



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE CONSUMER PROTECTION BOARD

George E. Pataki
Governor

May M. Chao
Chairperson and Executive Director

March 4, 2002

Richard J. Grossi
Chairman, New York Independent
System Operator Board of Directors
C/O William J. Museler
President and CEO
New York Independent System Operator, Inc.
3890 Carman Road
Schenectady, NY 12303

Re: Motion in Opposition of the New York State Consumer Protection Board and the New York State Energy Research and Development Authority to the Notice of Appeal to the NYISO Board of Directors by William P. Short III, Regarding the Management Committee's February 7, 2002 Approval of Proposed Revisions to the ISO Agreement and Committee By-Laws Addressing Participation in the Small Consumer Sub-sector

Dear Chairman Grossi:

Pursuant to Section 5.07 of the ISO Agreement and Article IV of the *Procedural Rules for Appeals to the ISO Board*, the New York State Consumer Protection Board (NYSCPB) and the New York State Energy Research and Development Authority (NYSERDA) respectfully submit three copies of their Motion in Opposition to the Notice of Appeal by Mr. William P. Short III, to the New York Independent System Operator Board of Directors (Board) regarding the Management Committee's January 7, 2002, approval of revisions to the ISO Agreement and Committee By-Laws related to participation in the Small Consumer sub-sector. We have e-mailed a copy of this Motion in Opposition to the NYISO staff for service to all members of the Management Committee.

Sincerely,

Tariq N. Niazi
Chief Economist

TNN/DWE/jf

cc: Kristen Kranz
Mollie Lampi

Motion in Opposition of the New York State Consumer Protection Board and the New York State Energy Research and Development Authority to the Notice of Appeal to the NYISO Board of Directors by William P. Short III, Regarding the Management Committee's February 7, 2002 Approval of Proposed Revisions to the ISO Agreement and Committee By-Laws Addressing Participation in the Small Consumer Sub-sector

Summary

The New York State Consumer Protection Board (NYSCPB) and the New York State Energy Research and Development Authority (NYSERDA) request that the NYISO Board of Director's reject the appeal of Mr. William P. Short III and approve the Management Committee's February 7, 2002, decision to revise the ISO Agreement and Committee By-Laws related to participation in the Small Consumer sub-sector. These revisions were carefully considered by the NYISO's By-Laws & Governance Subcommittee for approximately one year with the active participation of representatives from all sectors. The issue was first discussed in the March 28, 2001, meeting of the By-Laws & Governance Subcommittee and has been on the agenda for every meeting since then. Over the course of these meetings, several proposals were introduced, analyzed and revised to ensure that new by-laws would not exclude any individual or entity with a legitimate interest in representing small consumer interests. Finally, after several months of consideration, on January 30, 2002, the By-Laws & Governance Subcommittee reached a nearly unanimous consensus on revisions to the ISO Agreement and Committee By-Laws. Those proposed revisions were sent to the Management Committee for its approval.¹ On February 7, 2002, the proposed revisions to the ISO Agreement and Committee By-Laws were approved by an overwhelming majority of 95.29% of the Management Committee.

¹ The only opposition to the revisions at the By-Laws & Governance Subcommittee was from the appellant, Mr. William P. Short.

The appellant claims that the motion approved by the Management Committee would restrict direct participation by individual end users and would continue the participation of numerous large commercial and industrial users in the Small Consumer sub-sector. These claims are erroneous. The revisions to the ISO Agreement and Committee By-Laws will close the loophole in the definition of the “Small Consumer” that allowed individuals and/or entities that were not truly end-use representatives to participate in that sub-sector. Contrary to Mr. Short’s claims, the new rules will not restrict participation in the Small Consumer sub-sector by bona-fide small consumers. Mr. Short’s attempts to link this issue with the participation of large commercial and industrial users in the Small Consumer sub-sector is a transparent attempt to divert attention from the core problem. Nothing in the motion revising the ISO Agreement and Committee By-Laws approved by the Management Committee addressed participation by large commercial and industrial users. Therefore, that matter is not currently before the ISO Board and is irrelevant.

The NYSCP and NYSERDA recommend that the Board approve the revisions to the ISO Agreement and Committees By-Laws related to participation in the Small Consumer sub-sector approved by the Management Committee on February 7, 2002. Approval of these revisions is essential to maintaining the sanctity of sector participation that is the foundation of the stakeholder process. The revisions would foster confidence that individuals or entities that do not represent end user interests will no longer be permitted to join that sector. Alternatively, rejection of the revisions to the ISO Agreement and Committee By-Laws would demonstrate to end users and the public that individuals or entities that do not meet the standards for joining other sectors may vote in the End User

sector. Such a result would undermine the sector voting structure approved by the ISO and FERC and seriously erode the confidence of end users and the public in the NYISO's decision-making process.

Argument

The NYSCPБ and NYSERDA will address Mr. Short's contention that the revisions to the ISO Agreement and Committee By-Laws approved by the Management Committee would restrict his and similarly situated end users' direct participation in the deliberations of the NYISO. We will not address Mr. Short's claim regarding the participation of large commercial and industrial users in the Small Consumer sub-sector, as nothing in the revisions to the ISO Agreement and Committee By-Laws addressed those provisions and hence that issue is not relevant to this discussion.

During negotiations leading to the formation of the NYISO, the NYSCPБ vigorously argued that individual end users should be able to directly participate on decision-making committees. Indeed, the stakeholder governance model that was adopted and approved by FERC permitted such participation. However, over the two years of NYISO operation, not a single bonafide residential end user has joined the NYISO to represent Small Consumer interests. Instead, NYISO rules permitting individuals to participate have been exploited by several individuals and organizations. It is our understanding, that some of these entities are potential generators who could not join the Generation Sector since they currently do not own generators. It is also our understanding, that as recently as the beginning of this year, a potential new transmission owner with no existing transmission assets also joined the Small Consumer sub-sector. Once again, since this entity does not currently own transmission assets, it could not join the Transmission Owner Sector.

Clearly, the intent of establishing a separate sub-sector for small consumers was not to allow entities that did not fit in other sectors to join the Small Consumer sub-sector. Organizations that do not qualify for membership in any sector may participate in the NYISO as non-voting members pursuant to one of the major revisions to the ISO Agreement approved by the Management Committee on February 7, 2002, and currently before the NYISO Board.

While most of these individuals and organizations that joined the Small Consumer sub-sector abstained from voting since their main objective was to participate in the NYISO committee process and not to tarnish the process, Mr. Short had no such qualms. He openly flaunted the process by voting against end user interests and provided his proxy to generators to do the same. It is obvious that Mr. Short does not represent small consumer interests. In fact, he is the Director of Power Marketing for Ridgewood Power Management, which is the operating arm of the Ridgewood Companies as described in Mr. Short's biography on the web-site of Ridgewood Power LLC (Exhibit A, Page 1). Ridgewood Power's web-site also contains the following description of the company's activities, a copy of which is attached as Exhibit A, Page 2:

Ridgewood Power LLC invests in and operates independent power projects as well as environmental, water and other infrastructure projects. Ridgewood Power LLC manages over \$180 million for investment, which has been invested in operating projects in New York, Connecticut, Virginia, Rhode Island, Maine, Massachusetts, and California and is being actively invested in new development projects. Ridgewood Power has the expertise to manage projects with diverse fuel sources, including gas, oil, waste and hydro. In addition to power plants, Ridgewood has invested in recycling, waste-handling and water purification projects and is pursuing other environmental infrastructure projects. Ridgewood has recently expanded its efforts to include non-U.S. projects and has a number of power facilities in development in Europe, South America and the Mideast.

Also attached as Exhibit A, Page 3 is a map showing locations of generating plants operated by Ridgewood Power on the East Coast of the United States. Nine of the plants listed as operating on the East Coast are located in New York: (1) AA Residential Care Facility, N.Y.; (2) Elmsford, N.Y.; (3) Horizon, N.Y.; (4) Huntington, N.Y.; (5) Middle Greenwich, N.Y.; (6) Park, N.Y.; (7) Resort, N.Y.; (8) Union Falls, N.Y.; and (9) Upper Greenwich, N.Y. In addition to plants in New York, Ridgewood Power operates over two dozen plants in neighboring control areas that have interaction with the New York Control Area (NYCA).

Based on the information provided above, it is abundantly clear that Mr. Short does not represent the interests of small consumers. On the contrary, Mr. Short is a prominent employee of a generating company with significant interests in the NYCA. The revised Section 7.04 (a) and (b) of the ISO Agreement makes it clear that a “small consumer” must not be an officer, director, employee, owner, operator, partner, agent or affiliate of, or an entity with control of a Transmission Owner, Generator, Other Supplier, Public Power Party or Environmental Party. Additionally, a “small consumer” must not have any significant interest in any other aspect of the ISO markets or operations. These revisions to the ISO Agreement were made precisely to protect the stakeholder voting process from abuse. Without these revisions, the integrity of the sector voting process would be undermined.

CONCLUSION

For the reasons explained above, the NYSCP and NYSEDA urge the NYISO Board of Directors to deny Mr. Short's appeal and ratify the February 7, 2002, decision of the Management Committee to revise the ISO Agreement and Committee By-Laws related to participation in the Small Consumer sub-sector. The NYISO Board of Directors should carefully consider the decision of the Management Committee that was based on a near unanimous recommendation by the By-Laws Subcommittee. Consensus was achieved at the By-Laws Subcommittee after a very lengthy and deliberate process that involved the active participation of representatives from all sectors. The principal objective of this effort was to close loopholes that allowed entities from other sectors to gain membership in the Small Consumer sub-sector without excluding any legitimate end users from the process. The motion on penalties and public disclosure was approved by 95.29% of the Management Committee including overwhelming support from all sectors and should be approved by the NYISO Board of Directors.

Sincerely,

Tariq N. Niazi
Chief Economist
NYS Consumer Protection Board

Paul A. DeCotis
Program Director, Energy Analysis
NYS Energy Research and
Development Authority