

100 FERC ¶ 61, 028
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. EL01-19-001
v.
New York Independent System Operator, Inc.

PSEG Energy Resource & Trade LLC Docket No. EL02-16-001
v.
New York Independent System Operator, Inc.

ORDER ON REHEARING

(Issued July 3, 2002)

1. On November 20, 2001, the Commission issued an order in these proceedings,¹ which denied complaints filed by H.Q. Energy Services (U.S.), Inc.(HQUS) and PSEG Energy Resources & Trade LLC (PSEG) against the New York Independent System Operator (NYISO) in which they requested the Commission to direct NYISO to restore the original real-time market-clearing prices for energy on May 8, 2000, and on May 9, 2000, respectively. The order found that NYISO had authority to recalculate these clearing prices under its Temporary Extraordinary Procedures (TEP). Requests for rehearing of the order have been filed. For the reasons set forth below, the Commission denies rehearing. This order benefits customers by providing price certainty to NYISO market participants.

Background

NYISO's TEP Authority

¹97 FERC ¶ 61,218 (2001).

2. Under NYISO's TEP as it existed on May 8 and 9, 2000, 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. 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 addressed by the November 20 order was whether NYISO properly 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.

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

(1) notify 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) recalculate 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.

The Events of May 8-12, 2000

4. 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. 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. 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.

5. On May 9, 2000, the hourly prices reported on NYISO's OASIS indicated price levels up to \$3000 per MW for certain intervals in the real time market, and PSEG sold 200 MW of electricity imported into NYISO's market during certain hours on that day. As a result of the exercise of NYISO's TEP authority, the price on May 9 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 alleges financial harm in the amount of \$668,000.

6. 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. NYISO explained that the Blenheim-Gilboa unit was an Energy Limited Resource (ELR)² 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.

7. 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,³

²Energy-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."

³Out-of-merit generation is defined in Section 2.135 of NYISO's Services Tariff
(continued...)

resource-limited blocks. 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.

The November 20 Order

8. In denying HQUS's complaint, the Commission found that 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 NYPA's bid was not based on scarcity, but rather 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. The Commission further noted that NYPA 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, which were a market design flaw for which NYISO was authorized to use the TEP. In making these findings the Commission cited similar situations experienced by ISO-NE and PJM. The Commission also granted waiver of the provision of NYISO's TEP procedures that required NYISO to post notice, within 24 hours, that it was considering whether to issue an ECA concerning the prices of May 8 and 9. Further, the Commission found that NYISO's recalculation of the prices was not an illegal retroactive rate change not permitted by the TEP, the filed rate doctrine, or precedent.

9. In denying HQUS's complaint, the Commission recognized that NYISO's market 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 Commission stated that the TEP was in place for just these types of flaws, but with the passage of time, it was expected that NYISO should have less need for such market corrections and should have properly functioning and fully tested market design and rules, and that NYISO would comply with its tariff and act within the time frames prescribed therein. The Commission also found that NYISO was correct in setting the price at the next-highest non-ELR bid.

³(...continued)

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."

10. The Commission also denied PSEG's complaint, finding that there was no significant distinction between the factual situation involving PSEG and that involving HQUS. The Commission also found that, for the same reasons discussed in connection with the HQUS complaint, the method NYISO chose to recalculate the market clearing price is reasonable.

Discussion

Procedural Matters

11. The Commission-issued notice of the complaint filed by PSEG in Docket No. EL02-16-000 required that motions to intervene be filed on or before November 26, 2001. On December 20, 2001, Aquila Energy Marketing Corp. (Aquila) filed a motion to intervene out-of-time in this docket together with a request for rehearing of the November 20 Order. Aquila has not intervened in Docket No. EL01-19 concerning HQUS's complaint.

12. We will deny, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2001), Aquila's untimely motion to intervene in this proceeding for failure to demonstrate good cause warranting late intervention. In North Baja Pipeline LLC,⁴ the Commission stated that when late intervention is sought after the issuance of an order disposing of an application, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for the granting of such late intervention. Aquila has not met that burden here where it has attempted to intervene after issuance of the November 20 Order and the November 26 intervention due date. Consequently, we will also dismiss Aquila's request for rehearing. Because Aquila is not a party to this proceeding, it lacks standing to seek rehearing of the November 20 Order under the Federal Power Act (FPA) and the Commission's regulations.⁵ The Commission's denial of Aquila's motion to intervene and its dismissal of Aquila's request for rehearing is without prejudice to whatever rights Aquila has pursuant to the dispute resolution proceeding under NYISO's tariff which Aquila referred to in its pleading, and which also involves NYISO price corrections on May 8 and May 9, 2000.

⁴99 FERC ¶ 61,028 at 61,109-10 (2002).

⁵16 U.S.C. §§ 8251(a) (1994); 18 C.F.R. §§ 385.713(b) (2001).

13. Aquila also requests that the Commission hold in abeyance any further order regarding NYISO's issuance of the ECA concerning the events of May 8 and 9 under its TEP authority until the pending arbitration between Aquila and NYISO is completed. The Commission denies this motion. The Commission agrees with the argument made by NYISO in its answer to Aquila's motion to hold in abeyance that the existence of a collateral arbitration should not result in the delay of a Commission proceeding to determine the rights of parties who are not participating in that collateral arbitration.

14. Finally, PSEG asserts that it was error for the Commission to rule on its complaint before the noticed due date for interventions, protests, and answers to the complaint. The Commission rejects this argument. In the interest of administrative convenience and to bring regulatory certainty to market participants, the Commission chose to forego the additional input of parties opposing PSEG's complaint, who were the most likely to comment on PSEG's filing. A substantial record on the underlying facts in both Docket Nos. EL01-19 and EL02-16 had already been compiled and PSEG cannot maintain that it did not have an adequate opportunity to make its case. In addition, no other party has complained about the Commission's decision in this case to act before the intervention-answer due date.

Scarcity Premium

15. PSEG further argues that the Commission erred by not ruling that NYISO's finding of a market design flaw in connection with Energy Limited Resources (ELRs) is invalid on its face because NYISO failed to demonstrate that the ELR bids did not reflect a scarcity premium in a workably competitive market. KeySpan-Ravenswood, Inc. (Keyspan) makes a similar argument. PSEG points out that both Commission orders approving the TEP and NYISO's tariff expressly provide that NYISO does not have the authority to correct high prices caused only by a condition of scarcity. It believes that the November 20 order did not demonstrate that the price bid by the New York Power Authority (NYPA) did not appropriately reflect the scarcity conditions that existed on May 9, 2000, and that the Commission missed the point by noting that 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. It asserts that the only issues are whether NYPA submitted a legitimate bid (legitimate in the sense that the generation unit subject to the bid would run if dispatched), and whether the bid was selected by NYISO in accord with its dispatch procedures. It maintains that the intent of the bidder is irrelevant, particularly where there is no evidence that NYPA was attempting to exercise market power. Orion Power New York GP, Inc. (Orion) makes similar arguments. According to PSEG, the Commission's finding that the NYPA's bid was not based on

scarcity is also inadequate because it accepts without support NYPA's "self-serving, after-the-fact" statements concerning its intent.

16. In any event, PSEG continues, if it is true, as NYPA states, that NYPA selected \$3487 as its bid because it expected that amount to exceed other bids that might be accepted by NYISO, and assuming that NYPA also selected a bid level no higher than was absolutely necessary, it must have believed that other bidders might submit bids up to slightly below that level. PSEG asserts that such a bid should be considered to be based on scarcity since it is slightly higher than the maximum clearing price NYPA thought might otherwise occur. PSEG further questions why NYPA did not pick a bid level higher than \$3487 (such as the maximum possible bid level of \$10,000) if its sole objective was not to run and if it was not concerned with scarcity.

17. The Commission rejects these arguments. Regardless of whether bids submitted on May 8 and 9 reflected a scarcity premium, NYISO's market was flawed in that NYPA could not, under the NYISO bidding rules then existing, submit the complex bid it sought to make: a bid for normal operating conditions and a bid for limited periods when dispatch of the unit is required to ensure the reliability of the grid. There were no circumstances that required NYISO to let a flawed bid set the market price when it had TEP authority to correct the flaw. PSEG's speculation about whether NYPA's \$3487 bid could be viewed as some sort of scarcity bid ignores the problem NYPA faced because of NYISO's bidding rules: instead of being able to submit one bid assuming normal operating conditions, presumably a very high bid if not \$10,000, and one lower bid for periods when its units were required for reliability purposes, NYPA was forced to make an ultimately unworkable single bid that attempted to simultaneously reflect these considerations.

Opportunity Costs

18. PSEG further argues that the Commission should have ruled that NYISO's finding of a market design flaw in connection with the bidding by NYPA in question is invalid because NYISO failed to demonstrate that the NYPA's bid did not reasonably reflect its opportunity costs. Keyspan makes a similar argument. PSEG asserts that NYISO's finding is based exclusively upon the ex post facto statements by NYPA as to its subjective intentions. According to PSEG, it is obvious that the NYPA unit had some level of opportunity costs associated with its bids because, as demonstrated by NYISO's exclusion of pumped storage units from the operation of its Automatic Mitigation Procedures (AMP), NYISO was well aware that pumped storage units are especially likely to submit bids based upon significant levels of opportunity costs. It states that NYISO's failure to conduct further analysis is particularly egregious with respect to

May 9 since its concerns about limited water levels on that date should have been even greater than on May 8 because it was required to operate at maximum levels on May 8. PSEG further asserts that NYISO implicitly concluded that the unit had no incremental opportunity costs at all since the substitute price for NYPA's \$3000 bid was based during certain hours upon a valid bid from the last accepted point on the ERL resources bid curve.

19. The Commission rejects these arguments also. In doing so, the Commission notes that neither PSEG nor any other party provide any support for a particular level of such costs for NYPA on May 8 and 9. However, regardless of whether opportunity costs existed, NYISO's market was flawed in that NYPA could not under the NYISO bidding rules submit the complex bid it sought to make, and nothing required NYISO to let a flawed bid set the market price when it had TEP authority to correct the flaw.

Actual Costs

20. PSEG also criticizes NYISO's ECA addressing the events of May 8 and 9 because the ECA found that certain bids on those days were not consistent with a competitive market because they did not reflect rational or verifiable bid offers consisting of types of costs. The Commission rejects this argument as a reason for granting rehearing because it is not basing its decision on whether NYPA's bid reflected actual costs or not.

Conveying the Complex Message

21. PSEG further argues that the Commission's decision is erroneous because the Bidding and Dispatching Features of NYISO's tariff, as they existed during the periods in question, allowed NYPA to convey the "complex message" that it would run its pump storage units for reliability purposes without setting the LMBP in the Real-Time Market. It asserts that NYISO's tariff permitted NYPA to bid its units so that NYISO could have directed them to operate only in an emergency and, had they been directed to operate during an emergency, they would not have set the real-time market price. In particular, PSEG maintains that although NYPA was required to submit a bid into the Day-Ahead Market, it was not required to do so into the Real-Time Market. PSEG also points out that NYPA had the ability to change its bid into the Real-Time Market at any time up to 90 minutes before the beginning of a given hour. Because NYPA had been dispatched by NYISO to operate the unit, it must have known that it was potentially setting the market-clearing price at the level of its bid, particularly on May 9 after seeing how events unfolded on May 8.

22. Keyspan argues that NYPA could have sought and obtained approval for a maintenance outage or, if it was unable to obtain such approval, could have declared a forced outage due to limited resources. Keyspan asserts that NYPA's actions indicate that it wanted to be considered available to the market and indicate the price it deemed necessary for it to operate under the then prevailing conditions. Similarly, Orion maintains that NYPA's bidding reflects a rational decision to offer supply only at very high prices in order to, e.g., retain a unit's capability for other periods, save high operating costs, or undertake maintenance at a given time.

23. The Commission rejects these arguments. First, the Commission is not quick to second guess NYPA's actions, or fault if for not revising its bidding strategy after May 8 for May 9. NYPA's bidding strategy, developed in consultation with NYISO, had been working well enough even under NYISO's flawed bidding rules until May 8 and 9 when market participants first experienced conditions that significantly stressed the system. And it is not easy to safely change a complex bidding strategy on a moment's notice to face entirely unforeseen circumstances. Further, the problem with the alternative bid strategies suggested by Keyspan is that they ignore the impossible situation in which NYISO's market rules placed NYPA: reflect in one bid its ELR units' complex and changing circumstances. Since NYISO's market rules were revised to allow ELRs to properly reflect their intent in their bids, the bidding problem leading to the price corrections and the complaints in these proceedings has not risen again.

NYPA's Motivation

24. In addition, PSEG argues that the Commission's decision was erroneous because it assumed that the inability of a single bidder to fully specify its bidding preferences, motivated by non-economic considerations, constitutes a market-design flaw. PSEG states that NYISO's own analysis shows that if NYPA had indicated that it intended to run its pump storage unit at the \$3000 price, NYISO would not have taken corrective action. PSEG further asserts that NYISO has not supported the logical conclusion of its position under the ECA, that it would be a market flaw to ever permit ELR units to set the LBMP. PSEG also states that the existence of a market flaw cannot be based on the idiosyncrasies of a single market participant. Citing Alternate Power Source, Inc. v. ISO NE, Inc. (Alternate Power),⁶ Orion asserts that attempting to reconstruct the intentions behind a seller's bidding behavior upsets the integrity of the energy market's bidding system and will encourage ex ante challenges to market-driven prices and ad hoc inquires into a seller's intent in any given transaction.

⁶97 FERC ¶ 61,153 (2001).

25. The Commission agrees that, as a general matter, the intent of market participants is not a relevant concern. However, it was appropriate for NYISO to address the market flaw resulting from the inability of ELRs to structure their bids in a way that reflected their complex operational and economic circumstances. Further, the Commission is not persuaded by PSEG's argument concerning whether NYISO would not have taken corrective action if NYPA had indicated that it intended to run its pump storage unit at the \$3000 price. It is idle to speculate what NYISO would have done had NYPA's \$3000 bid properly reflected its intent. The point is that NYISO's market rules prevented NYPA from structuring its bid to reflect its intent. In addition, the Commission does not agree that the logical conclusion of NYISO's position is that it would be a market flaw to ever permit ELR units to set the LBMP. In the circumstances of this case, depending on market conditions, an ELR could set the LBMP during normal periods if the ELR owner submitted a competitive bid because it believed it was in a position where it could both provide some excess power during the current period and meet its longer term reliability requirements.

26. Further, the Commission disagrees that the existence of a market flaw cannot be based on the idiosyncrasies of a single market participant. This may be true in a theoretical market but unfortunately in the real market in which the NYISO participants operate the Commission cannot ignore the idiosyncrasies of NYPA and other ELR market participants. This is particularly true in cases like this where different market rules designed to accommodate ELR characteristics lead to such different results. Finally, the Alternate Power case cited by Orion is not on point. In that case, the complainant requested modification of prices resulting from conduct that the Commission ruled the ISO then had no authority to correct. Here, in contrast, the Commission is ruling that NYISO had authority to correct, under the TEP procedures set forth in its tariff, of prices resulting from a market flaw that prevented a market participant from bidding its preferences.

Late Notice that NYISO was Invoking its TEP Authority

27. Keyspan asserts that NYISO's failure to notify market participants within 24 hours of the market design flaw in accordance with its approved tariff precluded NYISO from invoking its TEP authority and retroactively changing market clearing prices. Keyspan maintains that NYISO was familiar with the bidding practice being used by NYPA and that accordingly this situation was not unusual contrary to the Commission's finding in the November 20 Order.

28. The Commission rejects this argument. The November 20 order provided more than adequate grounds for granting a one-time waiver to NYISO concerning the requirement that within 24 hours NYISO provide notice to market participants of a proposed ECA. In that order,⁷ the Commission stated:

[U]nder 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. Moreover, the entity whose bid was changed has not objected and the complainant received its bid price. [footnote omitted]

Filed Rate Doctrine

29. Orion argues that because the situation on May 8 and 9 was not due to a market design flaw or a transitional abnormality, the filed rate doctrine precludes the Commission from approving NYISO's retroactive alteration of prices. Orion states that the prices on May 8 and 9 were not the result of market flaws such as the invalid dispatch of higher priced resources despite the availability of lower priced resources, a situation in which approved procedures inadvertently created a supply shortage when sufficient supply would otherwise have been available, or a situation where prices are significantly inconsistent with actual system operations.

30. The Commission rejects this argument. As discussed elsewhere in this order and in the November 20 order, NYPA's inability under NYISO's tariff to make its complex bid constituted a market flaw which NYISO had authority to correct under its TEP.

Calculation of Substitute Price

31. Even assuming that NYISO properly exercised its TEP authority in identifying a market design flaw, PSEG asserts, the manner in which it calculated the substitute price was inconsistent with the Commission's orders and the express provisions of NYISO's

⁷97 FERC at 61,964-65.

tariff,⁸ which required NYISO to recalculate the clearing price by disregarding the ELR bid and recalculating LBMPs. In the November 20 Order, the Commission stated that:

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.

PSEG asserts that if an ELR bid is disqualified, the substitute prices should reflect the bid submitted by the next in-merit order unit that could have supplied the output actually supplied by the ELR unit. Rather, the substitute price was based upon "a valid bid from either the last accepted point on the ERL resources bid curve or the highest cleared price from an on-dispatch in-merit unit, either steam or GT."⁹ Given that the ELR bids were submitted under a flawed market rule, the Commission believes NYISO's price recalculation methodology is appropriate.

32. Keyspan argues that any revision to NYPA's bid must reflect the actual scarcity and opportunity costs associated with energy on May 8 and 9, 2000. NYISO's recalculations were consistent with its tariff. Therefore, it is irrelevant whether they reflected scarcity and opportunity costs.

33. NYISO states in its July 28, 2000 memorandum that it did not look to the next unit in the bid stack because the ELR units did, in fact, run on May 8 and 9 and the ECA price revision occurred after the actual dispatch. Thus, NYISO believed that it could not, after the fact, devise a correction that would have required it to assume that the NYPA units did not run and re-set clearing prices at a level that would have been set by resources that never actually were dispatched. PSEG argues that NYISO's tariff requires it requires it to reset the price by removing the NYPA unit from the bid stack and decide what other unit would have been taken under the circumstances.¹⁰ PSEG also argues that

⁸PSEG cites Attachment Q of NYISO's OATT, which contained NYISO's TEP provisions.

⁹NYISO-Navigant May 16, 2000 Memorandum.

¹⁰PSEG quotes the following language, citing "NYISO Tariff, Attachment Q, Original Sheet No. 336." However, Sheet Nos 300 through 350 are reserved for future

(continued...)

the LBMP mechanism itself contemplates that prices may be set by resources that never actually will be dispatched. Orion makes similar arguments.

34. The Commission rejects these arguments. Nothing in NYISO's tariff requires the price recalculation methodology favored by PSEG. On the contrary, NYISO's methodology reasonably adjusts for the flawed bids and the actual unit dispatches of May 8 and 9. And while under the LBMP prices occasionally may be set by resources that never actually will be dispatched, this is an exception which we will not allow to become the rule here.

35. Orion asserts if reflecting NYPA's intent is important, NYISO's price recalculation should, as stated in NYISO's answer to HQUS, reflect NYPA's intent "to limit the units' operation except where, among other conditions, system reliability required the units to be dispatched at their highest levels." Orion maintains that NYISO also ignored the fact that it needed NYPA's power, that accepted it at the bid price, and that there were no other lower-priced resources available to meet the dispatch requirements. According to Orion, if market participants are not allowed to submit verifiable bids and have them accepted, then effectively, the selected resources would be provided for free and the clearing price set by NYISO would have been the same whether these energy limited resources had bid \$10,000 or zero.

36. The Commission rejects these arguments. Contrary to Orion's suggestion, NYISO's price recalculation did reflect NYPA's intent to limit its units' operation except where system reliability required the units to be dispatched at their highest levels. NYPA did not intend for the units to run and set the market clearing price, and under NYISO's price recalculation, they do not set the market clearing price. Orion also overlooks the fact that although NYISO needed NYPA's power, NYPA was willing to make that available at a lower price than its \$3,487 bid. And affirming NYISO's price recalculation

¹⁰(...continued)

use and the quoted language appears on Original Sheet No. 647 of NYISO's OATT.

recalculate LBMPs or other clearing prices as they should have been but for a Transitional Abnormality or Market Design Flaw, and substitute the recalculated LBMPs or other clearing prices for the prices reflecting the Transitional Abnormality or Market Design Flaw.

The portion of this section quoted by PSEG omits the opening proviso "If possible with reasonable certainty,".

methodology does not require the selected resources to provide power for free. Rather, they would receive the tariff mandated bid production cost price.

Delay

37. PSEG further argues that the November 20 Order erred to the extent that it rejected PSEG's arguments due to the delay of PSEG in making its complaint filing. PSEG argues that nothing in NYISO's tariff prohibited PSEG from filing when it did, and that no party was prejudiced by the timing of the complaint. While the Commission wishes, as stated in the November 20 Order, to discourage such delay in the strongest way possible, the fact of the delay did not affect the Commission's merits consideration of PSEG's complaint filing.

The Commission orders:

The requests for rehearing are denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.