

NYISO to be required to provide service, commonly referred to as “reliability must run” (“RMR”) service, to satisfy an identified Reliability Need on the New York electric system.

Pursuant to Rule 211 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.211, and the Secretary’s Notice of Extension of Time, issued on September 29, 2016, the Independent Power Producers of New York, Inc. (“IPPNY”)⁷ and the Electric Power Supply Association⁸ (“EPSA”) (collectively, “IPPNY/ EPSA”) hereby protest certain aspects of the Compliance Filing. In its RMR Order, the Commission stated its policy that “RMR filings should be made only to temporarily address the need to retain certain generation until more permanent solutions are in place and that all alternatives should be considered to ensure that designating a generator for RMR service is a last resort option for meeting immediate reliability needs.”⁹ While the NYISO’s Compliance Filing complies with the RMR Order and the April Order in many respects, the Compliance Filing contains a number of proposals that are flawed and must either be rejected or modified to comply with the Commission’s RMR Order and April Order and to ensure that RMR service from a generator is a last resort option. As discussed herein, the Commission should order the NYISO to make the following modifications to its tariffs:

⁷ IPPNY is a not-for-profit trade association representing the independent power industry in New York State. Its members include nearly 100 companies involved in the development and operation of electric generating facilities and the marketing and sale of electric power in New York. IPPNY’s members include suppliers and marketers that participate in the NYISO’s energy and capacity markets. This pleading represents the position of IPPNY as an organization, but not necessarily the views of any particular member with respect to any issue.

⁸ EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40% of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

⁹ RMR Order at P 16.

- The NYISO should adopt a forward capacity market (“FCM”) to reduce the risk that RMR Generators or other regulated solutions will be needed to meet Reliability Needs.
- The NYISO’s Gap Solution process should be aligned with the Generator Deactivation Process, which, as directed by the Commission, requires that the NYISO be the sole entity responsible for (1) evaluating and selecting solutions to Generator Deactivation Reliability Needs and (2) entering into agreements with, and providing cost recovery and cost allocation under the NYISO tariffs for, generators needed to meet a Reliability Need.
- An RMR Generator should be subject to an RMR Offer Floor that reflects that Generator’s RMR avoidable costs.
- A Generator should be permitted to deactivate by no later than 10 business days after the NYISO determines that the Generator’s deactivation will not result in a Reliability Need or any identified need can be timely addressed without the deactivating Generator.
- The NYISO’s proposed 365-day notice period should be reduced to 270 days and the NYISO should begin paying an RMR Generator the Availability and Performance Rate (“APR”), including availability or performance incentives, at a minimum and should allow the generator to seek to apply its Owner Developed Rate beginning on the date the NYISO completes the Initiating Generator’s Generator Deactivation Assessment and determines that there will be a Reliability Need unless the Initiating Generator continues operations (*i.e.*, day 90).
- Generators located outside of New York should be permitted to offer their energy and capacity into New York to meet a Reliability Need to ensure the least cost solution to a Reliability Need is selected and that RMR Generators are used only as a last resort.

- The tariff should clarify that market participants may propose regulated Generator solutions to meet a Reliability Need.
- The tariff should clarify that both RMR Generators and Interim Service Providers (“ISPs”) will be excluded from the Reliability Needs Assessment (“RNA”) Base Case and permanent transmission Generator Deactivation Solutions will be included in the RNA Base Case.

I. THE COMMISSION SHOULD ORDER THE NYISO TO ADOPT AN FCM TO ENSURE REGULATED RELIABILITY SOLUTIONS ARE USED ONLY AS A LAST RESORT TO MEET IDENTIFIED RELIABILITY NEEDS.

To achieve its goal of relying on RMR Agreements and other regulated solutions only as a last resort to address reliability needs, the Commission should direct the NYISO to develop and implement an FCM. A properly designed FCM, with a sufficiently long planning horizon and commitment period, would allow market participants to accurately assess the risks and potential benefits associated with market entry and thereby elicit economically rational market-based solutions to satisfy reliability needs in New York.

IPPNY has long demonstrated the benefits of an FCM to provide market-based solutions for resource adequacy needs and thereby avoid the need for regulated reliability solutions. In 2007, in response to the NYISO’s proposed restructuring of its New York City installed capacity (“ICAP”) market design, IPPNY advocated for a mandatory, non-discriminatory FCM to “provide a level of compensation that will attract and retain needed infrastructure and thus promote long-term reliability while neither over-compensating nor under-compensating generators.”¹⁰ IPPNY demonstrated that an FCM was necessary to complement the existing

¹⁰ Docket No. EL07-39-000, *N.Y. Indep. Sys. Operator, Inc.*, Comments of Independent Power Producers of New York, Inc. (Nov. 19, 2007), at 2 (“IPPNY ICAP Comments”) (quoting *N.Y. Indep. Sys. Operator, Inc.*, 118 FERC ¶ 61,182, at P 17 (2007), *reh’g denied*, 118 FERC ¶ 61,251 (2007)).

rules and more effectively ensure the long-term commitment of needed supply resources. IPPNY urged the Commission to direct the NYISO to work within its market participant committee process and expeditiously develop an FCM.¹¹

Unfortunately, the Commission held that the specific objectives of the New York City ICAP design could be satisfied without implementing an FCM, but recognized that such a market “could potentially provide an alternative method to address long-term capacity needs in NYC and the entire NYISO region.”¹² Although the Commission encouraged the NYISO to continue its discussions with stakeholders on the subject, it did not establish a deadline for completing those discussions. Nor did it provide any timeline for the NYISO to finalize the design or implementation of an FCM for the New York Control Area (“NYCA”). In its rehearing request, IPPNY noted that the mismatch between the NYISO’s capacity procurement process and the comprehensive reliability planning process (“CRPP”) timing horizons would likely result in capacity prices that were too low to support needed entry “until it is too late for the market to respond.”¹³ IPPNY’s request for the Commission to direct the NYISO to develop an FCM anticipated the RMR Agreements at issue in the present case:

This mismatch all but guarantees that the short term capacity will fail to support market-based entry of new capacity in a timely manner and that in order to meet reliability requirements the planning process must rely on regulated backstop solutions mandated by the CRPP. If a reliability need becomes critical in the near-term, regulated backstop solutions may be necessary, which could result in a re-regulation through individual reliability must-run contracts.¹⁴

¹¹ *Id.* at 8–11.

¹² *N.Y. Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211, at P 128 (2008).

¹³ Docket No. EL07-39-001, *N.Y. Indep. Sys. Operator, Inc.*, Request For Clarification And Rehearing of Independent Power Producers of New York, Inc. (Apr. 7, 2008), at 18 (“IPPNY ICAP Rehearing Request”).

¹⁴ *Id.*

In its RMR Order, the Commission stated that the NYISO should rely on RMR Agreements only “as a limited, last-resort measure.”¹⁵ But as Generators retire due to various factors, including age, more stringent environmental regulations, and low gas prices, there is an increased risk of triggering a Reliability Need under the Generator Deactivation Process due to resource adequacy considerations. In February 2016, for example, the NYISO issued a Generator Deactivation Assessment determining that the planned deactivation of the FitzPatrick nuclear generating facility would result in a resource adequacy need in the NYCA in 2019 that could not be timely addressed in the NYISO’s biennial reliability planning process.¹⁶ The NYISO triggered its Gap Solution process to solicit regulated and market-based solutions to resolve the resource adequacy need. This process provided only 30 days for market participants to propose projects to meet an identified Reliability Need three years into the future.

An FCM that makes commitments to procure capacity three years forward, similar to those in place in the NYISO’s neighboring regions, ISO-New England (“ISO-NE”) and PJM Interconnection (“PJM”), would allow market participants in the NYCA to respond to reliability needs through an open and transparent competitive process that provides them sufficient time to accurately assess the costs and benefits of new entry. If an FCM had been in place in New York, the NYISO and market participants would have had far greater advance notice of the proposed retirement of FitzPatrick and would have had much more time to prepare and propose projects to

¹⁵ RMR Order at P 16.

¹⁶ *Gap Solution Solicitation Regarding James A. FitzPatrick Generator Deactivation*, NYISO (Feb. 16, 2016), at 1, http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Planning_Studies/Reliability_Planning_Studies/Reliability_Notices/FitzPatrick_Gap_Solution_Solicitation_20120216.pdf. While ultimately revised load forecasts negated the resource adequacy need and led the NYISO to rescind this notice, it does not take away from the fact that insufficient time will be provided to project developers each time a Reliability Need is identified in response to a generator deactivation notice absent the implementation of an FCM as a component of the New York capacity markets.

meet resource adequacy needs three years forward in 2019 than the mere 30 days provided by the NYISO under its Gap Solution process.¹⁷

Further, a properly designed FCM, with a sufficiently long planning horizon and commitment period, will better provide the predictable revenue streams that are necessary to attract new capacity to meet Reliability Needs. The FCMs in PJM and ISO-NE award binding commitments to developers to purchase capacity from new market-based resources that are needed to meet reliability needs for one year three years in advance. Under the NYISO's RMR process, market-based resources that are solicited to meet reliability needs in the future receive no such commitments. The current ICAP market design is characterized by a one-month obligation procurement period ("OPP"). Load serving entities ("LSEs") are required to procure sufficient capacity to meet their requirement only one month in advance of the actual need for the capacity. While the NYISO may solicit market-based resources for a reliability need for additional capacity in three years, LSEs have no obligation to secure adequate capacity beyond the one-month OPP.

An FCM would provide greater inducement to developers to offer market-based resources in anticipation of being required to meet Reliability Needs than the RMR process and would reduce the need for RMR Agreements or other regulated solutions. The Commission, therefore, should direct the NYISO to (i) expeditiously develop an FCM, informed by the market participant committee process, that augments the current demand curve structure; and (ii) make a compliance filing within 180 days of its order.

¹⁷ While the NYISO is proposing to allow parties 60 days to respond to solicitations in this Compliance Filing, it remains far less time than would be available under an FCM for market participants to efficiently produce project proposals.

II. THE COMMISSION SHOULD ORDER THE NYISO TO MODIFY THE GAP SOLUTION PROCESS TO ALIGN IT WITH THE NYISO'S PROPOSED GENERATOR DEACTIVATION PROCESS.

In its Initial RMR Filing, the NYISO proposed that if the Generator Deactivation Assessment determines that a Generator deactivation would cause a Reliability Need, the NYISO will initiate its Gap Solution process to solicit both market-based and regulated solutions, which can be generation, transmission, or demand response, to satisfy the Reliability Need.¹⁸ If the NYISO identifies any non-generation Viable and Sufficient Gap Solution(s), which would satisfy a Reliability Need in whole or in part, the NYISO proposed that it provide to the New York Public Service Commission (“NYPSC”) a list of these proposed non-generation Viable and Sufficient Gap Solution(s) and the results of the Viability and Sufficiency Assessment.¹⁹ In their protest of the Initial RMR Filing, IPPNY/EPSCA opposed the NYISO’s proposal to delegate to the NYPSC the NYISO’s obligation to select non-generation Gap Solutions, including transmission solutions, to meet a Reliability Need resulting from a generator deactivation because it directly contravened the express provisions of the RMR Order requiring the NYISO to perform this critical task.²⁰

In its April Order, the Commission rejected the NYISO’s proposal that the NYPSC select non-generation Gap Solutions to meet Reliability Needs caused by Generator deactivations because it “does not comply with the RMR Order, is inconsistent with Order No. 1000, and could lead to inefficient transmission development.”²¹ The Commission ruled that the NYISO’s proposal violates the requirement in the RMR Order that “NYISO must be the entity that makes

¹⁸ Initial RMR Filing at 7–8.

¹⁹ *Id.* at 24–25.

²⁰ Docket No. ER16-120-000, *supra*, Protest of IPPNY/EPSCA (Nov. 30, 2015), at 21–26.

²¹ April Order at P 31.

the determination whether a specific generator is needed to ensure reliable transmission service and thus whether the facility is designated an RMR unit.”²²

The Commission explained:

The clear intent of the RMR Order was that NYISO must, in an open and transparent manner, solicit RMR alternatives, and evaluate those alternatives, to help ensure that designating a generator for RMR service is a last-resort option for meeting immediate reliability needs. Through its information collection requirements, which we are approving herein, NYISO itself will be in the best position to solicit and evaluate all options and identify the least-cost non-generator solution. On the other hand, the New York Commission does not have an obligation to choose an alternative to an RMR agreement, even if there are more cost-effective viable and sufficient non-generation Gap Solution proposals. While the New York Commission points out that it will consider a broad array of solutions, this does not counter the fact that the New York Commission is not required to select one of those solutions.²³

In its RMR Order, the Commission was emphatic that having the NYISO serve as the entity that establishes RMR rates, terms, and conditions is “fundamental to the proper and efficient operation of [its] markets.”²⁴ Without the NYISO serving in this capacity, the Commission explained, “there is no assurance that generation resources will be treated on a not unduly discriminatory basis and have the opportunity to collect compensatory rates without a protracted proceeding.”²⁵

In its April Order, the Commission agreed with IPPNY/EPSC’s argument that allowing the NYPS&C to select transmission Gap Solutions to meet Reliability Needs on a short-term basis is inconsistent, and potentially interferes, with the NYISO’s evaluation and selection of proposed

²² *Id.* at P 32 (quoting RMR Order at P 14).

²³ RMR Order at P 9.

²⁴ *Id.*

²⁵ *Id.*

regulated transmission solutions to meet Reliability Needs on a long-term basis pursuant to its CRPP.²⁶ The Commission noted that it rejected the NYISO's proposal in its first Order No. 1000 compliance filing to have the NYPSC, rather than the NYISO, select transmission projects under the CRPP for inclusion in the regional transmission plan for purposes of cost allocation.²⁷ There, the Commission required that the NYISO, not the NYPSC, be the entity to select the more efficient and cost-effective regulated transmission solution to satisfy an identified Reliability Need as the permanent solution in the absence of adequate market-based solutions.²⁸

Finally, the Commission ruled that the NYISO's proposal to allow the NYPSC to select non-generation Gap Solutions, including transmission solutions, "could lead to inefficient transmission development" because the NYPSC's selection process for a short-term solution could conflict with the NYISO's process for selecting a long-term solution under the CRPP.²⁹

The Commission stated:

Having two different entities with authority over selecting transmission solutions to the same identified reliability need could result in inefficient implementation of both processes—two entities would perform evaluations of potential solutions, two entities would solicit comments on potential solutions, and one entity would select a temporary solution, which may be different than the permanent solution, or may become permanent itself. Therefore, NYISO's proposed RMR process may inhibit NYISO's ability to "efficiently and reliably administer the resources and transmission facilities under its control" and to "ensure reliable transmission service until more permanent reliability solutions are in place."³⁰

²⁶ April Order at P 36.

²⁷ *Id.*

²⁸ See *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059, at P 77 (2013) ("Order No. 1000 Compliance Order"), *order on reh'g and compliance*, 151 FERC ¶ 61040 (2105); NYISO Services Tariff § 31.2.6.5.2.

²⁹ April Order at P 38.

³⁰ *Id.* (quoting RMR Order at P 1).

The Commission directed the NYISO to establish an RMR process “under which NYISO evaluates and selects solutions to identified reliability needs caused by generator deactivations, whether market-based solutions, generation solutions, or non-generation solutions” and to separate such process from its Gap Solution process.³¹

In its Compliance Filing, the NYISO proposes a Generator Deactivation Process in a new Attachment FF to its OATT, which is separate from its Gap Solution process in Attachment Y of the OATT. While the NYISO’s proposal complies with the Commission’s directive to separate the Generator Deactivation Process from the Gap Solution process, its separation exposes inconsistencies in the two processes that the Commission should clarify and correct to ensure that Generators are selected only as a last resort to meet a reliability need under the Gap Solution process.

Specifically, in contrast to the NYISO’s proposed Generator Deactivation Process in its Compliance Filing, which, in compliance with the April Order, requires that the NYISO be the entity responsible for evaluating and selecting solutions to Generator Deactivation Reliability Needs, the Gap Solution Process provides that the “appropriate governmental agency(ies) and/or authority(ies) with jurisdiction over the implementation or siting of Gap Solutions will determine whether the Gap Solution Process or an alternative Gap Solution will be implemented to address the identified Reliability Need.”³² If an imminent threat to the reliability of the New York Power System arises that is not caused by a potential Generator Deactivation or a Reliability Need arises in the CRPP that cannot be addressed with a market-based or regulated solution by the need date, a New York State agency or authority may seek to argue that the Gap Solution

³¹ *Id.* at P 41.

³² Proposed OATT, Attachment Y § 31.2.11.5.

Process grants it unfettered discretion to select a regulated Generator solution or transmission solution to address the Reliability Need. In violation of the Commission’s policies in its RMR Order and in its Order No. 1000 Compliance Order, the State would have no obligation to ensure that a generator solution is the last resort option or that a transmission solution is the most efficient and cost effective solution.³³

In addition, Section 31.5.1.6 of Attachment Y of the OATT provides that costs of non-transmission solutions “will be recovered by Responsible Transmission Owners, Transmission Owners and Other Developers in accordance with the provisions of New York Public Service Law, New York Public Authorities Law, or other applicable state law.”³⁴ This cost recovery provision stands in sharp contrast to the Commission’s requirement in its RMR Order that the NYISO establish cost recovery and cost allocation procedures for RMR Generators in the NYISO tariff, including procedures governing the filing of RMR Agreements for review and approval by the Commission, a *pro forma* RMR agreement, and providing authorization for a generator to file an RMR agreement under Section 205 of the Federal Power Act.³⁵ While Section 31.5.1.6 recognizes the Commission’s exclusive jurisdiction in its statement that “[n]othing in this section shall affect the Commission’s jurisdiction over the sale and transmission of electric energy subject to the jurisdiction of the Commission,”³⁶ the tariff provides no procedures governing cost recovery, including no cost recovery for reliability issues that stem from local issues, in contrast to the very detailed procedures the Commission required

³³ The fact that this provision was not addressed in past compliance filings concerning, *e.g.*, Order No. 1000, simply reflected an oversight in failing to identify all affected provisions.

³⁴ OATT, Attachment Y § 31.5.1.6.

³⁵ RMR Order at P 18.

³⁶ OATT, Attachment Y § 31.5.1.6. During innumerable stakeholder meetings, load interests have challenged the import of this last sentence of Section 31.5.1.6 in favor of arguing that the NYPSC had exclusive jurisdiction over these issues.

for Generators in its RMR Order. As cost recovery for a Generator's wholesale sales is subject to the Commission's exclusive jurisdiction, any contracts or other arrangements providing for cost recovery for a Generator selected as a Gap Solution must be filed for the Commission's review and acceptance and the NYISO's tariffs should state that requirement explicitly.

For all of the same reasons that the Commission required the NYISO to be the entity to evaluate and select all potential solutions to identified reliability needs caused by a proposed Generator deactivation, the Commission should order the NYISO to, within 60 days of its order, modify its Gap Solution Process to provide that the NYISO is the entity to evaluate and select all potential solutions to reliability needs that are imminent or cannot be addressed in time through the CRPP.

III. AN RMR GENERATOR WHICH IS NEEDED FOR RESOURCE ADEQUACY MUST BE SUBJECT TO AN RMR OFFER FLOOR THAT REFLECTS THAT GENERATOR'S RMR AVOIDABLE COSTS.

The NYISO's Compliance Filing improperly proposes to "[e]xempt RMR Generators from offer floor mitigation in capacity auctions and require all such generators to offer their capacity as price-takers."³⁷ Both IPPNY and the NYISO have previously sought rehearing of the portion of the RMR Order that requires RMR Generators to offer as price-takers in the ICAP market.

As the NYISO noted in its rehearing request, exempting RMR Generators from offer floor mitigation "would mute the corresponding price signal and, as a result, inhibit the potential for market response."³⁸ Furthermore, the NYISO pointed out that the Commission "did not fully

³⁷ RMR Compliance Filing at 4.

³⁸ Docket No. ER16-120-001, *N.Y. Indep. Sys. Operator, Inc.*, Request for Rehearing and Clarification of the New York Independent System Operator, Inc. (May 23, 2016), at 6 ("NYISO RMR Rehearing Request").

consider all of the consequences for ratepayers of \$0.00 offers” when it expressed its concern for the possibility that mitigation might result in ratepayers “paying twice.”³⁹ The NYISO correctly noted that its proposal to base the RMR Offer Price for such RMR Generators on identified costs was reasonable because it would permit the market to produce efficient price signals. Exempting RMR Generators from mitigation, by contrast, “would interfere with those signals and distort decisions to invest in new or existing generation.”⁴⁰ Such interference would likely subvert the Commission’s intent that RMR Agreements be used only as measures of last resort because “inhibiting the potential market response would likely extend the length of such RMR Agreements,” potentially perpetuating those agreements indefinitely as market-based, and perhaps more efficient, solutions, deprived of accurate price signals, withdraw from the market and reduce competition.⁴¹

IPPNY also sought rehearing of the Commission’s determination that RMR Generators should be exempted from offer floor mitigation measures. In its rehearing request, IPPNY distinguished between RMR Generators needed for resource adequacy and those needed “for more localized transmission security issues.”⁴² IPPNY demonstrated that where a resource adequacy need is implicated, “there is no longer sufficient capacity in the relevant area to meet demand” and that resources retained under an RMR Agreement should therefore be subject to an RMR Offer Floor reflecting their avoidable costs to ensure that alternative, market-based

³⁹ *Id.*

⁴⁰ *Id.* “[W]hen an RMR Agreement addresses a resource adequacy need, requiring the RMR Generator to offer at a *de-minimus* amount, and thereby inhibiting the potential for the market to respond would not be more efficient.” *Id.* at 7.

⁴¹ *Id.*

⁴² Docket No. ER16-120-001, *supra*, Request for Rehearing of Independent Power Producers of New York, Inc. (May 20, 2016), at 3—4 (“IPPNY RMR Rehearing Request”).

solutions may be incentivized to add supply on a competitive basis in response to accurate price signals.⁴³

In its Compliance Filing, the NYISO was careful to specify that its submission of compliance tariff revisions in accordance with the RMR Order “is not intended to, and should not be construed as, a withdrawal or waiver of any argument raised in the NYISO [RMR] Rehearing Request.”⁴⁴ The NYISO’s proposal to require RMR Generators to offer at an RMR Offer Price if their RMR Agreement is based on a resource adequacy need would allow for markets to send price signals to incentivize market-based investment and is therefore consistent with both efficient price formation and a reduction of the need for extended RMR Agreements. To promote efficient market price signals and avoid inefficient outcomes as discussed in both the NYISO’s and IPPNY’s rehearing requests, the Commission should grant rehearing on this matter when it addresses the NYISO’s Compliance Filing.

IV. A GENERATOR SHOULD BE PERMITTED TO DEACTIVATE WITHIN 10 BUSINESS DAYS AFTER THE NYISO DETERMINES THAT THE GENERATOR’S DEACTIVATION WILL NOT RESULT IN A RELIABILITY NEED OR ANY IDENTIFIED NEED CAN BE TIMELY ADDRESSED WITHOUT THE DEACTIVATING GENERATOR.

The NYISO proposes in its Compliance Filing an “off ramp” that would permit generators to deactivate shortly after day 90 of the 365-day notice period “if [the NYISO] determines that a Generator’s deactivation will not result in a reliability need, or if it determines that any identified need can be timely addressed without the deactivating Generator.”⁴⁵ The Compliance Filing proposes that the NYISO will notify a market participant that wants to

⁴³ *Id.* at 4.

⁴⁴ Compliance Filing at 43 n.161.

⁴⁵ *Id.* at 16.

deactivate its generator “following [the NYISO’s] completion of all required NYISO administrative processes and procedures.”⁴⁶

Not limiting the timeframe of the NYISO’s administrative process is unduly arbitrary, unjust and unreasonable. The Commission should direct the NYISO to include a specific time to complete its administrative processes for a Generator that wishes to deactivate. The Commission should require the NYISO to modify its tariff to provide that it must complete its administrative process within 10 business days from the date that it determines that the Generator is not needed for a Reliability Need. Such a period should be sufficient for the NYISO to confirm that all of the required ministerial processes have been completed to track the generator’s exit from the market without forcing the Generator to unnecessarily remain in service. This outcome best protects market participants by ensuring that Generators are permitted to leave the market when they are not required to address an identified Reliability Need.

V. THE COMMISSION SHOULD ORDER THE NYISO TO MODIFY ITS TARIFF TO REDUCE THE NYISO’S PROPOSED 365-DAY NOTICE PERIOD TO 270 DAYS AND TO BEGIN PAYING AN RMR GENERATOR ON THE DATE THE NYISO COMPLETES THE INITIATING GENERATOR’S GENERATOR DEACTIVATION ASSESSMENT AND DETERMINES THAT THERE WILL BE A RELIABILITY NEED UNLESS THE INITIATING GENERATOR CONTINUES OPERATIONS.

In its Initial RMR Filing in response to the Commission’s RMR Order, the NYISO proposed that a Generator seeking to deactivate must provide the NYISO with 365-days prior notice when it submits its Generator Deactivation Notice.⁴⁷ The NYISO further proposed that the 365-day notice period would not start (the “Generator Deactivation Assessment Start Date”) until the NYISO has determined that the Generator Deactivation Notice is complete and the

⁴⁶ *Id.*

⁴⁷ Initial RMR Filing at 18–19.

NYISO has sufficient information to begin its review. The NYISO’s proposal provided for an initial period of up to 15 calendar days after the Notice’s submission to confirm the notice was complete, but allowed that the submission period could be extended if the NYISO did not believe that it has been given sufficient information to begin its review.⁴⁸ After it has determined the Generator Deactivation Assessment Start Date, the NYISO proposed that it would then conduct a Generator Deactivation Assessment—consisting of the NYISO’s own studies along with its review of the local Transmission Owners’ (“TOs”) studies—to determine whether the deactivation of the Generator will cause a Reliability Need.⁴⁹ The NYISO proposed to post the results of its Generator Deactivation Assessment within 90 days of the Generator Deactivation Assessment Start Date.⁵⁰

The Commission rejected the NYISO’s proposed 365-day notice proposal in its April Order because the Commission required the Generator Deactivation Process to be separated from the Gap Solution process.⁵¹ Specifically, the Commission found that because it did not have an RMR process before it, it could not ascertain whether a 365-day period was just and reasonable or whether a generator should be compensated during the notice period.⁵² Thus, the Commission directed the NYISO to file a proposed time line that reflected the new RMR process. The

⁴⁸ *Id.* at Proposed OATT, Attachment Y § 31.2.11.2.2 (providing that the NYISO shall inform the Generator within ten business days of receiving a Generator Deactivation Notice whether its submission is complete or additional information is required). Failure to submit sufficient information with the Generator Deactivation Notice results in an additional information submission and review process that, per the NYISO’s proposal, will not be completed until “[w]ithin ten (10) business days of the ISO receiving all additional information it requested.” *Id.* For purposes of this filing, the best case assumption has been made that it only takes 15 calendar days for the Initiating Generator’s Generator Deactivation Notice to be deemed complete.

⁴⁹ *Id.* at 18.

⁵⁰ *Id.* at 18–19.

⁵¹ April Order at P 63.

⁵² *Id.*

NYISO's Compliance Filing proposes the same 365-day notice period but proposes to provide an interim compensation mechanism for the Initiating Generator beginning on the 181st day after the Generator Deactivation Assessment Start Date.⁵³ In resubmitting the 365-day timeline, the NYISO stated:

The NYISO's proposed rules for compensating Interim Service Providers are designed to ensure that Generators seeking to deactivate remain in roughly the same financial position that they occupy today. To date, additional payments under RMR-like agreements have generally not been available in New York until after the NYPSC's 180 day notice requirement is satisfied. Establishing an interim compensation mechanism that would trigger on the 181st day should also eliminate any remaining concerns related to the overall justness and reasonableness of a 365 day notice period. The addition of interim compensation rules would align the NYISO's proposal with the Commission-approved 182 day notice period under the Midcontinent Independent Transmission System Operator, Inc.["MISO"]'s System Support Resource rules.⁵⁴

The Commission should reject the NYISO's proposal as unjust and reasonable for a number of reasons. First, the proposed 365-day notice period is unnecessarily long. The NYISO states that 365 days is "the shortest period practicable" for it to complete the process of its evaluation,⁵⁵ and that it seeks only to ensure that generators wishing to deactivate "remain in roughly the same financial position that they occupy today."⁵⁶ The NYISO's proposal does not, however, account for the time that will be saved by eliminating the NYPSC's role of evaluating and selecting potential solutions to Reliability Needs from the process. Given its greater experience and resources and the fact that it will be directly familiar with the scope of the need

⁵³ Compliance Filing at 36–37.

⁵⁴ *Id.* at 37.

⁵⁵ *Id.* at 14.

⁵⁶ *Id.* at 37.

and the state of the system, the NYISO should be better equipped to expedite its review than the NYPSC and should, therefore, be able to accommodate a 270-day notice period.

Moreover, the NYISO erroneously relies on the contention that its proposal conforms to the NYPSC's established 180-day generator retirement notice period and the MISO's 182-day notice period. The NYISO's argument ignores that the NYPSC operates under a 90-day notice period for generators rated under 80 MW.⁵⁷ Indeed, even the NYPSC's 180-day period as applied to larger generators does not align with the NYISO's proposal. When a generator that intends to deactivate its facility files its notice with the NYPSC, the 180-day clock begins to run immediately. However, under the NYISO process, the 365-day clock and the corollary 180-day clock do not begin to run until the complete notice is published, which can be at least 15 days after the notice is submitted and potentially much longer.

The NYISO's reference to the MISO's rules seems apt until compared with the process applied by adjoining RTOs. Neighboring PJM, for example, requires deactivating generators to provide notice "no later than 90 days prior to the proposed Deactivation Date for the generating unit."⁵⁸ Like PJM, the Compliance Filing envisions that the NYISO will determine whether a unit's deactivation will create a Reliability Need within 90 days of the Generator Deactivation Assessment Start Date. Its strained comparison to the NYPSC's 180-day and MISO's 182-day timelines is therefore both inapt and inapposite.

Second, the NYISO proposal fails to compensate ISPs before day 181 when, according to the proposed tariff's terms, the NYISO will have completed its evaluation and determined as

⁵⁷ See NYPSC Case 05-E-0089, *Policies and Procedures Regarding Generation Unit Retirements*, Order Adopting Notice Requirements for Generation Unit Retirements (Dec. 20, 2005).

⁵⁸ PJM OATT, Part V § 113.1.

early as day 90 whether the generator is needed to address a Reliability Need.⁵⁹ The NYISO proposal therefore compels deactivating Generators to continue operations even when both parties know that (a) market revenues are likely inadequate to support the generator's continued operation and (b) the NYISO cannot maintain system reliability if the uneconomic generator is allowed to deactivate. By failing to ensure adequate compensation after it has determined that a deactivating generator is needed to address a Reliability Need, the NYISO's Compliance Filing will adversely impact the generator's ability to maintain reliable operations. The Commission should therefore require the compensation for ISPs begin as of the date that the NYISO determines a deactivating Generator is required to meet a Reliability Need.

Third, the NYISO's Compliance Filing fails to justify its proposal to compensate Generators selected as ISPs at a lesser rate than those selected as RMR Generators. As proposed, the NYISO would compensate a deactivating Generator selected as an ISP from days 181–365 following the Generator Deactivation Assessment Start Date.⁶⁰ ISP compensation, however, would be less than that available to RMR Generators after day 365, reflecting a rate “that encompasses avoidable, fixed, and variable costs, but that does not include any availability or performance incentives.”⁶¹ The NYISO's proposal thereby undermines the foundation of the Commission's RMR policy, which aims to ensure the continued reliability and efficient operation of the system by requiring that uneconomic Generators needed for reliability be allowed to recover their costs for the limited period their operation is required to sustain system reliability.⁶² The NYISO itself has acknowledged that RMR Generators must receive some

⁵⁹ See Compliance Filing at 37–38, Proposed OATT § 38.1.

⁶⁰ *Id.* at 37.

⁶¹ *Id.* at 37–38.

⁶² RMR Order at P 6.

incentive payment in addition to their respective going forward costs to allow for the reliable operation of their facilities:

Incentive payments are a necessary feature of the NYISO's voluntary RMR proposal. RMR Generators will no longer have a market-based incentive to maximize their availability or to respond to dispatch instructions. The proposed rate incentives will give them a financial motive to be available, and to perform when called upon, at or above their historic levels.⁶³

But the NYISO provides no rational basis for the disparate treatment of a Generator selected as an ISP before day 365 and one designated as an RMR Generator after that milestone. Once the NYISO determines that a Reliability Need prevents a Generator's deactivation, that Generator is providing reliability service. Until such time as the NYISO affirmatively identifies another solution, the deactivating Generator should be compensated for that service accordingly, including availability and performance incentives. If the Generator elects to file an Owner Developed Rate, it is that rate that should be applied with an effective date of the 91st day.

The NYISO's Compliance Filing articulates no reason why, having determined that a deactivating Generator is required to meet an identified Reliability Need, that Generator should not be compensated fully for providing reliability service. Until the NYISO selects another alternative that is able to meet the identified need, the deactivating Generator is, by definition, an RMR Generator. The NYISO's Compliance Filing is unjust and unreasonable in that, as discussed above, it denies such Generators adequate compensation. The Commission should, therefore, order the NYISO to amend its Services Tariff as described herein.

VI. THE COMMISSION SHOULD ORDER THE NYISO TO MODIFY ITS TARIFF TO PERMIT RESOURCES LOCATED OUTSIDE OF NEW

⁶³ Initial RMR Filing at 34.

YORK TO OFFER THEIR ENERGY AND CAPACITY INTO NEW YORK TO MEET A RELIABILITY NEED.

In its Compliance Filing, the NYISO states that

[a]lthough the NYISO has not proposed any Tariff rules that would preclude it from executing an RMR Agreement with a Generator located outside the NYCA as a temporary solution to a Generator Deactivation Reliability Need, the NYISO does not have the Tariff mechanisms and rules that would be necessary for it to evaluate, rely on, execute an RMR Agreement with, or to compensate all of the costs that a Generator located outside the NYCA might incur.⁶⁴

Thus, out-of-state resources that might otherwise address an identified Reliability Need have no method by which to propose themselves as either market-based or regulated solutions. Failure to consider possible out-of-state solutions increases the likelihood that the NYISO will be constrained to fall back on RMR Agreements with uneconomic generators or solicit the construction of costly transmission upgrades at regulated rates. The Commission has long held that the NYISO should avoid such outcomes when possible to protect New York ratepayers from absorbing avoidable costs. For this reason, the Commission has directed the NYISO to pursue least-cost solutions and enter into RMR Agreements only as a last resort.

The NYISO indicates its willingness to develop improvements that would allow Generators located outside of New York to offer themselves as RMR Generators, but it appears the NYISO will not proceed with such improvements unless market participants prioritize this effort in the NYISO's project prioritization process.⁶⁵ The ability of Generators located outside of the State to meet Reliability Needs is too important to await consideration under the NYISO's project prioritization process, particularly given the fact that the 2017 project prioritization process effort was recently concluded which would mean that this effort would not even be

⁶⁴ Compliance Filing at 24.

⁶⁵ *Id.*

subject to consideration until the 2018 project prioritization process. If the NYISO were able to allow capacity from a neighboring region into the New York market, the arrangement would provide additional, alternative solutions to identified Reliability Needs. By increasing competition, the NYISO would thereby decrease the likelihood that it would need to rely on either an RMR Agreement or a regulated transmission upgrade. The Commission should, therefore, direct the NYISO to propose tariff rules no later than six months from the date of the Commission's order that would allow out-of-state Generators to offer themselves as a temporary solution to in-state Reliability Needs.

VII. THE COMMISSION SHOULD REQUIRE THE NYISO TO CLARIFY IN ITS TARIFF THAT A DEVELOPER MAY PROPOSE GENERATOR SOLUTIONS THAT ARE NOT MARKET-BASED SOLUTIONS, CURRENTLY MOTHBALLED, OR IN AN ICAP INEGLIGIBLE FORCED OUTAGE TO MEET A RELIABILITY NEED.

In its Initial RMR Filing, the NYISO's proposed amendments to its Services Tariff clearly stated that market participants could propose regulated Generator solutions to address identified Reliability Needs. Specifically, the Initial RMR Filing stated that, in addition to Gap Solutions proposed by the responsible TO, "[a]ny Developer may also propose a Gap Solution to the identified Reliability Need, which solution must satisfy the project information requirements: (i) in Section 31.2.4.6 for a market-based solution, or (ii) in Section 31.2.4.8.1 for alternative regulated solutions. A Gap Solution may include generation, transmission, or demand response solutions."⁶⁶

The NYISO's proposed tariff language in its Compliance Filing clearly states that Developers may propose market-based generation, transmission, or demand response solutions

⁶⁶ Initial RMR Filing, Proposed OATT, Attachment Y § 31.2.11.3.

and regulated transmission solutions.⁶⁷ The Compliance Filing, however, is unclear as to the ability of Developers to propose non-market-based generation solutions that are not a Generator that is currently mothballed or in an ICAP Ineligible Forced Outage (“IIFO”). Generators that are mothballed or in an IIFO may be offered as solutions by submitting a “statement of intent” in accordance with the rules set forth in the NYISO’s proposed Section 38.5. To clarify that Developers also have the ability to submit proposed new generation solutions, the Commission should direct the NYISO to add the following provision in its tariff revisions:

38.4.2.3 – Any Developer may submit a proposed new Generator that requires an RMR Agreement to operate as a temporary Generator Deactivation Solution. A proposed new Generator that requires an RMR Agreement must satisfy the project information requirements in Section 31.2.4.7 of Attachment Y of the ISO OATT, and must also satisfy the information requirements in Sections 38.25.3.1 through 38.25.3.3 and 38.25.5 through 38.25.7 of Appendix B of this Attachment FF.

The insertion of this provision would move the currently proposed Section 38.4.2.3 to a new Section 38.4.2.4. IPPNY is authorized to state that the NYISO does not oppose this proposed addition to the NYISO’s proposed Attachment FF.

VIII. THE COMMISSION SHOULD REQUIRE THE NYISO TO CLARIFY WHICH SOLUTIONS WILL BE INCLUDED IN THE RNA BASE CASE.

The Compliance Filing states that “the ISO shall not include in the RNA Base Case an RMR Generator or an interim non-RMR Generator Deactivation Solution selected by the ISO pursuant to Attachment FF of the ISO OATT.”⁶⁸ This provision correctly excludes RMR Generators from the RNA Base Case so that “the NYISO’s [Reliability Needs Assessment] can identify the Reliability Need underlying the need for the interim solution as a Reliability Need

⁶⁷ Compliance Filing, Proposed OATT, Attachment FF §§ 38.4.2.2–38.4.2.3.

⁶⁸ *Id.* § 31.2.2.3.2.

for which the NYISO will solicit in its CRP market-based and regulated permanent solutions and address that need through the biennial reliability planning process.”⁶⁹ ISPs are, effectively, RMR Generators that begin to receive RMR compensation prior to the completion of the 365-day Generator Deactivation Process. Thus, ISPs should similarly be excluded from the RNA Base Case. To clarify that ISPs will also be excluded from the RNA Base Case, the Commission should direct the NYISO to include the following edits to Section 31.2.2.3.2 of its proposed OATT revisions: “. . . the ISO shall not include in the RNA Base Case an [Interim Service Provide](#), RMR Generator or any [other](#) interim-~~non-RMR~~ Generator Deactivation Solution selected by the ISO pursuant to Attachment FF of the ISO OATT.”

Additionally, the Compliance Filing states that “the ISO will include in the RNA Base Case a permanent non-RMR Generator Deactivation Solution selected by the ISO pursuant to Attachment FF of the ISO OATT if it meets the base case inclusion requirements in the ISO Procedures.” Section 31.2.2.3.2 of the NYISO’s proposed OATT revisions should be clarified, as follows, to reflect the NYISO’s intention that permanent transmission Generator Deactivation Solutions will be included in the RNA Base Case: “. . . the ISO will include in the RNA Base Case a permanent ~~non-RMR~~[transmission](#) Generator Deactivation Solution selected by the ISO pursuant to Attachment FF of the ISO OATT. . . .”

These revisions to the Compliance Filing will clarify which resources will be included in the RNA Base Case. IPPNY is authorized to state that the NYISO does not oppose these proposed further revisions to Section 31.2.2.3.2 of the NYISO’s OATT.

⁶⁹ Compliance Filing at 36.

CONCLUSION

IPPNY/EPISA respectfully requests that the Commission direct the NYISO to make the modifications to its tariffs as discussed above.

Dated: October 25, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day, I served the foregoing document by electronic mail or first-class mail upon each person designated on the official service list compiled by the Secretary to the Commission in this proceeding.

David B. Johnson
David B. Johnson

Dated: October 25, 2016