

**BEFORE THE
PUBLIC SERVICE COMMISSION
STATE OF NEW YORK**

Proceeding on Motion of the Commission to)
Implement Transmission Planning Pursuant)
to the Accelerated Renewable Energy Growth)
and Community Benefit Act)

Case 20-E-0197

**RESPONSE OF THE NEW YORK TRANSMISSION OWNERS TO
COMMENTS ON THE PROPOSED COST SHARING AND RECOVERY AGREEMENT
AND RATE SCHEDULE**

On January 7, 2022, the New York Transmission Owners (“NYTOs” or “Transmission Owners”)¹ submitted a proposed Cost Sharing and Recovery Agreement (“CSRA”) and a conforming rate schedule in compliance with the New York Public Service Commission’s (“PSC” or “Commission”) *Order on Local Transmission and Distribution Planning Process and Phase 2 Project Proposals* issued September 9, 2021 (“Phase 2 Order”). The NYTOs submit this Response to comments filed by LS Power Grid New York Corporation I (“LS Power”), the City of New York, and the Alliance for Clean Energy New York, Inc. (“ACE”) (“Protesters”).²

¹ For purposes of this Answer, the NYTOs include Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., the Long Island Power Authority, New York Power Authority (“NYPA”), New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

² See Comments of LS Power Grid New York Corp. I on the New York Transmission Owners’ Proposed Cost Sharing and Recovery Agreement and Tariff Provisions, Case 20-E-0197 (filed Feb. 8, 2022) (“LS Power Comments”); Comments of the City of New York on Proposed Cost Sharing and Recovery Agreement and Cost Allocation Mechanism, Case 20-E-1097 (filed Feb. 8, 2022) (“City of New York Comments”); Alliance for Clean Energy New York, Inc., Comments on Cost Sharing and Recovery Agreement, Case 20-E-0197 (filed Feb. 8, 2022) (“ACENY Comments”).

I. Background and Executive Summary

In this proceeding, the Commission is fulfilling its duties under the Accelerated Renewable Energy Growth and Community Benefit Act.³ The Accelerated Renewables Act recognizes that the NYTOs' local transmission and distribution systems play a key role in integrating the nation-leading renewable energy buildout required by the Climate Leadership and Community Protection Act.⁴ Historically, the NYTOs⁵ have performed and continue to perform local transmission and distribution planning. These plans focus on local reliability, and costs for any necessary transmission investments allocated and recovered on an individual utility basis. In parallel, the New York Independent System Operator ("NYISO") has a Public Policy Transmission Planning Process ("PPTPP") which addresses bulk transmission projects to fulfill state policy.⁶

The Accelerated Renewables Act required the Transmission Owners, under the Commission's supervision, to facilitate the integration of renewable energy resources with local transmission and distribution projects to achieve CLCPA targets. Specifically, the Accelerated Renewables Act authorizes and requires the PSC:

to commence a proceeding to establish a distribution and local transmission capital plan for each utility in whose service territory the power grid study identified distribution upgrades and local transmission upgrades that the department [of public service] determines are necessary or appropriate to achieve the CLCPA

³ Accelerated Renewable Energy Growth and Community Benefit Act, 2020 N.Y. Sess. Laws, ch. 58, Part JJJ (McKinney 2020) ("Accelerated Renewables Act" or "Act").

⁴ Climate Leadership and Community Protection Act, Chapter 106 of the laws of 2019 ("CLCPA").

⁵ Certain requirements under the Accelerated Renewables Act do not apply to NYPA, which unlike the other Transmission Owners does not have a retail franchise area and distribution system. Additionally, NYPA does not plan to use the CSRA mechanism to recover its transmission costs because it uses a different mechanism. As the context requires, references to the NYTOs may exclude NYPA. Moreover, NYPA is exempt from certain provisions of the Federal Power Act and the New York Public Service Law. NYPA's participation in this proceeding and these comments do not constitute and should not be construed as a waiver of any such exemption.

⁶ See the NYISO Open Access Transmission Tariff ("OATT") Attachment Y.

targets . . . [The associated] programs shall establish a prioritized schedule upon which each such upgrade shall be accomplished . . .⁷

Given that the NYTOs will be developing local transmission solutions in support of the CLCPA, and that renewable energy is ultimately utilized by customers across the State, the PSC understood in its initiating order in this proceeding⁸ the need to provide for a new mechanism to allocate the costs of these local projects to customers who benefit from them. Accordingly, the PSC requested cost allocation and cost recovery recommendations from the NYTOs.⁹ The NYTOs complied with that request in their November 2020 filing. In the Phase 2 Order, the Commission agreed with the NYTOs' recommendation and determined that "the statewide allocation to all customers of the Phase 2 investment costs is appropriate . . ."¹⁰ After considering several alternatives, the Commission selected the participant funding approach the NYTOs proposed¹¹ to provide the mechanism to achieve cost allocation on a load ratio basis for the Phase 2 projects.¹² The Commission directed the NYTOs to develop the CSRA for the Commission's review and to explore the use of the NYISO to administer the statewide cost allocation and recovery.

⁷ Accelerated Renewables Act, Section 7.3.

⁸ *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, Order on Transmission Planning at p. 9, Case 20-E-0197 (Issued and Effective May 14, 2020) ("May 2020 Order").

⁹ May 2020 Order at pp. 8-11.

¹⁰ Phase 2 Order at p. 22. The Phase 2 Order also observed that the costs of Renewable Energy Credits ("REC"), Off-shore Wind Renewable Energy Certificates and Zero Emissions Credits were allocated throughout the state on a load ratio share basis. *Id.* at 23 & fn. 36.

¹¹ *See* Phase 2 Order at p. 30 ("the Commission believes the participant funding model can efficiently accomplish the balancing necessary to achieve an equitable cost distribution throughout the State. Thus, the next step would be development of an agreement among the Utilities [NYTOs], and the Commission understands that effectuating cost recovery of a voluntary statewide participant funding agreement would require FERC's approval.")

¹² *Id.* at pp. 30-31.

LS Power's¹³ filing seeks to prevent the Commission from administering the requirements of the Accelerated Renewables Act. The Accelerated Renewables Act directs the Commission to develop utility capital plans that support necessary modifications to utility local transmission and distribution systems in order to attain CLCPA goals. LS Power argues that the Commission should force all projects, including the local projects that are the focus of the Phase 2 Order, to be subject to the NYISO's PPTPP. LS Power makes this demand despite the facts: transmission projects identified through each NYTO's local planning process have never been subject to the NYISO PPTPP or its competitive solicitation process,¹⁴ and are properly within each NYTO's planning authority.

New York is in a race to transform the electric power system through renewable energy development of unprecedented scale. Attempts to confine the Commission to the NYISO process are misplaced, as the problem the Commission is trying to address is limited transmission capability on local networks. Pursuing a project development pathway at the NYISO would only serve to address bulk power transmission facility needs, not local system capacity shortfalls. In this proceeding, LS Power has sought to narrowly confine the projects the Commission can

¹³ When the City of New York or ACE raised similar points to LS Power, the NYTOs address both or all three parties in addressing LS Power's Comments. A failure to address a party by name or any point addressed by another party does not constitute and should not be construed as acquiescence.

¹⁴ LS Power repeats its flawed claim that voluntary cost sharing agreements to allocate transmission project costs to more than one Transmission Owner are not permitted and that such cost allocations may be achieved only under the NYISO's PPTPP. LS Power Comments at pp. 7-8. This is wrong irrespective of whether the project is local transmission, bulk transmission, or subject to a Transmission Owner's right of first refusal to construct Upgrades (OATT Attachment Y). *See* Response of the New York Transmission Owners to Request for Rehearing of LS Power, Case 20-E-0197 (filed Jan. 3, 2022) ("NYTOs' January 3 Response"). *See also* *State Voluntary Agreements to Plan and Pay for Transmission Facilities*, Policy Statement, 175 FERC ¶ 61,225, at P 2 (2021) ("*State Voluntary Agreements Policy*").

authorize for utility development,¹⁵ and eliminate an equitable and reasonable cost allocation and recovery mechanism,¹⁶ without which the needed projects cannot efficiently proceed.¹⁷

The NYTOs urge the Commission to reject all arguments against the CSRA. While the NYTOs address additional arguments below,¹⁸ the following highlights stand out:

- Neither the CSRA nor the proposed Rate Schedule¹⁹ violate FERC Order No. 1000.²⁰ To the contrary, FERC has been clear that voluntary participant funding agreements like the CSRA remain an option available to states and transmission providers as a *supplement* to regional planning processes. FERC has unambiguously affirmed that the use of such agreements is not only permitted but encouraged to achieve state policy goals.²¹
- The CSRA does not obligate the Commission to provide guaranteed cost recovery for the NYTOs' Phase 2 Projects or result in evasion of rate review. The Commission will use the Phase 2 Project/CSRA mechanism for only those projects the Commission approves as meeting the statutory objectives under the CLCPA; the sponsoring Transmission Owner must use the Commission-determined rate of return and capital structure for projects under the CSRA. The CSRA does NOT provide for pre-approval of all project costs; and, as is customary with FERC-filed formula rates,

¹⁵ See LS Power Application for Rehearing and Clarification, Case 20-E-0197 (Oct. 8, 2021), which should be denied in its entirety and NYTOs' January 3 Response.

¹⁶ As discussed in this Answer, LS Power seeks rejection of any cost-sharing of Phase 2 Projects. For example, LS Power claims Transmission Owners may recover Phase 2 Project costs through their existing NYISO OATT Transmission Service Charges. These charges are applied on a transmission district-specific basis which would prevent allocation State-wide on a load ratio basis and likely impede or prevent the projects from being built as required by the Accelerated Renewables Act.

¹⁷ In the absence of a FERC-approved cost recovery mechanism, it will be more difficult for utilities to commit substantial capital to Phase 2 Projects. (The Phase 2 Order recognized that "establishing certainty of cost recovery once ... rates are set is critical to meeting the CLCPA's ambitious deadlines.") Phase 2 Order at pp. 28-29. Moreover, alternative mechanisms would be unnecessarily administratively burdensome.

¹⁸ In this Answer, the Transmission Owners do not address every argument a party raised in comments on the CSRA. Rather, the Transmission Owners respond to erroneous legal arguments and misstatements of fact so that the Commission has a more complete and accurate record, clearing the path forward to implement the CSRA and satisfy the requirements of the Accelerated Renewables Act.

¹⁹ The NYTOs included in their January 7, 2022 filing in this proceeding the draft CSRA and a rate schedule to implement the CSRA with appropriate NYISO administration of recovery of the associated charges ("Rate Schedule").

²⁰ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) ("Order No. 1000").

²¹ See NYTOs' January 3 Response at pp. 5-7; Order No. 1000-A at P 724; *State Voluntary Agreements Policy* at PP 1, 2.

all interested parties have the right to contest the prudence of actual project costs incurred by the sponsoring Transmission Owner. The NYTOs have modified Section 9.16 of the CSRA to clarify the Commission's has not waived the right to protest costs recoverable in formula rate filings pursuant to the CSRA.

- The Commission should reject LS Power's request that the Commission defer review of the NYTOs' proposals until NYISO stakeholders approve them. Local system needs and planning are not subject to the NYISO central planning authority and only the Commission can approve local system project development.

The NYTOs urge the Commission to accept the CSRA so they can take the steps necessary to implement it including an appropriate FERC filing.

II. The CSRA and Proposed FERC Rate Schedule Do Not Violate Order No. 1000

LS Power's assertion that the proposed CSRA and FERC Rate Schedule violate the non-discrimination requirements of FERC Order No. 1000²² is fatally flawed because the Phase 2 Projects are part of local transmission and distribution planning processes, not the Order No. 1000 process. Local planning—before and after Order No. 1000—remains within the Transmission Owners' authority, subject to applicable state law requirements.²³ Moreover, even if the Phase 2 projects involved bulk transmission (which these do not), participant funding is available independent of and as a supplement to the Order No. 1000 planning process.²⁴

In this proceeding, the Commission has directed development of a process to facilitate local transmission and distribution needed to satisfy State policy. This process depends on and requires individual utility *local* transmission and distribution planning, something that has

²² See LS Power Comments at pp. 7-8.

²³ LS Power cites Order No. 1000 (LS Power Comments at p. 7) and footnote 155, but fails to note that there FERC stated: "nothing in this Final Rule preempts or otherwise limits any such obligation that may exist under state or local laws or regulations."

²⁴ See NYTOs' January 3 Response at pp. 5-7; Order No. 1000-A at P 724; *State Voluntary Agreements Policy* at PP 1-2.

always been subject of Commission approval and the province of the Transmission Owners. In contrast, the NYISO’s PPTPP addresses *bulk* system projects.²⁵

LS Power attempts to push all projects that seek multi-transmission owner cost allocation, even local projects, into the NYISO PPTPP process. LS Power’s position cannot be reconciled with New York State Law. The Accelerated Renewables Act authorizes and requires the PSC “to establish a distribution and local transmission capital plan for each utility in whose service territory the power grid study²⁶ identified distribution upgrades and local transmission upgrades that the department [of public service] determines are necessary or appropriate to achieve the CLCPA targets . . . and a prioritized schedule upon which each such upgrade shall be accomplished . . .”²⁷ The Commission must reject LS Power’s attempt to shift such local and distribution projects to the NYISO PPTPP.²⁸

Moreover, the State has jurisdiction and statutory authority over certain regulated electric corporations. Using this authority, the Accelerated Renewables Act “directs” the Commission:

to make a comprehensive study of the state’s power grid to identify distribution and transmission infrastructure needed to enable the state to meet the CLCPA targets, and based on such study, develop definitive plans that: (a) provide for the timely development of local transmission and distribution system upgrades *by the state’s regulated utilities and the Long Island Power Authority*. . . .²⁹

²⁵ See generally NYISO OATT, Attachment Y.

²⁶ See *Utility Transmission and Distribution Investment Working Group Report* filed in this proceeding on November 2, 2020.

²⁷ Accelerated Renewables Act, Section 7. 3.

²⁸ Under the NYISO’s FERC-approved Order No. 1000 process, each NYTO has the right and obligation to develop its own Local Transmission Plan after consideration of State public policy requirements and input from the Commission and stakeholders. NYISO OATT, Attachment Y section 31.2.1. These reserved rights are consistent with certain core rights each NYTO preserved in the foundational NYISO-Transmission Owner Agreement, including the right to build transmission facilities and modify their systems. ISO-TO Agreement, Section 3.10. (c). LS Power’s attempt to divest the NYTOs of these rights is beyond the scope of this proceeding.

²⁹ Accelerated Renewables Act section 2.3 (emphasis added).

State law seeks regulated local transmission and distribution solutions from jurisdictional utilities. Requiring the Commission to use the NYISO Order 1000 planning process as LS Power demands would not result in any local transmission needs being addressed. The NYISO planning process is clearly limited to addressing bulk power transmission needs or bulk power investments.³⁰ In addition, the Commission has decided state-wide cost allocation through voluntary participant funding agreements by and among the NYTOs for Phase 2 Projects is the appropriate mechanism to provide equitable cost recovery.

Moreover, FERC has cleared a path for such projects and participant funding agreements outside of the Order No. 1000 process. FERC has been abundantly clear that Order No. 1000 does not prohibit developers, including the NYTOs, from using participant funding outside of the Order No. 1000 regional transmission planning process.³¹ In its 2021 Policy Statement, FERC explicitly encouraged the use of voluntary agreements to fund transmission projects to achieve state policy goals that are not being developed pursuant to Order No. 1000's regional transmission planning process.³²

The CSRA is exactly the type of agreement to which FERC referred in its Policy Statement. The CSRA supplements, rather than replaces, the Order No. 1000 process.³³ The fact

³⁰ See, e.g., NYISO OATT, Attachment Y, Section 31.1.5: Public Policy Transmission Planning Process (“Section 31.4 of this Attachment Y describes the planning process that the ISO, and all interested parties, shall follow to consider *Public Policy Requirements that drive the need for expansions or upgrades to [Bulk Power Transmission Facilities]*”) (emphasis added).

³¹ See Order No. 1000 at P 274 (explaining that FERC will not “foreclose the opportunity for a transmission developer, a group of transmission developers, or one or more individual transmission customers to voluntarily assume the costs of a new transmission facility.”). In Order No. 1000-A, FERC similarly explained that “Transmission developers who see particular advantages in participant funding remain free to use it on their own or jointly with others. This simply means that they would not be pursuing regional or interregional cost allocation [under Order No. 1000].” Order No. 1000-A at P 729. FERC did not limit the number of transmission owners that participate in participant funding agreements.

³² *State Voluntary Agreements Policy* at P 2.

³³ *Id.* at P 4.

that the NYTOs voluntarily agree to share the costs of transmission projects does not render them subject to the NYISO's regional transmission planning process.³⁴

Accordingly, LS Power's claim that the use of a FERC-approved rate schedule to effectuate the CSRA violates Order No. 1000 is incorrect because Order No. 1000 does not apply. Rather, the new rate schedule will exist as a complementary recovery mechanism applicable to local projects selected by the Commission that facilitate CLCPA targets. FERC's Policy Statement was clear in recognizing that states also have an interest in using cost sharing arrangements to achieve policy objectives.³⁵

III. LS Power's Claims that the NYTOs are Requesting Pre-Approval of Project Costs in this Proceeding and Seeking to Evade Rate Review Are Wrong

Contrary to certain Protesters' characterizations, the CSRA does not obligate the Commission to pre-approve Phase 2 Projects and thus guarantee cost recovery for all Phase 2 Projects that the NYTOs may propose.

LS Power argues that the CSRA requires the Commission to grant "pre-approval" and "guarantee" recovery of all costs incurred in a Phase 2 Project.³⁶ LS Power and the City of New York also point to section 9.16 of the CSRA to argue that the CSRA should be rejected³⁷ (Section 9.16 memorializes the Commission's agreement to support the CSRA process). These arguments do not withstand scrutiny. The Commission controls which projects may be included

³⁴ There is already precedent for the use of an administrative mechanism whereby the NYISO collects transmission charges established by a NYTO and distributes revenues to it: the NYISO's administration of the NYPA Transmission Adjustment Charge (NYISO OATT Attachment H, Section 14.2.2.1).

³⁵ See *State Voluntary Agreements Policy* at P 2 ("Voluntary Agreements can further [FERC's goal to facilitate development of cost-effective and reliable transmission] by, for example, providing states with a way to prioritize, plan, and pay for transmission facilities that, *for whatever reason, are not being developed pursuant to the regional transmission planning processes required by Order No. 1000.*") (emphasis added).

³⁶ LS Power Comments at pp. 3-4.

³⁷ LS Power Comments at p. 5; City of New York Comments at pp. 2-4.

within the CSRA mechanism and subject to cost recovery. Moreover, the CSRA does not guarantee recovery of all costs incurred by an NYTO.

The CSRA requires each NYTO to obtain project-specific approval from this Commission prior to recovering their costs through the CSRA. Moreover, the Commission will only consider for approval those projects that it determines are necessary or appropriate to achieve the CLCPA requirements.³⁸ The Commission will review the benefits and forecast costs of each project before it approves the project and the use of the CSRA mechanism.³⁹ Moreover, the Commission shall establish the return on equity and capital structure the Transmission Owner shall use when filing to recover costs through the CSRA.⁴⁰

The NYTOs also clarify that the PSC would NOT be precluded from protesting the costs contained in a NYTO's filing to recover such costs under its formula rate at FERC. The PSC's right to protest, however, would not include the right to contest the cost allocation mechanism based on the CSRA and Rate Schedule or the rate of return or capital structure that was already approved by the PSC and included in such a formula rate filing.⁴¹ The NYTOs include a redline and clean version of the CSRA reflecting the following addition to section 9.16: “. . . provided, however, the NYPSC reserves the right to protest costs recoverable in any formula rate filings made pursuant to this Agreement.”

³⁸ CSRA at Section 2.1; *see also* Section 2.2. (“Each Transmission Owner shall have the sole right and responsibility to request and obtain an order from the NYPSC for its own Transmission Projects to be Approved Transmission Projects under this Agreement . . .”).

³⁹ The Commission paid careful attention to the methodology for the benefit/cost analysis; *see* Phase 2 Order, pp. 7-15.

⁴⁰ CSRA at Section 2.2. (“Each Transmission Owner shall . . . obtain an order from the NYPSC . . . including approval . . . of its return on equity and capital structure for such Transmission Projects.”).

⁴¹ As specified in Section 2.2 of the CSRA, LIPA's return and capital structure are not determined by the Commission; and LIPA's rates are not subject to FERC jurisdiction and would be reviewed under the “comparability” standard.

Thus, contrary to LS Power's and the City of New York's arguments, the CSRA does not deprive affected parties of their rights under the Federal Power Act to protest NYTO filings that seek to recover costs under their FERC-filed formula rates.

IV. LS Power's Alternate Arguments to Reject the CSRA are Misplaced

LS Power also asks that the Commission not review the CSRA.⁴² LS Power's argument is an untimely collateral attack on the Phase 2 Order which required the Transmission Owners to develop the participant funding agreement and to submit it to the Commission for review, noting "a voluntary participant funding agreement between the Utilities is essential to effectuate recovery of Phase 2 costs . . ."⁴³ The CSRA can only be used for projects approved by the Commission. It is absurd under these circumstances for the Commission not to review the form of CSRA the Commission directed the utilities to develop and that it would use with the NYTOs to fund Phase 2 Projects.

Next, LS Power claims the CSRA is not needed because its provisions should appear in the NYISO OATT. This too is a collateral attack on the Phase 2 Order. Moreover, it is just plainly wrong as a matter of law. FERC encourages the use voluntary participant funding agreements outside of the ISO/RTO tariff Order No. 1000 process.⁴⁴

⁴² LS Power Comments at p. 6.

⁴³ Phase 2 Order at p. 31.

⁴⁴ See NYTOs' January 3 Response at pp. 5-7; Order No. 1000-A at P 724; *State Voluntary Agreements Policy* at PP 1-2 (2021). See also *PJM Interconnection, L.L.C.*, 174 FERC ¶ 61,090, at PP 2-3 (2021) ("*PJM*") (state agreement approach to transmission upgrade cost allocation does not undermine and is not part of a Regional Transmission Organization's compliance with the provisions of Order No. 1000 that address non-local transmission needs driven by public policy requirements).

V. LS Power’s Claim that the NYTOs Do Not have Section 205 Rights to Effect the CSRA is Beyond the Scope of this Proceeding and Simply Incorrect

LS Power argues that the NYTOs do not have authority to make a Federal Power Act section 205 filing to implement the CSRA. This argument is beyond the scope of this proceeding and simply incorrect.

If the Commission accepts the CSRA and associated rate schedule and asks the NYTOs to make an appropriate filing with FERC,⁴⁵ it is up to the NYTOs to comply with the Federal Power Act. The scope of the NYTOs’ section 205 rights is an issue for FERC to decide. Accordingly, this issue is beyond the scope of this proceeding.

In any event, LS Power’s argument is wrong—the NYTOs have unilateral section 205 rights to file the CSRA and the implementing rate schedule. LS Power fails to overcome the reservation of NYTO rights in the ISO-TO Agreement that formed the NYISO. There, each Transmission Owner retained “the right at any time unilaterally to file pursuant to Section 205 of the Federal Power Act to change the ISO OATT, a service agreement under the ISO OATT, or the ISO Agreement to the extent necessary: (i) to recover all of its reasonably incurred costs, plus a reasonable return on investment related to services under the ISO OATT”⁴⁶

The CSRA and implementing rate schedule are to effect recovery of and return on investments in the local transmission systems of the NYTOs and fall within the explicitly reserved rights under the ISO-TO Agreement. Moreover, even if the ISO Agreement or OATT conflicted with this reserved right, the ISO-TO Agreement prevails.⁴⁷ This reservation of rights

⁴⁵ In the Phase 2 Order, the Commission clearly recognizes that the NYTOs would have to file the CSRA with FERC before it can become effective. Phase 2 Order at pp. 31-32.

⁴⁶ ISO-TO Agreement, Section 3.10.a. The NYISO routinely makes section 205 filings with FERC on behalf of other transmission owners, including the NYTOs and transmission developers so that they may recover their costs.

⁴⁷ *Id.*, Section 6.09 (“In the case of a conflict between the express terms of [the ISO-TO Agreement] and the terms of the ISO Agreement [or the tariff], the express terms of [the ISO-TO Agreement] shall prevail.”).

is so fundamental, it is not subject to change except under the public interest standard of the Mobile-Sierra Doctrine,⁴⁸ a standard LS Power claims is extremely difficult to satisfy.⁴⁹

Under the misapprehension that the NYTOs did not have unilateral rights to file the CSRA with FERC, LS Power asks the Commission to defer any review of the NYTOs' proposals until the NYISO stakeholders approve it.⁵⁰ This request should be summarily rejected. The Accelerated Renewables Act directs the Commission to develop definitive plans to meet CLCPA targets through timely development of local transmission system upgrades by the regulated utilities. This does not require a NYISO stakeholder vote. The NYTOs have the right to make unilateral filings under FPA section 205 in this instance without stakeholder approval.

Finally, LS Power's argument that the CSRA is not needed because the NYTOs' existing formula rates provide for recovery of Phase 2 Project costs⁵¹ simply misses the mark. If LS Power is suggesting that the NYTOs merely update their respective Transmission Service Charges ("TSCs") under the NYISO OATT, this proposal is another attempt to defeat the cost allocation mechanism the Commission adopted in the Phase 2 Order. The Phase 2 Order approves the NYTOs' allocation of Phase 2 Project costs statewide on a volumetric load-ratio share basis.⁵² TSCs under the NYISO OATT are applied on a transmission district basis and do not provide for a New York State load-ratio share cost allocation and recovery.⁵³ Thus, existing

⁴⁸ *Id.*, Section 6.14.

⁴⁹ LS Power Comments at pp. 10-11.

⁵⁰ LS Power Comments at p. 8.

⁵¹ LS Power Comments at p. 9.

⁵² Phase 2 Order at p. 23.

⁵³ *See, e.g.*, NYISO OATT, Attachment H, Sections 14.1 and 14.1.8 Tables 2 and 3; NYISO OATT, Section 2.7.2.1.4.

formula rates in the form of the TSC would fail to achieve the Commission's approved cost allocation.

VI. The CSRA Appropriately Does Not Include a Cost Containment Requirement

ACE requests that the Commission establish a generic cost containment mechanism for Phase 2 Projects.⁵⁴ As a threshold matter, the Commission should reject this request as outside the scope of this proceeding. The CSRA is a voluntary cost allocation and recovery agreement. The NYTOs carefully balanced competing interests in developing the CSRA and have provided essential consideration on the premise that prudently incurred costs of projects approved by the Commission would be recoverable.

The Commission will use the CSRA mechanism for only those projects the Commission approves as meeting the statutory objectives under the CLCPA. The sponsoring NYTO must use the Commission-determined rate of return and capital structure for projects under the CSRA (a rate that is expected to be lower than the typical FERC-approved rates, which is itself a form a cost containment); the CSRA does not provide for pre-approval of all project costs; and the Commission and all interested parties reserve the right to contest the actual project costs incurred by the sponsoring NYTO. It would accordingly be inappropriate to impose generic involuntary cost caps. The Commission should reject Protesters' arguments and approve the CSRA.

VII. The NYTOs Have Removed the Mobile-Sierra Clause

The NYTOs have removed the Mobile-Sierra clause from the CSRA. If this modification is acceptable to the Commission, the Commission need not address LS Power's and the City of New York's associated comments.

⁵⁴ Alliance for Clean Energy New York, Inc. Comments on CSRA at p. 2 (Feb. 8, 2022) ("ACE Comments").

VIII. There is No Backstop Recovery Proposal Before the Commission in the NYTOs' CSRA Filing

The Transmission Owners' CSRA filing does not contain a backstop cost recovery mechanism or proposal. It is not in the CSRA or Rate Schedule. Accordingly, it would be inappropriate to address a backstop mechanism in response to LS Power's argument.⁵⁵ Each NYTO, however, reserves the right to seek appropriate cost recovery for costs of developing projects approved by the Commission, including deferral of costs for future recovery. The time to rule on such applications is when they are made and before the Commission.

IX. There is No Inconsistency Between the CSRA and the Rate Schedule as to NYPA's Cost Recovery

The City of New York is concerned about a perceived inconsistency between the CSRA and the Rate Schedule. Section 3.4 of the CSRA states that NYPA "will be allocated costs of Approved Transmission Projects in the same manner as other [load serving entities] under Rate Schedule 18." Additionally, Section 6.18.1.2 of the Rate Schedule states that it does not apply to NYPA.

The CSRA and Rate Schedule are correct. CSRA section 3.4 relates to NYPA as a load serving entity. This provision recognizes NYPA's customers will be responsible for CSRA-related costs to the same extent as other end use customers in New York served by a load serving entity. NYPA, however, will not itself use the CSRA (or accompanying rate schedule) to recover the costs of its transmission projects because (1) NYPA does not have a retail service area or local transmission and distribution system and therefore, under the Accelerated Renewables Act,

⁵⁵ LS Power Comments at pp. 11-12. Moreover, LS Power's arguments are predicated on its application for rehearing pending in this proceeding. The New York Transmission Owners have already responded to LS Power (*see* NYTO's January 3 Response at pp. 10-13) and will not repeat the analysis here.

will not be developing Phase 2 projects for inclusion in the utilities' capital plans,⁵⁶ and (2) in any event, NYPA uses the NYPA Transmission Adjustment Charge, which already allocates those costs state-wide, to recover its transmission embedded costs. Consequently, NYPA is not using the CSRA mechanism to recover its project costs.

X. Other Changes to the Proposed CSRA

The NYTOs have made additional, discrete edits to the CSRA. First, references to “Rate Schedule 18” have been amended to “Rate Schedule 19.” Second, the NYTOs have made two amendments to section 3.2. In order to accurately reflect LIPA’s jurisdictional status and distinct ratemaking process, the NYTOs made the following change: “In addition, each Transmission Owner agrees that the return on equity and capital structure used to recover Approved Transmission Projects’ costs under Rate Schedule ~~18~~ 19 will be those approved ~~or reviewed~~ by the NYPSC (or reviewed by the NYDPS in the case of LIPA) for Approved Transmission projects (provided they are just and reasonable), subject to any requisite FERC approval or review.”

The NYTOs have also made the following edit to clarify that the net book value of any real property used for an Approved Transmission Project will not be included as an input to the transmission owners’ formula rates: “. . . no Transmission Owner shall include as an input into its formula rate the net book value of existing transmission facilities retired resulting from an Approved Transmission Project or the net book value of real property used for an Approved Transmission Project.” The NYTOs are attaching to this Response a revised, clean version of the proposed CSRA (Attachment 1) and a redlined version of the proposed CSRA, marked against the version submitted with the NYTOs’ January 7 filing (Attachment 2).

⁵⁶ These comments are without prejudice to NYPA’s statutory rights and obligations associated with priority transmission projects and other projects, all of which rights NYPA reserves.

XI. Conclusion

The NYTOs urge the Commission to reject the challenges to the CSRA and to accept the CSRA and Rate Schedule as amended by this filing.

Respectfully Submitted,

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