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March 12, 2001

FILE NO: 55430.000005

BY HAND

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Request of the New York Independent System Operator, Inc.
for Permission to Extend Temporary Bid Caps Until the End of the
Summer 2002 Capability Period

Dear Mr. Boergers:

Pursuant to Section 205 of the Federal Power Act ("FPA"),[1] and Section 35.13 of the Commission's Rules of Practice and Procedure,[2] the New York Independent System Operator, Inc. ("NYISO"), by counsel, hereby respectfully requests 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 caps on certain NYISO-administered markets. These bid caps are currently scheduled to expire on April 30, 2001. Under the NYISO's proposal, the duration of these bid caps would be extended until the end of the NYISO's Summer 2002 Capability Period, *i.e.*, until October 31, 2002. The NYISO is not proposing any other change to Attachment F.

In making this filing, the NYISO Board of Directors ("NYISO Board")[3] is sensitive the Commission's concerns about undue intervention in energy markets. Nevertheless, the NYISO is submitting this request because it believes that delays in New York State's "Article X" process for licensing and siting new generating capacity are inhibiting supply from increasing to match continued demand growth.[4] The NYISO has no power to address this

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1 16 U.S.C. § 824d (1998).

2 18 C.F.R. § 35.13 (1999).

3 The NYISO Board is comprised of ten directors, none of which is affiliated with any New York market participant.

4 There are currently many developers interested in building new power plants in New York. *See* < http://www.nyiso.com/services/planning.html> for more information on

problem by expediting the licensing of new plants, and can only mitigate it by enhancing its rules and software. Moreover, although the NYISO proposes to implement several demand-side measures this summer, it is not yet clear whether they will make demand sufficiently price-responsive to avoid periods of high prices that would not occur if there were an efficient demand-side response.

Consequently, the NYISO Board concurs with the NYISO's Management Committee that it is appropriate and necessary to extend the existing bid caps through the end of the Summer 2002 Capability Period. The NYISO believes that this measure is necessary to allow time for the development of additional generation capacity, and for gauging the effectiveness of the NYISO's proposed demand-side response mechanisms, in order to avoid exposing consumers to price spikes that are not a product of the interplay of competitive market forces.

I. Documents Submitted

1. This filing letter;

2. Clean revised tariff sheets amending Attachment F of the ISO Services Tariff to extend the duration of the NYISO's current bid caps ("Attachment A");

3. Redlined revised tariff sheets depicting the changes that the NYISO proposes to make to Attachment F of the ISO Services Tariff ("Attachment B"); and

4. Form of *Federal Register* Notice ("Attachment C").

II. Copies of Correspondence

Communications regarding this proceeding should be addressed to:

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proposed plants in the state. The problem is that the Article X process seems likely to substantially delay the construction of new projects.

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III. Reasons for this Filing

A. Background

On July 26, 2000 the Commission adopted a NYISO Board proposal for bid caps and set them at $1,000/MWh.[5] Those bid caps were subsequently extended by the Commission, upon the request of the NYISO, until April 30, 2001.[6]

On March 1, 2001, the NYISO Management Committee voted to continue the currently effective bid caps through the end of the 2002 Summer Capability Period, *i.e.*, until October 31, 2002. After careful consideration of the matter, the NYISO Board concurs with the Management Committee's decision. Accordingly, the NYISO Board has instructed NYISO staff and counsel to make this Section 205 filing with the Commission requesting permission to extend the existing bid caps until October 31, 2002.[7]

B. Considerations Underlying the NYISO Board's Concurrence with the Management Committee

The NYISO Board concurs with the Management Committee's March 1, 2001 bid cap extension proposal because the Board has determined that it is necessary to address instances in which an imbalance between supply and demand in the NYISO-administered markets can

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5 *New York Independent System Operator, Inc., et al.*, 92 FERC ¶ 61,073 (2000), *reh'g pending*.

6 *New York Independent System Operator, Inc.*, 93 FERC ¶ 61,189 (2000).

7 The NYISO is concurrently withdrawing a request for extension of the bid caps that it made on October 24, 2000, pursuant to Section 206 of the Federal Power Act.

lead to artificial price spikes. Due to the delays associated with New York State's Article X licensing and siting process, which are outside of the NYISO's control, the NYISO believes that new supply will not be available to eliminate the possibility of such severe supply and demand imbalances for at least 18 months, despite the fact that market signals are drawing new supply to the state.[8]

New York's supply situation continues to be very tight, and it is apparent that the State faces critical challenges with respect to its supply-related infrastructure, *i.e.*, electric generation and transmission and natural gas pipeline capacity. In the near term, the generating resources available to meet growing demands appear to be seriously insufficient, both within specific parts of the state and throughout the state as a whole. In its recently released *Locational Installed Capacity Requirements Study*, for example, the NYISO concluded that the New York City area is almost 400 MW short of installed locational generating capacity required to meet applicable reliability standards for the Summer 2001 Capability Period. While gas turbines scheduled for installation in the New York City area by this summer by the New York Power Authority ("NYPA") will provide some improvement in reliability during peak demand periods, there may still be supply shortages under high load conditions in the New York City area. Furthermore, the NYISO is concerned that the completion of the NYPA project faces significant local opposition, including civil litigation in the New York State courts.

New York State as a whole currently meets its 18% installed reserve reliability requirement, although by increased dependence on out-of-state resources. Between 1995 and 2000, statewide demand for electricity grew by 2,700 MW, while generating capacity increased by only 1,060 MW. Although 85 new generating projects have been proposed or announced for New York representing almost 33,000 MW of new generation in total, only two of these planned projects has even completed the lengthy and contentious licensing process required in New York State. In the meantime, electricity demands continue to increase at the rate of approximately 1.4% annually, and are expected to continue to do so over the next few years. In addition to the important reliability questions raised by the tightness of supply, the NYISO is particularly concerned that diminishing supplies of hourly generation and generation

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[8] The NYISO does not believe that the existence of the $1,000 bid caps will interfere with these signals. Indeed, the NYISO believes that the uncertainty that would be created if bid caps were to be removed, subject to the very real possibility of being re-imposed for so long as New York's supply-demand imbalance exists, would be much more disruptive to the marketplace.

reserves will make the NYISO-administered markets vulnerable to artificial price spikes or gaming.

Adequate transmission capacity has also long been a concern in New York State, as the Commission knows. It has always been difficult to move the more abundant and less costly energy supplies from upstate New York down to the more supply-limited downstate area, principally due to capacity and operating constraints at the New York Control Area's Central-East interface. Unfortunately, no major improvements in either capacity or operating limitations are currently planned at Central-East, reflecting the fact that the addition of new transmission capacity anywhere in New York is extremely difficult. Right of way acquisition is difficult and costly, and the siting of transmission lines typically faces even more opposition than proposed generating projects.

New York State's natural gas supply is of equal concern to the NYISO. Much of New York's existing generation base is fueled by natural gas. In addition, the vast majority of planned additions to generation will be fueled by natural gas. Nevertheless, during the winter heating season residential heating needs take a priority for most of the available interstate gas pipeline capacity. Consequently, additional pipeline capacity will be required if the new natural gas-fueled generation is to be able to operate year around. As with capacity additions for electric generation and transmission, however, planned enhancements to interstate gas pipeline capacity appear to fall far short of what will be needed in the near term to support new electric generation in New York.

The NYISO strongly believes that the currently effective $1000/ MWh bid caps are an appropriate protective measure in light of the electric supply constraints facing the NYISO-administered markets in New York. In the NYISO's estimation, this authority will continue to be necessary until the end of the Summer 2002 Capability Period. The NYISO is hopeful that, by that time, significant progress will have been made in enhancing New York's energy supply infrastructure and strengthening demand-response mechanisms.

The NYISO remains acutely aware that taking steps to deal with price abnormalities can have undesirable consequences. Nevertheless, the NYISO believes that the $1,000/MWh cap that has been used in the PJM's markets since inception does not appear to have had an adverse impact there. In particular, there is no evidence that the existence of permanent caps in PJM has discouraged the entry of new supply, and the NYISO believes that a cap at the $1,000/MWh level will not interfere with incentives to enter the New York market as well. The permanent bid caps in PJM, and the interim bid caps in ISO New England (proposed for extension through the end of 2001) also make continuation of the NYISO's bid caps more important in order to maintain uniformity across the Northeastern markets. The NYISO also continues to believe that suppliers will not be materially harmed by the continuation of bid caps, which are likely to come into effect very rarely and are set at levels that prevent only artificially high run-ups in prices. Finally, the NYISO Board takes notice of the fact that the Management Committee has recommended the extension of bid caps only through October 31, 2002.

In short, the NYISO Board has carefully weighed the competing considerations and has concluded that the most appropriate course of action is to seek permission to extend bid caps unit the end of the Summer 2002 Capability Period.

IV. Description of Proposed Tariff Changes

The NYISO proposes to amend Attachment F to the ISO Services Tariff to continue bid caps until the end of the 2002 Summer Capability Period. The NYISO is not proposing any other changes to Attachment F.

V. Stakeholder Approval

As mentioned above, this request to extend the effective date of the $1000/MWh bid cap was approved by the Management Committee at its meeting on March 1, 2001, pursuant to the provisions of Section 19.01 of the ISO Agreement.

VI. Requested Effective Date

The NYISO requests that the Commission shorten its usual 60-day notice period and expeditiously issue an order making the NYISO Board's bid cap extension proposal effective on May 1, 2001, or as early as possible thereafter. Expedited Commission action is necessary to ensure that the currently effective bid caps, which are scheduled to expire on April 30, do not lapse. As was explained above, the NYISO believes that bid caps provide customers with important protection from artificial price spikes. If Commission approval of this filing is delayed, consumers will be exposed to the risk of having to pay artificially high prices that are not determined by the interplay of competitive market forces. Therefore, the NYISO believes that under the circumstances good cause exists for the Commission to shorten the sixty-day period and to accept the NYISO's proposal on an expedited basis.[9]

VII. ***Federal Register* Notice**

A form of Federal Register Notice is provided as Attachment C hereto. A diskette of the notice is also provided.

VIII. **Service**

Copies of this filing are being served on all of the parties in Docket Nos. ER01-181-000, all parties that have executed Service Agreements under the ISO OATT or the ISO Services Tariff and on the electric utility regulatory commissions of New York, New Jersey and Pennsylvania.

IX. **Conclusion**

The NYISO Board recognizes that the use of bid caps as a market protective measure is a highly sensitive issue. The NYISO has carefully considered this proposal, and has concluded that its bid cap extension represents a necessary and appropriate means of addressing the potential for unjustifiably high prices resulting from occasional periods of uncompetitive market conditions. Accordingly, for the foregoing reasons, the NYISO, acting pursuant to Section 205 of the Federal Power Act, respectfully asks that the Commission accept its bid cap extension proposal, to become effective on May 1, 2001, and to expire on October 31, 2002.

Respectfully submitted,

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[9] The NYISO Board reserves the right to make a unilateral "exigent circumstances" filing proposing an immediate implementation date if it appears that consumers are likely to be harmed by non-market driven prices during the time that the Commission is reviewing this filing.

NEW YORK INDEPENDENT
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March 12, 2001

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