

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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March 17, 2011

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

Re: Reliability Resource Compensation

Dear Mr. Johnson:

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

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

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

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

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

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

² Id.

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

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

David G. Drexler
Assistant Counsel