

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

United States Department of Energy)

Docket ER03-246-000

**JOINT REQUENT FOR LEAVE TO ANSWER AND ANSWERS
OF ISO NEW ENGLAND INC. AND THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,¹ ISO New England Inc. (“ISO-NE”) and the New York Independent System Operator, Inc. (“NYISO”) jointly request leave to answer and submit their answers to the *Comments of Cross-Sound Cable Company, LLC* (“March 17 Filing”).

In its answer, the NYISO urges the Commission to reject Cross-Sound Cable Company, LLC’s (“CSCC”) request that the NYISO be compelled to develop software to support non-emergency functions over the Cross-Sound Cable (“CSC”) because it is outside the scope of this proceeding. ISO-NE is not taking any position on this issue.

In addition, in their joint answer, ISO-NE and the NYISO (together the “ISOs”) ask the Commission to reject CSCC’s request that the “Revised Protocol,” originally proposed by the Long Island Power Authority (“LIPA”), or a similar protocol, be adopted for future emergency CSC transfers. This request is also clearly outside the scope of this proceeding, which involves nothing more than a dispute between CSCC and LIPA regarding compensation for actions taken in response to a now-expired Department of Energy (“DOE”) emergency order that was issued in 2002. If the Commission nevertheless considers the Revised Protocol in this docket, it should be rejected on its

merits because it introduces commercial features that are not necessary to maintaining reliability during emergencies.

I. JOINT REQUEST FOR LEAVE TO SUBMIT ANSWERS

The Commission's procedural rules normally allow answers to pleadings that are styled as "comments." If, however, the Commission concludes that CSCC's pleading is tantamount to a "protest," which Rule 213(a)(2) ordinarily discourages parties from answering, then the ISOs respectfully ask for leave to answer. The Commission has permitted answers to protests when it determines that they will facilitate its decisional process or help it to resolve complex issues.² In this case, the ISOs' answers will assist the Commission by identifying issues that are outside the scope of this proceeding and by contributing to the Commission's understanding of complex issues. The ISOs should therefore be permitted to submit their answers.

II. ANSWER OF THE NYISO

CSCC proposes that the NYISO be directed to "develop the necessary billing and proxy bus software changes to accommodate northbound transfers of power from Long Island to Connecticut, and capacity release of LIPA's rights on the CSC."³ Both of these issues relate to commercial service across the CSC, which is not yet available. CSCC

¹ 18 C.F.R. §§ 385.212 and 213 (2002).

² See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,280 at P 15 (2003) (allowing response to comments that advanced the Commission's understanding of the issues); *New York Independent System Operator, Inc.*, 99 FERC ¶ 61,246 (2001) (accepting answers to protests that helped to clarify issues and did not disrupt the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (accepting an answer that was "helpful in the development of the record . . .") (2000); *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,137 at 61,381 (1999) (accepting otherwise prohibited pleadings because they helped to clarify complex issues).

³ See March 17 Filing at 5.

itself, however, acknowledges that developing this software is not necessary to support emergency protocols.⁴ As such, CSCC's proposal cannot properly be raised in this proceeding and must be rejected by the Commission.

There is no basis for addressing potential northbound transfers over the CSC in this docket. The issues in this proceeding relate to the DOE's August 16, 2002 order ("DOE Order")⁵ temporarily authorizing southbound emergency transfers in response to a Long Island capacity emergency.⁶ The DOE Order expired by its own terms on October 1, 2002. The present docket concerns only: (i) the proper allocation of costs incurred last summer between CSCC and LIPA; and (ii) the alleged delays in the ISOs' development of an emergency protocol to implement the DOE Order. The former issue does not concern the NYISO, and the latter has already been addressed by the ISOs' *Joint Compliance Filing* in this proceeding.⁷ There is no basis in this docket to make any determinations about possible future transactions, or to speculate about the DOE's potential exercise of its authority to require the NYISO to support northbound transfers.⁸

⁴ See March 17 Filing at 6. As is noted in the text below, CSCC has already asked the Commission to direct the NYISO to make software modifications that CSCC alleges are necessary to support secondary service over the CSC in Docket No ER03-600-000. The NYISO has opposed CSCC's request for the reasons stated in its *Motion to Intervene and Protest* in that docket. It is appropriate for the Commission to consider this discrete issue in that forum, not in this unrelated proceeding.

⁵ See United States Department of Energy, Order No. 202-02-01 (August 16, 2001) <<http://www.energy.gov/HQPress/releases02/augpr/OrderNo202-02-1.pdf>>.

⁶ The DOE order was expressly "limited to requiring the transmission and delivery of such electric capacity and/or energy as is necessary in the judgment of the [NYISO] to meet the supply and essential reserve margin needs of LIPA" *United States Department of Energy*, 101 FERC ¶ 61,389 at P 6 (2002).

⁷ See *Joint Compliance Filing on Protocol for Emergency CSC Operation*, Docket No. ER03-246-000 (January 31, 2003).

⁸ The NYISO is unaware of any application by either CSCC or LIPA to the DOE for a new order authorizing emergency operation of the CSC for the summer of 2003.

The Commission should therefore reject CSCC's improper attempt to inject its concerns about northbound CSC transfers, or the software that may or may not be needed to accommodate them, into this proceeding.

Similarly, the Commission should not address CSCC's proposals regarding CSC capacity releases in this docket. As with northbound transfers, capacity release rules have nothing to do with responding to emergency conditions on Long Island, which was the sole subject of the DOE Order. Capacity release procedures relate to the future commercial operation of the cable, not to the cost allocation and ISO responsiveness issues raised in this proceeding. In addition, CSCC itself has recently proposed new CSC reassignment procedures in Docket No. ER03-600-000. The NYISO has already filed a protest that raises a number of substantive issues in that proceeding.⁹ The Commission should have the benefit of a stakeholder process before approving capacity release rules for the CSC. It is clearly inappropriate for CSCC to raise these here.¹⁰

III. JOINT ANSWER OF THE ISOS

CSCC asks the Commission to endorse a "Revised Protocol" that, unlike the ISOs' 2002 emergency operating protocol, would include a day-ahead market scheduling component. The 2002 DOE order and the ISOs' protocol authorized only real-time energy transfers. Since the emergency authority granted by the DOE Order has expired, CSCC appears to be seeking the Commission's advisory views on the terms of a possible protocol that might be implemented under a future DOE order. Aside from the fact that

⁹ See *Motion to Intervene and Protest of the New York Independent System Operator, Inc.*, Docket No. ER03-600-000 (March 24, 2003).

¹⁰ In the event that the Commission decides to address the capacity release issues in this proceeding the NYISO respectfully asks that its pleading in Docket No. ER03-600-000 be incorporated herein by reference.

such issues are outside the scope of this docket, the Commission should avoid making hypothetical determinations that could be inconsistent with future DOE rulings (if any).¹¹ If a new emergency arises, the Commission should allow the parties to ask DOE to act, and should defer to DOE decisions that fall within DOE's purview. Only then should it address Commission-jurisdictional issues that are properly before it.

If the Commission nevertheless decides to consider the Revised Protocol, the ISOs strongly disagree that a day-ahead scheduling feature is a necessary, or appropriate, part of an emergency operating protocol. In both of the ISOs' market designs, day-ahead scheduling primarily performs financial, market-oriented functions. Emergency energy is not scheduled day-ahead. Although it would be possible to establish a protocol that required the ISOs to make day-ahead emergency purchases, the ISOs' believe that such a mechanism would unnecessarily interfere with the normal workings of the Day-Ahead markets. The ISOs' 2002 emergency operating protocol correctly focused on real-time operations, which is where emergency conditions arise. The "Revised Protocol" would thus introduce a commercial feature into that is unrelated to reliability into what is supposed to be an emergency operating protocol.¹²

Adding a day-ahead scheduling component would not improve the parties' ability to manage emergency operations. Requiring the ISOs to implement the Revised Protocol would, however, institute day-ahead market rules that CSCC, and LIPA, favor without

¹¹ Moreover, even if the Commission were willing to consider providing the kind of declaratory guidance that CSCC seeks it would not be appropriate to do so because CSCC has not complied with the filing fee requirement applicable to petitions for declaratory orders. *See* 18 C.F.R. 385.207 (2002).

¹² The ISOs are also concerned that introducing day ahead scheduling issues in this proceeding, without adequate notice to potentially interested stakeholders, will unfairly

considering the interests of the ISOs' other stakeholders or the issues pending in Docket No. ER03-600-000. It would also give LIPA the ability to submit day-ahead CSC schedules as if the CSC were commercially operational, without giving other market participants the same opportunity. The Commission should therefore reject the Revised Protocol.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, ISO New England Inc. and the New York Independent System Operator, Inc. respectfully request that the Commission accept their answers and grant the relief that they have requested.

Respectfully submitted,	Respectfully submitted,
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.	ISO NEW ENGLAND INC.
By <u>/s/ Ted J. Murphy</u>	By: <u>/s/ Matthew F. Goldberg</u>
Ted J. Murphy, Counsel	Matthew F. Goldberg, Senior Regulatory Counsel

April 2, 2003

deprive those stakeholders of a chance to comment, deprive the Commission of a complete record, and give short shrift to a complex issue.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party designated on the official service list compiled by the Secretary in Docket No. ER03-246-000, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2002).

Dated at Washington, D.C. this 2nd day of April, 2003.

/s/ Doreen L. Smith
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