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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

Section 206 Filing of the New York Independent System Operator, Inc.,  
At the Direction of its Board of Directors, for Permission to Extend Temporary Bid Caps  
Pending the Implementation of a Market Protective Mechanism

Pursuant to Section 206 of the Federal Power Act,<sup>1</sup> and Section 19.01 of the Independent System Operator Agreement (“ISO Agreement”), the New York Independent System Operator, Inc. (“NYISO”), at the direction of its independent Board of Directors (“NYISO Board”),<sup>2</sup> by counsel, hereby respectfully requests that the Commission accept a proposed amendment to Attachment F of the NYISO Market Administration and Control Area Services Tariff (“ISO Services Tariff”). Pursuant to the proposed amendment, in the event that the NYISO is unable to successfully implement a superior market protective mechanism before the start of the 2001 Summer Capability Period, *i.e.*, by April 30, 2001, the \$1,000/MWh bid caps set forth in Attachment F would remain in effect.<sup>3</sup> If, however, the NYISO is able to implement a working market protective mechanism by April 30, 2001 the bid caps would be terminated. Similarly, if a market protective mechanism were to be successfully implemented for the first time during the 2001 Summer Capability Period, the bid caps would be immediately terminated and replaced by the market protective mechanism. The NYISO Board has instructed the NYISO Staff to ask the NYISO committees to ratify this filing. If the Management Committee ultimately endorses it, the NYISO will ask the Commission to treat this filing as if it had been made under Section 205.

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<sup>1</sup> 16 U.S.C. § 824e (1998).

<sup>2</sup> The NYISO Board is comprised of ten directors, none of which is affiliated with any New York market participant.

<sup>3</sup> The NYISO is making a concurrent FPA Section 205 filing requesting permission to extend the Attachment F bid caps for the remainder of the 2000 Summer Capability Period, *i.e.*, from October 29 until October 31, 2000, and for the duration of the 2000-2001 Winter Capability Period, *i.e.*, from November 1, 2000 until April 30, 2001.

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In making these two filings, the NYISO is sensitive to the Commission's oft-stated aversion to bid and price caps. The NYISO Board shares this aversion and is making these 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.<sup>4</sup> As a result, despite the NYISO's progress in eliminating existing market design and software flaws, there will likely 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.

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,<sup>5</sup> together 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.

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<sup>4</sup> 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.

<sup>5</sup> 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*.

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**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").

**II. Copies of Correspondence**

Communications regarding this proceeding should be addressed to:

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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.<sup>6</sup> These bid caps are scheduled to expire on October 28, 2000. On August 30, 2000, the Commission granted the NYISO's request 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.<sup>7</sup>

On September 7, 2000, the NYISO Management Committee voted, with 63.59% of voting members in favor,<sup>8</sup> 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. 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.

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<sup>6</sup> *New York Independent System Operator, Inc., et al.*, 92 FERC ¶ 61,073 (2000), *reh'g pending*.

<sup>7</sup> *New York Independent System Operator, Inc., et al.*, 92 FERC ¶ 61,181 (2000).

<sup>8</sup> A 58% vote is required for approval.

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In addition, the Transmission Owners of New York State submitted a letter responding to IPPNY's letter.<sup>9</sup>

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 a 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 this Section 206 filing seeking permission to continue bid caps into the 2001 Summer Capability Period in the event that a superior market protective mechanism is not in place by that time.

**B. Considerations Underlying the NYISO Board's Decision to Direct the NYISO to Make This Filing**

The NYISO Board's rationale for concurring with the Management Committee's September 7 bid cap extension proposal, and for authorizing a separate Section 206 filing applicable to the 2001 Summer Capability Period, 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.<sup>10</sup> The NYISO Board also believes that although the many market corrections and improvements

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<sup>9</sup> 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](http://www.nyiso.com/services/documents/groups/board_of_directors.html).

<sup>10</sup> 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.

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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 substantially. However, the NYISO Board cannot be certain that such mechanisms will completely address a supply-demand imbalance that is likely to be more acute than it was during the 2000 Summer Capability Period. The NYISO Board has concluded that it would be inappropriate and, for purposes of FPA Section 206, unjust and unreasonable, to expect consumers 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 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. The NYISO Board also acknowledges that the Management Committee has recommended that bid caps be extended through April 30, 2001, and is hopeful that the Management Committee will eventually ratify the NYISO Board's proposal to extend them if no superior alternative is in place.

In short, the NYISO Board has weighed the competing considerations to the best of its ability and concluded the most appropriate course of action is to seek permission to extend bid caps into the 2001 Summer Capability Period as a consumer protection backstop. It is the NYISO Board's hope, however, that a superior market protective mechanism will be in place by next summer which will render the continuation of bid caps unnecessary.

#### **IV. Description of Proposed Tariff Changes**

The NYISO proposes to amend Attachment F so that bid caps will be continued into the 2001 Summer Capability Period unless a Commission-approved alternative market protective mechanism is in place. In addition, the NYISO's proposed amendment specifies that if bid caps are

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extended they will be terminated immediately upon the successful implementation of an alternative market protective mechanism. 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 the markets are no longer workably competitive, and 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 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. Possible Ratification By the Management Committee**

The NYISO Board has directed NYISO staff to ask the NYISO’s market participant committees to endorse this filing. If the Management Committee ultimately endorses it, the NYISO will ask the Commission to reclassify this filing as a Section 205 filing. The Commission has previously allowed ISO filings that did not have the requisite market participant support to be treated as FPA Section 205 filings when they were subsequently ratified in this manner.<sup>11</sup>

#### **VII. Requested Effective Date and Request for Waiver**

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<sup>11</sup> See *PJM Interconnection, Inc.*, 92 FERC ¶ 61,059 (2000) (accepting PJM filing pursuant to Section 205, conditioned on subsequent market participant ratification); *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,212 (1998) (same).

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The NYISO requests that the Commission make its proposed amendment to Attachment F of the ISO Services Tariff effective on April 30, 2001. To the extent necessary, the NYISO requests a waiver of the advanced filing limitation established by Section 35.3(a) of the Commission's regulations.<sup>12</sup> The NYISO submits that there is good cause to grant the requested waiver, and to issue an order granting an April 30, 2001 effective date more than 120 days before April 30, because doing so will provide participants in the NYISO-administered markets with certainty concerning the continued existence, or non-existence, of bid caps.<sup>13</sup>

#### **VIII. Federal Register Notice and Request for Expedited Commission Action**

A form of *Federal Register* Notice is provided as Attachment D hereto. In addition, a diskette containing a WordPerfect copy of the Notice is enclosed with this letter.

#### **IX. Service**

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.

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<sup>12</sup> 18 C.F.R. § 35.3(a) (2000) specifies that no "rate schedule" may be filed more than 120 days before its proposed effective date absent a Commission waiver. The NYISO does not believe that this regulation is applicable to filings pursuant to FPA Section 206, but has nevertheless requested a waiver out of an abundance of caution. Moreover, in the event that the Management Committee subsequently ratifies this proposal the NYISO has asked that it be treated as a Section 205 filing, which clearly would require a waiver of Section 35.3(a).

<sup>13</sup> The Commission has frequently granted requests for waiver of the advanced filing limitation when good cause has been shown. *See, e.g., Southwest Power Pool*, 90 FERC ¶ 61,140 (2000) (granting permission to submit a rate schedule more than 120 days before its effective date in order to promote certainty); *PSI Energy and Consumers Power Co.*, 56 FERC ¶ 61,237 at 61,911 & n. 29 (1991) ("We often review and act on proposed rates for transactions that will not take places *Dartmouth Power Associates Limited Partnership*, 53 FERC ¶ 61,117 at 61,335 (1990); *Duke Power Co.*, 43 FERC ¶ 61,001 at 61,001, 61,003-04 (1998).



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**X. Conclusion**

The NYISO Board recognizes that this filing raises very controversial issues. The NYISO Board 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, appropriately balances competing considerations. Accordingly, for the foregoing reasons, the NYISO, acting pursuant to its unilateral Section 206 filing authority, respectfully asks that the Commission accept its bid cap extension proposal, to become effective on April 30, 2001, and to expire on the date that the NYISO successfully implements an effective market protective mechanism.

Respectfully submitted,

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