

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

**New York Independent System Operator, Inc. )      Docket Nos. ER14-1138-000**

**MOTION TO INTERVENE AND COMMENTS  
OF  
NATIONAL ENERGY MARKETERS ASSOCIATION**

Pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214, the National Energy Marketers Association (NEM) hereby submits this Motion to Intervene and comments in the above-captioned proceeding. In support of this filing, NEM offers the following:

**I.      PERSONS TO BE SERVED**

Pursuant to 18 C.F.R. Section 385.203(b)(3), the following persons should be included on the official service list in these proceedings, and all communications, notices, pleadings, orders and other documents concerning this matter should be addressed to them:<sup>1</sup>

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<sup>1</sup> Waiver of Rule 203 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.203) is requested to the extent necessary to permit the inclusion on the service list of all parties listed herein.

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## **II. DESCRIPTION OF INTERVENOR**

NEM is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.<sup>2</sup> Many of NEM's members participate in the retail power markets of New York State.

## **III. MOTION TO INTERVENE**

In its January 22, 2014 Petition For Temporary Waivers, Request For Shortened Comment Period, And Request For Expedited Commission Action By January 31, 2014 (Petition), the New York Independent System Operator, Inc. (NYISO) requested waivers

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<sup>2</sup> This document reflects the views of the National Energy Marketers Association and does not necessarily reflect the views of any specific member of the Association.

of Sections 21.4 and 21.5 of its Market Administration and Control Area Services Tariff (Services Tariff) to allow the NYSIO to compensate Generators whose variable costs exceed the \$1000/MWh Bid Restriction for Incremental Energy and Minimum Generation. Many of NEM's members are registered as energy service companies with the New York State Public Service Commission and provide electric supply to a large portion of the retail electricity customers in New York State. In order to provide electricity to their customers, they also participate in the electricity markets administered by the NYISO and will be affected by, the outcome of this proceeding. See 18 C.F.R. Section 385.214(b)(2)(ii)(A). Moreover, because no other party exclusively represents its interests, NEM will not be adequately represented by any other party to this proceeding. See 18 C.F.R. Section 385.214(d)(1)(iii).

#### **IV. COMMENTS OF NEM**

In the Petition, NYISO asserts that the \$1000/MWh Bid Restriction must be increased because the extreme winter weather has driven natural gas market conditions to previously unseen levels. The higher natural gas prices that have occurred under these conditions have increased certain gas-fired Generators' costs above the \$1000/MWh Bid Restriction, leaving them in the position of not being able to recover all of their verifiable variable costs. On page 2 of its Petition, NYISO maintains that waiving the \$1000/MWh Bid Restriction so that it can consider Incremental Energy Bids and Minimum Generation Bids that exceed this amount is necessary to "protect the reliability of the New York State Power System."

In terms of compensating Generators for these costs, NYISO is requesting that it be able to make a Bid Production Cost Guarantee (BPCG) payments to Generators based

on their verifiable costs in excess of \$1000/MWh from January 22, 2014 through February 28, 2014. These costs will be passed on to Market Participants in New York State through Rate Schedule 1 of the NYISO OATT. The Petition states that the requested waivers will not have undesirable consequences, such as harming the legitimate interests of third parties. This is based on the incorrect assumption that all Market Participants have the ability to recover the incremental costs associated with Rate Schedule 1 charges or uplift. Energy supply companies that sell electricity to retail customers in New York State (ESCOs) cannot always recover these costs from their customers. The undesired consequence is that many ESCOs have difficulty passing through charges, as discussed in more detail below. The net result is that the problem of not being able to recover these very legitimate costs simply gets shifted from one Market Participant (generators) to another Market Participant (suppliers). The mechanism to recover these costs already exists in the setting of the Locational Based Market Prices (LBMP) in markets administered by NYISO. It should be applied to this situation for the legitimate costs generators incur above the Bid Restriction, and not through uplift. ESCOs can manage costs that are allocated in this fashion.<sup>3</sup> Further, with respect to the proposed BPCG, the Petition does not specify the location of customers that will be asked to fund the supplemental payments under Rate Schedule 1. Since NYISO has

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<sup>3</sup> Please note that PJM has made two filings with the Commission, the first request for similar relief on a short term basis as NYISO in this docket, and a second which NEM supports that requests proper recovery for legitimate generation costs through LBMP, although their short term solution is equally as damaging to ESCOs.

indicated that this is a problem for the New York State Power System it could ask customers across the entire state to fund these supplemental payments. Given the near term potential for the conditions to repeat themselves, NYISO requests a shortened comment period and expedited action by January 31, 2014.

NEM does not object to the principle that Generators be given the opportunity to recover the actual costs they incur to operate and supports the filing in that respect. However, NEM also believes that the filing should be accepted subject to the conditions that (i) the NYISO should be required to use the legitimate generator offers that are greater than \$1,000/MWh, to set the LBMP, provided that the NYISO verifies that these costs are legitimate; or (ii) if the above is not possible, that the NYISO specify that the supplemental payments being recovered under Rate Schedule 1 of the NYISO OATT only be collected from energy load zones where they are incurred; and (iii) the NYISO make a filing with the Commission on or before February 10, 2014 that eliminates the use of BPCG payments to compensate Generators for these supplemental payments and allows Incremental Energy offers in excess of \$1,000/MWh to set prices in its Day-Ahead or Real-Time Markets, or provide a detailed explanation as to why it cannot do so.

NYISO introduces the fundamental cause of the problem by referencing the high prices for day-ahead natural gas at the Transco Z6 NY hub for January 22, 2014. It notes that the prices were more than \$120/MMBtu. It also notes in footnote 6 of the Petition that Transco Z6 NY is the natural gas pipeline index price that determines the natural gas price for Generators in and around New York City. The costs for natural gas across New York State are not similar by any stretch so it is critical that if the only mechanism for Generators to recover these costs is through Rate Schedule 1 uplift, they must be assigned

to customers in and around New York City and not on a state-wide basis. This may be the NYISO's intention but it should specify this before load serving entities, such as ESCOs that have customers in the other parts of New York State are assigned costs. Customers in Up-State New York for example should not be asked to shoulder part of the electricity supply costs that are incurred to serve electricity customers in the New York City area, especially when the natural gas price differences are so dramatic.

A comparison of Transco Zone 6 prices to prices for the Tennessee zone 4-200 leg highlights the extreme discrepancy in the regional markets within New York State. Natural gas supplies for portions of Up-State New York are based on the Tennessee zone 4-200 index. The midpoint day-ahead price for January 22, 2014 for this index was \$4.87/MMBtu.<sup>4</sup> This is approximately \$115.13/MMBtu less than the Tennessee Zone 6 pricing. Thus, the conditions in the natural gas markets that require the waiver and the supplemental payments to Generators in and around New York City are not the same as the rest of the state, making it fundamentally unfair and not consistent with cost causation principles of ratemaking to force all customers to absorb Transco Zone 6 prices in their electricity bills.

Notwithstanding the allocation issue discussed above, the far better way to address this problem is to allow Incremental Energy offers in excess of \$1000/MWh to set prices in the Day-Ahead or Real-Time Markets. This would be consistent with the fundamental principles of the locational based marginal pricing that gave rise to markets administered by NYISO. In addition, ESCOs cannot always pass on uplift to their customers and often are forced to absorb these costs. Because customers can and do

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<sup>4</sup> Gas Daily, Platts McGraw Hill Financial, January 22, 2014, page 2.

migrate among ESCOs or even back to basic utility service, it is often difficult for them to collect these costs. If these costs are included in the Day-Ahead or Real-Time prices, ESCOs can flow them through their variable priced customers. For fixed priced customers of ESCOs, who paid a premium for a hedge against high electricity prices, they are protected against these costs and ESCOs are protected assuming they implemented the appropriate hedges for their portfolios. Regardless, the efficient operation of wholesale and retail energy markets requires that these costs be reflected in the market pricing mechanisms.

V. CONCLUSION

For the foregoing reasons, NEM respectfully requests that the Commission grant its Motion to Intervene, grant it full party status in this proceeding, and require the NYISO to allow the verifiable offers in excess of \$1000/MWh to set the market clearing prices, or if that is not possible, clarify that the BPCG costs will be assigned to customers in the regions where they are incurred.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion To Intervene and Comments of National Energy Marketers Association has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Indianapolis, Indiana, this 29th day of January, 2014.

/s/ Steven M. Sherman

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