

LUTHIN ASSOCIATES

Energy Management Consulting

15 Walling Place, Avon-By-The-Sea, NJ 07717

Tel (732) 774-0005 • Fax (732) 774-0049

www.luthinassociates.com

March 4, 2002

Richard J. Grossi
Chairman
c/o William J. Museler
President and Chief Executive Officer
New York Independent System Operator
3890 Carmen Road
Schenectady, NY 12303

RE: Motion in Opposition of Columbia University, New York University, New York Presbyterian Hospital, Mount Sinai Medical Center, Beth Israel Medical Center, Refined Sugars, the Association for Energy Affordability Inc., and the City of New York to William Short's Appeal of a Decision of the Management Committee to Adopt Certain Changes and Not to Adopt Other Changes to Criteria for Voting Membership in the Small End User Subsector

Dear Chairman Grossi:

Pursuant to §§ 1.03 and 4.01 of the New York Independent System Operator's ("NYISO") Procedural Rules of Appeal, Columbia University, New York University, New York Presbyterian Hospital, Mount Sinai Medical Center, Beth Israel Medical Center, and Refined Sugars, Inc. (hereinafter the "Respondents") submit this "Motion in Opposition" to William Short III's appeal to overturn the Management Committee's February 7, 2002 decision ("February 7 Decision") to revise criteria for voting membership in the Small End User subsector.

The above members are appealing this decision because: 1) the amended bylaws provide for appropriate representation within the small consumer subsector, 2) Mr. Short is concealing the true interest of whom he is representing, and 3) re-definition of one or all of these members as Large Users for NYISO purposes will not change the opportunities for them in the marketplace where retail suppliers and regulated distributors continue to offer service by rate schedules or contracts designed for small volume accounts.

A copy of this appeal has been electronically transmitted to Kristen Krantz of the New York ISO staff who has agreed to serve it on each member of the Management Committee on this date.

Sincerely yours,

Catherine Luthin
Principal, Luthin Associates

cc: Kristen Krantz
Mollie Lampi, Esq.

Motion in Opposition of Columbia University, New York University, New York Presbyterian Hospital, Mount Sinai Medical Center, Beth Israel Medical Center, Refined Sugars, Inc., and the City of New York to William Short's Appeal of a Decision of the Management Committee to Adopt Certain Changes and Not to Adopt Other Changes to Criteria for Voting Membership in the Small End Use Consumer Subsector.

Pursuant to §§ 1.03 and 4.01 of the New York Independent System Operator's ("NYISO") Procedural Rules of Appeal, Columbia University, New York University, New York Presbyterian Hospital, Mount Sinai Medical Center, Beth Israel Medical Center, Refined Sugars, Inc., the Association for Energy Affordability and the City of New York (hereinafter "the Respondents") submit this "Motion in Opposition" to William Short III's appeal to overturn the Management Committee's February 7, 2002 decision ("February 7 Decision") to revise criteria for voting membership in the Small End Use Consumer subsector.

Mr. Short's appeal of the February 7 Decision is based on three arguments: (1) that it unnecessarily restricts voting participation by individuals; (2) that it does not require the operators of numerous customer accounts to participate in the Large End Use Consumer subsector based on the aggregated volume of those accounts; and (3) that it represents a geographic conspiracy among end users to dominate the advisory committees. Each of these arguments is specious and should be rejected.

I. The Amended Bylaws Provide for Appropriate Representation

The Respondents have a long history of representing consumer interests at both the NYISO since 1998 and in other forums. The criteria for sector and subsector membership were negotiated in good faith within each sector, and the resulting rules have allowed wide participation by consumer representatives. These rules allow any entity which is eligible for more than one sector or subsector to choose which sector in which to vote.

While the Respondents continue to support the widest reasonable participation within the NYISO governing structure, the original criteria created significant problems that threatened the credibility of the NYISO governing structure process. Specifically, the original criteria for Small End Use Consumer subsector membership has allowed for participation in this sector by: (1) individuals who have published descriptions of NYISO committee proceedings; and (2) individuals who are affiliated with commercial entities that have an interest in developing generation and/or transmission in New York State, and whose interests therefore lie more appropriately with the Generator and Other Suppliers sectors than the Small Consumers subsector. Notwithstanding his attempt to portray himself solely as residential electric customer, it is widely suspected that Mr. Short falls

into the latter category by virtue of his affiliation with an entity that invests in and/or operates independent power projects throughout the Northeast United States, including New York State.

II. Definition of Small Consumer

While it is not surprising that the definition of the Small End Use Consumer subsector is problematic, (there are perhaps 4,000,000 individual electricity customers in New York State and the vast majority have only a limited interest, financial or otherwise, in NYISO matters), the By-Laws as amended by the February 7 Decision do not in any way limit the participation of legitimate groups representing consumer interests. Any group of 10 consumers, or any smaller group whose loads aggregate to at least 500kW, or any individual consumer whose load is greater than 500 kW may participate as a voting member of the NYISO governing committees. This is a reasonable standard that is intended only to prevent voting by those individuals who, like Mr. Short, either choose to conceal the true interest that they represent, or represent a commercial interest that would not otherwise be eligible to participate in the NYISO stakeholder committees. Mr. Short's contention that, because he is directly affected by the decisions of the NYISO, he must participate *as an individual* strikes at the very foundation of representative governance and must be rejected.

The Small End Use Consumer subsector members cited in the Appeal do not fall into the same category as Mr. Short. Rather than exploiting a loophole, these members are representing their interests as purchasers of electricity under rate schedules and by contracts designed for small volume accounts. Redefinition of one or all of these members as Large End Use Consumers for NYISO purposes will not change the opportunities for them in the marketplace, where retail suppliers and regulated distributors continue to offer service by rate schedules or contracts designed for small volume accounts. ESCOs do not price in an aggregate, and competitive pricing is provided on an account-by-account basis. The fact that these members manage numerous accounts merely means that they are devoting significant resources to understanding the new energy markets. These are precisely the kinds of organizations that can offer the advice that the committee structure was designed to provide.

III. No Unwritten Agreement Exists

Finally, the claims that there are no corporate Small End Use Consumers from Upstate New York and no Large End Use Consumers from Downstate New York, and that there is “an unwritten agreement” among Downstate-based Small End Use Consumers and Upstate-based Large End-Use Consumers is simply false. ATCO Management (a New York City real

estate development firm) and the Metropolitan Transit Authority are Large End Use Consumers, as Hudson River Energy Group, an Albany based company, is Small End Use Consumer. The relative geographic concentration of Small End Use Consumer subsector members in New York City may merely reflect the opportunities or problems arising from the Con Edison retail access tariff, or other considerations unique to New York City. If there is a conspiracy among all these various interests, it should be evident in their voting pattern. In fact, however, Large End Use Consumers sometimes vote with the Small End Use Consumers, and sometimes vote against them. Sometimes Downstate-based members vote with Upstate-based members, and sometime vote against them. No pattern suggesting a conspiracy can be shown to exist.

IV. Conclusion

For all the above reasons, the Respondents urge the Board to reject the appeal of Mr. Short in its entirety.

Dated: March 4, 2002

Respectfully Submitted,

Catherine Luthin
Executive Director
Consumer Power Advocates
15 Walling Place
Avon, NJ 07717
(732) 774-0005
cluthin@luthinassociates.com

Jay L. Kooper, Esq.
Energy Policy Advocate
City of New York
110 William Street
New York, NY 10038
(212) 312-3787
jkooper@nycedc.com

David Hepinstall
Executive Director
Association for Energy Affordability Inc.
505 Eighth Avenue
Suite 1801
New York, NY 10018