

97 FERC ¶ 61, 218  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, Linda Breathitt,  
and Nora Mead Brownell.

H.Q. Energy Services (U.S.), Inc.

Docket No. EL01-19-000

v.

New York Independent System Operator, Inc.

PSEG Energy Resource & Trade LLC

Docket No. EL02-16-000

v.

New York Independent System Operator, Inc.

ORDER ON COMPLAINTS

(Issued November 20, 2001)

On December 12, 2000, H.Q. Energy Services (U.S.), Inc. (HQUS) filed a complaint against the New York Independent System Operator (NYISO) in which it petitions the Commission for an order directing NYISO to restore the original real-time market-clearing prices for energy on May 8, 2000. Similarly, on November 5, 2001, PSEG Energy Resources & Trade LLC (PSEG) filed a complaint against NYISO to restore the original real-time market-clearing prices for May 9, 2000. On May 12, 2000, NYISO recalculated these clearing prices and claims that it was authorized to do so under its Temporary Extraordinary Procedures (TEP).

As explained below, we find that NYISO had the authority to act in the manner it did, and we deny the complaints. This order benefits customers by providing price certainty to NYISO market participants.

## I. Background

### A. The TEP

The TEP procedures were originally designed to address market design flaws and transitional abnormalities encountered during the first 90 days of NYISO operations.<sup>1</sup> The Commission has since granted five extensions of the NYISO's TEP authority.<sup>2</sup> Under the TEP, a Market Design Flaw is defined as a market structure, market design, or implementation flaw which would result in market outcomes that would not be produced in a workably competitive market. Examples of market outcomes that are a result of a market design flaw are the following: (1) dispatch of higher-priced resources when lower-priced resources are available; (2) situations in which NYISO procedures would create a shortage of supply in actual operations when sufficient supply would have otherwise been available; or (3) the derivation of prices that are significantly inconsistent with actual system operations. A Transitional Abnormality is defined as a situation in which systemic equipment malfunctions, including telecommunications failures or widespread and massive transmission or equipment outages, prevent the dispatch of the system as intended by the market rules. The TEP stipulate that Market Design Flaws and Transitional Abnormalities do not include outcomes produced by normal market behavior; that is, situations in which prices rise to levels based on demand and supply levels determined by efficient competition in periods of relative scarcity, or fall to levels based on demand and supply levels determined by efficient competition in times of relative surplus. The primary issue in this case is whether NYISO improperly used the TEP, *i.e.*, whether the prices cleared on May 8 were the result of the proper functioning of the NYISO market and thus should not have been corrected, or whether they were the result of a market design flaw or transitional abnormality properly addressed under the TEP.

Upon detection of a Market Design Flaw or Transitional Abnormality, the NYISO is authorized by the TEP to implement an Extraordinary Corrective Action (ECA) to

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<sup>1</sup>New York Independent System Operator, Inc. 88 FERC ¶ 61,228 (1999).

<sup>2</sup>New York Independent System Operator, Inc., 90 FERC ¶ 61,310 (2000); New York Independent System Operator, Inc., 92 FERC ¶ 61,015 (2000); New York Independent System Operator, Inc., 93 FERC ¶ 61,187 (2000); New York Independent System Operator, Inc., 95 FERC ¶ 61,185 (2001); and New York Independent System Operator, Inc., 97 FERC ¶ 61,095 (2001).

address either circumstance. The TEP permit NYISO to take two types of ECAs: (1) notifying the market participants that a shortage of one or more energy or other products may develop and requesting that market participants submit bids that provide greater operating flexibility for such products; or (2) recalculating LBMPs or other clearing prices as they should have been but for the Transitional Abnormality or Market Design Flaw, and substituting the recalculated LBMPs or other clearing prices for the prices reflecting the Transitional Abnormality or Market Design Flaw. The TEP require that NYISO post notice to market participants of a proposed ECA as soon as possible. If NYISO cannot post such notice before the proposed ECA is to take effect, it is permitted to post notice up until, but no later than, 5:00 P.M. on the calendar day following the day in which the hour occurs for which LBMPs or other clearing prices would be affected by the contemplated ECA. In addition, NYISO must post a description of the proposed ECA within 5 calendar days after the notice is posted.

B. The events of May 8, 2000 and after

On May 8, 2000, the NYISO Control Area experienced high temperatures that exceeded those projected in NYISO's day-ahead forecast. NYISO's procurement of energy in the Day-Ahead Market was thus insufficient to meet the high demand, and NYISO was forced to call upon a significant amount of generation resources offered in the Real-Time Market to maintain reliability. However, generation capacity on that day was scarce because a number of generation units in the NYISO Control Area were on maintenance outages, and because of import curtailments arising from a need for that energy in surrounding control areas.<sup>3</sup> As a result, NYISO was forced to dispatch the last available unit internal to the Control Area that was offered into the Real-Time Market, the Blenheim-Gilboa pumped storage hydroelectric unit (Blenheim-Gilboa), which is operated by the New York Power Authority (NYPA). NYISO dispatched Blenheim-Gilboa at its bid of \$3,487/MWH, which was the highest accepted bid, thereby setting the market-clearing price for a number of hours that day.

On May 12, 2000, NYISO concluded that the market-clearing price for May 8 had resulted from a market design flaw and, invoking its authority under the TEP, implemented an ECA that reduced the \$3,487/MWH clearing price to \$331/MWH.

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<sup>3</sup>ISO-NE, for example, experienced energy shortages and high prices also, which are the subject of a complaint addressed in a parallel proceeding in Docket Nos. EL00-99-000, EL00-100-000, and EL00-112-000.

NYISO explained that the Blenheim-Gilboa unit was an Energy Limited Resource<sup>4</sup> and that NYPA had attempted to manage its dispatch by submitting an artificially high bid. NYISO arrived at the recalculated price of \$331/MWH by setting it at the highest bid accepted for that time period submitted by a unit that was not an ELR unit. Thus, NYISO treated Blenheim-Gilboa as if it were not the marginal unit, or highest bid accepted, but rather as if NYPA's bid for the energy had been at or below the highest bid of a non-ELR unit. NYPA was paid the recalculated clearing price for the energy Blenheim-Gilboa provided.

In the ECA, NYISO notified market participants that, from that point on, ELR units would be allowed to designate all or a portion of their bids as out-of-merit, resource-limited blocks.<sup>5</sup> Thus, if in real-time operations an ELR unit needed to be dispatched into the upper portion (near maximum capacity), or resource-limited block, of its bid, it would not set the market-clearing price. Instead, the ELR unit would receive the price that would have cleared had the ELR unit not been dispatched into that range.

## II. HQUS's Complaint

### A. The Complaint

HQUS argues that NYISO improperly invoked its TEP authority on May 12 because the high prices of May 8 were a result of scarcity, not a result of a market design flaw that would be covered under the TEP authority. HQUS notes that the acceptance of Blenheim-Gilboa's bid and dispatch were consistent with NYISO's market rules. It argues that bidding in this manner was a customary business practice within NYISO in which market participants use high bids to limit a generator's availability unless system reliability requires the unit to be dispatched at its highest level. HQUS also argues that NYISO knew that Blenheim-Gilboa consistently bid in this manner, yet it took no action

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<sup>4</sup>Energy-limited resources are defined in Section 2.49 of NYISO's Services Tariff as "capacity resources that, due to design considerations, environmental restrictions on operations, cyclical requirements, such as the need to recharge or refill, or other non-economic reasons are unable to operate continuously on a daily basis, but are able to operate for at least four consecutive hours each day."

<sup>5</sup>Out-of-merit generation is defined in Section 2.135 of NYISO's Services Tariff as "generators producing at a different level of output than they would produce in a dispatch to meet load which was not security constrained. Out-of-merit generation occurs to maintain system reliability or to provide ancillary services."

against such bidding, thus indicating that the strategy was acceptable. In addition, HQUS notes that the TEP authority does not cover situations in which prices rise and fall based on demand and supply levels in periods of relevant scarcity or relative surplus. HQUS contends that the high prices of May 8 were a result of a scarcity of resources.

Second, HQUS argues that the TEP do not give NYISO authority to make retroactive changes to its market design and rules. It bases its argument upon the specific language of the TEP, contending that there is no indication that the TEP were intended to have anything but prospective effects. As evidence, HQUS notes that a market design flaw is defined under the TEP as something that would - rather than did - cause certain results. Moreover, HQUS contends that the specific examples cited in the TEP of market design flaws are cases when the system malfunctioned or design errors led to unintended results, and thus, that the TEP do not cover the types of problems that would be remedied by routine tariff amendments, as HQUS argues is the case for any shortcomings in the bidding process. Finally, HQUS argues that, under the TEP, NYISO is supposed to post notice of a market design flaw before bids are submitted for a given time period. At worst, if NYISO has already detected the market design flaw, but cannot give advance notice, it must post the notice as soon as possible. HQUS notes that there is no provision for NYISO to post notice to retroactively apply to a period when it was not yet aware of a market design flaw. HQUS argues that NYISO's action constitutes a retroactive rate change because NYISO revised how the LBMP is calculated by excluding certain bids legitimately offered by a generator and properly accepted by NYISO and because the rate change was not announced until May 12, four days after the prices occurred.

#### B. Notices, Interventions and Protests

Notice of HQUS's complaint was published in the Federal Register, with interventions and protests due on or before January 2, 2001. Protestors and intervenors are listed in the Appendix.

#### C. Comments in support of HQUS's complaint

A number of intervenors support HQUS's complaint on the grounds that allowing NYISO's price correction under the TEP to stand would be harmful to the market. Sithe Power Marketing, the Electric Power Supply Association (EPSA) and the Independent Power Producers of New York (IPPNY) argue that the May 8 price correction creates uncertainty in the marketplace and hinders the development of a workably competitive market by blunting price signals that would encourage new development, by reducing incentives for Load-Serving Entities to hedge, and by eroding trust in NYISO. Enron

Power Marketing states that NYISO's actions will produce even higher prices in the long run because market participants cannot manage risk on a forward basis, and may be penalized when they do, as long as NYISO remains free to change rules retroactively.

Several intervenors support Hydro-Quebec's complaint on the grounds that NYISO was not properly authorized under the TEP to make the price correction of May 8. Orion Power and Southern Energy Bowline agree with HQUS that scarcity determined the prices of May 8, and that the TEP were not properly invoked. Orion Power states that the TEP should not have been used because the software did not make a mistake in calculating the market clearing price, nor was there any other source of cheaper generation available, nor was there any data input error. Southern Energy Bowline argues that the cause of the high price was scarcity and notes that if Blenheim-Gilboa had not been available for dispatch, NYISO would have had to look for the next unit in the dispatch queue, and the clearing price would have been higher.

Orion Power and Southern Energy also argue that NYISO's price correction should be overturned because NYISO violated the terms of the TEP in setting the adjusted market price. They claim that NYISO's prices are illegitimate because NYISO had no reasonable way to recalculate the market price; Orion Power states that all resources with a price lower than that of Blenheim-Gilboa's bid had already been fully committed and dispatched and that NYISO's method of setting the market-clearing price based upon a unit that had already been dispatched was unreasonable.

Southern Energy argues that the prices originally determined by the market should be allowed to stand, consistent with Commission precedent and the filed rate doctrine. Orion Power notes that in San Diego Gas & Electric,<sup>6</sup> the Commission ruled that it has no authority to change past rates, even if those rates are later found to be unjust and unreasonable. Southern Energy also argues that the price correction violates Commission precedent with regard to NYISO's TEP authority. Southern Energy claims that the Commission in New York Independent System Operator<sup>7</sup> clarified that NYISO does not have the authority to change prices simply because it doesn't like them, and in New York Independent System Operator,<sup>8</sup> clarified that NYISO does not have the authority to retroactively recalculate market-clearing prices.

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<sup>6</sup>93 FERC ¶ 61,121 (2000).

<sup>7</sup>90 FERC ¶ 61,320 (2000).

<sup>8</sup>90 FERC ¶ 61,317 (2000).

Southern Energy also notes that ISO-New England (ISO-NE) chose not to adjust the high prices it had on May 8. Southern Energy argues that the events should be treated consistently by both ISOs in order to promote closer coordination between the two ISOs.

D. Comments opposed to HQUS's complaint

The Public Service Commission of New York (PSCNY) and Member Systems disagree with HQUS's argument that the high prices of May 8 were the result of scarcity. They argue that it was the result of a market design flaw and, as such, that it was clearly within NYISO's TEP authority to correct those prices. Member Systems contend that NYPA's bid did not reflect the price required by the bidder under the circumstances, but rather was submitted with the intent to prevent Blenheim-Gilboa from being dispatched. PSCNY argues that NYISO's software failed to account properly for certain commitment and dispatch decisions that NYISO normally handled manually, off-line, as it usually did with ELR units. PSCNY notes that efficient commitment and dispatch of ELR units requires deciding for what four hours they should be operated and that the NYISO software did not have the ability to make this decision efficiently.

PSCNY and Member Systems argue that NYISO's price correction does not violate Commission precedent and the filed rate doctrine. PSCNY argues that NYISO's filed rate is a formula rate that is designed to yield prices close to a generator's marginal costs, and that Blenheim-Gilboa's bid did not reflect any costs or the interplay of supply and demand. PSCNY states that resource-limited energy should not cost astronomically high prices unrelated to marginal or opportunity costs. Member Systems and PSCNY also argue that the TEP are a part of NYISO's filed rate and that the Commission expected NYISO to recalculate unreasonable prices that resulted from design flaws to price levels consistent with the approved market design.

PSCNY and Member Systems note that despite NYISO's intervention, the corrected clearing price was still above HQUS's bid, so that HQUS still made a profit. They claim that HQUS should not be entitled to receive a windfall at the expense of consumers, as HQUS would if the Commission granted the relief. Member Systems notes that no supplier, other than NYPA, received less than its bid.

E. NYISO's Answer

NYISO's answer includes an affidavit from NYPA. Therein, NYPA states that it used a strategy of bidding very high in order to avoid dispatch of the Blenheim-Gilboa

unit under normal system conditions. NYPA states that its expectation was that normal system conditions for early May would permit it to refill the reservoirs of the Blenheim-Gilboa unit by avoiding energy production. NYPA states that, because Blenheim-Gilboa was necessary to preserve system reliability on May 8, it would have preferred to sell that energy at a lower price than its bid, but was prevented from reflecting that in its bid. NYPA claims that NYISO's bidding protocols in effect at the time did not enable NYPA to distinguish in its bid between normal system conditions and conditions under which dispatch of the Blenheim-Gilboa unit would be necessary to preserve reliability. NYPA supports NYISO's price recalculation.

NYISO argues that its price correction of May 8 was consistent with its TEP authority because the cause of NYPA's high bid for Blenheim-Gilboa was a market design flaw, not scarcity. NYISO contends that it was limitations in the NYISO bidding procedures that forced NYPA to offer those units at artificially high prices. NYISO further states that the resulting prices would not have arisen in a workably competitive market because a workably competitive market would not force sellers to bid at prices that are higher than the seller is willing to offer, and that bear no relationship to the seller's marginal, opportunity or other costs.

NYISO further claims that the TEP authority was correctly invoked because the definition of a market design flaw includes the dispatch of higher-priced resources in the market when resources with lower-priced bids are available and not selected to operate, and there is no valid reason for not operating the lower-priced resource. NYISO claims that NYPA would have bid the energy in at a lower price and thus, that a resource was available at a lower price, but was not taken because of limitations in the bidding process.

NYISO contends that its market-based rate formula, as clarified by the Commission in NRG Power Marketing, Inc. v. New York Independent System Operator<sup>9</sup>, contemplates the determination of market-clearing prices on the basis of a pricing methodology under which the price of energy at each location in the New York control area is equivalent to the cost to supply the next increment of load at that location (i.e., the short run marginal cost). NYISO states that the May 8 ECA did not change this formula, and thus, was not a retroactive rate change.

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<sup>9</sup>91 FERC ¶ 61,346 (2000).

NYISO disagrees that its recalculation of the May 8 prices violated the Filed Rate Doctrine. NYISO argues that its filed rate is not a static number, but rather a formula rate, which must be applied as intended, using the correct inputs. NYISO contends that on May 8, the formula was not applied as intended because the correct inputs were not used. In addition, NYISO contends that the TEP themselves are a part of its tariffs, and thus a part of its filed rate.

In addition, NYISO indicates that granting HQUS's relief to re-set the market-clearing prices would be difficult to implement. NYISO states that each set of market-clearing prices would have to be run through NYISO's full billing and settlement systems in order to determine the net and absolute imbalances in energy schedules that were covered by the various participants in the May 8 real-time market.

## F. Discussion

### 1. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), the notices of intervention and timely, unopposed motions to intervene serve to make the intervenors that filed them parties to the proceedings in which they intervened. Given their interests in the proceedings, and the absence of undue prejudice or delay, we will grant the late-filed motions to intervene.

### 2. NYISO's authority to correct market design flaws under the TEP

As noted above, under the TEP, a market design flaw is defined as a "market structure, market design or implementation flaw giving rise to situations in which market conditions or the application of ISO procedures would result in inefficient markets or prices that would not be produced in a workably competitive market." NYISO is thereby authorized to use the TEP to address a market design flaw when the above-mentioned conditions are present, but not when high prices result from efficient competition in times of scarcity.

The evidence in the record, specifically the affidavit submitted by NYPA, the entity that submitted the bid that set the original market-clearing price, indicates that the bid was not based on scarcity. Indeed, it is undisputed that the bid actually reflected an attempt by NYPA to manage the dispatch of the Blenheim-Gilboa unit by bidding at a level high enough so that the unit would not be considered as a viable resource by the software NYISO uses to dispatch generation resources. Moreover, NYPA itself has

stated that it would have preferred to sell the energy of Blenheim-Gilboa at a lower price than its bid, but was prevented from reflecting this due to limitations in the bidding rules in effect at the time. We note that it was thus the existing bidding rules, or ISO procedures, that created an inefficient price by preventing NYPA from bidding the energy of the Blenheim-Gilboa unit in the manner NYPA states it would have preferred. We believe that the bidding rules' inability to allow pump storage units to reflect their operational constraints, and instead force such an entity to guess at a bid level that would be high enough to avoid dispatch, is a market design flaw. Therefore, on May 8, the NYISO's market design gave rise to a situation in which the application of the ISO's procedures resulted in prices for which NYISO was authorized to use the TEP to address this situation.

We note that other ISOs have also found it necessary to make changes to their market rules specifically to deal with the operational constraints faced by pump storage units. In its start-up period, ISO-NE had market design correction authority similar to that allowed NYISO under the TEP. ISO-NE used this authority to deal with pricing issues involving pump storage units.<sup>10</sup> PJM also makes special provisions for dispatching pump storage units under its market rules.<sup>11</sup>

Many intervenors oppose NYISO's recalculation of the prices as an illegal retroactive rate change not permitted by the TEP, the filed rate doctrine, or our precedent. We disagree. As we have clarified elsewhere, under the TEP, NYISO has the authority to correct incorrect prices that resulted due to the existence of a market flaw. Once the market flaw was identified by NYISO, it posted an ECA on May 12, 2000 notifying market participants that prices on May 8 and May 9, 2000 would be changed. NYISO also established a new market rule, to apply prospectively, which implements a revised

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<sup>10</sup>See ISO New England, 88 FERC ¶ 61,197 (1999); ISO-NE noted that 60% of its price corrections under Market Rule 15 were changes to reflect actual hydroelectric and pumped storage units.

<sup>11</sup>PJM does not rely solely on the levels of bids to determine dispatching decisions for such generating units. Section 1.10.2 of PJM's open access tariff provides that "market sellers offering energy from hydropower or other facilities with fuel or environmental limitations may submit data to the Office of the Interconnection that is sufficient to enable the Office of the Interconnection to determine the available operating hours of such facilities." Alternatively, PJM provides such units some control over their dispatch through self-scheduling (Section 1.10.3).

bidding mechanism for ELR units to prevent the recurrence of improper clearing prices being set due the existence of the market flaw.<sup>12</sup>

NYISO did not post notice that it was considering the ECA within the 24-hour period provided by the TEP. However, under the unusual circumstances presented here we will grant waiver of that provision. The NYISO was in its sixth month of operations and it, as well as other control areas in the Northeast, experienced record breaking temperatures that resulted in high loads for early May. NYISO was operating under emergency system conditions and was testing its system, including its market design and market rules, for the first time in this situation. We note that while NYISO did not provide notice of its intent to issue an ECA, NYISO did post the ECA within five days of May 8 and May 9 as contemplated under the TEP.<sup>13</sup> Moreover, the entity whose bid was changed has not objected and the complainant received its bid price. Accordingly, we will grant waiver in this limited circumstance.

We also do not find that Southern's reliance on prior Commission orders is relevant to the facts of the complaint addressed here. Citing a prior Commission order addressing an extension of NYISO's TEP authority, Southern states that the Commission clarified that NYISO does not have the authority to change prices simply because it doesn't like them. As discussed, NYISO is not changing the prices determined on May 8 and May 9 simply because it does not like them. The price changes were made under NYISO's authority under the TEP which provide that NYISO can correct prices that resulted from the existence of market flaws. Second, Southern's reliance on the Commission's statement that NYISO does not have the authority to retroactively recalculate market clearing prices, was in reference to the Commission's order approving NYISO's market mitigation measures in which the Commission determined all mitigation

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<sup>12</sup>Under the revised bidding mechanism, ELR units would be permitted to submit bids that define two operational ranges, one for normal operating conditions and a separate range for limited periods when dispatch of the unit is required to ensure the reliability of the grid. For the latter, when an ELR unit is dispatched into the resource-limited-block of their bid curve, NYISO will treat this as out-of-merit, and the price will not be set by the unit, but the unit will receive the price that would have prevailed had the unit not been dispatched into the resource limited block.

<sup>13</sup>Under the TEP NYISO has five days from the date of notice to post a description of the action it will take under the ECA. NYISO's actions met the overall timeframe for posting an ECA, but it did not meet the initial timeline for posting its notice of intent to issue an ECA.

must be prospective. The order cited by Southern does not address NYISO's authority under the TEP.

We recognize that this flaw occurred when parties were gaining their first practical experience with operation of NYISO's clearing mechanism during the first real test of the system under extreme system constraints. The TEP was in place for just these types of flaws. However, with the passage of time, we expect and our orders have reflected that NYISO should have less need for such market corrections and should have properly functioning and fully tested market design and rules.<sup>14</sup> We also expect NYISO to comply with its tariff and act within the time frames prescribed therein.

Intervenors take issue with the level at which the prices were recalculated. We find that the adjusted prices are reasonable and we will not direct NYISO to calculate an alternative price. Setting the price at the next-highest non-ELR bid is a reasonable proxy for the market price, since it has become clear that all ELR bids on that day, not just the one provided for Blenheim-Gilboa, may have been flawed because NYISO procedures prevented ELR units from reflecting the true price at which they wished to sell from their limited capacity.

Intervenors suggest that we should consider the fact that ISO-NE also experienced high prices on May 8, yet did not attempt to correct them, as a reason to grant HQUS's complaint. However, intervenors ignore the fact that ISO-NE did not have the authority to change bids due to market design flaws on May 8, 2000.<sup>15</sup> The difference in the effectiveness of the two authorities for the ISOs is directly due to their different start-up dates, as these "temporary authorities" were intended to cover their respective start-up periods.<sup>16</sup>

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<sup>14</sup>97 FERC ¶ 61,095 (2001)(Order extending and narrowing scope of TEP).

<sup>15</sup>ISO-NE's authority to use Market Rule 15 to adjust clearing prices for market design flaws expired on September 30, 1999. ISO New England, Inc., 89 FERC ¶ 61,209 (1999).

<sup>16</sup>ISO-NE commenced operations on May 18, 1999; NYISO commenced operations on November 18, 1999.

### III. PSEG's Complaint

#### A. The Complaint

In its complaint, PSEG maintains that NYISO violated its tariff and the Commission orders approving TEP authority by identifying a purported market flaw associated with bids submitted by an ELR, and by remedying this purported market flaw by repricing certain hourly clearing prices in a manner inconsistent with its tariff. PSEG alleges financial harm in the amount of \$668,000.

PSEG states that the hourly prices reported on NYISO's OASIS indicated price levels up to \$3000 per MW for certain intervals in the real time market for May 9, 2000, and that PSEG sold 200 MW of electricity imported into NYISO's market during certain hours on May 9. As a result of the exercise of NYISO's TEP authority, the price on May 9, 2000, for the hour beginning 13 through the hour ending 21 of the real time market was adjusted to a level of approximately \$350 per MWH.

PSEG argues that NYISO's finding of a market design flaw in connection with ELRs is invalid on its face because it erroneously assumes that the ELR bids could not reflect a scarcity premium in a workably competitive market and fails to demonstrate that the bid submitted by the ELR did not reasonably reflect its opportunity costs. PSEG further asserts that the bidding and dispatching features of the NYISO tariff, as they existed on May 9, 2000, allowed the ELR owner to convey the complex message that it would run the ELR unit for reliability purposes without setting the LMBP in the real time market. PSEG also maintains that NYISO's action was erroneous because it assumed that the inability of a single bidder to fully specify its bidding preferences, motivated by non-economic considerations, is a market design flaw. Finally, PSEG argues that even if the TEP was properly exercised to identify a market design flaw, the manner in which NYISO calculated the substitute price was inconsistent with the Commission's orders and the express provisions of its tariff.

Notice of PSEG's complaint was issued on November 6, 2001, with comments, protests, and interventions due on or before November 26, 2001.

#### B. Discussion

The Commission denies PSEG's complaint. There is no significant distinction between the factual situation involving PSEG and that discussed above involving HQUS. In both situations, a market design flaw resulted in an erroneous clearing price. The

Commission believes that it was appropriate that NYISO invoked its TEP procedures to correct prices that resulted from a market design flaw that prevented NYPA from structuring its bid to reflect the complex bid strategy it would have preferred. For the reasons set forth above in our discussion of HQUS's complaint, the Commission also believes that the method NYISO chose to recalculate the market clearing price is reasonable.

Further, PSEG waited approximately 18 months after the events in question before filing its complaint, and has not provided any reason for this delay. While NYISO's tariff does not have a specific provision which establishes a deadline for the filing of such a complaint, the Commission wishes to discourage such delay in the strongest way possible.

The Commission orders:

The complaints filed by HQUS and PSEG are hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

David P. Boergers,  
Secretary.

Appendix  
HQ Energy Services, Inc. v. New York Independent System Operator, Inc.  
EL01-19-000  
Intervenors

AES NY, LLC  
Central Hudson Gas & Electric Corp.  
Electric Power Supply Association, Independent Power Producers of New York, Inc.\*  
Enron Power Marketing, Inc.\*  
Indeck Companies  
KeySpan-Ravenswood, Inc.\*  
Member Systems\*  
Morgan Stanley Capital Group, Inc.  
NRG Power Marketing, Inc.  
Orion Power New York GP, Inc.\*  
PPL EnergyPlus, LLC  
PSEG Power LLC, PSEG Energy Resources & Trading LLC, PSEG Power New York,  
Inc.\*  
Public Service Commission of the State of New York\*  
Sith Power Marketing, LP\*  
Southern Energy Bowline, LLC, Southern Energy Lovett, LLC, Southern Energy NY-  
GE, LLC\*

\*Also filed Comments