

TED J. MURPHY
E-MAIL: TMURPHY@HUNTON.COM

FILE NO.: 55430.00005
DIRECT DIAL: (202) 955-1588

June 30, 2000

By Hand:

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Exigent Circumstances Filing of the New York Independent System Operator, Inc.
At the Direction of its Board of Directors Requesting Permission to
Unilaterally Implement Temporary Bid Caps

Dear Mr. Boergers:

Pursuant to Section 205 of the Federal Power Act¹ and Section 35.13 of the Commission's Rules of Practice and Procedure,² the New York Independent System Operator, Inc. ("NYISO"), at the direction of its independent Board of Directors ("NYISO Board"),³ by counsel, hereby respectfully seeks immediate authority to amend the NYISO Market Administration and Control Area Services Tariff ("ISO Services Tariff") to implement temporary \$1300 bid caps on certain bids in the NYISO-administered markets. In directing the NYISO to make this filing, the NYISO Board is exercising its independent, unilateral authority to take action in the best interests of the markets administered by the

¹ 16 U.S.C. 824d (1998).

² 18 C.F.R. § 35.13 (1999).

³ The NYISO Board is comprised of ten directors, none of which is affiliated with any New York market participant.

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NYISO and that appropriately balance the interests of buyers and sellers in those markets, as well as the ultimate consumers of electricity in New York.

Despite its philosophical aversion to any form of price control, the NYISO Board has concluded, after extensive review, that temporary bid caps are an appropriate *interim* solution to a significant market problem, namely, the near total absence of price responsive demand,⁴ which the NYISO cannot address, in the short term, by less intrusive means. The NYISO Board also believes that such a measure is prudent during the summer peak season given the sophistication of the New York market model and the shake-out problems that NYISO-administered markets are still experiencing. Further, the NYISO Board's proposal avoids a number of inefficiencies and distortions that would have been inadvertently created by a proposal for price caps approved by the NYISO's Management

The NYISO Board requests a waiver of the normal notice period so that this filing can become effective on July 6, 2000.⁵ This expedited treatment is necessary in order for the bid caps to be in place prior to the pending peak summer demand period. The NYISO Board further asks that the temporary bid caps expire no later than October 28, 2000, in accordance with the limits in the NYISO's governance procedures on action taken by the NYISO Board on its own initiative. The NYISO also respectfully asks that the Commission issue an order on this proposed filing on an expedited basis.

Finally, the NYISO Board informs the Commission that it has directed NYISO Staff and counsel to work with interested market participants to: (i) formulate effective demand-side market mechanisms in time for the summer of 2001; (ii) draft all necessary tariff revisions and develop all necessary software enhancements associated with these demand-side market mechanisms; (iii) seek to obtain the requisite NYISO stakeholder committee approvals; and (iv) subject to Commission review and approval, implement effective demand-side market mechanisms, as a permanent solution to the load price-responsiveness problem, by June 1, 2001.

⁴ It is estimated that there is approximately 50 MW of dispatchable load in the New York Control Area ("NYCA").

⁵ More specifically, the NYISO Board proposes that bid caps would apply starting on July 6th to Suppliers submitting Day-Ahead bids for the July 7th market, and would apply starting on July 7th in the Real-Time Market.

I. Documents Submitted

1. This filing letter;
2. New tariff sheets setting forth the tariff amendments proposed by the NYISO Board, which would (temporarily) become a new “Attachment F” to the ISO Services Tariff (Attachment A); and
3. Form of *Federal Register* Notice. (Attachment B).

II. Copies of Correspondence

Communications regarding this proceeding should be addressed to:

Robert E. Fernandez
General Counsel
John P. Buechler
Director of Regulatory Affairs
New York Independent System
Operator, Inc.
3890 Carman Road
Schenectady, NY 12303
Tel: (518) 356-6153
Fax: (518) 356-4702
rfernandez@nyiso.com
jbuechler@nyiso.com

Arnold H. Quint
William F. Young
Ted. J. Murphy
Hunton & Williams
1900 K Street, N.W.
Washington, D.C. 20006
Tel: (202) 955-1500
Fax: (202) 778-2201
AQuint@hunton.com
BYoung@hunton.com
TMurphy@hunton.com

III. Exigent Circumstances

The NYISO Board had directed the NYISO to make this filing pursuant to the Board’s independent filing authority.⁶

⁶ In ordinary circumstances, Section 19.01 of the ISO Agreement dictates that the NYISO may not file a proposed amendment to the ISO Services Tariff pursuant to Section 205 unless that amendment has been approved by both the NYISO Board and the Management Committee. When the NYISO Board certifies, however, that: (i) there are “exigent circumstances” related to the operation

(continued . . .)

The ISO Agreement specifies that any tariff amendment that is unilaterally filed by the NYISO Board will expire no later than 120 days after it is filed, unless it is subsequently ratified by the Management Committee. Accordingly, the attached filing specifies that the temporary bid caps will expire no later than October 28, 2000, 120 days from the date of this filing. The NYISO Board does not presently anticipate or intend that the temporary bid caps will remain in effect beyond October 28, 2000, and therefore will not ask the Management Committee to authorize a later expiration date.⁷ Indeed, the NYISO Board will closely monitor developments in the NYISO-administered markets and will exercise its right to make a subsequent filing to lift the temporary bid caps prior to October 28 if experience demonstrates that they are no longer needed.

IV. Reasons for this Filing

A. Background

The imposition of temporary bid caps in the NYISO-administered markets was first proposed by the New York State Public Service Commission (“NYPSC”) in comments filed in Docket No. EL00-70-000 in late May. Certain other entities supported the adoption of bid caps in that proceeding which, as of this writing, is still pending before the Commission.

A more refined version of the NYPSC’s bid cap proposal was approved by 63% of the Management Committee’s voting members at a special meeting on June 5th.⁸ The June 5th Proposal called for a \$1,000 bid cap until October 31 on all bids into all NYISO-administered markets, except for the regulation market which would be subject to an \$1,100 cap.⁹ The June 5th Proposal would have also suspended the payment of Bid Production Cost Guarantees to suppliers in certain circumstances.

of NYISO-administered markets or to the reliability of the New York State Transmission system, and (ii) the “urgency of the situation justifies a deviation from the normal ISO governance procedures,” the NYISO at the direction of its Board is authorized to make unilateral Section 205 filings.

⁷ The NYISO anticipates that lower overall demand in the fall will make the absence of workable demand-side market mechanisms less significant.

⁸ A 58% vote is required for Management Committee approval.

⁹ Under the June 5th proposal, the 10-minute and 30-minute reserve markets would each be subject to \$1,000 caps on total combined payments for availability and lost opportunity charges.

Consistent with Sections 5.07 and 7.03 of the ISO Agreement and the *Procedural Rules for Appeals to the ISO Board*, a number of market participants appealed the June 5th Proposal to the NYISO Board. Various market participants submitted responses to these appeals, both in opposition to and in support of bid caps. Oral presentations by market participants concerning bid caps were held at a special meeting of the NYISO Board's Governance Committee on June 29th. After receiving the recommendations of the Governance Committee and conducting its own deliberations, the NYISO Board decided to reject the June 5th proposal and instead take unilateral action to make this temporary bid cap filing.

B. Considerations Underlying the NYISO Board's Decision

The NYISO Board has carefully considered the written and oral statements by market participants prior to, and during, the June 29th meeting of its Governance Committee. The NYISO Board has reluctantly determined that temporary bid caps are a necessary supplement to the NYISO's existing Market Power Mitigation ("MPM") and Temporary Extraordinary Procedure ("TEP") authority. At the same time, meritorious arguments advanced by a number of bid cap opponents, as well as NYISO Staff, persuaded the NYISO Board to reject many aspects of the June 5th Proposal and to instead fashion a bid cap proposal of its own. The NYISO Board's thinking was influenced most strongly by the factors outlined below.

1. Management Committee and NYPSC Support for Bid Caps

The NYISO Board attaches substantial weight to actions of the NYISO Management Committee, and affords its views far greater deference to such actions than it does those of individual market participants acting outside of the NYISO governance procedures.¹⁰ Thus, the fact that a 63% Management Committee majority voted in favor of bid caps was a significant factor in the NYISO Board's decision. The substantial majority in support of the June 5th Proposal indicates a recognition across a range of market participant sectors of a need for bid caps to remedy potential problems in certain aspects of the markets administered by the NYISO. The NYISO Board also took into account the support for bids caps expressed by the New York Public Service Commission.

2. The NYISO Board Believes that the Near-Total Absence of Demand-Side Mechanisms in the NYCA Is a Serious Problem that Requires an Immediate Solution

¹⁰ See, e.g., the NYISO's answers in Docket No. EL00-70-000.

¹¹ For that reason, as is discussed in greater detail below in Part VI, the NYISO Board concurs in the support for a longer term demand-side solution expressed in the June 5th Proposal. Unfortunately, the NYISO will not be in a position to implement an effective Load-Response Program, or to otherwise address the demand-side problem, in time for this summer.¹² In and of itself, this lack of a demand response is not susceptible to correction through the exercise of the NYISO's MPM or TEP authority, although those tools will remain extremely important to check abuses involving market power or market design flaws, including abuses occurring at price levels below the \$1300/MWh bid cap. Thus, since the absence of effective demand-side market mechanisms paves the way to extremely high, artificial price spikes that bear no relation to the genuine interplay of competitive market forces, the proposed bid caps are a necessary adjunct to the NYISO's other means for assuring that the markets it administers function properly.

3. Other ISOs Have Successfully Adopted Bid Caps

¹¹ *New England Power Pool*, 91 FERC ¶ 61,203 (May 31, 2000). This order had not yet been issued at the time that the NYISO made its filings in Docket No. EL00-70-000.

¹² ISO-New England's Load Response Program was the product of an extensive stakeholder process. Such a collaborative process has not yet taken place in New York and the NYISO Board is not aware of any way in which workable demand-side market mechanisms could be implemented on an expedited basis.

In its deliberations, the NYISO Board paid close attention to concerns raised by bid cap opponents, who argued that the imposition of even temporary bid caps would have dire short and long-term consequences for the NYISO-administered markets. The NYISO Board took these concerns seriously. Indeed, they account for many of the differences between the NYISO Board's bid cap proposal and the June 5th Proposal. At the same time, the NYISO Board has noted the example of the PJM Interconnection, L.L.C. ("PJM ISO"), where a \$1,000 energy bid cap has been in place since the commencement of the PJM market.¹³ The NYISO Board does not believe that the existence of this cap has had serious adverse effects on reliability or market operations in PJM.

A number of bid cap opponents also argued that the imposition of temporary bid caps in New York would be unprecedented because price caps in PJM and California were already in place at the time that those ISOs' equivalents of Transmission Congestion Contracts ("TCCs") and Installed Capacity were allocated. The NYISO Board is aware, however, that the California ISO's Board of Governors recently voted to reduce existing price caps in California's real-time, ancillary services and intra-zonal congestion management markets from \$750 MWh to \$500 MWh, for the period between July 1 and October 15, 2000. The NYISO Board also understands that the California ISO's Board of Governors came quite close to adopting an even lower \$250 MWh bid cap. Thus, the NYISO Board's decision to impose temporary bid caps "midstream" is not unprecedented.¹⁴ It is also by no means clear that the California ISO's price caps, which have been in place in one form or another for two years, have caused the kind of problems that the bid cap opponents predict will beset New York if the NYISO implements temporary bid caps. This gives the NYISO Board additional comfort that the adoption of temporary bid caps will not have a harmful effect on the New York markets.

Finally, although bid caps have not, as of this writing, been imposed by ISO-New England, the NYISO Board notes that ISO-New England has implemented a number of other mechanisms,¹⁵

¹³ PJM's energy bid cap is set forth in Attachment K to the PJM Tariff, which establishes the PJM market rules. See PJM Tariff Attachment K, Section 1.10.1(e)(viii). It was accepted by the Commission in *Pennsylvania-New Jersey-Maryland, et. al.*, 81 FERC ¶ 61,257 (1997).

¹⁴ The NYISO Board estimates that the proposed bid cap is at least 30 times higher than the average total per megawatt cost of power in New York, and thus is sufficiently high to ensure that suppliers are not materially harmed by the caps.

¹⁵ The NYISO Board notes that a similar bid cap proposal was recently proposed by NSTAR Services for implementation in New England. See, e.g., *Answer of NEPOOL Participants*

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including most notably, its Load Response Program, that appear likely substantially to reduce, if not eliminate, a need for bid caps in its markets. Unfortunately, the NYISO simply cannot establish similar mechanisms in time to avoid the stresses of the imminent summer peak season.

4. Temporary Bid Caps Will Provide an Additional Safeguard for the NYISO-Administered Markets

The NYISO market system is the most sophisticated competitive electric market design that has been implemented to date in North America. The NYISO-administered markets encompass more products, complete more temporal settlements, and have a more advanced congestion management system than the markets administered by the California ISO, the PJM ISO or ISO-New England. At the same time, the NYISO is the newest of the currently operational ISOs. Accordingly, it should not be surprising that the NYISO-administered markets have experienced start-up problems during their first seven months of operation. The NYISO Board does not believe that these problems have crippled the NYISO-administered markets, and continues to be confident that these markets are fundamentally sound. The NYISO's existing MPM and TEP authority will play a key role in ensuring that the markets are workably competitive this summer, even if temporary bid caps are in place, since the market power or market design flaws addressed by those programs are distinct from the lack of demand-side responsiveness addressed by the proposed bid caps, and address problems that may have effects at price levels well below \$1300/MWH, or in markets that are not subject to the proposed bid caps. Accordingly, the NYISO Board is persuaded that bid caps will play an important "backstop" role this summer in conjunction with the NYISO's current MPM and TEP authority while the NYISO works to eliminate its post-start-up market implementation problems.

V. Description of the NYISO Board's Temporary Bid Cap Proposal

The NYISO Board proposes that a new "Attachment F" be temporarily added to the ISO Services Tariff in order to establish temporary bid caps. The NYISO Board has attempted to devise rules that will impose the fewest possible restrictions on the NYISO-administered markets. It is hoped that this approach will minimize any potential harm to suppliers and the likelihood of distortions in the NYISO-administered markets.

Committee to Complaint of NSTAR Services Company, Docket No. EL00-83-000 at 4-6 (June 23, 2000) (describing various recent filings by NEPOOL and/or ISO-New England aimed at addressing summer peak-demand market concerns without adopting bid caps.)

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Specifically, the NYISO Board would impose a \$1300 bid cap on Day-Ahead and Hour-Ahead bids to sell energy. The \$1300 bid cap would also apply to Minimum Generation Bids, Decremental Bids, Price Cap Load Bids, Sink Price Cap Bids and ICAP recall bids. Suppliers would be subject to the bid caps regardless of whether they are located inside or outside of the NYCA, as would dispatchable loads. Bid caps would not apply to ancillary services bids, Start-Up bids or any other bid that is not explicitly referenced in proposed Attachment F. Bid caps would be waived when necessary to permit emergency external purchases by the NYISO, but such emergency external purchases would not be permitted to set the market-clearing price.

The NYISO Board has rejected the June 5th Proposal's adoption of a \$1000 Mwh bid cap because no clear rationale for capping bids at that level was offered. The NYISO Board has chosen a \$1300/MWh bid cap because \$1300 is approximately equal to the highest Day-Ahead LBMP the NYISO-administered markets have experienced since they commenced operations (experienced on June 26, 2000). There were several unexpectedly hot days in May, which occurred at a time when many generating units were on maintenance, and because June temperatures on several occasions appear to have been reasonably representative of summer conditions, and the NYISO Board therefore believes that a \$1300 cap is appropriate.

The NYISO Board was persuaded by suppliers' arguments that the June 5th Proposal's suspension of Bid Production Cost Guarantees could unintentionally produce perverse economic consequences and has not included that provision in this filing.

Notwithstanding the implementation of bid caps, the NYISO Board will instruct the NYISO's market monitoring staff and the New York Market Advisor to carefully monitor developments in the NYISO-administered markets for evidence of unintended market distortions. The NYISO will use its MPM and TEP authority to correct any such problems as expeditiously as possible.

VI. Development of a Permanent Solution

The NYISO Board believes that its proposal will provide a safeguard against undue damage to the market arising from a near total lack of price-responsive load, and from unforeseen start-up problems. Nevertheless, it recognizes that bid caps are a sub-optimal solution and does not intend that they become a permanent feature of the NYISO-administered markets.

The NYISO Board believes that the near total absence of price responsive load in New York creates conditions where isolated artificial price spikes may occur. These conditions cannot be effectively addressed by the NYISO's current MPM or TEP authority. Consequently, the NYISO

Board embraces the Management Committee's conclusion that the ultimate solution is to develop procedures and software that will encourage the development of price-sensitive load and foster demand-side competition.

Thus, consistent with the June 5th Proposal, the NYISO Board will direct the NYISO staff to develop, by the fourth quarter of calendar year 2000, to develop specifications for metering, telemetry, business rules and software that would allow and encourage the development of price sensitive load to participate in the NYISO markets. The NYISO Board expects that such a system will be reviewed and accepted by the Business Issues Committee and Management Committee at their regularly scheduled December and January meetings. Early action will allow for any necessary tariff filings to be made and to provide for load metering and NYISO software development to be complete by June 1, 2000.

VII. Requested Effective Date and Request for Waiver of Notice Requirements

The NYISO Board requests a waiver of the Commission's usual 60-day notice period and asks that its proposed tariff amendments be made effective on July 6, 2000.¹⁶

For the reasons set forth *supra*, the NYISO Board's temporary bid cap proposal should be implemented as quickly as possible. If the effectiveness of the proposed bid cap amendments were delayed until 60 days after the date of this filing, *i.e.*, until August 29, their purpose would largely be defeated since much of the high-demand summer period would have elapsed. On the other hand, an immediate effective date would be inappropriate because market participants deserve time to analyze, and prepare themselves to operate under, the proposed rules. Consequently, the NYISO Board respectfully submits that there is good cause for the Commission to approve its requested effective date pursuant to Section 35.11 of the Commission's regulations.¹⁷

VIII. Federal Register Notice and Request for Expedited Commission Action

Given the importance of the temporary bid cap proposal to all New York market participants, the NYISO Board believes that it is appropriate for the Commission shorten the usual comment period and act on this filing as expeditiously as possible. Delaying the issuance of final order on NYISO Board's proposal will thus foster uncertainty in the NYISO-administered markets. Moreover, in the event that the Commission substantially modifies, or rejects, the NYISO Board's proposal after it has

¹⁶ See *supra* n. 5.

¹⁷ 18 C.F.R. § 35.11 (1999).

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been in effect for some time it will be difficult, or impossible, for the NYISO to make retroactive adjustments. Finally, because the imposition of bid caps have been debated in New York for more than a month, and because many parties have already prepared written arguments on the subject, it seems highly unlikely that interested market participants would be unduly prejudiced if the Commission shortened the comment period and issued an order on an expedited basis.

A form of *Federal Register* Notice is provided as Attachment B hereto. In addition, a diskette containing a WordPerfect copy of the Notice is enclosed with this letter.

IX. Service

Copies of this filing are being served on all of the parties in Docket Nos. ER97-1523-000, OA97-470-000 and ER97-4324-000, not consolidated, all parties in Docket No. EL00-70-000, and on all other parties that have executed Service Agreements under the ISO OATT or the ISO Services Tariff.

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X. Conclusion

The NYISO Board recognizes that this filing raises controversial issues. The NYISO Board has grappled with them, and concluded that its temporary bid cap represents the best possible balancing of competing considerations. Accordingly, for the foregoing reasons, the NYISO Board, acting pursuant to its exigent circumstances authority, respectfully asks that the Commission accept its temporary bid caps proposal, to become effective on July 6, 2000, and to expire no later than October 28, 2000.

Respectfully submitted,

NEW YORK INDEPENDENT
SYSTEM OPERATOR, INC.

By _____
Counsel

Arnold H. Quint
William F. Young
Ted J. Murphy
Hunton & Williams
1900 K Street, N.W., Suite 1200
Washington, DC 20006-1109
Of Counsel

June 30, 2000

cc: Mr. Daniel L. Larcamp, Director Office of Markets, Tariffs and Rates, Room 8A-01, Tel. (202) 208-2088
Ms. Alice M. Fernandez, Director Office of Markets, Tariffs and Rates – East Division, Room 82-15, Tel. (202) 208-0089
Ms. Andrea Wolfman, Office of the General Counsel , Room 101-29, Tel. (202) 208-2097

ATTACHMENT A

**Temporary Attachment F to New York Independent System Operator
Market-Administration and Control Area Services Tariff**

Temporary Bid Caps

I. Definitions

Except as noted below, all capitalized terms used in Attachment F shall have the meanings specified in Article 2 of the ISO Services Tariff, or in Section 1 of the ISO OATT. In addition, the following terms, which are not defined in the ISO Tariffs, shall have the meanings specified below.

A. **“Bid Cap”** shall mean the maximum Bid Price that may be submitted in connection with certain Bids, as specified in Sections V and VI of this Attachment F.

B. **“Emergency External Purchases”** shall mean the purchase, by the ISO, of Capability or Energy from External Suppliers for the purpose of eliminating an Operating Reserve deficiency, as described in the ISO Procedures.

C. **“Price Cap Load Bid”** shall mean the maximum price above which a Dispatchable Internal Load shall not be served.

D. **“Sink Price Cap Bid”** shall mean the maximum price above which an External Load or Energy Export shall not be served.

II. Supremacy of Attachment F

During the period that this Attachment F is in effect, the provisions set forth herein shall be deemed incorporated by reference into every provision of the ISO Services Tariff affected by this Attachment F, including each of the ISO Services Tariff’s Rate Schedules and Attachments. In the event of a conflict between the terms of this Attachment F and the terms of any other provision of the ISO Services Tariff, the terms of Attachment F shall prevail.

III. Effective Date

Attachment F shall become effective on July 6, 2000 for Suppliers submitting Day-Ahead Bids to sell Energy in the July 7, 2000 Day-Ahead market, and on July 7, 2000 for all other

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Suppliers and for any Dispatchable Loads that submit Bids which are subject to Sections V and VI below.

IV. Expiration Date

Attachment F shall expire no later than October 28, 2000 and shall not be extended, except as may be ordered by the Commission. The Board of Directors shall have the unilateral right to cause Attachment F to expire before October 28, 2000. The Board of Directors may exercise this right, at its sole discretion, by certifying that market experience has demonstrated that Bid Caps are no longer necessary.

V. Establishment of Temporary Bid Caps

During the period that Attachment F is in effect, the Bid Cap for all Bids referenced in Section VI.A below shall be \$1,300/MWh. If a Bid exceeds an applicable Bid Cap, the Bid shall be automatically rejected by the ISO. In addition, any Bid for a date during the effectiveness of this Attachment F that is submitted prior to the incorporation of Bid Cap logic into the ISO software that exceeds an applicable Bid Cap will be rejected, and the bidding entity will be required to submit a new Bid that conforms to the Bid Cap.

VI. Applicability of Temporary Bid Caps

A. The Bid Cap established in Section V shall apply to Day-Ahead and Hour-Ahead Energy Bids, Minimum Generation Bids, Decremental Bids, Price Cap Load Bids, Sink Price Cap Bids and Installed Capacity recall Bids, as applicable. All Suppliers and Dispatchable Loads, whether External or Internal to the NYCA, shall be subject to a Bid Cap for all Bids specified herein.

B. The Bid Cap shall not apply to Ancillary Services Bids, Start-Up Bids or to any other Bid that is not specified in Section VI.A. This Attachment F does not modify the bidding restrictions and opportunity cost recovery rules for 10-minute non-spinning reserves approved by the Commission in its May 31, 2000 Order in Docket No. ER00-1969-000, *et. al.*

C. Bid Caps shall not apply to Emergency External Purchases. Bids or Offers made in connection with External Emergency Purchases shall not establish Market-Clearing Prices.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

NOTICE OF FILING

Take notice that on June 30, 2000, the New York Independent System Operator, Inc., acting at the direction of its independent Board of Directors (“NYISO Board”) and pursuant to its “exigent circumstances” authority, unilaterally filed proposed tariff amendments that would implement temporary bid caps in certain NYISO-administered markets. The NYISO Board requested that the proposed temporary bid caps become effective on July 6, 2000, and expire no later than October 28, 2000.

A copy of this filing was served upon all parties in Docket Nos. ER97-1523-000, OA97-470-000 and ER97-4324-000, not consolidated, all parties in Docket No. EL00-70-000, and on all other parties who have executed Service Agreements under the NYISO’s Open Access Transmission Tariff or Market Administration and Control Area Services Tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (385.211 and 385.214). All such motions or protests should be filed on or before _____. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

David P. Boergers
Secretary