

June 23, 2000

Via Federal Express
Chairman Richard J. Grossi
c/o President William J. Museler
New York Independent System Operator
3890 Carman Road
Schenectady, NY 12303

Dear Chairman Grossi:

The City of New York (“City”) respectfully submits its “Motion in Opposition” pursuant to the ISO Board’s June 20, 2000 “Procedural Notice Concerning Pending Appeals” of the Management Committee’s June 5, 2000 decision to establish a \$1000/MWh bid cap for the summer capability period. Enclosed is the original document plus ten copies (one for each ISO Board member). Please contact me if you have any questions.

Yours Very Truly,

Jay L. Kooper, Esq.
Energy Policy Advocate

**MOTION OF THE CITY OF NEW YORK IN OPPOSITION TO APPEALS
OF THE MANAGEMENT COMMITTEE’S JUNE 5, 2000 DECISION TO
ESTABLISH BID CAPS IN ENERGY AND ANCILLARY SERVICES MARKETS**

The City of New York (“City”) submits this “Motion in Opposition” pursuant to §§ 1.03 and 4.01 of the New York Independent System Operator’s (“NYISO”) Procedural Rules for Appeals and the NYISO Board of Directors’ (“Board”) June 20, 2000 “Procedural Notice Concerning Pending Appeals.” The City requests that the Board reject the June 15 and 16, 2000 appeals to overturn the NYISO Management Committee’s June 5, 2000 decision to establish a \$1000/megawatt-hour (“MWh”) bid cap for the energy and specified ancillary services markets.¹ Absent these bid caps, energy prices could reach extraordinary levels this summer due to a variety of market flaws. As discussed herein, these flaws give suppliers the opportunity to exercise market power that would cause energy prices to spike above normal market-clearing levels. The Board should therefore affirm the bid caps approved by the Management Committee in order to protect New York City consumers from electricity price spikes this summer.

¹ The Appellants are Orion Power Holdings, Inc., Hydro Quebec Energy Services (U.S.) Inc., Citizens Power Sales, East Coast Power LLC, Indeck Energy Services, Inc., KeySpan Ravenswood, Inc., Natural Resources Defense Council, PG&E National Energy Group, and Sithe Energies, Inc.

DISCUSSION

I. THE BOARD SHOULD ACT TO PROTECT NEW YORK CITY CONSUMERS FROM ABOVE-MARKET PRICES CAUSED BY MARKET FLAWS.

In documents filed in this proceeding and in NYSEG v. NYISO, Federal Energy Regulatory Commission (“FERC”) Docket No. EL-00-70-000 (“FERC Proceeding”), several parties noted various design and software implementation flaws that are affecting the operation of the NYISO markets.² The City has reviewed these filings and believes that the results of the NYISO’s energy and ancillary service markets to date show that serious problems exist.

In its May 12, 2000 “Motion To Intervene” filed in the FERC Proceeding, the City showed that New York City consumers would be especially vulnerable to above-market prices because all Con Edison customers will bear the full cost of the above-market prices resulting from market imperfections.³ Con Edison’s service territory is the only place in New York State where all customers will pay the market price. See “Con Ed Price Limits Lifted,” The New York Times at B10 (May 2, 2000) (attached hereto).

New York City electricity customers will be exposed to these above-market prices before the Con Edison service territory has been opened to all customers for competitive retail electricity. At present, only 30% of Con Edison customers are allowed to purchase electricity from a competitive supplier. Not until November 1, 2000 will the Con Edison

² See, e.g., NYSEG v. NYISO, FERC Docket No. EL00-70-000, Complaint of NYSEG (April 25, 2000); Motion To Intervene of the National Energy Marketers Ass’n, (May 8, 2000); Motion To Intervene of the Member Systems of the Transmission Owners Committee of the Energy Ass’n of New York State, (May 10, 2000); Notice of Intervention and Comments of the New York Consumer Protection Board, (May 25, 2000); Notice of Intervention and Comments of the New York State Public Service Commission, (May 25, 2000).

³ Con Edison’s service territory principally includes New York City and neighboring Westchester County.

service territory be fully opened to competition so that all customers may participate. In addition, because Con Edison's delivery rates have still not been fully unbundled, even those customers who can participate in the competitive market will face limited choices. Indeed, this summer will be especially hard on the City's residential and small commercial customers, who will have the fewest choices. See, e.g., "KeySpan Pulls Out," The Crain's Insider (April 27, 2000) (KeySpan Energy Services has pulled out of the City's residential and small business market for the retail sale of electricity because "the cost of serving customers is more than acquiring them") (attached hereto).

In sum, the Board should act now to protect New York City's electricity consumers because, absent price caps, they will bear the brunt of above-market prices.

II. THE APPROVED BID CAPS WILL NOT HARM THE DEVELOPMENT OF NEW GENERATION IN NEW YORK STATE

The Appellants argue that the \$1000/MWh bid cap could harm the development of new generation in New York State. To be sure, the City recognizes that proper market prices will encourage the additional generation capacity that the City needs for a competitive market. Nevertheless, above-market prices that result from market design flaws will not encourage new generation. Generation developers should realize that such market design flaws will eventually be corrected, and will therefore not build plants based upon an unwarranted assumption that high prices will continue. In the alternative, if the developer expects these flaws to continue, the resulting above-market prices would produce uneconomic investment in generation plants. Thus, by capping bid prices at \$1000/MWh, the NYISO would not be distorting price signals for the development of future generation.

Moreover, the Board should note that there already are formal proposals to build approximately 3000 MW of new generating capacity in the City alone. See List of Proposed New York State Projects at <<http://www.dps.state.ny.us/xtable.html>>; NYISO Transmission and Interconnection Study Queue at <<http://www.nyiso.com/services/documents/planning.html>>. There are many other projects in the planning stage. Clearly, there is no need for a summer price spike that results from market design flaws to encourage new generation.

CONCLUSION

The City remains convinced that electric deregulation will benefit all consumers in the long-run. While short-term price volatility is part of a competitive market, price spikes resulting from market design flaws are inherently unfair when customers have limited choices and could undermine support for electric deregulation. The City therefore urges the Board to reject the appeals to overturn the Management Committee's vote to adopt a \$1000/MWh bid cap for the energy and ancillary services markets during the remainder of the summer capability period. Because of the urgency of this matter, the City requests that the Board direct NYISO counsel to file these price caps at the FERC as soon as possible.

Energy/NewYorkISO/ManagementCommittee/MotionNYC.doc