

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

**New York Independent System Operator, Inc.     )     Docket No. ER00-2624-000**

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

Pursuant to Rules 212 and 213(a)(2) of the Commission’s Rules of Practice and Procedure<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) hereby respectfully requests permission to submit this answer to protests filed in this proceeding by: (i) Merrill Capital Services, Inc. (“Merrill Lynch”)<sup>2</sup>; (ii) Morgan Stanley Capital Group, Inc. (“Morgan Stanley”),<sup>3</sup> and (iii) the “Southern Parties.”<sup>4</sup> In addition, the NYISO hereby respectfully submits its answer.

The Merrill Lynch and Morgan Stanley protests make baseless and outrageous allegations impugning the NYISO’s independence. Their claims are patently false and should not be countenanced by the Commission. The Commission should likewise not be swayed by the Southern Parties’ arguments because, as the NYISO explains below, they draw an erroneous analogy between New York and New England. In short, the Commission should not be misled

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<sup>1</sup> 18 C.F.R. §§ 212, 213(a)(2) (1999).

<sup>2</sup> *Motion of Merrill Lynch Capital Services, Inc. for Leave to Intervene, Protest in Opposition to Extension Absent Careful Limitation of TEPs and Opposition to Request for Waiver*, Docket No. ER00-2624-000 (June 16, 2000).

<sup>3</sup> *Motion to Intervene and Protest of Morgan Stanley Capital Group, Inc.*, ER00-2624-000 (June 15, 2000).

by these protests and should grant the NYISO's request for an extension of its Temporary Extraordinary Procedures ("TEPs"), without modifications, until October 31, 2000.<sup>5</sup>

**I. Request for Leave to Submit Answer**

The NYISO recognizes that the Commission normally disallows answers to protests. However, the Commission has allowed answers to responsive pleadings when they help to clarify issues or provide additional information that will assist the Commission.<sup>6</sup> In this proceeding, the NYISO should be permitted to answer in order to clarify blatant factual distortions, and other errors, in the Merrill Lynch and Morgan Stanley protests and to demonstrate the errors contained in the Southern Parties' protest. In addition, to the extent that these protests urge the Commission to deny the NYISO's request for an extension of its TEP authority, they are essentially motions for summary disposition which the NYISO should be permitted to answer.

However, in deference to the unusual procedural posture of this filing, and because it appears that the Commission will soon issue an order in this proceeding, the NYISO has limited its answer to the subjects described in the preceding paragraphs. The relatively narrow focus of this answer should not be construed as agreement with other arguments advanced by the protesters in this proceeding, which the NYISO generally denies.

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<sup>4</sup> *Motion to Intervene, Comments and Protest of Southern Energy Bowline, L.L.C., Southern Energy Lovett, L.L.C., and Southern Energy NY Gen. L.L.C.*, ER00-2624-000 (June 14, 2000).

<sup>5</sup> *See New York Independent System Operator, Inc., Extension of Temporary Extraordinary Procedures*, Docket No. ER00-2624-000 (May 26, 2000) ("May 26th Filing").

<sup>6</sup> *See, e.g., New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218, *slip op.* at 8 (2000).

## **II. Request for Reasonable Deference to a Decision Made by the NYISO's Independent Governance Institutions**

Under the circumstances here, the Commission should show reasonable deference to a decision reached by the NYISO's independent governance institutions and deny the protests' requests to reject or modify the NYISO's requested TEP extension. As the NYISO noted in the May 26th filing, its refiling of the TEPs, with no changes from the procedures currently in effect, was approved by an 82% vote<sup>7</sup> of the NYISO Management Committee,<sup>8</sup> whose membership is open to all interested market participants in New York. It has also been approved by the NYISO's independent Board of Directors.<sup>9</sup> In prior cases, the Commission has deferred to decisions made by approved, independent ISO governance institutions.<sup>10</sup> Clearly the vast majority of market participants recognized that the NYISO needs continued TEP authority to ensure that the NYISO-administered markets remain workably competitive this summer.<sup>11</sup> Under the circumstances, the NYISO respectfully submits that reasonable Commission deference is appropriate.

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<sup>7</sup> A 58% vote is required for approval.

<sup>8</sup> See May 26th Filing at 7.

<sup>9</sup> *Id.* The Commission concluded that the NYISO's governance mechanisms satisfied its independence requirements in *Central Hudson Gas & Electric Corp., et al.*, 89 FERC ¶ 61,229 (1999).

<sup>10</sup> See, e.g., *New York Independent System Operator, Inc.*, 90 FERC ¶ 61,319 at 62,058 (2000); *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,212 at 62,035 (1998); *Pennsylvania-New Jersey-Maryland Interconnection et al.*, 81 FERC ¶ 61,257 at 62,264-65 (1997); *clarified*, 82 FERC ¶ 61,068 (1998), *reh'g pending*

<sup>11</sup> In its Answer in Docket No. EL00-70-000, the NYISO explained that continued TEP authority, along with its market power mitigation powers, will enable it to initiate narrowly tailored corrective actions if problems arise this summer.

### **III. Answer**

#### **A. Answer to the Merrill Lynch Protest**

Merrill Lynch makes a series of false allegations to the effect that the NYISO has requested a TEP extension at the “behest of” the Members of the Transmission Owners Committee of the Energy Association of New York State (“Member Systems”), *i.e.*, the transmission-owning utilities in New York. More generally, Merrill Lynch also suggests that the NYISO is controlled by the Member Systems.<sup>12</sup> These allegations are completely unfounded, offensive and irresponsible. Even a casual review of recent Commission proceedings involving the NYISO immediately reveals that the NYISO is a truly independent entity that does not hesitate to dispute important issues with Member Systems, or any other entity, when circumstances warrant.<sup>13</sup> Indeed, NYSEG, one of the Member Systems, recently suggested that the NYISO is insufficiently responsive to its customers (including NYSEG) and implied that it is overly deferential to suppliers.<sup>14</sup> The fact that the NYISO is simultaneously under fire from both customers (such as NYSEG) and suppliers (such as Merrill Lynch) should confirm its independence.

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<sup>12</sup> See, *e.g.*, Merrill Lynch at 1-2.

<sup>13</sup> See, *e.g.*, Docket No. ER00-1483-000 (where the NYISO disagreed with several Member Systems concerning the recall bid components of its ICAP rules); Docket Nos. EL00-57-000, EL00-63-000 and EL00-64-000 (where the NYISO disputed a number of issues concerning the self-supply of ancillary services and the design of its 10-minute reserve markets with three different Member Systems); ER00-1969-000 (where the NYISO and LIPA, a Member System, had serious disagreements on many issues associated with the reserve markets); and EL00-70-000 (where the NYISO has consistently opposed NYSEG’s arguments and requests for relief and has objected to price screen proposals supported by virtually all of the Member Systems.)

<sup>14</sup> See *Second Answer of New York State Electric & Gas Corporation to Motions to Intervene and Dismiss Complaint and Protests*, Docket No. EL00-70-000 (June 9, 2000).

In addition, Merrill Lynch falsely claims that the NYISO was “not being candid” when it stated that it does not use the TEPs to cap prices and speculates that the NYISO will use its TEP authority to implement bid caps.<sup>15</sup> There is no basis for these allegations. As Merrill Lynch should know, the NYISO’s Management Committee has voted in favor of the imposition of bid caps. However, the NYISO’s independent non-stakeholder Board of Directors<sup>16</sup> is currently reviewing the proposal and has not yet acted on it. In the event that the Board votes in favor of bid caps, the NYISO will make a separate § 205 filing seeking permission to implement them. Merrill Lynch’s fanciful conspiracy theory regarding bid caps cannot withstand review.

Moreover, Merrill Lynch has misrepresented the way in which the NYISO’s price review and adjustment procedures operate. Merrill Lynch wrongly suggests that the NYISO corrects prices under its TEPs simply because they appear to be outside of a “normal range” or otherwise inconsistent with historic numbers<sup>17</sup> This is false. In reality, as the NYISO has explained before,<sup>18</sup> the NYISO reviews all prices and focuses particularly closely on those that appear to be inconsistent with its Commission-approved LBMP pricing regime. If the NYISO cannot quickly confirm that such prices are correct, it reserves them for further review. Reserved prices are corrected only when the NYISO establishes that the originally posted prices were the product of a

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<sup>15</sup> Merrill Lynch at 5-6.

<sup>16</sup> Merrill Lynch’s protest fails to provide a shred of evidence supporting its very serious allegation that the Member Systems “control” the NYISO’s Board.

<sup>17</sup> Merrill Lynch at 6, 11.

<sup>18</sup> *See, e.g.*, Answers of New York Independent System Operator, Inc. in Docket Nos. EL00-49-000 and EL00-70-000.

software problem, data entry error or other factor that prevents prices from reflecting the interplay of competitive market forces. Other reserved prices are allowed to stand.

Merrill Lynch's suggestion that the NYISO lacks authority to seek retroactive TEP approval is incorrect. The NYISO made a proper request for waiver of the Commission's standard notice period in its May 26th filing.<sup>19</sup>

Finally, the NYISO urges the Commission to reject Merrill Lynch's proposed limitations on its TEP authority because they are inappropriate and unworkable. Giving suppliers a 48-hour window to withdraw an accepted offer to sell power after the NYISO gives notice of a price correction would produce utter chaos in the NYISO markets. In addition, Merrill Lynch's proposal to make the NYISO responsible for "inappropriate" price corrections is inconsistent with the Commission-approved liability arrangements set forth in the NYISO tariffs. Merrill Lynch has not suggested that these provisions, which were the product of extensive negotiation and careful compromise, give the NYISO inadequate incentives to exercise its price correction authority reasonably, or offered any other reason to upset them.<sup>20</sup>

**B. Answer to the Morgan Stanley Protest**

The NYISO respectfully calls the Commission's attention to three inaccurate statements in Morgan Stanley's protest. First, it is misleading for Morgan Stanley to suggest that the NYISO has been working on the problems that necessitate the use of TEPs for "21 months."<sup>21</sup> Morgan Stanley is apparently counting back to the Commission's 1998 order conditionally

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<sup>19</sup> See, e.g., May 26th Filing at 7.

<sup>20</sup> Furthermore, because the NYISO is a not-for-profit entity with extremely limited financial resources, Merrill Lynch's liability proposal would threaten the NYISO's very existence.

authorizing the formation of the NYISO, ignoring the fact that the NYISO did not exist in a meaningful way until much later. Second, although Morgan Stanley is correct to note that the NYISO has authority to make unilateral Section 205 filings when “exigent circumstances” exist, it misleadingly neglects to mention that such filings are simply not an appropriate vehicle for quickly correcting prices that are miscalculated due to software problems or data entry errors. Nor, as demonstrated below, can the NYISO rely on the availability of Section 205 except in “exigent circumstances.” Third, for the reasons noted above in Part II.A, Morgan Stanley’s allegation that the NYISO is seeking a continuation of its TEP authority in response to “political pressure” is false. The NYISO is still in the process of implementing and improving its markets. As most market participants have recognized, the TEPs remain a useful tool to guard against software or human errors that would otherwise distort the markets.

**C. Answer to the Southern Parties**

The more limited procedures the Commission approved for ISO New England would not be appropriate here. The NYISO operates a much more complex and sophisticated system that encompasses more products, and temporal settlements, than ISO New England. The NYISO has developed a price review procedure pursuant to which it identifies prices that do not appear to be consistent with the Commission-approved LBMP regime.<sup>22</sup> That process cannot be completed in 75 minutes. Moreover, as the NYISO has repeatedly assured the Commission, it does not correct prices simply because it does not like the results.

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<sup>21</sup> Morgan Stanley at 3.

<sup>22</sup> See New York Independent System Operator Inc.’s Answer in Docket No. EL00-70-000 (May 26, 2000 as corrected May 31, 2000).

The NYISO has acknowledged that Market Design Flaws will continue to arise. It is correcting those flaws as rapidly as it can, but the Commission must recognize that an LBMP system such as that used by the NYISO may require corrections from time to time. Some of those flaws will not become apparent until the NYISO faces new and different fact patterns or until the more imaginative market participants cease testing the limits of the system.

Nor can the NYISO rely on Section 205 filings to revise market operations in a prompt manner. Section 19.01 of the ISO Agreement permits Section 205 filings to amend either of the NYISO Tariffs when the NYISO Management Committee and its Board of Directors agree. Without the concurrence of the Management Committee, the Board may make a filing under Section 205 only when the Board certifies the amendment is necessary to address exigent circumstances. The Board has invoked that authority only once, and such a procedure is not a satisfactory substitute for the TEPs.

Finally, the proposed extension of the TEPs, although for more than 90 days, simply runs to the end of the summer capability period.

### **III. Conclusion**

WHEREFORE, for the foregoing reasons the New York Independent System Operator, Inc., respectfully asks that the Commission: (i) accept its answer for filing; (ii) reject the arguments advanced in the protests; and (iii) extend the NYISO's Temporary Extraordinary Procedures, without modifications, until October 31, 2000.



Respectfully submitted,

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June 26, 2000

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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 this proceeding 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 26<sup>th</sup> day of June, 2000.

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