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May 31, 2006

BY MESSENGER

Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: PPL EnergyPlus, LLC v. New York Independent System Operator, Inc.; Docket No. EL06-72-000; Answer of New York Independent System Operator, Inc.

Dear Ms. Salas:

Enclosed for filing in the referenced docket is an original and 14 copies of the Answer of New York Independent System Operator, Inc. to Complaint of PPL EnergyPlus, LLC. Please date-stamp the extra copy and return it to the messenger making this filing.

If there are any questions concerning this filing, please call me at (202) 661-2205.

Very truly yours,

Howard H. Shafferman
Counsel for
New York Independent System Operator, Inc.

cc: Shelton M. Cannon
Anna Cochrane
Connie Caldwell
Michael A. Bardee
Kathleen E. Nieman
Dean Wight

Enclosures

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PPL EnergyPlus, LLC *Complainant* v. New York Independent System Operator, Inc. *Respondent*	)	Docket No. EL06-72-000

ANSWER OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC. TO COMPLAINT OF PPL ENERGYPLUS, LLC

The New York Independent System Operator, Inc. ("NYISO"), in accordance with Rules 206(f) and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),[1] hereby answers the Complaint filed in this docket by PPL EnergyPlus, LLC ("PPL").

Contrary to PPL's allegations, the NYISO has acted in compliance with the plain language of its Market Administration and Control Area Services Tariff (the "Services Tariff"), and the provisions of the NYISO Installed Capacity ("ICAP") Manual to which the Services Tariff directly refers. Accordingly, PPL's Complaint is without merit, and the Commission should deny it.

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[1] 18 C.F.R. §§ 385.206(f) and 213 (2005).

I. INTRODUCTION

A. Provisions of the Services Tariff and the ICAP Manual Governing the External ICAP Import Rights Allocation Process

The Complaint addresses the External ICAP Import Rights allocation process, as administered by the NYISO on February 16, 2006.

The allocation process at issue arises from the Services Tariff's ICAP[2] provisions. Under these provisions, each load-serving entity in the New York Control Area ("NYCA") is assigned a NYCA Minimum ICAP Requirement that can be met by self-supply or by the purchase, in NYISO-administered auctions or otherwise, of Unforced Capacity.[3]

Of particular pertinence here, load-serving entities may procure Unforced Capacity from areas External to the NYCA, in amounts determined by the NYISO consistent with the Reliability Rules.[4] The Services Tariff specifies that, once these amounts are determined, the NYISO implements the "[p]rocedures for qualifying selling, and delivery of External [ICAP] … detailed in the [ICAP] Manual."[5] The Services Tariff notes that External ICAP must be deliverable, *inter alia,* using "Import Rights."[6]

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[2] Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the Services Tariff.

[3] Unforced Capacity is based on ICAP after accounting for the historical outage performance of a generating facility. Because that distinction is not relevant to the Complaint, Unforced Capacity and Installed Capacity are used interchangeably.

[4] Services Tariff, at § 5.10.

[5] Services Tariff, at § 5.12.2.

[6] *Id.* External Installed Capacity may also be deliverable using Unforced Capacity Deliverability Rights (or "UDRs"). UDRs are not relevant for purposes of the Complaint.

As noted, the Services Tariff directs that procedures such as the allocation of the External ICAP Import Rights be conducted as set forth in the ICAP Manual. Market participants have reviewed and approved the ICAP Manual through the NYISO's governance process.[7]

Section 4.9.2 of the ICAP Manual (included in Attachment A to the Complaint) describes the process used by the NYISO to allocate the amount of Import Rights available from each neighboring control area. In summary, the steps in this allocation process (as relevant to the Summer Capability Period) are:

- The NYISO calculates and publishes the total number of import rights (on or about February 15) available – after accounting for grandfathered rights – to support ICAP imports into the NYCA from each of the neighboring control areas.
- Based on this information, an entity interested in obtaining import rights to bring in External ICAP for sale in the NYCA prepares a "Request for NYISO External ICAP Import Rights" specifying the MW of import rights sought for each month of the period and related information.
- On the first business day following publication, the interested entities fax in their requests to a specified NYISO fax number "beginning at 8:00 AM ET."
- "The date and time stamp provided by the FAX machine will determine the priority for the evaluation of requests."
- The NYISO allocates the External ICAP Import Rights on a "first-come, first-serve" basis in the order of receipt of requests that have subsequently supplied the required supporting documents in a timely fashion.[8]

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[7] As part of the stakeholder process, an ICAP Working Group was established where ICAP-related issues and procedures are discussed and language for the Services Tariff and the ICAP Manual is drafted. The work product of the ICAP Working Group then passes to the Business Issues Committee ("BIC") where stakeholders review and comment on any proposed changes. Ultimately, if any changes are desired, the BIC passes its recommendation on to the Management Committee for approval to make changes.

[8] Supporting documents must be submitted by 5:00 PM ET of the business day following the day in which requests for import rights are submitted to the NYISO.

If the pertinent External ICAP Import Rights are not fully subscribed after the related Capability Period (strip) Auction for ICAP has concluded, requests may be submitted to the NYISO in a similar process conducted monthly thereafter.

B. The External ICAP Import Rights Allocation of February 16, 2006

Applying the foregoing procedures, the NYISO published the total number of available Import Rights available in connection with the neighboring control area of the PJM Interconnection, L.L.C. ("PJM"). The External ICAP Import Rights available for the Summer 2006 Capability Period totaled 220 MW. Accordingly, requests for all or a portion of the 220 MW for some or all of the months of the Summer Capability Period could be faxed in by NYISO Customers beginning at 8 AM ET on February 16, 2006.

The events actually occurring on February 16, 2006, and the manner in which the NYISO complied with the Services Tariff and the ICAP Manual, are detailed in Section V.A., below.

II. SUMMARY OF COMPLAINT

PPL's Complaint alleges that the NYISO acted in an unduly discriminatory manner in allocating External ICAP Import Rights for the Summer 2006 Capability Period by failing to conduct such allocation in accordance with the Services Tariff, the ICAP Manual, and applicable legal precedent.

Specifically, PPL alleges that its request, for 250 MW of External ICAP Import Rights for the entire period, was the first received by the NYISO after the official 8:00 AM ET start time on February 16, 2006. PPL alleges that NYISO violated the foregoing authorities by awarding the

220 MW of available External ICAP Import Rights to "Entity X" notwithstanding the "7:59 a.m." log time generated for Entity X's request by the NYISO fax machine's internal clock.[9] An "8:01 a.m." log time was generated for PPL's request by the NYISO fax machine's internal clock.

PPL asks the Commission to: (i) direct the NYISO to award PPL the 220 MW of External ICAP Import Rights for the 2006 Summer Capability Period; (ii) direct the NYISO to conduct a stakeholder process to reform the NYISO External ICAP Import Rights process (including replacing the fax-based system and considering alternatives to the current first-come, first-served "winner takes all" allocation); and (iii) hold PPL "financially harmless" during any portion of the 2006 Summer Capability Period for which its has not received the entire 220 MW of External ICAP Import Rights, up to an amount of approximately $2 million.[10]

III. SUMMARY OF ANSWER

As explained further in Section V below, the Complaint should be denied for the following reasons:

- The NYISO's allocation of External ICAP Import Rights from PJM on February 16, 2006 complied with the process specified in the plain language of the Services Tariff and the ICAP Manual to which the Services Tariff directly refers – that is, the filed rate.
- For purposes of argument, even if the Commission were to find that the NYISO's conduct of the February 16, 2006 allocation did not comply with the filed rate, it

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[9] Coral Power, L.L.C. ("Coral") has, in a motion filed in response to the Complaint, identified itself as Entity X.

[10] PPL notes that the "ultimate value of the external rights will depend upon differences in the relative value of capacity between PJM and NYISO during the summer capability period."

should exercise its discretion to reject the remedies requested by PPL, and the cases discussed by PPL do not dictate otherwise.

The NYISO does not oppose PPL's request that the NYISO undertake a stakeholder process to consider improvements in the External ICAP Import Rights allocation process. Indeed, this has already been a topic of extensive discussion among the NYISO and its Customers within the ICAP Working Group. But PPL has historically chosen not to participate consistently in these discussions which addressed, through the NYISO's FERC-approved governance structure, the very allocation process at issue herein.

IV. CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications concerning this Answer should be sent to the following persons, who should be added to the official service list, at the addresses shown:

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V. ANSWER

As summarized in Section III above, the Commission should deny the Complaint because the NYISO complied with the plain language requirements of its Services Tariff and ICAP Manual in conducting the February 16 External ICAP Import Rights allocation. Moreover,

important policy considerations – and Commission precedent – support the manner in which the NYISO complied with these requirements, namely, by relying on "official time" rather than the non-synchronized, non-calibrated internal clock of a fax machine for determining the moment at which the 8 a.m. start time for receiving External ICAP Import Rights requests occurs.

For purposes of argument, even if the Commission were to find that the NYISO's conduct of the February 16, 2006 allocation did not comply with the filed rate, it should exercise its discretion to reject the remedies requested by PPL.

As stated above, the NYISO has no objection to PPL's request that the NYISO undertake a stakeholder process to consider improvements in the External ICAP Import Rights allocation process. Indeed, this allocation process was actively discussed among the NYISO and its Customers for many months within the ICAP Working Group. We note, however, that PPL has always had the ability to initiate or, as in this case, re-initiate, ***without Commission intervention,*** the stakeholder process it seeks as a "remedy" herein.

A. The NYISO Complied with the Requirements of its Services Tariff and ICAP Manual in Conducting the February 16 External ICAP Import Rights Allocation

As explained in Section II above, the Services Tariff calls for the NYISO to determine the amount of ICAP that may be imported from neighboring control areas for sale within the NYCA, and to conduct a process to allocate the associated External ICAP Import Rights in accordance with the ICAP Manual.

Though PPL assails the allocation process as crude, a review of the facts – as set forth in the attached affidavits of the NYISO personnel (Peter Morrison as Exhibit A and Mariann Wilczek as Exhibit B) and summarized in subsection 1 below – demonstrates that the NYISO nonetheless conducted this simple process in accordance with the "plain language" requirements

of the foregoing documents. In so doing, the NYISO properly allocated the External ICAP Import Rights to Coral Power rather than PPL, and the Commission should not disturb this allocation.

1. The Events of February 16

Contrary to PPL's allegations, on February 16, 2006, NYISO personnel properly carried out the steps for allocating the Summer 2006 External ICAP Import Rights.

These steps include: (i) accepting and evaluating faxed External ICAP Import Right requests *only after* the moment of 8:00 AM eastern time has occurred; (ii) determining the priority (*i.e.*, the relative order) in which requests were received based on the time stamp provided by the fax machine; and (iii) allocating the available import rights until all have been awarded[11] through a review of the import right amounts sought in each request in the relative order received based on the fax time stamp, and subject to the provision of supporting documents by 5 p.m. on the next business day.

On February 16, two NYISO personnel (Peter Morrison and Mariann Wilczek) carried out the **first step** of the process by ensuring that faxed requests could be received *only after* the moment of 8:00 AM eastern time had occurred. This was accomplished through: (i) disconnecting the phone line from the designated NYISO fax machine at about 7:50 AM; (ii) Mr. Morrison monitoring continuously updated official time via T-Mobile cellphone display as 8:00 AM approached and reconnecting the phone line to the fax machine immediately upon indication

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[11] On occasion, the requests collectively do not seek the entire amount of available import rights for a capability period, in which case allocations may be requested in succeeding months.

on his cellphone that the moment of 8:00 AM (based on official time) had occurred; and (iii) Ms. Wilczek witnessing the conduct of the foregoing process. As indicated in his affidavit, Mr. Morrison has verified with T-Mobile that the time continuously updated by T-Mobile and transmitted to its cellphones is synchronized to official U.S. government time (which is available to the public at all times via, *inter alia*, the www.time.gov website), and that Mr. Morrison's cellphone has this continuous time-updating feature built into it.[12] It is important to note that the pertinent fax machine's internal clock contains no mechanism to ensure that the time stamps it produced reflected official U.S. time.[13]

The **second step** of the process was carried out by NYISO officials on February 16 by reviewing the relative fax clock time stamps (as summarized on the fax log sheet) to determine the relative priority of the requests received after the occurrence of 8:00 AM. The first request received by the NYISO following 8:00 AM was submitted by Coral for 570 MW of External ICAP Import Rights from PJM to NYISO during the entire Summer 2006 Capability Period. The second fax received by the NYISO following 8:00 AM was a request by PPL, seeking 250 MW of External ICAP Import Rights for the entire period.

The **third step** of the process was carried out by the NYISO over the succeeding days. Because Coral's request was the first one received by fax after 8:00 AM ET, official U.S. time, and because Coral submitted the required supporting documents prior to 5 p.m. on February 17, the NYISO allocated to Coral the available 220 MW in External ICAP Import Rights available

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12 Exhibit A at ¶ 8.

13 *Id.* at ¶ 10.

from PJM to NYISO, and so informed Coral. Because PPL's request was the second fax received by the NYISO after 8:00 AM, it was not allocated any External ICAP Import Rights.[14]

2. Contrary to PPL's Allegations, the NYISO's Actions on February 16 Complied with the Plain Language of the Services Tariff and the ICAP Manual; PPL's Interpretation is Inconsistent With the Filed Rate Doctrine; These Actions Did Not Involve Improper Discretion, a Lack of Transparency or a Change in Procedures.

PPL attacks the NYISO's compliance with the Services Tariff and the ICAP Manual on February 16 on the following grounds:

- it was improper under the Services Tariff and/or the ICAP Manual to use continuously updated official time (rather than the fax machine internal clock time stamps) to determine when the moment of 8:00 AM ET had occurred; and
- use of a cellphone showing continuously updated official time to ascertain the occurrence of 8:00 AM represented
  - an inappropriate exercise of NYISO discretion;
  - an insufficiently transparent process; or
  - a "change in procedure" that was improper because it was not reflected in a corresponding change to the Services Tariff or ICAP Manual.

As explained below, these assertions are incorrect, and the Commission should reject them.

a. The NYISO's Use of an Official Time Source Was Appropriate

PPL's assertion that it was improper to use continuously updated official time (rather than the fax machine internal clock time stamps) to determine when the moment of 8:00 AM ET had

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[14] Interestingly, on February 16, PPL apparently attempted to fax 15 pages consisting of identical copies of its one-page request form. Ultimately, only five pages (consisting of five

(continued...)

occurred is not supported by the plain language or a strict construction of either the Services Tariff or the ICAP Manual. PPL instead seeks to marry two separate and disconnected provisions of the ICAP Manual to create – using wishful rather than strict construction of the tariff/manual language – a methodology for NYISO compliance that does not comport with the filed rate.[15]

Specifically, PPL asserts that whether the moment of 8:00 AM ET has actually occurred, initiating the "open season" for receipt of External ICAP Import Rights requests, and for ascertaining whether such requests have actually been received after 8:00 AM, must be determined from time stamps generated by the fax machine's internal clock. This is a strained, result-oriented and incorrect interpretation that does not square with the plain language of the Services Tariff or the ICAP Manual. Instead, the ICAP Manual states, in the initial portion of Section 4.9.2 under the heading "Requests," that "Requests for Import Rights … may be sent to the NYISO during the following time period … [namely,] [b]eginning at 8:00 AM ET." There is absolutely no mention of the means by which the occurrence of the moment of 8:00 AM ET is to be determined. Nevertheless, on February 16, the NYISO used an objective and reliable source of official time to make that determination and to commence the allocation process.

(...continued)

copies of the same form) came through.

[15] PPL also seeks to rely on the Service Tariff's definition of "Bid." (Complaint, at 11). NYISO disputes the relevance of this definition, and the related PPL assertion that the NYISO did not receive a "duly submitted Bid" from Coral (Complaint, at 14), as neither the Service Tariff nor the ICAP Manual uses the defined term Bid or the phrase "duly submitted" in conjunction with the External ICAP Import Rights allocation process.

Over seven paragraphs later in Section 4.9.2 of the ICAP Manual – under a separate heading of "Priority" – the manual states that: "The date and time stamp provided by the FAX machine will determine the ***priority*** for the evaluation of the requests." (emphasis added). This sentence neither ties back to the request period "start time provision" of Section 4.9.2 described above, nor does it state or connote that the time stamp from the fax machine should determine whether a request was received after the occurrence of the moment of 8:00 AM eastern time. Instead, this provision literally and ***solely,*** prescribes the method by which the NYISO will evaluate the relative "priority" or order of the requests received after 8:00 AM eastern time.[16]

Thus, there are two distinct concepts at play here: "start time" (or commencement) and "priority." PPL's attempt to combine and blur these two distinct and widely separated provisions has no basis in the literal words of the Services Tariff or ICAP Manual and should be rejected as nothing more than a desperate attempt at a construction that could support PPL's position. The plain language of the ICAP Manual states that requests may be sent "beginning at 8:00 AM ET." A market participant could only reasonably conclude that this provision contemplates, and indeed requires, the use of an official and publicly available time source available to both the NYISO and its Customers. What other time source could *all* affected parties reasonably rely upon to

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[16] It is well understood by the Commission that "priority" in reference to competing offers refers to the relative order of their receipt. For example, in adopting revised OASIS Business Practice Standards in its order on *Open Access Same-Time Information System and Standards of Conduct,* FERC Stats. and Regs. ¶ 31,108, at p. 31,833 (October 26, 2000), the Commission stated: "One general rule is that OASIS requests should be evaluated and granted *priority* on a first-come-first-served basis established by OASIS QUEUED time. Thus, the first to request service should get it, all else being equal." (Emphasis added.) In a similar vein, Black's Law Dictionary says "priority" means "the status of being *earlier in time* or higher in degree or rank; precedence." (Emphasis added.)

know when the allocation process has commenced?[17] Moreover, the ICAP Manual's separate provisions addressing the "priority" of requests "submitted within the time periods specified above" nowhere state or imply that the fax machine time stamp should determine whether a request was in fact submitted within the time period specified above (*i.e.,* beginning at 8:00 AM).

To comply with the first of these two distinct provisions, the NYISO acted properly by disabling the fax machine and then re-enabling it at 8:00 AM according to an official time source to begin receiving bids. Having done so, it is clear that Coral's request **could not have been** received starting prior to 8:00 AM official time – notwithstanding the "7:59" timestamp generated from the fax machine's clock which was unsynchronized with official time. Accordingly, the NYISO correctly allocated import rights to Coral because Coral's request was both timely received and higher in priority than PPL's request.

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[17] The affidavit included as Exhibit 1 to the Complaint states that PPL sent a fax the day before the allocation to "test" the communication link between PPL and the NYISO and to "synchronize" its fax machine time to the NYISO's fax machine clock. However, PPL's e-mail requesting the "test" fax makes absolutely no mention of the notion of "synchronizing" to the time on NYISO's fax machine. *See* Attachment 1, hereto. Moreover, the pertinent "ticket" prepared pursuant to NYISO's internal system for assuring responsiveness to Customer requests – the "CRITaR ticket" indicates no communication by PPL of an intent to "synchronize." *Id.* In fact, the NYISO was completely unaware of PPL's alleged desire to "synchronize" to the NYISO's clock on the fax machine until it received PPL's Complaint. Leaving aside the obvious question of why PPL would attempt to do so in light of the plain language of the ICAP Manual, PPL's implication that the NYISO was "on notice" that it viewed the fax machine clock as the arbiter of 8 AM's occurrence is clearly unfounded in light of the absence of any indication to the NYISO that PPL was attempting to synchronize. Attachment 1 hereto is a copy of the customer service CRITaR ticket relating to PPL's test faxes and pertinent e-mails between NYISO and PPL officials.

In any event, it makes no sense to adopt a contorted and inaccurate reading of the governing documents that could force all interested NYISO Customers to attempt such synchronization.

Important public policy considerations support commencing the allocation process based on a publicly available time source. Reliance on an internal, non-calibrated fax time clock would only lead to further controversy and frustration, as NYISO Customers would have to keep guessing exactly what the fax machine time clock will state when they fax in their requests after 8 AM.

Ironically, PPL's Complaint argues for "transparency," yet urges the Commission to upset valid auction results by having it accept an unofficial time source that was truly opaque to the market – the fax machine clock. The NYISO fax machine does not have the capability to synchronize with an official time source, is not a calibrated timekeeping device and the NYISO does not attempt to continuously synchronize this internal clock with an official time source. Indeed, given PPL's extensive expressions of concerns about the fallibility of fax machines,[18] it should applaud the use of official time instead of a particular fax machine's internal time clock.

The Commission has recently recognized that, when the time of an action "really counts," it should be judged using an official time source. Specifically, in Order No. 676,[19] the Commission approved the incorporation by reference in its regulations, and as requirements for all Transmission Providers, the OASIS Standards & Communications Protocols standards developed by the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB").

NAESB WEQ standard 002-5.6 provides:

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[18] Complaint, at 8.

[19] Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 676, 115 FERC ¶ 61,102 (2006).

The following are the time requirements:

> **a. Time Synchronization**: Time shall be synchronized on OASIS Nodes such that all time stamps will be accurate to within "0.5 second of *official time*. This synchronization may be handled over the network using NTP, or may be synchronized locally *using time standard signals (e.g. WWVB, GPS equipment*). (Emphasis added.)

The NYISO's actions are entirely consistent with this NAESB WEQ standard, for the NYISO used "official time" in carrying out the plain language of the ICAP Manual to determine when 8:00 AM had occurred.

In sum, on February 16, the NYISO commenced the allocation process at 8:00 AM eastern time, as determined by an official source, and used the fax clock time stamps to determine the order in which bids were received – all in compliance with a strict reading of the Services Tariff and ICAP Manual. This process resulted in an allocation of all available rights to Coral (the proper first-in-time requestor) rather than PPL. While PPL is unhappy with the result, its attempt to twist the applicable rules and facts and characterize the NYISO's conduct as a tariff violation actionable under Section 206 is simply without merit.

b. PPL's Attempt to Justify its Interpretation is Inconsistent with the Filed Rate Doctrine

The Complaint relies heavily on a poorly worded statement contained in a NYISO electronic newsletter which indicated that External ICAP Import Rights requests will be invalidated if received prior to 8:00 AM ET on the auction date and that the time of receipt would be determined by the date and time stamp provided by the fax machine.[20] While the

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[20] Complaint, at 15.

NYISO regrets this misstatement, the newsletter can in no way trump or supersede the standards and requirements of the Services Tariff and the ICAP Manual provisions referred to therein. Because the newsletter is *not* part of the Services Tariff or ICAP Manual, it is not part of the filed rate and, therefore, cannot as a matter of law, be relied upon by the Commission to dictate the NYISO's performance of the External ICAP Import Rights allocation.

It is black-letter law that the filed rate doctrine "forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority."[21] This applies to the terms of a contract that conflict with the filed rate,[22] or the language on a billing statement that is neither included nor referenced in a tariff.[23] Under this principle, a newsletter – that the NYISO neither filed with the Commission nor referenced in the Services Tariff or the ICAP Manual to which the Services Tariff refers – certainly cannot control how the NYISO must determine when 8:00 AM has occurred for purposes of the External ICAP Import Rights allocation**.** Instead, the Services Tariff (at § 5.12.2) incorporates the ICAP Manual alone:

> [p]rocedures for qualifying selling, and delivery of External [ICAP] … are detailed in the [ICAP] Manual.

Newsletters, press releases, or other such statements clearly do not rise to the level of the procedures referenced in the NYISO governing documents. As one of the Commission's

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21 *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 (1981).

22 *Id.* at 582 ("[U]nder the filed rate doctrine, when there is a conflict between the filed rate and the contract rate, the filed rate controls.").

23 *Exelon Corp. v. PPL Elec. Util. Corp.*, 111 FERC ¶ 61,065 at P 26 (2005) ("Since PJM's Tariff and Operating Agreement do not contain a time limit to complain about billing errors, the 45-day time frame mentioned on a billing statement cannot preclude PECO from seeking a correction of this error."), *reh'g denied*, 114 FERC ¶ 61,298 (2006).

Administrative Law Judges succinctly stated in a case involving the California crisis, it was "absurd" to argue that a press release dictated any legal requirements for public utility sales under a Department of Energy order pursuant to Section 202 of the FPA.[24] Instead, procedures contained in governing documents control, and in this proceeding the steps taken by the NYISO to implement those procedures were consistent with these documents. Because the language of the documents is unambiguous, PPL cannot argue a need for extrinsic evidence such as newsletters to interpret the documents' requirements or the documents' intent.[25]

Accordingly, the Commission should uphold the NYISO's actions as compliant with the governing documents: the Services Tariff and the ICAP Manual.

c. The NYISO's Use of an Official Time Source to Determine the Start Time for the Request Receipt Period Did Not Represent an Inappropriate Exercise of NYISO Discretion

PPL asserts that the NYISO's use of an official time source to determine the occurrence of the 8:00 AM start time for receipt of External ICAP Import Rights requests somehow

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[24] *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*, 101 FERC ¶ 63,026 at PP 366-67 (2002) (Birchman, A.L.J.), *order on proposed findings on refund liability*, 102 FERC ¶ 61,317, *order on reh'g*, 105 FERC ¶ 61,066 (2003).

[25] *See, e.g.*, *Mid-Continent Area Power Pool*, 92 FERC ¶ 61,229 at 61,755 (2000) ("Extrinsic evidence (which may include the parties' course of performance) is admissible to ascertain the intent of the parties when that intent has been imperfectly expressed in ambiguous contract language, but is not admissible either to contradict or alter express terms."); *see also Nicole Gas Production, Ltd.*, 105 FERC ¶ 61,371 at P 10 (2003) ("Furthermore, Columbia's past practices are irrelevant to the interpretation of Section 26.9(b). When presented with a dispute concerning the interpretation of a tariff or contract, the Commission looks first to the tariff or contract itself, and only if it cannot discern the meaning of the contract or tariff from the language of the contract or tariff, will it look to extrinsic evidence."), *vacated on other grounds sub nom. Columbia Gas Transmission Corp. v. FERC*, 404 F.3d 459 (D.C. Cir. 2005).

represents an inappropriate exercise of NYISO discretion. The Commission should reject this assertion.

While PPL and others may reasonably differ about whether the first-come, first-served, "winner take all" approach reflected in the import right allocation process reflected in the governing NYISO documents is the best approach,[26] it is difficult to understand in what sense the NYISO's literal implementation of the existing process on February 16 could represent an exercise of improper discretion.[27] Instead, the core act challenged in the Complaint – NYISO's determination that Coral's request was submitted after 8:00 AM ET – was conducted in the most straightforward and non-discretionary way by using a highly objective time source: namely, a continuously updated time synchronized with official U.S. Government time. PPL does not, and indeed cannot, offer a reason why the NYISO would unduly discriminate, or exercise any discretion in favor of one External ICAP Import Rights requestor versus another. PPL's repeated accusations of discrimination amount to nothing more than make-weight arguments ginned up to support the fundamental – and false – premise of their request for relief, namely, that the NYISO awarded External ICAP Import Rights based upon a bid received before 8:00 AM eastern time. As described above, there are no facts that support such a conclusion.

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[26] *See, e.g.,* Complaint, at 10.

[27] The cases cited by PPL are inapposite to the events of February 16. For example, the order involving the Midwest ISO order cited in footnote 8, criticizes vague and subjective tariff standards for market monitors' evaluation of the conduct of a market participant, a vastly more complex process than applying the correct time.

d. The NYISO's Conduct of Its Allocation Responsibilities on February 16 Did Not Constitute an Insufficiently Transparent Process

PPL also asserts that the NYISO's conduct of its import right allocation responsibilities did not constitute a sufficiently transparent process.

Again, reasonable minds can differ regarding whether the first-come, first-served, "winner take all" allocation system is appropriate, or whether "higher-tech" processes are merited. If the Commission wishes to direct a stakeholder process to further consider these issues (beyond the stakeholder discussions that have already occurred), or order a prospective tariff change, it certainly may do so. However, the NYISO's straightforward conduct of its allocation responsibilities on February 16 – utilizing continuously updated official time to determine when the moment of 8:00 AM had occurred – hardly represents a non-transparent process or a deviation from the terms of the governing documents.

In these circumstances, reliance by the NYISO on publicly available official time – rather than on an internal fax clock not available to any NYISO Customer – is the most "transparent" method possible, because NYISO Customers can rely on official time in gauging when to begin transmitting their requests. The combination of reliance on official time and the NYISO's disabling and re-enabling the fax machine is also the most reliable means of ensuring compliance with the governing documents' standard that a request may be submitted only beginning at the moment of occurrence of 8:00 AM.

e. The NYISO's Use of an Official Time Source to Determine the Start Time Did Not Represent a "Change in Procedure"

PPL also asserts,[28] incorrectly, that the use of official time rather than the fax machine time stamp represented a change in procedure that may not be undertaken without a change in the governing documents or other notice to NYISO Customers.

The Commission should reject this argument. As discussed in Section V.A., above, the Services Tariff and the ICAP Manual ***do not*** state that the fax machine time stamp will be used to determine whether a request for External ICAP Import Rights has been submitted on or after the occurrence of 8:00 AM. Therefore, the use by the NYISO of an objective measure of whether 8:00 AM has occurred – by reference to official time – does not require a tariff or manual change. Nor was there – in PPL's words[29] – an "overriding" of a time-stamp-based standard by the NYISO.

PPL's reliance[30] on the *Southern Natural Gas Co*. order as an indicator of NYISO malfeasance is misplaced. That order simply required Southern to "post all criteria it will utilize in evaluating bids."[31] Here the Services Tariff and ICAP Manual contain only one criterion for use by the NYISO (and PPL has not alleged that the NYISO applied any other criteria): in order for the NYISO to evaluate a request for External ICAP Import Rights, it must have been sent to the NYISO at a point on or after the moment of 8:00 AM had occurred. Surely inclusion in the

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28 Complaint, at 19-20.

29 Complaint, at 19.

30 Complaint, at 19.

31 *Southern Nat. Gas Co.*, 92 FERC ¶ 61,265, at p. 61,880-81 (2000).

ICAP Manual is sufficient "posting" of this single criterion, under the standards of *Southern Natural Gas Co.* or otherwise.

B. Assuming, for Purposes Of Argument Only, that the Commission Were to Find that the NYISO's Conduct of the February 16, 2006 Allocation Did Not Comply with the Filed Rate, It Should Exercise Its Discretion to Reject the Remedies Requested by PPL, and the Cases Discussed by PPL in the Complaint Do Not Dictate Otherwise

Assuming, for purposes of argument only, that the NYISO's allocation of External ICAP Import Rights from PJM to Coral did not comply with the process specified in the filed rate, the Commission nevertheless should exercise its discretion and reject the remedies requested by PPL.

As explained below, the Commission has broad discretion to refuse to grant a remedy to address an action that does not comport with the filed rate. Following this precedent, the Commission should reject PPL's request to upset the February 16 allocation results, because the alleged violation did not unjustly enrich another party. In the instant matter, granting the capacity allocation to PPL could unjustly and unreasonably harm Coral, which has relied on the NYISO's allocation determination to plan its summer trading activities. Similarly, the Commission should not seek to hold PPL financially harmless, because doing so would only impose an unjust and unreasonable burden on whomever ultimately pays the bill.

Finally, under the doctrine of laches, the Commission should not reward PPL – at the unreasonable expense of others – after it sat on its rights for several months (if not years), and filed its complaint two weeks after the Summer 2006 Capability Period began.

1. The Commission Should Award Remedies for Failing to Follow the Filed Rate Only Where an Entity Was Unjustly Enriched or Doing So Otherwise Does Not Conflict with the Core Purposes of the FPA

As courts have repeatedly asserted, " 'the breadth of agency discretion is, if anything, at [its] zenith when the action assailed related primarily not to the issue of ascertaining whether conduct violates the statute, or regulations, but rather to the fashioning of policies, remedies and sanctions … in order to arrive at maximum effectuation of Congressional objectives.' "[32] The Commission's authority to order remedies for actions that conflict with the filed rate derives from Section 309 of the FPA. This section permits the Commission to "perform any and all such acts … as it may find necessary or appropriate to carry out the provisions of [the Act]." The D.C. Circuit has found that the FPA does not require the Commission to order refunds or otherwise grant a remedy for actions that violate the filed rate.[33]

Granting a remedy for a filed rate violation constitutes "a form of equitable relief, akin to restitution."[34] The "general rule is that agencies should order restitution only when 'money was obtained in such circumstances that the possessor will give offense to equity and good conscience if permitted to retain it.' "[35] Therefore, the Commission will not award a remedy for a tariff violation if there was no unjust enrichment.[36] "[A]bsent some conflict with the explicit requirements or core purposes of a statute, [the court has] refused to constrain agency discretion

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32 *Louisiana Pub. Serv. Comm's v. FERC*, 174 F.3d 218, 224 (D.C. Cir. 1999) (quoting *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967)).

33 *Towns of Concord v. FERC*, 955 F.2d 67, 72-73 (D.C. Cir. 1992).

34 *Id.* at 76.

35 *Id.*

36 *New York Independent System Operator, Inc.*, 97 FERC ¶ 61,154 at 61,673 (2001).

by imposing a presumption in favor of refunds."[37] "The underlying concern of the Act is to assure that the rates subject to its coverage are reasonable and that these rates are set and reviewed in a fair and orderly manner."[38] Because refusing to grant a remedy would not conflict with these concerns, the Commission should deny PPL's requested remedy.

In several cases involving the NYISO, the Commission has refused to order a remedy despite finding a tariff violation. For example, the Commission found that curtailment practice utilized by NYISO violated the Commission-approved process described in the NYISO OATT.[39] The Commission nevertheless refused to order refunds because "no customer paid unjust and unreasonable rates as a result of NYISO's failure to follow its tariff in regard to pro rata curtailment."[40] Similarly, the Commission found that NYISO failed to comply with the tariff provisions requiring that reserves be priced independently.[41] The Commission nevertheless refused to grant refunds in part because no one was unjustly enriched.[42]

Consistent with these cases, because the capacity allocation did not result in unjust and unreasonable rates or otherwise unjustly enrich NYISO, Coral, or a third party, the Commission should reject the relief sought by PPL.

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37 *Towns of Concord*, 955 F.2d at 74 ("The question here is whether the remedy devised by FERC similarly conflicts with the 'core purpose[]' of the Federal Power Act and therefore constitutes an abuse of discretion.").

38 *Borough of Ellwood City v. FERC*, 583 F.2d 642, 649 (3d Cir. 1978).

39 *New York Independent System Operator, Inc.*, 97 FERC ¶ 61,154 at 61,673 (2001).

40 *Id.* at 61,674.

41 *New York Independent System Operator, Inc.*, 110 FERC ¶ 61,244 at P 70 (2005).

42 *Id.*

2. PPL's Requested Remedy of Stripping Coral of Its Capacity Allocation Is Unjust and Unreasonable, Because Coral Has Reasonably Relied on the Allocation Since February

The Commission also should reject PPL's request that the Commission require the NYISO to award it 220 MW of external capacity rights for the summer capability period because it would unjustly harm Coral, the entity to whom the NYISO allocated the capacity. PPL has presented no evidence that Coral somehow received the allocation from the NYISO by stealth or subterfuge. Instead, the NYISO began receiving faxes of External ICAP Import Right requests at the official start time of 8:00 a.m.

Stripping Coral of this capacity allocation would violate a core principle of the FPA and the filed rate doctrine: providing necessary predictability.[43] Coral no doubt has relied on the import rights allocated by the NYISO in February 2006 to plan its summer trading activities. Stripping Coral of this allocation, with the summer trading season already having commenced, would undermine Coral's reasonable expectation (and the expectation of the customer to which it sold the related External ICAP) that it could rely on the award of Import Rights it previously received.[44]

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[43] *Towns of Concord*, 955 F.2d at 75 (discussing *Electrical Dist. No. 1 v. FERC*, 774 F.2d 490, 493 (D.C. Cir. 1985)).

[44] *Cf. id.* (affirming the Commission's decision to refuse to award refunds for costs improperly pass through a fuel adjustment clause because doing so did not undermine the customers' "reasonable expectations or interfered with their economic plans").

3. PPL's Request to be Held Harmless, If Granted, Would Unjustly and Unreasonably Harm NYISO Market Participants

PPL also contends that it "should be held financially harmless for the erroneous award for any period before a Commission order issues."[45] PPL currently estimates the value for the entire Summer 2006 Capability Period at $2 million.[46] PPL, however, fails to identify who should ultimately hold it harmless. Assuming, *arguendo*, that NYISO failed to follow the Services Tariff and ICAP Manual, the Commission nevertheless should reject this remedy, because granting it would merely impose an unjust and unreasonable result on entities that were not unjustly enriched by NYISO's allocation determination.

Specifically, the Commission should not require the NYISO or its Customers to hold PPL harmless. The NYISO was in no way enriched – unjustly or otherwise – by allocating the capacity to Coral. The NYISO simply acted as an independent referee, following the procedures referenced in its Services Tariff to the best of its ability. Furthermore, as the independent not-for-profit system operator for New York, the NYISO would necessarily socialize the cost of PPL's "indemnification" among the NYISO's market participants as a whole through Rate Schedule 1 of the Services Tariff (Market Administration and Control Area Services Charge). No other market participants were unjustly enriched by the methodology NYISO used to allocate the rights at issue. Even if one assumes that the NYISO did not allocate the rights in the manner required by its Services Tariff, requiring all market participants to hold PPL harmless would

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45 Complaint, at 25.

46 *Id.* at 27.

nevertheless be unjust and unreasonable. Clearly, NYISO market participants as a whole have not obtained pecuniary reward from the capacity allocation to Coral.

4. The Commission Should Reject PPL's Requested Remedy Because Any Alleged Tariff Violation Arguably Conferred a Benefit for Customers

In appropriate circumstances, the Commission has declined to order a remedy when a tariff violation had beneficial effects. For example, in *Louisiana Pub. Serv. Comm'n v. FERC*, 174 F.3d 218, 225 (D.C. Circuit 1999), the Court noted with approval that the Commission "thought it inequitable to order a refund when the predicate tariff violation had conferred *benefits* on the system, including the allegedly injured parties, that would not have come to pass absent the tariff violation."

If in the current case, assuming *arguendo,* the Commission were to find a tariff violation by the NYISO, it should apply the principles of the foregoing decision and reject PPL's proposed remedy. In particular, the NYISO's use of an objective, transparent methodology relying on official U.S. government time rather than a single fax machine's unsynchronized time clock, has many benefits in terms of Customer certainty and operating precision. As discussed in Section V.A., above, the superior nature of U.S. Government time stems from its being publicly available to all NYISO Customers. Indeed, PPL recognizes this implicitly by its litany of the infirmities of fax machines.[47]

By making sure to accurately determine when 8:00 a.m. occurred on February 16, instead of relying on the unsynchronized, uncalibrated fax machine clock, the NYISO safeguarded the

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[47] Complaint, at 8.

fairness of the process and strove to comply with the provisions referenced in the Services Tariff. Consistent with *Louisiana PSC,* the Commission should recognize these equitable factors and refuse to grant PPL's proposed remedies.

5. The Commission Should Bar PPL's Request For Relief Under the Doctrine of Laches

Finally, the Commission should reject PPL's request for relief under the doctrine of laches. "Under the doctrine of laches, a claim in equity can be barred if the person bringing the claim has delayed for such a time that permitting it to prosecute the claim would be inequitable."[48] To prevail, the party must demonstrate that (i) the complaining unreasonably delayed in asserting a claim and (ii) the delay caused undue prejudice on the parties against whom the claim is brought.[49] "Therefore, laches is not a mere matter of time, but is ultimately a question of the inequity of permitting a claim to be enforced after the passage of time because of circumstances that occurred during that time."[50]

First, PPL unreasonably delayed in asserting its claims. The NYISO made its allocation determination in February for import rights to become available starting May 1, 2006. Other than pursuing action through the Commission's Enforcement Hotline, PPL provides no explanation for why it waited approximately **three** months – and two weeks after Coral became eligible to utilize the import rights (*i.e.*, on May 1) – to file a complaint. Indeed, given the statements in the

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48 *See Jack J. Grynberg*, 90 FERC ¶ 61,247 at 61,826 (2000).

49 *See Northwest Pipeline Corp.*, 56 FERC ¶ 61,231 at 61,890 (1991).

50 *Id.* (citing *Concerned About Trident v. Schlesinger*, 400 F. Supp. 454, *aff'd*, 555 F.2d 817 (D.C. Cir. 1975)).

affidavit of Mr. Cudwadie (see page 5 of Exhibit 1 to the Complaint) that PPL had previously had "experienced issues" with the NYISO fax process, and the "continuing concern" expressed in the March 6, 2006 PPL letter that is Attachment D to the Complaint, PPL has effectively sat on its rights for far longer than three months.

Regardless of its use of the Hotline, PPL knew it should have filed a complaint to preserve its rights – at a minimum – before May 1, if not earlier, to allow time for the NYISO, Coral, and others to respond, as well as time for the Commission to analyze the pleadings, issue an order and fashion any remedies.

Second, the delay has caused an undue prejudice to the NYISO, Coral, and New York market participants in general. Granting PPL the import right allocation on a prospective basis clearly will unduly prejudice Coral. As discussed above, Coral has presumably relied on its allocation to plan its trading activities this summer. Furthermore, holding PPL financially harmless for any activities that have already occurred would unduly prejudice whichever entity or entities must ultimately foot the bill. Assuming *arguendo* NYISO failed to comply with the process specified in the filed rate, had PPL promptly filed its complaint, there would have been sufficient time for NYISO, Coral, and interested parties to file responses and for the Commission to issue an order before May 1. Such a result would have prevented the need to hold PPL harmless.

The incongruity between PPL's delay[51] in filing its Complaint and its demand that the Commission issue an order within twelve business days is startling and has "an Alice-in-Wonderland quality."[52] Under circumstances similar to this proceeding, a party claimed "extraordinary circumstances warranting prompt Commission review" despite waiting five months to file a motion for interlocutory appeal.[53] The presiding judge denied the motion under the doctrine of laches. The Commission should do so here, as well.

6. The Cases Relied Upon By PPL Do Not Dictate Against the Exercise of Commission Discretion to Decline a Remedy

Even if PPL's assertion is correct that NYISO failed to follow the procedures referenced in the Services Tariff, the cases cited by PPL in which the Commission has reversed wrongful determinations by other transmission providers[54] are readily distinguishable and should not be followed here. The cases cited by PPL involved violations of key substantive provisions of the *pro forma* OATT, established Commission policy, or both. NYISO's alleged violation, in contrast, was ministerial and consistent with established Commission policy. Furthermore, the cases cited by PPL dictate *against* holding it harmless.

All of the cases cited by PPL in which the Commission granted complaints regarding denied transmission requests involved violations of key substantive provisions of the *pro forma*

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51 While PPL claims that it had problems with the NYISO's fax for the prior two capability period auctions, it inexplicably allowed its concerns to languish for over a year. See Exhibit 1 and Attachment D to Complaint.

52 *ARCO Products Co. v. SFPP, L.P.*, 93 FERC ¶ 63,020 at 65,076 (2000) (Zimmet, A.L.J.).

53 *Id.*

54 *Id.* at 20-24.

OATT, established Commission policy, or both. The transmission providers' violations in the cases cited by PPL included: failing to designate network resources in the same manner as customers were required to do under its OATT;[55] denying transmission requests due to miscalculations of available transmission capacity ("ATC");[56] and ignoring the "bumping" procedures of the *pro forma* OATT consistent with the Commission's established policy of granting preferences to longer-term transmission requests.[57] In this last example, the Commission made clear that the Midwest ISO's practice not only conflicted with Commission[58] and court[59] precedent, it adversely affected the market for long-term service.[60] Significantly, two of the cases cited by PPL involved blatant OATT violations by transmission providers that

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[55] *Morgan Stanley Capital Group v. Illinois Power Co.*, 83 FERC ¶ 61,204 at 61,911-12 (1998) ("Since Illinois Power did not designate network resources in the same manner as network customers are required to designate them under its open access tariff, its reductions of ATC at the Illinois Power-TVA interface to reflect these purchases as network resources violated the terms of its pro forma tariff.").

[56] *Id.*; *Wisconsin Public Power Inc. SYSTEM v. Wisconsin Public Service Corp.*, 83 FERC ¶ 61,198 at 61,856, *order on reh'g*, 84 FERC ¶ 61,120 (1998).

[57] *Tenaska Power Service Co. v. Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,095 at P 29, *order on clarification*, 103 FERC ¶ 61,049, *order on reh'g*, 104 FERC ¶ 61,075 (2003).

[58] *Id.* ("In addressing a similar issue, in *Mid-Continent*, the Commission found that 'services can be competing services even though they do not have the same points of receipt and delivery.' ") (quoting *Mid-Continent Area Power Pool*, 91 FERC ¶ 61,065 (2000)).

[59] *Id.* (noting that, when addressing a different section of the pro forma OATT, the D.C. Circuit similarly found that " 'the language of the tariff suggests that two offers are competing if there is an inability to accommodate both' ") (quoting *Idaho Power Co. v. FERC*, 312 F.2d 454 (D.C. Cir. 2002)).

[60] *Id.* at P 29 ("Midwest ISO's practice adversely affects the market for long-term service, in conflict with the bumping procedures in the pro forma tariff. The bumping procedures were included in the pro forma tariff to ration limited resources by giving a priority to such resources to those customers who are willing to reserve and pay for long-term service.").

benefited their marketing affiliates.[61] Finally, in one of the cases the transmission provider violated Commission policy clearly established in Order No. 638[62] governing queue priority.[63]

In contrast to the cases cited by PPL, any alleged violation by NYISO in electing how to determine when 8:00 AM occurred was at worst ministerial. It did not involve any substantive provisions of the Services Tariff or the pro forma OATT. The NYISO has no affiliates it could or did favor. Nor did NYISO's actions conflict with Commission policy announced in prior

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[61] In *Morgan Stanley Capital Group*, the Commission found the transmission provider "violated the terms of its pro forma tariff by granting *its own request* to access resources that do not meet the pro forma tariff requirements for network resources, by failing to offer partial transmission service, and by failing to consider the redispatch of its own transmission system to accommodate Morgan Stanley's request." *Morgan Stanley Capital Group*, 83 FERC ¶ 61,204 at 61,911. In *Wisconsin Public Power Inc. SYSTEM*, the Commission found the transmission provider "improperly calculated its ATC in a way that favored *its own merchant function* over the transmission needs of WPPI." *Wisconsin Public Power Inc. SYSTEM*, 83 FERC ¶ 61,198 at 61,856. The Commission concluded that the transmission provider's actions raised "serious concerns" as to the functional separation with its merchant function. *Id.* at 61,855. The Commission also found that the transmission provider denied the service request "not on the basis of any term or condition of its open access tariff, but on its view that WPPI could, and should, obtain the service through its existing agreements" with the transmission provider, even though there was "no tariff requirement that transmission customers disclose the terms of their contractual arrangements concerning the use of other transmission systems as a prerequisite to obtaining service from a transmission provider." *Id.*

[62] Open Access Same-Time Information System and Standards of Conduct, Order No. 638, FERC Stats. & Reg. ¶ 31,093 (2000).

[63] *Idaho Power Co. v. PacifiCorp*, 95 FERC ¶ 61,148 (2001). Specifically, the Commission explained that Order No. 638, not PacifiCorp's tariff, governed queue priority. *Id.* at 61,476. Applying Order No. 638, the Commission found that the transmission provider should have granted Idaho Power's request priority in the transmission queue, even though it was incomplete, because it was submitted before Powerex's approved application. *Id.* Essential to the Commission's finding was the fact that PacifiCorp had updated the status of Idaho Power's request to "STUDY" within two hours of receipt. *Id.* Order No. 638 provides that the "STUDY" status "denotes that the review of a request is being processed with no discrepancy or deficiency in the application." *Id.* (discussing Order No. 638). Therefore, PacifiCorp already determined

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orders; that is, the Commission does not have a pre-existing policy requiring transmission providers to rely on a fax machine's clock instead of a more accurate source of time. In fact, as discussed above in Section V.A.2.a, NYISO's practice of determining 8:00 AM by a cellular telephone clock synchronized to official U.S. time *is consistent with* Order No. 676, which incorporates, *inter alia*, NAESB WEQ standard 002-5.6 that requires time synchronization with official time.

Furthermore, in none of the cases cited by PPL involving a misallocation of transmission capacity has the Commission held the successful plaintiff harmless; the Commission only provided prospective relief.[64] In fact, Commission precedent (at least implicitly) rejects such a position by noting that "[i]t is, of course, impossible to undo" this lost opportunity.[65] Although the Commission held that the plaintiff in *Exelon Corp. v. PPL Electric Utilities Corp.* was entitled to reimbursement, that case involved a billing error by PJM in which it had charged Exelon's subsidiary for congestion charges caused by another customer (*i.e.*, PPL). Unlike the transmission misallocation cases cited by PPL, the billing error in *Exelon Corp.* was not "impossible to undo."

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that Idaho Power's application was not deficient, and therefore should have been granted priority over the later (albeit complete) application received from Powerex.

[64] *Tenaska Power Servs. Co.*, 102 FERC ¶ 61,095 at P 31 (directing the Midwest ISO to reconsider Tenaska's long-term firm transmission service request); *Idaho Power Co.*, 95 FERC ¶ 61,148 at 61,477; *Morgan Stanley Capital Group*, 83 FERC ¶ 61,204 at 61,913 (ordering the transmission provider to recomputed ATC and grant the plaintiff's request for service "for the remaining seven months" of the term); *Wisconsin Public Power Inc. SYSTEM*, 83 FERC ¶ 61,198 at 61,858 (directing the transmission provider "to release the capacity that it improperly reserved for its merchant function and to recalculate its ATC over the Western Interface in accordance with its open access tariff, within fifteen days of the issuance of this order").

C. The NYISO Does Not Oppose PPL's Request that the NYISO Undertake A Stakeholder Process to Consider Improvements in the External ICAP Import Rights Allocation Process

PPL seeks a Commission order directing the NYISO to conduct a stakeholder process in which improvements in the External ICAP Import Rights allocation process can be considered.

While the NYISO has no objection to commencing such a process,[66] it notes that PPL needs no Commission intervention to spur its initiation. PPL has always been empowered to put such a process in motion in the same manner as every NYISO Customer. Indeed, the Commission has repeatedly indicated its support for market participants' raising their concerns initially in the context of the Commission-approved NYISO stakeholder process, rather than through a complaint filed at the Commission.[67]

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65 *Idaho Power Co. v. PacifiCorp*, 95 FERC ¶ 61,148 at 61,477 (2001).

66 In light of the prior comprehensive stakeholder review already undertaken and discussed below, this would be a "recommencement" rather than the commencement of such a process.

67 *See, e.g., Niagara Mohawk Power Corporation, a National Grid Company v. New York State Reliability Council and New York Independent System Operator, Inc.,* 114 FERC ¶ 61,098 (2006) (requiring Niagara Mohawk to first exhaust its methods of resolving this dispute within Reliability Council and the NYISO before filing a complaint with the Commission).

The Commission places great weight on the product of stakeholder processes in ISOs and regional transmission organizations. *See, e.g., New England Power Pool*, 107 FERC ¶ 61,135 at P 24 (2004) (rejecting protests in part because the argument raised "have not been vetted through the stakeholder process and could impact various participants"); *New Power Co. v. PJM Interconnection, LLC*, 98 FERC ¶ 61,208 at 61,759 (2002) (deciding not to revise PJM's ICAP rules or institute further proceedings, noting that PJM was "currently pursuing its stakeholder process to develop a mechanism to ensure reliability" that PJM would make a new filing "either re-supporting the seasonal regime, or proposing a new mechanism"); *Morgan Stanley Capital Group Inc. v. PJM Interconnection, LLC*, 96 FERC ¶ 61,331 at 62,269 (2002) (concluding that, "rather than filing a complaint with the Commission, a more appropriate venue for Morgan Stanley to seek to address its concerns would be the PJM stakeholder process"); *Rumford Power Associates, L.P.,* 97 FERC ¶ 61,173 at 61,814 (2001) (noting that a petitioner "has not persuaded

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It is significant that prior to filing this Complaint PPL either ignored (or did not fully participate in) the stakeholder process conducted by the ICAP Working Group which considered modifications to the very allocation process at issue herein. Upon completion of that process – which entailed discussion at 13 meetings over a two-year period, including two meetings at which the allocation process was the sole agenda item – the Chair of the ICAP Working Group provided a summary of its efforts to the Business Issues Committee ("BIC").

The minutes of the BIC meeting of March 8, 2006 provide:

> The group also discussed the status of revised Import [R]ights allocation procedures. The ICAP WG concluded that there was not enough market interest in the allocation process to warrant additional investments of time for the NYISO or the Working Group. After a request for input, BIC raised no concerns with maintaining the current allocation process.

PPL attended the March 8, 2006 meeting but the Complaint – perhaps understandably – makes no reference to this disposition by the market participants of the allocation process deliberations.

VI. COMPLIANCE WITH RULE 213(C) OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

A. Disputed Factual and Material Allegations

As discussed in greater detail in Section V above, NYISO disputes the following key factual and material allegations raised in the Complaint:

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us to circumvent NEPOOL's stakeholder process by unilaterally ordering ISO-NE to adopt any particular [station power] netting interval").

- **Complaint at 10:** "The External Rights allocation should have been awarded pursuant to the procedures dictated by the Services Tariff as explained further in the ICAP Manual and as consistent with Commission precedent."

  - **NYISO Response:** As discussed throughout this answer, NYISO appropriately allocated the transmission capacity at issue to Coral.

- **Complaint at 10-11:** "NYISO violated the rate on file when it granted the award in a manner inconsistent with these published, and approved procedures."

  - **NYISO Response:** As discussed above in Section V.A, NYISO complied with the requirements of its Services Tariff and ICAP Manual in conducting the February 16 External ICAP import rights allocation.

- **Complaint at 14-15:** "The plain reading of the ICAP Manual … provides that the fax machine time stamp is the objective arbiter of the 8:00 a.m. start of the auction."

  - **NYISO Response:** As discussed above in Section V.A.2, the ICAP Manual does not state that NYISO will rely on the fax machine clock to determine when 8:00 AM occurs to begin the allocation process.

- **Complaint at 15-16:** PPL argues that a NYISO newsletter supports its view that a plain reading of the ICAP Manual makes the fax machine stamp the arbiter of the 8:00 AM start of the allocation process.

  - **NYISO Response:** As discussed above in Section V.A.2.b., a poorly-worded newsletter does not trump or supersede the standards and requirements of the filed rate (*i.e.*, the Services Tariff and the ICAP Manual provisions referred to therein).

- **Complaint at 16:** PPL asserts that NYISO overrode or otherwise changed the procedures referenced in its Services Tariff.

  - **NYISO Response:** As discussed above in Section V.A.2.e, NYISO's use of an official time source to determine the start time did not represent a "change in procedure."

- **Complaint at 17-20:** Use of the fax machine clock does not constitute a transparent procedure that "removes any discretion from NYISO personnel for deciding which bids were received on a timely basis and which was first in time."

  - **NYISO Response:** As discussed above in Section V.A.2.c, use of official time (via a synchronized cellular telephone) did not represent an inappropriate exercise of NYISO discretion. Furthermore, as discussed above in Section V.A.2.d, NYISO reliance on official time provides a transparent process.

- **Complaint at 20-24 and 25-27:** PPL asserts that an appropriate remedy is to reverse the transmission allocation to Coral and grant it to PPL.

    - **NYISO Response:** As discussed above in Section V.B, assuming for purposes of argument only that NYISO failed to comply with the filed rate, the Commission should exercise its discretion to refuse to grant the requested remedies, because any remedy would unjustly and unreasonably harm Coral and/or other market participants.

- **Complaint Exhibit 1, p.4:** Mr. Cudwadie states that PPL submitted test faxes "in order to synch their time to the NYISO's fax machine time."

    - **NYISO Response:** As discussed above in Section V.A.2.a, and as evidenced in Attachment 1, PPL never told NYISO that the purpose of the test faxes were to synch PPL time to the NYISO fax time. PPL stated only that the purpose was to make sure that the NYISO was receiving its faxes.

The NYISO's responses to other points raised by PPL are reflected in the discussion in Section V, above.

B. Law Upon Which This Answer Relies

To support this Answer, NYISO relies on, *inter alia*:

- **NYISO utilized appropriate methodologies for determining allocation start time and request priority:** Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 676, 115 FERC ¶ 61,102 (2006); Open Access Same-Time Information System and Standards of Conduct, FERC Stats. and Regs. ¶ 31,108, at p. 31,833 (October 26, 2000).

- **NYISO's actions were consistent with the filed rate:** *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 (1981); *Exelon Corp. v. PPL Elec. Util. Corp.*, 111 FERC ¶ 61,065 (2005), *reh'g denied*, 114 FERC ¶ 61,298 (2006); *Mid-Continent Area Power Pool*, 92 FERC ¶ 61,229 at 61,755 (2000); *Nicole Gas Production, Ltd.*, 105 FERC ¶ 61,371 (2003), *vacated on other grounds sub nom. Columbia Gas Transmission Corp. v. FERC*, 404 F.3d 459 (D.C. Cir. 2005); and *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*, 101 FERC ¶ 63,026 (2002) (Birchman, A.L.J.), *order on proposed findings on refund liability*, 102 FERC ¶ 61,317, *order on reh'g*, 105 FERC ¶ 61,066 (2003).

- **NYISO's use of an official time source to determine the start time did not represent a "change in procedure":** *Southern Nat. Gas Co.*, 92 FERC ¶ 61,265 (2000).

- **Assuming *arguendo* NYISO did not comply with the filed rate, the Commission should exercise its broad discretion to not grant PPL's requested remedies:** *Louisiana Pub. Serv. Comm's v. FERC*, 174 F.3d 218, 224 (D.C. Cir. 1999); *Towns of Concord v. FERC*, 955 F.2d 67 (D.C. Cir. 1992); *Borough of Ellwood City v. FERC*, 583 F.2d 642 (3d Cir. 1978); *New York Independent System Operator, Inc.*, 110 FERC ¶ 61,244 (2005); *Tenaska Power Service Co. v. Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,095, *order on clarification*, 103 FERC ¶ 61,049, *order on reh'g*, 104 FERC ¶ 61,075 (2003); *New York Independent System Operator, Inc.*, 97 FERC ¶ 61,154 (2001); *Idaho Power Co. v. PacifiCorp*, 95 FERC ¶ 61,148 (2001); *Jack J. Grynberg*, 90 FERC ¶ 61,247 at 61,826 (2000); *Morgan Stanley Capital Group v. Illinois Power Co*., 83 FERC ¶ 61,204 (1998); *Wisconsin Public Power Inc. SYSTEM v. Wisconsin Public Service Corp.*, 83 FERC ¶ 61,198, *order on reh'g*, 84 FERC ¶ 61,120 (1998); *Northwest Pipeline Corp.*, 56 FERC ¶ 61,231 at 61,890 (1991); *ARCO Products Co. v. SFPP, L.P.*, 93 FERC ¶ 63,020 at 65,076 (2000) (Zimmet, A.L.J.).

- **Commission policy supports market participants raising their concerns initially in the Commission-approved stakeholder process, rather than through a filed complaint:** *Niagara Mohawk Power Corporation, a National Grid Company v. New York State Reliability Council and New York Independent System Operator, Inc.,* 114 FERC ¶ 61,098 (2006); *New England Power Pool*, 107 FERC ¶ 61,135 (2004); *New Power Co. v. PJM Interconnection, LLC*, 98 FERC ¶ 61,208 at 61,759 (2002); *Morgan Stanley Capital Group Inc. v. PJM Interconnection, LLC*, 96 FERC ¶ 61,331 (2002); *Rumford Power Associates, L.P.,* 97 FERC ¶ 61,173 (2001).

C. Attachments

The following documents are attached to this Answer:

- Exhibit A: Affidavit of Peter Morrison.

- Exhibit B: Affidavit of Mariann Wilczek

- Attachment 1: CRITaR ticket and related e-mails

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully asks that the Commission deny the Complaint.

Respectfully submitted,

NEW YORK INDEPENDENT
SYSTEM OPERATOR, INC.

By _____

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simond@ballardspahr.com

May 31, 2006

Exhibit A

Exhibit A

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PPL EnergyPlus, LLC,	)	
	)	
Complainant	)	
	)	
	)	Docket No. EL06-72-000
v.	)	
	)	
New York Independent System Operator, Inc.,	)	
	)	
Respondent	)	

AFFIDAVIT OF PETER MORRISON

Town of East Greenbush :
: **ss:**
County of Rensselaer :

1. My name is Peter Morrison. I am an Analyst in the Auxiliary Market Operations department of the New York Independent System Operator, Inc. ("NYISO"). I conduct Installed Capacity ("ICAP") auctions and the External ICAP Import Rights allocation process and analyze input data and auction results.

2. The NYISO is a not-for-profit entity formed in 1999 as the central coordinator of New York State's restructured bulk electric power system. The NYISO's primary functions are to coordinate the operation of the State's bulk power grid and to administer open and competitive wholesale electric markets in New York for energy and certain ancillary services, in accordance with the NYISO Open Access

Transmission Tariff and the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") (collectively, "NYISO's Tariffs"). As a not-for-profit entity, the NYISO has no financial stake in the outcome of the External ICAP Import Rights allocation process. The NYISO conducts the External ICAP Import Rights allocation process in a non-discriminatory manner in accordance with the NYISO's Tariffs.

3. The External ICAP Import Rights allocation process consists of three steps: (i) accepting and evaluating faxed External ICAP Import Right requests *only after* the moment of 8:00 a.m. eastern time has occurred; (ii) determining the priority (*i.e.*, the relative order) in which requests were received by fax beginning at 8:00 a.m. based on the time stamp provided by the fax machine; and (iii) allocating the available import rights until all have been awarded (unless the requests collectively do not seek the entire amount of available import rights) through a review that includes the import right amounts sought in each request in the relative order received based on the fax time stamp, and subject to the provision of supporting documents by 5 p.m. on the next business day.

4. On February 16, 2006, the NYISO conducted an External ICAP Import Rights allocation process for the right to import External ICAP into the NY Control Area.

5. For the February 16, 2006 External ICAP Import Rights allocation process, I conducted the first step I discussed above. Mariann Wilczek Senior Analyst served as a witness to verify that I executed this step properly.

6. First, to ensure that the NYISO did not receive any requests before the 8:00 a.m. start time, on February 16, 2006, at approximately 7:50 a.m., I disabled the NYISO fax machine that receives External ICAP Import Rights requests by unplugging the telephone jack.

7. To ensure exactly when 8:00 a.m. occurred, I monitored a continuous official time display via T-Mobile cell phone as 8:00 a.m. approached. Immediately upon indication on this cellphone display that the moment of 8:00 a.m. had occurred, I reconnected the phone line to the fax machine. The fax machine immediately began to receive transmittals.

8. T-Mobile has verified that the time update signal transmitted to its cellphones is synchronized to official U.S. government time. I also have verified that the cellphone I used has this continuous time-updating feature built into it. Official government time is available to the public at all times at the www.time.gov website, as well as other sources.

9. Under this procedure, it would have been impossible for the NYISO to grant a request submitted at 7:59 a.m., as calibrated to official U.S. government time, because I did not reconnect the fax machine until 8:00 a.m. occurred on the cellphone synchronized to official U.S. government time. Therefore, although the NYISO fax machine indicated that the first request (Coral's) began to arrive at 7:59 a.m., the NYISO in fact did not begin to receive this request until after the occurrence of 8:00 a.m., official U.S. government time.

10. In contrast with the cellphone I used, the NYISO fax machine is not synchronized to official U.S. government time. Furthermore, I have been informed by NYISO information technology ("IT") support that the fax machine's time clock may not be of sufficient accuracy to remain calibrated, even if the NYISO periodically reset it to official U.S. government time.

11. The NYISO, however, can and does use the time recording feature of its fax machine to execute the second step of the process I described above in ¶ 3: determining the priority (*i.e.*, the relative order) of the requests received by fax beginning at 8:00 a.m. In other words, although the fax machine-generated time record for each request is not synchronized with official U.S. government time, the NYISO can rely on it to demonstrate the relative order in which the NYISO received the requests after 8:00 a.m. official U.S. Government time.

12. As referenced in the Services Tariff, the ICAP Manual mandates that the NYISO begins to receive External ICAP Import Rights requests at 8:00 a.m. Use of a cellphone clock synchronized with official U.S. government time ensures that the NYISO complies with this requirement. Because the NYISO fax machine clock is not so synchronized to any official time source, the NYISO cannot ensure that relying on it to determine when 8:00 a.m. eastern time occurred would not result in granting an allocation request received before 8:00 a.m.

13. By reconnecting the fax machine upon immediate indication that the moment of 8:00 a.m. had occurred, as measured by official U.S. government time, I ensured

that the NYISO did not receive any External ICAP Import Rights requests immediately before the required 8:00 a.m. start time.

Peter Morrison
Analyst, Auxiliary Market Operations
NYISO

Subscribed and sworn to before me this 30th day of May, 2006.

Notary Public

My Commission expires : 2/28/07

SHARON E. DUFFY
Notary Public, State Of New York
No. 01DU4515852
Qualified In Schenectady County
Commission Expires February 28, 2007

Exhibit B

Exhibit B

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PPL EnergyPlus, LLC,	)	
	)	
Complainant	)	
	)	
	)	Docket No. EL06-72-000
v.	)	
	)	
New York Independent System Operator, Inc.,	)	
	)	
Respondent	)	

AFFIDAVIT OF MARIANN WILCZEK

Town of East Greenbush :
: ss:
County of Rensselaer :

1. My name is Mariann Wilczek. I serve as a Senior Analyst in the Auxiliary Market Operations department of the New York Independent System Operator, Inc. ("NYISO"). The primary responsibility of the position is to administer the ICAP market activities. These activities include conducting the strip, monthly and spot market auctions, monthly certification, load shifting, true-up load shifting, and credit and billing activities.

2. The External ICAP Import Rights allocation process consists of three steps: (i) accepting and evaluating faxed External ICAP Import Right requests *only after* the moment of 8:00 a.m. eastern time has occurred; (ii) determining the priority

(*i.e.*, the relative order) in which requests were received by fax beginning at 8:00 a.m. based on the time stamp provided by the fax machine; and (iii) allocating the available import rights until all have been awarded (unless the requests collectively do not seek the entire amount of available import rights for the period) through a review of the import right amounts sought in each request in the relative order received based on the fax time stamp, and subject to the provision of supporting documents by 5 p.m. on the next business day.

3. On February 16, 2006, the NYISO conducted an External ICAP Import Rights allocation process for the right to import 220 MW into the NYISO markets from PJM Interconnection, L.L.C.

4. For the February 16, 2006 External ICAP Import Rights allocation process, I served as a witness to verify that Mr. Peter Morrison, Analyst in the Auxiliary Market Operations department, properly executed the first step described above in ¶ 2. Specifically, I watched Mr. Morrison operate the NYISO fax machine to ensure that it properly began to receive External ICAP Import Right allocation requests only after the moment of 8:00 a.m. had occurred.

5. On February 16, 2006, I witnessed Mr. Morrison disable the NYISO fax machine that receives External ICAP Import Rights allocation requests at approximately 7:50 a.m. by unplugging the telephone jack.

6. I witnessed Mr. Morrison then determine exactly when 8:00 a.m. would occur by monitoring the time via a T-Mobile cellphone display as 8:00 a.m. approached.

7. I witnessed Mr. Morrison reconnect the phone line to the fax machine immediately upon indication on the cellphone clock that the moment of 8:00 a.m. had occurred. The fax machine immediately began to receive transmittals.

8. Under this procedure, it would have been impossible for the NYISO to grant a request submitted at 7:59 a.m., because I witnessed Mr. Morrison wait to reconnect the fax machine upon the occurrence of 8:00 a.m. on the cellphone. Therefore, although the NYISO fax machine indicates that Coral's request began to arrive at 7:59 a.m., the NYISO in fact did not begin to receive this request until after the occurrence of 8:00 a.m.

Mariann Wilczek
Senior Analyst, Auxiliary Market Operations
NYISO

Subscribed and sworn to before me this 30th day of May, 2006.

Notary Public

My Commission expires : 2/28/07

SHARON E. DUFFY
Notary Public, State Of New York
No. 01DU4515852
Qualified In Schenectady County
Commission Expires February 28, 2007

Attachment 1

CRITaR Help Desk Ticket

Created from email message? Y
Click to view email message: (do not delete)

This ticket was closed on: 02/16/2006 09:37:41

Customer Information Schaefer, Brent	Ticket Information External ICAP Rights Request
Company: PP&L Inc. Phone: 610-774-7039 Email: bschaefer@pplweb.com Customer Title:Power Markets Developer NYISO Function: Abook ID: CAA51FEA6484CCA1852569E000499F41 Other Open Tickets for This Customer: NONE	Original Ticket Author: Rick Roby Ticket Number: 20060210080237 Status: Closed Ticket Opened Date: 02/10/2006 08:02 AM Category: OPERATIONS - AUXILIARY MARKETS Sub-category: UCAP AUCTIONS Dept Assignee: MS - Customer Relations Current Assignee: Rick Roby Priority: High

Issue description:
The period for Requesting Summer 2006 NYISO External ICAP Rights is only a week away. The next scheduled ICAP Working Group meeting is scheduled for Feb. 17th, the day after the opening of the request period. I am currently assuming that the posted "First Come First Served Import Rights FAX Form – winter (posted 2005-08-11) will be used again for requesting via the NYISO Fax @ 518-356-6208.

Due to PPL EnergyPlus's faxing problems occurring during the past two request periods, I would like to ask for a couple of simple requests which will improve our procedures for the request process. Would it be possible to send a test fax on the day before the request period (at about 2 pm) and have you tell me that it went through without problem? Should any problem arise, corrective measures could be made by me to insure a higher degree of deliverability for the actual request. I would also ask if a phone call could be placed to me (the requestor) after an actual request is received on the 16th. In previous years, I have stopped requesting after indications on our machines showed a successful transmission only to find that it was not received on your end. By having you call us immediately upon receipt, I would know you had received the faxed request and would not need to continue to send fax request(s).

I trust these two requests are not too onerous, and can be honored. I would think they could be honored for any requesting party and would serve only to better the present procedures. I thank you in advance... Brent Schaefer (PPL EnergyPlus LLC)

Resolution:
Fax was recieved by the NYISO.

Work History:

02/10/2006 10:47: Rick Roby - Bob Friend is the help desk person that morning. I've breifed him on this.
02/10/2006 08:45: Rick Roby - Spoke with Kathy and Brent. Kathy mentioned having Brent call the help desk that morning to verify if we have recieved a fax from PPL. Brent is happy with this suggestion and will be calling the help desk. I would like to keep this open until then as a reminder.
02/10/2006 08:05: Rick Roby - Steve, Another one for Mariann. You should alert Kathy with this one when it goes over. She has responded to Brent and sent me an e-mail and voice mail about a ticket for this.

Rich text items:

—— Forwarded by Kathy Whitaker/NYISO on 02/09/2006 05:33 PM ——

Kathy Whitaker/NYISO
02/09/2006 04:00 PM

To "Schaefer, Brent P" <b
cc "Schaefer, Brent P" <b
Subject Re: External ICAP Rigl

Brent - we certainly can support your request for a test fax the day before. I cannot commit at th
but I will get back to you before the actual period opens and let you know if that will be possible

Audit history:
02/16/2006 09:37: Rick Roby closed the ticket called "External ICAP Rights Request" .
02/10/2006 10:47: Rick Roby added to the work history for "External ICAP Rights Request".

02/10/2006 08:45: Rick Roby changed the assignee for "External ICAP Rights Request" from Stephen Lemme to Rick Roby
02/10/2006 08:45: Rick Roby added to the work history for "External ICAP Rights Request".

02/10/2006 08:06: Rick Roby added to the work history for "External ICAP Rights Request".

Kathy Whitaker/NYISO

		To
02/09/2006 04:00 PM	"Schaefer, Brent P" <bpschaefer@pplweb.com>	
		cc
	"Schaefer, Brent P" <bpschaefer@pplweb.com>, rroby@nyiso.com	
		Subject
	Re: External ICAP Rights Request (Document link: Kathy Whitaker)	

Brent - we certainly can support your request for a test fax the day before. I cannot commit at this time to immediately calling you following receipt of your fax, but I will get back to you before the actual period opens and let you know if that will be possible. Kathy

"Schaefer, Brent P"

<bpschaefer@pplweb.com>		To
	<kwhitaker@nyiso.com>	
		cc
02/09/2006 02:35 PM	<rroby@nyiso.com>, "Schaefer, Brent P" <bpschaefer@pplweb.com>	
		Subject
	External ICAP Rights Request	

Ms Whitaker;

The period for Requesting Summer 2006 NYISO External ICAP Rights is only a week away. The next scheduled ICAP Working Group meeting is scheduled for Feb. 17th, the day after the opening of the request period. I am currently assuming that the posted "First Come First Served Import Rights FAX Form – winter (posted 2005-08-11) will be used again for requesting via the NYISO Fax @ 518-356-6208.

Due to PPL EnergyPlus's faxing problems occurring during the past two request periods, I would like to ask for a couple of simple requests which will improve our procedures for the request process. Would it be possible to send a test fax on the day before the request period (at about 2 pm) and have you tell me that it went through without problem? Should any problem arise, corrective measures could be made by me to insure a higher degree of deliverability for the actual request. I would also ask if a phone call could be placed to me (the requestor) after an actual request is received on the 16th. In previous years, I have stopped requesting after indications on our machines showed a successful transmission only to find that it was not received on your end. By having you call us immediately upon receipt, I would know you had received the faxed request and would not need to continue to send fax request(s).

I trust these two requests are not too onerous, and can be honored. I would think they could be honored for any requesting party and would serve only to better the present procedures. I thank you in advance… Brent Schaefer (PPL EnergyPlus LLC)

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C. this 31st day of May, 2006.

Lyndsey K. Sites
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, N.W., Suite 1000 South
Washington, D.C. 20005
(202) 661-7618