161 FERC ¶ 61,189
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

New York Independent System Operator, Inc. Docket Nos. ER16-120-001
ER16-120-003
EL15-37-002

ORDER ON COMPLIANCE AND REHEARING

(Issued November 16, 2017)

1. On February 19, 2015, the Commission instituted a proceeding under section 206 of the Federal Power Act (FPA)[1] to direct the New York Independent System Operator, Inc. (NYISO) to submit tariff revisions governing the retention of and compensation to generating units needed for reliability, including procedures for designating such resources, the rates, terms, and conditions for reliability must run (RMR) service, provisions for the allocation of costs of RMR service, and a *pro forma* agreement for RMR service.[2] On April 21, 2016, the Commission accepted in part, subject to condition, and rejected in part NYISO's compliance filing, and directed further compliance.[3] This order addresses NYISO's September 20, 2016 compliance filing to the April Order and requests for rehearing and clarification of that order. As discussed below, we accept NYISO's compliance filing, subject to condition, with the conditionally accepted tariff revisions to be effective October 20, 2015, as requested, and grant in part, and deny in part, the requests for rehearing and clarification. We also direct NYISO to submit a further compliance filing, within 30 days of the date of this order, as discussed below.

[1] 16 U.S.C. § 824e (2012).

[2] *N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,116, at P 4 (2015) (RMR Order), *order on reh'g & compliance*, 155 FERC ¶ 61,076 (2016) (April Order).

[3] April Order, 155 FERC ¶ 61,076 at P 14.

I. Background

2. In the RMR Order, the Commission, acting under FPA section 206, found that NYISO's Market Administration and Control Area Services Tariff (Services Tariff) is unjust and unreasonable because it does not contain provisions governing the retention of and compensation to generating units needed for reliability.[4] The Commission stated that it was "fundamental to the proper and efficient operation of NYISO's markets" for the rates, terms, and conditions for services provided under RMR agreements to be on file.[5] Therefore, the Commission directed NYISO to submit proposed tariff revisions to establish an RMR process to govern "the retention of and compensation to generating units required for reliability, including procedures for designating such resources, the rates, terms and conditions for RMR service, provisions for the allocation of costs of RMR service, and a *pro forma* service agreement for RMR service."[6]

3. In the April Order, the Commission accepted in part, subject to condition, and rejected in part NYISO's compliance filing to the RMR Order.[7] In particular, the Commission: (1) rejected NYISO's proposal to situate the RMR process within the existing Gap Solution process[8] and required NYISO to propose a separate RMR process "under which NYISO evaluates and selects solutions to identified reliability needs caused by generator deactivations;" (2) rejected NYISO's proposed 365-day notice period in light of rejecting NYISO's proposal to situate the RMR process within the existing Gap Solution process; (3) accepted NYISO's proposed financial information requirements; (4) accepted NYISO's proposed "distinctly higher" net present value standard for selecting among RMR alternatives, subject to NYISO identifying criteria it will use and developing a conceptual basis for how it will implement the standard; (5) rejected NYISO's proposal to impose an offer price higher than $0.00/kW-month on RMR generators; (6) accepted NYISO's proposal to compensate RMR generators either an

[4] RMR Order, 150 FERC ¶ 61,116 at PP 1, 4.

[5] *Id.* P 9.

[6] *Id.* P 11.

[7] April Order, 155 FERC ¶ 61,076 at P 1.

[8] NYISO commences its Gap Solution process when it determines that there is: (1) a need identified in the reliability needs assessment that cannot be timely addressed in the biennial comprehensive reliability planning process; or (2) an imminent threat to reliability. The Gap Solution process is an element of NYISO's existing comprehensive reliability planning process. *Id.* P 17; *see also* NYISO, OATT, Attachment Y, § 31.2.11 (15.0.0).

Availability and Performance Rate (APR)[9] or an owner-developed rate;[10] (7) rejected NYISO's proposal to apply a revised version of its Order No. 1000[11]-compliant regional transmission cost allocation method to RMR generators and required NYISO to propose a separate cost allocation method as part of its RMR process; (8) accepted in part and rejected in part NYISO's proposed anti-toggling mechanism[12] and required a more stringent mechanism; (9) rejected certain proposed market enhancement proposals as outside the scope of the proceeding; (10) accepted the *pro forma* RMR agreement; and (11) required NYISO to clarify that it may complete a non-generation solution that is substantially complete when a deactivating generator rescinds its deactivation notice.[13]

II. Requests for Rehearing and Clarification

4. On May 20, 2016, Independent Power Producers of New York, Inc. (IPPNY) filed a request for rehearing of the April Order. On May 23, 2016, NYISO filed a request for rehearing and clarification of the April Order. Both IPPNY and NYISO seek rehearing of the Commission's rejection of NYISO's proposal to impose an offer price higher than

[9] The APR provides compensation that includes RMR avoidable costs, variable costs, and availability and performance incentives. April Order, 155 FERC ¶ 61,076 at P 86.

[10] An owner-developed rate must be submitted by the RMR generator to the Commission for review and acceptance. An owner-developed rate consists of variable costs and a Commission-authorized component that effectively replaces the avoidable costs component of the APR. *Id.* P 89.

[11] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

[12] The anti-toggling mechanism refers to the Commission's directive in the RMR Order that required NYISO to propose rules to "eliminate, or at least minimize, incentives for a generator needed for reliability to toggle between receiving RMR compensation and market-based compensation for the same units." RMR Order, 150 FERC ¶ 61,116 at P 21; *see also* April Order, 155 FERC ¶ 61,076 at PP 116–128 (discussing NYISO's proposed anti-toggling provisions submitted to comply with the RMR Order).

[13] April Order, 155 FERC ¶ 61,076 at PP 31, 63–64, 73, 82, 98, 108–109, 122, 133, 139–40, 151.

$0.00/kW-month on RMR generators needed to satisfy resource adequacy, arguing that the Commission failed to distinguish between RMR generators needed to satisfy local transmission security needs and those needed to satisfy resource adequacy.[14] NYISO also seeks rehearing of the Commission's rejection in part of NYISO's proposed anti-toggling mechanism and requirement that NYISO adopt a more stringent mechanism, asserting that the more stringent mechanism is unnecessary, may be overly punitive, and may discourage generators from voluntarily entering into RMR agreements.[15] Lastly, NYISO seeks clarification that its proposed process for addressing generator deactivations in the interim, pending Commission acceptance, and NYISO implementation of a complete RMR process, is appropriate.[16]

III. NYISO's Compliance Filing

5. On September 20, 2016, in compliance with the April Order, NYISO filed proposed revisions to its Open Access Transmission Tariff (OATT) and Services Tariff. NYISO proposes to implement a new RMR process (called the Generator Deactivation Process) separate from its existing Gap Solution process in Attachment FF of the OATT. NYISO proposes to require deactivating generators to provide NYISO with 365 days' advanced notice of a proposed deactivation, which NYISO asserts is the shortest period practicable for NYISO to complete the Generator Deactivation Process requirements. During the 365-day notice period, NYISO will determine whether a reliability need will arise as a result of the proposed generator deactivation. If NYISO determines that no reliability need will arise as a result of the proposed generator deactivation, or that any identified reliability need can be timely addressed without the deactivating generator, NYISO proposes an "off ramp" to allow the generator to deactivate as early as day 91 of the 365-day notice period. On the other hand, if NYISO determines that a reliability need will arise, NYISO proposes to pay an avoidable cost rate to the generator if the generator must remain available beyond the date that the generator requested to deactivate (called an Interim Service Provider), starting as early as day 181 of the 365-day notice period.

6. If NYISO cannot timely address a reliability need that arises as a result of a generator deactivation through the biennial reliability planning process, NYISO will solicit alternatives to entering into an RMR agreement with the deactivating generator (RMR alternatives). NYISO will evaluate and select among the RMR alternatives. NYISO states that the selection process establishes a preference for non-RMR agreement

[14] IPPNY May 20, 2016 Request for Rehearing at 3–10 (IPPNY Request for Rehearing); NYISO May 23, 2016 Request for Rehearing and Clarification at 1–2, 4–10 (NYISO Request for Rehearing).

[15] NYISO Request for Rehearing at 1, 3, 11–14.

[16] *Id.* at 15–16.

alternatives and is designed to make entering into an RMR agreement a temporary, last-resort measure. To select among RMR alternatives, NYISO proposes to use a "distinctly higher" net present value standard. According to NYISO, key criteria for implementing the standard include the expected expandability, operability, and performance of each RMR alternative.

7. NYISO contends that, consistent with Commission directives in the April Order, its proposal makes clear that RMR generators must be offered into the ICAP markets at $0.00/kW-month. As for cost allocation of RMR agreements or selected RMR alternatives, NYISO proposes to use a "needs-based" cost allocation methodology, which allocates the costs to those load serving entities in New York that contribute to the reliability need and primarily benefit from the solution. NYISO also proposes to require a former RMR generator or Interim Service Provider that wishes to continue to operate after the termination of an RMR agreement or the end of the 365-day notice period, as applicable, to repay NYISO the higher of: (1) the capital expenditures, less depreciation, that NYISO reimbursed the RMR generator or Interim Service Provider; or (2) the above-market payments the RMR generator or Interim Service Provider received. This last proposal is known as the anti-toggling mechanism.

IV. Notice of Filing and Responsive Pleadings

8. Notice of NYISO's September 20, 2016 compliance filing was published in the *Federal Register*, 81 Fed. Reg. 66,007 (2016), with interventions and protests due on or before October 11, 2016.[17] The New York Transmission Owners (NYTOs)[18] filed comments. The City of New York and Multiple Intervenors[19] (jointly, City of NY and MI) filed comments and a protest. IPPNY and the Electric Power Supply Association (jointly, IPPNY/EPSA) filed a protest.

[17] Subsequently, the comment period was extended to October 25, 2016. *N.Y. Indep. Sys. Operator, Inc.*, Notice of Extension of Time, Docket No. ER16-120-003 (Sept. 29, 2016).

[18] NYTOs consist of: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Niagara Mohawk Power Corporation; New York Power Authority; New York State Electric & Gas Corporation; Orange and Rockland Utilities, Inc.; Power Supply Long Island; and Rochester Gas and Electric Corporation.

[19] Multiple Intervenors is an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State.

9. On November 9, 2016, NYISO and NYTOs filed answers to the comments and protests. On November 16, 2016, the New York State Public Service Commission (New York Commission) filed an answer to the comments and protests.

V. Procedural Matters

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[20] prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

VI. Discussion

11. We accept, subject to condition, NYISO's proposed revisions to its OATT and Services Tariff as in compliance with the RMR Order and the April Order, with the conditionally accepted tariff revisions to be effective October 20, 2015, as requested. We also grant in part, and deny in part, the requests for rehearing and clarification. As discussed below, we direct NYISO to submit a further compliance filing, within 30 days of the date of this order, with revisions to the OATT and Services Tariff that: (1) clarify that a developer may propose generator solutions to a reliability need that are not market-based, or that involve generators that are currently mothballed or in an ICAP ineligible forced outage; (2) revise the anti-toggling mechanism to require repayment of above-market revenues that exceed an RMR generator's going-forward costs for RMR service, and to allow RMR generators that accepted an APR to retain their availability and performance incentives; (3) revise the anti-toggling mechanism to require repayment of either capital expenditures or above-market revenues in the shorter of 36 months or twice the duration of the applicable RMR agreement; (4) revise the anti-toggling mechanism to make two technical corrections; and (5) clarify which reliability solutions NYISO will include in its reliability needs assessment base case. Aspects of NYISO's compliance filing not discussed below are accepted.

12. The requests for rehearing and clarification and NYISO's compliance filing raise the following issues, discussed further below: (1) the length of the proposed notice period; (2) whether NYISO should compensate a generator during the notice period, and, if so, at what level; (3) when should NYISO allow a generator not needed for reliability to deactivate; (4) the standard for selection of RMR alternatives; (5) whether NYISO should impose an offer price higher than $0.00/kW-month on RMR generators; (6) how to minimize toggling concerns; (7) which reliability solutions NYISO should exclude from its reliability needs assessment base case; (8) whether NYISO should adopt a forward capacity market; (9) whether NYISO should revise its Gap Solution process; and

[20] 18 C.F.R. § 385.213(a)(2) (2017).

(10) how NYISO should proceed if it receives a generator deactivation notice before the Commission accepts, and NYISO implements, a complete RMR process.

A. Notice Period, Deactivation, and Interim Service Provider Compensation

1. April Order

13. In the April Order, the Commission rejected NYISO's proposed 365-day notice period "[i]n light of [the Commission's] rejection of NYISO's proposal to situate the RMR process within its existing Gap Solution process, and [the Commission's] requirement that NYISO establish an RMR process separate from its Gap Solution process."[21] The Commission directed NYISO to propose a "timeline that reflects the new RMR process," explaining that, because the Commission did not have such an RMR process to review, it could not "determine whether a 365-day notice period is just and reasonable, nor . . . whether a generator should be compensated during the notice period."[22] Therefore, the Commission stated that it would "address outstanding concerns regarding the timeline for the RMR process, whether a generator should be compensated during the notice period, and, if so, at what level," when NYISO submitted its compliance filing.[23]

2. NYISO's Proposal

14. NYISO proposes to require deactivating generators to provide NYISO with 365 days' advanced notice of a proposed deactivation.[24] The 365-day notice period will begin on the date that NYISO issues written notice to the deactivating generator that its notice form is complete. The notice form is complete once NYISO concludes that it has pertinent information (e.g., requested deactivation date and cost and revenue information) sufficient for NYISO to begin reviewing the reliability impacts of the proposed

[21] April Order, 155 FERC ¶ 61,076 at P 63.

[22] *Id.*

[23] *Id.*

[24] Proposed NYISO OATT § 38.3.1.1; NYISO Transmittal Letter at 13. Note that the 365-day notice period does not apply to generators entering into an ICAP ineligible forced outage. Those generators must submit the required information within 20 days of entering into the outage state. Proposed NYISO OATT § 38.3.2.

deactivation.[25] NYISO asserts that 365 days is the shortest period practicable for NYISO to complete the Generator Deactivation Process requirements. NYISO explains that, although it has removed the New York Commission's role in reviewing and identifying non-generation alternatives from what it originally proposed, NYISO must now step into that role to evaluate and select from among the RMR alternatives. NYISO argues that it developed the proposed timeframes for each of the steps based on its long-standing experience in administering its planning and market monitoring requirements and performing related responsibilities. NYISO explains that it will be compressing into 365 days many of the steps included in its biennial reliability planning process, which normally takes two years to complete. According to NYISO, a shorter notice period would not give NYISO sufficient time to carefully evaluate the information it receives regarding each RMR alternative.[26]

15. In the first 90 days, NYISO will evaluate the reliability impacts of a proposed generator deactivation to determine whether a reliability need will arise as a result of that proposed deactivation.[27] If NYISO determines that no reliability need will arise as a result of the proposed generator deactivation, or that any identified reliability need can be timely addressed without the deactivating generator, NYISO proposes an "off ramp" to allow the generator to deactivate as early as day 91 of the 365-day notice period.[28] On the other hand, if NYISO determines that a reliability need will arise, and NYISO cannot timely address that reliability need through the biennial reliability planning process, NYISO will provide 60 days for eligible parties to propose RMR alternatives, which NYISO explains is an increase from the 30 days it originally proposed.[29] NYISO will use the remainder of the 365-day notice period (215 days) to: evaluate the viability and sufficiency of the RMR alternatives, including calculating their net present values; calculate an avoidable cost rate for the RMR generator required to continue operating in

[25] Proposed NYISO OATT §§ 38.3.1.1, 38.3.1.2, 38.3.1.4. NYISO will have 10 business days to determine completeness following receipt of the initial notice form. NYISO will post non-confidential information about the completed notice on its website.

[26] NYISO Transmittal Letter at 14.

[27] NYISO explains that this includes performing required reliability studies using power flow and resource adequacy modeling tools, coordinating with transmission owners, consultants, and stakeholders, and developing and reporting the study results. *Id.* at 15–17.

[28] Proposed NYISO OATT § 38.3.6 (allowing a generator to deactivate following NYISO's "completion of all required NYISO administrative processes and procedures").

[29] Proposed NYISO OATT § 38.4; NYISO Transmittal Letter at 15.

the interim; select among the viable and sufficient RMR alternatives; negotiate and enter into an agreement with the developer of the selected RMR alternative (a development agreement, an RMR agreement, or one of several other types of agreements); and file any agreement(s) with the Commission.[30]

16. After NYISO determines whether a reliability need will arise as a result of a proposed generator deactivation, NYISO proposes to inform a deactivating generator that requested permission to deactivate earlier than 365 days from its notice to NYISO whether it needs to remain available for the duration of the 365-day notice period.[31] If NYISO determines that the deactivating generator is needed, and therefore declines to authorize the deactivating generator to deactivate by the later of the 181st day of the notice period or the requested deactivation date (called an Interim Service Provider),[32] NYISO proposes to compensate the deactivating generator at an avoidable cost rate.[33] NYISO will determine the avoidable cost rate based on cost and revenue information it solicits from the generator and verifies. NYISO explains that it will only have 180 days to calculate a rate, so if the generator owner does not promptly and diligently respond to NYISO's data requests, it may be required to rely on estimates in developing the rate.[34] NYISO proposes to provide an opportunity for the external Market Monitoring Unit (MMU) to provide input on the cost and revenue numbers. NYISO may also allow an Interim Service Provider to recover up to $1,000,000 in additional costs if they were necessary to enable the generator to continue operating and address an event that occurred after the notice was submitted and that could not reasonably have been foreseen.[35] NYISO states that this compensation proposal is designed to ensure that deactivating generators remain in roughly the same financial position that they occupy today (the New York Commission currently requires 180 days' notice without

[30] NYISO Transmittal Letter at 15.

[31] Proposed NYISO OATT § 38.3.6.

[32] NYISO proposes to define an "Interim Service Provider" as: "A Generator that must remain in service during the 365 days that follow the Generator Deactivation Assessment Start Date beyond the later of (a) the 181st day of the 365 day period, or (b) the Generator's requested deactivation date." Proposed NYISO OATT § 38.1.

[33] Proposed NYISO OATT § 38.13.

[34] NYISO Transmittal Letter at 38.

[35] Proposed NYISO OATT § 38.16.

compensation). NYISO further contends that its proposal is comparable to the Midcontinent Independent System Operator, Inc.'s (MISO) 182-day notice period.[36]

3. Protest

17. IPPNY/EPSA ask that the Commission require NYISO to shorten the notice period to 270 days instead of 365 days. IPPNY/EPSA argue that the 365-day notice period is unnecessarily long because it does not account for the time that will be saved by eliminating from NYISO's earlier proposal the New York Commission's role of evaluating and selecting potential solutions to reliability needs. IPPNY/EPSA assert that NYISO's greater experience and resources, and the fact that NYISO will be directly familiar with the scope of the reliability need and the state of the transmission system, mean that NYISO should be better equipped to expedite its review than the New York Commission to accommodate a 270-day notice period. Moreover, IPPNY/EPSA contend that NYISO ignores the fact that the New York Commission operates under a 90-day notice period, rather than a 180-day notice period, for generators rated under 80 MW.[37] According to IPPNY/EPSA, even the 180-day notice period does not align with NYISO's proposal because the New York Commission's 180-day clock begins to run immediately, rather than when the complete notice is published (which can be at least 15 days after the generator submits its deactivation notice under NYISO's proposal). IPPNY/EPSA also attempt to refute NYISO's reference to MISO's 182-day notice period by pointing out that PJM Interconnection, L.L.C.'s (PJM) notice period is only 90 days.[38]

18. In addition, IPPNY/EPSA request that the Commission require NYISO to provide compensation to deactivating generators starting on the date that NYISO completes the generator deactivation assessment and determines that there will be a reliability need unless the generator continues operating. IPPNY/EPSA contend that NYISO's proposal compels a deactivating generator to continue operating even when NYISO and the deactivating generator know that (1) market revenues are likely inadequate to support the generator's continued operation, and (2) NYISO cannot maintain system reliability if the uneconomic generator is allowed to deactivate (i.e., days 90–180). IPPNY/EPSA argue

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[36] NYISO Transmittal Letter at 37 (citing MISO, Open Access Transmission, Energy and Operating Reserve Markets Tariff, § 38.2.7).

[37] IPPNY/EPSA October 25, 2016 Protest at 16–19 (citing *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 at 15 (N.Y. Pub. Serv. Comm'n Dec. 20, 2005)).

[38] *Id.* at 19 (citing PJM, Intra-PJM Tariffs, OATT, Part V, § 113.1).

that this proposal will adversely impact the deactivating generator's ability to maintain reliable operations.[39]

19. Even where NYISO proposes to compensate a deactivating generator needed for reliability prior to entering into an RMR agreement—at this point, an Interim Service Provider—IPPNY/EPSA contend that NYISO improperly proposes compensation at a lesser rate than an RMR generator. According to IPPNY/EPSA, NYISO's proposal undermines the foundation of the Commission's RMR policy, which aims to ensure the continued reliability and efficient operation of the transmission system by requiring that uneconomic generators needed for reliability be allowed to recover their costs for the limited period that their operation is needed for reliability.[40] IPPNY/EPSA argue that NYISO provides no rational basis for the disparate treatment of a generator designated as an Interim Service Provider before day 365, and one designated as an RMR generator after day 365. Once NYISO determines that a reliability need prevents a generator's deactivation, IPPNY/EPSA continue, that generator is providing a reliability service and should be compensated accordingly, including availability and performance incentives. What is more, IPPNY/EPSA assert that the generator should be allowed to file an owner-developed rate with an effective date as of day 91.[41]

20. IPPNY/EPSA further argue that a generator should be permitted to deactivate within 10 business days after NYISO determines that the generator's deactivation will not result in a reliability need or any identified reliability need can be timely addressed without the deactivating generator. IPPNY/EPSA contend that the proposed language, which simply provides that a generator may deactivate following NYISO's "completion of all required NYISO administrative processes and procedures," is unduly arbitrary, and unjust and unreasonable, because it does not set forth a timeline. IPPNY/EPSA assert that a specific timeline will best protect market participants by ensuring that generators are permitted to deactivate when they are not required to address an identified reliability need. According to IPPNY/EPSA, 10 business days from the date NYISO determines that a generator is not required to address an identified reliability need should be sufficient for NYISO to confirm that all required ministerial processes are complete without forcing the generator to unnecessarily remain in service.[42]

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[39] *Id.* at 16, 19–20.

[40] *Id.* at 20 (citing RMR Order, 150 FERC ¶ 61,116 at P 6).

[41] *Id.* at 21.

[42] *Id.* at 15–16.

4. Answers

21. NYISO asserts that its proposed 365-day notice period is the minimum period feasible to allow NYISO to address bulk power system and local reliability needs in coordination with all market participants and stakeholders. According to NYISO, IPPNY/EPSA overlook the fact that NYISO will now be performing functions that the New York Commission would have carried out under NYISO's original proposal. Moreover, NYISO contends that IPPNY/EPSA and other interested parties requested in the stakeholder process that NYISO increase the originally proposed solicitation window for developers to submit alternatives to RMR agreements from 30 to 60 days.[43] NYISO also responds that IPPNY/EPSA provide no support for their claim that NYISO can perform the selection responsibilities faster than the New York Commission, or that the time periods identified by NYISO's subject-matter experts based on their experience performing similar studies and responsibilities should be shortened. Furthermore, NYISO continues, IPPNY/EPSA provide no basis for selecting a 270-day notice period instead, nor explain how NYISO would complete the required tasks with 95 fewer days.[44]

22. NYISO explains that it will use the first 150 days to perform the generator deactivation assessment (90 days) and to solicit alternatives (60 days).[45] IPPNY/EPSA's proposal, according to NYISO, would leave NYISO with only 120 days to complete what NYISO contends will take, at a minimum, 215 days: (1) evaluating the viability and sufficiency of RMR alternatives; (2) coordinating with the Responsible Transmission Owner in evaluating RMR alternatives; (3) evaluating the conceptual permanent solution; (4) reviewing, verifying, and/or validating cost information regarding the RMR alternatives; (5) determining the net present value of viable and sufficient RMR alternatives; (6) determining whether market-based solutions and Transmission Owners' Local Transmission Owner Plans will satisfy the reliability need; (7) administering study application and fees and deposits for all viable and sufficient RMR alternatives; (8) selecting from among viable and sufficient RMR alternatives based on the metrics in the OATT; (9) negotiating and entering into a development agreement, an RMR agreement, or another agreement; (10) filing the necessary agreements before their effective dates for acceptance by the Commission; and (11) arranging for service from and compensation to

[43] NYISO November 9, 2016 Answer at 24 (citing Proposed NYISO OATT § 38.4.1).

[44] *Id.* at 24–25.

[45] *Id.* at 25 (citing Proposed NYISO OATT §§ 38.3.4.3, 38.4.1).

generators serving as Interim Service Providers during the notice period.[46] NYISO explains that many of these tasks are normally associated with NYISO's biennial reliability planning process, and that the Generator Deactivation Process adds steps to enter into and file necessary agreements.[47]

23. NYTOs agree with NYISO that reducing the 365-day notice period to 270 days would not provide sufficient time for NYISO to analyze resulting reliability needs and solicit and evaluate proposed RMR alternatives. NYTOs contend that IPPNY/EPSA provide no support for their claim that 365 days is too long. According to NYTOs, removing the New York Commission from the process means that NYISO will be required to perform all of the functions that the New York Commission would have performed. NYTOs assert that 365 days is the minimum time period needed for NYISO to complete the Generator Deactivation Process requirements in an orderly and efficient manner.[48]

24. NYISO asks that the Commission reject IPPNY/EPSA's proposed changes to compensation during the notice period. With regard to starting compensation on day 91, rather than on day 181, NYISO argues that IPPNY/EPSA do not take into account when the reliability need is expected to arise, the circumstances under which it is expected to arise, or even the deactivation date specified in the generator deactivation notice. NYISO asserts that 181 days is the time when NYISO expects that it will obtain necessary avoidable cost information from the deactivating generator and be able to calculate an Interim Service Provider rate.[49] Moreover, NYISO contends that IPPNY/EPSA's proposal is inconsistent with the requirement that RMR agreements be used only as a limited, last-resort measure. NYISO asserts that its proposal provides the necessary time for NYISO and affected stakeholders to plan and implement reliability solutions that could avoid the need to enter into an RMR agreement.[50] Contrary to the Commission's directives to engage in a thorough consideration of alternatives to an RMR agreement, NYISO argues that IPPNY/EPSA's proposal would effectively require NYISO to begin paying full RMR compensation to a generator as soon as NYISO identifies a reliability

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[46] *Id.* at 25–27 (citing Proposed NYISO OATT §§ 31.7 (Attachment C), 38.1, 38.4.6, 38.6.1–2, 38.7, 38.10, 38.10.2.2, 38.11.2–5, 38.12.3, 38.13).

[47] *Id.* at 27.

[48] NYTOs November 9, 2016 Answer at 4–5.

[49] NYISO November 9, 2016 Answer at 29 (citing Proposed NYISO Services Tariff § 15.8.6).

[50] *Id.* at 31–32 (citing RMR Order, 150 FERC ¶ 61,116 at PP 13, 16).

need, before NYISO even receives proposed RMR alternatives. NYISO states that this is also inconsistent with RMR rules adopted by other independent system operators and regional transmission organizations (ISOs/RTOs).[51] According to NYISO, its proposal will return generators to approximately where they stood before NYISO proposed this new process because additional payments under RMR-like agreements have not generally been available in New York until after the New York Commission's 180-day notice requirement for generators that are 80 MW or larger has been satisfied.[52]

25. The New York Commission argues that IPPNY/EPSA's proposal to require NYISO to begin paying Interim Service Providers earlier in the notice period ignores lower-cost alternatives. The New York Commission asserts that IPPNY/EPSA's proposal would increase the out-of-market payments entering otherwise competitive markets, despite the possibility that a less expensive alternative may be identified and implemented relatively quickly. Under NYISO's proposal, the New York Commission continues, the deactivating generator would have to wait only an additional 90 days before receiving compensation if that generator is actually needed for such purpose and there are no lower-cost alternatives available. According to the New York Commission, NYISO's proposal aligns with current New York Commission policy requiring generators with a capacity of 80 MW or larger to provide at least 180 days' notice.[53] The New York Commission states that, in the 11 years since the New York Commission instituted this notice policy, no payments have been made substantially before the 180-day notice period expired, and there has never been a generator that could not continue operating for at least 90 days without out-of-market compensation. The New York Commission asserts that deactivating generators should incorporate the

[51] *Id.* at 30, 33 (citing MISO, Open Access Transmission, Energy and Operating Reserve Markets Tariff, §§ 38.2.7a, 38.2.7.c). NYISO argues that, at a minimum, it should have the same amount of time granted MISO to determine if a reliability need exists and to evaluate RMR alternatives before NYISO must implement a non-market compensation method.

[52] *Id.* at 30, 33–34 (citing *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 at 15 (N.Y. Pub. Serv. Comm'n Dec. 20, 2005)).

[53] New York Commission November 16, 2016 Answer at 2, 6–7. The New York Commission notes that generators with less than 80 MW of capacity must provide at least 90 days' written notice.

180-day notice period into their retirement planning process and submit deactivation notices sufficiently in advance to account for that period.[54]

26. With regard to IPPNY/EPSA's proposal to require NYISO to pay Interim Service Providers an APR that includes availability and performance incentives or an owner-developed rate approved by the Commission, NYISO contends that paying rates significantly exceeding expected market revenues before NYISO has solicited and considered alternatives will not encourage generators to submit deactivation notices sufficiently in advance for NYISO to plan for orderly generator deactivations. Instead, NYISO continues, generators that expect to be needed for reliability will be able to maximize profits by operating until they are no longer profitable and only then submitting a deactivation notice.[55] NYISO notes that generators can pay NYISO to perform an additional reliability study before submitting a generator deactivation notice to determine whether their deactivation will result in a reliability need.[56] NYISO also asserts that an Interim Service Provider may be able to extend the period over which it is paid a guaranteed rate significantly exceeding market-based revenues by delaying in providing needed information to NYISO.[57]

27. NYISO argues that IPPNY/EPSA's request that generators be permitted to deactivate within 10 business days after NYISO determines that the generator is not required to address an identified reliability need is based on several inaccurate assumptions. First, NYISO contends that IPPNY/EPSA assume that generators will want to deactivate at the earliest possible date (i.e., at day 91), when, in fact, NYISO has received multiple generator deactivation notices that provided NYISO far more than 91 days' advance notice. NYISO also states that it is not possible for NYISO to complete "all administrative processes" to deactivate a generator while that generator is continuing to participate in NYISO's markets. Second, NYISO argues that IPPNY/EPSA assume that all generators will actually be prepared to deactivate on their requested deactivation date, even though NYISO's proposed rules do not require this (NYISO needs to receive a confirming notice from the generator of the date on which the generator actually wants to deactivate). NYISO further asserts that the time it requires to deactivate a particular

[54] *Id.* at 7–8.

[55] NYISO November 9, 2016 Answer at 28–29, 34–36.

[56] *Id.* at 34 n.81 (citing NYISO, *Reliability Planning Process Manual*, Attachment E (Request for Additional Reliability Study), Attachment F (Agreements for Additional Reliability Studies), http://www.nyiso.com/public/webdocs/markets_operations/documents/Manuals_and_Guides/Manuals/Planning/rpp_mnl.pdf).

[57] *Id.* at 36.

generator will depend on generator-specific facts and circumstances. Therefore, NYISO contends that it is inappropriate to impose a strict time limit on NYISO's completion of administrative tasks related to deactivating a generator.[58]

5. Commission Determination

28. We accept NYISO's proposed 365-day notice period, as well as NYISO's proposed Interim Service Provider compensation and early deactivation process (i.e., the "off ramp") as in compliance with the RMR Order and the April Order.

29. With regard to the length of the notice period, we accept NYISO's proposal to require deactivating generators to provide NYISO with 365 days' advanced notice of a proposed deactivation. In the April Order, the Commission directed NYISO to propose a "timeline that reflects the new RMR process . . . (i.e., an RMR process separate from the Gap Solution process, under which NYISO evaluates and selects solutions to identified reliability needs caused by generator deactivations)."[59] NYISO has complied with that directive. NYISO asserts that 365 days is the shortest period practicable for NYISO to complete the Generator Deactivation Process requirements.[60] While some protesters argue that the notice period should be shorter, since the New York Commission is no longer involved in the process, we agree with NYISO that the length of the notice period should not necessarily change just because NYISO administers the selection process instead of the New York Commission. In all, we find that NYISO has sufficiently supported its proposed timeframe. NYISO argues that it developed the proposed timeframes for each of the steps based on its long-standing experience in administering its planning and market monitoring requirements and performing related responsibilities.[61] NYISO will use the first 90 days to evaluate the reliability impacts of a proposed generator deactivation, including performing numerous reliability studies, coordinating with transmission owners, consultants, and stakeholders, and developing and reporting the study results.[62] NYISO will then provide 60 days for eligible parties to propose RMR alternatives. Notably, NYISO explains that stakeholders requested that

[58] *Id.* at 22–23.

[59] April Order, 155 FERC ¶ 61,076 at P 63.

[60] NYISO Transmittal Letter at 14.

[61] *Id.*

[62] *Id.* at 15–17.

NYISO increase the originally proposed solicitation window from 30 to 60 days.[63] NYISO will then have 215 days to: evaluate the viability and sufficiency of the RMR alternatives, including calculating their net present values; calculate an Interim Service Provider rate; select among the viable and sufficient RMR alternatives; negotiate and enter into an agreement with the developer of the selected RMR alternative; and file any agreement with the Commission.[64] We therefore conclude that NYISO has proposed a just and reasonable timeline and justified the need for 365 days' notice.

30. IPPNY/EPSA ask that the Commission require NYISO to shorten the notice period to 270 days instead of 365 days, but they provide no support for their claim that NYISO should be able to perform all of the necessary steps in this timeframe instead. Moreover, IPPNY/EPSA attempt to refute NYISO's reference to MISO's 182-day notice period by pointing out that PJM's notice period is only 90 days. We find that NYISO, in responding to the Commission's directives pursuant to section 206 of the FPA to propose an RMR process, adequately explained its need for a 365-day notice period to ensure that an RMR agreement is only used as a "limited, last-resort measure" and that NYISO engages in "a thorough consideration of all types of RMR alternatives in an open and transparent manner."[65] Therefore, we find here that NYISO has complied with the Commission's directives. We also note that the length of the notice period is mitigated by two additional proposals, discussed further below: (1) Interim Service Provider compensation for deactivating generators needed for reliability; and (2) the "off ramp" for deactivating generators not needed for reliability to deactivate before the end of the 365-day notice period.

31. We similarly accept NYISO's proposal to compensate Interim Service Providers (i.e., deactivating generators needed for reliability that NYISO declines to authorize to deactivate by the later of the 181st day of the notice period or the requested deactivation date) at an avoidable cost rate during the notice period. We note that NYISO's proposal represents a compromise because NYISO did not originally propose to compensate deactivating generators during the notice period, but revised its proposal in response to protests to its first compliance filing.[66] With regard to the date on which NYISO should begin compensation, we find NYISO's proposal to be just and reasonable. For generators with a capacity of 80 MW or larger, the New York Commission already requires

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[63] NYISO November 9, 2016 Answer at 24 (citing Proposed NYISO OATT § 38.4.1).

[64] NYISO Transmittal Letter at 15.

[65] RMR Order, 150 FERC ¶ 61,116 at P 16.

[66] April Order, 155 FERC ¶ 61,076 at PP 48, 55; NYISO Transmittal Letter at 36.

180 days' prior notice of deactivation without additional compensation.[67] This means that NYISO's proposal does not require a deactivating generator with a capacity of 80 MW or larger to continue operating when it would not already be required to do so. In addition, it would be contrary to the Commission's directives to require NYISO to begin providing out-of-market compensation to a deactivating generator before NYISO has even received proposals for RMR alternatives.[68] Moreover, NYISO asserts that 181 days is the time at which NYISO expects that it will obtain necessary avoidable cost information from the deactivating generator and be able to calculate an Interim Service Provider rate.[69] Therefore, IPPNY/EPSA's request to begin compensation as early as the 91st day of the notice period is impractical, in addition to being unnecessary.

32. As for the rate itself, we find NYISO's proposal to compensate Interim Service Providers at an avoidable cost rate to be just and reasonable. Requiring NYISO to pay an Interim Service Provider a guaranteed rate in excess of its avoidable costs while NYISO considers RMR alternatives will not encourage generators to submit timely deactivation notices.[70] An owner-developed rate should only be available for an RMR generator after NYISO has fully considered RMR alternatives and entered into an RMR agreement as a limited, last-resort measure, as required by the RMR Order.[71] We therefore disagree with IPPNY/EPSA that there is no rational basis for the different treatment between an Interim Service Provider and an RMR generator because an RMR generator has been selected as a limited, last-resort measure, whereas an Interim Service Provider is a temporary solution while NYISO evaluates and selects among RMR alternatives. We note that

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[67] New York Commission November 16, 2016 Answer at 2, 6–7; NYISO November 9, 2016 Answer at 30, 33–34 (citing *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 at 15 (N.Y. Pub. Serv. Comm'n Dec. 20, 2005)).

[68] RMR Order, 150 FERC ¶ 61,116 at P 16 ("The evaluation of alternatives to an RMR designation is an important step that deserves the full consideration of NYISO and its stakeholders to ensure that RMR agreements are used only as a limited, last-resort measure.").

[69] NYISO November 9, 2016 Answer at 29 (citing Proposed NYISO Services Tariff § 15.8.6).

[70] We note that deactivating generators have the option to pay NYISO to perform an additional reliability study before submitting a deactivation notice to determine whether their deactivation will result in a reliability need.

[71] *See* RMR Order, 150 FERC ¶ 61,116 at P 16.

deactivating generators can consult with NYISO and MMU on the costs that will be used to develop the avoidable cost rate.[72] Moreover, NYISO may also allow an Interim Service Provider to recover up to $1,000,000 in additional costs if they were necessary to enable the generator to continue operating and address an event that occurred after the notice was submitted and that could not reasonably have been foreseen.[73]

33. We also accept NYISO's proposed "off ramp" for deactivating generators not needed for reliability to deactivate before the end of the 365-day notice period and after NYISO completes "all required [NY]ISO administrative processes and procedures."[74] Contrary to IPPNY/EPSA's suggestion that 10 business days from the date NYISO determines that a generator is not needed for reliability should be sufficient, NYISO contends that it cannot complete its administrative processes and procedures while the deactivating generator is continuing to participate in NYISO's markets and the time NYISO will need to deactivate a particular generator will depend on generator-specific facts and circumstances.[75] Moreover, we agree with NYISO that it is inappropriate to impose a specific timeline because not all deactivating generators may be prepared to deactivate within 10 business days after receiving NYISO's determination. In fact, in many cases, the generator will still need permission from the New York Commission to deactivate.[76] We therefore find NYISO's proposed "off ramp" to be just and reasonable as proposed.

B. Solicitation, Evaluation, and Selection of RMR Alternatives

1. April Order

34. In the April Order, the Commission accepted NYISO's proposed "distinctly higher" net present value standard for selecting among RMR alternatives, subject to NYISO "identify[ing] the criteria NYISO will use to implement its 'distinctly higher' net present value standard and provid[ing] a conceptual basis as to how the standard will be

[72] NYISO Transmittal Letter at 26–27; Proposed NYISO OATT § 38.8.

[73] Proposed NYISO OATT § 38.16.

[74] Proposed NYISO OATT § 38.3.6.

[75] NYISO November 9, 2016 Answer at 22–23.

[76] *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 (N.Y. Pub. Serv. Comm'n Dec. 20, 2005).

implemented."[77] Although the Commission agreed with NYISO that "it is just and reasonable for NYISO to use a standard that is able to account for a margin of error in cost and revenue estimates for both a proposed generation and non-generation solution," the Commission found that NYISO did not sufficiently explain or define its "distinctly higher" net present value standard.[78]

2. NYISO's Proposal

35. If NYISO determines that a reliability need will arise as a result of a proposed generator deactivation, and NYISO cannot timely address that reliability need through the biennial reliability planning process, NYISO will provide 60 days for eligible parties to propose RMR alternatives.[79] RMR alternatives can be market-based or regulated, and can be generation, transmission, or demand response solutions.[80] NYISO states that, although it has not proposed any rules that would preclude it from executing an RMR agreement with a generator located outside of New York, it also does not have any rules that would be necessary for it to evaluate, rely on, execute an RMR agreement with, or compensate all of the costs of a generator located outside of New York. However, NYISO explains that its proposed rules would allow NYISO to select a generator located outside of New York that qualifies as a "Generator."[81] NYISO states that if stakeholders want NYISO to develop rules to allow generators located outside of New York to be possible RMR alternatives, they can prioritize this effort in the stakeholder process.[82]

36. NYISO proposes to evaluate the proposed RMR alternatives to determine whether they are viable and sufficient to satisfy individually, or in conjunction with other RMR

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[77] April Order, 155 FERC ¶ 61,076 at P 73.

[78] *Id.*

[79] Proposed NYISO OATT § 38.4.

[80] NYISO Transmittal Letter at 20.

[81] A "Generator" is defined as: "A facility capable of supplying Energy, Capacity and/or Ancillary Services that is accessible to the [New York Control Area]. A Generator comprised of a group of generating units at a single location, which grouped generating units are separately committed and dispatched by the ISO, and for which Energy injections are measured at a single location, and each unit within that group, shall be considered a Generator." NYISO, OATT, § 1.7 (4.0.0).

[82] NYISO Transmittal Letter at 24.

alternatives, the identified reliability need.[83] NYISO states that it will perform the viability and sufficiency evaluation consistent with the requirements for performing such evaluation in its biennial reliability planning process.[84] If there are adequate viable and sufficient market-based or demand response RMR alternatives to completely satisfy the reliability need, NYISO proposes to conclude the Generator Deactivation Process and present the results of its assessment in a final report.[85]

37. If there are not adequate viable and sufficient market-based or demand response RMR alternatives, NYISO will evaluate the transmission and generation viable and sufficient RMR alternatives. NYISO will select a transmission RMR alternative if there is no generation RMR alternative that has a "distinctly higher" net present value.[86] A generation RMR alternative will have a "distinctly higher" net present value than a transmission RMR alternative if, after accounting for the accuracy range of each transmission project cost estimate and generation revenue estimate, NYISO determines that the range of net present values of the generation RMR alternative is higher than the range of the net present values of the transmission RMR alternative. If there is an overlap between the ranges of net present values, then the generation RMR alternative does not have a "distinctly higher" net present value than the transmission RMR alternative, and NYISO will select the transmission RMR alternative. On the other hand, if there is no overlap between the ranges of net present values, and the range of net present values of the generation RMR alternative is higher than that of the transmission RMR alternative, NYISO will move to the next step.[87]

38. NYISO states that, consistent with the Commission's directive that executing an RMR agreement should be a limited, last-resort measure, NYISO's determination that a generation RMR alternative has a "distinctly higher" net present value than a transmission RMR alternative does not require NYISO to select the generation RMR alternative and execute an RMR agreement.[88] Rather, NYISO will compare the RMR

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[83] Proposed NYISO OATT § 38.6.1.

[84] The viability and sufficiency evaluation requirements for NYISO's biennial reliability planning process are located in sections 31.2.5.3 and 31.2.5.4 of Attachment Y of the NYISO OATT.

[85] Proposed NYISO OATT § 38.6.2.

[86] Proposed NYISO OATT § 38.10.2.

[87] NYISO Transmittal Letter at 29.

[88] *Id.*

alternatives based on their net present values and the degree to which they satisfy additional metrics, which were largely adopted from NYISO's biennial reliability planning process. In particular, NYISO will consider: (1) capital costs; (2) costs per MW; (3) expandability of the proposed solution; (4) operability of the proposed solution; (5) performance of the proposed solution; (6) the extent to which the developer has the property rights, or ability to obtain the property rights, required to implement the proposed solution; (7) potential issues associated with delay in constructing the proposed solution or in entering into service; and (8) the impact on other pending reliability needs and pending solutions to those needs.[89] According to NYISO, these additional metrics allow NYISO to account for both cost and non-cost factors, including the impact each RMR alternative will have on the flexibility, efficiency, and operation of the transmission system.[90] When selecting among transmission RMR alternatives, NYISO states that it will focus on the additional metrics, but when selecting among generation RMR alternatives, NYISO states that it will focus on the net present value of the RMR service offers and any changes to the *pro forma* RMR agreement.[91]

3. Comments and Protest

39. NYTOs ask that the Commission require NYISO to clarify that an RMR agreement will be selected over a transmission RMR alternative only as a temporary, last-resort measure.[92] NYTOs contend that, because the same selection metrics are applied to generation and transmission RMR alternatives, and include capital costs and costs per MW for each solution, the selection process creates a preference for RMR agreements when a transmission solution is more expensive in the short term. According to NYTOs, NYISO's proposal could result in RMR agreements not being used as a temporary, last-resort measure, but, rather, as a substitute for permanent transmission alternatives, contrary to the Commission's directives.[93] Specifically, NYTOs ask that the Commission require NYISO to revise proposed OATT section 38.10.4 to clarify that RMR agreements will be selected only as a temporary, last-resort measure and that RMR agreements will not be used as a permanent alternative to a transmission solution.

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[89] Proposed NYISO OATT § 38.10.4.

[90] NYISO Transmittal Letter at 29.

[91] *Id.* at 30.

[92] NYTOs October 25, 2016 Comments at 2–3 (citing RMR Order, 150 FERC ¶ 61,116 at P 16; April Order, 155 FERC ¶ 61,076 at P 33).

[93] *Id.* at 3–4 (citing Proposed NYISO OATT § 38.10; April Order, 155 FERC ¶ 61,076 at P 33).

NYTOs ask that the Commission similarly require NYISO to revise proposed OATT section 38.2, which describes the scope of the selection process, to provide NYISO guidance when it makes other discretionary decisions under the RMR process.[94]

40. NYTOs argue that the "distinctly higher" net present value standard does not fully account for the value of permanent transmission RMR alternatives. NYTOs assert that the market revenues received by a transmission RMR alternative understate the benefits that transmission RMR alternatives provide to consumers because transmission RMR alternatives can reduce congestion and improve the efficiency of dispatch. As a result, NYTOs contend that NYISO's "distinctly higher" net present value standard may overstate the cost of transmission RMR alternatives to consumers and undermine NYISO's ability to only use RMR agreements as limited, last-resort measures. NYTOs ask that the Commission direct NYISO to make clear that an RMR agreement will only be used if its net present value is truly expected to be "distinctly higher" than the net present value of transmission RMR alternatives, and require NYISO to revise its calculation of the net present value of transmission RMR alternatives to recognize their full economic benefits.[95]

41. NYTOs further contend that the proposed selection metrics do not fully capture the costs of transmission RMR alternatives because NYISO proposes to evaluate only the gross capital costs and capital cost per MW of proposed RMR alternatives, which places transmission RMR alternatives at a competitive disadvantage. According to NYTOs, this is because transmission RMR alternatives generally do not qualify to receive energy or capacity market revenues in the same manner as generation RMR alternatives. NYTOs argue that this could put NYISO in the position of having to select an RMR agreement over a less-costly, permanent transmission RMR alternative because the long-term and system-wide benefits of the transmission RMR alternative were not acknowledged in the selection metrics. NYTOs ask that the Commission require NYISO to revise proposed OATT section 38.10.4 to add a metric that recognizes the net cost of a proposed RMR alternative to consumers.[96]

42. IPPNY/EPSA ask that the Commission direct NYISO to propose tariff revisions no later than six months from the date of its order on NYISO's compliance filing that would permit resources located outside of New York to offer their energy and capacity into New York to temporarily meet an in-state reliability need. IPPNY/EPSA argue that the failure to consider possible out-of-state solutions to reliability needs caused by generator deactivations increases the likelihood that NYISO will have to enter into an

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[94] *Id.* at 4.

[95] *Id.* at 5–6.

[96] *Id.* at 6–7.

RMR agreement with an uneconomic generator or solicit the construction of costly transmission upgrades at regulated rates. IPPNY/EPSA explain that, although willing, it appears that NYISO will not proceed with developing improvements that would allow generators located outside of New York to offer themselves as generation RMR alternatives unless market participants prioritize this effort in NYISO's project prioritization process. IPPNY/EPSA contend that this issue is too important to await such consideration, particularly given that the 2017 project prioritization process recently concluded.[97]

43. IPPNY/EPSA further request that the Commission direct NYISO to clarify that a developer may propose generation RMR alternatives that are not market-based, or generators that are currently mothballed or in an ICAP ineligible forced outage. IPPNY/EPSA explain that NYISO's compliance filing is unclear as to the ability of developers to propose such RMR alternatives. IPPNY/EPSA state that IPPNY is authorized to state that NYISO does not oppose this proposed clarification.[98]

4. Answer

44. With the exception of one limited clarification, NYISO objects to NYTOs' proposed changes to NYISO's proposed selection process. According to NYISO, NYTOs err by ignoring proposed OATT language that explicitly states that the selection process "is designed to ensure that executing an RMR Agreement with a Generator is a last resort to addressing a Generator Deactivation Reliability Need."[99] Additionally, NYISO states that its proposal limits the term of an RMR agreement by the in-service date of the conceptual permanent solution provided by the Responsible Transmission Owner, and modifications to the scope and timing of the reliability need arising from state agency action, information on other transmission owners' projects, other RMR agreements, and the entry of market-based solutions into service.[100] NYISO also explains that the term of RMR service is limited to the amount of time for which NYISO determines the relevant generator is viable and sufficient to meet the reliability need.[101] Finally, NYISO states that the *pro forma* RMR agreement provides that NYISO may

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[97] IPPNY/EPSA October 25, 2016 Protest at 21–23.

[98] *Id.* at 23–24.

[99] NYISO November 9, 2016 Answer at 10–11 (quoting Proposed NYISO OATT § 38.10.2.1).

[100] *Id.* at 11 (citing Proposed NYISO OATT § 38.11.2).

[101] *Id.* (citing Proposed NYISO OATT §§ 38.9.3, 38.9.4(D)).

unilaterally terminate an RMR agreement if it determines it is no longer needed to meet the reliability need.[102] Moreover, NYISO points to proposed OATT language stating that RMR generators will be excluded from NYISO's reliability needs assessment base case.[103] NYISO argues that its proposal balances a strong preference for implementing market-based and transmission alternatives over executing an RMR agreement with a generator with the Commission's mandate that NYISO consider the cost to consumers in its selection process. NYISO contends that it should not be required to select a transmission RMR alternative when a far less expensive generation RMR alternative is available. With that said, NYISO states that it does not object to revisions to proposed OATT section 38.10.2.1 to clarify that when there are multiple viable and sufficient transmission RMR alternatives, NYISO will only continue to evaluate viable and sufficient generation RMR alternatives that have a "distinctly higher" net present value than *all* viable and sufficient transmission RMR alternatives.[104]

45. Contrary to NYTOs' assertions, NYISO argues that its proposed selection process recognizes that selecting a permanent transmission RMR alternative may be the least-cost choice for consumers in the long run and allows NYISO to consider the broad range of benefits that transmission RMR alternatives can provide.[105] NYISO states that, like transmission RMR alternatives, generation RMR alternatives can also reduce congestion and improve the efficiency of dispatch. While NYISO's proposed net present value calculation does not explicitly take all system efficiency benefits into account for generation or transmission RMR alternatives, NYISO contends that this is appropriate given the role that the net present value analysis plays in NYISO's selection process.[106] Specifically, NYISO explains that it proposes to use the net present value analysis only: (1) when there is no transmission RMR alternative and NYISO is selecting among generation RMR alternatives; (2) as a gateway to determine which generation RMR alternatives, if any, NYISO will consider when it goes through the more comprehensive selection process; or (3) in conjunction with the more comprehensive selection process.[107]

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[102] *Id.* (citing Proposed NYISO OATT § 38.26, Appendix C – Form of Reliability Must Run Agreement, § 2.2.1).

[103] *Id.* at 12 (citing Proposed NYISO OATT § 31.2.2.3.2).

[104] *Id.* at 12–13.

[105] *Id.* at 9–10, 13 (citing Proposed NYISO OATT §§ 38.10.1.1, 38.10.1.2; NYISO Transmittal Letter at 28–29).

[106] *Id.* at 13–14 (citing Proposed NYISO OATT § 38.10.2.2).

[107] *Id.* at 14 (citing Proposed NYISO OATT §§ 38.10.2.2, 38.10.3, 38.10.4).

NYISO also contends that the selection metrics allow NYISO to consider all of the benefits NYTOs state that transmission RMR alternatives can provide. In particular, NYISO states that the metrics require NYISO to consider how the proposed RMR alternative may affect: (1) "the utilization of the transmission system (e.g., interface flows, percent loading of facilities);" (2) "additional flexibility in operating the system, such as dispatch of generation, access to operating reserves, access to ancillary services;" and (3) "the cost of operating the system, such as how it may affect the need for operating generation out of merit for reliability needs . . . or providing more balance in the system to respond to system conditions that are more severe than design conditions."[108] NYISO notes that the proposed selection process also requires NYISO to consider a broad range of economic benefits of proposed RMR alternatives. Therefore, NYISO contends that NYTOs' proposed additional selection metrics are neither necessary nor appropriate.[109]

46. NYISO responds to IPPNY/EPSA's proposal to allow out-of-state generators to serve as RMR alternatives by arguing that it is outside the scope of this proceeding. NYISO explains that its proposed rules already permit NYISO to consider generators located outside of New York that participate as market participants and respond to dispatch instructions in the New York Control Area as alternatives to RMR agreements, similar to MISO's rules.[110] NYISO states that it is not aware of any ISO/RTO that has developed a comprehensive set of rules to address how generators that are not subject to the ISO's/RTO's commitment and dispatch will participate as solutions to identified reliability needs. NYISO argues that it would need to develop a unique and complex set of rules for such generators and, even if it did, that is no guarantee a generator located outside of New York would be selected.[111]

47. Besides, NYISO contends that there are a number of constraints that make it difficult or infeasible for generators located outside of New York to participate as generation RMR alternatives to a reliability need caused by a generator deactivation in New York. First, NYISO asserts that generation RMR alternatives must offer their full capacity into NYISO's day-ahead (and real-time, if possible) energy market at their NYISO-determined reference levels, but it is impossible for imports to offer on a basis

[108] *Id.* at 15–16 (quoting Proposed NYISO OATT §§ 38.10.4.4, 38.10.4.5).

[109] *Id.* at 16.

[110] *Id.* at 37–38 (citing MISO, Open Access Transmission, Energy and Operating Reserve Markets Tariff, § 38.2.7.c).

[111] *Id.* at 40.

that is as flexible as NYISO's ability to commit and dispatch a generator in New York.[112] Second, NYISO explains that, to serve as a capacity resource in New York, the capacity of a generator located outside of New York would have to be associated with Unforced Capacity Deliverability Rights (UDRs),[113] obtain import rights (which are only available for periods up to six months on a first come, first served basis), or have External Capacity Resource Interconnection Service (CRIS) rights.[114] Third, NYISO states that, when it models firm imports at an external interface, it gives up the ability to receive emergency assistance at that interface, which significantly reduces potential reliability benefits from generators located outside of New York. Fourth, NYISO contends that it is unlikely that any entity would obtain new or additional firm withdrawal rights in PJM to address a temporary resource adequacy need in New York due to PJM's regional transmission expansion plan cost allocation rules.[115] Lastly, NYISO asserts that it would have to develop new anti-toggling provisions for generators located outside of New York.[116]

48. NYISO is not opposed to IPPNY/EPSA's request that the Commission direct NYISO to clarify that a developer may propose generation RMR alternatives to a

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[112] *Id.* at 38 (citing NYISO, Services Tariff, § 23.6).

[113] UDRs are defined as: "[R]ights, as measured in MWs, associated with (i) new incremental controllable transmission projects, and (ii) new projects to increase the capability of existing controllable transmission projects that have UDRs, that provide a transmission interface to a Locality. When combined with Unforced Capacity which is located in an External Control Area or non-constrained NYCA region either by contract or ownership, and which is deliverable to the NYCA interface in the Locality in which the UDR transmission facility is electrically located, UDRs allow such Unforced Capacity to be treated as if it were located in the Locality, thereby contributing to an LSE's Locational Minimum Installed Capacity Requirement. To the extent the NYCA interface is with an External Control Area the Unforced Capacity associated with UDRs must be deliverable to the Interconnection Point." NYISO, Services Tariff, § 2.21 (3.0.0).

[114] CRIS is defined as: "[T]he service provided by NYISO to Developers that satisfy the NYISO Deliverability Interconnection Standard or that are otherwise eligible to receive CRIS in accordance with Attachment S to the NYISO OATT; such service being one of the eligibility requirements for participation as a NYISO Installed Capacity Supplier." NYISO, OATT, Attachment X, § 30.1 (5.0.0).

[115] NYISO November 9, 2016 Answer at 39.

[116] *Id.* at 40.

reliability need that are not market-based, or are not generators that are currently mothballed or in an ICAP ineligible forced outage.[117]

5. Commission Determination

49. We accept, subject to condition, NYISO's proposed process for selecting among RMR alternatives. We direct NYISO to include in the compliance filing ordered herein revisions to the OATT and Services Tariff, as necessary, to clarify that a developer may propose generation RMR alternatives to a reliability need that are not market-based, or that involve generators that are currently mothballed or in an ICAP ineligible forced outage. We agree with IPPNY/EPSA that this clarification will provide greater transparency regarding potential generation RMR alternatives, and recognize that NYISO is not opposed to this clarification. We disagree with all other protesters' arguments, as discussed below.

50. We decline to require NYISO to further revise its standard for selecting among RMR alternatives to: (1) clarify that RMR agreements will be selected only as a temporary, last-resort measure; (2) state that RMR agreements will not be used as a permanent alternative to a transmission solution; (3) revise the calculation of net present values of transmission RMR alternatives; or (4) add a metric that recognizes the net cost of an RMR alternative to consumers. In the April Order, the Commission accepted NYISO's proposed "distinctly higher" net present value standard for selecting among RMR alternatives, subject to NYISO "identify[ing] the criteria NYISO will use to implement its 'distinctly higher' net present value standard and provid[ing] a conceptual basis as to how the standard will be implemented."[118] Here, NYISO has explained how it will conduct its net present value analysis, which includes the consideration of several metrics related to each RMR alternative's costs and performance. Thus, we find that NYISO has complied with the Commission's directive. In addition, NYISO already proposes to include the following language in its OATT, which explicitly clarifies that RMR agreements are intended to be a limited, last-resort option: "This solution selection process is designed to ensure that executing an RMR Agreement with a Generator is a last resort to addressing a Generator Deactivation Reliability Need."[119] It is unclear why NYTOs seek additional language to this effect, and, in any event, we find such additional language to be unnecessary.

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[117] *Id.*

[118] April Order, 155 FERC ¶ 61,076 at P 73.

[119] Proposed NYISO OATT § 38.10.2.1.

51. NYTOs contend that, because the same selection metrics are applied to generation and transmission RMR alternatives, the selection process creates a preference for RMR agreements when a transmission solution is more expensive in the short term.[120] First, when selecting among transmission RMR alternatives, NYISO states that it will focus on the additional metrics, but when selecting among generation RMR alternatives, it will focus on the net present value of the RMR service offers and any changes to the *pro forma* RMR agreement.[121] Therefore, it is incorrect to say that NYISO will apply the same selection metrics to generation and transmission RMR alternatives. NYTOs are correct that NYISO will determine the net present values of both generation and transmission RMR alternatives by considering the difference between the cost of the project and its expected market revenues (if any).[122] However, NYISO proposes to use the net present value analysis only: (1) when there is no transmission RMR alternative and NYISO is selecting among generation RMR alternatives; (2) as a gateway to determine which generation RMR alternatives, if any, NYISO will consider when it goes through the more comprehensive selection process; or (3) in conjunction with the more comprehensive selection process.[123] We thus disagree with NYTOs that the selection process favors RMR agreements.

52. Moreover, NYISO states that its additional metrics allow NYISO to account for both cost and non-cost factors, including the impact each RMR alternative will have on the flexibility, efficiency, and operation of the transmission system.[124] NYISO contends that the selection metrics allow NYISO to consider all of the benefits NYTOs state that transmission RMR alternatives can provide.[125] Specifically, the proposed additional metrics consider the operability and performance of the proposed RMR alternative, including how the proposed RMR alternative may affect: "additional flexibility in operating the system, such as dispatch of generation, access to operating reserves, [or] access to ancillary services;" "the cost of operating the system, such as how it may affect the need for operating generation out of merit for reliability needs . . . or providing more balance in the system to respond to system conditions;" and "the utilization of the system

[120] NYTOs October 25, 2016 Comments at 2–3 (citing Proposed NYISO OATT § 38.10; April Order, 155 FERC ¶ 61,076 at P 33).

[121] NYISO Transmittal Letter at 30; Proposed NYISO OATT § 38.10.3.

[122] Proposed NYISO OATT § 38.10.2.2.

[123] NYISO November 9, 2016 Answer at 14.

[124] NYISO Transmittal Letter at 29; NYISO November 9, 2016 Answer at 12.

[125] NYISO November 9, 2016 Answer at 15–16.

(e.g. interface flows, percent loading of facilities)."[126] Therefore, we agree with NYISO that NYTOs' proposed additional selection metrics are neither necessary nor appropriate.

53. We accept NYISO's proposal to only permit out-of-state generators that participate as market participants and respond to dispatch instructions in the New York Control Area to be considered as RMR alternatives. NYISO explains that it would need to develop a unique and complex set of rules for generators that are not subject to its commitment and dispatch instructions to be considered as RMR alternatives.[127] Additionally, NYISO identifies several constraints that it contends make it difficult or infeasible for generators located outside of New York to participate as RMR alternatives to a reliability need caused by a generator deactivation in New York.[128] We disagree with IPPNY/EPSA that this issue cannot await consideration in the NYISO stakeholder process. We find NYISO's proposal to allow out-of-state generators that participate as market participants and respond to dispatch instructions in the New York Control Area to be considered as RMR alternatives to be just and reasonable.

C. Imposing an Offer Price Higher Than $0.00/kW-month on RMR Generators Needed to Satisfy Resource Adequacy

1. April Order

54. In response to the RMR Order, NYISO proposed to require RMR generators to offer all of their unforced capacity (UCAP) into NYISO's ICAP spot market auctions at an offer price of $0.00/kW-month, i.e., as "price-takers," except if the RMR generator is needed to satisfy resource adequacy or is not the least-cost solution to the identified reliability need. For the two excepted circumstances, NYISO proposed to impose an

[126] Proposed NYISO OATT §§ 38.10.4.4–5.

[127] NYISO November 9, 2016 Answer at 40.

[128] *Id.* at 38–40 (listing the following: (1) it is impossible for imports to offer into NYISO's day-ahead and real-time markets on a basis that is as flexible as NYISO's ability to commit and dispatch a generator in New York; (2) the out-of-state generator's capacity would have to be associated with UDRs, obtain import rights, or have External CRIS rights; (3) when NYISO models firm imports at an external interface, it gives up the ability to receive emergency assistance at that interface, reducing reliability benefits from those imports; (4) it is unlikely that any entity would obtain new or additional firm withdrawal rights in PJM to address a temporary resource adequacy need in New York; and (5) NYISO would have to develop new anti-toggling provisions).

offer price equal to the RMR generator's avoidable costs net of likely projected annual energy and ancillary services revenues.[129]

55. In the April Order, the Commission rejected NYISO's proposal to impose an offer price higher than $0.00/kW-month on an RMR generator, reasoning that imposing a higher offer price may result in an RMR generator not clearing the market, and another generator that otherwise would not have cleared the market clearing instead, thereby requiring ratepayers to pay twice to satisfy the same capacity need. The Commission explained that RMR generators "are needed to fulfill a reliability need that market forces have not fulfilled," and, therefore, "should not be subject to a capacity minimum offer price" that would allow for inefficient and unreasonable outcomes.[130]

2. Requests for Rehearing and Clarification

56. IPPNY and NYISO contend that the Commission failed to distinguish between RMR generators needed to meet local transmission security needs, which are not currently reflected in NYISO's ICAP market rules, and those required to satisfy resource adequacy.[131] They argue that NYISO's capacity markets are designed to satisfy resource adequacy by sending price signals that indicate whether new capacity is needed. They contend that requiring an RMR generator needed to satisfy resource adequacy to bid at $0.00/kW-month will mute price signals that indicate a need for new generators and for retention of existing economic generators, leading to premature retirements and more RMR agreements.[132] NYISO states that, where there are limited or no alternatives to resolve the reliability need, and muted price signals have impeded the market's ability to respond, NYISO may have to choose between a long-term RMR agreement and constructing a regulated backstop generator to replace the deactivating generator.[133]

57. IPPNY and NYISO also assert that requiring an RMR generator needed to satisfy resource adequacy to bid its avoidable costs will not result in "paying twice" for capacity,

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[129] April Order, 155 FERC ¶ 61,076 at P 74.

[130] *Id.* PP 82–83 (citing *Indep. Power Producers of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,214, at P 66 (2015) (*IPPNY v. NYISO*)).

[131] IPPNY Request for Rehearing at 6–7; NYISO Request for Rehearing at 6–7.

[132] IPPNY Request for Rehearing at 8–9; NYISO Request for Rehearing at 6–7.

[133] NYISO Request for Rehearing at 7–8.

as the Commission reasoned.[134] NYISO argues that the scenario the Commission is concerned about is unlikely because it assumes that: there is another generator making cost-based bids (i.e., not bidding at $0.00/kW-month) that are lower than the RMR generator's avoidable costs; and this generator would not clear if the RMR generator bids at $0.00/kW-month. However, NYISO contends, if the other generator is behaving rationally, its avoidable costs must be lower than the RMR generator's; otherwise, it would have mothballed or deactivated at the same time as the RMR generator.[135] According to IPPNY, if an RMR generator needed to satisfy resource adequacy fails to clear when it bids its avoidable costs, its failure to clear indicates that it is not needed for reliability and its RMR agreement can be terminated.[136] Further, IPPNY and NYISO contend that *IPPNY v. NYISO* involved RMR generators needed to meet local transmission security needs, not to satisfy resource adequacy, so the Commission's analysis in that proceeding does not support requiring RMR generators needed to satisfy resource adequacy to bid $0.00/kW-month.[137]

58. IPPNY and NYISO ask that RMR generators needed to satisfy resource adequacy be required to bid their avoidable costs, as NYISO originally proposed.[138] They argue that an RMR generator's avoidable costs reflect its marginal cost of providing capacity, which provides an appropriate price signal to potential investors to satisfy the same reliability need, thereby reducing the need for, and duration of, RMR agreements.[139] NYISO asks that, if the Commission determines that the risk of ratepayers having to "pay twice" is too great, the Commission allow NYISO to propose revised offer floor rules with additional ratepayer protections that avoid the price formation problems associated with requiring RMR generators needed to satisfy resource adequacy to bid $0.00/kW-month.[140]

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[134] IPPNY Request for Rehearing at 8; NYISO Request for Rehearing at 8–9.

[135] NYISO Request for Rehearing at 9–10.

[136] IPPNY Request for Rehearing at 7–8.

[137] *Id.* at 7; NYISO Request for Rehearing at 8.

[138] IPPNY Request for Rehearing at 5, 9–10; NYISO Request for Rehearing at 6.

[139] IPPNY Request for Rehearing at 5; NYISO Request for Rehearing at 8.

[140] NYISO Request for Rehearing at 10.

3. NYISO's Proposal

59. In accordance with the April Order, NYISO proposes to specify that all RMR generators and Interim Service Providers must offer into NYISO's ICAP markets at an offer price of $0.00/kW-month.[141]

4. Protest

60. IPPNY/EPSA argue that an RMR generator needed for resource adequacy should be subject to an RMR offer floor that reflects that generator's avoidable costs. IPPNY/EPSA acknowledge that IPPNY and NYISO sought rehearing of the Commission's determination in the April Order to require RMR generators to offer at $0.00/kW-month in the ICAP market. IPPNY/EPSA ask the Commission to grant rehearing of this determination.[142]

5. Answer

61. NYTOs argue that IPPNY/EPSA's proposal is outside the scope of NYISO's compliance filing because IPPNY previously sought rehearing of this same issue, which remains pending. NYTOs contend that a request for rehearing does not stay a Commission order, so the Commission's determination in the April Order stands.[143]

6. Commission Determination

62. We deny IPPNY's and NYISO's requests for rehearing on this issue, and accept NYISO's compliance filing as in compliance with the RMR Order and the April Order. IPPNY and NYISO assert that the Commission failed to differentiate between RMR generators that meet local transmission security needs, and RMR generators that satisfy resource adequacy needs. They assert that, in contrast to RMR generators that meet local transmission security needs, RMR generators intended to satisfy resource adequacy needs should be subject to an offer floor. Based on the record before us, the Commission is unable to discern under what circumstances NYISO would need an RMR for resource adequacy, and thus, under NYISO's proposal, would need to be subject to an offer floor.

63. We agree with IPPNY and NYISO that NYISO's capacity markets are designed to achieve resource adequacy in the region. If NYISO determines that its capacity markets are not procuring sufficient capacity to ensure resource adequacy, we expect that NYISO

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[141] NYISO Transmittal Letter at 43.

[142] IPPNY/EPSA October 25, 2016 Protest at 13–15.

[143] NYTOs November 9, 2016 Answer at 3–4 (citing 16 U.S.C. § 825*l*(c) (2012)).

will first seek to make market rule changes before pursuing an RMR agreement.[144] If NYISO believes that an RMR agreement is appropriate to satisfy a resource adequacy need, the Commission will evaluate such a finding based on the record then before it.[145]

D. Anti-Toggling Provisions

1. April Order

64. As an anti-toggling mechanism, NYISO proposed in its original compliance filing to: (1) require RMR generators returning to market-based revenues after the termination of an RMR agreement to reimburse NYISO for all capital expenditure costs paid under the RMR agreement (less depreciation) before returning to the market; and (2) exclude RMR generators from its reliability needs assessment base case, which it uses to determine its resource adequacy needs.[146]

65. In the April Order, the Commission accepted NYISO's proposal to exclude RMR generators from its reliability needs assessment base case and accepted, in part, subject to condition, and rejected, in part, NYISO's proposed reimbursement provisions.[147] In rejecting in part NYISO's proposal, the Commission reasoned that NYISO's proposed anti-toggling mechanism only deterred toggling by generators that require capital expenditures during the term of an RMR agreement, and not by generators that do not

[144] We note that the Commission has addressed the concept of RMR generators for resource adequacy needs elsewhere, finding that PJM had not demonstrated that an out-of-market construct was necessary to address resource adequacy concerns. *See PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,122, at PP 52–53 (2015).

[145] If NYISO finds that an RMR generator is needed to satisfy resource adequacy, as with any RMR generator, NYISO is required to file for Commission review and approval "a description of the methodology and results of the reliability studies that identified" the need, a description of the RMR alternatives NYISO evaluated "and why the term of the RMR [a]greement is appropriate in light of these alternative[s]," and the RMR agreement. Proposed NYISO OATT § 38.11.

[146] April Order, 155 FERC ¶ 61,076 at P 117; NYISO October 19, 2015 Transmittal Letter at 44.

[147] April Order, 155 FERC ¶ 61,076 at PP 15, 122–128 (generally accepting aspects of NYISO's filing not otherwise discussed, and accepting in part, subject to condition, and rejecting in part NYISO's proposed anti-toggling mechanism).

require capital expenditures during the term of an RMR agreement.[148] To adequately address concerns with RMR generators toggling between receiving RMR compensation and market-based compensation, the Commission directed NYISO to adopt tariff revisions that require an RMR generator that seeks to continue to operate after the termination of its RMR agreement to "repay NYISO the higher of: (1) the capital expenditures less depreciation, that NYISO reimbursed the RMR generator to enable it to remain in service during the term of the RMR agreement; or (2) the above-market payments the RMR generator received during the term of the RMR agreement."[149] The Commission explained that the above-market payments under the second calculation "would be the difference between the total market-based revenues, including uplift revenues, the generator would have received during the term of the RMR agreement, and the revenues received pursuant to the RMR agreement."[150] Further, the Commission required NYISO to allow an RMR generator to immediately return to the market upon termination of its RMR agreement, while repaying NYISO the required amounts on a pro-rata monthly basis, with interest, until the generator completely repays NYISO or leaves the market.

2. Request for Rehearing

66. NYISO argues that: (1) protections already included in its RMR rules render the Commission's anti-toggling mechanism unnecessary; and (2) the Commission's anti-toggling mechanism could be overly punitive and discourage generators from voluntarily entering into RMR agreements.[151] In particular, NYISO contends that an RMR generator that expects market revenues greater than or equal to its going-forward costs would not accept the NYISO-calculated APR, but, rather, would file a proposed owner-developed rate with the Commission.[152] Then, according to NYISO, with MMU's participation, the Commission could determine whether it is just and reasonable for that generator to have

[148] *Id.* P 125.

[149] *Id.* P 126.

[150] *Id.*

[151] NYISO Request for Rehearing at 11.

[152] In the April Order, the Commission accepted NYISO's proposal to compensate RMR generators based on either an APR calculated by NYISO or an owner-developed rate that the RMR generator proposes to the Commission. The APR will take into account RMR avoidable costs, variable costs, an availability incentive, and a performance incentive. April Order, 155 FERC ¶ 61,076 at PP 85–86, 98–101.

an owner-developed rate higher than its going-forward costs.[153] NYISO also contends that excluding RMR generators from its reliability needs assessment base case will prevent generators from repeatedly entering into RMR agreements because NYISO will plan its system to operate reliably without that generator.[154]

67. Further, NYISO argues that the Commission's anti-toggling mechanism could be overly punitive. According to NYISO, the mechanism could discourage a generator that is not presently able to recover its going-forward costs in NYISO's markets, but that reasonably anticipates returning to NYISO's markets when conditions improve, from voluntarily agreeing to provide RMR service. That is because, NYISO continues, after the repayment obligation, the resource may have provided RMR service at less than its going-forward costs.[155] If the Commission requires a more stringent anti-toggling mechanism than what NYISO proposed in its original compliance filing, NYISO asks that it be allowed to work with stakeholders to propose a mechanism to permit RMR generators to recover their going-forward costs of providing RMR service and, for those that accepted an APR, to retain their availability and performance incentives.[156]

3. NYISO's Proposal

68. NYISO proposes to require a former RMR generator or Interim Service Provider that wishes to continue to operate after the termination of an RMR agreement or the end of the 365-day notice period, as applicable, to repay NYISO the higher of: (1) the capital expenditures, less depreciation, that NYISO reimbursed the RMR generator or Interim Service Provider; or (2) the above-market payments the RMR generator or Interim Service Provider received.[157] NYISO explains that both values will be adjusted to reflect accumulated interest computed on a quarterly basis and assessed based on the dates payments were made by NYISO.[158]

69. With regard to the term over which NYISO will require repayment, NYISO proposes to require monthly repayment of capital expenditures in the shorter of: (1) the

[153] NYISO Request for Rehearing at 12–13.

[154] *Id.* at 13.

[155] *Id.* at 13–14.

[156] *Id.* at 14.

[157] Proposed Services Tariff § 15.8.7.

[158] NYISO Transmittal Letter at 46.

major maintenance cycle in total years of the generator; or (2) the average remaining life of the cumulative capital expenditures paid by NYISO over the term of the RMR agreement.[159] NYISO states that it selected this repayment period for capital expenditures because a competitive generator that continues to operate in the market should be able to timely repair or replace capital expenditures necessary for operation. NYISO also justifies its proposal on the basis that the proposed repayment period is aligned with the average amount of time a generator would expect to incur such expenditures. NYISO also contends that the proposed repayment period for capital expenditures balances allowing an efficient former RMR generator to return to the market when it should with the need to recuperate monies paid to reimburse RMR generators for capital expenditures.[160]

70. For repayment of above-market revenues, NYISO proposes to require monthly repayment in the shorter of: (1) 36 months; or (2) twice the duration of the applicable RMR agreement.[161] NYISO states that this proposed repayment period is based on a stakeholder proposal that was near-universally supported as an appropriate compromise between allowing repayment over time and the desire to reimburse RMR loads as quickly as possible.[162]

4. Comments and Protest

71. NYTOs protest deducting depreciation costs from periods outside the RMR agreement term when the repayment amount is based on repaying capital expenditures.[163] NYTOs state that they confirmed with NYISO that NYISO's proposal would allow RMR

[159] Proposed Services Tariff § 15.8.7.1.1.

[160] NYISO Transmittal Letter at 46.

[161] Proposed Services Tariff § 15.8.7.2.

[162] NYISO Transmittal Letter at 46.

[163] NYTOs October 25, 2016 Comments at 7–8. NYTOs provide the example of an RMR generator that incurs capital expenditures at the outset of a three-year RMR agreement. NYTOs explain that the asset would be depreciated 30 percent at the end of the RMR agreement. If the generator then mothballs or retires after the term of the RMR agreement, but returns to the market several years later, NYTOs contend that NYISO's proposal would allow the generator to deduct from its repayment amount for capital expenditures the depreciation that occurred while the unit was mothballed or retired, not simply the 30 percent depreciation that occurred during the period in which the generator provided RMR service. *Id.* at 8.

generators to deduct depreciation costs from periods outside the RMR agreement term (e.g., when the RMR generator was mothballed or retired), and not only depreciation costs that the RMR generator incurred during the term of the RMR agreement. NYTOs ask that the Commission direct NYISO to revise proposed Services Tariff section 15.8.7 to exclude from any deduction in the repayment amount for capital expenditures depreciation that occurred while the asset was mothballed or retired, consistent with the Commission's requirement that RMR generators repay capital expenditure costs if they wish to continue to operate at the end of their RMR agreement.[164]

72. NYTOs also protest deducting depreciation attributable to capital expenditures reimbursed by NYISO from the repayment amount based on above-market revenues received by the RMR generator. NYTOs argue that it does not make sense to deduct such depreciation from the RMR generator's assumed market revenue because such depreciation is fully funded by NYISO. NYTOs quote the April Order: "[A]bove-market payments [are] the difference between the total market-based revenues . . . the generator would have received during the term of the RMR agreement, and the revenues received pursuant to the RMR agreement."[165] NYTOs assert that, to comply with this directive, NYISO should require a generator receiving a certain amount of reimbursement for capital expenditures under an RMR agreement to include all of those payments in the calculation of the repayment amount, without deducting depreciation.[166]

73. NYTOs also propose two "technical corrections" to NYISO's proposed anti-toggling provisions. First, NYTOs point to proposed Services Tariff section 15.8.7.1.1. NYTOs contend that this provision does not reflect NYISO's intent to weigh the remaining life of each capital investment by the depreciated value of that investment to calculate a weighted average life. NYTOs propose to revise the term RV_i to correct this alleged error.[167] Second, NYTOs contend that the equation that calculates the repayment amount based on above-market revenues does not mention allocating market revenues proportionally between (1) reimbursements for capital expenditures and (2) other above-market revenues. According to NYTOs, the first paragraph of proposed Services Tariff section 15.8.7.2 and the equation set forth in the second paragraph of that section should be revised to refer to this proration.[168]

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[164] *Id.*

[165] *Id.* at 9 (quoting April Order, 155 FERC ¶ 61,076 at P 126).

[166] *Id.*

[167] *Id.* at 9–10.

[168] *Id.* at 10–12.

74. City of NY and MI argue that the repayment period for capital expenditures is too long, such that an RMR generator continuing to operate after the termination of the RMR agreement is likely to earn profits from the marketplace, while consumers are unlikely to recover the funds they paid to keep the RMR generator operating and able to earn such profits. City of NY and MI contend that, depending on the equipment involved, the major maintenance cycle can be from five to 25 years, or perhaps longer, meaning the repayment period is likely to be significantly longer than any RMR generator is likely to remain in the market after the termination of the RMR agreement. According to City of NY and MI, the purpose of the RMR construct was not to provide new earnings opportunities for generators nor low cost loans that need not be repaid, especially where the financiers are consumers. City of NY and MI contend that the repayment period should be set such that all reimbursement of funds paid occurs over a short period, perhaps no more than two or three years. City of NY and MI argue that their proposal is consistent with one of the primary reasons for moving from vertically-integrated monopolies to competitive markets—shifting risks from consumers to investors and shareholders. Their proposal, they continue, is also consistent with market principles that would otherwise apply (i.e., obtaining financing from a bank or the investment community). City of NY and MI add that equitable principles also dictate a relatively short repayment period because consumers have funded capital expenditures up front, and when an RMR generator decides to continue operating, it should have to reimburse consumers in a similar manner.[169]

75. City of NY and MI also argue that the repayment period for above-market revenues is too long, creating an opportunity for an RMR generator to earn revenues in the market, make a partial repayment of above-market revenues, and then mothball, retire, or toggle back to RMR status to avoid full repayment. City of NY and MI contend that it is inequitable that an RMR generator has a longer period to repay its above-market revenues than the period over which it received the revenues from consumers. Rather, City of NY and MI assert that the repayment period should be no more than 24 months, or the lesser of 24 months and the duration of the RMR agreement, because a shorter repayment period is most likely to prevent toggling and ensure that the risks of operating in a competitive market are borne by the RMR generator and its investors, not by consumers. According to City of NY and MI, a shorter repayment period is further supported by the fact that an RMR generator may not continue to operate for an extended period of time after the termination of the RMR agreement. City of NY and MI state that this is because the RMR generator is likely an old, inefficient generator that will likely not remain competitive with modern facilities. City of NY and MI contend that capital expenditures are unlikely to increase their longevity with enough certainty to properly permit an extended repayment period like NYISO proposes. While a shorter repayment

[169] City of NY and MI October 25, 2016 Comments and Protest at 6–9.

period could be a disincentive for RMR generators to continue to operate after the termination of the RMR agreement, City of NY and MI respond that directly incentivizing RMR generators to do so is a departure from the anti-toggling goals in the RMR Order.[170] Moreover, City of NY and MI argue that NYISO's proposed repayment periods are inconsistent with federal, state, and local public policies intended and designed to reduce greenhouse gas emissions and combat climate change.[171]

76. City of NY and MI further argue that RMR generators should not be able to retain salvage value or other value if they have outstanding repayment obligations. City of NY and MI state that it is common practice when a generator is decommissioned and dismantled to collect and sell for either reuse elsewhere or for scrap all salvageable material, which could amount to millions of dollars. City of NY and MI argue that the failure to require RMR generators to use the proceeds from these sales to satisfy outstanding repayment obligations makes NYISO's proposal deficient. Similarly, City of NY and MI explain that, in the event the owner of an RMR generator sells the asset, the repayment obligation remains with the asset, but there is no obligation on the former owner to use the profits from the sale of the asset to satisfy outstanding repayment obligations. City of NY and MI contend that NYISO should file liens on the real property or security interests in the tangible assets, or use other similar mechanisms, to secure repayment of any amounts that the RMR generator owes to consumers.[172]

5. Answer

77. NYISO argues that the Commission should reject NYTOs' proposed revisions to the treatment of depreciation. NYISO contends that it is appropriate to deduct all depreciation from the repayment amount because depreciation that occurs during an RMR generator's mothball state or ICAP ineligible forced outage after the term of the RMR agreement is the direct result of the RMR generator making a capital expenditure earlier than it otherwise would have in order to provide RMR service. According to NYISO, if the RMR generator had refused to provide RMR service, it could have avoided the depreciation by making the capital expenditure at the end of its mothball state or ICAP ineligible forced outage. NYISO notes that NYTOs' proposal could require an

[170] *Id.* at 9–11 (citing RMR Order, 150 FERC ¶ 61,116 at PP 2, 21).

[171] *Id.* at 11–13 (referring to the U.S. Environmental Protection Agency's Clean Power Plan, the New York Commission's Clean Energy Standard, and New York City's One New York: The Plan for a Strong and Just City).

[172] *Id.* at 13–14.

RMR generator to repay the cost of a capital expenditure it made to be able to provide RMR service after that capital expenditure's useful life has expired.[173]

78. NYISO agrees with NYTOs' two proposed technical corrections. In particular, NYISO supports NYTOs' proposal to revise the term RV_i in proposed Services Tariff section 15.8.7.1.1 to reflect the summation of individual capital expenses after depreciation. NYISO also supports NYTOs' proposed revisions to proposed Services Tariff section 15.8.7.2 to refer to proration of market revenues between reimbursements for capital expenditures and other above-market revenues. NYISO states that these proposed revisions reflect NYISO's intent and are consistent with NYISO's presentations to its stakeholders. However, NYISO disagrees with the redline edit NYTOs propose to proposed Services Tariff section 15.8.7.2 to the variable $RMRCapExRecovery_g$. NYTOs' proposed revision would require NYISO to ignore depreciation of capital expenditures when it calculates above-market revenues. As discussed above, NYISO opposes NYTOs' proposed revisions to the treatment of depreciation as inconsistent with the Commission's instruction that capital expenditures should be repaid "less depreciation" and as producing an inequitable result.[174] NYISO notes that NYTOs' proposed revision is also inconsistent with the language NYISO proposed in Services Tariff section 15.8.7.1.1, which requires NYISO to include depreciation expense in its calculation of the repayment obligation that applies to capital expenditures. This inconsistency, according to NYISO, would inequitably over-weight the above-market revenues anti-toggling calculation.[175]

79. With regard to the repayment period for capital expenditures, NYISO responds to City of NY and MI that NYISO's proposed repayment period for capital expenditures appropriately balances the competing objectives identified in the April Order.[176] NYISO states that it used the major maintenance cycle to time-bound the capital expenditures repayment period because it is a point at which a generator owner would have to elect to make a significant additional expenditure to continue operating. NYISO states that it has observed that major maintenance cycles vary with use, but typically last no more than eight years and are usually much shorter. NYISO argues that, while a shorter repayment period increases the amount that must be repaid to NYISO on a pro-rata monthly basis, an extremely short repayment period could discourage an otherwise efficient RMR generator or Interim Service Provider from continuing to operate in, or returning to,

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[173] NYISO November 9, 2016 Answer at 16–17.

[174] *Id.* at 18–19 (citing April Order, 155 FERC ¶ 61,076 at P 126).

[175] *Id.* at 20.

[176] *Id.* at 6 (citing April Order, 155 FERC ¶ 61,076 at PP 126–127).

NYISO's markets. Moreover, NYISO points out that implementing a shorter repayment period may prevent NYISO from recouping for the benefit of RMR loads at least some of the funds supplied to purchase the capital asset because the RMR generator may retire instead of continuing to operate.[177]

80. With regard to the repayment period for above-market revenues, NYISO responds that, so long as the change that City of NY and MI seek only affects repayment by RMR generators of above-market revenues that are not capital expenditures, "NYISO does not support, but is not strongly opposed to, the shorter repayment period" that City of NY and MI propose.[178] Nevertheless, NYISO states that City of NY and MI do not explain either how a hypothetical generator would "toggle back to RMR status" or how their proposal would prevent this behavior.[179] If the Commission adopts City of NY and MI's proposal, NYISO explains that it would implement the change by modifying the proposed definition of *mAMR* in proposed Services Tariff section 15.8.7.2.[180]

81. NYISO asks that the Commission reject City of NY and MI's recommendation that NYISO recover the salvage value of former RMR generators because it is impractical and harmful to non-RMR loads. NYISO considers this recommendation to be commercially unrealistic and impractical, and asserts that its complexities would unfairly shift to all New York loads a category of transaction costs that would benefit only RMR loads. NYISO contends that it is unlikely that an RMR generator will hold the assets to which City of NY and MI refer free and clear of liens, meaning NYISO would have to undertake a detailed analysis of each RMR generator's debt structure, and obtain from preexisting secured creditors waivers, exceptions, or subordinations to put NYISO in the first-lien position. NYISO argues that, not only would this take time, it would likely be unsuccessful because a preexisting secured creditor would have little incentive to subordinate its right of recovery when the asset is already troubled and facing liquidation. Moreover, NYISO states that this process would carry significant expense, the costs of which would be paid by all New York loads, not just by RMR loads.[181]

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[177] *Id.* at 5–6.

[178] *Id.* at 7.

[179] *Id.* at 6–7 & n.22 (citing City of NY and MI October 25, 2016 Protest at 11–13).

[180] *Id.* at 7.

[181] *Id.* at 7–9.

6. Commission Determination

82. We grant rehearing in part on this issue and accept NYISO's proposed anti-toggling provisions in its compliance filing, subject to condition. Specifically, as discussed below, we direct NYISO to include in the compliance filing ordered herein revisions to its OATT and Services Tariff to: (1) revise the requirement to repay above-market revenues to require repayment of only the above-market revenues that exceed an RMR generator's going-forward costs for RMR service, and to allow RMR generators that accepted an APR to retain their availability and performance incentives; (2) revise the repayment periods for capital expenditures and above-market revenues to require repayment of either in the shorter of 36 months or twice the duration of the applicable RMR agreement; and (3) make the two technical corrections NYTOs suggest.

83. We are not persuaded that offering Commission-approved owner-developed rate compensation and excluding RMR generators from NYISO's reliability needs assessment base case are sufficient protections to "'eliminate, or at least minimize, incentives for a generator needed for reliability to toggle between receiving RMR compensation and market-based compensation for the same units,' even when there are no required capital expenditures."[182] Requiring RMR generators seeking to return to the market to repay revenues received pursuant to an RMR agreement in excess of the generator's going-forward costs is necessary to remove the incentive to toggle, especially when there are no required capital expenditures. By requiring repayment of revenues received in excess of going-forward costs, the generator under an RMR agreement will be in a similar position to a generator without an RMR agreement. However, under the anti-toggling mechanism the Commission ordered in the April Order,[183] it appears possible that a generator could be paid less than its going-forward costs for providing RMR service.

84. For example, in the case of an RMR generator that sought to deactivate, its market revenues are likely to be less than its going-forward costs, which is often why an RMR generator has sought to deactivate. Therefore, if an RMR generator that seeks to continue to operate after the termination of its RMR agreement must repay the above-market payments it received during the term of the RMR agreement, the RMR generator's effective compensation for RMR service may be less than its going-forward costs and it may be left in the same position of inadequate market revenues that motivated it to

[182] April Order, 155 FERC ¶ 61,076 at P 126 (quoting RMR Order, 150 FERC ¶ 61,116 at P 21).

[183] *Id.* (finding a more stringent anti-toggling mechanism necessary to "remov[e] an RMR generator's ability to receive above-market payments during the term of an RMR agreement and then continue to operate in the market after the termination of that agreement without refunding the above-market payments").

deactivate in the first place. Such an outcome is not what the Commission intended.[184] We further agree with NYISO that RMR generators that accept an APR should be allowed to retain their availability and performance incentives to ensure RMR generators have a "financial incentive to reliably perform while . . . receiving RMR compensation."[185] We note that, contrary to one of the rationales that NYISO provides in its request for rehearing, we expect that generators will not use RMR agreements to continue to operate while they wait for market conditions to improve. In most instances, an RMR agreement "should be of a limited duration" to "temporarily retain[] certain generation resources needed to ensure reliable transmission service until more permanent reliability solutions are in place."[186] We therefore direct NYISO to include in the compliance filing ordered herein revisions to the requirement to repay above-market revenues to only require repayment of above-market revenues that exceed an RMR generator's going-forward costs for RMR service, and to allow RMR generators that accepted an APR to retain their availability and performance incentives.

85. With regard to the repayment periods for capital expenditures and above-market revenues, we accept NYISO's proposal to require repayment of above-market revenues on a monthly basis in the shorter of 36 months, or twice the duration of the applicable RMR agreement.[187] In the April Order, the Commission rejected NYISO's proposal to require reimbursement of all capital expenditures *before* a former RMR generator can participate in the market because that might "discourage an otherwise efficient generator from continuing to operate to the detriment of customers."[188] Rather, the Commission required NYISO to propose tariff revisions to require repayment on a pro-rata monthly basis to "balance[] these concerns by ensuring the repayment of capital expenditures, while also ensuring that customers have the opportunity to receive the full value of service from upgrades for which they have paid."[189] We agree with NYISO, and disagree with City of NY and MI, that NYISO's proposed repayment period for above-market revenues is an appropriate compromise between allowing former RMR generators to

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[184] *See* RMR Order, 150 FERC ¶ 61,116 at P 17 ("Compensation to an RMR generator must at a minimum allow for the recovery of the generator's going-forward costs . . . .").

[185] NYISO Request for Rehearing at 12 n.27.

[186] RMR Order, 150 FERC ¶ 61,116 at PP 1–2.

[187] Proposed Services Tariff § 15.8.7.2.

[188] April Order, 155 FERC ¶ 61,076 at P 127.

[189] *Id.*

repay above-market revenues over time and ensuring that they reimburse RMR loads as quickly as possible. We note that NYISO states that stakeholders near-universally supported this proposal.[190]

86. As for repayment of capital expenditures, however, we reject NYISO's proposal to require repayment of capital expenditures on a monthly basis in the shorter of: (1) the major maintenance cycle in total years of the generator; or (2) the average remaining life of the cumulative capital expenditures paid by NYISO over the term of the RMR agreement.[191] NYISO's proposal could result in repayment periods that vary greatly depending on the nature of the capital expenditure and the resource type.[192] At the longer end, the anti-toggling mechanism would be ineffective because the pro-rata payments would be low and the generator may not remain in the market long enough to reimburse RMR loads. At the shorter end, the anti-toggling mechanism might "discourage an otherwise efficient generator from continuing to operate to the detriment of customers."[193] In order to strike a balance between encouraging efficient generators to continue to operate in the market and discouraging toggling between receiving RMR compensation and market-based compensation, we find that a consistent and predictable repayment period, like the one proposed for repayment of above-market revenues, is most effective. We therefore direct NYISO to include in the compliance filing ordered herein revisions to the repayment periods for capital expenditures and above-market revenues to require repayment of either in the shorter of 36 months or twice the duration of the applicable RMR agreement.

87. We agree with NYTOs that their two proposed "technical corrections" to NYISO's proposed anti-toggling provisions are necessary to reflect NYISO's intent. We therefore direct NYISO to include in the compliance filing ordered herein the following: (1) revisions to the term R_{Vi} in proposed Services Tariff section 15.8.7.1.1 to weigh the remaining life of each capital investment by the depreciated value of that investment to calculate a weighted average life; and (2) revisions to the first paragraph of proposed

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[190] NYISO Transmittal Letter at 46.

[191] Proposed Services Tariff § 15.8.7.1.1.

[192] City of NY and MI October 25, 2016 Comments and Protest at 7 (contending that, depending on the equipment involved, the major maintenance cycle could be from five to 25 years, or perhaps longer, and for a major capital addition, that the remaining life could be from 15 to 40 years, or longer); NYISO November 9, 2016 Answer at 5 n.17 (asserting that major maintenance cycles vary with use, but typically last no more than eight years and are usually much shorter).

[193] April Order, 155 FERC ¶ 61,076 at P 127.

Services Tariff section 15.8.7.2 and the equation set forth in the second paragraph of that section to refer to the proration of market revenues between reimbursements for capital expenditures and other above-market revenues. With regard to the redline edit NYTOs propose to proposed Services Tariff section 15.8.7.2 to the variable $RMRCapExRecovery_g$, we reject that proposal, consistent with the discussion below regarding depreciation of capital expenditures.

88. Contrary to NYTOs' protest, we accept NYISO's proposal to deduct depreciation from a former RMR generator's repayment amount attributable to capital expenditures. NYTOs argue that NYISO should not deduct depreciation from a former RMR generator's repayment amount attributable to capital expenditures when: (1) the depreciation costs are from periods outside the RMR agreement term; or (2) the repayment amount is based on above-market revenues received by the RMR generator.[194] We disagree with NYTOs. Rather, we agree with NYISO that its proposal is appropriate because depreciation that occurs during an RMR generator's mothball state or ICAP ineligible forced outage after the term of the RMR agreement is the direct result of the RMR generator making a capital expenditure earlier than it otherwise would have in order to provide RMR service. NYISO's proposal balances "discourag[ing] an otherwise efficient generator from continuing to operate" with "ensuring the repayment of capital expenditures"[195] by recognizing that a generator in an outage state could refuse to provide RMR service and avoid making necessary capital expenditures until the end of its outage state, thereby avoiding depreciation costs.

89. We similarly disagree with City of NY and MI that RMR generators should not be able to retain salvage value or other value if they have outstanding repayment obligations. Not only does NYISO's proposed anti-toggling mechanism, as revised by this order, achieve the balance that the Commission sought to achieve in the April Order without requiring NYISO to obtain salvage value or other value from a former RMR generator, City of NY and MI's alternative proposal is impractical. City of NY and MI contend that NYISO should file liens on the real property or security interests in the tangible assets, or use other similar mechanisms, to secure repayment of any amounts that the RMR generator owes to consumers.[196] However, City of NY and MI do not seem to consider the difficulties with this approach and the accompanied transaction costs to NYISO, and, by extension, to all New York load. NYISO explains that it would have to undertake a detailed analysis of each RMR generator's debt structure and obtain from preexisting secured creditors waivers, exceptions, or subordinations to put NYISO in the first-lien

[194] NYTOs October 25, 2016 Comments at 7–9.

[195] April Order, 155 FERC ¶ 61,076 at P 127.

[196] City of NY and MI October 25, 2016 Comments and Protest at 13–14.

position.[197] Even if NYISO undertook this process, it is unclear whether NYISO would ever succeed in obtaining the salvage value or other value to which City of NY and MI refer. We therefore reject City of NY and MI's suggestion.

E. Other Issues

1. Reliability Needs Assessment Base Case

a. NYISO's Proposal

90. NYISO states that the initial stage of its biennial reliability planning process is NYISO's performance of a reliability needs assessment, during which NYISO identifies whether there are any reliability needs for which NYISO must solicit permanent market-based or regulated solutions. NYISO proposes to revise the requirements for the development of the base case underlying the reliability needs assessment to enable the identification of permanent solutions to a reliability need caused by a generator deactivation. Specifically, if NYISO has selected a permanent solution in the Generator Deactivation Process, it will include that permanent solution in the reliability needs assessment base case so long as it satisfies the base case inclusion rules set forth in NYISO's procedures.[198] NYISO will exclude from the reliability needs assessment base case any interim solution that NYISO selects in the Generator Deactivation Process, including a generator operating under an RMR agreement. NYISO states that, because it will exclude these interim solutions from the reliability needs assessment base case, NYISO's reliability needs assessment can identify the reliability needs that resulted in the need for the interim solution, for which NYISO will solicit market-based and regulated permanent solutions through its biennial reliability planning process.[199]

b. Protest

91. IPPNY/EPSA contend that the Commission should direct NYISO to clarify which solutions will be included in the reliability needs assessment base case. While IPPNY/EPSA assert that NYISO correctly proposes to exclude RMR generators, IPPNY/EPSA argue that it is unclear whether NYISO will also exclude Interim Service Providers, which are, effectively, RMR generators. IPPNY/EPSA ask that NYISO also exclude Interim Service Providers from the reliability needs assessment base case by revising OATT section 31.2.2.3.2. IPPNY/EPSA propose further revisions to OATT

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[197] NYISO November 9, 2016 Answer at 8.

[198] Proposed NYISO OATT § 31.2.2.3.2.

[199] NYISO Transmittal Letter at 35–36.

section 31.2.2.3.2 to clarify that permanent transmission RMR alternatives will be included in the reliability needs assessment base case, consistent with NYISO's statements in its compliance filing. IPPNY/EPSA state that IPPNY is authorized to state that NYISO does not oppose these proposed OATT revisions.[200]

c. Answer

92. NYISO states that it is not opposed to clarifying which solutions will be included in the reliability needs assessment base case, as IPPNY/EPSA request.[201]

d. Commission Determination

93. We agree with IPPNY/EPSA that NYISO should clarify which reliability solutions NYISO will include in its reliability needs assessment base case to ensure transparency. We therefore direct NYISO to include in the compliance filing ordered herein revisions to OATT section 31.2.2.3.2 to clarify that NYISO will exclude RMR generators and Interim Service Providers from its reliability needs assessment base case, and will include permanent transmission RMR alternatives.

2. IPPNY/EPSA's Forward Capacity Market Proposal

a. Protest

94. IPPNY/EPSA ask that the Commission direct NYISO to adopt a forward capacity market to ensure regulated reliability solutions are used only as a limited, last-resort measure to meet identified reliability needs. IPPNY/EPSA contend that, as generators retire due to age, more stringent environmental regulations, and low natural gas prices, among other reasons, there is an increased risk of triggering a reliability need due to resource adequacy considerations. IPPNY/EPSA argue that a forward capacity market would: give market participants more time to propose projects to meet an identified reliability need than they have in the Generator Deactivation Process; better provide the predictable revenues necessary to attract new capacity to meet reliability needs; and reduce the need for RMR agreements or other regulated solutions.[202]

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[200] IPPNY/EPSA October 25, 2016 Protest at 24–25.

[201] NYISO November 9, 2016 Answer at 40.

[202] IPPNY/EPSA October 25, 2016 Protest at 4–7.

b. Answers

95. NYISO, NYTOs, and the New York Commission respond that IPPNY/EPSA's proposal is outside the scope of this proceeding. NYISO contends that Commission precedent is clear that a protest may not expand the scope of a compliance proceeding.[203] NYISO states that, if IPPNY/EPSA wish to pursue the market design changes they propose in their protest, they should do so through NYISO's stakeholder process.[204] NYTOs and the New York Commission argue that the April Order did not direct NYISO to consider the adoption of a forward capacity market.[205] Rather, NYTOs explain that the April Order rejected other "market enhancement proposals as outside the scope of this proceeding" and stated that "the RMR Order was not intended to allow or require NYISO to redesign its capacity market to ensure that RMR generators are never needed."[206]

c. Commission Determination

96. We find IPPNY/EPSA's forward capacity market proposal to be outside the scope of this proceeding. In the RMR Order, the Commission directed NYISO to submit tariff provisions governing the "retention of and compensation to generating units required for reliability, including procedures for designating such resources, the rates, terms, and conditions for RMR service, provisions for the allocation of costs of RMR service, and a *pro forma* service agreement for RMR service."[207] We find here that NYISO complied with that directive, subject to the conditions discussed above. As the Commission stated in the April Order, "[w]hile the Commission gave NYISO some flexibility as to how it would comply with the Commission's directives, the RMR Order was not intended to

[203] NYISO November 9, 2016 Answer at 20–21 (citing *Consol. Edison Co. of N.Y., Inc.*, 97 FERC ¶ 61,241, at 62,092 (2001); *Entergy Servs., Inc.*, 52 FERC ¶ 61,317 (1990); *La. Power & Light Co.*, 50 FERC ¶ 61,040, at 61,062 (1990)).

[204] *Id.* at 21.

[205] NYTOs November 9, 2016 Answer at 2–3 (citing *Sea Robin Pipeline Co., LLC*, 138 FERC ¶ 61,131, at PP 31–32 (2012); *NorthWestern Corp.*, 113 FERC ¶ 61,215, at P 9 (2005)); New York Commission November 16, 2016 Answer at 2, 4.

[206] NYTOs November 9, 2016 Answer at 3 (quoting April Order, 155 FERC ¶ 61,076 at P 133).

[207] RMR Order, 150 FERC ¶ 61,116 at P 4.

allow or require NYISO to redesign its capacity market to ensure that RMR generators are never needed."[208]

3. IPPNY/EPSA's Gap Solution Process Proposal

a. Protest

97. IPPNY/EPSA argue that the Commission should direct NYISO to modify its Gap Solution process to align it with the proposed RMR process. Specifically, IPPNY/EPSA assert that, if an imminent threat to the reliability of the New York Power System arises that is not caused by a potential generator deactivation, or a reliability need arises in NYISO's biennial reliability planning process that cannot be addressed with a market-based or regulated solution by the need date, a New York State agency or authority may argue that the Gap Solution process grants it unfettered discretion to select a regulated generator or transmission solution to address the reliability need. IPPNY/EPSA contend that, contrary to the Commission's policies in the RMR Order and in Order No. 1000, that New York State agency or authority would be under no obligation to select a generator solution only as a limited, last-resort measure or to ensure that a transmission solution is the more efficient or cost-effective solution.[209] IPPNY/EPSA argue that the fact that this provision was not addressed in past compliance filings concerning, for example, Order No. 1000 "simply reflect[s] an oversight in failing to identify all affected provisions."[210]

98. In addition, IPPNY/EPSA contend that the OATT provides that the costs of non-transmission solutions selected in the Gap Solution process will be recovered "in accordance with the provisions of New York Public Service Law, New York Public Authorities Law, or other applicable state law."[211] According to IPPNY/EPSA, this provision is inconsistent with the Commission's requirement in the RMR Order that NYISO establish cost recovery and cost allocation procedures for RMR generators in NYISO's tariffs.[212] While IPPNY/EPSA acknowledge that this OATT provision also states "[n]othing in this section shall affect the Commission's jurisdiction over the sale

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[208] April Order, 155 FERC ¶ 61,076 at P 133.

[209] IPPNY/EPSA October 25, 2016 Protest at 8–12 (citing Proposed NYISO OATT, Attachment Y, § 31.2.11.5).

[210] *Id.* at 12 n.33.

[211] *Id.* at 12 (quoting NYISO, OATT, Attachment Y, § 31.5.1.6).

[212] *Id.* (citing RMR Order, 150 FERC ¶ 61,116 at P 18).

and transmission of electric energy subject to the jurisdiction of the Commission," they ask that the OATT explicitly state that any contracts or arrangements providing for cost recovery for a generator selected as a Gap Solution must be filed with the Commission.[213]

b. Answers

99. NYISO, NYTOs, and the New York Commission respond that IPPNY/EPSA's proposal is outside the scope of this proceeding because the Commission did not direct NYISO to amend its biennial reliability planning process or the Gap Solution process. Rather, they explain that the April Order required NYISO to address reliability needs arising from generator deactivations and to provide for cost allocation and recovery for solutions to those needs separately from the Gap Solution process.[214] The New York Commission contends that IPPNY/EPSA's proposal is a collateral attack on the April Order that instead should have been raised on rehearing, if at all.[215]

c. Commission Determination

100. We find IPPNY/EPSA's Gap Solution process proposal to be outside the scope of this proceeding. In the April Order, the Commission directed NYISO to propose an "RMR process separate from NYISO's existing Gap Solution process, under which NYISO evaluates and selects solutions to identified reliability needs caused by generator deactivations."[216] The Commission did not require NYISO to revise its existing Gap Solution process, which the Commission noted "pre-existed, and was not modified on compliance with, Order No. 1000."[217]

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[213] *Id.* at 12–13 (quoting NYISO, OATT, Attachment Y, § 31.5.1.6).

[214] NYISO November 9, 2016 Answer at 21–22 (citing April Order, 155 FERC ¶ 61,076 at PP 31, 42, 112); NYTOs November 9, 2016 Answer at 2–3 (quoting April Order, 155 FERC ¶ 61,076 at P 41); New York Commission November 16, 2016 Answer at 2, 5.

[215] New York Commission November 16, 2016 Answer at 5.

[216] April Order, 155 FERC ¶ 61,076 at P 31.

[217] *Id.* P 36 (citing *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059, at PP 37, 248 (2013), *order on reh'g & compliance*, 148 FERC ¶ 61,044, at PP 20, 63, 215 (2014), *order on reh'g & compliance*, 151 FERC ¶ 61,040, at P 16 (2015), *order on reh'g & compliance*, 153 FERC ¶ 61,341 (2015)).

4. Interim RMR Process

a. April Order

101. In the April Order, the Commission accepted NYISO's proposed information requirements for a generator deactivation notice and its proposed APR and owner-developed rate compensation provisions.[218] However, the Commission rejected NYISO's proposed process for soliciting, evaluating, and selecting alternatives to RMR generators, as well as NYISO's proposal to require 365 days' notice before a generator deactivation.[219] With regard to the timeline, the Commission directed NYISO to submit a proposed timeline that reflects the new RMR process directed in the April Order.

b. Request for Clarification

102. NYISO seeks clarification of how it should proceed if it receives a generator deactivation notice in the interim, before the Commission accepts, and NYISO implements, a complete RMR process. NYISO proposes to generally follow the timetable and procedures for evaluating generator deactivation notices that it proposed in its original compliance filing: require deactivating generators to submit complete generator deactivation notices at least 365 days before their proposed deactivation date; require deactivating generators to submit all tariff-required information before NYISO commences review; take up to 90 days to perform reliability assessments; and take up to 120 days to review market power concerns. NYISO contends that this approach is reasonable because NYISO can act within the proposed timeframes. NYISO asks that the Commission confirm that its proposed approach is an appropriate interim approach. NYISO commits to inform the Commission if it receives a generator deactivation notice and identifies a reliability need before it submits its further compliance filing in September.[220]

c. Commission Determination

103. NYISO's request for clarification is rendered moot by our action in this order, in which we accept NYISO's proposed Generator Deactivation Process, subject to minor additional revisions to the OATT and Services Tariff discussed above. Nevertheless, to the extent NYISO has received a generator deactivation notice between the

[218] April Order, 155 FERC ¶ 61,076 at PP 64, 98–101.

[219] *Id.* PP 31–41, 63.

[220] NYISO Request for Rehearing at 15–16.

Commission's issuance of the April Order and this order, we clarify that NYISO's proposed interim process is appropriate.

The Commission orders:

(A) NYISO's compliance filing is hereby accepted, subject to condition, effective October 20, 2015, as requested, as discussed in the body of this order.

(B) The requests for rehearing and clarification of the April Order are hereby granted in part, and denied in part, as discussed in the body of this order.

(C) NYISO is hereby directed to submit a further compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.