UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Compensation for Reactive Power Within The Standard Power Factor Range	**)** **)** **)**	**Docket No. RM22-2-000**

REQUEST FOR REHEARING OF THE NEW YORK INDEPNDENT SYSTEM OPERATOR, INC.

In accordance with Section 313(a) of the Federal Power Act ("FPA")[1] and Rule 713 of the Commission's Rules of Practice and Procedure,[2] the New York Independent System Operator, Inc. ("NYISO") requests rehearing of several determinations made in the Commission's final rule in this proceeding ("Order No. 904").[3]

In Order No. 904, the Commission found that "transmission rates are unjust and unreasonable to the extent they include charges associated with the provision of reactive power within the standard power factor range."[4] The NYISO takes no position on the Commission's determinations as they apply to other Independent System Operators and Regional Transmission Organizations ("ISOs/RTOs") or to non-ISOs/RTOs. But the Commission clearly failed to adequately consider the NYISO Comments in this proceeding[5] and to reasonably explain its reasons for rejecting the NYISO's recommendations. This is inconsistent with the reasoned decisionmaking standard that the Commission must meet. The Commission should correct its error on rehearing by permitting the NYISO to retain its existing reactive power compensation

[1] 16 U.S.C. § 8251(a).

[2] 18 C.F.R. § 385.713 (2024).

[3] *Compensation for Reactive Power Within the Standard Power Factor Range*, Order No. 904, 189 FERC ¶ 61,034 (2024).

[4] Order No. 904 at P 49.

[5] *Notice of Proposed Rulemaking Comments of the New York Independent System Operator, Inc.,* Docket No. RM22-2-000 (May 28, 2024) ("NYISO Comments").

regime. In the alternative, the Commission should, at a minimum, give the NYISO sufficient time to develop replacement reactive power mechanisms and allow the NYISO's current reactive power compensation rules to remain in place until a Commission-accepted alternative is fully implemented.

I. COMMUNICATIONS

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II. REQUEST FOR REHEARING

A. The Commission Did Not Engage in Reasoned Decisionmaking When it Concluded that Reactive Power Within the Standard Power Factor Range Does Not Warrant Compensation Under the Circumstances that Exist in the NYISO Region

In Order No. 904, the Commission found that "transmission rates are unjust and unreasonable to the extent they include charges associated with the provision of reactive power within the standard power factor range."[6] The Commission believed that compensation was unnecessary "for comparability or to ensure continued investment in the capability of generating

[6] Order No. 904 at P 49.

facilities to provide reactive power within the standard power factor range."[7] Order No. 904's conclusion is based partly on a determination that generating facilities that provide reactive power within the standard power factor range merely meet their required obligations and incur no or, at most, *de minimis* variable costs.[8] The Commission also relied on its notion that charges associated with the provision of reactive power within the standard power factor range do not have a "sufficient economic basis" and do not result in commensurate reliability benefits.[9]

The NYISO respectfully requests rehearing of the Commission's ruling that providing reactive power within the standard power factor range does not warrant compensation, at least with respect to the NYISO and the markets that it administers. Agency orders must be "set aside" if they are "arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law."[10] "FERC—like all agencies—must engage in reasoned decisionmaking" and "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made."[11] The Commission cannot ignore the perspectives of those it regulates but must "respond meaningfully to the arguments raised before it."[12] Unless the Commission "answers objections that on their face seem legitimate, its decision can hardly be classified as reasoned."[13] Further, if the Commission's orders are not based on substantial evidence "support[ing] the Commission's ultimate decision," they should be set aside.[14] FERC

[7] Order No. 904 at P 24.

[8] *See* Order No. 904 at P 20.

[9] Order No. 904 at P 50.

[10] Administrative Procedure Act (APA), 5 U.S.C. § 706(2).

[11] *New Eng. Generators Ass'n, Inc. v. FERC*, 881 F.3d 202, 210 (D.C. Cir. 2018) ("NEPGA") (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

[12] *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1, 12 (D.C. Cir. 2015) (citation omitted).

[13] *Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001).

[14] *Fla. Gas Transmission Co. v. FERC*, 604 F.3d 363, 645 (D.C. Cir. 2010) (citing *Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 368 (D.C. Cir. 2003)).

must also "provide a reasoned explanation for departing from precedent or treating similar situations differently."[15]

The NYISO Comments were clear that reactive power within the standard power factor range provides important market design and reliability benefits in the NYISO.[16] The Commission should have considered that compensation for reactive power plays a critical role in New York, even though it may not in other regions. As a general matter, the NYISO's ongoing market design efforts are focused on ensuring that reliability attributes required by the grid, such as reactive power, receive appropriate compensation. The NYISO also explained that it cannot bifurcate compensation for reactive power within the standard power factor range from compensation for reactive power outside the standard power factor range in anywhere near the time allotted by Order No. 904.[17]

The NYISO Comments explained that the NYISO's existing Voltage Support Service ("VSS") program for reactive power creates the right economic incentives for suppliers in the NYISO.[18] Market principles play a significant role in establishing compensation for generator services in New York. Market principles support compensating the discrete reliability attributes the system requires. Compensating needed reactive power supplies through capacity market compensation would likely not be suitable for New York because general capacity market compensation may not encourage resources to provide the necessary service and will not encourage new technologies to provide the essential reliability service. For example, capacity

[15] *W. Deptford Energy, LLC v. FERC*, 766 F.3d 10, 20 (D.C. Cir. 2014) (cleaned up); *see also* NEPGA, 881 F.3d at 210 (quoting *FCC v. Fox Television Stations, Inc*., 556 U.S. 502, 515 (2009)) (alterations in original).

[16] *See* NYISO Comments at 5-8.

[17] *Id*. at 9-10.

[18] *See* NYISO Comments at 7-8.

market compensation may not effectively incentivize suppliers to have functioning automatic voltage controlling equipment the way that NYISO's existing VSS program requires.[19]

The NYISO Comments further emphasized that eliminating reactive power compensation inside the standard power range is not cost-justified for the NYISO. The NYISO's current approach to reactive power compensation emulates the workings of a competitive market by providing a payment for a necessary ancillary service based on the demonstrated capability of the supplier. These incentives would not exist if reactive power capability were compensated through unit-specific cost-based payments or as a component of installed capacity market payments or energy market payments. Compensating suppliers for demonstrated leading and lagging reactive power capability encourages them to accurately determine their total reactive power capability and to maintain the equipment necessary to provide the service, all of which supports reliable bulk power system operations. The NYISO Comments stated that while the total annual compensation for VSS is a small fraction of total compensation, when compared to capacity market and energy market compensation, compensation for VSS in New York nevertheless provides the necessary incentives for resources to collectively provide an ancillary service that is required for electric system reliability.[20] Even if the Commission were correct that reactive power is overcompensated in some other regions it is not the case in the NYISO.

The NYISO has also projected, based on 2025-2026 Capability Year values, that ending VSS-specific payments to generators would increase total consumer costs by increasing capacity procurement costs. Terminating the NYISO's VSS payment program, and the corresponding capacity market payment offset, increases payments to all capacity suppliers in the New York

[19] *See* NYISO Comments at 6.

[20] *Id.* at 7.

Control Area ("NYCA"). The magnitude of the increase depends on the assumptions used in the analysis.[21] However, the projected increases to capacity market procurement costs result in an approximately $26 million to an approximately $55 million annual increase over retaining VSS payments to generators. It was arbitrary and capricious for the Commission to fail to consider the cost-effectiveness of the NYISO's existing compensation mechanisms.

Similarly, the NYISO Comments showed that requiring the NYISO to eliminate its existing VSS program for reactive power would raise difficult, complex, and time-consuming compensation, market design, and reliability questions.[22] The NYISO urged the Commission to consider that these issues were not worth taking on at this time.

Order No. 904 acknowledged that the NYISO had made these arguments but then gave them short shrift. In effect, the Commission's response was that NYISO's region-specific arguments concerning the market and reliability benefits of providing reactive power compensation inside the standard power range were irrelevant because the Commission had already decided that compensation was not justified in other regions. The Commission failed to consider the NYISO's point when it stated that NYISO's arguments "ignore the preliminary findings of the NOPR, namely that generating facilities providing reactive power within the standard power factor range are only meeting their obligations under their interconnection agreements in accordance with good utility practice, and in doing so incur no or at most a *de*

[21] The magnitude of the increase varies based on what Capacity Accreditation Factor ("CAF") values are used. CAFs are values set annually by the NYISO that reflect the marginal reliability contribution of the Installed Capacity ("ICAP") Suppliers within each Capacity Accreditation Resource Class toward meeting New York State Reliability Council ("NYSRC") resource adequacy requirements for the upcoming Capability Year. When currently effective CAF values are applied, the projected net savings from retaining VSS payments to generators is approximately $55 million. The net savings is approximately $26 million when indicative CAF values calculated based on the preliminary NYSRC resource adequacy model for 2025 are applied.

[22] *See* NYISO Comments at 8-11.

minimis increase in variable costs beyond the cost of providing real power."[23] By taking this approach, the Commission avoided engaging with the NYISO's arguments and did not provide the reasoned explanation that is legally required.

The Commission also gave no indication that it recognized how its approach departed from decades of precedent allowing different ISO/RTO regions to adopt different market rules to reflect differing regional conditions, including rulings to permit the existing reactive power compensation structure in the NYISO markets.[24] Indeed, the Commission has often allowed for regional variations much more consequential than differing approaches to reactive power compensation.[25] Order No. 904's unacknowledged and unexplained variation from precedent is not reasoned decisionmaking.

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[23] Order No. 904 at P 53.

[24] *Calpine Corp. v PJM Interconnection, L.L.C.*,169 FERC ¶ 61,239 at P 204 n. 431 ("[R]egional markets are not required to have the same rules. Our determination about what rules may be just and reasonable for a particular market depends on the relevant facts."); *See also Midcontinent Indep. Sys. Operator, Inc*., 162 FERC ¶ 61,176, at P 57 ("In its orders, the Commission has consistently rejected a one-size-fits-all approach in the various RTOs/ISOs due, in large part, to significant differences between each region and that there can be more than one just and reasonable rate."); citing *Southwest Power Pool, Inc*., 158 FERC ¶61,063 at P 13 (2017) ("market rules need not be identical among the regions to be just and reasonable, and there can be more than one just and reasonable rate."); *PJM Interconnection, L.L.C*., 119 FERC ¶61,063 at P 39 (2007) ("[t]he Commission has permitted different just and reasonable rate designs reflective of particular system characteristics and stakeholder input."); *Midwest Indep. Transmission Sys. Operator, Inc*., 127 FERC ¶61,109 at P 20 (2009) ("[i]t is well established that there can be more than one just and reasonable rate").

[25] For example, the Commission has long accepted significant differences between capacity market, and capacity market power mitigation measures, in the NYISO and neighboring systems. *See, e.g., N.Y. Indep. Sys. Operator, Inc*., 170 FERC ¶61,121 at n. 39 (2020) ("This order addresses buyer-side market power mitigation for renewable resources and self-supply resources in a different way than the Commission recently addressed such resources in PJM Interconnection, L.L.C."; *Calpine Corp. v PJM Interconnection, L.L.C*., 171 FERC ¶ 61,035 at n754 (2020) ("Specifically, with regard to the NYISO capacity market rules, the Commission has repeatedly noted the differences between the PJM and NYISO capacity markets making different rules appropriate."); *N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc*., 153 FERC ¶ 61,022 at P 38 (stating that "[w]hether the Commission has found certain exemptions from buyer-side market power mitigation in … any other region to be just and reasonable is not dispositive of whether the Commission should find NYISO's buyer-side market power mitigation rules to be unjust and unreasonable absent similar exemptions"); *Consol. Edison Co. of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc*., 150 FERC ¶61,139 at P 47 ("As the Commission has stated many times before, we allow for each region to develop rules to address the differing concerns of the regions."), *order on clarification, reh'g, & compliance*, 152 FERC ¶61,110 (2015).

Finally, in the time since comments were filed in this proceeding, it has become even clearer that the accelerating transition of the New York State energy system is shifting the generation mix and increasing demand in ways that could increase the need for reactive power support. The NYISO has determined, as part of its work to develop its next forward-looking Reliability Needs Assessment, that there is a clear upward trend forecasted in peak demand in New York over the next ten years. There is also significant uncertainty driven by the electrification of heating and transportation coupled with the development of multiple high-electric demand facilities (e.g., microchip fabrication and data centers). As the demand on the grid grows at a rate greater than the build-out of generation and transmission, deficiencies could arise within the ten-year planning horizon. The NYISO is likewise now seeing more clearly that numerous new large loads are expected to interconnect to the New York system. These large loads are primarily expected to be concentrated in upstate New York. Most of them are likely to consist of manufacturing facilities and data centers, as well as hydrogen production operations (i.e., electrolysis). The Commission should consider this additional information, which reinforces and confirms arguments made in the NYISO Comments, and which is consistent with trends that the Commission has observed in other regions, in its review of this rehearing request.[26]

In short, it was not reasoned decisionmaking for the Commission to disregard the NYISO's region-specific concerns by continuing to insist, without an evidentiary basis, that the NYISO's existing reactive power compensation framework has no economic rationale, or would not bring

[26] *See* 2024 Reliability Needs Assessment ("RNA"), A Report of the New York Independent System Operator, at pp. 7-11, which was presented to, and approved by, the NYISO's Management Committee on October 31, 2024, available at https://www.nyiso.com/documents/20142/47773760/2024RNA_Report_103124MC.pdf/956d57b8-0a30-d1fb-70a1-9e1680ecdb6f. The RNA was developed after the comment period in this proceeding and should not be rejected as impermissible "new evidence" on rehearing. *See, e.g., Pub. Ser. Co. of N.M.*, 181 FERC ¶ 61,013, at P 12 and n.25 (2022) (describing an exception to the Commission's practice of rejecting new evidence on rehearing if an "argument could not have been previously presented, e.g., claims based on information that only recently became available or concerns prompted by a change in material circumstances.")

commensurate reliability benefits, in New York. The Commission likewise did not provide the required reasoned explanation for rejecting the NYISO's arguments. The Commission should correct its error on rehearing by reversing its directive that the NYISO eliminate compensation for providing reactive power within the standard range.

B. Order No. 904's Requirement that Existing Reactive Power Compensation Programs Be Discontinued Before a Just and Reasonable Complete Replacement Rate Is Established Is Unlawful Under FPA Section 206 and Is Arbitrary and Capricious

1. Order No. 904 Unlawfully Failed to Follow the Two-Step Process Required Under FPA Section 206 Because It Did Not Establish a Just and Reasonable Replacement Rate After Finding an Existing Provision Unjust or Unreasonable

In Order No. 904, the Commission acted under FPA section 206 to require the NYISO and other transmission providers to end reactive power compensation inside the standard power factor range. However, the Commission also permitted compensation for reactive power outside the standard power factor range to continue.[27] The NYISO and other transmission providers were directed to submit compliance filings within 60 days of Order No 904's effective date and to implement their compliance revisions within 90 days of their compliance filings.[28] In other words, the Commission found the NYISO's existing compensation rules for reactive power unjust and unreasonable but provided minimal, at best, guidance as to how the NYISO could structure replacement rules. The Commission's action is impermissible under section 206 of the FPA.

Courts have made clear that Commission action pursuant to FPA section 206 requires a two-step process.[29] First, the Commission must find that existing provisions are unjust and

[27] Order No. 904 at P 1.

[28] Order No. 904 at P 224. The 90-day implementation requirement is subject to potential extension requests, as discussed below.

[29] *See Int'l Transmission Co. v. FERC*, 988 F.3d 471, 485 (D.C. Cir. 2021); *Emera Me. v. FERC*, 854 F.3d 9, 21 (D.C. Cir. 2017).

unreasonable. Second, it must then establish a just and reasonable replacement rate.[30] Order No. 904 unlawfully failed to finish this two-step process.

The Commission may not undertake only one of the steps that comprise the two-step process. A Commission finding that an existing provision is unjust or unreasonable triggers FPA section 206's directive to establish a just and reasonable replacement rate.[31] Thus, after an existing tariff provision is found to be unjust or unreasonable, the Commission bears the burden of introducing a lawful replacement.[32] The Commission must fulfill *both* steps to satisfy its FPA section 206 obligations.

Many dual burden cases involve the Commission failing to complete the first step and moving too quickly to the second. As noted above, the NYISO disputes that the Commission has met its burden to show that the NYISO's existing reactive power compensation regime is unjust and unreasonable. Nevertheless, even if the Commission had properly completed the first step it has not met its obligation to take the second step by ensuring that a just and reasonable replacement rate will be in place.

Order No. 904 differs from the many other Commission rules that have found existing tariff provisions to be unjust or unreasonable and then provide ISOs/RTOs broad discretion to develop just and reasonable prospective compliance revisions. Order No. 1920 is a recent example of the Commission taking this approach.[33] That rule held that a number of existing transmission planning

[30] *Am. Clean Power Assoc. v. FERC*, 54 F.4th 722, 724 (D.C. Cir. 2022) (citing 16 U.S.C. § 824e(a); *Emera Me.*, 854 F.3d at 24).

[31] *Emera Me.*, 854 F.3d at 24 (citing *Am. Gas Ass'n v. FERC*, 912 F.2d 1496, 1504 (D.C. Cir. 1990)).

[32] *Emera Me.*, 854 F.3d at 25 (citing *First Energy Serv. Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014)) (explaining that FPA section 206 "imposes a 'dual burden' on FERC.").

[33] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068, reh'g denied by operation of law, 188 FERC ¶ 62, 025 (2024), *appeal pending sub nom, Appalachian Voices v. FERC*, Nos. 24-1650 (4th Cir. pet. consolidated Aug. 8, 2024).

and cost allocation rules were no longer just and reasonable. But it allowed a substantial time for ISOs/RTOs to develop and file replacement provisions without requiring them to eliminate existing tariff provisions in the interim. By contrast, Order No. 904 requires that reactive power compensation mechanisms be removed quickly regardless of the outlook for adopting an adequate replacement. As noted below in Part II.C, the Commission even contemplates that replacement rates may be developed, at least in part, outside of this proceeding through future FPA section 205 filings instead of Order No. 904 compliance filings.

2. Requiring the NYISO to Discontinue Its Current Reactive Power Compensation Program Before a Just and Reasonable Replacement Rate Is Fully Implemented Is Arbitrary and Capricious

Beyond being incompatible with the structure of FPA section 206, the Commission's directive to end reactive power compensation within the standard power range without providing for adequate replacement rules is arbitrary and capricious on the merits, at least as applied to the NYISO. Order No. 904 failed to provide guidance on how to compensate resources for reactive power outside the standard power factor range and failed to reasonably consider region-specific issues.

a. The Commission's Failure to Establish a Replacement Rate Increases the Reliability Challenges Facing the NYISO

Order No. 904 acknowledged that reactive power is critical to maintaining electric system reliability but prohibited compensation for reactive power within the standard power factor range without concern for how the NYISO would be able to obtain reactive power that is needed for reliability. Requiring the NYISO to discontinue its current reactive power compensation program without guidance on structuring a compensation mechanism for reactive power outside the standard power factor range that supports reliability is arbitrary and capricious.

For more than twenty years, the NYISO has compensated VSS suppliers using a flat rate structure of dollars per megavar ("MVAr")-year. This compensation structure consistently produces sufficient dynamic reactive power capability throughout the NYCA to maintain electric system reliability at a reasonable cost to consumers. Developing a similar compensation structure to comply with Order No. 904 would require significant effort and could not practicably be achieved by Order No. 904's default compliance deadline. Terminating the NYISO's current reactive power compensation program before a suitable alternative is in place could create uncertainty and have adverse reliability impacts. A premature termination would also put the NYISO in a position where it is not compensating resources for a necessary ancillary service. These issues are exacerbated because, as noted below, the NYISO is already in the midst of a clean energy transition that is raising new reliability challenges and requiring the NYISO to develop new market design solutions. The Commission has only made matters more difficult by forcing the NYISO to invent new ways to address reactive power compensation at a time when other market rules are evolving. Accordingly, it was not reasoned decisionmaking for Order No. 904 to fail to reasonably consider or explain how resources should be compensated for reactive power outside the standard power factor range in the NYISO.

b. The Commission's Failure to Establish A Replacement Rate Needlessly Complicates Efforts to Update the NYISO-Administered Markets to Account for the Clean Energy Transition and State Energy Policies

The New York State Climate Leadership and Community Protection Act ("CLCPA")[34] is the primary driver of energy policy in New York State. The CLCPA mandates that energy generated from renewable resources must serve seventy percent of the State's load by 2030 and requires that one hundred percent of the energy serving load be zero emission by 2040.

[34] *See* S. 6599, 2019-2020 Sen., Reg. Sess. § 1 (N.Y. 2019).

Additionally, the CLCPA requires the installation of 6,000 megawatts ("MW") of distributed solar resources by 2025, 3,000 MW of storage resources by 2030, and 9,000 MW of offshore wind resources by 2035. The NYISO must address these imminent changes and accommodate the unique attributes of the new resource types.

Concurrently, the electric system in New York State is undergoing a significant and rapid change, driven in substantial part by climate-related concerns. More frequent extreme weather events and higher temperatures will impact the ability of the grid to reliably serve electric demand. Additionally, the NYISO expects widespread electrification of the transportation and building sectors, which will change the magnitude and patterns of demand. New York State has also implemented certain electrification policies that will only strengthen these trends.

Due to the transformation of the generation resource mix, the wholesale energy market design in New York will need to evolve between now and 2030 to more efficiently value the grid services that will be necessary for maintaining reliability. Ideally, the wholesale energy market will signal the value of each type of grid reliability service. Revisions to Energy and Ancillary Service market designs are necessary to enable the wholesale Energy and Ancillary Services markets to meet the full spectrum of New York State policy requirements and needed grid services with competitive forces guiding the least-cost solution from a diverse set of resources. In light of New York's ambitions to transform the grid, the ability of the wholesale energy market to meet multiple objectives at least-cost is crucial.[35] However, the absence of a clear replacement rate to address the compensation of reactive power outside of the standard range, which is an important

[35] *See* Response of the New York Independent System Operator, Inc. to Order Directing Reports, Docket No. AD21-10-000 (Oct. 18. 2022) at 5 ("By evolving energy and ancillary service market design to reflect and incentivize the reliability services needed, wholesale energy and ancillary services markets can meet the full spectrum of New York State policy requirements and needed grid services, with competitive forces guiding the least-cost solution from a diverse set of resources. The wholesale market's ability to meet multiple objectives at least-cost is especially important given the state's ambitions to transform the electric grid.").

issue in the NYISO region, will unreasonably complicate the NYISO's efforts to address these much more important questions.

For example, an important attribute of efficient electric markets that promotes and protects reliability is the existence of differentiated payments based on resources' operational capabilities and various market products, such as wholesale energy, ancillary services, and installed capacity. As the needs of the grid continue to evolve and the need for operational flexibility grows in importance, markets and payment streams must exist for the attributes needed for the reliable operation of the grid, and resources must be compensated in accordance with their ability to fulfill reliability needs. As such, the NYISO's ongoing Energy and Ancillary Services design initiatives are currently examining the appropriate price signals for generating resources that are responsive to real-time changes in system conditions. Before Order No. 904, the NYISO could assume that necessary reactive power support would be procured through existing mechanisms. After Order No. 904, the NYISO must find a new solution to this issue that will inevitably be more complex and, as noted above, will likely be more expensive to consumers, without any guidance from the Commission.

To achieve the CLCPA's goals, significant quantities of new resources that satisfy the zero-emission definition and provide the necessary energy and reliability attributes will be required to support a reliable system. Because fossil-based generation provides the essential characteristics and reliability services today, achieving this target will require the development of existing and emerging zero-emission electricity supply. Inverter-based resources, such as wind and solar, do not have the technical capability to provide the same reliability attributes as the synchronous generators being decommissioned. The generation fleet must, at a minimum, also provide the critical reliability attributes of the retiring fossil-based generators. Collectively, the fleet of

generation resources must maintain a balance of the following attributes: zero-emission/carbon-free; dependable fuel sources; non-energy limited; dispatchable; quick-starting; flexible; fast ramping; multiple starts; inertial response and frequency control; ***dynamic reactive control***; and high short circuit current contribution. NYISO endeavors to incentivize each attribute through targeted compensation structures. Order No. 904 will make this effort harder because new compensation structures must now also address reactive power outside the standard power range without knowing what kinds of mechanisms the Commission might accept.

The NYISO is committed to continuously enhancing its wholesale market design to meet these challenges and position itself to support a reliable system through competitive wholesale electricity markets. But these solutions require time and effort. Having to devise an additional mechanism to cover necessary reactive power compensation could unreasonably complicate and delay the NYISO's efforts.

C. Order No. 904's Legal Defects Are Not Cured By Giving the NYISO an Opportunity to Seek a Later Effective Date for its Compliance Filing or to Submit Future FPA Section 205 Filings to Modify Existing Market Rules

The NYISO Comments explained that properly addressing the elimination of the existing reactive power compensation rules would be very burdensome and time-consuming for the NYISO. Order No. 904 briefly acknowledged the magnitude of the task that it was imposing on the NYISO given the complex "interplay between the existing reactive power compensation mechanisms and energy and capacity market rules . . . ."[36] It therefore permitted the NYISO, and other ISOs/RTOs, to request an effective date for their compliance revisions more than 90 days after their compliance filings.[37]

[36] Order No. 904 at P 224.

[37] Order No. 904 at PP 224-25.

The possibility of obtaining a later effective date does not cure the legal defects of Order No. 904 in the NYISO's case.[38] Order No. 904 still requires the NYISO to submit its compliance filing within 60 days of Order No. 904's effective date. It will almost certainly not be practicable for the NYISO to develop compensation rules for providing reactive power outside the standard range in this timeframe. There is also no guarantee that the Commission will allow the NYISO to defer the effective date of its compliance tariff revisions, let alone grant a reasonable extension. In fact, the Commission also stated that any ISO/RTO extension request must "affirmatively demonstrate why such a requested effective date is necessary, given, for example, its existing market rules, and what market rule changes the ISO/RTO believes may be needed to accommodate this final rule."[39] There is no reasoned justification for the Commission to impose such a potentially heavy burden, and the attendant uncertainty, upon the NYISO when the NYISO Comments have already fully explained why an extension would be required.[40]

Similarly, the Commission suggested that the NYISO could make a future FPA section 205 filing (or filings) to modify existing market rules to ensure suppliers are compensated for reactive power service outside the standard power factor range.[41] Again, the opportunity to make future FPA section 205 filings is insufficient to cure the legal defects of Order No. 904. The NYISO would have to devote substantial time and effort to develop one or more FPA section 205 filings, which almost certainly would have to address a number of complex market design issues. There is no assurance that the NYISO would practicably be able to secure the necessary super-majority in its stakeholder Management Committee to authorize it to submit an FPA section 205 filing given

[38] The NYISO takes no position on the reasonableness of Order No. 904's standard compliance deadlines for non-ISO/RTO regions or for other ISOs/RTOs.

[39] Order No. 904 at P 224.

[40] *See* NYISO Comments at 8-11.

[41] Order No. 904 at P 225.

the complex and consequential nature of revising compensation systems. Order No. 904 failed to consider that the NYISO lacks unilateral authority to propose permanent tariff changes under FPA section 205 or that attempting to make changes under FPA section 206 would require the NYISO to meet a more stringent legal standard. The Commission would also need to review, and might reject, proposed market design reforms submitted under FPA section 205.

D. If the Commission Declines to Permit the NYISO to Retain its Current Reactive Power Compensation Rules, it Should Permit Them to Remain In Place Pending the NYISO's Full Implementation of an Adequate Replacement

The Commission could partially remedy the legal defects of Order No. 904, as applied to the NYISO, by allowing the NYISO to keep its current reactive power compensation rules until adequate replacement arrangements have been accepted by the Commission and fully implemented. As the NYISO Comments detailed, the existing rules have sufficiently provided dynamic reactive power capability and maintained reliability, for more than twenty years and have done so at a reasonable total cost to consumers.[42] The NYISO's existing rules have also supported VSS suppliers appropriately responding to an increasing volume of calls for reactive power over the past several years. Furthermore, as noted above, Order No. 904's concerns regarding potential overcompensation for reactive power within the standard power factor range and related market distortions[43] are inapplicable to the NYISO.[44] In New York, resources are not overcompensated because reactive power compensation is included in the Energy and Ancillary Services offset as part of the ICAP demand curve process.

[42] *See* NYISO Comments at 2-8.

[43] *See* Order No. 904 at P 20.

[44] See NYISO Comments at 7-8.

III. SPECIFICATION OF ERRORS/STATEMENT OF ISSUES

In accordance with Rule 713(c),[45] the NYISO submits the following specifications of error and statement of the issues on which it seeks rehearing of Order No. 904:

1. Order No. 904's prohibition on any charges associated with the provision of reactive power within the standard power factor range from generating facilities in transmission rates does not reflect reasoned decision-making as applied to the NYISO because the Commission did not adequately consider, address or explain its response to arguments and evidence in the record or make reasoned decisions that accounted for reasonably foreseeable impacts to reliability, costs, and NYISO market design initiatives. *See, e.g.* Administrative Procedure Act, 5 U.S.C. § 706(2); *New Eng. Generators Ass'n, Inc. v. FERC*, 881 F.3d 202, 210 (D.C. Cir. 2018) ("FERC—like all agencies—must engage in reasoned decisionmaking" and "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made."); (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co*., 463 U.S. 29, 43 (1983)); *Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001); *W. Deptford Energy, LLC v. FERC*, 766 F.3d 10, 20 (D.C. Cir. 2014) ("provide a reasoned explanation for departing from precedent or treating similar situations differently.").

2. Order No. 904 failed to acknowledge, or to adequately explain, its departure from precedent allowing for regional market rule violations when it refused to allow the NYISO to retain reactive power compensation rules that suit the circumstances of the NYISO region. *See, e.g., W. Deptford Energy, LLC v. FERC*, 766 F.3d 10, 20 (D.C. Cir. 2014); *Calpine Corp. v PJM Interconnection, L.L.C*.,169 FERC ¶ 61,239 at P 204 n. 431 ("[R]egional markets are not required to have the same rules. Our determination about what rules may be just and reasonable for a particular market depends on the relevant facts."); *Midcontinent Indep. Sys. Operator, Inc*., 162 FERC ¶ 61,176, at P 57 ("In its orders, the Commission has consistently rejected a one-size-fits-all approach in the various RTOs/ISOs due, in large part, to significant differences between each region and that there can be more than one just and reasonable rate."); *Consol. Edison Co. of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc*., 150 FERC ¶61,139 at P 47 ("As the Commission has stated many times before, we allow for each region to develop rules to address the differing concerns of the regions.").

3. Order No. 904 unlawfully failed to establish a just and reasonable replacement rate as required under FPA section 206 after it found transmission rates that include charges associated with the provision of reactive power within the standard power factor range unjust and unreasonable. *See* 16 U.S.C. § 824(e)(a); *see e.g., Am. Gas Ass'n v. FERC*, 912 F.2d 1496, 1504 (D.C. Cir. 1990); *First Energy Serv. Co. v. FERC*, 758 F.3d 346,353 (D.C. Cir. 2014); *Int'l Transmission Co. v. FERC*, 988 F.3d 471, 485 (D.C.

[45] 18 C.F.R. § 385.713(c).

Cir. 2021); *Emera Me. v. FERC*, 854 F.3d 9, 21 (D.C. Cir. 2017); *Am. Clean Power Assoc. v. FERC*, 54 F.4th 722, 724 (D.C. Cir. 2022).

4. Order No. 904's requirement that existing reactive power compensation programs be discontinued is arbitrary and capricious because the Commission did not establish a just and reasonable replacement rate and did not provide guidance on how to compensate resources that provide reactive power outside the standard power factor range going forward. The Commission did not base this requirement on substantial evidence or reasoned decisionmaking because Order No. 904 did not adequately consider, address, or respond to the NYISO's explanation of its region-specific issues. *See, e.g.*, *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co*., 463 U.S. 29, 43 (1983)); *W. Deptford Energy, LLC* v. FERC, 766 F.3d 10, 20 (D.C. Cir. 2014).

5. Reasoned decisionmaking requires that the NYISO's existing reactive power compensation rules be allowed to remain in place until a replacement rate is fully implemented. *See Emera Me. v. FERC*, 854 F.3d 9, 21 (D.C. Cir. 2017).

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission grant rehearing of the Order No. 904 determinations that are specified above and permit the NYISO to retain its existing reactive power compensation rules permanently or, at a minimum, until an appropriate replacement rate has been accepted by the Commission and fully implemented by the NYISO.

Respectfully submitted,

/s/ Ted J. Murphy

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Dated: November 18, 2024

cc:

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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 18th day of November 2024.

/s/ Alexander Morse

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