ACE NY
ALLIANCE FOR CLEAN ENERGY NEW YORK, INC.

March 7, 2024

NYISO Order No. 2023 Interconnection Team
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer New York 12144

Email to: stakeholder_services_IPsupport@nyiso.com

Re: NYISO March 1, 2024, Order No. 2023 Draft Tariff Revisions
ACE NY Comments in Response to NYISO Request for Stakeholder Feedback

Dear Sara, Thinh and Angela,

The Alliance for a Clean Energy New York ("ACE NY") appreciates the NYISO's diligence and engagement with stakeholders supporting the development of the new interconnection process structure and note the stakeholder-driven changes made to date to your initial proposal that have honed its structure. In response to your March 1 request for feedback on the currently proposed draft tariff revisions on a rolling basis to further enhance and refine your proposed Order No. 2023 interconnection process structure, ACE NY has reviewed the NYISO's most recent proposed tariff language to implement the new Order No. 2023-directed interconnection process (*i.e.*, the 3.1 draft highlighting most recent changes in yellow) and offers these additional comments and requests for clarification. Some, but not all, of these concerns have been raised during meetings or were captured in previously submitted comments. We memorialize them here to assist you as you complete the compliance filing. We offer these proposed modifications and questions with a focus on supporting a compliance submission to FERC that will narrow the need for comment and protest so that we are most likely to seamlessly effectuate the Transition Cluster Study in New York on July 1.

First, and most critically, we have been working closely with you on the COD provisions and note your statement in the March 1 presentation and your comment bubbles in the draft Attachment HH modification provisions and the draft pro forma Interconnection Agreement that the NYISO is considering these comments regarding COD extension rules. Without pause, we can state that refinement of these rules is the single most important matter to our membership and, we believe, to the seamless and efficient implementation of this process to facilitate and foster the effective and timely project development in New York necessary to transform the electric system and meet the State's public policy initiatives.

We very much appreciate the opportunity given to us during the meeting to highlight our proposal. We would note that no party raised any question or otherwise challenged our proposal to supplement the base COD rule with the "later of" approach to incorporate contract COD provisions subject, where applicable to, the Cost Estimate Update provisions. Given the substantial number of REC

agreements that needed to be terminated and the status of the pending RESRFP23-1 and upcoming RESRFP24-1 solicitations, it is highly likely that many Class Year projects will not be able to meet the applicable 4-year period established by the current base COD rule. Our proposed rule change both addresses the need to seamlessly transition these projects and provides a refined approach to COD issues going forward that will more accurately track and align with project development. In addition, because it mirrors the manner that CLCPA-eligible projects are addressed under the NYISO Services Tariff, Attachment H buyer-side mitigation rules that FERC previously approved, it is a demonstrated structure that FERC has found effectively harmonizes state public policy programs with FERC-jurisdictional wholesale market rules in a just and reasonable manner.

Second, as you have also heard from our members on countless occasions, the manner in which the project milestones are currently addressed in the interconnection agreement negotiation process is severely flawed. The number of milestones a TO requires for a project can vary substantially among the TOs and, even within a TO, among its project teams. Members have advised us that as many as 50 milestones have been required. We appreciate that large scale projects require critical milestones to be identified to allow for equipment to be ordered, project construction teams to be scheduled and deployed and projects to otherwise be efficiently and timely brought to commercial operation. However, while many project steps certainly must be taken, many of them do not rise to the level of being a project milestone. Problematically, the TOs insistence to incorporate so many project steps as the Attachment B milestones is causing all parties to unnecessarily expend substantial additional time and resources and, in turn, is unjustifiably causing major delays in IA execution. We believe that this overhaul of the interconnection process provides an important opportunity to refine those rules so IAs may be negotiated and executed in a far more efficient and timely manner, allowing projects to more seamlessly proceed with development and construction.

The NYISO indicated in the March 1 presentation that it has made some proposed revisions to the draft pro forma Interconnection Agreement to comply with Order No. 2023 directives. Revisions to the project milestone provisions are not yet included. However, during the March 1 meeting, the NYISO also indicated that it wishes to address issues with the pro forma Interconnection Agreement through a separate Federal Power Act Section 205 submission to FERC and committed to develop that filing in short order after the April 3 submission is made. Taking this approach to resolve this issue will put a defined time frame on FERC action, and thus, ACE NY can support it. We would respectfully request that the NYISO: (i) confirm it will address this issue in the IA tariff revisions; (ii) develop a schedule to complete this effort that provides for filing tariff modifications by no later than early Q3 2024; and (iii) advise FERC about the need for, and the timing of, this companion effort in its Order No. 2023 compliance filing. Effectuating changes within this time frame will allow the CY 2023 IA negotiation and execution to proceed effectively from the outset while also providing for timely resolution of open IAs so they may be executed and filed.

Third, while well-intended conceptually when implemented, the improvements needed to the permitting processes have not yet come to fruition, making the regulatory milestone provisions untenable in practice. Removing those provisions going forward and providing a viable glide path for all Class Year projects to redress these issues and proceed with project development are important components of

your proposal that will negate the need for ongoing tariff waiver requests and eliminate project uncertainty, project development delays and, potentially, needlessly duplicative interconnection process study work. We appreciate the NYISO's purposeful review of stakeholder feedback and its diligence to define a comprehensive solution for the path forward.

Fourth, we appreciate the work the NYISO has done to address the storage issues, including the NYISO's efforts to engage with the Operations team and provide further information on how storage projects will be dispatched in both planning studies and in real world operations. To level set all parties, we would ask that the NYISO specify in the March 15 presentation the current study rules and how those rules would be modified under the new process as they apply to energy storage resource interconnections.

Substantively, we note that understanding limitations on operations that may occur in the future is important information needed to guide informed project development decisions. In its SRIS Summary Reports, the NYISO has identified circumstances under which thermal constraints will require redispatch of resources and has generally quantified the expected scope of these impacts on a MW basis, *i.e.*, the degree to which resources will need to be backed down to resolve the constraint. The tariff provisions addressing the Phase 1 and Phase 2 study results should specify that this information will continue to be provided in circumstances where thermal constraints and associated redispatch requirements are identified. In addition, we respectfully request that the NYISO delineate in the independent entity variation request set forth in its filing letter the existing and proposed planning study rules as applied to energy storage resources. Lastly, following up on the March 1 meeting discussion on this topic, we understand the next step is for the NYISO to provide its feedback on the open interconnection study-related storage considerations. With the posting date set for Tuesday, we will reach out to you on Monday if we have not yet received this information.

Lastly, we highlight below additional gaps in the draft tariff language or places where further clarification is needed to understand how the NYISO intends certain provisions to be implemented. We have structured our input by category to facilitate your review.

We appreciate you have a major task left in front of you here between now and the April 3rd filing date. Please note that we have canvassed our membership and provided these comments to you as expeditiously as possible to give you the opportunity to fully review them and incorporate changes into your draft tariff revisions that are posted with next week's meeting materials. We stand ready to answer any questions you may have and to further discuss any of these issues with you to support their incorporation so that the March 15 meeting materials encompass as many of the provisions expected to be set forth in the NYISO's compliance filing as possible.

<u>Open Issues</u>

- Breach, Notice of Default, Default and Termination provisions – all of these sections have been expanded to apply to the IA and, for the first time, the construction agreements. We would ask the NYISO to present the basis for this universal change and discuss how the NYISO anticipates it may affect the interconnection process going forward at the March 15

meeting. Having a better understanding of this change will allow ACE NY members to provide initial feedback as to whether the change should be made during that meeting and, as necessary, further refined in comments filed at FERC in response to the NYISO's Order No. 2023 compliance filing.

- Submission deadlines. Please clarify the definitions of Business Day and Calendar Day to specify that submissions must be made by 5 p.m. EST on the date identified.

- Material modification provisions. As we understand the NYISO's proposal, after an application is submitted, a developer cannot ask for a material modification to a project during the study process except to change the POI five days after the Customer Engagement Window opens.
    - From discussions during the meeting, the NYISO has confirmed that a developer can choose to withdraw one application and resubmit a new application capturing the material modification. As long as these steps are completed during the Application Window, the modified project will be put into the queue and the developer can move forward and meet the tariff requirements with it. The tariff language should be clarified to specify these steps are permissible, *i.e.*, within the Application Window, a developer can rescind one application and supplant it with a new application that incorporates the modification. The March 1 presentation suggests that tariff revisions were made to address this issue, but they are not apparent in the draft issued.
    - The tariff provides that if a modification is sought and deemed material at the end of the study process, the project loses its queue position. Given that study process has been completed by the time the developer could seek this determination, the tariff needs to be either corrected or clarified to explain how this provision operates, *i.e.*, how is it possible to lose a queue position at that point and even if you technically could, why would it matter?
    - The same questions apply to the tariff provisions addressing Permissible Technology Advancements (please see draft Section 40.6.3.7). Relatedly, there are some technology changes that will not adversely affect the system (e.g., changing the manufacturer for inverters for a project). However, being forced to wait until the end of the Cluster Study process could mean upwards of a year and a half without confirmation. This, in turn, can affect decisions on the allocation of equipment to projects and have other unnecessary project development ramifications. In light of that fact, can the NYISO add a provision in this section allowing a developer to ask for a modification during a Cluster Study with the proviso that an answer will only be tendered if the NYISO can confirm the modification will not have adverse effects absent study thereof?
    - What is the impact of the language in the Material Modification definition stating a project cannot have an adverse impact on the cost or timing of a project with an equal or later Queue position? Under the new approach, the NYISO has specified that queue position only matters for prioritization purposes. How does this apply? Ministerially, is the NYISO intending to have rolling queue numbers across Cluster Studies so that

the first queue number in the next study is the queue number following the last queue number in the immediately preceding study? Again, what is the relevance? Relatedly, how are Contingent Projects treated? Other projects that withdraw from the queue? Are their queue numbers simply left vacated/cancelled?

- Section 40.6.3.2 establishes the deadline for the NYISO to begin, but not complete, material modification reviews. As we understand the NYISO's proposal, a material modification determination requires a project to start over (please see question above as to this point). Given that fact, will the NYISO confirm that material modifications will be completed before the end of the next Application Window? The same gap exists in Section 40.6.3.7.4 concerning Permissible Technology Advancements (which we understand is potentially one form of a material modification determination) given the cross-reference back to Section 40.6.3.2's timing provisions.
- Section 40.6.3.3 provides that if a project makes a modification during the Cluster Study, it will be deemed a material modification. Practically speaking, we are having trouble understanding how this provision will be triggered. Per the rules, a project must: (i) notify the NYISO before it makes a material modification; and (ii) forego making any modifications until after the Cluster Study is completed (with the exception of the limited provisions for POI changes in the Customer Engagement Window).

- Queue Position; Prioritization
  - Section 40.6.1.1 specifies that a queue position is assigned when a "complete application" is submitted but does not define how an application is deemed complete. It is, however, apparently distinct from a validated application. Clarification is needed.
  - This section further provides that a queue position is lost if the application is not validated. It seems to be the NYISO's intent that a queue position is only "finalized" when an application is validated. If that is the case, this section should be clarified to state this fact clearly.
  - Section 40.7.3.4, addressing prioritization, provides a rule with a parenthetical specifying as follows: "(including as between IRs within the same Cluster)" but does not explain whether and how this is distinguished across Cluster Studies. Is prioritization across Cluster Studies relevant? If so, how is it applied? Wouldn't any project in a prior Cluster Study either have accepted its costs (and be in the Existing System Representation) or been eliminated for not having done so? Is this intended to capture the fact that there will be a limited overlap between a current Cluster Study and the Cluster Study immediately following it?

- Pre-Application Process; Application Window; Scoping Meeting; Customer Engagement Window; Applicability of Attachment HH to Developer Rights
  - Section 40.4.2 specifies each pre-application request can have two interconnection points. Please clarify that each interconnection point can be any physical location or voltage level on the system. It also states that a developer can submit more than one

pre-application request. How are requests as received addressed? Chronologically? Grouped together if they involve the same/similar interconnection points? Is each request addressed independently without reference to the requests addressed before it?

- Please compare Sections 40.2.2 and 40.5.5.1. We see that you have added a 10-business day deadline to submit additional information when a deficiency in the application request is identified which is a helpful addition. However, to be eligible to participate in a study, does a project have *to submit* its application before the close of the Application Window only *OR* have it *validated* before the close of that period, *i.e.*, can resolution of deficiencies still be ongoing when the Application Window closes or, if they are, is the application deemed invalid? What does it mean to have a "completed" application? If interconnection requests must be validated before the close of the Application Window for the project to be included in the Transition Cluster Study, the NYISO should revise this section to reference "validated applications" and eliminate references to "completed applications."
- Please see Sections 40.1, 40.2.2 and 40.7.4. Per the draft tariff language and the stakeholder discussions, we understand the NYISO proposes to supplant the currently existing individual project scoping meetings with a group scoping meeting of all Cluster Study projects. While this could be useful, we are concerned that the individual meetings provided a forum to discuss and address salient confidential project matters that cannot be accommodated in a group setting. We would request that the NYISO supplement these sections to provide for subsequent individual meetings promptly held thereafter to discuss discrete confidential project considerations, as warranted. We would also request that the NYISO specify in the filing letter that these meetings will be made available at any party's request.
- Relatedly, see Sections 40.5.7.2.3 and 40.5.7.3.3 – Is it the NYISO's proposal to apply the Application Window as the deadline for meeting the submission requirements of NYISO materials but the Customer Engagement Window for the materials to be submitted to the TOs? We see that you have clarified that developers must still meet the TO requirements when the NYISO has validated an application request, but it still leaves this question unanswered. If yes, from a tariff development standpoint, perhaps reference the "subsequent TO assessment" in the most recently added language? Substantively, if yes, is the difference here tied to the fact that the TOs are conducting the physical feasibility assessment in this stage and may need additional information?
- Section 40.18.2 specifies that the Attachment HH rules will apply to all CRIS whether obtained under these new rules or the previously applicable Attachment S rules. Isn't that true of a number of other rights and provisions? ERIS, headroom payments, and the bases for security forfeiture are just a few examples that come to mind. Why was this provision added here? And why is it not necessary to be added as to all other considerations?

- Site Control

- ACE NY appreciates the discussions to date concerning acreage requirements that will be applied to determine site control. We anticipate the NYISO will address the need for flexibility to define these requirements in its filing letter and would ask that the NYISO specify in the filing letter the timing to define the associated ISO Procedures.
- The NYISO has made important clarifications to the Site Control definition to date that are critical. However, one further modification is required. In the language added in the most recent revisions, reference must be made to restricting the use of *the land right, not the site*. Otherwise, it will contradict the practical realities of land usage and the likelihood that any number of activities have -- and will continue to -- simultaneously be occurring on these sites themselves but in a coordinated fashion that does not impinge on project development or operation.

- Phase 2 Study Process; Overlap of Cluster Study processes
  - Please see Sections 40.11.1.2 and 40.11.7. The former speaks in terms of the Phase 2 study process being "concluded" while the latter references Operating Committee approval deeming the Cluster Study Report "final." Until the cost allocation stage and security posting stages are completed, is the report final? Please compare Section 40.15 which correctly highlights the potential need for revised study results. At a minimum, to avoid any confusion, should these provisions be aligned to use the same language and cross-reference the cost allocation/security posting stages as well as the potential need for a re-study?
  - Please see Section 40.11.3. Given that the NYISO has now clarified that the Additional SDU Studies will only be conducted to address highways and other interfaces, should this provision be revised to specify that the NYISO will quantify SDUs for byways in the Phase 2 Study which will then be part of the package presented to the Operating Committee for discussion and action?
  - ACE NY appreciates the NYISO's efforts to make progress on the next Cluster Study while the then-current Cluster Study is coming to its end and understands that this provision has been structured to avoid exposing the ISO, TOs and developers to having to redo work. However, please see the timing delineated in Section 40.5.1 -- does it work to ask a project to decide to participate in Phase 1 by the Start Date if not enough information is known about the prior Cluster Study or, as noted below, the composition of the Existing System Representation that will be utilized for that next Cluster Study, *i.e.*, is the practical effect that the Application Window period will effectively be truncated or developers will be required to submit an application without having relevant information to make their determinations?

- Study deposits; project withdrawals; penalty assessments
  - Section 40.6.4.4 limits the information to be tendered to the Interconnection Customer upon withdrawal to completed studies. ACE NY would propose a revision to this section to specify that all materials developed up to that point will be provided to the

developer in an "as is" state upon withdrawal and will be identified as such. Preliminary or incomplete information can still be instructive.

- Section 40.6.5.2.2 provides for penalty payments to be tendered to Payment Eligible Projects by simply dividing the total amount by the total number of projects eligible. ACE NY supports Invenergy's position that these payments should be tendered on a MW-weighted basis. While the provision prohibiting payments from exceeding costs provides some balance, the NYISO has proposed to require study deposits that are calculated based on the size of a facility. Payments to offset these deposits should be tendered back in equal measure.
- Likewise, Section 40.6.5.2.2 provides the tendered withdrawal penalties will be paid to projects that complete the Cluster Study. However, under the same rationale that projects that must withdraw due to physical infeasibility are not charged withdrawal penalties (*i.e.*, they had no way to know there were issues), these projects also should be eligible to receive tendered funds to offset the costs they have incurred.
- ACE NY supports Invenergy's position to revise Section 40.15.5.1 to encompass Affected TO and Affected System cost increases in calculating the degree to which withdrawal penalties to Payment Eligible Projects are reduced.
- Section 40.24.3.3.2 addresses how penalties involving a percentage of a deposit will be calculated. It references the "initial Study Deposit amount." However, slide 93 of the March 1 presentation provides for percentage retention of study deposits and readiness deposits. To avoid confusion, should this provision be clarified to specify that this amount will be added to the readiness deposit percentage, which can (and will) be assessed on the full readiness deposit?
- ACE NY supports Invenergy's position that Interconnection Customers should be given a 60-day period to pay invoices as a reasonable time frame to accommodate company internal accounting needs and practices without having any material adverse consequences.

- Existing System Representation/Base Case composition
  - Section 40.10.2 provides that the Existing System Representation will be finalized after completion of the last Cluster Study but before the Phase 1 studies begin. Why isn't the Existing System Representation issued as soon as all elections have been made, security posted, and the final composition of the immediately preceding Cluster Study is known? Why would it change after that point? Are you accounting for the fact that an Additional SDU study may be pending and could be completed in time under the new rules? If so, will a preliminary base case be issued before that time, which could be designated as preliminary and subject to modification and would identify the other projects that could potentially be added if the Additional SDU Study is completed by the prescribed deadline? In addition, couldn't its composition affect a decision to enter the Cluster Study or designate a POI, and if so, why shouldn't the withdrawal penalty be waived just as it is waived to address the limited period after the Cluster Study list of projects is issued?

- Likewise, Section 40.10.2.1.3 provides the ISO will commence work on the Cluster Project Assessment (formerly the ATRA) "during" the Customer Engagement Window. Does this align with when the Existing System Representation will be set, *i.e.*, is the Existing System Representation actually going to be issued in the Customer Engagement Window too? Are there other implications from waiting this long?
- Section 40.10.3.2 provides mothballed and IIFO units are modeled as in-service but recent tariff changes provide that these units must be modeled as out of service in reliability studies if their respective CRIS won't be transferred within what remains of their 3-year CRIS rights period. Why are these units treated one way for reliability and another for interconnection?

- Additional SDU Studies
  - As a general matter, as of the draft revisions provided for the March 1st meeting, has the NYISO confirmed that the Additional SDU rules both hold together within themselves and as applied overall to this new structure? For example, posting the "heatmap" addressed in Section 40.4.1 sets the Additional SDU Study as a trigger point. Does that work? As another example, please see Section 40.15.2.6 – should the beginning of this section be revised to reference an Interconnection Customer "with a CRIS request that makes it eligible to participate in an Additional SDU Study" given the language in (ii) that follows?
  - In response to comments previously provided, the NYISO in its latest draft tariff issuance has clarified that ERIS elections must be made in Phase 2 which is helpful and should be retained.
  - If the Additional SDU Study is not completed by the time that the NYISO completes the CBA for the next Cluster Study, the NYISO has clarified that the only option for these affected projects is to join the next Cluster Study when it is commenced. Under these circumstances, are the projects deemed "withdrawn" and are they required to pay penalties? Again, given that the developers are not controlling this outcome and are already being delayed by the fact that they must await the next Cluster Study, withdrawal penalties should not also be assessed.

ACE NY requests that any questions about the content of these comments be directed to Keith Silliman (keith.silliman@ccrenew.com), Mark Reeder (mark.reeder.economics@gmail.com), Reid Wagner (rwagner@aceny.org), and Doreen Saia (saiad@gtlaw.com).

Respectfully,

Keith Silliman

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Chair of the Board
Alliance for Clean Energy New York