STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on March 8, 2007

COMMISSIONER PRESENT:

Patricia L. Acampora, Chairwoman

CASE 07-E-0088 - In the Matter of the Adoption of an Installed Reserve Margin for the New York Control Area.

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 AN INSTALLED RESERVE MARGIN FOR THE NEW YORK CONTROL AREA

(Issued and Effective March 8, 2007)

BACKGROUND

On January 19, 2007, a Notice Soliciting Comments on the Adoption of an Installed Reserve Margin (IRM) for the New York Control Area (NYCA) (the Notice Soliciting Comments) was issued in this proceeding. In this Order, we adopt an IRM of 16.5% for the NYCA for the capability period beginning on May 1, 2007 and ending on April 30, 2008.

The IRM is intended to ensure the adequacy of New York's electric grid. It is a measure of the amount of installed generating capacity (expressed as a percentage above forecasted peak loads) that is needed to ensure that the risk of disconnecting firm load due to resource deficiencies shall, on average, not be more than one-day-in-ten-years. The New York

State Reliability Council (NYSRC) annually establishes an IRM for the NYCA.[1] In establishing the IRM, the NYSRC must consider a number of factors, such as the characteristics of the loads, uncertainties in the load forecast, outages and deratings of generating units, the effects of interconnections with other control areas, and transfer capabilities within the NYCA. At present, the IRM for the NYCA is 18%.

On January 12, 2007, the NYSRC filed with the Federal Energy Regulatory Commission (FERC) a notice that the NYSRC had adopted a required Installed Reserve Margin of 16.5% for the New York Control Area for the capability period beginning on May 1, 2007 and ending on April 30, 2008. The NYSRC requested that FERC accept and approve the NYSRC's filing by no later than March 1, 2007 so that the revised ICR may be in place prior to the Installed Capacity (ICAP) auction to be conducted by the New York Independent System Operator, Inc. (NYISO) on March 29, 2007. On March 5, 2007, FERC issued an order accepting for filing the NYSRC's IRM of 16.5% for the NYCA for the capability year beginning on May 1, 2007 and ending on April 30, 2008.[2]

The Notice Soliciting Comments requested comments on whether the Commission should adopt an IRM of 16.5% for the NYCA for the capability year beginning May 1, 2007 and ending April

[1] The NYSRC was formed by an agreement dated 1999 by and among Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and the Power Authority of the State of New York. The NYSRC was formed as part of the comprehensive restructuring of the competitive wholesale electricity market in New York State to promote and preserve the adequacy and reliability of the New York State power system.

[2] FERC, Docket No. ER07-429-000, Order Accepting Proposed Installed Capacity Requirement (issued March 5, 2007).

30, 2008. Interested parties were permitted to submit comments on or before February 16, 2007.

Comments were filed by NYSRC, Multiple Intervenors (MI), New York Municipal Power Agency (NYMPA), Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), Independent Power Producers of New York, Inc. (IPPNY), NYISO, and Energy Curtailment Specialists, Inc. (ECS). Joint comments were filed on behalf of New York State Electric & Gas Corporation (NYSEG), Rochester Gas and Electric Corporation (RG&E), New York Power Authority (NYPA), and Long Island Power Authority (LIPA). Joint comments were also filed on behalf of Consolidated Edison Company of New York, Inc. (Con Edison), Orange and Rockland Utilities, Inc. (O&R), and Central Hudson Gas and Electric Corporation (Central Hudson) (together, Con Edison, O&R and Central Hudson).

The NYSRC Process

On January 5, 2007, by a vote of 10 to 3, the Executive Committee of the NYSRC adopted an IRM of 16.5% for the NYCA for the capability year beginning on May 1, 2007 and ending April 30, 2008. That decision was based on a technical study performed by the Installed Capacity Subcommittee (ICS) of the NYSRC, and other relevant factors.[3]

The 2007 IRM Study was performed by the staff of the NYISO, under the guidance of the NYSRC. It employed a probabilistic approach using a computer modeling software program which included detailed information on load and generation in each of the 11 zones within the NYCA, and four

[3] New York State Reliability Council, L.L.C., Installed Capacity Subcommittee, New York Control Area Installed Capacity Requirements for The Period May 2007 Through April 2008, Technical Study Report, (January 5, 2007) (2007 IRM Study).

external control areas directly interconnected to the NYCA.[4] The 2007 IRM Study also employed transmission modeling to take into account the ability of the system to transfer energy between zones under probabilistic generation and load scenarios. The computer modeling program calculates the probability of outages of generating units, coupled with a model of hourly loads, in order to determine the number of days per year of expected capacity shortages. The result, termed the loss-of-load expectation (LOLE) index, provides a measure of the reliability of the system. This approach is commonly used in the electric power industry for determining installed reserve requirements.[5]

Under the NYSRC's Reliability Rule A-R1, the NYSRC must establish the IRM for the NYCA

> such that the probability (or risk) of disconnecting any firm load due to resource deficiencies shall be, on average, not more than once in ten years. Compliance with this criterion shall be evaluated probabilistically, such that the loss of load expectation (LOLE) of disconnecting firm load due to resource deficiencies shall be on average, no more than 0.1 day per year. This evaluation shall make due allowance for demand uncertainty, scheduled outages and deratings, forced outages and deratings, assistance over interconnections with neighboring control areas, NYS Transmission System transfer capability and capacity and/or load relief from available operating procedures.[6]

The 2007 IRM Study concluded that, under base case conditions, the required NYCA IRM for the capability period beginning on May 1, 2007 and ending on April 30, 2008, should be

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[4] The 2007 IRM Study employed the General Electric Multi-Area Reliability Simulation Program (GE-MARS), which is a state-of-the-art modeling program. NYSRC Comments, p. 9.

[5] Letter from Paul Gioia, Esq., Counsel to the NYSRC, to Magalie Salas, Secretary, FERC, (January 12, 2007) p. 7 (attached as Exhibit 1 to the comments filed by the NYSRC in this proceeding).

[6] NYSRC Comments, p. 6 (emphasis added).

16.0%. That result was 2.0 percentage points below the base case IRM which was established by the 2006 IRM Study.

According to the 2007 IRM Study, the principle reasons for this fairly large reduction in the base case IRM are an updated version of the GE-MARS program, an updated representation of the transmission system, and updated generating unit outage rates.[7] The most significant change to the GE MARS program involved modifying the portion of the program logic which limits the number of days per year that emergency operating procedures (EOPs) can be invoked.[8]

SUMMARY OF COMMENTS

Con Edison, O&R and Central Hudson

Comments were filed jointly by Con Edison, O&R and Central Hudson (Con Edison Comments). The Con Edison Comments recommend that the Commission adopt an IRM of 18%. They assert that the 16% base case IRM adopted by the NYSRC did not comply with Reliability Rule A-R1 because it has a 50% chance of not meeting the one-day-in-ten-years LOLE criteria under Reliability Rule A-R1. They argue that the NYSRC should have adopted a base case IRM of 16.9% because, at that level, the IRM would have a 99.73% chance of meeting the LOLE. Con Edison, O&R and Central Hudson assert that, because such an approach is customary in probabilistic engineering design and is common practice, the NYSRC was obliged to adopt a base case IRM of 16.9%.

Con Edison, O&R and Central Hudson allege that the IRM of 16.5% adopted by the NYSRC fails to account for circumstances that could impact reliability, including increases in generator

[7] 2007 IRM Study, p. 2.

[8] The change to the GE-MARS program logic was validated by the NYISO, which recommended the use of the updated software. 2007 IRM Study, p. 8.

forced outage rates, an outage at the Indian Point 2 nuclear generating facility (IP2), and a reduced effectiveness of EOPs. They assert that the 2007 IRM Study used a five-year historical average of individual generator actual forced outage rates, as opposed to a ten-year average, which was used in the past. They contend that actual forced outage rates may not exactly follow historical averages because in the last five years a number of large units have operated at their best ever rates and those rates are lower than industry averages. They also assert that new wind generation will have higher forced outage rates. For these reasons, and because the IRM is sensitive to forced outage rate degradation, Con Edison, O&R and Central Hudson argue that it would be prudent and reasonable to assume a degradation in generator forced outage rates going forward.

On the risk of an outage at IP2, Con Edison, O&R and Central Hudson argue that, in the last five years, the IRM calculations have taken into account the prolonged outage which occurred at IP2 during most of the year in 2000. They claim that, by using a five-year average ERORd, the NYSRC did not take the IP2 outage into account. They assert that, if an outage at IP2 was assumed, the IRM would have been a full percentage point higher, and that this was not known to most of the members of the NYSRC Executive Committee until the conference calls during which the Executive Committee voted on the IRM. Based on this, Con Edison, O&R and Central Hudson charge that the Executive Committee did not have enough time to consider the risk associated with an outage at IP2 or a similarly large generating station.

Con Edison, O&R and Central Hudson argue that because all the uncertainties related to the effectiveness of EOPs can result in drastic increases to the IRM, the NYSRC should have assumed no voltage reduction actions as a proxy for the reduced

effect of other EOPs. By way of example, they assert that appeals to the general public to reduce consumption are so infrequent that it is not possible to gauge customer response to such appeals.

Con Edison, O&R and Central Hudson also assert that the decision to lower the IRM to 16.5% was imprudent and inconsistent with the NYSRC's past practice because the 2007 IRM Study did not provide any clear and convincing reason to change the IRM from its current level of 18%, and under past practice significant weight was given to the existing IRM.

NYSRC

NYSRC recommends that the Commission adopt an IRM of 16.5%. The NYSRC explains that because the 16.5% IRM was a change from the 2006 IRM of 18%, NYSRC justified its actions in a filing with FERC, which is attached as Exhibit 1 to the NYSRC Comments.[9]

NYSRC describes how it was formed with the support of the Commission during of the restructuring of New York's wholesale electricity market, in order to ensure that the more stringent and mandatory reliability standards applicable in New York State would be retained under the new competitive wholesale market structure. The NYSRC claims that, in approving the creation of the NYSRC, the Commission recognized that the NYSRC would be responsible for establishing a state-wide reserve

[9] The NYSRC requests that the record of this proceeding include its filing with FERC. *See* FERC Docket No. ER07-429-000. Those documents are attached as Exhibits A and B to the NYSRC Comments and include the 2007 IRM Study and the NYSRC's Motion For Leave to Respond and Response of the New York State Reliability Council, LLC, FERC Docket ER07-429-000 (February 16, 2007).

margin to ensure that adequate generation is available to serve load during both normal conditions and system emergencies.[10]

The NYSRC describes how, at its inception, it adopted already-existing reliability rules previously developed by the New York Power Pool and the Commission, based on decades of experience. NYSRC explains that revisions to its Reliability Rules are developed in an open process with direct participation by the NYISO and the Commission. If a conflict arises between NYSRC and NYISO specifically with respect to a new or modified Reliability Rule, the matter can be referred to the Commission for resolution. After describing the process it used to establish the statewide IRM, the NYSRC describes the methodology and findings of the 2007 IRM Study, as has been summarized above.

NYSRC then responds to the arguments advanced by Con Edison, O&R and Central Hudson.[11] NYSRC asserts that their contentions are premised on incorrect representations of the NYSRC's resource adequacy criterion, the meaning and purpose of sensitivity cases in the NYSRC's IRM Study, and well-established policies and practices for determining the IRM. The NYSRC contends that the base case IRM of 16.0% complies with Reliability Rule A-R1, because that rule requires that the probability of disconnecting firm load due to resource deficiencies be, on average, no more than once in ten years. The phrase "on average," according to NYSRC, means a 50% confidence level, rather than a 99.7% confidence level.

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[10] NYSRC Comments, p. 4-5 (quoting FERC Docket Nos. ER97-1523, *et al.*, State of New York Department of Public Service, Supplemental Comments, p. 2 (filed May 23, 1997)).

[11] The NYSRC Comments respond to a protest filed by Con Ed, O&R and Central Hudson in FERC's proceeding, which is substantively identical to the comments filed by the Con Edison, O&R and Central Hudson in this proceeding.

Therefore, because the 16.0% base case IRM presents an equal chance that disconnection of load would be higher or lower than once in ten years, NYSRC says, it satisfies Reliability Rule A-R1.

NYSRC asserts that this interpretation of the phrase "on average" has been consistently applied by the NYSRC since its inception, is consistent with the practice in the electric industry generally for computing LOLE, and that the GE-MARS program, which is used for IRM studies nationwide, reports LOLE results that are literally the average LOLE.[12] NYSRC also asserts that, as part of the 2006 IRM Study, Con Edison, O&R and Central Hudson supported this interpretation of the phrase "on average" before the Executive Committee of the NYSRC. Finally, NYSRC argues that a review of the NPCC's reliability criteria, policies and practices, did not reveal any confidence bound studies to establish IRMs that achieve a nearly 100% chance of meeting the one-day-in-ten-years LOLE, and that the NPCC imposes no such requirement.

With respect to the argument that it failed to fully account for the sensitivity scenarios in setting the base case IRM, the NYSRC argues that the base case results from an analysis of actual past experience, and represents the NYSRC's best judgment of what is most likely to occur. It asserts that the sensitivity scenarios, on the other hand, attempt to assess the potential impact on the IRM if actual experience differs from what has been deemed most likely to occur under the base case. Because of this, the base case and sensitivity scenarios serve distinct purposes, the NYSRC argues. There is no basis, NYSRC contends, in its policies, practices or past experience for requiring the adoption of the results of any particular sensitivity case. Nor, it argues, is there any basis for

[12] NYSRC Comments, Appendix A of Exhibit 2, pp. 6 & 9.

requiring the NYSRC to adopt the results of only those sensitivity cases that would increase the IRM. To the contrary, according to the NYSRC, the extent to which the sensitivity cases impact the selection of an IRM requires the exercise of its judgment.

As to the claim made by Con Edison, O&R and Central Hudson that generator outage rates are likely to increase and the 2007 IRM Study should have included consideration of the outage at IP2 in the year 2000, NYSRC argues that Con Edison, O&R and Central Hudson voted to approve the assumptions underlying the 2007 IRM Study, and that forced outage rates were not a contentious issue in this year's IRM Study. NYSRC also argues that Con Edison, O&R and Central Hudson approved the NYSRC's decision to use, beginning in 2004, a five-year historical average after a close review of availability trends between 1999 and 2003 showed a strong trend of improvement in the performance of generating units. In addition, NYSRC asserts, generator performance has continued to be consistent between 2001 and 2005, and the NYISO's ICAP demand curve provides a financial incentive for generators to maintain and improve unit performance and reliability. NYSRC also argues that Con Edison, O&R and Central Hudson have not quantified the higher outage rates they are recommending or provided any credible support for a different outage rate. NYSRC further argues that Con Edison, O&R and Central Hudson's concerns about the outage rate of expected new wind generation was expressly addressed in the 2007 IRM Study, which derated the capacity of wind resources by approximately 88%, and those study assumptions were unanimously approved by the Executive Committee of the NYSRC including representatives of Con Edison, O&R and Central Hudson.

In response to the allegation that the NYSRC improperly failed to take into account a potential outage at IP2, NYSRC argues that its policy to employ a five-year average was approved in 2004 by Con Edison, O&R and Central Hudson. NYSRC also asserts that the outage at IP2 in 2000 was an extraordinary one-year regulatory outage and not due to an equipment failure. NYSRC further argues that, rather than considering an outage at IP2 in isolation, it is far more reasonable to consider forced outage assumptions for all generating units, it is important to consider both higher and lower base case forced outage rates, and there is no reason to expect IP2 forced outage rates to increase during 2007.[13]

In response to the argument that the NYSRC failed to give sufficient weight to the existing IRM, the NYSRC argues that it is obliged to consider the results of the 2007 IRM Study and there is no presumption in favor of a current IRM. It also argues requiring clear and convincing proof of the need to modify the IRM would conflict with the established annual IRM Study process and the resource adequacy criterion under the NYSRC Reliability Rules.

Multiple Intervenors

Multiple Intervenors recommend that the Commission adopt an IRM of 16.5%. Pointing out that that Department Staff actively participates in the NYSRC's IRM process, MI argues that the 2007 IRM Study should be given substantial weight because it is comprehensive, and reflects numerous improvements from prior studies. MI also points out that the base case assumptions and inputs for the 2007 IRM Study were approved by the NYSRC's Executive Committee without any opposition.

According to MI, an IRM of 16.5% is conservative and should not be adjusted upward under any account. In support, MI

[13] NYSRC Comments, Appendix B of Exhibit 2, p. 8-9.

notes, among other things, that the 2007 IRM Study recommended a base case IRM of 16.0%, and that the correction to the GE-MARS software, in and of itself, reduced the IRM from 18% to 16.8%.

MI argues that the NYSRC's conclusions reflect the expertise and best judgment of the Executive Committee of the NYSRC, whose members take their responsibilities very seriously and whose highest priority is maintaining reliability. MI notes that the Executive Committee of the NYSRC spends a great deal of time on setting the IRM and its decision is the product of a comprehensive, well-reasoned, and open process. For these reasons, MI argues, the Executive Committee's judgment should be accorded substantial weight. In view of these factors, MI cautions the Commission against adopting an IRM other than 16.5% unless it first rigorously analyzes the 2007 IRM Study and performs its own study.

Finally, MI urges the Commission to issue its order by March 1, 2007 so that the NYISO can incorporate the IRM into its ICAP auction which is scheduled to take place on March 29, 2007. MI argues that any delay could lead to increased ICAP costs to support a reserve margin in excess of what is needed. MI also contends that any inconsistency between FERC and the Commission in determining the applicable IRM, or any regulatory uncertainty, would be highly unfortunate.

NYSEG, RG&E, NYPA and LIPA

NYSEG, RG&E, NYPA and LIPA support the adoption of an IRM of 16.5% and the technical merits and results in the 2007 IRM Study. They also support the NYSRC's review process, which, they assert, was in full compliance with NYSRC policies, rules and procedures. They argue that the 2006 IRM Study resulted in an overstated IRM of 18.0% because it employed software containing an error which affected the probabilistic regional reliability evaluations for 2006. Under the 2007 IRM Study,

they point out, errors in the GE-MARS program were corrected, and the logic and modeling assumptions were improved and enhanced.

NYSEG, RG&E, NYPA and LIPA note that the sensitivity cases resulted in IRM levels closer to 16% than 18%, and assert that the decision to add 0.5% to the IRM reflected a conservative approach on the part of the NYSRC. Lastly, they argue that an IRM of 16.5% is consistent with Reliability Rule A-R1 which requires that the risk of disconnecting firm load due to resource deficiencies, on average, is not more than one-day-in-ten-years.

New York Municipal Power Agency

The New York Municipal Power Agency recommends that the Commission adopt an IRM of 16.5% because the NYSRC's decision was the result of a long and transparent process undertaken by the competent authority acting pursuant to its legal charge. NYMPA notes that the Assumption Matrix employed in the 2007 IRM Study was approved unanimously; the 2007 IRM Study was performed using a state-of-the-art computer model including a comprehensive set of sensitivity analyses; General Electric Corporation (GE) verified the data inputs and modeling assumptions at the request of the ICS; and the 16.5% IRM was recommended by the ICS, the NYISO, and GE. NYMPA assert that the 0.5% adder was included in an overabundance of caution. According to NYMPA, the Study is unsurpassed in its rigor and sophistication; no new technical critique has been raised; and the issues were thoroughly considered and discussed.

NYMPA argues that, if the Commission decides to substitute its judgment for that of the NYSRC at this juncture, the NYSRC's process will be undermined and the forum for technical analysis for establishing the IRM would shift to the Commission. Finally, NYMPA recommends that the Commission adopt

the 16.5% IRM by May 1, 2007 [sic], because delay would be even more harmful than a rejection of the NYSRC's findings.

National Grid

Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) urges that the Commission adopt a statewide IRM of 14.1%. National Grid argues the proposed 16.5% IRM is overstated and not required to maintain system adequacy within the NYCA and would instead put system reliability at risk by needlessly and excessively relying upon capacity resources upstream of transmission constraints to serve load in downstream constrained areas. According to National Grid, the statewide 16.5% IRM, in conjunction with Locational Capacity Requirements (LCRs) of 80% in NYISO Zone J and 99% in Zone K, ignores existing generating capacity within Zones J and K, and relies upon almost all capacity in Zones A through I. National Grid also argues that the 2007 IRM Study ignores 1,248 MW of available capacity in Zones J and K, which is downstream of transmission constraints.

National Grid contends that, because the 16.5% IRM assumes the importation of electricity from upstate into Zones J and K during periods of peak demand, it will threaten reliability by increasing the number of hours that the transmission system is operating at its transfer limits, and force capacity imports across degrading transmission interfaces. National Grid also claims that an IRM of 16.5% will introduce inefficient economic signals by relying excessively on upstate resources to serve load within Zones J and K.

National Grid asserts that Locational Capacity Requirements within Zones J and K should be increased because significantly more capacity is needed outside Zones J and K to achieve the same level of reliability as would be possible by increased capacity within Zones J and K. Because of this,

National Grid asserts, the proposed IRM will distort market prices and increase upstate costs to meet downstate needs. According to National Grid, an IRM of 14.1% statewide, combined with increased LCRs within Zones J and K will also more correctly allocate costs, and align New York's capacity markets with New York's capacity needs.

Independent Power Producers of New York

The Independent Power Producers of New York request that the Commission adopt an IRM of 17.5% for the capability year 2007-2008. An IRM of 17.5% is warranted, IPPNY argues, because a primary driver in the reduction in the IRM from 18% to 16% was an decrease in the effective forced outage rate on demand (EFORd).[14] IPPNY asserts that this improvement in the EFORd is not likely to be replicated in future years because new units coming on-line will have higher forced outage rates due to fuel limitations. IPPNY refers to a significant number of intermittent resources which are scheduled to commence operation this year and in the near future. IPPNY argues that, because they will have significantly lower equivalent availability during peak periods, they will put upward pressure on the IRM and lead to an increase in the EFORd during the 2007-2008 capability year.

IPPNY argues that reducing the IRM will have significant ramifications because New York does not have a longer-term forward capacity market and instead relies on the ICAP Demand Curve in a month-ahead spot market. Therefore, according to IPPNY, the IRM should be set at a level which is indicative of both the relevant capability year and likely future IRM requirements. Otherwise, IPPNY asserts, erratic

[14] According to the 2007 IRM Study, the improved ERORd was mainly due to removing year 2000 data, which included prolonged outages of an Indian Point and a Lovett unit in the Lower Hudson Valley, from the average. 2007 IRM Study, p. 5.

yearly fluctuations in the IRM will blunt the market signals the IRM is intended to produce. Finally, IPPNY contends that federal and state regulators should agree to set the IRM at a level which is compatible with the design and operation of the energy markets serving the NYCA.

New York Independent System Operator

The New York Independent System Operator recommends that the Commission adopt an IRM by March 1, 2007 because NYISO must know, on or before March 8, 2007, what the applicable IRM is in order to prepare for its ICAP auction scheduled for March 29, 2007. A decision by March 8, 2007 is also needed, NYISO asserts, to provide market participants timely notice of their capacity requirements so they can develop or adjust bidding strategies and make economically efficient capacity procurement decisions. The NYISO recommends that the Commission coordinate its actions with FERC and reach a decision which is compatible with FERC's review because conflicting or contradictory orders will cause confusion and lead to litigation. The NYISO argues that any such litigation would create uncertainty about LSE's minimum requirements for the six-month 2007 Summer Capability Period, negatively impact the NYISO-administered markets, and put the NYISO in the impossible position of having to choose between federal and state requirements. Finally, while not advocating a particular level for the IRM, the NYISO states that an IRM of 16.5% would be reasonable.

Energy Curtailment Specialists, Inc.

Energy Curtailment Specialists, Inc. submitted comments which describe the company as the nation's largest and leading provider of full service demand response and energy management services for commercial, industrial, and institutional customers. In its comments, ECS characterizes itself as extremely concerned that a reduction in the IRM will

almost certainly have a negative impact on demand response if demand response resources encounter larger than normal event calls during the summer 2007 capability period. According to ECS, lowering the IRM by 1.5% will require less capacity to be purchased, thereby lowering the amount of generation obligated and committed to the day-ahead energy market. With less generation available, states ECS, greater reliance on demand response will lead to more frequent interruptions to business which will, in turn, drive demand response customers from the Special Case Resources program, especially within New York City. According to ECS, this will lead to a net reduction in demand response resources even though, as peak load continues to grow, demand response resources are needed to maintain reliable operation of the grid.

DISCUSSION AND CONCLUSION

Environmental Quality Review

Under the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR §7), we must determine whether the actions we are authorized to approve may have a significant impact on the environment. Other than our approval of the action proposed here, no additional state or local permits are required, so a coordinated review under SEQRA is not needed. We will assume Lead Agency status under SEQRA and conduct an environmental review.

SEQRA requires parties undertaking an action to complete an EAF describing and disclosing the likely impacts of the actions they propose.[15] The Joint Petitioners submitted a short-form EAF, with Part 1 completed, which substantially complies with this requirement.

[15] 6 NYCRR §617.6(a)(3).

The proposed action over which we have jurisdiction is the establishment of an IRM for the NYCA for the capability year beginning on May 1, 2007 and ending on April 30, 2008. Because the proposed action does not meet the definition of a Type 1 or a Type 2 action, it is classified as an unlisted action requiring SEQRA review. After review of the proposal for the adoption of an IRM, and the record in this proceeding, and based on the criteria for determining significance listed in 6 NYCRR §617.7(c), we find that the adoption of an IRM of 16.5% for the NYCA will not result in any adverse environmental impacts. Our Staff has completed Part 2 of the short-form EAF.

Accordingly, as Lead Agency, we determine that the proposed action will not have a significant impact on the environment and we adopt a negative declaration pursuant to SEQRA. Because no adverse environmental impacts were found, no public notice requesting comments is required or will be issued. A negative declaration concerning this unlisted action is attached. The completed EAF will be retained in our files.

The Installed Reserve Margin for New York State

We will adopt an IRM of 16.5% for New York State for the capability period beginning on May 1, 2007 and ending on April 30, 2008. At the outset, our review of the record is guided by two considerations. First, the NYSRC is the entity responsible for establishing the IRM for the NYCA. The NYSRC's Reliability Rules, which we have adopted,[16] are based on decades of experience in these matters. The NYSRC's process for evaluating the IRM on a yearly basis is well-established, comprehensive, detailed, and open and transparent. The NYSRC, industry members, NYISO, market participants, and Department Staff all participate in the annual IRM Study process. Second,

[16] Case 05-E-1180, Matter of Reliability Rules, Order Adopting New York State Reliability Rules (issued February 9, 2006).

the adoption of an IRM which differs from that adopted by the NYSRC at this late date would potentially undermine the NYSRC's process and may disrupt or interfere with the operation of the markets serving the NYCA. For these reasons, we will give considerable weight to the NYSRC's findings, conclusions, and recommendations.

We find that the NYSRC has demonstrated that the applicable IRM for the NYCA for the capability year beginning on May 1, 2007 and ending on April 30, 2008 should be 16.5%. The 2007 IRM Study, as well at the other materials provided by the NYSRC, provides a record basis for this conclusion. The Executive Committee of the NYSRC, including representatives of Con Edison, O&R and Central Hudson, unanimously approved the 2007 IRM Study, including the base case IRM of 16.0%, through a lengthy, transparent, open and deliberative process. In addition, the majority of the comments submitted in this proceeding support the NYSRC's recommendations.

We are persuaded by the NYSRC's response to the concerns and arguments raised in some of the comments. The NYSRC's claim that the phrase "on average" under Reliability Rule A-R1 requires a base case IRM with a 50% probability of meeting the one-day-in-ten-years LOLE, rather than a 99.7% level of confidence, is consistent with the plain language of the Reliability Rule, the established practice of the NYSRC, and the electric industry in general.

We conclude that the record supports the NYSRC's decision to add 0.5% to the base case IRM based on the sensitivity scenarios and other relevant information. First we note that, because the consideration of sensitivity cases is intended to assess the possible impacts on the IRM of events other than those most likely to occur in light of actual experience, it is a highly judgmental process. Concerns raised

in the comments that NYSRC did not adequately consider the impact of the sensitivity scenarios were effectively addressed in the comments filed by the NYSRC, where it notes that the selection of an IRM requires the exercise of judgment by the members of the Executive Committee, based on a consideration of all sensitivity cases (including those that would decrease the IRM as well as those that would increase the IRM), and other relevant factors.

IPPNY's assertion that the lower outage rates were a major driver in the reduction of the IRM from 18% to 16% is contradicted by the 2007 IRM Study which indicates that updated generating unit EFORs impacted the IRM by 0.4%.[17] Its claim that new wind generation will place upward pressure on the IRM also is not supported by the 2007 IRM Study which derated the capacity of new wind generation by approximately 88%.

We are not persuaded by the arguments that the NYSRC acted imprudently when it did not assume that sensitivity cases which increase the risk of not meeting the LOLE would exert upward pressure on the IRM. The NYSRC employed a five-year average methodology which has been in place since 2004 and which Con Edison, O&R and Central Hudson have previously supported. It also amounts to a collateral attack on the base case assumptions employed for the 2007 IRM Study, which assumptions were unanimously approved by the Executive Committee of the NYSRC including representatives of the Con Edison, O&R and Central Hudson. Moreover, Con Edison, O&R and Central Hudson have not offered any credible evidence or analysis for giving significant weight to an event which has not occurred at IP2, or any large generating facility, since 2000, in determining the 2007-08 IRM.

[17] 2007 IRM Study, Table 2.

The 2007 IRM Study specifically considered the impacts which EOPs may have on the IRM, using data supplied by NYISO derived from its past experience. Con Edison, O&R and Central Hudson have not demonstrated that the NYSRC was required to consider a simultaneous failure of all voltage reduction controls, a circumstance they themselves describe as unlikely, as a proxy for uncertainties associated with the EOPs.

The 2007 IRM Study provided clear reasons for reducing the IRM to 16.5%, including the improved GE-MARS software, an updated transmission system representation, and updated generating unit outage rates. Moreover, the argument that the NYSRC should have given greater weight to the fact that the existing IRM is 18% is contrary to the purpose served by the annual IRM Study process, which is to ensure that the IRM reasonably reflects changed circumstances over time. In addition, the NYSRC is bound to consider the results of the 2007 IRM Study in setting the IRM, and its policies do not create any presumption in favor of an existing IRM.

At this time, we will not address National Grid's assertions that the IRM should be set at 14.1%, with corresponding increases in Locational Capacity Requirements in NYISO Zones J and K. Because National Grid has not substantiated their claims, their arguments provide no reasonable basis for rejecting an IRM of 16.5%. In addition, National Grid's arguments were considered and rejected by the NYSRC Executive Committee.[18] Under the current proposal, the Locational Capacity Requirements for NYISO Zones J and K would be unchanged from those identified in the 2006 IRM Study. The approach urged by National Grid differs materially from that

[18] At its January 5, 2007 meeting, the Executive Committee of the NYSRC rejected a proposal to set the IRM at 14.1%, by a vote of 9 to 3, with one abstention. Con Edison Comments, Exhibit B at pp. 3-4.

taken by the NYSRC, and would require considerable further study. Moreover, the IRM must be in place in advance of the NYISO's March 29, 2007 ICAP auction to enable market participants to structure their bidding, and enable the NYISO to prepare for and conduct the ICAP auction without disruption. Under these circumstances, we will not delay a decision on the establishment of a statewide IRM for the NYCA.

As to the concerns expressed by ECS, that a decrease in the IRM may discourage participation in demand response programs, we note that ECS has not provided any data to support its concerns. While we recognize that the level of the IRM may impact participation in demand response programs, ECS has not quantified any such impact. As a result, ECS's comments do not provide any reasonable basis for requiring an IRM greater than 16.5%.

Emergency Adoption

This action is taken on an emergency basis pursuant to State Administrative Procedures Act (SAPA) § 202(b). The reliable and economic supply of electricity is essential to the public health, safety and general welfare of the citizens of the State. The IRM must be in place prior to the March 29, 2007 ICAP auction in order to provide market participants adequate notice to inform their bidding and to enable the NYISO to conduct the ICAP auction without disruption. A failure to timely adopt the IRM could potentially impair the availability of bidders and adversely affect the adequacy of supply and the reasonableness of capacity prices. As a result, compliance with the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest, and the immediate adoption of an installed reserve margin is necessary for the preservation of the public health, safety and general welfare.

CONCLUSION

For the reasons stated above, we find that the IRM for the NYCA for 2007-2008 should be 16.5%.

It is ordered:

1. The Commission adopts an Installed Reserve Margin of 16.5% for the New York Control Area for the capability year beginning May 1, 2007 and ending April 30, 2008.

2. This proceeding is continued.

(SIGNED) _____
Commissioner