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

September 19, 2016

By Electronic Delivery

Honorable 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 No. ER16-120-___

Dear Secretary Bose:

The New York Independent System Operator, Inc. ("NYISO") hereby submits this compliance filing to fulfill the directives of the Federal Energy Regulatory Commission ("Commission") in its April 21, 2016, *Order on Compliance and Rehearing* in the above-captioned proceeding ("April Order") and in accordance with the Commission's May 26, 2016, *Notice of Extension of Time*.[1] The NYISO respectfully requests that the compliance tariff revisions proposed in this filing become effective on October 20, 2015 as described in Part VII below.[2]

The NYISO's compliance filing in response to the April Order was due by 5 PM on Monday, September 19, 2016. Due to technical issues in the electronic submission of the NYISO's filing, the NYISO was unable despite its best efforts to submit its compliance filing until after the 5 PM deadline. Given the circumstances, there was no opportunity for the NYISO to seek an extension of time before the deadline expired. Consequently, the NYISO respectfully requests that the Commission grant any required motions to accept the compliance filing one day out of time.

I. SUMMARY OF DIRECTIVES AND COMPLIANCE FILING

The NYISO submits with this filing proposed revisions to its Open Access Transmission Tariff ("OATT") and Market Administration and Control Area Services Tariff ("Services

[1] *N.Y. Indep. Sys. Operator, Inc.*, Order on Compliance and Rehearing, 155 FERC ¶ 61,076 (2016) ("April Order"); *N.Y. Indep. Sys. Operator, Inc.*, Notice of Extension of Time, Docket No. ER16-120-000 (May 26, 2016).

[2] The NYISO requests in Part VII below a separate effective date of April 1, 2016, for Section 31.11 of the OATT - Form of Operating Agreement.

Tariff") to address the Commission's directives in the April Order and in its initial February 19, 2015 order directing the NYISO to establish reliability must run ("RMR") tariff requirements ("Initial RMR Order").[3] All of the proposed revisions included in this compliance filing are expressly required by the April Order and Initial RMR Order, are necessary to implement or clarify the existing tariff language to accommodate the Commission's directives, or are non-substantive organizational or clarifying adjustments of the kind that the Commission has previously permitted in compliance filings.[4] Affidavits in support of this compliance filing are provided by Zachary G. Smith, Vice President, System and Resource Planning, and Shaun Johnson, Director of the Market Mitigation and Analysis Department. The NYISO respectfully submits that its proposed compliance tariff revisions fully comply with the directives of the April Order and Initial RMR Order, are fully supported, are just and reasonable, and should be accepted without modification or condition.

As described in detail in this filing letter, the NYISO's proposed tariff revisions address the Commission's directives as follows:

- *Develop a Generator Deactivation Process that is separate from the NYISO's existing Gap Solution process.*

  The NYISO proposes to implement the reliability-must-run requirements in a new Generator Deactivation Process[5] located in Attachment FF of its OATT. This process is separate and distinct from the NYISO's Gap Solution process located in Attachment Y of the OATT. As described in Part III of this filing letter, the Generator Deactivation Process establishes the requirements by which the NYISO will assess whether a reliability need will result from a Generator's becoming Retired, entering into a Mothball Outage or being unavailable due to an ICAP Ineligible Forced Outage (collectively "deactivation"). If a Generator Deactivation Reliability Need cannot be timely addressed in the NYISO's biennial reliability planning process, the NYISO will solicit and evaluate solutions to the need, including alternatives to entering into an RMR Agreement. The NYISO will be the party independently responsible for evaluating and selecting solutions to Generator Deactivation Reliability Needs. Only the

[3] *N.Y. Indep. Sys. Operator, Inc.*, Order Instituting Section 206 Proceeding and Directing Filing to Establish Reliability Must Run Tariff Provisions, 150 FERC ¶ 61,116 at P 9 (2015) ("Initial RMR Order"). The Commission initially provided the NYISO with 120 days to submit its compliance filing. *Id.* at P 4. The Commission subsequently granted the NYISO a further 120 days to submit its compliance filing. *New York Indep. Sys. Operator, Inc.*, Notice of Extension of Time, Docket No. EL15-37-000 (June 4, 2015).

[4] *See New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 (2008), *reh'g*, 127 FERC ¶ 61,042 (2009) (accepting proposed additional tariff revisions that were necessary to implement the modifications directed by the Commission and to correct drafting errors or ambiguities in a compliance filing).

[5] Capitalized terms that are not defined in this filing letter have the meaning ascribed to them in the NYISO's Tariffs or in the proposed Tariff revisions submitted with this filing. Many of the terms that the NYISO defined to implement its Generator Deactivation Process are defined in the proposed revisions to Sections 1.18 or 38.1 of the OATT, or in Rate Schedule 8 to the Services Tariff.

NYISO may enter into an RMR Agreement with a Generator. The selection process establishes a preference for non-RMR Agreement alternatives and is designed to make RMR service a temporary, last resort solution.

- *Develop rules that specify when the RMR process will apply, and when the existing Gap Solution planning process will apply.*

  As described in Part III.B.i of this filing letter, Attachments Y and FF of the OATT establish that the NYISO will apply the Generator Deactivation Process, and not the Gap Solution process, to address the impacts of noticed Generator deactivations and of Generators that enter an ICAP Ineligible Forced Outage. The NYISO will continue to apply the Gap Solution Process in Attachment Y to evaluate and address immediate reliability threats resulting from causes other than a Generator's deactivation that cannot be timely addressed in the biennial reliability planning process.

- *Establish rules making the NYISO solely responsible for evaluating and selecting solutions to identified Reliability Needs caused by Generator deactivations.*

  Under the rules proposed in this filing, the NYISO is the sole entity responsible for evaluating and selecting solutions to Generator Deactivation Reliability Needs. If the NYISO determines that a reliability need results from a Generator's deactivation, the NYISO is responsible for soliciting, evaluating, and selecting among all proposed solutions. If the need is a Near-Term Generator Deactivation Reliability Need (occurring within three years of the conclusion of the 365-day Generator deactivation notice period), the NYISO will designate the Responsible Transmission Owner as the entity responsible for proposing a regulated solution, and will fully explain and allow stakeholders to comment on the rationale for its decision to assign this role to the Responsible Transmission Owner. If the NYISO performs a competitive selection process, it will solicit and select from among the competing Viable and Sufficient solutions in accordance with the selection criteria described below.

- *Develop a deactivation notice period and RMR evaluation timetable that reflects the establishment of an RMR process that is distinct from the Gap Solution process.*

  A Market Participant must provide a minimum of 365 days prior notice before its Generator may be Retired or enter into a Mothball Outage, which period begins after the NYISO determines its Generator Deactivation Notice has been completed. The NYISO will also conduct the Generator Deactivation Process over a 365 day period for a Generator that has entered into an ICAP Ineligible Forced Outage, starting on the date the Generator enters into the ICAP Ineligible Forced Outage. The 365 day period is the shortest period practicable for the NYISO to complete each of the steps of the Generator Deactivation Process, which steps were developed to address the directives of the Initial RMR Order and April Order. The NYISO's anticipated time frames to perform each of the process steps are based on its longstanding experience in administering its planning and market monitoring requirements and performing related responsibilities.

- *Submit criteria for implementing the "distinctly higher" net present value standard to select from among possible Generator and non-generation solutions to identified Reliability Needs, provide a conceptual basis as to how the "distinctly higher" standard will be implemented, and define the criteria that the NYISO will propose to make its selection.*

  As described in Part III.H of this filing letter, the NYISO's proposal establishes the criteria governing the application of the "distinctly higher" net present value standard, as well as the criteria governing the NYISO's ultimate selection of a solution to a Generator Deactivation Reliability Need. Executing an RMR Agreement with a Generator is designed to be a last resort to addressing a Generator Deactivation Reliability Need. For purposes of the Generator Deactivation Process, "last resort" means that the NYISO will only enter into an RMR Agreement when: (i) there is no Viable and Sufficient transmission solution, or (ii) if a Viable and Sufficient transmission solution is available, then the Viable and Sufficient generation solution must have a distinctly higher net present value than the transmission solution, and the advantages of entering into an RMR Agreement with the Generator must outweigh the advantages of selecting the transmission solution. The NYISO has defined the criteria it will use when assessing the benefits and detriments of each solution. Key criteria include the expected expandability, operability and performance of each solution. The NYISO will determine if a Generator has a "distinctly higher net present value" than a transmission solution by calculating accuracy ranges of each transmission and generation project cost estimate and determining whether the range of net present values of the generation solution is higher than the range of the net present values of the transmission solution. The NYISO may also enter into an RMR Agreement on a temporary basis, if necessary, to permit it to complete the resource selection process.

- *Exempt RMR Generators from offer floor mitigation in capacity auctions and require all such generators to offer their capacity as price-takers.*

  As described in Part IV.B, consistent with the Commission's instructions in its April Order, the NYISO has amended both its Services Tariff and its OATT to make clear that capacity offers from RMR Generators will not be subject to offer floor mitigation and will be offered into the ICAP markets at $0.00/kW-month.[6]

- *Propose a cost allocation methodology for its RMR process that is separate from its Order No. 1000-compliant regional transmission cost allocation methodology.*

[6] The NYISO has requested rehearing of certain aspects of the Commission's directives in the April Order that it implements in this filing, including the Commission's instruction that the NYISO must require all RMR Generators to offer into capacity auctions as price-takers and must implement an additional claw-back refund mechanism. *New York Independent System Operator, Inc.*, Request for Rehearing and Clarification of the New York Independent System Operator, Inc., Docket No. ER16-120-001 (May 23, 2016) ("NYISO Rehearing Request"). If the Commission grants the NYISO's rehearing request, the NYISO will submit the necessary changes in a future compliance filing, consistent with the Commission's direction.

As described in Part VI of this filing letter, the NYISO proposes to use a "needs-based" methodology to allocate the costs of an RMR Agreement or a transmission solution selected by the NYISO to address a Generator Deactivation Reliability Need. The methodology allocates the costs of the solution to those Load Serving Entities in New York that contribute to the Generator Deactivation Reliability Need and primarily benefit from the solution to the need. The methodology utilizes the cost allocation formulation for the NYISO's reliability planning process, as recently revised and accepted by the Commission to address both transmission security and resource adequacy needs.[7] The methodology in the Generator Deactivation Process adds to the methodology accepted in the reliability planning process by providing that the NYISO can allocate the costs of solutions to reliability needs that arise on the local, non-Bulk Power Transmission Facilities that result from a Generator's deactivation.

- *Expand the "anti-toggling" protections by requiring an RMR generator that wishes to operate at the end of its RMR agreement to repay the NYISO the higher of capital expenditures less depreciation or the above-market payments that it received.*

  Rate Schedule 8 of the Services Tariff governs compensation for RMR Generators and Interim Service Providers. As described in Part IV.C of this filing letter, Rate Schedule 8 has been revised to require that a Generator that wants to return to participate in the NYISO's markets after operating pursuant to an RMR Agreement or as an Interim Service Provider must reimburse the NYISO for the higher of: (1) the Capital Expenditures that were paid for by RMR Loads to permit the Generator to operate, or (2) the amount by which the payment under the RMR Agreement or to the Interim Service Provider (including payments to reimburse Capital Expenditures) exceeded the amounts the Generator would have received had it been participating in the ISO Administered Markets at market-based rates.

- *Specify that the NYISO may finish a non-generation solution that is substantially complete at the time a Generator rescinds its Generator Deactivation Notice.*

  As described in Part III.L of this filing letter, the NYISO will not halt a selected transmission project once the Developer has received its applicable permits or authorizations under state law, or if permitting is not required, after physical construction has commenced. In other circumstances, the NYISO may decide to halt a transmission project based on a set of proposed detailed criteria. Cost recovery is provided for all halted projects.

- *Define the circumstances under which a non-generation solution that NYISO selects in the RMR process can serve as the permanent solution to an identified Reliability Need.*

  As described in Part III.M of this filing letter, the NYISO may select a permanent solution in the Generator Deactivation Process. If the NYISO is required to select an interim solution in the Generator Deactivation Process, including entering into an RMR Agreement, it will not

[7] *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER16-1968-000 (August 12, 2016).

take these temporary solutions into account in determining whether there is a reliability need in its next biennial reliability planning process. If the need continues to exist, the NYISO will identify a permanent solution through its biennial reliability planning process.

- *NYISO proposal to pay an avoidable cost rate to Interim Service Providers that are required to operate after the requested deactivation date, during days 181 to 365 of the 365 day period.*

  As described in Part IV.A, consistent with its December 21, 2015 *Request for Leave to Answer and Answer* at pages 10-11, 17 and 21-23, the NYISO proposes changes to Rate Schedule 8 of the Services Tariff, added Section 38.13 of the OATT, and proposed revisions to other tariff sections to require it to pay an avoidable cost rate to Generators that (a) are not permitted to deactivate on the date the Generator asked to be permitted to deactivate, and (b) that are required to remain available for days 181 to 365 of the 365 Day Notice Period that is defined in proposed Section 15.8.6 of Rate Schedule 8 to the Services Tariff. The proposed compensation rule supports the NYISO's efforts to develop just and reasonable rates.

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II. BACKGROUND

On February 19, 2015, the Commission issued the Initial RMR Order determining that the NYISO is the appropriate entity to administer RMR service in New York under its tariffs.[8] 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.[9] For this reason, the RMR Order directed the NYISO to submit proposed tariff revisions to establish an

[8] Initial RMR Order at P 3.

[9] Initial RMR Order at P 9.

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 pro forma service agreement for RMR service."[10]

On October 19, 2015, the NYISO submitted its compliance filing in response to the Initial RMR Order ("October 2015 Filing").[11] On April 21, 2016, the Commission ruled on the October 2015 Filing with its *Order on Compliance and Rehearing*. The April Order accepted this filing subject to a number of compliance directives, each of which is addressed in detail below. On June 7, 2016, the NYISO submitted an initial limited compliance filing in Docket No. ER16-120-002 to remove language from its OATT that was rejected by the April Order. The Commission accepted this filing on July 1, 2016.

The NYISO has worked diligently with its stakeholders to respond to the Commission's directives. During the five months following the issuance of the April Order, the NYISO held multiple stakeholder meetings to develop the proposed compliance tariff revisions that are submitted in this second compliance filing. The NYISO presented the proposed Generator Deactivation Process and related provisions, rate schedules, and *pro forma* service agreement at a series of stakeholder working group meetings that were held on the following dates: July 26, 2016, August 9, 2016, August 10, 2016, August 25, 2016, September 1, 2016, September 7, 2016, and September 13, 2016. These meetings often involved a combination of stakeholder working groups focused on planning, energy markets, and installed capacity issues. At each of the meetings, the NYISO requested, received, and considered comments from interested parties.

The NYISO incorporated feedback from stakeholders on multiple issues and made numerous revisions to the proposed Generator Deactivation Process and related changes. Although a consensus was not reached on all issues, the open and transparent process facilitated the NYISO's and stakeholders' understanding of concerns, issues, and proposals and narrowed differences on many issues. The NYISO appreciates its stakeholders' efforts to review certain revisions the NYISO proposed on comparatively short notice.

III. GENERATOR DEACTIVATION PROCESS

A. New Generator Deactivation Process

i. *RMR Process Background*

In the April Order, the Commission rejected the NYISO's proposal to locate the RMR process within the existing Gap Solution process because it did not approve the role of the New York State Public Service Commission ("NYPSC") in selecting non-generation solutions.[12] The

[10] Initial RMR Order at P 11.

[11] *N.Y. Indep. Sys. Operator, Inc.*, Compliance Filing, Docket No. ER16-120-000 (October 19, 2015) ("October 2015 Filing").

[12] April Order at PP 31-41.

Commission directed the NYISO to establish an RMR process separate from its Gap Solution process in which the NYISO would evaluate and select solutions to the reliability needs resulting from Generator deactivations.[13] The Commission deferred ruling on the individual RMR process elements proposed in the October 2015 Compliance Filing until it reviewed the process proposed by the NYISO separate from the Gap Solution process.[14]

In response to the April Order, the NYISO proposes to create a separate new Generator Deactivation Process, which is located in a new Attachment FF (Section 38) of the OATT. The Generator Deactivation Process is consistent with the Commission's directives for an RMR process set forth in the April Order and the Initial RMR Order, which process requirements are summarized as follows:

- Establishes an RMR process separate from the existing Gap Solution process;[15]
- Includes a clear schedule by which a Generator must inform the NYISO of its proposed deactivation and by which the NYISO will notify the Generator whether it is required for reliability or can be deactivated;[16]
- Sets forth 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;[17]
- Sets forth the process the NYISO will use to identify alternative solutions to RMR contracts and to provide for thorough consideration of alternatives in an open and transparent matter to ensure that RMR agreements are only used as a limited, last resort measure;[18]
- Makes the NYISO solely responsible for evaluating and selecting the solutions to reliability needs resulting from Generator deactivations, whether market-based solutions, generation solutions, or non-generation solutions,[19] including determining whether a specific Generator is needed to maintain reliability and be designated an RMR unit; and[20]

[13] April Order at PP 31, 41.

[14] April Order at P 31.

[15] April Order at P 41.

[16] Initial RMR Order at P 13.

[17] Initial RMR Order at PP 13-14.

[18] Initial RMR Order at P 16.

[19] April Order at P 41.

[20] Initial RMR Order at P 14.

- Establishes a separate cost allocation methodology and process outside of the NYISO's reliability planning process.[21]

ii. *Summary of Generator Deactivation Process*

Under the Generator Deactivation Process, the NYISO will perform a Generator Deactivation Assessment to determine whether a Generator Deactivation Reliability Need would result from a Generator's deactivation. The NYISO will use its most recent reliability planning base case, updated for the most current data and Local Transmission Owner Plans. If the assessment identifies a Generator Deactivation Reliability Need that cannot timely be addressed through the NYISO's biennial reliability planning process, the NYISO will solicit and evaluate the viability and sufficiency of market-based and regulated Generator Deactivation Solutions as alternatives to the NYISO entering into an RMR Agreement to address the need. If the reliability need will arise within three years, the NYISO will designate the Responsible Transmission Owner as the sole party eligible to propose a regulated alternative to a generation solution. In evaluating alternative solutions, the NYISO will consider entering into an RMR Agreement with the Generator that may deactivate or with one or more Generators that have deactivated, but that are eligible to return, on a temporary basis to maintain system reliability.

The first set of solutions the NYISO will consider to address an identified Generator Deactivation Reliability Need are market-based solutions that are not eligible for additional cost recovery under the NYISO Tariffs. If there are not adequate market-based or demand response solutions to fully address the need, the NYISO will select one or more solutions from the Viable and Sufficient transmission and generation alternatives to address the Generator Deactivation Reliability Need. In choosing between competing solutions, the NYISO will make its selection in the manner described in Part III.H of this filing letter.

If the NYISO selects a transmission solution to address the need, it will enter into a Development Agreement with the transmission Developer. The costs of the transmission solution will be allocated under Attachment FF and recovered under Rate Schedule 16 to the OATT. Consistent with the rules set forth in its solution selection process, the NYISO may enter into an RMR Agreement with one or more Generators, including the deactivating Generator. Payments will be made to Generators under Rate Schedule 8 of the Services Tariff. The costs associated with the RMR Agreement will be allocated to the RMR Loads and recovered under Rate Schedule 14 to the OATT. If the NYISO enters into an RMR Agreement with a Generator or selects an interim transmission solution to address the need, the NYISO will not consider that temporary solution in its biennial reliability planning process when determining whether a reliability need exists for which the NYISO must solicit a permanent solution.

[21] April Order at P 112.

B. Identification of Generator Deactivation Reliability Need

i. *Commencing the Generator Deactivation Process*

The NYISO will commence the Generator Deactivation Process when either: (i) a Market Participant submits to the NYISO a Generator Deactivation Notice in the form set forth in Appendix A of Attachment FF indicating its intent for its Generator to be Retired or enter into a Mothball Outage, or (ii) a Market Participant's Generator has entered into an ICAP Ineligible Forced Outage.[22] These Generators are referred to as "Initiating Generators."[23]

The NYISO may accelerate its Generator Deactivation Process and take immediate action if it identifies an immediate reliability need that it determines cannot be timely addressed through the normal Generator Deactivation Process.[24] In such case, the NYISO may abbreviate, as necessary, the time periods and requirements of its Generator Deactivation Process and make any necessary filings with the Commission to maintain reliability.[25] The NYISO requires this flexibility to enable it to maintain reliability if a Generator Deactivation Reliability Need arises on short notice and must be addressed immediately to maintain reliability.[26]

The Generator Deactivation Process is separate from the Gap Solution process in Attachment Y of the OATT. The NYISO proposes revisions to its Gap Solution process requirements in Sections 31.1.2 and 31.2.11.3 to clarify that it will address any Generator Deactivation Reliability Need or immediate reliability need that results from a Generator's deactivation in accordance with Attachment FF of the OATT.[27] The Gap Solution process will be used to address imminent threats to reliability from causes other than deactivation of a Generator.

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[22] Proposed OATT Sections 38.3.1, 38.3.2. The Initial RMR Order indicated that generator "deactivation" encompasses "generator retirements, mothballing, or any other long-term outages or suspension of service." Initial RMR Order at P 1 n. 2.

[23] Proposed OATT Section 38.1 (definition of "Initiating Generator").

[24] Proposed OATT Section 38.3.3.

[25] Proposed OATT Section 38.3.3.

[26] The proposed process is intended to parallel the provisions in the Gap Solution process that are used to address "imminent threats" to reliability, which the Commission has previously approved. *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) (accepting NYISO's Gap Solution process).

[27] *See* April Order at P 41 ("In developing a separate RMR process, NYISO should develop additional tariff revisions to clarify when its separate RMR process will be triggered, as opposed to its existing Gap Solution process.").

ii. *Commencement of 365 Day Notice Period*

The Commission directed the NYISO to establish a clear time frame 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 Generator is needed for reliability or may deactivate.[28] Consistent with this directive, the NYISO proposes to require up to 365 days advanced notice if a Generator seeks to be Retired or to enter into a Mothball Outage.[29] The 365 day period will begin to run on the "Generator Deactivation Assessment Start Date."[30]

For a Generator proposing 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 Notice form is "complete" (as described below).[31] The Generator Deactivation Notice form is included in proposed Section 38.24 (Appendix A) of Attachment FF.[32] The Generator Deactivation Form requires the Market Participant to provide pertinent information, including the date that the Generator proposes to be Retired or enter into a Mothball Outage and confirmation regarding whether a Generator proposing to enter into a Mothball Outage is able to return to service within 180 days. The Market Participant must also provide cost, revenue, and other information that is specified in Section 38.25 (Appendix B) of Attachment FF.[33] The NYISO will review the submitted information and may request additional information.

The Generator Deactivation Notice will be considered "complete" when the NYISO determines that it has received sufficient information to begin reviewing both: (i) the reliability impacts that would result from the Generator being Retired or entering into a Mothball Outage and, (ii) the market and related information required by Appendix B.[34] The NYISO will notify the Market Participant when its notice is complete and post non-confidential information about the completed notice on its website.[35] Market Parties[36] are subject to a continuing obligation to promptly submit any additional information required by the NYISO.[37]

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[28] Initial RMR Order at P 13.

[29] Proposed OATT Section 38.3.1.1. In the April Order, the Commission rejected the NYISO's proposed 365 day notice period in light of its overall rejection of inserting the RMR process within the Gap Solution process. April Order at P 63. The Commission did not disapprove the length of the notice period, but directed the NYISO to submit in its compliance filing a proposed timeline that reflects the new RMR process. *Id.*

[30] Proposed OATT Section 38.1 (definition of "Generator Deactivation Assessment Start Date").

[31] Proposed OATT Section 38.3.1.1.

[32] Proposed OATT Section 38.3.1.2.

[33] Proposed OATT Section 38.3.1.2.

[34] Proposed OATT Section 38.3.1.4. The NYISO will have 10 business days to determine completeness following receipt of the initial information and, if necessary, additional information. *Id.*

[35] Proposed OATT Section 38.3.1.5.

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 with the Generator Outage rules in Section 5.18 of the Services Tariff.[38] 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 B to the NYISO.[39]

iii. *Need for a 365 Day Notice Period*

The 365 day notice period is the shortest period practicable for the NYISO to complete the Generator Deactivation Process requirements, which process steps were developed to address the directives of the Initial RMR Order and the April Order. The proposed notice period scarcely provides the NYISO with the time necessary to evaluate the reliability impacts of a Generator deactivation, to solicit and evaluate alternatives to an RMR Agreement that could address the reliability need, and to select among proposed solutions to address the need. Although the NYPSC's role in reviewing and identifying non-generation alternatives has been removed, the NYISO needs that time to step into this role itself and to evaluate and select from among the available transmission and generation alternatives.[40] Soliciting and evaluating proposed solutions are time and resource intensive processes that are necessary to fulfill the Commission's mandate that the NYISO be responsible for the evaluation and selection of solutions.[41] If the NYISO were to use a shorter notice period, it would not have sufficient time to carefully evaluate the information it received addressing each proposed solution.

The proposed time frames for each of the process steps in the Generator Deactivation Process were developed based on the NYISO's long-standing experience in administering its planning and market monitoring requirements and performing related responsibilities. The NYISO has sought to streamline process steps where possible, but will still be compressing into 365 days many of the steps included in its reliability planning process, which in the normal course requires at least two years to perform.[42]

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[36] The definition of "Market Party" recognizes that multiple business entities may have information pertinent to the NYISO's complete review. Proposed OATT Section 38.1 (definition of "Market Party").

[37] Proposed OATT Section 38.3.1.6.

[38] Proposed OATT Section 38.1 (definition of "Generator Deactivation Assessment Start Date"). Generators entering an ICAP Ineligible Forced Outage are not subject to the proposed 365 day prior notice requirement.

[39] Proposed OATT Section 38.3.2.

[40] Previously, the NYISO selected only from among transmission alternatives in its reliability planning process, and solely from among generators in its proposed RMR process. The Commission directed the NYISO to select from among transmission and generation alternatives for the first time in this proceeding.

[41] April Order at P 41.

[42] OATT Section 31.1.8.2.

The NYISO proposes to take up to 90 days to evaluate the reliability impacts of a Generator's proposed deactivation, which includes performing the required reliability studies using power flow and resource adequacy modeling tools, coordinating with the Responsible Transmission Owner(s), consultants, and stakeholders, and developing and reporting the study results.[43] Instead of the 30 days provided in its initial compliance filing, the NYISO will provide 60 days for eligible parties to propose Generator Deactivation Solutions.[44] This 60 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.[45]

After it receives responses to its solicitation, the NYISO must evaluate the Viability and Sufficiency[46] of potential alternative Generator Deactivation Solutions. Concurrent with soliciting alternative solutions and evaluating their Viability and Sufficiency, the NYISO will be calculating an RMR Avoidable Cost for the Initiating Generator and determining the net present value of Generator Deactivation Solutions that have been offered to the NYISO and determined to be Viable and Sufficient. The remainder of the 365 day period is required for the NYISO to: (a) make a selection among the Viable and Sufficient generation and transmission solutions that have been presented, (b) to negotiate and enter into a Development Agreement if the NYISO selects a transmission solution, or to negotiate and enter into an RMR Agreement if the NYISO selects a Generator solution, or to enter into several different agreements, and (c) to file RMR Agreements and/or Development Agreements with the Commission for its acceptance.

At the time or shortly after it issues its Generator Deactivation Assessment, the NYISO will inform an Initiating Generator that requested permission to deactivate earlier than 365 days whether it needs to remain available to provide service during the 365 day notice period.[47] In performing their deactivation planning, Generators should anticipate the possibility that they will be required to remain available for the 365 day notice period. As described in Part IV.A, the NYISO proposes to pay a deactivating Generator that requested permission to deactivate early an avoidable cost rate as an Interim Service Provider beginning as soon as Day 181 of the 365 day notice period.

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[43] The NYISO and stakeholders identified as a "lesson learned" from a prior assessment of a Generator's proposed deactivation the importance of NYISO review of key study assumptions with stakeholders. The 90 day period takes this additional process step into account.

[44] *See* proposed OATT Section 38.4.

[45] Deactivated Generators that want to be considered as possible solutions have 10 days to submit a "statement of intent" to participate and an additional 20 days to submit or update previously submitted cost information. *See* proposed OATT Section 38.5.

[46] The term "Viable and Sufficient" is defined in Section 38.1 of the proposed revisions to the OATT to mean the "[t]erm that describes a proposed Generator Deactivation Solution that the ISO has determined in accordance with Section 38.6 to be viable and sufficient to satisfy the identified Generator Deactivation Reliability Need individually or in conjunction with other solutions."

[47] Proposed OATT Section 38.3.6.

The NYISO proposes to create an "off ramp" that would be available to Generators as early as the conclusion of the Generator Deactivation Assessment at day 91 of the 365 day notice period, consistent with the Generator Deactivation Notice submitted to the NYISO.[48] Pursuant to this "off ramp," the NYISO will permit early deactivation if it determines that a Generator's deactivation will not result in a reliability need, or if it determines that any identified need can be timely addressed without the deactivating Generator. The NYISO will notify a Market Participant that wants to deactivate its Generator before the end of the 365 day notice period of the date, following its completion of all required NYISO administrative processes and procedures, when it may deactivate.[49]

iv. *Generator Deactivation Assessment*

The Initial 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."[50] Upon the Generator Deactivation Assessment Start Date, the NYISO, in coordination with the relevant Responsible Transmission Owner, will commence a Generator Deactivation Assessment to determine whether a Generator Deactivation Reliability Need would result from the Generator's deactivation.[51]

The NYISO will conduct the necessary reliability studies to review the impact of the deactivation on the reliability of the New York State Bulk Power Transmission Facilities ("BPTFs") following its current planning standards.[52] As contemplated by the Initial RMR Order,[53] 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.[54] For this assessment, the NYISO will review the five years period that follows the conclusion of the 365 day notice

[48] Proposed OATT Section 38.3.6.

[49] The deactivating 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).

[50] Initial RMR Order at P 13.

[51] Proposed OATT Section 38.3.4.1.

[52] Proposed OATT Section 38.4.3.1.

[53] Initial 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 . . . .").

[54] Proposed OATT Section 38.4.3.1.

period, using the most recent base case from its reliability planning process, as updated in accordance with the NYISO's procedures.[55] The NYISO will review whether any potential Generator Deactivation 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.[56] The NYISO will conduct the Generator Deactivation Assessment and post on its website the results of its analysis within 90 days of the Generator Deactivation Assessment Start Date.[57] The assessment will specify whether there is a Generator Deactivation Reliability Need and whether the need can be timely addressed in the biennial reliability planning process or must be addressed in the Generator Deactivation Process.[58]

The NYISO is required by the Initial RMR Order to determine whether there is a reliability impact of a Generator's deactivation on the local, non-BPTF portion of the New York State Transmission System. Accordingly, the NYISO will also indicate in the Generator Deactivation Assessment if the Generator Deactivation Reliability Need is only a reliability need on non-BPTFs, for which solely the Responsible Transmission Owner may propose a non-generation regulated solution as an alternative to an RMR Agreement.[59] Only the NYISO may enter into an RMR Agreement with a Generator to address this local need. The local Transmission Owner retains the right to develop projects on its system as an alternative to an RMR Agreement to address reliability needs within its Transmission District. Unless selected by the NYISO in its Generator Deactivation Process, such projects are not eligible for cost allocation and cost recovery through the NYISO's Tariffs. The costs of an RMR Agreement or a transmission solution to a local transmission need selected by the NYISO will be allocated through the NYISO OATT solely to the Subzones within the local Transmission Owner's service territory and will not be allocated regionally.[60]

v. *Near-Term Generator Deactivation Reliability Need*

The NYISO proposes to designate the Responsible Transmission Owner as the sole party to propose a regulated solution as an alternative to an RMR Agreement when the Generator Deactivation Reliability Need arises within three years of the conclusion of the 365 days that follow the Generator Deactivation Assessment Start Date.[61] The Commission has previously

[55] Proposed OATT Section 38.4.3.1. The NYISO will review the key study assumptions with its stakeholders. *Id.*

[56] Proposed OATT Section 38.3.4.2. As the NYISO must be the party to enter into an RMR Agreement with a Generator, updates to the Local Transmission Owner Plans cannot include agreements with the Initiating Generator subject to the assessment or to Generators currently in a Mothball Outage, ICAP Ineligible Outage, or that have been mothballed since before May 1, 2015. *Id.*

[57] Proposed OATT Section 38.3.4.

[58] Proposed OATT Section 38.3.4.

[59] Nothing in Order No. 890 or Order No. 1000 requires a competitive solicitation and selection process to address local reliability needs in a Transmission Owner's Transmission District.

[60] Proposed OATT Section 38.22.4.

[61] Proposed OATT Section 38.3.5.1.

permitted ISO-NE, PJM and SPP to include rules in their tariffs that allow the ISO or RTO to designate solely the local Transmission Owner as the party to develop a solution to a time-sensitive need if the ISO/RTO satisfies five criteria.[62]

In Section 38.3.5 of its OATT, the NYISO proposes a process for identifying Near-Term Generator Deactivation Reliability Needs and designating a Responsible Transmission Owner to meet that need. The NYISO's proposal is consistent with the five criteria that the Commission has accepted for other ISOs and RTOs.[63]

First, a Near-Term Generator Deactivation Reliability Need is a need that results from the deactivation of one or more Generators that the NYISO determines will arise within three years following the conclusion of the 365 day notice period.[64] This satisfies the Commission's criterion that requires that the solution "must be needed in three years or less to solve reliability criteria violations."[65]

Second, the NYISO will include with its posted Generator Deactivation Assessment an explanation of any Near-Term Generator Deactivation Reliability Need, including the reliability criteria violations and system conditions, in sufficient detail to allow stakeholders to understand the need and why it is time sensitive.[66] This satisfies the Commission's criterion that requires the ISO/RTO to identify and post an explanation "of the reliability violations and system conditions in advance for which there is a time-sensitive need . . . in sufficient detail to allow stakeholders to understand the need and why it is time-sensitive."[67]

Third, the NYISO will provide to stakeholders and post on its website a full and supported written explanation of its decision to solicit solely from the Responsible Transmission Owner a regulated non-generation solution as an alternative to an RMR Agreement, which will include an explanation of the other transmission and non-transmission options considered by the NYISO, the circumstances that generated the need, and an explanation of why the need was not identified earlier.[68] This satisfies the Commission's criterion that requires:

> the process that [the ISO/RTO] uses to decide whether an Immediate-need Reliability Project is assigned to an incumbent transmission owner must be clearly outlined in [the ISO/RTO's] OATT and must be open, transparent, and not

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[62] *See PJM Interconnection, L.L.C., et al.*, 142 FERC ¶ 61,214 (2013) at P 248 ("PJM 2013 Order"); *ISO New England Inc.*, 143 FERC ¶ 61,150 (2013) at P 236; Southwest Power Pool, Inc., et al., 144 FERC ¶ 61,059 (2013) at P 196.

[63] *See id.*

[64] Proposed OATT Section 38.1 (definition of "Near-Term Generator Deactivation Reliability Need").

[65] PJM 2013 Order at P 248.

[66] Proposed OATT Section 38.3.5.2.1.

[67] PJM 2013 Order at P 248.

[68] Proposed OATT Section 38.3.5.2.2.

> unduly discriminatory. [The ISO/RTO] must provide to stakeholders and post on its website a full and supported written description explaining: (1) the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of other transmission or non-transmission options that the region considered but concluded would not sufficiently address the immediate reliability need; and (2) the circumstances that generated the immediate reliability need and an explanation of why that immediate reliability need was not identified earlier.[69]

Fourth, the NYISO will provide stakeholders with a reasonable opportunity to provide comments on the NYISO's written explanation.[70] This satisfies the Commission's criterion that requires that "stakeholders must be permitted time to provide comments in response to the description in criterion three and such comments must be made publicly available."[71]

Finally, the NYISO will maintain and post on its website a list of all transmission solutions that it selected in prior years to be built in response to a Near-Term Generator Deactivation Reliability Need for which the NYISO solely designated a Responsible Transmission Owner.[72] The list will include the need, the identity of the designated Responsible Transmission Owner, the transmission solution selected by the NYISO, its in-service date, and date on which the transmission solution was energized or otherwise implemented.[73] The NYISO will file the list with the Commission as an informational filing in January of each year, covering the designation of the prior calendar year, if the NYISO selected a Responsible Transmission Owner's regulated transmission solution to a Near-Term Generator Deactivation Reliability Need in the prior year.[74] This satisfies the Commission's criterion that requires:

> [The ISO/RTO] must maintain and post a list of prior year designations of all projects in the limited category of transmission projects for which the incumbent transmission owner was designated as the entity responsible for construction and ownership of the project. The list must include the project's need-by date and the date the incumbent transmission owner actually energized the project. Such list must be filed with the Commission as an informational filing in January of each calendar year covering the designations of the prior calendar year.[75]

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[69] PJM 2013 Order at P 248.

[70] Proposed OATT Section 38.3.5.2.3.

[71] PJM 2013 Order at P 248.

[72] Proposed OATT Section 38.3.5.3.

[73] Proposed OATT Section 38.3.5.3.

[74] Proposed OATT Section 38.3.5.3.

[75] PJM 2013 Order at P 248.

C. Solicitation of Generator Deactivation Solutions

The Initial RMR Order directed the NYISO to "describe the process NYISO will use to evaluate alternatives for addressing the identified reliability need."[76] The NYISO will solicit market-based and regulated Generator Deactivation Solutions to address a Generator Deactivation Reliability Need. The NYISO will then evaluate the viability and sufficiency of the proposed solutions it receives. The NYISO will select a solution from among the Viable and Sufficient transmission and generation solutions it identifies.

i. *Solicitation of Generator Deactivation Solutions*

If the Generator Deactivation Assessment determines that a Generator Deactivation Reliability Need exists and must be addressed in the Generator Deactivation Process, the NYISO will solicit market-based and regulated solutions to address the need.[77] With the exception of Generators that are currently deactivated but eligible to return, a proposed Generator Deactivation Solution must be submitted to the NYISO within 60 days.[78] The NYISO's consideration of deactivated Generators is addressed in subpart iv, below.

Any Developer may propose a transmission, generation or demand response market-based solution to address the need.[79] As with its reliability planning process, the NYISO's Generator Deactivation Process favors market-based solutions. The NYISO will conclude the Generator Deactivation Process if there are adequate market-based solutions available to address the Generator Deactivation Reliability Need.

In response to the NYISO's solicitation, the Responsible Transmission Owner is required to submit a proposed regulated solution that must, to the extent practicable, completely address the need.[80] The Responsible Transmission Owner may propose a transmission, demand response and/or generation solution.[81] However, for a generation solution only the NYISO may enter into an RMR Agreement with a Generator.[82]

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[77] Proposed OATT Section 38.4.1.

[78] Proposed OATT Section 38.4.1. 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. Proposed OATT Section 38.4.4.

[79] Proposed OATT Section 38.4.2.2.

[80] Proposed OATT Section 38.4.2.1. The NYISO identifies the Responsible Transmission Owner, which will normally be the Transmission Owner in whose Transmission District the NYISO identifies the Generator Deactivation Reliability Need and/or that owns a transmission facility on which such a need arises.

[81] A Responsible Transmission Owner may only recover the costs of a transmission solution under the NYISO OATT. Proposed OATT Section 38.4.2.1.

[82] Proposed OATT Section 38.4.2.1.

The NYISO will determine, with input from the Responsible Transmission Owner, whether its proposed regulated solution is an interim or permanent solution.[83] If it is an interim solution, the Responsible Transmission Owner will also be required to submit a conceptual permanent solution to the Generator Deactivation Reliability Need.[84] The NYISO will use this conceptual permanent solution solely for the purpose of identifying the term of any RMR Agreement based on the anticipated time frame for permanently resolving the Reliability Need.

Regardless of whether its solution is ultimately selected by the NYISO, the Responsible Transmission Owner may recover under the OATT its costs for developing its proposed Generator Deactivation Solution and, if applicable, its conceptual permanent solution. Providing such cost recovery is just and reasonable, as the Responsible Transmission Owner is required to incur these costs and submit the proposed solutions in the Generator Deactivation Process.[85] The Commission previously approved recovery for Responsible Transmission Owner costs of proposing regulated backstop solutions in the NYISO's reliability planning process.[86]

Any Developer may propose a transmission solution for consideration as a regulated solution to address the Generator Deactivation Reliability Need, unless: (i) the NYISO has designated a Responsible Transmission Owner as the sole party to propose a regulated solution to a Near-Term Generator Deactivation Reliability Need, or (ii) the reliability need arises on the local, non-BPTF portion of the New York State Transmission System.[87]

A Developer's submission in response to the NYISO's solicitation must provide the same project information that is required in the NYISO's reliability planning process for proposed market-based and regulated solutions.[88] Developers must also provide the information regarding proposed Generator Deactivation Solutions that is required in Appendix B of Attachment FF.[89]

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[83] Proposed OATT Section 38.4.2.1. If the Generator Deactivation Reliability Need is only a local need on non-BPTFs, the Responsible Transmission Owner must propose a permanent solution. *Id.*

[84] Proposed OATT Section 38.4.2.1.

[85] Proposed OATT Sections 38.23.1.

[86] OATT Section 31.2.4.3.1. *See* New York Independent System Operator, Inc., 148 FERC ¶ 61,044 at P 75 (2014); New York Independent System Operator, 143 FERC ¶ 61,059 at P 326 (2013) ("We find that it is appropriate for the Responsible Transmission Owner to be permitted to recover costs that it prudently incurred to meet its obligation, even when the project is not selected, since only the Responsible Transmission Owner is required to provide the regulated backstop solution for a reliability transmission need.").

[87] Proposed OATT Section 38.4.2.3. As stated earlier, the Commission does not require a competitive solicitation and selection process to address local reliability needs in a Transmission Owner's Transmission District.

[88] Proposed OATT Sections 38.4.2.1, 38.4.2.2, 38.4.2.3. The project information requirements are located in Sections 31.2.4.4.1, 31.2.4.4.2, and 31.2.6.5.1.1 of Attachment Y to the OATT (for the Responsible Transmission Owner's project), Section 31.2.4.6 of Attachment Y (for market-based solutions), and Sections 31.2.4.8.1, 31.2.4.8.1, and 31.2.6.5.1.1 of Attachment Y (for alternative regulated solutions). In Section 38.4.5, the NYISO clarifies that it may disclose the proposed Generator

ii. *Responsible Transmission Owner Requirements for New Transmission Owners*

To implement the requirements for a Responsible Transmission Owner that is a new Transmission Owner in New York, the NYISO proposes conforming additions to the *pro forma* operating agreement ("Operating Agreement") to obligate a new Transmission Owner to propose and develop a regulated solution when designated as a Responsible Transmission Owner by the NYISO.[90] In the NYISO's September 13, 2016 Order No. 1000 compliance filing, the NYISO proposed changes to the Operating Agreement to set forth the rights and obligations of a new Transmission Owner in connection with providing a regulated backstop solution in the reliability planning process under Attachment Y of the OATT.[91] The proposed additions in this filing clarify that a new Transmission Owner that executes an Operating Agreement is also required to provide the NYISO a regulated solution in the Generator Deactivation Process when designated as a Responsible Transmission Owner.[92] Concomitantly, the tariff changes afford the new Transmission Owner the right to recover reasonably incurred costs in accordance with Section 6.16 of the OATT (Rate Schedule 16) related to the preparation of a proposal for, and the development, construction, operation, and maintenance, of such a regulated solution.[93]

iii. *Study Costs*

If the NYISO performs a competitive selection process among proposed regulated transmission solutions as part of the Generator Deactivation Process, each Developer proposing a regulated transmission solution, including an incumbent Responsible Transmission Owner, will be responsible for the NYISO's actual costs in evaluating its project proposal for purposes of selection.[94] With its submission of its project proposal in a competitive process, a Developer must submit a non-refundable $10,000 application fee and a study deposit of $100,000.[95] The

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Deactivation Solution, except for information regarding market-based solutions and non-public financial qualification information that the NYISO would otherwise maintain as confidential under its planning process requirements. 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, general geographic location 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, could elect to later propose it as a solution in a competitive reliability planning process.

[89] Proposed OATT Section 38.4.3.

[90] *See* OATT Section 31.11.

[91] *See New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-011 at pp 18–22 (September 13, 2016).

[92] Proposed Section 2.13(a) of the Operating Agreement.

[93] Proposed Section 2.13(b) of the Operating Agreement.

[94] Proposed OATT Section 38.4.6.2.

[95] Proposed OATT Section 38.4.6.1.

NYISO will then invoice each Developer monthly for the study costs related to the evaluation of its project.[96] As with its reliability planning process and Public Policy Transmission Planning Process, it is reasonable for the NYISO to recover the costs it incurs on behalf of a Developer in evaluating its project proposal as part of a competitive process.[97] The monthly invoicing requirements, including when the NYISO may draw on the security deposit and how invoice disputes are addressed, mirror the requirements in the NYISO's competitive planning processes that were previously accepted by the Commission.[98]

iv. *Review of Deactivated Generator(s) that Are Eligible to Return*

In addition to the Generator Deactivation Solution proposed in response to the NYISO's solicitation for solutions, the NYISO will review Generators that are currently deactivated, but are eligible to return to operation, to determine whether they may be capable of satisfying the Reliability Need in whole or in part.[99] 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.[100] If the NYISO identifies a Generator as a possible Generator Deactivation Solution, an interested Market Participant shall inform the NYISO in writing of its intent to offer its Generator as a Generator Deactivation Solution.[101] The Market Participant must then provide the NYISO within 20 days the information regarding its Generator that is required in Appendix B of Attachment FF.[102] Notwithstanding whether or not a Market Participant submitted a statement of intent, the NYISO may request, at any time, that a Generator Owner submit the information required in Appendix B, or any updates to previously submitted information within twenty days.[103] In its outage state requirements in Section 5.18 of the Services Tariff, the NYISO proposes to make conforming revisions concerning the terminology of the new Generator Deactivation Process and to reinstate Section 5.18.4.1.1 that was deleted in the October 2015 Filing to address the compensation requirements for a Generator that returns to service to address a reliability need that does not trigger the Generator Deactivation Process.

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[96] Proposed OATT Section 38.4.6.3.

[97] OATT Sections 31.2.5.1, 31.2.6.2 (reliability planning process), 31.4.4.4 (Public Policy Transmission Planning Process).

[98] Proposed OATT Sections 38.4.6.3 and 38.4.6.4.

[99] Proposed OATT Section 38.5. This requirement is consistent with tariff requirements accepted by the Commission in Docket ER14-2518 with respect to Generators in a Mothball Outage or ICAP Ineligible Forced Outage.

[100] Proposed OATT Section 38.5. 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.

[101] Proposed OATT Section 38.5.

[102] Proposed OATT Section 38.5.

[103] Proposed OATT Section 38.5.

v. *NYISO's Consideration of Demand Response and Generators Located Outside the New York Control Area as Generator Deactivation Reliability Need solutions*

The NYISO proposes to allow demand response resources to be solutions to Generator Deactivation Reliability Needs if they are included in a Transmission Owner's Local Transmission Plan, are offered as a market-based solution in the NYISO's solicitation for solutions, or are proposed as a regulated solution by a Responsible Transmission Owner, with regulated cost recovery, if any, occurring under state law. The NYISO does not, however, provide for cost allocation or cost recovery for a demand response solution under its Tariffs. The NYISO's proposed treatment of demand response is consistent with its biennial reliability planning process,[104] and with the rules other ISOs and RTOs have implemented.[105]

Although the NYISO has not proposed any Tariff rules that would preclude it from executing an RMR Agreement with a Generator located outside the NYCA as a temporary solution to a Generator Deactivation Reliability Need, the NYISO does not have the Tariff mechanisms and rules that would be necessary for it to evaluate, rely on, execute an RMR Agreement with, or to compensate all of the costs that a Generator located outside the NYCA might incur. The rules proposed in this filing would, however, allow the NYISO to select a Generator located outside New York that is a NYCA Generator as a solution to a Generator Deactivation Reliability Need.[106] The NYISO has informed its stakeholders that if they believe there is significant additional value to be gained by developing rules to allow Generators located outside the NYCA to be possible solutions to a Generator Deactivation Reliability Need, then they may prioritize this effort in the NYISO's project prioritization process at its Budget and Accounting Working Group. If developing improvements to enable Generators located outside the NYCA to be RMR Generators is prioritized as a part of that process, then the NYISO will develop enhancements to the baseline Generator Deactivation Process and Tariff rules the NYISO submitted in this filing to explicitly address how the NYISO would consider and select external Generators as Generator Deactivation Solutions, and the terms and conditions of service that would apply to external Generators.

D. Information Requirements and NYISO Review

i. *Cost, Revenue, and Other Information Requirements*

In addition to requiring the information for the Generator Deactivation Assessment and the information to evaluate proposed Generator Deactivation Solutions, the NYISO requires cost,

[104] OATT Section 31.5.1.6.

[105] *See, e.g.*, Midcontinent Independent System Operator presentation to its Planning Subcommittee *MISO Non-Transmission Alternatives* (April 19, 2016) (noting on Slide 30 "Non-transmission alternatives are not projects and there are no plans for cost recovery of such alternatives through the MISO tariff."), *available at*: https://www.misoenergy.org/Events/Pages/PSC20160419.aspx.

[106] There are currently Generators located in New Jersey that are NYCA Generators. There are Generators interconnecting in Pennsylvania that will be NYCA Generators.

revenue, and other information from proposed and potential Generator Deactivation Solutions. These information requirements are located in Appendix B (Section 38.25) of Attachment FF. The Commission accepted them in its April Order.[107] The NYISO has made conforming revisions to Appendix B to be consistent with the revisions to the Generator Deactivation Process.

The proposed tariff revisions establish the deadlines by which the required information must be submitted. 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 in Appendix B.[108] It is the same period in which a Generator Deactivation Notice is determined to be complete, *i.e.*, within 10 days of receipt of the information or receipt of information in response to a notice from the NYISO that the previously submitted information was not sufficient.

ii. *Review of Appendix B Cost, Revenue, and Other Information*

Section 38.7, along with the requirements in Appendix B previously accepted by the Commission, establish and describe the NYISO's role in reviewing and verifying and/or validating information related to an Initiating Generator and proposed Generator Deactivation Solutions. Section 38.7.2 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. The NYISO may terminate its consideration of a proposed Generator Deactivation Solution if a Market Party fails to provide the requested information.

E. NYISO Evaluation of Viability and Sufficiency of Generator Deactivation Solutions

The NYISO will evaluate all proposed Generator Deactivation Solutions to determine whether each is Viable and Sufficient to satisfy individually or in conjunction with other solutions the identified Generator Deactivation Reliability Need.[109] The NYISO will perform the viability and sufficiency evaluation consistent with the requirements for performing such

[107] April Order at P 64. In the October 2015 Compliance Filing, these information requirements were located in Appendix F of Attachment Y.

[108] Proposed OATT Section 38.3.1.5.

[109] Proposed OATT Section 38.6.1. 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.*

evaluation in its reliability planning process.[110] If there are adequate Viable and Sufficient market-based or demand response[111] Generator Deactivation Solutions to satisfy completely the Generator Deactivation Reliability Need, the NYISO will conclude the Generator Deactivation Process at this point.[112] In such case, the NYISO will present the results of its assessment in a final report.[113]

F. Determining RMR Avoidable Costs

Compensation for RMR Generators under an Availability and Performance Rate determined in accordance with Rate Schedule 8 of the Services Tariff is based on the Generator's Avoidable Costs. These costs are determined in accordance with Section 38.8 of the OATT and Rate Schedule 8 to the Services Tariff. RMR Avoidable Costs are those costs, net of estimated revenues (if applicable), of both the Initiating Generator and any other Viable and Sufficient Generator Deactivation Solution that responds to the Generator Deactivation Reliability Need.[114] RMR Avoidable Costs are determined, and verified, by the NYISO based on cost and revenue information that it receives under Sections 38.3, 38.4, 38.5, 38.7, 38.8, Appendix B and the other provisions of Attachment FF. RMR Avoidable Cost determinations are calculated for the shorter of the Generator Deactivation Reliability Need or the period that the Initiating Generator or other Viable and Sufficient Generator is able to address the Generator Deactivation Reliability Need.[115]

Cost determinations made by the NYISO will incorporate early termination adjustments reflected in any underlying agreement to which the Initiating Generator is a party.[116] Section 38.8 also requires the NYISO to include as Capital Expenditures, in the RMR Avoidable Cost calculation, any property or other asset acquisition costs that are necessary to permit the Initiating Generator or other Generator Deactivation Solution to address the Generator Deactivation Reliability Need, as long as the underlying assets have a useful life of longer than one year.[117] In calculating revenues, Section 38.8 requires the NYISO to include revenues from any contract then in place for the Initiating Generator or other Viable and Sufficient Generator Deactivation Solution.[118] Finally, the new proposal gives the NYISO external Market

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[110] Proposed OATT Section 38.6.1. The viability and sufficiency evaluation requirements are located in Sections 31.2.5.3 and 31.2.5.4 of Attachment Y of the OATT.

[111] The NYISO will consider demand response when it is offered as a market-based solution or when it is proposed by the Responsible Transmission Owner as a solution that is eligible for cost recovery under New York State law.

[112] Proposed OATT Section 38.6.2.

[113] Proposed OATT Section 38.6.2.

[114] Proposed OATT Section 38.8.1.

[115] *Id.*

[116] Proposed OATT Section 38.8.1.1.

[117] Proposed OATT Section 38.8.1.3.

[118] Proposed OATT Section 38.8.1.4.

Monitoring Unit ("MMU") the opportunity to provide input on the NYISO's cost and revenue calculations in its determination of RMR Avoidable Cost.[119]

G. RMR Service Offers

The NYISO will solicit an RMR Service Offer from Generators that have been determined to be a Viable and Sufficient Solution to the Generator Deactivation Reliability Need. If the NYISO has only identified one Generator that can meet the Reliability Need, or if all of the Generators that have been identified as Viable and Sufficient solutions are owned or controlled by the same Generation Owner, the NYISO will provide the 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*.[120] If there is more than one Generator that was determined to be a Viable and Sufficient Generator Deactivation Solution, the NYISO will solicit RMR Service Offers from each of the Generators that responded to the NYISO's solicitation or submitted a notice of intent to participate and required cost information.[121] Simultaneous with its request for RMR Service Offers, the NYISO will also post a notice on its website that it is soliciting such offers, which will provide further transparency to stakeholders.[122]

When the NYISO provides to a Generator a request for an RMR Service Offer, it must include with that request (a) the Generator's RMR Avoidable Costs (with a separate identification of the Capital Expenditure amount that is included in the RMR Avoidable Costs), (b) the duration of the period for which the NYISO determines that the Generator is Viable and Sufficient to meet the Generator Deactivation Reliability Need, (c) the deadline by which offers must be received, and (d) a listing of all other information that the Generator must provide in its proposal.[123] All RMR Service Offers are required to (1) state the price at which the Generator is willing to provide the service (at either an Availability and Performance Rate or a FERC-approved Owner Developed Rate), (2) list the timing and cost of each Capital Expenditure included in the offer, (3) identify any changes to the Form of Reliability Must Run Agreement that must be made to be able to provide the service, (4) identify the duration of the offer (which cannot be for a period that is longer than the duration identified by the NYISO), (5) explain whether the offer would change if the duration of the agreement were to be for a shorter period, and (6) explain whether the offer is for less than or equal to the Generator's full cost of service.[124]

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[119] Proposed OATT Section 38.8.2.

[120] Proposed OATT Section 38.9.1.

[121] *Id.*

[122] Proposed OATT Section 38.9.2.

[123] Proposed OATT Section 38.9.3.

[124] Proposed OATT Section 38.9.4.

H. Solution Selection Process

The NYISO proposes rules to evaluate and select among Viable and Sufficient transmission and generation solutions to address Generator Deactivation Reliability Needs that are consistent with the instructions in the Commission's April Order. In Paragraph 73 of its April Order the Commission stated "While we emphasize that RMR agreements should only be used as a last-resort measure, we also have an interest in minimizing costs." The NYISO's proposed solution selection process was developed to balance the competing concerns that the Commission recognized in its order. The execution of an RMR Agreement with a Generator should be a last resort. However, the NYISO should not be *required* to select a transmission solution if a far less expensive Generator solution is available.

The NYISO only initiates its solution selection process if it determines that a Generator Deactivation Reliability Need exists after it accounts for Transmission Owners' Local Transmission Owner Plans, operating procedures and for projects in its interconnection queue. The first set of solutions the NYISO considers are Viable and Sufficient market-based Generator Deactivation Solutions. Market based solutions can be generation, transmission or demand response. Market based solutions are not eligible to recover costs that exceed market rates under the NYISO's tariffs. If the NYISO identifies Viable and Sufficient market based solutions that fully address the identified Generator Deactivation Reliability Need, then it will conclude the Generator Deactivation Process. Otherwise, Viable and Sufficient market based solutions may reduce the scope of the need that the NYISO must select a Generator Deactivation Solution to address.

In Section 38.10.1 of its OATT, the NYISO explains that if it expects the solution selection process may require more than 365 days to complete, it may execute a short-term RMR Agreement with one or more Generators (most likely, with the Initiating Generator) in order to maintain reliability while it completes the solution selection process. Time concerns are most likely to arise where several Viable and Sufficient transmission solutions and several Viable and Sufficient generation solutions have all been presented for selection by the NYISO, or when several Generators provide near-simultaneous notice of their desire to deactivate.

In Section 38.10.1.1 of its proposed solution selection process, the NYISO may select a permanent transmission solution that completely satisfies a Generator Deactivation Reliability Need. Immediately implementing a permanent transmission solution when such a solution is available should reduce the long-term cost to ratepayers because it avoids incurring both the cost of implementing a temporary solution, such as an RMR Agreement, and the cost of the permanent solution.

When a need arises on non-bulk power transmission facilities, the NYISO proposes to select a temporary solution, if necessary, and a permanent transmission solution. The NYISO expects that selecting a permanent transmission solution and providing cost recovery to the Responsible Transmission Owner in this circumstance will significantly speed development of the transmission solution and reduce the duration of any RMR Agreement that might be necessary.

In footnote 136 and Paragraph 73 of its April Order the Commission instructed the NYISO to employ a "distinctly higher" net present value standard in its process for choosing between non-generation solutions and executing an RMR Agreement with a Generator, and to explain how the standard will be implemented. Proposed Sections 38.10.2.1 through 38.10.2.4 and Section 38.10.4 of the OATT were developed to implement the Commission's instruction, recognizing that RMR Agreements should be a last resort.

Section 38.10.2 of the proposed solution selection rules states that the NYISO will select a Viable and Sufficient transmission solution if there is no Viable and Sufficient generation solution that has a "distinctly higher net present value." Section 38.10.2.2 explains that a Viable and Sufficient generation solution has a "distinctly" higher net present value than a Viable and Sufficient transmission solution if, after accounting for the accuracy range of each transmission project cost estimate and generation revenue estimate, the NYISO determines that the range of net present values of the generation solution is higher than the range of the net present values of the transmission solution. If there is an overlap between the ranges of net present values between a generation solution and a transmission solution, then the generation solution does *not* have a distinctly higher net present value than the transmission solution, and the NYISO will select the Viable and Sufficient transmission solution. If there is no overlap between the ranges of the net present values of the generation and transmission solution, and the range of net present values of the generation solution is above those of the transmission solution, then the NYISO will select from among the generation and transmission solutions in the manner explained below.

Consistent with the Commission's instruction that executing an RMR Agreement should be a last resort, the NYISO's determination that a generation solution has a distinctly higher net present value than a transmission solution does *not* require the NYISO to select the generation solution and execute an RMR Agreement. In accordance with Section 38.10.2.4 of its proposed rules, the NYISO next compares the Viable and Sufficient transmission solution(s) to the Viable and Sufficient generation solution(s) based on (i) the net present value of each solution, and (ii) the degree to which each solution satisfies the metrics proposed in Section 38.10.4.1 through 38.10.4.8 of the solution selection rules.

The metrics proposed in Section 38.10.4.1 through 38.10.4.8 of the solution selection rules were adopted from the NYISO's biennial reliability planning process that were approved by the Commission and revised and expanded in response to stakeholder comments to better fit the Generator Deactivation Process.[125] The metrics allow the NYISO to account for both cost and non-cost factors, including the impact each solution will have on the flexibility, efficiency and operation of the New York State Transmission System and the NYISO's commitment of resources to serve load, when selecting a Generator Deactivation Solution.

[125] The selection metrics in OATT Section 38.10.4 include: (i) the capital costs, (ii) cost per MW, (iii) expandability of the proposed solution, (iv) operability of the proposed solution, (v) performance of the proposed solution, (vi) extent to which Developer has the property rights, or ability to obtain property rights, required to implement solution, (vii) potential issues associated with delay in constructing solution or entering into service, and (viii) the impact on other pending reliability needs and pending solutions to those needs.

In accordance with Section 38.10.2.1, the NYISO will choose from among Viable and Sufficient transmission solutions based on which transmission solution best satisfies the metrics proposed in Section 38.10.4.1 through 38.10.4.8 of the solution selection process. When there is no Viable and Sufficient transmission solution and the NYISO is selecting between the Viable and Sufficient generation solutions, consistent with Section 38.10.3, the NYISO will choose based primarily on which RMR Service Offer from a Generator results in the highest net present value solution to the Generator Deactivation Reliability Need. The NYISO will also consider the impact of any blacklined changes to the *Form of Reliability Must Run Agreement* that each Viable and Sufficient generation solution submits with its RMR Service Offer. If the NYISO's review of the net present value of each RMR Service Offer and requested changes to the *Form of Reliability Must Run Agreement* do not enable it to make a selection on those bases alone, then the ISO will also consider the expected operational, performance and market impacts, including the size of the offered generation solutions.

In some cases, addressing an identified Generator Deactivation Reliability Need may require a combination of Viable and Sufficient solutions. Addressing the need might require the NYISO to select a pair of compatible transmission solutions, or a transmission solution in conjunction with a compatible generation solution. Proposed Section 38.10.2.3 addresses how the NYISO will compare and select "Multi-Element Solutions." If the NYISO must select between one or more generation solutions that will be paired with a transmission solution, it will use the same selection criteria as it applies in Section 38.10.3 to select the Generator. The NYISO will compare a generation solution to a multi-element solution that includes transmission by applying the criteria set forth in Section 38.10.2.4, which are described above.

I. Entry into RMR Agreements

Proposed Section 38.11 establishes that the NYISO may enter into an RMR Agreement with one or more Generators it selected in accordance with Section 38.10, that are capable of satisfying an identified Generator Deactivation Reliability Need, either on their own or in tandem with other Viable and Sufficient Generator Deactivation Solutions.

Under proposed Section 38.11.2, the NYISO will tender to the Owners of the selected Generators the Form of Reliability Must Run Agreement set forth in proposed new Appendix C to Attachment FF. The term of the agreement shall be determined by the NYISO based on in service date of the conceptual permanent solution identified under Section 38.4.2.1. and any modifications to the scope and timing of the originally identified Generator Deactivation Reliability Need.

Sections 38.11.3 through 38.11.5 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 Generator Owner under Section 205 of the Federal Power Act ("FPA") if both parties agree on the terms and conditions of the agreement, including the Availability and Performance Rate ("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 Generator Owner agree on all terms and conditions (including the APR) but the Generator Owner proposes to recover Capital

Expenditures above the authorized limits ($10 million if the Generator is a non-nuclear Generator, and $25 million if it is a nuclear Generator), then the NYISO will file an unexecuted RMR Agreement, including a proposed APR, under Section 205 of the FPA, and the Owner will make a separate Section 205 filing seeking to recover its expected 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 will file an unexecuted RMR Agreement with the Commission setting forth general terms and conditions of service that the parties have agreed to, and the Owner will separately submit an Owner Developed Rate that is consistent with the terms and conditions of service specified in the RMR Agreement.

Section 38.11.6 proposes to include as part of the NYISO filing submitting an RMR Agreement a description of the methodology and results of the reliability studies that the NYISO performed to identify a Generator Deactivation Need. The NYISO's filing will describe the alternative solutions it evaluated and explain why the term of an RMR Agreement is appropriate in light of the potential alternative solutions it considered.

J. Developer's Responsibility Following Selection of Transmission Solution

i. *Responsible Transmission Owner's Obligation to Construct*

Consistent with its reliability planning process, the Responsible Transmission Owner is required to develop and construct its regulated Generator Deactivation Solution if it has been selected by the NYISO.[126] The Responsible Transmission Owner will be entitled to the full recovery of all of its reasonably incurred costs related to the development, construction, operation and maintenance of the solution.[127]

ii. *Developer's Responsibility to Obtain Necessary Approvals/Authorizations*

Upon its selection of its transmission Generator Deactivation Solution, the NYISO will inform the Developer that it should submit it solution to the appropriate governmental agencies or authorities to obtain any required approvals to site, construct, and operate the solution.[128] The Developer shall do so to the extent it has not already requested or obtain the approvals.[129] If the appropriate agency or authority either rejects the required approvals or later withdraws them, the Developer of the selected transmission solution may recover all of its necessary and reasonable costs incurred and commitments made up to the final regulatory decision, including reasonable and necessary expenses incurred to implement an orderly termination of the project to the extent permitted by the Commission in accordance with its regulations on abandoned plant recovery.[130]

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[126] Proposed OATT Section 38.12.1.

[127] Proposed OATT Section 38.12.1.

[128] Proposed OATT Section 38.12.2.1.

[129] Proposed OATT Section 38.12.2.1.

[130] Proposed OATT Section 38.12.2.2.

iii. *Development Agreement*

The NYISO proposes to require that the Developer of a transmission project selected in the Generator Deactivation Process enter into a development agreement with the NYISO.[131] The agreement would provide for the project to be timely developed and constructed in a manner consistent with the project proposal selected by the NYISO. The NYISO will use as the base for this agreement the *pro forma* Development Agreement for reliability projects selected in its reliability planning process that is located in Appendix C of Section 31.7 in Attachment Y of the OATT.[132]

Section 38.12.3 establishes the process by which the NYISO will tender the development agreement to the Developer and will negotiate and enter into the agreement. The proposed process is drawn from and generally consistent with the NYISO's process for negotiating and entering into a development agreement in its reliability and public policy planning processes.[133] However, due to the tight time frames associated with the Generator Deactivation Process, the parties must finalize the agreement "as soon as reasonably practicable" after it is tendered by the NYISO. In addition, as the parties will be modifying the *pro forma* Development Agreement from the reliability planning process, the NYISO will always file the agreement with the Commission for its acceptance of non-conforming changes to the *pro forma* agreement. Section 38.12.3 also establishes the method by which the NYISO will file either the non-conforming or an unexecuted version of the agreement with the Commission. Upon the execution or filing of an unexecuted version of the agreement, the NYISO and Developer will perform their respective obligations under the agreement that are not in dispute.

Section 38.12.4 establishes the consequences if: (i) the Developer of the selected transmission project does not timely execute the development agreement or does not request that it be filed unexecuted, or (ii) an effective development agreement is terminated under the terms of the agreement. If one of these circumstances occurs and the NYISO determines that it must identify a solution to the Generator Deactivation Reliability Need prior to the next planning cycle of its reliability planning process, the NYISO could take one or more of the following actions. The NYISO could address the remaining reliability need as an immediate reliability need as described in Part III.B.i above. The NYISO could direct the Developer to continue to develop its project for completion beyond the in-service date required to address the reliability need. Finally, if the selected solution was proposed by a party other than the Responsible Transmission Owner, the NYISO could request that the Responsible Transmission Owner step in to complete it. If the Responsible Transmission Owner agreed to complete the project, the Responsible

[131] Proposed OATT Section 38.12.3.

[132] The Commission has accepted in large part the NYISO's Development Agreement for its reliability planning process, while directing certain changes. *See* New York Independent System Operator, Inc., 153 FERC ¶ 61,341 at P 21 (2015). The NYISO filed compliance revisions regarding the Development Agreement that are currently pending. *See* New York Independent System Operator, Inc., Compliance Filing, Docket No. ER13-102-009 pp 31-40 (March 22, 2016).

[133] OATT Sections 31.2.8.1.6, 31.2.8.1.7 (reliability planning process); 31.4.12.2 (Public Policy Transmission Planning Process).

Transmission Owner and the original Developer would be required to work cooperatively with each other in accordance with the requirements in Section 38.12.4.4 to implement the transition, including negotiating in good faith with each other to transfer the project. The requirements and restrictions concerning the project's transfer mirror those in the NYISO's reliability planning process.[134]

K. Generator's Failure to Deactivate

i. *Deactivation Time Frame*

Section 38.14.1 establishes the timeframe in which a Generator that has submitted a Generator Deactivation Notice and has satisfied the requirements to be Retired or enter into a Mothball Outage may take such action. Specifically, a Generator may be Retired or enter a Mothball Outage within 365 days of: (i) the conclusion of the 365-day 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.[135] If the Generator is not Retired or does not enter into a Mothball Outage within the allowed period then the Market Participant must submit a new Generator Deactivation Notice and satisfy anew the requirements of the Generator Deactivation Process before its Generator may be Retired or enter into a Mothball Outage.[136] This time frame was developed to carefully balance the flexibility that a Market Participant may want to determine the date on which it deactivates its Generator with the NYISO's ability to assess the impact of Generator deactivations.

ii. *Study Cost Recovery*

If the NYISO commences its Generator Deactivation 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 time frame 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 Generator Deactivation Process, including any costs associated with using contractors.[137] Requiring a Market Participant to pay study costs under these circumstances will discourage the repeated submission of Generator Deactivation Notices to gauge the reliability implications of the potential deactivation of a Generator. The NYISO already has a reliability study process in place pursuant to which it will perform reliability analysis consistent with the

[134] OATT Section 31.2.10.1.4.

[135] Proposed OATT Section 38.14.1. As explained in Part III.B.iii of this filing letter, the NYISO may allow a Generator to deactivate at a date earlier than 365 days following a complete Generator Deactivation Notice, but not sooner than 91 days after the Generator Deactivation Start Date, in accordance with proposed Section 38.3.6 of its OATT.

[136] Proposed OATT Section 38.14.1.

[137] Proposed OATT Section 38.14.2. If the Initiating Generator is an Interim Service Provider, it may also be subject to a repayment obligation pursuant to Schedule 8 of the Services Tariff.

Generator Deactivation Assessment at a Market Participant's request and expense. In the absence of the proposed reimbursement requirement, a Market Participant might require the NYISO to continually perform detailed and time-consuming analysis concerning the Generator on its behalf at no cost to the Market Participant by repeatedly submitting Generator Deactivation Notices.

L. Halting

The Gap Solution process requirements proposed in the October 2015 Filing did not specify how the NYISO would address a non-generation solution selected to meet a reliability need if the underlying reliability need changed or no longer existed. In response to comments in this proceeding, the NYISO agreed that there are circumstances in which it would be reasonable for a selected non-generation solution to continue if a Market Participant rescinded the Generator Deactivation Notice that was the cause of the reliability need.[138] In the April Order, the Commission directed the NYISO to clarify that a non-generation solution that is substantially complete at the time a Generator Deactivation Notice is rescinded could be completed.[139] The Commission agreed that this would "prevent waste and increase efficiency of system planning."[140]

In developing the new Generator Deactivation Process, the NYISO identified additional instances in which it may need to address whether to halt a transmission project that was selected to satisfy a Generator Deactivation Reliability Need. The NYISO, therefore, proposes the following comprehensive halting requirements to address both the halting scenario identified by the Commission and additional circumstances.

Section 38.15 establishes the requirements by which the NYISO will determine whether or not to halt a transmission solution if the underlying reliability need has changed or no longer exists. This could occur if the Market Participant has rescinded the Generator Deactivation Notice that was the cause of the reliability need, the Generator that is the subject of the notice does not timely deactivate, or the need is otherwise addressed or eliminated.[141]

In such circumstances, the NYISO will not halt the selected transmission project once the Developer has received its applicable permits or authorizations under state law.[142] This approach is consistent with the NYISO's halting requirements for transmission projects in its reliability planning process and reflects the substantial investment of time and resources in the NYISO's

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[138] *New York Independent System Operator, Inc.*, Request for Leave to Answer and Answer of New York Independent System Operator, Inc., Docket No. ER16-120-000 (December 21, 2015) at p 36.

[139] April Order at P 151.

[140] April Order at P 151.

[141] For example, a market-based solution that satisfies the reliability need may have commenced operation.

[142] Proposed OATT Section 38.15.2.

selection and project permitting processes.[143] If permitting or regulatory approvals are not required, the NYISO will not halt a project once the Developer has commenced physical construction of its project.[144]

If a selected transmission project has not yet met these milestones, the NYISO will have the discretion whether or not to halt the project.[145] In making its determination, the NYISO will consider, among other things, several factors that are guided by the concerns raised by the Commission for preventing waste and maintaining the efficiency of system planning. The factors include; (i) whether the developer has executed a development agreement or requested it be filed unexecuted, (ii) the status of Developer's progress against the milestones in the development agreement, (iii) the status of Developer's obtaining required permits or authorizations, (iv) whether the project is an interim or permanent solution, and (v) the operational and performance benefits of the project.[146] If the NYISO halts the project, the Developer will be eligible to recover the costs it incurred and the commitments made up to that point, including the reasonable and necessary expenses incurred to implement an orderly termination of the project.[147]

M. Addressing Reliability Needs on a Permanent Basis

The Initial 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. . . ."[148] The NYISO's proposed tariff revisions limit the need to execute RMR Agreements with Generators by establishing a process to identify permanent solutions to address a Generator Deactivation Reliability Need.

Consistent with Section 38.10.1.1 of its proposed OATT revisions, the NYISO may select a permanent transmission solution in the Generator Deactivation Process to address an identified Generator Deactivation Reliability Need. If the NYISO is instead required to select an interim solution, such as entering into one or more RMR Agreements, the NYISO's proposed tariff revisions will enable the NYISO to identify a permanent solution through its biennial reliability planning process.

The initial stage of the NYISO's biennial reliability planning process is the NYISO's performance of a Reliability Needs Assessment ("RNA"). This process identifies whether there are any Reliability Needs for which the NYISO must solicit permanent market-based or regulated solutions in the Comprehensive Reliability Plan ("CRP"). The NYISO proposes to

[143] OATT Section 31.2.8.2.3.

[144] OATT Section 31.2.8.2.3. Commencing physical construction includes excavation and pouring for foundations or the installation or erection of improvements. *Id.*

[145] Proposed OATT Section 38.15.1.

[146] Proposed OATT Section 38.15.1.

[147] Proposed OATT Sections 38.15.1., 38.23.2.

[148] Initial RMR Order at P 16.

revise the requirements for the development of the base case underlying the RNA to enable the identification of permanent solutions to a Generator Reliability Deactivation Need. If the NYISO has selected a permanent solution in the Generator Deactivation Process, that permanent solution will be included in the RNA Base Case so long as it satisfies the base case inclusion rules set forth in the NYISO Procedures.[149] The NYISO will *not* include in the RNA Base Case an interim solution selected in the Generator Deactivation Process, or an RMR Generator operating under an RMR Agreement.[150] Because these interim projects will not be included in the base case, the NYISO's RNA can identify the Reliability Need underlying the need for the interim solution as a Reliability Need for which the NYISO will solicit in its CRP market-based and regulated permanent solutions and address that need through the biennial reliability planning process.

IV. PROPOSED COMPLIANCE REVISIONS ADDRESSING COMPENSATION, MARKET PARTICIPATION, "ANTI-TOGGLING" PROTECTION AND OTHER ISSUES

A. Revisions that Provide for Interim Compensation During the Second Half of the Proposed 365 Day Generator Deactivation Notice Period

i. *Justification for Compensating Generators During the Notice Period*

The NYISO's October 2015 Filing proposed that a Generator seeking to deactivate must provide the NYISO with 365 days prior notice. Several protests argued that the 365 day notice period was too long and should either be shortened or that the NYISO should be required to enter into an RMR Agreement as soon as it determines that a deactivation would result in a Reliability Need. In its December Answer to those protests, the NYISO stated that it "would not be opposed to allowing limited cost recovery under certain circumstances during the second half of the 365 day notice period" if necessary to ensure a just and reasonable rate.[151] The NYISO suggested that such compensation might encompass demonstrated avoidable costs, including variable operating costs.[152]

The April Order rejected the 365 day notice proposal without addressing its merits and directed the NYISO to submit a new notice timetable in this filing. In Part III.B.iii of this filing letter, the NYISO justified its decision to re-submit a 365-day notice proposal. The NYISO is also proposing to build on the concepts first outlined in its December Answer by establishing interim compensation rules that would apply to "Interim Service Providers" during the second half of the proposed 365 day period. The proposed new rules are within the scope of the April

[149] OATT Section 31.2.2.3.2.

[150] OATT Section 31.2.2.3.2.

[151] New York Independent System Operator, Inc., *Request for Leave to Answer and Answer of the New York Independent System Operator, Inc.*, Docket No. ER16-120-000 at 7 (December 21, 2015) ("December Answer").

[152] December Answer at 10.

Order's broad mandate that the NYISO develop a comprehensive deactivation notice proposal and thus are appropriately included in this compliance filing.

The NYISO's proposed rules for compensating Interim Service Providers are designed to ensure that Generators seeking to deactivate remain in roughly the same financial position that they occupy today. To date, additional payments under RMR-like agreements have generally not been available in New York until after the NYPSC's 180 day notice requirement is satisfied. Establishing an interim compensation mechanism that would trigger on the 181st day should also eliminate any remaining concerns related to the overall justness and reasonableness of a 365 day notice period. The addition of interim compensation rules would align the NYISO's proposal with the Commission-approved 182 day notice period under the Midcontinent Independent Transmission System Operator, Inc.'s System Support Resource rules.[153]

ii. *Overview of Proposed Interim Service Provider Compliance Revisions*

The NYISO proposes to make interim compensation available to "Interim Service Providers." The NYISO's proposed tariff revisions pertaining to the terms and conditions of service for Interim Service Providers are modeled very closely on the language concerning RMR Generators that was accepted by the April Order. Where there are differences they are minor and are justified by valid distinctions, *e.g.*, by the fact that Interim Service Providers will not execute RMR Agreements with the NYISO.

Section 38.1 of OATT would define an "Interim Service Provider" as "[a] Generator that must remain in service during the 365 days that follow the Generator Deactivation Assessment Start Date beyond the later of (a) the 181st day of the 365 day period, or (b) the Generator's requested deactivation date." Section 38.1's definition of "Generator Owner" would expressly include entities "that possess ultimate responsibility for the operation of an Interim Service Provider and its participation in the ISO Administered Markets."

Section 38.13 sets forth general rules applicable to Interim Service Providers. It also references more detailed Interim Service Provider rules that are located elsewhere in the tariffs. Specifically:

- Sections 38.13.1 and 38.13.2 explain that if the NYISO declines to authorize an Initiating Generator to deactivate by the later of the 181st day of the 365 day period or its requested deactivation date then the Initiating Generator will become an Interim Service Provider.

- Section 38.13.2.1 notes that Interim Service Providers will be compensated in accordance with Rate Schedule 8 of the Services Tariff. As is discussed in subsection "iii" below, the Rate Schedule 8 provisions applicable to Interim Service Providers are modeled closely on language applicable to RMR Generators that was accepted by the April Order. In general, the NYISO proposes to pay Interim Service Providers an Availability and

[153] The Midcontinent Independent System Operator, Inc.'s ("MISO's") tariff rules give the MISO 26 weeks (which is approximately 180 days) to identify a reliability need and develop a solution. *See* MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff Section 38.2.7.

Performance Rate that encompasses avoidable, fixed, and variable costs, but that does not include any availability or performance incentives.

- Section 38.13.2.1.1 describes the cost, revenue and other information that the NYISO will use to calculate the compensation to be paid under Rate Schedule 8. It also empowers the NYISO to use estimated values when it cannot verify or validate a submitted cost or revenue figure. This is necessary because the NYISO will only have 180 days to calculate a rate. If the Generator Owner does not promptly and diligently respond to the NYISO's data requests, the NYISO may be required to rely on estimates.

- Section 38.13.2.2 affirms that Generators are not eligible to be Interim Service Providers when they are in an ICAP Ineligible Forced Outage state. Generators that are in an ICAP Ineligible Forced Outage are not capable of operating; it would not make sense for the NYISO to pay a Generator a cost-based rate to provide a service it is not capable of providing.

- Section 38.13.2.3 authorizes the NYISO to allow an Interim Service Provider to deactivate, and thus cease to be an Interim Service Provider, prior to the conclusion of the 365 day notice period after the NYISO gives sixty days' notice. The NYISO will be able to use this rule to permit a Generator to deactivate prior to the conclusion of the 365 day period when a solution becomes available, or can be used by the NYISO to cease compensating a Generator that is not providing adequate service.

- Section 38.13.2.4 provides that the NYISO may also allow an Interim Service Provider to deactivate prior to the end of the 365 day notice period if it experiences a Forced Outage of ten days or longer. The deactivation may occur only after the NYISO gives at least thirty days' notice that deactivation is permitted. This rule allows the NYISO to cease paying a cost-based rate to a Generator that is not available to operate as an Interim Service Provider.

- Section 38.13.2.5 states that Interim Service Providers must comply with applicable Energy and Ancillary Services Market Participation Rules set forth in Section 23.6 of the Services Tariff. As is discussed below in subsection "iv" the rules that apply to Interim Service Providers are modeled closely on those that that April Order accepted for RMR Generators.

- Section 38.13.2.6 specifies that Interim Service Providers that have Capacity Resource Interconnection Rights must take all required actions to be qualified as Installed Capacity Suppliers pursuant to Section 5.12 of the Services Tariff. Section 5.12.4 provides than an Interim Service Provider cannot enter into any new agreements that limit its ability to provide Energy, Capacity or Ancillary Services into the ISO Administered Markets. This provision corresponds to revisions the NYISO proposed in October of 2015 to establish a limitation on RMR Generators entering into new agreements. Interim Service Providers must also comply with the capacity "must offer" requirements that the NYISO proposes to add to Section 5.14.1.1.

- Section 38.13.2.7 requires an Interim Service Provider that has deactivated but that wishes to return to participating in any of the ISO-Administered Markets to give the NYISO at least sixty days' notice of its intended return so that the NYISO may calculate any repayment obligation to be imposed under Rate Schedule 8 and any credit requirements to be applied under Sections 26.4 and 26.5 of the Services Tariff.

- Section 38.13.2.8 establishes that an Interim Service Provider that wishes to continue participating in the ISO-Administered Markets after it ceases to be an Interim Service Provider (and is not operating under an RMR Agreement) must give the NYISO at least 30 days' notice of its intentions so that the NYISO may calculate any repayment obligation and applicable credit requirements as noted above.

Proposed revisions to Section 38.16 of the OATT and Rate Schedule 8 to the Services Tariff address the recovery of "Additional Costs" by Interim Service Providers. Under the proposed rules the NYISO may allow an Interim Service Provider to recover up to $1,000,000 in additional costs that are necessary to address an event (a) that occurred after a Generator Deactivation Notice was submitted, but prior to the conclusion of the 365 day notice period, (b) that could not reasonably have been foreseen at the time the Generator Deactivation was submitted if incurring the cost is necessary to enable the Generator to continue operating as an Interim Service Provider. Under the proposed rules the Generator Owner would have to seek authority to recover costs that exceed $1,000,000 from the Commission. The NYISO is required to submit an informational filing to the Commission describing any reimbursement of Additional Costs it allows.

Proposed revisions to Rate Schedule 8 to the Services Tariff and Sections 38.17.3, 38.17.4 and 38.17.6 of the OATT allow the NYISO to reimburse an Interim Service Provider's Capital Expenditure costs that are necessary to permit the Generator to provide service during the 365 day period. Similar to the treatment of Additional Costs, the NYISO can only agree to reimburse costs of up to $1,000,000. Capital Expenditures with costs in excess of $1,000,000 must be approved by the Commission. In addition, the NYISO is not permitted to reimburse the Generator Owner for the Capital Expenditure if the facility is not placed in service by a date that the NYISO and the Generator Owner agree to in a written agreement (which in service date must be prior to the conclusion of the 365 day period). The NYISO is required to submit an informational filing to the Commission describing any reimbursement of Capital Expenditures it allows.

iii. *Rate Schedule 8: Availability and Performance Rate Payments to Interim Service Providers*

The NYISO has added proposed rules for determining Interim Service Provider compensation to Section 15.8.6 of Rate Schedule 8 to the Services Tariff. The new provisions that would apply to Interim Service Providers are modeled closely on tariff language applicable to RMR Generators that was accepted by the April Order.

Specifically, proposed new Section 15.8.6 would direct the NYISO to compensate Interim Service Providers using essentially the same calculations and defined variables that are

used to determine an APR for RMR Generators under Section 15.8.1. As under Section 15.8.1, Interim Service Providers will receive compensation that accounts for their avoidable costs, their energy costs, and their supply of Voltage Support Service and Restoration (black start) Service.

The NYISO is not proposing to make performance incentive payments or availability incentive payments to Interim Service Providers. Consistent with the explanation the NYISO provided on pages 15-17 and 21-23 of its December Answer, the rate the NYISO proposes to pay Interim Service Providers is appropriate because it will protect Interim Service Providers from sustaining losses during days 181-365 of the 365 day period, but will not give Generator Owners a financial incentive to give the NYISO the least possible amount of notice of a Generator deactivation in order to obtain the temporary recovery of a rate that exceeds the Interim Service Provider's costs. Accordingly, the NYISO is not proposing to revise existing Sections 15.8.2, 15.8.3, or 15.8.4 to make them applicable to Interim Service Providers.

Section 15.8.6 would also establish that if an Interim Service Provider has a Preexisting Capacity Bilateral then the NYISO will reduce the Interim Service Provider's RMR Avoidable Cost to reflect the revenues that the NYISO expects it to receive under the bilateral. If the Interim Service Provider's Preexisting Capacity Bilateral is with an Affiliate or was entered into less than year before the Interim Service Provider submitted its Generator Deactivation Notice then its RMR Avoidable Cost will be reduced by the amount that the NYISO determines that it would be reasonably expected to have received if it had offered the capacity that is subject to the Preexisting Capacity Bilateral into the Spot Market as a price taker for the relevant time period. This provision is a reasonable safeguard to prevent Interim Service Providers from being over-compensated.

iv. *Section 23.6: Participation by Interim Service Providers in the NYISO-Administered Energy and Ancillary Services Markets*

Interim Service Providers' participation in the NYISO-administered Energy and Ancillary Services markets would be governed by revisions to Section 23.6 of the Services Tariff. Most of the compliance tariff revisions addressing Interim Service Providers are minor adjustments to expand rules that the April Order accepted for RMR Generators to include Interim Service Providers or to add cross-references to other new tariff provisions.[154] Like RMR Generators, Interim Service Providers will be required to offer all of their Energy, Operating Reserves, and Regulation into the NYISO-administered Day-Ahead and Real-Time markets. They must generally bid in the same manner, and are subject to the same requirements and obligations, as RMR Generators. There are also a few instances in which the NYISO is proposing to add Interim Service Provider related language to Section 23.6 that differs slightly from previously accepted RMR Generator language. All of these variations are limited in scope and reflect valid differences between Interim Service Providers and RMR Generators. In most cases, the additional rules that apply to Interim Service Providers are necessary to replace rules that have been incorporated into the *pro forma* RMR Agreement. All of the proposed Interim

[154] *See, e.g.*, Sections 23.6.5.3.

Service Provider related changes to Section 23.6 should therefore be accepted for the same reasons that the April Order accepted that Section as applied to RMR Generators.

For example, the NYISO is proposing to revise Section 23.6.1.1.3 to establish procedures that will apply if a new operating constraint arises that prevents an Interim Service Provider from offering all or a portion of its capacity via an ISO-committed flexible bid. The relevant revisions closely track Commission-accepted language regarding the treatment of RMR Generators that face such a constraint, but with minor adjustments to account for the fact that Interim Service Providers will not execute RMR Agreements (except, of course, to the extent that that they later become RMR Generators). Similarly, the NYISO has added language to Sections 23.6.1.3, 23.6.1.4, 23.6.4.2, and 23.6.4.4 addressing, respectively, Interim Service Providers' potential obligation to provide Voltage Support Services and restricting both their participation in Bilateral Transactions and their ability to execute or extend agreements that would impede their ability to provide Energy or Ancillary Services to the NYISO. This language differs slightly from existing Sections 23.6.1.3, 23.6.1.4, 23.6.4.1, and 23.6.4.4 concerning RMR Generators, but only to the extent necessary to address the fact that Interim Service Providers have not executed RMR Agreements with the NYISO.

Finally, the NYISO is proposing to add new Section 23.6.2.2 to provide more detail concerning the determination of reference levels for Interim Service Providers. Because the NYISO will only have 90 days advance notice that a Generator will become an Interim Service Provider and interim service is only provided for 185 days, the NYISO will use an Interim Service Provider's existing cost-based reference levels, rather than performing a thorough reference level review in conjunction with the Generator Owner and the MMU in advance (as is done for an RMR Agreement). The Generator Owner, the NYISO or the MMU may request a review if they do not believe the Generator's cost-based reference levels are accurate.

v. *Exclusion of Interim Service Providers' UCAP from the Pivotal Supplier Calculation*

The October 15 Filing revised the definitions of "Affiliated Entity" and "Control" in Section 23.2.1 of the Services Tariff to exclude an RMR Generator's UCAP from being counted as "Mitigated UCAP." These revisions prevented such UCAP from being subject to the "supplier-side" "must offer" requirement applicable to Pivotal Suppliers located in Mitigated Capacity Zones.[155] The revisions were accepted by the April Order.

The NYISO is now proposing conforming revisions to Section 23.2.1 to exclude Interim Service Providers' UCAP from mitigation to the same extent as RMR Generators' UCAP.

vi. *Voltage Support Obligations*

The October 2015 Filing[156] included revisions to Rate Schedule 2 of the Services Tariff regarding RMR Generators' obligation to provide Voltage Support Service that were accepted by

[155] October 2015 Filing at p 49.

[156] October 2015 Filing at p 76.

the April Order. The NYISO is proposing conforming revisions to Rate Schedule 2 to apply the same requirements (for the same reasons) to Interim Service Providers.

Specifically, the NYISO would add language to Section 15.2 to require an Interim Service Provider that has provided Voltage Support Service over the last twelve months that it participated in the NYISO-administered markets to continue to provide the service unless it can demonstrate to the NYISO that it is no longer capable of doing so. This obligation is essentially identical to the one imposed on RMR Generators by Section 15.2. The October 2015 Filing explained that requiring RMR Generators to continue to provide Voltage Support Service was necessary to ensure that they continue to "provide all of the benefits they are capable of providing to the ISO-Administered Markets during the term of their RMR Agreement." The same rationale is equally applicable to Interim Service Providers.

Similarly, the NYISO proposes to revise Section 15.2.1 to establish that Interim Service Providers must timely perform the annual testing applicable to all Suppliers of Voltage Support Service so that they will remain continuously eligible to provide the service. If an Interim Service Provider does not comply with the annual testing requirements then the NYISO will make alternative arrangements to permit it to be a Qualified Supplier of Voltage Support Service. The October 2015 Filing adopted an identical rule for RMR Generators which was accepted by the Commission in the April Order.

B. Revisions that Require RMR Generators and Interim Service Providers to Offer Capacity as "Price-Takers" and that Address the Application of Offer Floors Under the Buyer-Side Market Power Mitigation Measures

The October 2015 Filing proposed to require RMR Generators to offer all of their UCAP into the NYISO-administered capacity auctions as "price-takers," *i.e.*, at $0.00/kW month with certain limited exceptions. The April Order rejected each of the proposed exceptions that would allow the NYISO "to impose a capacity offer price on RMR generators higher than $0.00/kW-month . . . ."[157] It stated that it would be "more efficient" for all RMR Generators to offer as price-takers and expressed concern that the proposed exceptions could result in ratepayers "paying twice."[158] The Commission also emphasized that RMR Generators should not be subject to offer floor mitigation under the NYISO's "buyer-side" capacity market power mitigation rules.[159]

The NYISO sought rehearing, and in the alternative clarification,[160] of the Commission's determination with respect to RMR Agreements that addressed a resource adequacy need. The NYISO argued that it would be inefficient to require RMR Generators that were retained to

[157] April Order at P 82.

[158] *Id.*

[159] *Id.* at P 83.

[160] *See* NYISO Rehearing Request at pp 4-10.

address such a need to offer as price takers. The NYISO's request for rehearing is still pending before the Commission.[161]

Consequently, in accordance with the April Order, the NYISO is proposing compliance revisions to specify that all RMR Generators and Interim Service Providers must offer into the capacity market as price-takers, *i.e.*, at $0.00/kW-month. Section 5.14.1.1 would establish the must-offer and price taker requirements for Interim Service Providers but allow an exception to the extent that the generator is subject to a "Pre-Existing Capacity Bilateral"[162] that precludes it from offering all or a portion of its capacity into an ICAP Spot Market Auction. This exception is necessary to avoid abrogating existing contracts in the absence of an express Commission directive to do so and is consistent with similar language that the April 16 Order accepted for RMR Generators.[163] The must offer and price taker requirements for RMR Generators would be set forth in Section 3.7.2 of the *Form of Reliability Must Run Agreement*. Similar must-offer and price taker language applicable to both ISP UCAP MW and RMR Generators would also be added to Section 23.4.5.8 of the Services Tariff.

In addition, the NYISO is revising Sections 23.4.5.7.12 and 23.4.5.8 to specify that RMR Generator or Interim Service Provider UCAP that is subject to an Offer Floor shall always be offered at $0.00/kW-month.[164] Correspondingly, the NYISO is proposing a conforming revision to Section 23.4.5.7.11 to specify that if UCAP MW are Mitigated UCAP (*i.e.*, subject to a Pivotal Supplier offer cap) and also subject to a buyer-side mitigation Offer Floor, the UCAP MW shall be offered in accordance with Section 23.4.5.7.12 (*i.e.*, at $0.00/kW-month).

Similarly, Section 23.4.5.7 would be revised to state that ISP UCAP MW and the UCAP of RMR Generators will not be required to offer capacity at the Offer Floor level that would normally apply and that Offer Floors shall "cease to apply" for periods when an Installed Capacity Supplier is an RMR Generator.

Finally, the NYISO is proposing to revise Section 23.4.5.7 of the Services Tariff to clarify that when ISP UCAP MW from an Interim Service Provider or UCAP from an RMR Generator that are subject to a buyer-side mitigation Offer Floor clears in an ICAP Spot Market Auction will not be counted for purposes of determining what constitutes "Cleared UCAP." Section 23.4.5.7 establishes that Offer Floor mitigation shall continue to apply to UCAP until it has cleared for any twelve, not necessarily consecutive, months. The purpose of this requirement

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[161] The NYISO's submission of compliance tariff revisions in accordance with the April Order is not intended to, and should not be construed as, a withdrawal or waiver of any argument raised in the NYISO Rehearing Request.

[162] The revision to Section 5.14.1.1 proposed in this filing would define a "Preexisting Capacity Bilateral" as a "bilateral contract that is effective at the time of the ICAP Spot Market Auction and was executed and effective before the NYISO received a Generator Deactivation Notice . . . ."

[163] Section 3.7.2 (Alternate Language) of the *Form of Reliability Must Run Agreement* in OATT Section 38.26.

[164] Sections 23.4.5.7(ii) and 23.4.5.7.1 of the Services Tariff specifies that UCAP subject to an Offer Floor can only be offered into an ICAP Spot Market Auction.

is to permit Offer Floor mitigation to end only when capacity has proven to be economic and thus becomes "Cleared UCAP."[165] Thus, the NYISO's proposed clarification is necessary because allowing UCAP that cleared an auction solely because it was being offered by an RMR Generator or was ISP UCAP MW at $0.00/kW-month in accordance with the RMR or Interim Service Provider rules would not be appropriate. Such UCAP would not have been demonstrated to be economic for that month and thus counting it as "Cleared UCAP" could result in mitigation ending prematurely.

C. Revisions to Establish Additional "Anti-Toggling" Measures and to Govern Repayment Periods

The April Order rejected, in part, the October 2015 Filing's proposed rules to disincentivize toggling between cost-based and market-based compensation. The Commission was concerned that the NYISO's proposed "claw-back" provision did not adequately prevent a Generator from noticing an intent to deactivate in order to temporarily obtain cost-based compensation in excess of its expected market compensation without having to refund the above-market payments.

The April Order therefore required the NYISO to revise its tariff to "provide that where an RMR generator wishes to continue to operate at the end of its RMR agreement, it must repay NYISO the higher of: (1) the capital expenditures less depreciation, that NYISO reimbursed the RMR generator to enable it to remain in service during the term of the RMR agreement; or (2) the above-market payments the RMR generator received during the term of the RMR agreement."[166] The above-market payments "would be the difference between the total market-based revenues, including uplift revenues, the generator would have received during the term of the RMR agreement, and the revenues received pursuant to the RMR agreement."

The April Order specified further that the NYISO should "propose a process to allow the RMR generator to return to the NYISO-administered markets immediately upon termination of the RMR agreement, while repaying NYISO any applicable capital expenditures . . . or above-market payments, both with interest, . . . on a pro-rata monthly basis." (footnotes omitted).[167] Repayments would "continue until all applicable capital expenditures or above-market payments are fully repaid, provided the now-former RMR generator continues to operate in the NYISO-administered markets." The Commission explained that "[r]equiring reimbursement of all capital expenditures before participating in the markets could discourage an otherwise efficient generator from continuing to operate to the detriment of customers."[168] It believed that its "pro-rata payment alternative balances these concerns by ensuring the repayment of capital

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[165] *See New York Independent System Operator, Inc.*, 133 FERC ¶ 61,178 (2010) at 47-52.

[166] April Order at P 126.

[167] In the December Answer, the NYISO had agreed that Section 15.8.6 should be clarified to specify that Capital Expenditure costs must be repaid with interest. *See* December Answer at 50.

[168] *See* April Order at P 127.

expenditures, while also ensuring that customers have the opportunity to receive the full value of service from upgrades for which they have paid."[169]

The NYISO sought rehearing, arguing that protections that were already included in its RMR rules made an additional claw-back measure unnecessary and that the specific additional measure adopted by the Commission could be unduly punitive and create other unintended problems.[170] To the extent that the Commission continued to believe that an additional anti-toggling measure was necessary, the NYISO asked that it be permitted to work with stakeholders to develop an alternative to the one imposed by the April Order. The NYISO's request for rehearing is still pending before the Commission. Accordingly, the NYISO is now proposing anti-toggling tariff revisions that implement the April Order's compliance directives notwithstanding the concerns expressed in the NYISO Rehearing Request.[171]

Specifically, the NYISO proposes to revise Rate Schedule 8 to its Services Tariff to enhance the October 2015 Filing's language that would have compelled former RMR Generators to pay back Capital Expenditures, minus depreciation, prior to returning to the NYISO-administered markets. Under a revised Section 15.8.7,[172] former RMR Generators and former Interim Service Providers would be required to make monthly payments in order to pay back the higher of Capital Expenditures minus depreciation or Above Market Revenues. Consistent with the April Order, interest would be applied to the value of both Capital Expenditures and Above Market Revenues prior to determining which was greater.

Proposed Section 15.8.7 of Rate Schedule 8 to the Market Services Tariff requires Generator to make repayments to the NYISO if the NYISO: (i) reimbursed all or a portion of the cost of a Capital Expenditure that was necessary to permit a Generator to provide service during the term of an RMR Agreement or while it was an Interim Service Provider or; (ii) compensated an RMR Generator or Interim Service Provider under Rate Schedule 8 in excess of what it would have received if it had participated normally in the markets, including the NYISO's reimbursement of Capital Expenditures. The Generator would be required to repay the NYISO the higher of the value calculated under Section 15.8.7.1, regarding the recovery of capital expenditures from former RMR Generators and former Interim Service Providers, and Section 15.8.7.2, regarding the recovery of Above Market Revenues from former RMR Generators and former Interim Service Providers. Section 15.8.7 also establishes that the higher of the two repayment obligations, divided by the applicable number of repayment periods, is the "Monthly Repayment Obligation."

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[169] *Id.*

[170] NYISO Rehearing Request at pp 11-14.

[171] The NYISO's submission of compliance tariff revisions in accordance with the April Order is not intended to, and should not be construed as, a withdrawal or waiver of any argument raised in the NYISO Rehearing Request.

[172] This provision was previously Section 15.8.6.

The calculation that would be conducted under Section 15.8.7.1 is essentially the same calculation that the April Order approved for determining reimbursable Capital Expenditure costs. The NYISO is proposing a new formula to govern the calculation of Above Market Revenue repayment obligations in Section 15.8.7.2.

As required by the April Order, the values calculated under both Sections 15.8.7.1 and 15.8.7.2 will be adjusted to reflect accumulated interest computed on a quarterly basis and assessed based on the dates payments were made by the NYISO. Once a Generator has returned to the NYISO-administered markets a fixed interest rate will be used in the NYISO's determination of the Generator's Monthly Repayment Obligation.

In addition, the NYISO proposes to comply with the April Order's mandate that it permit former RMR Generators to repay their claw-back obligations over time by modifying the formula it uses to calculate the claw-back obligation for Capital Expenditures in Section 15.8.7.1, adding new Section 15.8.7.1.1 that is used to determine the term over which Capital Expenditures must be repaid, and by making additional revisions to Section 15.8.7.2. Proposed Section 15.8.7.1.1 would set the "Recovery Term" for repayments calculated under Section 15.8.7.1 as the shorter of: (i) the major maintenance cycle in total years of the Generator; or (ii) the Average Remaining Life of the cumulative Capital Expenditures paid by the NYISO over the term of the RMR Agreement. The NYISO selected these repayment periods because a competitive entity participating in the ISO markets that intends to continue its participation should have the capability to accrue or finance the funds necessary to timely repair and/or replace Capital Expenditures that are necessary for the operation of a Generator. The proposed Recovery Term is aligned with the average amount of time over which such expenditures would be expected to be incurred. The proposed duration of the Recovery Term attempts to achieve a delicate balance. If it is too short, it may preclude a former RMR Generator or former Interim Service Provider from returning to the market, even though it should. If the Recovery Term is too long, then it will be difficult for RMR loads to recuperate the monies paid to reimburse RMR Generators and Interim Service Providers for Capital Expenditures, potentially resulting in a subsidy to the Generator.

The Recovery Term for repayments calculated under Section 15.8.7.2, with respect to any Capital Expenditure component of Above Market Revenues shall be the same as would be computed under Section 15.8.7.1.1. The portion of the Section 15.8.7.2 repayment obligation that is attributable to repaying the "Other [above market] Revenues" portion of the formula would be recovered over the shorter of 36 months or twice the duration of any applicable RMR Agreement. The proposed recovery period is based on a stakeholder proposal that was near-universally supported by the NYISO's stakeholders as an appropriate compromise between the Commission's instruction that the NYISO must allow repayment over time and the desire to reimburse RMR Loads as quickly as possible.

The NYISO is proposing revisions to Section 6.14.6 of Rate Schedule 14 to its OATT to ensure that any reimbursements received from Interim Service Providers are repaid to the appropriate RMR Loads. This allocation will be conducted based on the same principles and using the same mathematical formulae that the April Order accepted for capital expenditure repayments by RMR Generators. The NYISO's proposed revisions are limited to: (i) amending

existing provisions so that they will apply to both RMR Generators and Interim Service Providers; (ii) changing language that previously referred only to "Capital Expenditure Costs" to refer to "Monthly Repayment Credits" that reflect the broader scope of anti-toggling measures required by the April Order; (iii) adding a new section 6.14.3.5 to govern the calculation of the "RMR Charge" variable for Interim Service Providers; and (iv) making certain additional ministerial corrections and updates to tariff cross-references.

D. RMR Credit Rules

Because the NYISO is permitting former RMR Generators and former Interim Service Providers to repay their claw-back obligations over time, the NYISO has developed new credit rules to ensure that the NYISO is able to recover these repayment obligations from former RMR Generators and former Interim Service Providers.

The NYISO proposes to add a new Services Tariff Section 26.4.2.10 to establish a credit requirement that will apply to a Market Participant that returns a former RMR Generator or former RMR Interim Service Provider to the ISO-Administered Markets while the Generator is subject to a Monthly Repayment Obligation. The purpose of the credit requirement is to mitigate the risk of a bad debt loss that could result if the market participant defaulted on its Monthly Repayment Obligation.

The proposed credit requirement is eight times the Monthly Repayment Obligation associated with the former RMR Generator or former Interim Service Provider. Eight months is the maximum amount of exposure that a Market Participant could have at any given time for a Monthly Repayment Obligation for a Generator. If less than eight months are remaining in the repayment term for the Monthly Repayment Obligation associated with the former RMR Generator or former Interim Service Provider, then the NYISO will reduce the credit requirement accordingly.

The NYISO also proposes to modify Services Tariff Section 26.5 to indicate that a Market Participant may not use unsecured credit to satisfy this credit requirement. A Market Participant subject to this credit requirement must provide collateral to satisfy the repayment requirement.

E. MMU Responsibilities

Order No. 719,[173] requires all tariff revisions describing the MMU's RMR-related functions to be incorporated into Attachment O to the Services Tariff, (which is the NYISO's "Market Monitoring Plan"), in addition to appearing in other relevant portions of the tariffs. Accordingly, as it did in the October 2015 Filing,[174] the NYISO is proposing to revise Attachment O of the Services Tariff to delineate all new MMU responsibilities added by this

[173] *See Wholesale Competition in Regions with Organized Electric Markets*, Order No.719, 125 FERC ¶ 61,071 (2008).

[174] *See* October 2015 Filing at 71-72.

compliance filing. The NYISO proposes to revise Section 30.4.6.8.6 of Attachment O to conform the MMU responsibilities in Attachment O of the Services Tariff to those set forth in the Generator Deactivation Plan in Attachment FF of the OATT. These include that the NYISO will seek comments from the MMU: (i) on matters relating to the inputs and calculations performed by the NYISO in determining RMR Avoidable Costs in Section 38.8 of the OATT and (ii) on its review of Proposed Additional Costs and its determinations of Substantiated Additional Costs under Section 38.16 of the OATT. The NYISO also proposes revisions to Section 30.4.6.2.13 of Attachment O to modify the description of the MMU responsibilities concerning Energy and Ancillary Service market participation rules. The revisions address the addition or modification of these rules, so that they apply to Interim Service Providers as well as RMR Generators.

V. FORM OF RELIABILITY MUST RUN AGREEMENT

In paragraphs 139-140 of its April Order the Commission accepted the NYISO's *pro forma* RMR Agreement for filing without modification. In this filing the NYISO proposes to relocate the *pro forma* RMR Agreement from Section 31.10 of the OATT to Section 38.26 of the OATT as part of its effort to distinguish the generator deactivation rules from the gap solution rules. In addition to moving the *pro forma* RMR Agreement to a different location in its Tariffs, the NYISO proposes the following changes to the *pro forma* RMR Agreement to comply with requirements of the April Order:

1. The NYISO proposes to add a new defined term "365 Day Notice Period."

2. The NYISO proposes to revise sections 2.2.6.1, 2.2.9, 3.3.7, 4.1 and 4.3.4 of the *pro forma* RMR Agreement to implement the instruction in paragraphs 126-127 of the April Order that the reimbursement of Capital Expenditures and above market revenues can occur over time.

3. The NYISO proposes to revise Sections 2.2.6 through 2.2.9 and 4.3.4 of the *pro forma* RMR Agreement to incorporate by reference the new credit rules that will apply to former RMR Generators that elect to continue participating in the ISO Administered Markets following the conclusion of their RMR Agreement, or that deactivate and later return to participating in the ISO Administered Markets while they are eligible to receive market-based rates. The proposed credit rules are necessary to protect loads while former RMR Generators repay Capital Expenditures and above market revenues over time.

4. The NYISO proposes to revise sections 2.2.6.1, 2.2.9, 3.3.7, 4.1 and 4.3.4 of the *pro forma* RMR Agreement to implement the instruction in paragraphs 123-126 of the April Order that the NYISO must require former RMR Generators to repay to the NYISO the higher of (1) the capital expenditures, less depreciation, that the NYISO reimbursed the RMR Generator to enable it to remain in service during the term of the RMR Agreement; or (2) the above-market payments the RMR Generator received during the term of the RMR Agreement.

5. The NYISO proposes to revise section 3.7.2 of the *pro forma* RMR Agreement to implement the instruction in paragraphs 82-83 of the April Order that imposing a capacity offer price on RMR Generators higher than $0.00/kW-month would be unjust and unreasonable.

In addition to the changes described above, the NYISO proposes ministerial changes to the *pro forma* RMR Agreement that include updated cross-references to the NYISO's Tariffs.

VI. COST ALLOCATION AND COST RECOVERY

A. Generator Deactivation Process Cost Allocation Methodology

Consistent with the Commission's directives in the April Order, the NYISO proposes a cost allocation methodology that is completely separate from its Order No. 1000 cost allocation methodology. At the same time, the NYISO's proposed cost allocation mechanism for Generator Deactivation Solutions is similar to the NYISO cost allocation mechanism that the Commission accepted in the Order No. 1000 context.[175] Under the proposed cost allocation mechanism, the NYISO proposes to use a "needs-based" methodology to allocate the costs of a Generator Deactivation Solution to those LSEs in New York that contribute to the Reliability Need and primarily benefit from the solution to that need. Furthermore, like the Order No. 1000 cost allocation methodology recently approved by the Commission, the NYISO proposes to allocate costs based on five different types of reliability issues – resource adequacy , BPTF thermal transmission security, BPTF voltage security, local transmission security, dynamic stability, and short circuit.

In particular, the NYISO's proposed methodology will allocate costs associated with: (i) a Responsible Transmission Owner's proposed transmission Generator Deactivation Solution and, if applicable, its conceptual permanent transmission Generator Deactivation Solution, (ii) a Developer's transmission Generator Deactivation Solution selected by the NYISO to address the Generator Deactivation Reliability Need, or (iii) a Generator operating under an RMR Agreement to address a Generator Deactivation Reliability Need. The NYISO will perform the steps to resolve the different types of reliability issues based on the following hierarchy: (i) resource adequacy, (ii) BPTF thermal transmission security, (iii) BPTF voltage security, (iv) local transmission security, (v) dynamic stability, and (vi) short circuit.[176] The NYISO will proceed through this hierarchy until all of the costs of the solution have been addressed. The NYISO developed this hierarchy to reflect the level of importance of the reliability issue underlying each of these steps in relation to maintaining system reliability.

The NYISO's methodology is consistent with traditional electric system planning practice, which 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

[175] *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER16-1968-000 (August 12, 2016).

[176] Proposed OATT Section 38.22.

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 transmission. Local thermal and voltage transmission issues must then be addressed. Next, the methodology provides for maintaining dynamic system stability on the BPTF. Finally, solutions to exceeding fault current ratings of circuit breakers will be treated as a local matter without cost allocation through the NYISO's tariff.

1. Resource Adequacy Cost Allocation Step

The first step of the cost allocation mechanism is the allocation of that portion of the costs of the solution attributable to resolving resource adequacy.[177] This aspect of the cost allocation mechanism is comprised of a three-step approach that focuses on whether there is a locational, statewide, or a bounded region Reliability Need arising from a resource adequacy issue.

Step one focuses on those areas within the New York Control Area ("NYCA") that have Locational Minimum Installed Capacity Requirements ("LCRs") (*i.e.*, Load Zones J, K, and G through J), which are referred to herein as "LCR Zones." To the extent that these LCRs have resource adequacy deficiencies addressed by the Generator Deactivation Solution (deficiencies defined as having a Loss of Load Expectation ("LOLE") in the NYCA above 0.1 days per year), then the resource adequacy costs associated with the Generator Deactivation Solution are allocated first to those LCRs. Step two applies if the Generator Deactivation Solution addresses resource adequacy deficiencies in the unconstrained NYCA region. If so, then the portion of the resource adequacy costs of the Generator Deactivation Solution needed to address the NYCA resource adequacy deficiencies will be allocated to all Load Zones based on their coincident peak load contribution. If the reliability simulation shows that there are still resource adequacy issues after steps one and two are applied, step three requires the NYISO to apply a binding interface test. Any Bounded Regions identified under the application of this test are then allocated any remaining resource adequacy costs of the Generator Deactivation Solution.

2. BPTF Transmission Security Cost Allocation Step

If, after addressing any resource adequacy issues, there remains a BPTF transmission security issue that is addressed by the Generator Deactivation Solution, the NYISO will allocate the costs of addressing the transmission security issue by first allocating the costs for the portion of the solution attributable to a thermal transmission security issue on the BPTFs, and then allocating the costs for the portion attributable to a voltage security issue on the BPTFs.

a. BPTF Thermal Transmission Security Cost Allocation Step

For the portion of a Generator Deactivation Solution attributable to the resolution of 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.

[177] Proposed OATT Section 38.22.1.

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 under Attachment Y in identifying Reliability Needs necessitating the solution to be cost allocated. 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 thermal transmission security-related Generator Deactivation 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 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 thermal transmission security-related Generator Deactivation 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

[178] Proposed OATT Section 38.22.2.1.

[179] Proposed OATT Section 38.22.2.1.

[180] Proposed OATT Section 38.22.2.2.

[181] Proposed OATT Section 38.22.2.2.

[182] Proposed OATT Section 38.22.2.3.

[183] Proposed OATT Section 38.22.2.3.

[184] Proposed OATT Section 38.22.2.4.

[185] Proposed OATT Section 38.22.2.4.

[186] Proposed OATT Section 38.22.2.3.

[187] Proposed OATT Section 38.22.2.3.

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 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 NYISO 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

[188] Proposed OATT Section 38.22.2.4.

[189] Proposed OATT Section 38.22.2.4.

[190] Proposed OATT Section 38.22.2.5.

[191] Proposed OATT Section 38.22.2.5.

[192] Proposed OATT Section 38.22.2.6.

[193] Proposed OATT Section 38.22.2.6.

[194] Proposed OATT Section 38.22.2.7.

[195] Proposed OATT Section 38.22.2.8.

[196] Proposed OATT Section 38.22.2.8.

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.

i. 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.

3. Local Transmission Security Cost Allocation Step

The initial three cost-allocation steps, for resource adequacy, BPTF thermal transmission security, and BPTF transmission voltage security, all involve addressing issues on BPTFs. The RMR Order, however, requires that the NYISO administer all RMR Agreements needed to address Generator Deactivation Reliability Needs in the NYCA, including those Generator Deactivation Reliability Needs that arise on the New York Transmission Owners' local, non-BPTF transmission systems.[199] In compliance with the RMR Order, the NYISO proposes this local transmission security cost allocation step to allocate the costs under its OATT of a Generator Deactivation Solution that is required to address a non-BPTF thermal or voltage transmission security issue.[200]

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. If a solution 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,

[197] Proposed OATT Section 38.22.2.9. 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 Section 38.22.3.

[199] *See* Initial RMR Order at PP 14-15.

[200] Proposed OATT Section 38.22.4.

and voltage violations are inherently a local issue driven by reactive power draw to service local Load. Accordingly, it is appropriate to allocate the costs attributable to these violations on a Load-ratio share basis to LSEs at the local Subzone level, which is the lowest level of granularity at which the NYISO can allocate these costs.

4. 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 a Generator Deactivation 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.

5. 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 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.

B. Justification for Cost Allocation Methodology

Although the Commission has directed the NYISO to separate the cost allocation mechanism used for Generator Deactivation Solutions from the cost allocation provisions of the NYISO's Order No. 1000 planning process in Attachment Y, the cost allocation principles that underpin the Order No. 1000 process are fundamentally the same as the principles that underpin the allocation of costs for Generator Deactivation Solutions. The primary goal in cost allocation is to ensure that the rates paid by customers are at least roughly commensurate with the costs actually caused by those customers, and that customers who receive no benefit from an upgrade, and therefore do not cause those costs to be incurred, should not be assessed any of such costs.[203] Indeed, these are the core rules set forth in the Commission's Order No. 1000 cost allocation

[201] Proposed OATT Section 38.22.5.

[202] Proposed OATT Section 38.22.6.

[203] *See Public Service Commission of Wisconsin v. Midcontinent Independent System Operator, Inc.*, 148 FERC ¶ 61,071 at P 61 (2014) ("all approved rates[must] reflect to some degree the costs actually caused by the customer who pays them") (citing *Black Oak Energy, LLC v. FERC*, 725 F.3d 230, 364 (D.C. Cir. 2013).

principles, with the added requirements that cost allocation rules may impose different types of cost allocation mechanisms for different types of upgrades, that the rules not impose too high a burden on new facilities that have significant net benefits, and that the rules be transparent.

The NYISO respectfully submits that these core cost allocation requirements all are satisfied in this instance. The NYISO is proposing to allocate costs only to those entities that receive a benefit from a Generator Deactivation Solution, and that such allocated costs be commensurate with the reliability benefit that each paying entity receives from the Generator Deactivation Solution. An entity will not be allocated costs if it receives no benefit from a Generator Deactivation Solution, and the mechanism itself is fully transparent. The cost allocation mechanism that the NYISO proposes here is fundamentally the same as the cost allocation mechanism that the Commission recently accepted in Docket No. ER16-1968-000 for the reliability planning process.[204] Accordingly, the NYISO respectfully requests that the Commission approve the proposed cost allocation mechanism in Attachment FF.

C. Cost Recovery Requirements

i. *Cost Recovery for Regulated Transmission Solutions*

Sections 6.16 and 38.23 of the OATT establish the mechanism pursuant to which the NYISO will recover from Load Serving Entities the cost related to a Developer's transmission solution to a Generator Deactivation Transmission Need. The cost recovery requirements are based on and are generally consistent with the cost recovery requirements previously accepted by the Commission for the NYISO's transmission planning process, which requirements are set forth in Sections 6.10 and 31.5.6 of the OATT.

Pursuant to the Generator Deactivation Process requirements, the Responsible Transmission Owner or any other Developer of a transmission solution that is selected by the NYISO in the Generator Deactivation Process may recover through a Generator Deactivation Facilities Charge ("GDFC") all of its reasonably incurred costs, as determined by the Commission, related to the preparation of proposals for, and the development, financing, construction, operation, and maintenance of, the selected project.[205] Such cost includes, but is not limited to, a reasonable return on investment and any incentives for the construction of transmission projects approved under Sections 205 or Section 219 of the Federal Power Act and the Commission's regulations implementing those sections.[206]

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[204] *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER16-1968-000 (August 12, 2016).

[205] Proposed OATT Sections 6.16.4.1, 38.23.1.

[206] Proposed OATT Sections 6.16.4.1. OATT Section 6.16.5 establishes cost recovery rules that are specific to the New York Power Authority ("NYPA") and the Long Island Power Authority ("LIPA"), as Unregulated Transmitting Utilities that are not subject to the Commission's jurisdiction under Sections 205 and 206(a) of the Federal Power Act. These separate cost recovery rules are similar to the separate NYPA and LIPA requirements for recovering the costs of their projects in the NYISO's reliability planning process that are set forth in Schedule 10 of the OATT.

As it is obligated to submit a project proposal to maintain system reliability, the Responsible Transmission Owner may also recover its cost for developing its proposed transmission solution and, if applicable, its conceptual permanent solution, regardless of whether the project is selected by the NYISO to proceed with construction.[207] Finally, as described in Parts III.J.ii and III.L above, if a Developer's selected transmission project is halted or has its request for a necessary governmental authorization rejected or withdrawn, the Developer may recover the necessary and reasonable costs it had previously incurred and the reasonable and necessary expenses required for an ordinary termination of the project.[208]

The Developer or the NYISO[209] will file on the Developer's behalf with the Commission for its review and approval or acceptance, the final project cost and resulting revenue requirement to be recovered through the GDFC.[210] The NYISO will begin to calculate and bill the GDFC after the Commission has accepted or approved the filing. The period for cost recovery will be determined by the Commission and will begin if and when the project is completed or halted, or as otherwise determined by the Commission. The base revenue requirements will be adjusted to reflect any Incremental Transmission Rights Revenue resulting from the allocation of Incremental TCCs to the Eligible Project as well as any outage charges attributable to such project.

The ISO will recover the costs approved or accepted by the Commission from Load Serving Entities serving Load in the Load Zones and/or Subzones to which the cost of the transmission project are allocated in accordance with the cost allocation methodology for the Generator Deactivation Process using the methodology set forth in Section 6.16.3.4 of the OATT. Each Load Serving Entity is charged based on its Actual Energy Withdrawals in the Load Zones or Subzones to which costs are allocated.[211] The ISO will remit the recovered costs to the appropriate Developer in accordance with its billing and settlement procedures.[212]

ii. *Cost Recovery for RMR Generators Operating Under RMR Agreements*

Section 38.23.4 establishes 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 Load Serving Entities in accordance with Schedule 14 of the OATT. The revisions to these schedules to address Interim Service Provider requirements and claw-back rules are described in Parts IV.A and IV.C above.

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[207] Proposed OATT Sections 6.16.1, 38.23.1.

[208] Proposed OATT Sections 38.12.2.2, 38.15.1, 38.23.2, 38.23.3.

[209] Regardless of which party makes the filing, the Developer shall bear the burden of resolving all concerns about the contents of the filing that might be raised in such proceeding. Proposed OATT 6.16.4.2, 6.16.5.2.2, 6.16.5.3.1.

[210] Proposed OATT Section 6.16.4.2.

[211] Proposed OATT Sections 6.16.3, 6.16.3.1.

[212] Proposed OATT Sections 6.16.3.5.

iii. *Other*

Transmission Owners undertaking projects through their Local Transmission Owner Planning Process are not eligible to recover the costs of these projects under the NYISO tariffs.[213] In addition, with the exception of a Generator operating under an RMR Agreement, costs related to non-transmission regulated solutions to a Generator Deactivation Reliability Need, such as demand response, may be recovered by Developers in accordance with New York state law.[214] Finally, market-based solutions are not eligible for cost recovery under Rate Schedule 8 of the Services Tariff or Schedules 14 or 16 of the OATT.[215]

VII. EFFECTIVE DATE

With a limited exception described below, the NYISO respectfully requests that the Commission accept the tariff revisions proposed in this compliance filing with an October 20, 2015 effective date. This is the effective date the Commission accepted in its April Order for the tariff provisions filed in the October 2015 Filing for which all parties are on notice.[216] The NYISO requests that its tariff revisions to OATT Section 31.11, Form of Operating Agreement, have a different effective date of April 1, 2016. The base OATT Section 31.11 that the NYISO proposes to modify in this filing was filed with the Commission in Docket No. ER13-102-009 on March 22, 2016, with an errata correction submitted on May 24, 2016, with a requested effective date of April 1, 2016. The filing in Docket No. ER13-102-009 is currently pending before the Commission.

VIII. COMMUNICATIONS

Communications and correspondence regarding this filing should be directed to:

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[213] Proposed OATT Section 38.23.1.

[214] Proposed OATT Section 38.23.5.

[215] Proposed OATT Section 38.4.2.2.

[216] April Order at P 14.

[217] 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 Rensselaer, NY, Richmond, VA and Washington, DC.

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IX. LIST OF DOCUMENT SUBMITTED

The NYISO respectfully submits the following documents with this filing letter:

1. A clean version of the proposed revisions to the OATT, effective October 20, 2015 (Attachment I);

2. A blacklined version of the proposed revisions to the OATT, effective October 20, 2015 (Attachment II);

3. A clean version of the proposed revisions to the OATT, effective April 1, 2016 (Attachment III);

4. A blacklined version of the proposed revisions to the OATT, effective April 1, 2016 (Attachment IV);

5. A clean version of the proposed revisions to the Services Tariff (Attachment V);

6. A blacklined version of the proposed revisions to the Services Tariff (Attachment VI);

7. Affidavits of Zachary G. Smith and Shaun Johnson (Attachment VII);

8. A clean version of certain sections of the OATT incorporating tariff revisions that have, or have been proposed to, become effective subsequent to the October 20, 2015 effective date requested for the tariff revisions proposed herein (Attachment VIII);[218] and

9. A clean version of certain sections of the Services Tariff incorporating tariff revisions that have, or have been proposed to, become effective subsequent to the October 20,

[218] OATT Section 1.9 was filed July 31, 2015 in ER15-2345-000 and September 13, 2016 in ER13-102-011; OATT Section 31.1 was filed February 18, 2016 and May 18, 2016 in ER16-966-000 and -001 and March 22, 2016 and September 13, 2016 in ER13-102-009 and -011; OATT Section 31.2-31.2.7was filed May 18, 2016 in ER16-966-001 and March 22, 2016 in ER13-102-009; OATT Section 31.2.8-31.2.13 was filed March 22, 2016 in ER13-102-009; OATT Section 31.11 was filed March 22, 2016 in ER13-102-009, May 24, 2016 in ER13-102-010 and September 13, 2016 in ER13-102-011;

2015 effective date requested for the tariff revisions proposed herein (Attachment IX).[219]

X. SERVICE

The NYISO will send an electronic copy of this filing to the official representative of each party to this proceeding, 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. In addition, the complete public version of this filing will be posted on the NYISO's website at www.nyiso.com.

XI. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this compliance filing without requiring any modifications and determine that the NYISO has fully complied with the directives of the April Order and the Initial RMR Order.

Respectfully submitted,

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
By: /s/ Alex M. Schnell
Alex M. Schnell,
Assistant General Counsel,
Registered Corporate Counsel

By: /s/ Carl F. Patka
Carl F. Patka,
Assistant General Counsel

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

[219] Services Tariff Section 2.9 was filed May 20, 2016 in ER16-1751-000 and September 13, 2016 in ER13-102-011; Services Tariff Section 5.12 was filed October 30, 2015 in ER16-185-000; Services Tariff Section 23.2 was filed March 22, 2016 in ER16-1213-000; Services Tariff Section 23.4.5 was filed March 22, 2016 in ER16-1213-000 and September 13, 2016 in ER13-102-011; and Services Tariff Section 30.4 was filed May 20, 2016 in ER16-1751-000 and on November 30, 2015, June 7, 2016, June 21, 2016 and June 22,2016 in ER16-425-000, -002, -004 and -005 respectively.