UNITED STATES OF AMERICA 93 FERC ¶ 61,189
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc. Docket Nos. ER01-180-000
and ER01-180-001

ORDER EXTENDING BID CAP

(Issued November 21, 2000)

On October 20, 2000, as corrected on October 24, 2000, the New York Independent System Operator, Inc. (NYISO) filed in this proceeding under section 205 of the Federal Power Act (FPA) for authority to amend its services tariff to extend until April 30, 2001, its $1,000 per MWh energy bid caps on its energy markets, which were scheduled to expire on October 28, 2000. NYISO requests an October 29, 2000 effective date. As discussed in this order, we grant NYISO's request and accept the proposed tariff sheets, to be effective October 29, 2000, as proposed.

I. Background

By order issued July 26, 2000, in Docket Nos. ER00-3038-000, EL00-70-000 and EL00-70-001 (Energy Bid Cap Order), the Commission imposed a temporary bid cap on NYISO's energy markets of $1,000 per MWh until October 28, 2000 and directed NYISO to report on its efforts to correct certain market flaws by September 1, 2000.[1] In the Energy Bid Cap Order, the Commission imposed a bid cap of $1,000 per MWh on NYISO's energy markets because such markets were undergoing significant revisions to correct many market flaws.[2] The Commission was also concerned

[1]New York Independent System Operator, Inc. 92 FERC ¶ 61,073 (2000).

[2]The following market flaws were identified in NYISO's energy markets: the lack of a demand-side response mechanism; inappropriate curtailments of energy imports and exports; energy price fluctuations; administration of fixed block generation; rejection of bids above dependable maximum net capability; revisions of advisory bills and settlement information; lack of timely communications; Hydro-Quebec imports; and lack of price convergence between day-ahead and real-time prices. The Commission also encouraged NYISO to address any other changes necessary in
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that the lack of demand-responsiveness to price and predictions of tight supplies in the New York Control Area (NYCA) for Summer 2000 could exacerbate the potential problems in NYISO's energy markets.

II. Related Filing

In compliance with the Energy Bid Cap Order, NYISO filed a comprehensive report on September 8, 2000, in Docket No. ER00-3591-001, addressing the status of its corrections to the market flaws identified in its energy markets (September Report).[3] In the September Report, NYISO indicated that it has made considerable progress in addressing many of the market flaws and software problems in its energy markets and stated that it is working on longer term solutions to resolve the issues that remain. For example, NYISO stated that it will file to have in place a demand response program by June 1, 2001. In its September Report, NYISO also claimed that it has addressed nearly all of the market flaws identified by the Commission. However, NYISO identified two areas that are still problems and stated that it is working on longer term solutions: the issue of energy price fluctuations caused by its Balancing Market Evaluation software, and the revision of advisory bills and settlement information, where NYISO experienced many unexpected software glitches that have prevented the issuance of final bills to market participants.

In the November 8, 2000 order on NYISO's September Report (September Report Order),[4] we reached a conclusion similar to the general conclusions reached by the protesters. With regard to the energy markets, we found that NYISO has made progress in identifying and implementing measures to fix market flaws and related software problems, as we directed in the Energy Bid Cap Order. But to address the significant issues that remain to be addressed in NYISO's energy markets, the Commission directed staff to convene a technical conference. The Commission stated that the technical conference will provide a forum for NYISO, parties to this proceeding, and the Commission staff to identify what needs to be accomplished and to set priorities and deadlines for addressing the

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[2](...continued)
NYISO's markets, and ruled on certain tariff issues regarding pro rata curtailment and a pricing issue dealing with fixed block generation.

[3]NYISO was directed in five Commission orders to report on the progress of various Commission directives to correct market flaws and address other issues to further strengthen market performance by September 1, 2000. See 91 FERC ¶ 61,218 (2000) (Reserves Order); 91 FERC ¶ 61,338 (2000) (SPM Order); 92 FERC ¶ 61,073 (2000) (Energy Bid Cap Order); 92 FERC ¶ 61,060 (2000) (NMEM Order); and 92 FERC ¶ 61,051 (2000) (TEP Order).

[4]New York Independent System Operator, Inc., 93 FERC ¶ 61,142 (2000).

problems that must be fixed before the next summer capability period.[5] We also deferred ruling on the issue of whether the energy bid cap should be extended, stating that this issue would be addressed in the pending instant filing.

III. Instant Filing

NYISO filed in the instant docket for authority to amend Attachment F of the NYISO Market Administration and Control Area Services Tariff (Services Tariff) to extend its currently effective $1,000 per MWh energy bid caps, which were scheduled to expire on October 28, 2000. NYISO proposes to extend these bid caps until the end of its 2000-2001 Winter Capability Period, i.e., until April 30, 2001.[6]

NYISO states that it is submitting these requests 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. NYISO further states that while it 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, such measures cannot ensure that there will be no noncompetitive supply-demand imbalances.

On October 24, 2000, NYISO filed a correction of its October 20 filing in this proceeding. NYISO states that due to an administrative error, the revised tariff sheets that should have been included in the section 205 filing in Docket No. ER01-180-000 were mistakenly included in the section

[5]Pursuant to our July 26, 2000 order, 92 FERC ¶ 61,160, Commission staff recently completed a national investigation of electric bulk power markets to determine whether the markets are working efficiently and, if not, the causes of the problems. Commission staff was directed to investigate the markets, including volatile price fluctuations, and report its findings to the Commission by November 1, 2000. In the September Report Order, the Commission directed that the results of this report be considered in addressing the issues in that case at the technical conference which the Commission there required to be convened.

[6]Concurrent with the instant filing in Docket No. ER01-180-000, NYISO, acting at the direction of its Board of Directors, made a separate FPA section 206 filing in Docket No. ER01-181-000 in which it requested permission, if it is unable to implement a superior market protective mechanism by April 30, 2001, to further extend the duration of the $1,000 per MWh bid caps from May 1, 2001, until such a protective mechanism is developed, tested, approved, and in place. In that filing, NYISO further proposed to amend its Services Tariff to specify that if the bid caps are extended, they will be terminated immediately upon the certification of NYISO's Board of Directors that an alternative market protective mechanism has been successfully implemented. By notice issued November 7, 2000, the time for filing of comments on NYISO's Docket No. ER01-181-000 filing was extended to January 31, 2001.

206 filing in Docket No. ER01-181-000. Similarly, the revised tariff sheets that should have been included in the section 206 filing were mistakenly included in the section 205 filing. Consequently, NYISO resubmitted both filings so that each filing includes the appropriate revised tariff sheets.

IV. Notice of Filings, Interventions, Protest, and Comments

Notices of NYISO's October 20, 2000, and October 24, 2000 filings were published in the Federal Register, 65 Fed. Reg. 65,303 and 65,741 (2000), respectively, with protests, answers, and motions to intervene required to be filed on or before November 9, 2000. Motions to intervene, late filed motions, answers and motions to respond were filed by entities listed in the Appendix to this order.

Member Systems and the Public Service Commission of the State of New York (New York Commission) support extension of the bid caps until April 30, 2001 to enable NYISO to address the market flaws and the lack of price responsive demand affecting the NYISO-administered energy markets. However, the New York Commission states that it will explain in a "soon-to-be-released" staff report on NYISO that a price cap as high as $1,000 per MWh is likely to be inadequate to assure that wholesale rates are just and reasonable during the transition to workably competitive markets.

The County of Westchester (Westchester) contends that an extension of the $1,000 per MWh bid cap is inappropriate. Specifically, Westchester comments that a cap of $150 per MWh is more appropriate and consistent with the Commission's recent action regarding the California ISO.[7] Therefore, Westchester would support, on a temporary basis only for the winter period ending April 30, 2001, a cap of $150 per MWh. Westchester urges, however, that the Commission use the time between now and April 2001 to take action to insure that a lower cap will be in place for the Summer 2001.

The New York State Electric & Gas Corporation (NYSEG) contends that the $1,000 per MWh energy bid cap should not be binding in the Winter Capability period. In light of the extensive market flaws, NYSEG believes that the primary focus must be on correcting known market flaws and preventing the exercise of market power before Summer 2001. If the known market flaws are not fixed before Summer 2001, NYSEG states the $1,000 per MWh bid cap would be inadequate to prevent unreasonable harm to participants during the 2001 Summer Capability Period.

Morgan Stanley Capital Group Inc. (Morgan Stanley), H.Q. Energy Services (U.S.), Inc. (HQUS), the Electric Power Supply Association (EPSA), Aquila Energy Marketing Corporation (Aquila) and PPL EnergyPlus (PPL EnergyPlus) oppose continuation of the existing bid cap. Morgan Stanley argues that bid caps are antithetical to truly competitive markets where price is set by the interplay of supply and demand.

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[7] See Order Proposing Remedies for California Wholesale Electric Markets, 93 FERC ¶ 61,121 (2000).

HQUS, Aquila and PPL EnergyPlus contend that NYISO has not supported a need to extend the bid caps during the Winter Capability Period. Specifically, HQUS argues that the tight supply conditions cited by the Commission in its Energy Bid Cap Order related to the 2000 Summer Capability Period do not exist during the winter. HQUS states that NYISO's own data in its 2000 Load & Capacity Data Report suggest that the forecasted peak demand for the 2000-2001 Winter Capability period is only 24,250 MW for the base case, and 24,650 MW for the Extreme Weather case. Winter generating resources were forecast to be slightly higher than summer at 36,735 MW. This results in 12,500 MW of reserves for the winter, which represents a 50 percent reserve margin. HQUS states that this change of circumstances from the summer should eliminate any concerns with respect to the system being under "stress" for the Winter Capability Period.

Aquila and PPL EnergyPlus also point out that NYISO contends that it has already addressed the market flaws that led to the imposition of the bid cap over the 2000 Summer Capability Period. In addition, these parties argue that the continuation of bid caps in the New York markets leads to other undesirable results, such as causing hedged energy purchasers to subsidize unhedged purchasers, reducing energy supplies because such supplies are diverted to other markets or through the discouragement of entry by generators, and interfering with the expectations of owners of Transmission Congestion Contracts (TCCs). These parties also point out that a market mitigation plan already is in effect under the NYISO's tariff.

EPSA is concerned that the bid caps are becoming a standard feature of ISO-run markets. EPSA argues that caps send the wrong signals to participants, do not abolish market volatility, and in fact delay the development of robust competitive markets. EPSA notes that based on a report[8] recently released by NYISO's independent market advisor, the increased electricity prices in the state of New York are not attributable to NYISO's market design or operations. The report indicates that the increase in prices is primarily attributable to substantial increases in natural gas and oil prices, and the outage of Consolidated Edison's Indian Point 2 facility, a 1,000 MW nuclear plant in eastern New York. The analysis of these two factors illustrated that prices in 2000 would have been 48 percent lower in eastern New York absent these events. EPSA also prepared a paper that indicates that higher prices for electricity do not constitute market failure, but show instead that the markets are working and that prices indicate the imbalance between supply and demand.[9]

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[8]Citing Preliminary Market Assessment of the New York Electric Markets, which was presented to NYISO Board and Management Committee on October 17, 2000. (NY Market Advisor Report).

[9]EPSA attached to its filing a recently completed paper titled "An Initial Analysis of Recent Wholesale Prices, Price Caps and Their Effect on Competitive Bulk Power Markets." EPSA notes that this paper, prepared with the assistance of Boston Pacific Company, Inc., examines the effect of price caps on rising wholesale power bills in other regions of the country and concludes that such measures have not reduced those prices that have risen as the result of legitimate market dynamics.

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V. Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1999), the timely, unopposed motions to intervene of the entities listed in Appendix A to this order serve to make them parties to this proceeding(s) in which they intervened. At this early stage of the proceeding, given the lack of undue prejudice or delay and given the parties' interests, we also find good cause to grant under Rule 214 the unopposed, untimely motions to intervene in these proceedings.

B. Commission Decision

The Commission accepts NYISO's proposal and extends the $1,000 per MWh bid cap in its energy markets. In order to ensure continuity in the rules under which market participants operate, the Commission grants waiver of our prior notice requirement to allow the proposed extension of the bid caps to become effective on October 29, 2000, as proposed.

We find that there remains a need for a mechanism to mitigate the effects of the continuing flaws in NYISO's energy markets. In the Energy Bid Cap Order, we noted that if load cannot respond to dramatic increases in prices, then generators can submit very high bids that NYISO must accept when supplies are tight during peak periods, and price spikes can be magnified. In these situations load would not be able to reduce its purchases at these prices. NYISO has indicated it will not implement a demand response mechanism before June 2001. Furthermore, additional generation will not come on line in New York before 2002.

Thus, two of our primary concerns with respect to New York, its lack of demand response to price and its limited supplies, remain. Although there is a greater potential for these two concerns to become serious problems during the summer period, the potential exists during other periods as well. We will therefore extend the bid cap through the Winter Capability Period.

As mentioned in our Energy Bid Cap Order, we found $1,000 per MWh to be preferable as a bid cap due to the fact that the neighboring PJM ISO and ISO New England also have $1,000 per MWh bid caps. At this time, we continue to find that this rationale supports a $1,000 per Mwh bid cap for the NYISO. Therefore, we will extend the bid cap at the existing level. [10]

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[9](...continued)

[10]We note that ISO-New England has a pending filing to extend its existing bid cap of $1,000
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As discussed above, certain market flaws existing in NYISO's energy markets were directed to be addressed at a technical conference required by the Commission's November 8 Order.[11] The Commission directed its staff to convene a technical conference with NYISO and interested parties to discuss issues related to NYISO's energy markets regarding: the timing and implementation of a demand response mechanism; the failure to curtail transactions with equal decremental bids on a pro rata basis as required by its tariff due to software implementation problems; the continued problems with the Balancing Market Evaluation Software and other software problems; and the issues related to the appropriate way to calculate the market price when a fixed block unit is dispatched and a lower cost unit is backed down. The technical conference will provide a forum for parties to discuss these issues in an effort to mitigate the problems in NYISO's energy markets.

The issue of whether the bid cap should be extended beyond April 30, 2001, will be addressed when the Commission considers NYISO's filing in Docket No. ER01-181-000.

The Commission orders:

The proposed energy bid cap tariff sheets are accepted to become effective on October 29, 2000, as proposed.

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

(S E A L)

David P. Boergers,
Secretary.

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[10](...continued)
per MWh in Docket No. ER01-369-000. Additionally, there is a pending complaint in Morgan Stanley v. PJM Interconnection, LLC in Docket No. EL01-3-000 regarding the existing PJM bid cap of $1,000 per MWh.

[11]New York Independent System Operator, 93 FERC ¶ 61,142 (2000).

Appendix

New York Independent System Operator, Inc.
Docket Nos. ER00-180-000 and 001

Interventions, Comments and Protests

Aquila Energy Marketing Corporation
County of Westchester*
Dynegy Power Marketing, Inc.
Electric Power Supply Association*
H.Q. Energy Services (U.S.) Inc.*
Member Systems*
Merrill Lynch Capital Services, Inc.
Morgan Stanley Capital Group, Inc.*
New York Public Service Commission*
New York State Electric & Gas Corporation*
Niagara Mohawk Energy Marketing, Inc.
NRG Power Marketing Inc.
PPL EnergyPlus, LLC*
PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Power New York Inc.
1st Rochdale Cooperative Group, LTD. and Coordinated Housing Services, Inc.
Sithe Power Marketing, LP
Southern Energy New York, L.L.C., Southern Energy Bowline, L.L.C., and Southern Energy Lovett, L.L.C.
Tractebel Energy Marketing, Inc.

*Protest and/or Comments

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc. Docket Nos. ER01-180-000
and ER01-180-001

(Issued November 21, 2000)

HÉBERT, Commissioner, dissenting

In what must come as no surprise to anyone who follows our orders, I must dissent from today's order granting the New York ISO's request to extend the "temporary" bid cap on its energy markets.

Unlike the rest of the Commission, I would not have voted to adopt the price cap (of $1000/MWh) in the first instance. My dissent from the Commission's July 26, 2000 order in this proceeding explains why. See New York Independent System Operator, Inc., et al., 92 FERC ¶ 61,073 at 61,315-18 (2000) (dissenting statement). In the circumstances presented, I detect no reason to extend, through the upcoming winter, the price cap I would not have allowed to go into effect earlier. For similar reasons, I dissented from an order, issued only two weeks ago, that similarly extended the existing bid cap in the New York ISO's non-spinning reserve markets. See New York Independent System Operator, Inc., 93 FERC ¶ 61,142 (2000) (dissenting statement).

Today's order reinforces my belief that price caps, despite the Commission's rhetoric to the contrary, are not truly "temporary." In support of its action extending the cap on energy prices, the Commission (at 7) offers two "primary concerns." The first is the perceived lack of demand response to energy prices in New York. I disagree with the continuing perception that load cannot respond to increases in prices, and explain why in my July 26 dissent. 92 FERC at 61,317. In particular, I believe that price caps adopted by the New York ISO undermine valuable demand response options, such as customer hedging and bilateral arrangements, as well as conservation.

The Commission's second concern is the perception of limited energy supplies in New York. Left unrebutted, however, is the argument of intervenors that the supply problem – if indeed there is one – is a summer problem, not a winter problem. (The Commission, without any support, merely cites (at 7) the "potential" for supply problems which, it acknowledges, is "greater" in the summer than during other periods.)
Moreover, if there is indeed a winter supply problem, the best way to solve it is to

remove price caps and thus send a price signal to suppliers to enter capacity-starved markets.

Reluctantly, I must agree with intervenor EPSA that price caps, as today's order demonstrates, are becoming a standard feature of ISO-run markets. Any doubt is dispelled by the New York ISO's contemporaneous filing of two applications for price capping authority, as noted in today's order (at 3 n.6). The first application (ER01-180-000), which the Commission now approves, extends the $1000/MWh bid cap until April 30, 2001. The second application (ER01-181-000), which the Commission defers action on, would extend the bid cap indefinitely beyond May 1, 2001, until that time the New York ISO is satisfied that it successfully has implemented a new "market protective mechanism."

At the very least, I would have dismissed the second application as premature. The ISO's filing of a second application for price capping authority, and the Commission's failure to dismiss it out of hand, do not offer me much confidence that the price cap will be removed any time soon. Nor does it suggest to me that the ISO is committed to making the remaining difficult decisions in a timely manner and thus ensuring that its bid cap is truly "temporary."

For all of these reasons, I respectfully dissent.

Curt L. Hébert, Jr.
Commissioner