

April 11, 2011

ELECTRONICALLY SUBMITTED

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: New York Independent System Operator, Inc.'s Informational Report on Efforts to Develop Rules Addressing Compensation to Generators that Are Determined to be Needed for Reliability; Docket No. ER10-2220-____.

Dear Secretary Bose:

In accordance with paragraph 54 and ordering paragraph "(C)" of the Federal Energy Regulatory Commission's ("Commission's") October 12, 2010 *Order On Proposed Mitigation Measures* in Docket No. ER10-2220-000 ("Order"),¹ the New York Independent System Operator, Inc. ("NYISO"), hereby submits this *First Informational Report on Efforts to Develop Rules Addressing Compensation to Generators that Are Determined to be Needed for Reliability* ("Informational Report"). **In footnote 44 of its Order the Commission stated that it does not intend to issue public notices, accept comments, or issue orders on this Informational Report.**

Paragraph 54 of the Order stated, in part, as follows:

Because fixed cost recovery issues do not go to whether NYISO's mitigation proposal is in itself just and reasonable, this proceeding is not the appropriate forum in which to raise such issues. Further, commenters do not present factual evidence that demonstrates that market participants generally will be unable to recover their costs due to application of the proposed mitigation provisions. We note, however, that the NYISO Board of Directors, in its July 29, 2010 decision on the appeal of the NYISO Management Committee's adoption of the instant mitigation proposal, directed NYISO management to work with stakeholders to examine the generation owners' claims that existing cost recovery mechanisms are inadequate and to review the process that evaluates permanent solutions to reliability problems. Accordingly, we believe the better course is to await the outcome of the stakeholder process as directed by the NYISO Board of Directors. In this regard, we direct NYISO to file status reports every 180 days beginning 180 days from the date of this order for informational purposes only.⁴⁴

¹ *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,030.

⁴⁴ The Commission does not intend to issue public notices, accept comments, or issue orders on such informational filings.

In compliance with the cited sections of the Order, the NYISO submits this Informational Report.

I. Documents Submitted

1. This Informational Report;
2. A February 10, 2011 presentation by Shaun Johnson, Manager Energy Market Products, to the NYISO's Market Issues Working Group titled *Reliability Resource Presentation* ("Attachment A");
3. Three sets of comments on the NYISO proposal included in Attachment A that were submitted by the New York State Department of Public Service Staff, the New York Transmission Owners and Multiple Intervenors; also, an alternative proposal submitted by the Independent Power Producers of New York ("IPPNY") ("Attachment B"); and
4. A March 31, 2011 presentation by Shaun Johnson, Manager Energy Market Products, to the NYISO's Market Issues Working Group, also titled *Reliability Resource Presentation* ("Attachment C").

II. Informational Report

A. NYISO's Initial Proposal

The NYISO carefully reviewed the issues raised in the comments, protests and rehearing requests submitted in this Docket and in Docket No. ER09-1682, along with the feedback it received from its stakeholders, and used that information to develop an initial proposal for temporarily compensating generators that are planning to retire, but are needed for reliability to ensure they are able to recover their going-forward fixed costs. Only Generators that are determined to be needed for reliability would be eligible for compensation under the NYISO's proposal. Generators that are eligible for compensation would only receive compensation under the NYISO's interim measure until such time as (1) an alternative solution is developed and implemented, or (2) the resource is formally adopted as a Gap Solution under Attachment Y to the NYISO's Open Access Transmission Tariff (at which time a rate would be determined consistent with the Attachment Y rules). The NYISO shared this initial proposal with its stakeholders at a Market Issues Working Group ("MIWG") meeting that was held on February 10, 2011.

Following the MIWG discussions, the NYISO encouraged stakeholders to provide comments on its initial proposal. The comments that the NYISO received (from both load and supplier representatives) were critical of the NYISO's proposal for several reasons. The written comments that the NYISO received are included in Attachment B to this Informational Filing. In lieu of submitting comments, IPPNY presented an alternative draft proposal to the NYISO that it believed addressed many of the concerns expressed, both in oral comments at the February 10 MIWG, and in the attached written comments. As explained below, IPPNY's draft proposal was presented to the NYISO's stakeholders at the MIWG meeting that was held on March 31, 2011.

B. March 31, 2011 MIWG Meeting/IPPNY Draft Proposal

While the NYISO prepared the presentation included as Attachment C for presentation at the March 31, 2011 MIWG meeting, most of the discussion at the meeting occurred between stakeholder representatives. Representatives of the supplier sector asked load-side representatives about the reasons for their criticism of various aspects of the NYISO's draft proposal. Representatives of New York loads provided detailed responses to the suppliers' questions. When the presenter got to the summary of IPPNY's proposal (which was being shared with the load-side interests for the first time), IPPNY and other supplier-side representatives explained their reasoning and concerns to the load-side representatives. The New York State Department of Public Service Staff also participated actively in the MIWG discussion.

The discussion that occurred at the March 31, 2011 MIWG meeting was a constructive effort by divergent interests (suppliers and loads) to arrive at a common ground. While load-side interests expressed concerns with IPPNY's proposal, and there are areas where agreement has not been reached, the NYISO Staff believes further progress may be possible. NYISO Staff was encouraged by the tone of the discussions, which was clearly focused on better understanding the opposing positions; not restating past arguments.

C. Next Steps

This issue will next be discussed at a joint MIWG/Electric System Planning Working Group ("ESPWG") meeting that will be held in May. Load-side representatives have encouraged IPPNY to pull together a more concrete and fleshed-out proposal for the upcoming joint meeting. IPPNY's efforts to develop a universally acceptable proposal will, almost certainly, be assisted by information provided at the March 31, 2011 MIWG meeting. In addition, the NYISO Staff will make itself available to review and provide comments on IPPNY's proposal in advance of the joint meeting.

III. Communications

Communications and correspondence regarding this Informational Report and future informational reports in this Docket should be directed to:

Rana Mukerji, Senior Vice President of Market Structures
Robert E. Fernandez, General Counsel
Raymond Stalter, Director—Regulatory Affairs
*Shaun Johnson, Manager—Energy Market Products
*Alex M. Schnell
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, N.Y. 12144
Tel: (518) 356-8707
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sjohnson@nyiso.com
aschnell@nyiso.com

*Persons designated for receipt of service. As explained above, the Commission has instructed that this Informational Report should not be noticed for comment.

IV. Service

This Informational Report will be posted on the NYISO's website at www.nyiso.com. In addition, the NYISO will e-mail an electronic link to this Informational Report to the official representative of each party to this proceeding, to each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities.

V. Conclusion

The NYISO respectfully submits this Informational Report in compliance with the Commission's Order. For the reasons explained above, the NYISO is hopeful that it will be able to develop and submit for the Commission's consideration tariff revisions that have been approved in the NYISO's stakeholder governance process. The NYISO's next informational report is due on or about October 11, 2011.

Respectfully submitted,

/s/ Alex M. Schnell

Rana Mukerji, Senior Vice President of Market Structures

Robert E. Fernandez, General Counsel

Shaun Johnson, Manager of Energy Market Products

Alex M. Schnell

New York Independent System Operator, Inc.

April 11, 2011

CERTIFICATE OF SERVICE

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

§ 385.2010.

Dated at Rensselaer, New York this 11th day of April, 2011.

/s/ Alex M. Schnell

Alex M. Schnell
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, New York 12144
518-356-8707

Attachment A

**NYISO February 10, 2011 Presentation to the
Market Issues Working Group
Titled *Reliability Resource Compensation***



Reliability Resource Compensation

Shaun Johnson

*Manager, Energy Markets Products
New York Independent System Operator*

Market Issues Working Group

*Krey Corporate Center
February 10, 2011*

Agenda

- ◆ Background
- ◆ Purpose
- ◆ Details of Proposal
 - *Qualification*
 - *Compensation*
- ◆ Transparency
- ◆ Next Steps

Background

- ◆ July 07, 2010 NYISO presentation
- ◆ NYISO rest of state reliability mitigation filing
- ◆ BOD comments for NYISO to investigate fixed costs
- ◆ FERC response to ROS filing

Purpose of Proposal

- ◆ This proposal is intended to address a potential bridge payment to units needed for reliability, by creating an interim payment for services provided.

Qualifications for Consideration

- ◆ In order for a resource to be eligible for this payment it must meet three sets of criteria.
 - *Needed for reliability*
 - *Financial certification by resources*
 - *Agree to compliance obligations*

Qualifications for Consideration: Needed for reliability

- ◆ NYISO will determine if a unit is needed for reliability by conducting a NYCA study and coordinating the study with the local Transmission Owner if the need is for local reliability issues.
 - *Resource must request this evaluation via a new procedure.*
 - *New procedure is a confidential retirement notice to the NYISO; prior to any official notice to the PSC.*
 - *Study costs would follow the current procedures in place today; the requesting resource pays for the study.*

Qualifications for Consideration: Certification by resources

- ◆ The confidential retirement notification and request for study must include a certification by an officer of the company for the resource that:
 - *The unit is not forecasted to recover its going forward costs over the next twelve months, nor has the unit recovered those costs over the last twelve months*
 - *The amount needed to recover those costs*
 - *Officer must recertify every six months*

Qualifications for Consideration: Agree to compliance obligations

- ◆ In addition the unit would agree to:
 - *Bid into the DAM, respond to all SRE requests, and all other requests from NYISO for reliability*
 - This would include a penalty for non-compliance
 - *Unit must justify costs requested to the NYISO's Market Monitor*
 - MMU will validate costs and projections.
 - If the NYISO study determines that the Generator is not needed for reliability and the resource does not proceed with its retirement, the MMU will consider a referral to FERC enforcement

Compensation Details

- ◆ If the resource is determined to be needed for reliability and unable to recover its going-forward fixed costs, the NYISO will create a supplemental payment for services rendered to the resource via capacity payments
 - *Payment will be the difference between the capacity period award to the resource and the amount validated by the MMU*
 - Going forward cost calculations will be similar to the process used for buyer side mitigation
 - Going forward costs do not include a rate of return, or financing costs
 - *Payment will start no more than 60 days after all necessary data needed for the reliability study and cost data was submitted.*

Compensation Details - continued

- ◆ Payment continues until:
 - *Certification period ends*
 - *MMU directs the NYISO to modify the payment*
 - *The reliability need no longer exists*
- ◆ Payment costs will be allocated in accordance with the current reliability payment structures.
 - *Statewide reliability would be charged to statewide loads.*
 - *Local reliability needs would be charged to the local subzone.*

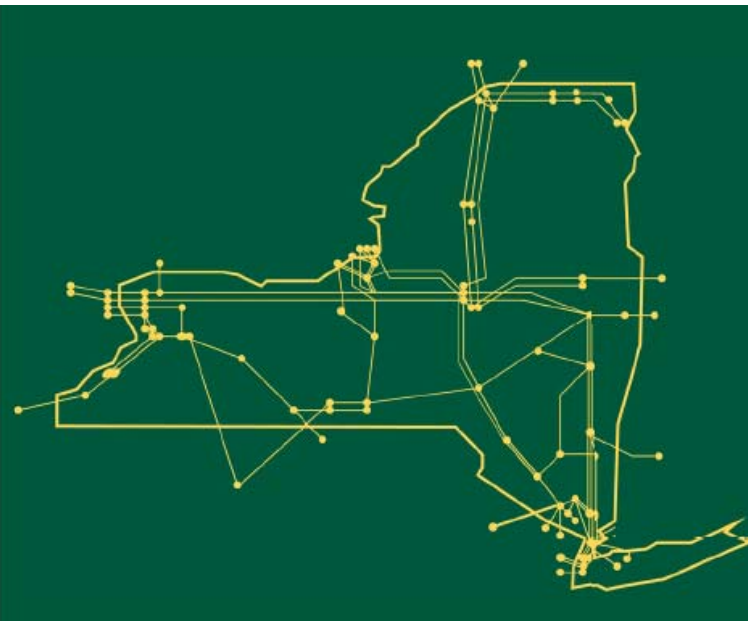
Transparency

- ◆ NYISO will notice the marketplace when a resource is determined to qualify and begins receiving payments

Next Steps

- ◆ Compile and incorporate feedback from today's MIWG
- ◆ Seek additional feedback from market participants by March 15, 2011.
- ◆ Return for further discussions to the April 15, MIWG.

The New York Independent System Operator (NYISO) is a not-for-profit corporation that began operations in 1999. The NYISO operates New York's bulk electricity grid, administers the state's wholesale electricity markets, and conducts comprehensive planning for the state's bulk electricity system.



www.nyiso.com

Attachment B

**Comments On NYISO's February 10, 2011
Presentation Submitted by the New York Department
of Public Service Staff, the New York Transmission
Owners and
Multiple Intervenors**

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

www.dps.state.ny.us

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Secretary

March 17, 2011

Shaun Johnson
c/o Leigh Bullock
New York Independent System Operator, Inc.
10 Krey Boulevard, Rensselaer, NY 12144
Sent via E-Mail: lbullock@nyiso.com

Re: Reliability Resource Compensation

Dear Mr. Johnson:

The Staff of the New York State Department of Public Service (DPS Staff) hereby provides its comments on the NYISO's proposal to establish a "Reliability Resource Compensation" mechanism, as detailed in the NYISO's February 10, 2011 presentation to the Market Issues Working Group (MIWG). DPS Staff opposes the NYISO's proposal for the following reasons.

As an initial matter, the NYISO has not established any basis for providing additional compensation for generators that may be needed for reliability. The NYISO's stated purpose for the proposal is to respond to the NYISO Board of Director's (NYISO Board) and the Federal Energy Regulatory Commission's (FERC) decisions. However, these decisions recognized that significant threshold issues existed and that the NYISO needs to first work with stakeholders to "examine generation owners' claims that existing cost recovery mechanisms are inadequate and

to review the process that evaluates permanent solutions to reliability problems."¹ It appears that the NYISO has not addressed either of these threshold issues, and thus failed to provide a basis for its proposal.

In its decision, the FERC was particularly mindful of the lack of support for generators' claims that the existing tariff fails to allow for adequate recovery of costs. As the FERC noted, no factual evidence was presented that "demonstrates that market participants generally will be unable to recover their costs due to application of the proposed mitigation provisions."² Despite FERC's recognition of the need for evidentiary support and the NYISO Board's direction to examine generation owners' claims, the NYISO has not presented any information or evidence to indicate that generator's claims are valid. Because this information is a critical step in determining whether a "Reliability Resource Compensation" mechanism is even justified, it would be entirely inappropriate for the NYISO to accept the generators' claims without conducting an independent and comprehensive inquiry to reach findings that are then provided to market participants.

The NYISO also appears to have inappropriately dispensed with the need to review the process that evaluates permanent solutions to reliability problems. It is important to recognize that the Comprehensive Reliability Planning Process (CRPP) already provides a mechanism to identify any reliability needs, while the allocation and recovery of the costs for any needed resources is provided for by the FERC or the New York

¹ ER10-2220-000, NYISO, Order on Proposed Mitigation Measures (issued October 12, 2010), ¶54 (directing the NYISO to file progress reports on the stakeholder process for informational purposes only).

² Id.

Public Service Commission (NYPSC), depending upon which resource is selected.

The CRPP includes a widely-supported all-resource (i.e., generation, transmission, and demand-response) approach to ensure an efficient and optimal solution is identified to addressing a reliability need. Under the CRPP, the NYISO does not determine the particular solutions to such needs. Instead, if a need is identified, the responsible Transmission Owner(s) (TOs) are required to develop a Reliability Backstop Solution. Other developers may also propose Alternate Reliability Solutions. The NYPSC then evaluates the competing options and selects the solution that best promotes the public interest, taking into account various factors such as the timeliness of the proposals, their costs, and other public policy considerations.³

The CRPP also provides for a "Gap Solution" to be implemented if a reliability need arises between planning cycles. In that case, the responsible TO is expected to propose a solution to the identified need until a permanent Reliability Backstop Solution can be implemented. Any other party may also submit an alternative Gap Solution to the NYISO and DPS Staff for consideration, which may include transmission, generation, and/or demand response solutions.

These planning processes dovetail with the NYPSC's requirement that generators planning to retire provide sufficient notice to the NYPSC to allow the NYISO and appropriate TOs to evaluate whether the proposed retirement

³ See Case 07-E-1507, Policy Statement on Backstop Project Approval Process, February 18, 2009. The Policy Statement envisions an informal consultation with the responsible TOs and the NYDPS Staff, followed by an Article VII process for formal selection of an RBS. If there is insufficient time for an Article VII process, the responsible TOs would still be expected to take action to ensure reliability, and the NYPSC would provide for appropriate cost recovery.

would give rise to a reliability need. If the retirement creates a reliability need, then DPS Staff works with the NYISO, the appropriate TOs, and the owner(s) of any resources capable of meeting the need to ensure the adequacy of resources. Similar to the CRPP, the resources that can satisfy the reliability need may include generation, transmission and/or distribution, or demand-response.

The NYISO's proposal, however, will interfere with and undermine the existing CRPP and NYPSC generator retirement notification procedures that have worked well to identify and address any reliability needs. In addition, by determining "need" and deciding which resource(s) will be entitled to receive guaranteed rate recovery, the NYISO would be undertaking actions akin to a regulatory function that is currently performed by the NYPSC. This could create a conflict with the NYPSC's regulatory responsibilities.

Moreover, because the NYISO's proposal would make a determination regarding a reliability need based on a "confidential retirement notification," resources other than generation capable of meeting the need would not be identified. This would inappropriately discriminate against transmission/distribution and demand-response resources, and could unnecessarily increase costs for consumers.

Inexplicably, the NYISO has bypassed stakeholders in the Electric System Planning Work Group (ESPWG) that have worked extremely hard to develop the existing CRPP, by going directly to the MIWG with a proposal that presumes the CRPP is inadequate. If the NYISO believes the CRPP is deficient, then it should present its findings to the ESPWG for review and consideration by stakeholders.

In addition, there are several issues with the mechanics of the NYISO's proposal that should be properly vetted with stakeholders. In particular, stakeholders should address

the timing of any additional form of compensation. DPS Staff maintains that any compensation deemed appropriate (i.e., the generator is determined to be needed for reliability and a preferable alternative has not been identified) should not be provided until after the generator has filed a notice of retirement with the NYPSC and the 90 or 180 day notice period has expired. The NYPSC's notice requirements have been well established and generation unit owners are responsible for factoring them into any retirement or other operational decisions.

Further, the NYISO should not establish the need for additional cost recovery merely because a generating unit has not recovered its going forward costs and is not forecasted to. Generators often enter into complex financial arrangements, such as sale-leaseback arrangements, where a generator may still receive financial benefits from keeping a unit operational despite the fact that the unit is not recovering its going forward costs in the markets. The NYISO should not be placed in the position of having to undertake the arduous task of examining such complex transactions.

We urge the NYISO to work with appropriate stakeholders to address the threshold issues identified by the NYISO Board, and to carefully consider these comments in its deliberations. Should you have any questions or would like to discuss these matters further, please feel free to contact me at (518) 473-8178, or via e-mail at: david_drexler@dps.state.ny.us.

Very truly yours,

A handwritten signature in dark ink, appearing to read "David G. Drexler", written in a cursive style.

David G. Drexler
Assistant Counsel

March 15, 2011

NYISO Proposal For Reliability Resource Compensation
Comments Submitted on Behalf of the New York Transmission Owners,
LIPA, and NYPA (the NYTOs)

1. The NYISO staff proposal states that “it is intended to address a potential bridge payment to units needed for reliability by creating an interim payment for services provided.”

The staff proposal is fatally defective in that it fails to define the problem it purports to address, and because it is presented without any reference to the Comprehensive Reliability Planning Process (CRPP), which provides a comprehensive structure to address reliability needs.

2. Neither the NYISO Board nor FERC requested the NYISO staff to develop an interim payment procedure for generators contemplating retirement. Instead, the NYISO Board and FERC both indicated, in response to complaints by certain suppliers, that the NYISO stakeholder process should examine claims that existing cost recovery mechanisms are inadequate and review the adequacy of the existing Attachment Y Gap Solution process.¹ That should be the initial focus of the stakeholder process.

3. Any proposal to permit a supplier to recover an out-of-market payment in order to maintain reliability must be considered in the context of the NYISO’s CRPP. The CRPP currently provides a comprehensive process for the development and consideration of solutions to meet reliability needs. For example, §31.2.5.9 of Attachment Y, Gap Solutions, includes the following provisions:

¹ NYISO Board of Directors’ Decision on the Appeal regarding Rest of State Mitigation, Issued on July 29, 2010. FERC Order in Docket No. ER10-2220-000, Issued October 12, 2010.

If the NYISO determines that neither market-based proposals nor regulated proposals can satisfy a reliability need in a timely manner, the NYISO will set forth its determination that a Gap Solution is necessary in the CRPP. The NYISO will also request the appropriate Transmission Owner or Transmission Owners to seek a Gap Solution. Gap Solutions may include a generation, transmission or demand-side resource. *** If there is an imminent threat to the reliability of the New York power system, the NYISO Board, after consultation with the NYDPS, may request the appropriate Transmission Owner or Transmission Owners to propose a Gap Solution outside the normal planning process. *** The Responsible Transmission Owner will propose such a solution as soon as reasonably possible, for consideration by the NYISO and the NYDPS. *** Any party may submit an alternative Gap Solution proposal to the NYISO and NYDPS for their consideration. The NYISO shall evaluate all Gap Solution proposals and determine whether they will meet the Reliability Need or imminent threat. The NYISO will report the results of its evaluation to the party making the proposal as well as to the NYDPS and/or other appropriate governmental agency(ies) or authority(ies) for consideration in their review of the proposals. The appropriate governmental agency(ies) and/or authority(ies) with jurisdiction over the implementation or siting of Gap Solutions will determine whether the Gap Solution or an alternative Gap Solution will be implemented to address the identified Reliability Need.

4. The NYISO tariff currently provides for the consideration of all potential solutions to address an identified reliability need, including generation, transmission and demand response. Under the CRPP, a retiring generator is not entitled to out-of-market compensation, unless it has been demonstrated that its retirement will create a reliability need and its continued operation is found to be the best solution to the reliability need. The PSC conducted an extensive proceeding specifically designed to establish procedures that would be used to implement a regulated reliability solution, and to determine which proposal should go forward if there are competing proposals (PSC Policy Statement on Project Cost Recovery and Allocation, April 24, 2008). It is clear that under the procedures adopted by the PSC proposals for a regulated generation reliability solution may be proposed by the Responsible TO or any other party, and will be considered.

5. No party has thus far explained why the current reliability planning process would not adequately address a reliability need that may be created by the retirement of a generator. The staff proposal appears to assume that the continued operation of the retiring generator is the only or the best solution to address the presumed reliability need, without any discussion of the existing process in which alternative solutions are considered and a determination is made by the appropriate jurisdictional entities as to which solution should be implemented.

6. The proposal for a confidential retirement notice by a generator is both infeasible and fundamentally inconsistent with the CRPP. Once it is determined that regulated reliability solution is required, there must be an open process to determine which of the available reliability solutions is in the public interest. Trying to conduct a process to provide out-of-market compensation for a generator in secret is not workable or appropriate.

7. Any proposal for a generator to be paid out-of-market revenues in order to maintain reliability must clearly provide that the generator would not be able to also gain revenues from participation in the competitive market in addition to the out-of-market revenues determined necessary for its continued operation (i.e., the generator should be paid a cost-of-service rate).

8. It also should be noted that NYISO and TO consideration of the retirement of pivotal generators is not limited to gap solutions. It is not reasonable to assume, therefore, that the retirement of a generator, even one that on occasion has been called upon to run for reliability purposes, will create a reliability problem that cannot otherwise be addressed by the appropriate TO.

9. Any further consideration of the NYISO staff proposal should be at joint ESPWG/MIWG meetings as was agreed to when similar issues were considered in the past.

103533

March 15, 2011

VIA E-MAIL

Mr. Shaun Johnson
Manager, Energy Markets Products
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, New York 12144

Re: Reliability Resource Compensation

Dear Shaun:

Pursuant to your request, this letter provides Multiple Intervenors' comments on the February 10, 2011 presentation to the New York Independent System Operator, Inc. ("NYISO") Market Issues Working Group ("MIWG") entitled, "Reliability Resource Compensation" (hereinafter, the "Proposal"). Multiple Intervenors is an unincorporated association of approximately 55 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State. Through four of its members, Multiple Intervenors participates actively in the NYISO's Management and Business Issues Committees and selected subcommittees and working groups, including the MIWG. For the reasons set forth below, Multiple Intervenors opposes the Proposal and urges that further consideration thereof be terminated.

Initially, Multiple Intervenors notes that it previously has opposed modifications to market rules similar in nature to those advanced in the Proposal. Attached hereto for your convenience are letters submitted by Multiple Intervenors, dated March 11 and July 28, 2010, commenting in opposition to prior proposals that consumers fund interim payments to generation facilities that have announced their intent to retire, but are identified as being required to continue to operate to ensure the reliability of the system.

A. General Concerns Regarding the Proposal

In evaluating the NYISO's Proposal, several significant problems, conceptual in nature, are readily apparent. Initially, there has been no demonstration of any need to modify existing market rules to address generator retirements. As you are aware, the New York State Public Service Commission ("Commission") previously established procedures governing the

retirement of generation facilities in New York.¹ There is no evidence that such procedures are inadequate and/or need to be modified or supplemented by the NYISO.² The time for parties to challenge the Commission's procedures passed many years ago and if, arguendo, changes in circumstances allegedly exist warranting a reexamination of those procedures, such reexamination should be conducted upon petition to the Commission. The NYISO should refrain from considering market rule modifications that undercut, are inconsistent with and/or attempt to circumvent procedures adopted by the Commission, especially where, as is the case here, there is no evidence that the Commission-adopted procedures are inadequate in any way.

The Proposal also facilitates and fosters, inappropriately, the payment of extra-market revenues by consumers. One of the strengths of the New York's competitive electricity markets is the longstanding avoidance of "Reliability Must Run" contracts, which really are little more than emergency-type mechanisms intended to address market failures. When the State elected to transition to competition, the primary purpose of that transition was to lower consumers' electricity rates and bills.³ The NYISO should refrain from pursuing market rule modifications that facilitate extra-market payments to generation facilities, or in any way favors existing facilities over the development of new facilities (generation or otherwise). A hallmark of a competitive market is that, over time, there will be market entry and market exit.

The Proposal, however, offers existing generation facilities the prospect of extra-market payments for periods prior to the dates they will retire, i.e., periods in which they have no right to any revenues other than those provided by the markets. In fact, the Proposal may provide generation facilities with the prospect of extra-market payments even in the absence of any real plans to retire. In addition to interfering with the Commission-adopted process governing generation facility retirements, the Proposal would increase costs to consumers, encourage existing generation facilities to seek extra-market payments in the absence of any plans to retire, and thereby discourage the development of newer, more efficient generation facilities – or other solutions to identified reliability needs (e.g., transmission enhancements, demand response initiatives) – that ultimately would have been developed. Accordingly, the Proposal ultimately impairs the benefits of a competitive marketplace – technological progression and cost reduction.

¹ Case 05-E-0889, Proceeding on Motion of the Commission to Establish Policies and Procedures Regarding Generation Unit Retirements, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

² It is ironic that the Proposal is being advanced at a time when New York State is extremely "long" in capacity and no reliability needs have been identified for at least the next decade.

³ See, e.g., Case 04-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion No. 96-12 (issued May 20, 1996) at 25-26, 28, 30.

B. Specific Concerns Regarding the Proposal

Multiple Intervenors also has numerous, specific concerns regarding the Proposal. The most prominent of those concerns are detailed below.

First, the Proposal purportedly is “intended to address a potential bridge payment to units needed for reliability, by creating an interim payment for services provided.” (Proposal, Slide 4.) Significantly, however, there has been no demonstration that any “bridge payments” are needed. Generation facilities operating in New York typically have no right to any revenues other than what the market will bear. If those revenues are insufficient to cover the costs of the facility, then pursuant to economic principles, the facility should retire. If the facility truly is needed for reliability, then the Commission’s retirement process will be activated and protect against any degradation in reliability. Moreover, under the Commission-adopted process, the right of a generation facility to any extra-market payments – if needed to protect reliability – is not triggered until after the requisite retirement notice is provided and the retirement date specified therein lapses. Until then, the facility only is entitled to market-based revenues.

Second, the Proposal encourages generation facilities to seek studies to ascertain if they are needed for reliability purposes, thereby potentially straining, unnecessarily, the resources of the NYISO and local transmission owners. Under the retirement process adopted by the Commission, if a generation facility has provided notice of its plans to retire, an examination will be conducted to ascertain whether said facility is needed for reliability purposes. Absent the plan to retire, there is no need to confirm, for the potential financial benefit of a generation facility, that it is needed for reliability purposes, because all it is entitled to are market-based revenues.

Third, the Proposal would provide for potential payments to generation facilities that have not provided the requisite retirement notice, thereby circumventing the Commission-adopted retirement procedures. Owners of generation facilities have asserted that there are “serious consequences” associated with announcing retirements. There is no evidence, however, that such consequences are inappropriate or that they constitute a proper concern for the NYISO. The purpose of the NYISO-administered markets is not – and should not be – to protect existing generation facilities or support the continued operation of uneconomic facilities. Absent the filing of a retirement notice, a generation facility has no entitlement to extra-market revenues. Indeed, even after such a notice has been filed, such extra-market revenues only would be appropriate after the date of the intended closure (satisfying the Commission’s notice requirements) and if there is no other reasonable or appropriate solution developed to address a demonstrated reliability need.⁴

⁴ The proposed payment of generation facilities months – if not years – prior to when such facilities may become eligible for compensation under the Commission’s retirement process would represent a clear circumvention of that process by the NYISO.

Fourth, the NYISO should not consider getting into the practice of making extra-market payments to generation facilities based on a “confidential retirement notice” and “prior to any official notice to the PSC.” (Proposal, Slide 6.) The NYISO needs to act in a transparent manner at all times, and especially if and when considering making consumer-funded extra-market payments to generation facilities. It is not the role of the NYISO to “go behind the Commission’s back” and make payments at the expense of consumers based on “confidential” notices. Furthermore, to the extent the filing of a retirement notice triggers certain legal and contractual obligations, it is not an appropriate role for the NYISO to aid and abet generation facilities in avoiding those obligations.⁵

Fifth, the proposal places the NYISO, unnecessarily and inappropriately, into the role of a financial auditor of a generation facility making a “confidential retirement notice.” While Multiple Intervenors recognizes and understands that the NYISO must conduct financial investigations from time to time, consistent with its market monitoring responsibilities and creditworthiness requirements, it should refrain from acting as an arbiter on the profitability of generation facilities or how much in consumer-funded, extra-market payments purportedly are required to keep a specific facility afloat.

Sixth, by potentially making extra-market payments to generation facilities prior to the filing of a retirement notice, the NYISO is favoring existing generation facilities over alternatives that could be developed and implemented if a true reliability need is identified publicly. The NYISO and its stakeholders have devoted considerable resources to developing a comprehensive reliability planning process, including a process by which identified reliability needs are met. Under the Proposal, however, a potential reliability need may never be made public because the NYISO secretly is making consumer-funded, extra-market payments to a generation facility that has made a “confidential retirement notice.”

For the reasons detailed above, Multiple Intervenors opposes the Proposal and urges that consideration of it be terminated. If, arguendo, consideration of the Proposal continues, although the Proposal indicates that the “NYISO will notice the marketplace when a resource is determined to qualify and begins receiving payments,” such notice to the marketplace should be expanded to include, inter alia, the identification of the generation facility and its location; the amount of extra-market payments being made; and the specific reliability need purportedly triggered. Generation facilities seeking extra-market payments are not entitled to any confidentiality with respect to those payments.

⁵ While the non-avoidance of such obligations may make reliability-based payments more expensive, if and when needed, consumers ultimately may be better off because unnecessary payments to generation facilities would be avoided. Irrespective of whether the NYISO agrees with this conclusion, it does represent the balance that was struck in the Commission-adopted retirement process, which should not be upset by the NYISO.

March 15, 2011

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For the foregoing reasons, further consideration of the Proposal should be terminated. Please contact Garrett Bissell or me if you have any questions regarding Multiple Intervenors' positions with respect to the Proposal.

Very truly yours,

COUCH WHITE, LLP

Michael B. Mager

Michael B. Mager

MBM/cgw

Attachments

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March 11, 2010

VIA E-MAIL

Dr. Nicole Bouchez
Manager, Market Mitigation and Analysis
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, New York 12144

Re: Proposed Mitigation of Rest of State Generators Committed for Reliability

Dear Nicole:

Pursuant to the New York Independent System Operator, Inc.'s ("NYISO") request at the February 25, 2010 Market Issues Working Group ("MIWG") meeting, Multiple Intervenors submits these comments regarding NYISO staff's proposed interim payment to certain generation facilities that have announced their intent to retire, but are identified as being required to continue to operate to ensure the reliability of the system. While Multiple Intervenors supports the NYISO's proposed mitigation measures for certain generation facilities committed to operate for reliability purposes ("Proposed Mitigation"), Multiple Intervenors, as further described below, strongly objects to NYISO staff's interim payment proposal. Moreover, Multiple Intervenors harbors significant concerns that on-going discussions regarding the interim payment proposal are likely to unnecessarily delay further stakeholder review and action regarding the Proposed Mitigation, and may be utilized as a tactic to further delay such action. Accordingly, Multiple Intervenors recommends that, to the extent NYISO staff finds that further discussions regarding its interim payment proposal are warranted, which Multiple Intervenors does not concede, the NYISO should bifurcate further discussions regarding the Proposed Mitigation and the interim payment proposal to ensure the Proposed Mitigation is acted on by stakeholders separately and expeditiously.

NYISO staff's interim payment proposal, as currently structured, contemplates a yet-to-be determined payment to certain generation facilities to begin after such a facility has submitted the required retirement notice to the New York State Public Service Commission ("Commission"), but prior to the effective retirement date stated in such notice. NYISO staff further proposes that this interim payment continue for up to one year after the effective retirement date set forth in a retirement notice to the Commission, unless an alternative solution to meet the reliability need is implemented prior to the expiration of such one year period. Moreover, NYISO staff proposes that the interim payment not be based on the costs of the specific generation facility in question. For numerous reasons, Multiple Intervenors opposes NYISO staff's approach to this issue.

Initially, the Commission already has established procedures governing the retirement of generation facilities in New York.¹ Specifically, the Commission requires all generation facilities subject to its jurisdiction of at least 80 MW to provide written notice at least 180 days prior to a proposed retirement date.² The Commission requires at least 90 days prior written notice from all generation facilities subject to its jurisdiction greater than 2 MW but less than 80 MW.³ Therefore, all such generation facilities are prohibited from retiring prior to the expiration of the applicable notice period established by the Commission. To do otherwise would constitute a violation of the Commission's established procedures. Accordingly, Multiple Intervenors adamantly opposes any proposal that would provide any payments, other than the revenues that may be earned through ordinary participation in the NYISO-administered markets, to any generation facility to remain in operation during the applicable retirement notice period established by the Commission.⁴

In establishing such notice requirements, the Commission specifically balanced the interests of protecting the public against reliability issues that could result from a generation facility retirement against the interests of avoiding adverse interference with operations of the competitive market and financial decisions by generation facility owners. Generation facility owners, transmission owners, end-use consumers and other interested parties all actively participated in the proceeding that established the applicable retirement notice periods. The NYISO's stakeholder process is not the appropriate venue for second-guessing, or attempting to maneuver around, the notice periods established by the Commission, nor should the NYISO stakeholder process be used to circumvent any of the requirements

¹ Case 05-E-0889, *Proceeding on Motion of the Commission to Establish Policies and Procedures regarding Generation Unit Retirements*, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005) (hereinafter, "Retirement Procedures Order"). The Commission defines "retirement" to include shut-downs, abandonments, mothballing and other circumstances where a generation facility is taken out of service for a substantial period of time, excluding scheduled maintenance and forced outages.

² *Id.* at 15.

³ *Id.* Generation facilities subject to Commission jurisdiction of 2 MW or less are exempt from the retirement notice requirements.

⁴ It is important to note that the Commission's standards establish only the minimum notice required. Providing payments to generation facilities during the period prior to the effective date of their proposed retirement may provide a perverse incentive for such facilities to submit retirement notices far sooner than required by the Commission for the sole purpose of extending the period over which they would qualify for receipt of the interim payment proposed by NYISO staff.

previously established by the Commission or perpetrate an effective usurpation of the Commission's jurisdiction.⁵

Furthermore, NYISO staff's proposal appears to be predicated on the presumption that the Commission will be unable, within the prescribed periods, to implement one or more solutions to address an indentified reliability concern caused by the proposed retirement of a generation facility. Such a presumption is, at best, purely speculative. It is important to note that the Commission specifically acknowledged the NYISO's own estimation of the minimum time required to identify and resolve a reliability concern in establishing the applicable retirement notice periods.⁶ Moreover, the retirement notice periods were established by the Commission, thus it is incumbent upon the Commission, not the NYISO or its stakeholders, to ensure that it has the necessary procedures in place to address reliability issues related to proposed retirements within the time periods prescribed.

In addition, it is important to note that the Commission has broad authority to fashion remedies to address an indentified reliability issue arising from a proposed retirement. As the Commission expressly stated in the Retirement Procedures Order:

[w]hile we are prepared to take any action within our jurisdiction necessary for the preservation of safe and adequate service, remedies are better considered on a case-by-case basis, given the potential variety of circumstances that could be encountered. Designing a remedy will depend upon the exact nature of those circumstances, which cannot be adequately forecast at this time.⁷

Among the actions within the Commission's jurisdiction is its broad authority, pursuant to Section 72 of the Public Service Law, to establish temporary rates, subject to refund. Such authority could, if necessary, be exercised to fashion a temporary solution, pending the implementation of a longer-term remedy.

⁵ Entities raising concerns regarding the retirement procedures established by the Commission had the opportunity to avail themselves of the right to request rehearing of the Retirement Procedures Order in accordance with the rules and regulations established by the Commission and/or file an Article 78 proceeding in accordance with the requirements of applicable State law. Attempts to address such concerns nearly five years later through the NYISO stakeholder process should not be countenanced.

⁶ Retirement Procedures Order at 15.

⁷ *Id.* at 20.

March 11, 2010

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Moreover, Multiple Intervenors has significant concerns regarding the value of the interim payment proposed by NYISO staff. NYISO staff has indicated that the interim payment is not intended to be based on the costs of the actual generation facility in question. Rather, it appears that NYISO staff is proposing establish some proxy payment. Payments that are not based on actual costs have the potential to result in establishment of payment levels that exceed the actual costs of a specific generation facility in question, thereby resulting in unnecessary, additional costs for consumers.⁸

Based on the foregoing, Multiple Intervenors disputes any purported need for the interim payment proposed by NYISO staff. The fashioning of remedies to address identified reliability issues resulting from retirement notices should, as required by the Retirement Procedures Order, be left to jurisdiction of the Commission, in consultation with the NYISO and the affected transmission owner(s).

If you have any questions regarding these comments or would like to discuss them further, please do not hesitate to contact me directly.

Respectfully submitted,

COUCH WHITE, LLP

Garrett E. Bissell

Garrett E. Bissell

GEB/dap

cc: Leigh Bullock (via E-mail)

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⁸ In addition, any such inflated payments would provide a perverse incentive for generation facilities with costs below such payment level to submit retirement notices solely to increase the revenues they might otherwise receive from participation in the NYISO-administered markets.

COUCH WHITE
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July 28, 2010

VIA EMAIL

Mr. Shaun Johnson
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, New York 12144

Re: Adequacy of Attachment Y

Dear Shaun:

At the July 7, 2010 joint meeting of the Electric System Planning Working Group and Market Issues Working Group, the New York Independent System Operator, Inc. ("NYISO") solicited comments on the adequacy of the procedures set forth in Attachment Y of its Open Access Transmission Tariff in relation to the proposed retirement of generation facilities deemed necessary to maintain system reliability. This request is related to the larger discussion of the need for recent mitigation measures approved by stakeholders for certain reliability-committed generators and the corollary discussion on the provision of additional revenues to generators needed for reliability purposes.

Initially, Multiple Intervenors reiterates its position that there has been no credible demonstration to date of the need to provide interim payments to, or create new procedures for, generators that merely claim they are contemplating retirement or which have filed notices of intent to retire. The NYISO has no statutory, regulatory, or other obligation to sustain existing generating facilities in such circumstances. Moreover, it should respect and adhere to the procedures that are already in place to address reliability needs arising from the retirement of a generating facility.

While Multiple Intervenors understands that the generators seek to maximize the profits derived from participation in the NYISO-administered wholesale markets, they are not entitled to any more revenues than the markets produce, and there is no justification for making additional payments to any generator because of a threat or concern that it may close. Indeed, doing so is completely contrary to the operation of a competitive market.

Since the inception of competition approximately 10 years ago, there has been a dramatic, and inappropriate, change in the treatment of generating facilities. Rather than allowing market forces to control, and new generation to fairly compete with existing

generation, the NYISO has taken, or is considering, administrative steps that, in practice, tend, whether intentionally or unintentionally, to preserve and increase revenue streams for existing generating facilities and stifle new generation. The establishment of deliverability requirements imposed only on new generation are but one example of such administrative constructs. The consideration of changes to Attachment Y to preserve and maintain existing generation, when there is no evidence of any deficiency in the existing procedures addressing reliability needs arising from proposed retirements of generating facilities, is another such example.

When the New York State Public Service Commission (“PSC”) decided to introduce competition to the electric industry in New York in the mid-1990s, it carefully and comprehensively examined the implications and consequences of doing so. As the PSC explained, the primary purpose of moving to competition was to lower consumers’ electricity rates and bills.¹ The PSC’s vision for a competitive paradigm included “*effective* competition in the generation and energy services sectors [emphasis added].”² With respect to generation, the PSC noted that competition should drive down costs, would embrace technological changes and advancements, and foster alternate (and more efficient and lower cost) sources of production.³

One set of implications and consequences identified and studied by the PSC was the potential for some generating facilities to close as a result of competition. In the Final Generic Environmental Impact Statement (“FGEIS”) prepared as part of Case 04-E-0952, the underlying assumption was that competition would lower the cost of generation, which could then lead to the retirement of some generating facilities.⁴ For this reason, the FGEIS expressly discussed the impacts of competition on plant retirements,⁵ and incorporated the potential for retirements throughout the analysis. In making findings based on the FGEIS, the PSC acknowledged that competition will result in the retirement of some generating facilities.⁶

¹ Case 04-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion No. 96-12 (issued May 20, 1996), *see, e.g.*, pp. 25, 26, 28, 30.

² *Id.*, p. 25.

³ *Id.*, pp. 30-32.

⁴ *See, e.g.*, Case 04-E-0952, supra, Final Generic Environmental Impact Statement (issued May 3, 1996), p. S-3.

⁵ *Id.*, pp. 5-3 – 5-5.

⁶ Opinion No. 96-12, p. 85.

Within a few years after the utilities divested their generating facilities, and Niagara Mohawk Power Corporation restructured its contracts with independent power producers, a number of old, inefficient generating facilities did shut down. Since then, however, only a handful of units have been retired, and the retirement dates for other units (*e.g.*, NRG's Astoria Gas Turbines) have been delayed. At the same time, and although costs and energy prices have generally risen (particularly downstate), other than renewable resources, there have been few new facilities constructed.

While there are likely many reasons for the lack of new facilities, Multiple Intervenors believes that one of the primary reasons is the existence of market rules, enacted over the past few years, that essentially protect existing generators and insulate them from competition by new entrants. Similarly, this proceeding involves consideration of additional protections to existing generators to prevent them from closing even if they are uneconomic and should otherwise close. The claimed rationale for doing so is that the generators may be needed for reliability purposes.

It is unknown whether the generators are actually needed because the proposals discussed contemplate providing protection before any study is undertaken as to the ramifications of the closure of a particular generating facility. In Opinion No. 96-12, the PSC discussed this very issue, observing that there could be a multitude of ways to address load pockets (*i.e.*, areas where the retirement of a generating facility could pose a reliability concern). The alternatives include transmission system reinforcements, new generation, reconfiguration of loads, demand side management and energy efficiency, contractual remedies, and cost-based regulation.⁷ In furtherance of contemplating these myriad possibilities, the NYISO adopted Attachment Y and its procedures for gap solutions, market-based solutions, and regulated solutions. Collectively, these procedures ensure that reliability needs will be satisfied with proper consideration of relative costs.

As noted above, the need to employ any of these procedures has yet to arise in New York. Therefore, there is no factual basis to conclude that the existing procedures are inadequate or ineffective. Moreover, Multiple Intervenors fails to comprehend why the intentional manipulation undertaken by three generating facilities and the concomitant need for enhanced mitigation in load pockets has caused the NYISO to second guess Attachment Y and its carefully crafted balance between the interests of loads, generators, reliability, cost, competition, market mitigation, and other salient factors.

With limited exceptions, generators operating in New York have no right to any revenues other than what the market will bear. If those revenues are insufficient to cover the

⁷ *Id.*, pp. 66-67.

costs of a generating facility, then pursuant to market-based and economic principles, the facility should close. Because electricity is generally considered an essential need, in 2005, the PSC determined that an analysis of the ramifications of the proposed closure of a generating facility should be undertaken before it actually closes.⁸ If the closure is determined to have an impact on reliability, the PSC, working with the NYISO and affected utilities, will then identify and assess the alternatives available to address the reliability need that would arise after the facility closes. As noted above, solutions could include any or a mix of options; continued operation of the existing generating facility is not necessarily the only, or even a desirable or preferred, option.

In this proceeding, however, generators are seeking extra-market payments for periods prior to dates they will retire; that is, periods in which they have no right to any revenues other than those provided by the markets. To the extent they dislike the retirement procedures adopted by the PSC, their time to challenge such procedures has long since expired, and the NYISO has no legal ability to change or nullify, directly or indirectly, such procedures. Unless and until a generating facility retires, nothing will have changed with respect to the reliability of the system that would require or justify extra-market payments to the facility's owner.⁹ Moreover, if during the analysis described above, an alternate solution is identified, providing extra payments to the generator would serve no legitimate purpose and could act to frustrate or delay the implementation of the alternative solution identified..

In past working group meetings, the generators have argued that they should not be required to file retirement notices prior to receiving extra-market payments because doing so could have "serious consequences." The filing of a retirement notice may indeed present serious ramifications for a generator, however, such ramifications should be irrelevant to the NYISO and the determination of whether the existing provisions of Attachment Y are adequate. As explained above, the purpose of the markets and market rules is not, and should not be, to protect existing generators or support the continued operation of uneconomic facilities. If a generator has no real intention of closing a generating facility, there is no justification for providing it extra-market revenues. Further, the filing of a retirement notice similarly provides no justification for providing extra-market revenues. It is only after the date of the closure, and only if there is no other reasonable or appropriate solution, that the generator should be given some type of financial support. Such support

⁸ Case 05-E-0889, Policies and Procedures Regarding Generation Unit Retirements, .Order Adopting Notice Requirements For Generation Unit Retirements (issued December 20, 2005).

⁹ It is important to note that under the PSC's retirement procedures, generators are prohibited from materially changing their operations prior to expiration of the notice period and, thus, effectively retiring their facilities early.

should not be in addition to market revenues; rather, since the generator no longer intended to participate in the market after the retirement date, its support should be cost-based, as determined by the PSC in a rate case.¹⁰

For the foregoing reasons, as well as the reasons previously presented by Multiple Intervenors to the NYISO and its Board of Directors in writing and orally,¹¹ Multiple Intervenors urges the NYISO to refrain from making any revisions to Attachment Y or otherwise provide any additional revenues to generators as inducements to continue their operation of generating facilities that otherwise would close. The existing provisions of Attachment Y and the retirement procedures adopted by the PSC adequately address the generators' alleged concerns, thereby obviating the need for additional action.

If you have any questions regarding these comments, or would like to discuss them further, please feel free to contact Michael Mager, Garrett Bissell, or me. Thank you for the opportunity to present Multiple Intervenors' perspective on this matter.

Respectfully Submitted,

COUCH WHITE, LLP

Kevin M. Lang

Kevin M. Lang

KML/glm

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¹⁰ No changes are needed to Attachment Y to allow for a cost-based contractual arrangement with a generating facility in the event that such an arrangement is determined to be necessary to maintain system reliability.

¹¹ Multiple Intervenors submitted comments to the NYISO on March 11, 2010 and discussed this matter in its June 23, 2010 opposition to appeals filed by generators on the Rest-Of-State mitigation tariff changes.

Attachment C

**NYISO March 31, 2011 Presentation to the
Market Issues Working Group
Titled *Reliability Resource Compensation***

Reliability Resource Compensation

Shaun Johnson

*Manager, Energy Markets Products
New York Independent System Operator*

Market Issues Working Group

*Krey Corporate Center
March 31, 2011*



Agenda

- ◆ Review History
- ◆ Review Comments
- ◆ Review IPPNY Proposal
- ◆ NYISO Response
- ◆ Next Steps

Previously

- ◆ NYISO presented a concept for consideration at the 02/10/2011 MIWG and solicited feedback by 03/15/2011
- ◆ This proposal focused on a new process prior to the Attachment Y retirement process:
 - *Qualifications*
 - Needed for reliability
 - Financial certification by resources
 - Agree to compliance obligations
 - *Compensation*
 - Going forward costs
 - *Transparency*

History continued

- ◆ Written comments on the proposal were submitted from three entities
 - *Multiple Intervenors (MI)*
 - *NY Department of Public Service*
 - *New York Transmission Owners, LIPA, and NYPA (NYTOs)*
- ◆ An alternative proposal was submitted from IPPNY

MI Comments

1. No demonstration that bridge payments are needed.
2. Could create a strain on NYISO and TO resources for unnecessary studies.
3. The NYISO's purpose is not to protect existing generation facilities or support the continued operation of uneconomic facilities.
4. The NYISO should be transparent and avoid payments on confidential notices.
5. The NYISO should not play the role of a financial auditor of a generation facility.
6. This process could lead to the NYISO favoring existing generation facilities over alternatives.
7. The NYISO should terminate consideration of this proposal.

NY PSC Comments

1. The NYISO has failed to provide a basis that the need exists for its proposal.
2. The NYISO has not presented any information or evidence to indicate the generator's claims are valid.
3. The NYISO dispensed with the need to review the process that evaluates permanent solutions to reliability problems.
4. Proposal would undermine the existing CRPP and NYPSC generator retirement notification procedures, which have worked well.
5. This could create a conflict with the NYPSC's regulatory responsibilities.
6. Could inappropriately discriminate against other solutions and unnecessarily increase costs for consumers.
7. NYISO bypassed ESPWG, which developed the existing CRPP. This discussion should be presented to the ESPWG for review and consideration.
8. Compensation should not be awarded until after the generator has filed a notice of retirement with the NYPSC and the appropriate notice period has expired.
9. The NYISO should not be placed in the position of examining complex financial arrangements.

NYTO Comments

1. The NYISO failed to define the problem it is attempting to address and has no reference to the CRPP.
2. The NYISO's proposal is beyond the scope of what the NYISO Board and FERC indicated, which was a review of the adequacy of the existing Att. Y Gap Solution process.
3. Any proposal must be considered in context of the CRPP.
4. Proposal must consider all potential solutions to address an identified reliability need.
5. No party has yet to explain why the current reliability planning process is not adequate.
6. The proposal for confidential retirement is both infeasible and inconsistent with the CRPP.
7. Out-of-market payments to generators must be accompanied by proposals to ensure that generator does not gain revenues in the competitive market in addition.
8. It should not be assumed that the retirement of a generator will create a reliability problem that could not otherwise be addressed by the appropriate TO.
9. Any further consideration of this proposal should be at joint ESPWG/MIWG meetings.

IPPNY Proposal

- ◆ A resource can request a confidential reliability study from the NYISO (and TO as necessary).
 - *NYISO should conduct the study in 30 or 60 days*
- ◆ Regardless of study findings a resource may stay in the market if it so chooses.
- ◆ If the generator decides to retire:
 - *If it's needed for reliability, the resource may seek a RMR type contract from FERC as soon as the resource submits its retirement notice to the PSC. This needs to be explicitly stated in the tariff to avoid procedural arguments.*
 - *Att. Y would proceed as currently defined. The FERC contract would be in place until the Gap solution or Reliability Backstop solution is put in place.*
 - *If the resource is not needed for reliability (as determined above), it should be allowed to retire immediately.*
- ◆ The unit should be removed from the Capacity market as soon as it files to retire
- ◆ The unit must bid in economically into the Energy markets

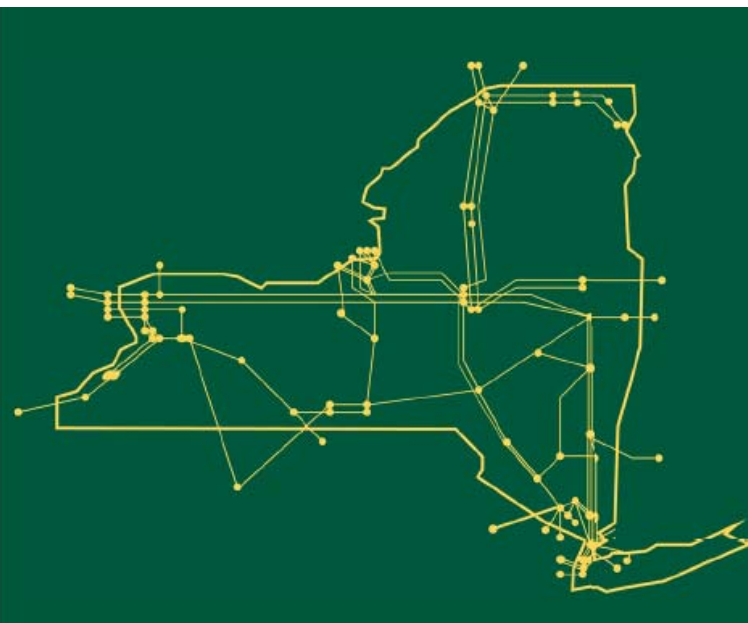
NYISO Response

- ◆ The NYISO is still reviewing the responses to its previous proposal and determining how best to incorporate the feedback it received into a proposal. However:
 - *Any future proposals will be fully incorporated into and consistent with the NYISO planning process.*
 - *NYISO will include ESPWG on any future proposals dealing with the planning process.*
 - *NYISO's focus continues to be ensuring that resources that are needed for reliability are fairly compensated.*
 - The NYISO has not identified a specific deficiency in the current process that requires a remedy.
 - Future proposals need to satisfy this threshold first.

Next Steps

- ◆ Evaluate and incorporate feedback from today's MIWG
- ◆ Evaluate the necessity for a revised or additional proposal
- ◆ If necessary, return for future discussion to a joint ESPWG/MIWG.

The New York Independent System Operator (NYISO) is a not-for-profit corporation that began operations in 1999. The NYISO operates New York's bulk electricity grid, administers the state's wholesale electricity markets, and conducts comprehensive planning for the state's bulk electricity system.



[*www.nyiso.com*](http://www.nyiso.com)