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 FEDERAL ENERGY  
 REGULATORY COMMISSION

**ORIGINAL**

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

**New York Independent System Operator, Inc ) Docket Nos. ER00-3591-010,  
 ) ER00-1969-012**

**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.'S  
 REQUEST FOR LEAVE TO SUBMIT LIMITED ANSWER OUT OF TIME TO  
 THE COMPANIES' MOTION TO INTERVENE AND PROTEST**

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,<sup>1</sup> the New York Independent System Operator, Inc. ("NYISO") hereby respectfully requests leave to submit a limited answer out of time to the *Motion of New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation and Niagara Mohawk Power Corporation to Intervene and Protest* ("Companies' Protest") that was filed on January 11, 2002, in response to the NYISO's December 21, 2001, and July 30, 2001, compliance filings (together "compliance filings"),<sup>2</sup> in the above captioned dockets. The NYISO is making this filing for the limited purpose of correcting inaccurate statements contained in the Companies' Protest and to clarify the record in this proceeding.

The NYISO respectfully requests that the Commission accept, without prejudice, this filing out of time. Granting the NYISO's Request for Leave to Submit Limited Answer Out of Time to the Companies' Motion to Intervene and Protest will not cause disruption in this proceeding nor will it prejudice any party to the proceeding.

<sup>1</sup> 18 C.F.R. §§ 385.212 and 385.213 (2001).

<sup>2</sup> The NYISO made the December 21, 2001, compliance filing to correct an oversight in the NYISO's original July 30, 2001, compliance filing in which the NYISO filed tariff revisions regarding suppliers of 10-minute reserves, but inadvertently omitted parallel revisions regarding suppliers of 30-minute reserves.

020220-0521-1

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### I. Notices and Communications

All notices and communications in this proceeding should be served on:

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### II. Service List

The NYISO has mailed copies of this filing to all parties on the official service lists maintained by the Commission in Docket Nos. ER00-3591-010 and ER00-1969-012.

### III. Request for Leave to Submit Limited Answer

The NYISO recognizes that the Commission generally discourages answers to protests. The Commission has allowed such answers, however, when they help to clarify complex issues, provide additional information that will assist the Commission, or are otherwise helpful in the development of the record in a proceeding.<sup>4</sup> The NYISO has carefully limited the scope of its

<sup>3</sup> The NYISO respectfully requests a waiver of the Commission's regulations (18 C.F.R. § 385.203) to allow the inclusion of more than two persons for service and communications.

<sup>4</sup> See, e.g., *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017, slip op. at 6 (accepting an answer that was "helpful in the development of the record . . .") (2000); *New York Independent System Operator, Inc.*,

(continued...)

answer to comply with this Commission precedent, and believes that its answer should be permitted because it clarifies issues before the Commission and corrects inaccuracies, thereby serving as an important addition to the record in this proceeding. The NYISO therefore respectfully requests that the Commission exercise its discretion and accept the NYISO's limited answer.

#### IV. Discussion

The Companies' Protest incorrectly asserts that the compliance filings do not comply with the Commission's order issued on June 29, 2001 ("June 29 Order"),<sup>5</sup> which directed the NYISO to file "tariff revisions setting forth the criteria for when [Bid Production Cost Guarantee ("BPCG")] costs will be allocated only to Long Island customers and when these costs would be allocated to all customers...." Contrary to the assertions of the Companies' Protest, the NYISO has complied with the June 29 Order by proposing a straightforward method for making this determination based on well-publicized criteria that do not allow the NYISO to exercise discretion.

In the June 29 Order, the Commission acknowledged the Companies' concern that the NYISO's initial proposed tariff language provided the NYISO with "too much" discretion to determine when BPCG costs would be allocated to Long Island customers and when they would

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91 FERC ¶ 61,218 at 61,797 (allowing an answer deemed "useful in addressing the issues arising in these proceedings . . .") (2000); *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,137 at 61,381 (1999) (accepting otherwise prohibited pleadings because they helped to clarify the issues and because of the complex nature of the proceeding).

<sup>5</sup> *Order Acting on Compliance Filing*, 95 FERC ¶ 61,484 (2001).

be allocated to all New York State customers.<sup>6</sup> The Commission therefore directed the NYISO to file revised tariff sheets specifying the criteria for how BPCG costs would be allocated.

The NYISO's compliance filings proposed to apply the NYISO's threshold for market power mitigation of guarantee payments to the allocation of BPCG charges for Long Island units on days that the Long Island Reserves constraint is binding. When the BPCG charges incurred by Long Island units exceed the thresholds for mitigation contained in Section 3.2.1(2) of Attachment H of the NYISO's Market Administration and Control Area Services Tariff, the NYISO will determine whether those BPCG charges were incurred because the Long Island Reserves constraint was binding. If the BPCG charges were incurred because the Long Island Reserves constraint was binding, then the NYISO will allocated the net incremental BPCG charges attributable to the constraint only to Long Island customers.

Consistent with the Commission's June 29 Order, the NYISO's compliance filings proposed a clear and consistent method for allocating BPCG charges that eliminated the NYISO's discretion in assigning these charges. The Companies are simply wrong to claim that the NYISO's use of clearly articulated, Commission-approved mitigation thresholds as its BPCG allocation criteria, instead of the kind of mathematical formula that the Companies imagine, somehow results in the NYISO having discretion. The NYISO's proposed criteria precisely define when the costs of net incremental BPCG payments are to be allocated to Long Island consumers and require the NYISO to enforce this rule when those criteria are met.

Furthermore, contrary to the Companies' Protest, there is a strong relationship between the allocation methodology proposed by the NYISO and the objective of countering generators' ability to exercise local market power to set the price of reserves on Long Island. As the June 29

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<sup>6</sup> June 29 Order at 62,723.

Order recognized, “[t]he main objective of the proposed LRP system is to ensure that, in constrained conditions, reserves suppliers will not be able to exercise market power to set reserves prices state-wide.”<sup>7</sup> Similarly, the purpose of the NYISO’s locational BPCG allocation rule is to ensure that BPCG payments “made to Long Island resources to meet Long-Island specific problems would be borne by Long Island customers.”<sup>8</sup> The June 29 Order required the NYISO to implement these policies in a non-discretionary manner. It did not require the NYISO to allocate all BPCG costs to Long Island customers except where “specifically justified following case-by-case analysis” as the Companies allege.<sup>9</sup> The compliance filings’ proposed mechanism for allocating BPCG charges provides the most appropriate means of accurately assessing and addressing the market power problems that led the NYISO to adopt locational reserve pricing in the first place. They are thus fully consistent with the actual requirements of the June 29 Order.

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<sup>7</sup> June 29 Order at 62,721.

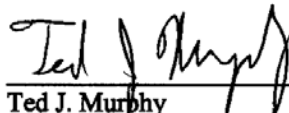
<sup>8</sup> *Id.*

<sup>9</sup> Companies’ Protest at 6.

**V. CONCLUSION**

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully asks that the Commission: (i) grant the NYISO's request for leave to submit an answer out of time in this proceeding; (ii) reject the relief requested in the protest discussed herein; and (iii) accept the filed tariff revisions governing the allocation of costs attributable to Long Island operating reserves BPGCs to Long Island Customers.

Respectfully submitted,



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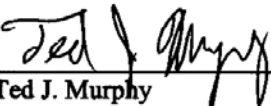
February 15, 2002

cc: Daniel L. Larcamp, Director Office of Markets, Tariffs and Rates, Room 8A-01,  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure 18 C.F.R. § 385.2010 (2001).

Dated at Washington, D.C. this 15th day of February, 2002.

  
\_\_\_\_\_  
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