

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on February 8, 2006

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin
Patricia L. Acampora

CASE 05-E-1180 - In the Matter of the Reliability Rules of the New York State
Reliability Council and the Criteria of the Northeast Power
Coordinating Council.

ORDER ADOPTING NEW YORK STATE RELIABILITY RULES

(Issued and Effective February 9, 2006)

BY THE COMMISSION:

INTRODUCTION

The New York Public Service Commission (Commission) initiated this proceeding under Public Service Law (PSL) §§4(1), 5(2), 65(1), 66(1), and 66(2) to consider, in light of enactment of the Federal Energy Policy Act of 2005¹ (Energy Act), adoption, in whole or in part, of the reliability standards established by the New York State Reliability Council (NYSRC) (Reliability Rules) and the criteria for operation and protection of the Northeast bulk power system approved by the Northeast Power Coordinating Council (NPCC).

The NYSRC was created as part of the restructuring of New York's competitive wholesale market to assume the reliability criteria functions previously

¹ Pub. L. No. 109-58, 119 Stat. 594 (2005).

administered by the New York Power Pool (Power Pool).² The NYSRC's responsibility is to promote and preserve the reliability of the New York State power system by developing, maintaining and updating reliability standards.³ The NYSRC adopted Reliability Rules in 1999, which it periodically amends as needed. Pursuant to a tariff adopted by the Federal Energy Regulatory Commission (FERC), all entities engaged in transactions on the New York State power system must comply with these Reliability Rules.⁴ The NPCC is an international electric regional reliability council, formed after the 1965 blackout disrupted service in the Northeast. It establishes criteria, and coordinates system planning, design, and operations to promote reliable and efficient operation of the interconnected bulk power systems throughout the Northeast and eastern Canada.

FERC has functioned primarily as an economic regulator of wholesale power markets and the interstate transmission grid. The Energy Act added a new Federal Power Act (FPA) §215, titled Electric Reliability, to authorize FERC to approve mandatory national reliability standards that will be developed by an electric reliability organization certified by FERC. Section 215 also specifically grants the State of New York authority to adopt reliability standards that result in a greater level of reliability than produced by the national standards.

In this Order, we adopt the NYSRC's current Reliability Rules. This action is taken to avoid any delay in the application and enforcement of reliability standards due to implementation of FPA §215, which requires action by New York State, and to ensure application of the NYSRC reliability standards in New York. It is critical that mechanisms to enforce New York's reliability standards remain in place even under FPA §215 and the new authority given our federal partners. We are not adopting the NPCC

² The Power Pool was formed by New York's major electric service providers in 1966 in response to the blackout in the Northeast. It functioned until 1999, when the New York Independent System Operator, Inc. (NYISO) and the NYSRC were established.

³ Central Hudson Gas & Electric Corp., et al., 83 FERC ¶61,352 (1998).

⁴ NYISO Services Tariff, Sections 5.1, 5.6.

criteria for operation of the Northeast bulk power system at this time because the NPCC is in the process of classifying its reliability criteria, based upon the relationship to national and regional standards, into various categories. We will consider their adoption once the classification project has been completed.

BACKGROUND

The Energy Act established a new regulatory framework to ensure the reliability of the nation's bulk electric system.⁵ FERC assumes jurisdiction in matters regarding reliability over a new entity to be established (the Electric Reliability Organization (ERO)), certain functions of regional reliability entities, and all users, owners, and operators of the nation's bulk power system. Section 215 establishes a process for promulgation of mandatory reliability standards for the nation's bulk power system. The ERO is responsible for developing mandatory national reliability standards, subject to FERC's approval, and authorized to delegate to regional entities the responsibility to propose standards to FERC for its approval and to enforce national reliability standards.

States are not pre-empted from taking action to ensure the safety, adequacy, and reliability of its electric system, as long as such action is not inconsistent with any mandatory national reliability standard. A significant exception is made for New York State: "[T]he State of New York may establish rules that result in greater reliability within that State, as long as such action does not result in lesser reliability outside the State than that provided by the reliability standards" approved by FERC under Section 215.⁶

⁵ Title XII, Subtitle A (Reliability Standards).

⁶ FPA §215(i) (3) (16 U.S.C. §§ 824 *et seq.*).

The Commission ensures the reliability of New York State's bulk electric system through orders adopting reliability requirements.⁷ Reliability requirements adopted in Commission orders are incorporated into the NYSRC Reliability Rules.⁸

COMMENTS

Notice of this proposed rule making was published in the State Register on October 12, 2005, in conformance with State Administrative Procedure Act (SAPA) §202(1). Comments were jointly filed by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (Con Ed/O&R), the NYSRC, and Niagara Mohawk Power Corporation d/b/a National Grid (NMPC).

Con Ed/O&R state that it is important to reconcile federal and state responsibilities while preserving the work of the NYSRC. These parties assert that formation of the NYSRC did not eliminate or limit the Commission's authority with respect to electric system reliability in any respect. In support of this argument, the companies refer to the requirement that the NYSRC adopt reliability standards that are consistent with the Commission's reliability standards, criteria, and procedures (NYSRC Agreement), Commission authority to initiate NYSRC meetings (NYSRC Operating Agreement⁹), acknowledgement that the Commission exercises a direct role in the formulation of Reliability Rules and resolves reliability-related disputes between and

⁷ See, for example, Case 27302, Reliability of the Power Supply in the Service Territory of Consolidated Edison Company of New York, Inc., Order Directing Short-Term Measures to Improve System Reliability (issued May 23, 1978); Case 27302, supra, Order Granting In Part and Denying In Part Petitions for Reconsideration and Clarifying Previous Order (issued July 31, 1978).

⁸ See New York State Reliability Council Agreement §3.01. The NYSRC Agreement was executed in 1999 by Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc., and Rochester Gas & Electric Corporation.

⁹ New York State Reliability Council, LLC Operating Agreement, amended and approved by the NYSRC Executive Committee and Members as of April 15, 2005.

among Commission staff, the NYSRC, and the NYISO (NYISO/NYSRC Agreement¹⁰), and no change in the Commission's statutory authority with respect to electric system reliability, after establishment of the NYSRC. To reconcile federal and state responsibilities, they recommend that the Commission generically adopt current and future NYSRC rules as New York State rules, subject to the Commission's disapproval, as necessary, of any particular rule that would not serve the public interest. These parties explain that they are not suggesting a delegation of the Commission's authority to the NYSRC; rather, the Commission would consider the matter independently. They explain, however, that because the NYSRC's Reliability Rules are developed by means of a public process in which the Department of Public Service Staff participates, only brief Commission consideration is required for disapproval of any requirement in the NYSRC rules.

The NYSRC asserts that the Energy Act does not alter the requirement in the NYISO and NYSRC Agreement that the NYISO comply with NYSRC Reliability Rules. It points out that the Reliability Rules are not static and are subject to constant review and revision. The NYSRC states that, since its inception, it has adopted 11 new Reliability Rules, 18 modified Reliability Rules, 55 new Measurements (compliance requirements for Reliability Rules) and 18 modified Measurements. It argues that no changes in the current process are needed and Commission adoption of the NYSRC's Reliability Rules would result in unnecessary duplication and cause confusion and uncertainty. For example, the NYSRC asks, what is the status and applicability of an NYSRC revision to the Reliability Rules during the time needed to complete the procedures necessary for its adoption by the Commission or subsequent to a Commission decision to reject the revision? To avoid any potential uncertainty relating to applicability and enforcement of the Reliability rules, the NYSRC urges retention of the status quo.

¹⁰ Agreement Between the New York Independent System Operator and the New York State Reliability Council, dated December 1, 1999.

NMPC states that the proposal to adopt the Reliability Rules is premature. It recommends postponement of Commission action until FERC establishes the ERO and approves mandatory national reliability standards. It asserts that, at this point, the Commission cannot determine whether the NYSRC Reliability Rules achieve "greater reliability within the State," as Section 215 of the FPA requires. NMPC asserts that it is unclear whether any benefit would be gained by taking the proposed action because the Reliability Rules are standardized and all entities using the New York bulk power grid are required to comply with them. Furthermore, NMPC maintains that ample time is available for the Commission to adopt the NYSRC Reliability Rules, after the regional reliability framework is established. If the Commission decides to go ahead with the proposal to adopt the Reliability Rules, NMPC recommends that it coordinate its efforts with NYSRC, NPCC, and the North American Electric Reliability Council (NERC).

DISCUSSION AND CONCLUSION

Based upon our evaluation of the comments and of the emerging statutory and regulatory framework on the federal level regarding system reliability, we conclude that it is in the public interest and in furtherance of the Commission's responsibilities under the Public Service Law¹¹ to adopt the current NYSRC Reliability Rules in their entirety.¹² Because the federal statute authorizes the *State* of New York to establish rules that result in greater reliability, we are compelled to establish our own *State* regulations to ensure that New Yorkers receive the highest level of reliable service.

The Department of Public Service has participated extensively in the development of the NYSRC's Reliability Rules over the years; and, these rules are well designed to meet the more stringent reliability requirements that are needed in New York State. The NYSRC was formed, with the active support of the Commission, as an integral part of the restructuring of New York's electricity industry to ensure that the more stringent and mandatory reliability standards in New York State would be retained

¹¹ See PSL §§4(1), 5(2), 65(1), 66(1) and 66(2).

¹² The NYSRC's Reliability Rules we are adopting are set forth in Appendix A.

under the new competitive wholesale market structure. The NYSRC adopted the pre-existing Power Pool reliability rules, developed with knowledge gained after decades of experience in the operation of the New York bulk power system.¹³ The NYSRC functions efficiently and effectively in developing revisions to the Reliability Rules in an open process with direct participation by the NYISO and Department of Public Service Staff. The Reliability Rules appropriately address the specific electric system characteristics, operation, and demographics of New York State, the complexities related to the maintenance of reliable transmission in the State given the configuration of the bulk power system, and the severe consequences that result from power interruptions - particularly in New York City and on Long Island.

We do not agree with the commentators who suggested that our adoption of the Reliability Rules would cause confusion. By removing any potential uncertainty over New York's implementation of the §215 New York carve out, this early adoption of the Reliability Rules will provide continuity and certainty regarding the requirements applicable in New York State to assure the reliability of its electric system, during the time necessary for development of the federal regulatory framework and mandatory national reliability standards.

It is our intention to consider changes to the Reliability Rules adopted with this Order, as necessary to maintain consistency with any NYSRC changes. Historically, the Department of Public Service has supported the NYSRC changes in its Reliability Rules. The Con Ed/O&R proposal is not workable because it shifts Commission responsibility for adoption of reliability standards to the NYSRC. The Commission has a responsibility to consider proposed revisions independently of the NYSRC, including review and analysis of public comments.

The NYSRC process for modifications of the Reliability Rules includes posting of the proposed change on the NYSRC Web site for 45 days, after an NYSRC

¹³ In addition to the Power Pool rules, the NYSRC adopted its rules based on NPCC standards that must be followed by all industry participants within the NPCC. These NPCC standards incorporate reliability requirements established by NERC.

Executive Committee determination that a new or modified Reliability Rule is warranted. After comments are reviewed and revisions made as appropriate, the proposed new or modified Reliability Rule is presented to the Executive Committee for review and approval. This process has often required from 75 to 100 days—and sometimes longer—to complete. SAPA procedures applicable to proposed Commission rules require the Department of Public Service to publish a notice of the proposed rule making in the State Register and allow 45 days after publication for public comment before Commission consideration of the rule (SAPA §202(1)). Due to the State Register publication schedule and the dates of Commission sessions, this process could require 90 to 120 days. Because the Department of Public Service is involved in NYSRC consideration of proposals for changes in the Reliability Rules, it would become aware of the proposals in advance of the Executive Committee determination and could initiate the SAPA review process as soon as possible during NYSRC deliberations. Coordination of the timing of the NYSRC's modifications to its Reliability Rules and the Commission's determination on the proposed changes appears feasible and would avoid any uncertainty or confusion regarding the applicability and enforcement of requirements in the Reliability Rules.

The NPCC criteria consist of requirements to implement national reliability standards, to address regional-specific reliability needs, and to resolve reliability issues related to New York State. The NPCC is in the process of separately classifying the criteria. When NPCC completes the process and identifies the criteria that are applicable to New York, scheduled for this spring, we will be able to identify and consider adopting the NPCC criteria that result in greater reliability within the State.

The Commission orders:

1. The current Reliability Rules (Version 15, dated December 10, 2005) established by the New York State Reliability Council are adopted in their entirety, as set forth in Appendix A to this Order.

2. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary