

market power assessments of deactivation notices and to make such revisions effective October 20, 2015.

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, Independent Power Producers of New York, Inc. (“IPPNY”) hereby answers Entergy Nuclear’s clarification request. To the extent necessary, IPPNY also moves to answer Entergy Nuclear’s rehearing request and its clarification request.⁵ In light of the fact that the Indian Point generator deactivation process is well underway, the Commission should expeditiously issue an order granting Entergy Nuclear’s clarification request that the NYISO must perform its final market power assessment with respect to Indian Point’s deactivation notice by no later than March 13, 2018. To provide certainty to the generator industry in New York and avoid future disputes, the Commission should clarify that the 120-day deadline for the NYISO to perform a final market power assessment applies to all generator deactivation notices effective October 20, 2015.

⁵ Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), states that “[a]n answer may not be made to . . . a request for rehearing, unless otherwise ordered by the decisional authority.” Rule 213(a)(3), 18 C.F.R. § 385.213(a)(3), states, however, that “[a]n answer may be made to any [other] pleading” not prohibited under Rule 213(a)(2). Entergy Nuclear’s request for clarification seeks affirmative relief in the form of confirmation of certain Commission determinations in the Second Compliance Order, not reversal of a specific ruling made therein. Therefore, it falls within the “other pleading” category to which answers are expressly permitted under Rule 213 of the Commission’s Rules of Practice and Procedure. The Commission has permitted answers under similar circumstances. *See, e.g., Transcontinental Gas Pipe Line Corp.*, 127 FERC ¶ 61,122 at P 14 (2009); *Columbia Gas Transmission*, 126 FERC ¶ 61,213 at P 8 (2009); *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030 at P 12 (2009). The Commission should also accept IPPNY’s answer to the clarification and rehearing requests because it will lead to a more accurate and complete record and will assist the Commission in its decision-making process. *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,137 (2017); *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,099 (2014); *Texas Eastern Transmission LP et al.*, 130 FERC ¶ 61,111 (2010).

I. THE COMMISSION SHOULD RULE THAT THE NYISO IS REQUIRED TO PERFORM THE FINAL MARKET POWER ASSESSMENT WITH RESPECT TO THE INDIAN POINT DEACTIVATION NOTICE BY MARCH 13, 2018.

In its initial order in Docket No. EL15-37, issued on February 19, 2015, the Commission directed the NYISO to establish provisions governing the deactivation process for generators in New York and the retention of and compensation to generators that wish to deactivate but are required to provide service to maintain reliability, commonly referred to as “reliability must run” (“RMR”) service.⁶ In response to the RMR Order, the NYISO filed, on October 19, 2015, a proposed process that would require a generator seeking to deactivate to provide the NYISO with 365-days’ prior notice.⁷ The NYISO proposed detailed information requirements and a series of deadlines by which it would process generator deactivation notices between the date that the deactivation notice is filed and 365 days from the date the NYISO determines the notice is complete. Among other deadlines, the NYISO proposed in its filing letter that it would complete market power assessments for generators in Mitigated Capacity Zones within the first 120 days from the date of the completed deactivation notice.⁸

In its answer to protests of the NYISO’s First Compliance Filing, which challenged the 365-day notice period, the NYISO defended the market power assessment aspect of its proposed notice period as critical for both the NYISO and the generators seeking to deactivate their facilities, emphasizing that “[t]his analysis must be performed at the start of the process to provide transparency regarding potential penalties that the Generator could be subject to if it were to

⁶ *New York Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,116 (2015) (“RMR Order”).

⁷ *New York Indep. Sys. Operator, Inc.*, Docket Nos. ER16-120-000 et al., Compliance Filing (Oct. 19, 2015), at 7 (“First Compliance Filing”).

⁸ *See id.* at 16.

deactivate and to enable the NYISO to address any market power concerns.”⁹ Thus, the NYISO established that it would perform this analysis to determine whether a Generator’s proposed deactivation “raises market power concerns or constitutes conduct inconsistent with competitive behavior promptly following a Generator’s submission of its completed Generator Deactivation Notice.”¹⁰ In its order on the First Compliance Filing, the Commission accepted the NYISO’s proposed market power assessment review deadlines, effective October 20, 2015.¹¹

Prior to filing its Second Compliance Filing, the NYISO requested that the Commission clarify how it should process deactivation notices.¹² Specifically, in light of the October 20, 2015 effective date, the NYISO asked the Commission to rule that the NYISO must apply, *inter alia*, the 90-day deadline and the 120-day deadline to its reliability assessment and any necessary market power assessments, respectively, consistent with the process proposed in its Initial Compliance Filing and accepted by the Commission in the Initial Compliance Order (the “Interim Process”).¹³ Thereafter, in its Second Compliance Order, the Commission accepted the NYISO’s proposed generator deactivation process without modifying the deadlines accepted in the Initial Compliance

⁹ *New York Indep. Sys. Operator, Inc.*, Docket Nos. ER16-120-000 et al., Request for Leave to Answer and Answer of New York Independent System Operator, Inc. (Dec. 21, 2015) at 27 & n.86 (further stating that the NYISO’s willingness to revise its tariff to allow a generator to deactivate earlier if its reliability assessment identified no system needs was “one more reason the NYISO will need a Generator’s information at the start of the process”) (“December 21, 2015 Answer”).

¹⁰ *Id.* at 27.

¹¹ *New York Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,076 (2016) (“Initial Compliance Order”). While the Commission rejected the NYISO’s proposed 365-day notice period in its Initial Compliance Filing because the Commission required the generator deactivation process to be separated from the NYISO’s gap solution process in its tariff, the Commission accepted the information and other requirements placed on generators, finding that they were “consistent with NYISO’s responsibility to monitor its markets and competitive behavior,” and further established that aspects of the Initial Compliance Order that the Commission did not discuss in its order were also accepted. *Id.* at PP 15, 64.

¹² *New York Indep. Sys. Operator, Inc.*, Docket Nos. ER16-120 et al., Request for Rehearing and Clarification of the New York Independent System Operator, Inc. (May 23, 2016) (“NYISO Clarification Request”).

¹³ *Id.* at 15–16.

Order.¹⁴ While stating that its determinations rendered the NYISO's request for clarification moot, the Commission nevertheless further ruled that the "NYISO's proposed [I]nterim [P]rocess is appropriate."¹⁵

As Entergy Nuclear stated in its Request, it filed its Request out of an abundance of caution because, upon review of the NYISO tariff, it was discovered the 120-Day Deadline is not codified therein. At this stage, the NYISO has issued its reliability assessment for the Indian Point Generator Deactivation Notice, confirming there are no reliability needs for Indian Point's continued operation.¹⁶ Thus, the market power assessment, which the NYISO established to the Commission in its December 21, 2015 Answer is a component of the deactivation process that must be completed within the first 120-day period to provide transparency and certainty, is the only remaining aspect of the NYISO's analysis, if deemed necessary. As demonstrated above and in Entergy Nuclear's Request, the Commission should expeditiously clarify that, based on the Commission's determinations in its Compliance Orders as further supported by its ruling in the Second Compliance Order granting the NYISO's requested clarification concerning the Interim Process, the NYISO must complete the final market power assessment for Indian Point by March 13, 2018.

¹⁴ See generally Second Compliance Order.

¹⁵ *Id.* at P 103.

¹⁶ The NYISO completed the reliability assessment prior to the end of the 90-day period. See Generator Deactivation Assessment: Indian Point Energy Center, NYISO (Dec. 13, 2017), http://www.nyiso.com/public/webdocs/media_room/press_releases/2017/Child-Indian-Point-Energy-Center-Retirement-Analysis/Indian_Point_Generator_Deactivation_Assessment_2017-12-13.pdf.

II. THE COMMISSION SHOULD RULE THAT THE NYISO MUST PERFORM A FINAL MARKET POWER ASSESSMENT WITH RESPECT TO ALL GENERATOR DEACTIVATION NOTICES FOR GENERATORS IN MITIGATED CAPACITY ZONES BY THE 120-DAY DEADLINE.

As discussed in Point I and in Entergy’s Nuclear’s Request, the Indian Point deactivation notice was deemed complete prior to the issuance of the Second Compliance Order and is clearly subject to the NYISO’s proposed Interim Process that the Commission determined in its Second Compliance Order to be “appropriate.” The Commission could certainly grant Entergy Nuclear’s Request on this ground alone. However, doing so would overlook the fact the Commission also accepted the 120-day deadline in its Compliance Orders for the NYISO’s market power assessments of generators in Mitigated Capacity Zones and would leave uncertain the NYISO’s treatment of other deactivation notices notwithstanding the October 20, 2015 effective date set in the Compliance Orders. The NYISO would have no deadline to complete any necessary market power assessments for these deactivation notices short of the 365-day outside date to complete the generator deactivation process itself. This result indisputably would be contrary to the fundamental purpose of the Commission’s RMR Order, which was to provide certainty for resources with respect to the rules governing deactivation to ensure the reliable and efficient operation of the grid and the market.¹⁷

Without a clear deadline on when the NYISO must perform the final market power assessment, a generator owner will have difficulty planning when its generator will be able to deactivate. While a generator owner could deactivate its generator once the NYISO has

¹⁷ RMR Order at P 3 (“The uncertainty created for resources by the lack of clear tariff provisions has the potential to exacerbate the very concerns an RMR service is meant to address – ensuring the continued reliable and efficient operation of the grid, and of NYISO’s markets.”).

determined that it is not needed to maintain reliability and the NYISO has completed its administrative processes, a generator owner may be unlikely to risk deactivating prior to receiving a statement from the NYISO that its deactivation is not an exercise of market power subject to penalties. The NYISO's completion of the final market power assessment may effectively operate as a bar on a generator's deactivation, which is entirely contrary to the Commission's goal that generator owners know with certainty when they can deactivate their resources.

Moreover, the NYISO agreed that there should not be uncertainty with respect to the completion of the market power assessment. The NYISO itself established that the market power assessment must be performed within the first 120 days from the deactivation notice to ensure that generators can reasonably assess their exposure to potential penalties and the NYISO can address any market power concerns. The NYISO assured the Commission that it had the capability to complete the assessment in the first four months after receiving a completed generator deactivation notice, "which is why it proposed [this time frame] in the first place."¹⁸ The NYISO should be held to its assurance.

Thus, the Commission should clarify that it accepted the NYISO's proposed 120-Day Deadline to perform the final market power assessment for deactivating generators in Mitigated Capacity Zones in its Compliance Orders effective October 20, 2015 and that such deadline shall apply to all deactivation notices filed thereafter. In the alternative, the Commission should grant Entergy Nuclear's request for rehearing and rule that the NYISO's tariff is unjust and unreasonable unless it includes a 120-Day Deadline and direct the NYISO to modify its tariff accordingly.

¹⁸ NYISO Clarification Request at 15.

III. CONCLUSION

For the foregoing reasons, the Commission should issue an order expeditiously granting Entergy Nuclear's clarification request that the NYISO must perform the final market power assessment with respect to Indian Point's Generator Deactivation Notice by no later than March 13, 2018. The Commission should also rule that the 120-Day Deadline for the NYISO to perform a final market power assessment applies to all generator deactivation notices submitted to the NYISO effective October 20, 2015.

Dated: January 2, 2018

Respectfully submitted,

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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 at Albany, NY, January 2, 2018.

By: David B. Johnson
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