

NYISO BOARD OF DIRECTORS DECISION
ON
WILLIAM P. SHORT'S APPEAL OF THE MANAGEMENT COMMITTEE VOTE
ON RULES FOR PARTICIPATION IN THE SMALL CONSUMER SUBSECTOR
(APRIL 17, 2002)

William P. Short, III, appeal from a Management Committee vote to amend several provisions of the ISO Agreement and MC By-Laws relating to participation in the Small Consumer subsector of the End-Use Consumer sector (the "Amendments"). Mr. Short challenges only two aspects of the Amendments: (1) the 500 kW minimum usage requirement for participation in the Small Consumer subsector, and (2) the failure to require entities wishing to participate in the Small Consumer subsector to aggregate their load with affiliates.

Mr. Short argues that the 500 kW threshold improperly restricts the ability of individual small consumers to participate in ISO governance. He argues that consumer protection groups do not adequately represent his interests, and he must therefore be allowed to individually participate in governance regardless of his electricity usage.

Mr. Short also argues that entities in the Small Consumer subsector should be forced to aggregate their load with affiliates. A consumer can participate in the Small Consumer subsector only if its peak load in any month within the previous 12 months did not exceed 2 MW. Mr. Short argues that numerous large commercial and industrial end-users divide their load among affiliates in order to participate in the Small Consumer subsector despite the 2 MW limit. Mr. Short also believes that there is an unwritten agreement whereby commercial and industrial end-users in the downstate region have agreed to participate in the Small Consumer subsector if those in the upstate region will vote only in the Large Consumer subsector. Mr. Short argues that participation in the Small Consumer subsector should be limited to those who have an aggregate peak load of less than 2 MW, including the load of their affiliates.

Three Motions in Opposition have been filed:

1. Motion in Opposition filed by Multiple Intervenors, an unincorporated association of approximately 60 large commercial and industrial energy consumers in New York State;
2. Motion in Opposition filed jointly by 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 Inc., and the City of New York; and
3. Motion in Opposition filed by the New York State Consumer Protection Board ("NYSCP") and the New York State Energy Research and Development Authority ("NYSERDA") (collectively, the "Respondents").

Respondents note that the Amendments were carefully developed through nearly a year of negotiations in the Management Committee's By-Laws & Governance Subcommittee and that the Amendments were almost unanimously approved by the Management Committee.

Respondents urge us to deny Mr. Short's appeal on several grounds: (1) Mr. Short lacks standing to challenge the Amendments because he is not a legitimate small consumer; (2) legitimate small consumers have ample opportunity to participate in ISO governance as voting or Non-Voting Entities and (3) requiring end-use consumers to aggregate their load with affiliates in order to participate in ISO governance is inappropriate.

After careful review of the documents submitted by the parties, we decline to overturn the decision of the Management Committee to approve the Amendments as developed through nearly a year of negotiations. We note that the year of discussions has produced the anomalous result that individual, small, end-use consumers are barred from voting in the small end-use consumers subsector, while large end-use consumers whose use happens to be spread out and recorded through numerous meters are permitted to vote in that subsector. This result may warrant reexamination by the Management Committee. We believe, however, that the Amendments lie within the purview of the Management Committee to govern itself, and are not so unfair as to require Board intervention. Small consumers have the opportunity to participate in ISO governance either as individuals or as part of a group. Those who do not meet the 500 kW requirement may form a group of ten or more and participate as an organization in the Small Consumer subsector. Individuals may also participate as Non-Voting Entities, which allows for significant involvement in the development of ISO operations. In addition, small consumers are represented by the New York State Consumer Protection Board and other similar consumer protection organizations.

We also reject Mr. Short's invitation to form a new requirement that end-users must aggregate their load with affiliates. As Respondents point out, there are many issues that must be considered in conjunction with any such change to the current rules. The By-Laws & Governance Subcommittee previously considered Mr. Short's proposal on this issue but decided that any such change should be considered separately because of the potential impact on the Large Consumer subsector. We see no reason to overturn the Management Committee's decision. Of course, our decision in no way prevents Mr. Short from bringing this issue to the appropriate committees for consideration and negotiation. Accordingly, we deny Mr. Short's appeal.

Finally, while the Board rejects Respondents' arguments that Mr. Short lacks standing to raise these objections, the Board notes that the Respondents raise serious concerns with respect to Mr. Short's legitimate participation in the End-Use Consumer sector. Respondents point out that Mr. Short is an officer of Ridgewood Power LLC, an entity with nine power plants in New York State and over twenty-four plants in neighboring control areas.

The appeal is denied.

4/17/02