

UNITED STATES OF AMERICA 116 FERC ¶61,084
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Niagara Mohawk Power Corporation,
a National Grid Company

Docket No. EL06-1-001

v.

New York State Reliability Council and
New York Independent System Operator, Inc.

ORDER ACCEPTING INFORMATIONAL REPORT
AND REQUIRING FURTHER REPORTS

(Issued July 26, 2006)

1. This order accepts the informational report filed by the New York State Reliability Council (Reliability Council) and the New York Independent System Operator, Inc. (NYISO) concerning these organizations' progress in resolving the concerns of Niagara Mohawk Power Corporation, doing business as National Grid (National Grid),¹ regarding the formulas and methodology used by these organizations to establish installed capacity requirements (ICAP Requirements) applicable to utilities in New York State. This order also grants the requests by National Grid and two other utilities in New York State (Upstate Utilities)² that the Commission require Reliability Council and NYISO to file continuing informational reports on their progress in resolving National Grid's concerns.

Background

2. On October 5, 2005, National Grid filed a complaint claiming that Reliability Council's and NYISO's practices for establishing mandatory minimum ICAP Requirements for the purpose of preserving reliable electric service throughout the New

¹ National Grid USA is a subsidiary of United Kingdom-based National Grid.

² The two utilities, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation, are subsidiaries of Energy East Corporation.

York Control Area (NYCA)³ inequitably cause customers upstate of New York City and Long Island to subsidize the costs of maintaining reliability in the downstate zones, and that its objections to these practices, made through the two organizations' stakeholder processes, had been fruitless.

3. On February 2, 2006,⁴ the Commission dismissed National Grid's complaint, without prejudice, finding that National Grid had filed its complaint prematurely, without exhausting its remedies within Reliability Council or NYISO, and that to grant the complaint would circumvent normal Reliability Council and NYISO procedures and the full participation of other interested parties. Nevertheless, the Commission directed Reliability Council and NYISO to file, within 90 days of the date of issue of the order, a report describing the progress that they had made in resolving National Grid's concerns.⁵

4. Reliability Council and NYISO filed their joint report on April 28, 2006 (Joint Report). In the Joint Report, Reliability Council and NYISO informed the Commission that, for the 2006-2007 Capability Year,⁶ both Reliability Council and NYISO had denied National Grid's request that they adopt National Grid's preferred method of establishing NYCA utilities' reliability requirements. However, the Joint Report explained, the Reliability Council Executive Committee authorized a "Lessons Learned" review of the methodology that Reliability Council had used for 2006-2007, and the NYISO Board of Directors concluded that further stakeholder process was necessary to allow adequate consideration of the issues raised.⁷ The Joint Report described the ongoing studies of

³ NYCA covers New York State and is divided into eleven zones, A through K. Zones J and K comprise New York City and Long Island, respectively, and are colloquially referred to as "downstate," with the rest of the state referred to as "upstate."

⁴ *Niagara Mohawk Power Corp., a National Grid Co. v. New York State Reliability Council and New York Independent System Operator, Inc.*, 114 FERC ¶ 61,098 (2006) (February 2, 2006 Order).

⁵ *Id.* at P 25.

⁶ A Capability Year runs May 1 through April 30.

⁷ Joint Report at 7. In an action referenced by the Joint Report, the NYISO Board of Directors, on March 28, 2006, directed its staff to facilitate studies to ensure that consideration of appropriate changes to the methodologies is completed in time for application to the 2007-2008 Capability Year. *See* March 28, 2006 NYISO Board of Directors Decision on Appeal of the February 28, 2006 Management Committee Vote Not to Pass a Motion to Change the NY Control Area Installed Reserve Margin and Locational Capacity Requirements at 3.

(http://www.nyiso.com/public/webdocs/committees/appeals/feb_9_2006/board_decision.pdf)

current methodologies, and Reliability Council's and NYISO's intent to consider improvements to these methodologies upon the studies' conclusions. According to the Joint Report, another study will evaluate the reliability parameters and inter-zonal assistance between the two NYCA "Superzones," identified as Zones A through I (upstate) and Zones J and K (downstate).⁸ The Joint Report stated that Reliability Council and NYISO had established a joint task force, called the Resource Adequacy Issues Task Force (Task Force), to address the issues raised by National Grid.⁹

5. Notice of the Joint Report was published in the *Federal Register*, 71 Fed. Reg. 29,328 (2006), with interventions and protests due on or before May 26, 2006. National Grid and Upstate Utilities both filed comments. On June 12, 2006, Reliability Council and a group of New York utilities and other entities (New York Entities)¹⁰ each filed a response to these comments.

Positions

6. National Grid and Upstate Utilities both ask the Commission to retain jurisdiction over the issues raised in the complaint proceeding and to require continued progress reports in order to ensure the successful completion of the stakeholder process with appropriate procedural protections. Specifically, they ask the Commission to require Reliability Council and NYISO to file a supplemental report, within 30 days, that complies with the February 2, 2006 Order, and also to file ongoing status reports every 90 days thereafter, and a final report that addresses the issues of any subsidies in New York's capacity markets and resulting price distortions. They also ask the Commission to resolve the issues set forth in National Grid's complaint so that any recommendation or change can be implemented in time for the 2007-2008 Capability Year.

7. In addition, National Grid states that, while the Joint Report describes the commendable efforts that Reliability Council and NYISO have undertaken, nothing in the Joint Report specifies how these efforts will address the fundamental market impact that currently results from subsidies embedded in the current method for setting resource adequacy responsibilities. Nor, National Grid asserts, does the Joint Report contain a firm and definitive timeline with procedural mechanisms to address disagreements in

⁸ Joint Report at 9-10.

⁹ *Id.* at 11-12.

¹⁰ New York Entities are: Consolidated Edison Company of New York, Inc. (ConEd); Orange & Rockland Utilities, Inc. (a wholly-owned subsidiary of ConEd); the Long Island Power Authority and its operating subsidiary, LIPA; the New York Power Authority; the City of New York; Consumer Power Advocates; and the New York Energy Consumers Council, Inc.

these processes. National Grid states its concern that neither Reliability Council nor NYISO has meaningfully addressed National Grid's concerns when establishing the ICAP Requirements for the 2006-2007 Capability Year, and that the two organizations' bifurcated responsibility for ensuring reliability presents a difficult practical problem that diminishes the likelihood of resolving National Grid's concerns over the ICAP Requirements in time for the 2007-2008 Capability Year.

8. In its response, Reliability Council states that its and NYISO's normal governance processes are fully addressing National Grid's complaint. It objects to the request for ongoing periodic reports as unnecessary and inconsistent with the Commission's directive that the issues raised by National Grid first be fully addressed within the organizations' normal governance processes. Reliability Council asserts that the reports themselves would almost certainly become a source of unnecessary additional litigation. New York Entities support Reliability Council's position. They contend that National Grid and Upstate Utilities ignore the work being done by the ongoing Task Force, and point out that the lack of immediate agreement by the Task Force with National Grid's proposed methodology does not mean that National Grid's fundamental issues are not being looked at and addressed through the stakeholder process.

Commission Determination

Procedural Matter

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) 92006) prohibits an answer to a comment unless otherwise ordered by the decisional authority. We will accept Reliability Council's and New York Entities' responses because they have provided information that assisted us in our decision-making process.

Informational Reports

10. We find that the Joint Report complies with the Commission's directive in the February 2, 2006 Order. We will therefore accept it.

11. As noted above, National Grid and Upstate Utilities request that the Commission retain jurisdiction over the issues raised by National Grid in its complaint. We construe National Grid's and Upstate Utilities' requests to mean that they want the Commission to continue monitoring how Reliability Council and NYISO address and finally resolve the concerns raised in National Grid's complaint through continued periodic reports. We will grant this request to the extent we discuss below.

12. We will require Reliability Council and NYISO to file reports every quarter-year, beginning September 29, 2006, to describe the progress that they, their Task Force, and

National Grid are making in resolving National Grid's concerns, with specification of the progress made since the previous quarterly report. Although we will not, at this time, establish a date certain by which time Reliability Council and NYISO must have completed acting on National Grid's concerns, we will nevertheless require these organizations to inform the Commission of the dates by which they anticipate completing the studies and action items discussed in the Joint Report. These quarterly reports are for informational purposes only. We do not intend to publish notice of the reports in the *Federal Register*; nor do we intend to issue orders addressing the reports or any responsive pleadings.¹¹

The Commission orders:

(A) The April 28, 2006 Joint Report filed by Reliability Council and NYISO is hereby accepted.

(B) Reliability Council and NYISO are hereby directed to file quarterly reports, beginning September 29, 2006, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹¹ See *New York Independent System Operator, Inc.*, 116 FERC ¶ 61,043 at P 23 (2006) (status reports filed for informational purposes do not require Commission action); *San Diego Gas & Electric Company, Complainant v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents*, 107 FERC ¶ 61,166 at P 72 (2004) (Commission will not address comments on a filing directed for informational purposes only).