

**MOTION OF MULTIPLE INTERVENORS IN OPPOSITION  
TO THE APPEAL OF WILLIAM P. SHORT III**

**PRELIMINARY STATEMENT**

Multiple Intervenors, an unincorporated association of approximately 60 large commercial and industrial energy consumers with manufacturing and other facilities located throughout New York State, hereby submits to the New York Independent System Operator (“NYISO”) Board of Directors (“Board”) this Motion in Opposition to the appeal filed by William P. Short III. Five members of Multiple Intervenors – Alcoa/Reynolds Metals Company, IBM Corporation, Occidental Chemical Corporation, Praxair Inc. and Xerox Corporation – are active members of the Management Committee (“MC”).

Mr. Short appeals from the decision of the MC, at its February 7, 2002 meeting, to approve certain amendments (hereinafter, the “Amendments”) to the NYISO Operating Agreement (“NYISO Agreement”).<sup>1</sup> The motion advancing the Amendments was approved overwhelmingly by the MC, with 95.29% of the vote in support of the Amendments. In fact, a hostile amendment to that motion by Mr. Short, seeking relief similar to the instant appeal, failed to garner even 40% of the vote at the MC meeting.

For the reasons set forth herein, Mr. Short’s appeal is without merit and should be denied by the Board in its entirety. As discussed, *infra*, one of the primary purposes of the Amendments is to protect the sanctity and the integrity of the NYISO’s five voting sectors and, in particular, the Small Consumers subsector of the End-Use Consumers sector. The Amendments help combat what has been dubbed by participants in the NYISO’s By-Laws

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<sup>1</sup> A black-lined copy of the relevant provisions of the NYISO Agreement depicting the Amendments approved by the MC is annexed hereto as Exhibit A.

Subcommittee (and others) as the “wolf in sheep’s clothing” problem; to wit, a party with significant interests other than that of an End-Use Consumer who seeks to infiltrate that sector as a member of the Small Consumers subsector.<sup>2</sup> Mr. Short’s appeal highlights the pressing need to address this problem. The Board should be aware that, notwithstanding Mr. Short’s blustering about his alleged rights and interests as a Small Consumer, he is employed as the Director of Power Marketing at Ridgewood Power Corporation (“Ridgewood Power”), an electric generating company with projects on at least four continents, including many facilities located in New York State. Thus, Mr. Short is a prime example of a “wolf” masquerading as a Small Consumer.<sup>3</sup>

### **BACKGROUND**

Since the Summer of 2001, the By-Laws Subcommittee has discussed, debated and drafted amendments to the NYISO Agreement intended to address, among other issues, the “wolf in sheep’s clothing” problem. In responding to this problem, the Subcommittee was forced to weigh the interests of Small Consumers to participate actively in NYISO matters against the pressing need to enact safeguards to prevent parties with significant interests other than that of a Small Consumer from voting in that subsector. Absent the Amendments approved by the MC, the Small Consumers subsector is particularly susceptible

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<sup>2</sup> When the Small Consumers subsector is infiltrated in this manner, it prejudices the voting rights of all End-Use Consumers, including Multiple Intervenors members.

<sup>3</sup> A separate complaint challenging Mr. Short’s continued participation in the NYISO as a voting member of the End-Use Consumers sector is being prepared and soon will be filed with the Board. Multiple Intervenors has no objections to Mr. Short participating in future NYISO matters as a Non-Voting Entity.

to abuse because, for the most part, all that currently is needed to attain membership is receipt of an electric bill and the payment of a nominal fee.

The Amendments approved by the MC strike the proper balance. Subject to certain necessary limitations, a party may participate as a voting member of the Small Consumers subsector if it either is “a single Small Consumer that ... had a peak Load in any month within the previous twelve months that was 500 kW or more” or “an organization that represents the interests of at least ten (10) Small Consumers or, at the discretion of the ISO Board, fewer than ten (10) Small Consumers but with an aggregate Load of 500 kW or more in any month within the previous twelve months ....” (See Ex. A, § 7.04.) The “necessary limitations” referenced above exclude from participation parties that, *inter alia*, “have any significant interest in any aspect of the ISO markets or operations other than that of a Small Consumer.” (*Id.*)

Importantly, unless one of the limitations is triggered – *i.e.*, the “wolf in sheep’s clothing” problem is present – parties can participate in the Small Consumers subsector with full voting rights if they meet the 500 kW peak load requirement individually, in a group of ten, or, at the Board’s discretion, in a group of less than ten.<sup>4</sup> Thus, the Amendments retain ample opportunities for parties with legitimate interests to participate in

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<sup>4</sup> These eligibility criteria impose necessary “hurdles” for parties with significant interests other than that of a Small Consumer who may seek to use an office or the residence of a single employee to subvert the NYISO’s sector designations. Additionally, some members of the By-Laws Subcommittee had concerns about the opportunity for individual consumers to control a comparatively large percentage of the vote, as compared to other parties that literally represent the interests of millions of consumers. For instance, on the motion in which the MC approved the Amendments, Mr. Short himself controlled 0.41% of the vote, compared to the City of New York and the New York State Energy Research & Development Authority, which collectively controlled only 1.8% of the vote. The voting results for that motion are annexed hereto as Exhibit B.

the Small Consumers subsector with voting rights. Moreover, the Amendments confer very broad rights on Non-Voting Entities that may not qualify (or choose not to qualify) for voting membership within a particular sector. (See Ex. A, § 2.02.)<sup>5</sup> Thus, the Amendments adopt necessary measures to protect against the “wolf in sheep’s clothing” problem while, at the same time, maintaining an open process and according legitimate parties, including individual consumers, with many avenues in which to participate in NYISO matters. To Multiple Intervenors’ knowledge, Mr. Short is the only individual who has sought to participate in his or her own right as a voting member of the Small Consumers subsector since the NYISO commenced operations in November, 1999. Given this lack of participation by individual consumers to date, compelling arguments could be made that the Amendments do not go far enough in eliminating opportunities for “wolves” to compromise the integrity of the Small Consumers subsector.<sup>6</sup>

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<sup>5</sup> Pursuant to the Amendments, Non-Voting Entities can: be signatories to the NYISO Agreement; receive agendas and other meeting materials for NYISO committee and subcommittee meetings; attend committee and subcommittee meetings; participate in discussions during meetings; and present positions on issues during meetings, including the right to make motions. (Id.)

<sup>6</sup> The Board should be aware that not only has Mr. Short declined requests that he refrain from voting in the Small Consumers subsector, he has stated publicly on several occasions that if his voting rights are eliminated, he will seek to have a different person represent his interests in the subsector. Thus, even with the Amendments, there may be situations where the Board is called upon to protect the integrity of the voting sectors.

## **ARGUMENT**

### **POINT I**

#### **MR. SHORT'S CHALLENGE TO THE AMENDMENTS LACKS MERIT AND SHOULD BE REJECTED**

In his appeal, Mr. Short raises numerous arguments as to how the Amendments compromise his individual right to vote in the Small Consumers subsector. To support his alleged interests as a Small Consumer, Mr. Short relies on the fact that he pays three residential electric bills (and, therefore, he purportedly is entitled to “direct voting participation”). However, as the Amendments were intended to protect against, Mr. Short possesses significant interests other than that of a Small Consumer. In fact, based on those significant other interests detailed below, Mr. Short lacks – or should lack – standing even to challenge the Amendments approved by the MC.

Mr. Short is an officer of Ridgewood Power, an entity that invests in and operates independent power projects, and which has millions of dollars invested in power generation projects throughout the Northeast United States, including New York State, and other regions of the world.<sup>7</sup> Ridgewood Power boasts that it is “one of the premier success stories in the Independent Power Industry.” (See Ex. C.) Its website contains the following description of Ridgewood Power’s activities:

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

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<sup>7</sup> Relevant pages from Ridgewood Power’s website are annexed hereto as Exhibit C and also can be viewed at [www.ridgewoodpower.com](http://www.ridgewoodpower.com).

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.

(See id.; emphasis added.)

Ridgewood Power's website also contains a list of the generating facilities that it operates in the Northeast United States. That list identifies the following facilities located in New York State: (a) AA Residential Care Facility, N.Y.; (b) Elmsford, N.Y.; (c) Horizon, N.Y.; (d) Huntington, New York; (e) Middle Greenwich, N.Y.; (f) Park, N.Y.; (g) Resort, N.Y.; (h) Union Falls, N.Y.; and (i) Upper Greenwich, N.Y. (Id.) The list also identifies numerous other generating facilities operated by Ridgewood Power that, while not located within the New York Control Area, are operated in neighboring control areas that might be influenced by the policies of the NYISO. (Id.)

Moreover, Mr. Short's relationship to Ridgewood Power is by no means incidental. According to its website, Mr. Short is the Director of Power Marketing at Ridgewood Power. This probably is the first time the Board has been confronted with an appeal by a "Small Consumer" who just happens to be the Director of Power Marketing at an independent power company with multiple generating facilities in New York State.

Additionally, although not necessarily determinative of a party's interests, Mr. Short's chosen alternate representatives demonstrate further that his interests differ from those of a "typical" Small Consumer. For instance, Mr. Short's designated Alternate No. 2 at the MC is Joe DeVito, who also is the designated representative of NRG Energy (from the

Generation Owners sector). Mr. Short's designated Alternate No. 3 at the MC is John Brodbeck, who also is the designated representative of PP&L Energy Plus (from the Other Suppliers sector). Mr. Short's designated Alternate No. 4 at the MC is Ron Matlock, who also is the designated representative of Duke Energy North America, LLC (from the Other Suppliers sector). Mr. Short's designated Alternate No. 5 at the MC is Paul Savage, who also is Alternate No. 2 for NRG Energy. Mr. Short's designated Proxy at the MC is Roberto Denis, who also is the designated representative of FPL Energy (from the Other Suppliers sector).<sup>8</sup> In Multiple Intervenors' experience, it is extremely rare, if not unprecedented, for a member of the Small Consumers subsector to select representatives of the Generation Owners and Other Suppliers sectors as its alternate representatives.

The foregoing demonstrates unequivocally that Mr. Short has significant interests other than that of a Small Consumer. Quite frankly, Mr. Short has no business voting in the Small Consumers subsector and should be removed from that subsector expeditiously. Furthermore, it is outrageous for Mr. Short to get on his soapbox and complain about his "rights" as an individual consumer being aggrieved without ever disclosing to the Board any information about his affiliation with Ridgewood Power. Indeed, if nothing else Mr. Short's duplicity in this matter highlights the pressing need for the Board to address the "wolf in sheep's clothing" problem. The Amendments, which strike a proper balance in this regard and were approved by over 95% of the vote at the MC, should be affirmed in all respects.

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<sup>8</sup> A copy of the Attendance List for the February 7, 2002 MC meeting setting forth the above designations is annexed hereto as Exhibit D.

## POINT II

### **MR. SHORT'S ARGUMENTS IN SUPPORT OF FORCING CUSTOMERS TO AGGREGATE ACCOUNTS SHOULD BE REJECTED**

In addition to challenging the Amendments, Mr. Short's appeal also advocates that the NYISO Agreement be modified to force End-Use Consumers to aggregate accounts and, where the monthly peak load of the aggregated accounts exceeds 2 MW, exclude such customers from the Small Consumers subsector (in favor of the Large Consumers subsector). For the reasons set forth below, Mr. Short's arguments should be rejected.

Initially, the Board should recognize that the NYISO Agreement currently does not require consumers to aggregate accounts for purposes of selecting subsectors within the End-Use Consumers sector. The Amendments approved overwhelmingly by the MC do not alter the status quo in this regard. (See Ex. A.)<sup>9</sup> Thus, Mr. Short simply is appealing the fact that he could not convince the MC to adopt his position on the forced aggregation of accounts.

Similar to other entities that can choose their sector (e.g., a Generation Owner that also may qualify as an Other Supplier), End-Use Consumers should have the option of whether or not to aggregate their accounts. There are many reasons why the Board should affirm the current policy.

Initially, if the aggregation of accounts is forced, it may produce anomalous results. For instance, must a customer aggregate every account, regardless of where it may

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<sup>9</sup> The Amendments simply move from Section 1.115 to Section 1.57 of the NYISO Agreement the provision that: "Industrial and Commercial customers with common ownership of fifty percent of more **may** aggregate their usage in order to qualify to participate in ISO governance as Large Consumers." (Id.; emphasis added.)

be located? What if the accounts are located in different utility service territories? What if the accounts have different, but affiliated owners? Importantly, what if the party considers its accounts to have, for purposes of market opportunities or otherwise, interests more similar to Small Consumers than Large Consumers? There simply is no bright line to be drawn here.

Second, the Board must recognize that the adoption of Mr. Short's position may hurt participation in the Small Consumers subsector, as well as the End-Use Consumers sector as a whole. It is Multiple Intervenors' understanding that many of the existing members of the Small Consumers subsector were encouraged by NYISO representatives and others to participate as voting members in order to help populate the subsector. If such parties now are forced to aggregate accounts and, as a result, are excluded from the Small Consumers sector, they may not elect to participate as Large Consumers due to the significantly higher annual membership fee. Thus, Mr. Short's position not only threatens participation in the Small Consumers subsector, it may lead to decreased customer participation in the End-Use Consumers sector as a whole.

Third, from high up on his grassy knoll, Mr. Short attempts, without any evidence, to construct some Upstate/Downstate and/or Large Consumers/Small Consumers conspiracy theory. No such conspiracy exists. Parties vote their interests. Upstate consumers occasionally vote differently than Downstate consumers. Similarly, Large Consumers occasionally (although probably less frequently) vote differently than Small Consumers. What is most important is that the End-Use Consumers sector be limited to parties whose interests truly are that of consumers.

Interestingly, not a single legitimate End-Use Consumer supported Mr. Short's position on this issue. (See Ex. B.) Inasmuch as the criteria applied to differentiate Small

Consumers from Large Consumers has no effect on any sector other than the End-Use Consumers sector, there really was no support for Mr. Short's position from parties in interest at the MC. Therefore, one must wonder why Mr. Short, the Director of Power Marketing at Ridgewood Power, would care enough about this issue to pursue the instant appeal. The answer, of course, is simple. Mr. Short intends to continue to infiltrate the Small Consumers subsector – either in his own name or through some proxy – and desires to maximize his own voting power at the expense of other Small Consumers. The Board should not let that happen. There is no compelling reason to force End-Use Consumers to aggregate their accounts in response to Mr. Short's appeal.

### **CONCLUSION**

For all the foregoing reasons, Mr. Short's appeal of the Amendments that were approved overwhelmingly at the February 7, 2002 MC meeting should be denied in its entirety. Mr. Short's arguments are without merit and, in Multiple Intervenors' opinion, are motivated by interests that are less than pure. The Board should be prepared to remove Mr. Short from the Small Consumers subsector at the earliest possible opportunity.

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Respectfully submitted,

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