

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

**New York Independent System Operator, Inc.    )       Docket Nos.   ER01-3009-000,  
  )                               ER01-3153-002,  
  )                               EL00-90-002**

**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.’S  
REQUEST FOR LEAVE TO SUBMIT LIMITED ANSWER OUT OF TIME TO  
THE PROTEST OF AQUILA ENERGY MARKETING CORPORATION  
AND EDISON MISSION ENERGY, INC.**

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 to the *Protest One Day Out-of-Time of Aquila Energy Marketing Corp., and, to the Extent Necessary, Motion to Intervene Out-of-Time And Protest Of Edison Mission Energy, Inc. and Edison Mission Marketing & Trading, Inc.* (“Aquila and Edison Mission Protest”) that was filed in response to NYISO’s November 27, 2001, filing (“November 27 Filing”) of revisions to its Market Administration and Control Area Services Tariff (“Services Tariff”) setting forth details of the credit policies applicable to non-physical (*i.e.* “virtual”) bids of generation and load submitted in the Day-Ahead Market<sup>2</sup> and settled in the Real-Time Market (“Virtual Transactions”).<sup>3</sup> The NYISO is making this filing for the limited purpose of:

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

<sup>2</sup> Capitalized terms not otherwise defined herein have the meaning ascribed to them in Article 2 of the Services Tariff.

<sup>3</sup> In *New York Independent System Operator, Inc.*, 97 FERC ¶ 61,091 (October 25, 2001) (“October 25 Order”), the Commission conditionally accepted proposed tariff revisions to implement Virtual Transactions and directed that, among other things, the NYISO file revised tariff sheets to incorporate the credit policies applicable to Virtual Transactions. The NYISO made the November 27 Filing pursuant to the October 25 Order.

(i) clarifying certain factual matters and (ii) correcting inaccurate statements contained in the Aquila and Edison Mission Protest.

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 Protest of Aquila and Edison Mission will not cause disruption in this proceeding, nor will it prejudice any party to the proceeding.

**I. Notices and Communications**

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

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<sup>4</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.

## 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. ER01-3009-000, ER01-3153-000, and EL00-90-000.

## III. Request for Leave to Submit Limited Answer

The NYISO recognizes that the Commission generally discourages answers to protests. The Commission has, however, allowed such answers 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>5</sup> The NYISO has carefully limited the scope of its 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.

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<sup>5</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.*, 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).

#### IV. Discussion

**A. The Aquila and Edison Mission Protest incorrectly asserts that the November 27 Filing does not comply with the October 25 Order because it does not describe all of the credit policies applicable to Virtual Transactions.**

The Aquila and Edison Mission Protest incorrectly asserts that the November 27 Filing failed to include aspects of the credit policy applicable to Virtual Transactions that are described in the NYISO's Technical Bulletin #81, dated October 26, 2001, ("Technical Bulletin #81"), which prohibit "netting" the daily trading positions of Market Participants within and between zones when determining the amount of collateral required to support Virtual Transactions. (In this context, "netting" refers to the offsetting of virtual load and supply bids placed by the same Market Participant.) The Protest further incorrectly asserts that "the netting policies included in Technical Bulletin #81 and currently enforced by the NYISO, were never approved by the Management Committee of the NYISO, pursuant to the governance rules approved by this Commission."<sup>6</sup>

Both the materials presented to the Management Committee when it voted to approve the credit policies applicable to Virtual Transactions ("Virtual Transactions Presentation," attached hereto as Attachment I) and the revisions to the Services Tariff submitted by the NYISO in its November 27 Filing require that a Virtual Transactions Customer provide collateral to support every megawatt hour ("MWh") that it is authorized to bid per day. Provisions for netting would be directly contrary to this requirement, so there are no provisions for netting in the credit policies applicable to Virtual Transactions. Consistent with the materials approved by the

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<sup>6</sup> Aquila and Edison Mission Protest at 9.

Management Committee, Virtual Transactions Customers must provide collateral for every MWh of Virtual Transactions that they are authorized to bid.

The Virtual Transactions Presentation that was distributed to the Management Committee at its meeting on August 17, 2001 was incorporated by reference into the motion passed by the Management Committee.<sup>7</sup> It plainly states that Virtual Transactions Customers must be “fully collateralized,” indicating that the NYISO takes into account “Virtual Load or Virtual Supply combined” when it determines the number of MWhs that a Virtual Transaction Customer may bid in one day.<sup>8</sup> This requirement, which was adopted by the Management Committee, is directly contrary to the assertion in the Aquila and Edison Mission Protest that Virtual Transactions Customers should somehow be able to net “virtual load” against “virtual supply” for purposes of determining collateral requirements.

Section 8.4.1 of the Services Tariff was created by the revisions submitted in the November 27 Filing. Section 8.4.1 addresses the collateral requirements applicable to Virtual Transactions and states that “[t]he amount of collateral required to support Virtual Transactions is the product of the MWh that the Virtual Transaction Customer has applied to be authorized to bid per day and the amount of collateral required per MWh....” There is no distinction drawn between “virtual load” and “virtual supply” for purposes of determining the total number of MWhs that the Virtual Transactions Customer must collateralize to be authorized to bid, much less any provision for netting the two types of bids to lower the credit support required of Virtual

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<sup>7</sup> At the conclusion of the meeting, the Management Committee voted, with an affirmative vote of 92.77%, to adopt “the credit policy *as discussed in the materials presented to the Management Committee.*” (Emphasis supplied.) Motion #1, Motions from the Meeting, August 17, 2001. (Copy attached as Attachment II).

<sup>8</sup> Virtual Transactions Presentation at 7.

Transactions Customers. Contrary to the assertions in the Aquila and Edison Mission Protest, the requirement that Virtual Transactions Customers provide collateral for every MWh they are authorized to bid, as approved by the Management Committee, was included in the tariff revisions submitted in the November 27 Filing.

**B. The Aquila and Edison Mission Protest incorrectly asserts that revisions filed by the NYISO were not approved by the NYISO Management Committee.**

The Aquila and Edison Mission Protest states that the minimum amount of collateral required per MWh for Virtual Transactions that is included in the revised tariff sheets filed by the NYISO “was never approved by the NYISO Management Committee, not included in the NYISO’s September 4 Filing, or even in any of the Technical Bulletins issued in regards to virtual transactions.”<sup>9</sup> The Aquila and Edison Mission Protest goes on to state that “[m]embers of the NYISO ... have never had the opportunity to discuss the requirement in the NYISO committees or to vote to approve or disapprove the requirement.”<sup>10</sup> This is simply not true. In fact, both Aquila Energy Marketing and Edison Mission Marketing and Trading voted in favor of the credit policy, as described here, at the August 17, 2001, meeting of the Management Committee.<sup>11</sup>

The Virtual Transactions Presentation includes the provision to which the Aquila and Edison Mission Protest now objects. Contrary to the assertions of the Aquila and Edison

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<sup>9</sup> Aquila and Edison Mission Protest at 11.

<sup>10</sup> Aquila and Edison Mission Protest at 11.

<sup>11</sup> The voting record of the August 17, 2001, Management Committee meeting, showing the votes of both Aquila Energy Marketing and Edison Mission Marketing and Trading in favor of the proposed credit policies applicable to Virtual Transactions is attached as Attachment III.

Mission Protest, members of the NYISO had ample opportunity to discuss this requirement and to vote either to disapprove it, or to approve it as both Aquila Energy Marketing and Edison Mission Marketing & Trading chose to do.

As indicated in the Virtual Transactions Presentation, the amount of collateral required per MWh bid is based on the difference between the prices observed in the Day-Ahead Market and the Real-Time Market at the 97<sup>th</sup> percentile during the “[m]ost recent/available rolling 3-Month period or (June/July/August) period; whichever is higher.” This formula for determining the collateral required per MWh produces a price of \$1113.00/MWh, based on the difference observed between the prices in the Day-Ahead Market and the Real-Time Market during June/July/August of 2001. This exact figure was not known at the time of the August 17 meeting of the Management Committee, since the relevant timeframe had not yet expired. However, by November 27, when the NYISO made its compliance filing, the precise dollar amount for that time period was known. Accordingly, the NYISO’s compliance filing simply indicated the sum-certain minimum collateral requirement, derived using the formula approved by the Management Committee.

Although Aquila Energy Marketing and Edison Mission Marketing & Trading may be unhappy with the dollar amount that results from the credit policy they previously endorsed, the fact remains that the policy being applied to Virtual Transactions is neither new, nor a surprise. The policy that the NYISO is now applying to Virtual Transactions is the policy that was adopted by a significant majority of the Management Committee to provide interim credit support measures for this new market administered by the NYISO.

## **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 a limited answer out of time in this proceeding; (ii) reject the relief requested in the Aquila and Edison Mission Protest, as discussed herein; and (iii) accept the filed revisions to the Service Tariff incorporating the credit support provisions applicable to Virtual Transactions.

Respectfully submitted,

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January 22, 2002

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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 lists 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. § 385.2010 (2001).

Dated at Washington, D.C. this 22nd day of January.

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