171 FERC ¶ 61,082
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

New York Independent System Operator, Inc. Docket No. ER20-1105-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued April 30, 2020)

1. On February 27, 2020, pursuant to section 205 of the Federal Power Act (FPA),[1] and Part 35 of the Commission's regulations,[2] the New York Independent System Operator, Inc. (NYISO) proposed revisions to its Open Access Transmission Tariff (OATT) and to its Market Administration and Control Area Services Tariff (Services Tariff) to implement enhancements to better integrate its Generator Deactivation Process with its Reliability Planning Process. Specifically, NYISO proposes to establish a Short-Term Reliability Process that would use quarterly Short-Term Assessment of Reliability (STAR) studies to simultaneously evaluate the reliability impacts of both generator deactivations and other changes that may affect transmission facilities. In this order, we accept NYISO's filing, effective May 1, 2020, as requested.

I. Background

2. On February 19, 2015, the Commission instituted a proceeding pursuant to section 206 of the FPA[3] to direct 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

[1] 16 U.S.C. § 824d (2018).

[2] 18 C.F.R. pt. 35 (2019).

[3] 16 U.S.C. § 824e (2018).

pro forma agreement for RMR service.[4] As a result, NYISO established its Generator Deactivation Process. Relevant here, under the current NYISO OATT, the Generator Deactivation Process begins either when an owner submits a Generator Deactivation Notice[5] for its generator, or when a generator enters an ICAP Ineligible Forced Outage.[6] Owners must submit Generator Deactivation Notices at least 365 days prior to their planned deactivation date. Once NYISO determines that a Generator Deactivation Notice is complete, NYISO conducts a resource-specific assessment within 90 days to determine if the proposed deactivation is expected to cause a Generator Deactivation Reliability Need.[7] NYISO will conclude the Generator Deactivation Process either if no Generator Deactivation Reliability Need will arise as a result of the deactivation or if NYISO determines that any identified need can be addressed in NYISO's longer-term Reliability

[4] *N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,116, at P 3 (2015), *order on reh'g & compliance*, 155 FERC ¶ 61,076 (2016), *order on reh'g & compliance*, 161 FERC ¶ 61,189 (2017), *order on reh'g*, 163 FERC ¶ 61,047 (2018), *order on compliance*, 166 FERC ¶ 61,203 (2019); *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER16-120-008 (Sept. 27, 2019) (delegated order).

[5] A Generator Deactivation Notice is the form set forth in section 38.24 that a generator owner submits to NYISO that initiates the Generator Deactivation Process. NYISO, NYISO Tariffs, OATT, Attach. FF, 38.1-38.10 (3.0.0), § 38.1; NYISO Transmittal at 5.

[6] An ICAP Ineligible Forced Outage is: "The outage state of a Market Participant's Generator after: i) the expiration or termination of its Forced Outage pursuant to the provisions in Section 5.18.1.6 of this Services Tariff, which Forced Outage started on or after May 1, 2015; ii) the Market Participant voluntarily reclassified its Forced Outage pursuant to the provisions in Section 5.18.2.1 of this Services Tariff, which Forced Outage started on or after May 1, 2015; or iii) substantial actions have been taken, such as dismantling or disabling essential equipment, which actions are inconsistent with an intention to return the Generator to operation and the Energy market. A Generator in an ICAP Ineligible Forced Outage is subject to the return-to-service provisions in Section 5.18.4 of this Services Tariff and is ineligible to participate in the Installed Capacity market." NYISO, NYISO Tariffs, Services Tariff, 2.9 MST Definitions – I (27.0.0).

[7] A Generator Deactivation Reliability Need is: "A condition identified by [NYISO] in a Generator Deactivation Assessment as a violation or potential violation of one or more Reliability Criteria and applicable local criteria." NYISO, NYISO Tariffs, OATT, Attach. FF, 38.1-38.10 (2.0.0), § 38.1.

Planning Process because the reliability need will not materialize in the short term. In this case, the generator can deactivate before the expiration of the 365-day notice period.

3. However, if the deactivation will cause a Generator Deactivation Reliability Need that cannot be addressed in the Reliability Planning Process, NYISO will solicit alternatives to entering into an RMR agreement with the deactivating generator. Under this process, NYISO may require the deactivating generator to continue operating temporarily as an interim service provider until NYISO selects a solution to the reliability need, with compensation for RMR service provided as early as day 181 of the notice period.[8] If NYISO determines that the deactivation will cause a Near-Term Generator Deactivation Reliability Need, defined as a reliability need that "will arise within three years of the conclusion of the 365 days that follow" the generator's completion of its Generator Deactivation Notice,[9] NYISO may solicit a regulated, non-generation solution solely from a Responsible Transmission Owner.[10]

II. NYISO's Filing

4. NYISO asserts that its current practice of performing resource-specific assessments of generator deactivations on an ad hoc basis is inefficient, especially when NYISO receives several Generator Deactivation Notices within a short time frame. NYISO adds that the ad hoc nature of the assessment process also makes it difficult for NYISO and the transmission owners to anticipate, schedule, and staff the required reliability studies.[11] To address these inefficiencies, NYISO proposes to establish a Short-Term Reliability Process that will expand its Generator Deactivation Process into a single, more efficient and comprehensive process that will also integrate

[8] NYISO, NYISO Tariffs, OATT, Attach. FF, 38.1-38.10 (2.0.0).

[9] *Id.* § 38.1.

[10] *Id.* § 38.3.6. A Responsible Transmission Owner is: "The Transmission Owner or Transmission Owners designated by [NYISO], pursuant to Section 31.2.4.3, to prepare a proposal for a regulated backstop solution to a Reliability Need or to proceed with a regulated solution to a Reliability Need. The Responsible Transmission Owner will normally be the Transmission Owner in whose Transmission District [NYISO] identifies a Reliability Need and/or that owns a transmission facility on which a Reliability Need arises." NYISO, NYISO Tariffs, OATT, Attach. Y, 31.1 (24.0.0), § 31.1.1.

[11] NYISO Transmittal at 7-8.

with NYISO's longer-term Reliability Planning Process.[12] The Short-Term Reliability Process will simultaneously evaluate the reliability impacts of both generator deactivations and other short-term reliability concerns that may affect transmission facilities.[13]

5. NYISO explains that as part of the Short-Term Reliability Process, NYISO will conduct STAR studies on a quarterly basis (to be completed within 90 days) that look forward five years from the start date of the study.[14] According to NYISO, the STAR studies will focus on system needs that are expected to arise in the first three years of the study period. NYISO states that reliability needs that NYISO identifies in a STAR study—Short-Term Reliability Process Needs—will include both any Generator Deactivation Reliability Needs,[15] as in the current Generator Deactivation Process, as well as any other violations or potential violations of one or more reliability criteria on

[12] NYISO proposes to define the Short-Term Reliability Process as "[t]he process set forth in . . . Attachment FF by which [NYISO] evaluates and addresses the reliability impacts resulting from both: (i) Generator Deactivation Reliability Need(s), and/or (ii) other Reliability Needs on the [bulk power transmission facilities] that are identified in a STAR." NYISO, NYISO Tariffs, OATT, Attach. FF, 38.1-38.10 (3.0.0), § 38.1.

[13] NYISO Transmittal at 6-7.

[14] NYISO proposes to define Short-Term Assessment of Reliability (STAR) as NYISO's "assessment, in coordination with the Responsible Transmission Owner(s), of whether a Short-Term Reliability Process Need will result from a Generator becoming Retired, entering into a Mothball Outage, a Generator being unavailable due to an ICAP Ineligible Forced Outage, or from other changes to the availability of Resources or to the New York State Transmission System." NYISO, NYISO Tariffs, OATT, Attach. FF, 38.1-38.10 (3.0.0), § 38.1.

[15] NYISO proposes to revise the definition of Generator Deactivation Reliability Need to read as follows: "A condition identified by [NYISO] in a STAR or a Generator Deactivation Assessment as a violation or potential violation of one or more Reliability Criteria and applicable local criteria. Violations and potential violations identified in a STAR are only Generator Deactivation Reliability Needs if the need can be resolved, in whole or in part, by the continued availability or operation of an Initiating Generator. A Generator Deactivation Reliability Need is a type of Short-Term Reliability Process Need." *Id.*

the transmission system over the five-year study period.[16] NYISO asserts that it will have the ability to address Short-Term Reliability Process Needs that arise in year four or five of the study period in either the Short-Term Reliability Process or in the longer-term Reliability Planning Process, and will address any such reliability needs that arise after year five of the study period in the Reliability Planning Process.[17] NYISO explains that if the retention of one or more of the deactivating generator(s) included in the STAR study would resolve, in whole or in part, a Short-Term Reliability Process Need, then the need is a Generator Deactivation Reliability Need. NYISO asserts that the identification of Generator Deactivation Reliability Needs may determine whether a deactivating generator will be permitted to deactivate prior to the conclusion of the 365-day notice period, or if the generator will instead be temporarily required to continue operating as an interim service provider. In addition, NYISO explains that Generator Deactivation Reliability Needs that arise on local transmission facilities must be resolved in the Short-Term Reliability Process, and only the Responsible Transmission Owner is permitted to propose a regulated transmission solution to address such local reliability needs.[18]

6. NYISO states it will conclude the Short-Term Reliability Process if it does not identify a Short-Term Reliability Process Need in the STAR study or if it determines that all identified needs will be addressed in the Reliability Planning Process. On the other hand, NYISO explains that if it identifies a Short-Term Reliability Process Need in the STAR study (that is not a Near-Term Reliability Need, as discussed below), then NYISO will issue a solicitation for transmission solutions to that reliability need and invite generators that are currently in an outage state to return to service to address the identified Short-Term Reliability Process Need.[19] According to NYISO, the proposed revisions will provide consistency in the competitive evaluation and selection of

[16] NYISO Transmittal at 6, 8. NYISO states that STAR studies will assess the reliability impacts of generator deactivations on transmission facilities, and the impacts on transmission facilities of adjustments to load forecasts, delays in completion of planned upgrades, long duration transmission facility outages, and other system topology changes. *Id.* at 8.

[17] *Id.* at 6-7.

[18] *Id.* at 9.

[19] *Id.* at 10.

transmission projects to meet all reliability needs in New York and will also ensure that NYISO's processes remain consistent with Order Nos. 890[20] and 1000.[21]

7. NYISO proposes to expand its existing Near-Term Generator Deactivation Reliability Needs process to apply to all Short-Term Reliability Process Needs that arise within the applicable three-year period. NYISO defines this expanded category as Near-Term Reliability Needs.[22] NYISO states that its proposed Near-Term Reliability Need process requirements are the same as those that currently apply to Near-Term Generator Deactivation Reliability Needs. This means that, for Near-Term Reliability Needs identified in a STAR study for which NYISO determines that there is inadequate time to conduct a solicitation for competitive transmission solutions, NYISO will designate the Responsible Transmission Owner as the sole entity to provide a regulated transmission solution for that Near-Term Reliability Need.[23] NYISO contends that its proposed Near-Term Reliability Needs process appropriately balances the need to avoid delays in addressing time-sensitive reliability needs with the Commission's interest in removing barriers to permit non-incumbent transmission developers to propose and be selected to construct alternative solutions. NYISO states that, to date, it has neither identified a Near-Term Generator Deactivation Reliability Need, nor designated a Responsible

[20] *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[21] *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, 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). NYISO Transmittal at 12-13.

[22] NYISO proposes to define a Near-Term Reliability Need as "A Generator Deactivation Reliability Need that [NYISO] determines will arise within three years of the conclusion of the 365 days that follow the Short-Term Assessment of Reliability Start Date, or a Short-Term Reliability Process Need that is not a Generator Deactivation Reliability Need that [NYISO] determines will arise within three years of the posting of the STAR in which the need is identified." NYISO, NYISO Tariffs, OATT, Attach. FF, 38.1-38.10 (3.0.0), § 38.1.

[23] NYISO Transmittal at 8, 17-18.

Transmission Owner to build a solution to any reliability needs identified in the Generator Deactivation Process or in the Reliability Planning Process.[24]

8. NYISO contends that, as with its existing Near-Term Generator Deactivation Reliability Need process, its proposed Near-Term Reliability Need process complies with the Commission's five criteria pursuant to which a regional transmission organization or independent system operator (RTO/ISO) can designate a local transmission owner to address an immediate reliability need without commencing a competitive transmission solicitation process.[25] First, NYISO contends that its proposal complies with the Commission's first criterion—that the project "must be needed in three years or less to solve reliability criteria violations—"[26] because the Near-Term Reliability Need will arise within three years of either: (1) the conclusion of the 365-day generator deactivation notice period, consistent with existing OATT section 38.1 (for Near-Term Reliability Needs that are Generator Deactivation Reliability Needs); or (2) NYISO's posting of the STAR study in which the Near-Term Reliability Need is identified (for other Near-Term Reliability Needs). NYISO states that, for Near-Term Reliability Needs that are Generator Deactivation Reliability Needs, the start date for the three-year time period reflects the fact that such a need would arise only after the generator at issue is eligible to deactivate at the conclusion of the 365-day notice period. For Near-Term Reliability Needs that are not Generator Deactivation Reliability Needs, because such needs are not dependent on the date a generator deactivates, NYISO proposes that such needs must arise within three years of NYISO's posting of the STAR study in which the need is identified.[27]

9. NYISO states that it is does not propose any revisions to the existing Near-Term Generator Deactivation Reliability Need process to address either the Commission's second criterion—requiring that an RTO/ISO identify and post an explanation of the reliability violations and system conditions in advance for which there is a time-sensitive need, or third criterion—requiring the process that the RTO/ISO uses to decide whether an immediate need reliability project is assigned to an incumbent transmission owner must be clearly outlined in the OATT and must be open, transparent, and not unduly discriminatory. NYISO contends that the currently effective OATT sections 38.3.6.2.1

[24] *Id.* at 17.

[25] *Id.* at 19.

[26] *Id.* (quoting *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 248 (2013) (PJM Compliance Order)).

[27] *Id.*

and 38.3.6.2.2 comply with the Commission's second and third criteria, respectively.[28] Consistent with the Commission's fourth criterion—requiring that stakeholders be permitted time to provide comments in response to the description in the third criterion and that such comments must be made publicly available—NYISO proposes to insert in OATT section 38.3.6.2.3 a requirement that it publicly post any written comments that it receives on its website.[29] NYISO states that it does not propose any revisions to the existing Near-Term Generator Deactivation Reliability Need process to address the Commission's fifth criterion—requiring that the RTO/ISO must maintain and post a list of prior year designations of all projects in the limited category of transmission projects for which the incumbent transmission owner was designated as the entity responsible for construction and ownership of the project. NYISO contends that currently effective OATT section 38.3.6.2.3 already complies with this criterion.[30]

10. Finally, NYISO states that in addition to achieving NYISO's primary goal of better integrating the Generator Deactivation Process with its other planning processes, NYISO and its stakeholders identified other improvements that could be made to the existing rules that are not directly tied to implementing the Short-Term Reliability Process. For example, NYISO proposes revisions to ensure that the entity with ultimate decision-making authority to decide when a generator will deactivate is required to comply with requirements in the OATT regarding the generator deactivation and outage state rules.[31] NYISO also proposes to exempt from compliance with the generator deactivation component of the Short-Term Reliability Process, generators with a nameplate rating of one MW or less.[32] NYISO further proposes revisions to interim service provider rules to permit temporary retention of step-up transformers and other system protection facilities needed for reliability after a retiring generator is permitted to deactivate.[33] And NYISO proposes enhancements to its monitoring of the progress of solutions to Short-Term Reliability Process Needs.[34]

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[28] *Id.* at 19-20.

[29] *Id.* at 20.

[30] *Id.* at 21.

[31] *Id.*

[32] *Id.* at 22.

[33] *Id.* at 22-23.

[34] *Id.* at 23-24

11. NYISO states that its Management Committee voted unanimously (with one abstention) to recommend that NYISO submit the tariff revisions proposed in this filing to the Commission.[35] NYISO requests that the Commission accept the filing without modification effective May 1, 2020.[36]

III. Notice of Filing and Responsive Pleadings

12. Notice of NYISO's filing was published in the *Federal Register*, 85 Fed. Reg. 12,783 (Mar. 4, 2020), with protests and interventions due on or before March 19, 2020. Timely motions to intervene were filed by Calpine Corporation; NRG Power Marketing LLC; Independent Power Producers of New York, Inc.; NextEra Energy Transmission New York, Inc.; and New York Transco, LLC. The New York State Public Service Commission filed a notice of intervention.

13. The New York Transmission Owners (NYTO)[37] filed a motion to intervene and comments. LSP Transmission Holdings II, LLC (LS Power) filed a timely motion to intervene and protest. On April 3, 2020, NYISO filed an answer to LS Power's protest.

A. NYTOs' Comments

14. The NYTOs support NYISO's filing and state that it will significantly improve the current Generator Deactivation Process, allowing for a more comprehensive and efficient Reliability Planning Process. The NYTOs assert that the quarterly STAR studies will allow for more holistic and systematic quarterly analyses than the ad hoc assessments of generator deactivations that NYISO currently performs. The NYTOs also contend that the Short-Term Reliability Process will align seamlessly with the longer-term Reliability Planning Process. The NYTOs add that the Short-Term Reliability Process will continue to protect reliability as the system faces challenges associated with generator retirements, with the STAR studies also performing a broader analysis to consider other changes that could affect reliability.[38]

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[35] *Id.* at 8.

[36] *Id.* at 47.

[37] New York Transmission Owners consist of Central Hudson Gas and Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Lighting Company; Long Island Power Authority; New York Power Authority; New York State Electric and Gas Corporation; Niagara Mohawk Power Corporation; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

[38] NYTOs Comments at 3-4.

B. LS Power's Protest

15. LS Power argues that NYISO has not demonstrated that its Near-Term Reliability Need process, which is a time-based reliability exemption from its competitive solicitation process, is just and reasonable. LS Power asserts that when the Commission approved similar time-based reliability exemptions in the ISO New England Inc. (ISO-NE), PJM Interconnection, L.L.C. (PJM), and Southwest Power Pool, Inc. (SPP) regions, the Commission explained that it was "'balancing' permitting incumbents to retain a right of first refusal, which the Commission had found unjust and unreasonable, with ensuring that incumbents can meet their reliability needs."[39] LS Power argues that since NYISO has not previously included an exemption from competitive solicitation for short-term reliability needs identified through its regional planning process, NYISO must explicitly demonstrate now that its proposal satisfies this balancing test.[40]

16. LS Power contends that NYISO's proposal would essentially allow a four-year right of first refusal, which is inconsistent with the first criterion that the Commission applied in approving similar exemptions in other RTOs/ISOs. LS Power states, because NYISO defines a Near-Term Reliability Need that is a Generator Deactivation Reliability Need as a need that may arise within three years after the 365-day notice period, the need could arise potentially as long as four years out. LS Power adds that any exemption from competition must be shown to outweigh the benefits of competition. LS Power states that NYISO does not have a time-based right of first refusal as part of its existing Order No. 1000-compliant regional transmission planning process, nor does NYISO cite any examples of when holding a competitive process for a reliability need threatened reliability. LS Power states that NYISO admits in the instant filing that it has not identified a single near-term generator deactivation need under its existing generator deactivation process.[41]

17. LS Power asserts that NYISO also ignores that the Commission has initiated an investigation to determine whether the previously approved three-year time-based exemptions in the other RTOs/ISOs remain just and reasonable and not unduly

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[39] LS Power Protest at 8 (citing *ISO New England Inc.*, 143 FERC ¶ 61,150, at PP 238-239 (2013) (ISO-NE Compliance Order); PJM Compliance Order, 142 FERC ¶ 61,214 at PP 249-250; *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059, at PP 197-198 (2013) (SPP Compliance Order)).

[40] *Id.*

[41] *Id.* at 11-12.

discriminatory or preferential.[42] LS Power further claims that NYISO must address the issues identified in the October 2019 Order to demonstrate that its proposed four-year time-based right of first refusal is just and reasonable.[43] LS Power argues that NYISO's proposed four-year right of first refusal will incentivize short-term planning because it will create an incentive to favor short-term planning to avoid competition, and there is evidence that such exemptions from competition can be overused. According to LS Power, the Commission should continue to incentivize the 10-year planning horizon that it already approved as part of NYISO's planning process.[44]

18. LS Power asks that, if the Commission finds that NYISO has met its burden of establishing that some form of "immediate need exemption" is needed, it condition approval on the inclusion of additional safeguards. In particular, LS Power asks the Commission to require NYISO to: (1) comply with the first criterion (i.e., that the project is needed less than three years from the date the need is identified); (2) affirmatively consider whether it is feasible to open a competitive window prior to moving forward with the incumbent transmission owner's solution; (3) identify any short-term operating procedures available to maintain reliability until a new project can be in-service; (4) include the possibility of a shortened competitive window, similar to PJM's process; and (5) consider the projected in-service date of the potential solution, and if the projected in-service date is beyond three years, it does not qualify as satisfying an immediate need, and there is no reason that the project should default to the incumbent transmission owner.[45]

C. NYISO's Answer

19. In response to LS Power, NYISO contends that its Reliability Planning Process, its existing Generator Deactivation Process, and its proposed Short-Term Reliability Process each establish a strong preference for market-based solutions, and NYISO only considers regulated solutions if sufficient market-based solutions are not available on a timely basis to meet a reliability need. Further, NYISO adds that in its existing Generator Deactivation Process, it can select a generation solution that has a "distinctly higher net

[42] *Id.* at 9 (citing *ISO New England Inc.*, 169 FERC ¶ 61,054, at P 7 (2019) (October 2019 Order)).

[43] *Id.* at 9-10 (citing October 2019 Order, 169 FERC ¶ 61,054 at P 19).

[44] *Id.* at 10-11.

[45] *Id.* 13-14.

present value" than a proposed regulated transmission solution.[46] NYISO argues that it is just and reasonable for it to designate the Responsible Transmission Owner(s) to develop regulated transmission solutions in the tariff-prescribed, limited circumstances to address time-sensitive reliability needs to avoid delays, as NYISO must ensure compliance with all reliability standards. NYISO contends that even a truncated, competitive solicitation and selection process would add months or longer to the timeframe for addressing an identified reliability need, and that the proposal appropriately balances the need to avoid delays in addressing time-sensitive reliability needs with the Commission's interest in removing barriers to permit non-incumbent transmission developers to propose and be selected to construct alternative solutions.[47]

20. With regard to LS Power's proposal that the Commission require NYISO to comply with as-yet unannounced, possible future changes to the Commission's five criteria in proceedings instituted by the October 2019 Order to which NYISO is not party, NYISO asserts that the Commission has not issued an order in any of these proceedings or otherwise changed the five criteria, and all of these proceedings are contested. NYISO contends that its proposed Near-Term Reliability Need process complies with the only set of Commission criteria that exists today, and that the Commission should reject LS Power's attempts to require that NYISO comply with hypothetical future changes in the Commission's requirements.[48]

21. As for LS Power's proposed modifications to NYISO's proposal, NYISO contends that it conducted an extensive stakeholder process to develop just and reasonable Short-Term Reliability Process requirements, including updates to the Near-Term Reliability Need process for Generator Deactivation Reliability Needs. NYISO claims that its proposed requirements create important efficiencies and enhancements to NYISO's reliability planning within the unique circumstances of NYISO's region and rules while also complying with the Commission's existing requirements. NYISO states that it worked with its stakeholders across all sectors to achieve compromises among competing interests to develop rules that obtained broad support with a unanimous vote to submit the tariff revisions.[49]

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[46] NYISO Answer at 7 (citing NYISO, NYISO Tariffs, OATT, Attach. FF, 38.1-38.10 (2.0.0), § 38.10.2.1).

[47] *Id.* at 8.

[48] *Id.* at 10.

[49] *Id.* at 11.

22. According to NYISO, the Commission is required to determine whether NYISO's proposed revisions are just and reasonable, not whether there might be other potential just and reasonable requirements that could be applied.[50] NYISO further asserts that LS Power's proposed modifications are not minor, but rather, would significantly alter NYISO's proposed filing. NYISO argues that this means that the Commission cannot implement these proposed modifications because it lacks the authority to impose a new rate scheme other than that proposed by NYISO in its section 205 filing.[51]

23. With respect to LS Power's first proposed modification, NYISO responds that the proposed Near-Term Reliability Need process complies with the Commission's three-year criterion, and that LS Power is attempting to initiate a section 206 complaint against currently effective tariff language under the guise of a protest. According to NYISO, its Commission-accepted and currently effective Generator Deactivation Process defines a Near-Term Generator Deactivation Reliability Need as a Generator Deactivation Reliability Need that will arise within three years of the conclusion of the 365 days that follow the start of NYISO's assessment of the generator deactivation. NYISO argues that the start date for the three-year time period reflects the fact that a Generator Deactivation Reliability Need will first arise only after a generator is entitled to deactivate at the conclusion of the 365-day notice period, and only applies to Generator Deactivation Reliability Needs. NYISO adds that it does not propose to change this requirement in this filing. NYISO states that, given that NYISO's proposed timeframe for the new category of Near-Term Reliability Needs fully complies with the Commission's first criterion, the Commission should reject LS Power's objection.[52]

24. Next, NYISO avers that the Commission should reject LS Power's proposed modification requiring NYISO to consider using a shortened competitive window consistent with PJM because each region is permitted to develop rules to address the differing concerns of the region, and the Commission did not require, nor has every region adopted, a similar shortened competitive window for their time-sensitive reliability need processes. NYISO explains that developing and implementing a shortened competitive window would provide very limited utility given the small likelihood that a competitive transmission solution, even if such solution was previously

[50] *Id.* (citing *Blumenthal v. FERC*, 552 F.3d 875, 883 (D.C. Cir. 2009); *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007)).

[51] *Id.* at 12 (citing *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017)).

[52] *Id.* at 13.

contemplated, could be solicited, proposed, selected, permitted, and built in time to meet a need identified in a three-year window.[53]

25. NYISO also asks that the Commission reject LS Power's proposed modification to require NYISO to implement interim operating procedures solely to allow competition. NYISO asserts that under both the existing Generator Deactivation Process and the new Short-Term Reliability Process it will review whether any potential reliability need can be addressed through the adoption of alternative operating procedures.[54]

26. Finally, NYISO argues that the Commission should reject LS Power's proposed modification requiring NYISO to only designate the Responsible Transmission Owner to address Near-Term Reliability Needs when the in-service date of the Responsible Transmission Owner's potential solution falls within the three-year time period, regardless of when the need date arises. NYISO answers that the Commission has previously rejected requests to modify the three-year requirement in the Commission's first criterion to reference the in-service date of a proposed solution, rather than the need date, and should uphold its existing precedent that the need date, not a solution's in-service date, must fall within the three-year period.[55]

IV. Discussion

A. Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept NYISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

29. We find that NYISO's proposed revisions to its OATT and Services Tariff to establish a Short-Term Reliability Process are just and reasonable and therefore accept

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[53] *Id.* at 14-15.

[54] *Id*. at 15-16.

[55] *Id.* at 17 (citing *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,033, at P 27 (2018)).

NYISO's filing, effective May 1, 2020, as requested. We agree that NYISO's proposal will enhance and expand its current Generator Deactivation Process into a more efficient and comprehensive Short-Term Reliability Process, allowing NYISO to simultaneously evaluate the reliability impacts of both generator deactivations and other changes that may affect transmission facilities.

30. With regard to NYISO's Near-Term Reliability Need process, the Commission has explained in approving similar exemptions from competition in other RTOs/ISOs that any such exemption must balance the need to remove barriers to nonincumbent transmission development with the need for incumbent transmission owners to meet their reliability needs.[56] The Commission has found that limiting such exemptions "to those reliability projects needed in three years or less to solve a reliability violation strikes a reasonable balance."[57] We find that NYISO's proposal, which revises its existing Near-Term Generator Deactivation Reliability Needs process to apply to all Short-Term Reliability Process Needs that arise within the applicable three-year period (i.e., Near-Term Reliability Needs), appropriately strikes this balance by avoiding delays in addressing time-sensitive reliability needs in the limited circumstances outlined in NYISO's OATT while removing barriers to nonincumbent transmission development where there is adequate time to conduct a solicitation for competitive transmission solutions. We further find that the Near-Term Reliability Need process complies with the Commission's five criteria pursuant to which an RTO/ISO can establish an exemption from competition for transmission facilities that are needed in a short time frame to address reliability needs (i.e., immediate need reliability projects).[58]

31. We agree with NYISO that it complies with the Commission's five criteria. With respect to the second, third, and fifth criteria, we agree with NYISO that its current OATT satisfies these requirements. We also find that NYISO's proposal to insert a requirement in its OATT that it publicly post any written comments that it receives on its website is consistent with the Commission's fourth criterion—requiring that stakeholders be permitted time to provide comments in response to the description in the third criterion and that such comments must be made publicly available. We disagree with LS Power's contention that NYISO has not demonstrated that its proposal complies with the Commission's first criterion from the October 2019 Order—requiring that the reliability

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[56] *E.g.*, ISO-NE Compliance Order, 143 FERC ¶ 61,150 at PP 238-39.

[57] *See id.* P 239; PJM Compliance Order, 142 FERC ¶ 61,214 at P 250; SPP Compliance Order, 144 FERC ¶ 61,059 at P 198.

[58] *See* ISO-NE Compliance Order, 143 FERC ¶ 61,150 at P 236; PJM Compliance Order, 142 FERC ¶ 61,214 at P 248; SPP Compliance Order, 144 FERC ¶ 61,059 at P 196.

project must be needed in three years or less to solve reliability criteria violations. With this proposal, NYISO's Short-Term Reliability Process measures a three-year period for two different types of Near-Term Reliability Needs: (1) Near-Term Reliability Needs that are not Generator Deactivation Reliability Needs (i.e., the expansion of NYISO's existing time-based reliability exemption proposed in this filing), and (2) Near-Term Reliability Needs that are Generator Deactivation Reliability Needs (i.e., NYISO's existing process).

32. With respect to Near-Term Reliability Needs that are not Generator Deactivation Reliability Needs, NYISO proposes to define these needs as those that arise within three years of NYISO's posting of the STAR study in which the need is identified.[59] We find that this proposal complies with the Commission's first criterion because the three-year period begins when NYISO posts the STAR study results in which NYISO identifies the reliability need and there is no associated notice period. With respect to Near-Term Reliability Needs that are Generator Deactivation Reliability Needs, NYISO explains that the three-year period begins at the conclusion of the 365-day generator deactivation notice period. We find that this start date complies with the Commission's first criterion because it reflects the fact that such needs would first arise only after the generator at issue is eligible to deactivate at the conclusion of the 365-day generator deactivation notice period. In other words, there is no reliability need until the generator in question deactivates. Further, given that a generator can withdraw its Generator Deactivation Notice prior to the end of the 365-day notice period, it is appropriate to start counting the three-year period at the conclusion of the 365-day notice period, when NYISO becomes certain that the need will exist.

33. With regard to LS Power's contention that NYISO must address the issues identified in the October 2019 Order to demonstrate that its proposed Near-Term Reliability Needs process is just and reasonable, we note that, although the Commission expressed concerns about the manner in which other RTOs/ISOs may be implementing similar exemptions from competition, we have not made any findings in the proceedings instituted in that order.[60] Therefore, the five criteria outlined by the Commission in orders approving similar exemptions from competition remain the applicable Commission policy to be applied in this proceeding. We find that NYISO's Near-Term Reliability Need process complies with these five criteria.

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[59] NYISO, NYISO Tariffs, OATT, Attach. FF, 38.1-38.10 (3.0.0), § 38.1.

[60] *See* October 2019 Order, 169 FERC ¶ 61,054 at P 1 (instituting proceedings pursuant to section 206 of the FPA directing ISO-NE, PJM, and SPP to respond to questions concerning their time-based exemptions to competition).

34. Finally, we decline to impose the additional requirements that LS Power suggests. As discussed above, we find that NYISO's proposal complies with the five applicable criteria, including the first criterion requiring that the reliability project must be needed in three years or less. With respect to LS Power's remaining requests, we find that these additional requirements are not necessary to render NYISO's proposal just and reasonable.[61]

The Commission orders:

NYISO's filing is hereby accepted, effective May 1, 2020, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[61] *See, e.g.*, *Blumenthal*, 552 F.3d at 883 ("The Supreme Court has repeatedly rejected the argument 'that there is only one just and reasonable rate possible . . . .'").