



PAUL D. TONKO
Assemblyman 105th District

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

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Committee on Energy

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Task Force on the Mohawk Valley

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July 27, 2006

Joseph T. Kelliher, Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

William Flynn, Chairman
New York State Public Service Commission
3 Empire State Plaza
Albany, NY 12223

Mark Lynch, President and CEO
New York State Independent System Operator
10 Krey Blvd
Rensselaer, NY 12144

Dear Chairman Kelliher, Chairman Flynn and President Lynch,

Extremely disturbing reports regarding the existence and exercise of Market Power in the New York City wholesale electric generation markets have come to my attention. If true, such accounts of manipulation of electric wholesale markets will undermine the entire electric industry restructuring, as implemented through regulatory fiat in the State of New York. Further aggravating this situation is the apparent knowledge and understanding by both the state utility regulator and the wholesale market overseer that this market power condition has existed for some time, and that no action has been taken to correct this situation.

Moreover, compounding this situation, is the existence of an acquisition proposal of one of the wholesale market participants (KeySpan) by an electric distribution company (National Grid) with extensive New York operations.

The New York Independent System Operator (NYISO) has recently claimed in a letter to the Federal Energy Regulatory Commission (FERC) that, despite its anointed role by FERC and the New York State Public Service Commission (PSC) as the market overseer of the installed capacity market, that the NYISO is "not in a position to second guess" the market structure, the price bidding practices and procedures, the concentration of electric generation ownership, nor other issues concerning the wholesale market in New York City. This structure, the NYISO claims, is the result of deregulation and restructuring policy decisions and program implementation as determined by the PSC prior to the NYISO initiating its operations. It appears

that the NYISO is thus "washing its hands" of the flawed structures and systems set up in New York – which it has been given the authority by both federal and state regulators to manage and remediate. To date, the NYISO Market Monitoring Unit which has the role to oversee bidding practices and assess whether market manipulation has occurred, has not commented on this situation.

I am concerned that the failure of the NYISO to actively pursue an investigation of possible market manipulation is a direct result of the management structure and decision-making processes at the NYISO. Despite FERC's approval that the voting procedures appeared sound, the ultimate decision of any action to implement policy or procedure is held by the corporate interests – both generation companies and transmission and distribution companies. This was a criticism addressed at the time the installed capacity market was created.

Further, while there exists a supposed wall between the market monitoring unit and decision-making process, there is absolutely no means of knowing what "behind closed doors" influences can be exercised. This has been a perennial flaw in the FERC-approved structure.

I am concerned that the regulatory structures in place to protect consumer interests have failed. This letter is being addressed to each of the entities which hold some measure of oversight or regulation over the electric industry. In light of possible market distortions, if not outright gaming of the system, what are your agencies prepared to do to further investigate or remediate the situation?

In addition, I am requesting that an accounting of the installed capacity markets, since its initial implementation, be conducted. This accounting should identify any and all possible withholding of generation from the market, and the price impacts which result from any withholding and the price if all available generation were bid into the market. Finally, I am asking that each entity report on what it believes are the available mechanisms of returning money to consumers in a funding of market gaming or manipulation.

I will close this letter by stating that my previous critiques and concerns of these new industry structures have been publicly dismissed as "nay-saying" or "alarmist." However, these recent reports will offer little consolation to me or consumers if my earlier criticism and predictions are true. As I stated in my 2002 "Perfect Storm" report, I recommended that *"the State should take an active role in overseeing the actions of the ISO in its efforts to eliminate market power, collusion and round-trip trades"* and utilize long-term power purchase contracts to *"reduce the opportunity for market manipulation."*

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In the aftermath of the widespread, if not institutional, market manipulation and gaming orchestrated in the California markets by Enron and other market participants, the country was promised that such a violation of the public trust by this industry would not happen again. At a minimum, I expect a thorough investigation concerning these issues by each entity with oversight responsibilities. My own investigations have begun, and I look forward to your full cooperation and working with each of you to ensure the integrity of the electric system in New York State and that the interests of the electric consumers are protected to the maximum degree.

Sincerely,

A handwritten signature in cursive script, reading "Paul D. Tonko", with a long horizontal flourish extending to the right.

Paul D. Tonko

Chairman

New York State Assembly Committee on Energy