

**MOTION OF CON EDISON, O&R, LIPA, NYPA, THE CITY OF NEW YORK,
CONSUMER POWER ADVOCATES AND NEW YORK ENERGY CONSUMERS
COUNCIL, INC. IN OPPOSITION TO AN APPEAL**

Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., LIPA, the New York Power Authority, The City of New York, Consumer Power Advocates and the New York Energy Consumers Council, Inc. (collectively, the “Indicated Parties”) hereby file this motion in opposition to the appeal filed by Niagara Mohawk, d/b/a National Grid (“Grid”) with respect to the Operating Committee’s (“OC”) February 9, 2006 decision to reject Grid’s amendment to the Locational Capacity Requirements (“LCRs”) for load Zones J and K.

SUMMARY

In its February 2, 2006 order dismissing Grid’s complaint against the NYISO and the New York State Reliability Council (“NYSRC”), in which Grid sought to lower the state-wide Installed Reserve Margin (“IRM”) and increase the LCRs and associated costs for New York City and Long Island consumers, FERC notes that Grid failed to “exhaust its methods of resolving this dispute within Reliability Council and NYISO before filing a complaint with the Commission.”¹ Despite FERC’s admonition, Grid now seeks to again avoid the NYISO and NYSRC stakeholder processes in a transparent attempt to get its complaint back to FERC as quick as possible.

Grid’s actions on this matter are indicative of its continued attempt to avoid any substantive discussion within the stakeholder groups that would expose the legitimate concerns and problems with the approach they are attempting to foist upon the NYISO

¹ *Niagara Mohawk Power Corporation, a National Grid Company v. New York State Reliability Council and New York Independent System Operator, Inc.*, Order Dismissing Complaint, 114 FERC ¶ 61, 098 at P 1 (2006) (the “*Order Dismissing Complaint*”).

and NYSRC. Although Grid gives the appearance of engaging in stakeholder discussions on its proposal on the one hand by agreeing to make a presentation to the Installed Capacity Working Group, Grid is undermining that very Working Group by immediately seeking to impose its proposal, via amendment, at the OC and now appealing that vote at the Management Committee (“MC”), without having had any working group discussion. Further, Grid did not even sponsor a motion at the OC to approve its free flowing method (“FFM”) of calculating LCRs. Rather, Grid decided to take a short cut and instead attempted to amend a properly-noticed motion to approve a set of LCRs based on a detailed NYISO study. Moreover, by requesting that the OC modify the state-wide Installed Capacity Requirement (“ICR”), Grid put forth a motion that, if approved, would have the NYISO act outside the scope of its Commission-approved authority, a fact recognized by Grid in its appeal.

When FERC said to use the stakeholder process it meant that Grid should work within, not around, the process in a meaningful way. The Indicated Parties respectfully request that the MC see through this charade and reject Grid’s appeal

ARGUMENT

I. Grid’s Actions Fly In The Face Of FERC’s Requirements

A. Grid’s Motion Is a Collateral Attack on the FERC Orders Establishing the NYSRC and NYISO

In its motion Grid requested that the OC: (1) establish LCRs for Zones J and K based on Grid’s FFM; and (2) establish a state-wide ICR that corresponds to Grid’s FFM. On its face, however, Grid’s amendment was procedurally deficient in that it requested the NYISO to take an action outside the scope of its legal authority. As Grid admits in its

appeal, “NYSRC has the responsibility to set the IRM and ICR. These NYSRC obligations arise from the Commission-approved NYISO-NYSRC Agreement.”² Grid’s own admission that “the NYSRC has the responsibility to set the IRM and ICR” fundamentally undermines their proposed amendment—which would have unilaterally established Grid’s FFM as the basis for the IRM even though such a determination is clearly a matter for the NYSRC. In fact, when this issue was raised during the discussion at the OC meeting, Grid recognized the issue but did not address the concern.

Grid’s attempt to usurp the basic responsibilities of the NYSRC through an OC amendment collaterally attacks the FERC orders approving the delineation of responsibilities between the NYISO and the NYSRC. Accordingly, Grid’s request to modify the ICR should be stricken from its appeal and summarily rejected.

B. FERC Ordered Grid To Work Within The New York Stakeholder Processes Not Circumvent Them

The NYISO stakeholder process consists of several working groups and task forces that exist in order to study, analyze and debate various technical, economic and policy matters before recommending one or more courses of action to either the OC or Business Issues Committee (“BIC”). Once at the OC or BIC most matters are further analyzed and debated, with various parties making detailed presentations to the committees in support of their view. The NYISO staff routinely participates in these matters, in many instances taking the lead in the study process. After the OC or BIC, most matters (and all involving tariff filings) proceed to the MC and then on to the

² See Grid Appeal at 3. See also, Section 3.03 of the New York State Reliability Council Agreement, which states that “[t]he NYSRC shall establish the state-wide annual Installed Capacity Requirements for New York State consistent with NERC and NPCC standards.”

NYISO Board. Both the MC and the Board further debate the issues before voting on them.

A similar stakeholder process exists at the NYSRC, where matters are first discussed in a subcommittee before being voted on at the Executive Committee. In response to FERC's *Order Dismissing Complaint*, both the NYISO and the NYSRC decided to pursue establishing a joint task force to address the issues raised in this proceeding. Thus, in addition to the normal panoply of working groups and committees available to Grid to pursue its issues, the NYISO and the NYSRC have also made a task force available to Grid.

This is what FERC meant when it told Grid to use the stakeholder process. In establishing this requirement, along with the requirement that both the NYISO and NYSRC file a status report in 90 days, the Commission was looking for a substantive and involved process where the issues raised by Grid could be reviewed on and debated by the market participants, the NYISO and the NYSRC. Specifically, FERC stated that Grid should “fully pursue these avenues within the Reliability Council and NYISO stakeholder processes before filing a complaint with the Commission.”³ In doing so, Grid would finally expose their proposed FFM to a full and fair stakeholder discussion of its strengths and weaknesses and the complexities that would arise should such a methodology be instituted. In particular, the Indicated Parties have a number of questions and concerns regarding the FFM that it is incumbent upon Grid to fully address. Attempting to impose the FFM by amendatory fiat would allow Grid to avoid that necessary testing ground for its proposal.

³ *Order Dismissing Complaint*, P 24.

But Grid has decided to take a shortcut and circumvent, rather than use, the stakeholder process. Acting just days after FERC's *Order Dismissing Complaint*, Grid sought to Amend another party's motion at the last minute to address this issues. This cannot be viewed as working within the NYISO stakeholder process. Nor can asking the OC to approve the FFM without any evidentiary support or working group discussion and analysis be considered working with the stakeholder process. Grid's appeal should be rejected.

II. Grid's FFM Proposal Is Unjust, Unreasonable and Unsupported

As was the case when Grid filed its complaint at FERC, Grid has failed to support both its allegations regarding the present IRM, ICR and LCR methodologies and its proposed FFM. The only thing that is clear in Grid's appeal is that its FFM is unjust, unreasonable and unsupported. To begin with, Grid argues that the "NYISO has the responsibility to set LICAP Requirements that correspond to a specified IRM and ICR."⁴ This statement, however, is incorrect. Specifically, Section 6 of the ISO Agreement provides that:

The ISO shall establish the Locational Installed Capacity Requirements for New York State, consistent with the Reliability Rules, Local Reliability Rules, and the provisions of the ISO/NYSRC Agreement. In establishing Locational Installed Capacity Requirements, the ISO shall consider the availability of the NYS Transmission System to the extent necessary to maintain reliability.

Thus, while the NYISO takes into consideration the IRM and ICR in setting the LICAP requirements, ultimately, the standard that applies in this case is consistency with applicable reliability rules, the ISO/NYSRC Agreement and consideration of

⁴ Grid Appeal, at 2.

transmission system availability. Further, the NYSRC's Reliability Rules require that the NYISO set the LCRs such that the loss of load expectation is not greater than 1 day in 10 years and that the LCRs meet the state-wide IRM. Grid has not demonstrated that the NYISO has violated any of these requirements when it set the existing LCRs or the ones just approved by the OC.

Grid's appeal also alleges that upstate customers subsidize downstate ones and that the current IRM, ICR and LCRs distort the market.⁵ Once again, Grid fails to factually support its assertions. Like its complaint, Grid's appeal is deficient because it fails to identify a nexus between its alleged harms (the alleged subsidy and inefficient market signals) and the calculation of the IRM, ICR or LCRs. Moreover, Grid fails to demonstrate that the LCRs developed and approved by the NYISO are unjust and unreasonable.

Finally, Grid fails to demonstrate that its FFM is just and reasonable or even works.

CONCLUSION

Accordingly, for the reasons set forth above, the Indicated Parties respectfully request that the MC reject Grid's appeal and affirm the OC's decision with respect to the LCRs. In addition, if the MC decides to hear presentations on this appeal, the Indicated Parties respectfully request an opportunity to present their arguments at the MC.

Dated: February 24, 2006

⁵ Grid Appeal, at 3.

Respectfully submitted,

**Consolidated Edison Company of New York, Inc.
And Orange and Rockland Utilities, Inc.**

By: /s/ Neil H. Butterklee

Neil H. Butterklee, Esq.

Associate Counsel

Consolidated Edison Company of New York, Inc.

4 Irving Place, Room 1815-S

New York, N.Y. 10003

Telephone: (212) 460-1089

Fax: (212) 677-5850

butterklee@coned.com

LIPA

Stanley B. Klimberg

Roni F. Epstein

Long Island Power Authority

333 Earle Ovington Boulevard

Suite 403

Uniondale, New York 11553

e-mail: sklimberg@lipower.org

e-mail: repstein@lipower.org

Telephone: (516) 222-7700

Facsimile: (516) 222-9137

By: Joseph B. Nelson

David P. Yaffe

Joseph B. Nelson

Nadia Zakir

Van Ness Feldman, P.C.

1050 Thomas Jefferson Street, N.W.

Seventh Floor

Washington, D.C. 20007

e-mail: dpy@vnf.com

e-mail: jbn@vnf.com

e-mail: nxz@vnf.com

Telephone: (202)-298-1800

Facsimile: (202)-338-2416

New York Power Authority

By: Edgar K. Byham

Edgar K. Byham, Esq.

Principal Attorney

New York Power Authority

123 Main Street

White Plains, New York 10601-3170

City of New York

By: Michael Delaney

Michael Delaney, Esq.

Vice President

New York City Economic Development Corporation

110 William Street, 4th Floor

New York, NY 10038
(212) 312-3787
e-mail: mdelaney@nycedc.com

Consumer Power Advocates

Catherine M. Luthin, President
Luthin Associates
15 Walling Place
Avon-By-The-Sea, N.J. 07717
Telephone: (732) 774-0005
Facsimile: (732) 774-0054
e-mail: cluthin@luthin.com

By: John J. Dowling
John J. Dowling, P.E.
Luthin Associates
4812 Foxwood Drive
Clifton Park, N.Y. 12065
Telephone: (631) 899-9043
Facsimile: (631) 899-9043
e-mail: jdowling@nycap.rr.com

New York Energy Consumers Council, Inc.

By: George Diamantopoulos
George Diamantopoulos, Esq.
Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601
Telephone: (914) 997-1346
Fax: (914) 997-7125
e-mail: gdiaman@ssmplaw.com

David F. Bomke, Executive Director
New York Energy Consumers
Council, Inc.
11 Penn Plaza, Suite 1000
New York, N.Y. 10001-2006

262865