

114 FERC ¶61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Niagara Mohawk Power Corporation,
a National Grid Company

Docket No. EL06-1-000

v.

New York State Reliability Council and
New York Independent System Operator, Inc.

ORDER DISMISSING COMPLAINT

(Issued February 2, 2006)

1. This order addresses a complaint filed by Niagara Mohawk Power Corporation, a National Grid Company, (National Grid)¹ under section 206 of the Federal Power Act (FPA),² against the New York State Reliability Council (Reliability Council) and the New York Independent System Operator, Inc. (NYISO). National Grid alleges that Reliability Council's and NYISO's current practices pertaining to mandatory minimum installed capacity requirements (ICAP Requirements)³ for the purpose of preserving reliable electric service throughout the New York Control Area (NYCA),⁴ unlawfully

¹ Niagara Mohawk Power Corporation (Niagara Mohawk) is, since 2002, a wholly-owned subsidiary of National Grid USA, itself a subsidiary of United Kingdom-based National Grid.

² 16 U.S.C. § 824e (2000).

³ NYISO defines ICAP as internal or external capacity (the capability to generate or transmit electrical power) that is made available, pursuant to NYISO's tariff requirements and procedures. NYISO's Services Tariff at sections 2.18, 2.74 (2001). The ICAP Requirement represents the amount of electric power capacity that a Load Serving Entity (LSE) must procure.

⁴ NYCA covers New York State and is divided into eleven zones, A through K.

cause New York customers upstate of New York City and Long Island⁵ to subsidize the costs of maintaining reliability in the downstate regions. National Grid requests that the Commission direct Reliability Council and NYISO to implement a lower state-wide ICAP requirement to eliminate the claimed subsidy. For the reasons described below, we will exercise our discretion and require that National Grid first exhaust its methods of resolving this dispute within Reliability Council and NYISO before filing a complaint with the Commission. Thus, we will dismiss the Complaint, without prejudice.

Background

2. In 1998 and 1999, the Commission authorized the owners of transmission facilities in New York State, *i.e.*, the public utilities,⁶ the New York Power Authority (NYPA),⁷ and LIPA⁸, who together constituted the New York Power Pool (Power Pool),⁹ to replace the Power Pool with NYISO and related governing organizations, including Reliability Council.¹⁰ NYISO assumed primary responsibility for operation of the New

⁵ New York City and Long Island, NYCA Zones J and K, respectively, are often referred to as “downstate,” and the rest of New York, NYCA Zones A through I, as “upstate.”

⁶ Central Hudson Gas & Electric Corporation (Central Hudson); Consolidated Edison Company of New York, Inc. (Con Edison); New York State Electric & Gas Corporation (NYSEG); Niagara Mohawk; Orange and Rockland Utilities, Inc. (O&R); and Rochester Gas and Electric Corporation (Rochester G&E).

⁷ NYPA is a non-profit, state-owned, power organization. It owns generation and transmission lines and sells power to community-owned electric systems and rural electric cooperatives.

⁸ LIPA is a subsidiary of the Long Island Power Authority, a corporate municipal instrumentality of the State of New York.

⁹ The Power Pool was organized after the Northeast Blackout of 1965 to avoid another major power interruption by combining its members’ resources for reliable operation of New York’s interconnected transmission system.

¹⁰ *Central Hudson Gas & Electric Corp.*, 83 FERC ¶ 61,352 (1998), *order on reh’g and clarification*, 87 FERC ¶ 61,135 (1998) (*NYISO Formation Order*). In related proceedings, the Commission accepted NYISO’s tariffs and market rules, separating transmission and non-transmission functions into the open access transmission tariff (OATT) and the Market Administration and Control Area Services Tariff (Services Tariff). *Central Hudson Gas & Electric Corp.*, 86 FERC ¶ 61,062, *order on reh’g, clarification, and compliance*, 88 FERC ¶ 61,138 (1999).

York State Bulk Power System (NY Bulk Power System)¹¹ and administration of the newly established competitive electricity market. Reliability Council assumed responsibility for overseeing the Reliability Rules previously developed by the Power Pool and the New York State Public Service Commission (New York Commission) to ensure reliability of the New York State Power System.

3. Among the agreements that the Commission approved in the *NYISO Formation Order* to establish the new governing organizations were the New York ISO Agreement (NYISO Agreement), the New York State Reliability Council Agreement (NYSRC Agreement), and the Agreement Between the New York Independent System Operator and the New York State Reliability Council (NYISO-NYSRC Agreement), which defines the relationship between the two organizations. The NYISO Services Tariff requires NYISO and Market Participants (the parties who participate in NYISO's markets) to comply with Reliability Council's Reliability Rules, and makes NYISO responsible for enforcing the rules.¹²

4. Reliability Council is governed by a 13-member Executive Committee.¹³ Its Reliability Rules Subcommittee makes the Reliability Rules applicable to that portion of the New York Power System that constitutes the NY Bulk Power System. The subcommittee follows the standards of the North American Electric Reliability Council (NERC) Planning Standards and Operating Policies, the Northeast Power Coordinating Council (NPCC) Criteria, Guidelines and Procedures, and the New York Reliability Rules and local reliability rules, which may be more specific or stringent than NERC or NPCC standards.

5. According to materials submitted with the Complaint and by the parties, Reliability Council preserves the reliability of the NY Bulk Power System through the mechanism of the annual NYCA Minimum Installed Capacity Requirement (NYCA

¹¹ The NY Bulk Power System is generally the portion of the New York Power System that comprises generating units 300 MW and larger, and transmission facilities 230 kV and above. Smaller generating units and lower voltage transmission facilities are included if they can have a significant adverse impact outside their local area.

¹² NYISO Services Tariff at section 5.11.2.

¹³ Executive Committee members are: Central Hudson; Con Edison; LIPA; National Grid; NYSEG; Rochester G&E; NYPA; one representative of the wholesale sellers; one representative of industrial and large commercial consumers; one representative of municipal electric systems and cooperatives; and four members unaffiliated with any Market Participant.

Minimum ICAP Requirement) that Reliability Council establishes each year.¹⁴ Consistent with NERC and NPCC standards, the annual NYCA Minimum ICAP Requirement is based on a Loss of Load Expectation (LOLE) such that the risk of disconnecting firm load due to resource deficiencies is, on average, no more than once in ten years (or 0.1 day per year, a 0.1 LOLE).

6. To calculate the annual NYCA Minimum ICAP Requirement, *i.e.*, the amount of capacity within the state that may be needed to meet a 0.1 LOLE, Reliability Council starts with the previous year's Locational Minimum Installed Capacity Requirements (LCRs),¹⁵ and studies the characteristics of loads, uncertainty in the load forecast, outages and de-ratings of generating units, the effects of interconnections to other control areas, and transfer capabilities within NYCA.¹⁶ The upcoming annual NYCA Minimum ICAP Requirement equals the sum of the peak load that is forecasted for the upcoming capability year¹⁷ (the Forecasted NYCA Peak Load) plus an extra amount of installed capacity. This extra amount of installed capacity is a percentage of the Forecasted NYCA Peak Load, and is referred to as the NYCA installed reserve margin (IRM). Since 2000, the IRM has been 18 percent. Each year, Reliability Council publishes a report that describes the results of its studies and gives the NYCA Minimum ICAP Requirement and the IRM for the upcoming capability year.

7. Consistent with Reliability Council's Reliability Rules and local reliability rules, NYISO's Operating Committee then translates the IRM, and the NYCA Minimum ICAP Requirement generated by Reliability Council into a NYCA Minimum Unforced Capacity Requirement that is allocated, for the upcoming capability year, among all LSEs serving load in NYCA.¹⁸ In addition, the Operating Committee determines for the upcoming capability year the LCR that applies to LSEs located in zones with severe transmission constraints. LSE's within these zones are required to procure a certain

¹⁴ See section 3.03 of the NYSRC agreement and section 5.10 of the NYISO Services Tariff.

¹⁵ The NYISO Services Tariff, at section 2.98, defines the Locational Minimum Installed Capacity Requirement as "the portion of the NYCA Minimum Installed Capacity Requirement that must be electrically located within a Locality . . . to ensure that sufficient Energy and Capacity are available in that Locality and that appropriate reliability criteria are met." LCRs are discussed further at P 7, *infra*.

¹⁶ The computer model used for establishing capacity requirements is called the Multi-area Reliability Simulation (MARS) program.

¹⁷ A capability year runs from May 1 to April 30.

¹⁸ See NYISO Services Tariff at sections 5.10 – 5.11.

percentage of their NYCA Minimum Installed Capacity Requirement assignment from local resources.¹⁹ Currently, the only zones so affected are Zones J and K, New York City and Long Island, where these LCR percentages are 80 and 99 percent, respectively, of the peak load forecast for these zones for the upcoming capability year.

National Grid's Complaint

8. National Grid's complaint has two prongs. It complains that Reliability Council does not modify the LCRs applicable to the transmission constrained zones so that the transmission constraints in these zones do not unduly increase the NYCA IRM. It complains also that Reliability Council calculates only one IRM, currently 18 percent, which NYISO applies equally to all the LSEs in NYCA, regardless of whether or not they are located in zones with transmission constraints. The result, according to National Grid, is that the LSEs in upstate New York, where the LOLE is essentially zero, are forced to subsidize the downstate LSE's in transmission constrained zones, without the upstate customers receiving commensurate benefits.

9. More specifically, National Grid's argument is as follows. Transmission constraints into New York City and Long Island create additional reliability difficulties for these downstate areas, but not for the upstate area. Alternative combinations of IRM and LCR could satisfy the NPCC's required 0.1 LOLE while addressing the reliability issues created by downstate transmission constraints.²⁰ The choice among these alternatives should be just and reasonable and not unduly discriminatory. If there were no transmission constraints within the state, a 16.1 percent IRM (with no LCRs) would meet the 0.1 LOLE requirement. Because transmission constraints affect reliability downstate but not upstate, the appropriate, nondiscriminatory solution is to impose additional requirements on downstate customers. One way would be to select as the statewide IRM the 16.1 percent that would be needed in the absence of the transmission constraints while also establishing LCRs for New York City and Long Island that address those zones' transmission constraints, LCRs of 86 percent and 102 percent, respectively. However, Reliability Council and NYISO have selected a statewide 18 percent IRM along with lower LCRs for New York City and Long Island (80 percent and 99 percent, respectively). Thus, National Grid concludes that this 18 percent IRM forces upstate customers to procure 2 percent more capacity for the sole purpose of addressing the reliability problems created by the downstate transmission constraints.

¹⁹ See ISO-NYSRC Agreement at section 3.4; NYISO Services Tariff at sections 5.10 and 5.11.4.

²⁰ National Grid's Complaint, at 29-30, citing a report by the Reliability Council, "New York Control Area Installed Capacity Requirements for the Period May 2005 through April 2006," included as Appendix A of the Complaint.

10. In monetary terms, National Grid states that upstate customers pay approximately \$22 million per year for the ICAP resources needed only for New York City and Long Island. National Grid objects that Reliability Council's failure to modify the LCRs, coupled with its calculation of one single IRM that NYISO implements by the ICAP allocations, violates section 206 of the FPA because an 18 percent IRM is unjust, unreasonable, unduly discriminatory and preferential. Furthermore, it is inconsistent with Commission orders and policy underlying locational markets and it diminishes price signals for increasing capacity in the downstate zones.

11. As remedy, National Grid asks the Commission to order Reliability Council to adopt an IRM methodology that eliminates the subsidy that National Grid considers unlawful. National Grid recommends a solution called the "Free Flowing Equivalent IRM and LICAP Requirements" (Free Flowing Proposal), which it asks the Commission to require. This Free Flowing Proposal would lower the IRM from 18 percent to 16.1 percent. In order to maintain the statewide 0.1 LOLE, National Grid recommends raising the LCR Requirements for New York City and Long Island to 86 percent and 102 percent, respectively.²¹ Alternatively, National Grid asks that the Commission allocate to the downstate LSEs those costs, borne currently by the upstate LSEs, that are attributable to an IRM above 16.1 percent.

12. National Grid states that it has made fruitless presentations to Reliability Council's Installed Capacity Subcommittee, requesting amendment of the annual NYCA ICAP Requirement and LCR Requirement. Its Free Flowing Proposal received only five of the nine votes necessary for the 13-member Executive Committee to adopt the proposal. National Grid states that it has participated in the NYISO stakeholder process to remedy the currently inequitable Minimum ICAP Requirement assessments, also unsuccessfully.

Notice and Responsive Filings

13. Notice of National Grid's Complaint was published in the *Federal Register*, 70 Fed. Reg. 60,324 (2005), with answers, interventions, and protests due on or before November 22, 2005.²² NYISO and Reliability Council each filed an Answer.

14. The New York Commission filed a notice of intervention. Filing motions to intervene were: Keyspan-Ravenswood, LLC (Ravenswood); AES Eastern Energy, L.P. (AES); Con Edison, O&R, LIPA, NYPA, The City of New York, Consumer Power

²¹ National Grid acknowledges that while Upstate's costs would decline by \$22 million, Downstate's short-run costs would rise by approximately \$56 million, so that total short-run costs in New York State would rise by \$34 million.

²² The filing deadline was extended by Notice of October 11, 2005.

Advocates, New York Energy Consumers Council, Inc., and Independent Power Producers of New York, Inc. (collectively, New York Participants); Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, Constellation); Multiple Intervenors;²³ NYSEG, Rochester G&E, and Central Hudson (collectively, Upstate Utilities); Astoria Generating Company Acquisitions, L.L.C.; Calpine Corporation and Calpine Energy Services, L.P.; Mirant Americas Energy Marketing, LP, Mirant New York, Inc., Mirant Bowline, LLC, Mirant Lovett, LLC, and Mirant NY-Gen (collectively, the Mirant Parties); Municipal Electric Utilities Association of New York; the NRG Companies;²⁴ the New York Association of Public Power; and Select Energy, Inc. Moving to intervene late in the proceeding was FPL Energy, LLC.

15. Intervenors protesting the Complaint are: New York Commission; Ravenswood; AES; and New York Participants. Those commenting on the Complaint are: Constellation; Upstate Utilities; and Multiple Intervenors. The protestors and Constellation generally assert that the Complaint should be dismissed because National Grid's proposed methodology is unsupported and unjust and unreasonable, while the current IRM and methodology are just and reasonable and consistent with applicable reliability rules, and because National Grid has failed to exhaust the stakeholder processes of Reliability Council and NYISO. Multiple Intervenors and Upstate Utilities support the Complaint, stating that the Free Flowing Proposal is consistent with principles of cost causation, and that distorted locational price signals raise reliability issues due to lack of incentive to build and upgrade generation and transmission facilities.

16. On December 6, 2005, National Grid filed a reply to Reliability Council's and NYISO's Answers and to the protests and comments previously filed (National Grid's Reply). On December 7, 2004, NYSEG and Rochester G&E jointly filed their reply to the previous filings. On December 20, 2005, New York Participants filed a reply to the replies of National Grid, and NYSEG and Rochester G&E. On December 21, 2005, Reliability Council filed a response to National Grid's Reply (Reliability Council's Response).

²³ Multiple Intervenors is an association of approximately 55 large industrial, commercial, and institutional energy consumers whose facilities are located in upstate New York.

²⁴ NRG Power Marketing, Inc., Arthur Kill Power LLC; Astoria Gas Turbine Power LLC; Dunkirk Power LLC; Huntley Power LLC; and Oswego Harbor Power LLC.

Discussion

Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2005), we will grant FPL Energy's motion to intervene late because intervention at this stage will not delay, disrupt, or otherwise prejudice this proceeding or other parties to the proceeding.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005) prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept National Grid's Reply, the joint reply by NYSEG and Rochester G&E, and Reliability Council's Response because they have provided information that assisted us in our decision-making process.

Complaint

19. Our evaluation of National Grid's Complaint focuses on National Grid's assertions that it has exhausted its remedies within Reliability Council and NYISO, and on the respondents' and some intervenors' statements contradicting that assertion. We agree with Reliability Council that National Grid filed its Complaint prematurely without exhausting its remedies within Reliability Council or NYISO, a position with which Market Participants and Constellation concur,²⁵ and that granting the Complaint at this juncture would circumvent normal Reliability Council and NYISO procedures and the full participation of other interested parties.

20. Reliability Council states, in its Answer, that it and NYISO are still working to coordinate further the processes for setting the IRM and locational capacity requirements. It states also that National Grid's Complaint does not concern a final decision by Reliability Council to adopt a statewide IRM but concerns rather the assumptions that Reliability Council's Installed Capacity Subcommittee (ICAP Subcommittee) used in its base case of its IRM study.²⁶

21. Concerning exhaustion of remedies within NYISO, Reliability Council states that the appropriate stakeholder committee process to consider National Grid's concerns is the

²⁵ Reliability Council's Reply at 6; Market Participants' November 22, 2005 filing at 34.

²⁶ Reliability Council's Answer at 11-12 & n.13.

NYISO Operating Committee. Reliability Council continues that National Grid did not request this committee to establish LCRs based on the Free Flowing Proposal for the current 2005-2006 Capability Year, nor did National Grid appeal the NYISO Operating Committee's February 2005 decision adopting the current LCRs to the NYISO Management Committee and the NYISO Board of Directors as NYISO governance procedures provide.²⁷ Reliability Council states also that to the extent that the current IRM/LCR methodology raise ICAP market issues, these issues should be addressed by the NYISO Business Issues Committee and the NYISO ICAP Working Group.²⁸

22. Thus, we will exercise our discretion as to whether and how to conduct our proceedings²⁹ and will dismiss the Complaint as not yet ready for Commission consideration, but without prejudice to future filing. We find unpersuasive National Grid's arguments, in its Response, that because Reliability Council determines the IRM, the NYISO stakeholder process is not appropriate to redress National Grid's concerns and would be useful only for determining LCRs after determination of a subsidy-free IRM methodology.³⁰ The IRM and the zonal LCRs interact to protect electric reliability within New York State and need to be addressed together.

23. We note that NYISO is undertaking a Comprehensive Reliability Planning Process, having recently issued the state's first Reliability Needs Assessment (RNA), and that National Grid, as one of the NYISO stakeholders, is involved in this process.³¹ Also, National Grid may pursue efforts within Reliability Council and NYISO to influence those organizations to revise their methods of establishing the IRM, the ICAP

²⁷ Reliability Council's Reply at 5-6. See sections 5.07 and 7.13 of the NYISO Agreement.

²⁸ Reliability Council Answer at 10-11; Reliability Council's Reply at 5-6.

²⁹ See *Enron Power Marketing, Inc.*, 106 FERC ¶ 61,182 at P 12, citing *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 543 (1978). See also *Kansas Power & Light Co. v. FERC*, 851 F.2d 1479, 1484 (1988) (Commission has discretion to leave petitioners to their remedies in another proceeding).

³⁰ National Grid's Reply at 9 n.32.

³¹ See New York Independent System Operator, "Comprehensive Reliability Planning Process; Reliability Needs Assessment," December 21, 2005, and associated NYISO Press Release. This report evaluates generation adequacy and transmission reliability over a 10-year planning horizon, and identifies future needs of the New York electricity grid.

allotments, and the zonal LCRs.³² The NYISO Agreement provides for appeals from actions of the Operating Committee to the Management Committee and thence to the Board of Directors.³³ It also provides dispute resolution procedures that National Grid may wish to utilize.³⁴

24. In future discussions, National Grid and the concerned committees of Reliability Council and NYISO may wish to separate the question of how to minimize the total statewide costs for ensuring the NYCA's reliability from the question of how to apportion these costs. National Grid should fully pursue these avenues within the Reliability Council and NYISO stakeholder processes before filing a complaint with the Commission.

25. Although we are dismissing the Complaint, we nevertheless wish to be informed of the progress that National Grid, Reliability Council, and NYISO make in their future discussions. To this purpose, we will require Reliability Council and NYISO to file, within 90 days of the date of issuance of this order, a report describing the progress that they and National Grid have made in resolving National Grid's concerns.

The Commission orders:

(A) The Complaint filed by National Grid in this proceeding is hereby dismissed without prejudice.

³² We note, in regard to National Grid's recommendation of increased downstate LCRs, that NYISO's December 21, 2005 report, "Comprehensive Reliability Planning Process (CRPP); Reliability Needs Assessment, at pp. 4-8, discusses the need for system reinforcements, such as transmission reinforcements, additional generation, or demand side management, to address significant reductions in transfer capacity into and through southeastern New York.

³³ Section 7.13 of the NYISO Agreement provides for the Management Committee to review and determine appeals from the Operating Committee. Section 5.07 provides for the Board of Directors to review and determine appeals from the Management Committee.

³⁴ Article 10 of the NYISO Agreement.

(B) Reliability Council and NYISO are hereby directed to file an informational report, as discussed in the body of this order, within 90 days of the date of issuance of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.