

# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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## PUBLIC SERVICE COMMISSION

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June 12, 2001

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

Re: Docket No.ER01-2076-000 - New York Independent  
System Operator, Inc.

Dear Secretary Boergers:

For filing please find the Motion and Response 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

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

New York Independent System Operator, Inc.            )            Docket No. ER01-2076-000

**MOTION FOR LEAVE TO FILE AND RESPONSE  
OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the Commission or FERC), 18 C.F.R. §§ 385.213 (2000), the New York State Public Service Commission (NYPSC) hereby submits a Motion for Leave to File with an Answer in response to the protests against the request of the New York Independent System Operator (NYISO) to implement Automated Mitigation Procedures (AMP) in this proceeding.

**I. MOTION FOR LEAVE TO FILE RESPONSE**

Commission Rule 213(a)(2) prohibits filing an answer to a protest “unless otherwise ordered by the decisional authority.” 18 C.F.R. § 385.213(a)(2). The Commission will, however, accept responses to answers when the responses are helpful in clarifying issues or factual disputes in the proceeding. *See Central Maine Power Co.*, 89 FERC ¶ 61,030 at 61,092 (1999) (where the Commission allowed replies to answers to protests because the replies would aid in the Commission’s understanding and resolution of the issues in the proceeding); *California Independent System Operator Corp.*, 88 FERC ¶ 61,221 at 61,727 (1999) (where the Commission found good cause to allow replies to answers to protests because they would provide additional information to assist the Commission in its decision-making process). This answer will help clarify issues raised by the protests in this proceeding and thus contribute to the development of a more complete record to aid the Commission’s decision-making.

## II. BACKGROUND

On May 17, 2001, the NYISO filed a proposal to implement a new Attachment H to its Market Administration and Control Area Services Tariff. The proposed Attachment H contains the NYISO's existing Market Mitigation Measures (MMM) and the proposed AMP.<sup>1</sup> The filing was made pursuant to the NYISO's exigent circumstances authority, which allows the NYISO Board to make filings without the concurrence of the Management Committee. The Management Committee later met and voted to concur in the filing. On May 24, 2001, the NYISO filed a letter notifying the Commission of the Management Committee's vote and withdrawing the proposed expiration date required under the exigent circumstances authority. The NYISO sought expedited consideration of the filing and requested an effective date of June 15, 2001.

The proposed AMP will apply to the Day-Ahead Market (DAM) and will be activated if the Locational Based Marginal Price (LBMP) in any area of New York exceeds \$150. Once the AMP is triggered, the Security Constrained Unit Commitment (SCUC) will review all bids in the zone triggering the AMP, and potentially the entire New York Control Area (NYCA), to determine whether the bids exceed the economic withholding thresholds (conduct threshold) established in the MMM. If one or more bids exceed the conduct threshold, the SCUC will examine whether the group of bids exceeds the market impact thresholds (impact threshold). If the group of bids exceeds the impact threshold, then all bids that exceeded the conduct threshold will be mitigated and a default bid based upon the market participant's "reference price" will be substituted for the questioned bid. A final pass of the SCUC, using the mitigated bid for the group along with the regular bids for all others, will then be made to determine the DAM prices for the day. If it is later determined that the NYISO mitigated improperly, the market

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<sup>1</sup> The MMM is an attachment to NYISO's Market Monitoring Plan (MMP).

participant(s) adversely impacted will be made whole. The AMP will not apply to hydro units, external units, or market participants or their affiliates that control 50 MW of capacity or less. In addition, the AMP will not be utilized if the price effect of the AMP would result in an overall increase in prices over the entire day.

### III. ANSWER

Although numerous energy suppliers filed protests, our Answer focuses on a particular assertion raised by the Independent Power Producers of New York (IPPNY) and others.<sup>2</sup> IPPNY suggests on page 13 of its filing, that one reason the AMP should be rejected is because “the likelihood of mistaken or improper mitigation under the AMP is potentially quite significant.” According to IPPNY, any imperfection would constitute a fatal flaw: “Improper mitigation simply is and should be impermissible.”<sup>3</sup>

#### A. A Proper Policy Must Balance Various Error Probabilities.

The NYISO, or any ISO for that matter, is continuously evaluating market behavior to assess the hypothesis that market power is being exercised. When doing so, there are two types of errors that an ISO can make. One type is the error in which market power is truly being exercised, yet the ISO concludes that it is not and fails to take action. The second type of error occurs when market power is not being exercised, yet the ISO concludes that it is and improperly intervenes. In common statistical nomenclature, the former is referred to as an “alpha error” and the latter is a “beta error.” Those that oppose the AMP place great stress on the beta error, i.e., on the importance of ensuring that policies are designed to avoid errors in which the ISO

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<sup>2</sup> The protests fail to show that the AMP is anything more than automation of the NYISO’s current FERC-approved mitigation measures. While useful, the current measures cannot be deployed quickly enough to avoid a one-day lag in posted prices that are unreasonably high due to the exercise of market power.

<sup>3</sup> Id.

improperly concludes that market power has been exercised when, in fact, no market power is truly occurring.

While the NYPSC shares the goal of avoiding beta errors, it would like to minimize alpha errors. The very high thresholds embedded in the NYISO's market mitigation measures suggest there are a large amount of alpha errors taking place under the NYISO's current rules, since market power that raises prices by \$99 or even more can occur without the NYISO taking any action. Although this market power (alpha errors) goes forward unabated under the current rules, current NYISO procedures painstakingly guard against errors in assessing (and correcting) market power. IPPNY's position would perpetuate, if not exacerbate, this imbalance, which dearly costs ratepayers. A more realistic and proper goal is to seek policies that strike a balance between alpha and beta errors. The balance inherent in the NYISO's measures, including the AMP, is clearly one that in no way can be claimed to be biased against generators, especially because the NYISO has committed to make generators whole if mitigation was improper.

B. The AMP Is Designed To Reduce The Effects of Market Power Without Affecting The Prices of True Scarcity.

The goal of any mitigation measure should be to take a very high price that is caused by a combination of scarcity and market power and strip away the market power effects, or at least a sizable portion of them. The AMP serves this purpose. Rather than cap prices, it simply targets market power and measures it in an appropriate way.

The AMP does not short-circuit scarcity prices. So long as there is a single megawatt in the system, whose valid bid is at or near the bid cap, prices will reach the bid cap level on a day in which there is a true shortage, even with the AMP in place. What the AMP attempts to do, is prevent artificially induced high prices on hot days, when the market is not truly in a shortage situation, yet is excessively vulnerable to market power.

C. The NYISO's Market Mitigation Measures, Including The AMP, Are Extremely Permissive With Regard To The Exercise of Market Power.

The existing market mitigation conduct threshold of \$100, in effect, permits each and every generator in New York to bid \$99 above its reference price and be free of mitigation. This translates into permission to bid \$99 above the level of a competitive bid without worry of intervention. In addition, even for generators that bid more than \$99 above the level of a competitive bid, the mitigation price impact threshold prevents intervention unless the impact of such high bids is to raise the market price more than \$100 above where it otherwise would have been. This package of mitigation measures amounts to permission for the generators to exercise market power that boosts prices by \$99, or even higher.<sup>4</sup> As such, the mitigation measures, including the AMP, are extremely conservative and intervene only when the damage of market power to the consumers is extreme.

CONCLUSION

For the reasons expressed above, the NYPSC urges the Commission to approve the NYISO's filing to implement the AMP.

Respectfully submitted,

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General Counsel

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Dated: June 12, 2001  
Albany, New York

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<sup>4</sup> The combination of the \$100 threshold on conduct and the \$100 threshold on price impact can easily yield a situation in which no mitigation occurs, yet the price is \$120, \$140, \$160, or even \$198 above the price that would have occurred if all generators had set their bids equal to the competitive bid.

CERTIFICATE OF SERVICE

I, Naomi Tague, do hereby certify that I will serve on June 12, 2001, the foregoing Motion and Response 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: June 12, 2001  
Albany, New York

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Naomi Tague