UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.	))	Docket No. ER14-1138-000

LIMITED PROTEST OF THE ELECTRIC POWER SUPPLY ASSOCIATION, PJM POWER PROVIDERS GROUP AND THE NEW ENGLAND POWER GENERATORS ASSOCIATION

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("FERC" or the "Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.211 (2013), the Electric Power Supply Association ("EPSA"),[1] the PJM Power Providers Group ("P3"),[2] and the New England Power Generators Association, Inc.[3] (collectively, the "Competitive Suppliers") respectfully file this

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1 EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers, which, collectively, account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

2 P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C. ("PJM") region. Combined, P3 members own over 87,000 MW of generation assets and over 51,000 miles of electric transmission lines in the PJM region, serve nearly 12.2 million customers, and employ over 55,000 people in the PJM region, representing 13 states and the District of Columbia. The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue. For more information on P3, visit www.p3powergroup.com.

3 NEPGA is a private, non-profit trade association advocating for the business interests of competitive electric power generators in New England. NEPGA's member companies represent approximately 27,000 megawatts of installed capacity throughout the New England region. NEPGA's mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. NEPGA's member companies are responsible for generating and supplying electric power for sale within the New England bulk power system. The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member

joint limited protest[4] of the January 22, 2014 petition by the New York Independent System Operator, Inc. ("NYISO" or the "ISO") requesting temporary waivers of Sections 21.4 and 21.5.1 of its Market Administration and Control Area Services Tariff ("Services Tariff") in order to enable the ISO to consider Incremental Energy and Minimum Generation offers that exceed $1000/MWh so that Generators able to demonstrate incurred variable costs in excess of $1000/MWh may submit such offers ("NYISO Petition").[5] The NYISO cites recent extreme weather and unprecedented natural gas market conditions which are driving some generators' fuel costs to unprecedented levels, including beyond the current $1000/MWh Bid Restriction[6] which limits the ISO's authority to consider Incremental Energy Bids and Minimum Generation bids that exceed that amount. As the extreme cold weather could continue, NYISO requests that FERC approve the waiver on an emergency basis by January 31, 2014, to be effective retroactively to January 22, 2014, when the filing was submitted. Such approval is necessary to protect the reliability of the New York State Power System by providing full recovery of actual costs incurred to operate of generators impacted by unprecedented spikes in natural gas prices in light of the weather conditions.

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[4] EPSA filed a doc-less Motion to Intervene in this proceeding on January 23, 2014. NEPGA filed a doc-less Motion to Intervene in this proceeding on January 28, 2014. P3 filed a doc-less Motion to Intervene in this proceeding on January 29, 2014.

[5] *New York Independent System Operator, Inc.,* Petition for Temporary Tariff Waivers, Request for Shortened Comment Period, and Request for Expedited Commission Action by January 31, 2014, Docket No. ER14-1138-000 (filed January 22, 2014)("NYISO Petition").

[6] *See* NYISO Market Services Tariff Section 21.4.

While the Competitive Suppliers vigorously support the NYISO's intention to provide essentially "make whole" payments for both Day-Ahead and Real-Time Market commitments for generation resources whose demonstrated actual costs of producing Incremental Energy and/or Minimum Generation exceeds the current $1000/MWh Bid Restriction, this emergency solution does not address the underlying market impacts of natural gas prices in the New York Control Area ("NYCA") or the rest of the Eastern United States (see similar filings submitted by PJM).[7] Rather, as PJM has proposed, payments for variable costs in excess of the Bid Restriction must set the market price in the ISO's Day-Ahead and Real-Time Markets in order to address fundamental market conditions. The ISO-NE energy markets, like the NYISO and PJM markets, suffer from the same failure to allow resources with offers above $1,000/MWh to set the clearing price, instead allowing such resources to recover their above-offer cap costs through a filing at the Commission. ISO-NE would therefore likewise benefit from the energy market rule changes sought by IPPNY and PJM.

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[7] *See* PJM Energy Market Offer Cap Emergency Waiver Filings: (1) *PJM Interconnection, L.L.C.*, Request of PJM Interconnection, L.L.C. For Waiver, Request for 7-Day Comment Period, And Request For Commission Action By February 10, 2014, Docket No. ER14-1145-000 (filed Jan. 23, 2014) ("PJM Cost-Based Offers Filing") *available at* http://www.pjm.com/~/media/documents/ferc/2014-filings/20140123-er14-1145-000.ashx

(2) *PJM Interconnection, L.L.C*., Request of PJM Interconnection L.L.C. For Waiver And For Commission Action By January 24, 2014, Docket No. ER14-1144-000 (filed Jan. 23, 2014)("PJM Make-Whole Payment Filing") *available at* http://www.pjm.com/~/media/documents/ferc/2014-filings/20140123-er14-1144-000.ashx

Also see, *PJM Interconnection, L.L.C,* Order Granting Waiver, 146 FERC ¶ 61,041 (issued Jan. 24, 2014).

Therefore, the Competitive Suppliers support the NYISO Petition as an emergency short term fix,[8] but urge the Commission to direct the ISO to develop expeditiously *for this winter* a mechanism to reflect in the market clearing price when costs are incurred in excess of the current Bid Restriction, and to work with stakeholders to develop a long term solution that would remove the Bid Restriction, or set it sufficiently high as to address conditions such as those experienced this winter. As demonstrated by the emergency filings from both the NYISO and PJM, an offer cap of $1000/MWh is no longer appropriate, just or reasonable for these markets.

I. BACKGROUND

Provisions 21.4 and 21.5.1 of Attachment F to the NYISO Services Tariff requires that the ISO summarily reject Day-Ahead and Real-time Market Incremental Energy Bids and Minimum Generation Bids that exceed the +/- $1000/MWh Bid Restriction. However, extreme weather conditions beginning January 21, 2014, have caused natural gas prices to reach unprecedented levels as detailed in the NYISO Petition, which in turn are causing some NYCA generators' variable costs to exceed the $1000/MWh Bid Restriction. Further, such extreme weather is forecasted to continue throughout January. In order to ensure reliability, NYISO requests a temporary waiver to its Bid Restriction tariff language in order to allow generators to submit and recover actual costs incurred to provide Incremental Energy and Minimum Generation. NYISO states, "Eligibility to recover costs in excess of the $1000/MWh cap will be determined

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[8] The NYISO requested the waiver for the period January 22, 2014 through February 28, 2014. The Competitive Suppliers request the waiver instead be granted through March 31, 2014, through the end of the winter heating season.

after-the-fact and will be limited to demonstrated, actual production costs incurred."[9] This temporary, limited waiver is requested for a period commencing on January 22, 2014 and concluding on February 28, 2014. The NYISO explains, "Failure to implement measures to permit generation owners to recover the costs they incur to supply Incremental Energy and/or Minimum Generation could reduce participation in the markets that the NYISO administers. Such a result could be detrimental to reliability."[10]

II. LIMITED PROTEST

As the Independent Power Producers of New York ("IPPNY") argue in their comments on this proposal,[11] and demonstrate in the accompanying expert affidavit of Mark D. Younger,[12] the Commission should grant the relief requested by the NYISO in its petition, but must also waive, or direct the ISO to eliminate or significantly raise the $1000/MWh cap in order to allow economic bids over that amount to set the market clearing price. This should occur expeditiously to address the conditions present this winter, and the ISO and market participants should be directed to develop the long term revision to eliminate or significantly raise the cap permanently pursuant to Section 205 of the Federal Power Act.

While it is certainly imperative that generators not be forced to sell below their marginal energy costs, the NYISO proposal unnecessarily impedes the overall market by depriving it of accurate price signals reflecting generators'

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9 NYISO Petition at 4.

10 NYISO Petition at 5.

11 Comments of Independent Power Producers of New York, Inc., Docket No. ER14-1138-000, (filed January 29, 2014) ("IPPNY Comments")

12 Affidavit of Mark D. Younger, Exhibit 1 to IPPNY Comments ("Younger Affidavit")

marginal costs for providing power. The NYISO proposal does not allow cost-based offers over a certain threshold, but rather allows for after-the-fact cost-based payments to be made to individual generators that demonstrate actual costs. This approach frustrates the ISO's economic dispatch as it relies on bids based on generators' marginal costs to set the locational-based marginal pricing ("LBMP"). As explained by Mark Younger,

> …[W]hile the NYISO's filing provides a critical framework to ensure that generating units can recover their operating costs, it fails to let the generating units bid those costs. The result is that there could be a significant number of units that would all be bidding at the bid cap while having actual costs above the bid cap. The NYISO's proposal would not set prices that reflect the locational based marginal costs of those units in the market – thereby undercutting a fundamental underpinning of the NYISO energy market design. Instead, the NYISO is effectively replacing its LBMP pricing mechanism with a one-off, pay as bid methodology for accepted bids above $1,000.[13]

This approach interferes with the very foundation of the NYISO market -- market prices are set based on the marginal cost of generation, thereby providing an efficient price signal for both the short term (Day Ahead and Real Time economic dispatch by the ISO) and the long term (investment decisions for existing and new generation resources).[14] Such a signal is required at all times, but may well

13 Younger Affidavit at P 9.

14 "If the market is competitive… then the clearing-price auction has two wonderful properties. The first is short-run efficiency. The dispatch of generation throughout the day is efficient—the electricity is generated at least-cost to the system, since all generation is supplied by the producers with the lowest cost. The second is long-run efficiency. The single clearing-price auction motivates efficient investment in new generation." Peter Cramton. *"Foreword to Ross Baldick's 'Single Clearing Price in Electricity Markets'"* prepared for the COMPETE Coalition, www.competecoalition.com, (Feb. 2009). *Available at*: http://works.bepress.com/cramton/157

be most pressing to reflect conditions such as the high natural gas prices seen during the extreme weather this winter. As Younger expounds,

> In these conditions it is not just important to assure that the expensive gas fired resource that the NYISO needs is able to fully recover the operating costs that it incurs -- as the NYISO has proposed in its filing -- but also that all suppliers see that price signal to reflect the value of generation having run on alternate fuels or having firm gas supplies and demand response providers having reduced usage. It is specifically in instances where gas prices become very high that it is important to represent these costs in the market and to provide efficient price signals for firm gas supplies, alternative fuel sources and demand response.[15]

While the NYISO proposal is a critical first step because generators cannot and should not be forced to provide service at a loss based on an outdated bid cap, it is also the case that to make generators whole through cost-based uplift payments will have unnecessary and irreparable negative impacts on the NYISO market. EPSA addressed this pressing generic market concern in comments filed pursuant to the FERC technical conference on organized capacity markets in the Eastern RTOs held in September 2013,[16] explaining that Locational Marginal Prices ("LMPs") are artificially suppressed when grid operators call on resources through what is called uplift, a cost that is spread among load or other generators outside of the LMP mechanism. By definition, the resulting LMPs when this occurs understate the amount of revenue necessary to serve the system because the LMPs do not include the cost of taking all of the actions actually taken in the name of reliability but paid via uplift

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[15] Younger Affidavit at P 15.

[16] *See* Comments of the Electric Power Supply Association at 12, Docket No. AD13-7-000, (filed Jan. 8, 2014) *available at* www.epsa.org

instead. This significantly mutes the price signals including forward prices on which investment decisions are based, resulting in muted investment relative to what is required in a competitive market.

This waiver, in addition to those filed by PJM as referenced in these comments, highlights EPSA's concern that markets are not consistently sending price signals truly reflective of all actual market conditions, which was raised in EPSA comments in the context of the AD13-7 capacity market proceeding. The recent very high natural gas prices were not forecast, yet reflect an important and defensible generation cost of the marginal unit that should be part of the LMP. It is time to move past band aid fixes for persistent structural problems in these markets as EPSA has identified. To allow only for such a temporary fix here or in PJM, without directing both RTOs to develop long term solutions to end or replace the current offer caps (as PJM has committed to doing) would send a telling and very disfavorable messages to participants in these organized markets. As noted by PJM and echoed by EPSA, this would be a particularly egregious result in this instance in which extreme weather is impacting the cost of fuel utilized to ensure a reliable power system. More broadly, the outcomes in these similar NYISO and PJM proceedings will communicate whether competitive suppliers can rely on market principles or whether the economic integrity of wholesale markets remains threatened by excessive intervention.

Based on this fundamental economic tenet, as noted above PJM has responded to the same weather situation by proposing a two-pronged approach, asking for a temporary waiver of its tariff to allow for cost-based make whole payments to generators in the immediate term (which was approved by the Commission on Friday, January 24). Additionally, for the near term (i.e., the remainder of this winter), PJM requested a waiver of its current offer-price cap rule to allow sellers submitting cost-based offers to base those offers on their marginal costs even if that results in offer prices over the current $1000/MWh cap. Critically, those permissible above cap offers will set the market price in PJM. PJM explains,

> This filing…will ensure not only that generators submitting *cost-based* offers can recover their marginal costs of sales into PJM's energy market, but also that the price in that market will correctly reflect the marginal costs of those sellers when they are needed to serve PJM loads. That principle—basing clearing prices on the costs of cleared sell offers—is fundamental to PJM's energy market design, and that principle should not be set aside, even for an interim period. To the contrary, it is especially critical to honor that principle at the very times, such as experienced this winter, when seller costs are high. There is no question that fuel costs are a legitimate marginal cost of generation, and there also is no question that generators that have had to purchase natural gas on the spot market this winter have at times faced extremely high costs for that gas. Consequently, there is no sound basis for energy prices to ignore those costs.[17]

Importantly, PJM recognizes both the fundamental market principle at stake, and notes that "even for an interim period," that principle should not be set aside. This principle[18] and the need to abide by it even under unexpected conditions applies equally to the NYISO market.

[17] PJM Cost-Based Offers Filing at 3-4.

[18] *Commonwealth Edison Co*., 113 FERC ¶ 61,278 at P 43 (2005), "[T]his pricing methodology is known as the 'single clearing price' method and has the benefit of encouraging all sellers to place bids that reflect their actual marginal opportunity costs. . . . The single price method has been proposed and found to produce just and reasonable rates for all the energy and ancillary service markets currently operated by the independent system operators and regional transmission organizations under our jurisdiction."

While the NYISO's Petition has been submitted to address an immediate concern, resolving that concern even in on a temporary basis should not be allowed to undercut the fundamental approach for economic dispatch. Therefore, the Commission should direct the NYISO to allow bids above the cap to determine the market clearing price for this winter, and further direct the ISO to work with market participants on a longer term solution.

Therefore, the Competitive Suppliers support the comments and suggestions offered by IPPNY in this proceeding, as well as the economic justification underlying those comments submitted by Mark D. Younger as an attachment to IPPNY's comments.

III. CONCLUSION

WHEREFORE, the Competitive Suppliers respectfully request that the Commission grant the requested waiver through March 31, 2014 with the condition that the NYISO allow above Bid Restriction offers to set the market

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Order No. 755, Frequency Regulation Compensation In The Organized Wholesale Power Markets, 137 FERC ¶ 61,064 at P 99 (2011), "The Commission finds that paying to all cleared frequency regulation resources a uniform clearing price that includes the marginal resource's opportunity costs is just and reasonable. Accordingly, this Final Rule requires that all RTOs and ISOs with centrally-procured frequency regulation resources must provide for such opportunity costs in their tariffs. Further, this uniform clearing price must be market-based, derived from market-participant bids for the provision of frequency regulation capacity. As commenters recognize, contrary market pricing rules would consistently result in artificial and inaccurate prices that do not include the total cost of reserving regulation capacity. In addition, paying an out-of-market unit-specific opportunity cost, rather than a uniform clearing price, can result in the market basing the commitment of regulating units on bids that do not reflect the true cost of providing capacity, potentially leading to committing units with higher costs than other units not committed. By not paying a uniform clearing price, it is possible, for instance, to dispatch a unit with relatively low explicit capacity costs but very high opportunity costs, rather than a lower-cost unit which has relatively higher explicit capacity costs but low opportunity costs. This can result in distorted investment and entry decisions by market participants. Paying to all cleared frequency regulation resources a uniform price that includes opportunity costs will ensure that all appropriate costs are considered and will send an efficient price signal to current and potential market participants. This will also be consistent with long-standing Commission policy approving uniform clearing prices. [FN 158]" price for this winter. Additionally, the Commission should direct to the ISO to work with market participants on a long term solution which removes the Bid Restriction or raises it sufficiently to allow for generator marginal costs during all reasonable conditions.

Respectfully submitted,

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Dated: January 29, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., January 29, 21014.

NEBagot

Nancy Bagot, VP of Reg. Affairs