

COMMENTS ON THE NYISO'S RELIABILITY RESOURCE COMPENSATION PROPOSAL
SUBMITTED ON BEHALF OF
THE NEW YORK TRANSMISSION OWNERS, LIPA AND NYPA

The following comments on the NYISO's presentation on Reliability Resource Compensation at the joint ESPWG/ICAPWG meeting on December 6, 2011 are submitted on behalf of the New York Transmission Owners, LIPA and NYPA (the NYTOs). These comments are submitted at the request of the NYISO and do not indicate that a decision has been made by the NYTOs, as a group or individually, to support or oppose this or any other proposal to provide out-of-market compensation to a generator needed for reliability. The NYTO comments also address the proposal made by IPPNY on July 18, 2011 and the need for clarification of the objectives of the IPPNY proposal.

Relevant NYISO Tariff Provisions and PSC Rulings

First, it is important to review the existing NYISO tariff provisions for the identification and solution of reliability needs, and relevant New York Public Service Commission rulings, including the Commission's Order Adopting Requirements for Generation Unit Retirements (PSC Retirement Order)¹ and the Commission's Policy Statement on Backstop Project Cost Recovery and Allocation (PSC Policy Statement).² The NYISO should explain the need for its proposal given the existing tariff provisions and PSC rulings and also clarify the relationship of its proposal to these tariff provisions and PSC rulings.

The relevant provisions in Attachment Y of the NYISO's OATT include the following:

Section 31.2.5.9 Gap Solutions

31.2.5.9.1 If the NYISO determines that neither market-based proposals nor regulated proposals can satisfy a reliability need in a timely manner, the NYISO will set forth its determination that a Gap Solution is necessary in the CRPP. The NYISO will also request the Responsible Transmission Owner to seek a Gap Solution. Gap Solutions may include a generation, transmission or demand-side resources.

¹ Case 05-E-0889, December 20, 2005.

² Case 07-E-1507, February 18, 2009.

31.2.5.9.2 If there is an imminent threat to the reliability of the New York power system, the NYISO Board, after consultation with the NYDPS, may request the appropriate Transmission Owner or Transmission Owners to propose a Gap Solution outside the normal planning cycle.

31.2.5.9.3 Upon the NYISO's determination of the need for a Gap Solution, pursuant to either sections 31.2.5.9.1 or 31.2.5.9.2 above, the Responsible Transmission Owner will propose such a solution as soon as reasonably possible, for consideration by the NYISO and the NYDPS.

31.2.5.9.4 Any party may submit an alternative Gap Solution proposal to the NYISO and NYDPS for their consideration. The NYISO shall evaluate all Gap Solution proposals and determine whether they will meet the Reliability Need or imminent threat. The NYISO will report the results of its evaluation to the party making the proposal as well as to the NYDPS and/or other appropriate governmental agency(ies) and/or authority(ies) for consideration in their review of the proposals. The appropriate governmental agency(ies) and/or authority(ies) with jurisdiction over the implementation or siting of Gap Solutions will determine whether the Gap Solution or an alternative Gap Solution will be implemented to address the identified Reliability Need.

Section 31.4.4.3 Costs related to regulated non-transmission reliability projects will be recovered by Responsible Transmission Owners, Transmission Owners and Other Developers in accordance with the New York Public Service Law, New York Public Authorities law, or other applicable state law. ...

PSC Retirement Order

In its Retirement Order, the PSC stated that: "an appropriate regulatory mechanism is needed to address the possibility that generation unit retirements might undermine

electric system reliability and render service unsafe or inadequate" (Retirement Order, p.13). The Commission noted that the six month notice period for larger generators equates with the minimum period that the NYISO indicated as adequate to identify and resolve reliability concerns. The Commission required that generators proposing to retire serve their notice on the PSC Secretary, the NYISO, and any affected T&D utility and that those entities will be involved in conducting an analysis of the impact of a retirement and in devising a solution in the event the retirement adversely affects reliability. The Commission requested that the NYISO notify its market participants of any retirement notices it receives, in order to apprise those potentially-affected parties. The Order stated that if a bulk-system need is identified, the NYISO should request that the responsible T&D utility develop a gap solution, similar to the one envisioned in the CRPP, for consideration by the NYISO and Commission staff. If a local reliability concern is identified, the appropriate T&D utility was expected to coordinate a solution with NYISO and the PSC.

PSC Policy Statement on Backstop Project Cost Recovery and Allocation

In its Policy Statement, the Commission clearly asserted jurisdiction over the cost recovery and cost allocation for non-transmission (i.e., generation and demand response) regulated reliability projects; and rejected proposals that would have placed the cost recovery for such projects under the NYISO's tariff (Policy Statement, pp. 9 & 10).

With respect to the mechanism for cost recovery, the Commission adopted the Model 1 proposal supported by its staff (Model 1 is set forth in the All Parties Report appended to the Policy Statement). Under Model 1, the proponent of a generation or demand-based reliability project would file the project costs with the PSC for recovery authorization. Model 1 also proposed a master contract between project proponent and the beneficiaries of the project as the cost recovery mechanism. The Commission adopted as its policy an approach to cost recovery that is consistent with Model 1, but did not adopt the specific cost recovery mechanism proposed by its staff to the exclusion of all others. The Commission stated that cost recovery mechanisms will be developed depending on the specific circumstances "to allow regulated reliability project costs to be collected in accordance with the Public Service Law in a fair, equitable, an non-discriminatory manner, and with due consideration of existing competitive markets" (Policy Statement, p. 10).

Suggested Revisions to NYISO Proposal

At the outset, we note that the adoption of a forward capacity market would generally provide more advance warning concerning possible resource adequacy needs including potential generator retirements and the need to resolve possible reliability issues.

In view of the current provisions in the NYISO tariff and the PSC rulings, the NYTOs believe that the NYISO has yet to demonstrate that the current Attachment Y process is inadequate and requires revision, *e.g.*, the NYISO has failed to demonstrate the need for compensation during the retirement notice period (we note that there are RTOs that do

not provide supplemental compensation during the notice period). Notwithstanding the foregoing, and in response to the NYISO's request, the NYTOs submit the proposals set forth below to clarify and/or revise the NYISO's proposal for providing compensation during the notice period. In making these comments, we also recommend that that any compensation proposed here be available, but not limit, the supplemental compensation that may be necessary to temporarily keep a generator in operation after the end of the notice period. As noted above, the submission of these comments does not indicate that the NYTOs, as a group or individually, have decided to support or oppose any proposal to provide out-of-market payments to a generator needed for reliability.

- In order to be considered for any out-of- market payment, a generator would have to submit a retirement notice, as required by the PSC Retirement Order.
- The NYISO and the appropriate TO, in consultation with PSC staff, would conduct an analysis of the potential impact of the proposed retirement on the reliability of the NYS power system.
- If the retirement or mothballing of a generator would result in a reliability need, and the generator certifies to the NYISO with appropriate documentation that it is unlikely that it will be able to recover its net going forward costs, the generator may have the opportunity to request out-of-market payments limited to its net going forward costs at least over the course of the retirement notice period. The generator may have the opportunity to request additional out-of-market payment for the period of time subsequent to the retirement notice period
- The appropriate TO and other parties would be able to suggest alternative solutions to the reliability need identified by the NYISO. These solutions would potentially eliminate the need to provide the generator with out-of-market payments .
- Net going forward costs would be specifically defined and would be limited to the costs actually incurred by the generator that it would have avoided if it had retired or been mothballed, net of related expense reductions and revenue increases. It would not include any capital costs except as set forth below. Net going forward costs would be calculated after the conclusion of the retirement notice period. Any revenues in excess of the generator's verifiable going-forward costs would be transferred to the NYISO and credited to the appropriate TO(s) and other LSE's responsible for funding the out-of-market payments.
- Any capital investments that may be required for the generator to operate during the retirement notice period would be clearly identified and quantified and would be considered by the NYISO, the appropriate TO and the PSC staff in determining whether such investments are indeed required in order for the generator to operate during the retirement notice period is appropriate. In addition, all other alternative means for enabling the generator to remain in operation should be exhausted (e.g., temporary relief from environmental regulations).

- A request to the appropriate regulatory agency for authorization to provide the generator with an out-of market-payment would be made jointly by the NYISO and the retiring generator, and supported by NYISO determinations that: (1) the retirement of the generator would cause a reliability problem; (2) the generator is unlikely to recover its going forward costs during the retirement/mothball notice period and an out-of-market payment is justified after considering all relevant circumstances; and (3) the NYISO has identified no better option for securing reliability during the retirement notice period. If the reliability need is a local reliability need, the appropriate TO would be the filing party. As noted above, under the NYISO tariff, cost recovery for a non-transmission regulated reliability project is subject to state law.
- The generator receiving these payments would be required to participate in the ICAP market as a price taker during the relevant period. These generators actually provide capacity, so excluding them from the ICAP market would be inefficient. It would cause the price of ICAP to be higher than it should be, given the amount of capacity being provided, which could lead to the procurement of excessive capacity in the long term, as prices would not fall as much as they should when there is over-supply. It could also expose the market to gaming by giving generator owners an incentive to claim that economically viable units may retire or be mothballed, as misclassifying such units would increase ICAP prices and could boost portfolio revenues without increasing reliability.
- The retiring generator could submit a proposal to serve as a gap or permanent solution to the reliability need, subject to the relevant provisions of Attachment Y, which requires consideration of all solutions, generation, transmission and demand side management.
- At the end of the retirement notice period, the tariff provisions with respect to a gap or permanent reliability solution would be implemented. As currently provided in the Attachment Y, cost recovery for a regulated transmission solution would be under the NYISO tariff, and cost recovery for a non-transmission solution would be in accordance with state law
- NYISO should remove any remaining reference to allocating cost for Reliability Resource Compensation (RRC) payments to existing capacity zones, and instead the costs should be allocated statewide or to applicable Subzone(s) depending on whether the need for the unit arises from bulk or local transmission constraints.

IPPNY Proposal

The NYTOs also would like to comment on the need for IPPNY to clarify the objectives of its proposal. As noted in the NYTO comments on the IPPNY proposal submitted on August 31, 2011, the rationale provided in support of the IPPNY proposal is that a

generator that has given notice of retirement may be forced to operate at a loss during the PSC's retirement notice period. However, the IPPNY proposal is not limited to addressing those circumstances. Instead, it appears that the proposal seeks to establish a right for a generator to make a Section 205 filing with FERC for a cost of service rate, without submitting a retirement notice. Furthermore, the IPPNY proposal does not address the current tariff provisions that provide that cost recovery for a non-transmission regulated reliability project is subject to state law, or the PSC Policy Statement in which the PSC rejected proposals for the recovery of such costs under the NYISO tariff rather than under state law, and reserved the right to determine whether a non-transmission regulated reliability solution should be implemented to address a reliability need identified by the NYISO.

In order for the stakeholder process to intelligently consider the IPPNY proposal, it is necessary for IPPNY to clearly explain its objectives and how those objectives are compatible with the current FERC-approved NYISO tariff provisions and applicable rulings by the PSC.