

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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February 2, 2007

VIA ELECTRONIC FILING

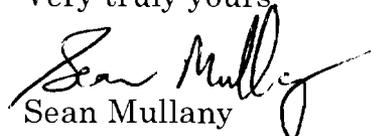
Honorable Magalie R. Salas, Secretary
Federal Energy Regulation Commission
888 First Street, N. E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. ER07-429-000 – New York State Reliability Council,
L.L.C.; Revised Installed Capacity Requirement for the New
York Control Area for the Capability Year Beginning On May 1,
2007 and Ending On April 30, 2008

Dear Secretary Salas:

Pursuant to Rule 214 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure, and the Notice of Extension of Time issued on January 24, 2007, enclosed 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) 474-7663.

Very truly yours,


Sean Mullany
Assistant Counsel

Attachment

New York Control Area (“NYCA”), from 18% to 16.5%, for the capability period beginning on May 1, 2007 and ending on April 30, 2008. The NYSRC has asked that FERC “accept and approve” the NYSRC’s filing by no later than March 1, 2007 “so that the revised ICR may be in place” prior to the ICAP auction to be conducted by the New York Independent System Operator, Inc. (“NYISO”) on March 29, 2007.

The NYPSC submits these comments in an abundance of caution to preserve the New York’s 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”). These comments do not take a position on the installed reserve level recently adopted by the NYSRC. That inquiry is the subject of a proceeding before the NYPSC. Nor are these comments intended to question the Agreement between the NYISO and the NYSRC, but are intended only to be sure the Commission does not act beyond its jurisdiction. Therefore, as FERC did in 2000, it should “accept for filing” rather than approve any change in the IRM, subject to the NYPSC proceeding.

To date, FERC has recognized that the States are the appropriate entities to oversee and ensure the adequacy of the bulk-power system, and that installed reserve margins are designed and intended to ensure electric system adequacy. The FPA preserves the states’ ability to oversee and ensure the adequacy of bulk-power system facilities within their respective jurisdictions, including the setting of an installed reserve margin. In the alternative, if the setting of installed reserve margins relates to the reliable operation of the bulk power system, which we do not believe to be the case, the FPA preserves the State’s ability to act in a manner not

inconsistent with Federal reliability standards, and the adoption of an IRM by the NYPSC for the NYCA will not be inconsistent with the FPA.

DISCUSSION

In 2000, the NYSRC reduced the IRM for New York from 22% to 18%. At that time, FERC reviewed the revised IRM and concluded that it did not “have any adverse effect on [FERC-]jurisdictional matters.” FERC Docket ER00-1671-000, Order Accepting For Filing Revised Installed Capacity Requirement, (Issued March 29, 2000), at 4. Consistent with FERC’s prior recognition of the purpose of installed reserves and the States’ role in setting IRMs, FERC did not approve the NYSRC’s revised IRM, but instead accepted the NYSRC’s documents for filing.

FERC has recognized that the states are the appropriate entities to regulate the "adequacy" of the bulk-power system. FERC Docket Nos. ER03-563-038, EL04-102-001, *Devon Power LLC, et al.*, Order on Rehearing and Clarification, 109 FERC P61,145, ¶47 (Nov. 8, 2004) ["Resource adequacy is a matter that has traditionally rested with the states, and it should continue to rest there."]; FERC Docket Nos. ER04-691-004, *et al.*, *Midwest Independent Transmission System Operator, Inc., et al.*, Order On Compliance Filing 109 FERC P61,285, P62,382 (Dec. 20, 2004). ["Finally, we note that if LG&E is concerned that an appropriate adequacy standard is in effect for load in Kentucky, this issue would be most appropriately addressed by the Kentucky Public Service Commission."]; FERC Docket No. ER03-647-000, *New York Independent System Operator, Inc.*, Order Conditionally Accepting For Filing Tariff Revisions, 103 FERC P61,201, P61,754, ¶ 15 (May 20, 2003) ["The Commission also believes that [the NYPSC and NYISO] are better placed to

establish the appropriate ICAP quantity New York requires to serve those customers over the short and long term"].

FERC's prior treatment of the IRM for the NYCA is consistent with the FPA which preserves the role of the states in regulating and ensuring the "safety and adequacy" of electric system facilities. *See, generally*, 16 USCS § 824o. In contrast, Federal reliability standards are intended to ensure the operation of "the elements of the bulk-power system . . . so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance . . . or unanticipated failure of system elements." 16 U.S.C. § 824o(a)(4).

Thus, taken together, the several provisions of 16 U.S.C. § 824o preserve the ability of the NYPSC to establish an IRM "to create a demand for new resource entry in advance of a shortage so that enough supply construction and demand response infrastructure installation are begun in time to avert the shortage." 67 Fed. Reg. at 55516, ¶520.¹

¹ FERC has described installed reserves as intended to "ensure that enough actual, deliverable generating capacity is available or developed at satisfactory locations to avert a future shortage," 67 Fed. Reg. 55452, 55515, and "to create a demand for new resource entry *in advance of a shortage* so that enough supply construction and demand response infrastructure installation are begun in time to avert the shortage." 67 Fed. Reg. at 55516, ¶520 (emphasis added). Installed reserves are established through a long-term planning process.

In contrast, operating reserves are intended to ensure continued reliable operation of the system in the event of a sudden or unforeseen failure of one or more element of the system. *Calif. ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 836 (9th Cir. 2004). Operating reserves must be available virtually instantaneously to enable system operators to recover from sudden contingencies.

Finally, even if the IRM is considered a reliability standard, which we do not believe, 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." 16 U.S.C. § 824o(i)(3). In this case, no Federal reliability standard for installed reserves exists. Therefore, New York's setting of an IRM for the NYCA will not result in any lesser reliability under any Federal reliability standard or any lesser reliability outside New York State.

The NYPSC has commenced a proceeding to determine whether to adopt an IRM of 16.5% for the NYCA for the capability year beginning May 1, 2007 and ending April 30, 2008, in order to ensure that the NYISO's Installed Capacity auction on March 29, 2007 is carried out without disruption. Case 07-E-0080, *et al.*, In re Adoption of an Installed Reserve Margin for the NYCA, Notice Soliciting Comments (Issued January 19, 2007).

CONCLUSION

For the reasons stated above, the NYPSC requests that FERC accept the NYSRC's filing for informational purposes only.

Respectfully submitted,



Peter McGowan
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Public Service
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(518) 474-7663

Dated: February 2, 2007
Albany, New York

CERTIFICATE OF SERVICE

I, **Margaret Manupella**, do hereby certify that I will serve on **February 2, 2007** the foregoing **Notice of Intervention and 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: February 2, 2007
Albany, New York


Margaret Manupella

Sworn to before me this
2nd day of February, 2007


Notary Public

DEBORAH J. STILSON
Notary Public, State of New York
No. 4987367
Qualified in Schenectady County
Commission Expires Oct. 15, 2009