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October 24, 2000

FILE NO: 55430.000005

BYHAND

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

Request of the New York Independent System Operator, Inc.
for Permission to Extend Temporary Bid Caps Until the End of the
2000-2001 Winter Capability Period

Dear Mr. Boergers:

Pursuant to Section 205 of the Federal Power Act (“FPA”),¹ and Section 35.13 of the Commission’s Rules of Practice and Procedure,² the New York Independent System Operator, Inc. (“NYISO”), by counsel, hereby respectfully requests authority to amend Attachment F of the NYISO Market Administration and Control Area Services Tariff (“ISO Services Tariff”) to extend the duration of its currently effective \$1,000/MWh bid caps. These bid caps are currently scheduled to expire on October 28, 2000. Under the NYISO’s proposal, the duration of these bid caps would
-2001 Winter Capability Period, *i.e.*, until April 30, 2001. The NYISO is not proposing any other change to Attachment F’s bid cap provisions.

Concurrent with this filing, the NYISO, acting at the direction of its independent Board of Directors (“NYISO Board”),³ is making a separate, unilateral FPA Section 206 filing.⁴ In that filing, the NYISO requests permission, in the event that it is unable to implement a superior market

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.

⁴ Section 19.01 of the Independent System Operator Agreement, authorizes the NYISO to unilaterally file proposed tariff changes under Section 206 without the concurrence of the Management Committee.

The Honorable David P. Boergers
October 24, 2000
Page 2

protective mechanism⁵ by April 30, 2001, to further extend the duration of its \$1,000/MWh bid caps from May 1, 2001 until such a protective mechanism is developed, tested, approved and in place. As is described in that filing, if the NYISO successfully implements a market protective mechanism prior to May 1, 2001 then there would be no need for bid caps next summer. Similarly, under the NYISO Board's proposal, if a market protective mechanism were implemented during the 2001 Summer Capability Period the NYISO would immediately terminate the bid caps. The NYISO Board has instructed the NYISO Staff to ask the NYISO committees to ratify the Section 206 filing. If the Management Committee ultimately endorses it, the NYISO will ask the Commission to reclassify it as a Section 205 filing.

In making these two filings, the NYISO is sensitive the Commission's oft-stated aversion to bid and price caps. The NYISO Board shares this aversion and is making the two filings very reluctantly. Nevertheless, the NYISO is submitting this request because it believes that delays in New York State's "Article X" process for licensing and siting new generating capacity are preventing supply from increasing to match continued demand growth.⁶ As a result, despite the NYISO's progress in eliminating existing market design and software flaws, there will likely continue to be occasional periods when the imbalance between supply and demand causes the NYISO-administered markets to cease to be workably competitive. The NYISO has no power to address this problem by expediting the licensing of new plants, and can only mitigate it by enhancing its rules and software. In particular, the NYISO is working closely with market participants and state agencies to develop effective demand-side response mechanisms, to be in place by the 2001 Summer Capability Period. While these measures will serve to reduce the frequency and severity of noncompetitive supply-demand imbalances the NYISO cannot be sure that they will address the problem completely.

⁵ The NYISO Board has directed NYISO Staff to work to develop a superior alternative to bid caps that would be triggered during the brief periods when the NYISO-administered markets cease to be workably competitive, *e.g.*, a "circuit-breaker" proposal.

⁶ There are currently many developers interested in building new power plants in New York. *See* <<http://www.nyiso.com/services/planning.html>> for more information on proposed plants in the state. The problem is that the Article X process seems likely to substantially delay the construction of new projects.

The Honorable David P. Boergers
October 24, 2000
Page 3

Consequently, the NYISO and the requisite majority of voting participants on the NYISO's Management Committee believe that it is appropriate to extend the existing bid caps through the end of the 2000-2001 Winter Capability Period. In addition, the NYISO believes that it will need to further extend the duration of bid caps, pending the successful implementation of an effective market participant mechanism, in order to avoid exposing consumers to non-competitive market conditions. The NYISO's own experience with the 10-Minute Non-Synchronized Reserve portion of its reserves markets,⁷ along with its awareness of the price disruptions that occurred in California last summer, have demonstrated that consumers should not be exposed to prices that are not driven by the interplay of competitive market forces.

I. Documents Submitted

1. This filing letter;
2. The NYISO Board's October 19, 2000 policy statement on "Market Protective
3. Clean revised tariff sheets amending Attachment F of the ISO Services Tariff to extend the duration of the NYISO's current bid caps ("Attachment B");
4. Redlined revised tariff sheets depicting the changes that the NYISO proposes to make to Attachment F of the ISO Services Tariff ("Attachment C"); and
5. Form of *Federal Register* Notice ("Attachment D").

⁷ The Commission addressed these problems in its May 31 Order on the NYISO's reserves market. *New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 (2000), *reh'g pending*.

The Honorable David P. Boergers
October 24, 2000
Page 4

II. Copies of Correspondence

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III. Reasons for this Filing

A. Background

On June 30, 2000, the NYISO, acting at the direction of the NYISO Board pursuant to the NYISO Board's unilateral "exigent circumstances" filing authority, made a filing in Docket No. ER00-3038-000 requesting permission to impose temporary \$1,300/MWh bid caps on 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 in the NYISO-administered markets. The NYISO Board had previously rejected a more sweeping \$1,000/MWh bid cap recommended by the NYISO's Management Committee. On July 26, 2000 the Commission adopted the NYISO Board's proposal but lowered the bid caps to \$1,000/MWh.⁸ These bid caps are scheduled to expire on October 28, 2000. On August 30, 2000, the Commission granted the NYISO's request

⁸ *New York Independent System Operator, Inc., et al.*, 92 FERC ¶ 61,073 (2000), *reh'g pending*.

The Honorable David P. Boergers
October 24, 2000
Page 5

for clarification that the bid caps would apply only to day-ahead sink price cap bids, and not to hour-ahead sink price cap bids.⁹

On September 7, 2000, the NYISO Management Committee voted, with 63.59% of voting members in favor, to continue the currently effective bid caps through the end of the Winter Capability Period, *i.e.*, until April 30, 2001. On September 18, 2000, the Independent Power Producers of New York, Inc. (“IPPNY”) sent the NYISO Board and NYISO Staff a letter objecting to the Management Committee’s decision to extend the bid caps. IPPNY also asked that if the NYISO Board voted to support the Management Committee’s bid cap resolution that it “clearly state the rationale for the bid cap extension and the conditions that need to be met before the market no longer needs bid caps.” Consistent with Sections 5.07 and 7.03 of the ISO Agreement and the *Procedural Rules for Appeals to the ISO Board*, Hydro Quebec Energy Services (U.S.), Inc. (“H.Q.”) appealed the Management Committee’s decision to the NYISO Board on September 21, 2000. Supporting motions were subsequently filed by the Aquila Energy Marketing Corporation and NRG Power Marketing. Motions opposing H.Q.’s appeal were filed by the City of New York and the New York State Transmission Owners, LIPA and the Power Authority of the State of New York. In addition, the Transmission Owners of New York State submitted a letter responding to IPPNY’s letter.¹⁰

After carefully reviewing the various motions submitted to it, and after extensive deliberation over the issues raised by the bid cap proposal, the NYISO Board decided to reluctantly concur with the Management Committee’s decision and to reject H.Q.’s appeal. The NYISO Board publicly announced this decision on October 19, 2000. Accordingly, the NYISO Board has instructed NYISO staff and counsel to make this Section 205 filing with the Commission requesting permission to extend the existing bid caps until April 30, 2001. However, the NYISO Board also decided to go beyond the Management Committee’s proposal and instructed NYISO Staff and counsel to make a separate and simultaneous Section 206 filing seeking permission to extend the existing bid caps into the 2001 Summer Capability Period in the event that a superior market protective mechanism is not in place by that time.

⁹ *New York Independent System Operator, Inc., et al*, 92 FERC ¶ 61,181 (2000).

¹⁰ The NYISO has opted not to attach these motions and letters to this filing. However, they are posted on the NYISO’s website at http://www.nyiso.com/services/documents/groups/board_of_directors.html.

The Honorable David P. Boergers
October 24, 2000
Page 6

B. Considerations Underlying the NYISO Board's Concurrence with the Management Committee

The NYISO Board's rationale for concurring with the Management Committee's September 7 bid cap extension proposal, is described in Attachment A hereto. Simply stated, the NYISO Board has determined that it is necessary to act to address conditions where an imbalance between supply and demand in the NYISO-administered markets renders them uncompetitive. Due to the delays associated with New York State's Article X licensing and siting process, the NYISO believes that new supply will not be available to eliminate the possibility of such severe supply and demand imbalances for some time, despite the fact that market signals are drawing new supply to the state.¹¹ The NYISO Board also believes that although the many market corrections and improvements already completed, or soon to be implemented, by NYISO staff will greatly enhance market performance during periods when workable competition exists, these efforts will, generally, do little to address New York's supply-demand imbalance, which is outside of the NYISO's control.

A potentially significant exception is the development and implementation of demand-side response mechanisms in time for next summer. The NYISO Board is hopeful that these mechanisms will help to address the imbalance, perhaps dramatically. Demand-side response mechanisms will not, however, be available during the Winter Capability Period. The NYISO Board understands that load levels will be relatively low during the winter period and that the risk of severe supply-demand imbalances is accordingly less than during the summer. Nevertheless, it is possible that unusual conditions may arise and create an imbalance that could render the markets noncompetitive at times during the winter. The NYISO Board does not believe that consumers should be required to bear this risk.

The NYISO Board is highly cognizant of the fact that bid caps are a blunt instrument and that reliance on them can have undesirable consequences. Nevertheless, the NYISO Board believes that

¹¹ The NYISO does not believe that the existence of transitional \$1,000 bid caps, or the future establishment of a market protective mechanism will interfere with these signals. Indeed, the NYISO believes that the uncertainty that would be created if bid caps were to be removed, subject to the very real possibility of being re-imposed for so long as New York's supply-demand imbalance exists, would be much more disruptive to the marketplace.

The Honorable David P. Boergers

October 24, 2000

Page 7

PJM's markets, which have been subject to a \$1,000 MW/h cap since their inception, do not appear to have been adversely affected as a result. In particular, there is no evidence that the existence of permanent caps in PJM has discouraged the entry of new supply. The NYISO Board also continues to believe that suppliers will not be materially harmed by the continuation of bid caps, which are likely to come into effect very rarely given that the NYISO-administered markets are workably competitive during most periods. Finally, the NYISO Board acknowledges the fact that the Management Committee has recommended the extension of bid caps through April 30, 2001.

In short, the NYISO Board has weighed the competing considerations to the best of its ability and concluded that the most appropriate course of action is to seek permission to extend bid caps for the duration of the 2000-2001 Winter Capability Period as a consumer protection backstop.

IV. Description of Proposed Tariff Changes

The NYISO proposes to amend Attachment F to the ISO Services Tariff to continue bid caps for the entirety of the 2000-2001 Winter Capability Period. The NYISO is not proposing any other changes to Attachment F.

V. Development of a Superior Market Protective Mechanism

As was stated above, the NYISO Board has directed the NYISO Staff to work with NYISO market participants to design and implement a market protective mechanism to protect consumers during temporary intervals when workable competition ceases to exist. One of several possible mechanisms would be a "circuit-breaker" that would mitigate sellers capable of wielding market power during periods when supply-demand imbalances disrupt the free interplay of competitive market forces. The NYISO recognizes that in order to create such a mechanism it must overcome a number of formidable design challenges, notably developing a "trigger" that can distinguish periods when markets are no longer workably competitive, and some sort of intervention is justified, from periods where the interplay of competitive market forces may legitimately raise prices, and intervention would only distort efficient market signals. Nevertheless, the NYISO believes that the effort is worth pursuing because a properly designed market protective mechanism would only go into effect when it was genuinely needed and would thus be a less intrusive, more narrowly tailored and more efficient remedy than generic bid caps. The NYISO's goal is to work

The Honorable David P. Boergers
October 24, 2000
Page 8

with market participants to develop such a mechanism, and to file an appropriate implementation proposal prior to the start of the 2001 Summer Capability Period.

VI. Requested Effective Date, Request for Expedited Action and Request for Waiver of Notice Requirements

The NYISO requests that the Commission shorten its usual 60-day notice period and expeditiously issue an order making the NYISO Board's bid cap extension proposal effective on October 29, 2000, or as early as possible thereafter. Expedited Commission action is necessary to ensure that the currently effective bid caps, which are scheduled to expire on October 28, do not lapse. As was explained above, the NYISO believes that bid caps provide customers with important, albeit limited and imperfect, protection during periods when the New York State electric markets cease to be workably competitive. If Commission approval of this filing is delayed, consumers will be exposed to the risk of having to occasionally pay artificially high prices that are not determined by the interplay of competitive market forces. While the NYISO believes that this risk is lower during the off-peak Winter Capability Period, it also believes that under the circumstances good cause exists for the Commission to shorten the sixty-day period and to accept the NYISO's proposal on an expedited basis.¹²

VII. Federal Register Notice and Request for Expedited Commission Action

The NYISO Board respectfully asks that the Commission shorten the allowed comment period to the greatest extent possible in order to facilitate an expedited review of its proposal. Affected market participants have had since September 7th to develop their arguments for and against the proposed bid caps extension and several have already submitted written motions on the subject to the NYISO Board. It is therefore unlikely that interested market participants would be unduly prejudiced if the Commission shortened the comment period and acted on an expedited basis.

VIII. Service

¹² The NYISO Board reserves the right to make a unilateral "exigent circumstances" filing proposing an immediate implementation date if it appears that consumers are likely to be harmed by non-market driven prices during the time that the Commission is reviewing this filing.

The Honorable David P. Boergers
October 24, 2000
Page 9

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. ER00-3038-000 and Docket No. ER00-3591, and on all other parties that have executed Service Agreements under the ISO OATT or the ISO Services Tariff.

IX. Conclusion

The NYISO Board recognizes that this filing raises very controversial issues. The NYISO has exercised its independent judgment, and concluded that its bid cap extension proposal, coupled with a parallel effort to develop a market protective mechanism for next summer, represents an appropriate balancing of competing considerations. Accordingly, for the foregoing reasons, the NYISO, acting pursuant to Section 205 of the Federal Power Act, respectfully asks that the Commission accept its bid cap extension proposal, to become effective on October 29, 2000, and to expire on April 30, 2001.

Respectfully submitted,

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October 24, 2000

The Honorable David P. Boergers
October 24, 2000
Page 10

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