

# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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## PUBLIC SERVICE COMMISSION

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*Secretary*

April 25, 2002

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

Re: Docket Nos. ER01-3155-000, ER01-1385-  
000, EL01-45-001 - New York Independent  
System Operator, Inc.

Dear Secretary Boergers:

For filing please find the Comments of the New York State Public Service Commission in the above-entitled proceedings. Should you have any questions, please feel free to contact me at (518) 486-2652.

Very truly yours,

Saul A. Rigberg  
Assistant Counsel

Enclosures



Market (DAM),<sup>1</sup> along with its penalties provisions,<sup>2</sup> which will expire on April 30, 2002, until the Commission has the opportunity to render a decision regarding the NYISO's Compliance Filing. Insofar as it blocks unreasonably high prices, caused by the exercise of market power, in the DAM, the AMP is critical to maintaining just and reasonable wholesale prices. While by mitigating automatically, the AMP allows for timely corrective action, a manual system would permit firms exercising market power to charge unreasonable wholesale prices for at least one day.<sup>3</sup> Because the tight supply situation and transmission constraints continue to exist in New York State as we enter the Summer Capability Period, extending the AMP and the

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<sup>1</sup> The request was first made in the *Compliance Filing of New York Independent System Operator, Inc., Regarding Comprehensive Market Mitigation Measures and Request for Interim Extension of Existing Automated Mitigation Procedure*, filed March 20, 2002, at 34-35 (hereinafter *NYISO Compliance Filing*).

<sup>2</sup> See *Id.* at 59-60.

<sup>3</sup> The automated processes of the AMP enable the market impact test to be applied for the same day in which the conduct test is applied. By contrast, with manual mitigation the impact test can only be applied to the prior day's bid, with those bidders then subject to mitigation on the following day.

penalties provisions is called for by Section 205 of the Federal Power Act.<sup>4</sup>

**I. THE AMP SHOULD BE EXTENDED TO ENSURE JUST AND REASONABLE PRICES.**

The main purpose of the AMP is to eliminate the delay of one DAM cycle inherent in manual application of the market mitigation thresholds. That delay is critical any time market conditions permit an exercise of market power. In an interconnected network with frequent potential for congestion, such conditions can arise at any time and absent mitigation can result in large unwarranted wealth transfers from buyers to sellers.

While the likelihood is greater that market power conditions will occur in the high-load summer months because supply may be tight relative to high loads, such conditions may also occur during shoulder months, when load may be lower but generation units may also be down for scheduled maintenance. In

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<sup>4</sup> Pursuant to Section 205 of the Federal Power Act (16 U.S.C. §824d), "[a]ll rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful." See also, Farmers Union Cent. Exch., Inc. v. FERC, 734 F.2d 1486 (D.C. Cir. 1984) (holding that the Federal Power Act requires market prices to be just and reasonable).

addition, transmission constraints can create tight market conditions, especially in smaller areas, even during shoulder months.

## **II. CURRENT PENALTIES MUST REMAIN IN PLACE**

As the NYISO stated in the Compliance Filing, the rationale for the current penalties remains valid.<sup>5</sup> These penalties are an integral part of the overall design of the NYISO's current Market Mitigation Measures<sup>6</sup> because they provide the only means for imposing mitigation measures on physical withholding that meets the applicable conduct and impact tests. This is the case because an entity engaged in physical withholding is, by definition, not submitting bids that can be changed to an appropriate reference level, as is the case with economic withholding.<sup>7</sup>

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<sup>5</sup> See NYISO Compliance Filing at 59.

<sup>6</sup> See Id.

<sup>7</sup> See Id. at 59-60.

## CONCLUSION

The NYPSC urges the Commission to approve the NYISO's request to extend the current AMP and its penalty provisions until it has rendered a decision on the NYISO's Compliance Filing. Without these measures, New York consumers are vulnerable to the exercise of market power, which, as experience has demonstrated, can result in unwarranted costs of tens of millions a day.

Respectfully submitted,

Lawrence G. Malone  
General Counsel  
By: Saul A. Rigberg  
Assistant Counsel  
Public Service Commission  
Of the State of New York  
3 Empire State Plaza  
Albany, NY 12223-1305  
(518) 473-8178

Dated: April 25, 2001  
Albany, New York

CERTIFICATE OF SERVICE

I, Karen Houle, do hereby certify that I will serve on April 25, 2002, the foregoing Comments of the Public Service Commission of the State of New York by depositing a copy thereof, first class postage prepaid, in the United States mail, properly addressed to each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: April 25, 2002  
Albany, New York

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Karen Houle