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

July 28, 2014

By Electronic Delivery

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

Re: *New York Independent System Operator, Inc.*, Docket No. ER14___-000; Proposed Tariff Amendments to Define Certain Outage States and Associated Requirements

Dear Secretary Bose:

In accordance with Section 205 of the Federal Power Act[1] and Part 35 of the Commission's regulations, the New York Independent System Operator, Inc. ("NYISO") respectfully submits proposed amendments to its Market Administration and Control Area Services Tariff ("Services Tariff") and Open Access Transmission Tariff ("OATT") to define certain generator outage states and associated requirements and calculations.[2] These proposed tariff amendments were approved by the NYISO's Management Committee with a 73.12% affirmative vote on February 27, 2014. The NYISO is requesting an effective date of November 1, 2014. The NYISO also requests that the Commission issue an order by September 26, 2014.[3]

I. Documents Submitted

1. This filing letter;

2. A clean version of the proposed revisions to the Services Tariff ("Attachment I");

3. A clean version of the proposed revisions to the OATT ("Attachment II");

[1] 16 U.S.C. §824d (2012).

[2] Capitalized terms not otherwise defined herein shall have the meaning specified in Section 1 of the OATT and Section 2 of the Services Tariff.

[3] The Commission should not view the request for a November 1, 2014 effective date as a waiver of the NYISO's right to change rates after sixty days' notice to the Commission and the public. 16 U.S.C. § 824d(d).

4. A blacklined version of the proposed revisions to the Services Tariff ("Attachment III");

5. A blacklined version of the proposed revisions to the OATT ("Attachment IV"); and

6. An Affidavit from David B. Patton, Ph.D., of Potomac Economics, the NYISO's Market Monitoring Unit ("MMU") ("Attachment V").

II. Overview

The NYISO is proposing to amend its Services Tariff and OATT to (i) clarify market rules surrounding outage states, (ii) provide that generators on outage respond to reliability needs, either by returning to service or by making their interconnection points available while they remain on outage, and (iii) establish a new EFORd calculation[4] for units returning to service from an outage. This proposal also responds to a need identified by the NYISO and the Market Monitoring Unit ("MMU") to establish clear rules regarding how long a unit suffering equipment failure may participate in the Installed Capacity ("ICAP") market.

While different generator outage states are currently recognized by the NYISO, the proposed revisions will define those states in the NYISO tariffs, limit the length of time a generator may remain in certain outage states, and clearly indicate whether generators in outage states are eligible to participate in the ICAP market. Specifically, the NYISO proposal would add a definition of Forced Outage to the tariff and terminate the ICAP eligibility of a generator in a Forced Outage at six months unless the Market Participant has begun repairing its unit. Market Participants that cannot demonstrate they are repairing their generators will have the generator reclassified into a new state called "ICAP Ineligible Forced Outage," an outage state in which generators are not eligible to participate in the ICAP market.

Currently, Market Participants that remove, or propose to remove, their suppliers in Mitigated Capacity Zones from the ICAP market may be subject to audit and review to determine whether the removal is based on an effort to withhold ICAP physically in order to affect price. The NYISO proposes to address application of this audit and review to Market Participants with generators that supply ICAP that have been classified into an ICAP Ineligible Forced Outage in order to determine whether the reclassification into an ICAP Ineligible Forced Outage is based on an effort to withhold ICAP physically in order to affect price. The NYISO is also proposing to exempt units, under certain circumstances, that have suffered significant

[4] Equivalent Demand Forced Outage Rate ("EFORd") is a performance-based measure of unit availability that, with a unit's Demonstrated Maximum Net Capacity ("DMNC"), determines how much capacity a unit may offer for sale. The EFORd represents a generating unit's expected availability based on previous performance. *See NYISO's Installed Capacity Manual* at Attachment J (May 2014) available at: http://www.nyiso.com/public/markets_operations/documents/manuals_guides/index.jsp.

damage from this audit and review or to delay the audit and review until sufficient data becomes available to conduct the audit and review.

The NYISO's proposal also includes additional tools that will allow it to address reliability issues that arise in the short-term. The proposal would allow the identification of units in certain outages for return to service to address a reliability issue. If, under certain circumstances, a unit so identified does not timely return to service, it may be responsible for certain costs if it later returns. Also, a generator would be required to allow use of its interconnection point on a temporary basis if needed to resolve a reliability issue. Finally, the NYISO is proposing to revise the calculation of a generation unit's EFORd when it returns from an outage that precluded ICAP eligibility and to define in its tariffs the terms "Mothball Outage" and "Retired."

The NYISO's proposed outage state clarifications will improve existing incentives for forced out units to repair quickly and return to the market. In addition, these clarifications will better inform decision-making by the NYISO, Transmission Owners, and generation developers when planning system reinforcements, expansions and new additions. The revisions proposed for return to service and use of interconnection points will increase the flexibility of the NYISO and Transmission Owners to resolve reliability issues quickly and efficiently. Finally, the revisions to the EFORd methodologies will better align capacity sales with generator operating history.

As the attached affidavit from Dr. Patton of the NYISO's Market Monitoring Unit demonstrates, the MMU endorses the tariff amendments being proposed here while noting some areas for potential improvements in the future.[5] The proposed amendments are the product of more than one year of stakeholder working group and governance committee meetings. They reasonably balance competing interests among Market Participants and the NYISO while offering concrete solutions to identified issues.

The revisions discussed in this filing letter and proposed in the amended tariff sections would apply only to units entering their outage on or after the effective date of these revisions. This filing letter provides a section by section description of the proposed revisions and an analysis and justification to demonstrate that the provisions are just and reasonable.

III. Proposed Tariff Revisions, Analysis and Justification

A. Defined Terms and Associated Responsibilities

The NYISO proposes to define, in the Services Tariff, the terms "Forced Outage," "Inactive Reserves," "ICAP Ineligible Forced Outage," and "Mothball Outage" as well as the term "Retired." Additional terms "Commenced Repair," "Credible Repair Plan," and "Repair Plan" are also defined to support the new outage states definitions. These terms are proposed to

[5] Affidavit of David B. Patton, Ph.D., Attachment V to this filing letter ("Patton Affidavit").

be included in the OATT with cross references to definitions in the Services Tariff. The NYISO also proposes a clerical amendment to add the defined acronym "ICAP" to the existing term Installed Capacity, included as a defined term in Section 2.9 of the Services Tariff.

> The term "**Forced Outage**" is proposed to be defined as:
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> An unscheduled inability of a Market Participant's Generator to produce Energy that does not meet the notification criteria to be classified as a scheduled outage or de-rate as established in ISO Procedures. If the Forced Outage of a Generator starts on or after the effective date of Section 5.18 of this Services Tariff, the Forced Outage will expire at the end of the month which contains the 180th day of its Forced Outage but may be extended if the Market Participant has Commenced Repair of its Generator.

As mentioned, with this revision a Market Participant with a generator in a Forced Outage may retain its eligibility to participate in the ICAP market with such unit for only six months[6] unless the Market Participant demonstrates that it is repairing the unit. To demonstrate repair, the generator must satisfy a new Commenced Repair test.

> The term "**Commenced Repair**" is proposed to be defined as:
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> A determination by the ISO that a Market Participant with a Generator i) has decided to pursue the repair of its Generator, and based on the ISO's technical/engineering evaluation, ii) has a Repair Plan for the Generator that is consistent with a Credible Repair Plan, and iii) has made appropriate progress in pursuing the repair of its Generator when measured against the milestones of a Credible Repair Plan.

The process for making a Commenced Repair determination is described in greater detail in proposed Services Tariff Section 5.18.1.3.

> The term "**Repair Plan**" is proposed to be defined as:
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> A work plan, set of actions, and time frame for such actions, that is necessary to repair a Generator and return it to service as described in Section 5.18.1 of this Services Tariff.

This definition lays out the information the NYISO requires a unit to provide in its Repair Plan. The Repair Plan is a required submittal, described in greater detail in proposed Services Tariff Section 5.18.1.2, used in demonstrating that the unit has Commenced Repair.

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[6] Proposed Services Tariff Section 5.18.1.6 clarifies that the six-month period would end on the last day of the month which contains the 180th day of the unit's outage. As a result, ICAP eligibility can extend for several days beyond the 180th day of the outage.

The term "**Credible Repair Plan**" is proposed to be defined as:

> A Repair Plan that meets the requirements described in Section 5.18.1.4 of this Services Tariff and in ISO Procedures**.**

The elements used to determine whether a unit's Repair Plan is a Credible Repair Plan are described in detail in the proposed Services Tariff Section 5.18.1.4.

The term "**ICAP Ineligible Forced Outage**" is proposed to be defined as:

> The outage state of a Market Participant's Generator after: i) the expiration or termination of its Forced Outage pursuant to the provisions in Section 5.18.1.6 of this Services Tariff, which Forced Outage started on or after the effective date of Section 5.18 of this Services Tariff; ii) the Market Participant voluntarily reclassified its Forced Outage pursuant to the provisions in Section 5.18.2.1 of this Services Tariff, which Forced Outage started on or after the effective date of Section 5.18 of this Services Tariff; or iii) substantial actions have been taken, such as dismantling or disabling essential equipment, which actions are inconsistent with an intention to operate the Generator in the Energy market. A Generator in an ICAP Ineligible Forced Outage is subject to the return-to-service provisions in Section 5.18.4 of this Services Tariff and is ineligible to participate in the Installed Capacity market.

An ICAP Ineligible Forced Outage is a proposed new outage state which begins either i) following the six-month expiration of a generator's Forced Outage if the Market Participant has not Commenced Repair, or ii) voluntarily at any time sixty or more days following a Forced Outage. This outage type would also include units, whether or not forced out, that have taken substantial actions inconsistent with an intention to operate in the Energy market, such as disabling essential equipment. A generator in an ICAP Ineligible Forced Outage is not eligible for, and may not participate in, the ICAP market.

With two exceptions described in Section III.H of this filing letter, Installed Capacity Suppliers with generators in Mitigated Capacity Zones that are classified as in an ICAP Ineligible Forced Outage would be subject to audit and review if the removal of such generator from the ICAP market would reasonably be expected to affect capacity prices in the Load Zone in which it is located. The purpose of the audit and review is to determine whether the ICAP market removal had a legitimate economic justification or was based on an effort to withhold ICAP physically in order to affect price ("Physical Withholding Test").

The term "**Inactive Reserves**" is defined as:

> The outage state in which a Market Participant's Generator is unavailable to produce Energy for a limited period of time not to exceed six months, for reasons that are not equipment related, which state does not meet the criteria to be classified as any other outage pursuant to the provisions of this Services Tariff or

> of ISO Procedures. A Generator in Inactive Reserves is ineligible to participate in the Installed Capacity market.

As defined, an Inactive Reserves outage would be taken for non-equipment related reasons such as unprofitable market economics and could continue for no more than six months. Inactive Reserves does not require prior notice to the New York State Public Service Commission ("PSC")[7] and is likely to be taken with the intent to return to the market before the end of the six-month period. Units in Inactive Reserves are not eligible to participate in the ICAP market.

> The term "**Mothball Outage**" is defined as:
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> The outage state in which a Market Participant's Generator is voluntarily removed from service, on or after the effective date of Section 5.18 of this Services Tariff, with applicable prior notice, for reasons not related to equipment failure. A Generator in a Mothball Outage is subject to return-to-service provisions in Section 5.18.4 of this Services Tariff and is ineligible to participate in the Installed Capacity market.

The phrase "applicable prior notice" refers to the notice required by the PSC prior to taking generating units out of service for a substantial period of time.[8]

> The term "**Retired**" is defined as:
>
> A Generator that has permanently ceased operating on or after the effective date of Section 5.18 of this Services Tariff either: i) pursuant to applicable notice; or ii) as a result of the expiration of its Mothball Outage or of its ICAP Ineligible Forced Outage.

Implications of defining the term "Retired" in the NYISO's tariffs are discussed below at Section III.F.2 of this filing letter.

The NYISO also proposes to add the terms "Gap Solution" and "New York State Bulk Power Transmission Facility" to the definition sections of the Services Tariff and OATT with cross-references to the meanings of those terms included in Attachment Y to the OATT, and add the new term "Notice of Intent to Return," which will be discussed in Section III.G.3 of this filing letter.

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[7] The PSC requires Market Participants intending to put a unit in an outage for a substantial period of time, such as retirement or a mothball outage to provide a notice of intent prior to taking the outage. Nothing the NYISO is proposing here alters the existing PSC notice requirement. *See Proceeding on Motion of the Commission to Establish Policies and Procedures Regarding Generation Unit Retirements*, Case 05-E-0889, *Order Adopting Notice Requirements for Generation Unit Retirements* (issued December 20, 2005) ("Retirement Order").

[8] Retirement Order at n.1.

B. Services Tariff Section 5.12.1, Installed Capacity Supplier Qualification Requirements

Services Tariff Section 5.12.1 outlines the obligations of suppliers that are eligible to participate in the ICAP market or intend to become eligible. To clarify ICAP market eligibility for units in various outage states, the NYISO proposes to amend this section to include the following sentence:

> Even if a Generator has otherwise satisfied the requirements to participate in the ISO's Installed Capacity market, a Generator in Inactive Reserves, an ICAP Ineligible Forced Outage, a Mothball Outage, or that is Retired is ineligible to participate in the ISO's Installed Capacity market.

This proposed amendment clarifies that a unit in one of the specified outage states is not eligible to participate in the ICAP market, even if the unit satisfies other existing requirements for generator eligibility.

C. Services Tariff Section 5.12.6.1, UCAP Calculations; Services Tariff Section 5.12.6.1.1, Exceptions

1. Services Tariff Section 5.12.6.1 ─ UCAP Calculations

Services Tariff Section 5.12.6.1 describes how the Unforced Capacity ("UCAP") that Installed Capacity Suppliers are permitted to sell in the ICAP market is calculated. As a general matter, the amount of UCAP an Installed Capacity Supplier may sell is calculated using operating data for the generator from previous calendar months. These calculations, which vary based on resource type, provide an indication of the extent to which the unit can reasonably be assumed to be available to the system in the Capability Period following the calculation. The NYISO proposes to amend this section to exclude from these calculations monthly operating data for any month, or Capability Period, as applicable, during which the unit was in an outage state that precluded its eligibility to participate in the ICAP market ("post-effective date ICAP ineligible outage").[9] The proposed exceptions to these rules are discussed below at Section III.C.2 of this filing letter.

Specifically, the amount of UCAP an Intermittent Power Resource is authorized to sell is based on the NYISO's calculation of the amount of Capacity the Resource can reliably provide during system peak load hours in accordance with ISO Procedures. The NYISO is proposing to exclude from this calculation those system peak hours that occur in a month that the Resource was in a post-effective date ICAP ineligible outage.

Similarly, in calculating the UCAP that each Limited Control Run-of-River Hydro Resource is authorized to provide, the NYISO proposes not to include hourly net Energy during any Capability Period in which the Resource was in a post-effective date ICAP ineligible outage. This means the UCAP will be calculated using the rolling average of the hourly net Energy from

[9] These include ICAP Ineligible Forced Outages, Mothball Outages and Inactive Reserves.

the 20 highest New York Control Area ("NYCA") integrated real-time load hours in the five most recent Winter or Summer Capability Periods in which the Resource was not in an outage state that precluded ICAP eligibility instead of from the five most recent winter or summer Capability Periods regardless of the Resource's outage state.

For all other internal generators, the NYISO proposes to calculate individual EFORds by excluding GADS Data[10] or other operating data from any month the unit was in a post-effective date ICAP ineligible outage state. The NYISO will replace the excluded month's GADS Data or other operating data with GADS Data or other operating data from the most recent prior month in which the generator was not in an outage state that precluded ICAP eligibility.

These amendments, supported by Dr. Patton, would replace the current practice of using a NERC class average derating factor for units returning from an outage that precluded ICAP eligibility in order to align the derating factor for such a unit with its history of operating before the outage began.[11] These amendments allow for a more accurate estimate of a generator's forced outage rate by basing it on its own operating history rather than a class average, while preserving incentives to return from such an outage as soon as possible to maximize the UCAP available for sale. [12]

2. Services Tariff Section 5.12.6.1.1 ─ Exceptions

The above described EFORd calculations would apply unless an exception, as provided in proposed new Services Tariff Section 5.12.6.1.1, is applicable. A generator with a post-effective date ICAP ineligible outage that returns to the Energy market with modifications to its operating characteristics that require the submission of a new Interconnection Request, because the modifications were determined by the ISO to be material, will receive, as the initial derating factor in calculating the generator's UCAP, the derating factor it would have received as a newly connecting unit in lieu of the derating factor that would otherwise be developed.

A generator returning to the Energy market after taking a post-effective date ICAP ineligible outage which, upon its return, uses as its primary fuel a type of fuel not previously used at the facility for any purpose other than for ignition will receive, as the initial derating factor in calculating the generator's UCAP, the NERC class average derating factor. The NERC

[10] The North American Electric Reliability Corporation's ("NERC") Generating Availability Data System ("GADS") is a system of event reporting required of all conventional generating units 20 megawatts ("MW") in size and larger. *See* http://www.nerc.com/pa/rapa/gads/pages/mandatory-gads.aspx.

[12] *See* Section III.E.3 of this filing letter for a description of the incentive for units to return quickly from an outage. *See* also Patton Affidavit at P 12:

> The NYISO operates an Unforced Capacity ("UCAP") market rather than an ICAP market in order to provide incentives for suppliers to reduce the forced outage rates of their generators. The amount of UCAP each generator can sell is equal to its ICAP, discounted to reflect its EFORd. This way, a 100 MW generator with a low EFORd is able to sell more UCAP than a 100 MW generator with a high EFORd.

class average derating factor will be used even if the modifications to allow use of a new primary fuel were not material and do not require the submission of a new Interconnection Request.

Retaining the use of NERC class averages is appropriate for units returning to the Energy market with substantially different operating characteristics because such class average derating factors are more likely to reflect future operating characteristics or primary fuel use than would the unit's operating history before it made these substantial changes.

D. Services Tariff Section 5.18, Generator Outages and Generator Obligations While in These Outages

The NYISO proposes to add a new Services Tariff Section 5.18 to describe each of the new outage states and the rights and responsibilities of the NYISO and generators based on outage state. As mentioned, these provisions would apply only to generators with an outage that begins following the effective date of these proposed amendments. Section 5.18 starts by requiring Market Participants with NYCA Generation to report outage states and their status to the ISO pursuant to ISO Procedures.

E. Services Tariff Section 5.18.1, Forced Outages and Commenced Repair Determinations; and Services Tariff Section 5.18.2, ICAP Ineligible Forced Outage

1. Services Tariff Section 5.18.1 ─ Forced Outages and Commenced Repair Determinations

New Services Tariff Section 5.18.1 provides additional detail on the NYISO's proposal to allow Market Participants to extend the Forced Outage of their generating facilities if the NYISO determines that they have Commenced Repair. This section provides key details on the pursuit of Commenced Repair for Market Participants with units in Forced Outages, ICAP Ineligible Forced Outages and Mothball Outages.[13] The section ends by describing the proposed consequence of reclassifying units to an ICAP Ineligible Forced Outage, if they have not Commenced Repair by the 180th day of their Forced Outage.

As described in proposed Services Tariff Section 5.18.1.1, a Market Participant with a unit in a Forced Outage would be required to keep the NYISO apprised of the progress of its unit's repairs pursuant to ISO Procedures. To extend a Forced Outage beyond the date it would otherwise expire, the NYISO would require a Repair Plan be submitted by the 120th day of the Forced Outage ("Day 120"). No Market Participant can extend its unit's Forced Outage without submitting a Repair Plan by Day 120.

[13] Units in ICAP Ineligible Forced Outages seek Commenced Repair determinations pursuant to Services Tariff Sections 5.18.2.3.2 or 23.4.5.6.2.2. Units in a Mothball Outage seek Commenced Repair determinations pursuant to Services Tariff Section 5.18.3.3.2.

While this proposal does not allow for extensions of the Day 120 submittal deadline, the NYISO does propose, in new Services Tariff Section 5.18.1.5, to update any Commenced Repair determination if a Market Participant provides additional information after Day 120 but before the 180th day of the Forced Outage, to the extent it is practicable to provide such an updated determination within this time frame.

In new Services Tariff Section 5.18.1.2, the NYISO proposes that the Repair Plan describe the milestones or necessary actions, including repairs that must be completed to return the unit to service, with estimated dates of completion for each necessary action. The Repair Plan must also include the date the Market Participant expects the unit to return to the Energy market. The return date must be reasonable – which is defined as comparable to a return date that would be included in a Credible Repair Plan. The return date can be provided as a good faith estimate but it must be updated to the extent new information becomes available.

New Services Tariff Section 5.18.1.3 sets forth the criteria the NYISO proposes to consider in making a Commenced Repair determination, including whether the Market Participant has decided to repair the generator, has submitted a Repair Plan that is consistent with a Credible Repair Plan, and has made progress appropriate with the milestones of the Credible Repair Plan. Under this proposal, the NYISO would use a technical/engineering evaluation to determine whether the submitted Repair Plan is consistent with a Credible Repair Plan.

In new Services Tariff Section 5.18.1.4, the NYISO proposes to define a Credible Repair Plan as a hypothetical Repair Plan, developed by NYISO engineering staff or consultants, which would be expected from a Supplier i) with a facility reasonably the same or similar to the type and vintage of the generator, and ii) intending to repair its facility and return it to the Energy market. When used to determine whether a generator in a Forced Outage or an ICAP Ineligible Forced Outage has Commenced Repair, the Credible Repair Plan would also be a Repair Plan expected from a supplier with a generating facility that had suffered the same type of forced outage as the generator, or one that was comparable, under the same or reasonably similar circumstances. For a generator in a Mothball Outage, a Credible Repair Plan would also be expected from a supplier pursuing a repair that is reasonably the same or comparable to the repair being pursued by the generator.

In new Services Tariff Section 5.18.1.5, the NYISO proposes to provide a Commenced Repair determination for a unit in a Forced Outage by the 160th day of the outage and proposes to update such determination, based on updated information, before the 180th day of the Forced Outage as practicable. The NYISO also proposes in this section to provide Commenced Repair determinations for units in a Mothball Outage or ICAP Ineligible Outage, as soon as practicable following receipt of necessary data, provided that, if required pursuant to new Services Tariff Sections 5.18.2.3.2 and 5.18.3.3.2 the Repair Plan is submitted at least 60 days before the outage would otherwise expire.

In new Services Tariff Section 5.18.1.6, the NYISO proposes that Forced Outages would expire on the last day of the month containing the 180th day of the Forced Outage unless there has been a determination that the generator has Commenced Repair. Further details on the

expiration of a Forced Outage for a generator that Commenced Repair and then ceased or unreasonably delayed its repair are also provided in this section. The NYISO also proposes, in new Services Tariff Section 5.18.1.7, to reclassify a unit with a Forced Outage that has expired, and which has not returned to the Energy market or Retired, to an ICAP Ineligible Forced Outage.

2. Services Tariff Section 5.18.2 ─ ICAP Ineligible Forced Outage

New Services Tariff Section 5.18.2 describes the proposal for the new ICAP Ineligible Forced Outage state. The ICAP Ineligible Forced Outage state includes units whose Forced Outage has either expired, terminated or was voluntarily reclassified pursuant to the provisions in new Section 5.18.2.1 of the Services Tariff. It also includes units that have taken substantial actions, such as dismantling or disabling essential equipment, that are inconsistent with an intention to operate the generator in the Energy market.

The start dates on which an ICAP Ineligible Forced Outage would begin, which can vary depending on how the generator came to be in this outage, are all described in new Services Tariff Section 5.18.2.1. This section also provides that a Market Participant may voluntarily reclassify the Forced Outage of its generating facility as an ICAP Ineligible Forced Outage after the 60th day of the Forced Outage.[14]

Pursuant to new Services Tariff Section 5.18.2.2, generators in an ICAP Ineligible Forced Outage are not eligible to participate in the ICAP market. This section also describes that the ICAP market ineligibility, resulting from being in this outage, would cease as of the first day the generator returns to operation and offers Energy into the Day-Ahead Market without declaring an outage. ISO Procedures will be developed to resolve issues surrounding the month for which a returning generator will first be eligible to participate in the ICAP market. The NYISO intends for the transition from an ICAP Ineligible Forced Outage to ICAP market eligibility to occur in a manner consistent with other market rules that would consider whether ICAP is available from a generator.[15]

New Services Tariff Section 5.18.2.3.1 contains the NYISO's proposal, with an exception described in new Services Tariff Section 5.18.2.3.2, that an ICAP Ineligible Forced Outage would expire when the unit's Capacity Resource Interconnection Service ("CRIS") expires or, if it had no CRIS, when the unit had been in this outage for 36 consecutive months. Pursuant to

[14] Requiring the unit to be in a Forced Outage for 60 days before leaving it is consistent with the rule found in Section 3 of NERC's GADS Data Reporting Instructions, available at: http://www.nerc.com/pa/RAPA/gads/DataReportingInstructions/Section_3_Event_Reporting.pdf. Such voluntary reclassifications can also trigger a physical withholding analysis pursuant to the proposed amendments to Services Tariff Section 23.4.5.6, described at Section III.H of this filing letter.

[15] Specifically, under the Services Tariff, Pivotal Suppliers are required to offer any remaining unsold capacity into the ICAP Spot Market Auction. Whether an entity is a Pivotal Supplier depends on the MW it has available for sale. For purposes of that calculation, the MW from a unit returning from an ICAP Ineligible Forced Outage would only be included if those MW are available to offer into the subsequent month's ICAP auction.

new Services Tariff Section 5.18.2.3.2, a unit that has Commenced Repair with a return date that falls after the ICAP Ineligible Forced Outage would otherwise expire could toll the outage expiration if the unit has a return date that is reasonable pursuant to Services Tariff Section 5.18.1.2. Under these circumstances, the ICAP Ineligible Forced Outage would expire on the earlier of i) 120 days from the date the outage would otherwise have expired under Section 5.18.2.3.1, or ii) a NYISO determination that the Market Participant has ceased or unreasonably delayed the repair of its unit. The unit's CRIS would also be tolled and would expire on the earlier of i) 120 days from the date the ICAP Ineligible Forced Outage would otherwise expire, or ii) a NYISO determination that the Market Participant has ceased or unreasonably delayed the repair of its unit.

Upon expiration of the ICAP Ineligible Forced Outage, a unit that had not returned to the Energy market would be deemed Retired. As defined, a unit that is Retired has "permanently ceased operating" either pursuant to applicable notice or because its Mothball Outage or ICAP Ineligible Forced Outage has expired. The proposed provision to categorize a unit with an expired ICAP Ineligible Forced Outage as Retired is further discussed below in Section III.F.2 of this filing letter.

New Services Tariff Section 5.18.2.4 requires that a Market Participant with a unit in an ICAP Ineligible Forced Outage provide an updated estimate of the date by which repairs will be complete and the unit will be available for service when notified by a Transmission Owner that the return to service of the unit could address a reliability issue. This section also requires that the unit i) make a timely return to service, as described in Services Tariff Section 5.18.4.2, or be subject to costs under Services Tariff Section 5.18.4.3 if the unit's return is selected as the Gap Solution[16] or is identified as the solution to a reliability issue on facilities other than those of the New York State Bulk Power Transmission Facilities[17] system ("non-bulk system"), and ii) provide temporary use of its interconnection point when a transmission solution using the interconnection point has been selected as a Gap Solution or to resolve a reliability issue arising on the non-bulk system during its outage. These requirements are discussed further in Section III.G of this filing letter.

[16] *See* OATT Section 31.2.5.10 for a description of the uses of a Gap Solution.

[17] The term *New York State Bulk Power Transmission Facilities* is defined in Attachment Y, Section 31.1.1 of the OATT as:

> The facilities identified as the New York State Bulk Power Transmission Facilities in the annual Area Transmission Review submitted to the NPCC by the ISO pursuant to NPCC requirements.

3. Analysis and Justification[18]

Current rules do not explicitly identify a maximum time period for forced out units to remain in the ICAP market although the EFORd calculation increases the derating factor used to calculate their UCAP to reflect the period of their forced outage.[19] While this incentive provides an appropriate market signal, the NYISO and its MMU have determined that unless the period of ICAP market eligibility is shortened, this existing construct does not remedy inefficiencies in the ICAP market that long-term ICAP eligibility for units that are unavailable to the Energy market can create. As the NYISO's MMU explained:

> The NYISO's practices allow an existing generator to be in a forced outage state and continue to sell capacity for an unreasonably long period of time that could easily span an entire summer capability period. Precluding such a unit from selling capacity after a reasonable amount of time would be beneficial because it would provide more accurate and efficient spot capacity [price] signals regarding the current state of the system. This would improve reliability because the reduction in sales from units on extended forced outages would encourage additional sales from importers, demand response resources, and/or mothballed generators with the ability to return to service on short notice. It would also provide more timely price signals for longer lead time investments in new generation, demand response, and transmission.[20]

The NYISO's proposal implements this recommendation by ending ICAP eligibility at six months for non-repairing units. This six month period provides a reasonable period of time during which the Market Participant can develop repair plans and perhaps even complete its repairs before losing this funding stream.[21]

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[18] The NYISO's proposal regarding units in an ICAP Ineligible Forced Outage to return to service and/or make their interconnection point available when necessary to resolve a reliability need is discussed at Section III.G.4 of this filing letter. The proposal to categorize units with expired ICAP Ineligible Forced Outages as Retired is discussed in Section III.F.2 of this filing letter.

[19] For more information on how a unit's EFORd calculations affect its available UCAP s*ee* the NYISO's *Installed Capacity Manual* at Attachment J available at: http://www.nyiso.com/public/markets_operations/documents/manuals_guides/index.jsp.

[20] Jie Chen, Pallas LeeVanSchaick, and David Patton, *2012 State of the Market Report for the New York ISO Markets*, Potomac Economics, April 2013 ("2012 SOM Report") at 26. Available at: http://www.nyiso.com/public/markets_operations/documents/studies_reports/index.jsp. *See also 2012 SOM Report,* Section X, "List of Recommendations" (advising the NYISO to modify the existing rules related to the ICAP qualification requirements for installed capacity suppliers to prevent capacity sales from a generator that is out-of-service for an extended period or out-of-service and not under-going the steps necessary to come back into service) at 82.

[21] It should be noted that approximately 94% of forced outages in the NYCA are resolved with a return to service in fewer than 30 days.

Ending ICAP eligibility at six months for units not undergoing repair improves market efficiency by providing an appropriate signal to the market that fewer capacity resources are available.[22] The ICAP market price changes that result when non-repairing units leave the ICAP market will encourage available but unsold capacity to enter the market in the short-term[23] and provide timely signals that additional capacity is needed for longer lead-time investments.

The NYISO proposes to balance these market improvements with the benefit of continuing ICAP eligibility beyond six months for generators that are forced out but have Commenced Repair. The NYISO notes that Dr. Patton expresses concern in his affidavit that allowing repairing units to maintain ICAP eligibility for a period extending beyond six months and into the summer period might lead capacity prices to be understated.[24] While some repairs may require more than six months from the time of the outage to complete, it will be exceedingly rare for a unit to need twelve months or more, given the continued EFORd incentive to return expeditiously to keep its derating factor as low as possible. Moreover, the NYISO proposal to end ICAP eligibility for units that cease or unreasonably delay their repairs will identify units not intending to return to the market. The NYISO believes the signal to suppliers that their ICAP eligibility will continue if they begin repairs promptly outweighs the potential ICAP price suppression that could occur in the rare circumstance that a unit, for good cause, is repairing beyond six months and into the summer season.[25] The Commission should accept the NYISO proposal to retain ICAP eligibility for this class of ICAP Suppliers.

The NYISO's Commenced Repair evaluation provides a reasonable process for distinguishing between generation facilities that are being repaired and those that are not. The tariff-based defined terms, and the processes described in Services Tariff Section 5.18.1, provide for a series of Market Participant submittals and NYISO technical/engineering evaluations to produce Commenced Repair determinations that are transparent, evidence-based, non-discriminatory and unambiguous. These detailed tariff provisions also put Market Participants on notice as to the necessary qualifications that forced out units need to satisfy in order to continue their ICAP eligibility beyond six months.

The tariff-based requirement that a Market Participant submit its Repair Plan by Day 120 to remain ICAP eligible offers a reasonable balance between the requirement for the NYISO to make its Commenced Repair determination by the 160th day of the Forced Outage and the time it should take a Market Participant to identify the damage to its generating facility and craft a plan to repair it. To provide additional flexibility, which could be useful for units with particularly severe damage, the NYISO proposal offers the opportunity to provide updated information after

[22] 2012 SOM Report at 26.

[23] Patton Affidavit at P 18.

[24] Patton Affidavit at P 19.

[25] The NYISO understands that Dr. Patton has recommended in his affidavit that units that had Commenced Repair not be included in the IRM and LCR calculation if their repairs will not allow them to return before summer peak conditions. (Patton Affidavit at PP 19, 20.) The NYISO notes that the IRM is calculated by the New York State Reliability Council.

Day 120 and before the 180th day of the Forced Outage and requires the NYISO to take such updated information into consideration in making, or revising, its determination to the extent practicable.

In addition, the NYISO proposes to address the application of the Physical Withholding Test to ICAP Suppliers with forced out units in Mitigated Capacity Zones that cannot, because of significant damage to their facilities, demonstrate they are repairing by the sixth month mark. This proposal is discussed in greater detail below at Section III.H of this filing letter.

The Commission should accept the NYISO's proposal to i) end Forced Outages for non-repairing generators at six months, ii) establish a new ICAP Ineligible Forced Outage state, and iii) reclassify non-repairing forced out units into a new ICAP Ineligible Forced Outage after six months in a Forced Outage. For the reasons described above, these proposals are just and reasonable because they improve the efficiency of the ICAP market while allowing Market Participants with forced out units to retain important ICAP eligibility for units undergoing repair. The Commission should also accept as just and reasonable the NYISO's proposed process for making Commenced Repair determinations. This process, described above, establishes a transparent, evidence-based approach for identifying repairing units for the purpose of extending the unit's Forced Outage and, thereby, continuing its ICAP eligibility.

F. Services Tariff Section 5.18.3, Mothball Outage

1. Proposed Tariff Provisions

New Services Tariff Section 5.18.3 provides further information on the requirements for units in a Mothball Outage. Units in this outage state are not eligible to participate in the ICAP market as of the first day of the outage. This ineligibility would terminate as of the first day the generator returns to operation and offers Energy into the Day-Ahead Market without declaring an outage. As with the ICAP Ineligible Forced Outage, ISO Procedures will be developed to resolve issues surrounding the month for which a returning generator will first be eligible to participate in the ICAP market. The NYISO intends for the transition from a Mothball Outage to ICAP market eligibility to occur in a manner consistent with other market rules that would consider whether ICAP is available from a generator.[26]

Unlike a Forced Outage, units enter a Mothball Outage for reasons not related to equipment failure. Pursuant to proposed Services Tariff Section 5.18.3.2, Market Participants must notify the NYISO no later than 60 days before the Mothball Outage begins, that their generator will be physically able to return within 180 days to resolve a reliability issue (if any), or present good cause for an alternate period of time through empirical evidence.

New Services Tariff Section 5.18.3.3.1 contains the NYISO's proposal, with an exception described in new Services Tariff Section 5.18.3.3.2, that a Mothball Outage would expire when

[26] *Supra* n.15.

the unit's CRIS expires or, if it had no CRIS, when the unit had been in this outage for 36 consecutive months.

The exception in new Services Tariff Section 5.18.3.3.2 mirrors the exception in new Services Tariff Section 5.18.2.3.2 for units in ICAP Ineligible Forced Outages. Pursuant to new Services Tariff Section 5.18.3.3.2, the expiration of the Mothball Outage could be tolled if a unit with a return date that falls after the outage would otherwise expire has Commenced Repair, provided its return date is reasonable pursuant to new Services Tariff Section 5.18.1.2. Under these circumstances, the Mothball Outage would expire on the earlier of i) 120 days from the date the outage would otherwise have expired under Services Tariff Section 5.18.3.3.1, or ii) a NYISO determination that a Market Participant has ceased or unreasonably delayed the repair of its unit. The unit's CRIS would also be tolled and would expire on the earlier of i) 120 days from the date the Mothball Outage would otherwise have expired, or ii) a NYISO determination that the Market Participant has ceased or unreasonably delayed the repair of its unit.

Mirroring new Services Tariff Section 5.18.2.3.1 for units in ICAP Ineligible Forced Outages, the NYISO is proposing in new Services Tariff Section 5.18.3.3.1 that, upon expiration of the Mothball Outage, a unit that had not returned to the Energy market would be deemed Retired. As defined, a unit that is Retired has "permanently ceased operating" either pursuant to applicable notice or because its Mothball Outage or ICAP Ineligible Forced Outage expired.

Finally, proposed Services Tariff Section 5.18.3.4 requires that the unit i) make a timely return to service, as described in Services Tariff Section 5.18.4.2, or be subject to costs under Services Tariff Section 5.18.4.3 if the unit's return is identified as a Gap Solution or to resolve a reliability issue on the non-bulk system, and ii) provide temporary use of its interconnection point when a transmission solution using its interconnection point has been selected as a Gap Solution or to resolve a reliability issue on the non-bulk system during its outage. These requirements parallel the requirements imposed on units in ICAP Ineligible Forced Outages as described in Services Tariff Section 5.18.2.4, discussed at Section III.E.2 of this filing letter. This section also requires the Transmission Owner to ensure that power to the generating station remains available notwithstanding its temporary use of the generator's interconnection point. This provision ensures the physical availability of power; it does not address whether the costs of that power are recovered at wholesale or retail rates.

2. Analysis and Justification [27]

A three-year duration for a Mothball Outage and an ICAP Ineligible Forced Outage provides a reasonable period of time within which Market Participants can evaluate whether to return to service or not (the option to return or "optionality"). Establishing a definition for the term "Retired," and including within that definition units that have not returned to service before

[27] The NYISO's proposal to require units in a Mothball Outage to return to service and/or make their interconnection point available when necessary to resolve a reliability need is discussed at Section III.G.4 of this filing letter.

their outages expired, is also reasonable as it clarifies the consequences of outage expiration and provides unambiguous information on the status of the unit for planning and reliability purposes.

The proposed three-year outage duration, or limit on generator optionality, mirrors existing limitations on the ability for units to return from outages as ICAP-eligible Suppliers without undergoing additional study. For instance, proposed tariff language provides that the three-year outage duration is coterminous with the expiration of a unit's CRIS. The NYISO's existing tariff indicates that units will lose their CRIS if they do not participate in the ICAP market for more than three years.[28] A generator located in the NYCA must have CRIS in order to participate in the capacity markets.[29] Thus, Market Participant optionality regarding re-entry into the Capacity market is already constrained by the loss of CRIS at three years.

Additionally, the proposed tariff language requires that an entity seeking to return a Retired unit to operation submit an Interconnection Request as a new facility.[30] Thus, a Retired unit electing to return to service would, as a general matter, be subject to all the same requirements as a new unit seeking to enter the market.[31] NYISO's current procedures already require units on certain extended outages to go through the NYISO's interconnection process before re-entering the market. As specified in the Transmission Expansion and Interconnection Manual, a unit must submit a new Interconnection Request if three years or more have passed from the date the unit is listed in the Gold Book as retired, in a mothball outage, or on standby, reserves shutdown, or in protective layup.[32] Here too, existing NYISO procedures limit generator optionality after three years in a mothball outage or similar state of non-operation. The tariff language proposed herein would replace the similar language currently in the manual.

Creating a definition of the term Retired and clarifying specific obligations for Retired units that wish to reenter the market improves the ability of system planners to separate units which may be available in the future from those that will not be without further study and evaluation. Documenting the situations under which a unit will be considered Retired in the NYISO's tariffs also provides further transparency of the consequences of long-term outages, allowing Market Participants to incorporate these consequences into their planning as well. Increased transparency in this regard will assist the NYISO, Transmission Owners, and generation developers in their decision-making for system reinforcements, expansions and new additions.

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[28] *See* OATT Section 25.9.3.1. Nothing proposed herein would preclude a Retired unit from pursuing ERIS and CRIS as a new generating facility.

[29] *See* Services Tariff Section 5.12.1.

[30] *See* proposed revisions to OATT, Attachment X, Section 30.3.1 and Attachment Z, Section 32.1.3.

[31] Section III.J of this filing letter discusses the proposed amendments to Attachments X and Z that affirmatively state units returning from an unexpired Mothball Outage or ICAP Ineligible Forced Outage do not need to file a new Interconnection Request.

[32] *Transmission Expansion and Interconnection Manual*, Section 3.3.4.A.3.

The NYISO notes that the Commission has accepted proposals from other ISO/RTO regions that limit time spent in outages such as mothball or suspension and deem units retired under the applicable tariff. Specifically, ISO-NE's tariff states that "[a] resource that does not operate commercially for a period of three calendar years will be deemed by the ISO to be retired."[33]

The Commission also accepted a time limit for generator suspensions under the MISO tariff. Specifically, MISO's tariff indicates that "[a] Market Participant owning or operating a Generation Resource . . . may request suspension pursuant to the provisions of this Section 38.7.2 for a maximum of 36 cumulative months during any five (5) year period."[34] MISO made clear in its filing that units that exceed the 36-month maximum are required to go through MISO's interconnection process in order to return to service.[35]

Most recently, the Commission affirmed the need for a three-year limitation on returning without a new Interconnection Request in New York. In denying Erie Power, LLC a waiver of the tariff to allow it to return a generator, deactivated in 2010, as an existing facility, with retention of its existing Energy Resource Interconnection Service (ERIS) and its existing CRIS, the Commission stated:

> Accordingly, we agree with NYISO that, if a facility has been out of service for more than three years, it should be subject to interconnection studies to ensure applicable reliability criteria are met before being allowed to reactivate and interconnect.[36]

As noted, several regions have crafted rules that attempt to balance the certainty needed for accurate planning and to encourage new entrants with the ability of existing generators to maintain options for a reasonable amount of time. The NYISO proposals achieve this goal in a manner consistent with its market design.

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[33] *See ISO New England, Inc.*, Open Access Transmission Tariff, Section III.13.2.5.2.5.3(d). *See also ISO New England, Inc. and New England Power Pool*, 125 FERC ¶ 61,102 (2008); *order on reh'g* 130 FERC ¶61,089 (2010).

[34] *See Midcontinent Independent System Operator, Inc.*, Open Access Transmission Tariff, Attachment Y, Section 38.2.7.l. *See also Midwest Independent Transmission System Operator, Inc.*, 140 FERC ¶ 61,237, at P 54 (2012).

[35] See *Midwest Independent Transmission System Operator, Inc. Filing to Enhance System Support Resource Provisions*, Docket No. ER12-2302, (July 25, 2012), at Direct Testimony of Jeffrey R. Webb at 21 (stating "[i]f any such lengthy suspension periods are exceeded, then the Market Participant would need to resume operations, should it choose to do so, in accordance with the generation interconnection queue procedures of Attachment X.")

[36] *Erie Power, LLC*, 148 FERC ¶ 61,038 at P 21 (2014).

G. Services Tariff Sections 5.18.4 and 5.18.5, Responding To Reliability Issues

1. Overview of the Proposals in Services Tariff Sections 5.18.4 and 5.18.5

The NYISO-proposed new Services Tariff Sections 5.18.4 and 5.18.5 provide two new options for resolving reliability issues that arise in the short-term. First, the NYISO is proposing a process that will facilitate the return to service of units in ICAP Ineligible Forced Outages and Mothball Outages to address reliability issues arising after their outages began. Under the proposal, a unit's return to service can be identified as a Gap Solution or to resolve a reliability issue arising on the non-bulk system.[37] In either case, the unit will have an obligation to return to service, provided a compensation mechanism is first established by an appropriate regulatory agency, or be subject to certain financial consequences if the unit later returns.

Second, the NYISO is proposing new tariff provisions to allow a Transmission Owner to use the interconnection point of a facility in a Mothball Outage or ICAP Ineligible Forced Outage on a temporary basis if a transmission project using that interconnection point has been identified as a Gap Solution or to resolve a reliability issue arising on the non-bulk system. The request could either be in addition to requesting that the unit return to service or in lieu of such a request. The proposed tariff revisions do not compensate the generator for this use, but they do require the Transmission Owner to make the interconnection point available to the generator on six months' notice of intent to return to service.

2. Services Tariff Section 5.18.4 ─ Return to Service of Generators in a Mothball Outage or an ICAP Ineligible Forced Outage to Resolve a Reliability Need

New Services Tariff Section 5.18.4.1 outlines the NYISO's proposal that units in an ICAP Ineligible Forced Outage or a Mothball Outage make a timely return to service following: i) notification that the return to service of the generator for a specified minimum time period has been selected as either a Gap Solution or to resolve a reliability issue on the non-bulk system arising during the generator's outage, ii) negotiations to effectuate and compensate the return, and iii) an order establishing compensation for such return from an applicable regulatory agency ("Compensation Order").

The term "timely return" is defined in new Services Tariff Section 5.18.4.2 for a unit in a Mothball Outage as a return that is i) within 180 days from the date of the Compensation Order, ii) within the alternate period of time following the date of the Compensation Order developed pursuant to Services Tariff Section 5.18.3.2, or iii) by such other date agreed to by the parties. For a unit in an ICAP Ineligible Forced Outage, the term "timely return" is defined in this new section as following the date of the Compensation Order, provided, however, the unit will not be

[37] *See* OATT Section 31.2.5.10.

required to return to service before the estimated return date it provided, unless otherwise agreed.[38]

With the exception outlined in new Services Tariff Section 5.18.4.2.1, discussed below, new Services Tariff Section 5.18.4.3 obligates a Market Participant to pay certain costs if it fails to make a timely return and then seeks to return its unit to the Energy market before its outage expires. The cost obligation would arise if the Transmission Owner had installed a transmission solution at the unit's point of interconnection to resolve a reliability issue because the unit did not make a timely return to service and the cost of such reliability solution would have been avoided had the unit made a timely return. The cost obligation is equal to the Transmission Owner's costs to install such transmission solution, which costs shall be mitigated by the Transmission Owner by, among other efforts, finding other uses for the equipment. If the Transmission Owner can accommodate both the reliability solution and the unit's return to service at no cost, or at a cost to which the unit owner agrees, the cost of installing the reliability solution would not be imposed on the returning generator.

Pursuant to new Services Tariff Section 5.18.4.2.1, a generator, requested to return to service to resolve a reliability issue and allowing temporary use of its interconnection point for a reliability solution, that cannot make a timely return although it is available because the Transmission Owner cannot reconnect it timely, will not be liable for costs under Services Tariff Section 5.18.4.3.

The cost responsibility for a returning generator that failed to make a timely return pursuant to a Compensation Order, and thereby caused a Transmission Owner to install a reliability solution at its interconnection point, is defined in this proposal as:

> [The] costs incurred by the Transmission Owner to install a reliability solution at the Generator's interconnection point, which costs the Transmission Owner will communicate to the Generator as soon as they are reasonably known . . . . The Transmission Owner shall mitigate the costs incurred in installing a reliability solution by, among other efforts, finding other uses for the equipment procured to provide the reliability solution at the Generator's interconnection point.[39]

Imminent reliability threats on the bulk system and reliability issues on the non-bulk system can require near-term solutions that may best be provided by existing generators able to return to service. When such a generator has been identified, a cost consequence for failure to return underscores the importance of the generator's cooperation in actually bringing itself back on-line; it is intended to encourage generators to respond appropriately and resolve the identified reliability issue in a timely manner. As is discussed below, the application of the cost

[38] A Market Participant with a unit in an ICAP Ineligible Forced Outage that is notified its return to service is being evaluated as a solution to a reliability issue would be required by new Services Tariff Section 5.18.2.4 to update the date it expects its repair to be complete.

[39] Services Tariff Section 5.18.4.3.

consequence is tailored to include only those generators who return to service after failing to respond to the reliability need in a timely fashion and only when, to preserve reliability, their failure required the Transmission Owner to make use of their interconnection point for a transmission solution.

3. Services Tariff Section 5.18.5 ─ Temporary Use of Interconnection Point to Resolve a Reliability Issue

New Services Tariff Section 5.18.5.1 requires a Market Participant to give a Transmission Owner temporary use of its generator's interconnection point when such unit is in an ICAP Ineligible Forced Outage or a Mothball Outage and a transmission solution using the generator's interconnection point during its outage has been selected as either a Gap Solution or to resolve a reliability issue arising on the non-bulk system.

New Services Tariff Section 5.18.5.2 describes the process that would apply if a generator, whose interconnection point is being used by the Transmission Owner, seeks to return to service. Among other protections, it specifies that the unit can generally return at no cost. This section requires a Market Participant that provided temporary use of the interconnection point of its generator while in an outage to submit a Notice of Intent to Return to Service before reconnecting to the transmission system. A Notice of Intent to Return to Service is defined in Services Tariff Section 2.14 as a notice providing a Transmission Owner with the date by which the Market Participant intends to return its unit to the Energy market prior to the expiration of its outage. Unless the provisions of Services Tariff Section 5.18.4.3 apply, the unit would be allowed to reconnect at no cost.

This section also places the obligation on the Transmission Owner to use reasonable efforts in reconnecting the generator. These include efforts that are timely, consistent with Good Utility Practice and that are otherwise substantially equivalent to those the Transmission Owner would use for its own purposes.[40] The Transmission Owner must also advise the NYISO and the generator owner of its progress in work necessary to reconnect the generator, and advise both parties if it will not be able to reconnect the unit by the requested date. Additionally, if the Transmission Owner is unable to reconnect the unit before the expiration of the outage, and the unit is available for reconnection, the outage expiration and any CRIS expiration shall be tolled until the Transmission Owner reconnects the generator. Since this extension is intended solely for the purpose of allowing the reconnection of the unit, transferring CRIS during this extended period would not be permitted.

4. Analysis and Justification

The obligation for units in a Mothball Outage or ICAP Ineligible Forced Outage to return to service and/or provide access to their interconnection point to resolve identified reliability issues is just and reasonable. As designed, these proposals provide the NYISO with additional,

[40] The description of these efforts is identical to the Reasonable Efforts required of parties taking action under the Standard Large Facility Interconnection Procedures or LGIA.

reasonably available tools to resolve quickly-arising reliability issues.[41] As Dr. Patton stated in his affidavit:

> As the entities responsible for maintaining reliability, it is important for the NYISO and the TOs in the NYCA to devise rules that would allow them to maintain reliability under circumstances where one or more generators unexpectedly cease to operate. By providing for the use of a generator's interconnection point, the NYISO's proposal has the virtue of increasing the potential set of solutions to a given reliability need. To the extent this might allow for a lower cost solution, this would reduce the cost of maintaining reliability and potentially reduce the overall market effect of an out-of-market intervention to maintain reliability.[42]

The return to service requirement is narrowly drawn and applicable only after such return has been selected as a Gap Solution or to resolve a reliability issue on the non-bulk system and an order has been issued establishing compensation for such return by the appropriate regulatory agency. Over the past several years, the PSC has approved several reliability service agreements with generators, none of which has been challenged as inadequate by the unit owners.

The notion of applying a consequence for failure to return was significantly narrowed during stakeholder discussions to apply only to an infrequent, if not rare, set of circumstances. A generator would have to fail to return after an order establishing compensation had been issued, trigger the installation of a replacement reliability solution at its own interconnection point, and then decide to return to the market before its outage expires. The NYISO proposal reasonably applies this consequence only when the failure of a unit to return to service has directly caused the need for additional expenses to be taken to maintain reliability. Limiting the set of generators exposed to this consequence to those that have failed to return in response to the order establishing compensation *and* whose own interconnection point had been used for the replacement reliability solution directly connects the generator's failure to return with the need for the replacement facilities. Additionally, limiting the consequence to a unit that returns to the market anyway before the end of its outage avoids applying a cost consequence to a generator that was unable to return to service at all. In this very narrow set of circumstances, assigning a generator the costs that resulted directly from its failure to return to service to resolve a reliability issue, even after an order establishing compensation for the return to service has been issued, is exceedingly fair and reasonable.

Similarly, the NYISO's proposal to require temporary use of a generator's point of interconnection is narrowly drawn and reasonably balances Market Participant interests with concerns that reliability issues be resolved. A generator in an applicable outage must provide use of its interconnection point only if a transmission project using the interconnection point has

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[41] Quickly arising reliability issues include imminent threats to the reliability of the New York Power System and Reliability Needs when the market based or regulated solutions identified cannot satisfy the need in a timely fashion. *See* OATT Sections 31.2.5.10.1 and 31.2.5.10.2.

[42] Patton Affidavit at P 33.

been selected as a Gap Solution or to resolve a reliability issue on the non-bulk system. This proposal intends to allow access to the transmission system for a transmission project needed to maintain reliability while the generator is not using that interconnection point.

Under the NYISO's tariff, a Point of Interconnection is defined as "the point . . . where the Attachment Facilities connect to the New York State Transmission System or Distribution System."[43] A generator is typically connected to the Point of Interconnection through a generator lead or interconnection facilities, referred to as Attachment Facilities under the NYISO's tariffs. Under this construct, the generator does not own facilities that comprise the Point of Interconnection. In fact, generators do not typically own even the portion of the Attachment Facilities that connect directly into the Point of Interconnection (defined as Connecting Transmission Owner Attachment Facilities under the NYISO interconnection process). Therefore, the proposal provides temporary access to the Transmission Owner to a point on its own system. For example, this might provide access to a bus position within a Transmission Owner-owned substation.

Further, the Commission concluded that facilities at and beyond the Point of Interconnection benefit both the generator and the transmission system and "serve to maintain the reliability and integrity" of the transmission system.[44] As a result, the Commission determined that the Transmission Owner, not the generator, has the responsibility for the costs of operating and maintaining transmission system facilities at and beyond the Point of Interconnection.[45] Therefore, it is reasonable to allow a Transmission Owner access to its own system using facilities that it pays to operate and maintain—particularly when this access is limited to a temporary period of time to address a reliability issue when the generator is not itself using the facility to access the transmission system.

The NYISO's proposal also places certain obligations on the Transmission Owner to reconnect the generator should the generator decide to return before its outage expires. Specifically, the Transmission Owner must make the interconnection point available upon notification that the generator is returning to service using actions that must be timely, consistent with Good Utility Practice, and otherwise substantially equivalent to the actions the Transmission Owner would use for its own purposes. As well, the NYISO and the generator will be able to track the Transmission Owner's progress through required periodic reports. Under new Services Tariff Section 5.18.5.2, the expiration of the unit's CRIS and outage would be tolled if the Transmission Owner cannot reconnect the unit before the outage would otherwise expire.

The NYISO notes that, as a general matter, Dr. Patton agrees that the NYISO's return to service and interconnection point accessibility obligations are coupled with provisions designed

[43] OATT Section 30.1 Attachment X.

[44] *Niagara Mohawk Power Corporation*, 121 FERC ¶ 61,104 at P 19; *see also New York Independent System Operator, Inc.*, 123 FERC ¶ 61,093 at P 46 (finding that a developer is not responsible for the costs of operating and maintaining network facilities).

[45] *Id.*

to avoid unduly interfering with a Market Participant's interests while its unit is in an outage state:

> Importantly, the NYISO's proposal includes provisions that are designed to avoid infringing on the ability of the generator to use its interconnection rights or to sell them to another supplier.[46]

The NYISO notes Dr. Patton's concern that the fact that a Transmission Owner may not make the reconnection available within six months raises the potential risk of inefficient outcomes and equity concerns.[47] The NYISO's proposed obligations on Transmission Owner actions to reconnect generators are intended to reduce the risk that a generator would not be reconnected within six months. As mentioned, pursuant to these provisions, the reconnecting Transmission Owner must act in a manner substantially equivalent to the manner in which it would act for its own purposes and must provide periodic reports on its reconnection activity. These tariff-included criteria and obligations provide adequate incentives and enforcement opportunities to address any potential inequity and reduce any risk of inefficient long-term outcomes that may result from a failure to reconnect a generator in a timely fashion.

The Commission should find that the NYISO's set of proposals reasonably balances the interests of generators with the need to make tools available to the NYISO and local Transmission Owners for resolving quickly-arising and potentially short-term reliability issues, which may arise particularly in New York's congested mid-Hudson and downstate area. While the need for these tools may be infrequent, the absence of these tools to resolve such a need could have significant impacts on preserving reliability.

H. Services Tariff Section 23, Attachment H, Market Power Mitigation Measures

In Services Tariff Section 23 (Attachment H), the NYISO proposes several amendments to integrate the tariff revisions proposed in this filing into the Market Power Mitigation Measures. These proposed rules are intended to prevent the exercise of market power in cases where a supplier would otherwise have incentives to physically withhold capacity by not making repairs that would clearly be economic for a competitive supplier. The NYISO's proposals, however, avoid the imposition of sanctions on the legitimate behavior of a generator when repairs are otherwise uneconomic, when circumstances outside the control of the owner make repair of the generator infeasible in the time frame required to allow the generator to continue selling capacity, and when damage would require at least 270 days to repair.[48]

Existing Services Tariff Section 23.4.5.6 describes the audit and review that the NYISO conducts when an Installed Capacity Supplier proposes to or removes a unit from a Mitigated

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[46] Patton Affidavit at P 34.

[47] Patton Affidavit at 34 – 35.

[48] *See* Text at footnotes 54 and 55.

Capacity Zone (such as by retiring or entering a Mothball Outage) if such removal could reasonably be expected to affect the Market-Clearing Price in one or more ICAP Spot Market Auctions for the Locality in which the unit is located. As mentioned, the audit and review, or Physical Withholding Test, is used to determine whether the removal of the Installed Capacity Supplier from the ICAP market has a legitimate economic justification or is motivated by a desire to physically withhold Installed Capacity in order to raise prices. The NYISO's current rules require that if an Installed Capacity Supplier is found to be exercising market power through physical withholding, the NYISO will assess a significant financial penalty.

The NYISO proposes to amend the language found in the existing Services Tariff Section 23.4.5.6 to exempt from audit and review Installed Capacity Suppliers that have noticed retirement of a generation facility that has experienced a "Catastrophic Failure," defined as damage that would reasonably require at least 270 days to repair.[49] The NYISO proposes to add the definition of this term to Attachment H at Section 23.2.1, include significant detail on how to determine repair time, and indicate that the determination of a Catastrophic Failure will be based on a technical/engineering evaluation by the NYISO.

The NYISO also proposes a new Services Tariff Section 23.4.5.6.2[50] to require a Physical Withholding Test when any Installed Capacity Supplier in a Mitigated Capacity Zone is removed from the market as a result of the reclassification of its generator from a Forced Outage to an ICAP Ineligible Forced Outage, with the same exemption described above for a unit that has suffered a Catastrophic Failure.[51] If, however, the unit's damage, while not catastrophic, renders the data needed for a Physical Withholding Test unavailable before the 180th day of the Forced Outage, the NYISO proposes in new Section 23.4.5.6.2.2 to delay the test until the data becomes available. If the Installed Capacity Supplier can demonstrate that "Exceptional Circumstances," apply to its unit,[52] the unit would be reclassified to an ICAP Ineligible Forced Outage but would not be evaluated for physical withholding until data necessary for the evaluation becomes available. An example of Exceptional Circumstances would be the inaccessibility of the generating facility to determine necessary repairs. An Installed Capacity Supplier whose Exceptional Circumstances have resolved would be exempted from the Physical Withholding Test if it demonstrates at that time that it has Commenced Repair.

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[49] A unit suffering a Catastrophic Failure would, as a general matter, go into a Forced Outage and then to an ICAP Ineligible Forced Outage unless it Commenced Repair. However, if such a unit owner, instead, noticed the NYS PSC with an intent to retire, the analysis that would otherwise be required by Services Tariff Section 23.4.5.6.1 would be forgone.

[50] The addition of this new Services Tariff Section requires the existing Services Tariff Section 23.4.5.6 to be renumbered 23.4.5.6.1.

[51] While Services Tariff Section 23.4.5.6 considers derates in available Installed Capacity as a form of "removal," the newly proposed outage states do not contemplate that a derate of Installed Capacity is an "outage."

[52] The NYISO proposes to add the definition of Exceptional Circumstances to Section 23.2.1 of Attachment H to the Services Tariff.

Pursuant to the proposed Services Tariff Section 23.4.5.6.2.3, the NYISO will establish in ISO Procedures specific timelines for making determinations of Catastrophic Failure and Exceptional Circumstances. The timelines would be developed with the intent to inform Market Participants with Forced Outages of the results of these determinations before their Forced Outage expires.

The NYISO also proposes to create a new Services Tariff Section 23.4.5.6.3 to describe the penalties that are applicable to findings of physical withholding. This new section is intended to apply the penalty structure currently in the Services Tariff, without change, to determinations of physical withholding resulting from actions described in revised Section 23.4.5.6.1 and to apply the same penalty structure to determinations of physical withholding on account of classifications as described in new Section 23.4.5.6.2.1. As a result, penalties for physical withholding under the new outage provisions being proposed here would be the same as the penalties for physical withholding under existing provisions.

Finally, the NYISO proposes to include in Services Tariff Attachment O, Section 30.4, which describes the NYISO's Market Monitoring Unit, the new activities described in Section 23.4.5.6.2 that will require coordination with its MMU. To do so, the NYISO proposes to amend the Services Tariff Attachment O, Section 30.4.6.2.10 and add a new Section 30.4.6.2.11.

The NYISO's narrowly crafted set of circumstances under which Installed Capacity Suppliers would be exposed to the Physical Withholding Test under the proposed amendments strikes the right balance between exempting or delaying the test when Commenced Repair is legitimately not an available option at the 180th day of the Forced Outage and the need for the NYISO to retain the ability to evaluate all other situations for evidence that a decision not to repair a facility was based on an effort to withhold Installed Capacity physically in order to affect price. As Dr. Patton concludes in his affidavit:

> These proposed rules will ensure that the market performs competitively when existing suppliers might otherwise withhold capacity. At the same time, the proposed rules will avoid sanctioning competitive behavior by taking adequate consideration of factors that would impede, prevent, or make it uneconomic for a generator to be returned to service before going into an ICAP Ineligible Forced Outage.[53]

The proposal to exempt Installed Capacity Suppliers experiencing Catastrophic Failures from the Physical Withholding Test is appropriate as the occurrence of a Catastrophic Failure is not indicative of an intentional decision to remove capacity from the market. The NYISO's view is that repairs that would require at least 270 days reasonably indicate that damage is so severe that a physical withholding determination is either unlikely or very difficult to make because of uncertain information. As Dr. Patton stated:

[53] Patton Affidavit at P 28.

> [I]f a repair requires more than nine months, it is more likely that the costs of repair and the revenues the generator would earn following the repair would be uncertain, making the evaluation of whether the decision had a legitimate economic justification overly speculative. Furthermore, if a repair requires more than nine months, it is more likely that the generator would be unable to return to service by the next summer peak conditions.[54]

The proposal to delay the Physical Withholding Test when Exceptional Circumstances are evident is appropriate to ensure that any evaluation is based on all appropriate data and to avoid the potential for unjust determinations. As Dr. Patton points out, the generation owner will not be at risk of incurring physical withholding penalties for not making repairs based on speculative or incomplete information about the cost and time necessary to make those repairs.

The proposal to exempt a unit that has Commenced Repair when the Exceptional Circumstances have been resolved is also appropriate as these circumstances indicate the Market Participant intended to repair and return to the market and that reclassification of its Resource to an ICAP Ineligible Forced Outage was not the result of an intentional decision to remove capacity from the market but rather was due to circumstances not entirely within its control.

I. OATT Section 25, Attachment S, Rules To Allocate Responsibility for the Cost of New Interconnection Facilities

The NYISO proposes two amendments to Sections 25.5 and 25.7 of Attachment S to the OATT – the sections that describe Minimum Interconnection Standard and provide the tests for determining deliverability. It proposes one amendment to OATT Section 25.9 concerning the termination of CRIS.

In OATT Section 25.5.5.1, the NYISO proposes that units in Mothball Outages, ICAP Ineligible Forced Outages and Inactive Reserves be modeled as in, and not removed from, the Existing System Representation used for studies performed under the Minimum Interconnection Standard.

In OATT Section 25.7.8.2.3, the NYISO proposes that the CRIS for each facility be modeled in Deliverability Studies for the Class Year, regardless of the facility's outage state, unless the CRIS will expire prior to the scheduled completion of the applicable Class Year study or the CRIS is associated with a Retired facility that cannot transfer its rights prior to the CRIS expiration.

In OATT Section 25.9.3.1, the NYISO proposes to amend the three year termination of CRIS by recognizing the tolling available pursuant to Service Tariff Sections 5.18.2.3.2, 5.18.3.3.2, and 5.18.5.

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[54] Patton Affidavit at P 26.

All three provisions clarify when a generating unit and a generating unit's CRIS will remain modeled in specific interconnection studies.[55]

J. OATT Section 30, Attachment X, Standard Large Facility Interconnection Procedures and Appendices; OATT Section 32, Attachment Z, Small Generator Interconnection Procedures and Appendices

The NYISO proposes to amend Section 30.3.1 of Attachment X to the OATT, the Standard Large Facility Interconnection Procedures, and Section 32.1.3 of Attachment Z to the OATT, the Small Generator Interconnection Procedures, to explicitly state that a Developer (or Interconnection Customer) seeking to return a Large (or Small) Generating Facility to Commercial Operation after it is Retired must submit a new Interconnection Request. The proposed amendments also clarify that a new Interconnection Request would not be required of Developers (or Interconnection Customers) seeking to return a unit before the end of its ICAP Ineligible Forced Outage or Mothball Outage, unless changes to the unit otherwise trigger the requirement.

In addition, the NYISO proposes to amend the definitions sections of the LGIA and the SGIA, which are found in Appendix 6 of Attachment X, Section 30.14 of the OATT and in Appendix 9, Attachment 1 of Attachment Z, Section 32.5 of the OATT, respectively, to add the definition of the term "Retired," as it is proposed to be defined in Section 2.18 of the Services Tariff. The NYISO also proposes to amend the LGIA termination provision, Section 2.3, to indicate that the NYISO and the Connecting Transmission Owner can terminate the Interconnection Agreement when a Large Generating Facility is Retired and to amend the SGIA, Section 3.3, to indicate that the NYISO can terminate the Interconnection Agreement when a Small Generating Facility is Retired. Both proposed provisions would apply to entities executing the standardized agreements after the effective date of these revisions.

The amendments to Attachments X and Z modify tariff language that the Commission adopted in Order Nos. 2003 and 2006, or their successors, as part of the *pro forma* interconnection procedures.[56] The Commission has accepted other modifications and improvements to the NYISO interconnection procedures,[57] recognizing that where changes to

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[55] The treatment of generators in these outage states in other planning studies and evaluations is being discussed this quarter in the NYISO's stakeholder process.

[56] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats.& Regs. 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. 131,190 (2005), *affirmed sub nom. Nat'I Ass'n of Regulatory Util. Com'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 70 Fed. Reg. 34190 (June 13, 2005), 111 FERC ¶ 161,220 (2005), *order on reh'g*, Order No. 2006-A, 113 FERC ¶ 61,195, 70 Fed. Reg. 71760 (Nov. 30, 2005).

[57] *See, e.g.*, *New York Independent System Operator, Inc.*, 135 FERC ¶ 51,014 (2011); *New York Independent System Operator, Inc*., 124 FERC ¶ 61,238 (2008).

pro forma interconnection procedures "are clarifying and/or ministerial in nature and/or NYISO has supplied sufficient justification," such modifications are acceptable under the "independent entity variation" standard.[58] The Commission has explained that under this standard, "the Commission will review the proposed variations to ensure they do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable."[59]

The revisions described above are fully justified under the Commission's "independent entity variation" standard. They have been approved by the NYISO's stakeholders after an extensive and open process, have been endorsed by the NYISO's independent Board of Directors and, as discussed above, are fully justified within the context of clarifying the status of units in various outage states. These tariff revisions are intended to improve upon and clarify the NYISO's current interconnection procedures and practices.

K. OATT, Section 31, Attachment Y, NYISO Comprehensive System Planning Process

As discussed at Section III.G of this filing letter, the NYISO's proposal addresses the return to service of units in a Mothball Outage or an ICAP Ineligible Forced Outage in response to a reliability need. If such a unit is selected as a Gap Solution, for example, proposed Services Tariff Section 5.18.4.3 would require the unit make a timely return or face potential cost consequences.

The NYISO is proposing to amend Section 31.2.10.4 of Attachment Y to the OATT to require the NYISO to make certain changes to the existing process of evaluating Gap Solutions or alternative Gap Solutions when such have been submitted following the NYISO's determination that one is necessary under OATT Sections 31.2.10.5.1 or 31.2.10.5.2. Specifically, this revision would require the NYISO to evaluate whether the return of units in Mothball Outages or ICAP Ineligible Forced Outages would address a Reliability Need or an imminent threat to reliability. The NYISO also proposes to add a cross-reference to the compensation and return to service provisions in Services Tariff Section 5.18.4 for units selected as either a Gap Solution or to resolve a reliability issue arising on the non-bulk system.

IV. Effective Date

The NYISO proposes that these tariff amendments become effective November 1, 2014. The NYISO requests that the Commission issue an Order in this proceeding within sixty days from the date of this filing – on or before September 26, 2014. If the Commission's acceptance of these tariff revisions includes significant revisions or compliance obligations, however, the NYISO may need to request a later effective date in order to timely implement these reforms

[58] *New York Independent System Operator, Inc*., 124 FERC ¶ 61,238 at PP 17-18.

[59] *Id*. at P 18.

which are extensive and interdependent. Should the need arise, the NYISO would make such a request as expeditiously as possible.

V. Requisite Stakeholder Approval

These amendments were approved by the NYISO Management Committee on February 27, 2014 by an affirmative vote of 73.12% and by the NYISO's Board of Directors on March 18, 2014.

VI. Communications and Correspondence

All communications and service in this proceeding should be directed to:

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VII. Service

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

VIII. Conclusion

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept for filing the proposed revisions to its OATT and Services Tariff that are attached hereto with an effective date of November 1, 2014.

Respectfully submitted,

/s/Mollie Lampi

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