

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

New York State Reliability Council

Docket No. ER09-437-000

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

Pursuant to Rules 212 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.214 (2008), the New York Independent System Operator, Inc. ("NYISO") respectfully moves to intervene and offers its comments in this proceeding. The NYISO believes that an Installed Reserve Margin ("IRM") of 16.5 percent for the New York Control Area ("NYCA") for the upcoming 2009/2010 Capability Year,<sup>1</sup> which runs from May 1, 2009 through April 30, 2010, falls within a range of reasonable determinations for the level of installed capacity required to maintain the reliability of the NYCA bulk power system. Accordingly, the NYISO supports the request of the New York State Reliability Council ("NYSRC") that the Commission approve an IRM of 16.5 percent.

The NYISO also joins the NYSRC in urging the Commission to act no later than February 17, 2009. A Commission order on or before that date would afford the NYISO adequate time to calculate the minimum capacity requirements and post the requirements sufficiently in advance of the March 30, 2009 scheduled Installed Capacity ("ICAP") auction for the Summer 2009 Capability Period so market participants have an opportunity to prepare for the auction. If NYISO market participants do not have timely access to the requirements calculated by the NYISO, their ability to participate effectively in the auctions could be seriously prejudiced.

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

Finally, the NYISO respectfully requests that the Commission coordinate its decision in this proceeding with the actions that the New York Public Service Commission (“NYPSC”) may soon take in response to the NYSRC’s request. Inconsistent determinations by the Commission and the NYPSC would create uncertainty about the IRM the NYSRC should provide to the NYISO to use, and potentially subject the NYISO to contradictory regulatory mandates. The NYISO is not taking a position on the merits of any federal/state jurisdictional issues at this time, but the NYISO respectfully requests that the Commission not allow jurisdictional considerations to delay a timely decision.

In support thereof, the NYISO states:

**I. Communications and Correspondence**

All communications regarding this filing should be directed to:

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**II. Background**

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

Capability Year from 2000/2001<sup>2</sup> through 2006/2007, 16.5% for the 2007/2008 Capability Year,<sup>3</sup> and 15% for the 2008/2009 Capability Year.<sup>4</sup>

The current NYCA IRM of 15% means that Load Serving Entities (“LSEs”) in the NYCA must procure ICAP equal to 115% of their forecast peak load.<sup>5</sup> In addition, there are separate location-specific ICAP requirements for LSEs in New York City and on Long Island, which reflect the existence of transmission constraints in those areas.

At the request of the NYSRC, the NYISO conducted a study to determine the NYCA IRM necessary to meet all applicable reliability criteria for the upcoming 2009/2010 Capability Year. The NYISO employed General Electric’s Multi-Area Reliability Simulation (“MARS”) model to determine the amount of installed capacity that is required NYCA-wide to meet the resource adequacy criterion that the probability of a disconnection of firm load not exceed one occurrence in ten years.<sup>6</sup> The NYISO reported its results to the NYSRC’s Installed Capacity Subcommittee.

That subcommittee reviewed and adopted the results of the study, with verification of the data inputs and modeling by General Electric. The NYSRC’s filing includes highlights of the Technical Study Report at pages 7-10 and includes the study itself as an appendix. The NYISO’s base case evaluation in the study yielded a minimum NYCA IRM of 16.2 percent for the 2009/2010 Capability Year. Using this result as the baseline for determining a final IRM, the NYSRC Executive Committee voted on December 5, 2008 to adopt a 16.5 percent IRM level.

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<sup>2</sup> *New York State Reliability Council*, 90 FERC ¶ 61,313 (2000).

<sup>3</sup> *New York State Reliability Council*, 118 FERC ¶ 61,179 (2007).

<sup>4</sup> *New York State Reliability Council*, 122 FERC ¶ 61,186 (2008).

<sup>5</sup> “The NYCA Minimum Installed Capacity Requirement is derived from the NYCA Installed Reserve Margin, which is established each year by the NYSRC. The NYCA Minimum Installed Capacity Requirement for the Capability Year beginning each May 1 [is] established by multiplying the NYCA peak Load forecasted by the ISO by the quantity of one plus the NYCA Installed Reserve Margin.” Services Tariff §5.10.

<sup>6</sup> This criterion is known as the “Loss of Load Expectation” or “LOLE” and is a standard contained in the reliability rules of the Northeast Power Coordinating Council (“NPCC”) and the NYSRC.

On December 19, 2008, the NYSRC filed its proposed NYCA IRM for the 2009/2010 Capability Year with the Commission. The NYSRC requested that the Commission act on its filing expeditiously and issue an order no later than February 17, 2009.

On December 31, 2008, the New York Public Service Commission issued a Notice seeking comments on the NYSRC's proposed NYCA IRM increase, with comments due by January 13, 2009. The NYPSC stated that it "is considering whether to adopt the Installed Reserve Margin established by the New York State Reliability Council ("NYSRC") for the New York Control Area during the upcoming capability year." The NYPSC further stated that it "intends to act promptly, so that market participants are informed of the new NYCA IRM prior to the Installed Capacity auction scheduled to be conducted by the [NYISO] on March 30, 2009."<sup>7</sup>

### **III. Motion to Intervene**

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. Pursuant to its Commission-approved tariffs, the NYISO is responsible for administering the ICAP auctions, including the Capability Period Auction scheduled for March 30, 2009.<sup>8</sup> The NYISO's Services Tariff also requires LSEs within the NYCA to procure sufficient levels of ICAP, including Locational Minimum Installed Capacity Requirements for New York City and Long Island.

Together with the ICAP Demand Curve, the NYCA IRM is a critical input into the NYISO's ICAP auctions because it is used to calculate the LSEs' minimum NYCA-wide capacity requirements, and its methodology and data inputs are used to calculate the Locational

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<sup>7</sup> *Notice Soliciting Comments on Adoption of Installed Reserve Margin*, Case 07-E-0080 and Case 05-E-1180 (Dec. 31, 2008), at 1.

<sup>8</sup> The ICAP auction processes are set forth in Sections 5.13 and 5.14 of the Services Tariff.

Capacity Requirements (“LCRs”). Specifically, after the NYSRC provides the IRM to the NYISO, the NYISO uses that figure to determine the capacity requirements for New York State as a whole and for individual LSEs. It then uses the methodology and data underlying the determination of the baseline for the IRM to calculate the additional LCRs for those LSEs in New York City and Long Island. Next, the NYISO informs the LSEs of their minimum capacity requirements and conducts auctions for each Capability Period (summer and winter six-month capability periods) as well as monthly and spot market auctions.<sup>9</sup> Because the NYISO’s calculations are dependent on the IRM set by the NYSRC, the NYISO has a unique interest in this proceeding that cannot be adequately represented by any other entity and, therefore, should be permitted to intervene with all the rights of a party.

#### **IV. Comments**

##### **A. The NYSRC’s Proposal to Establish a NYCA IRM of 16.5% is Reasonable**

As explained above, the NYSRC has requested Commission approval to increase the NYCA IRM from 15 to 16.5 percent. The NYISO believes that the revised IRM falls within a range of potentially reasonable IRM levels. As was noted above, the NYSRC’s technical study yielded a base case that resulted in a minimum NYCA IRM of 16.2% percent that will meet the LOLE resource adequacy criterion. The NYSRC Executive Committee concluded that the minimum NYCA IRM of 16.5%, which satisfies the resource adequacy criterion, should be accepted. The NYISO believes that it was reasonable for the NYSRC to have adopted the 16.5 percent level because it correctly applied the LOLE criterion and the Technical Study Report to select an IRM level within a range of reasonable IRM levels that will maintain reliability in New York for the upcoming 2009-2010 Capability Year.

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<sup>9</sup> See Services Tariff §§ 5.12-5.14.

**B. The Commission Should Act On or Before February 17, 2009**

The NYISO supports the NYSRC's request that the Commission act on or before February 17, 2009. It is essential that the Commission act by that date because the first ICAP auction for the six-month Summer 2009 Capability Period is scheduled to occur on March 30, 2009.<sup>10</sup> Further, the outcome of this auction will directly affect the monthly and spot capacity auctions the NYISO will conduct in April for May 2009.

The NYISO must know the NYCA IRM by that date so that it can calculate the minimum NYCA-wide capacity requirements and the locational capacity requirements for Zone J (New York City) and Zone K (Long Island), and the External ICAP allowances (import rights). If the Commission acts by February 17, 2009 – the date requested by the NYSRC – the NYISO is confident that it could complete this work on time. Commission action after that date, however, would delay the NYISO's computations, and the date upon which the NYISO could provide the data to market participants. A delay in the provision of that information would shorten, and likely impair, the opportunity for market participants' to prepare for the March 30, 2009 auction.

In accordance with its manuals and consistent with its past practice, the NYISO would inform LSEs of their new minimum requirements by March 20, 2009. Posting this information in advance of the capacity auction for the six-month Summer Capability Period provides market participants with notice of their capacity requirements so that they may develop or adjust their bidding strategies. The NYISO needs to receive a ruling by February 17 so that it can complete calculation of the Locational Capacity Requirements and the External ICAP Allowances and provide the results to NYISO Auxiliary Market Operations ("AMO") by March 7. AMO requires the Locational Capacity Requirements and the External ICAP Allowances by March 7 so that it can prepare the Load Serving Entity calculations by the March 20 deadline for

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<sup>10</sup> The NYISO is separately requesting that the NYPSC act expeditiously on its consideration of the NYSRC's proposed IRM level.

providing information to the LSEs. Further, without timely access to information, the ability of ICAP Suppliers and LSEs to make economically efficient capacity procurement decisions likely will be impaired.

The NYISO recognizes that the concurrent Commission and NYPSC reviews of the NYSRC's proposed NYCA IRM revisions may give rise to disagreement between the agencies as to whether the Commission or the NYPSC or both have jurisdiction over the NYCA IRM. Although the NYISO is not taking a position on the merits of any jurisdictional issue at this time, the NYISO believes that such disagreement about jurisdiction can be preserved on the administrative record for further resolution on rehearing or, if necessary, on appellate review. In any event, if a jurisdictional dispute arises that cannot be resolved expeditiously, the NYISO respectfully submits that the Commission should not allow delay in the resolution of jurisdictional issues to interfere with ruling on the NYCA IRM by February 17, 2009.

**C. The Commission Should Coordinate with the NYPSC to Avoid Imposing Inconsistent Requirements on the NYSRC**

The NYISO respectfully requests that the Commission coordinate its review of the NYSRC's proposed NYCA IRM revision with the NYPSC's inquiry into the subject. To the extent that both the Commission and the NYPSC address common questions, the NYISO also asks that the Commission make every effort to ensure that its determinations are compatible with the NYPSC's review. If the two agencies issue conflicting or contradictory orders to the NYSRC concerning the IRM level, confusion may ensue as to the IRM level the NYSRC should provide to the NYISO for use in the NYISO's calculations. If the NYSRC receives conflicting regulatory directives, it will be forced to choose between them, leaving its choice susceptible to almost certain litigation. The probability of such litigation and the uncertainty as to its outcome will engender uncertainty about the LSEs' minimum requirements for the six-month Summer Capability Period auction (and possibly even the subsequent monthly and spot auctions). The

resulting disruption and confusion would negatively affect the NYISO-administered markets and, potentially, threaten the reliability of the New York State transmission system.

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

## **V. Conclusion**

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission: (i) accept its motion to intervene, (ii) accept the NYSRC's proposed revision to the NYCA IRM, (iii) act on or before February 17, 2009, and (iv) coordinate its review with the NYPSC in order to avoid inconsistent federal and state rulings.

Respectfully submitted,

*/s/ Carl F. Patka*

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January 9, 2009



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2008).

Dated at Washington, DC, this 9<sup>th</sup> day of January, 2009.

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