STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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February 29, 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:

On January 25, 2008, the New York State Public Service Commission (NYPSC) submitted a Notice of Intervention and Comments in the above-entitled proceeding regarding the adoption of an Installed Reserve Margin (IRM) for the New York Control Area (NYCA) for the upcoming Capability Year beginning May 1, 2008, and ending April 30, 2009. At that time, the NYPSC did not take a position on the level of the IRM, given that the NYPSC was conducting its own investigation into the IRM. However, the NYPSC indicated that it would inform the Federal Energy Regulatory Commission of its position when a determination was made.

On February 29, 2008, the NYPSC adopted an IRM for the NYCA for the upcoming Capability Year. The NYPSC hereby provides a copy of that determination. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

David G. Drexler
Assistant Counsel

Attachment
cc: Service List

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on February 29, 2008

COMMISSIONER PRESENT:

Garry A. Brown, Chairman

CASE 07-E-0088 - In the Matter of the Adoption of an Installed Reserve Margin for the New York Control Area.

CASE 05-E-1180 - In the Matter of the Reliability Rules of the New York State Reliability Council and the Criteria of the Northeast Power Coordinating Council.

ORDER ADOPTING INSTALLED RESERVE MARGIN FOR THE NEW YORK CONTROL AREA FOR THE 2008-2009 CAPABILITY YEAR

(Issued and Effective February 29, 2008)

INTRODUCTION

On December 14, 2007, the Executive Committee of the New York State Reliability Council (NYSRC) adopted an Installed Reserve Margin (IRM) for the New York Control Area (NYCA) of 15.0% for the upcoming Capability Year from May 2008 through April 2009. The Commission issued a notice on January 15, 2008, soliciting comments on whether a 15.0% IRM should be adopted. Interested parties were permitted to submit comments on or before February 11, 2008. In this Order, the Commission considers the comments filed in response to the notice and adopts an IRM of 15.0% for the NYCA for the upcoming Capability Year.

BACKGROUND

The NYSRC was formed in 1998 as part of the restructuring of New York's wholesale electricity market in order to promote and preserve the reliability of New York's power system.[1] Among other matters, the NYSRC is responsible for developing reliability rules in accordance with the standards, criteria and regulations set forth by the Commission, the North American Electric Reliability Corporation (NERC), the Northeast Power Coordinating Council (NPCC), the Federal Energy Regulatory Commission (FERC), and the Nuclear Regulatory Commission. In addition to incorporating such criteria, the NYSRC implements more specific or more stringent reliability standards that account for special circumstances within the NYCA, such as the configuration of New York's bulk power system and the severe consequences that may result from power interruptions in New York City and Long Island.

One of the NYSRC's key responsibilities is the establishment of an annual statewide IRM. The IRM is intended to ensure that adequate levels of generation are available to serve load during normal and system emergency conditions. In establishing the IRM, the NYSRC considers various factors, including load characteristics, uncertainties in load forecasts, the transfer capability and configuration of the New York State transmission system, interconnections with other control areas, generation outages and deratings, and local reliability rules,

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[1] The NYSRC was formed by agreement among Central Hudson Gas & Electric Corporation (CHG&E), Consolidated Edison Company of New York, Inc. (Con Edison), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation (National Grid), Orange and Rockland Utilities, Inc. (O&R), Rochester Gas and Electric Corporation (RG&E), the Long Island Power Authority (LIPA), and the Power Authority of the State of New York (NYPA).

as well as other pertinent inputs.[2] In accordance with NYSRC Reliability Rule A-R1, the NYSRC must establish the IRM for the NYCA, expressed as a percentage above forecasted peak loads:

> 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. Compliance with this criterion shall be evaluated probabilistically, such that the loss of load expectation (LOLE) of disconnecting firm load due to resource deficiencies shall be on average, no more than 0.1 day per year.

Load-Serving Entities (LSE) are required to procure resource capacity that is sufficient to meet the statewide IRM when cumulated, as well as any Locational Capacity Requirements (LCR).[3] The New York Independent System Operator, Inc. (NYISO) determines each LSEs' LCR based on the IRM. LSEs comply with the LCR and IRM by buying Installed Capacity (ICAP), which is a commitment by a generator to bid energy it can produce into the Day-Ahead Energy Market administered by the NYISO. LSEs may meet their ICAP requirements by either self-supplying (e.g., bidding into the ICAP market either LSE-owned generation or ICAP obtained through a bilateral contract), or by purchasing ICAP through NYISO-administered ICAP auctions.

Participation in the NYISO-administered ICAP auctions is generally voluntary, although the NYISO conducts a monthly spot auction in which LSEs are obligated to purchase any remaining ICAP requirements pursuant to the ICAP "Demand Curve."[4] The Demand Curve, which is administratively set, establishes the

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[2] NYSRC Agreement section 3.03; NYSRC Reliability Rules, Resource Adequacy, Intro to Section A.

[3] NYSRC Reliability Rule A-R2. Currently, LCRs apply in New York City and on Long Island.

[4] If sufficient amounts of ICAP cannot be procured in the spot market to meet the LCR, the NYISO attempts to procure

quantity and price of ICAP commitments that LSEs are required to procure in relation to the IRM.[5]

COMMENTS

NYSRC

The NYSRC requests that the Commission adopt a 15.0% IRM for the NYCA for the upcoming Capability Year, which begins on May 1, 2008, and ends on April 30, 2009. The NYSRC advises that, on December 14, 2007, its Executive Committee voted to adopt an IRM of 15.0%.[6] The Executive Committee's decision was based on a technical study that was performed by the NYISO at the request and under the guidance of the NYSRC.[7]

The 2008 IRM Study employed the General Electric Multi-Area Reliability Simulation computer modeling software program to calculate the probabilities of outages of generating units, in conjunction with load and transmission models, to determine the number of days per year of expected capacity

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additional resources to make up any deficiency at a price that is capped at the spot auction clearing price.

[5] Under the Demand Curve, the price for ICAP gradually deceases as the amount of available ICAP goes above the IRM, while it increases as available ICAP decreases, in order to send an appropriate price signal when additional resources are needed.

[6] The NYSRC is governed by an Executive Committee, which is comprised of thirteen members, including six Transmission Owners (i.e., CHG&E, Con Edison, LIPA, National Grid, NYSEG/RG&E, and NYPA) one representative of the Wholesale Sellers sector (i.e., Independent Power Producers of New York, Inc. (IPPNY)), one representative of the Large Consumers sector (i.e., Multiple Intervenors), one representative of the Municipals and Electric Cooperatives sector (i.e., New York Municipal Power Agency), and four members not affiliated with any Market Participants.

[7] New York State Reliability Council, L.L.C., Installed Capacity Subcommittee, New York Control Area Installed Capacity Requirements for The Period May 2008 Through April 2009, Technical Study Report (December 14, 2007) (2008 IRM Study).

shortages. The NYSRC indicates that this technique is commonly used in the electric power industry for determining IRM requirements.

The 2008 IRM Study was conducted to determine the IRM for the NYCA that is necessary to meet NYSRC and NPCC criteria. The 2008 IRM Study determined that, under base case conditions, the required IRM for NYCA should be 15.0%. The 15.0% IRM represents a one percent drop in the base case from the 2007 IRM Study, which the NYSRC explains is due to: 1) the continued improvement of NYCA generating unit availability; 2) updated NYCA transmission topology (i.e., improved capacity transfer capabilities of the Dunwoodie-South interface and the 660 MW Neptune transmission line); 3) improved emergency assistance benefits from neighboring control areas; and, 4) reduced cable outage rates.

In order to illustrate how the IRM would be affected by different assumptions, the 2008 IRM Study included 19 sensitivity studies. These sensitivities used different assumptions from those adopted in the base case, such as transmission assistance from external control areas, generation unit availability, load growth, emergency operating procedures and environmental initiatives. After considering the sensitivity results, the NYSRC Executive Committee determined that a deviation from the 15.0% base case was not warranted in establishing a final IRM.

Since the 15.0% IRM represents a change from the current IRM for the 2007-2008 Capability Year, the NYSRC Agreement requires approval of the revised IRM from FERC.[8] On January 4, 2008, the NYSRC filed for FERC's approval of the 15.0% IRM by no later than March 1, 2008, so that the revised

[8] NYSRC Agreement, Section 3.03.

IRM may be in place prior to the ICAP auction to be conducted by the NYISO on March 28, 2008 (January 4 FERC Filing).[9]

NYISO

The NYISO supports the proposed IRM of 15.0%, which it believes is within a range of reasonable IRM levels to maintain reliability of the NYCA bulk power system. According to the NYISO, the NYSRC correctly applied the LOLE criterion and the 2008 IRM Study to arrive at an IRM of 15.0%.

The NYISO requests expeditious action on the IRM, and indicates that it needs to know the NYCA IRM by March 1, 2008, so that it can calculate the minimum NYCA-wide capacity requirements in time for the March 28, 2008 ICAP auctions. A decision by March 1, 2008, the NYISO asserts, is also needed in order to inform market participants, including LSEs, of their new minimum requirements by March 14, 2008, so that they have sufficient notice to develop or adjust bidding strategies. The NYISO recommends that the Commission coordinate its decision with FERC, since inconsistent determinations would create uncertainty and confusion about which IRM to apply.

National Grid

While National Grid observes that the proposed IRM of 15.0% satisfies both system adequacy and reliability, it neither supports nor opposes the NYSRC's proposed IRM.

NYSEG/RG&E

NYSEG/RG&E support the timely adoption of a 15.0% IRM based on the 2008 IRM Study, which is designed to meet, or exceed, the reliability criteria established by the NYSRC, NPCC, and NERC. NYSEG/RG&E express a high degree of confidence in the 2008 IRM Study, given enhancements in the primary modeling

[9] The NYSRC requests that the January 4 FERC Filing and the 2008 IRM Study, which are attached as Appendices to the NYSRC's comments, be made part of the record here.

software and the use of newer methodologies to clarify the results of the study.

Con Edison/O&R

In jointly filed comments, Con Edison/O&R recommend an IRM of 16.0% or higher to account for various sensitivities studied by the NYSRC, which the companies believe will occur in the near future. The companies note that the present IRM of 16.5% includes a 0.5% amount over the base case to account for the probability that one of the events modeled as a contingency could occur.

In particular, the companies argue that a sensitivity factor is appropriate for the new 660 MW "Neptune" transmission line between PJM Interconnection and Long Island because the NYSRC assumed greater reliability benefits by modeling the line as an emergency tie rather than as a Long Island capacity resource, which is LIPA's intended use of the line. Although the timing and terms regarding LIPA's use of the Neptune line are not yet known, Con Edison/O&R argue that LIPA may begin using the line as a Long Island capacity resource at any time. The companies also indicate that a prolonged outage at Indian Point would cause an increase in the IRM.

Further, Con Edison/O&R point to two New York State Department of Environmental Conservation (NYSDEC) initiatives, which the NYSRC analyzed as sensitivities in the 2008 IRM Study. The first initiative is the NYSDEC's "High Electric Demand Day" (HEDD) program to reduce NO_x emissions in order to bring New York into compliance with National Ambient Air Quality Standards for ozone. The second initiative is the NYSDEC's Regional Greenhouse Gas Initiative (RGGI), which is designed to cap CO_2 emissions from power plants larger than 25 MW. The companies contend that HEDD and RGGI, which are expected to go into effect in 2009, could cause substantial increases in the IRM.

Con Edison/O&R argue that a 15.0% IRM would provide an insufficient price signal for the 2008-2009 Capability Year, given the likelihood that the IRM will increase and that new resources will be needed in the near future. This low price signal, according to the companies, will make it more difficult to finance merchant generating plants. They also suggest that volatility in the IRM may impact decisions to invest in needed resources.[10]

IPPNY

IPPNY disagrees with the proposed reduction of the IRM, and supports the adoption of a 16.5% IRM, since it believes that the IRM will likely increase in 2009. IPPNY argues that the NYSDEC's RGGI and HEDD initiatives, which the NYSRC analyzed as sensitivities in the 2008 IRM Study, will require a higher IRM in 2009. IPPNY claims that achieving the HEDD emission reduction goals will require some existing generation units to limit capacity output, and thereby cause the IRM to increase. Similarly, IPPNY argues that RGGI will cause reductions in existing capacity and drive the IRM higher. Given its belief that the IRM will increase in future years, IPPNY contends that accepting a 15.0% IRM for 2008 will send an improper price signal to the ICAP market.

In addition, IPPNY argues that the IRM should be increased to reflect additional wind generation expected to become operational this summer. IPPNY states that modeling this generation would increase the base case IRM results by 1.5%.

Competitive Power Ventures (CPV)

[10] In comments submitted out-of-time, the New York City Economic Development Corporation expresses its support of the comments filed by Con Edison/O&R. Energy Curtailment Specialists, Inc. (ECS) also submitted untimely comments, raising concerns that a reduction in the IRM will reduce the number of resources participating in the NYISO's demand response programs.

CPV agrees with IPPNY's comments, and offers additional support to increase the IRM to at least 16.5%. In particular, CPV suggests that the Commission consider that the reliability standard upon which the IRM is based (i.e., LOLE of no more than 0.1 day per year) is out of date and may be insufficiently conservative to adequately assure reliability in the NYCA. CPV argues that the reliability standard was established many years ago when the financial costs of a large-scale power outage and importance of reliability were not as significant as they are today. According to CPV, the current LOLE does not reflect the present value of lost load in New York.

New York Association of Public Power (NYAPP)

According to NYAPP, the 15.0% IRM is consistent with the rules for adequacy and reliability with the NYCA.[11] Therefore, NYAPP requests that the 15.0% IRM be adopted in a timely manner to allow implementation for the upcoming Capability Year.

Multiple Intervenors

According to Multiple Intervenors, a reduction in the IRM from 16.5% to 15.0% is amply supported by the 2008 IRM Study and the NYSRC's expertise and best judgment.[12] The 2008 IRM Study, it avers, is comprehensive and reflects numerous improvements from prior technical studies.

Multiple Intervenors urges the adoption of the 15.0% IRM as expeditiously as possible. It argues that "any delay in the implementation of an IRM no greater than 15.0% could lead to increased ICAP costs to support a reserve margin in excess of

[11] NYAPP is an unincorporated association of nine municipal electric utilities and four rural electric cooperatives within New York.

[12] Multiple Intervenors notes that it is a member of the NYSRC Executive Committee, representing large end-use consumers.

what is needed to ensure compliance with all applicable reliability rules and standards."[13]

NYSRC Response

The NYSRC responds to arguments raised by IPPNY, Con Edison/O&R and ECS. The NYSRC contends that, contrary to IPPNY's assertion, the RGGI and HEDD environmental initiatives considered as sensitivities as part of the 2008 IRM Study do not provide a sound basis on which to establish the IRM for the upcoming Capability Year. The NYSRC points out that final state regulations have not been adopted at this point with respect to either of the two environmental initiatives, and that neither of the initiatives will be in effect during the 2008-2009 Capability Year. Further, they note that the sensitivity studies did not reflect the potential of control technology, other mitigating actions, or initiatives to reduce energy demand to offset the potential impacts of these initiatives.

The NYSRC also disputes IPPNY's contention that the additional wind generation, which is expected to come on-line this summer, justifies a change in the IRM. The NYSRC responds that although "a base case that includes a higher percentage of wind capacity would tend to increase the IRM, if that capacity were incremental as suggested by IPPNY, it would decrease the LOLE and enhance reliability."

Responding to Con Edison/O&R's argument regarding the Neptune transmission line, the NYSRC notes that LIPA is required to inform the NYISO by the August preceding the start of the next Capability Year of any intention to use the line as a Long Island capacity resource. This would allow a future IRM study to consider the impact of modeling the line differently than as an emergency tie, as was done in the 2008 IRM Study. Regardless, the NYSRC asserts that the net effect on the IRM of

[13] Multiple Intervenors Comments at p. 10.

a potential change in the use of the Neptune line is not known at this time, and "cannot affect the IRM for the 2008-2009 Capability Year."

Finally, the NYSRC responds to the claim by ECS that lowering the IRM will adversely affect the number of resources participating in the NYISO's demand response programs. According to ECS, lowering the IRM will reduce the amount of generation committed to bid into the day-ahead energy market, and cause the NYISO to increasingly rely on Special Case Resources (SCR). ECS maintains that significantly increased SCR events, which cause interruptions to businesses, will drive demand response customers away from participating in the SCR program. The NYSRC responds that all certified capacity is obligated to participate in the day-ahead market, regardless of the IRM. Further, the NYSRC offers evidence indicating that a reduction in the IRM does not correlate with the number of SCR events.

DISCUSSION

Jurisdiction Over The IRM

The New York State Public Service Law (PSL) provides 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."[14] Moreover, the PSL authorizes us to prescribe the "safe, efficient and adequate property, equipment and appliances thereafter to be used," whenever the NYPSC determines that the utility's existing equipment is "unsafe, inefficient or inadequate."[15] This authority encompasses prescribing

[14] PSL §65(1).

reliability rules necessary to ensure safe and adequate service.[16]

The IRM, as established by the NYSRC, is intended to ensure the adequacy of electric generating facilities in New York. As such, it is key among the tools available to the Commission to foster the adequacy of generating resources. While the IRM is a measure of adequacy, it is based, in part, on reliability criteria. Accordingly, the Commission has jurisdiction to review and approve the IRM, first as a matter of adequacy, and alternatively as a matter of reliability, so that electric corporations, such as LSEs, provide safe and adequate service, instrumentalities and facilities. The Commission has already exercised this authority in approving the current IRM of 16.5% for the NYCA.[17]

Coordination With FERC

Several comments requested that the Commission coordinate its approval with the FERC to ensure consistency and avoid confusion. The Commission concurs with the need for coordination between state and federal agencies, and we intend to develop a workable process in the future that will eliminate

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[15] PSL §66(5). The Commission also notes that 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. 16 U.S.C. §824o(i)(2).

[16] Case 05-E-1180, Matter of Reliability Rules, Order Adopting New York State Reliability Rules (issued February 9, 2006).

[17] 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).

any confusion.[18] Department of Public Service Staff (Staff) will work with the NYSRC to implement appropriate protocols to guide the timely development of future IRM determinations. Under these protocols, the Commission expects that the NYSRC can file its IRM determination in sufficient time for our review and approval, taking into account any necessary actions by the NYISO or FERC. Such a schedule should, at a minimum, provide for the NYSRC's filing of the next IRM by December 19, 2008, with comments from all parties due shortly thereafter.

The IRM for the 2008-2009 Capability Year

The NYSRC has considerable experience and expertise in evaluating and determining the sufficiency of the IRM within the NYCA. The 2008 IRM Study utilized a sophisticated computer model that included a detailed load, generation and transmission representation of the 11 NYCA zones, as well as the four external control areas. The model calculated the number of days per year of expected capacity shortages, expressed as an LOLE index, which is a common utility practice for determining installed reserve requirements.

The base case for the 2008 IRM Study calculated a NYCA IRM requirement of 15.0% for the period May 1, 2008 through April 30, 2009. This result is 1.0% lower than the base case determined for the 2007-2008 Capability Year. The NYSRC provides a satisfactory explanation for this reduction. Its reasons include: 1) the continued improvement of NYCA generating unit availability; 2) updated NYCA transmission topology; 3) improved emergency assistance benefits from neighboring control areas; and, 4) reduced cable outage rates.

[18] The FERC has indicated that the NYPSC is "better placed to establish the appropriate ICAP quantity New York requires to serve…customers." Docket No. ER03-647, New York Independent System Operator, Inc., Order Conditionally Accepting for Filing Tariff Revisions (issued May 20, 2003).

In adopting a 15.0% IRM, the Executive Committee of the NYSRC considered the 2008 IRM Study, the impact on the IRM under various sensitivity cases, and other relevant factors.

Parties advocating for a higher IRM point to the potential for the IRM to increase in the years as suggested by some sensitivity analyses in the 2008 IRM Study. However, the ultimate determination of an IRM requires some consideration of all sensitivity cases, including sensitivities that would decrease the IRM as well as those that would increase it.

The NYSRC concluded, and the Commission agrees, that parties opposed to the proposed IRM have not demonstrated that the sensitivity cases they cite are sufficient to serve as a basis for increasing the IRM above the 2008 IRM Study base case. In particular, final state regulations have not been adopted with respect to the RGGI environmental initiative. While the amount of emissions allowances that will be available to comply with RGGI may impact the availability of resources, that amount is not yet known. Furthermore, the HEDD regulations have not yet been proposed and thus, would not likely apply during the 2008-2009 Capability Year summer period, which is the type of period during which the program is likely to impact the availability of resources. Moreover, as the NYSRC correctly points out, there may be control technology or other mitigating actions that may offset the potential impacts of the RGGI and HEDD initiatives. Therefore, the Commission will not require an increase in the IRM based on these initiatives.

Similarly, the Commission rejects the argument raised by IPPNY that the wind generation expected to come on-line this summer supports the need for a higher IRM. The Commission anticipates that this generation will be an incremental additional to existing resources, and will therefore bolster reliability. As such, the Commission finds it is unnecessary to

increase the IRM to account for these additional wind resources. The Commission also rejects ECS' claim that the IRM will reduce the participation of demand response customers in NYISO programs. ECS has not provided evidence that lowering the IRM will reduce participation of demand response customers.

Con Edison/O&R maintain that a sensitivity factor should be applied in relation to the Neptune transmission line, which LIPA intends to use as a Long Island capacity resource. However, LIPA has not filed comments in this proceeding and the timing and terms regarding LIPA's use of the Neptune line are not yet known. The companies also indicate that a prolonged outage at Indian Point would cause an increase in the IRM, although they have not offered any evidence or analysis to support the basis for such an outage. As such, these arguments provide an insufficient basis for increasing the IRM above the 15.0% base case.

CPV argues that the reliability standard upon which the IRM is based (i.e., LOLE of no more than 0.1 day per year) is "insufficiently conservative" and out-of-date. However, CPV does not provide any analysis supporting a revision to the LOLE standard or establish what a sufficient LOLE standard would be. The LOLE criterion is a well-established NPCC and NYSRC reliability standard, which the Commission previously adopted. Accordingly, the Commission finds no basis in the record before it to adjust the current LOLE standard. The Commission expects CPV to advance its concerns by formally raising them before the NYSRC in the first instance, before the Commission considers any such proposed change.

Finally, the Commission rejects the arguments that a 15.0% IRM should not be implemented in order to provide appropriate market price signals. While the Commission recognizes the close relationship between the IRM and ICAP

prices, the purpose for establishing an annual IRM is to ensure that the IRM reasonably reflects changing circumstances over time. The Commission relies on the IRM as an important tool for defining and meeting our concern for resource adequacy and reliability of service by LSEs. The mere fact that year-to-year changes in the IRM occur should not be an overriding factor in setting the IRM, which is otherwise based on technical resource adequacy and reliability criteria.

Given its experience and expertise in developing the IRM, the Commission gives considerable weight to the NYSRC's findings, conclusions, and recommendations. The NYSRC has adequately demonstrated that the appropriate IRM for the upcoming Capability Year should be 15.0%. Recognizing that the sufficiency of electric generation facilities is critical to the health, safety and welfare of the citizens of New York, the Commission finds that the 15.0% IRM requirement recommended by the NYSRC properly responds to our State's needs and our statutory mandates to ensure reliability and the adequacy of generation facilities. Therefore, the Commission adopts the NYSRC-recommended IRM of 15.0% for the NYCA during the Capability Year beginning on May 1, 2008, and ending on April 30, 2009. This action is supported by the record and is in the public interest.

Environmental Quality Review

Under the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR §7), the Commission must determine whether the action that it is authorized to approve may have a significant impact on the environment. The proposed action over which the Commission has jurisdiction is the establishment of an IRM for the NYCA for the

Capability Year beginning on May 1, 2008 and ending on April 30, 2009.

The Commission is Lead Agency for the review of this action pursuant to SEQRA. There are no other "involved agencies," and the action contemplated is an "unlisted action," as defined in 6 NYCRR §617.2.

An Environmental Assessment Form (EAF) regarding the action was prepared by Staff for the Commission's consideration.[19] After considering the EAF, the record in this proceeding, and the criteria for determining significance listed in 6 NYCRR §617.7(c), the Commission concludes that the action will not have a significant adverse impact on the environment. The Commission finds that the action will not cause any direct environmental effects, since the action alone does not involve physical activities that might have impacts on the environment. The establishment of an IRM requirement, by itself, does not trigger the need to either construct additional generation units or to retire existing units. Compliance with the IRM requirement can be achieved through various means, including existing generation or demand response resources. As such, in the context of the current electricity markets in New York, the IRM neither mandates new construction nor the retirement of existing resources.

Moreover, the Commission notes that decisions to construct generation units or to retire existing units are based upon a complex set of factors. The level of payments for Installed Capacity, which are established in relation to the IRM, are only one such factor.

Accordingly, as Lead Agency, the Commission determines that the proposed action will not have a significant adverse impact on the environment. As such, it is unnecessary to

[19] 6 NYCRR §617.6(a)(3).

prepare an Environmental Impact Statement. A Notice of Determination of Non-Significance (Negative Declaration) concerning this unlisted action is attached.

Emergency Adoption

This action is taken on an emergency basis pursuant to State Administrative Procedure Act (SAPA) §202(6). The adequacy and reliability of the supply of electricity is essential to the public health, safety and general welfare of the citizens of New York. The IRM must be in place prior to the March 28, 2008 ICAP auction in order to provide market participants adequate notice to inform their bidding and to enable the NYISO to conduct the ICAP auction without disruption. A failure to timely adopt the IRM could potentially impair the availability of bidders and adversely affect the adequacy of capacity supply and the reasonableness of capacity prices. As a result, compliance with the advance notice and comment requirements of SAPA §202(1) would be contrary to the public interest, and the immediate adoption of an IRM is necessary for the preservation of the public health, safety and general welfare.

CONCLUSION

For the reasons stated above, the Commission adopts a 15.0% IRM for the NYCA for the Capability Year beginning on May 1, 2008, and ending on April 30, 2009.

It is ordered:

1. An Installed Reserve Margin of 15.0% is adopted for the New York Control Area for the Capability Year beginning May 1, 2008, and ending April 30, 2009.

2. The New York State Reliability Council is advised that it is expected to file its 2009-2010 Installed Reserve Margin report by December 19, 2008.

3. These proceedings are continued.

(SIGNED)

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Commissioner

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 07-E-0088 - In the Matter of the Adoption of an Installed Reserve Margin for the New York Control Area.

CASE 05-E-1180 - In the Matter of the Reliability Rules of the New York State Reliability Council and the Criteria of the Northeast Power Coordinating Council.

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission of an Installed Reserve Margin (IRM) for the New York Control Area for the Capability Year beginning on May 1, 2008 and ending on April 30, 2009. This is based upon the Commission's determination, pursuant to regulations implementing Article 8 of the Environmental Conservation Law contained in 6 NYCRR Part 617, that such action will not have a significant effect on the environment. The action contemplated is an Unlisted Action, as defined in 6 NYCRR §617.2.

The action will not cause any direct environmental effects, since the action alone does not involve physical activities that might have impacts on the environment. The establishment of an IRM requirement, by itself, does not trigger the need to either construct additional generation units or to retire existing units. Compliance with the IRM requirement can be achieved through various means, including existing generation or demand response resources. As such, in the context of the current electricity markets in New York, the IRM neither

mandates new construction nor the retirement of existing resources.

Moreover, decisions to construct generation units or to retire existing units are based upon a complex set of factors. The level of payments for Installed Capacity, which are established in relation to the IRM, are only one such factor.

The address of the Public Service Commission, the lead agency for the purposes of the Environmental Quality Review for this action, is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Richard H. Powell at (518) 486-2885 or to the address above.

JACLYN A. BRILLING
Secretary