

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

New York Independent System Operator, Inc.)))	Docket No. ER13-102-006
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**REQUEST FOR LEAVE TO ANSWER AND ANSWER OF
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Commission’s¹ Rules of Practice and Procedure,² the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this request for leave to answer and answer (“Answer”) of the protest of LS Power (“Protest”).³ LS Power’s Protest of the Filing Parties’ September 15, 2014, supplemental compliance filing (“Compliance Filing”)⁴ fundamentally mischaracterizes the Filing Parties’ proposal. The Protest also impermissibly collaterally attacks an issue that the Commission has already resolved. The Commission should, therefore, reject LS Power’s Protest in its entirety, accept the Compliance Filing, and find that the Filing Parties have fully complied with the regional transmission planning and cost allocation requirements of Order No. 1000⁵ and the Commission’s July 17, 2014, order in this proceeding (“July 2014 Order”).⁶

¹ Capitalized terms not defined in this Answer shall have the meaning set forth in Section 31.1.1 of Attachment Y of the NYISO OATT, and if not therein, in Section 1 of the OATT.

² 18 C.F.R. § 385.213 (2013).

³ *New York Independent System Operator, Inc. and New York Transmission Owners*, Protest of LS Power Transmission, LLC and LSP Transmission Holdings, LLC, Docket No. ER13-102-006 (October 6, 2014) (“LS Power Protest”). In the Answer, “LS Power” refers to LS Power Transmission, LLC and LSP Transmission Holdings, LLC.

⁴ *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-006 (September 15, 2014) (“Compliance Filing”). The “Filing Parties” are the NYISO and the New York Transmission Owners.

⁵ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (“Order No. 1000”), *order on reh’g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012) (“Order No. 1000-A”), *order on reh’g and clarification*, 141 FERC ¶ 61,044 (2012) (“Order No. 1000-B”). For convenience, unless otherwise

I. REQUEST FOR LEAVE TO ANSWER

The Commission has discretion to, and routinely accepts, answers to protests where, as here, they help to clarify complex issues, provide additional information, are otherwise helpful in the development of the record in a proceeding, or assist in the decision-making process.⁷ The NYISO's Answer to LS Power's Protest satisfies those standards and should be accepted because it addresses inaccurate or misleading statements, and provides additional information that will help the Commission fully evaluate the arguments in this proceeding.

II. BACKGROUND

The July 2014 Order accepted that the NYISO may direct a Responsible Transmission Owner to proceed with the development of a regulated backstop solution⁸ in parallel with an alternative regulated transmission solution selected by the NYISO as the more efficient or cost-effective transmission solution to ensure that a Reliability Need is satisfied.⁹ However, the July

specified, references in this filing to "Order No. 1000" should be understood to encompass Order Nos. 1000, 1000-A, and 1000-B.

⁶ *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 148 FERC ¶ 61,044 (2014) ("July 2014 Order").

⁷ See, e.g., *Southern California Edison Co.*, 135 FERC ¶ 61,093 at P 16 (2011) (accepting answers to protests "because those answers provided information that assisted [the Commission] in [its] decision-making process"); *New York Independent System 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 Independent System 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).

⁸ The NYTOs have a legal obligation to prepare a regulated backstop solution to an identified Reliability Need if designated by the NYISO as the Responsible Transmission Owner. This obligation is set forth in Attachment Y of the OATT and was memorialized by the NYTOs in a contract with the NYISO, which was accepted for filing by the Commission. Section 31.2.4.3.1 of Attachment Y of the OATT; Agreement Between the New York Independent System Operator, Inc. and the New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs (June 10, 2010), available at:

http://www.nyiso.com/public/webdocs/markets_operations/documents/Legal_and_Regulatory/Agreements/NYISO/Comprehensive_Planning_Process_for_Reliability_Needs_Agreement.pdf

⁹ July 2014 Order at PP 72-75.

2014 Order indicated that Sections 31.2.8.1.3 and 31.2.8.2.1 of Attachment Y of the NYISO Open Access Transmission Tariff (“OATT”) were unclear regarding the circumstances in which the NYISO would determine, prior to or at the Trigger Date¹⁰ of the regulated backstop solution, that it was necessary to direct the Responsible Transmission Owner to proceed with the regulated backstop solution.¹¹ The July 2014 Order, therefore, directed the Filing Parties to propose tariff revisions to explain the process by which the NYISO will make its determination.¹²

In response, the Compliance Filing proposed revisions to Section 31.2.8.1.3 of the OATT. Section 31.2.8.1.3 addresses the scenario in which the Trigger Date for the selected alternative regulated transmission solution precedes the Trigger Date for the regulated backstop solution. It sets forth that the NYISO will direct an Other Developer or Transmission Owner to proceed to develop its selected alternative regulated transmission solution at its project’s Trigger Date.

The proposed compliance revisions specify that, prior to the Trigger Date of the regulated backstop solution, the NYISO will review the status of the development of the selected solution to determine its ability to timely enter service to satisfy a Reliability Need. The revised Section 31.2.8.1.3 sets forth a non-exhaustive list of factors the NYISO will consider in reviewing the status of the selected solution, including whether the Other Developer or Transmission Owner developing that solution: (i) has executed a development agreement with the NYISO, (ii) has provided important milestone data to the NYISO, and (iii) has received its siting permits and authorizations under Article VII of the New York State Public Service Law or other applicable

¹⁰ As defined in Section 31.1.1 of Attachment Y of the OATT, Trigger Date means “[t]he date by which the ISO must request implementation of a regulated backstop solution or an alternative regulated solution pursuant to Section 31.2.8 in order to meet a Reliability Need.”

¹¹ July 2014 Order at P 75.

¹² *Id.*

New York State law. Based on its review, the NYISO will determine prior to or at the Trigger Date of the regulated backstop solution whether it is necessary to direct the Responsible Transmission Owner to proceed with the development of its regulated backstop solution to ensure that the identified Reliability Need can be satisfied by the need date. The NYISO will report to stakeholders the reasons for its determination based upon the conclusions of its review.

III. ANSWER

A. LS Power Incorrectly Describes the NYISO's Process for Determining Whether to Trigger a Regulated Backstop Solution.

LS Power incorrectly states that the NYISO will not make an actual determination regarding the need to trigger a regulated backstop solution, but would instead focus solely on whether or not the selected alternative regulated transmission solution has received its required permits, resulting in a mere “check-the-box” exercise.¹³ In actuality, the Filing Parties’ tariff revisions provide that the NYISO will consider the totality of the circumstances regarding the status of the selected solution.¹⁴ If the NYISO determines, based on this review, that the selected solution has not progressed sufficiently to ensure that the Reliability Need will be satisfied by the need date, and that it is necessary to trigger the regulated backstop solution, it will report to stakeholders the reasons for its determination. The extent to which the selected solution has satisfied the factors explicitly listed in Section 31.2.8.1.3, including whether the project has received the necessary permits, will certainly inform the NYISO’s analysis. However, as a plain reading of the revised language in Section 31.2.8.1.3 makes clear, the proposed tariff revisions in no way limit the factors that the NYISO can consider in making its determination, nor does

¹³ LS Power Protest at pp 3, 5-7.

¹⁴ As the NYISO has previously informed the Commission, a non-incumbent developer, unlike a Responsible Transmission Owner, does not have an obligation to construct its selected alternative regulated transmission solution and is free to discontinue its proposed project at any time.

Section 31.2.8.1.3 provide that the NYISO will automatically trigger the regulated backstop solution simply because the selected solution has not yet received its necessary permits.

B. LS Power Incorrectly Suggests that the NYISO Could Reasonably Determine that a Project Will Actually Be Constructed and Satisfy the Reliability Need Based Solely on the Results of the NYISO's Viability, Sufficiency, and Selection Processes.

LS Power incorrectly suggests that the NYISO does not need to take any steps beyond its evaluation of an alternative regulated transmission solution in the viability, sufficiency, and selection phases of the reliability planning process to have a reasonable assurance that the selected solution will actually be able to complete permitting, construction and commissioning to satisfy the Reliability Need by the need date.¹⁵ The NYISO's analysis in the initial sufficiency and viability phase of the reliability planning process, however, enables it to make only a preliminary determination regarding a proposed project's ability to satisfy the Reliability Need. This phase of the planning process will occur years before the actual project begins construction and is based on initial project information that is subject to further development and revision by the developer. Given that bulk power system reliability is at stake, the NYISO naturally will monitor the progress of the selected solution to ensure that it will be able to complete and enter service in time.

Similarly, the NYISO's review of the alternative regulated transmission solution using the selection metrics referenced by LS Power does not provide reasonable assurance that the selected project will be in service in time to satisfy the Reliability Need. For example Section 31.2.6.5.1.6 concerns whether the developer has obtained the property rights required to implement the project. This metric does not, however, require the developer to possess those rights at the time of selection. The NYISO could determine that a developer satisfies this metric

¹⁵ LS Power Protest at pp 5-6.

because it “has specified a plan or approach for determining routing and acquiring property rights.”¹⁶ A developer’s plan for addressing the acquisition of property rights under Section 31.2.6.5.1.6 or addressing potential issues with delays under Section 31.2.6.5.1.7 does not provide reasonable assurance that the developer will be able to satisfy the Reliability Need or take into account changes in circumstances that occur between the NYISO’s selection of a project and its decision to trigger a regulated project to proceed. The NYISO will re-evaluate the developer’s progress in carrying out its plan to obtain property rights, as well as other milestones, in deciding whether to trigger a regulated backstop solution to proceed in parallel with the selected solution.

C. The Commission Must Reject LS Power’s Collateral Attack on the Commission’s Acceptance of the NYISO’s Ability to Trigger a Regulated Backstop Solution in Parallel with a Selected Alternative Regulated Transmission Solution.

The Commission must reject LS Power’s argument that the NYISO’s triggering of a regulated backstop solution shifts project selection from the NYISO to the New York State Public Service Commission.¹⁷ The argument is nothing more than a collateral attack on the July 2014 Order’s determinations that: (i) the NYISO has satisfied the requirement to have a process to evaluate and select the more efficient or cost-effective transmission solutions to meet regional transmission needs,¹⁸ and (ii) the NYISO’s process to trigger a regulated backstop solution in parallel with a selected alternative regulated transmission solution under certain circumstances is

¹⁶ OATT, Attachment Y, Section 31.2.6.5.1.6.

¹⁷ LS Power Protest at p 7.

¹⁸ July 2014 Order at P 73.

permissible under Order No. 1000.¹⁹ The July 2014 Order firmly rejected LS Power's protests regarding the NYISO's ability to trigger a regulated backstop solution.²⁰

Nothing in the Compliance Filing changes the NYISO's process for selecting the more efficient or cost-effective transmission solution for purposes of cost allocation under the NYISO's tariffs. The Compliance Filing simply clarifies, as directed by the Commission, the circumstances under which the NYISO determines whether to trigger a regulated backstop solution.

D. The Commission Should Reject LS Power's Suggested Revisions to Section 31.2.8.1.4 of Attachment Y that Were Not Required under the July 2014 Order.

The Commission should reject LS Power's challenge to the requirement for triggering the regulated backstop solution set forth in Section 31.2.8.1.4 of Attachment Y.²¹ Section 31.2.8.1.4 concerns the scenario in which the Trigger Date for the regulated backstop solution precedes the Trigger Date for the selected alternative regulated transmission solution. Under these circumstances, the NYISO will trigger both the regulated backstop solution and the selected solution at the earlier Trigger Date for the regulated backstop solution.

The July 2014 Order did not direct the NYISO to revise the requirements in Section 31.2.8.1.4, and there is no cause for doing so. Unlike the scenario addressed in Section 31.2.8.1.3 in which the Trigger Date for the selected alternative regulated transmission solution comes first, the NYISO will not have the opportunity under the scenario addressed in Section 31.2.8.1.4 to perform a meaningful review of the status of the selected solution before determining whether to trigger a regulated backstop solution at its earlier Trigger Date. The

¹⁹ July 2014 Order at PP 72-75.

²⁰ July 2014 Order at PP 72-75.

²¹ LS Power Protest at pp 3-4.

Other Developer or Transmission Owner will not have made significant progress in developing the selected solution at the time the NYISO makes its decision on the project or projects to be triggered. Accordingly, at the time of its triggering decision, the NYISO will not have sufficient information regarding whether the selected solution will timely progress to be constructed and satisfy the Reliability Need. If the NYISO were to wait until sufficient information becomes available regarding the selected solution, it could be too late to trigger the regulated backstop solution that is required to satisfy the Reliability Need.

Any legitimate concern that LS Power might have that triggering the regulated backstop solution at its earlier Trigger Date could disadvantage the selected alternative regulated transmission solution has already been addressed. Section 31.2.8.1.4 already provides that the NYISO will also trigger the selected solution at the same time as the regulated backstop solution. Moreover, the NYISO will halt the regulated backstop solution once the selected solution satisfies the conditions set forth in Section 31.2.8.2.2 of Attachment Y.

IV. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this Answer and accept the Compliance Filing in the above-referenced docket without requiring any modifications.

Respectfully submitted,

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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 20th day of October, 2014.

/s/ Mohsana Akter

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