

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

Niagara Mohawk Power Corporation)
D/b/a National Grid)
)
v.)
)
New York State Reliability Council, L.L.C.)
)
and)
)
New York Independent System)
Operator, Inc.)

Docket No. EL06-1-000

ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Rule § 385.213 of the Commission’s Rules and Regulations¹ and the Commission’s October 14, 2005 *Notice of Extension of Time* in the above-captioned proceeding, the New York Independent System Operator, Inc. (“NYISO”) hereby answers the September 30, 2005 *Complaint of Niagara Mohawk Power Corporation d/b/a National Grid* (“Complaint”).

The Commission should dismiss the Complaint as against the NYISO for failure to allege any rate, charge, rule, regulation or practice of the NYISO that is unjust, unreasonable, unduly discriminatory or preferential. If the Commission does not dismiss the Complaint, the NYISO takes no position on the economic arguments raised by National Grid. Should the Commission determine that National Grid is entitled to relief, the NYISO requests that the Commission allow it, NYSRC, and New York market participants to craft any remedies that the Commission may find necessary and further than the Commission allow six months before such remedies become effective.

¹ 18 C.F.R. §385.213 (2005).

I. Copies of Correspondence

The following persons should be included on the official service list in this proceeding, and all communications concerning this proceeding should be addressed to them.

Robert E. Fernandez, General Counsel and Secretary
Mollie Lampi, Assistant General Counsel
Elaine Robinson, Director of Regulatory Affairs
290 Washington Ave. Ext.
Albany, NY 12203
Tel: (518) 356-7530
Fax: (518) 356-8825
rfernandez@nyiso.com
mlampi@nyiso.com
erobinson@nyiso.com

Ted J. Murphy
Hunton & Williams
1900 K Street, N.W.
Washington, D.C. 20006
Tel: (202) 955-1500
Fax: (202) 778-2201
tmurphy@hunton.com

II. Summary of Argument

The complaint filed by National Grid should be dismissed as against the NYISO as the Complainant has not alleged that any rate, charge, rule, regulation or practice of the NYISO is unjust, unreasonable, unduly discriminatory or preferential.²

National Grid's complaint lies wholly with the New York State Reliability Council's ("NYSRC's") determination of New York's Installed Reserve Margin ("IRM") and Installed Capacity Requirement ("ICR").³ The NYSRC is an independent organization, separate and

² "In a Section 206 matter, the party seeking to change the rate, charge or classification has a dual burden -- it must first provide substantial evidence that the existing rate is unjust, unreasonable or unduly discriminatory, and then demonstrate through substantial evidence that the new rate is just, reasonable and not unduly discriminatory." *California Independent System Operator Corporation*, 106 FERC ¶ 63,026 at n.19 (2004) (citing *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956)).

³ Complaint at 3-4. The NYSRC describes its function as determining the ICR by setting the IRM. See *New York Control Area Installed Capacity Requirements for the Period May 2005 through April 2006*, available at www.NYSRC.com and appended to Complaint as Appendix A. National Grid correctly points out the mathematical link between the two terms in the equation $ICR = (1 + IRM) \times \text{Forecasted NYCA Peak Load}$. (Complaint, n. 6.)

distinct from the NYISO; the NYISO has no authority to set the IRM, nor any authority to unilaterally change it.⁴

The dispute between National Grid and the NYSRC is, fundamentally, a dispute over allocating the costs of resource adequacy among New York State customers. Put in its most basic terms, National Grid is complaining that it is paying too much of the State's cost for maintaining resource adequacy.

To the extent that the Commission does not dismiss this complaint as against the NYISO, the NYISO takes no position on the economic argument over how the costs of maintaining resource adequacy should be spread across New York customers. Provided that the NYSRC establishes an IRM that satisfies the NPCC and NERC reliability standards, the NYISO can use it to establish Locational Minimum Installed Capacity Requirements ("LICAP") and implement the capacity responsibilities of Load Serving Entities ("LSEs") to maintain appropriate levels of Installed Capacity. The NYISO is not free, however to ignore the NYSRC's IRM in making that determination.

Finally, should the Commission determine that National Grid is entitled to relief, it should allow the NYSRC, the NYISO and the New York stakeholders to fashion a remedy. Allocation of the costs of maintaining resource adequacy in New York is a complex matter. The relationship between the IRM, LICAP, and the capacity-purchasing responsibilities of New York's LSEs all need to be taken into account in changing in the manner in which resource adequacy is procured.

In the alternative, should the Commission affirmatively determine the form of relief to which National Grid should be entitled, it should provide that any change it may order in the

⁴ See discussion, *infra*, at text and footnote 22.

IRM or the methodology by which the NYSRC determines the IRM to become effective in six months. Utilizing the stakeholder process, if necessary, can take several months. If the Commission sets a new ICR, the NYISO would need several months to re-establish LICAP, establish Installed Capacity (“ICAP”) requirements for LSEs and translate those into levels of Unforced Capacity (“UCAP”) that each LSE must procure in the NYISO Capacity market.

III. Statement of the Issues

In compliance with Order No. 633,⁵ the issues involved in this proceeding are:

1. The complaint should be dismissed as against the New York Independent System Operator, Inc. because the complaint fails to allege any rate, charge, rule, regulation or practice of the NYISO that is unjust, unreasonable, unduly discriminatory or preferential.
2. If the Commission does not dismiss the complaint as against the NYISO, it should either return the case to the NYSRC, the NYISO and the interested stakeholders to develop a remedy, or, if the Commission establishes a remedy itself, it should allow six months for any remedy to become effective in order to provide the NYISO an opportunity to analyze the implications of its Order so as to plan and effectuate any changes for the NYISO’s capacity market in an orderly fashion.

IV. Background

By order dated June 30, 1998, the Commission conditionally approved the establishment of the NYSRC as an unincorporated association formed by agreement by the Transmission Providers.⁶ The NYISO was not a party, and has not since become a party, to the agreement establishing the NYSRC.

In rendering its conditional approval of the NYSRC, the Commission noted:

The NYSRC Agreement will create an organization that will develop and promulgate Reliability Rules that the New York ISO must comply with when operating and maintaining the reliability of the grid. The NYSRC will be governed by an Executive

⁵ *Revision of Rules of Practice and Procedure Regarding Issue Identification*, 112 FERC ¶ 61,297 (2005)

⁶ *Central Hudson Gas & Electric Corp., et al.*, 83 FERC ¶ 61,352 (1998) (“*Central Hudson*”), *order on reh’g*, 87 FERC ¶ 61,135 (1999) (“*Central Hudson Rehearing Order*”).

Committee that will consist of 13 members. Each of the Transmission Providers will appoint a member to the Executive Committee.⁷

The obligations and responsibilities of the NYISO are established by separate agreement among the Transmission Providers and subsequent signatories (“Parties”).⁸ The Commission, in the same June 30, 1998 order, conditionally authorized the establishment of the NYISO, pending approval of its governance structure and successful transfer of control of necessary facilities. In that order, the Commission commented on the two new entities:

The New York ISO and the NYSRC will function as two separate and distinct entities. However, the New York ISO must comply with the Reliability Rules . . . established by the NYSRC. . . .⁹

The NYISO and the NYSRC also entered into a formal agreement with each other to define the separate obligations of each with regard to maintaining sufficient Installed Capacity in New York:

The NYSRC shall determine the state-wide annual Installed Capacity requirement. Such requirement will be subject to periodic review and revision by the NYSRC.^[10] The ISO shall require LSE’s within the NYCA to maintain appropriate levels of Installed Capacity consistent with the Reliability Rules, this Agreement, the ISO/TO Agreement and the ISO Agreement.¹¹

The NYISO’s Market Administration and Control Area Services (“Services”) Tariff instructs the NYISO on maintaining the Installed Capacity Requirement established by the NYSRC:

⁷ *Central Hudson* at 62,411.

⁸ *Id.* at 62,406.

⁹ *Id.* at 62,411 (footnote omitted).

¹⁰ See filings by the NYSRC with the Commission as a result of these reviews, New York State Reliability Council, Docket ER00-1671-000, *Filing* (Feb. 22, 2000) and *Informational Filing* (Jan. 14, 2002).

¹¹ *Agreement between the New York Independent System Operator and the New York State Reliability Council* (“ISO-SRC Agreement”), Section 3.4. The ISO-SRC Agreement was also approved by the Commission. See generally *Central Hudson* at 62,411-14.

The NYCA Minimum Installed Capacity Requirement is derived from the NYCA Installed Reserve Margin, which is established each year by the NYSRC. The NYCA Minimum Installed Capacity Requirement for the Capability Year beginning each May 1 will be established by multiplying the NYCA peak Load forecasted by the ISO by the quantity of one plus the NYCA Installed Reserve Margin. The ISO shall translate the NYCA Installed Reserve Margin, and thus the NYCA Minimum Installed Capacity Requirement, into a NYCA Minimum Unforced Capacity Requirement, in accordance with the ISO Procedures.¹²

V. Argument

A. **The Complaint as Against the NYISO Should be Dismissed Because it Fails to Allege Any Rate, Charge, Rule, Regulation or Practice of the NYISO that is Unjust, Unreasonable, Unduly Discriminatory or Preferential.**

The Complainant has not documented any rate, charge rule, regulation or practice by the NYISO that is unjust, unreasonable, unduly discriminatory or preferential. The Complainant's declarations that the NYISO's activity produces an unjust and unreasonable ICR are based on its misstatements and errors of fact with regard to the NYISO's obligations and responsibilities. Once these misstatements and errors are corrected, it becomes abundantly clear that the Complainant has no argument with the NYISO's actions, that its complaint is wholly with the NYSRC, and that its complaint against the NYISO should be dismissed.

First, National Grid erroneously asserts that "the NYSRC was established by agreement between the NYISO the NYSRC",¹³ when in fact the NYSRC was established by agreement among the Transmission Providers at the time, one of whom was the predecessor of the Complainant (Niagara Mohawk Power Corp.). As the Commission noted when commenting on the NYSRC Agreement:

¹² Services Tariff Section 5.10 (emphasis supplied).

¹³ Complaint at 13.

The NYSRC will be an unincorporated association formed by agreement among the Transmission Providers, with primary responsibility for setting bulk power system reliability rules that address the particular reliability needs of the state.¹⁴

Second, National Grid erroneously asserts that the “NYSRC’s obligations arise from the NYISO’s delegation of the associated responsibilities under the Commission-approved NYISO-NYSRC Agreement.”¹⁵ Here too, the Complainant misstates fact. As the Commission has noted, the NYISO does not delegate responsibilities to the NYSRC:

Unlike the Management Committee, the NYSRC is outside of the ISO organization and the ISO does not delegate any of its responsibilities to the NYSRC. In addition, the NYSRC’s role is clearly defined and limited in scope to the issuance of Reliability Rules.¹⁶

Through several other misstatements and incomplete descriptions, Complainant incorrectly links the NYISO with the development of the methodology by which the New York meets its reliability criteria and accounts for transmission constraints.¹⁷ For instance, the Complainant errs when it asserts that the NYISO joined with the NYSRC in establishing the methodology by which the New York region meets reliability criteria and accounts for transmission constraints:

NYSRC and the NYISO have chosen (c) – they have increased the capacity obligations of Load serving Entities (“LSEs”) in unconstrained zones by increasing the IRM above the free flowing requirement and reduced the obligations of LSEs down stream of the constraints.¹⁸

The NYSRC alone establishes the IRM for New York State when it establishes the

¹⁴ *Central Hudson* at 62,406.

¹⁵ National Grid cites the ISO-SRC Agreement “generally” for this assertion when, in fact, no actual language in the document supports this statement.

¹⁶ *Central Hudson Rehearing Order* at 61,544.

¹⁷ Complaint at 2-6 and 16.

¹⁸ Complaint at 6.

Installed Capacity requirement.¹⁹ There is no joint action between the NYISO and the NYSRC in performing this activity.²⁰

Neither has the Complainant supported any claim that the NYISO has violated the Commission's Reliability Compensation Issues Policy.²¹ National Grid does not, because it cannot, complain that the NYISO has not established locational capacity requirements, a Commission-preferred market design for solving Reliability Compensation issues.

The NYISO establishes LICAP requirements for New York, consistent with Reliability Rules, Local Reliability Rules and the provisions of the ISO / SRC Agreement.²² The NYISO is not free however, to ignore the NYSRC's determined IRM.²³

The IRM drives the NYISO's development of LICAP. The NYISO starts its process by updating the IRM's base case established by the NYSRC's Installed Capacity Subcommittee

¹⁹ NYSRC Agreement § 3.03. *See also Central Hudson* at 62,411 ("The NYSRC will also establish the state-wide Installed Capacity requirements for New York State. . .").

²⁰ Indeed, the NYISO is not authorized even to suspend Reliability Rules established by the NYSRC, including the IRM:

We clarify that the ISO may not suspend existing Reliability Rules. If the ISO were to disagree with an existing Reliability Rule and suspend operation of that rule, the reliability of the transmission grid could be jeopardized pending the resolution of the dispute between the ISO and the NYSRC. The operating procedures of the ISO will be based upon the existing Reliability Rules; thus, the suspension of an existing Reliability Rule could leave a void in the ISO's operating procedures.

Central Hudson Rehearing Order at 61,544.

²¹ *PJM Interconnection, LLC*, Docket No. EL03-236-000, 107 FERC ¶ 61,112 at P 15 (May 6, 2004).

²² *ISO Agreement* Section 6.05. *See also Services Tariff* Sections 2.96 and 2.158, wherein Local Reliability Rules and Reliability Rules are defined as being promulgated by the NYSRC, and Section 5.11.4 which articulates NYISO responsibilities in this regard.

²³ By the same token, the NYSRC must reflect the NYISO's LICAP determinations for the previous year, provided they meet NPCC and NERC requirements, when establishing a new IRM for the following year.

with more recently developed load forecasts and available capacity projections.²⁴ Then, accounting for Transmission Interface Transfer Capability and other Reliability Rules, the NYISO's LICAP development model shifts generation out of the constrained areas until it reaches the minimum amount of locational generation necessary to meet the NPCC and NERC reliability rule.²⁵ This is the minimum LICAP that the NYISO is authorized to set. The NYISO cannot adjust the IRM in setting LICAP and its LICAP determination must be consistent with the IRM.²⁶

The NYISO then performs several sequential operations all of which also follow directly from the IRM. It establishes both NYCA and locational Minimum Unforced Capacity Requirements, which are the minimum levels of Unforced Capacity that must be secured by LSEs for each Obligation Procurement Period. Actual LSE Unforced Capacity Obligations are determined for each Obligation Procurement Period by the appropriate ICAP Spot Market Auctions.²⁷ Each of these sequential operations, the establishment of LICAP and the determination of LSE's Unforced Capacity obligations starts, fundamentally, with the NYSRC's IRM.²⁸

²⁴ See: NYISO's *Locational Installed Capacity Requirements Study Covering The New York Control Area For The 2005 – 2006 Capability Year*.

As its starting point, the *NYISO Locational ICAP Requirements Study* utilized the statewide Installed Reserve Margin (IRM) study conducted by the NYSRC. This study (footnote omitted) was approved by the NYSRC Executive Committee on 12/10/04, and is available on the NYSRC web site at www.nysrc.org.

²⁵ Services Tariff Sections 5.10 and 5.11.4

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

Finally, the Services Tariff does not define the method by which the NYSRC establishes the IRM. It would be highly inappropriate, and likely unworkable, for the Services Tariff to require a particular methodology for establishing LICAP when the determination of the IRM is solely within the jurisdiction of the NYSRC.²⁹ Complying with National Grid's request to amend the Services Tariff to establish the 'free-flowing equivalent' methodology for LICAP determinations without first requiring the NYSRC to use the same methodology in its IRM determination would be to establish two separate methods for measuring capacity requirements, one for constrained areas and another for the rest of the state. This would be unfair to all New York customers.

B. Should the Commission Not Dismiss the Complaint as Against the NYISO, the NYISO has No Opinion on National Grid's Allegations that the Existing Installed Capacity Requirement is Unjust or Unreasonable.

In its simplest terms, this is a dispute between upstate and downstate electric LSEs over allocating the costs of maintaining New York's resource adequacy. The upstate LSE, National Grid, argues that it bears an unreasonable and disproportionate share of the Installed Capacity costs compared with downstate LSEs.³⁰ National Grid simply disagrees with the amount of the NYSRC-determined Installed Capacity Requirement that it bears. To the extent that the Commission does not dismiss this complaint as against the NYISO, the NYISO takes no position on this economic argument. Neither does the NYISO believe that the current system is unjust or

²⁹ *ISO / SRC Agreement*, Section 3.4

³⁰ National Grid states:

The extra 2% of IRM required by the NYSRC's current practice is procured by means of the \$22 million-per-year subsidy which upstate customers must pay solely to ensure downstate reliability.

Complaint at 24.

unreasonable; the mere fact that alternative methods may be available does not render the methods in use unjust or unreasonable.

National Grid admits there are several linked combinations of IRM / LICAP requirements that would satisfy NPCC resource adequacy criteria for region wide reliability.³¹ National Grid includes a curve from the NYSRC's *New York Control Area Installed Capacity Requirements for the Period May 2005 through April 2006* that:

[D]epicts a range of possible LICAP Requirement and IRM pairings, each of which meets NPCC and NYSRC resource adequacy criteria – a 0.1 LOLE for the region. . . . [This curve] demonstrate[s] that there are a series of IRM and LICAP Requirement solutions which satisfy NPCC resource adequacy criteria for region-wide reliability.³²

It is the NYSRC, and not the NYISO, however, that establishes the State's IRM.

NYISO's determination of locational requirements must be consistent with the NYSRC's IRM.

The NYISO has no opinion on which linked combination of IRM / LICAP is the most appropriate for New York provided that both the IRM and the LICAP requirements meet NPCC and NERC reliability requirements and are feasible.³³ As National Grid acknowledges, any

³¹ Complaint at 31.

³² The issue that National Grid raises was revealed by the sensitivity cases conducted by the NYSRC's Installed Capacity Subcommittee for the 2005 - 2006 Capability Year IRM Study. The issue was described as "an increasing spread between the "free flowing" or unconstrained (*i.e.*, no transmission constraints) IRM sensitivity case results and the base case results." Reported at pp. 6-7 of the *Locational Installed Capacity Requirements Study Covering the new York Control Area for 2005 – 2006 Capability Year* ("LICAP Study"). This indicated that locational capacity had a significant impact on the statewide IRM requirement. As a result, the NYISO incorporated into its LICAP Study, and National Grid incorporated into its Complaint (at 30) a graphic demonstration of locational capacity at multiple specified statewide reserve margins.

Note that Appendix B to the National Grid complaint is the draft *NYISO Locational ICAP Requirements for the Capability Year 2005 – 2006* presented for discussion at the February 10, 2005 meeting of the NYISO Operating Committee. The final report, approved by the Operating Committee February 17, 2005 and Revised March 23, 2005 (editorial) is available at: https://www.nyiso.com/public/webdocs/services/planning/resource_adequacy/locational_installed_capacity_requirement_study_032005.pdf

³³ Services Tariff Section 5.11.4

linked combination appearing on the chart included at p. 30 of the Complaint can meet the NPCC and NERC reliability requirements.

C. If the Commission Determines that National Grid is Entitled to Some Relief, it Should Turn to the NYSRC, the NYISO and the New York Stakeholders to Craft the Remedy.

If the Commission determines that National Grid is entitled to relief, it should offer the NYSRC, the NYISO and the New York stakeholders an opportunity to craft the remedy. Changes in the IRM will impact LICAP, and the capacity-purchasing responsibilities of New York's LSEs. New York Market Participants have important interests that could be impacted by the determinations being made as well. Offering the opportunity to develop any necessary remedy to the NYSRC, the NYISO and its market participants can avoid unintended consequences and assist in finding an integrated approach that is fair to all customers.

- 1. In the Alternative, the Commission Should Provide a Minimum of Six Months for Implementation in Order to Allow the NYISO to Utilize the Stakeholder Process, if Necessary, to Revise LICAP Requirements, if Necessary, and to Establish Revised ICAP Requirements for Load Serving Entities.***

In the alternative, if the Commission orders changes in the manner in which the NYSRC develops the Installed Capacity Requirement or changes the ICR itself, the NYISO requests that the Commission provide sufficient lead time before such changes become effective to allow the NYISO to pursue the variety of calculations, stakeholder communications, and website publications that are required to respond to a new ICR. This is a time-consuming process with a tight schedule.³⁴

³⁴ See Section 2, *ICAP Manual* at: http://www.nyiso.com/public/webdocs/products/icap/icap_manual/icap_mnl.pdf

VI. Defenses Asserted and Proposed Process for Resolution

As is demonstrated by this Answer, the NYISO asserts the following defenses:

1. The NYISO denies it has taken any action that violates Section 206 of the Federal Power Act.
2. The NYISO denies that it participates in the determination of the Installed Capacity Requirement or the Installed Reserve Margin for New York.
3. The NYISO denies it has taken any action that violates its tariffs, Commission orders establishing the NYSRC-NYISO resource adequacy framework in New York, the Commission's locational market theory or the Commission's Reliability Compensation Issues Policy.

The NYISO proposes that the Commission dismiss the complaint as against the NYISO.

VII. Conclusion

For the reasons stated herein, the Commission should dismiss this complaint as against the NYISO. In the alternative, should the Commission find that the Complainant is entitled to relief, the Commission should allow the NYSRC, the NYISO and the stakeholders to fashion an appropriate remedy. In the alternative, should the Commission establish required relief, the Commission should provide a reasonable period of time within which the NYISO can implement any ordered relief.

Respectfully submitted,

/s/ Mollie Lampi

Robert E. Fernandez
General Counsel and Secretary
Mollie Lampi
Assistant General Counsel
New York Independent System Operator, Inc.

November 22, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party designated on the official service list compiled by the Secretary in Docket No. EL06-1-000, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2001).

Dated at Washington, DC this day 22nd of November, 2005.

/s/ Michael E. Haddad
Michael E. Haddad
Hunton & Williams LLP
1900 K Street, N.W.
Washington, DC 20006-1109
(202) 955-1500

cc: Shelton M. Cannon
Anna Cochrane
Michael A. Bardee
Cheri Ganeles
Kathleen E. Nieman