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**Via Hand Delivery**

May 14, 2007

Ms. Karen Antion  
Chair, NYISO Board of Directors  
c/o Mr. Mark S. Lynch  
President and CEO  
New York Independent System Operator, Inc.  
10 Krey Boulevard  
Rensselaer, NY 12144

Re: Notice of appeal of Management Committee's April 30, 2007 decision adopting real time bid production cost guarantee payment mitigation measures

Dear Ms. Antion:

Pursuant to the Procedural Rules for Appeals to the ISO Board, please find enclosed three originals of Independent Power Producers of New York, Inc.'s ("IPPNY") Notice of Appeal of Management Committee's April 30, 2007 Decision Adopting Real Time Bid Production Cost Guarantee Payment Mitigation Measures. A copy of the enclosed Notice of Appeal has been delivered today to Ray Stalter, of the NYISO staff, for circulation to all members of the Management Committee via electronic mail.

IPPNY respectfully requests that if any other party requests the opportunity for oral argument on this matter, IPPNY be allowed to participate in the argument.

Very truly yours,

*/s/David B. Johnson*  
David B. Johnson

Enclosures

cc: Robert E. Fernandez, Esq. (via e-mail)  
Ray Stalter (via e-mail)

**NOTICE OF APPEAL OF MANAGEMENT COMMITTEE'S  
APRIL 30, 2007 DECISION ADOPTING REAL TIME BID PRODUCTION COST  
GUARANTEE PAYMENT MITIGATION MEASURES**

**SUMMARY**

Independent Power Producers of New York, Inc. (“IPPNY”),<sup>1</sup> acting through its members on the New York Independent System Operator (“NYISO”) Management Committee (“MC”), hereby appeals the MC’s April 30, 2007 decision (“MC Proposal”) to recommend that the NYISO Board of Directors (“NYISO Board”) authorize the filing of tariff amendments regarding Real Time Bid Production Guarantee Payment (“RTGP”) mitigation measures with the Federal Energy Regulatory Commission (“FERC”). The MC Proposal sets forth procedural requirements with respect to RTGP mitigation that the NYISO must follow, including a provision that would allow the NYISO to mitigate RTGP bids up until the NYISO issues the final bill close-out for the production day(s) at issue. Such an approach would leave bids exposed to mitigation for a period of up to ten months after such bids were accepted by the NYISO and the units provided service.

While IPPNY generally supports most of the procedural requirements that were passed by the MC as needed improvements to the NYISO’s tariffs, it cannot support the extremely long time frame to identify mitigation that was proposed by NYISO Staff and accepted by the MC. It is both unreasonable and disruptive for previously accepted bids to remain subject to mitigation for up to ten months after a generator has provided service. Moreover, limiting the time frame for mitigation is consistent with past NYISO practice and objectives concerning the need to provide Market Participants with

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<sup>1</sup> IPPNY is a not-for-profit trade association representing more than 100 companies involved in the development and operation of electric generation facilities and the marketing and sale of electric power in New York.

certainty.<sup>2</sup> Thus, as demonstrated herein, the NYISO Board should submit a Federal Power Act (“FPA”) § 206 filing setting forth procedural requirements for RTGP mitigation but revising the deadline for imposition of such mitigation measures to be co-terminus with the issuance of the invoice that contains finalized metering data.

## **ARGUMENT**

### **I. THE PROPOSED TARIFF AMENDMENTS WOULD ALLOW FOR AN UNREASONABLY LONG PERIOD TO MITIGATE A GENERATOR’S RTGP BIDS**

Due to the design of the electric grid and other factors associated with the operation of generating units throughout New York State, and, in particular, in New York City, there are times when reliability or other reasons require the NYISO to dispatch a particular generating unit out of merit. The NYISO Market Services Tariff specifically governs such events and provides for the generators to be compensated for their actual bids, subject to adjustment if the NYISO determines that the relationship between the generator’s bid and the reference bid exceeds a specified threshold (1.5 in New York City and 3.0 in the rest of the State).<sup>3</sup> The NYISO has interpreted its tariffs to allow the NYISO to mitigate RTGP bids after such bids have been accepted and the units have provided services in accordance with such bids.

Through a series of orders issued over the past year, it appears that the FERC has authorized the NYISO to implement RTGP mitigation in this after-the-fact

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<sup>2</sup> See *Tariff Filing of the New York Independent System Operator, Inc.* filed May 16, 2006, Docket No. ER06-1014-000.

<sup>3</sup> NYISO Market Services Tariff, Section 4.10 and Attachment C.

manner.<sup>4</sup> The FERC did not, however, direct the NYISO to implement the specific review process now before the NYISO Board for its consideration. To the contrary, the FERC directed the “NYISO to work with its stakeholders to clarify the details of future RTGP Tests consistent with NYISO’s Services Tariff.”<sup>5</sup>

IPPNY actively participated in the effort over the last several months to develop RTGP procedural rules.<sup>6</sup> Although these efforts with the NYISO stakeholders have led to consensus on most aspects of the proposed tariff amendments, a critical timing issue remains in dispute. Put simply, the open question is, once a generator has provided out of merit services and the NYISO has the information it needs to apply the RTGP impact test, how long should RTGP bids remain subject to mitigation. For purposes of these tariffs amendments, IPPNY accepts the NYISO’s assertion that it must have some time to review data to perform the RTGP impact test. However, as demonstrated below, the NYISO does not require upwards of ten months until final bill closeouts are issued to conduct these tests.

Specifically, the NYISO requires final LBMP data and final generator metering data to apply the RTGP impact test. There are two discrete, easily identifiable points in time when this information becomes available to the NYISO. Both occur well before final bill closeouts.

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<sup>4</sup> *New York Independent System Operator, Inc.*, 115 FERC ¶ 61,026 (2006), *order directing further filings*, 117 FERC ¶ 61,164 (2006), *order denying reh’g and directing further filings*, 117 FERC ¶ 61,349 (2006), *order accepting compliance filings*, 118 FERC ¶ 61,201 (2007). As reflected in these orders, the FERC approved the NYISO’s interpretation over the objection of suppliers who viewed such actions as retroactive mitigation. The core concern raised was that generators would be forced to operate without knowing what they would be paid for such service until after the fact. The MC Proposal exacerbates that problem by providing the NYISO with the maximum possible amount of time to exact mitigation, thus providing no balance at all between price accuracy and price certainty.

<sup>5</sup> *New York Independent System Operator, Inc.*, 117 FERC ¶ 61,164 at ¶ 7 (2006).

<sup>6</sup> During the discussions, parties “agreed to disagree” concerning the issue of whether the NYISO should be permitted to mitigate bids after the fact. However, the central concern for suppliers remained to develop procedural rules that would secure price certainty.

First, as reflected in draft Section 3.3.3.1.a of the proposed tariff amendments, the NYISO initially is able to perform the RTGP impact test within two days after the production day. However, at that point if price reservations have been issued, the LBMPs are not yet final. During stakeholder meetings, the NYISO Staff raised concerns that the RTGP impact test would need to be re-run if price corrections were required. Thus, taking the three calendar day price correction period into account, at the very latest, the NYISO will have the final LBMP information five days after the production day. At that point, from a price perspective, the NYISO can apply the RTGP impact test and determine if mitigation is required. Once this test has been applied and mitigation has been determined, the NYISO should be foreclosed from mitigating RTGP bids anew at any future point on a price basis.

Second, a change in the actual metering data could change the results of the impact test and the amount of mitigation needed, if any. The Market Services Tariff provides that all generator and tie line metering data must be finalized within 60 days of the date of the initial invoice for the month in which the service was provided.<sup>7</sup> Therefore, at that point, the NYISO has all the metering information it needs to re-run the RTGP impact test based on the final metering data and to determine if mitigation is required based on this newly submitted, final data.

Thereafter, corrections to the invoice are, as they properly should be, limited to “errors in arithmetic, computation, or estimation.”<sup>8</sup> In other words, taking static bids, static prices and static metering information into account, the only open

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<sup>7</sup> NYISO Market Services Tariff, Section 7.4.2.A.

<sup>8</sup> *Id.*

question should be whether the math was done correctly. Applying mitigation to the core bids for the first time simply does not fall into any of these ministerial categories.

For this reason, IPPNY objects to the proposal in Section 3.3.3.1.b that the NYISO be authorized to perform an indeterminate number of additional RTGP impact tests over a far longer time period. Under the proposed language, mitigation may be applied for the first time at any point during the approximate ten-month period allowed by Section 7.4.2.A of the Tariff to issue a final Close-Out Settlement. Thus, for example, a generator could provide service for which it is entitled to a RTGP on August 1, but its bids would remain subject to mitigation until May of the following year. Such an extended delay is not reasonable or appropriate.

Whether providing service in merit and receiving the LBMP or providing service out of merit and receiving a BPCG payment, generators need price certainty - - certainty in much the same manner that the MC, NYISO Board, and FERC determined that certainty was needed with respect to price corrections. Accordingly, the consultation process described in Section 3.3.3.1 should specify and limit the time frame to apply the RTGP test and mitigate RTGP bids to match the periods when the final pricing and metering data are available to the NYISO.

In considering this appeal, the NYISO Board should be concerned with the fairness and balance contained within the proposed language, or, more importantly, the lack of fairness and improper balance it creates. Once the metering data is finalized, the risk of any errors resides solely with the NYISO and its internal processes. Specifically, once the final metering data is available, the only other factors that could affect this result

are errors in the NYISO's software.<sup>9</sup> Fairness and certainty dictate that once the NYISO has all of the data it needs to perform the RTGP impact test, and there is no risk that the generator or another market participant has provided incorrect or incomplete information, the generator should be deemed to have satisfied all of its burdens and the financial portion of the transaction should be finalized.

Instead, the proposed language leaves generators exposed to further changes to their bids for an extended period of time. Generators are unfairly being held captive to the NYISO's internal processes. That is, although they have no control over or involvement with those processes, they remain at risk for approximately eight months after the metering data is finalized due solely to an error in the NYISO software processes. Such treatment is not consistent with instilling confidence in the markets the NYISO administers.

## **II. THE PROPOSED TARIFF AMENDMENTS ARE NOT CONSISTENT WITH THE BASES FOR PRIOR NYISO PRACTICE CONCERNING FINALIZING PRICE CORRECTIONS**

In May 2006, the NYISO filed tariff amendments to eliminate the Temporary Extraordinary Procedures and to establish requirements and rules for correcting market clearing prices. A key element of those amendments was the establishment of strict deadlines for making price corrections. The NYISO explained that

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<sup>9</sup> During the MC meeting, NYISO staff took the position that generators were seeking to benefit from these errors. This is simply not true. Software errors, once identified, could reveal that mitigation was applied improperly. In the name of certainty, generators are willing to accept the fact that they were over-mitigated if this fact was uncovered after the two time frames set forth herein.

those time limits “will benefit market participants by increasing transparency and certainty with regard to the NYISO's handling of those price errors when they occur.”<sup>10</sup>

Those tariff changes provided that corrections be made within five business days. In considering those amendments, the FERC rejected that time frame, stating that “... NYISO’s proposed five business days timeline is excessively long.”<sup>11</sup> It therefore modified the provision to set the deadline at three calendar days.<sup>12</sup>

In contrast, in this instance, the NYISO Staff proposed and the MC accepted that the NYISO should have up to ten months to make corrections to accepted bids when generators are asked to run for reliability or other important reasons. Significantly, and as explained above, the majority of this delay is occasioned out of a concern with the potential for inaccuracies in NYISO internal processes. Such a delay eviscerates certainty to generators or any other market participants in direct contravention of the identified need to achieve certainty as reflected by the process for correcting market clearing prices. Moreover, the proposed extended process is not consistent with the NYISO’s Mission Statement, Vision, and Guiding Principles of developing, promoting, managing, and operating an efficient and fair competitive electric wholesale market and of fostering regulatory certainty.<sup>13</sup>

IPPNY respectfully submits that a generator that is directed to operate out of merit should receive similar rights as other market participants with respect to finalization of its price. While IPPNY acknowledges that the time period used for

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<sup>10</sup> *Tariff Filing of the New York Independent System Operator, Inc.* filed May 16, 2006, Docket No. ER06-1014-000, Transmittal Letter, p. 6.

<sup>11</sup> *New York Independent System Operator, Inc.*, 116 FERC ¶ 61,037 (2006).

<sup>12</sup> Setting the three day limit leaves open the possibility that an incorrect price may be allowed to stand. The same is true if the limits are placed on RTGP mitigation. However, in both cases, such a possibility is properly weighed against the benefits of providing certainty.

<sup>13</sup> Statements are taken from the NYISO web site, [http://www.nyiso.com/public/company/about\\_us/index.jsp](http://www.nyiso.com/public/company/about_us/index.jsp).



