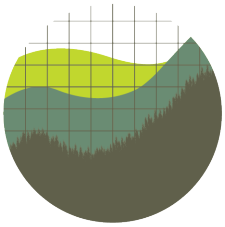

Institute *for*
Policy Integrity
NEW YORK UNIVERSITY SCHOOL OF LAW

August 21, 2020

Hon. Michelle L. Phillips
Acting Secretary
Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

VIA ELECTRONIC SUBMISSION

Attn.: Case 19-E-0530 – Proceeding on Motion of the Commission to Consider Resource Adequacy Matters

Subject: Institute for Policy Integrity Comments in response to Brattle Group analyses presented at July 10, 2020 technical conference on resource adequacy

Dear Acting Secretary Phillips:

The Institute for Policy Integrity at New York University School of Law[1] (Policy Integrity) appreciates the opportunity to submit these comments to the New York Public Service Commission (Commission) in response to the analyses presented by The Brattle Group at the Commission's July 10, 2020 technical conference in the above-captioned proceeding. Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.

We are grateful for your consideration of the attached comments.

Sincerely,

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[1] This document does not purport to present the views of New York University School of Law.

Policy Integrity's Comments on Brattle Group Resource Adequacy Analyses

The resource adequacy scenario analysis developed by The Brattle Group (Brattle) presents several important insights about the options (Brattle calls them "Structures") available to New York as it considers how best to meet its electricity generating capacity and resource adequacy needs. However, Policy Integrity encourages the Commission to consider several things that Brattle's analysis does not examine in depth before deciding how to proceed. In particular, Policy Integrity recommends that the Commission do as follows:

- Ask Brattle to examine and, if possible, quantify important outcomes of applying different Structures, such as emissions and transaction costs, which Brattle's analysis does not explore;
- Be especially cautious about pursuing the joint-capacity and renewable energy credit market approach presented by Brattle as Structure 5;
- Examine the major institutional changes that would be necessary to support Structures 3, 4, or 5, including state agency competency and capacity to perform functions that have been performed almost exclusively by the New York Independent System Operator (NYISO) for almost two decades;
- Should it want to pursue a Structure (like 3 or 5) that involves a centralized capacity market operated pursuant to state authority, explore how to delegate management of some capacity procurement functions to NYISO; and
- Even if it ultimately intends to opt for something like Structure 3, 4, or 5, the Commission should in any event wait to implement its plans until the upcoming presidential election is decided, given that the election—and potentially also action by the Federal Energy Regulatory Commission or the courts—could alter basic features of Structures 1 and 2 by altering the role of Buyers Side Mitigation (BSM) in NYISO's capacity market.

Each of these recommendations is explained more fully below, following a description of features and uncertainties of the current situation.

1. Introduction: Key Features of the Current Situation

The current situation facing the Commission and NYISO is characterized by a misalignment between state and federal policy and uncertainties about whether, when, and how alignment might be achieved. It is important to understand both the misalignment and uncertainties when weighing the five scenarios construed by The Brattle Group (Brattle).

Misalignment between state policy and NYISO's capacity market. While resource adequacy in New York is complex, the present misalignment can be boiled down to a few elements. On the one hand, state policy—most importantly the Climate Leadership and Community Protection Act (CLCPA)—includes commitments to deploy renewables and energy storage resources on a fixed schedule, and to eliminate greenhouse gas emissions from New York's electricity sector by

2040.[2] Crucially, the state's preferred mechanism for carrying out these commitments, the Clean Energy Standard, operates by subsidizing particular resources.[3] On the other hand, none of NYISO's markets take into account the climate change externality that state law prioritizes,[4] and NYISO's capacity market applies Buyer Side Mitigation (BSM)—with limited exceptions[5]—to new resources in the downstate region that receive state support. Specifically, BSM requires the resources to bid into capacity markets at prescribed levels that will tend to cause some of them not to clear the auction and so not to be compensated as capacity resources.[6] As a result of this misalignment, complying with the interim and ultimate targets codified in the CLCPA will cost New York more than would otherwise be the case.[7]

Since the Commission received initial comments and reply comments in this proceeding in fall of 2019, FERC orders issued in February and July of 2020 have amplified this misalignment and made it harder to correct.

- On February 20, 2020, FERC issued a set of four orders that addressed different but related issues. Specifically, those orders did as follows:
    - Rejected in part NYISO's proposed exceptions for renewables, self-supply resources, and storage paired with renewables;[8]
    - Rejected arguments by New York agencies that energy storage resources should be exempt from BSM pursuant to Order 841;[9]
    - Directed that demand response resources ("Special Case Resources") should be subject to BSM;[10] and

[2] 2019 N.Y. Laws ch. 106 § 4, *codified at* N.Y. Pub. Serv. L. § 66-p (2020).

[3] The Clean Energy Standard requires retail utilities to purchase particular amounts of the energy credits endowed to nuclear, renewable, and offshore wind resources. *See* Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement, N.Y. Pub. Serv. Comm'n Case 18-E-0071 (July 12, 2018); Order Adopting a Clean Energy Standard, N.Y. Pub. Serv. Comm'n Case 15-E-0302 (Aug. 1, 2016) (creating Zero Emission Credits for nuclear resources). Energy storage resources are subsidized directly. Order Establishing Energy Storage Goal and Deployment Policy, N.Y. Pub. Serv. Comm'n Case 18-E-0130 (Dec. 13, 2018).

[4] This point must be qualified insofar as NYISO energy market prices reflect the costs generators incur to acquire allowances in compliance with the requirements of the state regulations that implement the Regional Greenhouse Gas Initiative.

[5] As explained below, the exemptions for self-supply and renewables have been updated and markedly narrowed. Another exemption is available to resources that can pass the Part A or Part B mitigation exemption test administered by NYISO.

[6] N.Y. Indep. Sys. Operator, Inc., 172 FERC ¶ 61,058 (July 17, 2020); *see also* KATHLEEN SPEES, SAMUEL NEWELL & JOHN IMON PEDTKE, THE BRATTLE GRP., QUALITATIVE ANALYSIS OF RESOURCE ADEQUACY STRUCTURES FOR NEW YORK 8 (2020).

[7] For a more thorough description of BSM and how it could affect New York's agenda for renewable and energy storage resource deployments, see Comments of Policy Integrity in this docket, dated November 8, 2019, at 1–5.

[8] N.Y. Pub. Serv. Comm'n and N.Y. State Res. & Dev. Auth'y v. N.Y. Indep. Sys. Operator, Inc., 170 FERC ¶ 61,119 (2020).

[9] *Id.*

[10] N.Y. State Pub. Serv. Comm'n et al. v. N.Y. Indep. Sys. Operator, 170 FERC ¶ 61,120 (2020).

    - Rejected a proposal to make subject to BSM resources that would exit the market but for their receipt of reliability must run (RMR) payments.[11]
- On July 17, 2020, FERC issued a further order,[12] which did as follows:
    - Approved NYISO's compliance filing with respect to the revised renewables exemption to BSM, which establishes a dynamic limit that shifts in response to resource retirements prompted by state policy;
    - Subjected assets owned by the New York Power Authority (NYPA) to BSM; and
    - Denied New York agencies' request for a rehearing of FERC's February 20, 2020 orders in docket numbers EL16-1404, EL16-92, and EL19-86, clearing the way for litigation to proceed in court.

Uncertainties. Whether the present status quo (described by Brattle as Structure 1), will be maintained for the years to come, is subject to substantial uncertainty. It could change, for instance, if the Commission decides to expand the mitigation of the state-sponsored subsidies as in Brattle's structure 2. It could also be changed as a result of decisions taken by other players. Should the November election result in a Democratic administration and thus a new FERC Chair, it is conceivable that FERC will revisit its BSM decisions and its newly appointed members vote to reverse the decisions above.[13] Congressional legislation could also be a source of reversal,[14] as could a legal defeat in court.[15] Of course, the timeframes for each of these changes are impossible to predict.

These uncertainties are important to note because Commission action that alters New York's present approach to resource adequacy would—as explained further in part 2 below—require institutional changes, be disruptive to markets, and be difficult to reverse. At the same time, given the timeline of NYISO's capacity auctions and the resources in the interconnection queue, delaying the decision by few months will have relatively limited consequences for state's goals.

Brattle's resource adequacy "Structures." In its qualitative analysis of New York's options with respect to resource adequacy, Brattle helpfully presents five Structures (see Figure 1 below).

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[11] Indep. Power Producers of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc., 170 FERC ¶ 61,118 (2020).

[12] N.Y. Indep. Sys. Operator, Inc., 172 FERC ¶ 61,058 (July 17, 2020).

[13] *See* N.Y. Indep. Sys. Operator, Inc., 172 FERC ¶ 61,058, at 20–21 (July 17, 2020) (Glick, Comm'r, dissenting) ("I continue to believe that the foregoing analysis ought to compel the Commission to get back to the basics on buyer-side market power mitigation * * * Today's order is completely at odds with those principles . . . ."); *see also* Calpine Corp. v. PJM Interconnection, L.L.C., 171 FERC ¶ 61,034, 2020 WL 1896778, at *31 (Apr. 16, 2020) (Glick, Comm'r, dissenting) (explaining similar objections to use of Minimum Offer Price Rule in PJM's capacity market)

[14] *See, e.g.*, HOUSE SELECT COMMITTEE ON THE CLIMATE CRISIS, MAJORITY STAFF REPORT, 116TH CONG., SOLVING THE CLIMATE CRISIS61–62 (2020) (recommending legislative changes to federal oversight of resource adequacy in wholesale markets).

[15] *See* Petition for Review, New York State Pub. Serv. Comm'n v. FERC, Case No. 20-1220 (D.C. Cir. filed June 18, 2020) (challenging FERC's application of BSM measures to state-supported resources in NYISO); *see also* Petition for Review, New Jersey Division of Rate Co. v. FERC, Docket No. 20-01135 (D.C. Cir. filed Apr 23, 2020) (challenging FERC orders imposing Minimum Offer Price Rule on state-supported resources in PJM).

Figure 1. Brattle's five resource adequacy Structures.[16]

Structure	How is Resource Adequacy Achieved
1. **ICAP Market with Status Quo BSM**	• ICAP procurement market administered by NYISO • Administratively set demand curve consistent with 1-in-10 reliability standard • Supply-side offers provide capacity as per intersection with the demand curve • Status quo BSM rules (no blanket exemptions in place for Storage or Clean Resources in G-J) • Bilateral contracts enabled between Load-Serving Entitites (LSEs) and capacity sellers, but subject to BSM
2. **ICAP Market with Expanded BSM**	• Resource adequacy procurement administered by NYISO same as in Structure 1 • Expanded BSM rules cover some existing resources including policy-supported nuclear, all new clean energy, and contracted storage resources (consistent with FERC's recent MOPR Order for PJM) throughout NYCA • Bilateral contracts enabled between LSEs and capacity sellers, but subject to BSM
3. **Centralized RAC Market without BSM**	• Resource adequacy procurement functionally similar to Structure 1, but rule-setting would be taken on by the State. To achieve that outcome, the State may need to take on all auction and administrative functions (or some responsibilities may be shared by the State and NYISO) • New York Resource Adequacy Credits (RACs) would satisfy LSE reliability obligations, similar to the role ICAP/UCAP plays in Structures 1 and 2 • Bilateral contracts enabled between LSEs and capacity sellers • No BSM except as applied by PSC on a case-by-case basis to prevent the intentional introduction of uneconomic capacity to profitably suppress capacity market prices
4. **LSE Contracting for RACs**	• LSEs would be responsible for procuring through contracts sufficient RACs to meet resource adequacy obligations (fixed obligations, not on a demand curve) • No centralized procurement (no centralized auction; no administrative demand curve) • No BSM except as applied by PSC on a case-by-case basis to prevent the intentional introduction of uneconomic capacity to profitably suppress capacity market prices
5. **Co-optimized Capacity and Clean Energy Procurement**	• Same as Structure 3, except a State entity would procure both RACs and RECs for LSEs in a joint, co-optimized auction • To offer clean energy investors more forward visibility and certainty, the forward period could be extended to 3-years forward, and the term of RECs awarded under the auction may be 7-20 years for new resources (procurements of RECs for existing resources and RAC commitments would secured on a year-by-year basis) • Bilateral contracts enabled between LSEs and RAC sellers • No BSM except as applied by PSC on a case-by-case basis to prevent the intentional introduction of uneconomic capacity to profitably suppress capacity market prices

Those five Structures fall into two groups of scenarios. In the first of those, comprised of Structures 1 and 2, New York does not depart from its present reliance on NYISO's mandatory capacity market. In the second, comprised of Structures 3, 4, and 5, New York agencies, at a minimum, assume responsibility for governance of resource adequacy and cease applying BSM

[16] SPEES ET AL., *supra* note 6, at 2.

measures to offset policy support for particular resources. Whether to opt for the first or second of these groups of scenarios is up to the Commission; opting for the first effectively leaves the choice of Structure 1 versus Structure 2 to FERC; opting for the second means the Commission must also decide whether to pursue Structure 3, 4, or 5.

2. Important Factors Not Examined in Brattle's Analysis

Brattle's analysis usefully distills and organizes the state's most likely resource adequacy options, but it paints those options in broad strokes. It does not explore, for instance, the new institutional roles and competencies that would be needed to implement Structures 3, 4, or 5. Further, the quantitative portion of the Brattle's scenario analysis models and estimates only first-order effects, ignoring other important effects, such as transaction costs and emissions. As a consequence, the analysis offers limited insight into what pursuit of a given Structure would mean for achieving the state's goals of decarbonization and affordable access to clean energy. Before deciding on a course of action, the Commission should pick up where Brattle has left off and consider several important, still-open questions, including the following:

What risks follow from taking resource adequacy governance away from NYISO? And how well could existing and/or new state institutions manage those risks? Some degree of disruption would follow from any transition to a different approach to securing and allocating generation capacity, no matter how smooth. Market participants may also be concerned about—and seek to hedge against—state-led changes to the present approach to resource adequacy in dimensions other than BSM. One likely concern would be that the state would seek to minimize the cost of achieving its policy goals in ways that lead it to opt for economically inefficient design elements for resource adequacy. Such disruptions and concerns would be reflected in investments, bids and prices.

In general, an optimal approach to resource adequacy would not be static, but would evolve as the grid changes. For instance, renewable resources' intermittency and the correlations in their outputs might require substantial departures from NYISO's current methods of assigning capacity value to the resources. (In the wording of Brattle's proposal, this would result in changes to how Resource Adequacy Credits are generated.) Some ISOs have moved or are moving towards an Effective Load Carrying Capacity (ELCC) approach that relies on probabilistic simulation of the value that the capacity of a given resource creates for the system.[17] This sort of change might be appropriate in New York as well as the share of renewables in the generation mix increases, but undertaking it would require specialized institutional capability. Even if New York agencies were to assume responsibility for resource adequacy governance in general, they might still find it advantageous—or necessary—to rely heavily on NYISO for technical know-how about issues of market design and management. Given that the possibility of

[17] *See* Andrew Levitt, PJM Capacity Capability Senior Task Force presentation: ELCC Rules at other ISO-RTOs (Apr. 7, 2020), https://perma.cc/XW4F-W9W4 (noting adoption of ELCC approach by CAISO and MISO, and by NYISO with respect to energy storage).

drawing on and successfully integrating expertise across entities in this manner is untried, Structures 3, 4, and 5 should all be understood to carry risks arising from available institutional capacity, especially if state decides to be the sole administrator of resource adequacy. This is no less true for Structure 4, even though that approach would rely on bilateral transactions rather than an auction-based market.

In addition to the basic task of defining, valuing, and allocating capacity, Structures 3, 4, and 5 would require state agencies to also deal with other important aspects of market management. For one, if the state were to make itself responsible for preventing the use of wholesale market power then it would need to create new institutional capacity to perform that function. Poor management of market power (on both the supply and demand sides of the wholesale market) and/or of market operations could mean market distortions and adding costs (relative to the status quo) that would be passed on to ratepayers. Similarly, centralized auctions will keep search and transaction costs low only if they are designed and managed well, and if that management commences quickly. This would, in turn, require the state to repurpose existing agency capacity and/or establish new institutional capacity quickly.

All of this would be challenging under Structure 3, which would require the state to build and operate—or find a way to delegate to NYISO the operation of—a capacity market. Attempting Structure 5's combined capacity-plus-clean energy credit market would be still more challenging because the market design would be more complex, less like the existing wholesale capacity market, and involve changes not only to capacity procurement but also to clean energy credit procurement as well. And under Structure 4's decentralized approach, the absence of a centralized market mechanism would confront the state with different challenges, including, among other things, the need to address market power and search and transaction costs in a decentralized market. Consider that, even though search and transaction costs would be more pronounced under bilateral contracts and thus more important to address, the state's toolkit for doing so would be limited to creating a marketplace for transactions as well as creating and policing compliance with rules that encourage transparency among market actors employing diverse forms of contracts.

What steps would be necessary to realize Brattle's description of Structure 3: "maintaining the economic and competitive advantages of the current ICAP market," "provid[ing] market continuity," and possibly leaving "certain implementation functions . . . with NYISO . . . ."? Assuming the state attempts to maximize continuity with the existing capacity market by pursuing Structure 3 and possibly even continuing to delegate some market management functions to NYISO, it must strike a difficult balance. On the one hand, it must claim jurisdiction over the prevailing definition of resource adequacy and specify parameters that will satisfy newly articulated state requirements while continuing to satisfy federal requirements for bulk power system reliability. On the other hand, it must find a way to vest whatever institution manages the capacity market with the independence that has made NYISO credible and inspired market participants to have confidence in its decisions. Notably, whatever legal basis the

Commission cites to supports its decision,[18] claiming authority over resource adequacy would take time because it would require, first, unraveling and reweaving arrangements that were arrived at by the Commission, NYISO, and the New York State Reliability Commission in the late 1990s regarding the specification of capacity requirements and administration of capacity acquisition, and then surfacing and settling questions about how state and federal authority relate under the new approach—something that took a decade in the first instance.[19]

How would emissions effects differ across scenarios? Given that emissions reduction targets are the lodestar that guides resource deployments, it is important to consider the likely emissions outcomes for each of Brattle's Structures. Given that Brattle indicates it used the GridSIM Model,[20] which can generate emissions outputs, the Commission should request the summary emission outcomes for each Structure and sensitivity, as well as relevant underlying assumptions. While it is reasonable to expect that Structures 3, 4, or 5 would result in faster emissions reductions than 1 or 2, even a rough quantification of expected reductions and their monetary value would be useful to understand the full costs and benefits of various scenarios, as would a set of sensitivities that reflect some of the institutional risks noted above.

How do search and transaction costs differ across scenarios? How does the possibility of exerting market power differ between the scenarios? In its quantitative analysis of the consumer costs under each Structure, Brattle abstracts away from many market imperfections and implicitly assumes a competitive, frictionless market. Consequently, the costs of adhering to state clean energy policy and the changes in energy, ancillary services and capacity costs between Structure 3 (status quo but without BSM) and Structures 1 (status quo) and 2 (expanded BSM) reflect idealized assumptions about electricity market operations. However, it is not clear how well those assumptions would actually match reality. For instance, research suggests that NYISO's capacity market was plagued by tacit collusion among capacity suppliers.[21] Depending on the institutional capabilities of the resource adequacy administrator and the design of the operative capacity allocation mechanism, market power concerns could be a more or less pressing. Similarly, the design of whatever mechanism governs the allocation of capacity will greatly affect search and transaction costs.

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[18] The Federal Power Act clearly recognizes state authority in the realm of resource adequacy. 16 U.S.C. § 824o(i)(2) & (3) (providing that states and not FERC have authority to "set and enforce compliance with standards for adequacy . . . of electric facilities.").

[19] *Compare* Cent. Hudson Gas & Elec. Corp. 83 FERC ¶ 61,352, at p. 62,411 (1998) (establishing steps involved in and so clarifying jurisdiction over resolution of dispute between New York State Reliability Council and NYISO), *with* New York Independent Sys. Operator, 122 FERC ¶ 61,186, at P 40 (2008) (clarifying jurisdiction and process related to reserve margin approval).

[20] Kathleen Spees et al., The Brattle Grp. Quantitative Analysis of Resource Adequacy Structures [updated] 17 (July 1, 2020).

[21] *See* Sebastian Schwenen, *Strategic Bidding in Multi-unit Auctions with Capacity Constrained Bidders: the New York Capacity Market*, 46 RAND J. ECON. 730 (2015).

While the cost consequences of market power and search and transaction costs will tend to be smaller than the additional policy costs associated with Structure 2 (and, to a lesser degree, with Structure 1),[22] those consequences may nevertheless be substantial, especially if bilateral contracts feature prominently in New York's approach. Costs like these recently led California to replace an approach to resource adequacy that had relied heavily on bilateral contracting with a "central buyer" framework, in which two large retail utilities, Pacific Gas & Electric and Southern California Edison, will serve, beginning in 2021, as central procurement entities for their respective service territories and start procuring capacity for the 2023 compliance year.[23] The advantage of organized markets over bilateral contracting for keeping search and transaction costs low is also evident in recent proposals to introduce a Regional Transmission Organization or some other form of wholesale market mechanism into the Southeast.[24]

Brattle's lack of quantification of costs for Structure 4—which are, according to Brattle, "Similar to #3 but difficult to quantify"— indicates the challenge of predicting such costs for an approach that relies on bilateral contracting. Even so, the Commission should note that the reported cost comparisons between Structures 1, 2, and 3 *also* do not quantify those costs. An additional analysis that accounts for those effects might be warranted.

3. Policy Integrity's Recommendations

In light of the uncertainties and risks identified above, Policy Integrity encourages the Commission to further investigate several aspects of what Structures 3, 4, or 5 would entail, and not to commit to implementation of a particular approach until after the results of the upcoming federal election are clear. A more complete picture of prospective regulatory solutions and outcomes would provide greater certainty to stakeholders, particularly if the Commission ultimately decides to pursue an approach that involves greater state control over resource adequacy.

Our specific recommendations are as follows:

Ask Brattle to quantify other important outcomes. As explained above, Brattle's analysis does not include estimates of several second-order (but still material) costs, or of emissions outcomes. The analysis omitted these points even though it acknowledged, for instance, that Structure 4's

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[22] BSM imposes additional costs by preventing state-supported resources from receiving capacity payments. Because state policy has committed to supporting those resources' deployment, clean energy credit payments will make up the difference. The search and transaction costs associated with Structure 4 will represent the fraction of the capacity revenue that the generators and utilities will need to spend to find partners and negotiate contracts.

[23] Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local and Flexible Procurement Obligations for the 2019 and 2020 Compliance Years, Cal. Pub. Utils. Comm'n Decision 20-06-002 (June 11, 2020) https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M340/K671/340671902.PDF.

[24] In theory, all transactions conducted in such a market could be mimicked by bilateral contracting, but a centralized market generally coordinates such transactions much more efficiently than individual negotiations. For one such proposal, see JENNIFER CHEN, DUKE NICHOLAS INST. FOR ENVTL. POL'Y SOLUTIONS, EVALUATING OPTIONS FOR ENHANCING WHOLESALE COMPETITION AND IMPLICATIONS FOR THE SOUTHEASTERN UNITED STATES (2020).

decentralized approach would forgo the benefits of a centralized market. Given that New York policy prioritizes *affordable* access to *clean* energy, such estimates are worth pursuing.

Be especially cautious about pursuing Structure 5. Because Structure 5 would constitute a novel and little-researched approach, compared to others, the Commission should either direct substantial resources to studying it or rule it out. Policy Integrity would encourage the latter given that the envisioned length of the contracts (7-20 years) shifts substantial market risks from power plant operators to consumers and given that the co-optimization of RECs and capacity procurement may minimize the cost of achieving renewable deployment goals but will not necessarily result in maximal pollution abatement. Adopting Structure 5 might also have other undesirable effects such as creating windfall capacity revenue for the remaining fossil-fuel resources and thus distorting their exit signals.[25]

Identify and articulate institutional features needed to enable Structures 3, 4, or 5. No analysis has focused on the institutional nuts and bolts that would be involved in supporting implementation of Structures 3, 4, or 5. Identifying institutional needs, and also gaps between those needs and current capacity, is prerequisite to any decision by the Commission to assume greater control over resource adequacy. This is true in general but especially if the Commission considers delegating some set of management functions to NYISO.

Explore how to delegate management of some capacity procurement functions to NYISO. As hinted at by Brattle's qualitative analysis, should the Commission pursue Structure 3 or 4 (or something similar), it would do well to draw on the expertise, know-how, and related organizational and operational structures currently housed within NYISO. Doing so, however, would require blazing a new trail legally and administratively. Initial decisions about how the Commission, NYISO, and the New York State Reliability Council would interact reflected particular concern for maintaining the reality and appearance of NYISO's independence from political entities.[26] It is currently unclear how real and perceived independence of a capacity marketplace administration can persist in a scenario where state agencies assume control over governance and delegate elements of management to NYISO. The Commission, if it wants to explore such an approach, should, therefore, clarify how it might do so.

Wait for resolution of the upcoming election before committing to a particular approach. Whether the Commission ultimately decides to keep to the current approach (Structure 1) or to opt for something like Structure 3, 4, or 5, it should wait to implement its plans until the upcoming presidential election is decided, given that the election—and potentially also action by the Federal Energy Regulatory Commission or the courts—could alter basic features of

[25] Because Structure 5's design, as described, would include a uniform capacity price for all clearing resources and because the marginal resource in the capacity market will most probably be a clean resource that would otherwise not clear the capacity market, the auction co-optimization would likely lead to an increase in the equilibrium capacity price. That price increase would yield a windfall for remaining fossil fuel power plants.

[26] *See* Cent. Hudson Gas & Elec. Corp. 83 FERC ¶ 61,352, at 62,405 (1998); *see also id.* at 62,481 (Massey, Comm'r, concurring).

Structures 1 and 2 by altering the role of Buyers Side Mitigation (BSM) in NYISO's capacity market. This is not to say that the Commission should not *explore* its options further, only that committing to a given option now would mean forgoing the valuable clarity that will become available only after several important issues that lie beyond the Commission's power are partly or fully resolved.