

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

New York State Reliability Council

Docket No. ER10—416--

**MOTION TO INTERVENE AND COMMENTS OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.214 (2006), the New York Independent System Operator, Inc. ("NYISO") respectfully moves to intervene in this proceeding and offers its comments in support of the filing made by the New York State Reliability Council ("NYSRC"). The NYISO believes that an Installed Reserve Margin ("IRM") of 18 percent for the New York Control Area ("NYCA") for the upcoming 2010/2011 Capability Year,¹ which runs from May 1, 2010 through April 30, 2011, falls within a range of reasonable determinations for the level of installed capacity required to maintain the reliability of the NYCA bulk power system. Accordingly, the NYISO supports the NYSRC's request that the Commission approve an IRM of 18 percent.

The NYISO also joins the NYSRC in asking the Commission to grant any waivers that may be necessary to accept and approve the NYSRC's filing effective February 16, 2010. This date allows sufficient time for the NYISO to calculate and post the minimum capacity requirements and for market participants to prepare for the first Installed Capacity ("ICAP") auction for the Summer 2010 Capability Period, scheduled for March 30, 2010. Without this basic information, the efficiency of the NYISO's installed capacity auction could be seriously impaired.

¹ Capitalized terms have the meaning ascribed to them in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff")

Finally, the NYISO respectfully suggests that the Commission coordinate its decision in this proceeding with the actions that the New York Public Service Commission (“NYPSC”) may soon take in response to the NYSRC’s filing. Inconsistent determinations by the Commission and the NYPSC would create uncertainty about what IRM the NYSRC should provide to the NYISO to use, and, potentially, subject the NYISO to contradictory regulatory mandates. At the same time, the NYISO respectfully requests that the Commission not allow jurisdictional considerations to delay timely implementation of the auction process.

In support thereof, the NYISO states:

I. Communications and Correspondence

All communications regarding this filing should be directed to:

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II. Background

Section 3.03 of the NYSRC Agreement, which was approved by the Commission as part of the formation of the NYISO and the NYSRC, obligates the NYSRC to submit any proposed revisions to the NYCA IRM to the Commission for approval before the beginning of the Capability Year to which the change would apply. The IRM was set at 18.0% between the

2000/2001 and the 2006/2007 Capability Years² In recent years, the IRM has varied. The Commission accepted an IRM of 16.5% for the 2007-08 Capability Year,³ 15% for the 2008-09 Capability Year,⁴ and again 16.5% for the current Capability Year.⁵

The current NYCA IRM of 16.5% means that Load Serving Entities (“LSEs”) in the NYCA must procure ICAP equal to 116.5% of their forecast peak load.⁶ In addition, there are separate location-specific ICAP requirements for LSEs in New York City and on Long Island, which reflect the existence of transmission constraints in those areas.

At the request of the NYSRC, the NYISO conducted a study to determine the NYCA IRM necessary to meet all applicable reliability criteria for the upcoming Capability Year. The NYISO employed General Electric’s Multi-Area Reliability Simulation (MARS) model to determine the amount of installed capacity that is required NYCA-wide to meet the governing resource adequacy criterion that the probability of a disconnection of firm load not exceed one occurrence in ten years.⁷ The NYISO’s base case evaluation yielded a minimum NYCA IRM of 17.9 percent for the 2010/2011 Capability Year. The NYISO reported its results to the NYSRC’s Installed Capacity Subcommittee in the Technical Study Report.

The subcommittee reviewed the results of the study, with verification of the data inputs and modeling by General Electric. The NYSRC’s filing provides highlights of the Technical Study Report at pages 9 and 10 and includes the study itself as an attachment. As described in its filing, the NYSRC Executive Committee relied on this result as well as its evaluation of

² *New York State Reliability Council*, 90 FERC 61,313 (2000).

³ *New York State Reliability Council*, 118 FERC 61,179 (2007)

⁴ *New York State Reliability Council*, 122 FERC 61, 186 (2008)

⁵ *New York State Reliability Council*, Docket No. ER09-437-000 (February 6, 2009).

⁶ For the 2006/2007 Capability Year, for example, the forecast peak load for the NYCA was 33,295 MW. The 18.0% IRM means the minimum ICAP requirement was 39,288 MW (*i.e.*, 18% more than 33,295 MW).

⁷ This criterion is known as the “Loss of Load Expectation” or “LOLE” and is a standard contained in the reliability rules of the Northeast Power Coordinating Council (NPCC) and the NYSRC.

modeling changes, sensitivity studies, and its experience, and determined to adopt an IRM for the 2010-11 Capability Year of 18 percent.

On December 14, 2009, the NYSRC filed its proposed 2010-11 NYCA IRM with the Commission. The NYSRC requested that the Commission accept its filing and issue an order no later than February 16, 2010.

The NYSRC has informed the NYISO that, consistent with past practice, it intends to provide a copy of its filing to the NYPSC. The NYISO expects that the NYPSC will initiate a proceeding to review the proposed IRM and will accept comments from interested parties. The NYISO plans to file comments with the State Commission in support of the NYSRC's proposal.

III. Motion to Intervene

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. Pursuant to its Commission-approved tariffs, the NYISO is also responsible for administering the ICAP auctions, including the Capability Period Auction scheduled for March 30, 2010.⁸ The NYISO's Services Tariff also requires LSEs within the NYCA to procure sufficient levels of ICAP, including locational ICAP requirements for New York City and Long Island.

Together with the ICAP Demand Curves, the NYCA IRM is a critical input into the NYISO's ICAP auctions because it is used to calculate the LSEs' minimum NYCA-wide capacity requirements, and its methodology and data inputs are used to calculate the Locational Capacity Requirements ("LCRs"). Specifically, after the NYSRC provides the IRM to the NYISO, the NYISO uses the NYSRC's IRM to determine the capacity requirements for New

⁸ The ICAP auction processes are described in Sections 5.13 and 5.14 of the Services Tariff

York State as a whole. It then uses the methodology and data underlying the determination of the base case for the IRM to calculate the LCRs for LSEs, and those LCRs, together with the demand curve, determine the minimum amount of capacity that must be procured by LSEs. The NYISO informs the LSEs of their minimum capacity requirements and conducts auctions for each Capability Period (summer and winter six-month capability periods) as well as monthly and spot market auctions.⁹ Because the NYISO cannot fulfill its tariff obligations without the IRM, the NYISO has a unique interest in this proceeding that cannot be adequately represented by any other entity, and should therefore be permitted to intervene with all rights of a party.

IV. Comments

A. The NYSRC's Proposal to Establish a NYCA IRM of 18% is Reasonable

As explained above, the NYSRC has requested Commission approval to increase the NYCA IRM from 16.5 percent to 18 percent. The NYISO believes that the proposed IRM falls within a range of potentially reasonable IRM levels.

The analysis described in the Technical Study Report yielded a minimum IRM of 17.9 percent that meets the governing LOLE resource adequacy criterion. The NYSRC Executive Committee concluded that changes in modeling and assumptions from the prior year's study, among other factors, supported setting the next year's NYCA IRM at a level slightly above the minimum. In particular, improved special case resource performance modeling and a recent trend toward higher generator forced outage rates supported increases of approximately 1.7% over the 2009/2010 base case IRM of 16.2%.¹⁰ The NYISO believes that it was reasonable for the NYSRC to weigh these factors in adopting the 18 percent level, and believes the NYSRC's evaluation correctly applied the LOLE criterion to select an IRM level within a range of

⁹ See Services Tariff §§5 12-5.14

¹⁰ Technical Study Report, Executive Summary, at pp 8-9

reasonable IRM levels that will maintain reliability in New York for the upcoming 2010-2011 Capability Year.

B. The Commission Should Act Expeditiously

The NYISO supports the NYSRC's request that the Commission act in time to provide an effective date of February 16, 2010. Pursuant to its tariff, the NYISO has scheduled the first ICAP auction for the six-month Summer 2008 Capability Period to occur on March 30, 2010.¹¹ The outcome of this auction will affect the monthly and spot capacity auctions the NYISO will conduct in April for May 2010.

The NYISO must know the NYCA IRM sufficiently ahead of the scheduled auction so that it can calculate the minimum NYCA-wide and locational capacity requirements and transmit this information to auction participants. If the Commission acts by February 16, 2010 – the date requested by the NYSRC – the NYISO is confident that it could complete this work on time.

Moreover, in accordance with its manuals and past practice, the NYISO has informed Market Participants that the new minimum requirements will be available by March 19, 2010. This information is conveyed in advance of the capacity auction for the six-month Summer Capability Period in order to provide Market Participants with sufficient notice of their capacity requirements so that they may develop or adjust their bidding strategies. The NYISO would prefer to start making the necessary calculations as early as possible in advance of this deadline. Further, without timely information, it will be much harder for ICAP Suppliers and LSEs to make economically efficient capacity procurement decisions.

C. The Commission Should Coordinate with the NYPSC to Avoid Imposing

¹¹ The NYISO intends to ask the NYPSC to act promptly in considering the proposed IRM level, for the same reasons discussed here.

Inconsistent Requirements on the NYSRC

The NYISO respectfully suggests that the Commission coordinate its review of the NYSRC's proposed NYCA IRM revision with the NYPSC's inquiry into the subject. To the extent that both the Commission and the NYPSC address common questions, the NYISO also asks that the Commission take measures to ensure that its determinations are compatible with the NYPSC's. If the two agencies were to issue conflicting or contradictory orders to the NYSRC concerning the IRM level, confusion may ensue as to what IRM level the NYSRC should provide to the NYISO to use in the locational capacity calculations. If the NYSRC receives conflicting regulatory directives, it will be forced to choose between them, leaving its choice susceptible to almost certain litigation. The probability of such litigation and the uncertainty as to its outcome will engender uncertainty about the LSEs' minimum requirements for the auction for the six-month Summer Capability Period (and possibly even the subsequent monthly and spot auctions). The resulting disruption and confusion would negatively affect the NYISO-administered markets, and, potentially, threaten the reliability of the New York State transmission system.

Conflicting Commission and NYPSC rulings could also put the NYISO in the difficult position of trying to choose between inconsistent federal and state requirements. This would greatly complicate the NYISO's ability to fulfill its ICAP-related responsibilities under its tariffs. The NYISO could also be exposed to demands for refunds, and other legal claims, from either LSEs claiming that the NYISO unlawfully required them to over-procure, or from generators alleging an unlawful under-procurement and lost revenues.

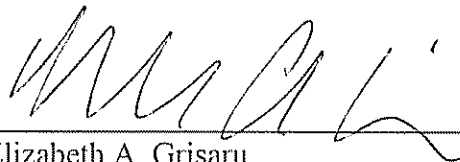
The NYISO recognizes that the parallel Commission and NYPSC reviews of the NYSRC's proposed NYCA IRM revisions may give rise to disagreement between the agencies as to

whether the Commission or the NYPSC, or both, have jurisdiction over the NYCA IRM. If a jurisdictional dispute arises, the NYISO respectfully submits that the Commission should not allow the possibility of such a dispute to interfere with the timely administration of the ICAP auctions.

V. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission: (i) accept its motion to intervene; (ii) accept the NYSRC's proposed revision to the NYCA IRM with an effective date of February 16; and (iii) coordinate with the NYPSC in order to avoid the possibility of inconsistent federal and state rulings.

Respectfully submitted,



Elizabeth A. Grisar
Counsel for New York Independent System
Operator, Inc.

December 16, 2009

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 this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2005).

Dated at Rensselaer, NY this 16th day of December, 2009

By: /s/ Joy A. Zimmerlin

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