

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System                    )  
Operator, Inc.                                        )     Docket No. ER09-1682-000

**MOTION TO INTERVENE AND COMMENTS OF THE  
ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214 (2008), the Electric Power Supply Association (EPSA)<sup>1</sup> respectfully files this motion to intervene and comment in the above-captioned proceeding. On September 4, 2009, the New York Independent System Operator, Inc. (NYISO), filed with the FERC, pursuant to Section 205 of the Federal Power Act (FPA) and Sections 1(b) and 3.2.3 of the NYISO's Market Mitigation Measures (MMM), a request for authority to apply prospectively new market power mitigation rules (New Mitigation Rules) to three generators<sup>2</sup> bidding into the NYISO's Day-Ahead Market (DAM) (September 4 Filing).<sup>3</sup> The

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<sup>1</sup> The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

<sup>2</sup> The NYISO does not identify the three generators in its public filing and requests confidential treatment for the generators' identities, bidding behavior, reference levels and related communications between the NYISO and the generators.

<sup>3</sup> The NYISO requested waiver of the 60-day prior notice period set forth in Section 205(d) of the FPA so that the proposed New Mitigation Rules, which are set forth in proposed Rate Schedule Market Mitigation No. 1 (Rate Schedule M-1), attached to the September 4 Filing as Attachment A, could go into effect on an expedited basis on September 8, 2009, one business day after the date of its September 4 Filing. The NYISO stated it would begin applying the New Mitigation Rules to the three generators on September 8 "unless it is instructed to do otherwise by the Commission." The NYISO further noted as follows, "[b]ecause Rate Schedule M-1 will only apply to individual Generator guarantee payments, should the Commission later determine it must

NYISO claims that the three generators' bidding behavior reflects an exercise of market power and departs significantly from conduct that would be expected under competitive market conditions.

The NYISO states that the three generators were submitting bids into the DAM that did not clear that market. Although their bids were not accepted day ahead on the basis of economics, the NYISO states it committed the three generators for reliability purposes because each of the generators is consistently the only alternative for resolving a particular reliability concern. According to the September 4 Filing, the three generators have each received guarantee payments that exceed the "100% increase in guarantee payments" mandatory filing threshold specified in Section 3.2.3 of the NYISO's MMM.

The NYISO requests waiver of the six month limit on the duration of mitigation measures provided in Section 4.7 of the MMM. The NYISO requests that the New Mitigation Rules remain in effect until the ISO's stakeholder governance process develops new mitigation measures that would apply to the potential exercise of market power by any generator outside of the New York City Constrained Area when it is the sole unit available to meet a reliability need.

## **I. INTERVENTION AND COMMUNICATIONS**

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible

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reject the NYISO's proposed rate schedule, the NYISO will be able to retroactively "undo" any mitigation it has imposed." September 4 Filing at 4.

facilities serving global power markets. EPSA seeks to bring the benefits of competition to all power customers.

Many of EPSA's member companies provide energy in the NYISO's energy, capacity and ancillary services markets and may become subject to the proposed mitigation rules that are the subject of this proceeding. EPSA member companies are also active participants in the various NYISO stakeholder processes. Further, EPSA and its members have been and continue to be active in many of the Commission's ongoing proceedings on NYISO issues. Accordingly, EPSA has a direct and substantial interest in the outcome of this proceeding that cannot be adequately represented by any other party and allowing EPSA to actively participate in this proceeding would be in the public interest.

All pleadings, correspondence and other communications concerning this proceeding should be directed to:

Nancy Bagot, Vice President of Regulatory Affairs  
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## **II. COMMENTS**

EPSA has had the opportunity to review and supports in principle the Independent Power Producers of New York, Inc. (IPPNY) Motion to Intervene and Comment in this proceeding.<sup>4</sup> EPSA generally concurs with IPPNY that: (1)

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<sup>4</sup> Motion to Intervene and Comments of Independent Power Producers of New York, Inc. (September 25, 2009) (IPPNY Filing)

the Commission should specify in its ruling on the September 4 Filing that it is not prejudicing or in any way predetermining the outcome of the stakeholder process that will address whether and, if so, how new mitigation rules should be applied to all generators located outside of New York City when they are the sole units that are available to be committed for reliability purposes; (2) if the Commission approves the New Mitigation Rules, it should order the NYISO to revise the consultation time frames in Rate Schedule M-1 to be consistent with the consultation time frames in the existing MMM; and, (3) if the Commission approves the New Mitigation Rules, it should reject the NYISO's request for waiver of the six month limit on the duration of mitigation measures (provided in Section 4.7 of the MMM) and order the NYISO to develop, in consultation with its market participants, rules for all generators that are located outside of New York City when they are the sole unit that is available to be committed for reliability purposes and such rules must be filed within 120 days of the effective date of the New Mitigation Rules.

Further, EPSA generally concurs with the IPPNY recommendation that, within the stakeholder process, there must be resolution of the underlying failure of the NYISO's software to model these reliability constraints appropriately so that they may be reflected through the clearing prices.<sup>5</sup> As the IPPNY filing discusses, among other things, correcting this software flaw would avoid the need for guarantee payments in the first instance and, concomitantly, the proposed New Mitigation Rules.

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<sup>5</sup> IPPNY Filing at 5-6.

### III. CONCLUSION

WHEREFORE, EPSA respectfully requests that the Commission grant its timely motion for leave to intervene, as set forth above, and consider EPSA's comments in rendering a decision in this proceeding.

Respectfully Submitted,



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Sharon Theodore, Director of Regulatory Affairs  
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September 25, 2009

**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., September 25, 2009.

A handwritten signature in cursive script that reads "Nancy Bagot".

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Nancy Bagot, VP of Reg. Affairs