NEW YORK INDEPENDENT SYSTEM OPERATOR
10 Krey Boulevard ♦ Rensselaer, NY 12144

October 19, 2015

By Electronic Delivery

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First St, NE
Washington, DC 20426

Re: *New York Independent System Operator, Inc.*, Compliance Filing; Docket Nos. EL15-37-002; ER16-____-000

Dear Ms. Bose:

The New York Independent System Operator, Inc. ("NYISO") respectfully submits this filing in compliance with the February 19, 2015, *Order Instituting Section 206 Proceeding and Directing Filing to Establish Reliability Must Run Tariff Provisions* ("RMR Order").[1]

This filing proposes compliance revisions to the NYISO's Open Access Transmission Tariff ("OATT") and its Market Administration and Control Area Services Tariff ("Services Tariff") to implement the RMR Order's directives. It would establish a NYISO-administered process for identifying Generators[2] that wish to deactivate,[3] determining when one or more Generators are needed to provide "reliability must run" ("RMR") service, and entering into agreements for such service. Consistent with the RMR Order, the NYISO would only enter into RMR agreements "to temporarily address the need to retain certain generation until more permanent solutions are in place" and "all alternatives" will "be considered to ensure that designating a generator for RMR service is a last resort option for meeting immediate reliability needs."[4] The NYISO is not proposing to mandate that Generators enter into such agreements.

[1] *New York Independent System 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) ("RMR Order"). The Commission subsequently granted an extension of its deadline for the NYISO's submission of a compliance filing from June 19, 2015, until October 19, 2015. *New York Independent System Operator, Inc.*, Notice of Extension of Time, Docket No. EL15-37-000 (June 4, 2015).

[2] Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in the NYISO OATT and Service Tariff, including in the proposed revisions to those tariffs included in this filing.

[3] As described below, Generator "deactivation" for purposes of this filing encompasses a Generator wishing to become Retired or enter into a Mothball Outage or a Generator that has entered into an ICAP Ineligible Forced Outage.

[4] RMR Order at P 16.

However, if a Generator voluntarily offers to provide RMR services and enters into a contract then it would be eligible to obtain RMR compensation, based on either a NYISO-calculated rate or its own proposal, and would be legally bound to fulfill the resulting contractual and tariff obligations.

As set forth below, Part I.B of this letter describes the RMR Order's directives and guidance. Part III summarizes the NYISO's proposed RMR process, which was developed through extensive discussions with the NYISO's stakeholders. Parts IV through X then describe in detail each of the components of the NYISO's proposed RMR process. These include rules governing:

- the identification of Reliability Needs that may result from a Generator's deactivation;
- the evaluation of alternative solutions to satisfy those needs;
- the mechanics of identifying Generators available to meet the Reliability Needs;
- determining which Generation solution offers the highest net present value;
- compensating Generators required for reliability; the rates, terms, and conditions in the NYISO's tariffs applicable to Generators providing RMR service, including a *Form of Reliability Must Run Agreement*;
- discouraging toggling between providing RMR service at cost-based rates and participating in the ISO-administered markets at market-based rates; and
- the allocation and recovery of the costs of RMR service under the NYISO's tariffs.

All of the proposed revisions included in this compliance filing are either expressly required by the RMR Order, necessary to implement or clarify the existing tariff language to accommodate its directives, or are non-substantive organizational or clarifying adjustments of the kind that the Commission has previously permitted in compliance filings. The proposed revisions build upon existing Commission-approved planning, market, and market power mitigation provisions. They are carefully designed to be compatible with existing rules and processes. They also seek to reasonably balance the interests of Generators wishing to be Retired or enter a Mothball Outage, RMR Generators, and New York consumers (who will ultimately pay for RMR service). The NYISO respectfully submits that its proposed tariff revisions fully comply with the directives of the RMR Order, are fully supported, are just and reasonable, and should be accepted without modification or condition.

The NYISO respectfully requests that the compliance tariff revisions proposed herein become effective on October 20, 2015, *i.e.,* one day after this filing is made. As noted below, necessary billing and software settlement changes to govern payments to RMR Generators are not expected to be ready until late 2016, but the NYISO will be prepared to implement the other components of this compliance filing sooner.

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I. OVERVIEW

A. Background

The RMR Order held that the NYISO is the appropriate entity to administer RMR service in New York pursuant to Commission-jurisdictional tariffs.[5] The Commission stated that it was "fundamental to the proper and efficient operation of NYISO's markets," for the rates, terms, and conditions for RMR service to be on file and that the absence of such requirements rendered the NYISO's tariffs unjust and unreasonable.[6] For this reason, the RMR Order directed the NYISO to submit proposed tariff revisions to establish an RMR process 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 *Form of Reliability Must Run Agreement* for RMR service."[7]

The RMR Order provided general guidance on the elements that should be addressed by the NYISO. It also gave the NYISO broad discretion to design this filing and did not restrict it to the points addressed by the Commission.[8] The Commission encouraged the NYISO to consider, but did not compel it to adopt, RMR provisions previously developed by other Independent System Operators and Regional Transmission Organizations ("ISOs/RTOs").[9]

B. The NYISO's Compliance Proposal Fully Complies with the RMR Order's Directives

The RMR Order's major compliance directives are listed below. For each directive a brief description is provided of how and where each is addressed in this filing letter. Detailed

[5] RMR Order at P 9.

[6] RMR Order at P 9.

[7] RMR Order at P 11.

[8] RMR Order at P 12 n 23 ("NYISO, however, is not limited to filing proposed tariff provisions that meet the general guidance provided in this order. NYISO's compliance filing may contain additional provisions as long as they are fully supported and shown to be just and reasonable and not unduly discriminatory").

[9] RMR Order at P 12 n 22 ("In its evaluation of what to include in its submission, we encourage NYISO to consider the RMR tariff provisions of other RTOs/ISOs. However, we recognize that there may be reasons to allow variation among RTOs/ISOs, so we will not at this time direct NYISO to adopt any particular mechanism").

descriptions and explanations of the NYISO's specific proposals are found in Sections IV through X of this filing letter.

- *Include a clear schedule by which a Generator must inform the NYISO of its proposed deactivation and the NYISO will notify the Generator whether it is required for reliability . . . .*[10]

The NYISO proposes to situate its process requirements for addressing a Generator's proposed deactivation within the Gap Solution process of its reliability planning process as described in Part IV of this filing letter. These process requirements establish a clear schedule by which a Generator seeking to deactivate must provide the NYISO with 365 days prior notice.[11] During this time period, the NYISO will within strict, delineated timeframes evaluate whether a Reliability Need could arise from a Generator's proposed deactivation and identify solutions to an identified need, including, as a last resort, entering into an RMR Agreement with a Generator.

- *Describe the process for conducting the reliability analysis necessary to determine whether there is a reliability need for the deactivating Generator, including coordinating, reviewing, and verifying any study work performed by the local Transmission Owner .....*[12]

The NYISO proposes to perform a "Generator Deactivation Assessment." In this part of the process, the NYISO would determine whether a Reliability Need would result from a Generator's deactivation as described in Part IV.B of this filing letter. The NYISO would conduct the necessary studies to evaluate the reliability impacts of the proposed deactivation on the New York State Bulk Power Transmission Facilities ("BPTFs"). The NYISO would also coordinate with the relevant New York Transmission Owner(s) regarding necessary reliability studies to evaluate the reliability impacts on the non-BPTFs that are part of the New York State Transmission System. The NYISO would review and verify those studies.

- *Describe the process the NYISO will use to identify alternative solutions to RMR contracts and to evaluate them in an open and transparent manner.....* [13]

The NYISO proposes to solicit proposed Gap Solutions to a Reliability Need that would result from a Generator's deactivation in accordance with its existing Gap Solution process, as described in Part IV.C of this filing letter. Consistent with the existing Gap Solution process, the Responsible Transmission Owner would be required to submit, and any other interested Developer could submit, a proposed Gap Solution. Such proposals could include generation,

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[10] RMR Order at P 13.

[11] However, Generators entering an ICAP Ineligible Forced Outage would not be subject to the proposed 365-day prior notice requirement.

[12] RMR Order at PP 13-14.

[13] RMR Order at P 16.

transmission, and demand response solutions. The NYISO would also consider Generators that are currently in an outage state and may be capable of addressing in whole or in part the Reliability Need. The NYISO would evaluate the viability and sufficiency of possible Gap Solutions as described in Part IV.E of this filing letter. To the extent that the NYISO identifies viable and sufficient non-generation Gap Solutions, the New York State Public Service Commission ("NYPSC") (or other appropriate authority) would identify, consistent with the existing Gap Solution process, whether any of the non-generation proposals should be implemented to address an identified Reliability Need. This process is described in Part IV.F of this filing letter.

- *Make the NYISO responsible for determining whether a specific Generator is needed to maintain reliability and be designated an RMR unit .....* [14]

The NYISO's procedures for identifying and selecting RMR Generators are discussed in Part IV of this filing letter.

- *Include provisions for compensation of RMR services, which must at a minimum allow for the Generator's going-forward costs and permit a Generator to propose a cost-based rate.....*[15]

The NYISO's compensation proposals are described in Part V of this filing letter. The NYISO would pay an Availability and Performance Rate ("APR") to Generators that agree to it. The APR would encompass avoidable cost, variable cost, and incentive components. The APR would provide compensation at or above the Generator's "going forward costs" and includes incentive features to encourage performance at or above defined levels. In the alternative, the proposed compliance tariff provisions would accommodate a Generator's ability to propose to the Commission an "Owner Developed" cost-based rate up to its full cost of service.

- *Require RMR agreements to be filed with the Commission for its review, including, among other provisions, a pro forma RMR Agreement .....* [16]

The NYISO is proposing a *Form of Reliability Must Run Agreement* which includes the types of provisions that the Commission has accepted for use by other ISOs/RTOs. Material terms are summarized in Part VII of this filing letter. A *Form of Reliability Must Run Agreement* would be included as Appendix G (Section 31.10) to Attachment Y to the OATT. Actual RMR Agreements would be filed with the Commission in accordance with the requirements described in Part IV.K of this filing letter.

- *Require that RMR filings fully describe the methodologies and findings of the underlying reliability studies, clearly state all potential reliability criteria violations, detail the*

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[14] RMR Order at P 14.

[15] RMR Order at P 17, 18.

[16] RMR Order at P 18.

alternative solutions evaluated, and justify the term of the proposed RMR agreement in light of the timing of alternative solutions.....[17]

As described in Part IV.K, the NYISO proposes to include as part of RMR Agreement filings a description of the methodologies and results of its reliability studies. Those studies would specify identified violations of reliability criteria and describe the alternative solutions evaluated by the NYISO. The NYISO would also explain why the term of a RMR Agreement is appropriate in light of potential alternative solutions.

- *Provide for appropriate compensation to Generators for accelerated cost recovery of investments required for them to operate for the term of the RMR agreement*..... [18]

The NYISO's provisions regarding the accelerated recovery of Capital Expenditures are discussed in Part V.C of this filing letter.

- *Specify a methodology to allocate the costs of RMR agreements in a manner consistent with the Commission's cost allocation principles and precedents*..... [19]

The NYISO's proposes to allocate the cost of RMR agreements in accordance with the existing cost allocation methodology for its reliability planning component of its Comprehensive System Planning Process, as amended in this filing to address the directives of the RMR Order. This revised methodology is described in Part VIII of this filing letter. As revised, the NYISO will appropriately allocate the costs of any solution (RMR Agreement or regulated transmission projects) to a Reliability Need to the Load Serving Entities ("LSEs") in New York that contribute to the Reliability Need and, therefore, benefit from the solution to that need. The NYISO's revised methodology adopts new process steps that will enable the NYISO to allocate under its OATT the costs of solutions to Reliability Needs that are attributable to addressing any type of Reliability Need.

- *Include rules to eliminate or minimize incentives for "toggling" between RMR and market-based compensation*.....[20]

The NYISO's proposed "anti-toggling" provisions are described in Part V.E of this filing letter.

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[17] RMR Order at PP 15, 16.

[18] RMR Order at P 19.

[19] RMR Order at P 20.

[20] RMR Order at P 21.

C. The NYISO's Settlement Software Will be Designed to Implement Only the Rate Schedules Contained in this Compliance Proposal

As permitted by the RMR Order, the NYISO's compliance proposal is informed by other ISOs/RTOs' rules, but was ultimately tailored to accommodate the characteristics of the ISOAdministered Market, the New York Control Area ("NYCA"), and the NYISO's established processes. In particular, the NYISO's existing billing and settlement systems and software are designed to pay Generators market compensation. In response to the Order, consistent with the compliance proposal set forth in this filing, the NYISO is developing new settlement software to pay RMR Generators rates that are not market rates. In this filing the NYISO proposes two nonmarket rate structures, the APR and the Owner Developed Rate.

As discussed below in Part V, the NYISO has proposed a voluntary RMR system and is not seeking to limit any statutory filing rights that Generators may have. Accordingly, the NYISO will be able to accommodate through its settlements software cost-based rate proposals whether they are APRs calculated under the NYISO's proposed rules or Owner Developed Rates.

It would be extremely difficult for the NYISO to implement alternative "one-off" RMR rate structures that deviate from the structures proposed in this compliance filing. The NYISO's software will be able to support paying RMR Generators their variable costs plus a daily payment of RMR Avoidable Costs[21] or other costs that the Commission determines to be just and reasonable, up to full cost of service. The NYISO's billing and settlement software will also be able to support the implementation of the proposed availability and performance incentives consistent with the formulae proposed in Rate Schedule 8 to the Services Tariff. It is unlikely that the NYISO's software would support alternative incentive payment structures without modification.

The NYISO's billing and settlement software is designed to support the interrelated and overlapping market-based payments under the NYISO's existing market design. The software is very sophisticated and complex. Software modifications must be made carefully, and must be limited in scope, to avoid disrupting the markets. As explained above, the NYISO's billing and settlement software can currently only support market-based payments to Generators. The NYISO is making significant modifications that will allow it to implement the non-market-based rate options proposed in this filing. The new billing and settlement software that the NYISO is developing to automate RMR Agreement settlements will be not be deployed until the fourth quarter of 2016 at the earliest.[22] It would be impossible for the NYISO to modify the software to be so flexible as to be capable of implementing any alternative rate structure that an RMR Generator might propose.

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[21] RMR Avoidable Costs is defined in proposed OATT Section 1.18, and its use in the proposed tariff revisions is described herein.

[22] If the NYISO were required to make material modifications to its RMR proposal, and thus to the design of its software, the expected deployment date would be substantially delayed.

Alternative rate structures that would result in the NYISO adopting "manual" procedures disconnected from the NYISO's billing and settlement software is not a realistic alternative. It is important to avoid *ad hoc* adjustments in the NYISO-administered settlement process. Careful development of a fully-automated settlements system, coupled with a disciplined approach to administering the settlements process, has substantially reduced the error rate in customer settlements that the NYISO experienced in its earliest years of operation. At that time, the state of development of the software tools used to calculate customer settlements required the use of certain manual processes and frequently necessitated manual adjustments to invoices. This led to an unacceptably high error rate, and the NYISO, at the behest of its stakeholders made it a major priority to fully automate the customer settlements system. This improved market certainty and confidence, reduced the NYISO's counterparty credit risk exposure, allowed the NYISO to lower its credit requirements, and enabled the shortening of the customer settlement review and correction process. It is essential that individual RMR arrangements that may be proposed by RMR Generators be compatible with the NYISO's automated settlements processes.

In short, although RMR Generators may be permitted to propose alternative rate structures under the Federal Power Act ("FPA") the Commission should not accept such proposals unless the NYISO confirms they can be practically implemented. RMR Generators should be strongly encouraged to recognize the limited range of billing and settlement structures that the NYISO's software can implement, while remaining free to propose rates at whatever compensation level they can support.

II. LIST OF DOCUMENTS SUBMITTED

Along with this filing letter, the NYISO respectfully submits the following documents:

1. A blacklined version of the NYISO OATT containing the proposed compliance modifications ("Attachment I");

2. A clean version of the NYISO OATT containing the proposed compliance modifications ("Attachment II");

3. A blacklined version of the NYISO Services Tariff containing the proposed compliance modifications ("Attachment III");

4. A clean version of the NYISO Services Tariff containing the proposed compliance modifications ("Attachment IV");

5. Affidavits ("Attachment V");

6. Excerpt from NYISO September 17, 2015, Transmission Security Cost Allocation Presentation for Electric System Planning Working Group ("Attachment VI"); and

7. Solely for purposes of showing the build of the eTariff, clean Section 15.2 of the Services Tariff.[23] ("Attachment VII");

III. STAKEHOLDER PROCESS

The NYISO has worked diligently with its stakeholders to address compliance with the RMR Order. The NYISO held multiple meetings with its stakeholders, and with New York State Department of Public Service ("NYDPS") staff, to review the directives of the RMR Order and to develop the NYISO's RMR process and related tariff revisions. Following the issuance of the RMR Order, the NYISO discussed its compliance obligations at its Sector Meetings held in March and April with each of the sectors comprising the full body of market participants: Generation Owners, Other Suppliers, Public Power Transmission Owners and End Use Consumers. Beginning on March 18, the NYISO has presented and discussed with stakeholders its concepts and design features for the RMR tariff provisions, including proposed tariff language, at sixteen working group meetings. These working group meetings were often joint meetings with some combination of the Installed Capacity ("ICAP") Working Group, Electric System Planning Working Group, or the Market Issues Working Group. At each of the above referenced meetings, the NYISO requested, received, and considered comments from all interested parties throughout the process.

The stakeholder process was open and transparent. The NYISO notes that, due to the large number of meetings and the volume of proposed tariff revisions, there were instances where stakeholders had limited time to review proposed language prior to the discussions at certain stakeholder meetings. However, such issues should not diminish the considerable effort made by the NYISO to provide opportunities for stakeholder input, and support of efforts to reach consensus on the facets of this compliance filing. Although consensus on all issues was not achieved, the process facilitated the NYISO's and stakeholders' understanding of concerns, issues, and proposals. It narrowed differences on many issues and fostered agreement on others. Numerous revisions were made to the RMR compliance proposal and related tariff revisions in response to stakeholder comments.

[23] Attachment VII incorporates the revisions proposed to Section 15.2 of the Services Tariff on the eTariff base that incorporates revisions accepted by the Commission with an effective date after the effective date requested for the tariff provisions proposed herein. On June 30, 2015 the Commission accepted revisions to Section 15.2 of the Services Tariff regarding compensation to suppliers for providing voltage support services, with an effective date of January 1, 2016. See *New York Independent System Operator, Inc.,* 151 FERC ¶ 61,281 (2015).

IV. GAP SOLUTION RMR PROCESS

A. Revised Gap Solution Process

i. Existing Gap Solution Process

As contemplated by the RMR Order,[24] the NYISO proposes to situate the RMR process requirements within the framework of its Comprehensive System Planning Process ("CSPP") in Attachment Y of the OATT. Specifically, the NYISO proposes to incorporate the RMR process requirements within the Gap Solution portion of its reliability planning process set forth in Section 31.2.11 of Attachment Y. The Gap Solution process establishes the mechanism by which the NYISO addresses Reliability Needs that cannot be timely addressed through its regular, biennial reliability planning process. The NYISO's Gap Solution process is a long-standing element of the existing CSPP, which has been found by the Commission to be compliant with Order Nos. 890 and 1000.[25]

The existing Gap Solution process functions as follows. The NYISO commences the process when: (i) it determines within its biennial reliability planning process that neither market-based nor regulated proposals will timely address an identified Reliability Need,[26] or (ii) its Board of Directors, after consulting with NYDPS staff, determines that there is an imminent threat to reliability.[27] Upon the NYISO's determination of the need for a Gap Solution, the Responsible Transmission Owner is required to submit a proposed Gap Solution[28] and any other

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[24] RMR Order at P 13 ("NYISO may elect to address these requirements by expanding upon its OATT Attachment Y planning process, or developing another process as it deems appropriate for inclusion in the NYISO Tariff.").

[25] The Commission accepted the NYISO's Gap Solution process in 2004 as part of the NYISO's development of a comprehensive planning process for reliability needs. *New York Independent System Operator, Inc.*, Order Accepting in Part and Rejecting in Part Tariff Amendments, 109 FERC ¶ 61,372 (2004), Order on Rehearing and Compliance, 111 FERC ¶ 61,182 (2005). The NYISO's current Comprehensive System Planning Process, including the Gap Solution process, has been accepted by the Commission as compliant with Order No. 890. The Commission recently accepted in large measure the NYISO's Comprehensive System Planning Process as compliant with Order No. 1000. *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 151 FERC ¶ 61,040 (2015); *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 148 FERC ¶ 61,044; *New York Independent System Operator, Inc.*, Order on Compliance Filing, 143 FERC ¶ 61,059 (2013). The NYISO's remaining compliance items pending before the Commission in the Order No. 1000 proceeding do not concern the Gap Solution process. *See New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket Nos. ER13-102-005, -006 (May 18, 2015).

[26] Current OATT Attachment Y Section 31.2.11.1.

[27] Current OATT Attachment Y Section 31.2.11.2.

[28] Current OATT Attachment Y Section 31.2.11.3.

Developer may propose an alternative Gap Solution.[29] Gap Solution proposals may include transmission, generation, or demand response resources.[30]

The NYISO is responsible for reviewing all Gap Solution proposals to determine whether they will meet the identified Reliability Need.[31] The NYISO reports the results of its evaluation to the NYDPS and/or other appropriate governmental agency and/or authority with jurisdiction over the implementation or siting of Gap Solutions.[32] The appropriate governmental agency and/or authority then determines the Gap Solution to be implemented to address the identified need.[33]

ii. Proposed Revisions to Gap Solution Process

The NYISO proposes to revise its existing Gap Solution process in a manner consistent with the RMR Order's directives and guidance to provide additional process details and expand its applicability to address Reliability Needs that could arise if a Generator were to deactivate. As described below, the NYISO's proposed revisions create an enhanced Gap Solution process for identifying and addressing any Reliability Needs, including those that may be caused by a Generator deactivation, that cannot be timely addressed through the NYISO's normal, biennial reliability planning process.

B. Identification of Reliability Need Requiring a Gap Solution

i. Commencing the Gap Solution Process

The NYISO's existing Gap Solution process contains two grounds for the NYISO to commence a Gap Solution process - (i) an imminent threat and (ii) a need identified in the Reliability Needs Assessment ("RNA") that cannot be timely addressed in the biennial reliability planning process. This compliance filing proposes to insert a third basis for commencing the Gap Solution process - the NYISO's identification of a Reliability Need that would result if a Generator deactivates.[34] A Generator that causes the NYISO to initiate the process under the third basis is one seeking to be Retired or enter into a Mothball Outage, or that has entered an ICAP Ineligible Forced Outage.[35] These Generators are referred to as "Initiating Generators" as

[29] Current OATT Attachment Y Section 31.2.11.4.

[30] Current OATT Attachment Y Section 31.2.11.1.

[31] Current OATT Attachment Y Section 31.2.11.4.

[32] Current OATT Attachment Y Section 31.2.11.4.

[33] Current OATT Attachment Y Section 31.2.11.4.

[34] Proposed OATT, Attachment Y Section 31.2.11.1(iii).

[35] The RMR Order indicated that generator "deactivation" encompasses "generator retirements, mothballing, or any other long-term outages or suspension of service." RMR Order at P 1 n. 2.

their proposal to be Retired, to enter a Mothball Outage, or their having entered an ICAP Ineligible Forced Outage initiates the Gap Solution Process as described below.[36]

The NYISO will determine whether a Reliability Need would result from a Generator's deactivation by performing a "Generator Deactivation Assessment" as described below.[37] The NYISO will commence its Gap Solution process under this new third prong if it determines that any Reliability Need that it identifies in its Generator Deactivation Assessment cannot be timely addressed within the next cycle of its biennial reliability planning process.[38] The insertion of this third basis for commencing the Gap Solution process does not modify the NYISO's ability to commence the Gap Solution process under the two existing grounds.[39]

ii. 365 Day Notice Period

The Commission directed the NYISO to establish a clear timeframe to govern the schedule by which it must be notified of a Generator's proposed deactivation and by which it must give notice of whether or not the Market Participant is needed for reliability or may deactivate.[40] Consistent with this directive, the NYISO is proposing that if a Generator seeks to be Retired or enter into a Mothball Outage the NYISO must be provided with at least 365 days advance notice.[41]

The 365 day notice period is the shortest period practicable for the NYISO to complete the Gap Solution process requirements detailed in this Part IV of this filing letter in a manner that complies with the RMR Order. Specifically, the notice period provides the NYISO with the time necessary to evaluate the reliability impacts of a proposed deactivation and to consider alternatives to an RMR Agreement that might address an identified Reliability Need. Taking these steps is what will enable the NYISO to fulfill the RMR Order's mandate that it rely on RMR Agreements "only as a limited, last-resort measure."[42] If the NYISO were to use a shorter notice period, the time to consider alternatives to addressing a Reliability Need would be too short and the NYISO's ability to identify alternatives would be substantially reduced.

As described above, the NYISO is leveraging its existing Gap Solution process requirements to evaluate proposed Generator deactivations and to explore alternatives. The NYISO's proposed timeframes for each of the process steps in its Gap Solution process to address deactivating Generators are based on its long-standing experience in administering its planning requirements and performing related responsibilities.

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[36] Proposed OATT, Attachment Y Section 31.1.1,

[37] Proposed OATT, Attachment Y Section 31.2.11.1(iii).

[38] Proposed OATT, Attachment Y Section 31.2.11.1(iii).

[39] Proposed OATT, Attachment Y Sections 31.2.11.1(i) and (ii).

[40] RMR Order at P 13.

[41] Proposed OATT Attachment Y Section 31.2.11.2.1.

[42] RMR Order at P 16.

In particular, the NYISO requires 90 days to perform the first step of evaluating the reliability impacts of a Generator's proposed deactivation, which includes performing the required reliability studies, coordinating with the Responsible Transmission Owner(s) and consultants, and developing and reporting the study results. The NYISO determined this time period based on its previous experience in performing similar reliability studies.

The NYISO will then provide 30 days for interested parties to propose a Gap Solution as an alternative to a potential RMR Agreement. This 30 day period reflects a careful balance between providing for an accelerated review of proposed Generator deactivations, while allowing sufficient time for interested parties to develop and submit viable alternatives to an RMR Agreement. The NYISO then requires 120 days to evaluate the viability and sufficiency of the potential alternative Gap Solution. Concurrent with this evaluation, the NYISO will calculate an RMR Avoidable Cost for Initiating Generators, determine the net present value of "Viable and Sufficient Gap Solutions,"[43] and evaluate the economic justification of the deactivation of Generators in Mitigated Capacity Zones.[44] Conducting this analysis will help the NYISO to discourage gaming associated with attempts to obtain RMR Agreements and "toggling" from RMR Agreements to market rates.

Together, these steps would require 240 days to complete. The remaining portion of the 365 day notice period is needed to provide the NYPSC (or other appropriate authority) with enough time to determine whether one or more viable and sufficient, non-generation alternatives should be implemented to minimize the need for an RMR Agreement. In addition, in the absence of a non-generation Viable and Sufficient Gap Solution, the NYISO will need to solicit offers, identify one or more Generators with which to enter into an RMR Agreement, and take the required actions to enter into the RMR Agreement(s).

The NYISO is proposing to create an "off ramp" that would trigger as early as 120 days into the process for a Generator to deactivate before the conclusion of the 365 day notice period. As described below, this off ramp would be available to a Generator if the NYISO determined that its deactivation would not create a Reliability Need.

The proposed 365 day timeframe will not apply to the NYISO's administration of the Gap Solution process if it commences this process to address a Reliability Need arising under one of the two existing grounds to initiate the process; that is, an imminent threat or a need identified in the RNA that cannot be timely addressed during the biennial reliability planning process. In those instances, the timeframes for the process steps will continue to be determined by the NYISO based on the urgency of resolving the Reliability Need.[45]

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[43] For ease of reference, the proposed tariff revisions include the defined term "Viable and Sufficient Gap Solution." *See* Proposed OATT Attachment Y Section 31.1.1.

[44] *See* Current Services Tariff Section 23.4.5.6.

[45] Given the need for flexibility to timely address urgent Reliability Needs or imminent threats to the reliability of the New York State Transmission System, the current Gap Solution process does not establish explicit deadlines for its process steps.

iii. Commencement of 365 Day Notice Period

The 365 day notice period will begin to run on the "Generator Deactivation Assessment Start Date."[46]

For a Market Participant seeking for its Generator to be Retired or enter into a Mothball Outage, the Generator Deactivation Assessment Start Date will be the date that the NYISO issues written notice to the Market Participant that its "Generator Deactivation Form" is "complete" (as defined below).[47] The Market Participant proposing that its Generator be Retired or enter into a Mothball Outage must submit to the NYISO a "Generator Deactivation Form," included in proposed new Section 31.8 (Appendix E) of Attachment Y of the OATT.[48] The Generator Deactivation Form requires pertinent information including that a Generator that is proposing to enter into a Mothball Outage specify whether it is able to return to service within 180 days. The Market Participant must also provide cost, revenue, and other information that is specified in new Section 31.9 (Appendix F) of Attachment Y and that is required by Section 31.2.11.2.1. These requirements are described in Part IV.D below. The NYISO will review the information and may request additional information.[49]

The Generator Deactivation Notice will be considered "complete" when the NYISO determines that it has received sufficient information to begin reviewing the reliability impacts that would result from the Generator being Retired or entering into a Mothball Outage and to review the information provided in accordance with Appendix F.[50] The NYISO will notify the relevant Market Participant and post the completed notice on its website.[51] Market Parties[52] have a continuing obligation to promptly submit any additional information required by the NYISO and Appendix F as part of this process.[53]

For a Generator that enters an ICAP Ineligible Forced Outage, the Generator Deactivation Assessment Start Date will be the date that it enters that outage status in accordance

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[46] OATT Attachment Y Section 31.1.1.

[47] Proposed OATT Attachment Y Section 31.2.11.2.2.

[48] Proposed OATT, Attachment Y Section 31.2.11.2.1.

[49] Proposed OATT Attachment Y Section 31.2.11.2.2.

[50] Proposed OATT Attachment Y Section 31.2.11.2.2. The NYISO will have 10 business days to determine completeness following receipt of the initial information and, if necessary, additional information. *Id.*

[51] Proposed OATT Attachment Y Section 31.2.11.2.2.

[52] Proposed OATT Attachment Y Section 31.1.1 proposes the definition "Market Party" recognizing that multiple business entities may have information pertinent to the NYISO's complete review.

[53] Proposed OATT Attachment Y Section 31.2.11.2.2

with the Generator Outage rules in Section 5.18 of the Services Tariff.[54] Within twenty days of its Generator entering into an ICAP Ineligible Forced Outage, the Market Participant must provide the cost and related information required in Appendix F, as described in Part IV.D below.[55]

iv. Generator Deactivation Assessment

The RMR Order directed the NYISO to describe "the process for conducting the reliability analyses necessary to determine that there is a Reliability Need for the unit."[56] The NYISO will conduct a Generator Deactivation Assessment. Upon the Generator Deactivation Assessment Start Date, the NYISO, in coordination with the relevant Responsible Transmission Owner(s) identified by the NYISO, will commence the Generator Deactivation Assessment to determine whether a Reliability Need would result from the Generator's deactivation.[57]

For this assessment, the NYISO will conduct the necessary reliability studies to review the impact of the deactivation on the reliability of the BPTFs following its current planning standards to determine whether there is a violation of Reliability Criteria.[58] As contemplated by the RMR Order,[59] the relevant Transmission Owner(s) will conduct the necessary reliability studies to review the impact on the reliability of the non-BPTFs that are part of the New York State Transmission System, which studies the NYISO will review and verify.[60] For this assessment, the NYISO will use the most recent base case from its reliability planning process, as updated in accordance with the NYISO's procedures.[61] The NYISO will review whether any potential Reliability Need can be addressed through the adoption of alternative NYISO or Transmission Owner operating procedures or by updates to the Local Transmission Owner Plans.[62] The NYISO will conduct the Generator Deactivation Assessment and post the results of

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[54] Proposed OATT Attachment Y Section 31.1.1 (definition of Generator Deactivation Assessment).

[55] Proposed OATT Attachment Y Section 31.2.11.2.3, 31.9.1, and 31.9.4.

[56] RMR Order at P 13.

[57] Proposed OATT, Attachment Y Section 31.2.11.2.4.

[58] Proposed OATT, Attachment Y Section 31.2.11.2.4.

[59] RMR Order at P 14 ("To avoid requiring NYISO to study steps necessary to ensure reliable operation of transmission facilities over which NYISO does not have direct operational control, we require that the NYISO Tariff indicate the entity that will conduct the study in such cases..... NYISO may elect to allow the relevant transmission owner to conduct the necessary reliability studies. If an entity other than NYISO is to conduct the initial reliability study, NYISO must review and verify any local or regional reliability studies conducted, and notify stakeholders as to whether or not it agrees with the outcome of those studies.....").

[60] Proposed OATT, Attachment Y Section 31.2.11.2.4.

[61] Proposed OATT, Attachment Y Section 31.2.11.2.4.

[62] Proposed OATT, Attachment Y Section 31.2.11.2.4. Updates to the Local Transmission Owner Plans cannot include agreements with the Initiating Generator subject to the assessment or to

its analysis within 90 days of the Generator Deactivation Assessment Start Date, so that the NYISO can complete the Gap Solution process within the 365 day notice period.[63]

v. Early Deactivation if No Reliability Need Identified

As described above, the NYISO is proposing a 365 day notice period, which is the time required for it to evaluate the impacts of a Generator's deactivation and address any resulting Reliability Need. Generators that provide a "Generator Deactivation Notice" must continue to be available to provide service through this 365 day period. In performing their future planning, Generators should anticipate having to operate through this full period.

A Market Participant may indicate in its Generator Deactivation Notice its interest in deactivating the Generator earlier than 365 days in the event the NYISO does not identify a Reliability Need in its Generator Deactivation Assessment.[64] In such case, if the NYISO does not identify a Reliability Need, it will notify the Market Participant of the date by which it may deactivate early. That date would be no earlier than 120 days after the Generator Deactivation Assessment Start Date.[65]

C. Solicitation of Gap Solutions

The RMR Order directed the NYISO to "describe the process NYISO will use to evaluate alternatives for addressing the identified reliability need."[66] The RMR Order further indicated that the NYISO "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."[67] As described below, consistent with its existing Gap Solution process, the NYISO will solicit Gap Solutions of all types from all interested parties to address an identified Reliability Need and will use its existing Gap Solution processes for evaluating and identifying the Gap Solution to be implemented, as modified where necessary to address the directives and guidance of the RMR Order. Transparency will be provided to all interested parties through the NYISO's existing stakeholder processes as appropriate.

Generators currently in a Mothball Outage, ICAP Ineligible Outage, or that have been mothballed since before May 1, 2015. *Id.*

[63] Proposed OATT, Attachment Y Section 31.2.11.2.4.

[64] Proposed OATT, Attachment Y Section 31.2.11.2.1.

[65] Proposed OATT, Attachment Y Section 31.2.11.2.5. The Generator will be separately responsible for satisfying any state law or regulatory requirements concerning its deactivation, including the 180-day prior notice requirements with the NYPSC (90 days for Generators between 2 and 80 MW). *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).

[66] RMR Order at P 16.

[67] RMR Order at P 16.

i. Solicitation of Gap Solutions

If the NYISO determines that a Reliability Need requiring a Gap Solution exists under any of the three grounds for commencing the Gap Solution process described above, the NYISO will solicit Gap Solution proposals and market-based solutions to address the need.[68] Consistent with existing Gap Solution requirements, the Transmission Owner identified by the NYISO as the Responsible Transmission Owner is required to submit a proposed Gap Solution.[69] The Responsible Transmission Owner will also be required to submit a conceptual permanent solution to the Gap Solution. The NYISO will use this conceptual permanent solution solely for the purpose of identifying the term of any RMR Agreement based on the anticipated timeframe for resolving the Reliability Need with a permanent solution. In addition, consistent with existing Gap Solution requirements, any other Developer may also propose a Gap Solution.[70]

A Gap Solution proposal may include generation, transmission, or demand response solutions.[71] Developer submission in the Gap Solution process must provide the same project information that is required in the NYISO's biennial reliability planning process transmission and non-transmission projects for the evaluation of their viability and sufficiency.[72] Developers must also provide the information regarding proposed Gap Solutions that is required in new Appendix F of Attachment Y, as described in Part IV.D below.[73]

If the Reliability Need is identified through a Generator Deactivation Assessment, the Developer must provide its proposed Gap Solution within 30 days of the NYISO's solicitation

[68] Proposed OATT Attachment Y Section 31.2.11.3.

[69] Proposed OATT Attachment Y Section 31.2.11.3.

[70] Proposed OATT Attachment Y Section 31.2.11.3. A Developer may only propose a transmission solution if it has satisfied the Developer qualification requirements for the biennial reliability planning process in Section 31.2.4.1.1.2. *Id.*

[71] Proposed OATT Attachment Y Section 31.2.11.3.

[72] Proposed OATT Attachment Y Section 31.2.11.3. The project information requirements are located in Section 31.2.4.4.1 (for the Responsible Transmission Owner's project), Section 31.2.4.6 (for market-based solutions), and Section 31.2.4.8.1 (for alternative regulated solutions). The NYISO proposes to insert a new Section 31.2.12.6 of Attachment Y of the OATT to clarify that the NYISO may disclose the proposed Gap Solutions, except for information regarding market-based solutions and non-public financial qualification information that the NYISO is otherwise required to maintain as confidential under Attachment Y. The proposed revision also provides that the NYISO will not disclose a Responsible Transmission Owner's conceptual permanent solution, except for its proposed project type and in-service date, which are used in determining the term of any RMR Agreement. The NYISO will not disclose other information regarding the conceptual permanent solution because the Responsible Transmission Owner, acting as a Developer, may elect to propose the solution as a permanent solution in the competitive, biennial reliability planning process.

[73] Proposed OATT Attachment Y Section 31.2.11.3, 31.9.3.

for solutions, so that the NYISO can complete the Gap Solution process within the 365 day notice period.[74]

ii. Gap Solution Definition

The NYISO's current tariff provides that a Gap Solution "must be designed to be temporary."[75] This language was originally inserted into the reliability planning process, so as not to discourage market-based solutions to Reliability Needs.[76] However, as drafted, the language could be read more broadly to limit the scope of solutions eligible to address a Reliability Need to only those that are specifically designed to be removed from the system after a short-term usage or to have a planned obsolescence. Such a limitation could exclude from consideration many potential transmission upgrades that may be available to the New York Transmission Owners or other Developers that could be placed into service in the short-term to address an immediate Reliability Need and could have beneficial impacts to the system going forward. This limitation would be at odds with the RMR Order's directive that the NYISO's process "ensure a thorough consideration of all types of RMR alternatives."[77]

The NYISO, therefore, proposes to revise the definition of Gap Solution to remove the limiting language "designed to be temporary" and to clarify that a Gap Solution refers to a "temporary solution to a Reliability Need that may become a permanent solution."[78] As described below, the NYISO may consider a non-generation Gap Solution as a possible permanent solution in the next biennial reliability planning process following its identification in the Gap Solution process. Consistent with its existing definition, the Gap Solution shall also strive to be compatible with permanent solutions, which could include market-based or regulated solutions that are identified through the normal, biennial reliability planning process.[79] Finally, the NYISO notes that a Gap Solution may be identified only if market-based solutions are not available to address a Reliability Need. Under the revised Gap Solution process, the NYISO will be soliciting market-based solutions in response to the identification of a Reliability Need necessitating a Gap Solution, and the NYISO will conclude the Gap Solution process if there are adequate market-based solutions available to address the Reliability Need.[80]

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[74] Proposed OATT Attachment Y Section 31.2.11.3.

[75] Current OATT Attachment Y Sections 31.1.1, 31.2.11.5.

[76] *See New York Independent System Operator, Inc.,* Filing of Comprehensive Reliability Planning Process and Related Agreement, Docket No. ER04-1144-000 (August 20, 2004) at p 6 ("These are intended to be temporary solutions that will not adversely impact any market-based proposals.").

[77] RMR Order at P 16.

[78] Proposed OATT Attachment Y Section 31.1.1.

[79] Proposed OATT Attachment Y Section 31.2.11.12.

[80] Proposed OATT Attachment Y Section 31.2.11.6.

iii. Review of Generator(s) Currently in Outage State

In addition to Gap Solutions proposed in response to the NYISO's solicitation for solutions, the NYISO will review Generators that are currently in an outage state to determine whether they may be capable of satisfying the Reliability Need in whole or in part.[81] Generators subject to review include Generators currently in a Mothball Outage, in an ICAP Ineligible Forced Outage, or that have been mothballed since before May 1, 2015.[82] If the NYISO identifies a Generator as a possible Gap Solution, the NYISO will notify the Market Participant, which must then provide the NYISO within 20 days the information regarding its Generator that is required in new Appendix F of Attachment Y, as described in Part IV.D below.[83]

D. Information Requirements and NYISO Review

As indicated above, in addition to the information required from Initiating Generators to determine if there is a Reliability Need and from proposed Gap Solutions to determine if they are viable and sufficient to address the need, the NYISO is requiring cost, revenue, and other information from these entities.[84] The proposed tariff revisions establish the deadlines by which this information must be received. The timing is important so that the NYISO can promptly identify the solution with the highest net present value to address a Reliability Need.

The NYISO considered but rejected the alternative of waiting to gather the information until after it determined that there was a Reliability Need. The rejected alterative would have delayed the NYISO's identification of the highest net present value solution, the opportunity for the identification of a non-generator Gap Solutions, and the signal to investment decisions. It would have also delayed the exit from the market of a Generator proposing to be in a Mothball Outage or to be Retired, if there was a higher net present value option available to address the Reliability Need.

The tariff also sets a time limit for the NYISO to determine whether the information submitted as part of a Generator Deactivation Notice meets the requirements of Appendix F. It is the same period in which a Generator Deactivation Notice is determined to be complete, *i.e.,* within 10 days of the receipt of the information, or receipt of information in response to a notice from the NYISO so that the previously submitted information was not sufficient.[85] That

[81] Proposed OATT Attachment Y Section 31.2.11.4. This requirement is consistent with tariff requirements recently accepted by the Commission in Docket ER14-2518 with respect to Generators in a Mothball Outage or ICAP Ineligible Forced Outage.

[82] Proposed OATT Attachment Y Section 31.2.11.4. Generators that were mothballed prior to May 1, 2015, do not fall within the definition of a Mothballed Generator and are separately referenced in the proposed tariff revisions.

[83] Proposed OATT Attachment Y Section 31.2.11.4.

[84] Proposed OATT Attachment Y Section 31.2.11.2.1 and 31.2.11.2.3.

[85] Proposed OATT Attachment Y Section 31.2.11.2.2

determination will give entities providing a Generator Deactivation Notice a clear demarcation point concerning the steps of the NYISO's review.

Appendix F to Attachment Y delineates the specific cost, revenue, and other information that is required. As the NYISO does when making Going Forward Cost and buyer-side mitigation determinations,[86] it will post on its website a spreadsheet form and instructions for submitting the required information. The detailed categories of information in Appendix F, and in the spreadsheet form, provide transparency to all stakeholders regarding the types of information that will form the basis of the NYISO's cost determinations.[87]

The NYISO's proposed tariff provisions are designed to limit the need for and duration of RMR Agreements. Its proposed information collection requirements will thus enable it to evaluate all options and identify the least cost non-generator solution if it has a net present value that is distinctly higher than that of an Initiating Generator or other Generator that is a Viable and Sufficient Gap Solution.

The NYISO also proposes to provide the NYPSC with information it received from Generators and potential Gap Solutions upon the NYPSC's request. The NYISO will request confidential treatment for any Confidential Information or Critical Energy Infrastructure Information as defined in its Code of Conduct,[88] as appropriate.[89] The NYPSC has asserted statutory authority to request information of this type from the NYISO. NYDPS staff has indicated that it anticipates it will want to review the information as it considers the NYISO's and the Transmission Owners' assessments of Reliability Needs and potential non-generation solutions. The addition of Section 31.2.11.5 alerts interested parties of this process and adds transparency.

E. NYISO Evaluation of Alternative Gap Solutions

The NYISO will evaluate all proposed Gap Solutions, including Generators in an outage state that are identified as possible Gap Solution. The NYISO will determine whether each is viable and sufficient to satisfy individually or in conjunction with other solutions the identified Reliability Need.[90] The NYISO will perform the viability and sufficiency evaluation consistent with the requirements for its performance of such evaluation in its biennial reliability planning

[86] *See* Services Tariff Section 23.4.

[87] *See* Proposed OATT Attachment Y Section 31.2.11.8.

[88] OATT Attachment F, Section 12.4, including proposed revisions thereto.

[89] Proposed OATT Attachment Y Section 31.2.11.5

[90] Proposed OATT, Attachment Y, Section 31.2.11.6. The NYISO will coordinate with the Responsible Transmission Owner, as necessary, in performing the evaluation. *Id.* The NYISO will also evaluate the conceptual permanent solution proposed by the Responsible Transmission Owner to determine that it is viable and sufficient for purposes of the NYISO's use of the solution as a benchmark for identifying the term of an RMR Agreement. *Id.*

process.[91] If there are adequate market-based solutions to timely satisfy the Reliability Need, the NYISO will conclude the Gap Solution process at this point.[92] Consistent with its current practices for its reliability planning process, the NYISO will present the assumptions, analytical methods, and the results of its evaluation to all interested parties through its open and transparent stakeholder process.[93]

If the Reliability Need results from the Generator Deactivation Assessment, the NYISO will perform this viability and sufficiency evaluation within 120 days of the due date for receiving proposed Gap Solutions, so that the NYISO can complete the Gap Solution process within the 365 day notice period.[94]

F. Consideration of Non-Generation Gap Solutions

The process for consideration of non-generation Gap Solutions by the NYPSC (or other appropriate authority/agency) is consistent with the Commission's directive that RMR Agreements be undertaken only as a last resort.[95] As currently provided in Section 31.2.11, the "appropriate governmental agency(ies) and/or authority(ies) with jurisdiction over the implementation or siting of Gap Solutions" are responsible for identifying the Gap Solution to be implemented. In most cases, the NYPSC is the appropriate entity under Section 31.2.11. The Commission did not direct the NYISO to modify this process in response to Order No. 1000.

The NYISO proposes to retain its existing requirement for the appropriate governmental agency or authority to identify the Gap Solution, with the following modification.[96] The RMR Order directed that the "NYISO must be the entity that makes the determination whether a specific generator is needed to ensure reliable transmission service and thus whether the facility is designated as an RMR unit."[97] Consistent with the RMR Order, the NYISO proposes to modify its existing Gap Solution requirements to provide that the NYPSC (or other appropriate authority/agency) may identify non-generation Gap Solutions to address a Reliability Need. As revised, the NYISO will provide the NYPSC (or other appropriate authority/agency) with a list of the Gap Solution proposals and the results of its viability and sufficiency assessment.[98] The NYPSC (or other appropriate authority/agency)[99] will determine which, if any, of the viable and

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[91] Proposed OATT, Attachment Y, Section 31.2.11.6. The viability and sufficiency evaluation requirements are located in Sections 31.2.5.3 and 31.2.5.4 of Attachment Y.

[92] Proposed OATT, Attachment Y, Section 31.2.11.6.

[93] Proposed OATT, Attachment Y, Section 31.2.11.6.

[94] Proposed OATT, Attachment Y, Section 31.2.11.6.

[95] RMR Order at P 16.

[96] Proposed OATT, Attachment Y Section 31.2.11.9.

[97] RMR Order at P 14.

[98] Proposed OATT Attachment Y Section 31.2.11.6.

[99] As the NYPSC will in most cases be the appropriate entity for identifying non-generation Gap Solutions, many of the requirements in Section 31.2.11 reference the NYPSC. However, as another

sufficient, non-generation Gap Solution proposals should be implemented to address the Reliability Need.[100] The NYISO will monitor the development of any market-based solution or any Gap Solution identified by the NYPSC (or other appropriate authority).[101] As described below, if there is not a non-generation Viable and Sufficient Gap Solution to fully address the Reliability Need, and the NYPSC (or other appropriate authority) does not identify sufficient non-generation Gap Solutions, the NYISO may enter into an RMR Agreement with one or more Generators to address the Reliability Need.

G. Review of Appendix F Cost, Revenue and Other Information

Proposed Section 31.2.11.7 and Appendix F to Attachment Y establish and describe the NYISO's role in reviewing and verifying and/or validating information related to Initiating Generator and proposed Gap Solutions. The NYISO must have complete and up to date information in order to accurately determine the highest net present value solution, as described below, and in relation to determining the RMR Avoidable Costs in relation to the solicitation of offers for RMR Service, and to determine the appropriate APR for RMR Generators. The NYISO therefore needs clear authority to review claimed costs, revenues, and other information, to obtain additional information if it finds submissions to be deficient. Proposed Section 31.2.11.7 and Appendix F grant the requisite authority and clearly establish Market Parties' obligations.

Proposed Section 31.2.11.7.1 provides that the NYISO may reject, and require a Market Party to re-submit or substantiate information that it determines is not adequately supported or otherwise verifiable. Market Parties must promptly provide additional information at the NYISO's request. They must also make qualified representatives available to answer NYISO questions and otherwise to facilitate the NYISO's review.

Section 31.9.4 reiterates and provides additional details on Market Parties' obligations to provide further information, including new and updated information when material developments or changes occur. It also specifies when these information submission obligations end. Section 31.9.5 requires Market Parties to give the NYISO estimated costs and revenues to the extent that actual figures are not available and to explain the accounting protocols used to determine such estimates. Section 31.9.6 directs Market Parties to provide a "detailed plan specifying the schedule and timing" of planned actions and expenditures related to regarding capital expenses, fixed operating and maintenance costs, the quantity of necessary inventory

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agency/authority may be responsible for identifying the Gap Solution under certain circumstances, Section 31.2.11.9 provides that the requirements concerning the NYPSC in Section 31.2.11 applies equally with regard to any agency or authority that is responsible for identifying the Gap Solution under Section 31.2.11.9.

[100] Proposed OATT Attachment Y Section 31.2.11.9.

[101] Proposed OATT Attachment Y Sections 31.2.11.6, 31.2.11.9. The NYISO proposes a minor clean-up to the monitoring requirements in Section 31.2.13.2 for use of consistent terminology.

items, and capital structure. Market Parties must explain and document how such plans compare to past similar expenditures. They must also specify relevant contractual terms and provide copies of relevant contracts and documentation. These provisions facilitate the NYISO's ability to verify and validated claimed costs.

Section 31.9.7 requires Market Parties to specify whether particular costs are associated solely with individual units or components ore are instead shared costs with other units or businesses. If the latter, the Market Party must provide additional information to allow the NYISO to understand how costs are divided. This provision enables the NYISO to exclude costs that do not truly belong to the resource needed to meet a Reliability Need.

Finally, Section 31.9.8 defines the time periods for which required information must be provided.

H. Reliability Net Cost Determinations

The NYPSC (or other appropriate state authority) will have the opportunity to identify a non-generator Viable and Sufficient Gap Solution. The NYISO will therefore signal the NYPSC, or other relevant state authority that could select a non-Generator Gap Solution, and all stakeholders whether there is a non-generator solution with a "net present value that is distinctly higher than the net present value of any Initiating Generator or Generator that is a Viable and Sufficient Gap Solution for a Reliability Need (*i.e.,* the non-generator Viable and Sufficient Gap Solution has a lower net cost)."[102] In that regard, and also in order to initiate its process designed to obtain a least cost offer from a Generator that can meet the Reliability Need, the NYISO will be making net cost determinations.[103] The RMR Avoidable Cost determination for a Generator will also be used to establish an RMR Offer Price, as described in Part VI(b)(ii) below.

Utilizing the information provided by the Market Party, the NYISO will determine the Generator or Viable and Sufficient Gap Solution's estimated costs net of revenues.[104] For existing Generators providing a Generator Deactivation Notice that are not mothballed or in an ICAP Ineligible Forced Outage, the NYISO will determine the costs that would be avoided if the Generator entered a Mothballed State or Retired. For other existing Generators, the NYISO will determine the costs that would be avoided if they remained in such state; *i.e.*, did not re-enter the market to meet the Reliability Need. For a Viable and Sufficient Gap Solution other than an existing Generator, the NYISO will determine the net costs for it to enter service. All determinations will exclude variable operating and maintenance costs, such as fuel, emissions, and start-up costs, and other costs.[105] The NYISO also will exclude from the RMR Avoidable

[102] Proposed OATT Attachment Y Section 31.2.11.8.2.

[103] *Id.* Proposed OATT Attachment Y Section 31.2.11.8.2.

[104] Proposed OATT Attachment Y Sections 31.2.11.2.1, 31.2.11.2.3, 31.2.11.2.4, 31.9 (Appendix F) and 31.1.1 at definition of RMR Avoidable Costs.

[105] *See* Proposed OATT Attachment Y Appendix F Section 31.9.2.1(c).

Cost determinations an existing Generator's cost savings due to a continuation of service.[106] An example of such costs is a fuel contract with an early termination fee that would be incurred if the Generator retired on a date sooner than the end of the 365-day period.

The NYISO will also review all sources of Generators revenues.[107] For purposes of its RMR Avoidable Cost determinations, the NYISO will only be netting from costs the estimated revenues that can be received from all market sources, *i.e.,* not just those derived from the ISO-Administered Market. Therefore, a Generator's net present value will exclude consideration of any subsidy or other benefit from an Load Serving Entity ("LSE") or governmental entity related to participation in the market. That exclusion will serve as a disincentive to an LSE or other entity attempting to subsidize the retention or repowering of uneconomic Generators. A component of the RMR Avoidable Cost determination is the separate identification of the dollar amount of Capital Expenditures and the expected date it will placed into service, or otherwise integrated into the Generator.[108] This information will be particularly important to estimate the overall cost of a Generator solution based on the anticipated duration of an RMR Agreement.

The determination of the estimated net present value of implementing a transmission, demand response and new Generator proposed as a Gap Solution to address a Reliability Need will be of a corresponding nature to that of the existing Generator determinations.

I. Identification of Distinctly Higher Net Present Value Non-Generator Solutions

The NYISO will use the estimated net cost determinations made pursuant to Section 31.2.11.8.1 to "determine if there is a non-generator Viable and Sufficient Gap Solution that has an estimated net present value that is distinctly higher than the net present value of any Initiating Generator or Generator that is a Viable and Sufficient Gap Solution for a Reliability Need (*i.e.,* the non-generator Viable and Sufficient Gap Solution has a lower net cost)."[109] The tariff provides that there be a "distinctly" higher net present value because project cost estimates alone have error bounds in the range of 5% to 20%, and for some projects can be considerably higher. Revenue estimates, which will be netted from costs, can have even higher error bounds.

The NYISO's identification of such a non-generator Gap Solution will be posted on its website, which will provide transparency and also signal all stakeholders that an RMR Agreement will not be the least cost solution to the Reliability Need. It also will signal stakeholders, as well as the NYPSC (or other state authority with jurisdiction to identify a non-Generator Gap Solution) that absent its identification of a non-generator solution, the RMR

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[106] Proposed OATT Attachment Y Section 31.2.11.8.1.1.

[107] *See* Proposed OATT Attachment Y Appendix F 31.9.2.1(i).

[108] Proposed OATT Attachment Y Section 31.2.11.8.1.3.

[109] Proposed OATT Attachment Y Section 31.2.11.8.2.

Generator will be subject to an RMR Offer Price.[110] The error bounding established through the use of the "distinctly" higher net present value requirement will avoid having an RMR Generator's offers be at a higher price (*i.e.*, at its RMR Avoidable Costs, rather than $0.00/kW-month) if there is not a clear distinction that a non-Generator Viable and Sufficient Gap Solution was more economic had it been identified. The NYISO's determination of whether there is a non-generator Viable and Sufficient Gap Solution that has an estimated net present value that is distinctly higher is supported by the affidavit of Shaun Johnson, Director of the Market Mitigation and Analysis Department for the NYISO.

J. RMR Service Offers and NYISO Selection of Offers

The proposed tariff provisions provide the NYISO with the authority to enter into an RMR Agreement if it determines that a Gap Solution is needed, and non-generation Viable and Sufficient Gap Solution(s) that would satisfy in whole or in part the identified Reliability Need have not been identified.[111] If the NYISO has only identified one Generator that can meet the Reliability Need, it will provide that Generator with its RMR Avoidable Costs, including a separate statement of the Capital Expenditures, and provide the Generator with an opportunity to enter into the *Form of Reliability Must Run Agreement*.[112]

If, however, there is more than one Initiating Generator or other Generator that was determined to be a Viable and Sufficient Gap Solution for the Reliability Need, the NYISO will solicit offers to provide service pursuant to the *Form of Reliability Must Run Agreement*.[113] This structure will provide an opportunity for the Reliability Need to be met at the lowest net cost. As part of its solicitation of offers, the NYISO will provide each Initiating Generator or other Generator its RMR Avoidable Costs, including a separate statement of its Capital Expenditures.[114] The NYISO will also post on its website that it is soliciting such offers, which will provide further transparency to stakeholders.[115]

All identified Generators will have the same deadline to submit an offer to provide service. If a Generator can demonstrate that any provisions in the *Form of Reliability Must Run Agreement* are incompatible with its ability to provide RMR service, the Generator can propose specific modifications to the agreement, however, they must be proposed in blackline as part of the offer. Offers cannot be higher than the Generator's full cost of service.[116]

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[110] *See* proposed Services Tariff Section 23.4.5.8, and discussion of RMR Offer Price in Part VI(B)(ii) below.

[111] Proposed OATT Attachment Y Section 31.2.11.10.1.

[112] Proposed OATT Attachment Y Section 31.2.11.10.2.

[113] Proposed OATT Attachment Y Section 31.2.11.10.2.

[114] Proposed OATT Attachment Y Section 31.2.11.10.4.

[115] Proposed OATT Attachment Y Section 31.2.11.10.3.

[116] Proposed OATT Attachment Y Section 31.2.11.10.5.

The tariff provides that the NYISO will rank the offers it receives "primarily based on which offer, or set of offers from more than one Generator, results in the highest net present value solution to the Reliability Need."[117] The NYISO will also consider the effect that any proposed changes to the *Form of Reliability Must Run Agreement* are expected to have on costs.[118] If there is not a clear delineation between the highest net present value of the offers, the NYISO will consider the operational impacts and the size of the Generators in an effort to minimize impacts to markets.[119]

K. Entry into RMR Agreements and Termination of RMR Agreements

Proposed new Section 31.2.11.11.1 establishes that the NYISO may enter into an RMR Agreement with one or more Generators from which it received offers under Sections 31.2.11.10.4 and 31.2.11.10.5, and which are capable of satisfying an identified Reliability Need, either on their own or in tandem with other Viable and Sufficient Gap Solutions.

Under proposed new Section 31.2.11.11.2 the NYISO will tender to the Owner(s)[120] of the selected Generators the *Form of Reliability Must Run Agreement* set forth in proposed new Appendix G to Attachment Y. The term of the agreement shall be determined by the NYISO based on in-service date of the conceptual permanent solution identified under Section 31.2.11.3 and any modifications to the scope and timing of the originally identified Reliability Need.

Sections 31.2.11.11.3 through 31.2.11.11.5 describe the alternative methods by which RMR Agreements may be submitted to the Commission. Consistent with Commission precedent, the NYISO will file an executed RMR Agreement on behalf of itself and the Owner under Section 205 of the FPA if they both agree on the terms and conditions of the agreement (including the APR.) The NYISO will specifically identify and explain any proposed changes to the *Form of Reliability Must Run Agreement* included in such filings. If the NYISO and Owner agree on all terms and conditions but the Owner proposes to recover Capital Expenditures above the authorized limits described in Part V.C, then the NYISO shall file an unexecuted RMR Agreement under Section 205 of the FPA, and the Owner will make a separate Section 205 filing to address Capital Expenditures. If the NYISO and Owner agree on the terms and conditions of the RMR Agreement but the Owner rejects the APR, then the NYISO shall file an unexecuted agreement with the Commission setting forth general terms and conditions, and the Owner will separately submit an Owner Developed Rate to be incorporated into the RMR Agreement. The NYISO proposes to include as part of RMR Agreement filings a description of the methodologies and results of its reliability studies.[121] The description would specify identified

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[117] Proposed OATT Attachment Y Section 31.2.11.10.6.

[118] *Id.*

[119] *Id.*

[120] "Owner" is a proposed defined term in OATT Attachment Y Section 31.1.1. [121]

Proposed OATT Attachment Y Section 31.2.11.11.16.

violations of reliability criteria and describe the alternative solutions evaluated by the NYISO.[122] The NYISO would also explain why the term of an RMR Agreement was appropriate in light of potential alternative solutions.[123]

Proposed rules addressing the termination of RMR Agreements are addressed in the NYISO's explanations of Sections 2.1 and 2.2 of the *Form of Reliability Must Run Agreement* in Part VII of this filing letter. The NYISO proposes revisions to Section 31.2.11.19 of its OATT that mirror the termination rules set forth in Sections 2.1 and 2.2 of the *Form of Reliability Must Run Agreement*. A termination provision that is of particular interest to the NYISO's stakeholders is Section 31.2.11.19.3, which states that the NYISO "shall timely terminate an RMR Agreement for an RMR Generator when that RMR Generator is no longer needed to address identified Reliability Need(s)." This provision will help ensure that the RMR Agreements the NYISO executes will "be of a limited duration so as to not perpetuate out-of-market solutions that have the potential, if not undertaken in an open and transparent manner, to undermine price formation."[124]

L. Deactivation Timeframe/Study Cost Recovery

i. Deactivation Timeframe

Section 31.2.11.14 of Attachment Y establishes the timeframe in which a Generator that has submitted a Generator Deactivation Notice and has proceeded to satisfy the requirements to be Retired or enter into a Mothball Outage may take such action. Specifically, a Generator that satisfies the requirements to be Retired or enter into a Mothball Outage may enter that outage state within 365 days of: (i) the conclusion of the 365-day prior notice period, or (ii) the date specified in the Generator Deactivation Notice for the Generator to take such action if the Market Participant provided greater than 365 days prior notice.[125] If the Generator is not Retired or does not enter into a Mothball Outage within this 365 day deactivation period, the Market Participant must submit a new Generator Deactivation Notice and satisfy anew the requirements of the Gap Solution process before its Generator may be Retired or enter into a Mothball Outage.[126] This deactivation timeframe was developed to carefully balance the flexibility that a Market Participant may want to determine the date to deactivate its Generator with the NYISO's ability to assess the impact of that deactivation, which assessment must be re-performed over time to account for changes in system conditions.

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[122] Proposed OATT Attachment Y Section 31.2.11.11.16. [123] Proposed OATT Attachment Y Section 31.2.11.11.16. [124] RMR Order at P 2.

[125] Proposed OATT Attachment Y Section 31.2.11.14.

[126] Proposed OATT Attachment Y Section 31.2.11.14.

ii. Study Cost Recovery

The NYISO proposes to require a Market Participant that submits a Generator Deactivation Notice, but then elects not to proceed to retire or mothball its Generator, to reimburse the NYISO and Responsible Transmission Owner for their actual study costs. Specifically, if the NYISO commences its Gap Solution process in response to a Market Participant's submission of a Generator Deactivation Notice and: (i) the Market Participant rescinds this notice or (ii) the Market Participant's Generator has not Retired or entered into a Mothball Outage within the permitted deactivation timeframe described above and is not operating under an RMR Agreement, the Market Participant must reimburse the NYISO and the Responsible Transmission Owner(s) the actual costs that each incurred in performing their responsibilities under the Gap Solution process, including any costs associated with using contractors.[127] Requiring a Market Participant to be responsible for study costs under these circumstances will discourage it from repeatedly submitting Generator Deactivation Notices to gauge the reliability implications of a potential deactivation of its Generator. In addition, the NYISO already has an additional reliability study process in place pursuant to which it will perform reliability analysis consistent with the Generator Deactivation Assessment regarding Generators at a Market Participant's request and expense. In the absence of the reimbursement requirement, a Market Participant may require the NYISO to continually perform detailed and time-consuming analysis concerning the Generator on its behalf at no cost to the Market Participant.

M. Addressing Reliability Needs on a Permanent Basis

The RMR Order indicated that "RMR filings should be made only to temporarily address the need to retain certain generation until more permanent solutions are in place..... "[128] Consistent with this guidance, the NYISO proposes to revise the requirements of its biennial reliability planning process to enable it to identify permanent solutions to address a Reliability Need that is being temporarily addressed by an RMR Generator operating under an RMR Agreement.

The initial stage of the NYISO's biennial reliability planning process is the NYISO's performance of a RNA, which process identifies whether there are any Reliability Needs for which the NYISO must solicit permanent market-based or regulated solutions. The NYISO proposes to revise the requirements for the development of the base case underlying the RNA to exclude RMR Generators operating under an RMR Agreement from the base case. As the RMR Generator will not be included in the base case, the NYISO's RNA can identify the Reliability Need underlying the need for the RMR Generator as an existing Reliability Need that must be addressed in the biennial reliability planning process and for which the NYISO will solicit permanent solutions.

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[127] Proposed OATT Attachment Y Section 31.2.11.15. [128]

RMR Order at P 16.

If a non-generation Gap Solution is identified in place of an RMR Generator in the Gap Solution process to temporarily address the Reliability Need, the NYISO may include this non-generation Gap Solution in the base case of the Reliability Need assessment as appropriate. As described above, a non-generation Gap Solution proposed to address a temporary need may be an upgrade that is not designed to be temporary or to obsolesce, or that may become a permanent solution.

V. RMR COMPENSATION REQUIREMENTS

The compensation of resources that choose to become RMR Generators will cease to be market-based for the duration of their RMR Agreements.[129] Instead, the NYISO would pay an RMR Generator either: (i) an APR determined in accordance with proposed Rate Schedule 8 of the Services Tariff; or (ii) an Owner Developed Rate that the RMR Generator proposes on its own (and which the NYISO would pay).[130] Both APRs and Owner Developed Rates will be submitted to the Commission for its review.[131]

Because the NYISO is not proposing to mandate that resources become RMR Generators the APR is not designed to provide full cost-of-service compensation on its own. Instead, consistent with the RMR Order, it encompasses what the Commission described as a generator's "going forward costs"[132] plus additional incentives for performance. Generators will have an opportunity to discuss their costs with the NYISO and the independent Market Monitoring Unit during the development of the APR. They also retain the right to propose an Owner Developed Rate. Thus, the NYISO's proposal is fully compliant with the RMR Order's directive that a voluntary RMR structure include appropriate cost-based compensation mechanisms to "minimize the potential for protracted disputes concerning the unit's compensation."[133]

The proposed compensation requirements described in this Part V are supported by the affidavit of Lorenzo P. Seirup, Supervisor of Market Mitigation and Analysis - Installed Capacity for the NYISO.

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[129] *See* proposed new Section 23.6.4.3 of the Services Tariff.

[130] These payments would be made in accordance with Services Tariff Rate Schedule 8, Sections 31.2.11.8 and 31.2.11.17 of its OATT, and other Tariff rules.

[131] The NYISO expects that payments under Rate Schedule 8 would normally not begin until the APR or Owner Developed Rate included in an RMR Agreement has been accepted by the Commission. At the same time, Rate Schedule 8 has been drafted to potentially allow the NYISO to make payments, subject to refund, prior to Commission action. *See* Rate Schedule 8 at Sections 15.8.1 and 15.8.2 and proposed Section 31.2.11.17.3 of the OATT.

[132] RMR Order at P 17.

[133] *Id.*

A. Availability and Performance Rates

The NYISO's proposed APR would have four components: (i) RMR Avoidable Costs; (ii) Variable Costs; (iii) the Availability Incentive; and (iv) the Performance Incentive. These components are set forth in Rate Schedule 8 of the Services Tariff and are discussed separately below. They are also described in the NYISO's proposed *Form of Reliability Must Run Agreement* which is discussed below in Part VII. Each of these components will be supported by the Generator, subject to NYISO verification, or derived from reasonable estimates made by the NYISO.

RMR Avoidable Costs and Variable Costs will be calculated daily and paid on a weekly basis. Performance Incentive Payments and Availability Incentive Payments, if any, will be paid on a monthly and seasonal (*i.e.,* six month) basis, respectively.

The premise underlying that NYISO's APR proposal is that any Generator seeking to be Retired or to enter a Mothball Outage will be doing so for economic reasons. Whatever the particular expense that drives a decision to exit the market, that decision ultimately will be a financial one. Regardless of whether or not a Generator ceases selling or continues operations, there will be a cost avoided and a cost kept. It is at this point that the Generator will have decided that the losses due to continuing operation exceed the losses that would be incurred if it were to shut down.

The NYISO's APR proposal is designed to approximate the Generator's going forward costs based on the Generator's information submissions and the NYISO's review. It effectively acknowledges the financial character of the decision facing the Generator and helps to make that decision constant (by providing sufficient revenues to prevent additional losses during the term of the RMR Agreement), while retaining the Generator in the market to address an identified Reliability Need. The NYISO's proposal, including its incentive components, is intended to put the total compensation received by an RMR Generator at or above its avoidable costs. Avoidable costs are the revenue stream that the Generator should require to continue operation. With the incentive payment a Generator could end up in a better financial position at the end of an RMR Agreement than the least cost position it had otherwise expected to be in. A reasonable Generator should seek to pursue the path of greater financial gain in all instances. A Generator owned by a corporate entity would be incented even further, as it would have a fiduciary duty to seek the solution that maximizes shareholder value. Paying a rate that matches, or exceeds, avoidable costs fully complies with the RMR Order's directives.[134]

1. RMR Avoidable Costs

RMR Avoidable Costs are determined by the NYISO pursuant to Section 31.2.11.8 and 31.2.11.17 of the OATT. Proposed Rate Schedule 8 specifies that RMR Avoidable Costs, for purposes of the payment to the Generator are either the amount that has been accepted for filing by the Commission, or as calculated by the NYISO in accordance with Section 31.2.11.8 and

[134] RMR Order at P17.

31.2.11.17 of the OATT pending Commission action, shaped on a Capability Period basis. RMR Avoidable Costs do not include Variable Costs or any other cost that might be included in an RMR Generator's reference level.

Each RMR Generator's individual RMR Avoidable Costs will be specified in its RMR Agreement. RMR Avoidable Costs can change over time. For example, when an approved Capital Expenditure enters service, the RMR Avoidable Cost paid to an RMR Generator will increase.

2. Variable Costs

Variable Costs are the incremental costs that an RMR Generator incurs to produce Energy or Ancillary Services. They may change frequently, *e.g.,* when fuel prices change. Having a variable cost component in the APR is preferable to a set fixed payment and will directly correlate to the benefits the RMR Generator provides the system while operating under an RMR Agreement.

Variable Costs include the additional cost of providing Energy, Operating Reserves, and Regulation Service to the ISO-Administered Markets. The NYISO shall determine these values based on the lower of: (i) the RMR Generator's bids; (ii) or the reference levels that the NYISO determines for market power mitigation purposes under Section 23 of the Services Tariff.

Variable Costs also include the RMR Generator's costs of providing Voltage Support and Restoration Services (black start). These costs shall be deemed to be equal to the compensation that the NYISO pays to resources providing these services under existing Rate Schedules 2 and 5 of the Services Tariff. If an RMR Generator requires a different level of compensation for providing either of these services it may seek additional compensation by making an FPA Section 205 filing with the Commission.

3. Availability and Performance Incentives

Proposed Rate Schedule 8 provides for RMR Generators to potentially receive incentive payments as part of the APR in addition to compensation for RMR Avoidable Costs and Variable Costs. These incentives would only be paid if an RMR Generator achieves established targets that are specified in its RMR Agreement.

Incentive payments are a necessary feature of the NYISO's voluntary RMR proposal. RMR Generators will no longer have a market-based incentive to maximize their availability or to respond to dispatch instructions. The proposed rate incentives will give them a financial motive to be available, and to perform when called upon, at or above their historic levels. The NYISO has designed the proposed RMR rules so that they provide appropriate incentives, without adding to the possible incentive for RMR Generators to propose overstated amounts for needed Capital Expenditures or for unnecessary Capital Expenditures.

The NYISO is proposing to set the value of incentive payments at levels that would both: (1) support additional possible expenditures related to fixed costs during the life of the RMR

Agreement, and (2) provide for a reasonable return on investment sufficient to make the voluntary acceptance of a NYISO calculated APR a financially attractive option. Incentives would be measured against each RMR Generator's calculated availability and performance, based on the Generator's being offered into the markets, and its ability to follow dispatch instructions. The incentive payment would be calculated as up to 25% of the RMR Generator's annual RMR Avoidable Costs less Capital Expenditures, as measured on a monthly basis for the Performance Incentive and on a Capability Period basis, for the Availability Incentive.

The NYISO examined industry returns for merchant generators and regulated utilities and determined that a return of 12.5% was consistent with these industry averages and thus provides a reasonable incentive that was likely to make the APR an attractive option to Generators seeking to be Retired or enter a Mothball Outage. This value is also consistent with the value used in the NYISO's currently approved Demand Curve.[135] In addition, this level indicates returns at which the industry is willing to expend capital in an effort to create revenue for shareholders. Thus, returns of up to 12.5% should create an incentive for RMR Generators to spend capital to make elective improvements in an effort to maximize availability and performance.

In order to avoid creating an incentive for an RMR Generator to overstate the amount of Capital Expenditures it requires to provide RMR service in order to increase its incentive payment, the NYISO designed the incentive payment so that it is calculated using RMR Avoidable Costs less the cost of Capital Expenditures. In order to maintain the appropriate percentage return notwithstanding the removal of Capital Expenditures, the NYISO examined the penetration of Capital Expenditures in similar agreements including New York State "Reliability Support Service Agreements" and RMR contracts from other ISO/RTO markets to derive a multiplier that would result in an expected 12.5% return on the overall costs of an RMR Agreement. The NYISO's analysis indicated that, on average, roughly 50% of the costs embedded in those estimates would be classified as Capital Expenditures, although the individual ratios varied significantly between units. Thus, the NYISO proposes that the incentive payment be 25% of the RMR Avoidable Costs less Capital Expenditures, which would result in a 12.5% return for an RMR Agreement comprised of 50% Capital Expenditures. The 12.5% return will only be realized if an RMR Generator exceeds the performance goals that the NYISO sets.

As operating or other conditions change over the term of an RMR Agreement, a need might arise for an RMR Generator to expend additional monies in order to operate efficiently. This could come in the form of a minor labor or investment sunk cost and would normally not satisfy the conditions the RMR Generator would have to meet in order to recover these unexpected costs as Additional Costs.[136] The proposed performance incentives may also allow

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[135] *See* Independent Study to Establish Parameters of the ICAP Demand Curve for the New York Independent System Operator, Final Report (August 2, 2013) at p. 84, available at: http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2013-08-13/Demand%20Curve%20FINAL%20Report%208-2-13.pdf.

[136] *See* OATT Section 31.2.11.16 and Part V.D.

an RMR Generator to receive revenues that exceed the cost-based components of its APR, thereby encouraging performance in accordance with its RMR Agreement. The RMR Generator could earn 80% of the potential 25% incentive (*i.e.,* a 20% incentive) by achieving its maximum threshold for availability. Twenty percent of the potential 25% (*i.e.,* 5%) could be earned by achieving the RMR Generator's maximum threshold for performance.

The majority of the incentive is attributed to availability for two reasons. First, there is significantly more risk and cost associated with keeping a resource available to be committed compared to following dispatch instructions. This creates a mechanism where the bulk of the potential incentive aligns with the higher expenses, so that an Owner would be incented to allocate its capital and resources accordingly. Second, it cannot reasonably be predicted how often the RMR Generator will be dispatched over the life of its RMR Agreement. Thus, placing too much weight on the performance aspect would make incentive payments less predictable and reliable which could diminish or eliminate the desired stimuli to perform well. By contrast, Generators from which the NYISO solicits offers to enter into an RMR Agreement will be able to estimate the availability payments that they are likely to receive with reasonable accuracy under the NYISO's proposal.

Eligibility for Availability Incentive Payments will be based on the RMR Generator's availability for scheduling and dispatch. The NYISO proposes to use NERC's "Equivalent Availability Factor" ("EAF") metric to determine Availability Incentives Payments. EAF measures the fraction of maximum net generation that could be dispatched to produce energy after all types of outages and derates are taken into account. It also measures the percentage of maximum generation available over time. The NYISO would calculate and pay these incentives seasonally (*i.e.,* on a six month Capability Period basis).

Eligibility for Performance Incentive Payments is based on the RMR Generator's performance in appropriately following NYISO dispatch signals. In effect, this means the extent to which an RMR Generator produces energy above the NYISO's penalty limit for undergeneration. The NYISO will use the Penalty Limit for Undergeneration ("PLU") metric to determine Performance Incentive Payments. PLU calculates the MW threshold below which an RMR Generator is considered to be undergenerating for a given interval in real time. The NYISO already automatically calculates PLU for all generator types.[137] The NYISO proposes to calculate and pay Performance Incentive Payments monthly.

For each type of incentive payment and metric, the NYISO will establish a long-term "Baseline," a "Bandwidth," and two performance targets. The Baseline for each RMR Generator will be specified in its RMR Agreement. The Bandwidth and performance targets can be

[137] *See* OATT Sections 25.3, 15.3(a); Accounting and Billing Manual, Section 1.7 (2014), available at: http://www.nyiso.com/public/webdocs/markets_operations/documents/Manuals_and_Guides/Manuals/Administrative/acctbillmnl.pdf.

calculated from the Baseline using the equations set forth in Sections 15.8.3 and 15.8.4 of Rate Schedule 8 to the Services Tariff.

A performance Baseline will be set in the RMR Agreement. It is not expected to change over the term of an RMR Agreement. The metrics for the availability Baseline are heavily influenced by a Generator's ability to Bid into the market, so things like scheduled maintenance outages can negatively impact the measurement. The NYISO expects that, in addition to ordinary maintenance, RMR Generators will need to take outages to make agreed-to improvements via Capital Expenditures. These expected outages to implement Capital Expenditures must be factored into the determination of the availability Baseline. Consequently, an availability Baseline will be determined for each Capability Period of the RMR Agreement. The availability Baseline will incorporate availability expectations that that RMR Generator has demonstrated it can consistently achieve, adjusted for foreseeable changes such as planned outages and Capital Expenditures that are expected to affect an RMR Generator's availability. Other information the ISO will use includes the availability history of a unit based on GADS and CMS data, the nature of the Reliability Need that necessitated an RMR Agreement, any projected improvements to an RMR Generator's availability due to planned capital improvements, and any relevant operational restrictions (*e.g.,* emissions and operational requirements limiting run-hours).

"Bandwidth" is the range of plus or minus 5% around the relevant Baseline. The proposed Bandwidth values are intended to allow for relatively minor deviations (margin error) from the fixed level of Baseline due to factors and outlier events that were not captured in a developed Baseline, and that are generally beyond an RMR Generator's control, in order to avoid unreasonably restricting incentive payments. The NYISO established the Bandwidth and Target Limit values based on its examination of data from existing New York generators of varying fuel type, technology, and vintage. The NYISO found that, on average, the availability and performance metrics vary around long-term average between -15% to +20%. Therefore, the Bandwidth bounds were developed to allow a margin of error while avoiding payments to an RMR Generator when it is not capable of meeting a Reliability Need. The Target Limit was developed to reward improvements an RMR Generator makes to its operating and maintenance practices to achieve availability and performance levels beyond the availability or performance the ISO reasonably anticipated based on an RMR Generator's historical performance, planned outage schedule and planned capital improvements.

For Baseline values between 50% and 95%, the lower bound of a Bandwidth is a decrease of 5% from the Baseline. The upper bound of the Bandwidth is an increase of 5% above it. The Target limit is an increase of 10% above the Baseline. If an RMR Generator's availability or performance Baseline value is 85% or higher, the maximum potential improvement in the incentive measures from the Baseline to 100% is divided into three bands; the upper bound of the Bandwidth is set at one third, and Target Limit is set at two thirds. This creates three bands of incentives, Baseline lower bound to Baseline upper bound, Baseline upper bound to the Target Limit, Target Limit to 100%. The lower bound of the Bandwidth is a decrease of 5 percent points from the Baseline. For Baselines below 50%, the lower bound is at 90% of the Baseline, the upper bound is 10% of the maximum possible improvement above the

Baseline; and the Target Limit is 20% of the maximum possible improvement above the Baseline.

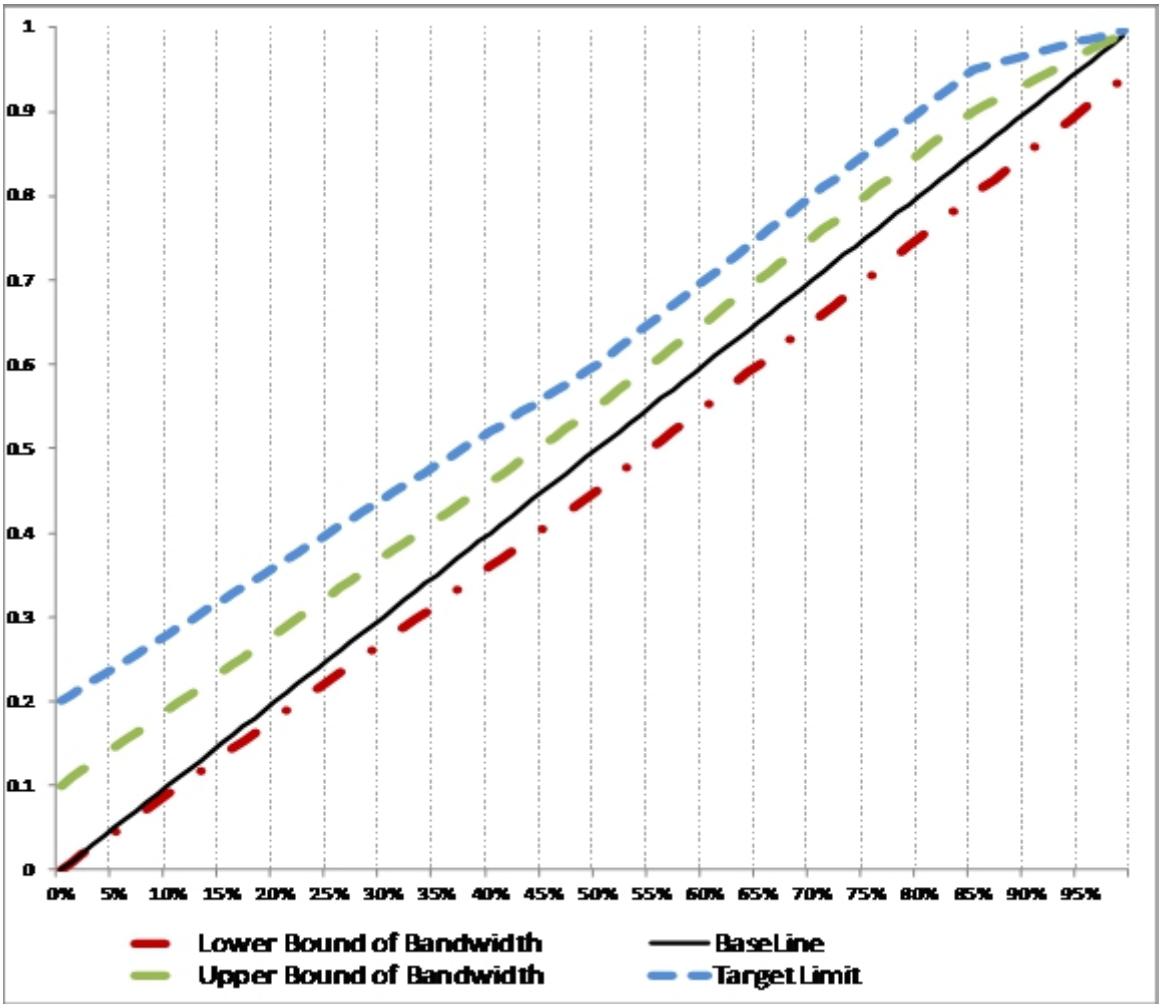

Illustration of the operation of the proposed Bandwidth and Target Limit

B. Owner Developed Rates

Commission precedent holds that if a potential RMR generator does not agree with an ISO/RTO regarding rates then it retains its statutory right to develop and propose its own rate under FPA Section 205. In 2014, the Commission directed the Midcontinent Independent Transmission System Operator ("MISO") to address this scenario in its version of reliability-must run rules. MISO was instructed to adopt a system under which "(1) in instances where MISO and the generation or SCU owner cannot agree on compensation for [RMR] service, the generation owner or SCU owner may submit a FPA Section 205 filing for the rate associated with the unexecuted SSR agreement; and (2) MISO will be required to file an unexecuted [RMR] agreement with the Commission that includes only the non-rate terms and conditions within 15

days after MISO and the generation or SCU owner determine that they are at an impasse regarding the appropriate level of compensation." [138]

This precedent appears to be as applicable to the voluntary RMR system that the NYISO is proposing. Accordingly, the NYISO's compliance filing expressly accommodates a generator's right to submit an Owner Developed Rate to the Commission for its review and potential acceptance. If the Owner has agreed to the terms and conditions of service under the *Form of Reliability Agreement* (discussed below at Part VII, and the NYISO has separately filed the agreement, then the NYISO would incorporate the Owner Developed Rate, as modified by the Commission in an order accepting the rate, into the RMR Agreement.

Under the NYISO's proposal, Owner Developed Rates cannot exceed an RMR Generator's full cost of service. Owner Developed Rates would have two components. The first, Variable Costs, will be determined in the same manner used to calculate Variable Costs included in the APR. The second, a Commission-authorized component, will effectively replace the RMR Avoidable Cost portion of an APR with a value that must be justified by Owner and accepted by the Commission. Because Owner Developed Rates are expected to be higher than an APR, and to potentially encompass full cost-of-service recovery (including a return on investment), the NYISO is not proposing to make Availability Incentive Payments or Performance Incentive Payments to RMR Generators that are compensated under Owner Developed Rates.

The NYISO proposes that the MMU will review Owner Developed Rates and participate in Commission proceedings concerning them.[139] The MMU would also be authorized to inform the Commission whether or not it believed proposed Owner Developed Rates, or any component of them, were reasonable and consistent with an RMR Generator's costs. As an independent entity with access to Generator costs, the MMU is well-situated to perform this function. The NYISO could likewise choose to participate in such proceedings.

C. Capital Expenditures

The RMR Order stated that NYISO "should address the circumstance of accelerated cost recovery for generators that require upgrades, retrofitting, repowering, or some other form of additional investment required to continue operating during the term of the RMR agreement, to ensure that in such circumstances generators are appropriately compensated."[140] The NYISO "should likewise address recovery of such investments from RMR generators should the RMR unit receive compensation for the investment during the term of the RMR agreement but then

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[138] *Midwest Independent System Operator, Inc.*, 148 FERC ¶ 61,057 at P 93 (2014); Order on rehearing and compliance *AmerenEnergy Resources Generating Company vs, Midwest Independent Transmission System Operator, Inc.*, 153 FERC ¶ 61,062 (2015).

[139] *See* Proposed Services Tariff Section 30.4.6.11. [140]

RMR Order at P 19.

continue to operate as a merchant unit after the term of the RMR agreement."[141] "Such provisions should ensure that generators under RMR agreements will not recover more than an allocable portion of the cost of such investments from providing RMR service." [142]

In compliance with these directives, the NYISO is proposing appropriate accelerated cost recovery rules for Capital Expenditures that are determined to be necessary to an RMR Generator's operation during the term of an RMR Agreement. The NYISO will account for such Capital Expenditures separately from the other components of RMR Avoidable Costs. The NYISO is also proposing a number of Capital Expenditure-specific rules to ensure that the accelerated cost recovery is not exploited to the detriment of consumers. Similar Capital Expenditure Rules apply to APRs and to Owner Developed Rates.

Proposed new Section 31.2.11.8.1.3 of the OATT defines "Capital Expenditures" as:

> the purchase or non-operational lease of, or modification to real property or assets (including, but not limited to, land, buildings, and equipment) that (a) are necessary to permit an Initiating Generator or Viable and Sufficient Gap Solution to provide service to satisfy, in whole or in part, the Reliability Need identified in the ISO's request for Gap Solutions, (b) have a useful life greater than one year, and (c) are not otherwise included in the NYISO's calculation of RMR Avoidable Costs.

Proposed Section 31.2.11.17.1 of the OATT requires the NYISO or an Owner that submits an Owner Developed Rate to provide an estimated cost and identify the reasonably anticipated date each Capital Expenditure will be placed into service or otherwise integrated into the RMR Generator.

Proposed Section 31.2.11.17.6.1 of the OATT states that the ISO will not provide initial financing for Capital Expenditures. Instead, when an authorized or accepted Capital Expenditure enters service or is otherwise integrated into an RMR Generator, the ISO will commence reimbursing the Owner for the actual, demonstrated cost of the Capital Expenditure following the NYISO's completion of the review process that is set forth in Section 31.2.11.17.5 of the OATT. The ISO will reimburse Owner for each Capital Expenditure on an accelerated basis, repaying the cost of Capital Expenditures by the end date of the RMR Agreement that Owner and the ISO originally anticipated. The NYISO developed these rules to ensure that consumers only pay for Capital Expenditures that are actually incurred to enable an RMR Generator to meet the identified Reliability Need.

Under proposed Section 31.2.11.11.1 of the OATT, Capital Expenditures of $10 million per year or less for non-nuclear-powered, or $25 million per year or less for nuclear-powered RMR Generators may be included in an APR filed by the NYISO. The attached Affidavit of Christopher D. Ungate explains that the $10 million and $25 million limits were selected based on previous studies conducted by Sargent & Lundy LLC, the consulting firm for which Mr.

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[141] *Id.*

[142] *Id.*

Ungate is a Senior Principal Management Consultant. Mr. Ungate concludes that the NYISO's proposed limits represent "a reasonable threshold for distinguishing between [Capital Expenditures] associated with non-discretionary capital projects required to maintain viability that would be approved by the NYISO, and large capital projects required for regulatory compliance, such as cooling towers or FGD or SCR equipment ..... "

If an RMR Generator wishes to recover Capital Expenditures in excess of the respective $10 million or $25 million annual limits, then it must make a filing with the Commission seeking approval to recover the additional amount. If the NYISO or MMU agree that the RMR Generator's request to recover additional Capital Expenditures is necessary and reasonable they may file a statement with the Commission expressing their support for the recovery of the identified costs.

If an RMR Generator files an Owner Developed Rate it must separately identify every Capital Expenditure that it is seeking to recover and justify each to the Commission. If the NYISO or MMU support some or all of the proposed recovery of Capital Expenditure costs they may make a filing with the Commission stating their views.

Consistent with proposed Section 31.2.11.17.1 of the OATT, each RMR Generator's Capital Expenditures will be specifically set forth in tables included in their RMR Agreements, including the estimated cost and estimated in-service date of each Capital Expenditure.[143]

Proposed Sections 31.2.11.16.3[144] and 31.2.11.17.3[145] of the OATT address situations where it is necessary for Owner to commence development of one or more Capital Expenditures on an expedited basis, before the Commission has issued a ruling on Owner's authority to recover the cost of that or those Capital Expenditure(s). Under these circumstances, the NYISO is seeking authority to reimburse Owner for the actual costs that Owner demonstrated that it reasonably incurred constructing the Capital Expenditures up to limits of $10 million or less (or $25 million or less for nuclear-powered RMR Generators).

Before the NYISO may commence reimbursing a Capital Expenditure proposed Section 31.2.11.17.5 of the OATT requires the ISO to verify and validate Owner's actual expenditures. If the actual cost of a Capital Expenditure exceeds the estimate Owner provided to the NYISO or the Commission by more than five percent, then the NYISO must also review the reasonableness of the expenditure. To the extent the NYISO is not able to verify and validate an actual expenditure, or if the NYISO is not able to determine that the actual cost of an expenditure that

[143] *See, e.g.*, the instructions included in Sections 4.3.1 and 4.6 of the NYISO's proposed *Form of Reliability Must Run Agreement*.

[144] Section 31.2.11.16.3 of the OATT addresses unexpected Additional Costs that need to be incurred during the term of an RMR Agreement in order for an RMR Generator to continue providing service.

[145] Section 31.2.11.16.3 of the OATT addresses circumstances where it is necessary for Owner to commence development of a Capital Expenditure in advance of FERC action on an initial rate filing in order to prevent or mitigate the possibility of an unmet Reliability Need.

exceeded the estimate presented to the NYISO or to the Commission by more than five percent was reasonable, then Owner must make a filing with the Commission to recover its Capital Expenditure costs.

Proposed Section 23.6.5 of the Services Tariff permits the NYISO to cease repaying the cost of Capital Expenditures if the NYISO terminates the RMR Agreement due to the default of Owner or if the RMR Generator fails to achieve certain minimum operating standards. Following the termination date, the NYISO shall not continue to pay for any Capital Expenditure that was incurred. This includes Capital Expenditures that were accepted for filing in an RMR Generator's APR or in an Owner Developed Rate.

Finally, proposed new Section 15.8.6 of Rate Schedule 8 requires an RMR Generator that received compensation from the NYISO for the cost of Capital Expenditures under an RMR Agreement to repay the depreciated cost of that Capital Expenditure before the NYISO may permit the Generator to submit offers into the ISO-Administered Markets, or to receive a schedule. Section 15.8.6 includes a formula that establishes how the repayment amount will be calculated. This proposed requirement is a practicably implementable and an enforceable way for the NYISO to safeguard consumer interests and discourage toggling between an RMR Agreement and RMR rates. The NYISO's proposed rule is also addressed in Part V.E below.

D. Additional Costs

The NYISO proposes to permit RMR Generators to recover as Additional Costs extraordinary Capital Expenditures or other RMR Avoidable Costs that arise during the term of an RMR Agreement that (a) are not already being recovered as components of an RMR Generator's RMR Avoidable Costs, its Owner Developed Rate or its Variable Costs, (b) could not have been reasonably anticipated at the time an RMR Agreement was entered into, and (c) are necessary for the RMR Generator to continue to provide service during the term of the RMR Agreement.

Proposed new Section 31.2.11.16.1 of the OATT would require an RMR Generator to promptly notify the NYISO of any event that could not reasonably have foreseen at the time that the rate in an RMR Agreement was established that may require it to incur costs that exceed the lesser of $250,000, or 5% of annual RMR Avoidable Costs (excluding Capital Expenditures) and that must be incurred in order for the RMR Generator to continue to perform its obligations under its RMR Agreement. When the criteria pursuant to Section 31.2.11.16.2.1 and 31.2.11.16.1.2 haves been met, it will be a "Proposed Additional Cost." Proposed tariff Section 31.2.11.16.2.1 describes the process by which the NYISO will determine whether the cost information the Owner provided constitutes an "Additional Cost."

Proposed Sections 31.2.11.16.3 and 31.2.11.16.4 of the OATT require most Additional Costs to be presented to the Commission for its review before the NYISO has an obligation to pay the cost. For example, RMR Generators that are being compensated pursuant to an Owner Developed Rate must obtain Commission approval to recover Additional Costs. This is appropriate because the NYISO may not know whether the RMR Generator that is subject to an

Owner Developed Rate is already being compensated to assume the risk of mechanical breakdown (or other contingencies) in its Commission-accepted rate. Additional Costs that exceed $10 million per event for a non-nuclear powered Generator or $25 million per event for a nuclear-powered Generator must be presented to the Commission for recovery. Finally, Additional Costs that do not involve Capital Expenditures must always be presented to the Commission for recovery.

Allowed Additional Costs that involve Capital Expenditures are recovered as Capital Expenditures, consistent with the rules described in Part V.C above.

Under proposed Section 31.2.11.16.3 of the OATT the NYISO can authorize recovery of Additional Costs that it has verified and validated for Capital Expenditures that are not expected to exceed the applicable $10 million or $25 million threshold if the RMR Generator is under an APR. Even in these circumstances, recovery is limited to the RMR Generator's actual Capital Expenditure and is subject to review in accordance with Section 31.2.11.17.5 of the OATT. The review process is described in Part V.C above.

Finally, proposed Section 31.2.11.16.4 of the OATT provides an opportunity for an Owner to seek recovery of Additional Costs that the NYISO determined did not meet the criteria to qualify as a Proposed Additional Cost or a Substantiated Additional Cost.

E. "Clawback" Requirements

The RMR Order stated that the NYISO's compliance proposal should "include rules to eliminate, or at least minimize, incentives for a generator needed for reliability to toggle between receiving RMR compensation and market-based compensation for the same units."[146]

The NYISO has added provisions to Section 15.8.6 of Rate Schedule 8 to its Services Tariff that present an effective deterrent to toggling between receiving RMR compensation and market-based compensation. If the NYISO reimbursed all or any portion of the cost of a Capital Expenditure that was needed to permit an RMR Generator to provide service under an RMR Agreement then, following the conclusion of the RMR Agreement, the Generator would not be permitted to submit offers into the ISO-Administered Markets or to be scheduled until ***all*** Capital Expenditure costs that the NYISO reimbursed (less depreciation) have been repaid. The proposed rule will prevent RMR Generators that are not sufficiently financially viable or that are unwilling to repay the cost of Capital Expenditures from returning to participate in the ISO-Administered Markets or being scheduled by the NYISO.

The proposed rules are also designed to ensure that any reimbursement the NYISO receives is repaid to the appropriate Loads. Section 6.14.6 of proposed OATT Rate Schedule 14 requires the NYISO to return any Capital Expenditure reimbursement it receives to the RMR

[146] RMR Order at P 21.

LSEs[147] that were allocated RMR costs that exceeded market rates while the RMR Agreement was in effect.

In addition to the requirement that RMR Generators repay to the NYISO the cost of Capital Expenditures, the NYISO has added a measure to its planning rules to reduce the likelihood of toggling between receiving compensation under an RMR Agreement and the markets. Section 31.2.2.3.2 of Attachment Y to the OATT has been revised to state that "the ISO shall not include in the [RNA] Base Case an RMR Generator." This rule supplements a requirement in Section 3.1.1 of the ISO's Reliability Planning Process Manual that "Generator retirements and mothballed units will be removed from the base case…."[148] When the NYISO removes an RMR Generator from its RNA base case it will plan the system to operate reliably without the RMR Generator's participation. This change to the NYISO's planning rules should prevent Generators that submitted Generator Deactivation Notices and that received RMR Agreements in the past from being able to do so repeatedly.

F. Penalties

RMR Generators that receive an APR would be subject to all penalties, sanctions, deficiency charges, and any similar charges under the NYISO tariffs except for undergeneration penalties (which are addressed by the proposed Performance Incentive Payment). The RMR Generator's total exposure to all penalties and charges will be limited to the amount of Availability and Performance Incentive payments that the RMR Generator has received under the RMR Agreement (if any) up to and including the billing month in which the penalty is assessed. If the NYISO were to allow penalties to reduce RMR Avoidable Cost payments then RMR Generators would be hesitant to accept an APR because the rate structure could result in the Generator receiving compensation below its avoidable costs.

RMR Generators that are compensated under an Owner Developed Rate will remain subject to all applicable tariff penalties and charges, including undergeneration penalties, without any restriction. It would not be appropriate to limit penalties for RMR Generators that file Owner Developed Rates because they would be expected to be seeking compensation well in excess of going forward costs, and presumably more than they were obtaining from the NYISO's markets prior to their deactivation decision. There is no reason to excuse Generators that are being compensated pursuant to Owner Developed Rates from penalties that Generators that participate in the NYISO's markets must pay.

Any penalties assessed by the NYISO would be included in monthly invoices.

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[147] "RMR LSE" is a defined term described in Part IX.A below.

[148] Section 3.1.1 of the ISO's Reliability Planning Process Manual currently states that generators that remain in service based upon "existing or executed agreements financially supporting their continued operations, will be modeled in service for the duration of that agreement." The ISO will propose to revise its Reliability Planning Process Manual to be consistent with its proposed revisions to Section 31.2.2.3.2 of the OATT before it initiates the next cycle of the Reliability Planning Process in April of 2016.

VI. RMR GENERATOR PARTICIPATION IN NYISO-ADMINISTERED MARKETS

A. Energy and Ancillary Service Markets Requirements

Proposed new Sections 23.6.1.1 through 23.6.4 of the Services Tariff will govern RMR Generators' participation in the NYISO-administered Energy and Ancillary Services markets.

Proposed new Section 23.6.1 requires that all of the Energy and Ancillary Services that an RMR Generator is capable of providing be offered into the Day-Ahead and Real-Time Markets. Proposed new Section 23.6.4.1 specifies that for the duration of an RMR Agreement the RMR Generator may not enter into any new agreement, or extend any other agreement, that would impair its ability to provide Energy or Ancillary Services directly to the ISO-Administered Markets or otherwise diminish its ability to comply with an RMR Agreement. Similarly, proposed Section 23.6.4.2 requires that RMR Generators not enter into, renew, or extend bilateral agreements for Energy or Ancillary Services during the term of their RMR Agreements.[149]

The NYISO's proposals regarding Energy, Operating Reserve and Regulation Bids made on behalf of RMR Generators build upon existing rules governing the establishment of Generator reference levels. These rules have been in place for more than a decade, work well, and have been repeatedly upheld by the Commission.

Under proposed Section 23.6.1.1, RMR Generators will be obliged to be bid into the Energy, Operating Reserve and Regulation Markets at a level no higher than their reference levels. Their Bids would also have to be consistent with all non-dollar Bid parameters for which reference levels are developed. If an RMR Generator is not able to operate to a reference level that has been established by the NYISO it must timely request a chance in accordance with existing ISO Procedures.[150] Under proposed new Section 23.6.3.1 the NYISO will mitigate all dollar-denominated Bids that exceed an RMR Generator's currently effective reference levels. If unit commitment data or non-dollar Bid parameters are submitted that are inconsistent with NYISO-approved reference levels then the ISO shall inform the MMU of this conduct and apply all authorized mitigation measures, including, potentially, financial penalties. RMR Generators shall also be subject to all other mitigation measures that exist under the NYISO's tariffs.

In advance of the execution of an RMR Agreement, the NYISO will consult with the MMU and the Owner to review and update a prospective RMR Generator's reference levels.[151] The NYISO shall make all final decisions regarding reference levels.[152] If a potential RMR Generator faces operational constraints, the NYISO will develop reference levels that permit it to

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[149] Proposed Services Tariff Section 5.12.4(c).

[150] *See* Proposed Services Tariff Section 23.6.1.1.2, current Services Tariff Section 23.3.1.4. [151] Proposed Services Tariff Section 23.6.2.2.

[152] *Id*.

operate consistent with its expected availability to satisfy the Reliability Need that it has been retained to address.[153]

The NYISO's ability to change an RMR Generator's reference levels after the review and update process described above is complete and an RMR Agreement takes effect would be limited to the circumstances expressly identified in proposed new Sections 23.6.2.3.1 - 5.

Proposed new Section 23.6.2.4 mandates that timely fuel price and fuel type updates be provided to the NYISO on behalf of RMR Generators. This information is necessary to the NYISO's calculation of accurate reference levels. If it is not provided in a timely manner then the NYISO would be authorized use the reference levels that were previously in place. Similarly, if a Market Party fails to timely update an RMR Generator's reference levels to reflect cost reductions that are not *de minimis* and that are required to be reflected, then the NYISO may recalculate the RMR Generator's reference levels and true-up the Variable Costs paid to the RMR Generator under Rate Schedule 8. The purpose of the true-up would be to ensure that the RMR Generator is compensated at a level consistent with its demonstrated costs.

Proposed new Section 23.6.1 also requires that ISO-Committed Flexible Bids be submitted on behalf of RMR Generators. The NYISO models reliability constraints into its Energy markets. Requiring resources to submit offers using the ISO-Committed Flexible Bid mode ensures that RMR Generators are available to be committed economically by the market solutions to meet reliability constraints, while also being eligible to set prices and reflect a proper price signal to the marketplace for their commitment.

Section 23.6.1.1.3 states that if an RMR Generator is not capable of providing all or a portion of its capacity flexibly that the restriction must be noted in its RMR Agreement. Similarly, if a new operating constraint arises during the term of an RMR Agreement that prevents all or a portion of an RMR Generator's capability from being offered via ISO-Committed Flexible Bids the RMR Generator must obtain the NYISO's written permission to change how it offers its Energy, Operating Reserves or Regulation Service.

Finally, proposed new Section 23.6.5.1 states that the NYISO may terminate an RMR Agreement in the event of a default under the agreement that is not cured or if the RMR Generator fails to satisfy one or more of the Minimum Operating Standards which are defined in its RMR Agreement and discussed in Part VII below. The NYISO may also terminate if an RMR Generator repeatedly fails to operate when it is called upon to address the Reliability Need that it was retained to address. Section 23.6.5.2 states that if the NYISO terminates an RMR Agreement for any of the preceding reasons, then it shall cease repaying the costs of Capital Expenditures that were incurred at or for the RMR Generator unless otherwise instructed by the Commission.

[153] Proposed Services Tariff Section 23.6.2.2.1.

B. Capacity Market Requirements

(i) Offer Requirements

Proposed new Section 32.4.5.8 of the Services Tariff requires RMR Generators to offer all of their Unforced Capacity into an ICAP Spot Market Auction.[154] The only exception is if an RMR Agreement expressly excuses an RMR Generator from this requirement due to a pre-existing bilateral agreement. An obligation to offer capacity into the market is a fundamental feature of the RMR tariff structure. However, the NYISO has no authority to abrogate pre-existing contracts and mandating abrogation would be incompatible with the voluntary character of its RMR proposals.[155] The proposed language therefore recognizes that there may be unusual instances where an RMR Generator is permitted to offer less than all of its UCAP into the ICAP Spot Market Auctions.

(ii) RMR Offer Price

In most cases, RMR Generators will be required to offer all of their UCAP into the auctions at an RMR UCAP Offer Price of $0.00/kW-month, *i.e.,* as "price-takers." This requirement is consistent with the underlying purpose of RMR arrangements. An RMR Generator that is the highest net present value solution to address a Reliability Need not modeled in the NYISO markets is not uneconomic, but rather would be revenue inadequate in the absence of an RMR Agreement. Because the RMR Generator is providing service under an RMR agreement it is being compensated at least for its avoidable costs, and cannot mothball or retire, its incremental costs to participate in the capacity market are *de minimis*. Thus, it is appropriate to require the RMR Generator to bid at $0.00/kW-month, which is simply requiring that it participate in the ICAP market in a competitive manner.

There are scenarios, however, in which the RMR UCAP Offer Price would not be $0.00/kW-month. As described in proposed new Section 23.4.5.8.2 of the Services Tariff, the RMR UCAP Offer Price would be equal to the RMR Generator's RMR Avoidable Costs net of likely projected annual Energy and Ancillary Services revenues, translated into seasonally adjusted values, if: (a) the NYISO's determination of the need for an RMR Agreement is based on a resource adequacy need; or (b) the NYISO identifies an alternative Viable and Sufficient transmission or demand response Gap Solution in accordance with Section 31.2.11.8.2 of the OATT and that meets certain conditions specified in Section 23.4.5.8.2.

The first scenario is when an RMR Agreement addresses a Reliability Need that is modeled in the NYISO's capacity market rules, *i.e.* resource adequacy, the revenue the RMR

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[154] Similarly, a proposed revision to Section 5.12.7 of the Services Tariff prohibits an RMR Generator from scheduling a Bilateral Transaction unless expressly authorized in an RMR Agreement.

[155] Proposed new Section 5.12.4(c) of the Services Tariff prohibits RMR Generators from entering into new or extending an existing agreement that "impairs or otherwise diminishes its ability to comply with its obligation under an RMR Agreement, or that limits its ability to provide Energy, Capacity, or Ancillary Services directly to the ISO Administered Markets."

Generator under the RMR Agreement (above that received from auction revenues) are compensation for providing service in order to meet a Reliability Need that is not met by the market. In such an instance, it is appropriate to consider the Generator's RMR Avoidable Costs as its marginal cost of providing capacity. It is also efficient to require it to offer its capacity at that price in the market. Indeed, reflecting the RMR Generator's RMR Avoidable Costs in the price offer, and thus in the UCAP Market-Clearing Price would send a price signal for economic investment in existing and new capacity resources. Thus, if a resource could offer capacity at a price that would clear below the Market-Clearing Price that includes the RMR Generator's offers, it would have a signal to remain in or enter the market. Such a market response could result in a reduction in the length of the RMR Agreement, or a reduction in the amount of capacity needed to meet the Reliability Need.

It also follows that if a Generator is needed to meet a Reliability Need that is not modeled in the ICAP market rules (*i.e.*, a Reliability Need other than Resource Adequacy,) recognizing the RMR Generator's RMR Avoidable Costs might send an incorrect price signal on the need in the same location as the RMR Generator. That price signal, however, would not necessarily be in a location that helps resolve the non-resource adequacy Reliability Need.

The second scenario in which an RMR Generator would be required to offer its capacity at its RMR Avoidable Costs (as described above) is if an RMR Generator is not the least cost solution; *i.e.,* when the NYISO has identified a non-generator Viable and Sufficient Gap Solution with a distinctly higher net present value than an Initiating Generator or other Generator that was a Viable and Sufficient Gap Solution. When this is the case, requiring that the RMR Generator offer its UCAP at its RMR Avoidable Costs into the ICAP Spot Market Auction is an efficient mechanism to protect the market from the potential of artificial price suppression, which could be achieved by the delay or deferral of the identification of a non-generator Viable and Sufficient Gap Solution, when there was a higher net present value option.

(iii) Buyer-Side Market Power Mitigation Offer Floors

The proposed tariff revisions also establish rules for when an RMR Generator is subject to Offer Floor mitigation under the NYISO's buyer-side market power mitigation rules. The current rules provide that UCAP that is subject to an Offer Floor[156] can only be offered into the ICAP Spot Market at or above the Offer Floor. A proposed new section requires that UCAP from an RMR Generator that is subject to an Offer Floor be offered into the auctions at the higher of its Offer Floor or its RMR UCAP Offer Price. This provision ensures that UCAP subject to the Commission-approved Offer Floor rules are not excused from buyer-side mitigation prematurely on account of addressing a temporary Reliability Need through an RMR Agreement. This requirement is set forth in proposed new Section 23.4.5.7.12 of the Services Tariff.

[156] By operation of the terms, if the Generator had an Offer Floor, and some of its UCAP was Cleared UCAP (as described sunder 2.3.4.5.7,) the Cleared UCAP is not subject to 23.4.5.7.12 of the Services Tariff.

(iv) Exclusion from Pivotal Supplier Calculation

The NYISO's capacity market mitigation measures also include supply-side mitigation rules. UCAP under the control of a Pivotal Supplier located in a Mitigated Capacity Zone (i.e., "Mitigated UCAP") is subject to a "must offer" requirement at the higher of the UCAP Offer Reference Level for the applicable ICAP Spot Market Auction, or Generator's Going-Forward Costs.[157] Revisions proposed in this filing exclude from the determination of Mitigated UCAP an RMR Generator's UCAP. The revisions accomplish this exclusion through a proposed revision to subsection (iv) of the definitions of "Affiliated Entity" and the definition of "Control" with respect to UCAP.[158] Because UCAP from the RMR Generator and its offer price will be controlled by the RMR Agreement, an additional mitigation rule for it is not needed.

The proposed requirements for RMR Generator's participation in the ISO-Administered Markets are supported by the affidavit of Shaun Johnson, Director of the Market Mitigation and Analysis Department for the NYISO.

VII. THE *FORM OF RELIABILITY MUST RUN AGREEMENT*

As directed by the RMR Order, this compliance filing includes a proposed *pro forma* RMR agreement, the *Form of Reliability Must Run Agreement* (the "*pro forma* RMR Agreement"). It is included in Appendix G (Section 3.10) of Attachment Y of the OATT.

The RMR Agreement is generally modeled on the Commission-approved *Form of Costof-Service Agreement* set forth at Appendix I to ISO New England, Inc.'s ("ISO-NE") Market Rule 1. It also includes certain elements from the MISO's Commission-approved *Standard Form System Support Resource ("SSR").* The NYISO has modified the ISO-NE form agreement to reflect the differences between its proposals and ISO-NE's rules. The NYISO RMR Agreement also accounts for broader differences in market design, planning processes, and terminology between the New York and New England systems.

The NYISO believes that its proposed language complies with the Commission's policy that "RMR agreements should be of a limited duration so as to not perpetuate out-of-market solutions that have the potential, if not undertaken in an open and transparent manner, to undermine price formation."[159] It creates binding contractual obligations that require an RMR Generator that voluntarily executes an RMR Agreement to perform the obligations defined in the *pro forma* RMR Agreement and in the NYISO's tariffs. It thereby will help to maintain reliability when the NYISO identifies Reliability Needs that cannot otherwise be addressed. At the same time the NYISO's proposal recognizes Generators' rights, including the right to submit an Owner Developed Rate. The proposal is also intended to protect the reasonable economic interests of consumers.

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[157] *See* Services Tariff Section 23.4.5.2.

[158] Proposed revisions to Services Tariff Section 23.2.1. [159]

RMR Order at P 2.

The RMR Agreement contains a number of provisions that incorporate, and make contractually binding, requirements that would be created by the new tariff provisions summarized above. To avoid repetition, those provisions are not addressed in detail in here. This Part also does not address standard contractual terms that are included in the RMR Agreement. Notable provisions are discussed below.

The proposed Recitals section establishes that the Parties to the RMR Agreement will be the NYISO and the "Owner" of an RMR Generator, *i.e.,* the entity(ies) that owns and has operational control over the generator. The Recitals also explain the manner in which RMR Agreements will be submitted to the Commission. Consistent with applicable precedent,[160] if Owner and the NYISO agree on terms and conditions and the Owner accepts the APR, then the NYISO shall submit an executed RMR Agreement on behalf of both Parties under FPA Section 205. If Owner and the NYISO agree on non-rate terms and the Owner accepts the APR but there are Capital Expenditures that require the Commission's approval, then the NYISO shall submit the RMR Agreement, including the agreed upon APR components under FPA Section 205, but the Owner will submit a separate Section 205 filing to address its proposed Capital Expenditures. If Owner and the NYISO only agree with respect to non-rate terms and conditions and the Owner rejects the APR, then the NYISO shall file the Parties' agreed upon non-rate terms and conditions under Section 205 of the FPA and the Owner shall submit its Owner Developed Rate under Section 205.[161]

Proposed Section 2.1 addresses the effective date and "Start Date" of the *pro forma* RMR Agreement. It states that the RMR Agreement shall become effective on a "Start Date" at the beginning of a calendar month and terminate on the termination date determined under Section 2.2. Under Section 2.1, the Party or Parties that file the RMR Agreement shall ask FERC to make the agreement legally effective on the "Start Date." Consistent with Commission precedent and tariff rules governing Interconnection Agreements, the Parties expressly agree to commence to implement and comply with the RMR Agreement on the proposed Start Date. However, their performance, including payments, are made subject to any condition or modification directed by the Commission. Similarly, Section 2.2 provides that if Parties agree, then Owner may begin incurring costs for Capital Expenditures that are included in the RMR Agreement pending Commission action. This provision corresponds to proposed Section 31.2.11.17.3 of the OATT.

Proposed Section 2.2 governs termination.[162] Under Section 2.2.1, the NYISO may unilaterally terminate an RMR Agreement on 90 days written notice if it determines that the RMR Generator will no longer be needed to meet a Reliability Need. Similar provisions

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[160] *See* above at fn 138

[161] These filing expectations are also reflected in Sections 31.2.11.11.3 through 31.2.11.11.5 of Attachment Y of the OATT.

[162] The NYISO proposes to describe in Section 31.2.11.19 of Attachment Y of the OATT termination provisions that are consistent with the termination requirements in Section 2.2 of the *pro forma* RMR Agreement.

allowing for termination when underlying reliability issues cease to exist have been accepted by the Commission in the RMR agreements of other ISOs/RTOs.[163] Section 2.2.2 empowers the NYISO to unilaterally terminate the RMR Agreement if the RMR Generator fails to meet the Minimum Operating Standards established in Section 7. Section 2 also describes the post-termination procedures that the NYISO and the RMR Generator will follow, including the ultimate deactivation (or market re-entry) of the former RMR Generator, notice to the NYPSC, and various other related matters. In particular, post-termination, the NYISO will cease to pay the APR or Owner Developed Rate, although certain specified Capital Expenditure or wind-down payments may continue, and the former RMR Generator will not be prohibited from entering into a Mothball Outage or becoming Retired.

Proposed Section 3.1 establishes the Owner's contractual obligation to operate, maintain, offer, and administer each RMR Generator in accordance with the NYISO's tariffs, manuals, other procedures as well as the terms of the *pro forma* RMR Agreement. Proposed Section 3.2 requires Owner to maintain All Risk Property Insurance, Commercial General Liability Insurance, and Umbrella Liability Insurance written for amounts and by insurance companies that are acceptable to the NYISO. To the extent the NYISO has an obligation to pay the Owner for Capital Expenditures, property insurance will reduce the risk of financial loss due to damage or destruction to the RMR Generator. General liability insurance will reduce the Owner's exposure in the event of third-party claims alleging bodily harm or property damage that may otherwise require the Owner to use financial resources needed to continue operating the RMR Generator. Umbrella liability insurance essentially increases the amount of commercial general liability coverage.

Proposed Section 3.3.1 requires Owner to provide the NYISO with copies of any contract, permits, or orders that is relevant to RMR matters when requested by the NYISO. Proposed Section 3.3.2 specifies that Owners may not enter into contracts during the term of an RMR Agreement that would impair or diminish an RMR Generator's ability to meet its obligations under the RMR Agreement or the NYISO Tariffs. Proposed Section 3.3.3 affirms that during the term of the RMR Agreement the Owner shall offer all of the Energy, Ancillary Services, and Unforced Capacity that the RMR Generator is capable of providing directly into the relevant ISO-Administered Market, except to the extent an RMR Generator is subject to a prior contractual commitment. Proposed Section 3.3.4 states that Owner must provide the Commission with a summary of all pre-existing contracts that might be the basis for an exception to the general rule set forth in Section 3.3.3. Any such pre-existing agreements would be identified in the RMR Agreement in a table to be included in Section 3.3.4.1.

Proposed Section 3.3.5 prohibits Owner from entering, modifying, extending, or renewing any contract to sell Energy, Ancillary Services, or Unforced Capacity from a RMR

[163] *See* Midcontinent Independent System Operator, Inc. Tariff, Attachment Y-1 Section 3 (giving MISO the authority to terminate SSR early for any reason, including end of underlying reliability need on 90 days' notice); and ISO-NE Section III, Market Rule 1, Appendix I, Form Of Cost-Of-Service Agreement Section 2.2.1 (giving ISO-NE the authority to terminate the agreement if the resource is no longer needed for reliability after 120 days' notice).

Generator that is inconsistent with it obligation to make the full quantity of those products that it is capable of producing available directly to the ISO-Administered Markets. This prohibition applies to the renewal of contracts that are temporarily accommodated under Section 3.3.3 of the *pro forma* RMR Agreement.

Proposed Section 3.3.6 contains standard terms governing transfers of ownership of RMR Generators. It includes an obligation to comply with all relevant regulatory and NYISO requirements. It also requires any authorized transferee to assume all of Owner's obligations under the RMR Agreement. Proposed Section 3.3.7 requires Owner to inform any subsequent purchaser of an RMR Generator of the obligation to repay the cost of Capital Expenditures, less depreciation, prior to re-entering ISO-Administered Markets, consistent with proposed Section 15.8.6 of Rate Schedule 8 of the Services Tariff.

Proposed Section 3.4 obliges Owner to timely comply with all NYISO testing requirements relevant to the performance of RMR Generators.

Proposed Section 3.5 reiterates the Energy market participation rules created by proposed new Sections 23.6.1.1 through 23.6.15 of the Services Tariff and makes them contractually binding. Section 3.6 does the same for the proposed reference level rules created by proposed new Sections 23.6.2.1 through 23.6.2.4.2 of the Services Tariff. It also contains language expressly acknowledging that a failure to timely update RMR Generator cost information could violate the Commission's regulations.

Proposed Section 3.6 refers to the reference level review and update that the NYISO and MMU will conduct in accordance with Section 23.6.2.2 of the Services Tariff and discussed above in Part VI.A. It includes an express acknowledgment by Owner that it reviewed and understood the reference levels determined by the NYISO under that provision.

Proposed Section 3.7 contains the rules governing capacity market offers by RMR Generators that are described in Part VI.B. Individual RMR Agreements will include tables setting forth the specific RMR Offer Price levels for the RMR Generator(s) that are the subject of an individual agreement.

Proposed Section 3.8 requires RMR Generators that provided Restoration Services, including "black start" services, or Voltage Support Services, during the most recent previous twelve month period that it participated in an ISO-Administered Market to provide these services during the term of the RMR Agreement.[164] Exceptions will be made to the extent that the Owner demonstrates that an RMR Generator is no longer capable of providing these services.

[164] Proposed Section 3.4.2 provides that if, prior to or during the twelve-month notice period, an RMR Generator that is required to provide Voltage Support Service under Section 3.8 of the RMR Agreement did not perform all testing that would be required to permit the RMR Generator to provide Voltage Support in the ISO-Administered Markets during the term of this Agreement, then the ISO shall require the RMR Generator to promptly test and shall permit the RMR Generator to provide Voltage Support in the ISO-Administered Markets during the term of this Agreement.

Proposed Section 3.9 reflect the rule established in proposed new Section 23.6.1.1 of the Services Tariff that RMR Generators must be bid into the NYISO-administered Energy and Ancillary Services markets using the ISO-Committed flexible bid mode. The provision allows Owner to ask the NYISO for permission to self-schedule the RMR Generator when it needs to do so. The NYISO will decide at its sole discretion whether to grant such requests.

Proposed Section 4 covers the RMR Generator compensation and settlement rules that are discussed in Part V above. Proposed Section 4.1 provides a general overview of what will be included in the APR or, alternatively, in an Owner Developer Rate. Section 4.2 describes the recovery of the various components that comprise Variable Costs. Section 4.3 governs RMR Avoidable Costs, including Capital Expenditures, and will include tables setting forth the costs of individual RMR Generators.

Proposed Section 4.3.2 references and summarizes the NYISO's proposed tariff rules related to Capital Expenditures which are discussed above in Part V.C. These include the respective $10 million or $25 million annual limits on Capital Expenditures that may be included in an APR, the NYISO review and verification requirements, and the rule that an Owner must separately seek the Commission's approval of any additional expenses beyond the defined limits. Section 4.3.3 describes and incorporates the NYISO's proposed tariff provisions related to the incurrence and potential recovery of Additional Costs which are discussed above in Part V.D. Section 4.3.4 reinforces the proposed tariff requirement that a former RMR Generator may not re-enter the ISO-Administered Markets if it has failed to repay the cost of all reimbursements for Capital Expenditures that it received from the NYISO under the RMR Agreement.

Proposed Sections 4.4 and 4.5 reference the provisions of Rate Schedule 8 of the Services Tariff governing the calculation of Availability and Performance Incentives. Each of these Sections will include tables containing RMR Generator-specific Availability and Performance Baselines which will be used in the determination of incentive payments (if any) as described in Part V.A above.

Proposed Section 4.6 references and summarizes the proposed tariff provisions addressing Owner Developed Rates, which are discussed in Part V.B above. It specifies that if an Owner proposes an Owner Developed Rate it will add supporting information and explain its proposal in this part of its RMR Agreement.

Proposed Section 4.7 recites the NYISO's proposed tariff rules regarding the applicability of penalties to RMR Generators, the cap on penalties for RMR Generators under an RMR Agreement with an APR, and the lack of a penalty cap for those that select an Owner Developed Rate. These rules are discussed in Part V.F above.

Proposed Section 4.8 defines the NYISO's obligation to pay wind-down costs if it terminates the RMR Agreement early in accordance with Section 2.2.1 because the Reliability Need has ended prior to the End Date specified in Section 2.2.5 of the RMR Agreement. Under the described circumstances, the NYISO shall pay any demonstrated and actual, reasonably incurred additional wind-down costs that the Owner must incur to place an RMR Generator in a

Mothballed Outage or Retired state in accordance with proposed new Sections 31.2.11.17.4 and 31.2.11.17.5 of the OATT. The NYISO shall not pay wind-down costs if the former RMR Generator continues to participate in the ISO-Administered Markets after the conclusion of the RMR Agreement. Owner may seek to recover additional wind-down costs by making a filing pursuant to Section 205 of the FPA if it disagrees with the NYISO's determinations. This proposal is reasonable and recognizes Generators' statutory filing rights.

Proposed Section 5 (Market Monitoring) affirms that nothing in the RMR Agreement precludes the NYISO from applying any of its market power mitigation measures to RMR Generators, the Owners, or Affiliates.

Proposed Section 6 (Reporting and Audit) gives the NYISO broad authority to review the books, records, documents, or other information in the possession of an RMR Generator and its Owner. Owner is also obligated to maintain detailed and accurate books and records for at least a six-year period to facilitate review by the NYISO. These provisions allow the NYISO to effectively review, substantiate, and verify any costs incurred by an Owner in connection with an RMR Agreement including those related to Capital Expenditures.

Proposed Section 7.1 establishes that the NYISO and RMR Generator will develop a Planned Outage Schedule for the first year of operation under the RMR Agreement, which will be appended to the RMR Agreement as a confidential schedule. Taking Planned Outages may reduce an RMR Generator's incentive payments and the NYISO and MMU will monitor for deviations from historic outage rates. Section 7.2 addresses Forced Outages. As with Planned Outages, Forced Outages may reduce incentive payments and will be reviewed by the NYISO and the MMU. Section 7.2 also defines additional Forced Outage notice requirements and shutdown procedures. Section 7.3 specifies NYISO-determined minimum operating, availability, and performance standards for individual RMR Generators. If RMR Generators fail to satisfy these minimum standards then the NYISO may, as noted above, terminate the RMR Agreement and cease repaying any Capital Expenditures.

Proposed Section 8 (Force Majeure Events) contains commercially reasonable *force majeure* terms. The NYISO has proposed language in Section 8.1, however, to expressly state that a "*Force Majeure* Event" shall "not include any economic hardship, the cost of or inability to procure fuel, or changes in market conditions that affect the price of energy or transmission." This language is necessary because it would be unreasonable, given the potentially critical importance of RMR Agreements to reliability, for an RMR Generator to be able to avoid its obligations under an RMR Agreement because of a change in market conditions, or a failure to timely procure fuel. In addition, Section 8.3 provides that if a *Force Majeure* Event results in a Forced Outage, then the Forced Outage provisions would apply (*i.e.*, Sections 7.2.1 through 7.2.9 of the RMR Agreement).

Proposed Section 9.1 establishes a streamlined and expedited dispute resolution procedure for most issues arising under the *pro forma* RMR Agreement. Under the NYISO's proposal, the Parties would have two calendar days to designate representatives to attempt to resolve a dispute informally. After ten calendar days either Party may refer the matter to the

Commission's Dispute Resolution Division. An expedited process is justified given the potentially critical importance of the performance of RMR Agreements to the NYISO's ability to maintain reliability.

Proposed Section 9.2.1 specifies that the NYISO shall not be liable for damages arising from acts or omissions associated with its performance of the *pro forma* RMR Agreement, except to the extent that it is found to have acted with gross negligence or engaged in willful misconduct. In those cases, the NYISO shall only be liable for direct damages. This is the same level of liability exposure that the NYISO has under the ISO Tariffs and is consistent with Commission precedent regarding ISO/RTO liability.[165] Section 9.2.2 specifies that except for penalties or as otherwise set forth in the ISO Tariffs, Owner is not liable under the *pro forma* RMR Agreement for certain damages, except in cases of gross negligence or willful misconduct. Section 9.2.3 requires the Owner to indemnify and hold harmless the NYISO for third-party claims resulting from the NYISO's performance of the agreement or the Owner's actions or omissions in connection with the RMR Agreement, except in cases of gross negligence or willful misconduct by the NYISO.

Proposed Section 9.3 expressly provides for specific performance to be a remedy available to either Party in the event of the other's non-performance. As Section 9.3 states, this is because non-performance under an RMR Agreement has the potential to result in irreparable harm that could not adequately be remedied by money damages alone.

Proposed Section 9.4 authorizes either party to an RMR Agreement to terminate in the event of the other's default unless the other party remedies the default within ten days of receiving written notice.

Proposed Section 11.5 (Amendments) specifies that RMR Agreements may only be revised through the mutual agreement of both Parties or via a unilateral filing under Section 206 of the FPA. Section 11.5 also expressly states that such Section 206 filings shall not be subject to the "public interest application" of the just and reasonable standard of review that would generally otherwise apply to "contract rates." Instead, they shall be subject to the version of the just and reasonable standard that is normally applied in Section 206 complaint proceedings concerning tariffs and tariff rates.

Proposed Section 11.10 establishes that the confidentiality provisions in Attachment F to the NYISO OATT and in Attachment O to the Services Tariff are applicable to Confidential Information and Protected Information provided under the auspices of the RMR Agreement. Section 11.10.2 provides that if during the course of an investigation or otherwise the Commission requests information that has been designated as confidential under an RMR Agreement, that the information will be provided (with notice given to the party whose confidential information is being disclosed).

[165] *See* NYISO OATT Section 2.11.3.

Finally, proposed Section 11.11 reiterates the procedures introduced in the Recitals that define the role of the NYISO and Owner in filing RMR Agreements. As noted above, the NYISO may file a complete executed RMR Agreement, or the NYISO may file a portion of the agreement while Owner makes a separate but concurrent filing addressing rate issues, depending on the extent to which the NYISO and Owner come to agreement regarding the terms and conditions of RMR services.

VIII. RMR COST ALLOCATION

Under the existing cost allocation methodology for its reliability planning process, the NYISO allocates the costs of solutions eligible for cost allocation under the OATT using a "needs-based" methodology, pursuant to which the NYISO will allocate the cost of a solution to those LSEs in New York that contribute to the Reliability Need and, therefore, benefit from the solution to that need.[166] In its RMR Order, the Commission directed the NYISO to specify the methodology by which it will allocate the costs of an RMR Agreement, and that the methodology must be consistent with the Commission's cost allocation principles and precedents.[167] In compliance with the RMR Order, the NYISO proposes to allocate the cost of an RMR Agreement in accordance with the existing needs-based methodology of its reliability planning process, as amended in the manner described in this filing to address the directives of the RMR Order.[168]

As revised, the NYISO's methodology will appropriately allocate the costs of an RMR Agreement or a regulated transmission solution eligible for cost allocation under the OATT to those LSEs that contribute to a Reliability Need and benefit from solutions to that Reliability Need. In addition, the revised methodology remains in compliance with the Commission's six Order No. 1000 regional cost allocation principles. The NYISO's revised cost allocation methodology is supported by the affidavit of Zachary G. Smith, Director - Transmission Planning for the NYISO.

A. Existing Cost Allocation Methodology for Reliability Planning Process

The NYISO's reliability planning process addresses Reliability Needs that arise on the BPTFs. For purposes of this process, Section 31.5.3 of Attachment Y establishes the methodology by which the NYISO allocates to LSEs the costs of a solution to a Reliability Need on the BPTFs that arises from a resource adequacy issue.[169] The Commission accepted this

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[166] Current OATT, Attachment Y, Section 31.5.3.

[167] RMR Order at P 20.

[168] As described in Part IX.A, the NYISO will use the cost allocation methodology in Section 31.5 of Attachment Y of the OATT to allocate that portion of the cost recoverable by the RMR Generator that is not otherwise recovered through the ISO-Administered Markets.

[169] With modified numbering in Section 31.5 of Attachment Y, the existing methodology for the reliability planning process is now located in Section 31.5.3.2.1.

existing methodology as compliant with its six Order No. 1000 regional cost allocation principles.[170]

The existing methodology establishes a three-step approach that focuses on whether there is a locational, statewide, or a bounded region need.[171] The NYISO performs this three-step process using the same system modeling that is used in identifying the Reliability Need necessitating the solution to be cost allocated. Step one focuses on those areas within the NYCA that have Locational Minimum Installed Capacity Requirements ("LCRs") (*i.e.*, allocation to LSEs in Load Zones G through K) ("LCR Zones"). The costs of upgrades in LCR Zones are allocated to LSEs in those Load Zones. In step two, the NYISO runs its reliability simulation model with all internal transmission constraints relaxed to determine whether an unconstrained NYCA would have a Loss of Load Expectation of less than 0.1 days per year. If not, the reliability upgrades necessary to meet the threshold are allocated to all Load Zones based on their coincident peak load contribution. LSEs in LCR Zones receive credit for meeting their LCRs under this calculation. If the reliability simulation shows that there are still Reliability Needs, step three requires the application of a binding interface test. This test identifies binding transmission constraints that are preventing the deliverability of capacity throughout the NYCA and allocates costs accordingly.

Under this existing methodology, the costs of a transmission solution to a Reliability Need on the BPTFs that arises from causes other than resource adequacy issues are deemed local and not allocated under the NYISO OATT.

B. Proposed Update to Existing Methodology

The NYISO is required by the RMR Order to have a methodology in place to allocate the costs of an RMR agreement. The NYISO may need to enter into an RMR Agreement in accordance with its revised Gap Solution process to address a Reliability Need that arises under circumstances in which the current cost allocation methodology for its reliability planning process does not apply. Specifically, the current OATT does not contain a methodology to allocate the costs of a solution to: (i) a Reliability Need on the BPTFs that arises from causes other than resource adequacy issues, or (ii) a Reliability Need that arises on the local, non-BPTF portion of the New York State Transmission System.

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[170] *New York Independent System Operator, Inc.*, 143 FERC ¶ 61,059 (2013) at PP 311-318 (finding the NYISO's cost allocation methodology for its reliability planning process as complaint with all, but, Regional Principle #4); *New York Independent System Operator, Inc.*, 148 FERC ¶ 61,044 (2014) at PP 296-297 (finding NYISO's cost allocation methodology for its reliability planning process as compliant with Regional Principle #4).

[171] The NYISO's existing cost allocation methodology for its reliability planning process precedes Order No. 1000. *See New York Independent System Operator, Inc.,* 125 FERC ¶ 61,068 (2008) (accepting cost allocation methodology for reliability planning process as consistent with Order No. 890 requirements).

The NYISO, therefore, proposes to revise the cost allocation methodology for its reliability planning process in Section 31.5.3 of Attachment Y in the manner described below, so that the NYISO can allocate under its OATT the costs of an RMR agreement or a transmission project that is eligible for cost allocation under the OATT that is required to address any type of Reliability Need.[172] As described below, the revised cost allocation methodology will appropriately allocate the costs of an RMR Agreement or regulated transmission solution, as applicable, to those LSEs that contribute to the Reliability Need and benefit from the solution to that need.

C. Hierarchy of Steps in the Revised Reliability Planning Process Cost Allocation Methodology

The NYISO will continue to apply its existing methodology for allocating the costs of a solution to a Reliability Need that arises from a resource adequacy issue as the first step of its proposed revised methodology. That is, the NYISO will first allocate under the revised methodology that portion of the costs of a solution that is attributable to resolving resource adequacy issues using its existing, Commission-accepted resource adequacy allocation methodology. If, after addressing the resource adequacy issue in this first step, there remains further issues that contribute to the Reliability Need, the NYISO will allocate those costs of the project that are attributable to these further reliability issues in the manner described in Parts VIII.E through VIII.H below in the following order.

The hierarchy of the NYISO's performance of the steps to resolve the different types of reliability issues is as follows: (i) resource adequacy, (ii) BPTF thermal transmission security, (iii) BPTF voltage security, (iv) local transmission security, (v) dynamic stability, and (v) short circuit.[173] The NYISO will proceed through this hierarchy until all of the costs of the solution have been addressed. This hierarchy reflects the level of importance of the reliability issue underlying each of these steps for the NYISO's maintenance of system reliability. Traditional electric planning practice begins by providing for resource adequacy with the design and siting of supply resources to provide sufficient resources to service load. This is followed by providing that the transmission system can accommodate the delivery of power from these supply resources to loads without creating thermal overloads, and ensuring that there is sufficient voltage support to accommodate this transmission. Local thermal and voltage transmission issues must then be addressed. Finally, system stability must be maintained without exceeding fault current ratings of circuit breakers.

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[172] A transmission project is eligible for cost allocation under the NYISO OATT as part of the NYISO's reliability planning process if it is a regulated backstop solution proposed by the Responsible Transmission Owner, it is selected by the NYISO as the more efficient or cost effective solution in its biennial reliability planning process, or it is identified as a transmission Gap Solution to be implemented to address a Reliability Need.

[173] OATT Attachment Y Section 31.5.3.2.

D. Resource Adequacy Cost Allocation Step

The first step of the revised cost allocation methodology for the reliability planning process will be the NYISO's existing resource adequacy cost allocation methodology described in Part VIII.A above. The Commission has previously determined that this methodology satisfies its six Order No. 1000 regional cost allocation principles, as it, among other things, allocates the costs of new transmission facilities to LSEs based on their contribution to the Reliability Need requiring the solution. This revised methodology will similarly allocate the costs of that portion of an RMR Agreement attributable to a resource adequacy issue to those LSEs that contribute to the Reliability Need necessitating the agreement.

E. BPTF Transmission Security Cost Allocation Step

i. Background

The NYISO's existing cost allocation methodology for the reliability planning process does not provide for the allocation of costs resulting from transmission security issues under the OATT. Such costs are currently deemed local and not allocated under the OATT.[174] An RMR Agreement may be required to address a Reliability Need resulting from a transmission security issue. In compliance with the RMR Order, the NYISO is proposing to have a new process step in place to allocate the costs attributable to a BPTF transmission security issue. This step is particularly important for allocating the costs of an RMR Agreement, as, in the NYISO's experience, Reliability Needs related to transmission security issues have predominantly resulted from previous generator retirements in New York.

The NYISO has previously informed the Commission as part of the Order No. 1000 proceeding of its intent to develop a new process step that would allocate through its OATT the costs of a solution to a Reliability Need resulting from a thermal or voltage transmission security issue.[175] The NYISO stated that it would work with its stakeholders to develop this step. In the meantime, the NYISO included a placeholder in Section 31.5.3.2.1.4 indicating that it would

[174] Current OATT Attachment Y Section 31.5.3.2.1.4.

[175] *See New York Independent System Operator, Inc.,* Order on Rehearing and Compliance, 151 FERC ¶ 61,040 (2015) at P 124 (acknowledging the NYISO's development of a transmission security cost allocation methodology and indicating that the Commission would address the methodology when it is filed by the NYISO); *New York Independent System Operator, Inc., and New York Transmission Owners*, Compliance Filing, Docket Nos. ER13-102-001, -002, -003 (September 15, 2014) at pp 16-17; *New York Independent System Operator, Inc.,* Order on Rehearing and Compliance, 148 FERC ¶ 61,044 (2014) at P 298; *New York Independent System Operator, Inc., and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-000 (October 15, 2013) at p 56.

take such action. Over the past two years, the NYISO has worked with its stakeholders to develop this new step.[176]

Under this step, the NYISO will first allocate the costs for the portion of a solution (RMR Agreement or regulated transmission) attributable to a thermal transmission security issue on the BPTFs, and then for the portion attributable to a voltage security issue on the BPTFs.

ii. BPTF Thermal Transmission Security Cost Allocation Step

For the portion of a solution (RMR Agreement or regulated transmission solution) attributable to a BPTF thermal transmission security issue, the NYISO will allocate the cost of the solution to those Subzones that contribute to a thermal overload on the BPTFs based on the relative contribution of the Load in each Subzone to the transmission security issue as described below and as illustrated in the example provided to stakeholders at the September 17, 2015, Electric System Planning Working Group meeting that is included in Attachment VI to this letter. The use of a Subzone evaluation methodology is consistent with the operation and market design of the NYISO's system and is the most granular level at which the NYISO's billing and settlement system can allocate the costs to LSEs.

The NYISO will perform the BPTF thermal transmission security step using the same system modeling that is used in identifying the Reliability Need necessitating the solution to be cost allocated.[177] The NYISO will first identify for each load bus in a Subzone a "nodal distribution factor" and "nodal megawatt flow." The "nodal distribution factor" represents the percentage of a Load that flows across the facility subject to the Reliability Need.[178] The sign (positive or negative) of the nodal distribution factor represents the direction of the flow.[179] The "nodal megawatt flow" represents the number of megawatts that flow across the facility subject to the Reliability Need due to the Load.[180] It is calculated by multiplying the amount of Load in megawatts for the bus (the "Nodal Load") by the nodal distribution factor (positive or negative) for the bus.[181]

Based on these determinations, the NYISO will identify which Loads contribute to the overloading of the facility and which help to resolve the overloading of the facility. The Nodal Load for a load bus with a positive nodal distribution factor contributes to the overloading

[176] The NYISO reviewed revisions to the existing cost allocation methodology with stakeholders on February 25, 2014, November 24, 2014, December 9, 2014, February 3, 2015, September 17, 2015, September 24, 2015, and October 13, 2015.

[177] Proposed OATT, Attachment Y, Section 31.5.3.2.2.1.

[178] Proposed OATT, Attachment Y, Section 31.5.3.2.2.1.

[179] Proposed OATT, Attachment Y, Section 31.5.3.2.2.1.

[180] Proposed OATT, Attachment Y, Section 31.5.3.2.2.2.

[181] Proposed OATT, Attachment Y, Section 31.5.3.2.2.2.

facility and is referred to as a "contributing Load."[182] The nodal megawatt flow for this Load is referred to as "contributing flow."[183] The Nodal Load for a load bus with a negative nodal distribution factor helps to resolve the overloading of the facility and is referred to as a "helping Load."[184] The nodal megawatt flow for this Load is referred to as "helping flow."[185]

The NYISO will then determine which of the contributing Loads and helping Loads have a material impact on the Reliability Need. The NYISO will first calculate the "contributing materiality threshold," which represents the percentage of all contributing Load that flows across the overloaded facility.[186] This is calculated by dividing the sum of all contributing flow by the sum of all contributing Load.[187] The NYISO will similarly calculate the "helping materiality threshold," which represents the percentage of all helping Load that flows across the overloaded element.[188] This is calculated by dividing the sum of all helping flow by the sum of all helping Load.[189] For each load bus, the nodal megawatt flow will be considered material if the nodal distribution factor is: (i) greater than or equal to the contributing materiality threshold, or (ii) less than or equal to the helping materiality threshold.[190]

The NYISO will calculate the net material flow for each Subzone as the sum of the material Subzone contributing flow and material Subzone helping flow for that Subzone.[191] Based on the net material flow, the NYISO will calculate the allocated flow for each Subzone.[192] If the net material Subzone flow for a Subzone is positive, the allocated flow is equal to the net material Subzone flow. If the net material Subzone flow for a Subzone is negative or zero, the allocated flow for that Subzone is zero. That is, based on the net material flow, a Subzone that is contributing to the overload will be allocated costs for the solution to the Reliability Need, whereas a Subzone that is helping to alleviate the overload will not be allocated costs.

The NYISO will then check the reasonableness of the resulting allocation to verify that sufficient contributing flow is being allocated costs. If the total allocated flow is less than a majority of the total contributing flow, represented as 60%, then the contributing materiality

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[182] Proposed OATT, Attachment Y, Section 31.5.3.2.2.3.

[183] Proposed OATT, Attachment Y, Section 31.5.3.2.2.3.

[184] Proposed OATT, Attachment Y, Section 31.5.3.2.2.4.

[185] Proposed OATT, Attachment Y, Section 31.5.3.2.2.4.

[186] Proposed OATT, Attachment Y, Section 31.5.3.2.2.3.

[187] Proposed OATT, Attachment Y, Section 31.5.3.2.2.3.

[188] Proposed OATT, Attachment Y, Section 31.5.3.2.2.3.

[189] Proposed OATT, Attachment Y, Section 31.5.3.2.2.4.

[190] Proposed OATT, Attachment Y, Section 31.5.3.2.2.5.

[191] Proposed OATT, Attachment Y, Section 31.5.3.2.2.5.

[192] Proposed OATT, Attachment Y, Section 31.5.3.2.2.6.

threshold will be reduced until the total allocated flow is at least 60% of the total contributing flow.[193]

Finally, the NYISO calculates the allocation percentage for each Subzone by dividing the total allocated flow for each Subzone by the total of all allocated flow in the NYCA.[194]

If a single solution addresses multiple BPTF thermal transmission security issues, the NYISO will calculate weighting factors based on the ratio of the present value of the estimated costs for individual solutions to the costs of resolving each BPTF thermal transmission security issue.[195] The ISO will apply the weighting factors to the cost allocation calculated for each Subzone for each individual BPTF thermal transmission security issue.[196]

The NYISO will exclude a Subzone from cost allocation if it does not exceed a threshold *de minimis* impact from the Subzone. If a Subzone is assigned a BPTF thermal transmission security cost allocation less than a *de minimis* dollar threshold, that Subzone will not be allocated costs. However, the total *de minimis* Subzones may not exceed 10% of the total BPTF thermal transmission security cost allocation.[197] The *de minimis* dollar threshold would be reduced until the total *de* minimis Subzones do not exceed 10% of the total BPTF thermal transmission security cost allocation. The *de minimis* threshold is initially $10,000.

iii. BPTF Voltage Security Cost Allocation Step

If, after addressing any resource adequacy or BPTF thermal transmission security issues, there remains a BPTF voltage security issue, the NYISO will allocate the costs of addressing the voltage security issue on a Load-ratio share to each Subzone to which the substation subject to the violation is connected as determined based on the total peak Load for that Subzone.[198] Transmission system voltage issues are inherently local in nature. It is, therefore, reasonable to allocate the costs of resolving these issues at the Subzone level, which is the lowest level of granularity at which the NYISO can allocate these costs.

F. Local Transmission Security Cost Allocation Step

The scope of the NYISO's existing reliability planning process and related cost allocation methodology concerns Reliability Needs that occur on the BPTFs. The RMR Order, however,

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[193] Proposed OATT, Attachment Y, Section 31.5.3.2.2.6.

[194] Proposed OATT, Attachment Y, Section 31.5.3.2.2.7.

[195] Proposed OATT, Attachment Y, Section 31.5.3.2.2.8.

[196] Proposed OATT, Attachment Y, Section 31.5.3.2.2.8.

[197] Proposed OATT, Attachment Y, Section 31.5.3.2.2.8. If the total allocation percentage of all *de minimis* Subzones is greater than 10%, then the *de minimis* threshold will be reduced until the total allocation percentage of all *de minimis* Subzones is less than or equal to 10%. *Id.*

[198] Proposed OATT, Attachment Y, Section 31.5.3.2.3.

requires that the NYISO administer all RMR agreements needed to address Reliability Needs in the NYCA, including those Reliability Needs that arise on the New York Transmission Owners' local, non-BPTF transmission systems. In compliance with the RMR Order, the NYISO proposes this local transmission security cost allocation step to allocate the costs under its OATT of an RMR Agreement that is required to address a non-BPTF thermal or voltage transmission security issue.[199]

If there are non-BPTF thermal overloads remaining after the NYISO has addressed the BPTF transmission security issues, the NYISO will allocate the costs of addressing these overloads to the Subzone in which the receiving terminal of the overloaded non-BPTF facility is assigned.[200] If an RMR Agreement addresses multiple non-BPTF overloads in multiple Subzones, the NYISO will allocate the costs of addressing these overloads on a Load-ratio share basis to each identified Subzone. Finally, if there are any remaining non-BPTF voltage violations, the NYISO will allocate the costs necessary to resolve these violations on a Load-ratio share basis to each Subzone to which the substation subject to the violation is connected.

The non-BPTF facilities are local in nature and used to secure local Load. Thermal overloads on non-BPTF facilities are primarily driven by the megawatt draw to serve local Load, and voltage violations are inherently a local issue driven by reactive power draw to service local Load. It is, therefore, appropriate to allocate the costs attributable to these violations on a Loadratio share basis to LSEs at the local Subzone level, which is the lowest level of granularity at which the NYISO can allocate these costs.

G. Dynamic Stability Cost Allocation Step

If, after completion of the preceding steps in the methodology, there remains a dynamic stability issue, the NYISO will allocate the costs of the portion of the solution attributable to resolving a dynamic stability issue to all Subzones in the NYCA on a Load-ratio share basis.[201] This additional step in the hierarchy is required because an RMR Agreement or transmission solution may be required to address a Reliability Need resulting from dynamic stability issues. Dynamic stability is a systemic issue that can lead to widespread cascading and outages. For this reason, the entire NYCA benefits from a solution resolving a dynamic stability issue.

H. Short Circuit Issues

Finally, if, after the completion of all of the prior steps in the methodology, there remains a short circuit issue, the short circuit issue will be deemed a local issue and related costs will not

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[199] Proposed OATT, Attachment Y, Section 31.5.3.2.4. This cost allocation methodology will not apply to transmission solutions. To the extent these local thermal or voltage issues are addressed in a manner other than through an RMR Agreement, the local transmission security issue will be deemed local and related costs will not be allocated under the OATT. *Id.*

[200] Proposed OATT, Attachment Y, Section 31.5.3.2.4.1.

[201] Proposed OATT, Attachment Y, Section 31.5.3.2.5.

be allocated under the OATT.[202] The NYISO proposes to insert this final step for completeness purposes as it clarifies how the NYISO will address a Reliability Need that results from a short circuit issue. In such case, a Generator would not be used to resolve the issue. Short circuit issues, or fault current issues, are inherently local, driven primarily by electrically-local generators, transmission system configuration, and transmission system impedance. Regional load and power transfers do not contribute to fault current, and therefore should not be allocated costs for Reliability Needs related to fault current.

I. Consistency with Order No. 1000 Cost Allocation Principles

Order No. 1000 required a method, or set of methods, for allocating the costs of new transmission facilities selected by the NYISO for purposes of allocating these costs under the NYISO OATT. The cost allocation methodology is required to satisfy six regional cost allocation principles established by the Commission in Order No. 1000.[203] The Commission has previously determined that the NYISO's current cost allocation methodology for its reliability planning process complies with these six regional cost allocation principles.[204] As described above, the NYISO's proposed enhancements to the cost allocation methodology for the regional planning process enable the NYISO to allocate the costs of RMR Agreements under circumstances not addressed in the current methodology. With the exception of the local transmission security step, these enhancements will apply equally to the allocation of the costs of a transmission solution selected by the NYISO as the more efficient or cost-effective transmission project in its biennial, reliability planning process. As explained below, the cost allocation methodology for the NYISO's reliability planning process, as revised in this filing, remains consistent with the Commission's six regional cost allocation principles.

i. Regional Principle #1

Regional Principle #1 provides that

> The cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits. In determining the beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to, the extent to which transmission facilities, individually or in the aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements.[205]

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[202] Proposed OATT, Attachment Y, Section 31.5.3.2.6. [203]

Order No. 1000 at PP 586, 603.

[204] *New York Independent System Operator, Inc.*, 148 FERC ¶ 61,044 (2014) at PP 296-297 (finding NYISO's cost allocation methodology for its reliability planning process as compliant with Regional Principle #4).

[205] Order No. 1000 at P 622.

The NYISO's revised cost allocation methodology maintains a "beneficiaries pay" approach and is compliant with Regional Principle #1. Under the NYISO's revised needs-based methodology, the NYISO will allocate under each step in the methodology only that portion of the solution (RMR Agreement or regulated transmission) to a Reliability Need that is attributable to the specific reliability issue addressed by that step. Within each step of the methodology, the NYISO will only allocate the costs of the solution to those LSEs that contribute to creation of the reliability issue, and therefore that benefit from the solution to the reliability issue. For the resource adequacy step, costs are appropriately allocated to LSEs at the Load Zone level. Load Zones constitute the major interfaces within which resource adequacy is modeled and arise as LSEs obtain resources and serve customers within these zones. For the transmission security steps, the reliability issues are inherently more local and nature, and the NYISO proposes to allocate costs to LSEs that contribute to such Reliability Needs at the Subzone level, which is the lowest level of granularity at which the NYISO can allocate such costs under its billing and settlement software and procedures. Finally, for the dynamic stability step, the NYISO proposes to allocate the costs to LSEs across the NYCA as the Reliability Need is a system-wide stability issue impacting all LSEs.

ii. Regional Principle #2

Regional Principle # 2 requires that: "those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those transmission facilities."[206] The NYISO's revised needs-based cost allocation methodology for the regional planning process is compliant with Regional Principle #2. The methodology will not allocate costs to customers that receive no benefit from the transmission facilities at issue. As described in response to Regional Principle #1, the methodology only allocates the costs of RMR Agreements or transmission projects to LSEs that contribute to the Reliability Need and, therefore, that benefit from the solution to that need.

iii. Regional Principle #3

Regional Principle # 3 requires that:

> If a benefit to cost threshold is used to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for the purpose of cost allocation, it must not be so high that transmission facilities with significant positive net benefits are excluded from cost allocation. A public utility transmission provider in a transmission planning region may choose to use such a threshold to account for uncertainty in the calculation of benefits and costs. If adopted, such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies and the Commission approves a greater ratio.[207]

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[206] Order No. 1000 at P 637.

[207] Order No. 1000 at P 646.

The NYISO's revised cost allocation methodology for the regional planning process complies with Regional Principle #3, as the NYISO is not using a benefit to cost threshold in the methodology.

iv. Regional Principle #4

Regional principle #4 requires that:

> The allocation method for the cost of a transmission facility selected in a regional transmission plan must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, the transmission planning process in the original region must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if the original region agrees to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the entities in the original region.[208]

The NYISO does not propose in this filing any changes to its tariff requirements applicable to Regional Principle #4. Specifically, the NYISO's revised cost allocation methodology for its regional planning process does not provide for the allocation of the costs of projects (whether RMR Agreement or regulated transmission) to entities outside of the NYCA. In addition, the NYISO has not proposed revisions to its existing tariff requirements that address identifying the consequences of the reliability transmission project on other regions, and the NYISO has not amended its tariff provision stating that it will not bear the cost of required upgrades in another region.[209] Accordingly, the NYISO's revised cost allocation methodology for the regional planning process complies with Regional Principle #4.

v. Regional Principle #5

Regional Principle # 5 requires that:

> The cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.[210]

The revised methodology in Section 31.5.3.2 of Attachment Y of the OATT provides transparent information on the methodology and data requirements for determining benefits and

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[208] Order No. 1000 at P 657.

[209] *See* OATT Attachment Y Section 31.2.2.7. The Commission accepted these tariff requirements as compliant with regional principle #4. *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 148 FERC ¶ 61,044 (2014) at P 335.

[210] Order No. 1000 at P 668.

identifying beneficiaries. The NYISO provides sufficient information for stakeholders to determine how the methodology and requirements were applied for a specific project. As an initial matter, the NYISO has not amended its existing resource adequacy cost allocation methodology, which step has already been determined by Commission to satisfy Regional Principle #5. The NYISO will administer the new cost allocation steps proposed in this filing in the same transparent manner as the existing step. The revised tariff language in Section 31.5.3.2 includes detailed descriptions of the proposed steps in the methodology, including the NYISO's process steps and formulas for administering them. In addition, the NYISO has reviewed examples of the application of these formulas with stakeholders, which presentation material is available on the NYISO's website.[211] Finally, the NYISO presents the results of its analysis to stakeholders and on its website. Accordingly, the NYISO's revised cost allocation methodology for the regional planning process complies with Regional Principle #5.

vi. Regional Principle #6

Regional principle # 6 requires that:

> A transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan, such as transmission facilities needed for reliability, congestion relief, or to achieve Public Policy Requirements. Each cost allocation method must be set out clearly and explained in detail in the compliance filing for this rule.[212]

The NYISO's proposed tariff revisions in this filing do not amend the NYISO's existing approach, accepted by the Commission, of using different cost allocation methodologies for its reliability planning process (Attachment Y Section 31.5.3), economic planning process (Attachment Y Section 31.5.4), and Public Policy Transmission Planning Process (Attachment Y Section 31.5.5). The Commission has previously determined that each methodology satisfied the requirement to be set out clearly and explained in detail. As described in response to Regional Principle #5, the NYISO has described its proposed revisions to the cost allocation methodology for the reliability planning process in detail in Section 31.5.3.2, including detailed process steps and formulas. Therefore, the NYISO's revised cost allocation methodology for the regional planning process is compliant with Regional Principle #6.

J. Other Revisions to Cost Allocation Provisions

Section 31.5.3.2.1.6 of Attachment Y currently requires the NYISO to file with the Commission to indicate whether it will continue to apply its existing reliability planning process

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[211] *See, e.g., Transmission Security Cost Allocation* Presentation (September 24, 2015) available at:
http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_espwg/meeting_materials/2015-09-24/TS_cost_allocation_ESPWG_2015-09-24.pdf.

[212] Order No. 1000 at P 685.

cost allocation methodology for the planning cycle beginning on January 1, 2016, or will propose a revised methodology. As part of its development of the revised cost allocation process described in this filing, the NYISO reviewed its cost allocation methodology, which was previously accepted by the Commission as consistent with the six Order No. 1000 regional cost allocation principles, with its stakeholders and determined that it should continue to use the foregoing methodology, as modified in this filing, going forward without expiration. The NYISO, therefore, requests that the Commission accept this filing as satisfying its filing requirement in Section 31.5.3.2.1.6 and proposes to remove that provision.

The NYISO proposes the following additional cost-allocation related clarifications:

- Clarify throughout Section 31.5 of Attachment Y that the cost allocation requirements apply to the allocation of the costs of RMR Agreements and transmission Gap Solutions.[213]

- Relocate from Section 31.5.3.1.2.5 to Section 31.5.1.3 language indicating that costs related to deliverability of a resource are addressed under the NYISO's deliverability procedures in Attachment S of the OATT.

- Include in Section 31.5.3.1.3 a reference to Subzones, along with Load Zones, as the new transmission security cost allocation methodologies are allocated on a Subzone basis.

IX. COST RECOVERY AND SETTLEMENT

The NYISO proposes to revise Section 31.5.6 of Attachment Y of the OATT to provide that an RMR Generator operating under an RMR Agreement will be paid in accordance with Rate Schedule 8 of the Services Tariff, and the NYISO will recover costs related to the RMR Agreement from LSEs in accordance with Schedule 14 of the OATT.[214] These new schedules are described below.

A. Services Tariff Rate Schedule 8

The NYISO proposes to establish a new Rate Schedule 8 of the Services Tariff pursuant to which it will pay RMR Generators an APR or an Owner Developed Rate. All of the components of the APR, including the Availability Incentive Payment and the Performance Incentive Payment are discussed in detail in Part V.A above. The rules the ISO will use to provide compensation under an Owner Developed Rate are addressed in Part V.B above. The proposed limit on the assessment of penalties to RMR Generators under an RMR Agreement

[213] OATT Attachment Y Sections 31.5.1.1, 31.5.1.6, 31.5.1.7, 31.5.3.1, 31.5.3.2, and 31.5.5.1.

[214] Proposed OATT Sections 31.5.6, 31.5.6. The NYISO also proposes clarifying revisions in Sections 31.5.6, 31.5.6.1, and 31.5.6.2 of Attachment Y of the OATT that regulated transmission solutions, including transmission Gap Solutions, to Reliability Needs will recover costs through Schedule 10 of the OATT.

with an APR is addressed in Part V.F above. Finally, the "claw-back" rules that require repayment of Capital Expenditures if an RMR Generator returns to the markets at any point after the conclusion of its RMR Agreement are addressed in Part V.E above.

The proposed compensation requirements described in Rate Schedule 8 of the Services Tariff are supported by the affidavit of Lorenzo P. Seirup, Supervisor of Market Mitigation and Analysis - Installed Capacity for the NYISO.

B. OATT Schedule 14

The NYISO proposes to establish a new Schedule 14 of the OATT pursuant to which the charges and credits associated with an RMR Generator operating under an RMR Agreement will be allocated to "RMR LSEs." RMR LSEs are all of the LSEs, including Transmission Owners, competitive LSEs, and municipal Load, serving Load in the Load Zone or Subzone (as applicable) to which the charge or credit is allocated.[215]

i. RMR Charge

As described in Part IX.A above, the NYISO will make payments under a new Rate Schedule 8 of the Services Tariff to an RMR Generator, which payments will be comprised of: (i) its avoidable cost that it is authorized to recover under its APR or the cost that it is authorized to recover based on its Owner Developed Rate, as applicable, and (ii) its Variable Costs. The NYISO will recover these costs in part from the revenue recovered in the ISO-Administered Markets based on the RMR Generator's participation in them. The NYISO will recover the remainder of the costs (if any), or the crediting of any surpluses when an RMR Generator's market revenues exceed what it is owed under an RMR rate, through the RMR Charge proposed in Section 6.14.3 of the Services Tariff.

The RMR Charge will be calculated using one of two formulas based on the rate pursuant to which the RMR Generator is providing service under an RMR Agreement. Section 6.14.3.3 establishes the formula for the RMR Charge for an RMR Generator providing service under an APR, and Section 6.14.3.4 establishes the formula for the RMR Charge for an RMR Generator providing service under an Owner Developed Rate. Pursuant to these formulas, if the market revenue is not sufficient to cover the costs that the RMR Generator is authorized to recover, the NYISO will recover the difference from the RMR LSEs through the RMR Charge. If, on the other hand, the market revenue that the RMR Generator "earns" is greater than the costs that the RMR Generator is authorized to recover, the excess amount recovered from the ISO-Administered Markets will be credited to the RMR LSEs through the RMR Charge. The RMR Charge will be calculated each day. The daily calculations will be netted over the course of a week for billing and settlement purposes. The NYISO will allocate the costs of the charge or credit to Load Zone(s) or Subzone(s), as applicable, in accordance with the cost allocation requirements in Section 31.5.3 of Attachment Y, as described in Part VIII above.[216] The NYISO

[215] Proposed OATT Section 6.14.1.

[216] Proposed OATT Sections 6.14.2, 6.14.3.

will charge or credit each RMR LSE based on its share of Actual Energy Withdrawals in its applicable Load Zone or Subzone.[217]

ii. Recovery of Incentive Payments

The NYISO will charge RMR LSEs a Performance Incentive Charge on a monthly basis to recover the cost of any Performance Incentive Payment made to the RMR Generator for that month under Schedule 8 of the Services Tariff, as described in Part V.A above.[218] The NYISO will calculate the Performance Incentive Charge each RMR LSE must pay in accordance with Section 6.14.4 of Schedule 14. The NYISO will also charge RMR LSEs an Availability Incentive Charge to recover the costs of any Availability Incentive Payment made to the RMR Generator under Schedule 8 of the Services Tariff, as described in Part V.A above.[219] The NYISO will calculate the Availability Incentive Charge each RMR LSE must pay in accordance with Section 6.14.5 of Schedule 14 for the billing period following the first month of a Capability Period for any Availability Incentive Payment earned for the previous Capability Period.

The NYISO will allocate the costs of any Performance Incentive Charge or Availability Incentive Charge to the LSEs in the Load Zone(s) or Subzone(s), as applicable, in accordance with the cost allocation requirements in Section 31.5.3 of Attachment Y, as described in Part VIII above.[220] The NYISO will charge each RMR LSE the costs of the Performance Incentive Charge or Availability Incentive Charge based on its share of Actual Energy Withdrawals in its applicable Load Zone or Subzone.[221]

iii. Distribution of Recovered Capital Expenditure Costs

The NYISO may recover from an RMR Generator certain Capital Expenditures in accordance with Section 15.8.6 of Rate Schedule 8 of the Services Tariff, as described in Part V.C above. In such case, the NYISO will credit the recovered costs to RMR LSEs in the next monthly invoice following the receipt of payment from the RMR Generator in accordance with the formula in Section 6.14.6 of Schedule 14. The NYISO will allocate the costs of the Capital Expenditure credit to the applicable Load Zone(s) or Subzone(s) in accordance with the cost allocation requirements in Section 31.5.3 of Attachment Y, as described in Part VIII above.[222]

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[217] Proposed OATT Sections 6.14.2, 6.14.3.

[218] Proposed OATT Section 6.14.4.

[219] Proposed OATT Section 6.14.5.

[220] Proposed OATT Section 6.14.2.

[221] Proposed OATT Sections 6.14.2, 6.14.4, 6.14.5. [222]

Proposed OATT Section 6.14.2.

The NYISO will provide each RMR LSE the credit based on its share of Actual Energy Withdrawals in its applicable Load Zone or Subzone.[223]

C. OATT Schedule 10

Schedule 10 of the OATT establishes the Reliability Facilities Charge, pursuant to which the NYISO recovers the costs of those regulated transmission projects eligible for cost allocation and recovery under the NYISO OATT, including transmission Gap Solutions. The NYISO proposes minor, conforming revisions to Schedule 10 of the OATT to clarify the applicability of Schedule 10 to transmission Gap Solutions identified under the Gap Solution process for implementation and to explicitly carve out from Schedule 10 cost recovery for RMR Agreements that are covered under Rate Schedule 14 of the OATT. In addition, as the NYISO's revised cost allocation methodology for its reliability planning process will allocate costs at either the Load Zone or Subzone level based on the specific methodology being applied, the NYISO proposes to revise the cost recovery formulas in Section 6.10.3 to reference both Load Zones and Subzones, as applicable.

X. OTHER MATTERS

A. MMU/MMA Responsibilities

The NYISO is proposing to involve its independent MMU in multiple aspects of the RMR tariff rules, such as providing comment to the NYISO as it reviews costs of Initiating Generators and proposed Gap Solutions, and reviews and ranks offers from potential RMR Generators.[224] In order to increase transparency and stakeholder confidence, the proposed tariff provisions also specify that the MMU is to publish a report in the event that the NYISO enters into an RMR Agreement. As is required by Order No. 719,[225] all tariff revisions describing the MMU's RMR-related functions must be incorporated into Attachment O to the Services Tariff, (the NYISO's Market Monitoring Plan),[226] in addition to appearing in other relevant portions of the tariffs. The MMU has authorized the NYISO to state that it has reviewed its new proposed responsibilities and agrees that they will provide considerable transparency about the selection process to interested parties.

As noted above, consistent with longstanding practices related to the development of Generator reference levels, the MMU will consult with the NYISO when the NYISO is determining, and potentially adjusting or updating RMR Generator reference levels. Proposed new Section 30.4.6.2.13 incorporates provisions describing the MMU's involvement in calculating and changing reference levels for RMR Generators into Attachment O.

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[223] Proposed OATT Sections 6.14.2, 6.14.6.

[224] Proposed OATT Attachment Y Section 31.2.11.18.

[225] *See* Wholesale Competition in Regions with Organized Electric Markets, 125 FERC ¶ 61,071 (2008).

[226] Proposed Services Tariff Attachment O Section 30.4.6.

Proposed new Section 30.4.6.10 states that the MMU and the NYISO shall monitor deviations from RMR Generators' historic planned outage schedules and historic forced outage rates. The MMU and NYISO may also request information regarding outage schedules and forced outages which must be promptly submitted by RMR Generators. The MMU's role in these matters is described in Section 7 of the *pro forma* RMR Agreement. The MMU will not be a party to RMR Agreements, which necessitates the inclusion of language in the Market Monitoring Plan to address this MMU function.

As noted above, the MMU will be responsible for reviewing any Owner Developed Rate that is filed with the Commission and for participating in Commission proceedings concerning such filings. Proposed new Section 30.4.6.11 formally assigns this function to the MMU. The MMU's role is also described in Section 4.5 of the RMR Agreement. The MMU will not be a party to the RMR Agreements. It is reasonable for the MMU to perform this function because it is an independent entity with access to all cost data the NYISO receives[227] and is well-positioned to evaluate and comment on Owner Developed Rate proposals.

Finally, the NYISO is proposing to revise Section 30.3.3 of Attachment O to clarify that its MMA shall "participate in and review the ISO's development, implementation and administration of Reliability Must Run Agreements." This is an appropriate and necessary function for MMA to perform. It is consistent with Commission policy, as expressed in Order No. 719, and will not interfere with the MMU's independence or ability to fulfill its obligations. Adding a referencing to MMA's role in this area is likewise consistent with Order No. 719's requirements.

The proposed MMU/MMA responsibilities in connection with this compliance filing are supported by the affidavit of Shaun Johnson, Director of the Market Mitigation and Analysis Department for the NYISO.

B. Market Power Mitigation of Uneconomic Retention and Repowering Pursuant to Agreements of Generators Needed for Reliability

In Docket No. EL13-62 the Commission is considering whether resources under certain kinds of repowering agreements should be subject to mitigation under the NYISO's buyer-side capacity market power mitigation measures ("BSM Rules"). On June 17, the NYISO filed a compliance report in that proceeding explaining that additional analysis of uneconomic retention and repowering was needed. The NYISO expressed that it would be premature for the Commission to take further action prior to the NYISO's filing in this docket, and the NYISO's report on its subsequent and additional analysis.[228] The NYISO anticipated that this filing would propose tariff revisions that could "impact the circumstances in which agreements (which could

[227] Proposed Services Tariff Attachment O Section 30.6.2.

[228] *New York Independent System Operator, Inc.*, Compliance Report at p 5 and Attachment 2 at pp 3-5 (June 17, 2015). The NYISO will address the issues related to repowering projects not needed for reliability in its January 2016 further compliance report in Docket No. EL13-62.

include repowering provisions) will be executed in response to reliability needs." As noted below, this filing in fact contains such proposed revisions.[229]

On October 9, 2015, the Commission issued an order in Docket No. EL15-64-000 which indicated that mitigation issues "relating to repowering projects needed for reliability are best addressed in Docket No. EL15-37-000 and that issues related to repowering projects not needed for reliability are best addressed in Docket Nos. EL13-62-001 and -002."[230]

The RMR Order made it clear that any agreements to retain generators needed for reliability should be under the NYISO's RMR tariff process. Accordingly, the NYISO considered issues related to uneconomic retention and repowering pursuant to agreements involving Generators needed for reliability as it developed this compliance filing. The NYISO recognized that there could be a price suppression concern if a buyer-side entity were to encourage an uneconomic Generator to repower or remain in the market, including to solve a Reliability Need, through governmental subsidies or other out of market payments.

Proposed new Sections 31.9.2.1(i) and 31.9.3.3(g) of Appendix F to the OATT require that existing and proposed new Generators provide information on all sources of revenue. Under proposed Section 31.2.11.8.1.4 of the OATT, the NYISO will use that information to determine the appropriate revenue offsets in order to determine RMR Avoidable Costs and the net present value of potential solutions. Those cost determinations will be utilized by the NYISO under proposed Section 31.2.11.8.2 to identify if there is any non-generator solution with a distinctly higher net present value than a generator solution to address a Reliability Need (*i.e.,* if an RMR Generator would not be the most economic solution to the Reliability Need). The RMR Avoidable Cost determinations would also be used by the NYISO if there was no non-generator Viable and Sufficient Gap Solution or a non-generator solution had not been identified. In those instances, the NYISO would provide each Initiating Generator and Generator that is a Viable and Sufficient Gap Solution its RMR Avoidable Costs. If only one Generator could be the solution, the NYISO would provide it an opportunity to enter into an RMR Agreement. If more than one could be the solution, the NYISO would solicit offers to provide service pursuant to an RMR Agreement and determine the highest net present value offer. These proposed rules minimize the likelihood that an uneconomic generator that otherwise would exit the market might receive a subsidy or other benefit from an LSE or governmental entity simply to give it a financial incentive to stay in the market. The RMR tariff rules would not provide certainty that a subsidized uneconomic generator would be selected to meet a Reliability Need.

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[229] *New York Independent System Operator, Inc.*, Compliance Report, Attachment 2 at p 2 (June 17, 2015).

[230] *New York Public Service Commission*, Order on Complaint and Directing Compliance Filing, 153 FERC ¶ 61,022 (2015), at P 93.

The proposed tariff rules specify that an RMR Generator can only schedule a Bilateral Transaction to the extent expressly authorized in its RMR Agreement.[231] Therefore, when determining RMR Avoidable Costs and net revenues, and before entering into an RMR Agreement, the NYISO would determine whether the bilateral agreement for the Energy, Capacity or Ancillary Services was an arm's length transaction or entered into in the ordinary course of business. If it was not, the NYISO would bring this information to the attention of the Commission and would not consider revenues from the agreement in its calculation of the Generator's net present value.

The proposed rules also specify that an RMR Generator cannot enter into any new bilateral, cannot enter into any new agreement, or extend any other agreement that impairs or otherwise diminishes its ability to comply with its obligation under an RMR Agreement, or that limits its ability to provide Energy, Capacity, or Ancillary Services directly to the ISO-Administered Markets. RMR Generators, therefore, would not be able to receive any additional subsidies during the course of the RMR Agreement.

The NYISO's proposed tariff revisions specify that if there is a distinctly higher net present value non-generator Viable and Sufficient Gap Solution that could have been available for a period during the term of the RMR Agreement, the RMR Generator's RMR Avoidable Costs will be used to establish the price of its offers into the ICAP Spot Market Auctions, rather than a $0.00/kW-month offer.[232] Therefore, even if a Generator that is not the most economic solution to the Reliability Need is selected as the RMR Generator, this uneconomic Generator's offers would be at the RMR Offer Price. This provision is designed to ensure that the economic solution (in this scenario which triggers a non-zero RMR Offer Price,) is identified even when there may be an incentive to indirectly cause the Generator to be retained uneconomically through an RMR Agreement by not identifying, or unreasonably delaying, the most economic alternative solution. Thus an uneconomic Generator's offers into the capacity auction would not provide a benefit to the LSE or Governmental entity that provided the subsidy, effectively eliminating the incentive to subsidize an uneconomic Generator that is needed to meet a Reliability Need.

The NYISO recognizes that it is theoretically possible that the highest net present value solution could be a Generator which includes a requirement and costs to repower. However, the proposed rules provide that if a Generator continues to operate after the end of the term of an RMR Agreement, it must first repay the NYISO the non-depreciated amount of all monies paid for Capital Expenditures.[233] Therefore, to the extent an uneconomic Generator that repowered

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[231] See Proposed Services Tariff Section 5.12, and OATT Attachment Y Appendix G *Form of Reliability Must Run Agreement* at Section 3.3.

[232] The price is the "RMR Offer Price." *See* proposed Services Tariff Sections 23.2.1 and 23.4.5.8.

[233] *See* proposed MST Section 15.8.6, Rate Schedule 8; referred to in Part V.E above and among the NYISO and stakeholders as the "clawback."

under an RMR Agreement, the RMR rules eliminate the value of the Capital Expenditures that would continue past the date it ceased to provide service pursuant to an RMR Agreement.

For these reasons, the NYISO believes that the structure of the RMR tariff provisions will provide a disincentive for the uneconomic retention or repowering of a generator that has noticed its intent to retire and that might be needed to address a Reliability Need. The NYISO also does not believe additional market power mitigation measures applicable to uneconomic retention and repowering projects needed for reliability are necessary because even if an LSE or Governmental entity had an incentive to suppress market prices, its ability to do so is curbed by the design of the proposed RMR rules.

The capacity market power mitigation requirements and discussion in this section are supported by the affidavit of Lorenzo P. Seirup, Supervisor of Market Mitigation and Analysis - Installed Capacity for the NYISO.

C. OATT Attachment F

The NYISO proposes to revise Attachment F to the OATT to clarify that the following information will not be considered Confidential Information under its Code of Conduct: (1) identification of Generators entering service, becoming Retired, or entering a Mothball Outage or an ICAP Ineligible Forced Outage, including the date thereof, and (2) New York State Transmission System reliability impacts that would occur if a Generator was unavailable, such as due to becoming Retired or entering a Mothball Outage or an ICAP Ineligible Forced Outage.[234] Transparency concerning both Generator outage states and the reliability impact of the unavailability of a particular Generator will, consistent with the Commission's regional planning principles, add further to the openness and transparency of the NYISO's process, and will also bolster stakeholder confidence in the process that may lead to RMR Agreements and possible non-generation alternatives.

D. Clarifying Existing References to "Deactivation"

Section 25.9.3.1 of Attachment S of the OATT establishes requirements for a facility to maintain its Capacity Resource Interconnection Service status as long as its facility remains capable of operating at the capacity level studied and is not "deactivated" as that term is defined in Section 25.9.3.1. In its tariff revisions proposed in response to the RMR Order, the NYISO uses the term deactivation in a different context. To avoid confusion regarding the use of the term "deactivation" throughout the ISO Tariffs, the NYISO proposes to replace the term "deactivation" as used in Section 25.9.3.1 with "CRIS-inactive" and to make conforming changes throughout the ISO Tariffs.[235] The proposed revision does not change the substance of these provisions.

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[234] Proposed OATT Attachment F, Section 12.4.

[235] Proposed OATT Attachment S Sections 25.9.3.1; proposed Services Tariff Sections 5.16.1.1.1, 5.18.2.3.2, 5.18.3.3.2, 5.18.5.2.

E. Conforming Changes to Generator Outage Provisions

Section 5.18 of the Services Tariff establishes the requirements for Generator outage states and Generator obligations while in such states, including the requirements applicable to Generators in a Forced Outage, Ineligible ICAP Forced Outage, or Mothball Outage.[236] The NYISO proposes to revise certain requirements in Section 5.18 to conform the outage requirements in this section with the requirements developed in response to the RMR Order for the NYISO to address proposed Generator deactivations. Specifically, the NYISO proposes to revise the requirements in Sections 5.18.3.1 and 5.18.3.2 to clarify that before a Generator can enter into a Mothball Outage, it must satisfy the prior notice requirements described above that may result in the commencement of the Gap Solution process, including providing certain information in its Generator Deactivation Notice.

The NYISO also proposes to delete Section 5.18.4.1(ii), which currently establishes requirements regarding returns to service that are superseded by the new RMR requirements.[237] In addition, the NYISO proposes to delete Section 5.18.4.1.1, which currently governs filings to establish the rate and non-rate terms for the return to service of a Generator in an outage state. These requirements are also superseded by the new RMR service requirements. Finally, the NYISO proposes additional revisions to Sections 5.18.4.1 and 5.18.4.2 to make non-substantive improvements to existing language.

F. Conforming Changes to Voltage Support Service Requirements

As described in Part VII above, the *pro forma* RMR Agreement requires an RMR Generator that has provided Voltage Support Service over the last twelve months of operation in the ISO-Administered Markets to provide this service during the term of the RMR Agreement, or demonstrate why it cannot continue to provide the service. The purpose of this requirement is to ensure that RMR Generators provide all of the benefits they are capable of providing to the ISO-Administered Markets during the term of their RMR Agreement. The RMR Agreement further provides that if the RMR Generator has not timely performed the testing to provide Voltage Support Service during the term of the Agreement, the NYISO shall require the RMR Generator to promptly perform the required testing. The NYISO proposes to revise Rate Schedule 2 of the Services Tariff that establishes the testing and payment requirements for Voltage Support Service to ensure that RMR Generators provide all of the benefits they are capable of providing to the ISO-Administered Markets.[238]

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[236] The Commission recently accepted these Generator outage states requirements. *See New York Independent System Operator, Inc.*, Letter Order, Docket No. ER14-2518-003 (October 15, 2015) (accepting NYISO's compliance filing regarding proposed tariff revisions to define certain types of generator outage states); *New York Independent System Operator, Inc.*, 151 FERC ¶ 61,075 (2015) (accepting, in part, NYISO's proposed tariff revisions to define certain types of generator outage states and directing a compliance filing).

[237] The deleted language refers to a Transmission Owner's negotiation with a Generator regarding its return to service.

[238] Proposed Services Tariff Section 15.2 and 15.2.1.1.

G. Additional Ministerial Modifications in the OATT and Services Tariff

The NYISO also proposes several non-substantive modifications to correct omissions, grammatical, and typographical errors related to implementation of the tariff modifications proposed to comply with the RMR Order, or that were identified in the course of drafting those changes and that need to be addressed for the tariff to read logically and consistently.

XI. EFFECTIVE DATE

The NYISO respectfully requests that the Commission make this compliance filing effective on October 20, 2015, *i.e.,* one day after this filing is made. To the extent that the Commission deems it to be applicable, the NYISO requests a waiver of the normal notice period under Section 35.3 of the Commission's regulations to allow the requested effective date. There is good cause for waiver because the Commission has declared that the NYISO rules must include RMR procedures. A waiver would permit the NYISO to implement Commission-mandated RMR rules sooner. It would also facilitate the NYISO's application of its proposed compliance tariff revisions to any deactivations that may be proposed in the near future.

As noted above, the NYISO does not expect to complete the implementation of billing and settlement software changes needed to support payments to RMR Generators until late 2016. The NYISO emphasizes that this implementation date can only be met if the Commission accepts the NYISO's compliance with no more than limited modifications in a reasonably timely manner. If the Commission requires material modifications to the proposal or a Commission order is delayed then the implementation of payments to RMR Generators could be delayed significantly further. Nevertheless, the NYISO is seeking an October 20 effective date for entire compliance proposal as a whole so that it will have authority to implement the non-billing and settlement related components immediately.

XII. SERVICE

The NYISO will send an electronic copy of this filing to the official representative of each party to these proceedings, to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission and the New Jersey Board of Public Utilities. Because the NYISO is reporting information herein that relates to the Commission's compliance directives in Docket No. EL13-62, it will also serve this filing on the parties that docket. In addition, the complete public version of this filing will be posted on the NYISO's website at www.nyiso.com.

XIII. COMMUNICATIONS

Communications and correspondence regarding this filing should be directed to:

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XIV. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this compliance filing without requiring any modifications, make the proposed compliance tariff revisions effective on October 20, 2015, and determine that with this filing, the NYISO has fully complied with the RMR Order.

Respectfully submitted,

/s/ Alex M. Schnell
Karen Georgenson Gach
Carl F. Patka
Alex M. Schnell
Gloria Kavanah

cc: Michael Bardee
Anna Cochrane
Kurt Longo
Max Minzner
Daniel Nowak
Larry Parkinson
J. Arnold Quinn
Kathleen Schnorf
Jamie Simler
Kevin Siqveland
Gary Will

[239] Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2014)) is requested to the extent necessary to permit service on counsel for the NYISO in both Richmond, VA and Washington, DC.