

150 FERC ¶ 61,116
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

New York Independent System Operator, Inc.

Docket No. EL15-37-000

ORDER INSTITUTING SECTION 206 PROCEEDING AND DIRECTING
FILING TO ESTABLISH RELIABILITY MUST RUN TARIFF PROVISIONS

(Issued February 19, 2015)

1. The Commission, pursuant to section 206 of the Federal Power Act (FPA),¹ takes action through this order to address a recurring issue in the wholesale markets administered by the New York Independent System Operator, Inc. (NYISO). NYISO, as the independent system operator, is responsible for efficiently and reliably administering the resources and transmission facilities under its control. As with certain other regions of the country, NYISO is facing challenges with temporarily retaining certain generation resources needed to ensure reliable transmission service until more permanent reliability solutions are in place. This has manifested itself in proceedings before this Commission initiated by generation resources that had sought to deactivate² but were determined to be needed for reliability by the New York Public Service Commission (New York Commission). These generation resources sought this Commission's approval of agreements under which the generation resources would continue to operate and recover costs that would not otherwise be recovered through generator sales of energy, capacity and ancillary services in NYISO's markets. The services provided under these agreements, commonly referred to as "must run" or "reliability must run" (RMR) services,³ provide for the retention of generation units wishing to deactivate, often

¹ 16 U.S.C. § 824e (2012).

² For purposes of this order, references to generator "deactivation" encompass generator retirements, mothballing, or any other long-term outages or suspension of service.

³ The services are designated as RMR or "Reliability Support Services" (RSS) in the various agreements. We will generally refer to such services as RMR services here.

because they have become uneconomic, but which are needed for transmission system reliability. NYISO was not a party to any of the agreements or applications filed for approval.

2. Given the foregoing, the Commission is concerned that NYISO's Market Administration and Control Area Services Tariff (NYISO Tariff) is unjust and unreasonable. Although NYISO is the entity responsible for providing open access transmission service on the New York transmission system and ensuring the reliability and efficiency of that transmission service,⁴ the NYISO Tariff lacks provisions governing the rates, terms and conditions for RMR service. While the Commission has repeatedly stated that our jurisdictional markets should utilize market mechanisms to ensure that the resulting rates are just and reasonable,⁵ the Commission has also recognized that short-term remedies, such as RMR agreements, may be appropriate in certain circumstances to address an immediate problem at hand. Indeed, pursuant to our authority under the FPA, the Commission has accepted tariff provisions filed by other independent system operators (ISOs) and regional transmission organizations (RTOs) to implement and

⁴ Article 2.01 of the ISO/TO Agreement, which governs the relationship between NYISO and its transmission owners, explains that NYISO has operational control over certain transmission facilities, while Transmission Owners have responsibility for the operation of Local Area Transmission System Facilities. It further explains that such operation by each Transmission Owner shall not compromise the reliable and secure operation of the New York State Transmission System, and that each Transmission Owner shall promptly comply to the extent practicable with a request from the NYISO to take action with respect to coordination of the operation of its Local Area Transmission System Facilities.

⁵ *PJM Interconnection, LLC*, 110 FERC ¶ 61,053, at P 31 (2005) ("market clearing prices that reflect [reliability] costs better support efficient consumption and investment decisions"). *See also, ISO New England, Inc.*, 148 FERC ¶ 61,179 (2014), *order on clarification*, 150 FERC ¶ 61,029, at P 10 (2015) (if future winter reliability program is found to be necessary, it must be a market-based, rather than out-of-market, solution); *ISO New England, Inc.*, 144 FERC ¶ 61,204, at P 42 (2013), *reh'g denied*, 147 FERC ¶ 61,026 (2014) (market-based solutions preferable to out-of-market solutions to address winter reliability issues); *See Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163 at n. 226 ("The Commission favors market design remedies, where possible, to provide needed revenues to support reliability-based generators and other needed investments"), *reh'g denied*, 109 FERC ¶ 61,157 (2004); *see also Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237, at P 63 (2012), *order on compliance*, 148 FERC ¶ 61,056, at P 42 (2014).

govern RMR service.⁶ In doing so, the Commission has emphasized that RMR agreements should be of a limited duration so as to not perpetuate out-of-market solutions that have the potential, if not undertaken in an open and transparent manner, to undermine price formation.⁷

3. As further discussed below, the provision of RMR services has been an ongoing concern in NYISO's markets. Accordingly, to ensure the proper and efficient operation of NYISO's markets, we find that NYISO should have on file the rates, terms, and conditions for RMR service. Without such provisions, 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. The uncertainty created for resources by the lack of clear tariff provisions has the potential to exacerbate the very concerns an RMR service is meant to address - ensuring the continued reliable and efficient operation of the grid, and of NYISO's markets.⁸ NYISO is uniquely positioned to assess the need for RMR service and the appropriate entity to assess the potential impacts RMR agreements may have on its markets in New York. Thus, NYISO should be the entity that administers RMR service in New York, and should do so pursuant to the provisions of its Commission-jurisdictional Tariff required by this order to be filed with the Commission.

4. As discussed below, NYISO's Tariff is unjust and unreasonable because it does not contain provisions governing the retention of and compensation to generating units needed for reliability. The Commission, pursuant to section 206 of the FPA, will require NYISO to submit to the Commission within 120 days of the date of this order fully supported proposed tariff provisions governing the retention of and compensation to

⁶ See, e.g., *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,112, at P 8 (2004); *Calif. Indep. Sys. Operator Corp.*, 138 FERC ¶ 61,112 (2012); *Calif. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,211 (2011); *ISO New England, Inc.* 125 FERC 61,102, *order on clarification*, 125 FERC ¶ 61,234 (2008), *order denying reh'g*, 130 FERC ¶ 61,089 (2010); *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237 (2012).

⁷ See, e.g., *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,112, at PP 20-21 (2004); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 368, *reh'g denied*, 109 FERC ¶ 61,157 (2004) (RMR program is backstop measure designed to meet short-term reliability need).

⁸ See 16 U.S.C. § 824(b)(1) (2012) (the FPA gives the Commission jurisdiction over "the transmission of electric energy in interstate commerce and . . . the sale of electric energy at wholesale in interstate commerce").

generating units required for reliability, including procedures for designating such resources, the rates, terms and conditions for RMR service, provisions for the allocation of costs of RMR service, and a *pro forma* service agreement for RMR service.⁹

I. Background

5. Multiple filings have been made by generators that had applied to the New York Commission to mothball certain facilities but which were determined to be needed for transmission system reliability. These generators then pursued agreements to provide RMR-type service for a limited term until permanent solutions to transmission system reliability issues are addressed by transmission upgrades. The range of RMR-type services to be provided by these units were substantially similar, but involved a number of different agreements some of which were filed at the Commission and others at the New York Commission.

6. Specifically, on July 12, 2012, pursuant to FPA section 205,¹⁰ Dunkirk Power LLC (Dunkirk) filed in Docket No. ER12-2237-000, an unexecuted RMR agreement with cost-of-service pricing net of revenues, under which Dunkirk would provide RMR service to Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) from two of Dunkirk's generation units.¹¹ Concurrently, however, Dunkirk had been engaged in negotiations with National Grid for the same type of services for the same units but with different compensation provisions. Dunkirk filed a "Term Sheet" summarizing the RSS agreement (RSSA) with the New York Commission on July 20, 2012. Accordingly, Dunkirk submitted a request on August 1, 2012, for the Commission to hold the RMR proceeding in abeyance to provide the New York Commission time to review the Term Sheet for the RSSA. On August 16, 2012, the New York Commission approved the Dunkirk/National Grid RSSA Term Sheet. On August 22, 2012, Dunkirk filed a further request that the Commission hold the RMR proceeding in abeyance indefinitely to provide time for the parties to execute a final contract and for any subsequent New York Commission order to issue.¹²

⁹ The Commission is acting on two filings concerning agreements for RMR service in NYISO concurrently with this order in Docket Nos. ER12-2237-002 and ER13-405-000.

¹⁰ 16 U.S.C. § 824d (2012).

¹¹ Dunkirk Filing, Docket No. ER12-2237-000, at 1 (filed July 12, 2012).

¹² On March 4, 2013, National Grid and Dunkirk entered into a second RSSA (2013 Dunkirk RSSA) to cover the period following termination of the August 2012

7. On March 29, 2013, National Grid proposed in Docket No. ER13-1182-000 to amend certain components of its Wholesale Transmission Service Charge formula under Attachment H of the NYISO Tariff to incorporate the costs it incurs pursuant to the above-described RSSAs covering the Dunkirk services as approved by the New York Commission. National Grid proposed to add a new item, “Reliability Support Services Expense,” that would have included expenses incurred pursuant to agreements entered into with generators or other similar resources for the purpose of supporting transmission reliability. On August 30, 2013, noting protestors’ arguments about the unique rate and reliability implications inherent in National Grid’s proposed revisions, the Commission rejected National Grid’s filing, without prejudice to National Grid making a new filing under FPA section 205 providing additional support for recovery of RSS costs. The Commission found that the proposed formula rate revisions would essentially establish a placeholder that would allow the future pass-through of RSS costs. In order for the Commission to approve such a pass-through, the Commission explained that National Grid would, at a minimum, need to file any underlying RSSAs for Commission review, and support the proposed rates.¹³ On December 6, 2013, in Docket No. ER14-543-000, National Grid filed different revised provisions to its Wholesale Transmission Service Charge formula to pass through RSS costs and included the two RSSAs pursuant to the Commission’s directive. On February 4, 2014, the Commission accepted and suspended National Grid’s revisions, and made them effective subject to refund and further order.¹⁴

8. Similar to Dunkirk, Cayuga Operating Company, LLC (Cayuga) sought approval from the New York Commission to mothball its generation units, but it was determined that its units are needed for transmission system reliability. On November 16, 2012, pursuant to FPA section 205, Cayuga filed an unexecuted RMR agreement with the Commission under which Cayuga would provide RMR service to New York State Electric & Gas Corporation (NYSEG). This agreement was based on cost-of-service rates less the revenues earned by Cayuga from the sale of energy, capacity and ancillary services in the NYISO markets. In the meantime, similar to Dunkirk, Cayuga was in negotiations with NYSEG for an RSSA and filed a “Term Sheet” with the New York

RSSA. On May 20, 2013, the New York Commission approved the 2013 Dunkirk RSSA. *Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements - Order Deciding Reliability Need Issues and Addressing Cost Allocation and Recovery*, Case 12-E-0136 (New York Public Service Commission, May 20, 2013).

¹³ *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,172, at P 39 (2013).

¹⁴ *New York Independent System Operator, Inc.*, 146 FERC ¶ 61,065 (2014).

Commission summarizing the proposed RSSA, which differed from its FPA section 205 RMR agreement only as to the rate. Cayuga also requested that the Commission hold Cayuga's RMR filing in abeyance until Cayuga notified it to do otherwise.¹⁵ Following the New York Commission's December 17, 2012 order approving the RSSA Term Sheet and directing the parties to execute and subsequently file the RSSA with the New York Commission,¹⁶ Cayuga submitted an expedited motion for the Commission to hold the RMR proceeding in abeyance until further notice.¹⁷ On February 28, 2013, Cayuga filed a motion to withdraw its FPA section 205 RMR filing as moot on the grounds that it would never make sales to NYSEG under the RMR agreement it had filed with the Commission, but, rather, any sales would be pursuant to the RSSA that NYSEG filed with the New York Commission.¹⁸

II. Discussion

9. As noted above,¹⁹ NYISO's having on file rates, terms and conditions for RMR service is fundamental to the proper and efficient operation of NYISO's markets. Without such provisions, 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. Thus, pursuant to FPA section 206, the Commission finds that the omission of procedures in the NYISO Tariff governing the rates, terms, and conditions of FERC-jurisdictional RMR service needed to ensure reliable transmission service renders the NYISO Tariff unjust and unreasonable and inadequate to prevent undue discrimination among similarly-situated resources. The uncertainty created for resources by the lack of clear tariff provisions has the potential to exacerbate the very concerns an RMR service is meant to address - ensuring the continued reliable and efficient operation of the grid, and of NYISO's markets. NYISO, as the independent system operator in New York, is uniquely positioned to assess the need for RMR service. Moreover, given its role, NYISO is the appropriate entity to

¹⁵ Cayuga Transmittal, Docket No. ER13-405-000, at 4 (filed Nov. 16, 2012).

¹⁶ *Petition of Cayuga Operating Company, LLC to Mothball Generating Units 1 and 2*, Case 12-E-0400, New York Public Service Commission, (issued and effective December 17, 2012).

¹⁷ Cayuga Expedited Motion to Hold Proceeding in Abeyance, Docket No. ER13-405-000, at 2 (filed Dec. 31, 2012).

¹⁸ Cayuga Expedited Motion to Withdraw Filing, Docket No. ER13-405-000, at 3 (filed Feb. 28, 2013).

¹⁹ See *supra* note 8 and accompanying text.

assess the potential impacts RMR agreements may have on its markets in New York. Therefore, NYISO should be the entity that administers RMR service in New York, pursuant to the provisions of its Commission-jurisdictional Tariff required by this order to be filed with the Commission.

10. NYISO has filed status reports on matters concerning RMR service and compensation for nearly four years now and there has been no consensus regarding tariff provisions governing compensation for generators needed for reliability.²⁰ The Commission thus has no expectation of NYISO and its stakeholders addressing the matter on their own. Yet, the need for RMR service remains as evidenced by the aforementioned cases, and NYISO, as the independent system operator is responsible for efficiently and reliably administering the resources under its control, particularly including the generation resources needed to ensure reliable transmission service.

11. If left unresolved, uncertainty regarding NYISO's RMR procedures and compensation policies could undermine NYISO's access to generation units needed for reliability. That is, in the absence of tariff provisions that would allow NYISO to secure RMR services, NYISO may not be able to ensure both that there is indeed adequate generation, and at the appropriate locations, to ensure reliable and efficient operations, and that such generation is adequately compensated so that it will be available when needed. NYISO's inability to secure adequate RMR services could impede its ability to ensure the reliable and efficient operation of the electric grid and its markets. Therefore, pursuant to FPA section 206, we direct NYISO to submit proposed tariff provisions setting forth its proposals to establish an appropriate RMR process in the NYISO tariff. The filing should consist of fully supported proposed tariff provisions governing the retention of and compensation to generating units required for reliability, including procedures for designating such resources, the rates, terms and conditions for RMR service, provisions for the allocation of costs of RMR service, and a *pro forma* service agreement for RMR service.²¹

²⁰ NYISO *Eighth Informational Report on Efforts to Develop Rules Addressing Compensation to Generators that Are Determined to be Needed for Reliability*, Docket No. ER10-2220-000, at 2 (filed Sep. 23, 2014).

²¹ However, the Commission clarifies that NYISO's RMR proposal will not require Dunkirk to enter into new *pro forma* agreements for the 2012 and 2013 RSS agreements or for Cayuga to enter into new *pro forma* agreements for the Cayuga RSSA-1 and RSSA-2 agreements referenced above. The Commission also notes that the costs at issue in the Niagara Mohawk Power Corp. filing in Docket No. ER14-543-000, related to the 2012 and 2013 Dunkirk RSSAs, remain pending before the Commission in Docket No. ER14-543-000.

12. In order to assist NYISO in the development of a compliance proposal, the Commission provides general guidance on the elements that should be addressed by NYISO.²² NYISO's proposal should be consistent with this general guidance.²³

A. RMR Process

13. As an initial matter, as part of its RMR mechanism, NYISO should include Tariff provisions governing the schedule by which a generation owner must notify NYISO that it intends to deactivate.²⁴ These provisions should also include a clear timeline by which NYISO will notify the generation owner that its unit is required for reliability, or, alternatively, determine that the deactivation will not impact reliability and the unit can be deactivated as planned.²⁵ Provisions establishing a schedule by which a generator must notify NYISO of deactivation and clear timelines for action will ensure that NYISO, generation owners, all relevant transmission owners, and other concerned parties have sufficient time to plan and implement the reliability solutions necessary to address any identified reliability issue, which may ultimately mitigate the need for an RMR

²² In its evaluation of what to include in its submission, we encourage NYISO to consider the RMR tariff provisions of other RTOs/ISOs. However, we recognize that there may be reasons to allow variation among RTOs/ISOs, so we will not at this time direct NYISO to adopt any particular mechanism. *See PJM Interconnection, LLC*, 112 FERC ¶ 61,031, at P 21 (2005) (PJM's procedures need not precisely match procedures of another ISO).

²³ NYISO, however, is not limited to filing proposed tariff provisions that meet the general guidance provided in this order. NYISO's compliance filing may contain additional provisions as long as they are fully supported and are shown to be just and reasonable and not unduly discriminatory.

²⁴ *See, e.g.*, Midcontinent Independent System Operator, Inc. (MISO), FERC Electric Tariff § 38.2.7 (requiring 26 weeks' notice); PJM Interconnection, LLC (PJM), FERC Electric Tariff Part V Section 113.1 (requiring 90 days' notice); California Independent System Operator Corp. (CAISO) FERC Electric Tariff, Section 43 (requiring 180 days' notice). *See generally*, *Calif. Indep. Sys. Operator Corp.*, 138 FERC ¶ 61,112 (2012); *Calif. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,211 (2011); *ISO New England, Inc.* 125 FERC 61,102, *order on clarification*, 125 FERC ¶ 61,234 (2008), *order denying reh'g*, 130 FERC ¶ 61,089 (2010); *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237, at P 18 (2012).

²⁵ *See, e.g.*, *Calif. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,211 (2011); *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237, at P 18 (2010); *PJM Interconnection, L.L.C.*, 112 FERC ¶ 61,031, at P 31 (2005).

designation. In this regard, NYISO should describe the process for conducting the reliability analyses necessary to determine that there is a reliability need for the unit. NYISO may elect to address these requirements by expanding upon its OATT Attachment Y planning process, or developing another process as it deems appropriate for inclusion in the NYISO Tariff. We believe it is appropriate to require the NYISO Tariff to provide transparency with respect to such timelines, processes, and schedules, not just for the practical administration of the NYISO Tariff, but also to help ensure that there is no undue discrimination or preference in the handling of RMR service and agreements pursuant to the NYISO Tariff.

14. After considering the necessary reliability studies, NYISO must be the entity that makes the determination whether a specific generator is needed to ensure reliable transmission service and thus whether the facility is designated an RMR unit. As indicated earlier, NYISO is uniquely positioned to assess the need for RMR service. Further, given that it is not only the independent system operator in New York but also is responsible for administering the markets in New York, NYISO is the appropriate entity to assess the potential impacts RMR agreements may have on its markets. To avoid requiring NYISO to study steps necessary to ensure reliable operation of transmission facilities over which NYISO does not have direct operational control, we require that the NYISO Tariff indicate the entity that will conduct the study in such cases. In order to avoid any potential for bias among stakeholders, NYISO may elect to conduct the necessary reliability studies itself, including any studies necessitated by local reliability standards, such as those developed by the New York State Reliability Council (NYSRC). Under that approach, NYISO would need to identify in the NYISO Tariff how it will coordinate the necessary reliability studies with the affected transmission owners. Alternatively, NYISO may elect to allow the relevant transmission owner to conduct the necessary reliability studies. If an entity other than NYISO is to conduct the initial reliability study, NYISO must review and verify any local or regional reliability studies conducted, and notify stakeholders as to whether or not it agrees with the outcome of those studies, independent of any other relevant authority's determination that a particular unit is needed for reliability. NYISO's proposal may also include a process for it to take into consideration the relevant reliability studies and evaluations made by the New York Commission and/or NYSRC.

15. In addition, regardless of the approach chosen by NYISO for conducting the necessary reliability studies, NYISO's proposal must include the requirement that any future generation resource-specific RMR filing made with the Commission fully describe, at a minimum, the methodologies and findings in the underlying reliability studies and clearly state all potential reliability criteria violations. NYISO's including such a requirement is important to ensuring that, when a resource-specific RMR filing is made with the Commission, the Commission will be able to evaluate NYISO's

assessment of the need for operation of the resource in judging the reasonableness of the agreement including whether there has been any undue discrimination or preference.²⁶ Where an RMR determination is based on local planning criteria, any filing also must similarly provide, and for the same reasons, a full discussion of those local criteria, including, for example, documentation as to when the criteria became effective, how the criteria were applied, which regulatory body approved the standard, and any other supporting information.²⁷

16. Finally, NYISO's proposal must describe the process NYISO will use to evaluate alternatives for addressing the identified reliability need. The evaluation of alternatives to an RMR designation is an important step that deserves the full consideration of NYISO and its stakeholders to ensure that RMR agreements are used only as a limited, last-resort measure. To this end, NYISO, in its proposed tariff language, should explain its process for identifying RMR alternatives in detail, including how the process will ensure a thorough consideration of all types of RMR alternatives in an open and transparent manner.²⁸ For example, MISO applies an open and transparent process to consider with its stakeholders feasible alternatives to an RMR designation, including (depending on the type of reliability concern identified) transmission upgrades, demand-side resources, and generator alternatives, as well as alternative operating procedures (e.g., re-dispatch,

²⁶ See, e.g., *Calif. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,211, at P 130 (2011) (directing tariff provisions providing that risk of retirement designation may be exercised "only if all other available procurement measures fail to procure the resources needed for reliable operation"); *ISO New England, Inc.* 125 FERC 61,102, at P 110, *order on clarification*, 125 FERC ¶ 61,234 (2008), *order denying reh'g*, 130 FERC ¶ 61,089 (2010), *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,337, at PP 10, 36 (2012).

²⁷ See, e.g., MISO, FERC Electric FPA Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, C., Planning Activities., 1.0.0 ("planning shall conform to applicable reliability requirements of NERC, applicable Regional Entities, or any successor organizations, each Owner's specific reliability requirements and operating guidelines, and all applicable requirements of federal or state laws or regulatory authorities"); PJM Operating Agreement 462 (Jan. 6, 2014), *available at*: <http://www.pjm.com/~media/documents/agreements/oa.ashx> (addressing Regional Transmission Expansion Plan criteria).

²⁸ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237, at P 36 (2012).

temporary rating increases, special protection systems).²⁹ Our requiring that NYISO describe this process promotes the transparency needed to ensure that the process has indeed not been unduly discriminatory or preferential. Furthermore, NYISO's proposal must include the requirement that any future generation resource-specific RMR filing made with the Commission should detail the alternative solutions evaluated and justify the term of the proposed RMR agreement vis-à-vis the timing of alternative solutions to the identified reliability need.³⁰ This last requirement reflects our belief 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.

B. RMR Compensation

17. As RMR agreements are for Commission jurisdictional services, we require NYISO's RMR proposal to include provisions dealing with compensation for RMR services. The Commission believes that NYISO's RMR compensation provisions should reflect the nature of NYISO's RMR proposal. That is, should NYISO choose an exclusively voluntary RMR regime, under which a generator wishing to deactivate could reject the reliability needs determination and continue to deactivate absent the establishment of acceptable compensation, the tariff should provide for the parties to agree to an appropriate cost-based rate. Compensation to an RMR generator must at a minimum allow for the recovery of the generator's going-forward costs,³¹ with parties having the flexibility to negotiate a cost-based rate up to the generator's full cost of service.³² This ensures that generators are appropriately compensated for agreeing to provide RMR service. Thus, if NYISO chooses an exclusively voluntary RMR regime, the tariff must include a process by which NYISO and the RMR unit may negotiate an appropriate cost-based rate, to minimize the potential for protracted disputes concerning

²⁹ See, e.g., *Midcontinent Independent System Operator, Inc.*, FERC Electric Tariff, § 38.2.7.

³⁰ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 140 FERC ¶ 61,237, at PP 10, 106 (2012).

³¹ With respect to the going-forward costs rate, the Commission recognizes that the NYISO Services Tariff already defines Going Forward Costs. NYISO Services Tariff, Attachment H, § 23.2.1. However, for purposes of its RMR proposal, NYISO may wish to define going-forward costs differently in the context of RMR unit compensation.

³² *PJM Interconnection, LLC*, 107 FERC ¶ 61,112, at P 40 (2004).

that unit's compensation. The participation of the NYISO Independent Market Monitor in negotiations with the generator regarding the appropriate level of charges to include in the negotiated RMR rate should also be considered. Alternatively, should NYISO choose an exclusively mandatory RMR regime, under which a generator wishing to deactivate but determined by NYISO to be needed for reliability is required to remain in operation, NYISO's proposal should provide for compensation at a full cost-of-service rate.³³

18. NYISO's proposal should also contain procedures requiring the filing of RMR agreements for review and approval by the Commission, including, among other provisions, a *pro forma* RMR Agreement;³⁴ a filing requirement for RMR agreements will ensure Commission review of the agreements and thus ensure that they are just and reasonable and not unduly discriminatory or preferential.³⁵ Specifically, regardless of whether NYISO adopts a voluntary approach or an involuntary approach, NYISO's proposal should provide authorization for a generator to file, for Commission review, an RMR agreement under FPA section 205 in the form of the Tariff's *pro forma* RMR Agreement containing cost-based rates (and provisions for filings to change such rates)³⁶ for the provision of RMR service in accordance with the NYISO Tariff.³⁷ Providing for

³³ *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,057, at P 84 (2014) ("While the Commission has accepted a range of reasonable compensation methodologies for RMR units in RTOs/ISOs, we find that it is unjust and unreasonable to not allow SSRs to receive compensation for the fixed costs of existing plant given MISO's authority under its Tariff to unilaterally require a generator that seeks to retire or suspend operations to remain online in order to address reliability concerns").

³⁴ The filing of RMR agreements should be done consistent with the requirements of the Commission's eTariff system.

³⁵ *Midwest Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,237, at P 10 (2012)

³⁶ For example, a generator should have the ability to file to change that rate under section 205 in the event, among other things, that materially adverse unforeseen circumstances affecting the unit increase its costs, or, alternatively, if circumstances result in a decrease in costs.

³⁷ See, e.g., *PJM Interconnection, L.L.C.*, 112 FERC ¶ 61,031, at PP 18-20 (2005); see also PJM OATT § 119. ("A generator seeking to provide RMR services under a nonconforming RMR Agreement must file that agreement for Commission review and approval, and demonstrate that it is consistent with or superior to the *pro forma* agreement"); see also *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,057, at P 92 (2014) ("the MISO Tariff should allow generation or SCU owners designated as SSRs to file their own revenue requirement in order to protect that generation or SCU owner's rights under FPA section 205").

such FPA section 205 filings will ensure that generators delaying deactivation for transmission system reliability reasons will have the authority to seek just and reasonable rates when they delay deactivation. In the case where a generator seeks to file such rates under FPA section 205, NYISO should provide the generator the reliability study report and NYISO's RMR proposal should address which entity will file the reliability report(s) with the Commission.

19. NYISO's RMR proposal should address the circumstance of accelerated cost recovery for generators that require upgrades, retrofitting, repowering, or some other form of additional investment required to continue operating during the term of the RMR agreement, to ensure that in such circumstances generators are appropriately compensated.³⁸ In addition, the proposal should likewise address recovery of such investments from RMR generators should the RMR unit receive compensation for the investment during the term of the RMR agreement but then continue to operate as a merchant unit after the term of the RMR agreement.³⁹ Such provisions should ensure that generators under RMR agreements will not recover more than an allocable portion of the cost of such investments from providing RMR service.

C. RMR Cost Allocation

20. NYISO's RMR compliance filing should include tariff provisions specifying a methodology for allocating the costs of RMR agreements, as appropriate cost allocation is essential to ensuring that the rates charged are just and reasonable and not unduly discriminatory or preferential.⁴⁰ Moreover, disclosing the allocation of RMR costs in this manner will enable the entities to whom the costs may be allocated to better understand their potential responsibility for the RMR costs.⁴¹ Other RTOs and ISOs have adopted different approaches to address the recovery of the costs associated with agreements like the RMR agreements discussed in this order. For example, in PJM Interconnection, L.L.C. (PJM), RMR costs are allocated to the load in the zone(s) of the transmission owners that will be assigned financial responsibility for the reliability upgrades necessary

³⁸ See, e.g., *ISO New England, Inc.* 125 FERC 61,102, at PP 82-84, *order on clarification*, 125 FERC ¶ 61,234 (2008), *order denying reh'g*, 130 FERC ¶ 61,089 (2010).

³⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237, at P 138 (2012), *order on compliance*, 148 FERC ¶ 61,056, at P 44 (2014).

⁴⁰ *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,112, at P 22 (2004).

⁴¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237, at P 154 (2012).

to alleviate the reliability impact that would result from the unit's deactivation.⁴² NYISO should ensure that any cost allocation regime is consistent with the Commission's cost allocation principles and precedents.

D. Toggling Provisions

21. NYISO's proposal should also include rules to eliminate, or at least minimize, incentives for a generator needed for reliability to toggle between receiving RMR compensation and market-based compensation for the same units.⁴³ The Commission appreciates that uneconomic units could become economic for a number of reasons, including changing market conditions and the need for and timing of capital investments. However, the Commission is concerned that any proposed provisions not provide an incentive for a generation resource to propose to deactivate earlier than it otherwise would have in expectation of being needed for reliability and, therefore, be able to receive more revenues under an RMR service agreement than by remaining in the market. As noted above, the tariff provisions should not provide an incentive for a generation resource to re-enter the market after having received accelerated recovery of the cost of additional investments made under its RMR agreement.⁴⁴ Accordingly, to address the Commission's concerns related to toggling, NYISO should craft tariff provisions that provide clear guidance to generators regarding the implications of a deactivation notice.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL15-37-000 concerning the justness and reasonableness of NYISO's Tariff with regard to RMR issues, as discussed in the body of this order.

⁴² See, e.g., PJM OATT § 120.

⁴³ See, e.g., PJM OATT § 118; ISO-NE, Transmission Markets and Services Tariff, § III.13.2.5.2.5 (18.0.0); MISO, FERC Electric Tariff, § 38.2.7 (4.0.0); CAISO, eTariff, § 43.2.6 (1.0.0).

⁴⁴ See, *ISO New England Inc.*, 125 FERC ¶ 61,102, at PP 45-48 (2008).

(B) Within 120 days of the date of issuance of this order, NYISO shall submit a compliance filing containing a proposed RMR Rate Schedule and *pro forma* RMR agreement, as discussed in the body of this order.

(C) Any interested person desiring to be heard in this proceeding must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2014)) within 21 days of the date of this order.

(D) The Secretary is hereby directed to promptly publish this order in the *Federal Register*.

By the Commission. (S

E A L)

Kimberly D. Bose,
Secretary.