

The NYISO respectfully requests that the Commission accept its Compliance Filing with only the limited clarifications described below. The NYISO's proposed revisions to its Open Access Transmission Tariff ("OATT") and its Market Administration and Control Area Services Tariff ("Services Tariff") were carefully developed to bring the NYISO into full compliance with the directives of the Commission's April 21, 2016, *Order on Compliance and Rehearing* in this proceeding ("April Order")⁷ and the Commission's initial February 19, 2015 order directing the NYISO to establish RMR tariff requirements ("Initial RMR Order").⁸ Except as noted below, the Commission should reject the protests of and proposed changes to the Generator Deactivation Process. The proposed changes would impede the NYISO's ability to administer RMR services in New York in a manner consistent with the directives of the April Order and the Initial RMR Order. Finally, the Commission should reject as clearly beyond the scope of this proceeding the proposal to use this proceeding to enact broad changes to the NYISO's capacity market design.

I. REQUEST FOR LEAVE TO ANSWER

The NYISO may answer pleadings that are styled as comments as a matter of right.⁹ The Commission has discretion to, and routinely accepts, answers to protests where, as here, they help to clarify complex issues, provide additional information, are otherwise helpful in the development of the record in a proceeding, or assist in the decision-making process.¹⁰ The

⁷ *N.Y. Indep. Sys. Operator, Inc.*, Order on Compliance and Rehearing, 155 FERC ¶ 61,076 (2016) ("April Order").

⁸ *N.Y. Indep. Sys. Operator, Inc.*, Order Instituting Section 206 Proceeding and Directing Filing to Establish Reliability Must Run Tariff Provisions, Docket No. EL15-37-000 (February 19, 2015) ("Initial RMR Order").

⁹ See 18 C.F.R. § 385.213(a)(3).

¹⁰ See, e.g., *Southern California Edison Co.*, 135 FERC ¶ 61,093 at P 16 (2011) (accepting answers to protests "because those answers provided information that assisted [the Commission] in [its] decision-making process"); *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,058 at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *New York Independent*

NYISO's Answer to the protests in this proceeding satisfies those standards and should be accepted because it addresses inaccurate or misleading statements, and provides clarification and additional information that will help the Commission fully evaluate the arguments in this proceeding. The NYISO, therefore, respectfully requests that the Commission accept this Answer.

II. BACKGROUND

The Commission issued the Initial RMR Order on February 19, 2015. The order identified the NYISO as the appropriate entity to administer RMR service in New York pursuant to Commission-jurisdictional tariffs. The Initial RMR Order directed the NYISO to submit proposed tariff revisions to govern “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.”¹¹ On October 19, 2015, the NYISO submitted a compliance filing proposing revisions to its OATT and its Services Tariff to implement the directives of the Initial RMR Order (“October 2015 Filing”). On April 21, 2016, the Commission accepted the October 2015 Filing with its *Order on Compliance and Rehearing* subject to a number of compliance directives. On September 19, 2016, the NYISO submitted a second Compliance Filing to address the directives of the April Order.¹²

System Operator, Inc., 140 FERC ¶ 61,160 at P 13 (2012) and *PJM Interconnection, LLC*, 132 FERC ¶ 61,217 at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process).

¹¹ Initial RMR Order at P 11.

¹² On June 7, 2016, the NYISO submitted a limited compliance filing in Docket No. ER16-120-002 to remove language from its OATT that was rejected by the April Order. The Commission accepted this filing on July 1, 2016.

III. ANSWER

A. The NYISO's Proposed Anti-Toggling Measures Address the Directives in the April Order

MI/NYC argue that the periods of time over which the NYISO proposes to claw-back the cost of Capital Expenditures and other Above Market Revenues from former RMR Generators and former Interim Service Providers (“ISPs”) that return to participating in the NYISO’s markets are too long.¹³ MI/NYC recommend that the claw-back repayment periods be truncated.

In the April Order, the Commission instructed the NYISO to develop rules to claw-back Capital Expenditures over time in a manner that does not discourage an otherwise efficient generator from continuing to operate.¹⁴ The April Order states that the Commission’s goal is to balance the competing objectives of (1) ensuring repayment of Capital Expenditures (and also, presumably, other Above Market Revenues), and (2) giving RMR Loads the opportunity to receive the full value of service from the upgrades for which they have paid by not discouraging otherwise efficient generators from continuing to operate. The NYISO’s proposed claw-back rules were developed to achieve this balance.¹⁵

¹³ MI/NYC Protest at 7-11.

¹⁴ April Order at P 127.

¹⁵ The NYISO has requested rehearing of certain aspects of the April Order that relate to the implementation of anti-toggling rules. In its Compliance Filing, the NYISO submitted revisions to its anti-toggling rules that it developed to comply with the Commission’s instructions in PP 122-128 of the April Order. As the NYISO explained on page 45 of its Compliance Filing, its submission of compliance tariff revisions is not intended as, and should not be construed as, a withdrawal or waiver of any argument raised in the NYISO’s May 23, 2016 request for rehearing. *See New York Independent System Operator, Inc., Request for Rehearing and Clarification of the New York Independent System Operator, Inc.*, Docket No. ER16-120-001 (May 23, 2016) (“Rehearing Request”). The same is true for this Answer. Because the Commission has not yet ruled on its Rehearing Request, the NYISO finds itself defending proposed rules that it developed and submitted to comply with the April Order.

1. The NYISO’s Proposed Recovery Term for Capital Expenditures Appropriately Balances the Competing Objectives Identified in the April Order

In proposed Section 15.8.7.1.1 of Rate Schedule 8 to the Services Tariff, the NYISO proposes to claw-back the cost of Capital Expenditures¹⁶ over the shorter of (a) the major maintenance cycle, in years, of the Generator, or (b) the Average Remaining Life of the cumulative Capital Expenditures that RMR Loads paid for. The NYISO used the major maintenance cycle to time-bound the Capital Expenditure repayment period because it is a point in time at which an owner would have to elect to make a significant additional expenditure in order to continue operating its Generator.¹⁷

MI/NYC argue that the cost of Capital Expenditures should instead be clawed-back over “perhaps no more than two or three years.”¹⁸ The repayment period MI/NYC propose is likely to be shorter (sometimes significantly shorter) than the repayment period the NYISO’s proposed Tariff revisions will produce. A shorter repayment period increases the amount that must be repaid to the NYISO on a *pro rata* basis each month. An extremely short payback period could discourage an otherwise efficient former RMR Generator or former ISP from returning to participate in the ISO Administered Markets.¹⁹

MI/NYC state that a Generator that proposed to deactivate is not likely to continue operating for very long. MI/NYC further state that the NYISO’s proposed repayment term will not result in the former RMR Generator or ISP fully repaying the capital investments that were

¹⁶ NYISO proposes to apply the same repayment period to the Capital Expenditure component of Above Market Revenues.

¹⁷ In implementing Tariff-required processes including the buyer-side and supplier-side capacity market power mitigation rules and performing withholding analyses, the NYISO has observed major maintenance cycle vary with use, but typically last no more than 8 years and are usually much shorter.

¹⁸ MI/NYC Protest at 8.

¹⁹ See April Order at P 127.

funded by consumers before it finally retires. MI/NYC's protest also suggests that implementing a shorter repayment period may cause older, less efficient Generators to retire, which it argues is consistent with the New York State and Federal policy goals of reducing greenhouse gas emissions.²⁰ On the other hand, implementing a significantly abbreviated claw-back period for Capital Expenditures that RMR Loads already paid for may prevent the NYISO from recouping for the benefit of RMR Loads at least some of the funds supplied to purchase the capital asset.

The NYISO's proposed claw-back rules were developed to achieve the balance described in paragraphs 126 and 127 of the April Order. The rules the NYISO filed are more likely to permit a former RMR Generator or former ISP to return to, or to continue to operate in, the ISO Administered Markets after the Generator Deactivation Reliability Need has been addressed, than the shorter Capital Expenditure repayment period MI/NYC propose. The NYISO requests that the Commission confirm that it struck the appropriate balance.

2. Response to MI/NYC Concern that NYISO's Proposed Recovery Term for Above Market Revenues is Too Long

In proposed Section 15.8.7.2 of Rate Schedule 8 to the Services Tariff, the NYISO proposes to claw-back the cost of Above Market Revenues that are not Capital Expenditures from former RMR Generators²¹ over the shorter of (a) three years, or (b) twice the duration of the applicable RMR Agreement. MI/NYC argue that the NYISO's proposed repayment period for Above Market Revenues that are not Capital Expenditures is too long and should be truncated to the shorter of (a) two years, or (b) the duration of the applicable RMR Agreement.

MI/NYC express concern that the NYISO's proposed repayment period for Above Market Revenues that are not Capital Expenditures from former RMR Generators "create a

²⁰ See MI/NYC Protest at 11-13.

²¹ MI/NYC did not protest the NYISO's proposed one year period for former ISPs to repay Above Market Revenues that are not Capital Expenditures.

window of opportunity during which a former RMR generator can earn revenue in the marketplace, make only a partial repayment, and then shut down (or toggle back to RMR status²²) to avoid full repayment.” MI/NYC also argue that it is not equitable to give a former RMR Generator longer to repay its Above Market Revenues (other than Capital Expenditures) than the period over which the revenues were received from consumers.

So long as the change only affects repayment by former RMR Generators of Above Market Revenues that are not Capital Expenditures, the NYISO does not support, but is not strongly opposed to, the shorter repayment period that MI/NYC propose. If the Commission were to direct the NYISO to adopt the shorter repayment period proposed by MI/NYC, the NYISO would implement the change by modifying the proposed definition of “*mAMR*” that appears in Section 15.8.7.2 of Rate Schedule 8 to the Services Tariff.

3. The Commission Should Reject MI/NYC’s Recommendation that the NYISO Should Recover the Salvage Value of Former RMR Generators as Impractical and Harmful to Non-RMR Loads

MI/NYC argue that the NYISO should be required to obtain an unspecified type of security interest in RMR Generators,²³ to carefully track what happens to former RMR Generators after they cease participating in the ISO Administered Markets, and to recover an unspecified portion of the former RMR Generator’s salvage value for the benefit of RMR Loads when that Generator is, eventually, dismantled and salvaged.²⁴ In essence, MI/NYC contend that the NYISO should position itself as a senior secured creditor in these transactions with preferred

²² MI/NYC do not explain in their protest either how a hypothetical Generator would “toggle back to RMR status” or how their proposal prevents this behavior. The NYISO has explained several times in this Docket how its proposed rules prevent or deter toggling. *See, e.g.*, October 2015 Filing at 43-44, Rehearing Request at 11-14.

²³ The MI/NYC Protest does not address former ISPs. The NYISO does not negotiate an RMR Agreement with an ISP, so it would be difficult for the NYISO to obtain a security interest in the salvage value of such a Generator.

²⁴ MI/NYC Protest at 13-14.

access to an RMR Generator's assets. The NYISO considers this proposal to be commercially unrealistic and impractical. The NYISO also believes that the complexities of such an approach would unfairly shift to all New York Loads a category of transaction costs that (assuming any of this were possible) would benefit only the RMR Loads.

On the commercial side, it seems certain that most RMR Generators will be subject to significant secured financing. It seems very unlikely that an RMR Generator will hold the assets to which the protest refers free and clear of liens. Consequently, for the NYISO to occupy the position MI/NYC describe, the NYISO would first need to undertake a detailed analysis of each RMR Generator's debt structure. Because this analysis almost certainly would reveal the existence of preexisting secured debt, the NYISO would need to obtain from the holders of this debt waivers, exceptions, or subordinations sufficient to put the NYISO in a first-lien position (which in most cases would be the only position that would carry value given the financial difficulties to which the RMR Generator presumably already is subject). This would take time – almost certainly longer than the 60-90 days contemplated for negotiation of an RMR Agreement. In most cases, this would be unsuccessful, given that a preexisting secured creditor likely would have little incentive to subordinate its right of recovery when the asset is already troubled and facing liquidation.

It would also carry significant expense. While the NYISO operates a credit department, the NYISO's primary business is not secured credit, or participation in bankruptcy or salvage proceedings. The NYISO would have to hire and pay outside lawyers and other experts to manage these matters on its behalf. At the same time, the NYISO's costs of operation, including the legal fees it incurs, are paid by *all* New York Loads, not just by RMR Loads. Accordingly, the transactional and other costs associated with the approach advocated by MI/NYC – one that,

again, is unlikely to yield real economic value in most cases – would be spread across all New York loads. The value (if any) actually generated by this approach, on the other hand, (i) would go only to the RMR Loads, and (ii) in the aggregate, very likely would be less than the total costs incurred. This would be unfair to the non-RMR Loads. The Commission should not accept MI/NYC’s proposed change.

B. The Commission Should Reject, with the Exception of One Limited Clarification, the NYTOs’ Proposed Changes to the NYISO’s Proposed Solution Selection Process

In paragraph 73 of its April Order, the Commission stated:

While we emphasize that RMR agreements should only be used as a last-resort measure, we also have an interest in minimizing costs. It would be unreasonable, as NYISO states, to ask NYISO to ignore uncertainty factors associated with a non-generation solution and automatically dismiss the generation solution, when the non-generation solution may turn out to be the more expensive option.

The NYISO’s solution selection process balances the competing concerns that the Commission recognized in the April Order. The execution of an RMR Agreement with a Generator should be a last resort. However, the NYISO should not be *required* to select a transmission solution when a far less expensive generation solution is available.

The solution selection process the NYISO developed strongly favors selecting market-based and transmission solutions over executing an RMR Agreement with a Generator. The NYISO’s proposed rules recognize that selecting a permanent transmission solution may be the least-cost choice for consumers in the long run. Proposed Section 38.10.1.1 of the OATT states “If the ISO determines that there is a Viable and Sufficient permanent transmission solution that completely satisfies the Generator Deactivation Reliability Need, the ISO may select the solution.” For reliability needs that arise on non-Bulk Power Transmission Facilities due to a Generator deactivation, the NYISO is *required* to select a permanent transmission solution, even

if the NYISO has to first execute an RMR Agreement with a Generator as a temporary solution to allow for the implementation of the transmission solution.²⁵

The NYTOs' comments propose several changes to the NYISO's resource selection process that might prevent the NYISO from selecting a far less expensive generation solution and instead require the NYISO to select a significantly more expensive transmission solution. Because the NYISO's proposed resource selection process satisfies the requirements that the Commission specified in paragraph 73 of its April Order and achieves an appropriate balance, the Commission should accept the NYISO's resource selection process without requiring the NYISO to make the modifications that the NYTOs request, except that the NYISO does not object to the clarification proposed in Section III.B.2 of this Answer.

1. The Proposed Generator Deactivation Process Reasonably Treats RMR Agreements as a Last Resort while Considering the Cost of Generation and Transmission Alternatives

The NYTOs argue that the NYISO's tariff does not absolutely require RMR Agreements to be implemented as temporary solutions and as a last resort.²⁶ They state that "the NYISO's compliance filing could be interpreted as allowing for the selection of an RMR agreement as a permanent solution."²⁷ The NYTOs further argue that although the NYISO's filing letter "repeatedly emphasizes that its selection process is consistent with the principles that RMR agreements will be used as a temporary, last-resort measure . . . relying on the OATT language alone, the proposed selection process could be applied such that RMR agreements are not used as

²⁵ See proposed OATT Section 38.10.1.2; Compliance Filing at 28-29.

²⁶ NYTO Comments at 2-3.

²⁷ NYTO Comments at 3.

a temporary measure of last resort but rather as an alternative to permanent transmission solutions.”²⁸

The NYISO’s Generator Deactivation Process establishes that an RMR Agreement will not be used as a permanent solution to a reliability need. The NYTOs err by ignoring language in the OATT that explicitly states that the solution selection process “is designed to ensure that executing an RMR Agreement with a Generator is a last resort to addressing a Generator Deactivation Reliability Need.”²⁹ The OATT provides that the term of RMR Agreements is limited by the in-service date of the conceptual permanent solution to the reliability need provided by the Responsible Transmission Owner and modifications to the scope and timing of the need arising from state agency action, information on other Transmission Owner projects, other RMR Agreements and from the entry of market-based solutions into service.³⁰ RMR Service Offers must limit the term of service to the duration of the time for which the NYISO determines the Generator is viable and sufficient to meet the reliability need.³¹ Finally, *the pro forma* RMR Agreement provides that the NYISO may unilaterally terminate an RMR Agreement with an RMR Generator if it determined that it “is no longer or will no longer be needed to meet a Reliability Need.”³²

²⁸ NYTO Comments at 4.

²⁹ Proposed OATT § 38.10.2.1.

³⁰ Proposed OATT § 38.11.2.

³¹ Proposed OATT § 38.9.3 (term of RMR Service Offers determined by duration of period Generator is viable and sufficient to meet the Generator Deactivation Reliability Need); proposed OATT § 38.9.4(D) (RMR Service Offers shall “state the duration for which the Generator is being made available to provide the RMR service (which shall be no longer than the duration the ISO determined the Generator is a viable and sufficient solution), and specify whether the offer would be the same for any shorter period of time”).

³² Proposed OATT § 38.26, Appendix C – Form of Reliability Must Run Agreement, §2.2.1 “Conclusion of Reliability Need.”

The NYTOs further overlook tariff language stating that a Generator operating under an RMR Agreement will not be included in the base case of the NYISO’s biennial Reliability Needs Assessment. Specifically, the tariff states that “the ISO shall not include in the RNA Base Case an RMR Generator . . . selected by the ISO pursuant to Attachment FF of the ISO OATT.”³³ As explained in the Compliance Filing, the NYISO will exclude RMR Generators from inclusion in its reliability planning process: (i) to allow for the identification of Reliability Needs in the Reliability Needs Assessment that take into account the Generator Deactivation Reliability Need, and (ii) provide for the NYISO’s consideration of permanent market-based and, if necessary, regulated solutions to those needs in its Comprehensive Reliability Plan.³⁴

The NYISO’s proposed solution selection process balances a strong preference for implementing market-based and transmission solutions, instead of entering into RMR Agreements, with the Commission’s clear mandate that the NYISO must consider the cost to consumers in its selection process. The Commission should not instruct the NYISO to revise its solution selection process in a manner that would require the NYISO to select a Viable and Sufficient transmission solution even though a far less expensive generation solution is available based on blind adherence to an absolute requirement that RMR Agreements may only be entered into as a “last resort.”

2. The NYISO Does Not Object to Language Clarifying the Application of the Requirement that to be Eligible for Selection a Generator Must Have a Distinctly Higher Net Present Value than All of the Transmission Solutions under Consideration

The NYTOs further assert that the NYISO’s selection process “narrows the field of eligible projects by discarding generation options, but only if all of the generation options are

³³ Proposed OATT § 31.2.2.3.2.

³⁴ Compliance Filing at 35.

more costly than at least one of the proposed transmission solutions.”³⁵ Although the NYTOs’ interpretation does not align with the NYISO’s intent, the NYISO does not object to making the following redlined change to the language of proposed Section 38.10.2.1 of the OATT to clarify that when there are multiple Viable and Sufficient transmission solutions available to address an identified Generator Deactivation Reliability Need, the NYISO will only continue to evaluate Viable and Sufficient generation solutions that have a “distinctly” higher net present value than all the Viable and Sufficient transmission solutions that are being considered. Specifically:

This solution selection process is designed to ensure that executing an RMR Agreement with a Generator is a last resort to addressing a Generator Deactivation Reliability Need. The ISO will select a Viable and Sufficient transmission solution to address the Generator Deactivation Reliability Need if: (i) there is one or more Viable and Sufficient transmission solutions, and (ii) none of the Viable and Sufficient generation solutions have a “distinctly higher net present value” than a transmission solution. The ISO shall cease evaluating a Viable and Sufficient generation solution if it does not have a “distinctly” higher net present value than all of the Viable and Sufficient transmission solutions that the ISO is considering. If the ISO is selecting between and among Viable and Sufficient transmission solutions, the ISO will perform its selection based on the degree to which each transmission solution satisfies the metrics set forth in Section 38.10.4.³⁶

This revision is consistent with the method the NYISO intends to use to perform its solution selection process and should address the NYTOs’ concern.

3. The NYISO’s Solution Selection Proposal Permits it to Consider the Broad Range of Benefits that Transmission Solutions Can Provide

In Sections II.B and II.C of their comments, the NYTOs argue that the NYISO’s proposed net present value (“NPV”) calculation does not adequately recognize the economic benefit of transmission solutions because it does not fully account for benefits, such as reduced

³⁵ NYTO Comments at 3.

³⁶ Proposed OATT § 38.10.2.1.

congestion or improved efficiency of dispatch, that a transmission solution may provide. Generation solutions can also reduce congestion and improve the efficiency of dispatch. The NYISO's proposed NPV calculation does not explicitly take all system efficiency benefits into account for generation or transmission solutions.³⁷ This is appropriate given the role that the NPV analysis plays in the NYISO's resource selection process.

The NYISO's proposed NPV calculation does not include broad-ranging system benefits of the sort the NYTOs suggest because the NYISO only proposes to use the NPV analysis: (a) when there is no transmission solution and the NYISO is selecting between and among competing generation solutions in accordance with proposed Section 38.10.3, (b) as a gateway to determine which generation solutions, *if any*, the NYISO will consider when it employs the more comprehensive resource selection criteria set forth in proposed Section 38.10.4, or (c) in conjunction with the more comprehensive resource selection metrics set forth in proposed Section 38.10.4 of the OATT. The NYISO's determination that a generation solution has a "distinctly" higher NPV than a transmission solution does not require the NYISO to select the generation solution and execute an RMR Agreement. It merely requires the NYISO to consider the generation solution when it applies the broader metrics set forth in Section 38.10.4 to select a solution to an identified Reliability Need.

The NYISO's NPV analysis is appropriately designed to act as a gateway when generation solutions are being compared to transmission solutions. Proposed Section 38.10.2.2 explains that a Viable and Sufficient generation solution has a "distinctly" higher net present

³⁷ Proposed OATT Section 38.10.2.2 states that the net present value ("NPV") of a generation solution is the present value of the difference between the generation solution's offered costs and its expected market revenues for the expected duration of an RMR Agreement. The NPV of a transmission solution is the present value of the difference between the transmission solution's estimated costs and its expected market revenues (if any).

value than a Viable and Sufficient transmission solution if, after accounting for the accuracy range of each transmission project cost estimate and generation revenue estimate, the NYISO determines that the range of net present values of the generation solution is higher than the range of the net present values of the transmission solution. If there is *any* overlap between the ranges of net present values between a generation solution and a transmission solution, then the generation solution does *not* have a distinctly higher net present value than the transmission solution, and the generation solution will be dropped from consideration. If there is *no* overlap between the ranges of the net present values of the generation and transmission solution, and the range of net present values of the generation solution is above those of the transmission solution, then the NYISO will select from among the generation and transmission solutions in the manner explained below.

The NPV analysis is also a useful adjunct to the metrics proposed in Section 38.10.4 of the OATT. The broad set of metrics proposed in Section 38.10.4 allows the NYISO to consider *all* of the benefits that the NYTOs state that transmission solutions can provide in choosing a solution to a Generator Deactivation Reliability Need. The NYTOs state that the NYISO's solution selection process will not take into account "the full economic benefits of transmission solutions on energy and capacity markets"³⁸ including reduced congestion and increased efficiency of dispatch.³⁹ Proposed Section 38.10.4.5 of the OATT explicitly requires the NYISO to consider "how the proposed solution may affect the utilization of the transmission system (e.g. interface flows, percent loading of facilities)." Proposed Section 38.10.4.4 of the OATT requires the NYISO to consider "how the proposed solution may affect additional flexibility in operating the system, such as dispatch of generation, access to operating reserves, access to ancillary

³⁸ NYTO Comments at 6.

³⁹ *Id.* at 5.

services” and “how the proposed solution may affect the cost of operating the system, such as how it may affect the need for operating generation out of merit for reliability needs ... or providing more balance in the system to respond to system conditions that are more severe than design conditions.” The NYISO’s proposed solution selection process already requires the NYISO to consider a broad range of the economic benefits that transmission solutions (and other solutions) can provide to energy and capacity markets.

The NYISO’s proposed solution selection process does not require it to select an RMR Agreement over a less costly, permanent transmission solution. The process requires the NYISO to take a broad range of system-wide and long-term benefits into account when choosing between a permanent transmission solution and a temporary RMR Agreement. The modifications to the solution selection process that the NYTOs propose in sections II.B and II.C of their comments (on pages 5-7) are not necessary or appropriate and should not be adopted.

C. Response to NYTOs Proposed Corrections and Revisions to the Claw-Back Repayment Obligation Rules

1. The Commission Should Reject the NYTO’s Proposed Change to the Treatment of Depreciation in the Claw-back Calculation

The NYTOs argue that the NYISO should not consider depreciation that occurs while a former RMR Generator or former ISP is deactivated when calculating the Generator’s repayment obligation (claw-back).⁴⁰ The NYISO disagrees with the NYTOs position for the following reasons.

It is appropriate to deduct all depreciation that may occur to a Capital Expenditure that is purchased by RMR Loads to enable a Generator to provide service during the term of an RMR Agreement from the claw-back repayment obligation that applies when the former RMR

⁴⁰ NYTOs Comments at 8-9.

Generator returns to the ISO Administered Markets. If a former RMR Generator enters a Mothball Outage or an ICAP Ineligible Forced Outage (“IIFO”) following the conclusion of its RMR Agreement (or if the former RMR Generator becomes Retired and then returns as a new Generator following the conclusion of its RMR Agreement) and the Capital Expenditure is one that continues to depreciate even though it is not being used,⁴¹ then the fact that the Capital Expenditure had to be made to permit the Generator to provide RMR Service *before* the Generator entered its Mothball Outage or IIFO means that the additional depreciation that occurs during the Mothball Outage or IIFO was the direct result of the Generator making the Capital Expenditure earlier than it otherwise would have in order to provide RMR service. If the Generator had refused to provide RMR service, it could have avoided the depreciation by purchasing the Capital Expenditure at the end of its Mothball Outage or IIFO instead of prior to commencing the outage.

The NYTOs’ proposal could require a former RMR Generator that returns to the ISO Administered Markets following a Mothball Outage to reimburse the cost of a Capital Expenditure (that was made to permit the Generator to provide RMR service) after that Capital Expenditure’s useful life has expired. In this case the former RMR Generator would have to re-incur the same Capital Expenditure to return to service. The NYISO’s proposed rules avoid charging former RMR Generators for the cost of Capital Expenditures that the Generator could have avoided by declining the opportunity to execute an RMR Agreement with the NYISO. The Commission should accept the rules proposed in the NYISO’s compliance filing.

⁴¹ Many types of Capital Expenditures only depreciate when they are used. Capital Expenses that depreciate based on run-hours or the number of times a Generator starts-up are examples of Capital Expenses that depreciate based on use. The difference in opinion between the NYISO and the NYTOs is only relevant when considering Capital Expenditures that depreciate even when they are not being used.

2. The NYISO Agrees with Many, But Not All, of the NYTOs' Proposed Technical Corrections to the Claw-Back Calculations in Rate Schedule 8 of the Services Tariff

The NYISO agrees with many, but not all, of the technical corrections to the claw-back calculations that the NYTOs propose in Section II.D.2 of their comments.⁴² Several of the NYTOs' proposed changes help to better accomplish the intended purpose of the claw-back calculation. The NYISO would not object to the Commission directing it to make the changes that it agrees are appropriate.

The NYISO concurs with the proposal on page 10 of the NYTOs' comments to modify the calculation of the RV_i variable that is defined in Section 15.8.7.1.1 of Rate Schedule 8 of the Services Tariff. The NYTOs' proposed change accurately takes into account the summation of the individual Capital Expenses after depreciation.

The NYISO also agrees with the NYTOs' proposed changes to clearly explain that the NYISO will use a proportionate share of the Capital Expenditures and of the Other Revenues when determining the correct dollar amount an entity must repay each month to satisfy the "Above Market Revenues" repayment obligation included in Section 15.8.7.2 of Rate Schedule 8 of the Services Tariff. In particular, the NYISO agrees with the high-level explanation on page 10 of the NYTOs' comments, with the additional language that the NYTOs propose to add to Section 15.8.7.2 starting at the bottom of page 10 of their comments, and with all of the redlined changes to the equation and defined terms that appear on pages 11 and 12 of the NYTOs' comments, *except* the NYTOs' proposed changes to the term $RMRCapExRecovery_g$.

⁴² NYTO Comments at 9-12.

The proposed edits that the NYISO agrees with properly reflect the NYISO's intent and are consistent with the NYISO's presentations to its stakeholders – in particular, the RMR Capital Expenditure presentation made to working groups on September 1, 2016.⁴³

The NYISO disagrees with the NYTOs' proposed redlined additions to the variable $RMRCapExRecovery_g$ that appear on page 11 of their comments. Consistent with paragraph 126 of the April Order, Section 15.8.7 of Rate Schedule 8 of the Services Tariff requires the NYISO to claw-back the "higher of" two possible repayment obligations, either: (i) the residual value of the remaining Capital Expenditures at the time the former RMR Generator or former ISP would return to the market or (ii) the total "above-market payments" the former RMR Generator or former ISP received.

To calculate $AboveMarketRevenue_g$ in Section 15.8.7.2, the NYISO proposes to add the reimbursed Capital Expenditures to the Other Revenues it paid to the Generator, and then to subtract the revenues that the Generator would have earned by participating in the NYISO's markets. The NYTOs propose to modify the definition of $RMRCapExRecovery_g$ in a manner that would require the NYISO to ignore the depreciation of Capital Expenditures when it calculates the Generator's Above Market Revenues. The NYTOs' proposal is inconsistent with the Commission's instruction that Capital Expenditures should be repaid "less depreciation,"⁴⁴ and it would produce an inequitable result.

Including the NYTOs' proposed addition "...except that the depreciation term P_{ik} shall not be subtracted when making this determination..." would require the NYISO to *ignore*

⁴³ See Revised RMR Clawback Rules: Updated Presentation, NYISO ICAP Working Group (September 1, 2016), available at http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2016-09-01/Clawback%20Presentation%20Updated.pdf.

⁴⁴ See April Order at P 126.

depreciation expense for Capital Expenditures when the NYISO calculates Above Market Revenues.⁴⁵ The proposal is inconsistent with the language the NYISO proposed in Section 15.8.7.1.1, which requires the NYISO to *include* depreciation expense in its calculation of the repayment obligation that applies to Capital Expenditures. The NYTOs' proposal to ignore depreciation in one of the two "higher of" calculations, even though it is required to be included in the other calculation, would inequitably over-weight the Above Market Revenue claw-back calculation. To fairly determine the "higher of" the two values and the total amount of claw-back owed, the NYISO must use the same value (Capital Expenditures minus depreciation) and apply it in a consistent manner when calculating both the Capital Expenditure repayment obligation (Section 15.8.7.1) and the Above Market Revenue repayment obligation (Section 15.8.7.2).

In sum, the NYISO agrees with all of the corrections and revisions the NYTOs propose in Section II.D.2 of their comments (pages 9-12), *except* the NYTOs' proposed edits to the definition of the *RMRCapExRecovery_g* variable.

E. IPPNY's Recommendation that NYISO Should Adopt a Forward Capacity Market Falls Outside the Scope of the Commission's Orders and the NYISO's Compliance Filings

IPPNY's proposal to have the NYISO implement a Forward Capacity Market ("FCM") is beyond the scope of this proceeding.⁴⁶ The NYISO's second Compliance Filing properly focused on implementing the directives of the April Order. IPPNY's proposal to require the NYISO to implement a FCM is far broader than both: (a) the Commission's directives to the NYISO in the Initial RMR Order and the April Order, and (b) the NYISO's compliance filings.

⁴⁵ The term P_{ik} is defined in Section 15.8.7.1 of Services Tariff Rate Schedule 8. It is "the annual depreciation expense, determined by the ISO, for Capital Expenditure i in year k ".

⁴⁶ See IPPNY Protest at 4-7.

Commission precedent is clear that a protest may not expand the scope of a compliance proceeding.⁴⁷ The Commission should reject IPPNY's proposal for the same reason it rejected Entergy's market enhancement proposals in paragraph 133 of its April Order. The NYISO does not substantively respond in this Answer to the FCM aspects of IPPNY's protest because they fall outside the scope of the compliance directives in the Initial RMR Order and the April Order.

If IPPNY wishes to pursue the market design changes that it has proposed in this proceeding, it should do so through the NYISO stakeholder process in the first instance. The Commission should not allow consideration of these matters to delay action on the Compliance Filing.

F. IPPNY's Proposal to Align the NYISO's Generator Deactivation Process with its Gap Solution Process Falls Outside the Scope of the Commission's Orders and NYISO's Compliance Filings

IPPNY argues that the Commission should order the NYISO to align the NYISO's Gap Solution process with its proposed Generator Deactivation Process.⁴⁸ It asserts that the NYISO should be required to modify its Gap Solution process to provide that only the NYISO may select and provide cost allocation and recovery for a Generator to resolve a Reliability Need in that process, and only as a last resort.⁴⁹ The NYISO agrees that consistent treatment of generation solutions in all of the NYISO's long term planning processes, including the Gap Solution process and regular biennial Attachment Y reliability planning process, is logical. Nevertheless, IPPNY's argument is beyond the scope of the instant compliance filing because the Commission did not direct the NYISO to amend the Attachment Y reliability planning process or the Gap

⁴⁷ See, e.g., *Consolidated Edison Company of New York*, 97 FERC ¶ 61,241 at 62,092 (2001); *Entergy Services, Inc.*, 52 FERC ¶ 61,317 (1990); *Louisiana Power & Light Co.*, 50 FERC ¶ 61,040 at 61,062 (1990).

⁴⁸ IPPNY Protest at 8-13.

⁴⁹ IPPNY Protest at 11-13.

Solution process in the manner that IPPNY suggests in this proceeding. The NYISO's Compliance Filing complies with the Commission's directives in the April Order that the NYISO address reliability needs arising out of Generator deactivations and provide for cost allocation and recovery for solutions to these needs in its tariff separately from its Gap Solution process and other planning processes.⁵⁰

G. The Commission Should Reject IPPNY's Proposed Changes to the Timing of Generator Deactivation That Do Not Take Into Account the Administrative Actions Necessary to Deactivate a Generator

On pages 15 and 16 of its protest, IPPNY argues that, once the NYISO determines that an Initiating Generator is not needed for reliability and can deactivate, the NYISO should be required by its Tariff to complete all administrative processes that are necessary to permit the Generator to deactivate within 10 days of reaching that determination. IPPNY's request appears to be premised on several inaccurate assumptions about why the NYISO allows itself time to complete administrative processes.

First, IPPNY's protest assumes that all Initiating Generators will be asking to leave at the earliest possible date (91 days). In fact, the NYISO has already received multiple Generator Deactivation Notices that provided the NYISO far more than 91 days advance notice of a planned deactivation. It is not possible for the NYISO to complete "all administrative processes"

⁵⁰ See April Order at P 31 ("we reject NYISO's proposal to situate the RMR process within the existing Gap Solution process and require NYISO to submit ... a compliance filing with a proposed RMR process separate from NYISO's existing Gap Solution process, under which NYISO evaluates and selects solutions to identified reliability needs caused by generator deactivations."), P 41 ("we reject the NYISO's proposal and require NYISO to establish an RMR process separate from its Gap Solution process, under which NYISO evaluates and selects solution to identified reliability needs caused by generator deactivations, whether market-based solutions, generation solutions, or non-generation solutions. In developing a separate RMR process, NYISO should develop additional tariff revisions to clarify when its separate RMR process will be triggered, as opposed to its existing Gap Solution process"); P 112 ("we require NYISO to include in the compliance filing ordered herein a proposed cost allocation method as part of its RMR process that is separate from its Order No. 1000-compliance regional transmission cost allocation method").

to deactivate an Initiating Generator while that Generator is continuing to participate in the ISO Administered Markets.

Second, IPPNY's protest assumes that all Initiating Generators will actually be prepared to exit the ISO Administered Markets on their requested deactivation date, even though the NYISO's proposed rules do not strictly require this. Before the NYISO turns off an Initiating Generator's bid flags and takes other actions to remove the Generator from its markets, the NYISO needs to receive a confirming notice from the Generator of the date on which that Generator *actually* wants to deactivate. The actual deactivation date may be a different date from the date specified in the Generator Deactivation Notice. For example, a Generator might have noticed its intent to deactivate by a specific date, but later determines that it needs to remain in service for a few additional days to consume remaining fuel stock.

The time the NYISO requires to deactivate a particular Initiating Generator will depend on Generator-specific facts and circumstances. The most important criteria are that the deactivating Generator (1) timely ceases participating in the ISO Administered Markets, (2) provides sufficient advance notice of its actual deactivation date to the NYISO, and (3) timely responds to NYISO questions and completes any required tasks. Because the Initiating Generator's actions can impact both the NYISO's ability to permit the Generator to deactivate and the time the NYISO requires to complete necessary administrative tasks, it is not appropriate to impose a strict time limit on the NYISO's completion of administrative tasks related to the deactivation of an Initiating Generator.

H. The NYISO’s Proposed 365-Day Notice Period Is the Minimum Period Feasible to Allow It to Address Bulk Power System and Local Reliability Needs in Coordination with all Market Participants and Stakeholders.

In the Compliance Filing, the NYISO emphasized that the 365 day notice period “scarcely provides the NYISO with the time necessary to evaluate the reliability impacts of a Generator deactivation, to solicit and evaluate alternatives to an RMR Agreement that could address the reliability need, and to select among proposed solutions to address the need.”⁵¹ IPPNY counters that “the proposed 365-day notice period is unnecessarily long” for several reasons.⁵² First, IPPNY asserts that the notice period does not “account for the time that will be saved by eliminating the New York State Public Service Commission’s (“NYPSC”) role of evaluating and selecting potential solutions to Generator Deactivation Reliability Needs from the process.”⁵³ IPPNY overlooks the fact that functions that were to be carried out by the NYPSC will now be performed by the NYISO. These additional functions will take the NYISO considerable time to administer.⁵⁴ Moreover, as requested by IPPNY and other interested parties in the stakeholder process, the 365-day period also includes an additional 30 days for interested parties to propose Generator Deactivation Solutions, increasing the solicitation period from 30 to 60 days.⁵⁵

⁵¹ Compliance Filing at 14; *see* proposed OATT § 38.3.1 (establishing that a Market Participant must provide the NYISO with a minimum of 365 days prior notice, following the NYISO’s determination that the Generator Deactivation Notice is complete, before its Generator may be Retired or enter into a Mothball Outage).

⁵² IPPNY Protest at 18.

⁵³ *Id.* at 18.

⁵⁴ Compliance Filing at 14 (“Although the NYPSC’s role in reviewing and identifying non-generation alternatives has been removed, the NYISO needs that time to step into this role itself and to evaluate and select from among the available generation and transmission alternatives.”)

⁵⁵ Proposed OATT § 38.4.1.

Second, IPPNY argues that the NYISO “should be better equipped to expedite its review than the NYPSC” “[g]iven its greater experience and resources and the fact that it will be directly familiar with the scope of the need and the state of the system.”⁵⁶ IPPNY provides no support for its claim that the NYISO can perform the responsibilities previously assigned to the NYPSC faster than the NYPSC could or the time periods identified by the NYISO’s subject-matter experts based on their long experience in performing similar studies and responsibilities. As the NYISO states in the Compliance Filing and in Attachment I to this Answer, the affidavit of Zachary G. Smith, NYISO Vice President of System and Resource Planning (“Smith Affidavit”), it has streamlined process steps where possible, but “will still be compressing into 365 days many of the steps included in its reliability planning process, which in the normal course requires at least two years to perform.”⁵⁷

Based on its unsupported assertions, IPPNY concludes that the NYISO “should, therefore, be able to accommodate a 270-day notice period.”⁵⁸ IPPNY provides no indication of the basis for selecting a 270-day period, nor does IPPNY explain how the NYISO will complete all of the tasks it will be required by its Tariffs to perform in 95 fewer days. One hundred and fifty days of the deactivation process are taken up by the Generator Deactivation Assessment (90 days) and the NYISO’s solicitation of solutions (which was extended from 30 days to 60 days at the request of stakeholders).⁵⁹ IPPNY’s proposal would leave the NYISO a scant 120 days to

⁵⁶ IPPNY Protest at 18-19.

⁵⁷ Compliance Filing at 14. *See* OATT § 31.1.8.2 (stating that the reliability planning process will normally be conducted over a two-year planning cycle.)

⁵⁸ IPPNY Protest at 19.

⁵⁹ Proposed OATT Sections 38.3.4.3 (establishing 90 day period for Generator Deactivation Assessment) and 38.4.1 (establishing 60 day period for interested parties to submit proposed Generator Deactivation Solutions).

complete all of the remaining steps of the Generator Deactivation Process set forth in the NYISO's Tariffs as described below.

In the Compliance Filing and the accompanying affidavit from Zachary G. Smith, the NYISO explained that it requires at least 215 days before the Initiating Generator may deactivate to complete all of the following tasks set forth in the tariff:

- Evaluate the Viability and Sufficiency of potential alternative Generator Deactivation Solutions to satisfy the identified Generator Deactivation Reliability Need (OATT §§ 38.1, 38.6.1);
- Coordinate with the Responsible Transmission Owner in performing the evaluation of solutions to both Bulk Power System and local transmission system reliability needs (OATT § 38.6.1);
- Evaluate the conceptual permanent solution proposed by the Responsible Transmission Owner to determine that it is viable and sufficient to use as a benchmark for identifying the term of an RMR Agreement (OATT § 38.6.1);
- Review, verify and/or validate cost information provided to the NYISO by proposed Generator Deactivation Solutions pursuant to OATT §§ 38.3, 38.4, 38.5 and Attachment F, Appendix B (OATT § 38.7);
- Determine the net present values of the Viable and Sufficient Generator Deactivation Solutions that have been offered to the NYISO, including validating developers' cost information and determining an accuracy range for each solution's costs (OATT § 38.10.2.2);
- Determine whether market based solutions and Transmission Owners' Local Transmission Owner Plans will satisfy the Generator Deactivation Reliability Need or whether a regulated solution is needed (OATT § 38.6.2);
- Administer study application and fees and deposits for all Viable and Sufficient Generator Deactivation Solutions the NYISO evaluates (OATT § 38.4.6);
- Select from among regulated Viable and Sufficient generation and transmission solutions using the net present value analysis and all of the criteria set forth in the NYISO's tariff, including cost per MW ratio, expandability, operability, performance, property rights, risk of project delay and impact of other pending Generator Deactivation Reliability Needs (OATT § 38.10);
- If the Initiating Generator plans to deactivate immediately after the 365th day of the notice period and the Generator Deactivation Reliability Need arises either immediately upon deactivation or in a future year, the NYISO must negotiate and enter into a Development Agreement with a Developer if the NYISO selects a transmission solution

(OATT §§ 38.12.3, 31.7, Appendix C), or negotiate and enter into an RMR Agreement with the Initiating Generator or another Generator if selected by the NYISO (OATT § 38.11.2 and Attachment F, Appendix C), or enter into several different agreements. The NYISO must also file the necessary RMR Agreements (OATT §§ 38.11.3 – 38.11.5) and or Development Agreements (OATT § 38.12.3) before their effective dates for acceptance by the Commission; and

- Arrange for service from and compensation to Generators as Interim Service Providers during the 365 day notice period (OATT §§ 38.1, 38.13).

Many of these tasks are normally associated with the NYISO’s two-year reliability planning process.⁶⁰ The Generator Deactivation Process adds further steps to enter into and file necessary agreements to secure solutions to address the Generator Deactivation Reliability Need.⁶¹ Given the scope and depth of the requirements of the Generator Deactivation Process, the NYISO’s proposal to complete these tasks in 215 days of the 365 day notice period is reasonable and IPPNY’s proposal to shorten the 365 day period to 270 days should be rejected.

I. The Commission Should Reject IPPNY’s Proposed Changes to Generator Compensation During the 365 Day Generator Deactivation Notice Period

IPPNY argues that the NYISO should start paying a Generator that submitted a Generator Deactivation Notice the Initiating Generator’s choice of an Availability and Performance Rate including Availability Incentives and Performance Incentives (“APR”) or an Owner Developed Rate (“ODR”) that the owner files and the Commission accepts, commencing 91 days after the Generator Deactivation Assessment Start Date.⁶² IPPNY states “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 [at the APR or ODR].”⁶³ The Commission

⁶⁰ Smith Affidavit at ¶¶ 8-9.

⁶¹ Smith Affidavit at ¶ 9.

should accept the compensation rules for Interim Service Providers (“ISPs”) that the NYISO proposed in its Compliance Filing⁶⁴ and reject IPPNY’s proposed changes.

The NYISO proposes to pay ISPs an APR that does not include Availability Incentives or Performance Incentives commencing 181 days after the Generator Deactivation Assessment Start Date. Implementing a rate that permits ISPs to recover their incremental and avoidable costs commencing 181 days after the Generator Deactivation Assessment Start Date is appropriate for all of the following reasons:

(a) requiring the NYISO to pay a deactivating Generator a guaranteed rate that may significantly exceed the Generator’s expected market-based rate compensation as soon as the Generator Deactivation Assessment is completed, *before* the NYISO has the opportunity to solicit or consider alternative solutions, will not encourage owners to submit a Generator Deactivation Notice sufficiently in advance to permit the NYISO to plan for the Generator’s orderly deactivation. To the contrary, if an owner knows or expects that its Generator will be needed for reliability, it will be able to maximize its profits by operating the Generator until it is no longer expected to be profitable and, only then, submitting a Generator Deactivation Notice.⁶⁵ If the NYISO is required to immediately begin paying the owner a guaranteed rate that both covers the Generator’s costs and significantly exceeds expected market-based rate compensation, the owner will not care that the Generator’s operation is not profitable during the notice period.

⁶² IPPNY Protests at 19-21.

⁶³ IPPNY Protest at 21.

⁶⁴ The NYISO had to develop a significant set of new rules to properly implement ISPs because they are Generators that have submitted a Generator Deactivation Notice but that have not executed an RMR Agreement with the NYISO. *See, e.g.*, proposed Services Tariff § 15.8.6, OATT § 38.13 and the other proposed Tariff rules that are cited in those sections.

⁶⁵ This would potentially delay the submission of a Generator Deactivation Notice by up to 365 days. The owner of a Generator that is not expected to be needed for reliability will not have the same incentive.

Instead, under IPPNY's proposal RMR Loads will absorb the losses that the Generator sustains during the notice period, while the owner receives a rate that may equal the deactivating Generator's full cost-of-service. Because IPPNY is proposing to require the NYISO to pay a rate that exceeds market compensation (up to a full cost-of-service rate) before the NYISO has the opportunity to consider or select an alternative solution, IPPNY's proposed change would not produce a just and reasonable result;

(b) IPPNY's argument does not take into account when the Generator Deactivation Reliability Need is expected to arise, the circumstances under which the identified Reliability Need is expected to arise, or even the deactivation date specified in the Generator Deactivation Notice;

(c) 181 days is the time the NYISO expects it will require to obtain necessary avoidable cost information from the Initiating Generator and to calculate a rate that complies with Section 15.8.6 of the Services Tariff. Since October 19, 2015, the NYISO has posted "completeness" determinations for two Generator Deactivation Notices (addressing a total of three Generators) that were subject to the new Generator Deactivation Notice requirement and to the associated data submission rules. In both cases the NYISO found it necessary to issue multiple requests for additional information from the Initiating Generator(s) to obtain the avoidable cost components that NYISO would use to develop an APR. Based on its experience, the NYISO cannot commit to have a reasonably accurate APR in place 91 days after a Generator Deactivation Notice is submitted;

(d) the NYISO's proposed timeframe is consistent with the timeframe in which the Midcontinent Independent Transmission System Operator begins paying out-of-market compensation⁶⁶; and

(e) it is consistent with the notice period that the NYPSC already requires for Generators that are 80MW or larger. Generators that are 80 MW or larger cannot deactivate prior to the conclusion of the NYPSC's 180 day notice period unless the NYPSC grants a waiver of the requirement.⁶⁷

In its December 21, 2015 Request for Leave to Answer and Answer in this proceeding, the NYISO explained in detail why it does not support paying rates that might significantly exceed market compensation before it determines which solution to implement to address a Generator Deactivation Reliability Need.⁶⁸ An updated response is provided below because IPPNY modified some of the arguments that were presented to the Commission in protests of the NYISO's initial October 2015 Filing.

⁶⁶ The Midcontinent Independent System Operator, Inc.'s ("MISO's") tariff rules require a generator to submit an Attachment Y Notice to MISO at least 26 weeks prior to changing to a Retire or Suspend status. If its deactivation would result in a reliability need and MISO does not identify an alternative by the Attachment Y Notice date to Retire or Suspend, the MISO must file an SSR Agreement with the noticing generator with an effective date as of the Attachment Y Notice date to Retire or Suspend. See MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff Sections 38.2.7.a and 38.2.7.c.

⁶⁷ *Proceeding on Motion of the Commission to Establish Policies and Procedures Regarding Generation Unit Retirements*, Case 05-E-0889, *Order Adopting Notice Requirements for Generation Unit Retirements* (issued December 20, 2005).

⁶⁸ See *New York Independent System Operator, Inc.*, Request for Leave to Answer and Answer of New York Independent System Operator, Inc., Docket No. ER16-120-000 (December 21, 2015) at 8-11, 14-17.

1. IPPNY’s Proposal to Require the NYISO to Pay RMR Compensation Immediately After a Generator Deactivation Reliability Need is Identified is Inconsistent with the Requirement that RMR Agreements be a Limited Last-Resort Measure

The Initial RMR Order requires the NYISO, relevant transmission owners, and interested parties to consider alternatives to an RMR Agreement *before* the NYISO enters into an RMR Agreement with a Generator. The Initial RMR Order states that RMR Agreements should be used “only as a limited, last-resort measure” and that alternatives to an RMR Agreement should be considered in order to “mitigate the need for an RMR designation.” Requiring the NYISO to begin paying compensation to an Initiating Generator as if the Generator is already operating pursuant to an RMR Agreement one day after the NYISO’s Generator Deactivation Assessment is completed (*i.e.*, 91 days after the Generator Deactivation Assessment Start Date), would change RMR service from a “limited, last-resort measure” into a “first resort” requirement that applies whenever the NYISO identifies a Generator Deactivation Reliability Need. The Commission should reject IPPNY’s protest and accept the NYISO’s proposed ISP compensation rules because they provide the necessary time for the NYISO and affected stakeholders to plan and implement reliability solutions that could avoid the need to enter into an RMR Agreement.

In paragraph 13 of its Initial RMR Order, the Commission instructed the NYISO to include in its compliance filing:

13. ...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 designation....**⁶⁹

In paragraph 16 of the Initial RMR Order, the NYISO was further instructed that:

⁶⁹ Emphasis added; internal citations removed.

16. ...**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....** 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.** 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.**⁷⁰

The NYISO proposes to perform a Generator Deactivation Assessment⁷¹ and, where a Generator Deactivation Reliability Need is identified, to solicit a broad range of possible Generator Deactivation Solutions from Responsible Transmission Owners and Developers,⁷² and to consider the possible return to service of Generators that are in a Mothball Outage or an ICAP Ineligible Forced Outage to address the identified Reliability Need.⁷³ The NYISO must next identify the proposed Generator Deactivation Solutions that are viable and sufficient to satisfy the identified Reliability Need.⁷⁴ All viable and sufficient Generator Deactivation Solutions are considered in determining how to address the identified Generator Deactivation Reliability Need⁷⁵ before the NYISO decides that it needs to enter into an RMR Agreement.⁷⁶ This process

⁷⁰ Emphasis added; internal citations removed.

⁷¹ See proposed OATT Section 38.3.4.

⁷² See proposed OATT Section 38.4.

⁷³ See proposed OATT Section 38.5.

⁷⁴ See proposed OATT Section 38.6.

⁷⁵ See proposed OATT Sections 38.9 and 38.10.

⁷⁶ See proposed OATT Section 38.11.

ensures that the NYISO only executes an RMR Agreement as a last-resort option, after all alternatives have been considered, consistent with the Commission's instructions.

The rules IPPNY proposes in its protest would effectively require the NYISO to begin paying full RMR compensation to the Initiating Generator as soon as the NYISO identifies a Generator Deactivation Reliability Need; before the NYISO even receives proposed alternative solutions to the identified need. IPPNY's proposal to require the NYISO to begin paying an APR that includes Availability Incentives and Performance Incentives or an ODR before the NYISO even has the opportunity to evaluate alternative solutions is not consistent with the provisions of the Initial Order that require "thorough consideration" of alternative solutions before an RMR Agreement is executed, nor is it consistent with the rules adopted in other ISO/RTO markets.⁷⁷

Although it would not be appropriate to require the NYISO to begin compensating an Initiating Generator as if the Generator has already executed an RMR Agreement with the NYISO⁷⁸ immediately after a Generator Deactivation Reliability Need is identified, the NYISO proposes to compensate ISPs that are required to remain in service beyond the 180th day of the notice period at the Generator's demonstrated avoidable costs, including its variable operating costs. Implementing this approach will return New York Control Area ("NYCA") Generators to

⁷⁷ As explained previously, the MISO's tariff rules provide 26 weeks (which is approximately 180 days) for the MISO to identify a reliability need and develop a solution. *See* MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff Section 38.2.7. At minimum, the Commission should give the NYISO the same amount of time it granted the MISO to determine if a Reliability Need exists and to evaluate alternatives before it requires the NYISO to implement a non-market compensation method.

⁷⁸ The Initiating Generator has not yet agreed to comply with the terms and conditions of service that are required in the NYISO's *Form of Reliability Must Run Agreement*.

approximately where they stood before the NYISO proposed its RMR rules.⁷⁹ Additional payments under an RMR-like agreement have not generally been available in New York until after the NYPSC's 180 day notice requirement is satisfied.

2. Paying Generators an APR that Includes Availability and Performance Incentives or up to Full Cost-of-Service Under an ODR During the Notice Period Would Discourage Generators from Providing Advance Notice or Assisting Efforts to Plan for an Orderly Deactivation

IPPNY argues that if a Generator is not permitted to deactivate immediately after the NYISO completes a Generator Deactivation Assessment because the assessment indicates that the Generator's deactivation presents a Generator Deactivation Reliability Need that the NYISO, affected Transmission Owners and interested stakeholders must plan to address, then the Initiating Generator should be paid its choice of either (a) an APR that includes an Availability Incentive and a Performance Incentive, or (b) an ODR (under which the Generator may seek to recover its full cost-of-service from the Commission) until the Initiating Generator is permitted to deactivate.⁸⁰ The Commission should reject IPPNY's proposal. Requiring the NYISO to pay a guaranteed rate that may significantly exceed expected market-based rate compensation to a deactivating Generator before the NYISO has the opportunity to consider alternatives to executing an RMR Agreement with that Generator will send the wrong economic signal to Generators that can reasonably anticipate or know⁸¹ that their deactivation will result in a

⁷⁹ See NYPSC Case No. 05-E-889, *Order Adopting Notice Requirements for Generation Unit Retirements* (December 20, 2005), which requires 180 days prior notice before Generators that are 80 MW or larger may deactivate.

⁸⁰ IPPNY Protest at 21.

⁸¹ Generators can pay for the NYISO to perform an additional reliability study before a Generator Deactivation Notice is submitted. See Reliability Planning Process Manual, Attachment E, Request for Additional Reliability Study, and Attachment F, Agreements for Additional Reliability Studies; *available at*: http://www.nyiso.com/public/webdocs/markets_operations/documents/Manuals_and_Guides/Manuals/Planning/rpp_mnl.pdf.

Generator Deactivation Reliability Need. Paying these Generators a guaranteed rate that may significantly exceed their expected market-based rate compensation during the notice period will encourage surprises, and reward the last-minute submission of Generator Deactivation Notices.

Ideally, the NYISO wants Generators that are close to the end of their operating lives to continue operating while they are profitable and to cease operation when they no longer expect to be profitable.⁸² The NYISO's Tariff rules are intended to incentivize Generators to submit a Generator Deactivation Notice sufficiently in advance of an expected deactivation to permit the NYISO, affected Transmission Owners and interested stakeholders to plan for the noticed Generator's orderly deactivation.⁸³

Requiring the NYISO to pay a deactivating Generator a guaranteed rate that may significantly exceed the Generator's expected market-based rate compensation as soon as the Generator Deactivation Assessment is completed⁸⁴ will not encourage owners to submit a Generator Deactivation Notice sufficiently in advance to permit the NYISO, affected Transmission Owners and interested stakeholders to plan for the Generator's orderly deactivation. To the contrary, if an owner knows or expects that its Generator will be needed for reliability, at least temporarily, it will be able to maximize its profits by operating the Generator until it is no longer expected to be profitable and, only then, submitting a Generator Deactivation

⁸² As the NYISO explained on pages 17 to 21 of its December 21, 2015 *Request for Leave to Answer and Answer* in this docket, expected revenues from the NYISO's capacity market are reasonably predictable, and it is appropriate for generation owners to bear the risk of the business decisions they make.

⁸³ The NYISO's proposed rules give the owner up to a full year after the conclusion of the 365 day notice period to decide to deactivate the Generator. See proposed OATT Section 38.14.1.

⁸⁴ This would require cost-of-service payments to commence before the NYISO has the opportunity to solicit or consider alternatives to executing an RMR Agreement with the deactivating Generator.

Notice.⁸⁵ If the NYISO pays the owner a guaranteed rate that may significantly exceed expected market-based rate compensation, the owner will not care that the Generator's operation is not profitable during the notice period. Instead, loads that had no say in when the Generator Deactivation Notice was submitted will absorb the losses that the Generator sustains during the notice period, while the owner receives a rate that may equal the deactivating Generator's full cost-of-service. The result proposed in IPPNY's protest would not be just or reasonable.

The owner might even be able to extend the period over which it is paid a guaranteed rate that may significantly exceed expected market-based rate compensation for its Generator by being dilatory in providing needed information to the NYISO in order to delay the NYISO's efforts to determine the least-cost solution to the identified Generator Deactivation Reliability Need.

The Commission should reject IPPNY's proposal to require the NYISO to pay Generators that are required to continue operating after the NYISO completes its Generator Deactivation Assessment a guaranteed rate that may significantly exceed expected market-based rate compensation (up to and including the Generator's full cost-of-service), during the notice period. Doing so would incentivize inappropriate behavior. The NYISO's proposed rules for compensating ISPs provide appropriate financial incentives to deactivating Generators.

The Tariff rules that the NYISO proposed to the Commission in the Compliance Filing require the owner of an Initiating Generator to bear any losses that may occur during the first 180 days of the 365 day notice period. The proposed ISP compensation rules set forth in Section 15.8.6 of Rate Schedule 8 to the Services Tariff will enable the NYISO to pay ISPs their avoidable and incremental costs commencing on the 181st day of the notice period. The

⁸⁵ This would potentially delay the submission of a Generator Deactivation Notice by 365 days. The owner of a Generator that is not expected to be needed for reliability will not have the same incentive.

proposed compensation structure for ISPs does not include Availability Incentives or Performance Incentives. The ISP compensation rules were developed to protect an Initiating Generator from sustaining losses during days 181-365 of the notice period, but they should not provide a financial incentive for owners to delay the submission of a Generator Deactivation Notice. The NYISO's proposed compensation rules give the owner an appropriate financial incentive to submit a Generator Deactivation Notice in advance, and to deactivate the Generator when its operation ceases to be profitable.

J. The Commission Should Reject As Outside the Scope of its Orders IPPNY's Proposal that the NYISO Consider Out-of-State Generators as Possible Generator Deactivation Solutions

On pages 21-23 of its protest, IPPNY argues that the NYISO's Generator Deactivation Process should include rules to permit out-of-state Generators to participate as Generator Deactivation Solutions. IPPNY's protest states (but does not include any supporting evidence) that developing rules to permit Generators located outside New York to be offered as RMR solutions is of "crucial importance" and that the NYISO should be directed to develop and submit rules to allow out-of-state Generators to be offered as temporary solutions to a Generator Deactivation Reliability Need.

The NYISO's proposed rules already permit the NYISO to consider Generators located outside New York State that participate as Market Participants and respond to dispatch instructions in the NYCA as Generator Deactivation Solutions.⁸⁶ The NYISO's consideration of all Generators that are capable of following the NYISO's commitment and dispatch instructions

⁸⁶ There are Generators located in New Jersey that participate in the NYCA. There are also Generators interconnecting in Pennsylvania that will participate in the NYCA.

as potential Generator Deactivation Solutions is similar to the MISO's rules.⁸⁷ The MISO considers external generators that it can commit and dispatch as potential solutions to identified reliability needs.⁸⁸

There are a number of constraints that make it difficult or infeasible for Generators located outside the NYCA to participate as Generator Deactivation Solutions to a NYCA reliability need. These include:

1. NYCA Generators that are selected as Generator Deactivation Solutions are required to offer their full capacity into the NYISO's Day-Ahead (and Real-Time, if possible) Energy Market at their ISO-determined reference levels (incremental marginal costs), so that the NYISO can economically commit the Generator and obtain Energy Market revenues that can reduce the burden imposed by the RMR Generator on RMR Loads.⁸⁹ It is not possible for Imports from Generators located outside the NYCA to be offered to the NYISO on a basis that is as flexible as the NYISO's ability to commit and dispatch a NYCA Generator. New rules would need to be developed to address the scope of services Generators located outside the NYCA would be

⁸⁷ In footnote 22 of its Initial RMR Order, the Commission stated "In its evaluation of what to include in its submission, we encourage NYISO to consider the RMR tariff provisions of other RTOs/ISOs."

⁸⁸ Section 38.2.7.c of Module C to the MISO Open Access Transmission, Energy, and Operating Reserve Markets Tariff ("MISO Tariff") states, in pertinent part, that "A Generator alternative may be a new Generator, an existing Generator ... or an increase to existing Generator capacity ... and must be registered as a Generation Resource that is obligated to offer into the market and respond to instructions from the Transmission Provider" Module A, Section 1 of the MISO Tariff defines a Generation Resource as "Generator within the MISO Balancing Authority Area or an External Resource that is Pseudo-tied into the MISO Balancing Authority Area and that (i) is registered to participate in the Energy and Operating Reserve Markets, (ii) is capable of supplying Energy, Capacity, Operating Reserve, Up Ramp Capability and/or Down Ramp Capability, (iii) is capable of complying with the Transmission Provider's Setpoint Instructions and (iv) has the appropriate metering equipment installed." The NYISO's proposed rules would permit the NYISO to consider all Generators that are able to satisfy MISO's stated criteria as possible Generator Deactivation Solutions. The NYISO does not employ pseudo-ties but, as previously explained, there are Generators located outside New York that participate in the NYCA.

⁸⁹ See Services Tariff § 23.6.

required to provide and how Generators located outside the NYCA would be compensated for providing those services.

2. For an external Generator to serve as a capacity resource to New York, its capacity must be associated with Unforced Capacity Deliverability Rights (“UDRs”),⁹⁰ or the Generator would have to obtain import rights into the NYCA (which are only available for periods of up to six months and are only available on a first come, first serve basis) or have External CRIS rights.⁹¹ The studies that the NYISO performs to identify Generator Deactivation Reliability Needs assume that all UDRs that are currently contracted will continue to be contracted and will continue to be used to import Capacity. There are very few existing UDRs that could be used to address a Generator Deactivation Reliability Need. New UDRs might need to be obtained, which could require transmission upgrades to be completed in an external control area and could be subject to cost allocation and other regulatory requirements of that external control area. The NYISO would need to develop new rules to address how all of these factors would be considered and how the NYISO would evaluate whether an external Generator is an appropriate solution to a Generator Deactivation Reliability Need.

3. When the NYISO models firm imports at an external Interface, it gives up the ability to receive emergency assistance at that Interface. This trade-off significantly reduces the potential reliability benefits external solutions would be expected to provide.

4. It is unlikely that any entity would obtain new or additional Firm Withdrawal Rights in PJM to address a *temporary* resource adequacy need in New York due to PJM’s Regional Transmission Expansion Plan (“RTEP”) cost allocation rules.

⁹⁰ See Services Tariff § 2.1.

⁹¹ See Services Tariff §§ 5.12.2.1 and 5.12.2.2.

5. New rules would need to be developed to address the claw-back of Capital Expenditures and Above Market Revenues from Generators located outside the NYCA.

IPPNY's request falls outside the scope of the NYISO's compliance obligation in this proceeding. The NYISO is not aware of any Commission-jurisdictional ISO or RTO that has developed a comprehensive set of rules to address how Generators that are not subject to that ISO's or RTO's commitment and dispatch will participate as solutions to identified reliability needs.⁹² The NYISO would have to develop a unique and complex set of rules to address consideration of and compensation to external generators that are not dispatched by the NYISO as possible Generator Deactivation Solutions. Even if the NYISO develops IPPNY's requested rules, there is no guarantee that an external generator will ever be selected as a Generator Deactivation Solution. The Commission should reject IPPNY's request and let the NYISO's stakeholders determine if IPPNY's requested additional rules should be given priority over other desired market and planning process enhancements.

K. NYISO is Not Opposed to the Clarifications IPPNY Proposes in Sections VII and VIII of its Protest

At the conclusion of Section VII of its Protest on page 24 and at the conclusion of Section VIII of its Protest on page 25, IPPNY states that the NYISO is not opposed to the Tariff addition or further revisions that IPPNY proposes. IPPNY's statements are accurate. The NYISO appreciates IPPNY's effort to work with the NYISO to address these concerns.

⁹² In addition to the MISO example included in n. 88 above, Part V ("Generation Deactivation") of the PJM Interconnection, L.L.C. ("PJM") Open Access Transmission Tariff ("OATT") provides solely for the Generation Owner of the deactivating unit to file with the Commission a cost of service rate to operate its generating unit when its deactivation would cause reliability concerns. *See* PJM OATT Part V Section 113.2. A "Generation Owner" is defined in the PJM OATT as "an entity that owns or otherwise controls and operates one or more operating generating unit *in the PJM Region.*" PJM OATT Part I (Definitions G-H) (*emphasis added*).

IV. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this Answer and accept the NYISO's Compliance Filing in the above-referenced docket with only the limited clarifications described above.

Respectfully submitted,

By: /s/ Alex M. Schnell

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November 9, 2016

Attachment I

from a Generator's deactivation and the solicitation, evaluation, and selection of solutions to address any reliability needs.

7. I make this affidavit to respond to arguments raised by the Independent Power Producers of New York ("IPPNY") and the Electric Power Supply Association ("EPSA") (hereinafter jointly referred to as "IPPNY") in their protest of the 365-day notice period proposed in the NYISO's Compliance Filing.
8. In response to the argument IPPNY raises, that the NYISO should be able to complete its Generator Deactivation Process with a notice period of 270 days, I hereby attest that 365 days is the minimum time required for the NYISO to complete its requirements. Although the NYISO has streamlined process steps where possible, it will still be compressing into 365 days many of the steps included in its reliability planning process, which in the normal course requires at least two years to perform.
9. Given that the tariff dedicates 150 days of the Generator Deactivation Process to completion of the Generator Deactivation Assessment (90 days) (OATT § 38.3.4.3), and for solicitation of solutions (60 days)(OATT §38.4.1), only 215 days remain for the NYISO to complete the process before the Initiating Generator may deactivate. The NYISO requires at least 215 days to complete all of the following tasks required by the Generator Deactivation Process set forth in the tariff:
 - Evaluate the Viability and Sufficiency of potential alternative Generator Deactivation Solutions to satisfy the identified Generator Deactivation Reliability Need (OATT §§ 38.1, 38.6.1), and
 - Coordinate with the Responsible TO in performing the evaluation of solutions to both Bulk Power System and local transmission system reliability needs (OATT § 38.6.1), and
 - Evaluate the conceptual permanent solution proposed by the Responsible TO to determine that it is viable and sufficient to use as a benchmark for identifying the term of an RMR Agreement (OATT § 38.6.1);
 - Review, verify and/or validate cost information provided to the NYISO pursuant to OATT §§ 38.3, 38.4, 38.5 and Appendix B of Attachment FF (OATT § 38.7);
 - Determine the net present values of the Viable and Sufficient Generator Deactivation Solutions that have been offered to the NYISO, including validating Developers' cost information and determining an accuracy range for each solution's costs (OATT § 38.10.2.2);

- Determine whether market based solutions and TO Local Transmission Owner Plans will satisfy the Generator Deactivation Reliability Need or whether a regulated solution is needed (OATT § 38.6.2);
 - Administer study application fees and deposits for all Viable and Sufficient Generator Deactivation Solutions the NYISO evaluates (OATT § 38.4.6);
 - Select from among regulated Viable and Sufficient generation and transmission solutions using the net present value analysis and all of the criteria set forth in the NYISO's tariff, including cost per MW ratio, expandability, operability, performance, property rights, risk of project delay and impact of other pending Generator Deactivation Reliability Needs (OATT § 38.10);
 - If the Initiating Generator plans to deactivate immediately after the 365th day of the notice period and the a Generator Deactivation Reliability Need arises either immediately upon deactivation or in a future year, the NYISO must negotiate and enter into a Development Agreement with a Developer if the NYISO selects a transmission solution (OATT §§ 38.12.3, 31.7, Appendix C of Attachment F), or to negotiate and enter into an RMR Agreement with the Initiating Generator or another Generator if selected by the NYISO (OATT § 38.11.2 and Appendix C of Attachment F), or enter into several different agreements. The NYISO must also file the necessary RMR Agreements (OATT §§ 38.11.3 – 38.11.5) and or Development Agreements (OATT § 38.12.3) before their effective dates for acceptance by the Commission;
 - Arrange for service from and compensation to Generators as Interim Service Providers during the 365 day notice period (OATT §§ 38.1, 38.13).
10. I have also reviewed Part H of the NYISO's filing letter. The statements therein are true and correct to the best of my knowledge, information, and belief.
11. This concludes my affidavit.

ATTESTATION

I am the witness identified in the foregoing affidavit. I have read the affidavit and am familiar with its contents. The facts set forth therein are true to the best of my knowledge, information, and belief.



Zachary G. Smith

Subscribed and sworn to before me
this 4 th day of November 2016



Notary Public

My commission expires: 2/12/2018

CARL F. PATKA
Notary Public - State of New York
No. 4962209
Qualified in Albany County
My Commission Expires Feb. 12, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 9th day of November 2016.

/s/ Joy A. Zimmerlin

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