

October 7, 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 Second 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 *Second Informational Report on Efforts to Develop Rules Addressing Compensation to Generators that Are Determined to be Needed for Reliability* (“Informational Report”). The NYISO submitted its *First Informational Report on Efforts to Develop Rules Addressing Compensation to Generators that Are Determined to be Needed for Reliability* on or about April 11, 2011 (“April 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

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

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

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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 July 18, 2011 presentation titled *IPPNY Reliability Compensation Proposal* by Chris LaRoe, of IPPNY, to a joint meeting of the NYISO's Market Issues Working Group and Electric System Planning Working Group ("Attachment A"); and
3. A written outline titled *IPPNY Reliability Compensation Proposal* submitted by IPPNY for discussion during the July 18, 2011 presentation ("Attachment B");
4. Two sets of comments on the IPPNY proposal included in Attachment B that were submitted by the New York State Department of Public Service Staff and Multiple Intervenors ("Attachment C").

II. Informational Report

A. Summary of the April Informational Report

The NYISO shared an initial proposal for temporarily compensating generators that are planning to retire, but are needed for reliability, with its stakeholders at a Market Issues Working Group ("MIWG") meeting on February 10, 2011. Following the MIWG discussions, the NYISO received comments (from both load and supplier representatives) that were critical of the proposal for several reasons. IPPNY submitted an alternative draft proposal to the NYISO that it believed addressed many of the concerns expressed.

The NYISO presented IPPNY's proposal and its response at the March 31, 2011 MIWG meeting. The discussion at this meeting, primarily occurring among stakeholder representatives, was a constructive effort by divergent interests (suppliers and loads) to arrive at a common ground.

B. July 18, 2011 Joint MIWG/Electric System Planning Working Group

On July 18, 2011, IPPNY presented a revised proposal at a joint MIWG/Electric System Planning Working Group (“ESPWG”) meeting. IPPNY proposed that Attachment Y to the NYISO’s OATT be amended to expressly incorporate a right for a generator that is needed for reliability, but chooses to retire, to file a cost-of-service agreement at FERC under section 205 of the Federal Power Act. Additionally, IPPNY proposed that the New York State Public Service Commission amend its retirement provisions to allow a generator that has already been found not to be needed for reliability to exit the market immediately upon submittal of its retirement notice.

The majority of the discussion at the July 18 meeting occurred between stakeholder representatives. Representatives of New York loads (industrial, municipal and Transmission Owners) and the New York State Department of Public Service (“DPS”) Staff again participated actively in the stakeholder discussion; asking questions about and commenting on IPPNY’s proposal. The NYISO also received written comments from DPS Staff and Multiple Intervenors, which are attached to this filing. While stakeholder representatives continued to express concerns with IPPNY’s proposal, NYISO Staff believes further progress is possible because the discussions continue to focus on better understanding the other side’s concerns, rather than restating past arguments.

C. Next Steps

During the July 18, 2011 MIWG/ESPWG meeting load-side representatives expressed an interest in developing a counter-proposal to IPPNY’s proposal for discussion and IPPNY committed to consider the comments it received at the meeting. To date the NYISO has only received the two sets of comments that are attached to this filing. The NYISO is working to schedule a stakeholder meeting to further discuss compensation for generators that are needed for reliability.

III. Service

The NYISO will send an electronic link to this Informational Report to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, to all parties listed on the Commission’s official service list in this Docket and to the New Jersey Board of Public Utilities. In addition, the complete filing will be posted on the NYISO’s website at www.nyiso.com.

IV. 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 April 11, 2012.

Respectfully submitted,

/s/ Alex M. Schnell

Alex M. Schnell

Rana Mukerji, Senior Vice President of Market Structures
Robert E. Fernandez, General Counsel
Shaun Johnson, Manager of Energy Market Products
New York Independent System Operator, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 7th day of October, 2011

/s/ *Mohsana Akter*

Mohsana Akter
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New York Independent System Operator, Inc
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IPPNY Reliability Compensation Proposal

Joint ESPWG/MIWG

July 18, 2011

Background

- Currently, the New York Public Service Commission requires generators that wish to retire to continue operating for at least six months and potentially longer.
- PSC requirement that generator operate against its will is a “taking” under the US Constitution.
- Reliability determinations are not made until a generator submits a formal retirement notice, which can trigger financial consequences such as foreclosures and cash sweeps, as well as result in potential labor and pension issues. Furthermore, retirement requests can negatively affect a facility’s ground leases, equipment rentals, taxes, and tax abatements.

Background Cont'd

- Attachment Y, however, does not provide for *any* compensation to a generator owner between the time the owner wishes to retire its generator and a gap solution begins operation to resolve the reliability need. Nor does Attachment Y provide a deadline for when a gap solution must be chosen and implemented.
- Attachment Y provides just and reasonable compensation to owners who generators are selected as a regulated “gap solution.” Attachment Y states that such owners are “entitled to full recovery of all reasonably incurred costs, including a reasonable return on investment and any applicable incentives, related to the development, construction, operation and maintenance” of their projects. Such compensation is not currently provided to generators operating for reliability prior to the selection of the gap solution.

Solution

- IPPNY proposes that Attachment Y be amended to codify the right in the NYISO's tariff that a generator may file for cost of service contract with the NYISO at FERC under section 205 of the Federal Power Act.
- Additionally, IPPNY proposes the PSC amend its retirement provisions to allow a generator already found not to be needed for reliability to exit the market immediately upon submittal of its retirement notice.

IPPNY Proposal

- Amend Attachment Y to state that a generator may request a confidential reliability study from the NYISO for purposes of determining whether the generator is needed to maintain reliability.
- The study would be funded by the generator and should remain confidential. The NYISO will reimburse the generator if the generator is found to be needed for reliability.
- The DPS Staff and relevant transmission owners would be involved in the study process to determine whether the retirement would cause any local reliability concerns.
- Once the study is performed and the NYISO/DPS Staff concludes that a generator's retirement poses no threat to reliability, the generator should be able to retire immediately with no further notice requirements. IPPNY recognizes that the PSC's Retirement Order would need to be amended to clarify the generator's right to retire under this circumstance.

IPPNY Proposal

- If the study determines that the generator is needed for reliability but the generator chooses to retire, Attachment Y would state that the generator may file a cost-of-service contract under Section 205 of the FPA with FERC immediately. At the same time, the study would be made available to market participants.
- Attachment Y would state that the cost of service contract would provide full recovery of all reasonably incurred costs, including a reasonable return on investment and any applicable incentives, related to the development, construction, operation and maintenance of the generator. The contract would specify that it would expire the date the NYISO issues a written determination that the generator is no longer needed to maintain reliability.
- Both the PJM and ISO New England tariffs provide the opportunity for generators to seek approval of cost-of-service contracts from FERC.

IPPNY RELIABILITY COMPENSATION PROPOSAL

Independent Power Producers of New York, Inc. (“IPPNY”) hereby proposes amendments to Attachment Y of the NYISO’s Open Access Transmission Tariff (“Attachment Y”) to provide a cost recovery mechanism for the limited circumstance when a generator owner is ordered to operate its generator for reliability but is unable to recover its costs from the market. As discussed in further detail below, a cost recovery mechanism is needed because the New York Public Service Commission’s (“PSC”) generator retirement order¹ requires a generator owner that wishes to retire its generator to continue operating for at least six months and potentially longer even if the generator is operating at a loss. If the PSC requires a generator to operate against the will of the generator’s owner and at a loss, it is confiscatory and is a “taking” under the Fifth Amendment to the United States Constitution. The Fifth and Fourteenth Amendments to the United States Constitution provide that private property may not be “taken” by state government without just compensation.

Attachment Y provides just and reasonable compensation to owners whose generators are selected as a regulated “gap solution” to meet an imminent reliability need.² Attachment Y states that such owners are “entitled to full recovery of all reasonably incurred costs, including a reasonable return on investment and any applicable incentives, related to the development, construction, operation and maintenance” of their projects. Attachment Y, however, does not provide for *any* compensation to a generator owner between the time the owner wishes to retire its generator and a gap solution begins operation to resolve the reliability need. Nor does Attachment Y provide a deadline for when a gap solution must be chosen and implemented.

¹ Case 05-E-0889, *Order Adopting Notice Requirements for Generation Unit Retirements* (2005)(“Retirement Order”).

² A gap solution is defined as “[a] solution to a Reliability Need that is designed to be temporary and to strive to be compatible with permanent market-based proposals.” OATT, Attachment Y, Section 2.0.

Thus, Attachment Y must be amended to ensure that owners that are required by the PSC to operate their generators beyond the date they wish to retire receive just and reasonable compensation until they are no longer required to operate. Attachment Y should provide that generator owners have the right under Section 205 of the Federal Power Act (“FPA”) to file with the Federal Energy Regulatory Commission (“FERC”) a cost of service contract with the NYISO if the NYISO determines that the generator is needed for reliability.

PSC Retirement Order

The PSC’s Retirement Order was intended to remedy a perceived lack of regulatory mechanisms in place to address the retirement of electric generating units in New York State. Under the Retirement Order, generators sized equal to or greater than 80 MW are required to provide written notice of a proposed retirement at least 180 days prior to the time the retirement is effectuated. Generators sized under 80 MW have a minimum 90 day notice requirement, while generators sized 2.0 MW and under are exempted from the notice requirement. Generators proposing to retire are required to serve their notice on the PSC, the NYISO, and any affected transmission owner and are subject to sanctions if they fail to make a timely filing.³ The PSC did not address how generator owners would be compensated if it required generators to continue operating at a loss. Indeed, the PSC stated in its Retirement Order that “[a]ccording to New York Utilities, the issue of paying additional compensation to generators to forestall a retirement should be deferred for consideration in the NYISO stakeholder process.”

³ See, Case No. 10-E-0533, Project Orange Associates, LLC - Petition Providing Notice of Generation Unit Retirement and Requesting Waiver of Certain Notification Requirements, Order Accepting Notice of Retirement and Making Other Findings (December 21, 2010) at 3-4 (ruling “[t]hat declining to pursue sanctions against Project Orange is warranted under these peculiar circumstances, however, is not precedent that other owners of generation units owners may rely upon if they fail to meet deadlines for providing notice of retirements. Those other owners of generation units are reminded that they remain subject to the enforcement mechanisms of the PSL, including PSL §24 and §25, if they do not give timely notice of generation unit retirements.”).

The PSC's notice requirements were intended to complement the NYISO's Comprehensive Reliability Planning Process ("CRPP") by providing useful information that may be reflected in the NYISO's Reliability Needs Assessment ("RNA") and may be considered in devising a solution to identified reliability needs. Time permitting, any proposed retirement is to be included in the RNA base case developed through the CRPP. Where there is insufficient time, such that bulk system reliability needs cannot be addressed through the ordinary RNA planning cycle, the expectation is that, when a retirement notice is received, the NYISO and responsible transmission owner would work together, in consultation with DPS Staff, to determine if the retirement will result in a bulk and/or local system reliability need.

The NYISO CRPP Process

The CRPP assigns to the NYISO lead responsibility for evaluating the bulk power system over a ten year horizon and identifying any violations or potential violations of the applicable reliability rules. The results of this evaluation are published after stakeholder review and vote and approval by the NYISO Board in the annual RNA.

In the event the NYISO projects a reliability need, the responsible transmission owner is required to submit a proposal for a backstop regulated solution to the NYISO for evaluation. Merchant project developers are at the same time invited to submit proposals for solutions to the needs identified in the RNA. Other developers can also develop regulated proposals for generation, demand side alternatives and other solutions. Following screening by the DPS Staff, such alternative regulated proposals that satisfy the PSC Staff may be submitted to the NYISO for review. The NYISO then evaluates the proposals and presents them in a yearly Comprehensive Reliability Plan ("CRP") for stakeholder review and approval by the NYISO

Board. The Board approved CRP reflects the NYISO's assessment of the adequacy of both market and regulated proposals to meet the reliability concerns identified in the RNA.

The CRPP also provides a means of addressing time-critical reliability needs through "gap solutions." Gap solutions are intended to be temporary solutions that will not adversely impact any market-based proposals. The NYISO calls for, and evaluates, such solutions to determine whether they will meet the reliability need, and works with the transmission owners and the DPS Staff as appropriate to ensure that emergency reliability needs are addressed. The appropriate transmission owner offers a gap solution and any other party may submit an alternative gap solution proposal to the NYISO and the DPS staff for their consideration. The appropriate governmental agency 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.

The cost recovery section of Attachment Y provides that owners of gap solutions are “entitled to full recovery of all reasonably incurred costs, including a reasonable return on investment and any applicable incentives, related to the development, construction, operation and maintenance” of their projects. In the NYISO’s September 4, 2009 filing to FERC in Docket No. ER09-1682-000, the NYISO’s Market Monitoring Unit (“MMU”), Potomac Economics, expressly recognized that suppliers providing necessary reliability services to the system may not be recovering their fixed costs. The MMU stated that FERC has relied on contractual solutions customized to address the situation in the past and such an approach would be reasonable here.⁴ In the same docket, the NYISO stated that the “gap solution” process in Attachment Y would

⁴ Docket No. ER09-1682-000, New York Independent System Operator, Inc.'s Filing Requesting Authority to Prospectively Apply New Mitigation Rules to Three Specifically Identified Generators, Requesting Limited Waivers of the NYISO's Tariff and of the Commission's Regulations, Seeking Expedited Commission Action, and Requesting Shortened Notice and Comment Periods, Attachment B, Affidavit of Dr. David Patton at ¶ 42.

provide cost recovery for a generator that is needed to meet “an imminent threat to the reliability of the New York power system” but is unable to otherwise stay in business due to its inability to recover its legitimate going-forward costs. The NYISO cited to Section 13.6 of Attachment Y, which it stated “provides for the recovery of the costs of Gap Solutions that are not transmission projects; such as the funding of a reliability must-run arrangement with a given Generator in appropriate circumstances.”⁵ There is nothing in Attachment Y, however, that provides a generator that is ordered to operate to address an identified reliability need prior to the implementation of a gap solution an adequate opportunity to recover its costs, and thus, to ensure just and reasonable rates under Section 205 of the FPA. Nor is there anything in Attachment Y that provides a timeline or deadline for when a gap solution is chosen and implemented.

Discussion

Attachment Y only provides for a process to be started to find a gap solution if a reliability need is identified that results in an imminent threat to the reliability of the system. It does not contain a clear and transparent cost-of-service mechanism for generators that are ordered to continue operating to secure payment for necessary compensation. Attachment Y must be amended to ensure that owners that are required by the PSC to operate their generators beyond the date they wish to retire receive just and reasonable compensation until they are no longer required to operate. Attachment Y should provide that generator owners have the right under Section 205 of FPA to file with FERC a cost of service contract with the NYISO if the NYISO determines that the generator is needed for reliability. The PSC mandated retirement notice requirement forces a generator to operate at a loss for a minimum of 6 months while the retirement’s impact on the system is evaluated. If the generator is determined to be needed to

⁵ Docket No. ER09-1682-000, Motion For Leave To Respond, And Response of The New York Independent System Operator, Inc., October 13, 2009 Filing at 12.

continue operating to maintain reliability, the generator could be required to continue operating at a loss much longer than six months because the process for choosing, permitting and constructing a gap solution could take years to complete. During this period, the generator has no defined recourse to recover its costs.

The Attachment Y process is also cumbersome because it requires that a generator formally request retirement before the provisions of Attachment Y can be triggered. This requirement is unnecessarily onerous and fraught with numerous negative consequences. A retirement request can trigger financial consequences such as foreclosures and cash sweeps, as well as result in potential labor and pension issues. Furthermore, retirement requests can negatively affect a facility's ground leases, equipment rentals, taxes, and tax abatements.

While IPPNY believes that generators have the right to file for cost-of-service rates under Section 205 of the FPA, certain load interests claimed in the stakeholder process that led to the NYISO's filing in Docket No. ER09-1682-000 that generators do not have the ability to make such a Section 205 filing. Once a reliability need determination is made and a generator is ordered to remain operating, Attachment Y must indicate clearly that generators have a right to seek FERC's approval of a cost-of-service contract with the NYISO under Section 205 to avoid delay and unnecessary litigation on this point. Both the PJM and ISO New England tariffs provide the opportunity for generators to seek approval of cost-of-service contracts from the Commission and include detailed rules to achieve this goal.

IPPNY Proposal

1. Amend Attachment Y to state that a generator may request a confidential reliability study from the NYISO for purposes of determining whether the generator is needed

to maintain reliability. The NYISO is optimally equipped to perform such studies as it performs them routinely in connection with new interconnection requests, the yearly planning process, *etc.* The study would be funded by the generator and should remain confidential.⁶ As discussed above, a retirement request can trigger adverse financial consequences for the generator. Further, no market participant would be prejudiced as a result of the study being confidential. The DPS Staff and relevant transmission owners would be involved in the study process to determine whether the retirement would cause any local reliability concerns. Once the study is performed and the NYISO/DPS Staff concludes that a generator's retirement poses no threat to reliability, the generator should be able to retire immediately with no further notice requirements. IPPNY recognizes that the PSC's Retirement Order would need to be amended to clarify the generator's right to retire under this circumstance.

2. If the study determines that the generator is needed for reliability but the generator chooses to retire, Attachment Y would state that the generator may file a cost-of-service contract under Section 205 of the FPA with FERC immediately. At the same time, the study would be made available to market participants. Attachment Y would state that the cost of service contract would provide full recovery of all reasonably incurred costs, including a reasonable return on investment and any applicable incentives, related to the development, construction, operation and maintenance of the generator. The contract would specify that the generator would bid energy into the energy market at no less than its marginal costs. This would ensure that the generator's continued operation does not distort market prices because its costs are

⁶ If study determines that the generator is needed for reliability, the generator will be compensated for its costs of the study because the generator should not be in any worse position than if it filed a retirement notice with the PSC. Generators that file retirement notices with the PSC do not pay for reliability studies.

not reflected in the energy market. The contract would also specify that it would expire the date the NYISO issues a written determination that the generator is no longer needed to maintain reliability. The gap solution process would proceed as already specified in Attachment Y.

NEW YORK STATE
DEPARTEMNT OF PUBLIC SERVICE

August 31, 2011

Attn: Shaun Johnson, NYISO
Sent via E-mail: sjohnson@nyiso.com
Deborah Eckels, NYISO
Sent via E-mail: deckels@nyiso.com

Re: DPS Staff Comments on IPPNY Reliability Resource
Compensation Proposal

The New York State Department of Public Service Staff (DPS Staff) is concerned that NYISO Staff has not addressed the NYISO Board of Directors' (NYISO Board or Board) directive to examine the adequacy of existing cost recovery mechanisms. In the NYISO Board decision, dated July 29, 2010, the Board denied IPPNY's appeal of the Rest-of-State Mitigation Measures. However, the NYISO Board decision directed the NYISO Staff to work with stakeholders in the governance process to examine the Generation Owners' claims that existing cost recovery mechanisms are inadequate. This important directive was reiterated by FERC in Docket No. ER10-2220, where FERC noted that the NYISO will "examine the generation owners' claims that the existing cost recovery mechanisms are inadequate and to review the process that evaluates permanent solutions to reliability problems."

When the NYISO brought its proposal to the stakeholders to amend the Attachment Y process, NYISO Staff did not provide any data or support for the claims that existing cost recovery mechanisms are inadequate. Likewise, the IPPNY proposal lacks any data to support such claims. Thus, the NYISO Board directive has been inappropriately bypassed in this process.

Similarly, DPS Staff is concerned that the Board's directive to review the planning process has not been addressed. In its July 29, 2010 decision, the Board directed NYISO Staff to review the process by which permanent solutions to specific reliability needs are evaluated and planned for, particularly in terms of timing and cost to consumers. IPPNY proposes to amend the Attachment Y process without any evidence or support demonstrating it is insufficient. As the NYISO Board stated in its decision denying the appeal, "IPPNY's assertion that no mechanism exists in New York to permit a generator that is needed for reliability to recover its fixed costs is inaccurate. Assuming a generator needed for reliability is not able to recover its fixed costs through the usual market mechanisms, additional compensation for providing reliability service may be negotiated among the affected supplier, Transmission Owner, and the PSC, consistent with Attachment Y to the NYISO's OATT." The NYISO Board further explained the mechanics of the Attachment Y process and stated that should a generator be selected as a Gap Solution, it fully expects the PSC will authorize the necessary cost recovery. The IPPNY proposal is based upon the unsupported assertion and conclusion that generators are being forced to operate at a loss. As the NYISO Board noted, "the compensation concerns that IPPNY raises have not been substantiated." It would be entirely inappropriate for stakeholders to accept the claim that generation owners are unable to recover their costs without any documentation or support for the claim.

Additionally, the IPPNY proposal overlooks another extremely important statement from the NYISO Board decision. The NYISO Board stated that "during these discussions, we expect that stakeholders will examine both the need to assure adequate and timely cost recovery for suppliers, and to assess whether transmission, demand-side or other permanent solutions may be

more cost-effective for consumers. We cannot overemphasize the need to adequately plan to address reliability concerns, for which 'reliability must run' agreements may only represent a solution of last resort." The IPPNY proposal fails to address this important part of the reliability planning process. All possible alternative solutions, including transmission and demand response, must be sufficiently examined before any decision is made to enter into a cost-of-service contract with a generation owner. The six-month notice period for a generator retirement is an important part of this process, allowing for a sufficient period to examine all potential reliability solutions. It is important to note that the NYPSC has never required a unit to operate beyond this six-month time frame.

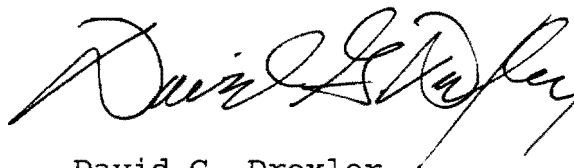
Any proposed changes in procedures must comport with the current Comprehensive Reliability Planning Process (CRPP). The CRPP already provides a mechanism to identify reliability needs, while either FERC or NYPSC provides for the allocation and recovery of the costs. If a unit plans to retire and the retirement raises a reliability need, then there is already a process in place for determining a solution to the reliability need that "may be more cost effective for consumers," as stated by the NYISO Board. The CRPP is an all-resource approach that ensures the optimal solution is identified in addressing the reliability need. Under the CRPP, the responsible Transmission Owner is required to develop a Reliability Backstop Solution, while other developers may propose alternative solutions. The NYPSC then evaluates all of the available alternatives and determines the solution that best promotes the public interest, taking into account various factors such as the timeliness of proposals, the costs, and other public policy goals. The CRPP also provides for a "Gap Solution" to be implemented in the event a reliability need arises between planning cycles.

With respect to specific aspects of the IPPNY proposal, requests for reliability impact studies for individual units raise several significant concerns. First, it would be wholly inappropriate for the NYISO to provide studies that essentially demonstrate how a unit might attempt to exercise market power and/or increase revenues within the mitigation bid constraints. Furthermore, studies that might result in ratepayers paying out-of-market compensation should not be confidential. We are also concerned that a significant number of study requests could overwhelm the resources of both the NYISO and TOs and distract them from more important work. Finally, unless the unit under study does indeed plan to retire on the date identified in the study, this could easily be a meaningless exercise. Planned and unplanned system resource additions and retirements and other operating factors change continuously, and any given study can become invalid in a short period of time.

Finally, DPS Staff opposes changes to the current process that would allow a generating unit to jump back and forth between receiving market-based prices and cost-based rates, depending on whichever is most advantageous at the time. Payments must not be provided to generation units until a formal retirement notice has been filed, a reliability need is identified, and no other preferable alternative exists. The NYPSC's notice requirements are well established and asset owners are responsible for factoring them into any retirement or other operational decision. Any cost-of-service agreement should be viewed as a last resort solution, and must be cost-effective to customers. We also note that while IPPNY's proposal refers to Attachment Y provisions for full recovery of all reasonably incurred costs, including a return on investment for gap solutions, limiting cost recovery to "Going-Forward

Costs" (as defined in Services Attachment H), would be more appropriate for keeping an established resource in service for a limited period of time.

Very truly yours,

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

David G. Drexler
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-8178

Dated: August 31, 2011
Albany, New York

cc: Adam Evans

August 31, 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 the request of the New York Independent System Operator, Inc. ("NYISO"), Multiple Intervenors hereby submits its comments on the Reliability Compensation Proposal (the "Proposal") advanced by the Independent Power Producers of New York, Inc. ("IPPNY") at the July 18, 2011 joint Electric System Planning Working Group/Market Issues Working Group meeting.¹ For the reasons set forth below, IPPNY's Proposal should not be adopted in its current form. With certain modifications and clarifications, however, the Proposal would warrant further consideration by stakeholders.

GENERAL POSITION

Multiple Intervenors understands the need for, and can, if structured properly, support the availability of cost-based, out-of-market compensation to generators that otherwise would retire but which are directed to continue operating to maintain reliability. Significantly, however, the rules governing any such compensation need to be equitable and consistent with the NYISO's existing planning processes and the notice requirements adopted by the New York State Public Service Commission ("Commission") governing the retirement of generation facilities. Multiple Intervenors previously has opposed, for various reasons, different reliability resource compensation proposals that did not satisfy such prerequisites. Additional copies of letters

¹ 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.

submitted by Multiple Intervenors commenting in opposition to prior reliability resource compensation proposals, dated March 11, 2010, July 28, 2010, and March 15, 2011, are available upon request.

Multiple Intervenors recognizes that IPPNY's Proposal attempts to address concerns expressed previously by Multiple Intervenors and other stakeholders. Accordingly, Multiple Intervenors hereby limits the instant comments to the Proposal. One general comment, however, is in order. Thus far, New York has avoided the myriad of issues and problems associated with other regions' reliance on "Reliability Must Run" ("RMR") contracts. The necessity to provide out-of-market compensation to a retiring generator needed for reliability purposes has yet to be demonstrated in New York. Accordingly, even if, arguendo, such necessity is demonstrated in the future, the payment of such compensation pursuant to RMR contracts should be the exception (and a limited one at that), not the norm.

SPECIFIC COMMENTS AND CONCERNS

Initially, Multiple Intervenors does not agree with IPPNY that compliance with, or enforcement of, the Commission's well-established retirement notice requirements applicable to electric generating facilities represent an unconstitutional taking under either the Fifth or Fourteenth Amendments to the United States Constitution. (See Proposal at 1.) It is unnecessary to engage IPPNY in legal argument on this issue at this time and, therefore, Multiple Intervenors simply notes its disagreement with IPPNY for the sake of clarity.

IPPNY then asserts that while Attachment Y to the NYISO's Open Access Transmission Tariff provides for cost-based compensation for regulated "gap solutions" to meet imminent reliability needs, it does not: (a) "provide for *any* compensation to a generator owner between the time the owner wishes to retire its generator and a gap solution begins operation to resolve the reliability need"; or (b) "provide a deadline for when a gap solution must be chosen and implemented." (Id.; emphasis in original.) IPPNY asserts further that generation owners should have the right to file with the Federal Energy Regulatory Commission ("FERC") a proposed cost-of-service contract if the NYISO determines that the generator is needed for reliability purposes. (Id. at 2.)

Multiple Intervenors does not oppose IPPNY's proposal that FERC determine the amount of cost-based, out-of-market compensation that should be paid to owners of electric generation facilities that otherwise would retire but which are needed for reliability purposes. Significantly, however, Multiple Intervenors opposes the commencement of such compensation prior to satisfaction of the Commission's retirement notice requirements. If a generation facility is needed for reliability purposes, it still is entitled to market-based compensation, similar to other facilities. Any entitlement to out-of-market compensation, however, only should be triggered when that facility otherwise would retire (i.e., after compliance with the Commission's established requirements). IPPNY's concern regarding an apparent lack of deadline for choosing

and implementing gap solutions appears reasonable and should be addressed. Where a reliability need has been identified and is not cured by a market-based solution, then a regulated solution – and, if necessary, a gap solution – should be selected and implemented on a timely basis.

For instance, if, arguendo, there is a 180-day notice requirement applicable to the retirement of a hypothetical generation facility and such facility submits the Commission-required notice exactly 180 days prior to its desired retirement date, then that facility should be entitled to market-based compensation for the first 180 days following its retirement announcement. Out-of-market compensation should be triggered only if that generation facility is forced to remain in operation – instead of retire – due to a reliability need. For this hypothetical facility, such trigger would occur on the 181st day following the retirement notice. Moreover, one of the primary purposes of the retirement notice requirements is to allow the Commission and impacted transmission owners, in coordination with the NYISO, to identify and resolve potential reliability issues. It may be possible that a gap solution can be implemented within the 180-day notice period, thereby obviating any need for the retiring facility to remain in operation (or to provide that facility with out-of-market compensation).

In its Proposal, IPPNY states that:

The PSC mandated retirement notice requirement forces a generator to operate at a loss for a minimum of 6 months while the retirement's impact on the system is evaluated. If the generator is determined to be needed to continue operating to maintain reliability, the generator could be required to continue operating at a loss much longer than six months because the process for choosing, permitting and constructing a gap solution could take years to complete. During this period, the generator has no defined recourse to recover its costs.

(Id. at 5-6.) Multiple Intervenors disagrees with – but need not rebut here – IPPNY's criticism of the Commission's well-established retirement notice requirements. Multiple Intervenors agrees with IPPNY, however, that a retiring generator directed to continue operating for reliability purposes after the applicable notice requirement has been satisfied and beyond its desired retirement date specified in the Commission-required notice should not be forced to operate at a loss while a gap solution is implemented. In that circumstance, the process should ensure that cost-based, out-of-market compensation is instituted immediately upon expiration of both the notice period and the generator's specified retirement date.

Turning to the specific elements of the Proposal, Multiple Intervenors hereby comments as follows.

First, IPPNY proposes that: (a) generators be able to request a confidential study from the NYISO for the purpose of determining whether they are needed for reliability purposes; (b) said study would be paid for by the generator, unless it is determined that the generator is needed for reliability purposes; and (c) if the generator is not needed for reliability purposes, it should be allowed to retire immediately with no further notice requirements. (Id. at 6-7.)

Multiple Intervenors understands that generators currently are able to request that the NYISO conduct certain reliability studies. Accordingly, Multiple Intervenors has no objections to memorializing such practice, provided that: (a) the NYISO is responsible for how the study is conducted; and (b) the requesting generator is responsible for the cost of the study. Multiple Intervenors still is considering – and believes further discussion is warranted on – whether and under what conditions the study should be kept confidential (although IPPNY’s proposal – as further discussed below – to make the study results public if the generator seeks out-of-market compensation alleviates Multiple Intervenors’ primary concern in this regard). IPPNY argues that if a generator is needed for reliability purposes, it should not have to pay for the reliability study “because the generator should not be in any worse position than if it filed a retirement notice with the PSC. Generators that file retirement notices with the PSC do not pay for reliability studies.” (Id. at 7, n.6.) Multiple Intervenors agrees, provided that the generator files its retirement notice within a short period (e.g., 30 days) following completion of the study. Thus, the generator requesting the reliability study would be treated similarly to retiring generators – no worse and no better. Finally, allowing generators to retire prior to expiration of the Commission’s applicable retirement notice requirement is not a matter that can be decided by the NYISO or its stakeholders at this time; it requires an order from the Commission modifying the existing requirements. While some advance notice of retirements still may be needed for administrative and other purposes, Multiple Intervenors agrees that a relaxation of the current requirements may be reasonable where the NYISO confirms that a retiring generator is not needed to maintain reliability. Such a decision, however, rests ultimately with the Commission, not the NYISO or its shared governance process.

Second, IPPNY proposes that: (a) a generator shown to be needed for reliability purposes that wishes to retire may seek cost-based compensation from FERC; (b) in that instance, the reliability study would be made available to market participants; (c) generators would be authorized to seek compensation for all reasonably-incurred costs, including a reasonable return on investment, plus any applicable incentives; (d) the out-of-market contract would specify that the generator would bid energy into the energy market at no less than its marginal costs; and (e) the contract would specify that it expires when the generator no longer is needed to maintain reliability. (Id. at 7-8.)

Multiple Intervenors does not oppose allowing a generator to seek cost-based, out-of-market compensation from FERC provided that: (a) it has announced plans to retire, consistent with the Commission’s notice requirements; and (b) the generator is needed to maintain reliability. Multiple Intervenors continues to oppose proposals that would provide generators

with out-of-market compensation prior to, or in the absence of, the filing of a notice of impending retirement and expiration of the Commission's required prior notice period. Multiple Intervenors agrees that any studies relied upon to seek out-of-market compensation should be made available to market participants. Multiple Intervenors is unaware of any incentives available to existing generation owners; that part of IPPNY's proposal warrants further discussion. Conceptually, Multiple Intervenors agrees that a generator directed to continue operating after it had planned to retire (following satisfaction of the Commission's retirement notice requirements) should be entitled to seek cost-based, out-of-market compensation in lieu of (not in addition to) market-based compensation. Such cost-based compensation presumably would include an opportunity to earn a reasonable return on investment. Multiple Intervenors does not oppose IPPNY's proposal that out-of-market generators be required to bid into the NYISO's energy markets at no less than their marginal costs, provided that such bids also are no greater than marginal costs (as established and enforced by the NYISO). Finally, Multiple Intervenors agrees that the out-of-market contract should expire as soon as the generator no longer is needed to maintain reliability, regardless of the reason for which such need lapses.

Multiple Intervenors appreciates the opportunity to comment on IPPNY's Proposal, and looks forward to further discussions regarding same in the appropriate NYISO working groups. Multiple Intervenors has no objections if the NYISO wishes to circulate its comments to other stakeholders.

Very truly yours,

COUCH WHITE, LLP

Michael B. Mager

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