

City of New York

March 24, 2004

Via Hand Delivery

John W. Boston
Chairman, 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 to Appeal to the Board of Directors by the Independent Power Producers of New York, Inc. (IPPNY) Regarding the March 2, 2004 Decision of the Management Committee to Disapprove Formation of a New Sub-Sector for Demand Response Providers and Distributed Generators, and the Accompanying Alteration of the NYISO Market Participant Voting Structure

Dear Chairman Boston:

In accordance with the Procedural Rules for Appeals to the NYISO Board, the City of New York (City) hereby submits an original and three copies of a Motion in Opposition to the Notice of Appeal by IPPNY of a March 2, 2004 decision by the New York Independent System Operator (NYISO) Management Committee rejecting the formation of a new sub-sector within the NYISO governance structure, and the restructuring of the NYISO voting structure. The City urges that the Board of Directors deny the appeal of IPPNY, and affirm the Management Committee decision concerning the present form of NYISO governance.

A copy of this letter is being electronically transmitted to Ms. Kristen Kranz to facilitate service on the members of the Management Committee and posting on the NYISO website.

Respectfully submitted,

/s/ Michael Delaney

Michael J. Delaney
Energy Policy Advocate
City of New York

Attachment

Motion in Opposition to Appeal to the Board of Directors by the Independent Power Producers of New York, Inc. (IPPNY) Regarding the March 2, 2004 Decision of the Management Committee to Disapprove Formation of a New Sub-Sector for Demand Response Providers and Distributed Generators, and the Accompanying Alteration of the NYISO Market Participant Voting Structure

The City of New York (City) hereby submits its Motion in Opposition to the appeal filed by IPPNY in this matter. The appeal filed here principally reiterates the conclusory and unsupported arguments that IPPNY advanced in its parallel appeal of the February 4, 2004 vote of the Management Committee. In essence, the appellant urges on the Board a solution to a nonexistent problem: a purported threat to the very governance of the NYISO. In advancing this claim, IPPNY once again invokes a graphic image of virtually Manichean duality in which all market participants are cast in deterministic fashion as adherents of load or supply. This artificial construct in turn gives rise to the appellant's persistent, if wholly unsubstantiated, claims that the governance of the NYISO is currently beset by what it alternately refers to as a "supplier/load division" and a "load/supply dichotomy"¹ among the market participants.

And as was true in the IPPNY appeal of the earlier Management Committee vote also under consideration by the Board, this characterization is clearly at odds with reality. As other parties have shown in the parallel appeal,² market participants take positions on a range of issues reflective of a broad spectrum of views - a spectrum that clearly defies such a facile categorization as simple load-supply interests. Importantly, the refutation of appellant's position is achieved not merely by dueling rhetoric, but by the careful examination of actual sector votes taken in the Management Committee by market

¹ IPPNY Notice of Appeal at p. 3

² TOs Motion in Opposition to IPPNY Appeal of February 4 action of the Management Committee, at pp. 5-7

participants over an extended period of time.³ In contrast, the appellant employs what can only be called a twist of logic in suggesting that the substantial majority of votes arrayed against its positions in Management Committee votes currently under review by the Board demonstrate that the NYISO governance system is in jeopardy. The very requirement in the underlying NYISO Agreement mandating a vote of 58% for passage of Management Committee decisions is reflective of the foundational concept that a broad consensus is necessary for action. By definition, an array of like-minded voters on a particular motion or action sufficient to meet or exceed that threshold will span a number of sectors or portions of sectors. Thus, to equate lack of market participant support for a particular proposal or series of proposals desired by the appellant with a flawed or precarious governance system is antithetical to the principles of the NYISO itself, and should be rejected by the Board.

Moreover, the elaborate handicapping engaged in by the appellant - attempting to forecast likely future voting patterns by parties whose very identities are as yet unknown - is both a fruitless exercise and wholly beside the point. As in the parallel appeal of the February Management Committee vote, the focus of the Board's examination should properly rest on functional considerations. In practice, this means that the DG or DRP entities that form the focus of both motions should be assessed in a disinterested manner to ascertain where they logically fit in the current NYISO governance scheme.

IPPNY in its appeal has largely ignored or mischaracterized these functional considerations, and substituted wholesale speculation about likely loyalties among DGs and DRPs. In contrast, a functional analysis formed the core of the process that was used

³ TOs Motion in Opposition to IPPNY Appeal of February 4 and attached chart of MC roll call votes taken in 2002-2003

in the By Laws Subcommittee to find the most logical and equitable locus for these entities. Through many iterations and compromises, wide agreement was ultimately achieved in the Subcommittee, and strongly ratified in two successive Management Committee votes. Despite the strained contentions of the appellant, there is simply no current need to revisit the entire structure of NYISO governance, and to reweigh the vote totals attributable to the various sectors of market participants in order to address what is at base a limited issue.

It is universally recognized that DGs and DRPs serve a critical and increasingly important role in the market, and they clearly deserve full inclusion in the NYISO sector structure. The actions of the Management Committee in the two votes here demonstrate a spirit of compromise and accommodation that reflects well on the functioning of the NYISO, and they provide no reason for the Board to revisit them. As noted, the appeal herein is essentially a purported solution in search of a nonexistent problem, and should not be granted by the Board.

Conclusion

For all the reasons explained herein, the City urges the Board of Directors to deny the IPPNY appeal, and ratify the March 2, 2004 decision of the Management Committee.

Respectfully submitted,

/s/ Michael Delaney

Michael J. Delaney
Energy Policy Advocate
City of New York