

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

<b>Niagara Mohawk Power Corporation,</b>	)	
<b>A National Grid Company</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. EL06-1-000</b>
	)	
<b>New York State Reliability Council, LLC</b>	)	
	)	
<b>and</b>	)	
	)	
<b>New York System Independent Operator, Inc.</b>	)	

**MOTION FOR LEAVE TO RESPOND AND RESPONSE OF  
THE NEW YORK STATE RELIABILITY COUNCIL**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213 (2005), the New York State Reliability Council, LLC ("NYSRC") moves for leave to respond and response to the Reply of Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") filed in this proceeding.

In support hereof, the NYSRC states as follows:

**I. STATEMENT OF ISSUES**

In its Reply, National Grid raises the following issues to which the NYSRC responds herein:

1. Whether the Commission should accept National Grid's Reply;
2. Whether the relief requested by National Grid's Complaint complies with applicable reliability criteria while adhering to the requirements of the Federal Power Act ("FPA"), the Commission's anti-subsidy precedents and its Reliability Compensation Issues Policy;
3. Whether the Commission should act deliberately and expeditiously to grant the relief requested by National Grid's Complaint in order to optimize the

prospects of success of the Installed Capacity (“ICAP”) market in New York; and

4. Whether National Grid’s Complaint amply sets forth a *prima facie* case under FPA § 206.

## **II. MOTION FOR LEAVE TO FILE RESPONSE**

On November 22, 2005, the NYSRC filed an answer in accordance with the Commission’s regulations in response to the Complaint filed, in part, against it in the captioned proceeding. On December 6, 2005, National Grid filed a Motion to Reply and Reply in response to the NYSRC’s Answer. National Grid’s Reply is not permitted under the Commission’s regulations, unless otherwise authorized by the Commission. To the extent that the Commission accepts National Grid’s Reply, the Commission also should accept the NYSRC’s response to National Grid’s Reply. The Commission has permitted answers where, as here, the information provided in an answer will narrow the matters at issue, clarify the record, facilitate the Commission’s decisional process and aid in the Commission’s understanding of the issues. This response will ensure that the record is complete and accurate to enable the Commission to reach expeditious resolution of these issues. Accordingly, the NYSRC respectfully requests that the Commission grant the necessary waivers of its regulations to permit this response to the Reply filed by National Grid.

### III. RESPONSE

In its Reply, National Grid sets forth a Statement of Issues. The NYSRC respectfully submits the following responses to the issues presented by National Grid.

**1. Whether the Commission Should Accept National Grid's Reply.**

With respect to its contentions concerning the NYSRC, National Grid's Reply does not provide any new facts or analyses but merely contains conclusory statements and repeats contentions set forth in the Complaint. National Grid's Reply, therefore, should not be accepted. However, if the Commission decides to accept National Grid's Reply, the NYSRC respectfully requests that the Commission also accept this response to the Reply.

**2. Whether the Relief Requested by National Grid's Complaint Complies with Applicable Reliability Criteria While Adhering to the Requirements of the Federal Power Act ("FPA"), the Commission's Anti-Subsidy Precedents and its Reliability Compensation Issues Policy.**

With respect to this issue, National Grid's Reply mischaracterizes the NYSRC's actions concerning to its proposed Free Flow Equivalent ("FFE") methodology. The only action taken by the NYSRC's Executive Committee with respect to the FFE methodology was to decline to adopt its use in the base case IRM study for the 2006-2007 Capability Year. The Executive Committee did not find that if the NYSRC decided to employ the FFE methodology, and if the statewide installed capacity requirement ("IRM") and locational capacity requirements ("LCRs") were set according to the FFE methodology, all applicable reliability criteria would be met.

The National Grid Reply suggests that simply because the NYSRC Executive Committee approved an IRM study report that includes an IRM/LCR curve that shows that, at various points on the curve the minimum resource adequacy criteria would be met, the NYSRC has found that the adoption of an IRM and LCRs based on the FFE methodology would meet all applicable

reliability criteria. That is simply not the case. The NYSRC has not adopted the FFE methodology, nor has it made any finding that an IRM and LCRs based on the FFE methodology would satisfy all applicable reliability criteria. In determining the IRM, the NYSRC Executive Committee will consider the results of its base case study (which will not employ the FFE methodology) and other relevant factors. Consequently, the statements in National Grid's Reply, to the effect that the NYSRC's "sponsoring" of the IRM/LCR curve in its IRM Study "demonstrates that the FFE IRM, itself a point on that curve, complies with all reliability criteria, including the requirement to account for transmission system transfer capability" is speculative and misleading.

**3. Whether the Commission Should Act Deliberately and Expeditiously to Grant the Relief Requested by National Grid's Complaint in Order to Optimize the Prospects of Success of the Installed Capacity ("ICAP") Market in New York.**

National Grid has not provided adequate justification for Commission intervention into the NYSRC and NYISO procedures to establish the IRM and LCRs, and it certainly has not provided justification for the Commission's mandating how the NYSRC should conduct its IRM study or how the NYISO should establish LCRs.

Contrary to National Grid's contention, it has not "dutifully exhausted all meaningful opportunities within the appropriate NYSRC stakeholder process," with respect to the issues it has raised in this proceeding, nor has it exhausted its meaningful opportunities to raise and have those issues addressed within the NYISO governance process.

The NYSRC Executive Committee and its Installed Capacity Subcommittee continue to consider ways to improve the annual IRM studies, and to better coordinate the IRM process with the NYISO's LCR process. Improvements to the IRM study process are made on a regular basis. Earlier this year, a Unified Study Methodology was adopted by the NYSRC and the NYISO in

order to better coordinate the IRM/LCR processes. The issues raised by National Grid will continue to be considered by the NYSRC, along with all other relevant factors, to ensure that an IRM is established that provides reasonable assurance that applicable reliability criteria will be met.

In this regard, we note that National Grid states that the NYSRC stakeholder process “remains dominated by the majority interests which benefit from the existing subsidy.” National Grid provides no support for this statement, because it is insupportable. The 13 voting members of the NYSRC Executive Committee include appointees of four investor-owned utilities (one of which is located downstate), two state authorities (one of which is located downstate), one appointee each of suppliers, large consumers and municipal systems, and four unaffiliated members. It cannot reasonably be contended, therefore, that the NYSRC Executive Committee is “dominated” by parties who benefit from the subsidy National Grid alleges to exist.

Furthermore, the NYSRC mission statement provides: The NYSRC shall carry out its mission with no intent to advantage or disadvantage any market participant’s commercial interests. (Emphasis added). Reliability standards invariably affect the commercial interests of market participants because, in order to protect system reliability, they impose restrictions or obligations that would not otherwise exist in the competitive market. However, the NYSRC endeavors to exercise its responsibilities with the single objective of ensuring that adequate reliability standards are established and maintained in the New York Control Area with no intent to advantage or disadvantage any market participant’s commercial interests. The members of the NYSRC Executive Committee take this mission statement seriously. Any suggestion to the contrary is simply not justified.

Similarly, National Grid has not exhausted its opportunities to have the issues raised in its Complaint be considered and addressed within the NYISO governance process. As noted in NYSRC's Answer to the Complaint, it does not appear that National Grid requested the NYISO's Operating Committee to establish LCR's for the 2005-2006 Capability year based on its FFE methodology, nor did National Grid appeal to the NYISO Management Committee or the NYISO Board the Operating Committee's decision to adopt the LCRs recommended in the NYISO's Locational Installed Capacity Requirements Study for the 2005-2006 Capability Year. Furthermore, to the extent National Grid contends that the current IRM/LCR methodology raise ICAP market issues, those issues should be addressed by the NYISO's Business Issues Committee and ICAP Working Group.

It is patently clear, therefore, that National Grid has not exhausted all meaningful opportunities to raise its issues within the NYSRC and NYISO stakeholder processes, where all interested parties would have an opportunity to participate in the consideration of those issues. In fact, the National Grid Complaint is an effort to circumvent the normal NYSRC and NYISO procedures and to have the Commission mandate its favored position, in contravention of those procedures and without the full participation of other interested parties.

**4. Whether National Grid's Complaint Amply Sets Forth a Prima Facie Case Under FPA §206**

Neither National Grid's Complaint nor its Reply provide a sufficient basis for the granting of relief under §206. National Grid has not demonstrated that any action taken by the NYSRC is unjust and unreasonable or unduly discriminatory; nor has National Grid demonstrated that mandating the establishment of an IRM and LCRs in accordance with its proposed FFE methodology would be just and reasonable and not unduly discriminatory. A Commission

mandate under §206 to impose the FFE methodology on the NYSRC IRM process, therefore, has not been justified.

Furthermore, a Commission mandate imposing on the NYSRC and the NYISO National Grid's FFE methodology, on the grounds that it is necessary as a matter of law, would set a precedent for the establishment of resource adequacy requirements throughout the United States.

The National Grid pleadings do not provide any substantial or meaningful analysis of the consequences of the adoption of the FFE methodology for New York, let alone for the entire nation. The consequences of establishing the Commission precedent requested by National Grid, therefore, have not been defined, and may be very significant.

#### IV. CONCLUSION

For the reasons stated above, the NYSRC requests that the Commission accept its response and deny the relief requested in National Grid's Reply and Complaint.

/s/ P. Donald Raymond\_\_\_\_\_

Bruce B. Ellsworth  
Chairman  
NYSRC Executive Committee  
46 Tamarack Road  
Hopkinton, NH 03229  
Telephone: (603) 746-3447  
Email: [ellsworth@conknet.com](mailto:ellsworth@conknet.com)

P. Donald Raymond  
Executive Secretary  
New York State Reliability Council, LLC  
14 Thornwood Lane  
Fayetteville, NY 13066  
Telephone: (315) 637-9002  
Email: [Raymond40@aol.com](mailto:Raymond40@aol.com)

Dated: December 21, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Washington, D.C. this 21st day of December, 2005.

/s/ Claire M. Brennan  
Claire M. Brennan  
LeBoeuf, Lamb, Greene & MacRae LLP  
1875 Connecticut Avenue, N.W.  
Washington, D.C. 20009-5728  
202-986-8000