MARKET PROTECTIVE MECHANISMS

INTRODUCTION

The New York electricity markets, which opened about ten months ago, have generally operated in a competitive manner, and during this initial period a number of design flaws were revealed and resolved. Continued demand growth, however, coupled with vestigial market design flaws and attempts by market participants to exercise market power, have resulted in occasional price spikes and higher price levels during certain periods.

We take this opportunity to reiterate our opposition to incursions upon a free and open market for electric energy. However, the Board is also well aware of the price disruptions that occurred in California this past summer, as well as significant increases that occurred in New York City. We are determined to do all that is reasonably within our power to see to it that the New York markets function efficiently and fairly. Efficiency requires that we minimize interference with market processes, but fairness requires that we try our best to avoid unfair impacts on consumers from either a temporary imbalance of supply and demand or anomalous market behavior. The steps referred to in this statement are intended to mitigate any unfair impacts, and to lead into a long-term strategy based on an open and competitive market.

GENERATING PLANTS

Underlying the conditions creating the near term threat of price disruption is the fact that generating capacity is not increasing to keep pace with demand. This failure is all the more unfortunate since modern technology offers the opportunity to replace energy from older, more polluting generating resources with energy from modern, efficient and cleaner generation. The failure to bring generating resources on line cannot be attributed to market forces. Rather, it is attributable to delays occurring in the licensing process. Our staff estimates that there are seventy-four projects indicating a desire to build in New York. Only one of these (Athens) is likely to be complete during the next three to four years. This situation is an invitation both to severe reliability problems and to price disruptions such as were encountered in southern California last summer. It is unacceptable.

We are cognizant of the fact that we have no authority directly to expedite the licensing of power plants, but we also know that we and the consumers of this state will be forced to cope with the price and reliability problems created by the imbalance. We are, therefore, instructing our staff and counsel to report to us at our next meeting on measures the NYISO could take to work with environmental groups, governmental entities and Market Participants to break the prevailing logjam.

PRICE RESPONSE

Customers, too, can lessen this imbalance between supply and demand if they are given the opportunity to reduce their purchases during periods of short supply. Therefore, the Board has instructed the staff to develop price responsive mechanisms to be exercised by load in time for next summer. Once developed, these mechanisms will probably have to be incorporated into the tariff, and they will be submitted to the Management Committee and then to the Federal Energy Regulatory Commission (FERC) for approval.

PROTECTIVE MECHANISMS

We have today instructed the NYISO staff to work with market participants to develop a market design change (or changes) intended to protect electric markets and customers during situations when ordinary market competition is inadequate to protect them. One such mechanism that has been widely discussed is the so-called ‘circuit breaker’, but the staff will not limit its work to that mechanism alone. The procedures will be submitted to the Board and the Management Committee. They will then be submitted to the FERC for final approval. We are instructing the staff to take all steps necessary to have them in place by next summer.

Under most circumstances, the laws of supply and demand function both to maximize efficiency and protect against prices which are higher than competition should produce. In New York, however, as in several other regions, deregulation occurred at a time when demand was increasing and supply remained stagnant. This situation permits very high prices to occur at times when workable competition does not exist. We regard the new mechanism as a tool to protect consumers and Load Serving Entities against the economic impact of the supply and demand imbalance or other market anomalies, but these should be consistent with our long-term goal of an open and competitive market for electricity.

BID CAPS

We are denying the appeals of the $1,000 bid caps passed by the Management Committee, and we will reluctantly concur in their submission to the FERC pursuant to Section 205 of the Federal Power Act, requesting FERC to act as expeditiously as possible. Our reluctance is based on the Board's concerns that a bid cap represents an arbitrary interference with the market that is unrelated to market conditions, and could also discourage the development of new generation. We will concur in the filing, however, since tight supply situations and transmission constraints can also occur during winter months, creating non-competitive conditions and artificially high prices. Moreover, because we do not currently have the authority to mitigate market power retroactively, the bid cap would provide a modicum of protection against market abuses. Equally important, a denial of concurrence could create the false impression that we are insensitive to the needs of consumers.

We are concerned lest the short duration of the Management Committee motion deceive the community into believing that the necessity for protective measures will not be present this coming summer. All indications are that the problems encountered last summer will be compounded by the growing imbalance between supply and demand this coming summer. We are, therefore, instructing our staff to file simultaneously, under Section 206 of the Federal Power Act, to continue the $1,000 bid caps until the alternate protective mechanism is fully developed, tested, approved, and in place. We invite the Management Committee to concur in this extension, in which case we can re-file the extension under Section 205.

BASE LOAD POWER

We take note of the analysis by our independent market advisor of the profound economic impact of the prolonged outage of large, base load plants. We, of course, have no authority to restore any generating facility to operation, but we are instructing our staff to do everything reasonably possible to encourage and assist plant owners and regulators to cause plants to be in operation next summer whenever possible. We include in this category, plants that may have been retired but are still capable of returning to service.