

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

New York Independent System Operator, Inc.) Docket No. ER03-836-000

**RESPONSE OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
TO THE MOTION FOR CLARIFICATION OF
THE NEW YORK STATE PUBLIC SERVICE COMMISSION**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”), by counsel, hereby responds to the Motion for Clarification of the New York State Public Service Commission (“NYPSC”).²

In its Motion for Clarification, the NYPSC suggests that the proposed new § 5.4 of the Market Mitigation Measures (“MMM”), Attachment H to the Services Tariff, could be viewed as inconsistent with the market mitigation standards in § 3.2.3 of the MMM. The NYISO does not believe this is the case. The NYPSC characterizes § 3.2.3 as imposing a “mandatory” obligation to make a market mitigation measures filing under § 205 of the Federal Power Act if certain price increase thresholds are met. The NYISO respectfully submits that this overstates the thrust of § 3.2.3. Section 3.2.3 recognizes that apparently anticompetitive conduct and associated price impacts may be attributable to “legitimate competitive market forces or incentives.” Thus, action under § 3.2.3 is predicated on the NYISO’s consideration of all the facts and circumstances, including consultation with the relevant market participant under § 3.3, to determine whether observed market conduct and performance is consistent with competitive conditions. As the Commission stated in its Order on Rehearing and Compliance Filing

approving the MMM, “if a threshold that would trigger possible mitigation is reached, the ISO may choose not to impose mitigation, depending on whether it is satisfied with the party’s explanation for its behavior.”³

New § 5.4 of the MMM deals solely with procedures for reserving and, if appropriate and approved by the Commission, correcting 10-Minute Non-Synchronous Reserves (“NSR”) prices that are a result of an abuse of market power. The new proposed language does not establish new standards for mitigation, much less ones that conflict with § 3.2.3. Nothing in the new language purports to supercede or overrule § 3.2.3, and to the extent other provisions of the MMM establish standards for determining if “significant” bidding or price effects have been observed, those standards would be applicable to § 5.4 as well.

In the remainder of its motion, the NYPSC asks the Commission to specify the frequency of the reports that the Market Advisor should make concerning conditions in the 10-minute NSR market. The NYISO has committed to providing adequate reporting on the performance of this market and will comply with the NYPSC’s request for a report at three months and six months, as well as twelve months, after the lifting of the NSR bid cap.

Respectfully submitted,
NEW YORK INDEPENDENT
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By _____ /s/

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¹ 18 C.F.R. § 385.212 and 385.213.

² Capitalized terms not otherwise defined herein have the meanings set forth in Article 2 of the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff").

³*New York Independent System Operator, Inc.*, 90 FERC ¶ 61,317 at 62,055 (2000).