

October 27, 2006

**Via Hand Delivery**

Honorable Magalie R. Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

**Re: *PPL EnergyPlus, LLC v. New York Independent System Operator, Inc.,  
Status Report of New York Independent System Operator, Inc.,  
Docket No. EL06-72-001***

Dear Ms. Salas:

Pursuant to the commitment made in its compliance report filed in this proceeding on August 28, 2006 (the "Compliance Report"),<sup>1</sup> the New York Independent System Operator, Inc. (the "NYISO") is providing this status report concerning the NYISO's and its stakeholders' consideration of changing the method for allocating Import Rights to external Installed Capacity ("ICAP").<sup>2</sup>

This status report relates to one of the two compliance obligations specified in the Commission's June 29, 2006 order in the above-referenced proceeding (the "Order").<sup>3</sup> Specifically, the Commission ordered the NYISO to "consider whether external rights should be awarded on a pro rata basis among all bidders" instead of using the current first-come, first-served approach.<sup>4</sup>

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<sup>1</sup> The Compliance Report was accepted by delegated letter order issued October 12, 2006.

<sup>2</sup> Capitalized terms not otherwise defined in the letter have the meanings ascribed thereto in the NYISO's Market Administration and Control Area Services Tariff or in the NYISO's Installed Capacity Manual.

<sup>3</sup> *PPL EnergyPlus, LLC v. New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,383 (2006).

<sup>4</sup> Order at P 31. The Commission also ordered the NYISO to propose improvements to the process:

In light of the apparent lack of transparency in the external ICAP import rights allocation process, we will require the NYISO to *propose* within 60 days of the date of this order *improvements to the process and revisions to the ICAP Manual so that both the requester and NYISO know when an allocation process begins.*

(continued...)

## **Background**

Prior to the date of the Compliance Report, the NYISO and its stakeholders considered the *pro rata* approach suggested by the Commission in paragraph 31 of the Order. Specifically, the NYISO considered this issue at the ICAP Working Group and Business Issues Committee (“BIC”) meetings on August 1 and August 9, 2006, respectively.

The ICAP Working Group’s consideration of this issue entailed discussions of the current first-come, first-served allocation methodology versus *pro rata* or auction allocation methodologies. The discussion concluded in a straw vote, with only one member (PPL) supporting the concept of a *pro rata* allocation methodology. As a result, the ICAP Working Group recommended to the BIC not to amend the current allocation methodology at this time.

At the following BIC meeting, the group discussed such issues as the potential impact on external ICAP Import Rights of the on-going revisions to the ICAP markets of neighboring Control Areas. After hearing from participants (including representatives of PPL) regarding their interest in pursuing other allocation approaches, the BIC concurred in the ICAP Working Group’s recommendation.

Subsequent to these meetings, however, it came to the NYISO’s attention that PPL wanted additional consideration of alternatives to the existing allocation methodology. Accordingly, the Compliance Report stated that NYISO planned to prepare specific ICAP Manual language changes that could be used to implement a *pro rata* allocation methodology and present them, together with supporting presentation materials, to the next ICAP Working Group meeting and to the BIC meeting in October. The NYISO also committed to filing a status report with the Commission regarding these additional efforts on or before October 27, 2006, and to supplement its Compliance Report if any ICAP Manual changes were adopted as a result of this further consideration. This letter constitutes that status report.

## **Further Consideration: Process and Results**

In order to facilitate full and informed consideration of a *pro rata* allocation process, the NYISO invested extensive business and legal resources to prepare possible revisions to ICAP Manual Section 4.9.2 to achieve a *pro rata* allocation of ICAP Import Rights (the “Proposal”). The Proposal utilized concepts reflected in a stakeholder proposal considered at several ICAP Working Group meetings over the past year or so.

The NYISO circulated the Proposal (Attachment 1) to the ICAP Working Group in advance of its September 26, 2006 meeting, along with an explanatory document. At

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(...continued)

*Id.* (emphasis added). The NYISO fulfilled this obligation by adopting changes to the Installed Capacity Manual as reflected in an attachment to the Compliance Report recently accepted by the Commission.

that meeting,<sup>5</sup> the NYISO explained the Proposal, and made it clear that the NYISO was prepared to undertake efforts with the Working Group, following the meeting, to revise the Proposal to address any detailed concerns, if the core concept of a *pro rata* allocation of Import Rights was acceptable to the Working Group. An extensive discussion of the Proposal ensued, in which multiple questions were asked about the Proposal's details and many viewpoints were expressed on the advisability of a *pro rata* approach and on whether the existing system needed modification. In particular, certain market participants expressed their view that a significant disadvantage of a *pro rata* approach (compared with a first-come, first-served approach) was that the MW amount in a contract for imported ICAP often cannot easily be adjusted with a counterparty in response to a prorationing that reduces the MW amount of ICAP Import Rights below the amount originally requested. Market participants expressed additional concern about the delays in obtaining final Import Right allocations that arise if a *pro rata* allocation approach were adopted because of the time constraints involved in striking ICAP deals.

A straw vote was taken at the ICAP Working Group meeting. To ensure that the vote would gauge the general support for a *pro rata* approach rather than focus on the acceptability of the specific wording of the Proposal, the NYISO posed the question for voting as to whether the Working Group supported moving forward to develop a *pro rata* allocation approach. In other words, the vote was not an "up or down" vote on the Proposal, as written, but rather, the concept of the *pro rata* allocation. Only PPL supported the concept of a *pro rata* allocation approach in the straw vote (which included a number of abstentions). Following the vote, the NYISO indicated its intention to present the Proposal at the next meeting of the BIC, and invited the ICAP Working Group members – in the interim – to submit proposed revisions to the Proposal. Subsequent to the ICAP Working Group meeting, another market participant (Brookfield Energy Marketing Inc.) that had not attended the meeting expressed its support for the *pro rata* allocation approach.

The NYISO sent copies of the Proposal to the BIC members, with explanatory materials and a draft motion, in advance of its October 11, 2006 meeting. (Attachment 2.) Consistent with the NYISO's approach at the ICAP Working Group meeting, the draft motion for the BIC was designed to gauge support for a *pro rata* Import Rights allocation methodology as a replacement for the existing first-come, first-served process. At the BIC meeting, the NYISO provided an overview of the Proposal. Following committee discussion on the merits of shifting to *pro rata* allocation, a roll call vote was taken. The motion supporting a change to the existing process failed, with a vote of only 14.69 percent in favor. This represented a positive vote from only two committee members, a negative vote from 19 committee members, and numerous abstentions. The discussion of this agenda item concluded with a reminder that the failure of this particular motion does not mean that stakeholders are precluded from bringing new Import Rights allocation proposals to the ICAP Working Group or the BIC.

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<sup>5</sup> The ICAP Working Group meeting was attended by representatives of all sectors.

In sum, the NYISO has facilitated thorough, additional consideration by a broad spectrum of stakeholders of the merits of shifting to a *pro rata* Import Rights allocation methodology. It is clear that only one or two stakeholders support such a shift at this time. The discussion during the four stakeholder meetings described in this letter revealed the lack of support for the proposition that a *pro rata* allocation methodology is superior to a first-come, first-served methodology. Indeed, several market participants indicated that a *pro rata* approach would adversely affect their ability to enter into external ICAP transactions. In addition, the first-come, first-served methodology has been improved, as described in the Compliance Filing. For these reasons, the NYISO has concluded that a shift to a *pro rata* allocation methodology is not advisable at this time.

### **Conclusion**

The NYISO is electronically serving a copy of this filing on each party on the official service list in this proceeding, on the official representative of each of its customers, on each member of its Market Participant committees, and on the New York State Public Service Commission.

Correspondence and communications regarding this filing should be addressed to the persons listed below:

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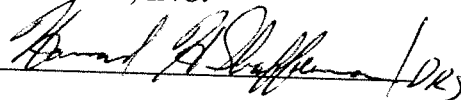
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Please acknowledge receipt of the foregoing by date-stamping the enclosed extra copy of this filing and returning it to the courier delivering this filing.

Respectfully submitted,

**NEW YORK INDEPENDENT SYSTEM  
OPERATOR, INC.**

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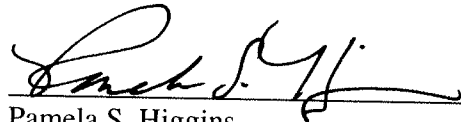
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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Washington, D.C. this 27th day of October, 2006.



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## **Attachment 1**

## 4.9.2 Allocation of Import Rights

The NYISO establishes the maximum amount of Unforced Capacity that can be provided to the NYCA by Resources located in each neighboring Control Area according to the procedures contained in Section 2.7 of this Manual. On or about February 15 the NYISO shall post the final quantity of external Installed Capacity import rights (“Import Rights”) available for request for the following Capability Year. The quantity of Import Rights available prior to the Summer and the Winter Capability Period (Strip) Auctions shall be 100% of the Import Rights available, as posted by the NYISO. Once this amount has been posted, the allocation among NYISO Customers of Import Rights is performed according to the following procedures.

### § Grandfathered External Installed Capacity Import Rights

Details concerning grandfathered external Installed Capacity import rights (“Grandfathered External Installed Capacity Import Rights”) (as described in Section 5.12.2 of the Services Tariff) are provided in Attachment E to this Manual.

### § Other Allocations

After accounting for Grandfathered External Installed Capacity Import Rights, the NYISO will allocate the remaining Import Rights to Customers, to the extent they are requested, in the manner specified below. The Unforced Capacity imported using these Import Rights may ultimately only be used by LSEs to satisfy their requirements within the NYCA, but any NYISO Customer may submit a request seeking Import Rights along with all required supporting documents as detailed below. Customers may request only that megawatt quantity of Import Rights remaining to be allocated from each control area.

### § Effect of MW Limits on Allocations

Megawatt amount limits on Import Rights that can be allocated by the NYISO may affect the allocation process at different points in time. For Import Rights not yet allocated during a Capability Period, the NYISO may consider other, newly developing constraints when determining allocations for those remaining Import Rights.

### § Period for Initial Requests Made Prior to Capability Period

Initial requests for Import Rights for one or more months within a Capability Period must be sent by e-mail (using as an e-mail attachment a completed version of the request form posted at [http://www.nyiso.com/public/webdocs/products/icap/auctions/Winter-2005-2006/forms/icap\\_import\\_rights\\_fax\\_form.pdf](http://www.nyiso.com/public/webdocs/products/icap/auctions/Winter-2005-2006/forms/icap_import_rights_fax_form.pdf)) [**Form will be reviewed, as necessary, for any changes necessitated by the pro rata approach**] to the NYISO (ICAP\_Info@nyiso.com) during the following time periods:

- For Summer Capability Period: After 8 AM ET and before 5:00 PM ET on the first business day (referred to herein as Day 1 of the four-day cycle applicable to Capability Period and monthly Import Rights allocations) following the publication of the total number of Import Rights made available by the NYISO (on or about February 15)



- For Winter Capability Period: After 8 AM ET and before 5:00 PM ET on the first business day (referred to herein as “Day 1) following the publication of the total number of Import Rights made available by the NYISO (on or about August 30) not more than thirty (30) days prior to the Winter Capability Period (Strip) Auction.

### **§ Period for Initial Requests Made For Remaining Import Rights Following Strip or Monthly Auction**

If Import Rights are not fully allocated for the entire Capability Period after the Strip Auction has concluded, the NYISO will open another period of allocations prior to each Monthly Auction for the month or months in which Import Rights remain and the NYISO will post any change to the amount remaining of available Import Rights after each Monthly Auction.

In circumstances where the NYISO offers such subsequent Import Right allocations, for each month within a Capability Period, Day-1 requests for Import Rights must be sent by e-mail (using as an e-mail attachment a completed version of the request form posted at [http://www.nyiso.com/public/webdocs/products/icap/auctions/Winter-2005-2006/forms/icap\\_import\\_rights\\_fax\\_form.pdf](http://www.nyiso.com/public/webdocs/products/icap/auctions/Winter-2005-2006/forms/icap_import_rights_fax_form.pdf)) to the NYISO (ICAP\_Info@nyiso.com) during the following time periods:

- After 8:00 AM ET and before 5:00 PM ET on the business day (Day 1) following the day the NYISO posts the results of each Capability Period (Strip) or Monthly Auction.

### **§ Treatment of Multiple and Duplicate Requests**

If multiple requests are to be submitted by a Customer in multiple separate e-mail submittals within a single request period (which can extend up to four days if prorating is required, as described below), with the intent that the NYISO evaluate each request submitted individually, the Customer must provide notice to the NYISO of that intent separately and in writing via e-mail (ICAP\_Info@nyiso.com) at least one day prior to Day 1 of that request period and must also supply the appropriate additional supporting documentation for each request.

If a Customer's request (by separate e-mail submittal) changes the content of a prior request e-mail submitted by that Customer within the same request period and without prior notice of intent to submit separate e-mail requests for individual evaluation, or if an identical request is submitted more than once in multiple e-mail submittals, the final request received within that request period (as judged by the time stamp assigned by the NYISO e-mail server) from that Customer will be deemed to supersede all prior requests from that Customer for Import Rights, and the NYISO will presume any supporting documentation received is intended to support that latest request.

If duplicate requests are submitted in the same e-mail submittal, they will be treated by the NYISO as requests for a cumulative megawatt amount and the NYISO will presume any supporting documentation should support that cumulative megawatt amount.

Customers requesting Import Rights may, but are not initially required to, notify the NYISO in the e-mail submitting their requests that they will accept the obligation to supply either the requested megawatt amount or any prorated portion of that requested amount as modified by the NYISO in the evaluation process.

### **§ Supporting Documents**

In addition to the request form and contents described above, the requester must submit supporting documentation, with pricing redacted, of the executed bilateral agreements for which Import Rights are requested, between either a qualified External Installed Capacity Supplier or a marketer contracted with a qualified External Installed Capacity Supplier and:

- (a) a LSE within the NYCA; or
- (b) a marketer that is not an affiliate of the External Installed Capacity Supplier.

The supporting documentation of bilateral agreements must be received by 5:00 PM ET (if sent by e-mail or fax, as determined by the time stamp of the NYISO e-mail or fax machine, respectively) of the business day in which the requests for Import Rights are submitted to the NYISO. This supporting documentation may be submitted via e-mail (ICAP\_Info@nyiso.com) along with the request form.

The submission of incomplete or inadequate information does not alter the time frame in which such documents are due. For example, a requester that has submitted incomplete or inadequate supporting documentation has until 5:00 PM ET of the business day in which the requests for Import Rights are submitted to the NYISO to provide adequate and complete supporting documentation.

### **§ Rejection of Requests**

A submittal consists of a conforming request form and conforming supporting document(s) for that request form. Only conforming submittals by e-mail within the time periods specified above will be evaluated by the NYISO. A submittal that is non-conforming, in that it is lacking required information, will result in the treatment as non-conforming of all requests included on that request form. If the NYISO determines that the information provided in the request is non-conforming, the NYISO will so notify the requesting party as soon as reasonably feasible on the day the submittal is received. If conforming information is not submitted by 5:00 P.M. ET on the same day as the request, the request will be rejected.

A request may also be rejected based on any of the following:

- The Installed Capacity to be imported is from unqualified External Installed Capacity Suppliers; or
- The megawatt amount provided in the supporting documentation is less than the megawatt amount included in the Import Rights request; or

· The megawatt amount requested exceeds the limit available to import from the corresponding control area.

If a request is rejected, the allocation of Import Rights proceeds as if that request had never been submitted.

### **§ Initial Processing/Modification of Valid Requests**

Upon receipt of a valid request and supporting documentation for a bilateral transaction on Day 1 of the four-day request/allocation period, the NYISO will respond by 5:00 PM ET of the next business day (“Day 2”) following the day on which the initial requests for Import Rights are submitted to the NYISO.

During Day 2, the NYISO will review all conforming requests with conforming supporting documentation to determine whether it is necessary for the NYISO to modify requests by prorating allocations of Import Rights because of either or both of these conditions:

- a) Allocating all requests would cause the megawatt amount of Import Rights allocated from one or more external control areas to exceed the limit on the amount of Installed Capacity that can be imported from that control area or areas, or
- b) Allocating all requests would cause the total megawatt amount of Import Rights allocated to exceed the limit on the amount of Installed Capacity that can be imported from all external control areas combined into the NYCA;

If no prorating is necessary, the NYISO will notify each requesting party on Day 2 whether its request has been accepted or rejected, with reasons for rejection, if such be the case. If a request is accepted, the NYISO will provide a confirmation number.

If prorating is necessary, Customers who do not withdraw accepted requests within the Two Day Window detailed below acquire an obligation to supply the requested capacity amount to NYCA using resources located in that control area and using those Import Rights, either through bilateral transactions with a qualified LSE or unaffiliated marketer, or through a \$0 offer in a New York Installed Capacity auction.

### **§ Prorating and Subsequent Withdrawals/Requests; Obligations**

Where prorating is necessary, the procedure for determining the megawatt amount of Import Rights allocated to each customer making a request in these situations consists of two stages.

The first stage is a proration by the NYISO of requests in situations where the total megawatt amount of Import Rights requests for an individual external control area exceeds the megawatt limit on imports of capacity from that control areas. The prorated megawatt amount for each request would be determined by multiplying the number of megawatts of Import Rights from that control area contained in the request for a given month by the ratio of (1) the number of megawatts of Import Rights available for allocation from that external control area (after taking Grandfathered External Installed Capacity Import Rights and other previously accepted obligations into account) to (2) the

number of megawatts of Import Rights from that external control area that have been requested for that month. Requests to import Installed Capacity from control areas for which requests for Import Rights are collectively less than or equal to the limit on the number of Import Rights that can be allocated from that control area would not be prorated in this stage.

In the second stage, the NYISO will reduce Import Rights allocations further, as necessary, to conform to limits on the aggregate megawatt amount of External Installed Capacity that can be imported from all external control areas into the NYCA. If, following the first stage, these limits would be exceeded by the grant of the requests following modifications in the first stage, the megawatt amount of Import Rights in each request from each control area for each month will be multiplied by the ratio of (1) the total number of megawatts of Import Rights that can be allocated (after taking grandfathered Import Rights and other previously accepted obligations into account), to (2) the number of megawatts of Import Rights that have been requested for that month, as prorated in the first stage.

If requests for Import Rights from any control area exceed the Import Rights the NYISO can allocate from that control area (after taking Grandfathered External Installed Capacity Import Rights into account) the NYISO will so notify the Customers by 5:00 PM ET on Day 2. In addition, customers will be notified of the available Import Rights for each month within a Capability Period.

During the two business day “window” following Day 2 (“Day 3” and “Day 4”, collectively the “Two-Day Window”) and ending at 5:00 P.M. ET on Day 4:

- Customers who had previously requested Import Rights and who did not previously indicate that they would accept the obligation to supply capacity may withdraw their requests by e-mail.
- Customers may submit additional requests for Import Rights from any control area, up to the limit of available Import Rights from each control area (as reduced by previous requests for which an obligation has already been accepted by the requesters). Requirements for such requests (including the timely submission of supporting documentation) are the same as stated above.
- Customers requesting Import Rights may inform the NYISO by e-mail that they accept the obligation to import capacity using those Import Rights allocations, as described above, either at the time the request is submitted or before the close of Day 4.

The NYISO will notify Customers when Import Rights have been made available due to withdrawal of Import Rights requests.

At the conclusion of the Two-Day Window at 5:00 P.M. ET on Day 4, all Customers who have submitted valid requests (not withdrawn within the Two-Day Window) for Import Rights for the control area(s) for which the Two-Day Window was declared become obligated to supply the requested capacity amount (or pro-rated amount thereof, as applicable) to NYCA using those resources and located in that control area as designated in the request form and using those Import Rights, through bilateral transactions with a

qualified LSE or unaffiliated marketer. Customers who requested Import Rights and who did not indicate they would accept the obligation to supply capacity but rather withdrew their requests prior to the close of the Two-Day Window will be under no further obligation associated with those Import Right requests.

If at any time, the NYISO has allocated all of the Import Rights that are available to permit the import of Installed Capacity from one or more control areas or NYCA as a whole for one or more months, the NYISO will promptly issue an announcement to all Customers alerting them to this fact.

### **§ Use of Import Rights**

Customers who are allocated Import Rights under the process described above shall demonstrate to the NYISO via the certification process stated in the Services Tariff no later than the deadline for monthly certification, as provided by the applicable Capability Period event schedule on the Installed Capacity (ICAP) Product page of the NYISO web site (<http://www.nyiso.com/public/products/icap/index.jsp>), that they have used those Import Rights to support the import of Installed Capacity from the relevant Control Area into New York to meet the LSE Unforced Capacity Obligation of an LSE serving load in the NYCA.

If, by the close of that certification time, a holder of such Import Rights has neither sold that Installed Capacity using those Import Rights in an NYISO-administered auction nor has entered into a bilateral agreement to supply Installed Capacity to a New York LSE using those Import Rights, the associated Installed Capacity will be made available to the market for use in the Spot Market Auction as price taker, i.e., at a price of \$0/megawatt. The Supplier will be paid the market-clearing price for the control area in which that capacity is located.

### **§ External Installed Capacity Sales in NYISO Administered Auction**

All purchasers of External Unforced Capacity in a NYISO-administered auction shall receive the Import Rights necessary to permit that Unforced Capacity to count towards the LSE Unforced Capacity Obligation. Therefore, in order to ensure that there are sufficient External Installed Capacity Import Rights available, the NYISO shall limit the number of megawatts of Unforced Capacity that can be purchased in any External Control Area in those auctions. In each Capability Period auction, the NYISO shall limit the number of megawatts of Unforced Capacity that can be purchased in any External Control Area to the number of megawatts of Unforced Capacity that can be provided by Installed Capacity Suppliers located in that Control Area, as determined in Section 2.7 of this Manual, less all Import Rights that have been requested for that External Control Area under the provisions of this section. In addition, the NYISO will permit entities that have been allocated Import Rights to offer Installed Capacity into the auctions it administers.

In the Capability Period Monthly Auctions held before and during the Capability Period, the NYISO shall limit the number of megawatts of Unforced Capacity that can be

purchased in any External Control Area to the number of megawatts of Import Rights that the NYISO makes available for the Capability Period from that Control Area, less the number of megawatts of Unforced Capacity purchased in that External Control Area for that month in preceding Monthly Auctions and the Strip Auction, less all External Installed Capacity Rights that have been allocated to support external Bilateral Transactions for that month.

The NYISO will reduce Import Rights eligible to be allocated in the Capability Period strip auction based on the allocations made according to the above procedures.

## **Attachment 2**

## ***Business Issues Committee***

October 11, 2006 Meeting

Motion - Agenda # 07

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### Motion:

The Business Issues Committee (BIC) hereby recommends that the NYISO staff work with the members of the ICAP Working Group to prepare a proposed set of changes to the Installed Capacity Manual (and to the NYISO's Market Services Tariff, as and if needed) to reflect a *pro rata* approach to the allocation of Installed Capacity Import Rights, as a replacement for the current first-come, first-served process, as discussed at the ICAP Working Group on September 26, 2006, and as presented to the BIC on October 11, 2006. The proposed set of changes prepared by the NYISO and the ICAP Working Group will be presented to the BIC for review.