

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

New York Independent System Operator, Inc.) Docket No. ER13-102-000

**ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
AND THE NEW YORK TRANSMISSION OWNERS**

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”) and the New York Transmission Owners² (“NYTOs”) (collectively, the “Filing Parties”) respectfully submit this answer (“Answer”) to the requests for clarification in the above-captioned proceeding.³ In its April 18, 2013 order, the Commission conditionally accepted the Filing Parties’ proposed revisions to the NYISO’s planning process to comply with Order No. 1000 and directed the Filing Parties to make a further compliance filing regarding certain matters within 120 days (“April Order”).⁴ In response to the April Order, (i) the Independent Power Producers of New York, Inc. (“IPPNY”), Multiple Intervenors (“MI”) and Pace Energy and Climate Center (“Pace”) have requested clarification or, in the alternative,

¹ 18 C.F.R. §§ 385.212 and 385.213.

² The New York Transmission Owners are: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company d/b/a LIPA, New York Power Authority, New York State Electric & Gas Corp., Niagara Mohawk Power Corp. d/b/a National Grid, Rochester Gas & Electric Corp., and Orange & Rockland Utilities, Inc.

³ The Filing Parties are entitled to answer requests for clarification as a matter of right. The issues that IPPNY, MI, and Pace request clarification for overlap with the issues they request rehearing on in the alternative. To the extent that the Commission deems all or a portion of this Answer to be a response to a request for rehearing the Filing Parties respectfully request that the Commission exercise its discretion to accept it. The Commission has discretion to accept answers to requests for rehearing and has done so when they help to clarify complex issues, provide additional information, or are otherwise helpful in the Commission’s decision-making process. *See, e.g., Transcontinental Gas Pipe Line Corp.*, 113 FERC ¶ 61,129 at P 11 (2005) (accepting a response where an applicant “filed its pleading as a request for clarification, to which answers lie, and only asked that it be considered a request for rehearing in the alternative”); *New England, Inc.*, 120 FERC ¶ 61,122 at P 46 (2007) (stating that “unlike answers to requests for rehearing, answers to requests for clarification are not prohibited under the Commission’s Rules of Practice and Procedure”).

⁴ *New York Independent System Operator, Inc.*, Order on Compliance Filing, 143 FERC ¶ 61,059 (April 18, 2013) (“April Order”).

rehearing,⁵ and (ii) LS Power Transmission, LLC and LSP Transmission Holdings, LLC (collectively, “LSP Transmission”) have requested clarification⁶ regarding certain determinations by the Commission in the April Order.

The Commission has provided the transmission planning regions with significant flexibility to work with their stakeholders to tailor the transmission planning and cost allocation requirements set forth in Order No. 1000 in a manner that accommodates regional differences.⁷ Accordingly, for purposes of their compliance filing in response to the April Order, the Filing Parties are already addressing the matters raised in the requests for clarification with NYISO stakeholders. For this reason, the Commission should refrain from taking a position on or prejudging matters that are under development and, instead, should encourage IPPNY, MI, Pace, and LSP Transmission to provide their input and address any concerns as the NYISO develops the compliance filing.

I. Background

The Commission issued its Order No. 1000 to improve local, regional, and interregional transmission planning processes and cost allocation mechanisms, building on the requirements set forth in its Order No. 890.⁸ The Commission’s proposed reforms in Order No. 1000 are intended to accomplish two primary objectives. Specifically, to:

(1) ensure that transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a transmission plan that can meet transmission needs more efficiently and

⁵ *New York Independent System Operator, Inc.*, Request for Clarification or Rehearing of Independent Power Producers of New York, Inc., Multiple Intervenor and Pace Energy and Climate Center, Docket No. ER13-102-000 (May 17, 2013) (“IPPNY Filing”).

⁶ *New York Independent System Operator, Inc.*, Request for Clarification of LS Power Transmission, LLC and LSP Transmission Holdings, LLC, Docket No. ER13-102-000 (May 20, 2013) (“LSP Transmission Filing”).

⁷ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (“Order No. 1000”) at PP 61, 149, 157, and 604, *order on reh’g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

⁸ Order No. 1000 at P 1.

cost-effectively; and (2) ensure that the costs of transmission solutions chosen to meet regional transmission needs are allocated fairly to those who receive benefits from them.⁹

The Commission acknowledged that certain transmission planning regions may already have in place transmission planning processes and cost allocation mechanisms that satisfy these requirements.¹⁰ In addition, the Commission provided the transmission planning regions with significant flexibility to tailor their transmission planning processes and cost allocation mechanisms to accommodate the unique circumstances of their regions.¹¹

The NYISO's transmission planning process is contained in Attachment Y of the NYISO's Open Access Transmission Tariff ("OATT") and is known as the Comprehensive System Planning Process ("CSPP"). The CSPP has been composed of three components: (i) a local transmission planning process for the New York Transmission Owners, (ii) a reliability transmission planning process, and (iii) an economic transmission planning process.

Following the issuance of Order No. 1000, the NYISO and its stakeholders worked diligently to develop enhancements to the CSPP consistent with the Order No. 1000 requirements. In an October 11, 2012, compliance filing regarding the Commission's local and regional transmission requirements, the Filing Parties described where the existing CSPP already complies with or surpasses the Order No. 1000 requirements and proposed certain revisions to the NYISO's tariffs to ensure the CSPP is in full compliance with Order No. 1000.¹² The Filing Parties' proposed revisions to the NYISO's tariffs included: (i) making limited tariff revisions to the reliability and economic transmission planning processes; (ii) introducing a new Public

⁹ *Id.* at P 4.

¹⁰ *Id.* at P 13.

¹¹ *Id.* at PP 61, 149, 157, and 604.

¹² *New York Independent System Operator, Inc.*, New York Independent System Operator, Inc. and New York Transmission Owners, Compliance Filing, Docket No. ER13-102-000 (October 11, 2012) ("Filing Parties Compliance Filing").

Policy Requirements (“PPR”) transmission planning process; (iii) supplementing the entity qualification and project information criteria in the tariff; (iv) introducing a process to consider more efficient or cost effective transmission solutions; and (v) making additional revisions required to comply with Order No. 1000’s transmission planning process and cost allocation requirements.

In its April Order, the Commission found that the Filing Parties’ proposed revisions were partially compliant with Order No. 1000 and identified certain matters requiring further development through a supplemental compliance filing.¹³ Following the issuance of the April Order, the NYISO has initiated a stakeholder consultation process to review the Commission’s directives and to develop tariff revisions consistent with these requirements.

II. Answer

A. The Commission Should Deny IPPNY, MI, and Pace’s Requested Clarifications and Encourage Them to Address their Concerns within the NYISO Stakeholder Consultation Process

In its April Order, the Commission found that the NYISO’s reliability and PPR transmission planning processes do not fully comply with Order No. 1000 because they do not require the NYISO to select the more efficient or cost-effective transmission solutions to Reliability Needs or PPR-driven needs for purposes of cost allocation.¹⁴ The Commission also found that the Filing Parties’ proposed PPR transmission planning process does not adequately provide for the consideration of non-transmission alternatives on a comparable basis.¹⁵ Accordingly, the Commission directed the Filing Parties to include in a compliance filing a process by which the NYISO will select in the regional transmission plan for purposes of cost allocation the more efficient or cost-effective transmission solutions proposed to meet Reliability

¹³ April Order at P 13.

¹⁴ *Id.* at PP 77 and 145.

¹⁵ *Id.* at P 148.

Needs or PPR-driven needs.¹⁶ In addition, the Commission directed the Filing Parties to revise the PPR transmission planning process to provide for the evaluation of all resource types, including non-transmission alternatives, on a comparable basis.¹⁷

In their requests for clarification, IPPNY, MI, and Pace request that the Commission clarify these directives to require that the NYISO must “perform an evaluation comparing the relative cost effectiveness and efficiency of transmission solutions with proposed non-transmission alternatives and reporting which studied transmission and non-transmission solution best meets the reliability need or PPR-driven need.”¹⁸ They also request that the Commission clarify that if, after evaluating all solutions on a comparable basis, the NYISO identifies a non-transmission solution to a Reliability Need or PPR-driven need as the most cost-effective or efficient solution, the NYISO not be required to select a transmission solution for purposes of cost-allocation.¹⁹

The Filing Parties object to the requested clarifications and urge the Commission to reject them. The Commission has previously indicated that it will provide transmission providers with significant flexibility to develop such processes with their stakeholders. The Commission stated in paragraph 61 of Order No. 1000:

Nevertheless, the Commission recognizes that each transmission planning region has unique characteristics and, therefore, this Final Rule accords transmission planning regions significant flexibility to tailor regional transmission planning and cost allocation processes to accommodate these regional differences.

The Commission further stated in paragraph 149 of Order No. 1000:

We provide public utility transmission providers in each transmission planning region the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the region identify and evaluate

¹⁶ *Id.* at PP 81 and 147.

¹⁷ *Id.* at P 148.

¹⁸ IPPNY Filing at p 7.

¹⁹ *Id.*

the set of potential solutions that may meet the region's needs more efficiently or cost-effectively.²⁰

For purposes of complying with the Commission's April Order, the NYISO is already working with its stakeholders, with meetings on a bi-weekly basis, to develop processes that comply with the Commission's directives. In particular, the NYISO and its stakeholders are developing a process by which the NYISO will select for its regional transmission plan for purposes of cost allocation the more efficient or cost-effective transmission solutions to Reliability Needs or PPR-driven needs. We are also developing a process by which the NYISO will conduct a comparable evaluation of all resource types, including transmission, generation, and demand response, for its PPR transmission planning process.²¹

Consistent with its statements in Order No. 1000, the Commission should provide the NYISO and the NYTOs, in consultation with the NYISO stakeholders, the flexibility needed to develop processes that both satisfy the Commission's requirements and are tailored to the specific circumstances in New York. The processes being developed are complex with impacts on many stakeholders and are not limited to a single possible approach. IPPNY, MI, and Pace are, in essence, requesting that the Commission act outside of this consultation process and require that one particular approach be adopted for complying with the Commission's directives in its April Order. The Commission should not permit individual stakeholders to bypass this stakeholder consultation process, nor should the Commission prejudge or limit the manner in which the NYISO's and the NYTOs' process addresses its directives. For these reasons, the Commission should deny IPPNY, MI, and Pace's request for clarification and encourage the parties to provide their input in the NYISO stakeholder consultation process.

²⁰ Order No. 1000 at P 149. The Commission has allowed such flexibility in its orders approving different planning processes for different regions.

²¹ The NYISO's reliability transmission planning process already provides for a comparable evaluation of all resource types.

B. Filing Parties Will Provide Criteria for a Developer to Demonstrate that It Can Operate and Maintain a Transmission Facility for the Project’s Life in Their Supplemental Compliance Filing

In its April Order, the Commission accepted that the NYISO, in evaluating a transmission developer’s qualifications, can consider whether the developer’s existing resources and commitments provide sufficient assurance that the developer will be able to operate and maintain a facility for the life of the project.²² LSP Transmission requests that the Commission clarify that the NYISO must submit information in its supplemental compliance filing “that would identify what the NYISO would deem sufficient to establish that an entity has sufficient financial resources to operate and maintain a project for its life.”²³

The Commission has already directed the NYISO in the April Order to revise the financial pre-qualification and entity qualification criteria “to describe the information that a potential developer must provide to demonstrate that it meets these criteria.”²⁴ In complying with this requirement, the Filing Parties intend to provide the criteria that a developer must satisfy to demonstrate that it can operate and maintain a facility for the life of the project. These criteria will be provided to NYISO stakeholders for their review prior to the supplemental compliance filing. As the Filing Parties will address this matter in their supplemental compliance filing, further action by the Commission is not required on this point.

C. Filing Parties Will Provide in Their Supplemental Compliance Filing for the Inclusion in Project Costs of the Incremental Costs for Utilization of Existing Rights of Way

In its April Order, the Commission indicated that the NYISO could consider whether an entity has existing rights of way or experience or ability to acquire rights of way in evaluating

²² April Order at P 195.

²³ LSP Transmission Filing at p 2.

²⁴ April Order at P 200.

whether to select a proposed facility for purposes of cost allocation.²⁵ LSP Transmission expresses concerns that rights of way ownership could be given inappropriate weight in the NYISO's determination regarding which project is more cost-effective.²⁶ For this reason, LSP Transmission requests that the Commission direct the NYISO to require entities with existing rights of way to indicate any incremental costs they would incur in connection with placing new or additional facilities on existing rights of way.²⁷

The Filing Parties will address this issue in their supplemental compliance filing, rendering further action by the Commission unnecessary on this point.

D. Filing Parties Will Address in Their Supplemental Compliance Filing Recovery of Development Costs by Non-Incumbent Transmission Projects Upon NYISO Selection

In its April Order, the Commission indicated that:

[w]here an alternative regulated solution *receives the necessary governmental approval*, a non-incumbent developer will be entitled to the same cost recovery as a Responsible Transmission Owner if the regulated backstop solution were implemented (i.e., full recovery of all reasonably incurred costs, including costs related to the development of the project).²⁸

LSP Transmission notes that as part of its April Order, the Commission required that the NYISO, rather than the New York State Public Service Commission, select projects as part of the reliability transmission planning process.²⁹ For this reason, LSP Transmission requests that the Commission correct its statement to clarify that a non-incumbent developer is entitled to the same cost recovery as a Responsible Transmission Owner where an alternative regulation solution(s) is selected by the NYISO.³⁰ The Filing Parties

²⁵ *Id.* at P 197.

²⁶ LSP Transmission Filing at p. 2.

²⁷ *Id.* at pp. 2-3.

²⁸ April Order at P 326 (emphasis added).

²⁹ LSP Transmission Filing at pp 3-4.

³⁰ *Id.* at p 4.

will address the timing of cost recovery for transmission projects selected by the NYISO for purposes of cost allocation in their supplemental compliance filing.

E. A Responsible Transmission Owner Must Be Able to Recover Reasonably Incurred Development Costs to Ensure That Reliability Needs Are Met

LSP Transmission further requests that the Commission clarify that if the NYISO selects an alternative regulated transmission project other than the Responsible Transmission Owner's regulated backstop project as the more efficient or cost-effective solution to a Reliability Need, the selected project is from that point onward the sole project entitled to further cost recovery under the NYISO OATT.³¹ That is, the Responsible Transmission Owner could not recover any costs that it incurs for its backstop project, including further development costs, following the NYISO's selection of the other project.

The Filing Parties object to this clarification and urge the Commission to reject it. The Responsible Transmission Owner should continue to be eligible to recover reasonably incurred development costs following the NYISO's selection of a non-incumbent's alternative project. As the Commission recognized in its April Order, the Responsible Transmission Owner has a continuing obligation to serve, unlike the non-incumbent.³² The NYISO regional transmission plan must address a Reliability Need to ensure system reliability and to satisfy mandatory NERC reliability criteria. The obligation assumed by the Responsible Transmission Owner to provide a regulated backstop solution and to proceed to develop that solution if needed must be fulfilled to ensure system reliability. If the non-incumbent developer were unable to proceed with its project for any reason, the Responsible Transmission Owner may be obligated to proceed with its backstop project to meet the identified Reliability Need. For this reason, the Responsible Transmission Owner should be permitted to recover fully its reasonably incurred costs to

³¹ *Id.* at pp 4-5.

³² April Order at P 326.

continue development of its backstop project beyond the date of the NYISO's selection of the non-incumbent alternative project and until the point at which it is certain that the alternative transmission project will be completed in time to meet the Reliability Need.

III. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. and the New York Transmission Owners respectfully request that the Commission address the requested clarifications, and alternative rehearing requests, in the manner described above.

Respectfully submitted,

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
By: /s/ Carl F. Patka

Robert E. Fernandez, General Counsel
Ray Stalter, Director of Regulatory Affairs
Carl F. Patka, Assistant General Counsel
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Email: rfernandez@nyiso.com
Email: rstalter@nyiso.com
Email: cpatka@nyiso.com

Ted J. Murphy
Hunton & Williams LLP
2200 Pennsylvania Ave, NW
Washington, DC 20037
Email: tmurphy@hunton.com

Michael Messonnier
Hunton & Williams LLP
951 East Byrd Street
Richmond, VA 23219
Email: mmessonnier@hunton.com

/s/ John Borchert
John Borchert
Manager of Electric Engineering Services

NEW YORK TRANSMISSION OWNERS
By: /s/ Elias G. Farrah

Elias G. Farrah
Winston & Strawn, LLP
1700 K Street, NW
Washington, DC 2006-3817
Email: efarrah@winston.com

Paul L. Gioia
Whiteman Osterman & Hanna LLP
111 Washington Avenue
Suite 401
Albany, NY 12210
Email: pgioia@plg26.com

/s/ Richard B. Miller
Consolidated Edison Company of New York, Inc.
Orange and Rockland Utilities, Inc.

Central Hudson Gas & Electric Corporation
284 South Avenue
Poughkeepsie, NY 12601
Email: jborchert@cenhud.com

Richard B. Miller
Director of Energy Markets Policy Group
Consolidated Edison Co. of New York, Inc.
4 Irving Place
Room 1815-s
New York, NY 10003
Email: millerich@coned.com

/s/ Kristina Nifora
Consolidated Edison Company of New York, Inc.
Orange and Rockland Utilities, Inc.
Kristina Nifora, Esq.
Senior Attorney
Consolidated Edison Co. of New York, Inc.
4 Irving Place
Room 1850-s
New York, NY 10003
Email: niforak@coned.com

/s/ Jacqueline Hardy
Jacqueline Hardy
Assistant General Counsel
Long Island Power Authority
333 Earle Ovington Boulevard
Suite 403
Uniondale, NY 11553
Email: jhardy@lipower.org

David Clarke
Director of Power Markets Policy
Long Island Power Authority
Alfred E. Smith Building
80 South Swan Street, 6th Floor
Albany, NY 12210
Email: dclarke@lipower.org

/s/ R. Scott Mahoney
R. Scott Mahoney, Esq.
New York State Electric & Gas Corporation
Rochester Gas and Electric Corporation
Durham Hall, 52 Farm View Drive
New Gloucester, ME 04260
Email: scott.mahoney@iberdrolausa.com

/s/ Andrew Neuman
New York Power Authority
Andrew Neuman, Esq.
New York Power Authority
123 Main Street
White Plains, NY 10601-3170
Email: andrew.neuman@nypa.gov

Andrew Antinori
Director Market Issues
New York Power Authority
123 Main Street
White Plains, NY 10601-3170
Email: andrew.antinori@nypa.gov

/s/ Daniel Galaburda
Niagara Mohawk Power Corporation
d/b/a/ National Grid
National Grid USA Service Company, Inc.
Assistant General Counsel and Director
40 Sylvan Road
Waltham, MA 02451-1120
Email: daniel.galaburda@us.nrid.com

Bart Franey
Director of Federal Regulation
Niagara Mohawk Power Corporation d/b/a
National Grid
300 Erie Boulevard West
Syracuse, NY 13202
Email bart.franey@us.ngrid.com