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May 15, 2006

Ms. 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-\_\_\_\_-000

Complaint and Request for Fast Track Procedures

Dear Secretary Salas:

Please find enclosed for electronic filing in the above-captioned proceeding, the Complaint and Request for Fast Track Procedures.

If you should have any questions regarding this filing, please contact the undersigned.

Sincerely,

*/s/ Sandra E. Rizzo*

Sandra E. Rizzo

SER/bh  
Enclosure

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

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

**COMPLAINT AND REQUEST FOR FAST TRACK PROCEDURES**

Pursuant to Section 206 of the Federal Power Act (“FPA”), 16 U.S.C. § 824e (2005), and Rule 206(h) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.206(h) (2005), PPL EnergyPlus, LLC (“PPL EnergyPlus”) hereby files this Complaint and requests fast track processing. This Complaint seeks relief for the failure of the New York Independent System Operator, Inc. (“NYISO”) to conduct its External Rights Auction in a just and reasonable manner. The Complaint also seeks a stakeholder process to revise the process by which External Rights are awarded.

NYISO acted in an unduly discriminatory manner in awarding External Rights for the summer 2006 capability period when it failed to conduct such auction in accordance with the New York ISO Market Administration and Control Area Services Tariff (“ISO Services Tariff”), the ISO Procedures set forth in the NYISO Installed Capacity Manual (“ICAP Manual”), and applicable legal precedent.

The External Rights Auction, conducted on February 16, 2006, allocated 220 MW of rights to import power into NYISO markets from the PJM Interconnection, L.L.C. ("PJM"). The official auction start time is 8:00 a.m. and bids received before that time are invalid. Rights are to be awarded on a first come, first served basis. Bids are faxed to the NYISO. PPL EnergyPlus' bid was the first bid received after the official 8:00 a.m. start time as evidenced by the NYISO's fax machine time stamp. NYISO allocated the external rights to a market participant ("Entity X") whose fax was received at 7:59 a.m. according to the NYISO fax machine time stamp. For the reasons set forth below, PPL EnergyPlus respectfully requests that the Commission find that NYISO violated the ISO Services Tariff, ICAP Manual and applicable legal precedent and acted unduly discriminatorily in its allocation of External Capacity rights to Entity X and direct NYISO to award PPL EnergyPlus the 220 MW of external rights for the 2006 summer capability period.

In addition, for the reasons explained further herein, the Complaint seeks that the Commission direct a stakeholder process in order to reform the NYISO process of awarding External Rights. At the conclusion of the stakeholder process, the NYISO should be directed to make a compliance filing with the Commission to implement modifications that would rectify the flaws in the current process, such as replacing use of the fax system in favor of the use of better and updated technology and considering alternatives to the current "winner takes all" allocation.

As described further herein, PPL EnergyPlus requests prompt Commission action in response to the issues raised in this Complaint given that the six month summer capability period for which PPL EnergyPlus was wrongly denied external rights began on May 1, 2006.<sup>1</sup> This Complaint is filed consistent with the ISO Agreement and ISO Services Tariff, which preserve the rights of a market participant to file a complaint at the Commission in exercise of its FPA rights at any time.<sup>2</sup>

## **I. COMMUNICATIONS**

Please address all notices and communications regarding this filing to the following persons who are also designated for service in this proceeding:

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<sup>1</sup> Relief that reallocates the rights to PPL EnergyPlus could be afforded at the beginning of any month during the summer capability period, but the full relief requested that grants 220 MW of external rights to PPL EnergyPlus for the entire summer capability period would have required a resolution prior to May 1, 2006. PPL EnergyPlus may be held financially harmless for any period before a Commission order reallocates the External Rights award.

<sup>2</sup> See New York Independent System Operator Agreement, Sections 10.05(14) and 19.02, and New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 2, Original Sheet No. 214, Section 11.3 Arbitration; Original Sheet Nos. 229 – 230, Section 14.4 Amendments.

## **II. DESCRIPTION OF COMPLAINANT**

PPL EnergyPlus is a Pennsylvania limited liability company and an indirect wholly-owned subsidiary of PPL Corporation. PPL EnergyPlus buys and sells electricity, natural gas and energy services in the Northeastern and Western regions of the country. PPL EnergyPlus is a power marketer authorized to sell energy, capacity and certain ancillary services at market-based rates and to resell transmission rights and associated ancillary services to wholesale customers.<sup>3</sup>

## **III. BACKGROUND**

On February 16, 2006, NYISO conducted the External Rights Auction to award rights to import capacity into the NYISO market from neighboring markets for the summer 2006 capability period. NYISO offered 220 MW of External Rights for the summer 2006 capability period in this auction. In essence, the awarded rights allow a market participant to use constrained transmission tie lines between the NYISO and adjoining regions to import capacity in to the New York Control Area. External Rights are granted in this auction on a first come, first served basis, and bids are received by NYISO via fax. The auction commences at 8:00 a.m. Detailed procedures pursuant to which the External Rights Auction is to be conducted are set forth in the ICAP Manual.

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<sup>3</sup> *PP&L EnergyPlus Co.*, 85 FERC ¶ 61,377 (1998), *reh'g denied*, *PP&L EnergyPlus Co., LLC*, 95 FERC ¶ 61,154 (2001).

In accordance with instructions set forth in the ICAP Manual concerning the External Rights Auction,<sup>4</sup> PPL EnergyPlus sent its bid to NYISO by fax at 8:01 a.m.,<sup>5</sup> after the 8:00 a.m. official start time of the auction. NYISO awarded the rights to a fax request made by another entity that the NYISO fax log indicates was received at 7:59 a.m. The PPL EnergyPlus bid was the first time-stamped bid received by NYISO after the 8:00 a.m. start of the auction, as evidenced by the fax machine time stamp and NYISO's fax log.

PPL EnergyPlus has attempted to pursue resolution of the dispute bilaterally with NYISO, and through discussions facilitated by the Commission's Enforcement Hotline. The failure of these efforts and the commencement of the summer 2006 capability period for which the auction was conducted necessitate PPL EnergyPlus' filing of the instant Complaint and request for fast track processing.

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<sup>4</sup> New York Independent System Operator, Installed Capacity Manual version 5.5 (Feb. 2006) ("Manual" or "ICAP Manual"). A complete version of the NYISO Installed Capacity Manual is available at [http://www.nyiso.com/public/webdocs/documents/manuals/previous\\_versions/icap\\_manual\\_winter\\_2005.pdf](http://www.nyiso.com/public/webdocs/documents/manuals/previous_versions/icap_manual_winter_2005.pdf). Excerpts from the ICAP Manual as relevant to the issues raised in this Complaint are provided in **Attachment A** hereto.

<sup>5</sup> This is the time as indicated by the NYISO fax time stamp. Given its suspicions regarding the accuracy of the initial auction award, PPL EnergyPlus contacted NYISO on February 22, 2006 seeking a copy of the NYISO fax log. This communication is provided as **Attachment B** hereto. NYISO responded with a communication that included a redacted copy of its February 16, 2006 fax log on February 28, 2006. This communication is provided as **Attachment C** hereto. NYISO confirmed its receipt of the PPL EnergyPlus fax at 8:01 a.m. in its letter provided in Attachment C. In response, on March 6, 2006, David Yannarell, Capacity Trading Manager for PPL EnergyPlus, sent a letter to Ms. Kathy Whitaker, Manager – Auxiliary Market Operations for the NYISO rectify its error in the award of External Rights for the summer capability period by providing PPL EnergyPlus with 220 MW of External Rights. This communication is provided as **Attachment D** hereto.

During these discussions, PPL EnergyPlus, NYISO and representatives of the Commission's Enforcement Hotline also discussed the need for reform to the process by which External Rights are allocated.

**IV. THE COMMISSION SHOULD FIND THE CURRENT EXTERNAL RIGHTS ALLOCATION PROCESS IS NOT JUST AND REASONABLE AND REQUIRE A COMPLIANCE FILING TO CORRECT ITS FLAWS**

External rights awards must be granted using transparent processes that do not permit discretion to be exercised. The Commission has recognized that subjective standards permit undue discrimination to occur, and has required that objective standards be followed in granting valuable rights. In *El Paso Natural Gas Co.*,<sup>6</sup> the Commission explained that it "required that all bid evaluation methods be objective and nondiscriminatory."<sup>7</sup> To that end, the Commission has stated that bid evaluation methods must be set forth with sufficient specificity that the pipeline's evaluation of the bids to determine the winning bid is a purely ministerial matter that does not require any discretionary exercises of judgment."<sup>8</sup> Indeed, in adopting Order No. 2000, the Commission stressed the need for transparent information so that competing market participants can be treated equitably.<sup>9</sup> It explained that "actual discrimination may be undetectable in a non-

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<sup>6</sup> 62 FERC ¶ 61,311 (1993).

<sup>7</sup> *Id.* at 62,999.

<sup>8</sup> *Id.* See also *Midwest Indep. Transmission Sys. Operator, Inc., et al.*, 109 FERC ¶ 61,285 at P 244 (2004) (critical of MISO's use of vague and subjective standards instead of clear, objectively quantifiable ones, and refusing to permit subjective standard).

<sup>9</sup> *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs., Regulations Preambles (July 1996 – Dec. 2000) ¶ 31,089 at 31,017 (1999) ("Order No. 2000"), *order on reh'g*, Order No. 2000-A, 65 Fed.

transparent market.”<sup>10</sup> The Commission has stressed the need for transparency in the conduct of auctions in particular, indicating that auction processes must adhere to several central principles. Primary among these is that auction procedures that will be followed in the award of rights must be publicized in advance.<sup>11</sup> In furtherance of this market tenet, the Commission has directed that “ISO-NE be transparent in all of its calculations, procedures, and review processes.”<sup>12</sup>

As will be discussed further herein, the NYISO auction process for External Rights does not meet these Commission standards, is not just and reasonable and is unduly discriminatory. Accordingly, in addition to remedying the economic harm PPL EnergyPlus suffered as a result of the NYISO’s failure to properly implement its tariff and market rules in connection with the Summer

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Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs., Regulations Preambles (July 1996 – Dec. 2000) ¶ 31,092 (2000), *petitions for review dismissed sub nom., Pub. Util. Dist. No. 1 of Snohomish County, Wash. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>10</sup> *Id.* at 31,005 (citing *Regional Transmission Organizations*, Notice of Proposed Rulemaking, 64 Fed. Reg. 31,390 (June 10, 1999), FERC Stats. & Regs., Regulations Preambles (July 1996 – Dec. 2000) ¶ 32,541 at 33,683-781 (1999)).

<sup>11</sup> See e.g., *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, 65 Fed. Reg. 10,156 (Feb. 25, 2000), FERC Stats. & Regs., Regulations Preambles (July 1996 – Dec. 2000) ¶ 31,091 at 31,296 (2000) (explaining that to increase market efficiency and auction “should be user-friendly with information on the rules and procedures easily accessible to all,” and that “bidding procedures as well as the methods for selecting the best bid should be fully disclosed prior to the auction” in order to ensure “that auctions are transparent, verifiable, and non-discriminatory.”); *Mont. Alta. Tie Ltd.*, 112 FERC ¶ 61,018 at P 11 (2005) (directing that open season process should be non-discriminatory, fair and transparent); *Ne. Utils. Serv. Co.*, 98 FERC ¶ 61,310 at 61,328 (2002) (explaining Commission goal to “ensure transparency in the bidding process, and to enable unsuccessful bidders to ensure if they were treated in a fair manner” allowing parties to be assured that “one party is not unfairly favored over another.”)

<sup>12</sup> *New England Power Pool and ISO New England, Inc.*, 100 FERC ¶ 61,287 (2002).



2006 External Rights Auction,<sup>13</sup> the Commission should also direct that NYISO replace its unjust, unreasonable and unduly discriminatory method of allocating external rights with a just and reasonable method. NYISO should initiate a stakeholder process to develop a replacement allocation construct. The Commission should direct a compliance filing to be made with the replacement allocation method.<sup>14</sup>

The fax process now being used by NYISO to allocate External Rights allocates a valuable resource using out-of-date fax technology that is prone to errors. Among other problems, fax machines run out of paper, experience paper jams and other communications glitches. The problem experienced in the Summer 2006 External Rights Auction was not PPL's first. On another occasion, PPL's fax was being transmitted to NYISO when the transmission signal was dropped. PPL believes other market participants have experienced similar situations. The system NYISO uses is similar to participating in a radio contest, not to the type of transparent and modern process one would expect a sophisticated independent system operator to use.

Exacerbating the effect of these problems is that NYISO uses these processes to grant what can be an extremely valuable right. And if the first bidder in the fax stampede requests the entire allotment of rights, that bidder will displace all other bidders.

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<sup>13</sup> See *infra* section V.5.

<sup>14</sup> See *infra* section IV.

The fax process currently employed by NYISO does not meet the Commission's policy goal of presenting transparent information to market participants. Absent direct communication with NYISO, a bidder cannot confirm if its fax was received and where in the bid queue it was received. Nor can a market participant know if it is being treated equitably and that NYISO is not exercising prohibited discretion. For example, PPL does not know whether NYISO personnel rely on the fax time stamp to grant results in some auctions, and rely on cell phone time to grant awards in others. Nor can PPL or other market participants defeat a NYISO claim that NYISO did not receive a fax despite that sender's fax log records. Contrary to the Commission's Order No. 2000 standards aimed at permitting competing market participants to ensure that they are treated equitably,<sup>15</sup> the NYISO system is largely opaque to market participants. The Commission has directed a stakeholder process to develop reforms and a compliance filing to report the directed changes when an ISO's existing market rules did not conform to the Commission's policies.<sup>16</sup> Similarly, it should do so here.

An electronic bulletin board or internet-based bidding/posting system will provide the transparency that is lacking in the approach now utilized to award

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<sup>15</sup> *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs., Regulations Preambles (July 1996 – Dec. 2000) ¶ 31,089 at 31,017 (1999) (“Order No. 2000”), *order on reh’g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs., Regulations Preambles (July 1996 – Dec. 2000) ¶ 31,092 (2000), *petitions for review dismissed sub nom.*, *Pub. Util. Dist. No. 1 of Snohomish County, Wash. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>16</sup> *Duke Energy Moss Landing LLC v. Cal. Indep. Sys Operator Corp.*, 109 FERC ¶ 61,170 (2004), *reh’g denied*, 111 FERC ¶ 61,451 (2005).

External Rights. Such a just and reasonable approach is one of the alternatives that should be considered as a substitute for the current unjust and unreasonable system in a stakeholder process.<sup>17</sup>

In addition, the Commission should direct NYISO to consider with its stakeholders whether continuing the system of awarding rights completely on a first come first serve basis is appropriate. A preferable approach that stakeholders should consider may be to allocate rights on a pro rata basis among bidders who submitted bids in a fifteen minute interval, until the available rights are fully awarded.<sup>18</sup> This would permit the sharing of a scarce resource among multiple market participants and increase competition for imports into New York.

In sum, the Commission should find the current external rights allocation process is not just and reasonable and, consistent with the above recommendations, direct the NYISO to make a compliance filing to replace its current auction process with an improved process upon consultation with stakeholders.

**V. NYISO'S ALLOCATION OF EXTERNAL RIGHTS IS IN VIOLATION OF THE ISO SERVICES TARIFF, IMPLEMENTING PROCEDURES CONTAINED IN THE ICAP MANUAL AND COMMISSION PRECEDENT**

The External Rights allocation should have been awarded pursuant to the procedures dictated by the ISO Services Tariff as explained further in the ICAP Manual and as consistent with Commission precedent. NYISO violated the rate

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<sup>17</sup> Affidavit of Michael S. Cudwadie on behalf of PPL EnergyPlus, LLC at pp. 5-6 ("Cudwadie Affidavit"), attached hereto as Exhibit 1.

<sup>18</sup> *Id.* at p. 6.

on file when it granted the award in a manner inconsistent with these published, and approved procedures.<sup>19</sup> Its allocation of rights also is objectionable, among other reasons, because it is unduly discriminatory, subjective, and erodes confidence in markets. The appropriate remedy in these circumstances is to allocate the External Auction rights to PPL EnergyPlus, the first in time bidder at the start of the auction as evidenced by the fax machine time stamp.

**1. Applicable Provisions of NYISO Documents Provide That Only Timely Submitted Bids within the Auction Period Are to be Considered**

The ISO Services Tariff contains provisions applicable to the services provided by the NYISO related to its administration of competitive markets, including provisions addressing installed capacity auctions.<sup>20</sup> The ISO Services Tariff discusses general auction requirements and related issues.<sup>21</sup> The ISO Services Tariff defines a “Bid” as an “[o]ffer to purchase and/or sell . . . that is duly submitted to the ISO pursuant to ISO Procedures.”<sup>22</sup> The ISO Services Tariff defines Installed Capacity as external capacity made available pursuant to Tariff requirements and ISO Procedures.<sup>23</sup> It defines Installed Capacity Suppliers as those entities that satisfy qualification requirements for supplying Unforced

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<sup>19</sup> *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981).

<sup>20</sup> New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 2, Original Sheet No. 21, Fifth Rev. Sheet No. 120 through Original Sheet No. 156A.

<sup>21</sup> *Id.*, Fifth Revised Sheet No. 146 through Fifth Revised Sheet No. 153, Section 5.13 Installed Capacity Auctions.

<sup>22</sup> *Id.*, Seventh Rev. Sheet No. 28, Section 2.12.

<sup>23</sup> *Id.*, Fifth Rev. Sheet No. 42, Section 2.74.

Capacity to the NYCA.<sup>24</sup> The ISO Services Tariff provides that qualification requirements for an Installed Capacity Supplier include compliance with the ISO Procedures.<sup>25</sup> The ISO Services Tariff indicates that “[a]dditional detail concerning the ISO’s Installed Capacity auction procedures are provided in the ISO Procedures.”<sup>26</sup> The ISO Services Tariff defines “ISO Procedures” as “[t]he procedures adopted by the ISO in order to fulfill its responsibilities under the ISO OATT, the ISO Services Tariff and the ISO Related Agreements.”<sup>27</sup> ISO Procedures include the ISO manuals such as the Installed Capacity Manual.<sup>28</sup>

The Installed Capacity Manual states that it “contains the procedures that will be followed by the NYISO and its Customers with regard to the Installed Capacity markets and auctions administered by the NYISO pursuant to the NYISO Services Tariff.”<sup>29</sup> As relevant to this Complaint, the procedures that NYISO and its Customers were bound to follow in the conduct of the NYISO

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<sup>24</sup> *Id.*, Fourth Rev. Sheet No. 43, Sec. 2.74c.

<sup>25</sup> New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 2, Fourth Rev. Sheet No. 130, Sec. 5.12.1 (viii). See also Seventh Rev. Sheet No. 132 providing that “Procedures for qualifying selling and delivery of External Installed Capacity are detailed in the Installed Capacity Manual.”

<sup>26</sup> *Id.*, Fifth Revised Sheet No. 153, Section 5.13.4 Detailed Installed Capacity Auction Description.

<sup>27</sup> *Id.*, First Revised Sheet No. 45, Section 2.84 ISO Procedures.

<sup>28</sup> *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER01-2536-000, Request to Implement a Stage II ICAP Market with an Unforced Capacity Methodology and One-Month Obligation Procurement Period, and Request for an Expedited, 10 Business Day Period for Filing on the Issue of the Translation of the \$105 Price Cap for In-City Mitigated Units, Transmittal Letter at 10, 12, 14 (filed July 6, 2001).

<sup>29</sup> NYISO Installed Capacity Manual, at 1-1, Introduction. Procedures applicable to the ICAP auction are found in Sections 5.9 through 5.16 of the Manual.

External Rights Auction as set forth in the ICAP Manual and referenced in the ISO Services Tariff include the following:

- The requests for the summer capability period must be sent “[b]eginning at 8:00 AM ET . . . on the first business day following the publication of the total number of import rights made available by the NYISO (on or about February 15)”[.]<sup>30</sup>
- Only complete requests submitted within the time periods specified above will be evaluated by the NYISO. *The date and time stamp provided by the FAX machine will determine the priority for the evaluation of requests.* If a request is resubmitted for any reason, the latest time stamp will determine its priority. Priority is assigned to each request and assumes that supporting documents are received by the NYISO within the time period set forth below. Late submissions of supporting documentation will result in the automatic rejection of the Import Rights request.<sup>31</sup>
- NYISO will allocate available rights for External Unforced Capacity supply on a first-come, first serve basis.<sup>32</sup>

Given that (i) the auction begins at 8:00 a.m., (ii) requests outside the time period are not to be considered, (iii) allocations are made on a first come first served basis and (iv) the NYISO fax machine time stamp determines the priority of requests, PPL EnergyPlus’ request, which was the first received after the official 8 a.m. start of the auction as evidenced by the fax machine time stamp, was the winning bid and it should have been awarded the External Rights. NYISO’s allocation of External Rights to Entity X was in violation of the ISO Services Tariff:

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<sup>30</sup> NYISO Installed Capacity Manual at 4-17, Section 4.9.2 Allocation of Import Rights, Request.

<sup>31</sup> *Id.* at 4-18 – 4-19, Section 4.9.2 Allocation of Import Rights, Priority (emphasis added).

<sup>32</sup> *Id.* at 4-17, Section 4.9.2 Allocation of Import Rights, Other Allocations.

NYISO did not receive a duly submitted Bid from Entity X – The fax request received by the NYISO at 7:59 a.m. was not a “Bid,” as defined in the ISO Services Tariff because it was not submitted when due.<sup>33</sup> The tariff requires bids to be “duly submitted.”

NYISO may not grant allocations of External Rights other than to qualified Installed Capacity Suppliers – Only entities that satisfy qualification requirements for supplying Unforced Capacity may be Installed Capacity Suppliers. The ISO Services Tariff provides, among other qualification requirements, that to qualify as an Installed Capacity Supplier, the entity must comply with ISO Procedures.<sup>34</sup> ISO Procedures require the submission of a timely bid at 8:00 a.m. or later.<sup>35</sup> Here no timely bid was submitted and thus Entity X is not an Installed Capacity Supplier.

NYISO’s failure to follow its own published procedures is unduly discriminatory and a violation of the ISO tariff – NYISO wrongly granted the external rights allocation to an entity that made an untimely request at 7:59 a.m., before the start time of the auction, as determined by the NYISO fax machine time stamp. The plain reading of the ICAP Manual excerpts presented above provides that the fax machine time stamp is the objective arbiter of the 8:00 a.m.

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<sup>33</sup> New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 2, Seventh Rev. Sheet No. 28, Section 2.12.

<sup>34</sup> New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 2, Fourth Rev. Sheet No. 130, (viii).

<sup>35</sup> NYISO Installed Capacity Manual at 4-17, 4-18 (“[r]equests for Import Rights may be sent . . . [b]eginning at 8:00 AM ET”) and 4-18 (“[o]nly complete requests submitted within the time periods specified above will be evaluated . . .”).

start of the auction.<sup>36</sup> Faxed bids received at 8:00 a.m. or later as established by the fax time stamp are to be prioritized by NYISO on a first come first served basis. Faxed bids that the time stamp establishes as received before the auction start time of 8 a.m. are invalid. NYISO is only to consider timely received requests.

PPL EnergyPlus' plain reading of the ICAP Manual is further supported by a publication called the NYISO Insider. The February 13, 2004 issue of the NYISO Insider contained a section titled "A Reminder About Requesting External Installed Capacity Rights,"<sup>37</sup> which states:

The NYISO will only evaluate complete requests provided via facsimile to the following number: (518) 356-6208. The date and time stamp provided by this FAX machine will determine the priority of the request. The request period opens at 8:00 AM ET on February 17, 2004. **Requests will be invalidated for any of the following reasons:**

\* **Request is received prior to 8:00 AM ET on February 17, 2004; the date and time stamp provided by the FAX machine described above is used for this determination.**

\* Request is incomplete or contains inadequate information; Section 4.9.2 of the NYISO ICAP Manual provides a description of the required request information.

\* If a request is resubmitted for any reason, the latest time stamp will determine its priority.

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<sup>36</sup> As explained further herein, the Commission has issued orders that approve the use of the fax time stamp to determine the priority of competing requests for service.

<sup>37</sup> This publication is attached as **Attachment E** hereto and is available on the NYISO website at [www.nyiso.com/public/webdocs/documents/newsletters/nyiso\\_insider/insider\\_02\\_13\\_04.pdf](http://www.nyiso.com/public/webdocs/documents/newsletters/nyiso_insider/insider_02_13_04.pdf). As explained by NYISO on page 6 of Attachment E "[t]he NYISO Insider is published by the New York Independent System Operator (NYISO), and is electronically mailed to all Market Participants who have subscribed to the Technical Information Exchange (TIE) Mailing List. Its mission is to compile and disseminate noteworthy items of general interest for Market Participants as a review and for future reference to help make the competitive wholesale electric market function more effective through improved communication."



Moreover, NYISO's OATT supports the principle that an objective time standard is required to evidence NYISO's receipt of materials that must be received within a window of time. The OATT provides for various applications to be submitted by fax or time recorded telephone log.<sup>38</sup> These transmission methods each provide an objective time stamp to NYISO and market participants.

**2. NYISO Claims it Could Override the Fax Time Stamp Despite the Provisions of the Services Tariff and ICAP Manual**

In defense of its grant of external auction rights to the bidder whose fax was time stamped 7:59 a.m. by NYISO's fax machine, NYISO explained in a February 28, 2006 letter to PPL EnergyPlus:

Please note that although the time-stamp on the FAX log for the first request was 7:59 AM, the clock on the FAX machine is manually adjustable; we re-connected the FAX machine at 8:00 AM, according to cellular telephone time.<sup>39</sup>

However, this apparently new procedure is neither stated in the ISO Services Tariff or the ICAP Manual nor, to PPL's knowledge, has the use of cellular phone time to replace the fax time stamp been communicated to market participants prior to the NYISO's February 26, 2006 response to PPL EnergyPlus' inquiry.<sup>40</sup>

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<sup>38</sup> See, e.g., New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 1, Open Access Transmission Tariff, Original Sheet No. 127, Section 17.1 (discussing transmission of firm transmission point-to-point service applications to NYISO by telefax or time recorded telephone line); Section 18.1 (same procedure for non-firm point-to-point transmission service applications); Section 29.2 (same as to Part III service).

<sup>39</sup> See Attachment C.

<sup>40</sup> See Exhibit 1, Cudwadie Affidavit at 4.

### **3. The Commission has Permitted Fax Time Stamps to Determine Priority**

In *Tennessee Gas Pipeline Co.*,<sup>41</sup> the pipeline sought to shift to a net present value system for awarding capacity on its system. The pipeline proposed a temporal method for breaking ties that would have treated bids received on its electronic bulletin board (“EBB”) as received when posted but would consider faxed bids as received at the end of the business day. The Commission directed Tennessee to modify its tariff to recognize bids received by fax as of the time of day indicated on the fax transmission sheet. The Commission acknowledged that “fax documents show the time a bid was transmitted” and directed that such time be used to prioritize faxed bids vis-à-vis EBB bids.<sup>42</sup>

### **4. Public Utilities, Including ISOs, Must Follow Objective, Non-Discriminatory and Transparent Procedures**

As indicated, market participants have long been on notice that the NYISO fax time stamp determines the time at which a bid in the External Auction was received by NYISO.<sup>43</sup> This approach removes any discretion from NYISO personnel for deciding which bids for External Rights were received on a timely basis and which was first in time; the fax stamp dictates this result. Market participants have been able to send test transmissions to “synch” their fax machines’ time with the NYISO’s. Moreover, as PPL EnergyPlus did in this case,

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<sup>41</sup> 76 FERC ¶ 61,101 (1996), *order on reh’g*, 79 FERC ¶ 61,297 (1997).

<sup>42</sup> *Id.* at 61,525. See also *Chandeleur Pipe Line Co.*, 63 FERC ¶ 61,279 (1993) (accepting proposal to break ties by allocating capacity to shipper who submitted the earliest valid offer based on the facsimile date and time).

<sup>43</sup> See Exhibit 1, Cudwadie Affidavit at pp. 3-4.

market participants know that they can request a copy of NYISO's fax log in the event of a discrepancy. The fax log evidences the time at which and order in which each faxed bid was received by the NYISO's fax machine. The fax time stamp accordingly provides a reasonably objective standard upon which market participants can rely in participating in the auction, and in challenging the auction results in the event of a discrepancy.

Instead of this objective (and previously known) arbiter of auction awards, NYISO now claims that it may impose (and has imposed to the detriment of PPL EnergyPlus in this case) elements of subjectivity in the grant of awards in the External Rights Auction. Specifically, NYISO now claims that its personnel use their cellular telephones to determine when the auction time of 8:00 a.m. has occurred and then plug the fax machine in, and that NYISO may award External Rights to the first fax received thereafter regardless of the time stamp indicated by the fax log if NYISO determines that bidder was first.<sup>44</sup> Short of witnessing the conduct of the auction first hand,<sup>45</sup> market participants are left unable to rely on NYISO's fax log, their fax log or anything else to challenge NYISO's award decisions. This approach puts too much discretion in NYISO personnel and is unduly discriminatory.<sup>46</sup>

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<sup>44</sup> See Attachment C.

<sup>45</sup> NYISO has refused PPL EnergyPlus' request to observe the conduct of a future auction claiming confidentiality concerns. See Attachment C.

<sup>46</sup> See, e.g., *Tenn. Gas Pipeline Co.*, 76 FERC ¶ 61,101 at 61,525 (directing fax time stamp to determine time received). See also Section IV *supra*.

Moreover, since the procedure of overriding the fax time stamp has not been relayed in advance to market participants, if allowed to stand, it will erode confidence in markets and permit the opportunity for after-the-fact standards to be applied to discriminate against individual market participants without the opportunity for redress.

In *Southern Natural Gas Co.*,<sup>47</sup> the Commission permitted Southern Natural Gas Company (“Southern”) to transition from a first come, first serve policy in awarding capacity to one that considered the highest bid. The Commission addressed concerns that the changes would permit Southern to exercise impermissible discretion, explaining as follows:

There should be no uncertainty or ambiguity concerning the bid criteria that will be utilized or how available capacity will be awarded following the evaluation of bids. Therefore, when soliciting bids for available capacity, Southern *must post all criteria it will utilize in evaluating bids* and on what basis (either request with the higher rate or pro rata) it will award capacity in case of a tie. While the bid evaluation criteria may differ from posting to posting, bids for the same capacity must be evaluated identically and the *capacity awarded under known procedures*. There should also be no ambiguity in how capacity is awarded to tie bids. Southern's tariff should provide a consistent methodology to be used when two or more tie bids are received.<sup>48</sup>

NYISO may from time to time change its procedures for evaluating bids in the External Rights Auction.<sup>49</sup> However, it may not change procedures without putting market participants on notice in advance as to what procedures will govern awards. Moreover, in order to be just and reasonable and not unduly

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<sup>47</sup> 92 FERC ¶ 61,265 (2000).

<sup>48</sup> *Id.* at 61,880-81 (emphasis added).

<sup>49</sup> Of course, the established procedures must be just and reasonable and not unduly discriminatory.

discriminatory, such procedures must not place undue discretion in NYISO personnel.

**5. When Capacity Rights Are Awarded Incorrectly, the Commission has Required Grant of the Award to the Improperly Denied Applicant**

Because, as discussed above, NYISO inappropriately allocated the External Rights to an untimely bidder, the appropriate remedy is to reverse the wrongful allocation and grant the External Rights to the first in time bidder – PPL EnergyPlus. This approach has been followed in multiple instances in which capacity awards were granted to the wrong party. In *Morgan Stanley Capital Group v. Illinois Power Co.*,<sup>50</sup> the Commission granted Morgan Stanley's complaint that Illinois Power had not followed its tariff in designating network resources and in certain other respects. Illinois Power wrongfully had denied a Morgan Stanley request for transmission service based upon these errors. The Commission directed Illinois Power to grant Morgan Stanley's wrongfully denied requests for transmission service.

In *Wisconsin Public Power Inc. SYSTEM v. Wisconsin Public Service Corp., et al.*,<sup>51</sup> the Commission granted in part Wisconsin Public Power Inc. SYSTEM's ("WPPI") complaint that Wisconsin Public Service ("WPS") wrongfully granted transmission capacity rights. The Commission also granted in part WPPI's complaint that Wisconsin Power & Light ("WP&L") changed its available transmission capacity without posting the changes, and wrongfully allocated

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<sup>50</sup> 83 FERC ¶ 61,204 (1998).

<sup>51</sup> 83 FERC ¶ 61,198 (1998), *order on reh'g*, 84 FERC ¶ 61,120 (1998).

service. The Commission directed WPS and WP&L to release the capacity that had been improperly reserved, to recalculate the available transmission capacity, and make it available on a first come, first serve basis, taking into account the date when WPPI first made its request for such capacity. On rehearing, the Commission considered additional evidence regarding network resources in effect when WPPI made its capacity request to WPS. The Commission confirmed that “WPPI was first-in-time with a valid request” and WPS must grant WPPI’s request.<sup>52</sup>

In *Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc.*,<sup>53</sup> the Commission granted a complaint filed by Tenaska Power Services Company (“Tenaska”) relating to the relative priority of Tenaska’s request for long-term firm transmission service to competing requests for short-term service when Tenaska’s request did not have the same source control area. The Midwest Independent Transmission System Operator, Inc. (“MISO”) relied on its Business Practices Manual to determine that the long term request could only preempt the short term request when the long term request had the same source and sink control area as the short term request. The Commission indicated that the MISO must implement its business practices consistent with the OATT and that the OATT did not require that the source and sink points be identical.<sup>54</sup> The Commission characterized MISO’s business

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<sup>52</sup> 84 FERC ¶ 61,120 at 61,656.

<sup>53</sup> 102 FERC ¶ 61,095 (2003).

<sup>54</sup> *Id.* at P 28, 32.

practice as incorrect and directed MISO to reconsider Tenaska's request for transmission service, placing it in the queue as of the date when Tenaska first made its request.<sup>55</sup>

In *Idaho Power Co. v. PacifiCorp*,<sup>56</sup> Idaho Power claimed that PacifiCorp improperly denied Idaho Power's request for transmission service, and improperly accepted a competing Powerex application. Idaho Power's request was the first received, although Powerex was the first to submit a deposit. The Commission found that priority in the transmission queue is based upon the date and time at which the request for transmission service is made on the OASIS, rather than the time a customer submits a Completed Application, which includes a deposit.<sup>57</sup> The Commission found that Idaho Power had a right to the transmission service in question, and should have received service commencing at 12:00 a.m. on April 1, 2001, as it requested. Since the Commission order issued on April 27, 2001, the Commission acknowledged that it could not fully undo PacifiCorp's failure to award the capacity as an initial matter to Idaho Power as of April 1. The Commission required PacifiCorp to provide the service to Idaho Power beginning on the day following its order.<sup>58</sup>

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<sup>55</sup> *Id.* at P 31.

<sup>56</sup> 95 FERC ¶ 61,148 (2001).

<sup>57</sup> *Id.* at 61,476 (citing *Open Access Same-Time Information System and Standards of Conduct*, Order No. 638, 65 Fed. Reg. 17,370 (Feb. 25, 2000), FERC Stats. & Regs., Regulations Preambles (July 1996 – Dec. 2000) ¶ 31,093 at 31,462 (2000)).

<sup>58</sup> *Id.* at 61,477.

In *Exelon Corp. v. PPL Electric Utilities Corp. et al.*,<sup>59</sup> the Commission considered a complaint by PECO Energy Company (“PECO”) that PJM’s billing based upon use of its state estimator program resulted in overcharges to PECO and undercharges to PPL when a substation owned by PPL was wrongly coded by PJM as belonging to PECO. The Commission determined that the filed rate required that the party incurring congestion charges should pay for them.<sup>60</sup> The Commission explained that “just because PJM’s billing system is more complex than simple application of a tariff rate to a transaction does not mean that billing errors should not be corrected.”<sup>61</sup> In this proceeding, NYISO did not follow its market rules when it granted an award of external rights to a bid received at 7:59 a.m. before the 8:00 a.m. auction start time, using unpublished procedures that involve the exercise of inappropriate discretion by NYISO personnel. NYISO acted in an unduly discriminatory manner in overriding its fax time stamp to deny PPL EnergyPlus the award of External Rights for the 2006 Summer Capability Period.

The Commission has indicated that NYISO “is required to promptly correct its errors.”<sup>62</sup> When NYISO posted prices that did not reflect the proper operation of its market rules, the Commission required the prices to be recalculated.<sup>63</sup> In

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<sup>59</sup> 111 FERC ¶ 61,065 (2005), *reh’g denied*, 114 FERC ¶ 61,298 (2006).

<sup>60</sup> *Id.* at P 29.

<sup>61</sup> 114 FERC ¶ 61,298 at P 13.

<sup>62</sup> *NRG Power Mktg., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 91 FERC ¶ 61,346 at 62,166 (2000).

<sup>63</sup> *Id.*



another example, when NYISO erroneously sold more transmission congestion contracts than it should have due to a NYISO input error, NYISO responded to a complaint that was filed by proposing settlement talks pursuant to which it agreed to reimbursement to wronged market participants using net excess auction revenues, the NYISO Working Capital Fund and a shortfall reimbursement surcharge. The Commission accepted the settlement.<sup>64</sup>

## **VI. ALTERNATIVE DISPUTE RESOLUTION**

PPL EnergyPlus and NYISO have attempted to resolve this dispute through bilateral discussions facilitated by FERC Enforcement Staff. These efforts were not successful.

## **VII. REQUEST FOR SUMMARY DISPOSITION**

PPL EnergyPlus submits that the Commission is able to provide the requested relief in this proceeding based on this Complaint and supporting documentation. PPL EnergyPlus further submits that no evidentiary hearing is required for the Commission to reach such a determination. The Commission has an established practice to seek to resolve proceedings without hearings when there are no genuine issues of material fact. The facts are not in dispute, and the law applicable to this case is clear. PPL EnergyPlus respectfully requests that the Commission grant the Complaint summarily.

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<sup>64</sup> *N.Y. Indep. Sys. Operator, Inc., et al.*, 108 FERC ¶ 61,075 (2004).

## **VIII. REQUEST FOR RELIEF**

PPL EnergyPlus respectfully requests that the Commission issue an order on an expedited basis, on or before June 1, 2006, requiring NYISO to award PPL EnergyPlus 220 MW of external capacity rights for the summer capability period based upon the NYISO violation detailed herein.

If the Commission does not anticipate being able to issue a ruling on the merits in advance of June 1, 2006, PPL EnergyPlus requests that the Commission issue a temporary order directing NYISO to allocate the external rights to PPL EnergyPlus, pending a ruling on the merits. PPL EnergyPlus submits that there is a strong likelihood of success on the merits, irreparable harm and that the public interest supports its request.

If the Commission is unable to resolve this dispute or issue a temporary order as requested prior to June 1, 2006, the second month of the summer capability period, PPL EnergyPlus respectfully requests that the Commission render a ruling as soon as possible thereafter, so that PPL EnergyPlus may use the external rights during the remaining months of the summer capability period. PPL EnergyPlus should be held financially harmless for the erroneous award for any period before a Commission order issues.

PPL EnergyPlus further requests that the Commission grant such other relief to PPL EnergyPlus as the Commission deems appropriate, including directing the NYISO to make a compliance filing to replace its current auction process with an improved process upon consultation with stakeholders.

PPL EnergyPlus requests that the Commission resolve this dispute as soon as possible. PPL EnergyPlus recognizes that resolving this case in a short time period imposes a substantial strain on the Commission's resources. PPL EnergyPlus submits, however, that the nature of the violation and the injury to PPL EnergyPlus warrant such treatment. The issue raised in this Complaint concerning the Summer 2006 auction is not a complicated one, and this matter is one that should have been resolvable through the Enforcement Hotline. NYISO is fully aware of the basis for the position taken by PPL EnergyPlus. PPL EnergyPlus made its first contact with NYISO shortly after the auction results were communicated and, both with and without the participation of Enforcement Hotline staff, has been in communications with NYISO personnel regarding this issue since late February. NYISO and FERC Enforcement Staff also have had discussions with Entity X,<sup>65</sup> which is well aware of the challenge to external rights allocation given the 7:59 a.m. receipt of its fax as evidenced by the NYISO fax log. Under these circumstances, PPL EnergyPlus requests that the period for responses to this complaint be established as two weeks from the date this complaint was filed. PPL EnergyPlus will serve NYISO this complaint electronically contemporaneously with its filing at the Commission to ensure prompt receipt.

The standard complaint processing timeline will not permit full and complete relief in the form of an allocation of the external rights that NYISO wrongfully denied PPL EnergyPlus. The external rights began to flow on May 1,

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<sup>65</sup> PPL EnergyPlus is not aware of the identity of Entity X.

2006. Additional opportunities to correct the allocation are afforded on a monthly basis thereafter throughout the summer capability period.

#### **IX. OTHER INFORMATION REQUIREMENTS OF RULE 206**

PPL EnergyPlus estimates that the value of the 220 MW of external rights for the summer capability period that it was wrongly denied is approximately \$2 million as of this date.<sup>66</sup> 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.

The practical and other non-financial impacts associated with the NYISO's failure to follow its published procedures and instructions communicated to market participants include inefficient market operation and participation and loss of confidence in markets and market operations.<sup>67</sup>

The issues presented are not pending in any existing proceeding at the Commission or in any other forum in which PPL EnergyPlus is a party.

PPL EnergyPlus has sought resolution of the issues raised in this Complaint with NYISO and with the assistance of the FERC Enforcement Hotline personnel before making this filing, but despite the support of the FERC Enforcement Hotline, these negotiations were unsuccessful. Thus, PPL EnergyPlus does not believe alternative dispute resolution or other informal dispute resolution procedures would be successful to resolve this Complaint.

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<sup>66</sup> Exhibit 1, Cudwadie Affidavit at 5.

<sup>67</sup> Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,017 (there will be reduced competition and higher prices for consumers in the absence of information transparency and equitable treatment of competing participants).

However, if the Commission is unable to summarily issue an order granting the relief requested in the Complaint, formal settlement judge proceedings initiated after the Commission sets the proceeding for hearing may allow the parties to resolve the issues in a negotiated manner.

## **X. CONCLUSION**

WHEREFORE, for the foregoing reasons, PPL EnergyPlus respectfully requests that the Commission expeditiously grant its Complaint, issue an order directing NYISO to award PPL EnergyPlus 220 MW of external rights that it is due as the winning bidder of the External Rights Auction for the 2006 summer capability period and such other financial relief as it deems appropriate. Moreover, PPL EnergyPlus requests that the Commission direct the NYISO to make a compliance filing to replace its current External Rights Auction process with an improved process consistent with the above recommendations and grant such other relief as the Commission deems appropriate.

Respectfully submitted,

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Washington, DC 20006

By                   /s/ Sandra E. Rizzo                    
Attorneys for PPL EnergyPlus, LLC

Dated: May 15, 2006

# **EXHIBIT 1**

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

|                                    |   |                                 |
|------------------------------------|---|---------------------------------|
| <b>PPL EnergyPlus, LLC</b>         | ) |                                 |
|                                    | ) | <b>Docket No. EL06-____-000</b> |
| <b>Complainant</b>                 | ) |                                 |
| <b>v.</b>                          | ) |                                 |
|                                    | ) |                                 |
| <b>New York Independent System</b> | ) |                                 |
| <b>Operator, Inc.</b>              | ) |                                 |
| <b>Respondent.</b>                 | ) |                                 |

**Affidavit of Michael S. Cudwadie  
on behalf of  
PPL EnergyPlus, LLC**

**Affidavit of Michael S. Cudwadie**

My name is Michael S. Cudwadie. I am the Director - Trading for PPL EnergyPlus, LLC ("PPL EnergyPlus"). I am the direct supervisor of PPL EnergyPlus personnel who participate in the New York Independent System Operator ("NYISO") External Rights Auction. In that capacity, I am familiar with the conduct of the External Rights Auction and with the procedures that PPL EnergyPlus personnel follow in their participation.

The External Rights Auction offers the capability to import capacity into New York from neighboring control areas, such as PJM. The External Rights Auction provides external rights to the winning bidder or bidders for individual months over a six month capability period (summer or winter). NYISO grants the rights on a first come first serve basis. There is no charge for the rights. If the first successful bidder does not request all of the available rights, then the next successful bidder will receive the rights they requested until all rights are allocated. Entities receiving external rights must designate the load to be served and generation to be used each month during the period. The auction begins at 8:00 a.m. on the day it is held by NYISO.

In participating in the External Rights Auction, PPL EnergyPlus personnel have at all times understood that the NYISO fax stamp was used by the NYISO to



determine which faxed bids for external rights are received on a timely basis and the order in which the faxed bids are received. Namely, PPL EnergyPlus personnel have understood that NYISO uses the fax time stamp to invalidate requests received prior to 8:00 AM eastern time and to prioritize requests received at 8:00 AM or later in the auction. PPL EnergyPlus personnel have gained this understanding from both written and oral representations of NYISO personnel.

NYISO explained this position to market participants in the February 13, 2004 edition of the NYISO Insider. According to NYISO, the NYISO Insider is “published by the New York Independent System Operator (NYISO), and is electronically mailed to all Market Participants who have subscribed to the Technical Information Exchange (TIE) Mailing List. Its mission is to compile and disseminate noteworthy items of general interest for Market Participants as a review and for future reference to help make the competitive wholesale electric market function more effective through improved communication.” Page 6.

That edition of the NYISO Insider states, at page 2, in a section with the headline “A Reminder about Requesting External Installed Capacity Rights,” that requests will be invalidated if received prior to 8:00 AM ET on the auction date, which is determined by the date and time stamp provided by the fax machine.

NYISO personnel have reiterated this NYISO procedure to market participants repeatedly in public meetings. Arthur L. Dessell, NYISO Manager of Resource Reliability, has stated at ICAP Working Group meetings during 2004 and 2005 at which PPL EnergyPlus representatives have been in attendance that the date and time stamp provided by the fax machine is used to determine the

timeliness and validity of requests for rights in the External Rights Auction. John Charlton, NYISO Senior Engineer, has stated the same position at ICAP Working Group meetings during 2004 and 2005 at which PPL EnergyPlus representatives have been in attendance.

Because of the well-known importance of the NYISO time stamp to the allocation of awards in the External Rights Auction, PPL EnergyPlus personnel have submitted test faxes to the NYISO in advance of the date the External Rights Auction is held in order to synch their time to the NYISO's fax machine time. PPL EnergyPlus personnel most recently did so in advance of their participation in the February 16, 2006 External Rights Auction on February 15, 2006.

Until NYISO personnel responded to PPL EnergyPlus' February 22, 2006 email request for a copy of the fax log associated with the February 16, 2006 External Rights Auction, we were unaware that NYISO personnel would use the time displayed on one or more of their cellular phones to override the fax time stamp in awarding rights in the February 16, 2006 External Rights Auction. It is my understanding that NYISO may intend to make changes to the procedures it follows in the conduct of future External Rights Auctions but that NYISO has not yet finalized any such changes or communicated these intended changes to its market participants.

PPL EnergyPlus expends time, effort and financial resources to understand the rules and procedures in the various markets in which it conducts its business. If NYISO can after-the-fact indicate that it was following procedures that were not published, vetted and conveyed to market participants in advance, PPL

EnergyPlus' confidence in markets and that of market participants generally will erode and they will be less able to detect discriminatory treatment.

NYISO denied PPL EnergyPlus' bid for external rights for the summer 2006 capability period. PPL EnergyPlus believes this denial was wrongful given that its fax was the first received after the official 8:00 a.m. start of the auction as evidenced by the NYISO fax time stamp. PPL EnergyPlus has estimated its losses for the six month period based on the currently projected differential in market prices between PJM and NYISO for the entire summer capability period. PPL EnergyPlus estimates the wrongful denial of external rights has cost it approximately \$2 million based on price data and projections currently available. Because the load served in this auction is re-designated on a monthly basis, NYISO can correct its initial wrongful allocation by awarding PPL EnergyPlus the rights for each remaining month of the summer capability period.

PPL EnergyPlus has experienced issues with the NYISO fax process for the External Rights Auction in the past. In that instance, PPL EnergyPlus' fax was being transmitted to NYISO when the transmission signal inexplicably dropped. PPL EnergyPlus believes that the fax process used by NYISO to allocate these valuable rights is flawed and not just and reasonable and that a stakeholder

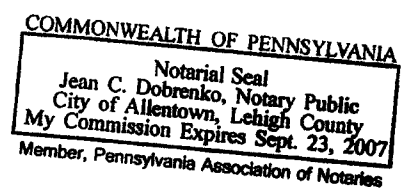
process should be convened to consider alternatives, including use of an electronic bulletin board and an elimination of the first come first serve scheme in favor of a pro rata allocation among bidders whose bids are received in a fifteen minute increment.

Signed: Michael S. Cusumano

Dated: 5/15/2006

Subscribed and sworn before me, a notary public in Lehigh County on this 15<sup>th</sup> day of May, 2006.

Jean C. Dobrenko



# **ATTACHMENT A**

# *Installed Capacity Manual*

*February 2006*

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### 1. INTRODUCTION

The New York Independent System Operator's (NYISO) Installed Capacity (ICAP) manual (the "Manual") contains the procedures that will be followed by the NYISO and its Customers with regard to the Installed Capacity markets and auctions administered by the NYISO pursuant to the [NYISO Services Tariff](#). The Installed Capacity Market provisions are discussed generally at Sections 5.9 through 5.16 of the NYISO Services Tariff as filed at Federal Energy Regulatory Commission (FERC).

The NYISO uses an Unforced Capacity methodology to determine the amount of Capacity that each Resource is qualified to supply to the New York Control Area (NYCA), and to determine the amount of Capacity that Load Serving Entities (LSEs) must procure. The Unforced Capacity methodology estimates the probability that a Resource will be available to serve Load, taking into account, forced outages. Section 2.194a of the NYISO Services Tariff defines Unforced Capacity as follows: The measure by which Installed Capacity Suppliers will be rated, in accordance with formulae set forth in the NYISO Procedures, to quantify the extent of their contribution to satisfy the NYCA Minimum Installed Capacity Requirement, and which will be used to measure the portion of that NYCA Minimum Installed Capacity Requirement for which each LSE is responsible.

While the NYISO uses an Unforced Capacity methodology, this Manual and the [NYISO Services Tariff](#) refer to the term "Installed Capacity" to describe the market as opposed to the product. For example, the NYISO administers "Installed Capacity auctions" where "Installed Capacity Suppliers" offer "Unforced Capacity" that LSEs will purchase to meet their "NYCA Minimum Installed Capacity Requirements."

Every Capability Period, the NYISO will translate the NYCA Minimum Installed Capacity Requirement and the Locational Minimum Installed Capacity Requirement into a NYCA Minimum Unforced Capacity Requirement and a Locational Minimum Unforced Capacity Requirement (see Sections 2.5, 2.6, 3.1, and 3.2 of this Manual). From the NYCA Minimum Unforced Capacity Requirement and the Locational Minimum Unforced Capacity Requirement, the NYISO will then calculate and establish each LSE's minimum Unforced Capacity requirement ("Minimum Unforced Capacity Requirement"). On the supply side, the NYISO will compile 12-month rolling averages of Operating Data that it will use to determine the amount of Unforced Capacity that each Installed Capacity Supplier is qualified to supply to the NYCA (see section 4.5 of this Manual). Thus, Market Participants will transact Unforced Capacity in Installed Capacity auctions and Bilateral Transactions.

The NYISO conducts three (3) types of Installed Capacity auctions: the Capability Period Auction, the Monthly Auction, and the ICAP Spot Market Auction. LSEs may use Unforced Capacity procured in the Installed Capacity auctions to meet their respective LSE Unforced Capacity Obligations for the applicable Obligation Procurement Period. Participation in the Monthly Auction and the Capability Period Auction shall consist of: (i) LSEs seeking to purchase Unforced Capacity; (ii) any other entity seeking to purchase Unforced Capacity; (iii) qualified Installed Capacity Suppliers; and (iv) any other entity that owns excess Unforced Capacity. Participation in the ICAP

## NYISO INSTALLED CAPACITY MANUAL

the prospective External Installed Capacity Supplier wishes to supply Unforced Capacity to the NYCA).

The NYISO may verify this data with the appropriate External Control Area.

### **4.9.2 Allocation of Import Rights**

The NYISO establishes the maximum amount of Unforced Capacity that can be provided to the NYCA by Resources located in each neighboring Control Area according to the procedures contained in Section 2.7 of this Manual. Once this amount has been determined for each neighboring Control Area, the allocation among NYISO customers of Import Rights to External Unforced Capacity supply is done according to the following procedures.

#### **Grandfathered External Installed Capacity Rights**

Details concerning Grandfathered Rights are provided in [Attachment E](#) to this Manual.

#### **Other Allocations**

After accounting for Grandfathered External Installed Capacity rights, the NYISO will allocate the remaining rights for External Unforced Capacity supply on a first-come, first serve basis. Import Rights may ultimately only be used by LSEs located within the NYCA, but any NYISO Customer may submit a request along with all required supporting documents seeking External Installed Capacity rights.

#### **Request**

Requests for Import Rights for one or more months within a Capability Period may be sent to the NYISO during the following time period. A request sheet is available at: ([http://www.nyiso.com/public/webdocs/products/icap/auctions/Winter-2005-2006/forms/icap\\_import\\_rights\\_fax\\_form.pdf](http://www.nyiso.com/public/webdocs/products/icap/auctions/Winter-2005-2006/forms/icap_import_rights_fax_form.pdf)) or participants may use their own request sheet.

- Beginning at 8:00 AM ET

For Summer Capability Period: on the first business day following the publication of the total number of import rights made available by the NYISO (on or about February 15)

For Winter Capability Period: on the first business day not more than thirty (30) days prior to a Capability Period (strip) Auction, and

- Ending at 5:00 PM ET four (4) business days prior to a Capability Period Strip Auction.

On or about February 15 the NYISO shall post the final quantity of Import Rights available for request for the following Capability Year. The quantity of rights that will be available at that time prior to the Summer and the Winter Capability Period (strip) Auctions shall be 100 % of the Import Rights available, as posted by the NYISO.



## NYISO INSTALLED CAPACITY MANUAL

If Import Rights are not fully subscribed after the Capability Period (strip) Auction has concluded, the NYISO will open another period of first-come, first-serve allocations prior to each Monthly Auction for the month or months in which Import Rights remain and the NYISO will post the available Import Rights after each subsequent auction.

For each month within a Capability Period, requests for Import Rights may be sent to the NYISO during the following time period:

- Beginning at 8:00 AM ET on the business day following the day the NYISO posts the results of each Capability Period (Strip) or Monthly Auction.
- Ending at 5:00 PM ET four (4) business days prior to the next Monthly Auction.

### Contents of Request

Each request must contain the following information:

1. The identity of the NYISO Customer making the request;
2. The identity of the External Installed Capacity Supplier;
3. The name and location of the Resource;
4. The Control Area in which the Resource for which the Installed Capacity Supplier seeks rights is located;
5. The MW amount requested, equal to the Installed Capacity Equivalent of the Unforced Capacity sale to the NYCA from the Resource designated in (4) above. For example, a request for 100 MW of Import Rights from a Resource with a 10% EFORd will support a UCAP sale of 90 MW;
6. The time period, in blocks of whole months, for which the rights are requested;
7. E-mail address of the requesting party to which a response will be made.

The information listed above must be provided as a “Request for External Installed Capacity Import Rights” to the ISO’s Manager of Auxiliary Market Operations via facsimile to the following number: 518-356-6208.

If the NYISO determines that the information provided in the request is incomplete or inadequate, the NYISO will immediately notify the requesting party. By 5:00 PM of the day on which requests are received, the NYISO will notify all requestors that have submitted a complete and adequate request for Import Rights of their priority.

### **Priority**

Only complete requests submitted within the time periods specified above will be evaluated by the NYISO. The date and time stamp provided by the FAX machine will determine the priority for the evaluation of requests. If a request is resubmitted for any reason, the latest time stamp will determine its priority. Priority is assigned to each

## NYISO INSTALLED CAPACITY MANUAL

request and assumes that supporting documents are received by the NYISO within the time period set forth below. Late submissions of supporting documentation will result in the automatic rejection of the Import Rights request.

### **Supporting Documents**

In addition, the requestor must submit documentation of the bilateral agreements for which External Capacity Import Rights are being requested, with pricing redacted, between a qualified External Installed Capacity Supplier or a marketer with a contract with a qualified External Installed Capacity Supplier and:

- (a) a LSE within the NYCA; or,
- (b) a marketer that is not an affiliate of the External Installed Capacity Supplier.

The supporting documentation of bilateral agreements must be received by 5:00 PM ET of the business day following the day in which the requests for Import Rights are submitted to the NYISO.

If the NYISO determines that the information provided as supporting documentation is incomplete or inadequate, the NYISO will immediately notify the requesting party. The submission of incomplete or inadequate information does not alter the time frame in which such documents are due. For example, a requestor that has submitted incomplete or inadequate supporting documentation has until 5:00 PM ET of the business day following the day in which the requests for Import Rights are submitted to the NYISO to provide adequate and complete supporting documentation.

### **Response from the NYISO**

Upon receipt of supporting documentation of a bilateral transaction, the NYISO will respond by 5:00 PM ET of the second business day following the day in which the requests for Import Rights are submitted to the NYISO.

The NYISO will notify the requesting party if its request has been accepted or rejected, with reasons for rejection, if such be the case, within the time period specified above, following receipt of a complete request and supporting documentation. If accepted, the NYISO will provide a confirmation number. A rejection may be based on any of the following:

Incomplete or inadequate information:

Fully subscribed External Installed Capacity rights;

Late submission of supporting documentation of bilateral agreements;

Unqualified External Installed Capacity Suppliers; or,

The MW amount provided in the supporting documentation is less than the MW amount included in the Import Rights request.

## **NYISO INSTALLED CAPACITY MANUAL**

If a request is rejected, the allocation of ICAP Import Rights proceeds using the assigned priorities as if that request had never been submitted.

### **Tally of Import Rights**

The NYISO will maintain a tally of the available Import Rights for each month within a Capability Year and will post these figures on the NYISO web site (<http://www.nyiso.com/public/products/icap/index.jsp>).

### **Obligations of Recipients of Import Rights**

If at any time, the NYISO has allocated all of the Import Rights that are available to permit the import of Installed Capacity from one or more control areas for one or more months, the NYISO will promptly issue an announcement to all Market Participants, alerting them to this fact. Recipients of these Import Rights will have until 12:00 PM ET two business days following the issuance by the NYISO of this announcement or until 5:00 PM ET on the last business day that precedes the beginning of the Capability Period (strip) auction by at least 15 days, if that is later, either to decide to keep these Import Rights, or to return these Import Rights to the NYISO. The NYISO may exhaust its supply of Import Rights for different Control Areas and different months at different times, so this deadline may differ from Control Area to Control Area within a month, and it may vary from month to month for a given Control Area.

Entities that had requested those Import Rights of the ISO, but which elect to return them to the NYISO prior to this deadline, will be under no further obligation associated with those Import Rights. Likewise, if the NYISO never makes such an announcement pertaining to Import Rights to import Installed Capacity from a given Control Area for a given month (because the NYISO never allocated all of the Import Rights that were available to permit the import of Installed Capacity from those Control Areas in those months), then the recipients of those Import Rights will be under no obligation to use those Import Rights to support the import of Installed Capacity to a New York LSE, nor will they be required to offer Installed Capacity into any NYISO-administered auctions. The NYISO will notify all Market Participants when Import Rights have been made available due to Import Rights that have been returned back to the NYISO from previously awarded Import Rights recipients. Any Import Rights that are returned to the NYISO shall be available for allocation to market participants or for use to support the purchase of Installed Capacity in NYISO-administered auctions, using the same procedures that are used for other Import Rights, as described elsewhere in this Manual.

Entities that elect not to return those Import Rights by the deadline described above after such an announcement is made, or entities that are allocated Import Rights to import Installed Capacity from a Control Area for a given month after such an announcement has been issued for that Control Area and that month by the NYISO, shall be able to demonstrate to the NYISO no later than the deadline for monthly certification, as provided by the applicable Capability Period on the Installed Capacity (ICAP) Market page of the NYISO web site (<http://www.nyiso.com/public/products/icap/index.jsp>), that

## **NYISO INSTALLED CAPACITY MANUAL**

they have used those Import Rights to support the import of Installed Capacity from the relevant Control Area into New York to meet the LSE Unforced Capacity Obligation of an LSE serving load in the NYCA. If, by that time, a holder of such Import Rights has neither sold that Installed Capacity using those Import Rights in an NYISO-administered auction nor has entered into a bilateral agreement to supply Installed Capacity to a New York LSE using those Import Rights, the associated Installed Capacity will be offered for sale into the ICAP Spot Market Auction as price taker, i.e., at a price of \$0/MW, and the NYISO will not accept any other offers to sell Installed Capacity from other Suppliers located in the corresponding external Control Areas. The Supplier will be paid the market-clearing price determined in those auctions for the control area in which it is located for the Unforced Capacity in question.

### **External Installed Capacity Sales in NYISO Administered Auction**

All purchasers of Unforced Capacity that is located in an External Control Area in an NYISO-administered auction shall receive the External Installed Capacity rights necessary in order to permit that Unforced Capacity to count towards the LSE Unforced Capacity Obligation; consequently, in order to ensure that there are sufficient external Installed Capacity rights available, the NYISO shall limit the number of MW of Unforced Capacity that can be purchased in any External Control Area in those auctions. In each Capability Period auction, the NYISO shall limit the number of MW of Unforced Capacity that can be purchased in any External Control Area to the number of MW of Unforced Capacity that can be provided by Installed Capacity Suppliers located in that Control Area, as determined in Section 2.7 of this Manual, less all External Installed Capacity rights that have been requested for that External Control Area under the provisions of this section. In addition, the NYISO will permit entities that have been allocated Import Rights to offer Installed Capacity into the auctions it administers.

In the Capability Period Monthly Auctions held before and during the Capability Period, the NYISO shall limit the number of MW of Unforced Capacity that can be purchased in any External Control Area to the number of MW of Import Rights that the NYISO makes available for the Capability Period from that Control Area, less the number of MW of Unforced Capacity purchased in that External Control Area for that month in preceding Monthly Auctions and the Strip Auction, less all External Installed Capacity Rights that have been requested to support external Bilateral Transactions for that month.

The NYISO will reduce External Installed Capacity rights eligible to be traded in the Capability Period strip auction based on the allocations made according to the above procedures.

### **4.9.3 Additional External Installed Capacity Supplier Requirements**

#### **Certification**

Entities that have received External Installed Capacity Import Rights or that are using UDRs to meet NYCA Locational Capacity Requirements must provide the following

# **ATTACHMENT B**

**Schaefer, Brent P**

**From:** Schaefer, Brent P  
**Sent:** Wednesday, February 22, 2006 9:21 AM  
**To:** 'rroby@nyiso.com'; 'kwhitaker@nyiso.com'  
**Cc:** 'PMorrison@nyiso.com'; Cudwadie, Michael S; Yannarell, David A; Schaefer, Brent P  
**Subject:** RE: NYISO - Summer 2006 External ICAP Import Rights Request - Rejected

Ms. Whikater,

PPL EnergyPlus requests the timestamp for the winning Summer 2006 External ICAP Import Rights Request as well as our own timestamp for our request. We would also request consideration of having a PPL EnergyPlus representative observing the next request process onsite. Thank-you in advance for your time and consideration....Brent Schaefer

---

**From:** PMorrison@nyiso.com [mailto:PMorrison@nyiso.com]  
**Sent:** Tuesday, February 21, 2006 4:11 PM  
**To:** Loughney Jr, Donald R; Schaefer, Brent P; Cudwadie, Michael S; Yannarell, David A  
**Subject:** NYISO - Summer 2006 External ICAP Import Rights Request - Rejected

Dear Market Participant PPLEnPI,

The NYISO has rejected your company's External ICAP Import Rights request because:

External ICAP Import Rights were not available; either the Control Area Interface or the NYCA External ICAP Import limit was already allotted.

You may refer to other e-mail notices from NYISO Auxillary Market Operations to determine if any External ICAP Import Rights remain to be allocated.

If so, you may choose to request any that remain to be allocated.

Pete Morrison  
1-518-356-6013  
Auxiliary Market Operations  
New York Independent System Operator

\*\*\*\*\*

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\*\*\*\*\*

# **ATTACHMENT C**

Mr. Brent Shaefer  
PPL EnergyPlus, LLC  
2 North Ninth Street  
Allentown, PA 18101

Dear Mr. Shaefer,

As requested in your February 22, 2006 email, included is a redacted copy of the FAX log for the morning of February 16, 2006. Your request from PPL EnergyPlus for import transmission rights was second in the queue, with a time-stamp on the FAX log of 8:01 AM. Please note that although the time-stamp on the FAX log for the first request was 7:59 AM, the clock on the FAX machine is manually adjustable; we re-connected the FAX machine at 8:00 AM, according to cellular telephone time.

It will not be possible for a PPL EnergyPlus representative to observe the next import rights allocation process onsite. The process involves confidential data from multiple Market Participants, and it is not appropriate that a representative from PPL EnergyPlus be present.

If you have additional questions about the import rights process for external capacity, please call me at 518-356-6008.

Regards,



Kathy Whitaker  
Manager, Auxiliary Market Operations

Enclosure

Cc: Peter Morrison  
Rick Roby



\*\*\*\*\*  
 \*\*\* ACTIVITY MANAGEMENT REPORT TX \*\*\*  
 \*\*\*\*\*

| ST. TIME    | DESTINATION TEL/ID | NO.  | MODE         | PGS. | RESULT             |
|-------------|--------------------|------|--------------|------|--------------------|
| 02/10 16:11 | 93566298           | 0606 | TRANSMIT     | 0    | NG 00'00<br>0 STOP |
| 02/10 16:12 | 93567584           | 0607 | TRANSMIT ECM | 1    | OK 00'18           |
| 02/16 12:17 | 93567678           | 0608 | TRANSMIT ECM | 5    | OK 01'08           |

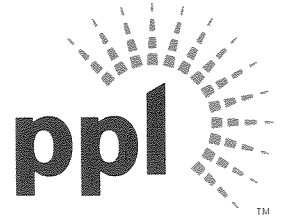
\*\*\*\*\*  
 \*\*\* ACTIVITY MANAGEMENT REPORT RX \*\*\*  
 \*\*\*\*\*

| ST. TIME    | DESTINATION TEL/ID | NO.  | MODE        | PGS. | RESULT   |
|-------------|--------------------|------|-------------|------|----------|
| 02/09 23:21 | [REDACTED]         | 6806 | AUTO RX ECM | 2    | OK 01'06 |
| 02/10 11:09 | [REDACTED]         | 6807 | AUTO RX ECM | 1    | OK 01'47 |
| 02/10 11:20 | [REDACTED]         | 6808 | AUTO RX ECM | 3    | OK 00'53 |
| 02/10 13:10 | [REDACTED]         | 6809 | AUTO RX ECM | 1    | OK 00'44 |
| 02/12 16:50 | [REDACTED]         | 6810 | AUTO RX ECM | 1    | OK 00'54 |
| 02/12 19:31 | [REDACTED]         | 6811 | AUTO RX ECM | 4    | OK 01'49 |
| 02/13 18:31 | [REDACTED]         | 6812 | AUTO RX ECM | 1    | OK 00'54 |
| 02/14 10:00 | [REDACTED]         | 6813 | AUTO RX G3  | 3    | OK 01'43 |
| 02/14 18:03 | [REDACTED]         | 6814 | AUTO RX ECM | 1    | OK 00'46 |
| 02/14 23:56 | [REDACTED]         | 6815 | AUTO RX ECM | 1    | OK 00'59 |
| 02/15 06:03 | [REDACTED]         | 6816 | AUTO RX ECM | 1    | OK 00'54 |
| 02/15 07:02 | [REDACTED]         | 6817 | AUTO RX ECM | 1    | OK 00'31 |
| 02/15 08:28 | [REDACTED]         | 6818 | AUTO RX ECM | 2    | OK 01'39 |
| 02/15 09:27 | [REDACTED]         | 6819 | AUTO RX ECM | 2    | OK 01'28 |
| 02/15 13:58 | [REDACTED]         | 6820 | AUTO RX ECM | 1    | OK 00'45 |
| 02/15 15:30 | [REDACTED]         | 6821 | AUTO RX ECM | 1    | OK 00'15 |
| 02/15 15:42 | [REDACTED]         | 6822 | AUTO RX ECM | 1    | OK 00'18 |
| 02/15 15:47 | [REDACTED]         | 6823 | AUTO RX ECM | 1    | OK 00'15 |
| 02/15 22:00 | [REDACTED]         | 6824 | AUTO RX ECM | 3    | OK 00'39 |
| 02/15 22:25 | [REDACTED]         | 6825 | AUTO RX ECM | 1    | OK 01'01 |
| 02/16 07:59 | [REDACTED]         | 6826 | AUTO RX ECM | 1    | OK 01'27 |
| 02/16 08:01 | [REDACTED]         | 6827 | AUTO RX ECM | 5    | NG 05'19 |
| 02/16 08:07 | [REDACTED]         | 6828 | AUTO RX ECM | 0    | NG 00'36 |
| 02/16 08:07 | [REDACTED]         | 6829 | AUTO RX ECM | 1    | OK 00'23 |
| 02/16 08:09 | [REDACTED]         | 6830 | AUTO RX ECM | 2    | OK 00'57 |
| 02/16 08:10 | [REDACTED]         | 6831 | AUTO RX ECM | 1    | OK 00'38 |
| 02/16 08:11 | [REDACTED]         | 6832 | AUTO RX ECM | 1    | OK 00'49 |
| 02/16 08:12 | [REDACTED]         | 6833 | AUTO RX ECM | 1    | NG 00'46 |
| 02/16 08:13 | [REDACTED]         | 6834 | AUTO RX ECM | 1    | OK 00'35 |
| 02/16 08:14 | [REDACTED]         | 6835 | AUTO RX ECM | 1    | OK 00'52 |
| 02/16 08:15 | [REDACTED]         | 6836 | AUTO RX ECM | 1    | NG 00'45 |
| 02/16 08:16 | [REDACTED]         | 6837 | AUTO RX ECM | 1    | OK 00'35 |
| 02/16 08:17 | [REDACTED]         | 6838 | AUTO RX ECM | 1    | OK 00'57 |
| 02/16 12:04 | [REDACTED]         | 6839 | AUTO RX ECM | 2    | NG 01'06 |
| 02/16 12:08 | [REDACTED]         | 6840 | AUTO RX ECM | 9    | OK 01'16 |
| 02/16 12:11 | [REDACTED]         | 6841 | AUTO RX ECM | 10   | OK 02'04 |
| 02/16 14:17 | [REDACTED]         | 6842 | AUTO RX ECM | 26   | OK 08'12 |

# **ATTACHMENT D**

**David Yannarell**  
Capacity Trading Manager

**PPL EnergyPlus, LLC**  
Two North Ninth Street / GENPL7  
Allentown, PA 18101-1179  
Tel. 610.774.4287 Fax 610.774.4877  
dayannarell@pplweb.com



March 6, 2006

Ms. Kathy Whitaker  
Manager – Auxiliary Market Operations  
New York Independent System Operator  
5172 Western Turnpike  
Altamont, NY 12009

**Re: Dispute Regarding February 21, 2006 External Rights Auction**

Dear Ms. Whitaker:

I am writing this letter to express PPL EnergyPlus, LLC's ("PPL EnergyPlus") continuing concern with the systems and processes used by the New York Independent System Operator ("NYISO") to conduct the allocation of External Rights to transfer capacity into the NYISO from other regions. PPL EnergyPlus requests prompt resolution of the dispute described in further detail below.

PPL EnergyPlus is again faced with the task of disputing the results of the NYISO External Rights Auction, which was held the morning of February 16, 2006. In contrast to the last two auctions where our initial FAX was not received by the NYISO for reasons still not clear, a representative of your department confirmed receipt of our FAX for the auction in question. However, PPL EnergyPlus was informed that our FAX was the second one received, and that no External Rights remained for the delivery of PJM capacity into NYISO for the 2006 Summer Capability Period. PPL EnergyPlus had requested a total of 250 MW of PJM External Rights for this period but we understand only 220 MW was available at the start of the auction.

Upon learning this outcome at the close of business on February 21, 2006, PPL EnergyPlus requested the following day a redacted copy of the designated FAX log via an e-mail from Brent Schaefer to you. We received your response on February 28, 2006, which consisted of a cover letter and a one page redacted FAX log.

The NYISO FAX log (attached) confirms that the PPL EnergyPlus FAX was received by the NYISO at 8:01 AM., and was the first FAX received by the NYISO following the official 8:00 AM start time for the auction. The FAX log indicates that the bidder who was awarded PJM External Rights submitted its FAX at 7:59 AM, which was prior to the official start time of the auction, rather than within the designated window. Therefore, PPL EnergyPlus believes that it was unjustly denied its request for PJM External Rights for the 2006 Summer Capability Period.

In the cover letter of your response you state:

Please note that although the time-stamp on the FAX log for the first request was 7:59 AM, the clock on the FAX machine is manually adjustable; we re-connected the FAX machine at 8:00 AM, according to cellular telephone time.

However, it is clearly stated in Section 4.9.2 of the NYISO Installed Capacity Manual under the Priority heading that:

The date and time stamp provided by the FAX machine will determine the priority for the evaluation of requests.


We are unable to find any provision in the NYISO Capacity Manual or filed tariff that justifies the use of anything other than the designated FAX machine time for purposes of determining winning bidders.

Therefore, PPL EnergyPlus believes that the initial result reached in this auction is in violation of the NYISO Installed Capacity Manual and such result must be rectified by the NYISO immediately by providing PPL EnergyPlus with 220 MW of PJM External Rights for the 2006 Summer Capacity Period.

PPL EnergyPlus reserves all of its rights at law and equity to pursue this matter, including, without limitation, its rights under Section 206 of the Federal Power Act.

We request the NYISO's response to this letter by close of business on March 10, 2006. If you have any questions, please call me at 610-774-4287.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Yannarell', with a stylized flourish at the end.

David A. Yannarell  
Manager – Capacity Trading

Attachment

cc: John Buechler, NYISO, Acting VP Market Structures  
Michael Calimano, NYISO, VP Operations  
Robert Fernandez, NYISO, General Counsel  
Lisa Travaly, NYISO, Supervisor of Mitigation, Compliance and Investigations  
Rick Roby, NYISO, Customer Account Associate  
Michael Cudwadie, PPL EnergyPlus, Director-Trading  
Robert Grassi, PPL Services Corp., Senior Counsel  
Joseph Langan, PPL EnergyPlus, Market & Regulatory Policy Manager  
Brent Schaefer, PPL EnergyPlus, Trader

# **ATTACHMENT E**

## **Inside this Issue of the Insider:**

- **SMD 2** – A schedule and status update.
- **Elements of A620 Day-Ahead AMP** – Incorporation in the Legacy Systems.
- **More about SMD2** – Important information about SMD 2 Upload/Download Templates.
- **ALERT** – New Procedures regarding External Installed Capacity Rights.
- **We've Passed Again!** – SAS 70 Type 2!

## **Insider Highlights:**

Kudos for NYISO Employee 3

NYISO Committee and Working Group Updates 4-6

## **SMD 2 – Updated**

Despite the recently announced delay in deploying SMD 2 until after summer 2004, there is a lot of good news about the project. Completion and “Go Live” is now only a question of when, not if.

Factory Acceptance Testing ended 12 weeks later than called for in the original aggressive schedule, but the results demonstrated successful functionality.

- Product core functionality has been delivered, tested, and accepted.
- Hardware delivery on is on track.

- NYISO site testing is underway.
- Phase 2 design and development started.
- Dispatcher training program initiated.

Once it became apparent that implementation of SMD2 before the coming summer was not feasible, the NYISO initiated a detailed review of the schedule.

There is general agreement that deploying a complex new system of such magnitude during the peak summer period would create an unacceptable level of risk.

The NYISO staff also took into account the feedback from last November's Tech Conference where the Market Participants requested additional time in the testing period to both test the program and provide intervals for remediation.

The new, realistic schedule targets September 15, 2004 to be “ready to go live”. Since there is a requirement to provide at least two weeks notice to market participants, the earliest date for deployment is October 1, 2004. ■

## **Software Changes for Real-Time and Day-Ahead AMP for Summer '04**

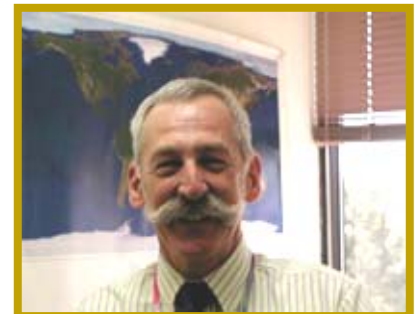
Because SMD2 will not be deployed this spring, elements of A620 – Real-Time and Day-Ahead AMP will be incorporated into the legacy systems for summer '04. Most changes to AMP will be in New York City.

In Day-Ahead AMP in New York City:

- There will be full conduct and impact testing when there is congestion,

- Only units failing conduct and showing impact will be mitigated,
- Hourly selectivity will be implemented,
- Start-up, min-gen, and incremental energy offers will be evaluated separately for conduct, and
- LBMP impact and Guarantee Payment impact will be tested separately.

Statewide, start-up and min-gen can be mitigated in Day-Ahead AMP. ■



Jim Savitt,  
NYISO/Market Monitoring and Performance Unit,  
Market Monitor and Principal Economist

## SMD2 Upload/Download Templates

---

*“With market trials on the horizon, the desire to prepare for the changes is high, especially the upload/download formats used by many Customers.”*

The NYISO staff is preparing for SMD 2 by revising manuals to agree with the new market design and preparing for market trials slated in the upcoming months. With market trials approaching, preparing for these changes is a priority—especially the upload/download formats used by many Customers. To ensure a smooth transition into the new market design, NYISO is testing the necessary changes to the upload/download templates drafted by Customers before market trials.

The template changes are restricted to generator bidding parameters and relate to

- a generator’s ability to change its start up cost on an hourly basis,
- allowing for self-committed generator’s ability to submit 15–

- minute schedule changes within its bid
- changes to 11 MW/\$/mw pairs in place of the current 6-point bid curve
- eliminating the need to offer a MW quantity for reserve products
- the addition of an emergency upper operating limit

The NYISO QA team will run drafted templates in test mode to ensure document integrity and will document errors, if any, on the draft template. The revised document will be returned to the Customer to review and implement changes. Opportunities exist if Customers wish to resubmit their drafts for additional testing. It is not necessary to include a user name and password as part of the upload/download parameters within the draft as the templates are for testing purposes only.

To simplify the process, Customer Relations will act as the liaison between the marketplace and NYISO QA. Beginning February 9 to March 12, 2004, Customer representatives will collect draft templates from each Market Participant to send to the QA team. To avoid confusion, submit each template as a separate file titled by the organization’s name and template title, such as ABCCompany-upload-genbid.txt. All documents will be returned to the Customer in a timely manner.■

The following links provide a brief summary of these changes.

[http://www.nyiso.com/oasis/smd2/pdf/smd\\_template\\_changes\\_summary.pdf](http://www.nyiso.com/oasis/smd2/pdf/smd_template_changes_summary.pdf)

[SMD2 Upload/download Advisory Notice](#)

## A Reminder about Requesting External Installed Capacity Rights

The NYISO will only evaluate complete requests provided via facsimile to the following number: (518) 356-6208. The date and time stamp provided by this FAX machine will determine the priority of the request. The request period opens at 8:00 AM ET on February 17, 2004. Requests will be **invalidated** for any of the following reasons:

- Request is received prior to 8:00 AM ET on February 17, 2004; the date and time stamp provided by the FAX machine described above is used for this determination.
- Request is incomplete or contains inadequate information; Section 4.9.2 of the NYISO ICAP Manual provides a description of the required request information.
- If a request is resubmitted for any reason, the latest time stamp will determine its priority.

Please review the [NYISO ICAP Manual, Section 4.9.2 Allocation of Import Rights](#) for additional details.■

## NYISO Employee Receives Recognition Award

Edward Horgan, an engineer at NYISO, and a member of the Thyristor Controlled Series Capacitors (TCSC) Working Group was one of the recipients of the T&D Committee Working Group Recognition Award.

"IEEE 1534 is the first ever document to address the specification of Thyristor Controlled Series Capacitors (TCSC). With concerns about reliability and congestion of transmission systems, advanced technology applications will be utilized more in the future. IEEE 1534 will benefit the industry by providing useful practices for rating

TCSCs and evaluating supplier capabilities, and will promote consistency and standardization in TCSC installations throughout the world. This document is also a shining example of cross-organizational cooperation within PES. The standard was developed by a joint working group of the T&D Committee (Capacitor Subcommittee) and the Substations Committee (HV Power Electronic Stations Subcommittee)."

When asked how he felt about receiving such a laudable award, brimming with enthusiasm he said, "This was a truly unexpected surprise, and

a nice finish to a team that truly clicked." ■



Edward Horgan  
NYISO Resource Reliability,  
Senior Engineer

---

*"NYISO Employee receives prestigious recognition award from IEEE Power Engineering Society."*

## Another FIRST for the NYISO

The NYISO, the first ISO to achieve an unqualified opinion on a SAS 70 Type 2 audit on its first try, is now the first to achieve two unqualified opinions in its first two tries.

The NYISO Board's Audit & Compliance Committee has approved the release to NYISO Market Participants of the SAS 70 Type 2 audit report, issued by KPMG, for the NYISO bid-to-bill process during the period 7/1-12/31/2003. ■

If you would like an electronic version of this report, please submit your request to Marc Rubin at [mrubin@nyiso.com](mailto:mrubin@nyiso.com)



Marc Rubin  
NYISO Internal Audit,  
General Auditor



## NYISO Committee and Working Group Updates

---

*“The Business Issues Committee approved further tariff amendments regarding special pricing rules at non-competitive proxy generator buses.”*

### ***Business Issues Committee (BIC)***

At the January 21<sup>st</sup> BIC meeting there were presentations of the Northeast Seams Report and the Market Operations Report, an update on the Project Prioritization Team; the effects of gas de-rates on the NYISO grid, and a report on the results of the Autumn 2003 customer survey. The Committee approved further tariff amendments regarding

special pricing rules at non-competitive proxy generator buses, and tabled consideration of a motion addressing creditworthiness and collateralization of TSCs on wheel-throughs and exports.■

### ***Decision Support Task Force (DSS TF)***

The DSS TF continues to meeting regularly via teleconference.■

### ***Billing and Accounting Working Group (BAWG)***

The BAWG met via telecom January 28<sup>th</sup> to review Customer Issues Tracking, Enhancing Settlements, the status of billing-related projects, and Working Capital re-balancing.

The Working Group also discussed settlement issues from the August 2003 Blackout.■

### ***Scheduling and Pricing Working Group (SPWG)***

The SPWG met on January 9<sup>th</sup> to discuss collateralization of TSCs for wheel-throughs and exports, internal controllable line scheduling, TLRs, compliance-filing issues related to rules regarding pricing at external proxy generator busses, and congestion mitigation using the 1385 cable.■

### ***Market Structure Working Group (MSWG)***

The MSWG met on January 29<sup>th</sup> to discuss MP questions regarding the revised SMD2 implementation schedule, Combined Cycle Unit modeling, and the Spring 2004 TCC auctions.■

### ***Metering Task Force (MTF)***

The MTF met on January 27<sup>th</sup> to discuss station service issues (and review draft Technical Bulletins on the issue), the new losses calculation methodology, and metering issues related to the NYISO demand-side programs.■

## NYISO Committee and Working Group Updates *(continued)*

### **Management Committee (MC) Budget, Standards, and Performance Subcommittee (BSP)**

The MC met by teleconference on January 7, 2004. ■

### **Project Priority Team (PPT)**

Feedback on the Project Schedule that is posted can be provided to the members of the PPT. They are the Chairs and Vice-Chairs of the MC, BIC, and OC and the Chair of the BS&PS. ■

The OC met on January 22<sup>nd</sup> to review and approve the definition of

The next meeting of the BS&P Subcommittee is February 17. R.J. Rudden will present an update on Rate Schedule 1 cost allocation. ■

### **Operating Committee (OC)**

“Methodology of Measurement of Historical Congestion” as it will be applied to the planning process. The OC discussed issues pertaining to, as well as approving, the: SRIS Scope for the East Coast Power Linden Generation Expansion Project, East Coast Power Linden VFT Inter-Tie Project Study Scope, and the Chautauqua Wind Power Project study scope. The

OC also approved the SRIS for the Flat Rock Wind Power 300 MW Project. ■



From Left to Right — Howard Fromer and Mark Younger  
(Market Participants)  
“Scheduling and Pricing Working Group”

### **Communications and Data Advisory Subcommittee (CDAS)**

The CDAS continues to work on improvements to “DNI” accuracy while the NYISO operates in the back-up dispatch mode. CDAS is working on several projects including Phase 1 telemetering equipment replacement, ICCP conversion from OSI to IP, Web Based Reconciliation, and SMD2 preparation. ■

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“NYISO is a non-for-profit organization formed in 1998 and officially began operations in December 1999, as part of the restructuring of New York State’s electric power industry. Its mission is to ensure the reliable, safe, and efficient operation of the State’s major transmission system and to administer an open, a competitive and nondiscriminatory wholesale market for electricity in New York State. Competition in New York’s wholesale electricity market is expected to result in lower overall electricity cost for New Yorkers.”



**ADDRESS:**

290 Washington Ave Ext  
Schenectady, NY 12303

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(518) 356-6000

**FAX:**

(518) 356-6118

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The *NYISO Insider* is published by the New York Independent System Operator (NYISO), and is electronically mailed to all Market Participants who have subscribed to the Technical Information Exchange (TIE) Mailing List. Its mission is to compile and disseminate noteworthy items of general interest for Market Participants as a review and for future reference to help make the competitive wholesale electric market function more effective through improved communication.

## NYISO Committee and Working Group Updates

*(continued)*

### *Electric System Planning Working Group (ESP WG)*

The ESPWG is a newly formed joint Working Group of both the BIC and the OC with the OC having final decisional authority. The chair is Mr. William Palazzo of NYPA.

The ESPWG worked toward finalizing the Initial Planning Process and Comprehensive Planning Process as well as preparation for the FERC Compliance filing of Standard Interconnection procedures.■

### *System Protection Advisory Subcommittee (SPAS)*

Mr. Gerry Larose, Chair of the OC attended at the January 27<sup>th</sup> meeting to discuss the role of the SPAS in the Aug 14<sup>th</sup>, 2003 incident investigation.■

### *System Operations Advisory Subcommittee (SOAS)*

At the January 7<sup>th</sup> meeting, the SOAS discussed Regulation and Reserve requirements and NYISO staff presented a status update of the "Regulation Analysis Project and the Variable Regulation project."■

### *Transmission Planning Advisory Subcommittee (TPAS)*

The TPAS reviewed and approved the following SRIS scopes: East Coast Power Linden Generation Expansion Project, East Coast Power Linden VFT Inter-Tie Project Study Scope, and the Chautauqua Wind Power Project study scope. The TPAS also reviewed and approved the SRIS for the Flat Rock Wind Power 300 MW Project.■

### *Restoration Working Group (RWG)*

The RWG has been active in reviewing the August 14, 2003 incident and the NYISO System Restoration Plan.■