

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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January 25, 2008

VIA ELECTRONIC FILING

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. ER08-414-000 - New York State
Reliability Council

Dear Secretary Bose:

For filing, please find the Notice of Intervention and Comments of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

A handwritten signature in cursive script that reads 'David G. Drexler'.

David G. Drexler
Assistant Counsel

Attachment
cc: Service List

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York State Reliability Council) Docket No. ER08-414-000

NOTICE OF INTERVENTION AND COMMENTS
OF THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK

NOTICE OF INTERVENTION

On January 4, 2008, the New York State Reliability Council, L.L.C. (NYSRC) filed a revised Installed Capacity Requirement (ICR) for the New York Control Area (NYCA) for the Capability Year beginning May 1, 2008, and ending April 30, 2009 (NYSRC Filing). The New York State Public Service Commission hereby submits its Notice of Intervention and Comments in the above-captioned proceeding pursuant to the Federal Energy Regulatory Commission's (FERC or Commission) Combined Notice of Filings #1, issued January 10, 2008, and Rule 214 of FERC's Rules of Practice and Procedure.

Copies of all correspondence and pleadings should be addressed to:

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BACKGROUND

The NYSRC is responsible, in part, for establishing an annual statewide ICR for the NYCA, which is described in terms of an Installed Reserve Margin (IRM). The IRM is established such that the probability of disconnecting firm load, attributable to a resource deficiency, occurs no more than once in ten years. Load-Serving Entities (LSE) are required to procure resource capacity that is sufficient, when cumulated, to meet the statewide IRM. The mechanism whereby LSEs procure that capacity is through auctions for Installed Capacity (ICAP), which are administered by the New York Independent System Operator, Inc. (NYISO).

On December 14, 2007, the Executive Committee governing the NYSRC adopted an IRM of 15 percent for the NYCA for the 2008-2009 Capability Year. The NYSRC's Filing requests that the Commission "accept and approve" the IRM by March 1, 2008, so that the IRM can be reflected in the 2008 summer capability period auction that the NYISO intends to hold on March 28, 2008.

INTRODUCTION AND DISCUSSION

The IRM is designed to ensure the adequacy of electric system facilities in New York. Although the NYSRC seeks Commission approval of the IRM, the Federal Power Act reserves jurisdiction to the States to "set and enforce compliance with standards for [the] adequacy...of electric facilities," such as

the IRM.¹ Accordingly, the NYPSC seeks to clarify State and Federal jurisdictional responsibilities over the IRM to remove any regulatory uncertainty that may arise.²

The Commission has recognized the "traditional role of state and local entities over resource adequacy."³ In particular, the Commission has indicated that the NYPSC is "better placed to establish the appropriate ICAP quantity New York requires to serve...customers."⁴ As such, the Commission reviews matters regarding resource adequacy standards "for

¹ 16 U.S.C. §824o(i)(2).

² The NYPSC requested rehearing of the Commission's prior order concerning the IRM set by the NYSRC so that any jurisdictional uncertainty could be removed, but that request is still pending before the Commission. See, Docket No. ER07-429, New York State Reliability Council, Order Granting Rehearing for Further Consideration (issued May 4, 2007).

³ See, Docket No. ER07-429, New York State Reliability Council, Order Accepting Proposed Installed Capacity Requirement for the 2007/2008 Capability Year (issued March 5, 2007); see also, Docket No. ER03-563-038, et al., Devon Power LLC, et al., Order on Rehearing and Clarification (issued November 8, 2004)(indicating that "[r]esource adequacy is a matter that has traditionally rested with the states, and it should continue to rest there").

⁴ Docket No. ER03-647, New York Independent System Operator, Inc., Order Conditionally Accepting for Filing Tariff Revisions (issued May 20, 2003).

purposes of determining whether [they] would have any adverse effect on [its] jurisdictional matters."⁵

In this case, the Commission should review the IRM to ensure it does not adversely affect matters within FERC's exclusive jurisdiction. To the extent the Commission finds that the IRM does not create any such adverse impacts, the Commission should accept the 15 percent IRM for filing purposes only, as it did in 2000.⁶ In the event the revised IRM would result in any adverse impacts, the Commission should identify those impacts and allow the NYSRC to address them, in consultation with the NYPSC. This approach will ensure that the Commission can meet its statutory responsibilities, without overstepping jurisdictional boundaries.

In order to fulfill the NYPSC's responsibility to ensure the adequacy of electric facilities,⁷ we have commenced an

⁵ Docket No. ER00-1671, New York State Reliability Council, Order Accepting for Filing Revised Installed Capacity Requirement, 90 FERC ¶61,313 (issued March 29, 2000) (concluding that "the revision does not appear to have an adverse effect on matters within [FERC's] exclusive jurisdiction").

⁶ Docket No. ER00-1671, New York State Reliability Council, Order Accepting for Filing Revised Installed Capacity Requirement, 90 FERC ¶61,313 (issued March 29, 2000).

⁷ See, N.Y. PUB. SERV. §65(1) (McKinney 2000) (providing that "every electric corporation...shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable"). The NYPSC approved the current IRM for NYCA of 16.5 percent. See, Case 07-E-0088, et al., Installed Reserve Margin, Order Adopting an Installed Reserve Margin for the New York Control Area (issued March 8, 2007).

inquiry into the NYSRC's establishment of a 15 percent IRM, and have sought comments from interested parties by February 11, 2008.⁸ Because we intend to consider those comments in ruling upon the revised IRM, the NYPSC does not take a position on the NYSRC's Filing at this time. However, we are cognizant of the NYSRC's request for a determination by March 1, 2008, and plan to take appropriate action in time to prevent uncertainty from affecting the upcoming NYISO auction. At the time a determination is made, the NYPSC will inform FERC of the decision.

CONCLUSION

In accordance with the discussion above, the Commission should review the proposed IRM to determine whether it would adversely affect matters within FERC's exclusive

⁸ See, Case 07-E-0088, et al., Installed Reserve Margin, Notice Soliciting Comments on Adoption of Installed Reserve Margin (issued January 15, 2008).

jurisdiction, and accept the IRM for informational purposes only
in the event there is no such effect.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter McGowan". The signature is written in a cursive, flowing style.

Peter McGowan
Acting General Counsel
Public Service Commission
of the State of New York
By: David G. Drexler
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-8178

Dated: January 25, 2008
Albany, New York

CERTIFICATE OF SERVICE

I, Ruth Tarrance, do hereby certify that I will serve on January 25, 2008, the foregoing Comments of the Public Service Commission of the State of New York upon each of the parties of record indicated on the official service list compiled by the Secretary in this proceeding.

Date: January 25, 2008
Albany, New York


Ruth Tarrance