

UNITED STATES OF AMERICA 93 FERC ¶ 61,142
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. ER00-3591-000
ER00-3591-001,
ER00-3591-002, and
ER00-1969-001

ORDER EXTENDING BID CAP, ACTING ON TARIFF SHEETS, AND ESTABLISHING
TECHNICAL CONFERENCE

(Issued November 8, 2000)

On September 1, 2000, as revised on September 8, 2000, the New York Independent System Operator, Inc. (NYISO) filed a combined compliance filing and report (September Report), including revised tariff sheets, reporting on the progress of various directives ordered by the Commission to correct market flaws and addressing other issues to further strengthen market performance. As discussed in this order, we extend the existing bid cap of \$2.52 per MWh (plus opportunity costs) in NYISO's non-spinning reserve markets and the related mandatory bidding requirement. We also act on tariff sheets regarding NYISO's proposals to: (1) incorporate language regarding market participants ability to hedge transactions; (2) establish lost opportunity cost payments for spinning and non-spinning operating reserves; and, (3) establish locational pricing for its operating reserves. Finally, we direct Commission staff to convene a technical conference to address other issues raised by the filing.

I. Background

In five separate Commission orders, the Commission required NYISO to file a comprehensive report on its progress on various directives ordered by the Commission to correct market flaws and address other issues to further strengthen market performance. These orders and directives are briefly described below.

- 1) May 31, 2000 order in Docket Nos. ER00-1969-000, EL00-57-000, EL00-60-000, EL00-63-000 and EL00-64-000 placing mandatory bid requirement and a temporary bid cap of \$2.52 per MWh plus opportunity costs until October 31, 2000 on NYISO's non-spinning reserve market and directing NYISO to revise a number of features of its 10-minute operating reserves markets, 91 FERC ¶ 61,218 (Reserves Order);

- 2) June 30, 2000 order in Docket No. EL00-67-000, rejecting allegations made by Strategic Power Management, Inc., but directing NYISO to promptly disclose more cost information to market participants, 91 FERC ¶ 61,338 (SPM Order);
- 3) July 25, 2000 order in Docket No. ER00-2624-000, extending NYISO's Temporary Extraordinary Procedure (TEP) authority until October 31, 2000 and requiring NYISO to file a report on price corrections made under that authority during the summer capability period, 92 FERC ¶ 61,051 (TEP Order);
- 4) July 26, 2000 order in Docket Nos. ER00-3038-000, EL00-70-000 and EL00-70-001 imposing a temporary bid cap on NYISO's energy markets of \$1,000 per MWh until October 28, 2000 and directing NYISO to report on its efforts to correct certain market flaws and report on its progress, 92 FERC ¶ 61,073 (Bid Cap Order); and
- 5) July 26, 2000 Order in Docket No. EL00-82-000, rejecting a complaint by Niagara Mohawk Energy Marketing, Inc. (NMEM) and directing NYISO to fix its software and report on its progress of addressing the software flaw affecting export transactions, 92 FERC ¶ 61,060 (NMEM Order).

II. Notice

Notice of NYISO's filings was published in the Federal Register, 65 Fed. Reg. 56,573 (2000), with protests, answers, and motions to intervene required to be filed on or before September 27, 2000. This notice also extended the time for filing motions and protests in response to the September 1, 2000 filing by NYISO, which was previously published in the Federal Register, 65 FR 55,571. The due date for motions and protests was extended from September 22, 2000 to September 27, 2000. Motions to intervene, late filed motions, answers and motions to respond were filed by entities listed in Appendix A to this order.

III. Discussion

NYISO began its operations on November 18, 1999. Since that time, the Commission has received many complaints regarding prices, operations, and practices in NYISO's administered markets.¹ We have also received filings by NYISO requesting Commission intervention in the form of

¹See 91 FERC ¶ 61,218 (Reserves Order); 91 FERC ¶ 61,338 (SPM Order); 92 FERC ¶ 61,073 (Bid Cap Order); and 92 FERC ¶ 61,060 (NMEM Order).

price caps in its reserve markets and energy markets, and requests for extension of its TEP authority.² In our orders addressing these complaints and filings, we established interim measures, such as instituting bid caps during the summer capability period and directing NYISO to address issues regarding self-supply and methods for reducing the effects of concentration in its non-spinning reserve markets. We also directed NYISO to fix software problems and market flaws identified by complainants in its energy markets. In these successive orders, we required NYISO to file a comprehensive report by September 1, 2000, after the summer capability period, so that we could get an overall picture of the state of NYISO's markets, make an assessment of the progress NYISO has made in addressing these problems, and identify the problems that remain to be addressed. NYISO indicates in its September Report that it has made considerable progress in addressing many of the market flaws and software problems which it is faced with in its non-spinning operating reserve and energy markets, and states it is committed to working on longer term solutions to resolve the issues that remain.

In general, protesters' reactions to the September Report indicate that while NYISO has resolved a number of issues, there still remains a significant amount of work to be done before next spring in order to get NYISO-administered markets in the best shape possible heading into the 2001 summer capability period. In this regard, protesters point out that the September Report indicates a number of significant market design flaws and other problems which persist in the markets. The market flaws which continue to exist in the non-spinning reserve markets include a highly concentrated market; no immediate solution to permitting market participants to self-supply operating reserves; and no immediate solution which would allow transmission capacity across the central-east constraint to be used to move western operating reserves to the east. In this regard, protesters generally support the continued need for a bid cap to remain in place until May 1, 2001 in NYISO's non-spinning reserve markets.

With regard to NYISO's energy markets, protesters are concerned with the continuance of certain market flaws which include defective Balancing Market Evaluation (BME)³ software which inflates NYISO energy market prices and uplift charges; continued pricing problems regarding fixed block generation; need for improved inter-control area coordination; need for improved communications both internally, and between NYISO and market participants; and the lack of a more timely implementation of a demand-side mechanism as well as more timely resolutions to other market design problems.

²See 91 FERC ¶ 61,218 (Reserves Order); 92 FERC ¶ 61,073 (Bid Cap Order); and 92 FERC ¶ 61,051 (TEP Order).

³The BME is used to forecast operations in the hour-ahead market and computes advisory prices based on these conditions. These advisory prices are then used to schedule off-dispatch generation, imports and exports.

Enron Power Marketing, Inc. (EPMI), suggests that the complexity of this market and NYISO's filing lend themselves to the technical conference process where parties can discuss with each other and the Commission staff how best to provide effective relief for New York's problems. The Transmission Owners Committee of the Energy Association of New York State (Member Systems) filed an answer in support of this request for a technical conference. However, the Member Systems propose that, prior to establishing a date for a technical conference, the Commission should first require NYISO to submit an implementation plan identifying the order of priority in which it proposes to address each of the established market flaws and the basis for that priority. Member Systems propose that this plan would be the subject of discussion at the technical conference. Member Systems suggest that if NYISO fails to meet established deadlines for implementing corrective action, the Commission should institute a Section 206 proceeding to investigate the delay and to require corrective action by a date certain.

We have studied the September Report filed by NYISO and our conclusion is similar to the general conclusions reached by the protesters. With regard to the non-spinning reserves markets, NYISO has not made the progress that we expected when we directed NYISO to look at ways to increase competition in the non-spinning reserve markets. With regard to the energy markets, we recognize that NYISO has made progress in many areas in identifying and implementing measures to fix market flaws and related software problems as we directed in the Bid Cap Order. However, there are still significant issues that remain to be addressed in the energy markets and we are concerned with NYISO's timetable for completing these corrections. At this point, we believe the best way to proceed is to direct Commission staff to convene a technical conference. A 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 problems that must be fixed prior to the next summer capability period.⁴ The technical conference should also be used as a forum to discuss whether these markets can be adequately fixed in the short term and if not, the Commission will need to decide what type of pricing mechanisms should be in place while the problems are being fixed. For example, the Commission may need to decide whether a continuation of market-based pricing in the NYISO's non-spinning reserve markets remains viable.

Below we discuss the requirements imposed on NYISO by the Commission's orders and NYISO's responses, and proposals to address the Commission's concerns. We will also rule on the tariff sheets filed by NYISO where NYISO proposes to: (1) extend the bid cap on the non-spinning reserves market; (2) establish a lost opportunity cost payment for non-spinning and spinning reserves; (3) include language in its tariff that sets forth market participants ability to hedge transactions by

⁴ Pursuant to our July 26, 2000 order (92 FERC ¶ 61,160), our staff recently completed a national investigation of electric bulk power markets and reported its findings to the Commission. The results of staff's investigation should be considered in addressing the issues we are setting for resolution in the technical conference.

entering into bilateral deals; and, (4) establish locational pricing for operating reserves when the Long Island or central-east constraint is binding.

A. Reserves Order

In the Reserves Order, we found that the conditions under which market-based rate authority for ancillary services was granted do not match the current operational realities of NYISO's non-spinning reserve markets. In particular, we found that the non-spinning reserve markets are even more concentrated than indicated in the original analysis, and the prime mitigating factor upon which we relied, the presence of multiple suppliers with the ability to fully satisfy the ISO's ancillary service requirements, does not exist as originally contemplated because of transmission constraints which act to limit the number of sellers in the non-spinning reserve markets. Accordingly, we determined that market-based pricing could no longer serve as a reliable indicator of competitive forces in the non-spinning reserves market and that an alternative pricing methodology was necessary until such time as that market could be demonstrated to be workably competitive. In place of market-based rates, we accepted NYISO's pricing proposal, which consisted of a cap on incremental cost-based bids of non-spinning reserves supplies and a requirement that all available non-spinning reserves supplies be bid into the market. We found NYISO's proposal to be reasonable on the condition that it be modified to ensure that non-spinning reserves suppliers would be given any lost opportunity costs incurred as a result of participating in the non-spinning reserves market.

Our acceptance of the bid cap and mandatory bid requirement was also predicated on their establishment only for an interim period, until solutions could be developed to improve the competitiveness of the market and allow a full reinstatement of market-based rates. We defined the interim period within which the caps would remain in place as ending on November 1, 2000, and required NYISO to develop solutions and file them on, or before, September 1, 2000. In addition, we identified several operating practices that could alleviate the concentration of market power, and directed NYISO to address these practices in its development of a permanent solution. These practices include: (1) procuring reserves west of the central-east constraint during periods when the transmission system is not constrained; (2) setting aside transmission capacity for reserves located west of the central-east constraint when it leads to lower overall costs; (3) modifying NYISO's software to allow the Blenheim-Gilboa pumped storage facility to bid for spinning and non-spinning reserves; and (4) a review of the costs incurred to meet local reliability rules being paid by customers in those local areas compared to all customers statewide. Finally, we directed NYISO to provide customers with the option of self-supplying operating reserves without being required to bid into NYISO markets.

On September 1, NYISO submitted the requisite filing containing a proposal for pricing in the non-spinning reserve markets. However, NYISO admits that its proposal will not ensure that the reserves markets will be workably competitive under all possible conditions and, therefore, NYISO requests an extension of the bid cap and mandatory bidding requirement. NYISO proposes that the term of the bid cap be extended until April 30, 2001, at which time NYISO expects to have completed

a number of long-term measures to improve competition. Until then, NYISO proposes to "ease into" lifting the bid cap on the non-spinning reserves market with a transition period. During this transition period, NYISO proposes to raise the cap's level from the current \$2.52/MW to \$15/MW on November 1, and to \$30/MW on January 1, 2001, until its proposed expiration on April 30. NYISO proposes that the mandatory bidding requirement be kept in place throughout the transition period, and that NYISO be allowed to make vigorous use of its market monitoring authority to mitigate any exercise of residual market power upon expiration of the bid cap.

NYISO's proposal to improve the operation of the operating reserves market consists of only three concrete modifications that will be made at this time to its rules. NYISO asserts that it will study further, or implement in the long run, additional measures. The three modifications proposed by NYISO are to correct its software to recognize the Blenheim-Gilboa plant as an additional resource for up to 500 MW of non-spinning reserves, revise its tariff to clarify that opportunity costs will be paid to non-spinning reserves suppliers on a permanent basis, rather than only until November 1, and to institute a locational reserves pricing system to ensure that, in constrained conditions, reserves suppliers cannot exercise market power to set reserves prices state-wide.⁵ Under the locational reserves pricing methodology, NYISO will separate its control area into three markets during constraints for the purposes of calculating spinning reserves, non-spinning reserves, and 30 minute operating reserves prices: (1) the area west of the central-east constraint; (2) the area east of the central-east constraint, excluding Long Island; and (3) Long Island. When constraints are not present, all reserves suppliers will receive the same clearing price. However, during constrained times, suppliers of reserves located in the highly concentrated Long Island area will not receive a market-clearing price higher than the one cleared in the rest of the central-east area. In addition, bid production cost guarantee payments made to Long Island resources to meet Long Island specific problems would be borne only by Long Island consumers. By this methodology, NYISO hopes to reduce incentives to exploit market power. NYISO does not propose to change the way it currently allocates reserves costs among all customers.

NYISO claims that it cannot, at this time, implement the other practices which we directed it to address. With regard to procuring reserves west of central-east when the constraint is not binding, NYISO claims that it is impractical in the short-term to develop automated or manual procedures that would permit NYISO to rely on western supplies when there is no anticipated congestion at the central-east constraint because congestion is so frequent and intervals without congestion are difficult to anticipate. In particular, NYISO claims that its analysis of the real-time market indicates that central-east is constrained approximately 80% of the time and establishes the impracticality of attempting to predict additional reserves needs in advance of real-time operations. With regard to procuring

⁵In a status report filed on October 26, 2000, NYISO claims that software modifications to accommodate Blenheim-Gilboa as a reserves supplier are complete and that it is already participating in the market. NYISO also reports that it is on schedule to implement locational reserves pricing by November 1.

transmission capacity to procure reserves from beyond the constraint, NYISO claims that implementing scheduling systems that would enable NYISO to successfully optimize the use of transmission capacity for energy and reserves would require substantial software modifications that cannot be implemented in the near term. NYISO does propose to continue studying the feasibility of several possible methods to implement such optimization and plans to file a report of its progress by May 1, 2001. With regard to self-supply, NYISO claims that it cannot offer self-supply of non-spinning reserves outside of its market structure until some time in the future, when it has developed virtual load bidding and transmission optimization mechanisms. In the near term, NYISO proposes to meet the self-supply requirement by clarifying in its tariff that customers may enter into day-ahead financial transactions to hedge against wholesale price volatility. In addition, NYISO states that it is investigating the possibility of retaining a third party to create a forward market that would expand market participants' hedging options.

NYISO also plans to implement additional measures in the future that would increase the number of non-spinning reserves capacity available to the market by modifying its software and market rules so that dispatchable loads, suppliers of 10- minute spinning reserves, and suppliers of 30-minute operating reserves can be recognized as potential suppliers of 10-minute non-spinning reserves. In addition, NYISO claims that it is studying the possibility of creating a larger, "northeastern" market for reserves by combining the resources of ISO-New England, PJM, and the Ontario Independent Market Operator.

In a status report filed on October 26, 2000, NYISO informed the Commission that it has reduced part of its locational reserve requirements. In particular, NYISO has reduced its requirements so that 300 MW, rather than 490 MW, of spinning reserves must be procured east of the central east constraint. However, NYISO notes that it has not reduced the overall requirement that a total of 1200 MW of ten-minute reserves, which must be either spinning or non-spinning, be procured east of the central east constraint. Nevertheless, NYISO claims that a reduction in the spinning reserves requirement alone will facilitate greater participation by western suppliers of reserves and thereby reduce the eastern reserves market concentration.

In the report, NYISO also states that, in the event the Commission does not issue an order on its proposal by its requested effective date of November 1, it has concluded that it would be appropriate to keep the currently effective \$2.52 (plus lost opportunity costs) bid cap in place until November 8, i.e., sixty days from the date that NYISO submitted the revised tariff sheets setting forth the proposal.

Comments

Multiple Intervenors (Multiple Intervenors) object to the proposed transition period of the bid cap for non-spinning reserves, and instead recommends that the existing bid cap remain in place until NYISO demonstrates that the non-spinning reserve markets are workably competitive, ownership of 10-minute non-spinning reserves is less concentrated and the additional market improvements that

NYISO is pursuing are fully tested and implemented. Multiple Intervenors argue that increased market monitoring cannot fix a flawed market, and that, accordingly, the existing cap must remain in place until the market flaws are fixed.

Other protesters offer comments on the proposed transition period and state they support the transition period only if certain conditions were met. Keyspan-Ravenswood, Inc. (Keyspan-Ravenswood) states it can live with the transition period proposal provided the cap is lifted on May 1, 2001. However, Keyspan-Ravenswood objects to NYISO's proposal to vigorously use its market monitoring authority and argues that NYISO should not take a simplistic approach of challenging prices when the bid caps expire.

Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (ConEd) supports the proposal, but requests that NYISO be required to file reports assessing the performance of the non-spinning reserves market in order to determine whether it is appropriate to raise the cap on January 1, and to lift the cap on April 30, 2001.

The New York State Electric and Gas Corporation (NYSEG) would support the lifting of the bid cap on non-spinning reserves but only if the following conditions have been met: that the various short-term market improvements described in the Compliance Filing are successfully implemented; the Commission allows the mandatory bidding requirements for Eastern suppliers to remain in place during a transition period; the Commission permits the interim bid cap to be lifted gradually, in order to guard against the possibility of price spikes; the Commission permits NYISO to use its market monitoring power and mitigation authority even when prices are below the maximum levels allowed under the gradually increasing bid cap; utilization of operating reserves west of central-east; and NYISO should solve for the actual single largest contingency, not be statically locked into 1200 MW.

The New York Public Service Commission (NYPSC) states that NYISO appears to overstate the role of 10-minute spinning reserves in controlling abuses of market power in the 10-minute non-spinning reserve markets. The NYPSC requests the Commission to condition the approval of NYISO's proposal to allow the current cap on 10-Minute non-spinning reserve bids to lapse on a requirement that screening for market power and possible mitigation be referenced to a level for each unit equal to the average level of its accepted bids for the period between June 1 and August 31.

A number of protesters comment that NYISO's efforts to meet the Commission's requirements are inadequate, and that NYISO must make further changes to its market rules. Keyspan-Ravenswood requests that NYISO explain the basis for its estimate that the Blenheim-Gilboa will bid only 250 MW of 10 minute reserves at all times in light of the fact that its total capacity is 1000 MW. H.Q. Energy Services (U.S.) Inc. (HQUS) requests that NYISO promptly facilitate the sales of reserves between NYISO and neighboring Control areas, such as the sale of 30-minute reserves from Hydro-Quebec to New York.

Rochester Gas & Electric Corporation (RG&E) contends that NYISO's requirement that 1200 MW of operating reserves be located east of the central-east constraint has no justification and is inconsistent with pre-NYISO operations. RG&E claims that it is only in rare contingencies that the 1200 MW must be maintained and all reserves must be located east of the central-east constraint.

NYSEG claims that when NYISO argues that the intervals without congestion across the central-east constraint are too hard to anticipate, NYISO is referring to only the real-time market. NYSEG claims that in the day-ahead market, when bidding of operating reserves takes place, there is often at least 500 MW of transmission capacity available over the central-east interface. Thus, NYSEG argues, for purposes of scheduling and providing operating reserves, it is not the real-time market that is the relevant indicator, but the day-ahead market that should be examined to determine whether western supplies may supply operating reserves to the east. NYSEG requests the Commission to require NYISO to implement within 60 days the software modifications necessary to allow reservations of day-ahead transmission capacity to be available for operating reserves in real-time.

RG&E argues that NYISO has not supplied a mechanism to permit suppliers to self-supply outside of NYISO market. Rochester G&E claims that financial instruments are not viable substitutes for the ability to physically self-supply. A financial hedge or contract for differences would still require market participants to obtain physical supplies east of the central-east interface. Since all of RG&E's generation is located west of the central-east interface, this proposal would not permit RG&E to self-supply operating reserves from its generation.

RG&E protests NYISO's locational operating reserves proposal. It contends that NYISO's proposal for compensating suppliers under locational operating reserves located west of the central-east constraint is unjust and unreasonable and must be rejected. While Long Island operating reserves should not set the market price for operating reserves in the entire state, there is no justification for pricing reserves located in the west differently than those supplied from the east. RG&E states that there is a disconnect where western suppliers of operating reserves would get paid the locational reserve price when there is a constraint on Long Island or the central-east interface, but loads would pay the statewide operating reserves rate.

Long Island Power Authority and LIPA (LIPA) contends that the Commission should reject the alternative conditions to lifting the bid cap proposed by ConEd, NYPSC and Multiple Intervenors. LIPA argues that, since the locational reserves requirement represents a constraint in the reserve market, it is appropriate that separate locational prices to suppliers be calculated whenever the constraint is binding. LIPA also argues that NYPSC's proposed screening measure is simply another kind of price control in disguise and that Multiple Intervenors' comments do not provide a sufficient basis for rejecting NYISO's proposal, which the remainder of market participants have approved.

Discussion

NYISO's proposal does not adequately address the problems in its non-spinning reserve markets which necessitated the mitigation measures we accepted in the Reserves Order. Indeed, we find that the present state of the non-spinning reserve market is largely the same as that which precipitated mitigation in the first place. NYISO must still procure 1200 MW of reserves from suppliers east of the central-east constraint, in an area where ownership of non-spinning reserves is held by only a few suppliers.⁶ Moreover, NYISO admits that, even if all of its proposed short-term and long-term measures were put in place, it cannot determine that its reserves markets will be workably competitive under all of the conditions they will encounter.

We are concerned that NYISO has not implemented several of the possible fixes we directed it to address which, if implemented, would reduce the high degree of concentration in its non-spinning operating reserves market through an optimization of transmission capacity and by offering self-supply. Those fixes which NYISO has implemented do not sufficiently mitigate the level of concentration. As noted above, NYISO has modeled into its software the Blenheim-Gilboa plant as a supplier of up to 500 MW of operating reserves. However, although we believe it is a step in the right direction, the impact of adding 500 MW (of the Blenheim-Gilboa's total capacity of 1,000 MW) of potential reserves to the non-spinning reserves market will not be significant enough to reduce concentration concerns.⁷ We conclude that NYISO's current proposal does not constitute a permanent solution to the concentration problems in the reserves market at this point and that the reserves market cannot be considered workably competitive. Accordingly, we will extend the term of the \$2.52 bid cap, plus opportunity costs, and the mandatory bidding requirement until such time as NYISO demonstrates that the non-spinning reserves market, in all situations, is workably competitive.

We will reject the proposed transition period for the bid cap, where its level would rise to \$15 and \$30. Our approval of the existing level of \$2.52 was based, in part, upon its significance as a reasonable proxy for the upward limit on incremental cost-based bids into the non-spinning reserves market. We found it to be a reasonable proxy because of its historical relevance as the highest bid accepted into the market during the period when the market appeared to have been operating

⁶Prior to the addition of the Blenheim-Gilboa plant as a possible supplier, NYISO has indicated that 97% of all the non-spinning reserve capacity (2359 MW at that point) in the East was held by three entities (KeySpan-Ravenswood, Inc., The Long Island Power Authority and LIPA, and NRG Power Marketing, Inc.)

⁷NYISO has explained that the addition of 500 MW from the Blenheim-Gilboa plant to the non-spinning reserve market will reduce the Herfindahl-Hirschman Index (HHI) of market concentration from 4,031 to 3,027. We note that the Department of Justice guidelines regarding market concentration define levels above 1800 as 'highly concentrated.'

competitively.⁸ However, no support, historical or otherwise, has been presented to justify levels of \$15 or \$30, and we thus cannot determine that they have any relevance to cost or even to the past performance of the market. Further, we note that a number of market participants that support raising the cap to \$15 and \$30 condition that support upon the ability of NYISO to implement additional mitigation as a 'safety net' to assure just and reasonable prices under the increased levels. The extent and type of additional mitigation they propose NYISO undertake as the cap is raised varies across market participant and, in some cases, is unspecified, but it is clear that there is no consensus on this issue. Nonetheless, our primary consideration is that NYISO has not shown that the competitive state of the non-spinning reserve market has reached a level of improvement that would warrant a lifting of, or increase in, the existing \$2.52 cap.

As stated earlier, we are establishing a technical conference in this proceeding. At the technical conference, parties will be given the opportunity to explore changes that could be made to the market rules to resolve the concerns in the non-spinning reserves market so that it can be workably competitive. We also expect that the technical conference will result in a consensus regarding the market flaws that need to be corrected, the steps to be taken to correct them, and a realistic schedule for accomplishing those steps. If an adequate resolution cannot be achieved, we will consider alternative methods for setting prices in the non-spinning reserves market in the long run.

We will accept NYISO's proposal to revise its tariff to provide that customers may hedge against wholesale price volatility by entering into bilateral financial transactions, but we clarify that this proposal alone is not an adequate substitute for allowing customers to self-supply reserves. To the extent NYISO does not currently allow customers to self-supply, it is in clear violation of our requirements. NYISO must provide the option to self-supply, and we will address issues related to such implementation in the technical conference. We are particularly interested in discussing at the technical conference a more adequate short-term solution to be implemented as soon as possible which would permit market participants to physically self-supply operating reserves and to permit western operating reserves to supply eastern loads. We share the concerns of the protesters that NYISO should at least be able to permit parties to schedule operating reserves in the west in the day-ahead market when the central-east constraint is not binding.

We will suspend for five months NYISO's proposed tariff sheets that would implement locational pricing for 10-minute spinning, 10-minute non-spinning and for 30-minute operating reserves, and permit these tariff sheets to take effect on May 1, 2000, subject to refund and the outcome of the technical conference. We suspend this proposal because we are concerned about the effects of this proposal given our ruling to continue the \$2.52 bid cap. It appears that the effect of the locational

⁸In the Reserves Order, we clarified that any generators who believed that they would be unable to recover their costs of providing non-spinning reserves under this proxy could file a proposed cost-based bid limit under Section 205 of the FPA.

pricing mechanism if implemented with the existing \$2.52 bid cap, would be to cap LIPA's bids below the existing \$2.52 bid cap. At this time, there has not been a demonstration that further mitigation is necessary below the existing cap. Moreover, NYISO has not demonstrated that this type of mitigation is necessary in the spinning reserves or 30-minute operating reserves markets. These issues concerning the locational reserve pricing proposal can be discussed further at the technical conference.

Lost Opportunity Cost Payments

As noted above, the Commission directed NYISO to make whole non-spinning reserves suppliers for their lost opportunity costs in the Reserves Order. The Commission noted that the price paid by NYISO for spinning reserves includes payments for lost opportunity costs, calculated as the difference between the applicable locational-based marginal price (LBMP) for energy and the reserves bidder's energy bid. The Commission found that non-spinning reserve suppliers are entitled to similar compensation and directed NYISO to modify its proposal accordingly. On June 15, 2000, in Docket No. ER00-1969-001, NYISO filed revised tariff sheets which contained a method of calculating lost opportunity cost payments for non-spinning reserve suppliers. In addition, in Docket No. ER00-3591-000, NYISO filed revised tariff sheets which propose a different method of calculating lost opportunity cost payments from the one it filed in Docket No. ER00-1969-001. Below we rule on the proposed lost opportunity cost payment formulas.

The Formula proposed in Docket No. ER00-1969-001

NYISO's proposed opportunity cost payment in ER00-1969-001 would apply in cases where a supplier of non-spinning reserves, which produces less energy in the real-time dispatch than it would have been economic for it to produce because it has been selected to provide non-spinning reserves, will be paid its lost opportunity costs. The lost opportunity cost payment that each such supplier receives will be based on the difference between the projected LBMP revenue that the supplier would have received (based on the real-time LBMP) if it had supplied energy, and the Generator's production cost (based on its day-ahead energy bid if selected to provide non-spinning reserves in the day-ahead market, or its hour-ahead energy bid if selected in the hour-ahead market to provide non-spinning reserves). NYISO proposes that the revised tariff provisions become effective May 31, 2000, the date of the order.

LSE Intervenors urge the Commission to defer action on the compliance filing in light of the pending requests for rehearing of NYISO. LSE Intervenors argue that the outcome of the requests for rehearing will significantly impact the disposition of the compliance filing.

KeySpan-Ravenswood protest NYISO's proposed formula for calculating lost opportunity cost payments for non-spinning reserves suppliers. KeySpan-Ravenswood argues that the formula is unclear as to whether non-spinning reserves suppliers will receive a lost opportunity cost payment based upon the amount of energy that the generator bids into the energy market, or based upon the

amount of capacity that is actually selected for non-spinning reserves. It argues that the payment should be based upon the amount of energy bid because only a small portion of its capacity may be selected for reserves, and once a unit is selected for reserves, that unit loses the opportunity of selling any portion of its energy bid.

LIPA also protests NYISO's proposed lost opportunity cost formula. LIPA argues that a generator's opportunity cost should be based upon the energy revenues it could have recovered in the energy market into which it bid. LIPA contends that NYISO's formula is flawed and that it will result in overpayment in some situations and underpayment in others. LIPA argues that the lost opportunity cost payment must mirror and reflect how a generator would operate but for its selection in the reserves market.

On August 17, 2000, KeySpan-Ravenswood filed a supplement to its original protest. It expands its protest to address the proposed effective date of the tariff sheets of May 31, 2000. KeySpan-Ravenswood claims that this date is prejudicial to generators which will not be made whole for their costs during the period between March 28, 2000, the date of the bid cap on non-spinning reserves, and May 31, 2000, the date proposed by NYISO for lost opportunity costs. It argues that an effective date of May 31 would deprive non-spinning reserve suppliers of two months of opportunity costs. It requests that NYISO calculate the opportunity costs with interest back to March 28, 2000.

Revisions proposed in Docket No. ER00-3591-000

On September 1, 2000, NYISO submitted amendments to its tariff with the September 1 report which would revise the lost opportunity cost formula for both spinning and non-spinning reserves suppliers. NYISO's revised formula clarifies that lost opportunity cost payments will be tied to the total capacity of each unit. NYISO's formula provides that a generator scheduled in the day-ahead market to provide non-spinning reserves will receive a payment based on the difference between: (1) the higher of its day-ahead and real-time energy bids; and (2) the day-ahead LBMP. If this difference should result in a value equal to or lower than zero, the generator will receive a payment based upon the real-time LBMP. The formula also provides that a generator scheduled only in the hour-ahead market to provide non-spinning reserves will receive a payment based upon the difference between its real-time energy bid and the real-time LBMP. NYISO states that the Management Committee approved its revised lost opportunity cost proposal with a 100% affirmative vote. NYISO proposes an effective date of June 1, 2000, for the revised lost opportunity cost formula.

Only LIPA has raised an issue regarding the revised formula. LIPA repeats its request that the effective date for the lost opportunity cost payments be March 28, the date the bid caps went into place, rather than June 1, 2000.

Discussion

We will require NYISO to re-file the lost opportunity cost formula submitted in Docket No. ER00-1969-001, so that it is similar to its lost opportunity cost formula currently in effect for spinning reserves, as required by the Reserves Order. The lost opportunity cost formula for spinning reserves currently in effect calculates payments based upon differences between the generator's real-time energy bid and the real-time LBMP. The formula proposed by NYISO in ER00-1969-001 calculates payments for non-spinning reserves based upon the difference between the generator's day-ahead bid and the real-time LBMP. Because NYISO's lost opportunity cost formula treats spinning and non-spinning reserves suppliers unequally, the proposal falls short of the requirements of the Reserves Order. We will direct NYISO to file revised tariff sheets within 15 days of the date of this order to effectuate this change. We will permit these tariff sheets to become effective May 31, 2000, the date of the Reserves Order. We will deny intervenors' request that the lost opportunity cost payment be made effective

March 28, 2000. We have no legal authority to permit the tariff sheets to become effective prior to our order directing the change under Section 206.⁹

We will accept the revised formula submitted in Docket No. ER00-3591-000 for calculating lost opportunity cost payments for spinning and non-spinning reserve suppliers, to become effective the date of this order. We will approve the revised formula for several reasons. First, the revised formula applies to both spinning and non-spinning generators and thus treats them equally. In addition, the revised formula appears to adequately meet many of the concerns which KeySpan and LIPA raised regarding the originally proposed formula. Finally, we find it to be a reasonable indicator of lost opportunity costs for reserves suppliers because it allocates lost opportunity costs based upon the market, either day-ahead or real-time, in which the generator was selected and in which the generator would have incurred the lost opportunity costs if not for its selection to provide reserves.

B. Bid Cap Order

The Bid Cap Order approved a temporary bid cap for NYISO's energy markets which will expire on October 28, 2000, and directed NYISO to correct the market flaws identified and to file a report with the Commission.¹⁰

⁹Western Resources, Inc. vs FERC, 9F.3d 1568 (D.C. Cir. 1993)

¹⁰The market flaws identified in the Bid Cap Order included issues concerning: energy imports; the lack of a demand-side response mechanism; 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 regarding transaction curtailments; increasing ancillary service prices; Hydro-Quebec imports; price convergence between day-ahead and real-time prices. The Commission also encouraged NYISO to address any other changes necessary in NYISO's markets. The Bid Cap Order also ruled on certain tariff issues regarding pro rate curtailment (continued...)

In its September 1 Report, NYISO claims that it has addressed nearly all of the market flaws identified by the Commission and states that its energy markets are working well. NYISO is not requesting an extension of the energy bid cap in its September Report.¹¹ However, NYISO specifically identifies two areas that are still problematic and NYISO is working on longer term solutions.

The first area deals with the issue of energy price fluctuations. NYISO explains that 95 percent of transactions occur in its day-ahead market, where price fluctuations are not a concern. However, NYISO recognizes that price volatility in the real-time market exists and attributes some of the real-time price volatility to volatile market conditions but believes most of the problems relate to its Balancing Market Evaluation (BME) software. The BME forecasts operations during the next hour and posts advisory prices based on these conditions. The BME, however, has not turned out to be a reliable predictor of real-time prices. This creates a concern as the advisory prices calculated by the BME are not used for settlement, but are used to schedule off-dispatch generation, imports and exports. These economic decisions on whether or not to schedule certain transactions based on BME prices, often turn out to be uneconomic decisions when compared to real-time prices. As a result, the decisions made by the BME can lead to higher real-time prices when transactions are not scheduled by the BME that would have otherwise been economic to schedule, forcing NYISO to move up the bid stack to schedule more expensive resources to serve its markets. Similarly, inaccurate price projections made by the BME have been used to schedule transactions that would not have been scheduled in real-time causing increased uplift payments to be paid. NYISO states it has completed a study of BME and real-time price divergence and found that some discrepancies were inevitable but identified the four largest factors contributing to divergence and has made remedial changes to more closely align BME predictions with the real-time market. NYISO states its efforts are ongoing to seek both short term and longer term solutions to resolve the problems associated with the BME.

The second area of concern to NYISO as identified in the September Report is the revision of advisory bills and settlement information where NYISO experienced many unexpected software glitches which have prevented the issuance of final bills to market participants. NYISO states it has made corrections to the problems it was aware of but explains that many previously undetected problems have recently surfaced. NYISO expects that rebilling for November 1999 will be completed in mid-September 2000; December 1999 rebills are expected to be completed by the end of September 2000; January - March 2000 rebills are expected to be completed by early October 2000; and April - June rebills are expected to be completed by mid-October 2000. NYISO states it has

¹⁰(...continued)
and a pricing issue dealing with fixed block generation.

¹¹On October 20, 2000, in Docket Nos. ER01-180-000 and ER01-181-000, NYISO filed a Section 205 filing and related Section 206 filing to extend the existing \$1,000 per MWh energy bid cap.

formed a special sub-group to advise on additions or revisions to NYISO's billing and settlement procedures to provide timely, accurate billing and settlement information to market participants.

Comments

In general the commenters agree that NYISO has made progress in addressing the existing market flaws in the energy markets, but is a long way from claiming that the markets are working well. Protesters primarily raise concerns with NYISO's timetable for implementing a demand response mechanism; the continued problems with the BME; inter-control area coordination issues; and pricing issues dealing with fixed block generation.

Demand-Response Mechanism

The Bid Cap Order imposed a bid cap of \$1,000 per MWh on the energy markets through the summer capability period in large part due to the lack of a demand response mechanism during the summer capability period when supplies were predicted to be tight. In the September Report, NYISO states it will file to have in place a demand response program by June 1, 2001. Protesters request that the Commission either require NYISO to implement such a mechanism well before the summer capability period of 2001 or, at least, direct NYISO to adhere to its own projected timetable for implementing a demand-response mechanism to ensure such a mechanism is in place by June 1, 2001.

Energy Imports and Inter-Control Area Coordination

Protesters are concerned with the continued problems associated with the BME. Protesters offer various ways for NYISO to address these problems and request that the Commission direct NYISO to: (1) implement changes to the BME; (2) study the financial consequences to market participants and provide a compensation mechanism for import participants harmed by any uneconomic decisions made using the BME, while NYISO works on fixing or replacing BME; (3) use the TEP procedures to reserve and correct prices to the levels that would have occurred absent the market design flaws and software problems occurring with the BME; (4) replace the BME's scheduling function with a simple means of firm transmission reservation (e.g., first-come-first-served, or an auction) and self-scheduling mechanism similar to those employed by neighboring ISOs; (5) eliminate the economic scheduling function of BME, use BME for reliability purposes only, or make this scheduling function available to transmission customers and market participants on an optional basis.

Protesters also request NYISO be directed to continue to identify and study seams issues regarding import/export transactions between neighboring ISOs. In this regard, protesters request that (1) NYISO develop an interim regional scheduling process; (2) if separate scheduling systems are used on each side of a border, than participants must be able to (i) reserve transmission capacity on the ties, (ii) trade those reservations at market value, and (iii) "self-schedule" energy transactions using those reservations;

(3) NYISO study methods of improving ramping across control area interfaces and report to the Commission within a specific time period; (4) NYISO identify and study other factors contributing to the voltage problems which currently have the effect of reducing imports from Hydro-Quebec and submit a report to the Commission and market participants by December 31, 2000.

Pro Rata Curtailment

In the Bid Cap Order, the Commission found that NYISO was not curtailing transactions having equal decremental bids on a pro rata basis as required by its ISO OATT tariff. The Commission cautioned NYISO that if it is not curtailing such transactions on a pro rata basis, it is in violation of its tariff. The Commission suggested that if NYISO wishes to change the way it curtails bilateral transactions with identical decremental bids, then it must file proposed tariff changes with the Commission for approval.

On August 4, 2000, NYISO filed a preliminary compliance report in Docket Nos. ER00-3038-002 and EL00-70-003 explaining that it intends to comply with the Commission's mandate that it implement pro rata curtailment procedures. NYISO contends that its scheduling software was not designed to handle pro rata curtailments and it has made modifying its software to accommodate pro rata curtailment a high priority. NYISO explains that it believes certain market participants may prefer its existing curtailment method, under which certain transactions are cut completely pursuant to a random, automated process. In this regard, NYISO states it will work with its market participants to develop tariff language that would incorporate its current curtailment procedures to be filed as part of its OATT tariff, subject to approval of NYISO's committees and independent Board of Directors.

Fixed Block Generation

The Bid Cap Order directed NYISO to report on its progress in remodeling bundled generation units into smaller, discrete units capable of being bid into NYISO's markets independently. The Bid Cap Order also directed NYISO to revise how it is setting the price of energy when lower cost units are dispatched down in order to accommodate the fixed block resource. In these situations, the Commission determined that the least expensive unit to be backed down, not the fixed block resource, will set the market-clearing price.

Protesters recognize the progress that NYISO has made in remodeling the fixed block units into smaller block units for bidding into the New York administered-markets. However, NYSEG argues that further work is needed with regard to the fixed block generation pricing issue.

With regard to the fixed block pricing issue, we note that NYISO filed a preliminary compliance report with the Commission stating it could not comply with the Commission's ruling at this

time without major software changes.¹² NYISO states in the preliminary report it will work diligently to complete these software modifications and will inform the Commission as soon as they have been implemented. However, NYISO states it has conducted a preliminary analysis of the fixed block generation pricing rule and believes it may create serious market distortions that were not intended by the Commission and thereby notified the Commission it may seek rehearing of that ruling.

On August 25, 2000, NYISO filed for rehearing of this issue and proposed the Commission adopt a different pricing approach from the current practice of NYISO and the Commission's ruling in the bid cap order.¹³ In its rehearing request, NYISO proposes the Commission adopt a different, or "hybrid," pricing approach from the current practice of NYISO and the Commission's ruling in the Bid Cap Order. On rehearing, NYISO argues that there are some circumstances when applying the revised rule set forth in the July 26 Order would send inaccurate price signals, distort market participants' incentives, and increase uplift charges borne by customers located west of New York's Central-East constraint. On the other hand, NYISO believes that there are other situations where following the revised rule would yield better results than NYISO's current pricing policy. NYISO therefore asks the Commission to modify its holding in the July 26 Order to allow NYISO to implement a hybrid fixed block pricing rule that will combine the best features of the revised rule and NYISO's current pricing policy, while minimizing the disadvantages otherwise associated with each.

Under NYISO's hybrid fixed-block pricing policy, NYISO proposed that its current pricing rule apply for calculating real-time prices when a fixed block unit must run to: (1) meet load; (2) avoid the operation of a more expensive unit; or, (3) satisfy a NERC reserve requirement and consequently displaces a less expensive unit. In such situations, NYISO contends that the GT that sets the LBMP price is running because its operation is economic and necessary, not because of minimum run-time requirements or other inflexibilities. The NYISO proposes to follow the Commission's new pricing rule in all other situations.

Discussion

We believe that the best approach to resolving these issues, and others raised by the protesters, is to address them at the technical conference. The Commission is concerned with the fact that NYISO is still not curtailing transactions with equal decremental bids on a pro rata basis as required by

¹²On August 4, 2000, NYISO filed a "Preliminary Compliance Report Concerning Pro Rata Curtailment Procedures and Fixed Block Generation Pricing," in Docket Nos. ER00-3038-002 and Docket Nos. EL00-70-003.

¹³Other parties which filed for rehearing of this price ruling include NYISO, Independent Power Producers of New York, Inc., Southern Energy Bowline et al, AES NY, L.L.C., and Orion Power New York GP, Inc. These parties request that the Commission grant rehearing and permit NYISO's current practice for pricing fixed block generation to remain in place.

its tariff due to software implementation problems. We are also concerned with the continued problems with the BME. Discussions at the technical conference should consider whether NYISO's software, including its BME software, are fixable or if they should be replaced. The Commission has also reviewed NYISO's rehearing request with regard to the fixed block pricing issue. We believe there is merit in the "hybrid" proposal suggested by NYISO for pricing fixed block generation when a lower cost unit is backed down. The technical conference will provide a forum for parties to respond to NYISO's hybrid approach to this pricing issue.¹⁴ We expect that the technical conference will result in a consensus regarding the market flaws that need to be corrected, the steps to be taken to correct them, and a realistic schedule for accomplishing those steps. In addition, the Commission expects that the technical conference will be used as a forum to establish priorities to ensure that solutions will be in effect soon enough to avoid a repeat of the events occurring at the commencement of the summer capability period of 2000, when emergency filings were necessary to implement bid caps during the peak period.

III. TEP Order

The Temporary Extraordinary Procedures (TEP) Order approved the extension of NYISO's TEP authority until October 31, 2000 and required NYISO to report on all price corrections made during the summer capability period under this authority.

The September 1 Report indicates that NYISO has corrected two market flaws which were the primary reasons for many of the price adjustments under the TEP.¹⁵ NYISO also indicates in its report that the frequency of price corrections under this authority is down, but the fact remains that NYISO will need to correct prices in the future due to software problems causing incorrect price calculations and other future market flaws that surface. NYISO has not requested an extension of the TEP authority in its September Report.

¹⁴Because NYISO proposed its "hybrid" approach for the first time in a request for rehearing in Docket Nos. ER00-3038-001 and EL00-70-002, parties were not able to respond to the proposal.

¹⁵These corrections include: (1) a correction to the Security Constrained Dispatch (SCD) software which was assigning incorrect upper operating limits to steam units; and (2) implementation of software enhancements and negotiations with generation owners to reduce the number and size of multi-block bidding units. The latter correction has prevented pricing errors from arising as a result of bids submitted by large multi-unit bidding blocks, and the running of large amounts of uneconomic energy associated with the multi-unit bidding blocks.

The issues raised by the protesters concerning NYISO's TEP procedures include (1) the frequency of price corrections under the TEP is much higher than NYISO contends; (2) whether NYISO should use its TEP to reserve and correct prices to the levels that would have occurred absent these market design flaws that contribute to inflated, or erroneous, LBMPs, such as in instances where the BME rejects economic transactions in the hour-ahead market; (3) concerns that NYISO is using its TEP authority in situations not covered by such authority; and (4) whether the TEP should be extended beyond the current expiration date of October 31, 2000.

We will defer ruling on these issues until we act upon NYISO's recent Section 205 filing to extend the TEP procedures from November 1, 2000 to April 30, 2001. This application was filed by NYISO on October 11, 2000 in Docket No. ER01-94-000.

IV. Strategic Power Order and NIMO Marketing Order

In the Strategic Power Order, the Commission found it reasonable that market participants should be able to verify their costs and explain how such costs will translate to their monthly bill. The Commission stated it expected that NYISO's will include a method or procedure through which market participants may accurately project their future charges, based on current consumption of ancillary services. In its September Report, NYISO states that software changes and posting of daily cash flow and MWh reconciliation's will begin October 1, 2000; and that month-to-date and hourly ancillary service charges will be posted beginning November 1, 2000.

In the NIMO Marketing Order, the Commission directed NYISO to correct its Security Constrained Unit Commitment (SCUC) software problem that was causing erroneous curtailments. In the September Report, NYISO states that it corrected its software on August 4, 2000 and indicates that to the best of its knowledge, this correction has worked as intended and there have been no erroneous curtailments since it was instituted.

No comments were filed in the current proceeding regarding NYISO's proposed changes to meet the requirements of the Strategic Power Order or the NIMO Marketing Order. Accordingly, we see no need for further discussion on these issues at this time.

V. Issues Raised by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (ConEd)

On September 27, 2000, ConEd filed a motion to intervene, answer and comments that proposed substantial modifications to the existing tariffs and practices of NYISO. Most significant among ConEd's requests include: a request that the Commission approve an extension of the current bid cap on energy; a proposal that NYISO be required to implement price screens for bid prices below the cap; and a request that the Commission establish a refund effective date. Notably, ConEd requests that the Commission deem its filing a complaint should the Commission find it necessary to address the

issues it raises. ConEd also requests that bid data be disclosed on a monthly basis as opposed to the Commission's ruling in Central Hudson¹⁶ that bid data must be kept confidential for six months; more stringent market monitoring and mitigation be in place; NOX emission issues; par angle regulator issues; reports of gaming, among other issues.

Several entities including Aquila Energy Marketing Corporation (Aquila), the Indeck Companies (Indeck), Long Island Power Authority and LIPA (LIPA), Keyspan-Ravenswood, Inc. (Keyspan-Ravenswood), Morgan Stanley Capital Group Inc. (Morgan-Stanley), Westchester County (Westchester) and the City of New York (NY City) filed motions, answers and/or comments seeking permission to respond to the issues raised by ConEd in this proceeding. Indeck, Aquila and Morgan Stanley contend that ConEd's filing in this proceeding is more akin to a complaint as ConEd raises issues that are not within the scope of the compliance filing. They contend that ConEd's proposals to extend the bid cap, institute price screens and establish a refund effective date, violate the Federal Power Act and the FERC's complaint regulations. These parties argue that the Commission has no authority to change the rates of NYISO, without first initiating a Section 206 proceeding under the FPA on its own motion, or upon complaint. These parties argue that the actions requested by ConEd should not be considered by the Commission in this proceeding and that ConEd should file a complaint in a separate docket, comply with all applicable requirements, bear the burden of proof as required by the Federal Power Act and the Commission's regulations, whereby the parties would have the right to respond.

In addition, parties generally contend that ConEd's proposal that the energy bid cap be extended is outside the scope of this proceeding as the Commission already determined that the bid cap would expire on October 28, 2000 and NYISO has not proposed in this proceeding to extend the energy bid cap. NY City and Westchester respond to ConEd's proposal by requesting that the Commission establish a lower bid cap from the existing \$1,000 per MWh to implement a \$250 per MWh bid cap until such time as NYISO has fully implemented the mitigation and other proposals proposed by ConEd. Parties also contend that ConEd bypassed NYISO's governance process by filing these requests with the Commission for affirmative action on several issues that are either currently pending before NYISO committees, or Board of Directors, such as with the proposal to extend the energy bid cap, or the issues have yet to be decided by the committees and Board of Directors.

Parties also object to ConEd's proposed request that the Commission establish a refund effective date in a compliance proceeding. Citing a recent California case,¹⁷ ConEd argues that in order

¹⁶Central Hudson Gas and Electric Corporation, 86 FERC para. 61,062 (1999) order denying in part and granting in part rehearing, 88 FERC para. 61,138 (1999).

¹⁷San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange, 92

to protect consumers from unreasonably high wholesale energy prices while problems in the New York market are addressed, the Commission should impose a refund effective date of November 1, 2000, for all energy and ancillary services. LIPA and Keyspan-Ravenswood contend there is no justification for imposing a refund date and that the Commission has consistently rejected the implementation of a refund effective date to bid-based markets, specifically in New York.¹⁸ LIPA also states that while price levels and volatility for services in New York's energy market are not acceptable, they are not as blatantly chaotic and disruptive as recently experienced in California. Moreover, Keyspan-Ravenswood contends that the request for a refund effective date is premature given the Commission's on-going investigation of competitive bulk power markets. There, the Commission, in lieu of instituting a Section 206 proceeding, ordered its staff to undertake a fact-finding investigation and then will determine the appropriate action.

The Commission will not “deem” ConEd’s filing a complaint for purposes of extending the energy bid cap, instituting price screens, or establishing a refund effective date. Nor will we institute a Section 206 complaint proceeding under our own motion at this time. While significant market problems remain to be effectively addressed in the New York market, the Commission wishes as much as possible to encourage the normal operation of markets in New York without the uncertainties that potential refund obligations create. This is particularly true during the winter season when electricity markets are not normally under the same price pressure as they are during the summer. Establishment of a technical conference will enable parties to examine existing market flaws and develop a timetable for correcting the problems.

We also will not rule on the merits of whether the energy bid cap should be extended at this time. ConEd contends that the current bid cap of \$1,000 per MWh on NYISO's energy markets should not be permitted to expire on October 28, 2000. In addition, ConEd proposes that the Commission require NYISO to institute bid price screens at bid levels lower than the bid cap where bids are automatically considered suspect of market abuse because they are substantially above cost. We note that on October 20, 2000, in Docket No. ER01-180-000, NYISO filed a Section 205 filing requesting permission to extend the energy bid cap until April 30, 2001, the end of the winter capability period. Concurrently, in Docket No. ER01-181-000, NYISO filed a Section 206 filing at the direction of its Board of Directors requesting permission to extend its energy bid cap from April 30, 2001, until such time as NYISO implements a market protective mechanism.¹⁹ NYISO explains that it currently

¹⁷(...continued)
FERC ¶ 61,172 (2000).

¹⁸Citing, New York Independent System Operator, Inc. 91 FERC ¶ 61,218 (2000) and 92 FERC ¶ 61,073 (2000).

¹⁹NYISO's Board of Directors has directed NYISO Staff to work to develop a superior
(continued...)

does not have the concurrence of its Management Committee to make a Section 205 filing requesting that the bid cap be extended beyond April 30, 2001. Therefore, NYISO is authorized to unilaterally file proposed tariff changes under Section 206 without the concurrence of the Management Committee.²⁰ NYISO explains that if the Management Committee ultimately endorses the proposal, it will request the Commission treat the Section 206 filing as a Section 205 filing. We will act on the merits of these proposals in the pending filings before us. The fact that we have a Section 205, and related Section 206 filing before us, obviates the need to institute a Section 206 investigation on our own motion regarding this issue.

With regard to the other issues raised by ConEd we will permit such issues to remain as topics to be discussed further at the technical conference and to have such issues be considered when priorities are established for completing corrections to existing problems and market flaws.²¹

The Commission orders:

(A) The bid cap of \$2.52 per MWh (plus opportunity costs) and the mandatory bid requirement is extended beyond October 31, 2000 to remain in effect until such time as the Commission determines that the non-spinning reserve markets are demonstrated to be workably competitive.

(B) Third Revised Sheet No. 141, First Revised Sheet No. 141A, and Fourth Revised Sheet No. 142, proposed by NYISO to implement revisions to the level of the bid cap, are hereby rejected.

(C) First Revised Sheet No. 159 is accepted to be effective November 1, 2000, as proposed which implements tariff language regarding market participants ability to hedge transactions;

(D) The tariff sheets proposing the lost opportunity payment for spinning and non-spinning reserves filed in Docket No. ER00-3591-000 are accepted to become effective on the date of this order. NYISO is directed to file tariff sheets to establish a lost opportunity cost payment for non-

¹⁹(...continued)

alternative to bid caps that would be triggered during the brief periods when NYISO-administered markets cease to be workably competitive, e.g., a "circuit-breaker" proposal.

²⁰Section 19.01 of the Independent System Operator Agreement, authorizes NYISO to unilaterally file proposed tariff changes under Section 206 without the concurrence of the Management Committee.

²¹ConEd raises several issues on generation bidding rules, market power mitigation measures, out-of-merit generation, phase angle regulators (PAR), NOx emissions, and time period for disclosing confidential bid data.

spinning reserves, consistent with its calculation of spinning reserves, to be effective for the period May 31, 2000 to the date of this order, within 15 days of the date of this order.

(E) NYISO's tariff sheets proposing locational pricing for its operating reserves are suspended for 5-months, subject to refund and the outcome of the technical conference.

(F) Commission staff is directed to convene a technical conference to address the remaining issues as discussed in this order. The staff is directed to issue a notice of the technical conference which sets forth the agenda for the conference and to file a report with the Commission within 120 days of the date of this order.

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

(S E A L)

David P. Boergers,
Secretary.

Appendix A

New York Independent System Operator, Inc.
Docket Nos. ER00-3591-000 and 001

Interventions and Protests

Aquila Energy Marketing Corporation+
City of New York+
Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.*/**
County of Westchester+/**
Dynergy Power Marketing, Inc.
Enron Power Marketing, Inc.*+
H.Q. Energy Services (U.S.) Inc.*
Indeck Companies +/**
Keyspan-Ravenswood, Inc.*/+
Long Island Power Authority and LIPA++
Member Systems*/**
Morgan Stanley Capital Group, Inc.*/+
Multiple Intervenors*
New York Independent System Operator**
New York Public Service Commission*
New York State Electric & Gas Corporation*
Niagara Mohawk Energy Marketing, Inc.
NRG Power Marketing Inc, Arthur Kill Power LLC, Astoria Gas Turbine Power, LLC, Dunkirk
Power, LLC, Huntley Power, LLC, and Oswego Harbor, LLC
PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Power New York Inc.+
Rochester Gas and Electric Corporation*
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.+

*Protest and/or Comments

+Motion to Intervene Out of Time

**Answer

++Response

New York Independent System Operator, Inc.

Docket Nos. ER00-3591-000
ER00-3591-001 and
ER00-1969-001

(Issued November 8, 2000)

HÉBERT, Commissioner *dissenting*

Almost 50 years ago, General Douglas MacArthur reminded us, "Old soldiers never die, they just fade away." Old regulators never die. Today, FERC reminds us that, unfortunately, neither do they fade away. Under prodding from this Commission last May in *New York Independent System Operator, Inc.*, 91 FERC ¶61,218 (2000), the New York Independent System Operator, Inc. (ISO) took some measures to increase supplies in the non-spinning (stand-by) reserve market. The ISO considers New York ready for a gradual lifting of the "temporary" price cap we imposed for the past summer. Rather than let go and, at least allow the ISO to take baby steps into the competitive market, our "old regulators" continue price controls indefinitely. I would let go. Especially when an ISO, an institution inherently wedded to keeping prices low, rather than efficiency, wants to test its legs we should allow it to do so.

Today's order shifts the grounds of our previous decision. Concentrating on concentration of generation in the State, the majority improperly ignores the explicit findings we made earlier. We concluded then that high prices in the non-spinning reserve market resulted from the ISO's rules, not from any withholding of capacity resulting from alleged concentration. 91 FERC at p.61,799.

In May, we said that the ISO excluded a major hydroelectric facility from its list of available resources. In May, we said that including it would "significantly" expand the market with a "major" competitor. 91 FERC at 61,8000. The ISO fixed that. Today the majority downplays the move. In May we said that the ISO kept prices high in the non-spinning reserve market by applying to it the higher prices in the spinning (available on short notice) reserve market. 91 FERC at p.61,800. If it has not done so, the ISO can easily separate the pricing from these two markets. This order ignores the issue.

The ISO informs us that it has taken other steps to increase supplies. Its filing on October 26, at 2-3, indicates that the ISO reduced reserve requirements by 190 megawatts (MW's) for spinning reserves and 270 MW's for "30 minute reserves" in the east, the constrained region, while on Long Island, it has reduced reserve requirements by an amount between 30 and 140 MW's in the "10 minute" market. Reducing reserve requirements frees up supplies.

Beyond that, we just approved an agreement for the New England Power Pool, New York's neighbor to the Northeast, the open side of the constraint, to sell emergency power into New York. Along with the agreement already in force for PJM, New York's neighbor to the south and west, to sell emergency supplies, the supply picture since May brightened considerably. The ISO has a long way to go, I admit. Nevertheless, I would not make the "perfect the enemy of the good." At least, let us allow the ISO to lift its price cap. Given the dynamics of ISO's, we can rest doubly sure that the organization exercised caution in its request.

Even if the ISO responded inadequately to the directions we gave in May, we have more measure to take. The majority squandered an opportunity to induce more supplies to come to the market, but can still rectify the error. My colleagues should confess error and join me to require the ISO, by next summer, enable marketers and arbitragers to participate in New York's market. I urged that in my dissent last month, when the majority required only a progress report. *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶61,017 at p. (2000) (Hébert, Commissioner *dissenting*). Current practice, that restricts sellers to owners of plants, keeps out supplies and the current rule, that restricts buying to consumers, prevents hedging. More supplies and hedging lead to price stability as well as efficiency.

Alternatively, if I found the ISO's response inadequate, as today's order does, I would take stronger steps than the majority orders here. When we imposed the cap, we indicated, both in writing and in speaking from the bench, that if the ISO failed to correct the problems we identified, we would consider instituting an investigation to restructure the market. If the record convinces the majority, as it seems to, that the ISO must do more, we should march boldly to institute the proceeding we threatened. Instead, the majority meekly calls for a technical conference, a meeting at which staff and interested parties exchange ideas. With the price cap in effect indefinitely, the exchange of ideas may make for an interesting salon, but will lead nowhere.

Choosing either course undertakes constructive action for relieving high prices the citizens of New York must endure. The majority, instead, undertakes more of the same drift. Finally, I would remove the \$1,000 bid cap on the energy market now, rather than discuss it at the technical conference. Therefore, I respectfully dissent.

Curt L. Hébert, Jr.
Commissioner