

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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Secretary

April 2, 2001

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

Re: Docket No.EL01-1517-000 - 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) 473-7136.

Very truly yours,

Saul A. Rigberg
Assistant Counsel

Enclosures

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

NEW YORK INDEPENDENT SYSTEM)
OPERATOR, INC.) Docket No. ER01-1517-000
)
)

**NOTICE OF INTERVENTION AND COMMENTS OF THE
PUBLIC SERVICE COMMISSION OF THE
STATE OF NEW YORK**

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §385.214) and Filing, issued March 15, 2001, the Public Service Commission of the State of New York (NYPSC) hereby submits its notice of intervention and comments in the above-captioned proceeding.

Copies of all correspondence and pleadings should be addressed to:

Lawrence G. Malone, Esq.	Ronald Liberty
Saul A. Rigberg, Esq.	Director Fed. En. Interv.
Public Service Commission	Public Service Commission
of the State of New York	of the State of New York
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Albany, NY 12223	Albany, NY 12223

On March 12, 2001, pursuant to Section 205 of the Federal Power Act (FPA) and Section 35.13 of the Commission's Rules of Practice and Procedure (18 C.F.R. §35.13) and with the concurrence of the NYISO's Management Committee, the New York Independent System Operator, Inc. (NYISO) submitted a request for authority to amend Attachment F of the NYISO Market Administration and Control Area Services Tariff (ISO Services

Tariff) to extend the duration of its currently effective \$1,000/MWh bid cap on the NYISO-administered energy market until October 31, 2002. This date corresponds to the end of the NYISO's Summer 2002 Capability Period. Inasmuch as a cap is necessary to allow time for the development of additional generation capacity, and for evaluating the effectiveness of new demand-side response mechanisms, such as price-capped load bidding, to avoid exposing consumers to price spikes that are not the interplay of competitive market forces, we urge extension of the bid cap. Failure to continue the cap may result in unjust and unreasonable NYISO-administered market prices.¹

Our support for allowing prices to spike to \$1000/MWh before a cap takes effect is contingent on the NYISO implementing its automatic mitigation process (AMP) by June 1, 2001. If significant progress in establishing generators' reference levels, which are crucial to implementation of the AMP is not made in the next month,² the NYPSC may propose in May a lower bid cap tied to the variable cost of the least efficient

¹ Pursuant to Section 205 of the Federal Power Act (16 USC § 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) (FPA requires that market prices be just and reasonable).

² The NYISO's efforts at establishing reference levels has lagged. The NYISO has agreed to furnish NYPSC Staff with weekly reports on its progress in setting reference levels.

gas turbines in New York State. This cost-based parameter was used by the Commission in its recent California refund decision.³ Without the AMP in place to mitigate market power bids before prices are posted, improper transfers of millions of dollars from consumers to generators may result.

1. A Bid Cap Should Remain In Place

The NYPSC shares the Commission's and the NYISO Board's concerns about undue intervention in energy markets. In a workably competitive market, bid caps are counterproductive. New York's current wholesale electricity market, however, is not workably competitive during many critical hours. The NYISO's market clearing prices have hit the bid cap on numerous occasions during the past summer and fall.⁴ Most of these instances occurred when prices should have been lower because there was no scarcity of supply. Without a bid cap, the clearing prices could exceed \$10,000/MWh.⁵

As an example, the cost to consumers on a single peak day with eight hours of \$10,000/MWh prices, even with 80% of the

³ San Diego Gas & Electric Co., et al., Order Directing Sellers to Provide Refunds of Excess Amounts Charged for Certain Electric Energy Sales During January 2001 or, Alternately, to Provide Further Costs or Other Justifications for Such Charges, 94 FERC ¶61,245 (March 9, 2001).

⁴ On 7/10/00, 8/3/00, 8/9/00, 8/11/00, 8/28/00, 12/11/00, and 3/09/01, there were market clearing prices of \$1,000/MWh or greater.

⁵ The highest bid NYISO's bid box can register is \$10,000.

load hedged, would be a staggering \$430 million.⁶ This increase would approximately double the NYISO billings for the whole month. Since spot prices directly affect hedge prices, the actual impact of such prices would be much greater.

On November 21, 2000, the Commission extended the \$1,000/MWh bid cap until the end of the Winter Capability Period (April 30, 2001).⁷ The Order took into account New York's lack of a demand response to prices and limited supplies in times of high demand.⁸

This situation is largely unchanged. The summer of 2000 was one of the coolest on record in the New York City Zone. The peak load occurred on June 26, 2000 at 9,830 MW, compared to the forecasted peak load for 2000 of 10,340 MW. The summer 2001 peak load forecast is 10,535 MW. According to the NYISO's recently issued *Locational Installed Capacity Requirements Study*, demand of this amount would result in an in-City summer supply deficiency of almost 400 MW of installed generation. While the proposed 408 MW of new generation in New York City

⁶ This calculation assumes an average statewide consumption of 30,000 MW for these eight hours, with only 20% of consumption directly affected, *i.e.*, the other 80% is assumed to be hedged. (30,000 MW x 20% x 8 hours x \$9,000/MWh = \$430 million.) The 30,000 MW is below the NYISO's forecast peak of 30620 for Summer 2001.

⁷ Docket Nos. ER01-180-000 and ER01-180-001, New York Independent System Operator, Inc., Order Extending Bid Caps (issued November 21, 2000), at 6.

⁸ Id.

should address the supply deficiency,⁹ New York will not see major new base load generation until late 2002.

The NYISO has indicated that the first steps toward implementing demand response mechanisms are expected to be in place by this summer, but much more work is needed in regard to price-responsive load bidding to have a significant impact on prices.¹⁰ Meanwhile, the NYPSC itself has undertaken considerable efforts to facilitate demand response.¹¹

2. A \$1,000/MWh Bid Cap Will Not Discourage New Generation in New York

The claim that a \$1,000/MWh bid cap will discourage new generators from doing business in New York is incorrect for several reasons.¹² First, New York's Installed Capacity Market provides generators with substantial incentives to construct new plants, especially in the New York City area. Second, no

⁹ The New York Power Authority plans to install 408 MW of new generation within New York City to meet summer demand. The projects are the subject of litigation.

¹⁰ The NYISO also expresses concern about two other factors possibly putting an upward pressure on prices, namely, operating constraints at the Central-East interface and the adequacy of natural gas supplies.

¹¹ In NYPSC Cases 00-E-2054 and 94-E-0952, the NYPSC has issued orders initiating programs to establish a price-sensitive response on the part of customers, promote conservation, increase public awareness of the necessity to respond to electric emergencies, refocus the use of system benefit charges, promote peak demand reductions and to ensure that government and utility sectors participate in efforts to reduce summer peak demand. The effectiveness of these programs will be better known after they have been in operation for at least one summer.

¹² Various suppliers have filed applications or preliminary scoping statements under Article X of the Public Service Law to construct 15,124 MW's of new generation in New York, which represents approximately half of New York's peak load.

evidence has been offered indicating that PJM's permanent cap, in place since inception of PJM's markets, has discouraged entry of new supply. Third, suppliers' costs are only a small fraction of \$1,000/MWh.¹³

CONCLUSION

For the reasons expressed above, the NYPSC requests that the Commission grant the NYISO's request to extend the \$1,000/MWh bid cap through October 31, 2002 to protect consumers from unjust and unreasonable prices, provided that significant progress is made toward establishing reference levels so that the automatic mitigation process can be in place by June 1, 2001. In the event that significant progress is not made in establishing reference levels in the next month, the NYPSC may propose in May a lower bid cap tied to the least efficient gas turbines operating in New York State.

¹³ Public Service Electric and Gas Company, which owns a variety of generation facilities in the NYISO and PJM Control Areas, acknowledged to the NYISO Board last summer that a \$1,000/MWh bid cap would not interfere with its ability to earn a profit. Additionally, the President of Calpine, which is a large generation company based in California and owns facilities in New York, indicated that his corporation could operate profitably with a cap of \$250/MWh. Wall Street Journal, June 26, 2000, at p. A2.

Respectfully Submitted,

Lawrence G. Malone
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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: April 2, 2001
Albany, New York

CERTIFICATE OF SERVICE

I, Naomi Tague, do hereby certify that I will serve on April 2, 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: April 2, 2001
Albany, New York

Naomi Tague