

FEDERAL ENERGY REGULATORY COMMISSION 96 FERC ¶ 61,048
WASHINGTON, D.C. 20426

July 11, 2001

New York Independent System Operator, Inc.
Docket Nos. ER97-1523-040, ER97-4234-036,
and OA97-470-038

Hunton & Williams
Attn: Mr. Ted J. Murphy
Attorney for New York Independent
System Operator, Inc.
1900 K Street, N.W.
Washington, D.C. 20006-1109

Dear Mr. Murphy:

By letter dated April 18, 2000, you submitted for filing with the Commission, on behalf of New York Independent System Operator, Inc. (NYISO), **revisions to Addendum A to NYISO's Market Monitoring Plan (MMP) that sets forth its Market Mitigation Measures**. This filing was directed by the March 29, 2000 Order. See **New York Independent System Operator, Inc., 90 FERC ¶ 61,319 (2000)**. Your submittal is accepted for filing, effective April 18, 2000.

Notice of the filing was published in the Federal Register, **65 Fed. Reg. 30,101 (2000)**, with comments, protests, or interventions due on or before May 15, 2000. Under 18 C.F.R. § 385.210 (2000), interventions are timely if made within the time prescribed in the Notice of the filing. Pursuant to 18 C.F.R. § 385.214 (2000), the filing of a timely motion to intervene makes the movant a party to the proceeding, provided that no answer in opposition is filed within 15 days. The following entities are made parties to this proceeding as they have filed timely motions to intervene that have not been opposed: **Member Systems and Keyspan-Ravenswood, Inc. (Ravenswood)**. **In addition, given the lack of undue prejudice and the parties' interests, the Commission also finds good cause to grant under Rule 214 the unopposed, untimely motion to intervene filed by AES NY, L.L.C.**

In its protest filed along with the motion to intervene, Ravenswood states that NYISO fails to comply with the Commission's directive to limit application of mitigation measures on a prospective basis only. In particular, Ravenswood requests the

Commission to direct NYISO to delete the phrase "except as may be authorized by the Commission" from subsections 4.2.2(c) and 4.3.(c) of the MMP. It argues that the proposed language provides NYISO with the opportunity to unilaterally impose a retroactive default bid and to retroactively revise locational based marginal prices, while seeking authorization from the Commission for its actions. Ravenswood argues that as a result, market participants would be forced to litigate the retroactive ratemaking and filed rate doctrine issues at the Commission, which would erode their confidence in the market and would involve the Commission in review of NYISO's day-to-day activities. Additionally, Ravenswood seeks other clarifications to NYISO's MMP, which were not directed by the March 29, 2000 Order. In particular, Ravenswood proposes to modify the provision on reference levels for calculating each component of a generator's bid.

Independent Power Producers of New York, Inc. (IPPNY) and Southern Energy Bowline, L.L.C. , Southern Energy Lovett, L.L.C., and Southern Energy NY-GEN, L.L.C. (collectively, Mirant Parties)¹ request that the Commission direct NYISO to set the threshold levels triggering mitigation measures higher than proposed by NYISO. They argue that the NYISO-proposed thresholds of 300 percent will be triggered in a wide variety of circumstances that do not involve an exercise of market power.

With respect to Ravenswood's concern about the possibility of retroactive application of mitigation measures, if NYISO seeks an effective date for mitigation measures prior to the date of Commission action, Ravenswood and others may oppose such request at that time. Thus, Ravenswood's argument does not require rejection or modification of NYISO's compliance filing. Also, Ravenswood's request for other clarifications is denied as beyond the scope of the March 29, 2000 Order.

The March 29, 2000 Order required that NYISO publicly disclose the threshold levels that trigger market mitigation. We find that NYISO has complied with the Commission's directive. IPPNY and Mirant Parties' objection to the actual level of the threshold is beyond the scope of this proceeding.

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in

¹ Since this protest was filed, the protesters' names have been changed to **Mirant Energy Bowline, L.L.C. , Mirant Energy Lovett, L.L.C., and Mirant Energy NY-GEN, L.L.C.**

the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such action

is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against New York Independent System Operator, Inc.

By direction of the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.