

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.)))))	ER24-1915-000 ER24-1915-001
---	-----------------------	--

**MOTION TO REJECT SECOND ANSWER OF CLEAN ENERGY ASSOCIATIONS
AND ALTERNATIVE REQUEST FOR LEAVE TO ANSWER, AND ANSWER,
OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the New York Independent System Operator, Inc. (“NYISO”)² respectfully submits this motion to request that the Commission reject the Second Answer submitted by Advanced Energy United, the American Clean Power Association and the Solar Energy Industries Association (collectively, “the Clean Energy Associations”)³ in response to the NYISO’s June 27, 2024, answer in the above-captioned proceedings.⁴ Clean Energy Associations’ answer does not satisfy the Commission’s standard for considering answers to answers. In the alternative, if the Commission considers Clean Energy Associations’ Second Answer, then the NYISO respectfully requests that the Commission accept the NYISO’s

¹ See 18 C.F.R. §§ 385.212, 385.213.

² Capitalized terms that are not otherwise defined in this Answer shall have the meaning specified in Section 40.1 of the proposed Attachment HH to the NYISO Open Access Transmission Tariff (“OATT”) and, if not defined therein, in the NYISO OATT and NYISO Market Administration and Control Area Services Tariff (“Services Tariff”).

³ *New York Independent System Operator, Inc.*, Motion for Leave to Answer and Answer of the Clean Energy Associations, Docket No. ER24-1915-000 (July 12, 2024) (“Second Answer”).

⁴ *New York Independent System Operator, Inc.*, Request for Leave to Answer, and Answer of the New York Independent System Operator, Inc., Docket Nos. ER24-1915-000, ER24-1915-001 (June 27, 2024) (“NYISO Answer”).

alternative request for leave to answer and allow the NYISO to provide necessary corrections and clarifications.⁵

I. MOTION TO REJECT ANSWER

Answers to answers are not permitted as of right under the Commission's procedural rules. The Commission has discretion to accept answers to answers where they help to clarify complex issues, provide additional information, are helpful in the development of the record in a proceeding, or otherwise assist in the decision-making process.⁶ The Second Answer falls short of this standard. Clean Energy Associations claim that the Second Answer should be accepted "because it provides further information and clarification of our initial Joint Protest, corrects NYISO's mischaracterization of our positions, and will otherwise assist the Commission in its decision-making process."⁷ In fact, the Second Answer will not assist the Commission because it simply rehashes claims from the Clean Energy Associations' protest. Instead of "correcting" supposed "mischaracterizations" in the NYISO Answer, Clean Energy Associations seek to build

⁵ In the interest of limiting the scope of this answer and in not reiterating its previous answer, the NYISO did not address all issues raised by Clean Energy Associations' Second Answer. The fact that the NYISO is not responding to all of the assertions in Clean Energy Associations' Second Answer should not be construed as agreement therewith.

⁶ See, e.g., *New York Indep. Sys. Operator, Inc.*, 134 FERC ¶ 61,058, at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,160, at P 13 (2012); and *PJM Interconnection, LLC*, 132 FERC ¶ 61,217, at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process); *Northwestern Corp.*, 179 FERC ¶ 61,131, at P 13 and n.13 (2022) ("Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers, we will accept Northwestern's and the Businesses' answers because they provide information that has assisted in our decision-making.") (citing 18 C.F.R. § 385.213(a)(2)); *Tenn. Gas Pipeline Co., LLC*, 178 FERC ¶ 61,119, at P 20 (2022) ("Although the Commission's Rules of Practice and Procedure do not permit answers to protests and answers to answers, we will accept the Applicants' and Municipals' answers because they provide information that has assisted in our decision-making.") (citing 18 C.F.R. § 385.213(a)(2)); *New Fortress Energy LLC*, 174 FERC ¶ 61,207, at P 7 ("The Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers; however, we find good cause to waive our rules and accept the answers because they provide information that has assisted in our decision-making process.") (citing 18 C.F.R. § 385.213(a)(2)).

⁷ Second Answer at 2.

on arguments that are based on misunderstandings of the NYISO's compliance proposal. The Second Answer distorts instead of clarifies the record and should be rejected.

II. REQUEST FOR LEAVE TO ANSWER

If the Commission denies the NYISO's motion to reject the Second Answer, then the NYISO respectfully requests, in the alternative, that the Commission exercise its discretion to permit the NYISO to respond to the Second Answer. The NYISO's answer satisfies the Commission's standard to accept an answer and should be accepted because it addresses inaccurate and misleading statements, and provides additional information that will help the Commission fully evaluate the arguments in this proceeding. For the foregoing reasons, the NYISO respectfully requests that the Commission accept its answer.

III. ANSWER

A. The NYISO Has Justified its Study Process Timeframe and Its Application of Study Delay Penalties within Its Study Structure

The Commission should reject Clean Energy Associations' erroneous argument that the NYISO is taking two competing positions concerning whether its proposed Cluster Study is a single study or multiple studies for purposes of its study timeframe and the application of study delay penalties.⁸ Contrary to this assertion, the NYISO's description of its study process and its study delay penalty rules is internally consistent and has been fully justified in its compliance filing and the NYISO Answer.⁹

As previously detailed by the NYISO, its proposed Cluster Study constitutes a single, consolidated interconnection study. This Cluster Study includes two components – a Phase 1

⁸ Second Answer at 4.

⁹ See *New York Independent System Operator, Inc.*, Compliance Filing for Order No. 2023 and Order No. 2023-A; Conditional Request for Prospective Waivers, Docket No. ER24-1915-000 at 30-32 and Nguyen Affidavit at PP 7-11 (May 1, 2024) ("Compliance Filing"); NYISO Answer at 14-17.

component that primarily focuses on the assessment of local impacts of the proposed interconnections and a Phase 2 component that primarily focuses on the systemwide impacts of the proposed interconnections. Both study components are necessary to provide an Interconnection Customer with the complete evaluation of its proposed interconnection under the Cluster Study. These components are integrated within the Cluster Study with the NYISO and Transmission Owner performing certain study work for each phase in parallel to timely complete the study. For example, the NYISO and Transmission Owners may initiate certain work required for Phase 2 early in the Cluster Study Process and during Phase 1 and will perform updates to the Phase 1 work during Phase 2 to account for withdrawn projects.

The NYISO has inserted a decision point following the performance of the Phase 1 component to enable Interconnection Customers to determine, based on the attachment facilities and local upgrades initially determined for their project, whether to continue to remain in the Cluster Study, subject to higher deposits and withdrawal penalties, or to withdraw based on the information provided up to that point. However, the NYISO's and Transmission Owners' full determination of the required attachment facilities and upgrades and the related cost estimates are not completed until the end of the Phase 2 component. An Interconnection Customer may only proceed with its project if it completes the full Cluster Study by accepting at the conclusion of the study the cost allocation and posting security for this final determination of attachment facilities and upgrades for its project.

Clean Energy Associations again appear to misunderstand the purpose of the Phase 1 and Phase 2 components of the Cluster Study, comparing these study elements to the Commission's *pro forma* cluster system impact study and its cluster re-study. However, the components of the NYISO's Cluster Study do not mirror the Commission's *pro forma* structure. Rather, the

NYISO consolidates into the single Cluster Study the full scope of study work that is otherwise addressed across the Commission’s separate *pro forma* cluster study, cluster re-study, and individual facilities study.¹⁰ Accordingly, the NYISO reasonably included the timeframes for all three of these *pro forma* studies (not just the cluster study and cluster re-study) in establishing the benchmark for demonstrating that its proposed process timeframe is comparable to the *pro forma* timeframe and reasonable.¹¹ In addition to this comparison, the NYISO provided support in its filing letter and the NYISO Answer demonstrating the reasonableness of its requested study time periods as an independent entity variation based on its particular regional circumstances.¹²

In addition, Clean Energy Associations’ claims regarding study penalty deadlines continue to fail because they are based on the same faulty premise. As the NYISO re-emphasized above, the Cluster Study is a single study. Clean Energy Associations, not the NYISO, are attempting to elevate “form over substance”¹³ by treating Cluster Study components as if they were separate studies. It is also Clean Energy Associations who are seeking to rewrite Order No. 2023, which clearly imposes penalties on transmission providers for not completing studies *in their entirety* on time.¹⁴ Order No. 2023 does not penalize transmission providers based on their rate of progress through a study so long as completion is timely. There likewise

¹⁰ The NYISO’s Phase 1 and Phase 2 components both include elements of system impact and facilities studies: (i) to determine the need for attachment facilities and upgrades required to reliably interconnect projects and to address deliverability for those projects requesting Capacity Resource Interconnection Service and (ii) then, as applicable, to identify and allocate the costs of the local and non-local upgrades required for the interconnection. In addition, the NYISO performs re-study work throughout the Cluster Study and decision periods as projects withdraw or are withdrawn.

¹¹ Clean Energy Associations reference only the Commission’s *pro forma* cluster study and cluster re-study timeframes in asserting that the appropriate benchmark for the NYISO’s study process should be 300 days. Second Answer at 5. However, the NYISO’s Cluster Study also includes study work comparable to the *pro forma* facilities study, which, when added to the study *pro forma* timeframe, establishes a timeframe consistent with that proposed by the NYISO for its Cluster Study.

¹² See Compliance Filing at 30-32 and Nguyen Affidavit at PP 7-11; NYISO Answer at 14-17.

¹³ Second Answer at 3.

¹⁴ See Order No. 2023, Pro Forma LGIP at 3.9(1) (“Transmission Provider shall be subject to a penalty if it fails to complete a Cluster Study, Cluster Restudy, Interconnection Facilities Study, or Affected Systems Study by the applicable deadline set forth in this LGIP.”)

continues to be no basis in Order No. 2023’s text for Clean Energy Associations’ notions of “interim accountability.” It would serve no valid purpose to penalize the NYISO if it temporarily falls behind schedule on a Cluster Study but ultimately completes the study by the deadline. Importantly, the NYISO’s penalty structure holds the NYISO and Transmission Owners accountable for timely performing their responsibilities during both Phase 1 and Phase 2, as they would be subject to the penalty requirements at the conclusion of the Cluster Study if late work during any phase of the process delays the prescribed timeframe for completing the study.

Clean Energy Associations also offer no real response to the NYISO’s observation that they are seeking to hold the NYISO to a more stringent test for justifying independent entity variations than the Commission requires.¹⁵ They claim to be open to “some deviations” from the *pro forma* Large Generator Interconnection Procedures (“LGIP”). But they would unreasonably prevent the NYISO from adopting a longer study deadline without adding further “customer protections” to preserve an alleged balancing of interests underlying Order No. 2023. The Commission has not required the NYISO to demonstrate that a proposed independent entity variation will not disturb a claimed balance of transmission provider and Interconnection Customer interests. Order No. 2023 instead expressly invited ISOs/RTOs to propose longer study deadlines without requiring offsets or reciprocal benefits for customers. The NYISO need only show that the proposed independent entity variation is just and reasonable given New-York specific circumstances, which is exactly what its compliance filing did. Similarly, there is no basis for Clean Energy Associations to suggest that the NYISO’s proposed independent entity variation be denied, and “interim accountability” imposed, simply because they fear that Order No. 2023’s penalty regime will be overturned on appeal.¹⁶ The NYISO is unaware of the

¹⁵ See NYISO Answer at 35-36.

¹⁶ See Second Answer at 4, 6, 8.

Commission ever treating the possibility that its rules could be overturned as a reason to apply them more harshly. The Commission should not do so here.

B. The NYISO Has Justified Not Providing for Interconnection Customers to Compel the Use of a Third-Party Contractor in the Cluster Study Process

Clean Energy Associations assert that Interconnection Customers must have the right to compel the NYISO to make use of third-party contractors as a mechanism to expedite interconnection studies.¹⁷ As detailed in the NYISO Answer, the NYISO will continue to use third-party contractors for purposes of conducting the Cluster Study.¹⁸ However, Clean Energy Associations have not provided a basis for Interconnection Customers to compel the NYISO or Transmission Owner to have to use a third-party contractor under the new Cluster Study Process.

The NYISO's Cluster Study Process consist of numerous sub-studies that apply to both individual projects and the full cluster of projects. These study elements need to be managed and sequenced in a particular manner to ensure the performance of the Cluster Study across all projects within the tariff-prescribed time periods. It would be exceedingly disruptive to the study process if individual developers could decide that a particular portion of the study work needs to be completed by a particular consultant, rather than by the NYISO or Transmission Owner or through their processes for administrating the use of consultants.

C. Interconnection Customers Retain the Ability to Make Non-Material Modification to Their Projects

Clean Energy Associations renew their objection to the NYISO's requirement that an Interconnection Customer may not modify its project during the Cluster Study Process with limited exceptions.¹⁹ As previously detailed by the NYISO, permitting Interconnection

¹⁷ Second Answer at 8-10.

¹⁸ See NYISO Answer at 17-19.

¹⁹ Second Answer at 10-12.

Customers to make modifications during the Cluster Study Process would result in substantial delays in the performance of the Cluster Study Process and would create significant uncertainty in the timeframe of this process to the detriment of all projects.²⁰ The NYISO, however, clarifies that Interconnection Customers can continue to request such modifications following the completion of the Cluster Study. The NYISO will continue to assess such requested modifications to determine whether each requested change meets the tariff definition of a Material Modification—i.e., whether it has an impact on the cost or schedule of another Cluster Study Project (in the current or a prior Cluster Study).²¹

D. NYISO’s Independent Entity Variation Regarding the Interconnection of Energy Storage Resources Appropriately Reflects its Capabilities and Is Fully Justified

Clean Energy Associations assert that the statement in the NYISO Answer that it secures certain transmission facilities below 100 kV undermines the NYISO’s statements concerning the barriers to applying its proposed approach or the Order No. 2023 approach for energy storage resources interconnecting below 100 kV.²² Contrary to Clean Energy Associations’ assertion, the fact that the NYISO secures a small number of transmission facilities below 100 kV under limited circumstances does not change its inability to adequately monitor most of the transmission facilities below 100 kV in New York, the significant quantity of additional facilities it would need to monitor in order to secure them, or the substantial difficulties and expense that would be required to adequately monitor and secure such facilities in its Business Management System. Although there are limited circumstances where the NYISO has the ability to monitor

²⁰ See Compliance Filing at 74-75; NYISO Answer at 10-14.

²¹ As described in the NYISO Answer, Interconnection Customers are able to review the NYISO’s posted list of previously permitted modifications, which provide a reasonable basis for Interconnection Customers to assess whether a modification would be found non-material in determining how to proceed with their projects.

²² Second Answer at 12.

and secure transmission facilities below 100 kV, these limited circumstances are not representative of the NYISO's capabilities for most of the sub-100 kV transmission system. As detailed in the NYISO Answer, the Commission should, therefore, reject requests to simply extend the NYISO's proposed approach to interconnections to sub-100 kV transmission facilities, which would constitute a massive expansion of the NYISO's operation responsibilities beyond what is currently required by the Commission and could not be achieved without significant additional expenditure and operational changes.²³

The NYISO also clarifies in response to Clean Energy Associations' statements in their Second Answer that the NYISO is not inviting the Commission to direct it to revisit the NYISO's proposed approach for studying energy storage resources.²⁴ As detailed in its compliance filing and the NYISO Answer, the NYISO's proposed approach is a reasonable independent entity variation in light of the unique circumstances in New York.²⁵ The NYISO has only indicated that, in the event the Commission were to determine that the NYISO must modify its proposed approach, the Commission should permit the NYISO to make such modifications after the Transition Cluster Study to avoid disrupting and delaying such study.

E. The NYISO Will Assess Alternative Transmission Technologies Consistent with the Directives of Order No. 2023

Clean Energy Associations appear to continue to misunderstand how the NYISO will address enumerated alternative transmission technologies in its Cluster Study, asserting that the NYISO's consideration of such technologies amount to a post hoc rationale.²⁶ In actuality, the NYISO will assess the alternative transmission technologies enumerated in Order No. 2023 as

²³ NYISO Answer at 7-8.

²⁴ Second Answer at 13.

²⁵ See Compliance Filing at 119-125; NYISO Answer at 4-10.

²⁶ Second Answer at 13-14.

potential solutions to address identified reliability issues arising from the interconnection of the proposed project.²⁷ This will occur during the study process and, not as Clean Energy Associations assert, at the end of the Phase 2 Study. Following the NYISO's study and determinations concerning the alternative transmission technologies, the NYISO will then include an explanation of the results of its evaluation of these technologies in the Cluster Study Report.²⁸

IV. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission reject Clean Energy Associations' July 12, 2024, Second Answer in the above-captioned dockets. In the alternative, if the Commission decides to consider the Second Answer, then the NYISO requests that it grant the NYISO's request for leave to answer and consider the NYISO's answer.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan
Angela J. Sicker

/s/ Michael J. Messonnier, Jr.

Ted J. Murphy
Michael J. Messonnier, Jr.
Hunton Andrews Kurth LLP

*Counsel for the New York Independent System Operator,
Inc.*

July 29, 2024

cc:	Janel Burdick	Jette Gebhart	David Morenoff
	Emily Chen	Leanne Khammal	Jason Rhee
	Matthew Christiansen	Jaime Knepper	Douglas Roe
	Jignasa Gadani	Kurt Longo	Eric Vandenberg

²⁷ See NYISO OATT Attach. HH § 40.11.5.1.

²⁸ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 29th day of July 2024.

/s/ Alexander Morse

Alexander Morse
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144
(518) 285-7826