95 FERC ¶ 61,186
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

New York Independent System Operator, Inc. Docket Nos. ER01-1517-000
ER01-181-000 and
ER01-181-001

ORDER GRANTING LIMITED EXTENSION OF ENERGY BID CAP UNTIL OCTOBER 31, 2001, AND AUTHORIZING WITHDRAWAL OF FILING

(Issued May 8, 2001)

In this order, we extend the $1,000 per MWh bid cap on energy markets administered by the New York Independent System Operator, Inc. (NYISO), but only until October 31, 2001. We accept for filing tariff sheets submitted by NYISO to extend the bid cap, subject to modifications to reflect the October 31, 2001 expiration date. We grant NYISO's request for waiver of the 60-day prior notice requirement to permit the proposed tariff sheets to become effective on May 1, 2001, as requested. We also permit NYISO to withdraw its filings in Docket Nos. ER01-181-000 and ER01-181-001 made pursuant to section 206 of the Federal Power Act (FPA),[1] as further discussed herein.

I. Background

The Commission first approved imposition of a temporary bid cap of $1,000 per MWh on NYISO's energy markets by order issued July 26, 2000.[2] Subsequently, the Commission granted an extension of the $1,000 per MWh bid cap authority to expire on April 30, 2001.[3] In these orders, the Commission found it appropriate to impose a bid cap on NYISO's energy markets because these markets were undergoing significant revisions to

[1] 16 U.S.C. § 824e (2000).

[2] New York Independent System Operator, Inc., 92 FERC ¶ 61,073 (2000), reh'g pending.

[3] New York Independent System Operator, 93 FERC ¶ 61,189 (2000).

correct many market flaws. The Commission was also concerned that the lack of demand-responsiveness to price and predictions of tight supplies in the New York control area for Summer 2000 could exacerbate the problems in NYISO's energy markets.

NYISO's filing in Docket No. ER01-1517-000 was made pursuant to section 205 of the FPA and is intended to replace pending filings made by NYISO under section 206 of the FPA in Docket Nos. ER01-181-000 and ER01-181-001 (Section 206 filings). In the Section 206 filings, NYISO had requested extension of the currently effective bid cap past April 30, 2001 if an alternative market protection mechanism was not successfully implemented. On March 9, 2001, NYISO filed a Notice of Withdrawal of the Section 206 filings. This order will address the Notice of Withdrawal, as well as NYISO's new filing.

II. Filing

On March 12, 2001, pursuant to section 205 of the FPA, NYISO filed with the Commission a revised Attachment F to its Market Administration and Control Area Services Tariff (Services Tariff) to extend the currently effective $1,000 per MWh energy bid cap, which would otherwise expire on April 30, 2001. NYISO proposes to extend this bid cap until the end of the Summer 2002 capability period, i.e., until October 31, 2002.

NYISO contends that the extension of the energy bid cap is necessary for the following reasons. First, NYISO is concerned that its electric supply continues to be tight, while adequate new generation is not yet available and demand continues to grow. In its recently released Locational Installed Capacity Requirements Study (ICAP Study), NYISO concluded that the New York City area is almost 400 MW short of installed locational generating capacity required to satisfy reliability standards for the Summer 2001 capability period. In addition, NYISO states that delays in New York State's process for licensing and siting new generating capacity are preventing supply from increasing in order to match the continued demand growth.

Second, NYISO states that it has inadequate transmission capacity. NYISO's Central-East transmission constraint prevents lower-cost supplies from the western part of the state from being used to serve eastern New York. NYISO states that no major improvements in either capacity or operating limitations are currently planned at the Central-East interface. The fact remains that right-of-way acquisition is difficult and costly, and the siting of transmission lines typically faces even more opposition than do proposed generating projects.

Third, NYISO expresses concerns regarding New York State's natural gas supply situation. NYISO states that much of the existing generation is, and the vast majority of planned additions to generation will be, fueled by natural gas. Consequently, additional pipeline capacity will be required in order to enable year-around operation of the new natural gas-fueled generation. However, planned enhancements to interstate gas pipeline capacity appear to fall far short of what will be needed in the near term to support new electric generation in New York.

Fourth, NYISO states that although it proposes to implement several demand-side measures this summer, it is not yet clear whether they will make demand sufficiently price-responsive to avoid periods of high prices. NYISO argues that extension of the existing bid cap is necessary to allow time for testing the effectiveness of its proposed demand-side response mechanisms, in order to avoid exposing consumers to price spikes that are not a product of the interplay of competitive market forces.

In light of the constraints facing the NYISO-administered markets, NYISO estimates that the bid cap authority will continue to be necessary until the end of the Summer 2002 capability period. NYISO is hopeful that, by that time, significant progress will have been made in enhancing New York's energy supply infrastructure and strengthening demand-response mechanisms.

NYISO does not believe that the existence of the $1,000 bid cap will distort market signals and discourage new supply to the state. NYISO argues that the $1,000 per MWh cap that has been used in the PJM-administered market since its inception does not appear to have discouraged the entry of new supply. The permanent bid cap in PJM and the interim bid cap in ISO-NE[4] also warrant extension of the NYISO's bid cap in order to maintain uniformity across the Northeastern region. NYISO also continues to believe that suppliers will not be materially harmed by the continuation of the energy bid cap, which is likely to come into effect very rarely and is set at levels that prevent only artificially high run-ups in prices.

III. Notice, Interventions, Protests, and Comments

Notice of NYISO's filing was published in the Federal Register, 66 Fed. Reg. 16,222 (2001), with protests, answers, and motions to intervene required to be filed on or before

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[4] ISO-New England filed in Docket No. ER01-1482-000 to extend its existing bid cap of $1,000 per MWh through the end of 2001. The Commission is acting on this order concurrently.

April 2, 2001. Timely motions to intervene were filed by entities listed in the Appendix to this order. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), the filing of a timely motion to intervene that has not been opposed makes the movant a party to the proceeding.

New York Public Service Commission (New York Commission), the Member Systems, and Multiple Intervenors support the proposed extension of the bid cap on the grounds that NYISO-administered markets experience continued lack of demand-responsiveness to price and limited supplies in times of high demand. The New York Commission believes that during many critical hours the New York markets do not operate as competitive markets.

Several generators and power marketers[5] and Electric Power Supply Association (EPSA) oppose the extension of the bid cap. These parties observe that capped prices may provide short-term comfort, but in the long run, they distort the economies of supply and demand, create regulatory uncertainty, interfere with the Transmission Congestion Contract market, and discourage long-term contracting, hedging, generation investment, and load response. They claim that an extension of the bid cap will not cure or alleviate any of the problems identified by NYISO, primarily, supply shortages and transmission constraints. They argue that NYISO's concerns about future high prices are misplaced and that high prices are an accepted market mechanism to encourage new supplies.

These parties characterize NYISO's proposal to extend the bid cap as just one of multiple layers of mitigation proposed by NYISO to be effective for Summer 2001, referring to NYISO's proposals to extend the Temporary Extraordinary Procedures[6] and to

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[5]Aquila Energy Marketing Corporation (Aquila), Morgan Stanley Capital Group, Inc. and Enron Power Marketing, Inc. (MSCG and EPMI), PPL EnergyPlus, LLC (PPL), Williams Energy Marketing & Trading Company (Williams) (supports and joins the protest filed by Dynegy Power Marketing); and Reliant Energy Power Generation, Inc. (Reliant) (generally supports the comments submitted by the Electric Power Supply Association).

[6]On March 9, 2001, in Docket No. ER01-1489-000, NYISO filed a request for extension of its Temporary Extraordinary Procedures until October 31, 2002, the end of the Summer 2002 capability period. The Commission is acting on this filing in a concurrent order.

implement a "circuit breaker," or "automated mitigation."[7] They argue that while NYISO pursues market mitigation through these measures, it fails to implement such measures as a virtual bidding program, which would add liquidity to the markets. These parties maintain that it is time to let market solutions work to moderate the wholesale price of electricity.

Additionally, Dynegy Power Marketing, Inc. (Dynegy), Aquila, Indeck Companies (Indeck), and Independent Power Producers of New York, Inc. (IPPNY) argue that NYISO has failed to justify the extension of the bid cap because of changed circumstances. They point to factors such as NYISO's demand response initiatives proposed to be in place for Summer 2001, additional generation assets projected to come on-line for Summer 2001, and the return to service of Indian Point 2, as evidence that the bid cap extension is not needed.

Finally, if the Commission grants the extension, these parties particularly object to the proposed duration of the bid cap. MSCG, IPPNY, EPMI, and PPL see the request for an 18-month extension as inconsistent with a temporary nature of this measure and as indicative of NYISO's desire to perpetuate the price cap rather than take positive action toward permanent market improvements. Dynegy, Indeck, and Ravenswood state that if the Commission decides to approve the requested extension, it should not grant the full 18 months. These parties call for an extension of no more than 6 months ending on October 31, 2001, the end of the Summer 2001 capability period, if at all, finding no reason to speculate about conditions a year from today.

IV. Commission Ruling on Extension of Energy Bid Cap

We grant the extension of NYISO's bid cap authority until October 31, 2001 and direct NYISO to file, within 10 days of issuance of this order, revised tariff sheets to reflect the new expiration date of the bid cap. In order to ensure continuity of the rules under which market participants operate, the Commission grants waiver of the 60-day prior notice requirement to allow the proposed extension of the bid cap to become effective on May 1, 2001, as requested.[8]

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[7] On March 16, 2001, in Docket Nos. ER01-181-000 and EL01-55-000, Mirant Americas Energy Marketing, L.P. filed with the Commission a complaint challenging NYISO's right to implement the automated procedures without a separate filing. The Commission is acting on this filing in a concurrent order.

[8] Central Hudson Gas and Electric Corporation, 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992).

The Commission had two primary concerns when it extended the bid cap in its November 21, 2000 Order. They were tight supplies and the lack of a demand response mechanism.[9] We think that the tight supply situation still exists today, if at all, only in some parts of New York. The ICAP Study completed by NYISO indicates that New York City and Long Island may be short of capacity to meet local reliability targets for Summer 2001, and may have to rely on exports, if present efforts to install new capacity are delayed.[1010] Moreover, while NYISO is implementing three demand response programs for Summer 2001,[11] it is unclear whether enough load will participate to make a significant difference on days when supplies are tight, and none of the proposals is intended for load to respond to real-time prices.[12] We therefore believe that a temporary extension of the bid cap is warranted.

However, we find that NYISO's proposal to extend the $1,000 per MWh bid cap for a period of 18 months is unsupported, based on the progress NYISO has made to increase supply and to correct market design flaws. NYISO's ICAP Study indicates that if expected supplies come on line by June 1, 2001, NYISO will be able to meet ICAP requirements for Summer 2001. Specifically, the New York Power Authority is expected to install about 400 MW of new gas-fired turbines in New York City by June 1, 2001. A more recent report, released on May 1, 2001 by the Northeast Power Coordinating Council (NPCC),[13] finds that New York State, as a whole, should have an adequate supply of electricity,

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[9] See New York Independent System Operator, Inc., 93 FERC ¶ 61,189 (2000).

[10] See Locational Installed Capacity Requirements Study, February 14, 2001.

[11] These demand response programs would allow customers to be paid market prices for reducing or interrupting load, or to allow them to bid their load into the market with price caps. See New York Independent System Operator, Inc.'s Report on Implementation of Virtual Bidding and Zonal Price-Capped Load Bidding, Docket No. EL00-90-000 (February 2, 2001); New York Independent System Operator, Inc. Filing of Attachment G to Services Tariff to Implement Emergency Demand Response Program, Docket No. ER01-1520-000 (March 13, 2001); New York Independent System Operator, Inc. Tariff Revisions to Implement an Incentivized Day-Ahead Economic Load Curtailment Program, Docket No. ER01-1740-000 (April 5, 2001).

[12] The Commission recognizes that customers' ability to respond to price signals may be limited by the current availability and installation of demand management technology.

[13] The NPCC is the organization that oversees international electric power grid reliability for Northeastern North America.

recognizing, however, that the state may require significant amounts of electricity to be imported during peak demand periods.[14] Additionally, Indian Point 2, which provides 1,000 MW of nuclear capacity, is back on line. This nuclear capacity was not available during Summer 2000. Another reason for the Commission's prior approval of the bid cap was the existence of market design and software flaws.
However, there is a general consensus among market participants in New York that NYISO has made progress in eliminating market design problems and software defects. For these reasons, we will only grant the extension of the bid cap until October 31, 2001.

Furthermore, temporary retention of the bid cap also will ensure consistency between the bid cap in New York State and the existing $1,000 per MWh bid caps in the PJM Interconnections, Inc. (PJM)[15] and ISO New England, Inc. (ISO-NE) markets.[16]

For these reasons, the Commission extends the $1,000 per MWh bid cap until October 31, 2001 and accepts for filing Attachment F to NYISO's Services Tariff implementing the proposal, subject to modification. We also note that on April 30, 2001, NYISO issued an Emergency Corrective Action (ECA) under its Temporary Extraordinary Procedures authority to extend the $1,000 bid cap scheduled to expire on that date. This ECA is superseded by this order.

V. Notice of Withdrawal of Section 206 Filing

On March 9, 2001, NYISO filed a Notice of Withdrawal requesting to withdraw its pending Section 206 filings in Docket No. ER01-181-000 in which NYISO requested an extension of the bid cap. As part of its justification for withdrawal, NYISO states that due to changes in its computer system, it will implement an automated mitigation process effective May 1, 2001.

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[14] See Media Release, "NPCC Expects Reliable Supply of Electricity this Summer for Eastern Canada, New England and the City and State of New York." May 1, 2001.

[15] See PJM Open Access Transmission Tariff, Attachment K, Section 1.10.1a(d)(viii); PJM Operating Agreement, Schedule 1, PJM Interchange Energy Market, Section 1.10.1a (d)(viii).

[16] By a contemporaneous order in Docket No. ER01-1482-000, the Commission extends the bid cap of $1,000 per MWh in the ISO-NE energy markets until October 31, 2001.

Notice of NYISO's March 9, 2001 Notice of Withdrawal was published in the Federal Register, 65 Fed. Reg. 65,303 (2001), with protests, answers, and motions to intervene required to be filed on or before March 30, 2001. Timely motions to intervene were filed by entities listed in the Appendix to this order. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), the filing of a timely motion to intervene that has not been opposed makes the movant a party to the proceeding.

No party objects to the withdrawal of NYISO's Section 206 filings. However, several parties raise concerns about NYISO's statements that it will implement "automated mitigation" on May 1, 2001.

We will permit the withdrawal of NYISO's Section 206 filings made in Docket Nos. ER01-181-000 and ER01-181-001, effective immediately. These filings have been superceded by NYISO's filing made pursuant to section 205 of the FPA, which is the subject of this order. A complaint was filed in Docket Nos. ER01-181-000 and EL01-55-000 by Mirant Americas Energy Marketing, L.P. regarding NYISO's automated mitigation. The merits of the complaint will be addressed by a concurrent order in Docket No. EL01-55-000.

The Commission orders:

(A) The tariff sheets submitted by NYISO on March 12, 2001 in Docket No. ER01-1517-000 are hereby accepted for filing, as modified, to become effective on May 1, 2001.

(B) NYISO is hereby directed to file with the Commission, within 10 days of issuance of this order, tariff revisions to reflect the October 31, 2001 expiration date for the bid cap.

(C) NYISO's request for waiver of the 60-day prior notice requirement is hereby granted.

(D) The Commission hereby permits NYISO to withdraw its filings in Docket Nos. ER01-181-000 and ER01-181-001, effective immediately.

By the Commission. Chairman Hébert dissented with a separate statement attached.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

Appendix

New York Independent System Operator, Inc.

Interventions, Comments, Protests and Answers

Docket No. ER01-181-000 and 001

Aquila Energy Marketing Corporation*
City of New York*
Dynegy Power Marketing, Inc.*
Indeck Companies*
KeySpan-Ravenswood, Inc.
Member Systems*
Merrill Lynch Capital Services, Inc.*
Mirant Companies (Mirant Americas Energy Marketing, L.P., Mirant New York, Inc., Mirant Bowline, LLC, Mirant Lovett, LLC, and Mirant NY-Gen, LLC.)
Morgan Stanley Capital Group Inc.*
Multiple Intervenors*

Docket No. ER01-1517-000

Aquila Energy Marketing Corporation
Dynegy Power Marketing, Inc.*
Electric Power Supply Association*
El Paso Merchant Energy, L.P.
H.Q. Energy Services (U.S.) Inc.
Indeck Companies*
Independent Power Producers of New York, Inc.*
KeySpan-Ravenswood, Inc.*
Member Systems*
Morgan Stanley Capital Group, Inc. and Enron Power Marketing*
Multiple Intervenors*
New York Public Service Commission*
New York State Electric & Gas Corporation*
Niagara Mohawk Energy Marketing, Inc.
NRG Power Marketing Inc. and Affiliated Companies*
PPL EnergyPlus, LLC*
Reliant energy Power Generation, Inc.
Sithe Power Marketing, LP
TransCanada Power Marketing Ltd.
Williams Energy Marketing and Trading Company*

*Protest and/or Comments

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.	Docket No. ER01-1489-000
New York Independent System Operator, Inc.	Docket Nos. ER01-1517-000, ER01-181-000, and ER01-181-001
ISO New England Inc.	Docket No. ER01-1482-000

(Issued May 8, 2001)

HÉBERT, Chairman, *dissenting:*

I continue to oppose the bid caps in New York and New England and the "temporary extraordinary procedures" (TEP) in New York. I explain my reasons in my dissents previously issued in these proceedings. See 92 FERC at 61,135; 93 FERC at 61,623 (New York TEP); 92 FERC at 61,315-18; 93 FERC at 61,631-32 (New York bid cap); 92 FERC at 61,210-12; 93 FERC at 61,824 (New England bid cap). My preference would be to allow these market mitigation measures to now lapse. My conviction is particularly strong in light of improvements during the last year, explained in today's orders, in the supply situation and the introduction of demand response programs in those regions.

I add only that today's orders limit the extension of the TEP and bid caps (only through October 31 of this year) and thus decline to extend them for the lengthier term requested by the Applicants. (These filings all require Commission action within 60 days of filing; Commission inaction would have allowed the filings to go into effect by operation of law, thereby extending the TEP and bid caps for the full period requested by the Applicants.) My hope is that the Commission, when it revisits these issues this Fall, will conclude that the TEP and bid caps no longer serve any purpose other than to stifle the type of supply and demand initiatives necessary to ensure a truly competitive market for electricity in New York and New England.

For all of these reasons, I respectfully dissent.

Curt L. Hébert, Jr.
Chairman