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October 19, 2001

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

Re: Docket No. ER01-3155-000 - New York
Independent System Operator, Inc.

Dear Secretary Boergers:

For filing please find the Notice of Intervention and 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

prices in the DAM caused by the exercise of market power. The advantage of the AMP is that it mitigates automatically, thereby allowing for timely corrective action. The alternative, manual system permits unreasonable prices to be paid to firms exercising market power for at least one day.¹ Continuation of the AMP is necessary to ensure that wholesale prices are just and reasonable² because the tight supply situation and transmission constraints continue to exist in New York State.

BACKGROUND

The Commission approved the NYISO's proposal to implement the AMP for the DAM in its June 28, 2001 Order Accepting Tariff Filing as Modified (June 28 Order),³ but limited its duration to

¹The 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.

² 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).

³ New York Independent System Operator, Inc., Docket No. ER01-2076-000, 95 FERC ¶ 61,471 (2001).

October 31, 2001. The June 28 Order expressed two explicit concerns regarding the AMP's design: 1) the AMP may mitigate bids in situations where market power is not the cause for high or volatile prices, and 2) the AMP may not provide for sufficient consultation with generators to reasonably establish that particular bids were attempts to exercise market power.⁴ Despite these reservations, the Commission concluded that "because the NYISO states that it is important to have an automatic mitigation procedure in place for the summer, when supplies may still be tight and when the effectiveness of new demand response mechanisms are uncertain, we will approve the AMP through October 31, 2001."

NYISO FILING

With the approval of the NYISO's Management Committee, the NYISO has requested, pursuant to Section 205 of the Federal Power Act, that the termination date for the AMP be extended to October 31, 2002. The NYISO states that the AMP functioned as designed, imposing bid caps on only four occasions, which

⁴ As discussed below, evidence obtained from actual experience should allay these concerns.

reduced prices by \$11 million in unwarranted energy costs.⁵

While seeking an extension of the AMP because "the fundamental reason for having the AMP continues to exist," the NYISO notes that it is engaged in a detailed analysis of the performance of the AMP over this past summer, and is committed to working with Market Participants in developing improvements.

I. THE NYISO'S ARGUMENTS IN SUPPORT ARE CORRECT

**A. The AMP Is Needed Throughout The Year,
Not Just In The Summer Months.**

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, as experience in California has demonstrated, such conditions may

⁵ The AMP undoubtedly protected consumers from the risk of paying hundreds of millions of dollars of non-competitive prices by altering generators' bidding behavior. For example, according to the NYISO, on June 26, 2000, consumers were charged \$100 million in unwarranted energy costs because improper bids could not be mitigated without a day's lag.

also occur during shoulder months, when load may be lower but generation units may also be down for scheduled maintenance. In addition, transmission constraints can create tight market conditions, especially in smaller areas, even during shoulder months.

B. In Both Design And Practice, The AMP Focuses Only On High Prices Caused By Market Power And Does Not Limit High Prices Caused By Scarcity.

In response to the Commission's concern that the AMP would improperly mitigate high prices caused by scarcity, the NYISO noted on page 3 that although prices reached or surpassed the \$150 threshold level 12 times during the summer of 2001, the AMP intervened only 4 times. For example, for Hours 14 and 15 on August 9, 2001, the AMP did not mitigate even though the price actually hit the \$1,000 bid cap. Thus, high prices by themselves do not cause imposition of the AMP, contrary to FERC's concern.

C. The AMP Has Not Unreasonably Disadvantaged Generators.

In committee discussions and in pleadings, and as the Commission noted in its June 28 Order, generators argued that the rapid timeframes associated with the AMP would not allow them to demonstrate to the NYISO that reference prices should properly be adjusted upward to account for changes in such factors as fuel prices. Generators know their reference prices and if anything occurs that might change them, they have ample

time to contact the NYISO. In fact, actual practice has shown this to be an unfounded concern. The NYISO has reported that there were only two instances in the entire summer period in which a generator requested that the NYISO adjust its reference price upward. In both cases, after consultation with the parties involved, the NYISO accepted the request. This issue, initially raised by the generators, is simply unsupported by the experience of this summer.

II. THE AMP REMAINS A CRITICAL CONSUMER PROTECTION AND ENSURES CONFIDENCE IN THE MARKET

A. The AMP Complements But Does Not Duplicate The In-City Mitigation Measures.

Generators may argue that the AMP is superfluous because of the existence of the In-City Mitigation Measures. If constraints exist elsewhere in the State, as they do oftentimes in areas north of New York City but east of the transmission constraint, the prices in New York City may be no more than the (inflated) prices at the Indian Point 2 bus. Under these circumstances, economic withholding cannot be mitigated by the In-City Mitigation Measures because they will not be triggered, but could be mitigated by the AMP. For instance, on August 2, 2001, the AMP was implemented to prevent market power, while the In-City Mitigation Measures were not implemented. The two measures are not duplicative.

B. New Programs, Such As Price-Capped Load-Bidding Or Virtual Bidding, Do Not Eliminate The Need For The AMP.

Opponents of the AMP may argue that with the introduction of other bidding opportunities, such as price-capped load-bidding or virtual bidding, the AMP is no longer needed. This claim is without merit for several reasons. First, price-capped load-bidding has been fully utilized for only a short time, so the full impact of that program is not yet known. Virtual bidding will not be implemented until November 1, 2001, and so we have no knowledge of the effectiveness of this program.

Second, and perhaps more importantly both virtual bidding and price-capped load bidding can only limit DAM prices by shifting purchases to the real-time market (RTM). This may simply shift the focus of market power abuse from the DAM to the RTM. Moreover, as has been well established and is undisputed by all neutral observers, it is far superior for the vast majority of load to be purchased day-ahead so that the NYISO's optimization software can commit units and dispatch the system in a manner that is optimal both for the purpose of reliability and for the purpose of economics. Accordingly, getting pricing in the DAM right is paramount. For if market power exists in the DAM and is not mitigated appropriately, costly inefficiencies occur and prices in the RTM are pushed upward.

III. THE AMP CONFORMS TO THE COMMISSION'S PREFERENCE FOR EX ANTE MITIGATION.

The Commission acknowledged the importance of the AMP in its rejection of the NYISO's penalties proposal. In a recent Order on Tariff Filing,⁶ the Commission explained that it was rejecting a NYISO proposal that generators be penalized for repeated economic withholding because the NYISO provided no factual support demonstrating a need for additional mitigation measures beyond ex ante measures such as the AMP. The Order states:

Currently, NYISO has the authority under the AMP to automatically mitigate bids that exceed threshold levels and that result in significantly higher prices in the DAM. Additionally, under the currently effective MMM [Market Monitoring Measures], NYISO is authorized to mitigate conduct and impose default bids in the RTM to counter withholding. NYISO has failed to demonstrate that the current MMM and AMP are ineffective in preventing economic withholding.

In circumstances, such as a high demand period or times when transmission constraints are binding in New York City, when the competitiveness of the market may be questioned, we have authorized ex ante mitigation measures, not penalties, that essentially cap bids at a reference level that reflects what the accepted bids have been in competitive situations, thereby limiting the ability of a seller to increase prices above the competitive level. In these circumstances, bid caps limit generators' ability to profit from withholding and achieve a more efficient market outcome.

⁶ New York Independent System Operator, Inc., Docket No. ER01-2489-000, 96 FERC ¶ 61,249 (August 31, 2001).

The AMP satisfies the Commission's stated preference for ex ante mitigation to handle the possibility of market power abuse. Given the Commission's reluctance to allow penalties to be imposed at this time, it is critical to continue the AMP.

CONCLUSION

The NYPSC urges the Commission to approve the NYISO's request to extend the AMP until October 31, 2002. Without the AMP, 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
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Public Service Commission
Of the State of New York
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-8178

Dated: October 19, 2001
Albany, New York

CERTIFICATE OF SERVICE

I, Karen Houle, do hereby certify that I will serve on October 19, 2001, the foregoing Notice of Intervention and 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: October 19, 2001
Albany, New York

Karen Houle