



Independent Power Producers of New York, Inc.

Gavin J. Donohue
President and CEO

Hand Delivered

March 16, 2004

Hon. John W. Boston
Chairman of the Board
C/O
Mr. William J. Museler
President and CEO
New York Independent System Operator
3890 Carman Road
Schenectady, NY 12303

Re: Appeal of Management Committee Decision on Creating a DRP/DG Sub-sector

Dear Chairman Boston:

Pursuant to the "Procedural Rules for Appeals to the ISO Board," please find enclosed an original and three copies of the Independent Power Producers of New York, Inc.'s (IPPNY) Appeal, on behalf of its members identified on Attachment 1 to the Appeal, of the Management Committee's March 2, 2004 decision with respect to the creation of a new governance sub-sector for demand response providers and distributed generators. IPPNY also would like to request that it be given the opportunity to present oral argument to the Board with respect to the Appeal.

Please do not hesitate to contact me, if you have any questions or I may be of assistance to you.

Very truly yours,

Glenn D. Haake
General Counsel

Powerfully Competitive

19 Dove Street, Suite 302
Albany, NY 12210
Phone: 518-436-3749
Fax: 518-436-0369
Email: mail@ippny.org
Website: www.ippny.org

NOTICE OF APPEAL

The Independent Power Producers of New York, Inc. (“IPPNY”), on behalf of its members identified on Attachment 1 (the “Appellants”) that are also members of the New York Independent System Operator’s (“NYISO”) Management Committee (“MC”), hereby appeals to the NYISO Board of Directors (“Board”) to support the March 2, 2004 proposal for establishing a new sub-sector within the NYISO governance for Demand Response Providers (“DRPs”) and Distributed Generators (“DGs”) (the “Sub-sector Proposal”) and find that the MC’s rejection of the Sub-sector Proposal was inappropriate. On behalf of the Appellants, IPPNY respectfully requests that the Board consolidate the instant appeal with the appeal of the MC’s February 4, 2004 approval of voting procedures for DRPs and DGs (the “February 4 Voting Procedures”) that IPPNY filed on February 19, 2004 (the “February 19 Appeal”). In consideration of both of these appeals, IPPNY further requests that the Board issue a decision directing NYISO staff to work with market participants to develop a structure that allocates a voting percentage to DRPs and DGs taken from both load and supply interests, thereby keeping intact the balance of market participant interests necessary for workable shared governance, in a manner similar if not identical to that set forth in the Sub-sector Proposal. IPPNY requests the Board take this action, because (1) the February 4 Voting Procedures are unjust, unreasonable and inequitable, for the reasons stated in the February 19 Appeal,¹ and (2) the Sub-sector Proposal would more appropriately and equitably account for DGs and DRPs within the NYISO voting structure without undermining the precarious balance between Suppliers and Load.

¹ In the interest of brevity, IPPNY will not restate in the instant appeal the arguments advanced in its February 19 Appeal that demonstrate the inequity of the February 4 Voting Procedures, which are incorporated herein by reference.

I. THE SUB-SECTOR PROPOSAL

During the February 4, 2004 MC meeting, supplier-oriented market participants within the Other Supplier and Generator sectors outlined many of the flaws with the February 4 Voting Procedures that are identified in IPPNY's February 19 Appeal. One such market participant requested, and the MC Chairman agreed, to include on the March 2, 2004 MC agenda an action item concerning the creation of a new DRP/DG sub-sector within the NYISO governance. On February 10, 2004, the NYISO issued notice that a meeting of the By-Laws Subcommittee would be held on February 24, 2004 to discuss and debate the creation of such a sub-sector. Thereafter, IPPNY submitted the Sub-sector Proposal to the NYISO, which the NYISO then distributed to the members of the By-Laws Subcommittee and to the members of the MC at large on February 20, 2004.

To structure its proposal, IPPNY focused on a number of factors, including the fact that DRP/DG parties were never discussed or even contemplated as a concept during the negotiations in 1998 that led to the formulation of the NYISO's governance framework and the fact that all segments of the market benefit from demand response. Based on these and other factors, the proposed Sub-sector Proposal would establish a new sub-sector within the Public Power/Environmental Parties sector for parties who qualify as DRPs or DGs (the "DRP/DG sub-sector"). Two percent of the total votes within the NYISO governance would be allocated to the DRP/DG sub-sector. Those votes would come from equal four-tenths percent (0.4%) reductions to each of the five existing sectors, with the caveat that neither the Environmental Parties sub-sector nor any Governmental Agency sub-sector would have its current voting allocation reduced.²

The By-Laws Subcommittee met on February 24, 2004 to discuss the Sub-sector Proposal and participation from supplier and load sectors was robust. During this meeting,

² The existing sector voting percentages and the revised percentages contemplated in the DRP/DG sub-sector are set forth in the table included as Attachment 2 hereto.

relatively little time was spent to further develop and refine the Sub-sector Proposal, as the majority of the meeting was devoted to the questions of whether a load/supply dichotomy exists within the NYISO governance, how parties believed DRP/DG entities are likely to vote and whether parties have a predilection to “vote their pocketbooks.”

The only comments that addressed the details of the Sub-sector Proposal concerned (1) a question as to why the DRP/DG sub-sector was established as a sub-sector within the Public Power/Environmental Parties sector, instead of as a stand-alone sector, and (2) a suggestion that any contribution of voting percentages to the DRP/DG sub-sector should be done on a pro rata basis from all sectors, rather than on the straight four-tenths percent basis contemplated in the Sub-sector Proposal. Market participant views on whether to establish a sector or sub-sector for DRPs and DGs, with equal contributions from the supplier and load sides of the market, or to implement the February 4 Voting Procedures approach, which vests these entities with votes taken virtually entirely from the supplier side of the market, broke down along purely load and supply lines.

As was the case with the February 4, 2004 MC vote, the supplier/load division observed during the By-Laws Subcommittee, once again, was borne out during the March 2, 2004 MC vote on the Sub-sector Proposal. During the discussions leading to the MC vote, once again the only substantive questions aimed at the Sub-sector Proposal were those identified in items (1) and (2) of the preceding paragraph. IPPNY indicated that it is amenable to the creation of a new sector, instead of a sub-sector, for DRPs and DG, and also stated its willingness to adjust the voting percentage contributions. Nonetheless, the Sub-sector Proposal was defeated by a vote of 37.27% in favor and 62.73% against. It is noteworthy that the Transmission Owners, End-Use Consumer and Public Power/Environmental Parties sectors unanimously voted against the Sub-sector Proposal, the Generation Owners sector voted unanimously in favor, and the Other Suppliers sector split 15.77% in favor of the Sub-sector Proposal and 5.73% against. Within the Other Supplier sector, supply-oriented market participants voted in favor of the Sub-sector Proposal

while retail Load Serving Entities (“LSEs”) voted against it. This result mirrored the breakdown of the MC vote that was taken on the February 4 Voting Procedures.

II. ARGUMENT

At the outset, IPPNY wishes to re-enforce its support for the provision of voting rights to DGs and DRPs. These entities are an important component of a robust, competitive marketplace and provide benefits to all market participants. However, if the NYISO is to retain its shared governance structure, it is crucial that the enfranchisement of these entities is not done in a manner that untenably undermines the interests of one segment of the market in favor of another. The Sub-sector Proposal would grant DGs and DRPs representation in the NYISO governance without unfairly skewing the balance of interests in the NYISO governance; the February 4 Voting Procedures would eviscerate that balance.

A. THE MOST RECENT NYISO GOVERNANCE VOTES EVINCE A CLEAR LOAD/SUPPLY DICHOTOMY OF VOTING INTERESTS

During the discussions leading up to the March 2 MC vote on the Sub-sector Proposal, load-oriented market participants asserted that there is no clear divergence between load and supply in the NYISO voting history. IPPNY suggests that the most recent votes on DRP/DG voting rights demonstrate that such a dichotomy of interest does, in fact, exist.

While it is correct that load and supply do not always vote as unified blocks, IPPNY contends that this result does occur with respect to matters that are likely to affect substantially their economic or voting interests. As previously noted, the March 2 MC vote clearly diverged along load and supply lines. The February 4 MC vote for the February 4 Voting Procedures was a mirror image of the March 2 MC vote, with the Transmission Owners, End-Use Consumer and Public Power/Environmental Parties sectors

unanimously voting in favor of the February 4 Voting Procedures, the Generation Owners sector voting unanimously against the February 4 Voting Procedures, and the Other Suppliers sector splitting 13.23% against the February 4 Voting Procedures and 8.27% in favor. Here, too, the Other Supplier sector broke down along purely load and supply lines; the retail LSEs voted in favor of the February 4 Voting Procedures, while the supply-oriented parties voted against it. The difference in the Other Suppliers sector vote is attributable to the number, and the load versus supply interest, of the Other Suppliers that showed up at the two meetings.

During the February 24 By-Laws Subcommittee meeting and the March 2 MC meeting, load-oriented market participants cited prior votes on the elimination of the bid cap on 30-minute non-synchronous reserves, the ICAP demand curve and scarcity pricing as support for the proposition that load often votes in an altruistic manner with the sole aim of enhancing market equity and efficiency. In each of these instances, the proposals enjoyed strong support from the NYISO's Independent Market Advisor and were in the latter two cases touted as necessary corrections to fundamental market flaws. Moreover, a number of other factors affected these votes. For example, the scarcity pricing vote occurred at the same meeting as one of the ICAP demand curve votes. Faced with incontrovertible facts from the ISO's Independent Market Adviser that revenues in the NYISO's markets were insufficient, several parties argued that it was only the energy market, and not the capacity market, that was flawed. Having done so, these same parties would have been hard-pressed to oppose both the demand curve and scarcity pricing. This suggests that load support for such measures may have resulted from the recognition of strong, objective support for the initiatives, the need to "choose one's battles" and other intervening factors; those votes, therefore, taken in a vacuum are not determinative concerning whether or not entities tend to "vote their pocketbooks."

The fact remains that the recent governance votes demonstrate that when votes line up based on whose ox is being gored, the supplier side alone is wholly unable to amass enough support to block an initiative under the current voting structure. Taking the entire voting

percentage awarded to DGs and DRPs from the supplier side of the market pursuant to the February 4 Voting Procedures will, IPPNY contends, exacerbate the situation. In direct contrast, the Sub-sector Proposal subtracts an equal amount of vote from each of the five sectors thereby effectively maintaining the status quo. Accordingly, Appellants urge the Board to direct NYISO staff to work with market participants to fashion voting rights for DRPs and DGs in a manner consistent with the Sub-sector Proposal.

B. THE DRP/DG PROPOSAL IS THE BEST MEANS TO PROVIDE DRPS AND DGS WITH VOTING RIGHTS WHILE MAINTAINING THE CURRENT BALANCE BETWEEN LOAD AND SUPPLY INTERESTS

In contrast to the February 4 Voting Procedures, the Sub-sector Proposal is intended to maintain the existing balance between load and supply in the NYISO governance. As evidenced from the votes on this issue taken at the two most recent MC meetings, it already is apparent that the balance between load and supply interests in the NYISO governance tips heavily in favor of load interests. As reflected by these votes, suppliers alone are unable to block load initiatives, while load-oriented market participants have veto power over supplier initiated proposals.

In its February 19 Appeal, IPPNY supported its assertion that DGs and DRPs are likely to vote on controversial issues consistent with the load perspective. During the discussions on the Sub-sector Proposal, load-oriented market participants generally have taken the position that DGs and DRPs are aligned more with the supplier side of the market. However, in its SMD NOPR, the Federal Energy Regulatory Commission (“FERC”) recognized that DGs and DRPs have a unique market perspective; FERC proposed to require that the demand side vote be afforded its own sector in the six-sector model it advanced for advisory voting.

To the extent that DRPs and DGs vote as load, their inclusion in the Other Suppliers sector will further skew the NYISO voting structure in favor of load, making the hill even more insurmountable to prevent approval of a motion, no matter how one-sided or ill-conceived. On the other hand, if, as load-oriented market participants have argued, DRPs and DGs vote consistent with the supplier perspective, their inclusion in the Other Supplier sector still leaves the supplier segment of the market in the position where it is forced to find market participants on the load side to vote alongside it to prevent approval of a motion.

Thus, if suppliers are incorrect in their prediction of expected DG/DRP voting, the effect of implementing the Sub-sector Proposal would be to bring the load/supply equation into a closer balance. If suppliers are correct concerning likely DG/DRP voting, the inclusion of these entities only in the Other Suppliers sector, pursuant the February 4 Voting Procedures, unfairly will skew the balance of market participant interests in the NYISO governance to a point so far in favor of load as to make shared governance untenable. In light of the foregoing, IPPNY requests that the Board direct NYISO staff to work with market participants to further develop the Sub-sector Proposal for filing with FERC.

CONCLUSION

For the foregoing reasons, the Board should reject the February 4 Voting Procedures and direct NYISO staff to work with market participants to develop a voting rights process consistent with the DRP/DG Sub-sector Proposal that allocates a voting percentage to DRPs and DGs on a fair and equitable basis without eroding the balance of market participant interests necessary for workable shared governance.

Respectfully submitted,

Glenn D. Haake
General Counsel
Independent Power Producers
of New York Inc., on behalf
of the Appellants

ATTACHMENT 1

LIST OF APPELLANTS

1. AES NY
2. American National Power, Inc.
3. Calpine
4. Constellation Power Source
5. Coral Power, LLC
6. Dominion Energy Marketing, Inc.
7. Dynegy
8. Edison Mission Marketing & Trading
9. Entergy Nuclear Northeast
10. Fortistar/Lockport Energy Associates, L.P
11. HQ Energy Services
12. Indeck Energy Services
13. KeySpan Ravenswood, LLC
14. Mirant New York, Inc.
15. NRG Power Marketing
16. PSEG Energy Resources & Trade
17. Reliant Energy Services, Inc.
18. SCS Energy LLC/Astoria Energy LLC
19. Sithe Energies, Inc.

ATTACHMENT 2

SECTOR VOTING PERCENTAGES

Sector	Current Voting Percent	New Voting Percent
Generators	21.50	21.10
Other Suppliers	21.50	21.10
Transmission Owners	20.00	19.60
End-Use Consumers		
Large Consumers	9.00	8.80
Small consumers	4.50	4.30
Governmental Agency	4.50	4.50
Large Energy Using Governmental Agency	2.00	2.00
Public Power/Environmental		
State Power Authorities	8.00	7.80
Municipals and Coops	7.00	6.80
Environmental Parties	2.00	2.00
DGs and DRPs		2.00
TOTAL	100%	100%