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Commission**

**Public Service Commission**

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Secretary

Three Empire State Plaza, Albany, NY 12223-1350

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November 16, 2016

**SENT VIA ELECTRONIC FILING**

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Room 1-A209  
Washington, D.C. 20426

Re: Docket No. ER16-120-003 - New York Independent  
System Operator, Inc.

Dear Secretary Bose:

For filing, please find the Motion and Answer of the New York State Public Service Commission in the above-entitled proceeding. The parties have also been provided a copy of this filing, as indicated in the attached Certificate of Service. Should you have any questions regarding the attached, please feel free to contact me at (518) 402-1537.

Very truly yours,

*S. Jay Goodman*

S. Jay Goodman, Esq.

Assistant Counsel

Attachment

cc: Service List

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent                 )         Docket No. ER16-120-003  
System Operator, Inc.                )

**MOTION AND ANSWER OF THE  
NEW YORK STATE PUBLIC SERVICE COMMISSION**

**INTRODUCTION**

The New York State Public Service Commission (NYPSC) hereby seeks leave to answer the Protest filed by Independent Power Producers of New York, Inc. and Electric Power Supply Association (the “Incumbent Suppliers”) on October 25, 2016. The Protest advances numerous arguments in response to the New York Independent System Operator, Inc.’s (NYISO) “Compliance Filing,”<sup>1</sup> which was submitted pursuant to the Federal Energy Regulatory Commission’s (Commission) “Order on Compliance and Rehearing” (April 2016 Order).<sup>2</sup>

With relevance to this Answer,<sup>3</sup> the Incumbent Suppliers recommend that the Commission direct the NYISO to transition the

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<sup>1</sup> Docket No. ER16-120-003, New York Independent System Operator, Inc., Compliance Filing (filed September 20, 2016).

<sup>2</sup> Docket No. ER16-120-000, New York Independent System Operator, Inc., Order on Compliance and Rehearing (issued April 21, 2016) (April 2016 Order).

<sup>3</sup> The NYPSC’s Answer addresses a limited set of arguments advanced by the Incumbent Suppliers, and should not be

capacity market to a Forward Capacity Market (FCM) structure, and expand the scope of pending issues to include an extensive re-examination of the NYISO's Gap Solution process. As described below, both recommendations are outside the scope of the April 2016 Order and the Compliance Filing, and should therefore be rejected. Although an FCM is outside the scope of this proceeding, the NYPSC shares IPPNY's interest in improving the existing market structure and is prepared to work with stakeholders to evaluate and consider alternative market structures.

The Incumbent Suppliers also argue that retiring generators should begin receiving out-of-market compensation when the NYISO completes its system reliability evaluation and finds that the retirement would create a system reliability need. As described below, this proposal would increase the out-of-market subsidies flowing into an otherwise-competitive market, without securing any corresponding reliability benefit. The proposal, therefore, should be denied.

**MOTION FOR LEAVE TO ANSWER**

The NYPSC hereby submits this Motion for Leave to Answer and Answer, in response to the Incumbent Suppliers'

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interpreted as agreement with, or consent to, any other arguments not addressed herein.

Protest, pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure.<sup>4</sup> For the reasons detailed herein, the NYPSC requests that the Commission grant this Motion in order to consider the Answer, which responds to certain arguments advanced by the Incumbent Suppliers that are outside the scope of the April 2016 Order and the Compliance Filing.<sup>5</sup> This Answer also explains why the Incumbent Generators' proposal to begin compensating retiring generators on the date the NYISO completes the system reliability study and determines that there will be a reliability need should be rejected. Although answers to protests are generally discouraged, the Commission has accepted answers, similar to those provided here by the NYPSC, because they clarify and contribute to full and complete record, and provide information that will assist the Commission in its decision making process.<sup>6</sup>

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<sup>4</sup> 18 C.F.R. §385.212 and 385.213.

<sup>5</sup> The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

<sup>6</sup> See, e.g., Entergy Louisiana, LLC, 156 FERC ¶61,146 (issued August 31, 2016) at P5, 15 (accepting an Answer to a Motion for Leave to Answer because it provides information that assisted the Commission in its decision-making process); see also Michigan Electric Transmission Company, 156 FERC ¶61,025 (issued July 8, 2016) at P6, 14; Midcontinent Independent System Operator, Inc., 155 FERC ¶61,130 (issued May 3, 2016) at P7, 25.

**ANSWER**

**I. THE COMMISSION SHOULD REJECT THE INCUMBENT SUPPLIERS' REQUEST TO IMPLEMENT AN FCM BECAUSE IT IS OUTSIDE THE SCOPE OF THIS PROCEEDING**

The Incumbent Suppliers request that the Commission order the NYISO to develop and implement an FCM in New York.<sup>7</sup> They claim that an FCM would yield various benefits, including a reduced (but not eliminated) need for Reliability Must Run (RMR) Agreements or other regulated solutions.

The Commission should reject the Incumbent Suppliers' request to implement an FCM because it exceeds the scope of issues identified in the Commission's April 2016 Order. The April 2016 Order did not direct the NYISO to take any action relevant to the consideration of an FCM.

Although an FCM is outside the scope of this proceeding, the NYPSC shares IPPNY's interest in improving the existing market structure. The NYPSC welcomes the opportunity to work with IPPNY, the NYISO, and other interested stakeholders to evaluate and consider alternative approaches and solutions to address this critical issue.

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<sup>7</sup> Incumbent Suppliers Protest at 4-7.

**II. THE COMMISSION SHOULD REJECT THE INCUMBENT SUPPLIERS' REQUEST TO MODIFY THE NYISO'S GAP SOLUTION PROCESS BECAUSE IT IS OUTSIDE THE SCOPE OF THIS PROCEEDING**

The Incumbent Suppliers argue that separating the Generator Deactivation Process and the Gap Solution Process into separately-defined tariff sections "exposes inconsistencies in the two processes."<sup>8</sup> According to the Incumbent Suppliers, the NYISO should be directed to modify the Gap Solution process to eliminate the purported inconsistencies.

This recommendation is outside the scope of issues addressed by the April 2016 Order and presented in the NYISO's Compliance Filing. In its April 2016 Order, the Commission directed the NYISO to submit further tariff revisions that separate the RMR process from the Gap Solution process. The Commission, however, did not direct the NYISO to revise the Gap Solution process beyond making this specific change. The Incumbent Suppliers, therefore, inappropriately seek to expand the obligations that the April 2016 Order imposed on the NYISO. Given that the Commission did not direct the NYISO to make any other change to the Gap Solution process, the Incumbent Suppliers' recommendation amounts to a collateral attack on the April 2016 Order that instead should have been raised on rehearing, if at all. Consequently, the Commission should

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<sup>8</sup> Incumbent Suppliers' Protest at 11.

reject the Incumbent Suppliers' recommendation to expand this proceeding by ordering modifications to the Gap Solution process, as any such modifications were not anticipated in the April 2016 Order and may have unconsidered, adverse impacts on stakeholders.

**III. THE COMMISSION SHOULD REJECT THE INCUMBENT SUPPLIERS' PROPOSAL TO ACCELERATE THE START OF RMR GENERATOR COMPENSATION BECAUSE IT IGNORES LOWER-COST ALTERNATIVES**

The Incumbent Suppliers argue that retiring generators should begin receiving compensation when the NYISO has completed its system reliability study and determined that the unit is needed for reliability purposes.<sup>9</sup> Under the Incumbent Suppliers' proposal, retiring generators might begin receiving out-of-market compensation as early as 90 days after submitting a retirement notice.<sup>10</sup>

The Commission should reject the Incumbent Suppliers' proposal, whereby retiring generators would begin receiving out-of-market compensation before the NYISO has begun considering alternative options for reliability support services. Such premature compensation would increase the out-of-market payments entering otherwise-competitive markets, despite the possibility that a less expensive alternative potentially may be identified

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<sup>9</sup> Incumbent Suppliers' Protest at 19-20.

<sup>10</sup> Id.

and implemented relatively quickly. Under the NYISO's proposal, in contrast, the retiring generator would have to wait only an additional 90 days to begin receiving out-of-market compensation for providing reliability support services, if it actually is needed for such purpose and there is no lower-cost alternative available.

This timing aligns with current NYPSC policy. Generators with a capacity of 80 MW or greater must currently notify the NYPSC at least 180 days before the date of a proposed retirement.<sup>11</sup> Although multiple generation retirements have precipitated the need for out-of-market RMR payments during the 11 years since the NYPSC instituted this policy, no payments were made substantially before the 180-day notice period ended and there has never been an instance in which the retiring unit could not continue operating for at least 90 days without extra-market compensation. Given that the reliability need in such instances is caused only by the planned retirement, and in light of current expectations that RMR payments would not begin until the 180-day notice period expires, it is reasonable for the retiring unit to operate without extra-market payments for a short 180-day period while the NYISO examines alternative

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<sup>11</sup> Case 05-E-0889, Generation Unit Retirements, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005) at 15. Units with a capacity less than 80 MW must provide at least 90 days written notice. (Id.)



solutions. The generator should incorporate the 180-day notice period into its retirement planning process and issues its retirement notice sufficiently in advance of its intended retirement to account for the 180-day period.

### **CONCLUSION**

For the reasons described above, the NYPSC respectfully urges the Commission to grant the NYPSC's Motion for Leave to Answer, and to include the NYPSC's Answer in the official record. This Answer explains that the Incumbent Suppliers' proposals to transition the NYISO capacity market to an FCM structure and to commence a re-examination of the NYISO's Gap Solution process are outside the scope of issues that the April 2016 Order directed the NYISO to address in its Compliance Filing. The Answer also explains that accelerating the start of out-of-market compensation to retiring generators is unjustified and, if approved, would increase subsidies flowing into the

otherwise-competitive market without securing any increase in system reliability.

Respectfully submitted,

*/s/ Paul Agresta*

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Dated: November 16, 2016  
Albany, New York

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: Albany, New York  
November 16, 2016

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