UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Remedying Undue Discrimination	**)**	
through Open Access Transmission Service	**)**	**Docket No. RM01-12-000**
and Standard Electricity Market Design	**)**	

ADDITIONAL COMMENTS OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Consistent with the Commission's October 2 Notice[1] in this proceeding, the New York Independent System Operator, Inc. ("NYISO"), respectfully submits additional comments on the Commission's Notice of Proposed Rulemaking ("NOPR")[2] in this proceeding. These comments address the allocation of CRR revenues, the pricing of new transmission capacity, regional planning, and long-term resource adequacy. In addition, the NYISO supports the Joint Comments on Resource Adequacy submitted separately by ISO New England Inc. ("ISO-NE"), the NYISO and the PJM Interconnection, L.L.C. ("PJM") ("Joint Comments").

I. ALLOCATION MECHANISM FOR CRR REVENUES (PP 171-173)

In P 171, the Commission proposes that "customers paying access charges would receive Congestion Revenue Rights (or alternatively, revenues from the auction of CRRs)." The Commission goes on to ask for comment (P 172) on whether existing customers who are not Load-Serving Entities("LSEs") should receive an initial allocation of CRRs. Finally, the

---

1 *Notice of Conferences and Revisions to Public Comment Schedule*, Docket No. RM01-12-000 (October 2, 2002).

2 *Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,539 (2002).

Commission asks how CRR allocations should be handled for load switching situations in retail access states (P 173).

The NYISO supports requiring loads to pay a transmission access charge, but does not agree that CRRs should physically "follow the load" since this would create numerous complications — especially in retail access states such as New York. The NYISO suggests that the Commission consider the process used in New York, which has been favorably received by New York Market Participants, as an equitable means of ensuring that all who use the transmission system receive the benefits from CRR revenues while avoiding the need to specifically track changes in Loads or the shifting responsibilities of LSEs.

The NYISO used the following procedure to conduct the initial allocation of its version of CRRs, *i.e.,* Transmission Congestion Contracts (TCCs). First, existing holders of long term firm transmission wheeling agreements were given the option to retain those firm rights or to convert them to TCCs. The duration of the firm rights or TCCs conformed to the terms of the grandfathered agreements. Second, following an initial determination of transmission capacity for certain "native load" purposes, the remainder of the transmission capacity on the New York grid was allocated to the New York Transmission Owners ("TOs") in the form of TCCs. The TOs, in turn, agreed to offer their TCCs for sale either directly or in periodic NYISO-administered TCC auctions. As the terms of grandfathered transmission agreements expire, the additional transmission capacity associated with them will also be made available through the TCC auctions.

All TO revenues from the sale of TCCs, whether by direct sales or through NYISO auctions are automatically credited on a monthly basis to each TO's Transmission Service Charge ("TSC"). The TSC is the zonal access charge paid by internal New York loads as well as

by parties obtaining through and out service from the NYISO control area. The TCC revenue allocation to each zone is consistent with the fact that all loads within each zone pay the same, weighted average energy price. Therefore, once the transition period is complete, the value of all transmission capacity on the New York grid will be determined in NYISO-administered auctions by those who desire to use it, and all transmission users who pay a transmission access charge in New York will receive a proportional share of the revenues from the sale of TCCs. The NYISO suggests that this mechanism be considered for inclusion in the final SMD rule.

In the alternative, if the Commission chooses not to adopt this allocation mechanism for general application, the NYISO urges the Commission to permit it to continue to use it in New York. To do otherwise would disrupt the existing NYISO markets and upset the commercial decisions that have already been made by market participants.

II. PRICING OF NEW TRANSMISSION CAPACITY (PP 191-202)

The NYISO agrees that the Commission should review and revise its transmission pricing policies with an eye toward stimulating new investment. In many cases, it may be appropriate for the Commission to move away from its traditional preference for "rolled in" pricing mechanisms and to allow the use of "participant funding." At the same time, the Commission should not presume that participant funding will always be the best option. Participant funding should be allowed, as the NOPR proposes,[3] in regions that have a planning process administered by an independent entity. It should, however, be left to the discretion of the independent entity that manages the regional plan to decide, in consultation with its stakeholders, including state regulatory agencies, when each funding mechanism should be used.

---

[3] *See* NOPR at P 199.

Transmission expansion pricing rules need not be standardized for all regions of the country because inter-regional differences will not create "seams" or impede transactions. Each region will need efficient rules, but this does not require that each have identical rules. Regions should instead be permitted to adopt variations that satisfy their region-specific needs.[4]

The NYISO believes that the transmission pricing principles that were included in the "Joint Petition" regarding a Northeastern Regional Transmission Organization ("NERTO")[5] properly balanced competing considerations and recognized that the type of pricing is best determined by the situation. Although the Joint Petition has now been withdrawn, the Commission should allow Independent Transmission Providers ("ITPs"), or other independent planning entities, to adopt its core pricing principles. These principles accommodate all of the pricing options identified by Commission staff during the November 6, 2002 Technical Conference on pricing issues. The principles give deference to voluntary participant funding for projects, other than projects built by transmission owners for reliability reasons, where parties agree that it is appropriate. Regulated transmission upgrades that are constructed for reliability purposes are more likely to be "rolled-in" or subject to "local license plate" pricing, *i.e.,* they would be paid for by ratepayers in the area deemed to have benefited from an expansion. The principles also call for a back-stop planning process and pricing methodology to ensure that reliability and efficiency are preserved when market forces fail to meet system needs.

---

[4] Transmission expansions intended to increase transfer capability between regions are probably an exception to this principle, because a consistent inter-regional pricing regime will be important to them. Regional State Advisory Committees could play a significant role in achieving an inter-regional resolution equitable to all regions.

[5] *Joint Petition for Declaratory Order Regarding the Creation of a Northeastern Regional Transmission Organization,* Docket No. RT02-3-000 (August 23, 2002).

Under the transmission pricing principles,[6] interconnection facilities would be paid for by their developers on a participant funding basis in accordance with the independent planning entity's interconnection cost allocation procedures.[7] Other expansions proposed by market participants, whether for economic or reliability reasons, including merchant transmission projects but not regulated transmission upgrades developed by transmission owning utilities ("TOs"), would likewise be participant funded. If market solutions to the regional needs are not forthcoming or are not adequate, the independent planning entity would then turn to a regulated transmission solution.

Regulated transmission upgrades built for reliability reasons would also be funded in a manner agreed upon by the parties. In the Northeast,[8] absent such an agreement, there could be a presumption that the costs of facilities rated 345 kV or above that would contribute to the parallel current carrying capability of the regional grid would be rolled-into the region-wide transmission rate. The funding of regulated transmission upgrades built for economic reasons would be decided on a case-by-case basis through a consultative process involving the independent planning entity, state regulators, TOs and other stakeholders. Local facilities proposed by a TO

---

[6] The NYISO and ISO-NE expect to develop a coordinated planning process that will likely incorporate a number of the transmission pricing principles that were introduced in the Joint Petition.

[7] The NYISO's interconnection cost allocation process, set forth in Attachment S of the NYISO OATT, provides that each interconnecting project will pay only its proportional share of the necessary upgrade costs incremental to certain baseline costs needed to ensure reliability and provide for load growth needs.

[8] The NYISO believes that in the Northeast it will generally be appropriate to draw the line between "regional" and "local" facilities at 345 kV, instead of the 138 kV dividing line that the NOPR proposes to distinguish between rolled-in pricing and participant funding. The Northeast has many 138kV facilities that serve primarily local needs—especially in New York City and on Long Island. Different lines of demarcation might well be appropriate for other regions.

to meet load growth or to provide local reliability would be funded on a "local license plate" basis.

While participant funding may be the preferred approach, different situations will require different pricing approaches to meet regional needs.

III. REGIONAL PLANNING PROCESS (PP 335-350)

The NOPR proposes a number of sound planning principles. It correctly emphasizes the importance of coordinated, transparent regional planning and the need to initiate a regional planning process as soon as possible. Coordination is necessary to ensure that market-driven expansion proposals account for loop flow effects and will meet applicable reliability criteria. A coordinated process will also ensure that projects which are relatively unattractive from a commercial perspective, but that are important from a system perspective, are evaluated. The NOPR's proposal that a regional planning process begin within six months of a final SMD rule, and that the first plan be completed within twelve months,[9] is ambitious but should be achievable with the cooperation of all entities, including the independent planning entities, state regulatory agencies, TOs, and other stakeholders.

The NYISO supports the NOPR's suggestion that state regulatory agencies harmonize their infrastructure siting processes.[10] The NYISO does not take a position as to whether this coordination should occur through a "Multi-State Entity" or a "Regional State Advisory Committee." In either case, however, states should play an advisory role on planning and other

---

9 *See* NOPR at PP 338, 345.

10 *See* NOPR at P. 339.

Commission jurisdictional matters.[11] They should not share the Commission's regulatory authority. Other stakeholders should likewise have an advisory voice.

The NYISO also supports the proposed designation of "planning areas," and agrees that the New England – New York region should be treated as a single area.[12] ISO-NE and the NYISO are already coordinating their planning activities, and seeking closer coordination with all adjacent control areas, including their neighboring Canadian system operators, as part of the expanded regional planning activities of the NPCC.[13] Although the ISOs recently withdrew their Joint Petition regarding the NERTO, New England and New York have similar system and market characteristics, are closely integrated, and should, at a minimum, have a closely coordinated planning process. The NYISO and ISO-NE intend to work to better integrate the two ISOs' planning systems and to consider additional steps. The Commission would reinforce these efforts by confirming that New England and New York constitute a single planning area.

The NYISO agrees with the NOPR's proposal that ITPs, or other independent planning entities, should establish a planning mechanism to complement private initiatives and that this mechanism should identify both reliability and economic expansion needs for a region.[14] Reliability needs should be identified in accordance with generally accepted industry criteria promulgated by NERC and it's the regional reliability councils and the planning mechanism

---

[11] Input should be included from various state agencies, such as the state regulatory commissions, siting councils and state energy planning agencies. In New York, for example, the State Energy Planning process, administered by the New York State Energy Research and Development Authority, can provide valuable input into the ITP's regional planning process.

[12] *See* NOPR at P 343.

[13] The NPCC regional planning process includes coordination with the adjacent MAAC area, and thereby includes PJM as well.

[14] NOPR at P 347.

should ensure that local reliability rules are observed as well. Each ITP should develop, in consultation with its stakeholders, appropriate criteria for identifying and evaluating economic needs and upgrades for its region. In addition, the NYISO agrees that the planning process should not play favorites among transmission, generation or demand response options.[15] Market-driven projects meeting identified system needs should be the preferred choice. Because such projects will be developed at the initiative of private parties, they should be paid for on a participant funding basis.

The Commission should reconsider the NOPR's requirements that ITPs (i) issue formal RFPs for generation or demand response projects, as well as transmission[16] and (ii) serve as a "clearinghouse" for all types of proposed projects, evaluating the benefits of various project alternatives or combinations of different alternatives.[17] These proposals would essentially require ITPs to perform an "integrated resource planning" function, which would be inconsistent with a market-driven system and would undercut the incentive for desired market responses.

The marketplace should normally be capable of efficiently pursuing alternative generation and demand response solutions without an ITP (or independent planning entity) performing a "centralized planning" function. The Commission should not ask ITPs to second guess the market by establishing "optimal" generation and demand response plans. Market participants should make such decisions in the first instance. If no market solution is forthcoming, or if the ITP determines that such proposals are untimely or inadequate to meet identified needs, then the ITP should turn to a regulated transmission solution. Regulated

---

15 NOPR at P 347.

16 NOPR at P 348.

17 NOPR at P 349.

projects would be built by the appropriate TO. As a backstop, an RFP could be issued by the ITP, in consultation with the affected TO, for constructing traditional regulated transmission facilities, if they were deemed necessary to ensure that the most economic project was built. ITPs should become involved in non-transmission resource planning only when no other solution is possible within the available time, *e.g.,* if market dysfunctions are impeding new resources to such an extent that reliability is jeopardized.

Moreover, many stakeholders, in New York and elsewhere, oppose giving "integrated resource planning" responsibilities to an ITP. Their objections could delay the introduction of a regional transmission planning process. Because the benefits of having ITPs "optimize" competing transmission, generation and demand response projects would likely be small, it would be better to avoid distracting delays and to focus instead on developing an appropriate regional transmission planning process.

Finally, the NYISO supports the NOPR's proposal that TOs continue to be the transmission builders of last resort. It is essential, however, that the Commission and state regulators work together to ensure that TOs have the opportunity to fully recover their costs at any time that this obligation to build is triggered.

IV. LONG-TERM RESOURCE ADEQUACY (PP 457-550)

1. Reason for the Requirement (PP 460-473)

The NYISO concurs with the Commission's proposal to include a resource adequacy requirement in the SMD. This requirement is needed to ensure sufficient resources to support reliability and competitive wholesale electricity markets. The NYISO supports the incorporation of a planning horizon that is consistent with the lead-times for developing and constructing new generation and developing and implementing new demand response programs. Resource

adequacy requirements also allow suppliers to recover a portion of their fixed costs, which facilitates marginal pricing of variable energy costs, and helps to eliminate the extreme price volatility (and potential panic) that would occur during true shortage periods if marginal units had to recoup their fixed costs solely through energy markets.[18]

The NYISO supports the concurrently filed Joint Comments, which describe a framework for the design of a regional resource adequacy market for New England, New York, PJM, and, potentially, Ontario. This framework is based on the collaborative efforts of the Resource Adequacy Model Group ("RAM") which was initiated in December 2001 by the three ISOs. The central mechanism of the RAM Group's framework is a central capacity market administered by an ITP or ITPs that assures adequate resources will be available in future years.

The NYISO and the other ISOs intend to pursue the development of this concept for the Northeast. The first step in this process is to develop the detailed market design concepts in conjunction with each ISO's respective stakeholder governance procedures.

In addition to the NYISO's support of the Joint Comments, these additional comments respond to certain aspects of the NOPR's resource adequacy proposal from the NYISO's own perspective.

2. Basic Features of the Requirement (PP 474-508)

a. Level of Resource Adequacy (PP 487-493)

The Commission asks for comment on appropriate planning targets in "energy-limited" areas, including incorporating the volatility of annual hydropower supply.[19] Both the NYISO

---

[18] However, peaking units, which typically set the marginal clearing price when they operate, would need to either recover their full fixed costs through resource adequacy payments or obtain a premium above their marginal costs in the energy market.

[19] NOPR at P 489.

and PJM currently use, and ISO-NE plans to use, "Unforced Capacity"[20] valuations and appropriate reserve margin studies to reflect the known variability of any intermittent and energy limited resources. This practice has been effective, and has been adopted as part of the RAM framework. With respect to determining appropriate reserve margins for reserve capacity, the NYISO supports the NOPR's concept that localities within a single region should have the same reliability requirement, which the NYISO interprets as meaning that the same requirements should apply within NERC's reliability councils. The NOPR proposes that a Regional State Advisory Committee ("RSAC") set the level of resource adequacy. While input from the RSAC is important to this process, the bulk system reliability requirement has traditionally been determined by the North American Electric Reliability Council's ("NERC's") Regional Reliability Councils. Within the New York Control Area ("NYCA"), the New York State Reliability Council ("NYSRC"), an entity that is not affiliated with the NYISO, sets the statewide reserve level in accordance with the reliability criteria of the Northeast Power Coordinating Council ("NPCC").[21] This separation has proved successful in setting impartial reserve requirements with which the NYISO and LSEs must comply. The NYISO, in turn, is responsible for determining locational reserve requirements. The NYISO supports the development of an SMD that continues this practice since the analyses required are technically complex and best administered by those entities familiar with such criteria. The NYISO

[20] Unforced Capacity is defined as "The measure by which Installed Capacity Suppliers will be rated, in accordance with formulae set forth in the ISO Procedures, to quantify the extent of their contribution to satisfy the NYCA Installed Capacity Requirement, and which will be used to measure the portion of that NYCA Installed Capacity Requirement for which each LSE is responsible." NYISO Market Administration and Control Area Services Tariff, § 2.194a.

[21] The NPCC reliability criterion is that the probability of load shedding due to a capacity deficiency shall not be greater than one occurrence in ten years.

currently provides assistance to the NYSRC by performing the technical analyses required to determine the statewide reserve level for the NYCA. The NYISO concurs with the Commission that ITPs should provide a forum for and assistance to such entities.

The Commission requests comments on what fallback provisions should be employed if the RSAC does not reach agreement on the appropriate level of resource adequacy.[22] If the Commission determines that the RSAC should have this responsibility (a position not advocated by the NYISO), the NYISO proposes two possible fallback alternatives. First, the NYISO has developed expedited dispute resolution procedures for similar scenarios where a decision will affect the ability of a market to function in a timely manner. These procedures could be used to decide the appropriate resource adequacy level. The second alternative is to allow the last objective level of resource adequacy to remain in effect until the RSAC has reached agreement on a new level of resource adequacy. Based on the processes the NYSRC uses to set the Installed Reserve Margin in the NYCA, it is unlikely that the appropriate level of resource adequacy would fluctuate significantly from year to year. Allowing the level set in a prior period to roll over to the next year while resolution of a new resource adequacy level occurs should not jeopardize system reliability.

As to specific resource adequacy margins, the NYISO agrees that 12% "is low by traditional generation adequacy standards . . . ."[23] The Northeast ISOs historically have been able to ensure compliance with reliability requirements with reserve margins in the 15%-18% range. Higher reserve margins will also enhance market efficiency and competition, reduce the potential for market power and minimize the incidence of price spikes in the spot energy

---

22 NOPR at P 492.

23 NOPR at P 493.

markets. The NYISO believes that this range is the minimum appropriate for the NYCA and its neighboring control areas.

b. Load-Serving Entity's Share of the Regional Resource Requirement (PP 497-503)

The Commission asks for comment on two proposed methods for allocating LSEs' resource adequacy requirements.[24] The first method bases each LSE's future resource adequacy needs on its forecasted future demand. The second method allocates the future adequacy requirement to loads based on each load's most recently documented load ratio share. The first methodology is prone to inaccuracy and possible gaming, especially if longer planning horizons are used, since longer term forecasts amplify potential inaccuracies. The second methodology, which is currently employed in the NYISO, bases future requirements on actual experience and provides a balanced solution. By employing the second method, faster or slower growing loads catch up later but always track their true resource needs. Forecasts used for resource adequacy requirements should be based on past actual load history.

Load ratio share should be based on peak load ratio shares. This is difficult to forecast when the loads served by numerous LSEs within a Control Area grow at different rates. A "central clearing" approach would allow readjustment of an LSE's resource adequacy requirement prior to and within the object year. This is similar to the current NYISO method of setting each LSE's requirement every year. The market design under development in New York would allow ITPs to make overall load forecasts for 3-5 years and get commitments from sufficient capacity to meet this requirement. Individual LSEs would pay a known price for these resources based on their contribution to the most recent peak load. This would permit LSEs to

---

[24] NOPR at P 498.

pay for the resources they need in a more timely fashion if they chose this method of procurement over long-term bilateral transactions.

c. Resources That Can Satisfy the Resource Needs (PP 503-550)

The NYISO supports the Joint Comments regarding generation and demand response resources, and offers the following comments regarding "transmission resources."

(1) Transmission (PP 504-506)

The NYISO believes that, in general, it is inappropriate to treat transmission as a resource adequacy resource. Transmission usually acts as a "facilitator" for the delivery of capacity resources, not as an alternative to such resources. For certain situations, however, the NYISO has developed a method for valuing the resource contribution of some new, incremental, controllable transmission projects in the NYCA and connecting the NYCA to an adjacent Control Area. Unforced Capacity Deliverability Rights ("UDRs"), a product developed by the NYISO through its stakeholder process, place a value on transmission projects that connect capacity limited regions in the NYCA with non-constrained NYCA regions or adjacent Control Areas. The NYISO supports any Commission proposal that provides an incentive for transmission development, and offers UDRs as one possible method of valuing transmission in the context of the resource adequacy market design.

3. Resource Standards (PP 509-519)

a. Generation Standards (PP 511-513)

The NYISO concurs that generation must either be owned by or under contract to the LSE, that the ITP must be satisfied that the generation is physically feasible, and that the generating units under contract must be real and specific generators. The NYISO does not agree, however, on the need for physical deliverability from a particular generator "to the particular load" of the LSE. From a reliability viewpoint, it is important that generation not be "bottled up"

and that an area must have sufficient generation to sustain some loss of transmission. The NYISO has both Control Area-wide and internal locational capacity requirements that ensure the reliability of the system; PJM has a deliverability requirement that is imposed on generators. Either practice will ensure reliability. The Commission should permit regional flexibility for ITPs in such matters.

The NYISO does not support any proposition that a contract with a marketer to deliver power from "unspecified resources" should satisfy the resource adequacy requirement. The NYISO also does not support liquidated damages clauses in such contracts for unspecified resources. Liquidated damages contracts do not add value unless they are backed by a qualified committed resource that is not otherwise committed to another area (and thus cannot be double-counted). In this case it is the resource that counts, not the contract; if there is no resource behind the contract, paying damages after the fact does not ensure reliability.

b. Transmission Standards (PP 514-516)

As stated above, the NYISO has developed a method for valuing new, controllable transmission projects in a reliability resource market. The NYISO supports developing similar concepts in the final SMD.

The Commission asks for comment on whether "a commitment by any load-serving entity to pay congestion costs no matter how high will satisfy [a deliverability] requirement" for the supply of energy associated with a resource adequacy product.[25] All internal capacity in the NYCA is deliverable under the Market Administration and Control Area Services Tariff. The Commission also proposes to adopt a rule that would allow a resource owner to pay for the development of adequate transmission to deliver its energy to a load and then to sell its CRRs

[25] NOPR at P 514.

while still ensuring deliverability of its generation. While the NYISO agrees in concept that generation must be "deliverable" to load in order to ensure reliability, in an LMP system there are various ways to accomplish this. One method is to ensure physical deliverability by requiring that new resources pay for adequate transmission to deliver to any load within the region. This, in theory, would provide an unconstrained transmission system from an adequacy standpoint and effectively remove the need for an LSE to acquire "physical" transmission capacity since the system, as a whole, will be reliable because any generation resource can be delivered to any load at all times. While an LSE might want to hedge its congestion costs to support any bilateral energy transactions, this is a purely financial decision, which will have no impact on the "deliverability" of the generation resource to ensure the adequacy of the system.

The Commission requests comments on how an ITP should respond under such plan "if the sum total of all such commitments exceeds the available capacity of a bottleneck interface."[26] The Commission's request addresses the existence of load pockets within a region, a scenario existing in the NYCA. The NYISO has developed locational requirements for ensuring resource adequacy in load pockets. The locational requirements address concerns raised by the Commission by requiring that a predetermined amount of resources furnishing a resource adequacy product (backed by generation or demand response) to the load pocket be physically sited in the load pocket. This is an acceptable alternative to ensure the reliability of the system from a resource adequacy point of view, and recognizes the constraints imposed by the existing transmission infrastructure.

---

[26] NOPR at P 514.

c. Demand Response Standards (PP 517-519)

The NYISO has developed appropriate demand response resource standards that could aid in the development of such standards for a SMD. The NYISO will continue to work through the RAM Group process to develop such standards for broader application throughout the Northeast.

4. Enforcement (PP 526-541)

The Commission has proposed an enforcement mechanism that would penalize LSEs that fail to achieve sufficient resource adequacy levels at the time that they actually become deficient. One component of this mechanism incorporates a graduated penalty depending on the degree to which an LSE has failed to meet its requirement applied only when there is a shortage in operating reserves.[27] The NYISO believes that the Commission's proposed penalty structure will be inadequate and unworkable in a de-regulated, retail access environment. Further, the proposed penalties occur too late to avoid a reliability problem. Therefore, the penalties proposed by the Commission will neither act as a deterrent nor ensure reliability.

This proposal confuses actions needed in the real-time operations environment with the longer term resource adequacy requirement. In the long term environment, it is the LSE that is responsible for procuring adequate resources to meet the region's reliability criteria. In the short term, operating environment, it is the ITP that is responsible for the procurement of operating reserves on a region-wide basis. The prices for such reserves will reflect the appropriate market prices recognizing system needs at that time. There is not necessarily a direct cause-and-effect relationship between any particular LSE having met its long term resource adequacy requirements and the availability -- or cost -- of operating reserves in the real time spot markets.

---

[27] NOPR at P 530.

The Commission's selective and phased curtailment proposal is also unworkable. At this time it is not technically feasible to target curtailments to individual LSEs in a retail access environment. The metering, communications, and switching equipment is not available to allow the ITP to make "selective" curtailments in the short time required to maintain system reliability. Even if such technology existed, selective curtailment could lead to reliability "slamming" if the curtailed customers were not aware their LSE had elected to operate under a lower level of reliability. Emergency operations protocols are already well established, including sub-area (not customer-specific) automated load shedding as a last resort, in accordance with accepted reliability practices of NERC and the Regional Councils. These critical procedures should not be confused with an enforcement mechanism applicable to customers that fail to meet the resource adequacy requirement.

The NYISO has found that strict penalties, greater than the levelized costs of a combustion turbine, provide a greater deterrent and also provide more appropriate signals for new entry.

The Commission also asks for comments on a second mechanism for enforcing resource adequacy requirements. Under this mechanism, LSEs would be penalized immediately for failing to achieve required resource adequacy levels.[28] Based on its experience, the NYISO supports a form of this second mechanism because it deters LSE non-compliance and should provide adequate encouragement for new entry

5. Regional Flexibility (PP 542-550)

The NYISO supports the Joint Comments on the need for regional flexibility for the design and implementation of resource adequacy mechanisms appropriate for each region. The

[28] NOPR at P 536.

NYISO urges the Commission to support the continued development and implementation of the central market framework under the RAM Group for the Northeast region.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission adopt the recommendations set forth in these comments.

Respectfully submitted,

*/s/ Ted J. Murphy*_____
Counsel for
New York Independent System Operator, Inc.

Robert E. Fernandez, General Counsel and Secretary
Mollie Lampi, Assistant General Counsel
New York Independent System Operator, Inc.
3890 Carman Road
Schenectady, NY 12303

Arnold H. Quint
Ted J. Murphy
Hunton & Williams
1900 K Street, NW, Suite 1200
Washington, DC 20006

Ira L. Freilicher
Kathy Robb
Hunton & Williams
200 Park Avenue
New York, NY 10166

January 10, 2003

cc: Daniel L. Larcamp, Director Office of Markets, Tariffs and Rates, Room 8A-01, Tel. (202) 502-6700
Alice M. Fernandez, Director Office of Markets, Tariffs and Rates -- East Division, Room 71-31, Tel. (202) 502-8284
Robert E. Pease, Acting Director of Division of Enforcement, Office of Market Oversight and Enforcement, Room 52-41, Tel. (202) 502-8131
Michael A. Bardee, Lead Counsel for Markets, Tariffs and Rates, Room 101-09, Tel. (202) 502-8068
Stanley P. Wolf, Office of the General Counsel, Room 101-03, Tel. (202) 502-8891

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 the above referenced dockets, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 2010 (2002).

Dated at Washington, D.C. this 10th day of January, 2003.

/s/ Ted J. Murphy
Ted J. Murphy
Hunton & Williams
1900 K Street, N.W.
Washington, DC 20006-1109
(202) 955-1500

/s/ Kathy Robb
Kathy Robb
Hunton & Williams
200 Park Avenue
New York, NY 10166-0136
(212) 309-1128