

January 16, 2018

By Electronic Delivery

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, 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 revisions to its Open Access Transmission Tariff (“OATT”) and its Market Administration and Control Area Services Tariff (“Services Tariff”) concerning its Generator Deactivation Process. The proposed revisions fulfill the directives of the Federal Energy Regulatory Commission (“Commission”) in its November 16, 2017, *Order on Compliance and Rehearing* in the above-captioned proceeding (“November 2017 Order”) and in accordance with the Commission’s November 28, 2017, *Notice of Extension of Time*.¹ The NYISO respectfully submits that its proposed compliance tariff revisions fully comply with the directives of the November 2017 Order, are fully supported, are just and reasonable, and should be accepted without modification or condition.² The NYISO respectfully requests that the compliance tariff revisions proposed in this filing become effective on October 20, 2015 as described in Part V below.

I. BACKGROUND

In an order issued February 19, 2015, the Commission determined that the NYISO is the appropriate entity to administer “reliability-must-run” (“RMR”) service in New York under its tariffs, with the option to enter into an RMR Agreement with a Generator if necessary (“Initial RMR Order”).³ The Initial RMR Order directed the NYISO to submit proposed tariff revisions

¹ *N.Y. Indep. Sys. Operator, Inc.*, Order on Compliance and Rehearing, 161 FERC ¶ 61,189 (2017) (“November 2017 Order”); *N.Y. Indep. Sys. Operator, Inc.*, Notice of Extension of Time, Docket No. ER16-120-003 (November 28, 2017).

² Capitalized terms that are not defined in this filing letter have the meaning ascribed to them in Section 38.1 of the OATT or, if not defined therein, in Section 1 of the OATT or Section 2 of the Services Tariff.

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 (2015) (“Initial RMR Order”).

to establish a 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.”⁴

In response to these directives, the NYISO has submitted two compliance filings to implement reliability-must-run requirements through a new Generator Deactivation Process located in Attachment FF of the OATT, along with related compensation and market monitoring requirements in the OATT and Services Tariff. The Commission has largely accepted these provisions.⁵

The November 2017 Order directed the NYISO to submit a further compliance filing to make a limited number of additional revisions concerning: (i) the anti-toggling requirements, (ii) the eligibility of certain generators to address a reliability need resulting from a Generator’s deactivation, and (iii) which solutions identified in the Generator Deactivation Process will be included in the base case for the Reliability Needs Assessment performed by the NYISO in its biennial reliability planning process. The NYISO discussed the tariff revisions developed in response to the directives of the November 2017 Order with stakeholders at a joint meeting of its ICAP Working Group, Market Issues Working Group, and Electric System Planning Working Group on January 10, 2018.

In response to the November 2017 Order’s directives, the NYISO proposes the revisions to the NYISO’s tariffs described in Parts II through IV below.

II. ANTI-TOGGLING PROVISIONS

The Initial RMR Order stated that the NYISO should “include rules to eliminate, or at least minimize, incentives for a generator needed for reliability to toggle between receiving RMR compensation and market-based compensation for the same units.”⁶ As part of the NYISO’s anti-toggling RMR requirements, Section 15.8.7 of the Services Tariff establishes that an RMR Generator or Interim Services Provider must repay certain capital expenditures or above-market rates for it to return to receiving market-based rates in the NYISO-administered markets. In the November 2017 Order, the Commission directed the NYISO to make certain changes detailed below to these anti-toggling requirements.

The Commission directed the NYISO to revise the requirements for repaying above-market revenues “to only require repayment of above-market revenues that exceed an RMR generator’s going-forward costs for RMR service, and to allow RMR generators that accepted an [Availability and Performance Rate (“APR”)] to retain their availability and performance

⁴ Initial RMR Order at P 11.

⁵ November 2017 Order at P 11; *N.Y. Indep. Sys. Operator, Inc.*, Order on Compliance and Rehearing, 155 FERC ¶ 61,076 at P 14 (2016) (“April 2016 Order”).

⁶ Initial RMR Order at P 21.

incentives.”⁷ To comply with the Commission’s directives, the NYISO proposes the following revisions to Section 15.8.7 of Rate Schedule 8 of its Services Tariff:

First, because both the APR⁸ and the rate paid to Interim Service Providers⁹ were developed to compensate a Generator’s going-forward costs to provide service, the NYISO proposes to limit the potential claw-back from former Interim Service Providers and from former RMR Generators that were paid an APR to the recovery of Capital Expenditures in Section 15.8.7 of Rate Schedule 8 of the Services Tariff.

Second, consistent with paragraph 84 of the November 2017 Order, the NYISO has removed any obligation for former RMR Generators that were paid an APR to repay Availability Incentives¹⁰ or Performance Incentives¹¹ they earned while providing RMR service if they later return to participating in the ISO Administered Markets.

Third, the revised formula that applies to the claw-back of Above Market Revenues from former RMR Generators is now designed to claw-back the amount by which an Owner Developed Rate (“ODR”) that NYISO pays in accordance with Section 15.8.5 of Rate Schedule 8 of its Services Tariff exceeds the going-forward cost based rate that the NYISO calculates in accordance with Section 15.8.1 of Rate Schedule 8 of its Services Tariff.¹²

The Commission also directed the NYISO to revise the repayment periods for capital expenditures and above-market revenues “to require repayment of either in the shorter of 36 months or twice the duration of the applicable RMR agreement.”¹³ The NYISO proposes to revise Section 15.8.7.1 of the Services Tariff to implement a recovery period that is consistent with the Commission’s directive. The key proposed revisions to Section 15.8.7.1 are:

For the component of a former RMR Generator’s or former Interim Service Provider’s Above Market Revenues that is Capital Expenditures, the value derived in the calculation above shall be divided by “*mCapEx*” months;

mCapEx = For a former RMR Generator, the shorter of 36 months or twice the duration of the applicable RMR Agreement in months. For a former Interim Service Provider, twelve months. Alternatively, if the former RMR Generator or former Interim Service Provider elects to repay its entire obligation before it begins participating in the ISO Administered Markets at market-based rates, then *mCapEx* shall be one month~~the number~~

⁷ November 2017 Order at PP 82, 84.

⁸ See Services Tariff Section 15.8.1.

⁹ See Services Tariff Section 15.8.6.

¹⁰ See Services Tariff Section 15.8.3.

¹¹ See Services Tariff Section 15.8.2.

¹² See proposed revised Services Tariff Section 15.8.7.2.

¹³ November 2017 Order at P 86.

~~of months in the Recovery Term, determined in accordance with Section 15.8.7.1.1 below.~~

The NYISO proposes minor revisions to the definition of the term “*mAMR*” in Section 15.8.7.2 to better align it with the proposed definition of *mCapEx* in Section 15.8.7.1, and to remove the obligation for Interim Service Providers to repay Above Market Revenues consistent with the Commission’s determination that claw-backs should only recover payments that exceed a Generator’s going-forward costs.

Finally, the Commission directed the NYISO to make two “technical corrections” to the anti-toggling provisions that the New York Transmission Owners proposed and the NYISO agreed with.¹⁴ First, the Commission directed the NYISO to revise the term R_{Vi} in Section 15.8.7.1.1 “to weigh the remaining life of each capital investment by the depreciated value of that investment to calculate a weighted average life.”¹⁵ Second, the Commission directed the NYISO to revise the first paragraph of Section 15.8.7.2 and the equation in the second paragraph of that section “to refer to the proration of market revenues between reimbursements for capital expenditures and other above-market revenues.”¹⁶

Although both technical corrections were appropriate at the time they were proposed by the New York Transmission Owners, directives in the November 2017 Order subsequently obviated the need for these changes. The change to the term R_{Vi} in Section 15.8.7.1.1 is no longer necessary because the Commission instructed the NYISO to require the repayment of Capital Expenditures over the shorter of 36 months or twice the duration of the RMR Agreement (which significantly simplifies implementation).¹⁷ The NYISO proposes to delete Section 15.8.7.1.1 entirely, and to replace it with the definition of *mCapEx* that is set forth above.

The change to the first paragraph of Section 15.8.7.2 and the equation in the second paragraph of that section to refer to the proration of market revenues between reimbursements for capital expenditures and other above-market revenues is also no longer necessary. Consistent with paragraph 86 of the November 2017 Order, the cost of Capital Expenditures is now being recovered over the same recovery term as other Above Market Revenues. This Commission-instructed change enabled the NYISO to simplify the Above Market Revenue claw-back equation so that the improvement the New York Transmission Owners developed, the NYISO agreed with, and Commission accepted, is no longer necessary.

III. NEW GENERATOR AS GENERATOR DEACTIVATION SOLUTION

Sections 38.4 and 38.5 of Attachment FF of the NYISO OATT provide that if the NYISO identifies a reliability need resulting from a Generator’s deactivation, it will solicit proposed

¹⁴ See November 2017 Order at PP 73, 78, 87.

¹⁵ November 2017 Order at P 87.

¹⁶ *Id.*

¹⁷ *Id.* at P 86.

Generator Deactivation Solutions, which may include regulated and market-based transmission, generation and market-based demand response. Developers may propose “generation” solutions that are market-based or an RMR Agreement with a generator that is currently mothballed or in an ICAP Ineligible Forced Outage.¹⁸

In their protest of the NYISO’s previous compliance filing in this proceeding, Independent Power Producers of New York, Inc. (“IPPNY”) and Electric Power Supply Association (“EPSA”) requested that the Commission direct the NYISO to clarify in its tariff that a developer may propose generator solutions that are not market-based solutions or involve generators that are currently mothballed or in an ICAP Ineligible Forced Outage.¹⁹ IPPNY and EPSA provided a proposed tariff insert for a new Section 38.4.2.3 that addressed their concern, and they informed the Commission that the NYISO did not oppose this change,²⁰ which the NYISO subsequently confirmed.²¹

In response, the Commission directed the NYISO in the November 2017 Order to clarify that a Developer may also propose “generation RMR alternatives to a reliability need that are not market-based, or that involve generators that are currently mothballed or in an ICAP ineligible forced outage.”²² Accordingly, in order to clarify that a new Generator is eligible for consideration as a Generator Deactivation Solution, the NYISO proposes to insert a new Section 38.4.2.3 that is consistent with the insert proposed by IPPNY and EPSA and states that: “Any Developer may submit a proposed new Generator that requires an RMR Agreement to operate as a temporary Generator Deactivation Solution. A proposed new Generator that requires an RMR Agreement must satisfy the project information requirements in Sections 31.2.4.8.1 and 31.2.4.8.2 of Attachment Y of the ISO OATT.”²³ As revised, the NYISO will now consider – for purposes of entering into an RMR Agreement as a temporary solution to address a reliability need – any new or existing Generator not currently participating in the NYISO-administered markets, including the acceleration or increased capacity of new generation.

¹⁸ OATT Sections 38.4.2.2 and 38.5.

¹⁹ *New York Independent System Operator, Inc.*, Protest of Independent Power Producers of New York, Inc. and Electric Power Supply Association, Docket No. ER16-120-003 at pp 23-24 (October 25, 2016) (“IPPNY/EPSA Protest”).

²⁰ *Id.* at p 24.

²¹ *New York Independent System Operator, Inc.*, Request for Leave to Answer and Answer of New York Independent System Operator, Inc., Docket No. ER16-120-003 at p 40 (November 9, 2016) (“NYISO Answer”).

²² November 2017 Order at P 49.

²³ The NYISO’s proposed insert in Section 38.4.2.3 of Attachment FF is consistent with the insert proposed by IPPNY and EPSA, but corrects an internal cross-reference and does not include language concerning the satisfaction of certain information requirements contained in Appendix B of Attachment FF, as this requirement is already addressed in Section 38.4.3 for all proposed Generator Deactivation Solutions.

IV. INCLUSION OF GENERATOR DEACTIVATION SOLUTION IN RELIABILITY NEEDS ASSESSMENT BASE CASE

Section 31.2.2.3.2 of Attachment Y of the NYISO OATT establishes the requirements for developing the base case for the Reliability Needs Assessment (“RNA Base Case”) performed by the NYISO in its biennial reliability planning process. In its previous compliance filing, the NYISO proposed to revise Section 31.2.2.3.2 to indicate that interim Generator Deactivation Solutions, such as RMR Agreements, would not be included in the RNA Base Case, so that the NYISO can identify permanent solutions to any reliability need resulting from a Generator’s deactivation in its biennial reliability planning process. Permanent Generator Deactivation Solutions would be included in the RNA Base Case.

In their protest of the NYISO’s previous compliance filing, IPPNY and EPSA requested that the Commission direct the NYISO to make certain revisions to clarify which resources will be included in the RNA Base Case.²⁴ IPPNY and EPSA provided proposed revisions to Section 31.2.2.3.2, and they informed the Commission that the NYISO did not oppose the revisions,²⁵ which the NYISO subsequently confirmed.²⁶ In response, the Commission directed the NYISO in the November 2017 Order to clarify in its tariff that “NYISO will exclude RMR generators and Interim Service Providers from its reliability needs assessment base case, and will include permanent transmission RMR alternatives.”²⁷ Accordingly, the NYISO proposes to revise the relevant language in Section 31.2.2.3.2 consistent with IPPNY and EPSA’s proposed revisions as follows:

the ISO shall not include in the RNA Base Case an Interim Service Provider, an RMR Generator, or any other interim ~~non-RMR~~ Generator Deactivation Solution selected by the ISO pursuant to Attachment FF of the ISO OATT; *provided, further*, the ISO will include in the RNA Base Case a permanent transmission ~~non-RMR~~ Generator Deactivation Solution selected by the ISO pursuant to Attachment FF of the ISO OATT if it meets the base case inclusion requirements in the ISO Procedures.

V. EFFECTIVE DATE

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 for the NYISO’s RMR tariff provisions adopted in this proceeding for which all parties are on notice.²⁸

²⁴ IPPNY/EP SA Protest at pp 24-25.

²⁵ *Id.* at p 24.

²⁶ NYISO Answer at p 40.

²⁷ November 2017 Order at P 93.

²⁸ November 2017 Order at P 11; April 2016 Order at P 14.

VI. COMMUNICATIONS

Communications and correspondence regarding this filing should be directed to:

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VII. DOCUMENTS SUBMITTED

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

1. A clean version of the proposed revisions to the NYISO OATT (“Attachment I”);
2. A blacklined version of the proposed revisions to the NYISO OATT (“Attachment II”);
3. A clean version of the proposed revisions to the NYISO Services Tariff (“Attachment III”); and
4. A blacklined version of the proposed revisions to the NYISO Services Tariff (“Attachment IV”).

VIII. 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

²⁹ 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.

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.

IX. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. requests that the Commission accept this compliance filing without requiring any modifications and determine that the NYISO has fully complied with the directives in the November 2017 Order.

Respectfully submitted,

/s/ Alex M. Schnell

Carl F. Patka, Assistant General Counsel
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