UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.	)	**Docket No. ER00-1969-000**
	)	
Niagara Mohawk Power Corp.	)	**Docket No. EL00-57-000**
v.	)	
New York Independent System Operator, Inc.	)	
	)	
Orion Power New York GP, Inc.	)	**Docket No. EL00-60-000**
v.	)	
New York Independent System Operator, Inc.	)	
	)	
New York State Electric & Gas Corporation	)	**Docket No. EL00-63-000**
v.	)	
New York Independent System Operator, Inc.	)	
	)	
Rochester Gas and Electric Corporation	)	**Docket No. EL00-64-000**
v.	)	
New York Independent System Operator, Inc.	)	

REQUEST FOR LIMITED REHEARING AND STAY OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),[1] the New York Independent System Operator, Inc. ("NYISO") hereby respectfully requests rehearing of one aspect of the Commission's May 31, 2000 *Order on Tariff Filings and Complaints* in the above-referenced dockets, 91 FERC ¶ 61,218 ("May 31 Order"). Specifically, the NYISO asks that the Commission reverse its decision to bar the NYISO from retroactively adjusting charges assessed for 10-Minute Non-Synchronized Reserves ("10-Minute NSR" or "NSR") for the period between January 29 and March 28, 2000 (the "Relevant Period").

Based on the factual findings set forth in the May 31 Order, and the evidence presented by the NYISO in its March 27th filing,[2] those charges were, by virtue of the Commission's own findings, unjust and unreasonable and must not be allowed to stand. Instead, the Commission must establish a procedure for determining the just and reasonable charges for the period in question. As explained below, it will not be difficult to perform such a calculation—and even a significant degree of difficulty should not be a sufficient basis for rates that are not just and reasonable to remain in effect.

In addition, the NYISO respectfully asks that the Commission stay its refusal to allow an interim re-determination of operating reserves charges for the NYISO's March bills to remain in place pending the Commission's ruling on the NYISO's limited request for rehearing. Although it may not be common for the Commission to stay its orders pending rehearing, the NYISO respectfully submits that the Commission's own findings, and the substantial evidence supporting those findings showing that rates during the Relevant Period were not just and reasonable, warrant a stay here. As shown in the NYISO's original filing in this docket, if operating reserves prices are left uncorrected, ratepayers in New York will be required to pay approximately $65 million more for 10-minute reserves than they would have paid at the prices prevailing prior to the Relevant Period. This will damage all customers, and would irreparably harm smaller load serving entities that lack the financial resources to absorb such charges. Thus, allowing the interim rebilling for the March portion of the Relevant Period to remain in place would equitably balance the interests of suppliers and ratepayers.

---

1 18 C.F.R. § 385.713 (1999).

2 *Request of New York Independent System Operator, Inc. for Suspension of Market-Based Pricing for Ten-Minute Reserves and to Shorten Notice Period,* Docket No. ER00-1969-000 (March 27, 2000).

I. Request for Rehearing of the Commission's Decision to Prohibit Retroactive Adjustments to Unjust and Unreasonable 10-Minute Operating Reserves Charges

A. The May 31 Order, the NYISO's Compliance Plan and the NYISO's Request for Rehearing

The NYISO commends the Commission for recognizing that high levels of market concentration, exacerbated by certain market design problems, in the 10-Minute NSR market presently makes the continuation of market-based pricing in it inappropriate.[3] The NYISO is committed to making the changes required to resume market-based bidding in this market as quickly as possible. Consistent with the May 31 Order, the NYISO made a compliance filing on June 15, 2000, under which suppliers of 10-Minute NSR are made whole for their lost opportunity costs. (The filing also removes bid caps and mandatory bidding requirements from the 10-minute spinning reserves market.) In addition, the NYISO has been working with market participants to develop permanent solutions to the problems in the markets for operating reserves, and will comply with the Commission's requirement that it submit by September 1, 2000 a filing to resume market-based bidding in the 10-Minute NSR market by November 1, 2000.[4]

Nevertheless, the NYISO takes issue with the May 31 Order's rejection of the NYISO's request "to initiate an ADR settlement process for the purpose of determining the correct charges to be billed for the past period January 29 to March 28, the effective date of the proposed bid caps."[5]

---

[3] This aspect of the May 31 Order is discussed *infra* in Part I(C).

[4] Indeed, a NYISO plan for market-based operating reserves bidding, a proposal which addressed some, but not all, of the May 31 Order's concerns and included a number of other market design improvements, was approved by 83.22% of the NYISO's Business Issues Committee on May 18. It was pending before the NYISO's Management Committee at the time that the May 31 Order was issued.

[5] May 31 Order at 23.

Similarly, the NYISO disputes the May 31 Order's refusal to grant its request for permission to make an interim adjustment to its bills for March to reflect normal competitive pricing levels for operating reserves.[6] The Commission's findings concerning the extremely high levels of market concentration and the presence of market design problems in the 10-Minute NSR markets inevitably lead to the conclusion that 10-Minute NSR prices during the Relevant Period were not produced by the interplay of competitive market forces and were therefore unjust and unreasonable. This reality mandates the instant request for rehearing and stay.

B. The Commission Has a Clear Statutory Obligation to Ensure that 10-Minute Reserve Charges are Just and Reasonable

Section 205(a) of the Federal Power Act ("FPA") requires that all rates and charges assessed by public utilities be just and reasonable. Specifically:

> All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges *shall be just and reasonable,* and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.[7]

Thus, the FPA imposes an affirmative obligation on the Commission to ensure that customers do not pay unjust and unreasonable charges when they purchase jurisdictional services from public utilities. This obligation is fully applicable to the charges assessed by the NYISO, a public utility, for 10-minute reserves, a jurisdictional service.

As several courts have recognized, market-based pricing can be a just and reasonable alternative to traditional cost-of-service regulation, provided that the interplay of competitive forces

---

6 *Id.*

7 16 U.S.C. § 824d (emphasis supplied.)

ensures that markets are at least workably competitive, or that regulatory mechanisms are in place to mitigate any market power that might arise in markets that are not workably competitive.[8] Each departure from cost-based rates must, however, be "found not to be unreasonable and consistent with the Commission's [statutory] responsibility."[9] In cases where this standard has not been met, courts have held that market-based charges are unjust and unreasonable and required the Commission to find a just and reasonable means of establishing prices.[10]

The Commission has acknowledged that market-based pricing is only permissible when competitive market forces or adequate regulatory back-stops are in place.[11] For example, in Order No. 2000, the Commission noted that it has "a responsibility under FPA Sections 205 and 206 to ensure that rates for wholesale power sales are just and reasonable and has found that market-based rates can be just and reasonable where the seller has no market power."[12] Similarly, in Order No. 637-A, the Commission argued that it was not required to conduct a detailed market power analysis prior to

---

[8] *See, e.g., Elizabethtown Gas Co. v. FERC*, 10 F. 3d 866, 870 (D.C. Cir. 1993) ("*when there is a competitive market* the FERC may rely upon market-based prices . . . to ensure a 'just and reasonable' result.") (emphasis added).

1. [9] *Farmers Union Central Exchange, Inc. v. FERC* (*"Farmers Union"*), 734 F.2d 1486, 1502 (D.C. Cir. 1984*); cert. denied*, 469 U.S. (1984); *citing Mobil Oil*, 417 U.S. 283, 308 (1974).

[10] *Farmers Union* at 1508-10 (rejecting Commission approval of market based rates for oil pipelines on the basis that the Commission had not supported its claim that market forces would restrain rates to just and reasonable levels.); *Farmers Union* was decided pursuant to the Interstate Commerce Act which, like the FPA, employed a justness and reasonableness standard.

[11] *See. e.g., LG&E-Westmoreland Southampton*, 83 FERC ¶ 61,182 (1998) ("The Court of Appeals has stated that where there is a competitive market, the Commission 'may rely upon market-based prices in lieu of cost-of-service regulation to assure a "just and reasonable result."')

[12] Regional Transmission Organizations, Order No. 2000, FERC Stats. & Regs. (CCH) at ¶ 31,089 at 31,044.

relaxing cost-based regulation in the secondary gas capacity release market but recognized that rate regulation could only be relaxed "if the regulatory scheme itself acts as a monitor to maintain rates in the zone of reasonableness or to act as a check on rates if they are not."[13]

Accordingly, in order for the Commission to fulfill its obligation to ensure that jurisdictional charges are just and reasonable, it must be able to conclude that market-based rates are driven by competitive market forces or that appropriate regulatory safeguards are in place. The May 31 Order, however, implicitly accepts the NYISO's conclusion that 10-Minute NSR prices were not subject to either kind of market power mitigating check during the Relevant Period. *See infra*, Part I.C. It follows that 10-Minute NSR prices during that period were unjust and unreasonable under the FPA.

The NYISO shares the Commission's desire to foster the development of competitive markets. As the NYISO demonstrated in a recent answer to a complaint which called for competition to be suspended in all of the NYISO-administered markets,[14] the NYISO understands that when the interplay of supply and demand legitimately result in high prices those prices should not be artificially suppressed since they provide essential information to the market. Indeed, because such prices would be the product of genuine competition the NYISO believes that they would be just and reasonable under controlling legal precedent. In this proceeding, however, the NYISO has shown, and the Commission has confirmed, that 10-Minute NSR prices during the Relevant Period were unjust and unreasonable under the FPA.

---

[13] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637-A, FERC Stats. & Regs. (CCH) ¶ 31,099 (May 19, 2000), *slip op,* at 28.

[14] Answer of New York Independent System Operator to Complaint of New York State Electric and Gas Corporation to Suspend Market Based Rates, Docket No. EL00-70-000 (May 31, 2000).

C. The May 31 Order's Findings of Fact Necessarily Implies that Charges for 10-Minute NSR Were Unjust and Unreasonable During the Relevant Period

The May 31 Order found that the NYISO had "presented sufficient evidence to call into question continued reliance on market-based pricing for non-spinning reserves."[15] It also held that:

- "[T]he conditions under which market-based rate authority for ancillary services was granted do not match the current operational realities of the New York ISO's reserve markets."[16]

- "[T]he evidence presented by the NY ISO is sufficient to call into question our continued reliance on market-based rates for non-spinning reserves."[17]

- "[T]he NY ISO has shown that capacity that was previously offered to the market is no longer being offered and that the decline in supply offers correlates with a dramatic increase in bid prices." [18]

Based on these factual findings, the May 31 Order concluded that it was appropriate to permit the NYISO to impose a temporary $2.52 cap on suppliers' bids into the 10-Minute NSR markets, so long as a mechanism was included to ensure that those suppliers would recover their lost opportunity costs.[19] The May 31 Order also determined that given the state of the 10-Minute NSR markets the imposition of a mandatory bidding requirement was "necessary to protect against the physical withholding of capacity for the 10-Minute NSR market."[20]

The May 31 Order's express findings, and the resulting holdings mandating NSR bids and capping the level of those bids, lead ineluctably to the conclusion that prices were unjust and

---

15 May 31 Order at 61,798.

16 *Id*. at 61,799.

17 *Id.*

18 *Id.*

19 *Id.*

unreasonable during the Relevant Period. Although the Order purports to "make no finding that any supplier engaged in the withholding of capacity," and otherwise seeks to avoid confronting the inevitable conclusions that arise from its findings of fact, the Commission cannot have it both ways. It cannot use evidence of market power and market design problems to justify remedies to prevent overcharges during the period after the NYISO's filing, while simultaneously ignoring the fact that the same evidence shows that prices were unjust and unreasonable during the period before the filing, the very period from which the evidence was drawn. If as the Order states "the evidence presented by the [NYISO] is sufficient to call into question [the Commission's] continued reliance on market-based rates for non-spinning reserves,"[21] so that bid caps and mandatory bidding are warranted subsequent to the period covered by the evidence, then the evidence is also sufficient to show that rates were not just and reasonable, and remedies are warranted, during the period directly within the scope of the evidence.

In short, given the evidence submitted by the NYISO, and in light of the May 31 Order's findings of fact, further proceedings are required to determine just and reasonable charges for NSR during the Relevant Period.

D. Determining Just and Reasonable Charges for 10-Minute NSR for the Relevant Period would Not be Unduly Difficult

The May 31 Order sought to justify its rejection of the NYISO's request for permission to retroactively adjust reserves charges on the theory that high concentration levels and market design problems in the reserves markets would make it "very difficult for the New York ISO, or any party, to

---

20 *Id. at 61,802.*

21 *Id. at 61,799.*

simply recalculate the correct market-based rates."[22] The NYISO respectfully submits that the Commission has misapprehended what must be done given the factual record and the requirements of the FPA. As noted above, market conditions during the Relevant Period did not match the assumptions upon which the Commission based its authorization of market-based rates for 10-Minute NSR. Ten-minute NSR prices were neither produced by the interplay of competitive market forces, nor checked by regulatory safeguards or cost-based bidding limits. They were therefore unjust and unreasonable. Under the FPA, the Commission's statutory responsibility is not to determine what the market-based rate should have been during the Relevant Period, but to establish a just and reasonable rate.

The record permits the development of a methodology to determine just and reasonable charges for operating reserves during the Relevant Period. An analysis by the New York Market Advisor of the market effects of the withholding of 10-Minute NSR was described in the NYISO's original filing. This analysis showed that had participants continued to bid into the 10-Minute NSR market as they had prior to January 29, the 10-Minute NSR clearing prices would have averaged well below $2.00, and that prior to January 29 clearing prices exceeded $2.52 only in one anomalous instance. This result indicates that $2.52 is, if anything, higher than the market-based rates that would have prevailed absent the pattern of withholding.

The NYISO would propose, therefore, that any supplier of 10-Minute NSR that was selected during the Relevant Period but whose bidding behavior during the Relevant Period deviated significantly from its bidding behavior prior to the Relevant Period be paid $2.52, the mitigated bid level which the Commission found to be just and reasonable in the May 31 Order. Based on the analysis described

---

[22] May 31 Order at 61,804.

above, those suppliers would still be compensated at a level that is higher than the market-based price that would have prevailed without the withholding. Absent the proposed remedy, those suppliers would reap the lion's share of the gain if the unjust and unreasonable charges originally calculated for the Relevant Period were allowed to stand.[23]

By contrast, each supplier whose bidding behavior during the Relevant Period did not differ significantly from its behavior in the prior period would be paid at the level of its actual bids. Therefore, any supplier that continued to bid its capability rather than withhold it during the Relevant Period would be paid not less than its bids, even if its bids exceeded $2.52.

In addition, spinning reserve payments that were skewed upward by the artificially high 10-Minute NSR prices would be reset to the highest offer from units providing spinning reserves in an hour.[24] A further adjustment for lost opportunity costs, however, would not be warranted. Since lost opportunity cost payments were not specified for 10-Minute NSR during or prior to the Relevant Period, the submitted bids should have incorporated a supplier's lost opportunity costs. Therefore, providing lost opportunity cost payments retroactively will tend to over-compensate 10-Minute NSR suppliers.

---

[23] The data available to the NYISO from its administration of the operating reserves markets indicates that the principal participant in the operating reserves market realized a net profit on operating reserves (operating reserves payments less payments as a load serving entity for operating reserves) of $17.9 million for the period Jan. 29 through Mar. 31, as compared to a total for the month of April, after mitigation measures went into effect, of $1.5 million.

[24] The May 31 Order, *slip op.* at 23, found that the "New York ISO's tariff with regard to pricing of 10 minute spinning reserves . . . is reasonable. . . . . The New York ISO's practice of setting the price of 10 minute spinning reserves no lower than the price of 10 minute non-spinning reserves is necessary for the spinning reserves price to clear the market."

The foregoing methodology has been reviewed by the New York Market Advisor, and is considered by him to be a reasonable and appropriate means to determine just and reasonable rates for operating reserves during the Relevant Period. *See* affidavit of David Patton, attached hereto as Exhibit A.

While the Commission found the NYISO's proposal for an alternate dispute resolution process inappropriate, no such process is necessary to implement the relief the Commission should have required. Nonetheless, if on rehearing the Commission determines that some procedure that incorporates input from the market participants on the determination of an appropriate level of rates during the Relevant Period seems appropriate, the NYISO remains willing to work with the Commission and the market participants to refine the rate redetermination approach described above, or to develop an alternative method of establishing just and reasonable rates for the Relevant Period. At a minimum, the FPA requires the Commission to find a way to determine just and reasonable charges for NSR during the Relevant Period.

E. Consumers Did Not Make Economic Choices to Pay the High Rates for Operating Reserves During the Relevant Period

In rejecting the NYISO's proposed procedures for "determining the correct charges to be billed" during the Relevant Period, the Commission stated that "such changes should be prospective" because: "Customers cannot effectively revisit their economic decisions in these circumstances – there is no way for buyers and sellers to retroactively alter their conduct."[25] The NYISO respectfully submits that the Commission's reasoning on this point is faulty insofar as the Commission has wrongly presumed that consumers made "economic decisions" to purchase NSR at up to 100 times the normal price.

---

[25] *Id. at* 61,804.

In reality, Load Serving Entities ("LSEs"), who are the NYISO's direct customers, are required to pay for the NSR purchased by the NYISO in order to meet New York reliability standards, except to the extent that they could, in accordance with applicable standards and requirements, self-supply reserves. At the same time, "[g]iven [the Commission's] finding of concentration and other market flaws in the operation of the New York ISO markets,"[26] the evidence before the Commission shows that the NYISO did not have the freedom of choice necessary to make "economic decisions" when it purchased NSR on behalf of the LSEs. Therefore the LSEs did not have the freedom to make economic decisions.

Moreover, the actual customers for operating reserves, *i.e.*, the LSEs' resale customers, did not see, let alone have a chance to make "economic decisions" on the basis of, the high real-time NSR prices during the Relevant Period. The ultimate customers are the industrial, commercial and residential end-users. Despite the fact that they lacked the freedom to pursue economic alternatives, these customers will ultimately pay the unjust and unreasonable costs of reserves that the NYISO had no choice but to purchase and pass on to the LSEs in after-the-fact bills.

As the Commission found in the May 31 Order, the 10-Minute reserves markets were "even more concentrated than indicated in the original [ancillary services market power] analysis and the prime mitigating factor upon which we relied, the presence of multiple suppliers with the ability to fully satisfy the ISO's ancillary service requirements, does not exist."[27] The Commission therefore cannot, in the name of protecting "economic decisions" that were in fact never made, shirk its statutory obligation to protect customers from unjust and unreasonable charges for jurisdictional services.

---

26 *Id.*

F. The Commission should not Encourage Market Power Abuse by Arbitrarily Precluding Retroactive Action under § 205

The March 27 filing was made because the NYISO detected a pattern of withholding by a market participant controlling a high concentration of resources in the 10-Minute NSR market. This pattern continued while the NYISO conducted its investigation of the relevant markets, including consultation with the market participants that appeared to be responsible for the dramatic changes in operating reserves prices. The pattern only ended when the NYISO made its March 27 filing under § 205 of the FPA. As described in the filing, the New York Market Advisor estimates that the total amount of excessive charges for operating reserves obtained by sellers from New York load serving entities prior to the March 27 filing is on the order of $65,000,000.

As the Commission noted in the May 31 Order, the NYISO's March 27 filing was not made under its Market Mitigation Measures, which were only approved subsequent to March 27. Thus, granting the NYISO's request for rehearing would not undermine the principle articulated by the Commission in approving the NYISO's Market Mitigation Measures that such measures should not, as a general matter, be applied retroactively. Denying this rehearing request would, however, signal to market participants that they will be able to retain the fruits of market power abuse, even when disgorgement has specifically been shown to be appropriate on a case-by-case basis under § 205 of the FPA. Providing such an incentive for market power abuse is not necessary to ensure efficient competition, and is diametrically at odds with the Commission's obligation under the FPA to ensure that rates are just and reasonable.

---

[27] *Id.* at 61,799.

II. Request for Limited Stay

The Administrative Procedure Act authorizes the Commission to stay the effects of its rulings "when justice so requires."[28] In applying this standard, the Commission has traditionally considered three factors in determining whether a stay should be granted. These are: (i) whether the moving party will suffer irreparable injury without a stay; (ii) whether issuing a stay will not substantially harm other parties; and (iii) whether a stay is in the public interest.[29] The NYISO believes that the facts of this case justify a stay under the applicable standards.

The NYISO's request for authority to recalculate operating reserves prices on an interim basis for its billings for the month of March was based upon evidence it presented to the Commission showing that the rates for operating reserves increased by approximately $65 million during the Relevant Period, [30] and that this increase was attributable to factors, *e.g.,* high levels of market concentration and market design problems, that rendered the increase unjust and unreasonable. A significant portion of the increase was passed on to customers in the normal operation of the NYISO's billing procedures prior to its initial filing in this docket. Given that the NYISO's filing was made right before the end of March, however, the NYISO was in a position to take action on an interim basis, pending final Commission action, with respect to its March bills.

It is likely that the NYISO will be irreparably harmed if its request for a stay is rejected. The NYISO is a not-for-profit entity with extremely limited financial resources. If the Commission requires

---

[28] 5 U.S.C. § 705 (1994).

[29] *See, e.g., CMS Midland, Inc., Midland Cogeneration Venture Limited Partnership*, 56 FERC ¶ 61,177 at 61,631 (1991), *aff'd sub. nom*, *Michigan Municipal Cooperative Group v. FERC*, 990 F.2d 1377 (D.C. Cir. 1993), *cert. denied*, 510 U.S. 990 (1993).

[30] May 31 Order at 61,799.

the NYISO to pay unjust and unreasonable prices to suppliers of 10-Minute reserves, many LSEs may well balk at paying such prices when the NYISO attempts to bill them. The NYISO could therefore find itself with a dangerous cash flow crisis.

Moreover, other NYISO market participants, specifically the smaller players that cannot absorb prices as high as those during the Relevant Period, will be irreparably harmed if they are forced to pay the unjust and unreasonable prices that were assessed during the Relevant Period. *See, e.g., Motion to Intervene by Strategic Power Management, Inc.* in Docket No. ER00-1969-000 at 5 ("SPM fully supports the NY ISO's March 27, 2000 filing and asks this Commission to grant the relief requested in full, particularly the request to withhold billing and collecting the March 10-minute reserves above 'normal' levels. Without this relief, SPM for one and possibly others will be driven out of the market because of an inability to meet such extraordinary cash demands . . . . SPM has been adversely affected by the failure of the 10-minute reserve markets to the point where it will face extreme financial distress should this Commission deny the relief requested by the NY ISO.") While the impact on these entities may not directly affect the NYISO, the Commission should take them into account when it considers this request for stay.[31]

Granting a stay is unlikely to harm other parties. The suppliers are already reaping the benefits of the very high prices prior to the March period for which interim rebilling authority is sought. The interim payments were based on weighted average market prices prior to the Relevant Period, and thus would not affirmatively harm those suppliers but only delay the benefit of the unexpectedly high prices should the Commission decide to keep those prices in place. Thus, the equities militate strongly in favor

of leaving in place the NYISO's rebilling for March, pending resolution on the merits of the appropriate pricing levels for the entire Relevant Period.

III. Conclusion

WHEREFORE, for the foregoing reasons the New York Independent System Operator, Inc., respectfully asks that the Commission: (i) grant its request for rehearing of the May 31 Order's rejection of the NYISO's proposal to retroactively adjust unjust and unreasonable rates and charges; and (ii) stay the May 31 Order's denial of authority to conduct an interim rebilling for operating reserves for the month of March.

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

---

[31] These additional facts distinguish the situation here from that faced by the Commission in *Mid-Continent Area Power Pool ("MAPP"),* 91 FERC ¶61,163 (2000).

June 30, 2000

cc: Service List
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

EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.	**)**	**Docket No. ER00-1969-000**
	)	
Niagara Mohawk Power Corp.	**)**	**Docket No. EL00-57-000**
v.	**)**	
New York Independent System Operator, Inc.	**)**	
	)	
Orion Power New York GP, Inc.	**)**	**Docket No. EL00-60-000**
v.	**)**	
New York Independent System Operator, Inc.	**)**	
	)	
New York State Electric & Gas Corporation	**)**	**Docket No. EL00-63-000**
v.	**)**	
New York Independent System Operator, Inc.	**)**	
	)	
Rochester Gas and Electric Corporation	**)**	**Docket No. EL00-64-000**
v.	**)**	
New York Independent System Operator, Inc.	**)**	

AFFIDAVIT OF
DAVID B. PATTON

David B. Patton, having been duly sworn under oath deposes and says:

1. My name is David B. Patton. I am the Director of the Energy Practice at Capital Economics. My business address is 1299 Pennsylvania Avenue, N.W. Washington, D.C. 20004. I have a Ph.D. in economics and have worked as an energy economist for more than eleven years, focusing primarily on the electric utility and natural gas industries.

2. In May 1999, I was appointed as the independent Market Advisor for the New York Independent System Operator, Inc. ("NYISO"). As the independent Market Advisor, I am

responsible for helping the NYISO to monitor for market design flaws and market power abuses, as well as assessing the overall efficiency of the wholesale electric power markets in New York.

3. I have carefully reviewed the attached *Request for Limited Rehearing and Limited Stay* ("*Request*") of the NYISO. I believe the *Request's* proposed methodology for determining just and reasonable charges for ten-minute non-synchronous reserves during the "Relevant Period," *i.e.,* the period between January 29 and March 28, 2000 is appropriate and I recommend that the Commission to endorse it. *See Request* at II.D.

4. Importantly, this methodology is not intended to establish the "correct market-based prices" that FERC determined would be very difficult in its May 31 Order in the above referenced dockets. Rather, it establishes a payment level for those suppliers that physically or economically withheld their resources at $2.52 per MW, the bid cap level approved by FERC prospectively. Based on my analysis supporting the NYISO's prior filing, this level is well above the prices that would have prevailed during the relevant period had suppliers not substantially altered their bid patterns. The estimated prices resulting from this analysis averaged substantially less than $2.00 per MW. These results are consistent with the prices that prevailed prior to January 29.

5. Other suppliers of 10-minute non-synchronous that did not withhold supplies by substantially raising their bid prices would be paid their bid price when scheduled at a price above $2.52. Taken together, these pricing provisions provide an appropriate basis for determining just and reasonable charges for 10-minute non-synchronous reserves during the Relevant Period.

_____

David B. Patton
Director, Energy Practice
Capital Economics

Subscribed and sworn to before me
this ____ day of June, 2000.

_____
Notary Public

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 30th day of June, 2000.

_____

Hunton & Williams
1900 K Street, N.W.
Washington, D.C. 20006-1109
(202) 955-1588