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118 FERC ¶ 61,179
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York State Reliability Council Docket No. ER07-429-000

ORDER ACCEPTING PROPOSED INSTALLED CAPACITY REQUIREMENT FOR THE 2007/2008 CAPABILITY YEAR

(Issued March 5, 2007)

1. In this order, the Commission accepts for filing the New York State Reliability Council's (NYSRC) Installed Capacity Requirement (ICR) for the New York Control Area (NYCA) for the 2007/2008 Capability Year[1] effective March 1, 2007.

I. Background

2. The NYSRC was established as part of the restructuring of the electricity market in New York State and the formation of the New York Independent System Operator (NYISO).[2] Consistent with section 3.03 of the NYSRC Agreement,[3] section 4.1 of the Agreement between the New York Independent System Operator, Inc. (NYISO) and NYSRC (NYISO/NYSRC Agreement), and section 5.10 of the NYISO Market Services

[1] May 1, 2007 through April 30, 2008.

[2] *Central Hudson Gas & Electric Corp.*, 83 FERC ¶ 61,352 (1998), *order on reh'g*, 87 FERC ¶ 61,135 (1999); *Central Hudson Gas & Electric Corp.*, 86 FERC ¶ 61,062 (1999); *Central Hudson Gas & Electric Corp.*, 87 FERC ¶ 61,135 (1999); *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,138 (1999).

[3] NYSRC Agreement dated 1999 by and among Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, New York State Electric & Gas Corp., Niagara Mohawk Power Corp., Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corp., all corporations organized under the laws of the State of New York, and Power Authority of the State of New York, and LIPA.

Tariff, the NYSRC annually establishes the state-wide ICR.[4] Section 3.03 of the NYSRC Agreement further states that any changes to the ICR require an appropriate filing and Commission approval.[5]

3. The ICR is a measure of the installed generating capability that load-serving entities in the NYCA are required to procure. The ICR is expressed as a percentage of forecasted peak loads for the NYCA and includes a reserve margin. The ICR currently is 118 percent of the forecasted peak loads. The Installed Reserve Margin (IRM) component of the ICR, also expressed as a percentage of peak load, currently is 18 percent.

4. Pursuant to its Reliability Rules, the NYSRC must establish the IRM requirement such that the probability of disconnecting any firm load due to resource deficiency shall be, on average, not more than once in ten years, stated as .1 day per year. In setting the IRM, the NYSRC is required by its Reliability Rules to consider such factors as the characteristics of the loads, uncertainty in the load forecast, outages and deratings of generating units, the effects of interconnections to other control areas, and transfer capabilities within the NYCA.

5. The IRM is implemented by the NYISO. Together with the capacity demand curve, the IRM is a critical input into the NYISO's installed capacity auctions, because it is used to calculate load serving entities' minimum capacity requirements.

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[4] In addition, section 3.01 of the NYSRC Agreement provides:

> Using the reliability standards, regulations, criteria, procedures, and rules established or imposed by NERC, NPCC, FERC, PSC, NRC, and any other government agency with jurisdiction over the reliability of the NYS Power system, other reliability criteria, and Local Reliability Rules, the NYSRC shall develop, establish, maintain, assure compliance with, and, from time-to-time, update the Reliability Rules which shall be complied with by the ISO and all entities engaging in electric power transactions on the NYS Power system.

[5] NYSRC has filed the ICR annually since the year 2000. The last change in the ICR, a reduction in the IRM from 22 percent to 18 percent, was accepted by the Commission in March 2000. *New York State Reliability Council*, 90 FERC ¶ 61,313 (2000).

II. The ICR Filing

6. On January 12, 2007, the NYSRC submitted the instant filing, advising the Commission that it has revised the ICR for the NYCA for the 2007/2008 capability year to 116.5 percent reflecting a 16.5 percent IRM and requesting that the Commission accept and approve the filing effective no later than March 1, 2007, so that the revised ICR will be in place for the installed capacity auction to be conducted by NYISO on March 29, 2007. The NYSRC included a copy of the New York Control Area /Installed Capacity Requirements for the Period May 2007 through April 2008, Technical Study Report (2007 IRM Study). The NYSRC states that, based on the 2007 IRM Study and other relevant factors, the NYSRC Executive Committee, by a vote of ten to three, adopted a required IRM of 16.5 percent for the New York Control Area for the 2007/2008 capability year, a reduction from the existing 18.0 percent IRM.

7. The NYSRC explains that the 2007 IRM Study is conducted by NYISO staff at the request and under the guidance of the NYSRC, using a computer model called the General Electric Multi-Area Reliability Simulation Program (GE-MARS), which the NYSRC asserts is a state-of-the-art program. The NYSRC states that the 2007 base case result is 2.0 percentage points lower than the 18 percent IRM requirement determined by the 2006 IRM Study. The NYSRC provides three principal reasons for the IRM reduction from the previous year: 1) several changes made to the GE-MARS program used for the 2007 IRM Study, the most significant of which corrects the treatment of emergency operating procedures (-1.2 percentage points); 2) an updated transmission representation, including updated system operating limits and transmission cable outage rates (-0.3 percentage points); and 3) updated generating unit outage rates (-0.4 percentage points).

8. The NYSRC states that, after considering the 2007 IRM Study results, the sensitivity cases and other relevant factors, including its experience and expertise, it adopted a 16.5 percent IRM for the 2007-2008 capability year.

III. Notice of Filings and Responsive Pleadings

9. Notice of NYSRC's filing was published in the *Federal Register*, 72 Fed. Reg. 3828 (2007), with interventions and protests due on or before January 26, 2007. This date was subsequently extended to February 2, 2007.

10. The following parties filed timely motions to intervene: NRG Companies, Keyspan-Ravenswood, LLC, and AES Eastern Energy, LP.

11. The following parties filed timely interventions and comments in support of the revised ICR: New York State Electric & Gas Corporation, Rochester Gas and Electric

Corporation, New York Power Authority, and Long Island Power Authority (collectively, NYSEG); New York Association of Public Power; Multiple Intervenors and the New York Municipal Power Agency; and the NYISO.

12. The Public Service Commission of the State of New York (New York Commission) timely intervened and submitted comments in regard to jurisdictional issues.

13. The following parties filed timely interventions and protests: Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Central Hudson Gas and Electric Corporation (collectively, Con Ed); Energy Curtailment Specialists, Inc.(ECS); Independent Power Producers of New York, Inc. (IPPNY); Mirant Energy Trading LLC, Mirant New York, Inc., Mirant Bowline, LLC, Mirant Lovett, LLC, and Mirant NY-Gen, LLC (Mirant Parties); and Niagara Mohawk Power Corporation (National Grid).

14. Dynegy Northeast Generation, Inc. and Sithe/Independence Power Partners, L.P. (collectively, Dynegy) moved to intervene and protest late in the proceeding.

15. National Grid, Con Ed, and the NYSRC each filed an answer to protests.

16. Those filing supportive comments assert that the IRM decision is supported by the results of the 2007 IRM Study and by the expertise and best judgment of the NYSRC. They express support for both the process and the results. LIPA asserts that the 18 percent IRM, approved by NYSRC as a result of the 2006 IRM Study, was based in part on a flawed version of GE-MARS, while the 2007 IRM Study takes advantage of program updates, improved logic and enhanced assumptions. LIPA states that the final vote on the IRM was held during a special Executive Committee meeting in which proposals for 14.1, 17.5, and 17 percent IRMs all failed before a 16.5 percent IRM was ultimately approved by a margin of ten affirmative to three negative votes. The NYISO points out that the 2007 IRM Study resulted in a 16.0 percent IRM but that 0.5 percent was added as a safety margin.

17. Protesters include both those favoring a higher IRM and those favoring a lower IRM. The Mirant Parties, Con Ed, and IPPNY argue on behalf of a higher IRM and criticize the assumptions underlying NYSRC's decision. Con Ed asserts that a rational IRM needs to account for the probabilistic nature of the calculations implicit in the model by taking a more conservative approach. Con Ed asserts that NYSRC did not use complete base case results contained in the study, nor did NYSRC account for relevant sensitivity analyses such as an outage of the largest plant in the state, and how this would impact meeting required reliability criteria. Con Ed argues that, had it done so, the NYSRC would have retained an IRM of 18.0 percent.

18. Mirant and IPPNY address the factors that NYSRC identified as most significant in the IRM reduction. Both argue that the significant improvement in the average effective forced outage rate, mainly caused by the removal of the year 2000 data, is likely to be offset by the increase in the number of intermittent, energy-limited new generation units coming online. Mirant argues that the modeling system update should have more real-world use to test its validity, and concludes it is imprudent to accept such a large change. It contends that such action would likely result in higher volatility in the market for capacity and may cause investors to demand higher returns for future investments.

19. ECS, the largest demand response provider in New York State, expresses concern that a reduction in the IRM will require less capacity to be purchased, thereby lowering the amount of energy obligated and committed to the day ahead energy markets. ECS contends that, with less generation available to be called upon, the NYISO will rely on demand response resources to assist in managing the load during what could be more Special Case Resource (SCR) event calls and this increased reliance on demand response customers will drive them from the SCR program. ECS further states that this potential negative impact on the demand response market comes at a time when more demand response resources are sought to play a more significant role in maintaining reliability.

20. National Grid requests that the Commission reject the proposed 16.5 percent IRM in favor of a 14.1 percent IRM, arguing that the NYSRC proposal would introduce inefficient economic signals and would be counterproductive from a reliability planning perspective because it would excessively rely on resources upstream of transmission constraints and arbitrarily raise the capacity requirements for the entire region rather than the downstate constrained zones. National Grid further states that the proposed 16.5 percent IRM violates the Commission's doctrine of cost allocation under which the costs of the selected infrastructure should be allocated at a subzone level to the load responsible for the problem. It adds that at a minimum, if 14.1 percent is not adopted, the Commission should not adjust the 16.5 percent figure any higher because doing so will only exacerbate National Grid's concerns.

21. In its answer to Con Ed's protest, National Grid argues that the Commission should reject Con Ed's proposal to increase the IRM to 18.0 percent. National Grid provides an error analysis which it contends indicates that both a 16.5 percent and a 14.1 percent IRM would satisfy both the Northeast Power Coordinating Council, Inc. reliability criteria and the NYSRC resource adequacy criteria.

22. The New York Commission states that it takes no position on the IRM adopted by NYSRC, but asserts that the Commission should accept for filing rather than approve any change in the IRM, subject to an ongoing New York Commission proceeding. It states that its comments are filed out of an abundance of caution to preserve its existing jurisdiction over the adequacy and reliable operation of the bulk power system facilities

within New York State, in a manner consistent with New York state law and the Federal Power Act (FPA). The New York Commission states that the installed reserve level is the subject of an ongoing proceeding before the New York Commission. It asserts that the Commission has recognized that the states are the appropriate entities to oversee and ensure the adequacy of the bulk power system and that IRMs are designed and intended to ensure such adequacy.[6] It further asserts that new section 215 of the FPA preserves the role of the states in regulating and ensuring the "safety and adequacy" of electric system facilities.[7] Finally, the New York Commission states, even if the IRM is considered a reliability standard, New York State retains authority to set the IRM provided New York's actions do not result in lesser reliability outside the state than that provided by the federal reliability standards. It asserts that, in this case, no federal reliability standard exists and, thus, New York's setting of an IRM will not result in any lesser reliability.

23. In its response to the comments and protests filed, the NYSRC clarifies the nature of the action it requests of the Commission, requesting that the Commission approve the revised IRM or, in the alternative, accept the NYSRC filing along with an express statement that the revised IRM will be binding on the NYISO under the Commission-approved agreements as of a specified effective date. The NYSRC further responds to protesters' critique of the 2007 IRM Study methodology with affidavits in support of the confidence level selected in the calculation of the 16.0 percent IRM, and in support of the selection of the base case. The NYSRC states that its decision is consistent with past practice and conforms to NYSRC and NYISO policies and procedures.

IV. Discussion

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 384.214(d) (2006), the Commission will grant Dynegy's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

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[6] The New York Commission cites *Devon Power LLC*, 109 FERC ¶ 61,145, at P 47 (2004); *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,285 at 62,382 (2004); *New York Independent System Operator, Inc*., 103 FERC ¶ 61,201 at 61,754(2003).

[7] 16 U.S.C.A. § 824o (West Supp. 2006).

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept National Grid's, Con Ed's, and the NYSRC's answers because they have provided information that assisted us in our decision-making process.

26. Under the NYSRC Agreement, as approved by the Commission, the mission of the NYSRC is to promote and preserve the reliability of electric service in New York. One of the NYSRC's obligations under the NYSRC Agreement, the NYSRC/NYISO Agreement, and NYISO Tariff is to establish a statewide annual ICR.[8] In order to fulfill that obligation, the NYSRC, in conjunction with NYISO staff, conducted the 2007 IRM Study using the GE-MARS program. The NYSRC subsequently determined by a vote of ten to three that a 16.5 percent IRM is an adequate reserve margin for the 2007/2008 capability year.

27. Protesters in general challenge the underlying assumptions of the 2007 IRM Study. With the exception of National Grid and the New York Commission, protesters object to the choice of 16.5 percent, arguing that a decrease of 1.5 percentage points is inappropriate for a variety of reasons and requesting the IRM be set at a higher figure. National Grid, on the other hand, argues that resources upstream of transmission constraints are being forced by a high IRM to subsidize downstate constrained zones and requests the IRM be further reduced to 14.1 percent. We find both positions unpersuasive.

28. The NYSRC, in accordance with the NYISO's Market Services Tariff,[9] followed its Reliability Rules in calculating the IRM. The NYSRC Reliability Rules require that the calculation of the IRM consider 1) characteristics of the loads, 2) uncertainty in the load forecast, 3) outages and deratings of generating units, 4) the effects of interconnections to other control areas, and 5) transfer capabilities within the NYCA. These factors were considered and resulted in a change from the previous year's IRM. The most significant change in the calculation was caused by change in the modeling of emergency operating procedures. In previous years the software used to calculate the IRM did not use all of these procedures and this year the software was updated to more accurately model them. An update of outage data also affected the calculation. Outage data considers a sliding five year window. A major outage took place just outside of the

[8] NYSRC Agreement, § 3.03; NYISO/NYSRC Agreement, § 4.5; NYISO Market Services Tariff, §§ 5.10 and 5.11.4.

[9] NYISO Market Services Tariff, § 5.11.4.

five year period. While the absence from the data of this outage raised concerns among protesters, the methodology used here is consistent with that used in past studies. We see no irregularities in the consideration of the factors listed in the Reliability Rules.

29. The Reliability Rules further state that "The NYSRC shall establish the IRM requirement for the NYCA such that the probability (or risk) of disconnecting any firm load due to resource deficiencies shall be, on average, not more than once in ten years." Here again the study methodology is consistent with that of past years. The study identifies a range of IRM values within a 99.7 percent confidence interval. A 16.0 percent IRM falls in the middle of this range. The Executive Committee, however, adopted the 16.5 percent IRM after considering the sensitivity cases and opting for adding a safety margin of .5 percent. The 16.5 percent IRM falls within the range indicated by the study. While protesters argue on behalf of other points in the range, the Executive Committee acted within its discretion and in accordance with the Reliability Rules.

30. We will accept the NYSRC's 16.5 percent IRM; the 16.5 percent IRM, thus, must be used by the NYISO in the determination of locational capacity requirements and in conducting installed capacity auctions until such time as the NYSRC submits a revised IRM. As noted above, the 16.5 percent IRM is supported by the 2007 IRM Study and NYSRC's analysis, and is an outcome of the stakeholder process which was carried out consistent with the NYSRC Agreement, the NYSRC/NYISO Agreement, and the NYISO Tariff. Further, a super majority of the NYSRC Executive Committee, ten votes to three, supports the proposed 16.5 percent IRM.

31. In regard to the New York Commission's concerns with respect to its jurisdiction, the Commission acknowledges those concerns and respects the traditional role of state and local entities over resource adequacy. Our goal is to appropriately recognize state and local jurisdiction over resource adequacy while at the same time fulfilling our statutory mandate under the FPA to ensure that rates, terms, and conditions of jurisdictional sales of electric energy and of jurisdictional transmission are just, reasonable and not unduly discriminatory or preferential.[10] The NYSRC is required to file with the Commission the reduction in the IRM from 18 to 16.5 percent under the terms of the NYSRC Agreement. NYSRC's filing is consistent with the requirement established in that Agreement. Moreover, to the extent the IRM is used to determine capacity charges, it affects Commission jurisdictional power sales rates and therefore is

[10] 16 U.S.C. §§ 824d and 824e (2000).

properly before us.[11] At this time, moreover, the New York Commission takes no position on the NYSRC's 16.5 percent IRM. Our acceptance of the 16.5 percent IRM here is, thus, not inconsistent with any decision or action of the New York Commission. That is, we see no conflict between our action here and any decision or action of the New York Commission.[12] Should the NYSRC, as a result of New York Commission action, adopt a different IRM percentage, then it is our expectation that the NYSRC would make a filing with the Commission to that effect.

32. Finally, we find good cause to grant waiver of the 60-day prior notice requirement of section 205 of the FPA to allow an effective date for the proposed revised ICR of March 1, 2007, as requested.

The Commission orders:

The proposed revised 16.5 percent ICR is hereby accepted for filing, effective March 1, 2007.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.

[11] *California Independent System Operator Corp*., 116 FERC ¶ 61,274 at P 1112–1119 (2006), *(*citing *California Independent System Operator Corp*., 115 FERC ¶ 61,172 at P 36 (2006), and *Gainesville Utility Dep't v. Florida Power Corp.*, 402 U.S. 515, 529 (1971) (the Commission has the "responsibility to the public to assure reliable efficient electric service")).

[12] Our intent has been to defer to the NYSRC and its processes in the first instance in reviewing a NYSRC-filed IRM. Here the 16.5 percent IRM is supported by the 2007 IRM Study and the NYSRC's analysis, and by the stakeholder process for selecting an IRM.