

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

New York Independent System Operator, Inc.)	
)	
Central Hudson Gas & Electric Corporation)	
)	
Consolidated Edison Company of New York, Inc.)	Docket No. RT01-95-000
)	
Niagara Mohawk Power Corporation)	
)	
New York State Electric & Gas Corporation)	
)	
Orange & Rockland Utilities, Inc.)	
)	
Rochester Gas and Electric Corporation)	

**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.’S
ANSWER TO CERTAIN MOTIONS AND REQUEST FOR LEAVE
TO ANSWER AND ANSWER TO CERTAIN COMMENTS AND PROTESTS
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to 213(a)(2) of the Commission’s Rules of Practice and Procedure,¹ and the Commission’s March 6, 2001 *Notice of Extension of Time* in this proceeding, the New York Independent System Operator, Inc. (“NYISO”) hereby submits its answer to the *Motion for Leave to File Protest One Day Late and Protest and Motion to Consolidate and For Appointment of Settlement Judge of Enron Power Marketing, Inc.* (“EPMI Motion”). The NYISO is also answering pleadings in this proceeding which are styled “comments” or “protests,” but which actually contain similar motions asking the Commission to take additional action, *e.g.*, ordering an ISO merger or convening formal Commission proceedings on RTO formation. Finally, pursuant to Rules 212² and

¹ 18 C.F.R. § 213(a)(2) (2000).

² 18 C.F.R. § 212 (2000).

213 of the Commission’s Rules of Practice and Procedure, the NYISO requests leave to answer, and answers other comments and protests to the extent necessary to clarify complex Regional Transmission Organization (“RTO”) formation issues, and to help the Commission reach an informed decision in this proceeding.

The NYISO’s January 16 RTO filing was a joint application (“NYISO RTO Filing”) by the NYISO and six of the eight Members of the Transmission Owners Committee of the Energy Association of New York State (“Member Systems”).³ The Member Systems have informed the NYISO that they are filing a separate answer in this proceeding and provided the NYISO with a preliminary draft. Based on its review of this draft, the NYISO supports the Member Systems’ answer.

I. PROCEDURAL MATTERS

A. The NYISO Is Entitled to Answer Motions Requesting Additional Commission Action

Because the EPMI Motion incorporates a motion to consolidate and establish settlement judge proceedings, the Commission’s procedural rules permit the NYISO to answer. In addition, the NYISO believes that it is entitled⁴ to answer pleadings that are formally entitled “comments” and “protests” to the extent that they contain similar motions to consolidate, convene a technical conference, establish

³ The Member Systems are the Members of the Transmission Owners Committee of the Energy Association of New York State, *i.e.*, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc., the Power Authority of the State of New York (“NYPA”) and the Rochester Gas and Electric Corporation. Because LIPA and NYPA are non-jurisdictional utilities, they supported but did not sign the NYISO RTO Filing.

⁴ *See, e.g., Williams Natural Gas Company*, 48 FERC ¶ 61,079 (1989).

settlement judge proceedings, require the NYISO to merge with one or more neighboring Independent System Operators (“ISOs”), and/or direct the NYISO to adopt particular market rules and software.⁵

The NYISO’s response to all of the arguments that it believes it is entitled to answer is set forth in Sections II and III.

B. Request for Leave to Answer Certain Other Comments and Protests

The NYISO also respectfully requests leave to answer certain other comments and protests. Many of the pleadings make complex legal and factual arguments. Others contain conclusory allegations, misleading statements, raise new issues or improperly address issues that were previously decided by the Commission or that are simply beyond the proper scope of an RTO proceeding. The Commission allows answers to comments and protests 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.⁶ In the RTO context, the Commission has previously

⁵ These *de facto* motions include: (i) Aquila Energy Marketing Corporation’s (“Aquila”) request that the Commission convene an “Interregional Collaborative” under the auspices of the Commission’s Dispute Resolution Service (“DRS”) to create an Independent Market Monitoring Unit (“IMMU”) and to fully integrate the NYISO and ISO-NE by late 2003 or early 2004;⁵ (ii) Electric Power Supply Association’s (“EPSA”) request that Commission form a single Northeastern RTO by Summer 2003; (iii) the “Industrial Customers” request that the Northeastern ISOs be required to either resolve all seams issues by December or forced to combine; (iv) NRG Power Marketing, Inc. and its Affiliated New York Generating Companies (“NRG”) request that the NYISO and ISO-NE be compelled to create an IMMU and to submit a merger plan by January 1, 2002; and (v) the joint proposal of the New York State Gas & Electric Corporation (“NYSEG”) and Rochester Gas & Electric Corporation (“RG&E”) that the Commission engage in “targeted” interventions to advance the functional integration of the Northeastern ISOs by December, 2003, with structural integration to follow.)

⁶ 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 *New York Independent System Operator, Inc.*, 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, 61,381 (1999) (accepting otherwise

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accepted answers by RTO applicants that help to enhance its understanding of complex RTO formation issues.⁷ The NYISO has carefully limited the scope of its answers to these arguments in order to comply with Commission precedent, and respectfully submits that they should be allowed because they will help to clarify the issues under consideration in this proceeding, and because the issues are so important.

The NYISO's response to all of the arguments that it believes it needs the Commission's permission to answer is set forth in Section IV of this filing. In the event that the Commission determines that the NYISO is not automatically entitled to answer any or all of the arguments addressed in Sections II and III, the NYISO respectfully requests that the Commission exercise its discretion and permit the NYISO to answer them for the reasons specified in the preceding paragraph.

II. ANSWER TO MOTIONS TO CONSOLIDATE RTO PROCEEDINGS, TO CONVENE TECHNICAL CONFERENCE, TO ESTABLISH SETTLEMENT JUDGE PROCEEDINGS, OR TO COMPEL AN ISO MERGER

EPMI and the others that urge the Commission to consolidate the NYISO's and Member Systems' joint RTO filing ("NYISO RTO Filing") with the PJM⁸ and New England RTO⁹ filings, to convene a technical conference or settlement judge proceeding on RTO formation in the Northeast, or to mandate an ISO merger, all make a number of erroneous assumptions. Specifically, they have wrongly concluded that: (i) the NYISO, and, other Northeastern ISOs, lack adequate scope and

prohibited pleadings because they helped to clarify the issues and because of the complex nature of the proceeding.)

⁷ See, e.g., *Alliance Co.* 94 FERC ¶ 61,070 at 61,301-02 (2001); *GridFlorida LLC*, 94 FERC ¶ 61,020 at 61,043 (2001); *Carolina Power & Light Company, et al.*, 94 FERC ¶ 61,273, *slip op.* at 4 (2001).

⁸ See *PJM Interconnection, L.L.C., et al.* Order No. 2000 Compliance Filing, Docket No. RT01-2-000 (October 11, 2000).

⁹ See *Joint Petition for Declaratory Order to Form the New England Regional*

(continued . . .)

configuration to qualify as RTOs on their own; (ii) voluntary efforts to better coordinate their markets and address seams issues have failed, and the Commission must therefore become heavily involved in the RTO development process; and (iii) the NYISO lacks the requisite independence to be an RTO because it is overly susceptible to the influence of the Member Systems and/or the New York Public Service Commission (“NYPSC”). The NYISO disagrees with these presumptions and addresses each in the Sections that follow.

The NYISO has worked assiduously to eliminate barriers to inter-ISO transactions, in order to promote establishment of a single Northeastern market for electric energy. To this end, the NYISO: (i) is playing a leading role in a joint effort with ISO New England (“ISO-NE”) and the Ontario Independent Electricity Market Operator (“IMO”) to develop a single Northeastern day-ahead market; (ii) has actively pursued, and is attempting to expedite, the implementation of the Memorandum of Understanding (“MOU”) among the Northeastern ISOs and the IMO; and (iii) has entered into a reserves sharing agreement with ISO-NE. In addition, the independent Boards of Directors of the NYISO and ISO-NE have agreed to establish a joint task force to address seams issues and facilitate inter-ISO market monitoring. While the NYISO is open to the possibility of an eventual ISO merger in the Northeast it is vigorously opposed to misguided merger proposals that would impede progress on market integration and shift the focus to less important, but highly controversial, issues that could take years to resolve. Such proposals lose sight of the desired end, *i.e.*, a seamless marketplace, by taking an overly myopic view of the means required to achieve it.

Transmission Organization, Docket No. RT01-86-000 (January 16, 2001).

, *Order No. 2000-A*, III FERC Stats. & Regs. ¶ 31,092 (2000); *petitions for review pending sub nom., Pub. Util. Dist. No. 1 of Snohomish County, Wash v. FERC*, Case Nos. 00-1174, *et al* (D.C. Cir. Apr. 24, 2000).

¹¹ The NYISO's strategy of beginning by focusing on the development of integrated markets, while leaving the door open to future structural integration, is analogous to the approach of the original proponents of a European Common Market, who successfully paved the way for the subsequent creation of the European Union.

Finally, EPMI and others that ask the Commission to take a more prescriptive approach do not mention that the NYISO's RTO filing was the product of a collaborative process that was open to all stakeholders, received the endorsement of the NYISO's Commission-approved governance institutions, and was ultimately supported by most New York market participants. They also ignore that each of the Northeastern ISOs' RTO proposals has been endorsed by the relevant state public utility commissions. None of these regulators have called for an ISO merger, although several support efforts to more closely coordinate the ISO markets.

A. The NYISO Has Sufficient Scope to Qualify as an RTO

EPMI argues that the NYISO is too small to be an RTO because it believes that a single Northeastern RTO would better satisfy Order No. 2000's requirements.¹² Thus, EPMI declares that the key question for the Commission is "[w]hat is the configuration of power markets in the Northeast

¹³ Various other pleadings take a similar view.¹⁴ The NYISO respectfully submits, however, that EPMI and its allies are asking the wrong question.

The NYISO did not claim to be creating an "ideal" RTO. Nor did it suggest that it was impossible to imagine alternative RTO structures that might possess the required RTO characteristics to an even greater extent, and be capable of performing the required RTO functions even more capably, than the NYISO. Instead, the NYISO focused, as a first step, on ensuring its full compliance with all of

¹² As is discussed below, this presumption is false because the NYISO's virtual RTO proposal will be the practical equivalent of a single Northeastern RTO.

¹³ EPMI Motion at 3.

¹⁴ *See, e.g., Motion to Intervene and Comments of the Williams Companies* at 3 (asserting that a single Northeast RTO would "optimally" resolve congestion, transmission planning and interregional coordination issues and would be "best positioned" to fulfill other RTO functions.)

Order No. 2000's requirements while building the consensus support necessary to make a voluntary RTO filing, and addressing real world complexities.¹⁵ Critics such as EPMI ignore these considerations when they demand that their individual conceptions of a "perfect" RTO be realized overnight. The NYISO is proposing a more realistic approach aimed at maximizing the benefits to the Northeastern energy markets as quickly as possible while minimizing the time and effort spent on secondary structural issues. Meanwhile, the NYISO and its co-applicants are committed to making further improvements, and to pursuing additional functional and structural integration among the Northeastern ISOs.

Thus, those parties that depict the NYISO's emphasis on inter-regional coordination as an implicit "concession" that the NYISO lacks sufficient scope to be an RTO have missed the point.¹⁶ In the short-term, the NYISO is focusing on inter-ISO coordination to ensure its compliance with Order No. 2000's scope and configuration, and inter-regional coordination, requirements. In the longer-term, the NYISO expects that these efforts will provide the foundation for greater functional and, if it is determined to be appropriate, structural, integration.

B. The NYISO's Virtual RTO Proposal Is Consistent With Commission Precedent

The NYISO's virtual RTO approach is entirely consistent with Commission precedent, including Order No. 2000, which invited entities that were of sufficient scope to meet some, but not all of the RTO requirements to achieve the requisite "effective scope" through coordination and

¹⁵ The NYISO RTO Filing described some of these practical, reliability, operational, structural, cost allocation and legal considerations at pp. 21-22. The NYISO has revisited this subject below in Section II.E.

¹⁶ See, e.g., Aquila at 5-9; NRG at 7-8.

agreements with neighboring entities.¹⁷ Moreover, the Commission’s recent order provisionally approving the “GridSouth” RTO embraced the “effective scope” concept.¹⁸ In that proceeding, many parties protested that “the scope and configuration of GridSouth is inadequate because it is too small in size and number of transmission owners to be considered a truly regional organization.”¹⁹ Others argued that the GridSouth Applicants dominated energy supply in the Carolinas, and that there was insufficient merchant generation in the area to support a truly competitive market.

Nevertheless, the Commission found that “GridSouth, while not ideal with respect to scope and configuration, represents a good first step toward the creation of an RTO in the Southeast region and can serve as a platform for the formation of a larger RTO in the Southeast.”²⁰ Accordingly, it provisionally accepted GridSouth’s scope “as a starting point” and encouraged further expansion. The Commission observed that the GridSouth proposal was a “realistic and balanced effort to create an RTO in the Southeast region” that complied with Order No. 2000’s requirements.²¹

The NYISO is, at a minimum, similarly-situated to GridSouth for scope and configuration purposes, and in several respects is clearly more fully compliant with Order No. 2000’s RTO requirements. First, as the NYISO RTO Filing indicated, the NYISO and GridSouth are approximately the same size.²² Second, like GridSouth, the NYISO’s boundaries will encompass “a single contiguous

¹⁷ See Order No. 2000 at 31,033.

¹⁸ *Carolina Power & Light Company, et al (“GridSouth”)*, 94 FERC ¶ 61,273 (2001).

¹⁹ *Gridsouth, slip op.* at 25.

²⁰ *Gridsouth, slip op.* at 27.

²¹ *Gridsouth, slip op.* at 29.

²² See NYISO RTO Filing at 19.

area” without internal holes.²³ Third, like the GridSouth applicants, the Member Systems and the NYISO, have a “history of cooperating together on transmission assessment and expansion planning” which “make them a logical platform for RTO formation and development.”²⁴ Indeed, the Member Systems, have coordinated their operations for decades, first through the New York Power Pool, and later through the NYISO, and thus have an even longer history of cooperation.

Moreover, GridSouth has no experience providing open-access transmission service under a single tariff, administering wholesale power markets, or even operating as a centralized power pool. By contrast, the NYISO has substantial operational experience, and has demonstrated its ability to safely manage the system its controls. Merchant suppliers are a much larger portion of the supply mix in New York than they are in the GridSouth area, which eliminates the concern that the NYISO-administered markets will be dominated by a handful of sellers. Further, unlike GridSouth, which was ordered to do more to coordinate with Santee Cooper and other non-investor owned utilities, all non-jurisdictional transmission owners in New York are already NYISO members. Finally, as the NYISO has previously explained, and discusses further herein,²⁵ it has already made substantial progress towards coordinating its practices, rules, software and operational markets with neighboring ISOs. GridSouth is still working to commence operations, and has not yet had a chance to begin these efforts in earnest.

The Commission should therefore find that the NYISO, which has taken many steps towards the creation of an integrated regional market, and is far ahead of GridSouth in this regard, satisfies Order No. 2000’s scope and configuration requirement. Such a ruling would recognize that the

²³ *Gridsouth, slip op.* at 28.

²⁴ *Id.*

NYISO is a fully compliant, albeit, like GridSouth, arguably not an “ideal,” RTO, that has made a realistic and balanced compliance effort which represents a “good first step” toward the creation of a larger Northeastern energy market. The NYISO RTO Filing will serve as a “platform” for further market integration efforts, including the possible formation of a single RTO in the Northeast. Just as the Commission has signaled that it will support efforts to broaden and improve the GridSouth proposal, it should continue to support the NYISO’s efforts to better harmonize its market rules and software with its neighbors in the Northeast. There is no valid reason to treat the NYISO and GridSouth differently in this regard.

The Commission has recently suggested that a kind of “virtual” RTO structure, pursuant to which several RTOs would closely coordinate their markets, could be a viable RTO configuration in the West, where, as in the Northeast, infrastructure deficiencies and “fragmented” market rules have impeded the development of a regional market.²⁶ In addition, the Commission’s Chief Administrative Law Judge has concluded that a settlement between the Midwest Independent System Operator, Inc. (“MISO”) and the conditionally authorized Alliance RTO, pursuant to which there would be two separate, but closely coordinated, RTOs in the Midwest region, “accomplishes the same result that a single RTO for the region would produce” The Chief Administrative Law Judge also found that

²⁵ See Section II.C below for a discussion of the NYISO’s recent “Best Practices” proposal.

²⁶ See *Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States*, Docket No. EL01-47-000, *slip op.* at 14 (March 14, 2001) (“A west wide RTO, or a seamless integration of Western RTOs, is the best vehicle for designing and implementing a long term regional solution [to the west’s problems].”)

the settlement was in the public interest and represented the “very best solution” that could practically be achieved.²⁷ The NYISO’s virtual RTO proposal is entirely consistent with these precedents.

C. A Virtual RTO Can Be the Practical Equivalent of a Single Northeastern RTO

Order No. 2000 requires RTO applicants that intend to rely on inter-RTO agreements to achieve the “effective scope” necessary to satisfy certain RTO requirements to demonstrate that the arrangement they propose to “eliminate the effects of seams is the practical equivalent of eliminating the seams by forming a larger RTO.” Various parties in this proceeding allege that it is impossible for the Northeastern ISOs, and the IMO, to enter into voluntary coordination agreements that would be the “practical equivalent” of forming a single Northeast RTO. However, none of these parties support these claims with anything more than conclusory statements, nor do they effectively counter the NYISO’s discussion of the practical benefits a virtual RTO approach will bring.

This is especially true of the EPMI Motion, which includes a technical affidavit that purports to demonstrate that only a single Northeastern RTO could satisfy Order No. 2000’s requirements. In reality, although the affidavit effectively shows that the three Northeastern ISOs are electrically interdependent in many ways, a point that the NYISO has never disputed, it lends no support to EPMI’s thesis that a virtual RTO would be unworkable. Indeed, the affidavit contains just a single sentence which speculates, without any factual support, that voluntary coordination arrangements cannot be “adequate substitutes” for a single RTO.²⁸ The truth is that a Northeastern virtual RTO can be the practical equivalent of forming a single large RTO. Indeed, in the short-term, creating a virtual RTO will

²⁷ See *Report of the Chief Judge*, Docket No. ER01-123-000, *slip op.* at 3 (February 23, 2001).

²⁸ See EPMI Motion, Affidavit of Dr. Judith B. Cardell on Behalf of Enron Corporation at 14-15.

bring greater benefits because it will permit stakeholders to focus on developing a large, well-integrated market, and to defer work on distracting corporate structure, cost allocation, and other less important issues.

EPMI also argues that the three Northeastern ISOs are incapable of managing parallel path flows that would be internalized by a single RTO. This argument must fail because Order No. 2000 does not require RTOs to perform this function until December 31, 2004. The NYISO RTO Filing pledged to comply with this requirement by that date. The Commission's recent GridSouth order accepted a similar commitment by the GridSouth applicants, who will also have to rely on voluntary arrangements to manage parallel path flows in the Southeast.²⁹ There is thus no reason for the Commission not to accept the NYISO's and its co-applicants' commitment on this subject.

Similarly, EPMI's argument that the alleged incompatibility of the three Northeastern ISO's congestion management systems necessitates the formation of a single RTO is without merit. As an initial matter, EPMI's claims that the NYISO's existing congestion management system is unworkable, or that the existence of formal trading hubs is a necessary pre-requisite to efficient congestion management, are simply incorrect. The NYISO's existing system is successful and EPMI's criticism of it is seriously exaggerated. Even if EPMI's charges were accurate, however, it has ignored the ongoing ISO efforts to develop an inter-ISO congestion management system in the Northeast that will be the practical equivalent of a single RTO's congestion management system.³⁰ Order No. 2000 gives RTO applicants until December 15, 2002 to create fully operational regional congestion management

²⁹ *GridSouth slip op.* at 46.

³⁰ EPMI's suggestion that the NYISO be required to adopt PJM's congestion management system is inappropriate for the reasons discussed below in Section III.

systems.³¹ The NYISO is hopeful that an inter-ISO congestion management system will be in place by that time.

EPMI's claim that the existing ISOs have inconsistent reservation, scheduling and trading rules completely ignores the ISOs' ongoing efforts to harmonize seams problems. In addition to the efforts described in the NYISO RTO Filing, the NYISO staff and New York market participants have recently developed an inter-ISO "Best Practices" proposal that would address the eight most important seams issues, including those identified by EPMI,³² on a high priority basis. The NYISO's Management Committee approved the proposal at a special March 12, 2001 meeting convened solely for that purpose. Under the proposal, the Northeastern ISOs will identify and uniformly adopt the best ISO practice regarding each seams issue. The best practice may be one that is already being used by one ISO, which would then be adopted by the other ISOs and the IMO, or a new hybrid that is acceptable to all four entities. The NYISO is currently working through the ISO-MOU process to persuade the other ISOs to adopt and implement this proposal. A copy of the Best Practices proposal is attached to this Answer.

In addition, although it is probably true that a single Northeastern RTO would ultimately have a lower annual budget than the three existing ISOs, the savings from a merger would be unlikely to be anywhere near as great, or as immediate, as EPMI imagines. Each ISO has non-redundant costs that

³¹ Order No. 2000 at 31,229.

³² Indeed, the EPMI Motion refers to an earlier version of the best practices proposal to support its claim that there are significant seams issues separating the Northeastern ISOs. EPMI Motion at 11 (Referring to a February 15, 2001 proposal presented to the NYISO's Business Issues Committee.) This should confirm that the NYISO's best practices proposal squarely addresses EPMI's concerns.

would not disappear in the event of a merger.³³ This is especially true if, as EPMI suggests,³⁴ there would continue to be three separate control areas (with three separate staffs) in the aftermath of an ISO merger. EPMI's savings estimate also excludes, among other things, the substantial costs that would have to be incurred to upgrade the post-merger RTO's software systems so they could manage the entire Northeastern transmission grid, as well as the sizable costs involved in negotiating and consummating a merger. Finally, EPMI ignores the enormous costs that could potentially be imposed on consumers if a Northeastern RTO is formed in a haphazard manner and proves unable to safely manage the Northeastern transmission system, or to successfully administer the Northeastern markets.

D. A Virtual RTO Can Be Created Voluntarily With Minimal Commission Involvement

A number of parties assert that the NYISO is not truly committed to creating a virtual RTO.³⁵ Others declare that voluntary efforts to bring the Northeastern ISOs together have been a failure and should not ever be expected to succeed.³⁶ They therefore argue that the Commission must take aggressive action to accelerate the formation of a single Northeastern RTO.³⁷ They ask the Commission to: (i) convene a technical conference; (ii) initiate settlement judge procedures; (iii) consolidate different

³³ EPMI's Motion states that the three Northeastern ISOs budgets for 2001 totaled \$300 million, and that a merger would result in \$200 million in annual savings. *See* EPMI Motion at 11-12. It appears that EPMI calculated this figure by simply eliminating two thirds of the total cost, which is clearly simplistic.

³⁴ EPMI Motion at 12, n. 10.

³⁵ *See, e.g.*, EPMI Motion at 13-14.

³⁶ *See* NRG at 8; NYSEG/RG&E at 7-13; Industrial Customers at 13-14.

³⁷ *See, e.g., Motion to Intervene and Comments of Reliant Energy Power Generation, Inc.* ("Reliant") at 3 (asserting that the MOU has been a failure and that no more progress will be made without the Commission's direct intervention.) (February 22, 2001.)

RTO proceedings; (iv) adopt arbitrary ISO merger timetables; (v) make far-ranging use of the Commission's DRS staff; and/or (vi) make the Commission's Office of Markets, Tariffs and Rates staff available to evaluate the technical accuracy of ISO statements.

Contrary to these allegations, the NYISO has demonstrated by its actions, most recently its "Best Practices" proposal, its announcement of an inter-regional reserves sharing program with ISO-NE,³⁸ and other short-term initiatives undertaken pursuant to the joint agreement between the NYISO and ISO-NE Boards,³⁹ that it is dedicated to creating an integrated Northeastern energy market.⁴⁰ Parties that question the NYISO's commitment mistake the NYISO's superior understanding of the challenges involved in integrating the Northeastern markets, and advocacy of a more realistic RTO formation approach, for a lack of will. Moreover, they fail to recognize the considerable progress that has already been made, and the additional progress that will become apparent in the near future, as various initiatives, *e.g.*, inter-ISO congestion management, inter-ISO reserve sharing and the development of a regional day-ahead market, begin to produce results.⁴¹

The NYISO strongly believes that it will be possible to complete the development of a virtual RTO on a voluntary basis. All three Northeastern ISOs, the region's transmission-owning utilities, all of

³⁸ Under the new program, the NYISO and ISO-NE will share reserves for up to four hours after a system interruption causes one of the ISO's to lose generation or a transmission line. The NYISO and ISO-NE are continuing to explore the future development of combined reserves markets.

³⁹ These initiatives are described at pp. 83-86 of ISO-NE and the New England Transmission Owners' joint *Response to Motions to Intervene, Protests, Answers and Comments* in Docket No. RT01-86-000 (March 9, 2001).

⁴⁰ Of course, these efforts also bolster the NYISO's compliance with Order No. 2000's inter-regional coordination requirement.

⁴¹ EPMI Motion at 13.

the relevant state regulators, and most market participants, support the development of a better integrated Northeastern market, many with increasing urgency. Given the growing consensus on this issue, the NYISO expects that the ISO-MOU process will accelerate further in coming months and prove its detractors wrong. The NYISO's own experience in working with the Member Systems, and other market participants, to build support for the NYISO RTO filing is evidence that voluntary efforts can be fruitful in the RTO context.

Moreover, integrating the Northeastern markets, to say nothing of making structural changes to existing ISOs, has given, and will give, rise to a host of extremely complex technical and economic issues. The Commission has generally preferred to let ISOs and market participants attempt to resolve difficult technical issues, rather than enmeshing itself in the details. It is difficult to artificially expedite the resolution of such issues. The NYISO believes that the Commission should continue to follow this policy in the RTO context and allow parties to find their own solutions whenever possible.

The Commission should reject requests that it initiate a technical conference or turn RTO formation over to a settlement judge.⁴² The NYISO is very concerned, based on what it has observed in prior proceedings, that holding formal Commission sponsored events can impede, rather than encourage, progress by giving market participants an incentive to posture and play for the Commission's favor rather than genuinely negotiating. Holding a technical conference, or any other kind of formal adjudicative proceeding, will introduce additional delay and expense to the RTO process.

⁴² The NYISO recognizes that the Commission's use of a settlement judge appears to have helped the Midwest ISO, Alliance RTO and various Midwestern stakeholders resolve a number of disputes. However, the MISO and the Alliance were two nascent entities that were attempting to address basic structural and market issues prior to commencing operations. The Northeastern ISOs are more mature

(continued . . .)

More “targeted” Commission interventions, such as those NYSEG and RG&E propose,⁴³ would be less disruptive than the heavy-handed approach others have recommended, but would nevertheless pose problems. The NYISO does not think that the Commission’s DRS staff is needed to resolve most of the issues that the MOU process is addressing. Instead of becoming actively involved in every phase of MOU meetings, the DRS staff should be deployed only when its help is clearly needed to resolve protracted deadlocks. Similarly, settlement judges should be turned to only to resolve disputes that prove intractable with the DRS’s assistance. In short, the Commission should presume that voluntary discussions will succeed. The NYISO also strongly objects to NYSEG and RG&E’s proposal that OMTR staff be deployed to test the veracity of the ISOs’ technical statements, which is based on a totally unwarranted assumption that ISOs will attempt to subvert the effort to more closely coordinate their markets.

The NYISO also asks that the Commission resist the temptation to set arbitrary implementation deadlines. Some parties have asked the Commission to order the ISOs to complete major tasks by deadlines that are simply unattainable. The most conspicuous example is EPMI’s suggestion that the three Northeastern ISOs complete a merger by Fall 2002. Others have asked the Commission to set very specific RTO formation timetables that include precise implementation milestones.⁴⁴ The NYISO opposes all attempts by individual market participants to use this proceeding to prescribe such milestones. Instead, to the extent that specific milestones are necessary, they should be set by the ISOs

organizations that are attempting to address more numerous and much more detailed questions that do not readily lend themselves to resolution through a settlement judge proceeding.

⁴³ NYSEG/RG&E at 11.

⁴⁴ *See, e.g.*, NYSEG/RG&E at 21-24; NRG at 13.

in consultation with their stakeholders. This approach will ensure that whatever deadlines are set are realistic, and take the interests of all stakeholders into account. In the event that the Commission determines that it must nevertheless set deadlines, the NYISO respectfully requests that it tie them to broad goals, rather than attempting to estimate how long discrete technical projects should take to complete, and invite comment before finalizing them.

The Commission should also consider that it recently refused to intervene in GridSouth’s RTO formation process. In that proceeding, certain protestors claimed that the GridSouth Applicants’ inter-regional coordination plans were vague and asked that the Commission, among other things, convene a technical conference or settlement judge proceeding, require GridSouth and other entities to create a “seams administration organization,” establish strict RTO merger deadlines, and/or prescribe standard market and reliability practices itself. The Commission rejected these requests, although it did require the GridSouth applicants to submit a schedule “for the submission of future reports addressing their progress in resolving inter-regional problems and problems at the seams between GridSouth and other transmission entities within the Southeast region.”⁴⁵ The Commission explained that:

Several Intervenors request that the Commission design a specific or uniform template for inter-regional coordination or otherwise be actively involved in directing and governing interregional coordination discussions. EPSA requests that the Commission direct the parties to use the resources of its Dispute Resolution Service (DRS) division. We decline at this time to dictate a uniform or “one-size-fits-all” approach. While some aspects of EPSA’s request may be worthy of consideration, this docket is the wrong forum for dealing with these issues. It is also premature at this stage to involve the Commission’s dispute resolution resources. If discussion concerning appropriate integration of reliability and market practices break down in the future, parties can request DRS assistance ⁴⁶

⁴⁵ *GridSouth, slip op.* at 64.

⁴⁶ *GridSouth, slip op.* at 65.

The Commission should adopt a similar approach in this proceeding. The Northeastern ISOs are far ahead of GridSouth with respect to inter-regional coordination. The NYISO has also already pledged to submit regular reports on its progress, much as the Commission has required the GridSouth applicants to do. There is thus no reason for the Commission to be more prescriptive in the Northeast than it has been in the Southeast.

Finally, the Commission should consider that the best way to ensure the Ontario IMO's full integration into the Northeastern market is to permit the Northeastern ISOs, and the IMO, to develop voluntary agreements for the harmonization of their markets, software and practices. The IMO will not be subject to any mandates or deadlines that the Commission might impose, and may abandon the RTO process if the Commission takes an overly prescriptive approach.

E. Parties That Advocate a Near-Term RTO Merger Greatly Underestimate the Difficulties, and Exaggerate the Benefits

EPMI and other parties that ask the Commission to prescribe aggressive, and unrealistic, ISO merger timetables, apparently do not understand the difficulty of the undertaking, especially considering the magnitude of the current effort to integrate Northeastern markets. The NYISO RTO Filing addressed this issue when it stated that:

Any decision with respect to a possible merger of RTOs, however, would require careful analysis to ensure that all potential impacts, both positive and negative, on system reliability, market efficiency and Market Participants are carefully considered. Impediments to mergers also must be identified and reasonably assessed. Among the issues that would need to be addressed are the renegotiation of tariffs, market rules and governance structures. In addition, new software and operating procedures would need to be developed. A premature and inadequately considered attempt to move toward an RTO merger could be disruptive, wasteful and result in a degradation of system reliability and disruptions in the competitive markets. Most importantly, it cannot simply be assumed that a single operator would be able to maintain the real-time security of the Northeast's transmission grid. These and numerous other issues must be seriously

considered before any reasonable decisions can be made with respect to the advisability of a merger of the NYISO with any other RTO.⁴⁷

No protestor in this proceeding has refuted these comments, or adequately addressed the complexities that an RTO merger would involve. Likewise, no protestor has persuasively explained why it is essential to mandate disruptive structural changes now, at a time when the Order No. 2000's market integration goal can be achieved more easily through coordination arrangements.

Certain protests create the inaccurate impression that an ISO merger would create a perfectly integrated Northeastern market by eliminating all ISO seams, and that a virtual RTO would not do this. The New York, PJM and New England systems have developed separately for decades and, although they are electrically interdependent in a number of ways, the ties that connect them have limited capacity, especially relative to the load that each ISO serves. For example, the NYISO has approximately 1600 MW of import/export capacity with New England, 2500 MW with PJM, and 2400 MW with Ontario. Currently, the NYISO can also import approximately 1500 MW from, and export approximately 1000 MW to, Quebec. Thus, until substantial new transmission capacity is in place there will be discrete New York, New England and PJM sub-markets in the Northeast. Combining the existing ISO structures will not change this physical reality, and would only delay the effort to coordinate the three existing markets.

Similarly, the three existing ISOs encompass a number of states, each of which has introduced a different retail access programs and applied different generation divestiture requirements to the transmission-owning utilities they regulate. For example, most of the New York utilities have sold all, or nearly all, of their generation, whereas a number of PJM states have essentially allowed utilities to

⁴⁷ NYISO RTO Filing at 21-22.

remain vertically integrated. These differences cause the NYISO and PJM markets to function in subtly different ways which an ISO merger would not eliminate. Additional “seams” issues are attributable to grandfathered transmission agreements that would not be affected by an ISO merger.

Finally, the NYISO respectfully suggests that there are ways in which, a virtual RTO will be superior to a single RTO, at least during a transitional period. First, as the NYISO has previously emphasized, a virtual RTO approach will permit Northeastern stakeholders to focus on important market integration issues, rather than getting bogged down in controversial structural, cost allocation and governance issues. It would be illogical to permit such issues to delay the benefits that market integration will bring. Second, it is possible that an entity responsible for simultaneously operating the PJM, New York, New England and Ontario transmission systems in real-time would be too far removed from smaller scale local operational issues.⁴⁸ This could substantially reduce a Northeastern-wide RTO’s efficiency. Furthermore, because no entity has ever had to operate a system as huge as the combined NYISO, PJM, New England and IMO control areas before, it would be irresponsible to risk major market and reliability disruptions by rushing haphazardly to adopt a single RTO structure. Starting with a virtual RTO approach will allow system operators to gain experience that could facilitate the eventual development of a Northeastern RTO.

F. Many Parties Place Undue Reliance on Inaccurate or Incomplete Portions of the Commission Staff’s November Report on Northeastern Bulk Power Markets

Most of the parties that challenge the adequacy of the NYISO’s scope and configuration have relied heavily on comments in the Commission Staff’s November 1, 2000 Report on its Investigation of

⁴⁸ See Order No. 2000 at 31,076, 31,082-83 (noting the RTO NOPR’s discussion of the
(continued . . .)

Northeastern Bulk Power Markets (“*Northeast Report*”).⁴⁹ In many cases this reliance is seriously misplaced. The NYISO Staff has previously met with Commission Staff to discuss certain inaccuracies in the *Northeast Report*, many of which it understands were attributable to the haste with which the *Northeast Report* was prepared, the use of stale data and a lack of communication with NYISO staff on various technical matters. Subsequently, at the January 22-23 technical conference convened in Docket Nos. ER00-3591-000, *et al*, the NYISO staff thoroughly addressed a number of issues discussed in the *Northeast Report*, and corrected a number of misunderstandings. These included erroneous statements that: (i) the NYISO was a “barrier to trade” in the Northeast; (ii) the NYISO’s software, particularly its Balancing Market Evaluation (“BME”), was unworkable and overly “rigid;” and (iii) the NYISO’s use of a financial reservation system creates market disruptions.

The NYISO staff further explained that a number of the alleged problems described in the *Northeast Report* had either already been fixed, would soon be corrected, or would be eliminated once all of the Northeastern ISOs agreed to a common set of “best practices.” The NYISO staff also demonstrated that the NYISO’s market design offered many benefits that the *Northeast Report* did not recognize. Moreover, the *Northeast Report* did not consider the practical difficulties and delays that would necessarily arise if the three Northeastern ISOs were combined,⁵⁰ or the problems, discussed

possibility that an RTO might be inefficiently large.)

⁴⁹ See, e.g., *Motion to Intervene and Protest of Calpine Eastern* (“Calpine”) at 6, 7-8; EPMI Motion at 5-6.

⁵⁰ Even EPMI has recognized this. See EPMI Motion at 12, n. 10, which concedes that the *Northeast Report*’s suggestion that the three ISOs be combined into a single Control Area would be impractical.

below in Section III, that would arise if some ISOs were required to adopt another ISO's software and market rules.

It is therefore at best disingenuous for market participants, especially those that attended the technical conference, to treat the *Northeast Report* as if it were the final word on scope and configuration issues. The Commission should consider the full record and recognize the *Northeast Report's* weaknesses when it reaches its decision in this proceeding.

F. The NYISO Is Not Unduly Influenced by the Member Systems or the NYPSC

Several parties have complained that the NYISO is subject to the "parochial" influence of the Member Systems and/or the NYPSC.⁵¹ With respect to the Member Systems, these claims are obviously belied by the long list of high profile disputes between the NYISO and the Member Systems over numerous issues, many of which have been the subject of Commission proceedings, and one of which is currently pending in federal district court. NYISO staff and Member System representatives have also had disagreements concerning policy proposals pending before the NYISO committees.

Similarly, the NYISO has demonstrated its independence from the NYPSC by objecting to policy recommendations that it believes would be harmful to the markets the NYISO administers. Most notably, the NYISO has publicly opposed certain aspects of the NYPSC's "*Interim Pricing Report*"⁵² including its proposed \$150 "soft price cap," which it believed would be overly restrictive and could discourage suppliers from participating in the NYISO-administered markets. More generally, the

⁵¹ See, e.g., Reliant at 3.

⁵² New York Department of Public Service, *Interim Pricing Report on New York State's Independent System Operator* (December, 2000).

NYISO has not come under undue NYPSC pressure to adopt particular policies and does not expect that it will in the future.

The NYISO recognizes that the Commission is especially sensitive, as a result of events in California, to independence problems that may effect single-state ISOs or RTOs. Nevertheless, claims that regulators of single-state transmission entities will inevitably attempt to meddle with the markets are overblown.⁵³ First, there is no analogue to the California Electricity Oversight Board in New York. NYPSC representatives are permitted to attend and participate in NYISO committee meetings, but may not vote. The NYISO believes that this arrangement is entirely appropriate because the NYPSC has a legitimate role in NYISO affairs as a representative of New York State's consumers. Second, unlike certain California political and regulatory bodies, which have sometimes favored autarkic energy policies, the NYPSC has publicly declared its commitment to fostering wholesale competition and developing a truly regional market.⁵⁴ In addition, the NYPSC and various other state agencies are striving to improve New York State's supply situation by, among other things, pursuing a controversial effort to bring badly needed capacity online in New York City in time for summer.

Finally, the NYISO must question the underlying premise that a single-state RTO would be more vulnerable than a multi-state entity to state regulatory and political pressure in the event of a California-style crisis. The NYISO suspects that such a crisis would cause many state regulators and politicians to react much as California's have. A multi-state RTO would therefore not be exempt from state pressure but would instead face the combined pressure of many states.

⁵³ See, e.g., Reliant at 3

⁵⁴ See NYPSC at 3-4.

G. The Commission Should Give Considerable Weight to the Consensus Support of Market Participants and the Opinion of Northeastern State Regulators When It Evaluates the NYISO's RTO Proposal

Order No. 2000 encouraged RTO applicants to conduct a collaborative stakeholder process that would permit stakeholders to help shape RTO rules, RTO design and RTO filings, in an attempt to build consensus support for such filings and avoid administrative litigation. Order No. 2000 pledged that the Commission would show reasonable deference to proposals that truly enjoyed consensus support.⁵⁵ The NYISO has complied with this requirement by conducting an extensive collaborative stakeholder process and by working closely with market participants to develop a filing capable of winning broad support. The Commission should reward the NYISO RTO applicants and other New York market participants for their efforts by deferring to the NYISO RTO Filing to the greatest extent possible.

In addition, Section 202(a) of the Federal Power Act, one of the three statutory provisions from which the Commission derives its RTO authority, specifies that:

For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission and sale of electric energy Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations and shall receive and consider such rules and recommendations.⁵⁶

⁵⁵ Order No. 2000 at 31,231.

⁵⁶ 16 U.S.C. 824a (2000).

Consistent with Section 202(a), the Commission should carefully consider the opinions of Northeastern state regulators when it decides whether to accept the Northeastern ISOs' RTO proposals. The states clearly favor permitting each of the ISOs to qualify as separate RTOs and support their efforts to better integrate their markets. For example, the NYPSC, which is the only state commission directly affected by the NYISO RTO Filing, strongly supports the NYISO RTO proposal, except for one aspect of its transmission planning and expansion plan. At the same time, the NYPSC has called for greater regional coordination in order to facilitate the creation of an efficient regional market.⁵⁷ Similarly, the New England Conference of Public Utility Commissioners believes that the proposed NERTO's borders should remain unchanged, but that closer coordination among the Northeastern ISOs must be encouraged. No state regulator has asked that the existing ISOs be compelled to merge.⁵⁸ Under the circumstances, the Commission should attach substantial weight to the Northeastern regulators' views.

III. ANSWER TO MOTIONS TO DIRECT THE NYISO TO ADOPT CERTAIN SOFTWARE AND MARKET RULES

EPMI's Motion asks that the NYISO be compelled to adopt PJM's congestion management system. Other pleadings would require the NYISO to adopt PJM's software and market rules in their

⁵⁷ See *Notice of Intervention and Comments of the Public Service Commission of the State of New York* ("NYPSC"), at 2 (February 23, 2001).

⁵⁸ See, e.g., *Motion to Intervene and Protest of the New England Conference of Public Utility Commissioners*, ("NECPUC") Docket No. RT01-86-000 at 19-21 (February 22, 2001) ("Requiring a single Northeast/Mid-Atlantic RTO now would create yet another wave of institutional change . . . [a] mandate to combine regions would interfere with efforts to address existing market problems, including CMS/MSS and would create needless delays in making progress to wider markets.")

entirety.⁵⁹ The NYISO has previously opposed such proposals because they are overly simplistic and fail to account for physical and operational differences between ISO-operated transmission systems.⁶⁰ These differences have a great deal to do with the differences in market rules and software employed by the Northeastern ISOs.

PJM's software and market rules have clearly worked very well for PJM. The NYISO has found, however, that each ISOs' software, including PJM's, is inextricably intertwined with its market rules. The NYISO therefore could not simply adopt PJM's software without making major, and time-consuming, rule changes. Even if the NYISO were directed to abruptly discard its existing rules and software and adopt PJM's, it would have to modify the PJM rules to account for various New York-specific problems, *e.g.*, the Central-East constraint and the resulting need for rigorous locational requirements in New York City and on Long Island, that would ultimately result in their looking very much like existing NYISO systems.

The NYISO agrees with the *Joint Comments* submitted by NYSEG and RG&E that “insurmountable technical impediments prevent the NYISO’s short-term adoption of PJM software in a manner that would obviate the need to improve existing NYISO market rules and software.”⁶¹ Each of the Northeastern ISOs has features that are worthy of consideration by the other two, and it would be inappropriate to impose new software requirements on any ISO without first identifying what the “best practices” in the Northeast truly are and how they should be implemented. As was discussed above,

⁵⁹ See, *e.g.*, Reliant at 3-4 (The Commission should “require the NYISO to adopt market rules, market monitoring and other practices that are consistent with and comparable to the PJM rules.”)

⁶⁰ See, *e.g.*, *Initial Comments of the New York Independent System Operator, Inc.*, Docket No. ER00-3591-000, *et al.*, at 20-22 (February 8, 2001).

the NYISO is actively working to promote the adoption of mutually agreed best practices, not necessarily PJM's in all cases, by the three Northeastern ISOs and the IMO. The Commission should therefore reject all motions, and other requests, that would arbitrarily impose PJM software and market rules on the NYISO.

IV. ANSWER TO OTHER COMMENTS AND PROTESTS

As is discussed above in Section II.B, the NYISO respectfully requests permission to answer, and answers, the comments and protests described below.

A. Arguments that the NYISO's Market Monitoring Unit Should Be Deprived of its Market Power Mitigation Tools and/or Be Made Independent from the NYISO Board and Staff

1. The Commission Should Not Eliminate the NYISO's Market Power Mitigation Authority

A number of suppliers ask the Commission to eliminate the NYISO's Commission-approved market power mitigation plan.⁶² The NYISO believes that these arguments are baseless, and self-

⁶¹ *Cite* NYSEG/RG&E at 13.

⁶² *See, e.g.*, Calpine, EPSA, MSCG, and NRG. In addition, Williams asks the Commission to eliminate the NYISO's market monitoring responsibilities which is flatly inconsistent with Order No. 2000's requirement that all RTOs perform a market monitoring function.

serving, attempts to eliminate an important safeguard essential to the competitiveness of the NYISO-administered markets. Although some of the suppliers have made vague allegations that the NYISO uses its mitigation authority to “manipulate” prices they have offered no evidence to support their claims. In reality, the market power mitigation plan has worked well, and the NYISO has exercised its mitigation authority judiciously. Moreover, the suppliers have not shown that the NYISO’s market power mitigation is inconsistent with Order No. 2000, which allows market mitigation pursuant to objective, pre-approved standards that are publicly available.⁶³

The Commission has previously recognized that the NYISO-administered energy markets are highly concentrated and potentially vulnerable to the exercise of market power. Indeed, the Commission predicated its generic grant of market-based rate authority to sellers in the NYISO-administered markets on the existence of an effective market power monitoring and mitigation regime.⁶⁴ Nothing has changed in the time since the Commission made this decision to make market power mitigation less important in the highly concentrated NYISO-administered markets. The NYISO therefore submits that if the Commission were to eliminate, or substantially reduce, the NYISO’s market power mitigation authority it would also have to restrict, or even take away, at least some sellers’ market-based rate authority. The NYISO believes that retaining the existing market power mitigation system, which treats all suppliers alike, and is not overly intrusive, is vastly preferable to imposing restrictions on an *ad hoc* basis.

2. The Commission Should Not Mandate the Formation of an Independent Market Monitoring Unit

⁶³ See Order No. 2000 at 31,156-57.

⁶⁴ See *Central Hudson Gas & Electric Corp., et al*, 86 FERC ¶ 61,062 (1999).

Aquila, NRG and various others⁶⁵ argue that there should be an independent market monitoring (“IMMU”) for the NYISO and ISO-NE, which would later be expanded to include PJM. The IMMU would be completely independent from each ISO’s staff and would not be answerable to the ISOs’ Boards. Its purpose would be to complement the ISOs’ monitoring efforts and to monitor the performance of the ISOs themselves. The IMMU would have no mitigation authority.

The NYISO believes that the IMMU proposal should be rejected. While it is important that market monitoring units be independent of market participants, there is no reason why they must be independent of ISOs, which are themselves required to be independent of market participants. The NYISO’s current MMU and independent market advisor have not hesitated to identify flaws in the NYISO’s market rules or to recommend changes. No party has submitted evidence demonstrating that the NYISO’s MMU or market advisor have been insufficiently objective or inappropriately subservient to the NYISO.

The IMMU’s proponents also fail to appreciate that an effective market monitor must have close ties to an ISO’s operational staff and full access to ISO market information so that it can properly understand an ISOs’ practices and procedures. Artificially separating market monitoring from ISO staff will substantially undermine its effectiveness. Moreover, the IMMU’s one attractive feature, *i.e.*, its adoption of a regional market monitoring perspective, is redundant. The Joint Monitoring Committee established under the recent agreement between the NYISO and ISO-NE Boards will already coordinate the two ISO’s market monitoring efforts and make sure the inter-ISO transactions and market interactions are properly considered.

Creating an IMMU will divert attention and resources from the much more important effort to enhance the Northeastern market and create distracting structural, governance and cost allocation issues. Such a diversion would be totally unjustified given the lack of benefits that an IMMU would bring. The IMMU would be an unnecessary bureaucracy that would simply add confusion, delay, inefficiency and expense to the governance and market monitoring efforts of the Northeastern ISOs.

Finally, the IMMU was proposed during the collaborative process that led to the development of the NYISO RTO Filing, but was rejected by the NYISO staff and most market participants. The IMMU's proponents have not explained why the Commission should overturn this decision, and the NYISO believes that it would be inappropriate for the Commission to do so. If there is to be an IMMU, it should first be approved by Northeastern stakeholders.

B. Arguments that NYSIO's Commission-Approved Congestion Management System, Locational Based Pricing Methodology and Use of Transmission Congestion Contracts Should Be Eliminated in Favor of a Physical Reservation System

EPMI and other suppliers have asked the Commission to replace the NYISO's existing financial-based transmission reservation and congestion management systems with physical system that they believe will perform better. These arguments should be rejected because they are beyond the scope of this proceeding and represent collateral attacks on previous Commission orders approving the NYISO's use of financial-based systems. Moreover, the critics of financial-based systems have failed to refute the evidence that they are superior to physical-reservation models. By contrast, the NYISO

⁶⁵ See, e.g., Aquila at 9-11; EPSA at 17-18.

presented substantial evidence of the superiority of financial-based systems during the technical conference convened in Docket Nos. ER00-3591-000, *et al.*, and in its post-technical conference comments.

In addition, EPMI has complained that the NYISO's market design should be modified to allow suppliers to physically reserve capacity at ISO interfaces. It should be noted that the NYISO is considering such a revision as part of its Best Practices initiative and will certainly adopt it if it is found to be the best solution to a regional seams issue. The NYISO therefore respectfully asks that the Commission refrain from pre-judging this question.

C. Arguments that NYSIO's "Shared Governance" Structure Compromises the NYISO Board's Independence and Threatens its Ability to Unilaterally Make Tariff Filings under Section 205 of the Federal Power Act

Certain parties have argued that the NYISO's "shared governance" system undermines the NYISO Board's independence and unreasonably restricts its ability to file unilateral tariff amendments pursuant to Section 205 of the Federal Power Act. For the reasons set forth in the NYISO RTO Filing, the NYISO disagrees with these claims. The Commission has already held that the NYISO's governance system prevents any market participant, or any one class of market participant, from exerting undue influence over the NYISO. Order No. 2000 also expressly permits RTOs to have shared governance and tariff filing mechanisms. It therefore appears that the NYISO's governance structure complies with Order No. 2000's requirements

Moreover, although some market participants have criticized the shared governance system for the first time in this proceeding most market participants strongly support the existing system. Indeed, the NYISO does not believe that many market participants, including the transmission owners, would

have supported the NYISO RTO filing if it did not provide for shared governance. There will likely be considerable opposition if the Commission eliminates the shared governance system.

D. Arguments Pertaining to the NYISO's OASIS and Information Disclosure Policies

Calpine Eastern ("Calpine") argues that the NYISO's method of operating its OASIS and posting Available Transmission Capacity ("ATC") and Total Transmission Capacity ("TTC") is inadequate, inconsistent with Order No. 2000 and incompatible with the practices of neighboring ISOs.⁶⁶ Calpine's argument misleadingly minimizes both the NYISO's efforts to improve its information disclosure practices and the distinctive features of the NYISO's market model that have previously led the Commission to grant the NYISO a temporary waiver of certain OASIS requirements.⁶⁷ The Commission should also be aware that the NYISO has included the need for the Northeastern ISOs to adopt a common method of performing ATC/TTC calculations in its "Best Practices" proposal.⁶⁸

EPMI's Motion raises a related issue when it urges the Commission to require the NYISO to immediately implement an expanded market information disclosure policy that was approved by the NYISO's Business Issues Committee in September. EPMI has previously raised this issue in Docket Nos. ER00-3591-000, *et al.*, where the NYISO responded by explaining that it was implementing this policy pursuant to the timetable established by its Management Committee.⁶⁹ The Commission should

⁶⁶ *Motion to Intervene and Protest of Calpine Eastern* at 4, 16-19.

⁶⁷ *See New York Independent System Operator, Inc.*, 94 FERC ¶ 61,215 (2001) (extending interim waiver of various OASIS requirements.)

⁶⁸ *See* Attachment at 4.

⁶⁹ *See Reply Comments of the New York Independent System Operator, Inc.*, Docket Nos. ER00-3591-000, *et al.*, at 4-5 (February 21, 2001).

accept this answer and reject EPMI's attempt to unilaterally override a Management Committee decision.

E. Arguments Regarding the Implementation of Virtual Bidding and Trading Hubs

EPMI has asserted that the current absence of “virtual bidding” and trading hubs in the NYISO market model is a fatal deficiency and that these two features are necessary prerequisites to compliance with both Order Nos. 888 and 2000. This position is without merit. Virtual bidding and trading hubs are desirable but neither Order No. 888 nor Order No. 2000 requires an ISO, or even a traditional utility transmission provider, to make these features available. In any event, the NYISO is already working diligently to implement both virtual bidding, which is scheduled to be implemented by Fall 2001,⁷⁰ and PJM-style trading hubs, which the NYISO intends to implement on a high priority basis pursuant to its Best Practices proposal.⁷¹ There is thus no reason to deny the NYISO RTO status on account of these issues.

F. Arguments Proposing that the NYISO Be Given Additional Authority Over Transmission Lines, Dispatching Out-of-Merit Units

EPMI has argued that the NYISO should have exclusive control over all transmission lines in the New York Control Area and sole authority over the dispatching of out-of-merit generation. The NYISO previously responded to these arguments in its reply comments in Docket Nos. ER00-3591-000, *et al*⁷² and incorporates that response by reference here.

⁷⁰ The NYISO's virtual bidding implementation effort is described in its February 2, 2001 *Report* in Docket No. EL00-90-000.

⁷¹ See Attachment at 5.

⁷² See *Reply Comments of the New York Independent System Operator, Inc.*, Docket Nos. ER00-3591-000, *et al*, at 4-5 (February 21, 2001).

G. Arguments Regarding Transmission Planning and Expansion

A number of parties have attacked aspects of the transmission planning and expansion plan proposed in the NYISO RTO Filing.⁷³ The NYISO disagrees with these arguments and continues to support the proposal set forth in its filing. Because most of the challenges to the proposal involve rate issues or questions about legal responsibilities of the Member Systems the NYISO has decided to defer to the Member Systems' answer on these matters.

V. CONCLUSION

WHEREFORE, for the foregoing reasons the New York Independent System Operator, Inc. hereby respectfully requests that the Commission: (i) grant it leave to submit this answer to the extent that leave is required; (ii) rejects the motions, comments and protests that would require the NYISO to merge with neighboring ISOs, institute formal or informal Commission proceedings to address RTO formation in the Northeast, establish an Independent Market Monitoring Unit or eliminate the NYISO's existing market power mitigation authority; and (iii) approve the joint RTO application submitted by the NYISO and the Member Systems in this proceeding on January 16, 2001.

...

⁷³ See, e.g., EPSA at 18-22; Williams at 26.

Respectfully submitted,

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March 23, 2001

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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 proceedings in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure 18 C.F.R. § 2010 (1999).

Dated at Washington, D.C. this 23rd day of March, 2001.

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