

122 FERC ¶ 61,186  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent  
System Operator, Inc.

Docket No. ER08-414-000

ORDER ACCEPTING PROPOSED INSTALLED CAPACITY REQUIREMENT FOR  
THE 2008/2009 CAPABILITY YEAR

(Issued February 29, 2008)

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 2008/2009 Capability Year<sup>1</sup> effective March 1, 2008.

**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).<sup>2</sup> Consistent with section 3.03 of the NYSRC Agreement,<sup>3</sup> 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

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<sup>1</sup> May 1, 2008 through April 30, 2009.

<sup>2</sup> *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).

<sup>3</sup> 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 Long Island Power Authority.

Tariff, the NYSRC annually establishes the statewide ICR.<sup>4</sup> Section 3.03 of the NYSRC Agreement further states that any changes to the ICR require an appropriate filing and Commission approval.<sup>5</sup>

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 116.5 percent of the forecasted peak loads. The ICR is described generally in terms of the Installed Reserve Margin (IRM). The Installed Reserve Margin (IRM) is currently 16.5 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. NYSRC Policy No. 5-1 provides the procedure for determining the IRM and includes an approval process in which the NYSRC Executive Committee reviews the IRM Study and determines the IRM after considering base case and sensitivity case results shown in the technical IRM report as well as considering other issues that may impact NYCA IRM requirements.

6. The IRM is a critical factor in the development of the NYISO's capacity demand curve. The demand curve, in turn, is used in the NYISO's installed capacity spot market auctions to determine each load serving entity's installed capacity requirement and price.

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<sup>4</sup> 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.

<sup>5</sup> NYSRC has filed the ICR annually since the year 2000. The last change in the ICR, a reduction in the IRM from 18 percent to 16.5 percent, was accepted by the Commission in an order issued March 5, 2007. *New York State Reliability Council*, 118 FERC ¶ 61,179 (2007) *order on reh'g*, 122 FERC ¶ 61,153 (2008).

## II. The ICR Filing

7. On January 4, 2008, the NYSRC submitted the instant filing, advising the Commission that it has revised the IRM for the NYCA for the 2008/2009 Capability Year to 15 percent and requesting that the Commission accept and approve the filing effective no later than March 1, 2008, so that a revised ICR will be in place for the installed capacity auction to be conducted by NYISO on March 28, 2008.

8. The NYSRC states that the responsibilities assigned by the NYSRC Agreement and the NYISO/NYSRC Agreement are implemented in the NYSRC's Reliability Rules,<sup>6</sup> the NYSRC's Policy No. 5-1,<sup>7</sup> and the NYISO's Market Services Tariff. The NYSRC included a copy of the New York Control Area /Installed Capacity Requirements for the Period May 2008 through April 2009, Technical Study Report (2008 IRM Study). The NYSRC states that, based on the 2008 IRM Study and other relevant factors, the NYSRC Executive Committee adopted a 15 percent IRM for the NYCA for the 2008/2009 Capability Year, a reduction from the existing 16.5 percent IRM.

9. The NYSRC explains that the 2008 IRM Study was 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) and that the probabilistic technique involved is commonly used in the electric power industry for determining installed reserve requirements. The NYSRC states that the 2008 base case result is 1.0 percentage point lower than the 16 percent base case IRM requirement determined by the 2007 IRM Study. The NYSRC provides four principal reasons for the IRM reduction from the previous year: (1) the continued improvement of NYCA generating unit availability; (2) updated NYCA transmission topology; and (3) improved emergency assistance benefits from interconnection to neighboring control areas, primarily due to transmission reinforcements within these areas; and (4) a reduction of transmission cable outage rates.

10. The NYSRC states that, after considering the 2008 IRM Study results, the modeling and assumption changes made to simulate actual operating conditions and system performance, sensitivity cases, and other relevant factors, based on its experience and expertise, it adopted a 15 percent IRM for the 2008/2009 Capability Year.

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<sup>6</sup> The NYSRC Reliability Rules are available on the NYSRC website, [www.NYSRC.org](http://www.NYSRC.org), under Documents/NYSRC Reliability Rules and Compliance.

<sup>7</sup> The NYSRC Policy No. 5-1 is available on the NYSRC website, [www.NYSRC.org](http://www.NYSRC.org), under Documents/Policies.

### **III. Notice of Filings and Responsive Pleadings**

11. Notice of the NYSRC's filing was published in the *Federal Register*, 73 Fed. Reg. 2905 (2008), with interventions and protests due on or before January 25, 2008.
12. The following parties filed timely motions to intervene: NRG Companies, New York Power Authority, Mirant Corporation, PSEG Power Companies, Long Island Power Authority, AES Eastern Energy, LP, and Entergy Nuclear Power Marketing, LLC.
13. The following parties filed timely interventions and comments: Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (collectively Con Ed), Multiple Intervenors,<sup>8</sup> Niagara Mohawk Power Corporation d/b/a/ National Grid (Niagara Mohawk), New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Central Hudson Gas and Electric Corporation, the Public Service Commission of the State of New York (New York Commission), and the NYISO.
14. Independent Power Producers of New York, Inc. (IPPNY) filed a timely intervention and protest and a late-filed supplemental protest. Astoria Generating Company (Astoria) filed a timely intervention and comments in support of IPPNY's protest.
15. Dynegy Northeast Generation, Inc. and Sithe/Independence Power Partners, L.P. (collectively, Dynegy) and Energy Curtailment Specialists, Inc. (Energy Curtailment) moved to intervene and protest late in the proceeding. New York Municipal Power Agency (NYMPA) moved to intervene and filed comments late in the proceeding.
16. The NYSRC filed two answers to protests. Con Ed filed a response to the comments of Multiple Intervenors and a response to the NYSRC's answer.
17. Those filing supportive comments assert that the IRM decision is supported by the results of the 2008 IRM Study and by the expertise and best judgment of the NYSRC. They express support for both the process and the results. The NYMPA further states that the methodology employed by the NYSRC is consistent with each of the prior IRM studies undertaken by the NYSRC since its formation and that the results of the study are consistent with the reliability criteria required and promulgated in the NYSRC Reliability Rules. The NYISO states that the revised IRM falls within a range of potentially reasonable IRM levels. It requests that the Commission coordinate its review of the proposed IRM with the New York Commission's inquiry into the subject and states that conflicting regulatory directives would put the NYSRC and the NYISO in the difficult

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<sup>8</sup> Multiple Intervenors states that it is an unincorporated association of approximately 50 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State.

position of choosing between them, leaving both entities susceptible to litigation and raising uncertainty about the Load Serving Entities' (LSEs) minimum requirements for the auction for the six-month Summer Capability Period. According to the NYISO, the resulting disruption and confusion would negatively affect the NYISO-administered markets and potentially threaten the reliability of the New York State transmission system.

18. IPPNY states that the Commission should reject the IRM filing and should order the NYSRC to adequately reflect two environmental initiatives when establishing the 2009-2010 IRM. IPPNY contends that there are clear indications that the reduction to a 15 percent IRM is not indicative of longer-term trends and will not be sustained in future years. Specifically, IPPNY states that the NYSRC studied two New York State environmental initiative scenarios, the High Electric Demand Day Initiative (HEDD)<sup>9</sup> and the Regional Green House Gas Initiative (RGGI)<sup>10</sup> and determined that the former would have the potential to significantly affect system reliability as soon as 2009. According to IPPNY, the NYSRC determined that the removal of 2,370 MW of capacity as a result of the HEDD restrictions would require an IRM of 24 percent, and that the removal of 2,139 MW as a result of the RGGI restrictions would require an IRM of 17.1 percent. IPPNY contends that the NYSRC did not adequately take these factors into account when it determined to lower the 2008/2009 IRM, and that, in fact, additional capacity is urgently required to meet reliability needs as soon as 2012 under the NYISO's base case assumptions and as early as next year if the HEDD rules are adopted. IPPNY states that the ICAP Demand Curve is currently the sole means to signal the future value of capacity in New York and that ignoring conditions that will likely have a substantial impact on the IRM in the near future, will result in an IRM that fluctuates erratically from year to year, thereby impeding the reliability signals that it was intended to produce. Astoria, Energy Curtailment, and Dynegy all support the IPPNY's protest.

19. In its supplemental protest, IPPNY states that since it filed its original protest, the NYISO has announced that it now expects approximately 500 MW of additional wind facilities to become operational for this summer, and this was not included in the base case for the IRM analysis. IPPNY asserts that because the wind generation has a very low coincidence with system peak conditions, the introduction of these wind facilities is equivalent to approximately 50 MW of traditional resources and consequently the IRM

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<sup>9</sup> IPPNY explains that the HEDD is a New York State Department of Environmental Conservation initiative to reduce the ozone precursors of NO<sub>x</sub> to enable New York to come into compliance with the National Ambient Air Quality Standards for ozone beginning in 2009. Protest at 5.

<sup>10</sup> IPPNY explains that the RGGI is a 10 state program designed to reduce CO<sub>2</sub> emissions by capping such emissions from power plants larger than 25 MW of capacity beginning in 2009. *Id.*

would need to be adjusted upwards to obtain an additional 450 MW of contribution to meeting the peak from other resources. IPPNY asserts that, had this level of additional wind resources been modeled in the base case for the IRM analysis, the base case IRM results would have been between one and one and one half percentage points higher, effectively maintaining the current IRM level. IPPNY adds that the significant incentives provided by New York's Renewable Portfolio Standard to encourage construction of renewable projects is likely to result in further additions of intermittent resources in the near future, putting upward pressure on the IRM, indicating that the drop to a 15 percent IRM is not indicative of system conditions that will be in place this year or in future years.

20. The New York Commission states that, although the NYSRC seeks Commission approval of the IRM, the Federal Power Act (FPA) reserves jurisdiction to states to “set and enforce compliance with standards for [the] adequacy... of electric facilities,” such as the IRM.<sup>11</sup> Accordingly, the New York Commission seeks to clarify State and Federal jurisdictional responsibilities over the IRM to remove any regulatory uncertainty that may arise. The New York Commission states that the Commission has recognized the traditional role of the state and local entities over resource adequacy and that it reviews matters regarding resource adequacy standards for purposes of determining whether they would have any adverse effect on Commission-jurisdictional matters. The New York Commission further states that the Commission has indicated in a prior Commission order that the New York Commission is “better placed to establish the appropriate ICAP quantity New York requires to serve customers.”<sup>12</sup>

21. With respect to the instant case, the New York Commission states that:

the Commission should review the IRM to ensure that it does not adversely affect matters within [the Commission'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. In the event that the revised IRM would result in adverse impacts, the Commission should identify those impacts and allow the NYRSC to address them, in consultation with the [New York Commission].<sup>13</sup>

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<sup>11</sup> *Citing* 16 U.S.C. § 824o(i)(2) (Supp. V 2005).

<sup>12</sup> *Citing New York Indep. Sys. Operator Inc.*, 103 FERC ¶ 61,201, at P 15 (2003).

<sup>13</sup> New York Commission January 25, 2008 Comments at 4.

The New York Commission also states that it has commenced an inquiry into the NYSRC's establishment of a 15 percent IRM and therefore, does not take a position on the NYSRC's filing at this time.

22. Con Ed expresses the concern that LSEs, generators, and the NYISO might be put in an untenable position if the Commission and the New York Commission should adopt different IRM levels. It states that in such a case, it would be difficult for entities that are subject to the jurisdiction of both the Commission and the New York Commission to be able to comply with both standards. It therefore requests that the Commission order the NYSRC to file with the Commission any changes to the IRM adopted by the New York Commission that differ from the NYSRC's current IRM proposal.

23. Niagara Mohawk states that it does not oppose or support the Commission's acceptance of the NYSRC proposal. Niagara Mohawk asserts, however, that the methodology used to determine the base case IRM may result in an unwarranted increase in the statewide reserve margin, distort market signals, and is inconsistent with the findings described in NYISO's Reliability Needs Assessment.

24. In its answers Con Ed contends that the NYSRC did not exercise reasonable judgment when it failed to consider alternatives based on various sensitivity analyses, many of which support a higher IRM. Con Ed states that had the Neptune Transmission line from PJM to Long Island been modeled as a Long Island capacity resource (less reliability) instead of being modeled as an emergency transmission tie line (greater reliability), the IRM would have been over 16.5 percent. Con Ed also references prior NYSRC statements before New York State agencies regarding the potential of RGGI and the HEDD program to result in an IRM between 17.1 and 20 percent over the next two years and argues the statements are inconsistent with the NYSRC's current proposal. Con Ed states that the NYSRC answer misstates the RGGI start date and implies that any impact from RGGI will be outside of the time period covered by the new IRM. Con Ed asserts that, to the contrary, RGGI is scheduled to start on January 1, 2009, right in the middle of the IRM time period covered by the filing. Con Ed further asserts that it is not possible to know the strategy a generation owner will employ to respond to RGGI requirements and costs of compliance at the beginning, middle or end of the compliance period. According to Con Ed, the NYSRC voted only on the base case, which passed with nine out of twelve votes, and did not consider alternative scenarios. Con Ed states that previous IRMs have included an amount above the base case IRM to account for the probability that one of the events modeled as a contingency could occur. Con Ed also asserts that any decreases in the IRM should be treated conservatively in order to avoid unnecessary volatility in the IRM, a component that affects decisions to acquire new resources. Con Ed concludes that the IRM should be set at a level of 16 percent or higher.

25. In its answer, the NYSRC states that IPPNY does not take issue with the technical study upon which the NYSRC's IRM determination was based, nor does IPPNY contend

that the 15.0 percent IRM approved by the NYSRC for the 2008/2009 Capability Year is not adequately supported by the 2008 IRM Study. Instead, the NYSRC states that IPPNY's protest is based on the contention that because two sensitivity studies indicate that environmental initiatives to be implemented sometime subsequent to the 2008/2009 Capability Year may require higher IRMs in future years, the NYSRC was obligated to ignore the results of the 2008 IRM Study and retain the current 16.5 percent IRM in order to avoid the potential need to increase the IRM in future years. The NYSRC states that this contention does not provide a sufficient basis for the Commission's rejection of its filing and asserts that its Reliability Rules A-R1–A-R3 and its Policy Statement 5-1<sup>14</sup> make it clear that the 2008 IRM Study is the primary basis upon which the IRM determination is made.

26. The NYSRC further states that 19 sensitivities were considered in the 2008 IRM Study, using assumptions that differ from those adopted for the base case with respect to various factors (including environmental initiatives) and producing a wide range of results with IRMs both higher and lower than that produced by the base case. The NYSRC notes that 17 of the 19 sensitivities considered in the 2008 IRM Study involved varied assumptions with respect to the conditions in effect during the 2008/2009 Capability Year, while the two environmental sensitivities addressed conditions that may occur in future years.

27. The NYSRC asserts that the two environmental sensitivities cited by the protestors cannot provide a reasonable basis for establishing the IRM for the 2008/2009 Capability Year. The NYSRC states that the environmental sensitivities considered in the 2008 IRM Study were adopted from the NYISO's 2008 Reliability Needs Assessment (RNA). According to the NYSRC, state regulations have not been adopted for the RGGI, regulations have not been drafted for the HEDD initiative, and compliance with the HEDD and RGGI initiatives is not anticipated until 2009 and 2012, respectively. The NYSRC notes that while the RGGI initiative is expected to begin in 2009, the proposed program will have a three year compliance timeline, from 2009 to 2011. The NYSRC also notes that the sensitivity studies represent a worst case planning scenario in that they did not assume any compliance strategies or control measures to offset the potential reliability impacts of these environmental initiatives, and it is not clear what control technology or other mitigating actions may be available to offset the potential reliability impacts of these initiatives. Further, the sensitivity study did not presume to measure the actual impact of the RGGI program on the state's power system, but only to indicate to policymakers a level of allowances needed by resources providing energy to the NYCA below which reliability would be affected. The level of allowances that would be available to resources supplying the NYCA is not known at this time.

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<sup>14</sup> See *supra* n.6–7.

28. The NYSRC states that the RNA also included a sensitivity study to analyze potential reliability impacts of New York's energy efficiency initiative which is intended to achieve a 15 percent reduction in energy use by 2015 but which also was not included in the base case. The NYSRC also states that the NYISO's RNA did not include in its base case either of the two environmental sensitivities relied upon by the protestors, even though the RNA is an assessment of reliability needs over a ten year period.

29. The NYSRC states that while it is appropriate for both the NYISO and the NYSRC to monitor the development of environmental initiatives and their potential impact on reliability, they also must be careful not to base their conclusions on premature assessments of their reliability impacts.

30. The NYSRC also opposes Con Ed's request that the Commission order the NYSRC to file with the Commission any changes to the IRM adopted by the New York Commission that is different than the NYSRC's current IRM proposal. The NYSRC states that the request is inconsistent with the NYISO/NYSRC Agreement and the relevant NYISO tariff provisions, is inconsistent with the Commission's articulation of its role in reviewing the NYSRC's IRM determinations, and would lead to unnecessary confusion with respect to the relative responsibilities of the NYSRC, the Commission, and the New York Commission.

31. In response to Niagara Mohawk's comments, the NYSRC states that Niagara Mohawk's position has been the subject of a separate Commission proceeding in Docket No. EL06-1-000 and that, in a final joint report filed by the NYISO and the NYSRC in that proceeding, the filing parties informed the Commission that the independent Upstate-Downstate Study had found that the current IRM methodology has not resulted in a subsidy to any portion of the NYCA by another portion of the NYCA. The NYISO and the NYSRC also informed the Commission that they would conduct supplemental evaluations of this issue over the following three years.

32. In its response to Con Ed, the NYSRC reiterates that all of the sensitivity study results were included in the 2008 IRM Study, which was discussed and approved unanimously by the NYSRC Executive Committee. The NYSRC also states that Con Ed misrepresents the NYSRC's statements in regard to the RGGI and HEDD programs.

#### **IV. Discussion**

##### **Procedural Matters**

33. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), 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 Procedure, 18 C.F.R. § 385.214(d) (2007), the Commission will grant the late-filed motions to intervene given

the parties' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

34. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Con Ed's and the NYSRC's answers because they have provided information that assisted us in our decision-making process.

### **Commission Determination**

35. 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.<sup>15</sup> In order to fulfill that obligation, the NYSRC, in conjunction with NYISO staff, conducted the 2008 IRM Study using the GE-MARS program. The NYSRC unanimously approved the 2008 IRM Study report.<sup>16</sup> The NYSRC subsequently determined by a vote of nine to four that a 15 percent IRM is an adequate reserve margin for the 2008/2009 Capability Year.

36. Protestors argue for a higher IRM, outside of the 99.7 percent confidence interval range of the IRM study, based on the two environmental initiatives which could, if they came to fruition in their present form, have significant impact on system reliability. IPPNY and Con Ed argue that these initiatives could cause the IRM to increase in the near future and such volatility is undesirable. They assert that the NYSRC should have increased the IRM above the base case result to account for the probability of these sensitivity cases. The Commission disagrees.

37. The NYSRC, in accordance with the NYISO's Market Services Tariff,<sup>17</sup> 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.

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<sup>15</sup> NYSRC Agreement, § 3.03; NYISO/NYSRC Agreement, § 4.5; NYISO Market Services Tariff, §§ 5.10 and 5.11.4.

<sup>16</sup> *See* NYSRC Executive Committee, December 14, 2007 Meeting Minutes at 5, available at [www.nysrc.org/pdf/ECMeetingMinutes/ECMinutes104Final.pdf](http://www.nysrc.org/pdf/ECMeetingMinutes/ECMinutes104Final.pdf).

<sup>17</sup> NYISO Market Services Tariff, § 5.11.4.

The principal reasons for the reduction are the continued improvement of NYCA generating unit availability, updated NYCA transmission topology, improved emergency assistance benefits from interconnection to neighboring control areas, and a reduction of transmission cable outage rates. We see no irregularities in the consideration of the factors listed in the Reliability Rules.

38. 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 complies with the reliability requirements and is consistent with that of past years. The study identifies a range of IRM values within a 99.7 percent confidence interval (14.3 to 15.8 percent). A 15.0 percent IRM has a 50 percent probability of meeting this one-in-ten loss of energy expectation criterion. This is in full compliance with the NYSRC Resource Adequacy rules and criteria. The NYSRC Executive Committee adopted the 15 percent IRM after considering the sensitivity cases.<sup>18</sup> The fact that the NYSRC has on past occasions set an IRM that was higher than the base case result does not require it to do so here. As the NYSRC stated in its answer, state regulations have not been adopted for the RGGI and have not even been drafted for the HEDD. According to the NYSRC, even if the RGGI initiative should begin in 2009, it is anticipated to have a three year compliance timeline, i.e., suppliers will have three years to respond to any new requirements. Further, the environmental sensitivities did not assume compliance strategies or control measures to offset the potential reliability impacts of the environmental initiatives. Similar to the expected timeframe of the RGGI, the implementation of any HEDD proposals is not anticipated until 2012. The Commission agrees with the NYSRC that it is appropriate to monitor the development of environmental initiatives and their potential impact on reliability but it is premature to adjust the IRM based on these initiatives.

39. We will therefore accept the NYSRC’s 15 percent IRM for the period May 1, 2008 through April 30, 2009. The 15 percent IRM must be used by the NYISO in the determination of locational capacity requirements used in setting the NYISO’s installed capacity demand curves and related capacity auctions until such time as the NYSRC submits a revised IRM. As noted above, the 15 percent IRM is supported by the 2008 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, the required majority of the NYSRC Executive Committee supports the proposed 15 percent IRM.

40. In regard to the concerns expressed by the New York Commission with respect to its jurisdiction, and by the NYISO and Con Ed with respect to the possibility of

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<sup>18</sup> See NYSRC Executive Committee, December 14, 2007 Meeting Minutes at 5, available at [www.nysrc.org/pdf/ECMeetingMinutes/ECMinutes104Final.pdf](http://www.nysrc.org/pdf/ECMeetingMinutes/ECMinutes104Final.pdf).

conflicting regulatory directives, 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.<sup>19</sup> The NYSRC is required to file with the Commission the change in the IRM from 16 to 15 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 properly before us.<sup>20</sup> At this time, moreover, the New York Commission takes no position on the NYSRC's 15 percent IRM. We agree with the New York Commission that we should accept the 15 percent IRM for filing and, in this regard, find that the proposed 15 percent IRM does not appear to have an adverse effect on matters within our jurisdiction. Further, we find that our acceptance here is not inconsistent with any decision or action of the New York Commission. That is, we find no conflict between our action here and any decision or action of the New York Commission.<sup>21</sup> 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.

41. 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, 2008, as requested.

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<sup>19</sup> 16 U.S.C. §§ 824d and 824e (2000).

<sup>20</sup> *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”)).

<sup>21</sup> Our intent has been to defer to the NYSRC and its processes in the first instance in reviewing a NYSRC-filed IRM. Here the 15 percent IRM is supported by the 2008 IRM Study and the NYSRC's analysis, and by the stakeholder process for selecting an IRM.

The Commission orders:

The proposed revised 15 percent IRM is hereby accepted for filing, effective March 1, 2008.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.