

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

New York State Reliability Council, LLC) Docket No. ER08-414-000

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

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213 (2007), the New York State Reliability Council, LLC (“NYSRC”) moves for leave to respond and submits this response to the comments and protests filed in the above-captioned proceeding. In support hereof, the NYSRC states as follows:

MOTION FOR LEAVE TO FILE RESPONSE

On January 4, 2008, pursuant to Section 3.03 of the New York State Reliability Council Agreement (“Agreement”), the NYSRC submitted a filing to advise the Commission that the NYSRC has revised the Installed Reserve Margin (“IRM”) for the New York Control Area (“NYCA”) for the Capability Year beginning on May 1, 2008 and ending on April 30, 2009 (the “2008-2009 Capability Year”) to be 15.0% and to request that the Commission accept and approve the filing effective no later than March 1, 2008.¹ The NYSRC requested that the Commission grant any and all waivers of its regulations that it deems necessary to accept and approve the filing effective no later than March 1, 2008.²

¹ “Filing of the New York State Reliability Council Revising the Installed Capacity Requirement for the New York Control Area,” Docket No. ER08-414 (Jan. 4, 2008) (“NYSRC January 4 Filing”).

² NYSRC January 4 Filing at 1.

Through this instant filing, the NYSRC respectfully requests that the Commission grant the necessary waivers of its regulations to permit this response to the comments and protests submitted in this proceeding. 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.³ Under the Commission's Rules of Practice and Procedure and Commission precedent, the NYSRC is entitled to respond to affirmative requests, including affirmative requests for relief, set forth in the pleadings submitted in this proceeding.⁴ The NYSRC's response will ensure that the record is complete and accurate to enable the Commission to reach expeditious resolution of these issues.

I. Protest by the Independent Power Producers of New York

In its protest,⁵ Independent Power Producers of New York ("IPPNY") does not take issue with the technical study upon which the NYSRC's IRM determination was based, which was included in the NYSRC's January 4 Filing as Appendix A ("2008 IRM Study"), nor does IPPNY contend that the 15.0% IRM approved by the NYSRC for the 2008-2009 Capability Year is not adequately supported by the 2008 IRM Study. IPPNY's protest is based on the contention that because two sensitivity studies indicate that environmental initiatives to be implemented sometime subsequent to the 2008-2009 Capability Year may require higher IRMs in future years, the NYSRC was obligated to ignore the results of the 2008 IRM Study and retain the current 16.5% IRM in order to avoid the potential need to increase the IRM in future years. This

³ See, e.g., *N.Y. Power Auth. v. Consol. Edison Co. of N.Y., Inc.*, 112 FERC ¶ 61,304, at P 41 (2005) ("We will accept . . . [the] reply, . . . [the] response, . . . and [the] answer because these supplemental pleadings serve to narrow the matters at issue in this proceeding and provide information that facilitates our decision-making process.").

⁴ See, e.g., *Iroquois Gas Transmission System, L.P.*, 61 FERC ¶ 61,341, at n.9 (1992); *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 53 FERC ¶ 61,026, at 61,101 (1990).

⁵ "Motion to Intervene and Protest of the Independent Power Producers of New York, Inc.," Docket No. ER08-414 (January 24, 2008).

contention does not provide a sufficient basis for the Commission's rejection of the NYSRC's January 4 Filing, as requested by IPPNY.

The procedures by which the NYSRC determines the annual IRM for the NYCA are set forth in the NYSRC's Reliability Rules A-R1–A-R3 and its Policy Statement 5-1 (Policy for Establishing NYCA Installed Capacity Requirements).⁶ It is clear from these documents that the 2008 IRM Study is the primary basis upon which the IRM determination is made. As noted in the NYSRC's January 4 Filing, the reliability calculation process for determining the NYCA IRM requirement utilizes a probabilistic approach. This technique considers the probability of generating outages, in conjunction with load and transmission models, to determine the number of days per year of expected capacity shortages. The General Electric Multi-Area Reliability Simulation ("GE-MARS") is the primary computer program used for this probabilistic analysis. The result of the calculation for Loss of Load Expectation ("LOLE") provides a consistent measure of electric power system reliability. The GE-MARS model includes a detailed load and generation representation of the eleven NYCA Zones as well as the four external control areas ("Outside World Areas") interconnected to the NYCA. The GE-MARS program also uses a transportation model representing transmission that reflects the ability of the system to transfer energy between zones under probabilistic generation and load scenarios. This technique is commonly used in the electric power industry for determining installed reserve requirements. The Assumptions Matrix for the 2008 IRM Study base case was approved by the NYSRC Executive Committee on November 9, 2007. *See* 2008 IRM Study, Table A-5.

⁶ The NYSRC's Reliability Rules and Policy Statement 5-1 are available on the NYSRC's website at: <http://www.nysrc.org/pdf/Documents/RRManualVer21%20Final%2012-14-07.pdf> and <http://www.nysrc.org/pdf/Policies/Policy%205-1%20Final%2011-14-06.pdf>.

In addition to a base case that uses assumptions approved by the NYSRC, the 2008 IRM Study includes a number of sensitivity studies to illustrate how the IRM would be affected if different assumptions were used. The sensitivity studies also provide a mechanism for illustrating “cause and effect” of how certain performances and/or operating parameters can impact reliability. *See* NYSRC Policy Statement 5-1, § 3.4.3.

In the 2008 IRM Study, 19 sensitivity studies were performed. *See* 2008 IRM Study, Table B-2. These sensitivities used assumptions different from those adopted for the base case with respect to various factors, including transmission assistance from Outside World Areas, generation unit availability, load growth, emergency operating procedures, environmental initiatives, and miscellaneous considerations. The sensitivity studies produced a wide range of results, with IRMs both higher and lower than the base case 15.0% IRM adopted by the NYSRC. It should be noted that 17 of the 19 sensitivities considered in the 2008 IRM Study involved varied assumptions with respect to the conditions in effect during the 2008-2009 Capability Year, while the two environmental sensitivities addressed conditions that may occur in future years.

Furthermore, the two environmental sensitivities that IPPNY contends should have caused the NYSRC to disregard the results of the careful and extensive analysis in the 2008 IRM Study cannot provide a reasonable basis for establishing the IRM for the 2008-2009 Capability Year. The environmental sensitivities considered in the 2008 IRM Study were adopted from the New York Independent System Operator’s (“NYISO”) 2008 Reliability Needs Assessment (“RNA”).⁷ As the RNA states, the purpose of the sensitivities was to determine to what extent the potential impact of the environmental initiatives on reliability can be quantified, and the

⁷ The RNA is available on the NYISO’s website: http://www.nyiso.com/public/webdocs/newsroom/press_releases/2007/RNA_and_Supporting_FINAL_REPORT_12-12-07.pdf.

resulting information is intended to assist in “developing compliance strategies that achieve the goals of these environmental initiatives while maintaining reliability.” RNA at I-22. State regulations have not been adopted for the CO₂ Regional Greenhouse Gas Initiative (“RGGI”) and regulations have not been drafted for the NO_x High Electric Demand Day (“HEDD”) initiative. Compliance with the HEDD and RGGI initiatives is not anticipated until 2009 and 2012, respectively.⁸

It should be noted that the sensitivity studies conducted by the NYISO, and considered in the 2008 IRM Study, did not assume any compliance strategies or control measures to offset the potential reliability impacts of these environmental initiatives. For example, the NYISO’s environmental sensitivity study of the HEDD initiative did not consider the possible replacement of the affected generating units with new, clean multi-fueled and operationally flexible generation in load pocket areas (RNA at I-25), nor the possible installation of emissions reduction technology on affected resources. The assumption that no compliance strategies or control measures are undertaken represents a worse case planning scenario.

With respect to the sensitivity study of the RGGI program, the NYISO analysis was undertaken to estimate the minimum level of allowances that New York State would need under the proposed CO₂ cap and trade program for the generation of sufficient electricity to meet NYCA requirements. The NYISO estimated that in 2010 the state would need allowances for 52 million tons of CO₂ to meet reliability standards, unless that number were decreased by renewable resources produced under the state’s Renewable Portfolio Standard program. RNA at I-26. The sensitivity study did not presume to measure the actual impact of the RGGI program on the state’s power system, but only to indicate to policymakers a level of allowances needed by

⁸ While the RGGI initiative is expected to begin in 2009, the proposed program will have a three year compliance timeline. The initial compliance period will be from 2009 to 2011, and it is our understanding that affected parties will be required to have the necessary allowances by 2012.

resources providing energy to the NYCA below which reliability would be affected. The level of allowances that would be available to resources supplying the NYCA is not known at this time.

The RNA also included a sensitivity study to analyze the potential reliability impacts of New York's energy efficiency initiative which is intended to achieve a 15% reduction in energy use by 2015 (the "15x15" program). This sensitivity study found that the successful implementation of the 15 x 15 program "will assist in realizing the goals of both environmental initiatives . . . in a manner that augments, rather than degrades, reliability." RNA at I-22. IPPNY does not explain why the sensitivity study of the state's demand reduction initiative, which could offset the reliability impacts of the environmental initiatives, should not be accorded comparable consideration with that accorded the environmental sensitivity studies. It is important to note that the NYISO's RNA did not include in its base case either of the two environmental sensitivities relied upon by IPPNY. This was true despite the fact that the RNA is an assessment of reliability needs over a 10 year period, as compared to the 2008 IRM Study which is limited to one year.

While it is appropriate for both the NYISO and the NYSRC to monitor the development of environmental initiatives and their potential impact on reliability, they also must be careful not to base their conclusions on premature assessments of their reliability impacts. At this point, final state regulations have not been adopted with respect to either of the environmental initiatives. The NYISO and NYSRC sensitivities were intended, in part, to provide useful information to state policymakers for their consideration in development of the final environmental programs. Furthermore, it is not currently clear what control technology or other mitigating actions may be available to offset the potential reliability impacts of these initiatives, including the installation of emissions reduction technologies on those resources that will be

most affected. In addition, the state is actively pursuing initiatives to reduce energy demand and increase the use of renewable resources which have the potential to offset the reliability impacts of the environmental initiatives.

The IRM adopted by the NYSRC is for the 2008-2009 Capability Year during which neither of these environmental initiatives will be in effect. Currently, their net effect on system reliability in future years is uncertain and the environmental sensitivities included in the 2008 IRM Study do not provide a sound basis on which to establish the IRM for the 2008-2009 Capability Year.

II. Comments of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.

In their joint filing,⁹ Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (collectively, the “Companies”) do not protest the NYSRC’s filing nor the 15.0% IRM. The Companies note, however, that the New York Public Service Commission (“NYPSC”) has issued a notice soliciting comments on the IRM adopted by the NYSRC, as the NYPSC did with respect to the NYSRC’s adoption of the IRM for the 2007-2008 Capability Year. The Companies also note the possibility that the NYPSC may adopt an IRM different from that adopted by the NYSRC and that “LSEs, generators and the NYISO may be put in an untenable position if the Commission and the NYPSC adopt different IRM levels”¹⁰ and that the adoption by the NYPSC of a different IRM would make it “difficult for the NYISO to implement its 2008 summer capacity market.”¹¹ The Companies then request that the Commission order the NYSRC “to file with the Commission any changes to the IRM adopted by the NYPSC that is different than the NYSRC’s current IRM proposal . . . [to] allow any change that results from the

⁹ “Motion to Intervene and Comment of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.,” Docket No. ER08-414 (Jan. 25, 2008) (“Companies’ Comments”).

¹⁰ Companies’ Comments at 3.

¹¹ *Id.*

NYPSC proceeding to be brought before FERC so that it can seek to make a determination for an appropriate IRM as part of the NYISO capacity markets.”¹² The NYSRC respectfully submits that the Companies’ request should not be adopted by the Commission.

First, as noted, the Companies do not raise any issue with the 2008 IRM Study or the consistency of the NYSRC’s IRM determination with the extensive technical analysis contained in the 2008 IRM Study. Second, the Companies’ request is inconsistent with the NYISO/NYSRC Agreement and the relevant NYISO tariff provisions approved by the Commission. The Companies’ request also is inconsistent with the Commission’s articulation of its role in reviewing the NYSRC’s IRM determinations, and would lead to unnecessary confusion with respect to the relative responsibilities of the NYSRC, the Commission and the NYPSC.

The NYISO/NYSRC Agreement provides that the NYSRC will determine the annual IRM for the NYCA and that the NYISO will establish installed capacity requirements consistent with that determination.¹³ The NYISO’s Market Services Tariff provides that the NYISO will establish the NYCA Minimum Installed Capacity Requirement and the related Load Serving Entity (“LSE”) and locational capacity requirements based on the NYSRC’s IRM determination.¹⁴ The NYSRC has made the required IRM determination based on its technical analysis and its expertise. To the extent that the NYPSC has the authority to establish a different IRM for LSEs in the NYCA, and determines that such action is necessary and prudent, it may do so.¹⁵ However, that action will not affect the NYSRC’s determination based on its independent

¹² *Id.*

¹³ NYISO/NYSRC Agreement, Sections 4.5 and 3.4.

¹⁴ See NYISO Market Services tariff at http://www.nyiso.com/public/webdocs/documents/tariffs/market_services/services_tariff.pdf, Sections 5.10, 5.11, *et seq.*

¹⁵ We note that Section 4.02 of the NYSRC Agreement provides for the participation of NYPSC representatives in NYSRC committee meetings, and the NYPSC is represented at all NYSRC Executive Committee

technical analysis. Furthermore, the Commission has articulated the standard it uses in reviewing an IRM determination by the NYSRC, as follows:

we have reviewed the revised ICR for purposes of determining whether it would have any adverse effect on jurisdictional matters. We have concluded that the revision does not appear to have an adverse effect on matters within our exclusive jurisdiction.¹⁶

It is respectfully submitted that the Commission's review of the NYSRC's IRM determination should be based on the above standard and the record before it.

Finally, the Companies note that in its order concerning the NYSRC's IRM determination for the 2007-2008 Capability Year, the Commission stated "[s]hould the NYSRC, as a result of New York Commission action, adopt a different IRM percentage, then it is our expectation that the NYSRC would make a filing with the Commission to that effect."¹⁷ This expectation by the Commission is entirely reasonable. In fact, the NYSRC can assure the Commission that if it should adopt an IRM different from the IRM subject to review in this proceeding, because of the adoption of a different IRM by the NYPSC or for any other reason, it will make an appropriate filing with the Commission.

III. Comments Submitted by the NYISO

In its comments,¹⁸ the NYISO supports the request of the New York State Reliability Council . . . that the Commission approve an IRM of 15 percent."¹⁹ The NYISO also supports the NYSRC's request that the Commission act expeditiously and issue an order by March 1,

and Installed Capacity Subcommittee meetings. The NYSRC is aware that the possible adoption by the NYPSC of an IRM different from the IRM adopted by the NYSRC could raise difficult issues for the NYISO concerning the implementation of its ICAP auction. The NYSRC has raised this concern with the NYPSC and intends to pursue it further with the NYISO and the NYPSC.

¹⁶ "Order Accepting For Filing Revised Installed Capacity Requirement," Docket No. ER00-1671-000 (March 29, 2000).

¹⁷ New York State Reliability Council, 118 FERC at p31.

¹⁸ "Motion to Intervene and Comments of the New York Independent System Operator, Inc." Docket No. ER08-414 (January 25, 2008) ("NYISO Comments").

¹⁹ NYISO Comments at 1, 9.

2008.²⁰ It should be noted that the 2008 IRM Study was implemented by the NYISO, subject to the supervision of the NYSRC's Installed Capacity Subcommittee and the review and approval of the NYSRC's Executive Committee.

IV. Comments by National Grid

National Grid's filing²¹ does not protest the NYSRC's IRM determination, but reiterates its views concerning the current methodology for establishing the IRM. National Grid's position in this regard has been the subject of a separate Commission proceeding.²² In the final joint report filed by the NYISO and the NYSRC in that proceeding, the filing parties informed the Commission that the independent Upstate-Downstate Study had found that the current IRM methodology has not resulted in a subsidiary to any portion of the NYCA by another portion of the NYCA, which was the primary concern raised by National Grid in that proceeding.²³ The NYISO and the NYSRC also informed the Commission that they would conduct supplemental evaluations of this issue over the following three years.²⁴

²⁰ *Id.*

²¹ "Motion to Intervene and Comments of Niagara Mohawk Power Corporation d/b/a National Grid," Docket No. ER08-414 (Jan. 25, 2008).

²² See "Protest of Niagara Mohawk Power Corporation d/b/a National Grid," Docket No. ER07-429-000 (Feb. 2, 2007).

²³ Quarterly Informational Report on Actions Taken by the New York State Reliability Council and the New York Independent System Operator Concerning the Issues Raised in the Complaint Filed by Niagara Mohawk Power Corporation, d/b/a National Grid, filed on June 29, 2007.

²⁴ *Id.* at 6.

CONCLUSION

For the foregoing reasons the NYSRC respectfully requests that the Commission:

1. Accept this response to the comments and protests filed in this proceeding; and
2. Accept and approve the NYSRC's January 4 Filing effective no later than March 1, 2008.

Respectfully submitted,

/s/ P Donald Raymond

P. Donald Raymond
Executive Secretary
New York State Reliability Council, LLC
7 Wheeler Avenue
Fayetteville, NY 13066
Telephone: (315) 637-9002
Email: p.raymond40@gmail.com

George C. Loehr
Chairman
NYSRC Executive Committee
4101 Killington Road NW
Albuquerque, NM 87114
Telephone: (505) 792-0643
Email: gloehr@Lucen.com

Dated: February 11, 2008

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 11th day of February, 2008.

/s/ Claire M. Brennan

Claire M. Brennan

Dewey & LeBoeuf LLP

1101 New York Avenue, N.W.

Suite 1100

Washington, D.C. 20005-4213

202-986-8000