

**MOTION OF MULTIPLE INTERVENORS**  
**IN OPPOSITION TO THE APPEAL OF**  
**THE INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.**

On February 19, 2004, the Independent Power Producers of New York, Inc. (“IPPNY”) filed an appeal (“First Appeal”) with the New York Independent System Operator, Inc. (“NYISO”) Board of Directors (“Board”). IPPNY’s First Appeal challenges the decision of the Management Committee (“MC”), at its February 4, 2004 meeting, to approve the proposal advanced by the By-Laws & Governance Subcommittee (“Subcommittee”) modifying the ISO Agreement and the MC By-Laws to define Demand Response Providers (“DRPs”) and Distributed Generators (“DG”) and establish rules governing the voting sector designations applicable to those entities (“Subcommittee Proposal”). On March 16, 2004, IPPNY filed another appeal (“Second Appeal”) with the Board, this time challenging the MC’s decision, at its March 2, 2004 meeting, to reject IPPNY’s proposal that a new sub-sector be created for DRPs and DGs, and that all five sectors each sacrifice 0.4% of the vote to the new sub-sector (“IPPNY Proposal”).

Multiple Intervenors, an unincorporated association of approximately 55 large commercial and industrial energy consumers with manufacturing and other facilities located throughout New York State, hereby submits to the Board its Motion in Opposition to IPPNY’s Second Appeal.<sup>1</sup> For the reasons set forth below, the Board should deny IPPNY’s

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<sup>1</sup> Five members of Multiple Intervenors – Alcoa Incorporated, IBM Corporation, Occidental Chemical Corporation, Praxair Inc. and Xerox Corporation – are active members of the MC.

Second Appeal. In so ruling, the Board should affirm, in all respects, the MC's decisions to: (a) approve the Subcommittee Proposal; and (b) reject the IPPNY Proposal.<sup>2</sup>

The following parties filed motions or statements in opposition to IPPNY's First Appeal: (a) City of New York and Consumer Power Advocates; (b) Consolidated Edison Company of New York, Inc., Central Hudson Gas & Electric Corporation, New York State Electric and Gas Corporation, and Niagara Mohawk, a National Grid Company ("Transmission Owners"); (c) Joint Supporters by the E Cubed Company, L.L.C.; (d) New York Power Authority and LIPA; (e) New York State Consumer Protection Board; (f) NY Municipals; (g) Price Responsive Load Coalition; (h) Strategic Power Management, Inc. ("SPM"); and (i) Multiple Intervenors. Thus, IPPNY's First Appeal was opposed by numerous parties, representing four of the five sectors. In contrast, no motions were filed in support of IPPNY's First Appeal.

This Motion in Opposition is organized into two points. In Point I, Multiple Intervenors responds to IPPNY's latest arguments that all market participants can be classified as "load" and "supply" and that such a dichotomy is supported by historic voting patterns. In Point II, Multiple Intervenors responds to arguments that the IPPNY Proposal is the best means to provide DRPs and DGs with voting rights, while maintaining what IPPNY characterizes as the existing delicate balance between load and supply interests.

For numerous reasons, IPPNY's arguments are without merit and should be rejected. The Subcommittee Proposal approved by the MC succeeds in assigning DRPs and

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<sup>2</sup> Importantly, to the extent IPPNY's Second Appeal repeats arguments advanced in its First Appeal, Multiple Intervenors will refrain from responding again to such arguments here, and, instead, refers the Board to its Motion in Opposition to IPPNY's First Appeal, filed on February 27, 2004.

DGs to the most appropriate sectors for voting purposes. The Subcommittee Proposal also is more consistent with the existing NYISO governance process than the IPPNY Proposal because it assigns DRPs and DGs to sectors that reflect their role in the market and likely voting interests. Rather than addressing the merits of the Subcommittee Proposal or attempting to explain why the MC's actions are not reasonable, IPPNY again relies extensively, if not exclusively, on its unsupportable characterizations of a load/supply dichotomy in the NYISO's existing governance structure that somehow has been jeopardized by the MC's actions.

### **POINT I**

#### **The Load/Supply Dichotomy Relied Upon By IPPNY Is Not Supported By Historic Voting Patterns**

In its Second Appeal, IPPNY argues that the MC's votes of February 4 and March 2, 2004 demonstrate that there is a load/supply dichotomy that exists in the NYISO's governance structure. (Second Appeal at 4-6.) For the reasons set forth below, IPPNY's characterizations of the existing governance structure are unsubstantiated and flawed.

Initially, Multiple Intervenors does not dispute that some participants in the NYISO governance can be classified as load and supply for certain purposes. However, the voting dichotomy alleged by IPPNY – which simply lumps all End-Use Consumers, Public Power/Environmental Parties, Transmission Owners and one-third of the Other Suppliers sector together as load, and lumps two-thirds of the Other Suppliers sector and all Generator Owners together as supply – is without merit and not supported by historic voting patterns.

In response to similar allegations raised in IPPNY's First Appeal, numerous parties disputed the existence of IPPNY's perceived dichotomy and the Transmission Owners provided a detailed analysis of historic voting patterns demonstrating that such a dichotomy does not exist.<sup>3</sup> Several parties also pointed to recent, somewhat controversial MC votes in which all or most of the Generator Owners sector was successful, such as the elimination of the bid cap on 30-minute non-synchronous reserves, the adoption of the Demand Curve proposal, and the adoption of scarcity pricing rules.

IPPNY has no real answer to these arguments in its Second Appeal. It does not – and cannot – refute the NYISO's records of historic voting patterns. IPPNY's speculations regarding the motives of those supporting its victories on the non-synchronous reserves, the Demand Curve and scarcity pricing rules votes (see Second Appeal at 5) have no basis in fact and should be ignored. The real reason why historic voting patterns and the more recent controversial MC votes do not mesh with IPPNY's allegations is that the inflexible voting dichotomy simply does not exist. Market participants cannot be pigeonholed into load and supply groupings as IPPNY has done.

IPPNY's reliance on the February 4 and March 2, 2004 MC votes, in particular, is misplaced. The MC's decision to approve the Subcommittee Proposal on February 4, 2004, with over 65% of the vote, reflects its support for the balanced proposal that was negotiated extensively by representatives from all five sectors, including IPPNY and

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<sup>3</sup> For example, the Transmission Owners' analysis demonstrated that during the June 2002 through June 2003 period: (a) the End-Use Consumers sector voted as a block only 43% of the time and was "successful" on MC votes 57% of the time; and (b) the Generator Owners sector voted as a block 56% of the time, and was "successful" on MC votes 63% of the time. (Transmission Owners at 7.) The hard numbers just do not support IPPNY's contentions, either with respect to the load/supply dichotomy or the alleged precarious position of supply-side interests.

some of its members, over an approximate 8-month period.<sup>4</sup> The fact that the MC, after months of deliberation, voted to approve the Subcommittee Proposal, including the numerous concessions included for IPPNY's benefit, proves only that the Proposal was a fair, balanced solution.

Similarly, the MC's vote of March 2, 2004 does not support IPPNY's arguments. The fact that the IPPNY Proposal failed to garner support demonstrates that almost all market participants, other than IPPNY's members, find the IPPNY Proposal to be unacceptable and inferior to the Subcommittee Proposal that previously was approved by the MC. Indeed, inasmuch as market participants rejected a proposal very akin to the IPPNY Proposal on February 4, 2004, it should have come as no surprise to anyone, especially IPPNY, that the outcome of the MC's votes of February 4 and March 2, 2004 were very similar. The MC's rejection of the IPPNY Proposal does not evince a load/supply dichotomy such as that alleged by IPPNY; rather, it reflects a profound lack of support for the substance of IPPNY's proposals.

## **POINT II**

### **THE SUBCOMMITTEE PROPOSAL IS THE BEST MEANS TO PROVIDE DRPs AND DGs WITH VOTING RIGHTS**

In its Second Appeal, IPPNY argues that the IPPNY Proposal – which would force each of the NYISO's existing five sectors to sacrifice 0.4% of the vote to form a new

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<sup>4</sup> Multiple Intervenors refers the Board to pages 2-6 of its motion in opposition to IPPNY's First Appeal for a detailed description of the Subcommittee Proposal, the efforts undertaken by the Subcommittee to maximize support for that Proposal, and the numerous reasons why the Subcommittee Proposal is reasonable and should be affirmed.

sub-sector – is the best means to provide DRPs and DGs with voting rights. (Second Appeal at 6-7.) IPPNY is incorrect. As detailed below, the Subcommittee Proposal approved by the MC represents the best approach for recognizing the voting rights of DRPs and DGs.<sup>5</sup>

IPPNY’s focus on its perceived voting impact of the Subcommittee Proposal, rather than the actual merits of the issues resolved by the MC’s actions, is very telling. DRPs are aggregators and suppliers (but not owners) of Demand Side Resources. As suppliers of energy products, DRPs are precisely the type of entity that was intended to populate the broadly-defined Other Suppliers sector. DGs – with the exception of those that would qualify as End-Use Consumers under the Subcommittee Proposal – would not be affiliated with the End-Use Consumer at the site, but would sell energy and/or capacity to that End-Use Consumer and/or third parties, including into the grid itself. Those DGs indisputably satisfy the definition of Other Supplier, and also could be expected to satisfy the current definition of a Generator. (See ISO Agreement at §§ 1.38, 1.96.)<sup>6</sup> Thus, the Subcommittee Proposal assigns DRPs and DGs to the sectors that are consistent with their role in the market.

Even if, arguendo, the Board looks beyond the merits of the Subcommittee Proposal and focuses instead on the likely impacts of the MC’s actions on the existing voting structure, IPPNY’s arguments still should be rejected. IPPNY argues that it is necessary to take votes away from all five sectors to maintain the status quo. (Second Appeal at 6-7.)

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<sup>5</sup> It is noteworthy that representatives of DRPs and DGs support the Subcommittee Proposal and the MC’s approval thereof, and several of them filed submissions in opposition to IPPNY’s First Appeal.

<sup>6</sup> In contemplation of IPPNY supporting the Subcommittee Proposal, other members of the Subcommittee agreed to exclude DGs from the current definition of Generator. This section of the Subcommittee Proposal, like many others, was drafted by IPPNY and reflected a compromise made in response to IPPNY’s stated desire of limiting the ability of DGs to populate the Generator Owners sector.

However, upon closer examination, it is the Subcommittee Proposal approved by the MC, and not the IPPNY Proposal, which is most likely to accomplish this goal.

As noted above and in Multiple Intervenors' Motion in Opposition to the First Appeal, the Subcommittee Proposal assigns DRPs and DGs to the sectors that are most consistent with their likely voting interests. Importantly, throughout the deliberations of the Subcommittee, representatives of DRPs and DGs have confirmed that: (a) the financial interests of the DRPs they represent are best served by higher energy and capacity prices; and (b) with the exception of DGs that would be designated as End-Use Consumers, the financial interests of the DGs they represent also are best served by higher energy and capacity prices. The comments of SPM in its motion in opposition to IPPNY's First Appeal bear out this point:

Even more unreasonable is the second underlying assumption that Appellants know how DGs and DRPs will vote, i.e., always with load-oriented MPs. SPM, who also participates in the NY ISO demand response programs, views high market prices as a "good outcome", a distinctly un-load like view. DGs with typically higher per kw costs and DRPs owe their existence to high market clearing prices. These are separate companies hoping to provide a service to, and make a profit from, their customers. This is no different than any other company that sells a product or service. Indeed, it is no different than the business goals of the companies in the Generator Sector.

(SPM at 3-4.)

Thus, even if the Board applies IPPNY's vote-oriented perspective, the Subcommittee Proposal is superior because all DRPs and almost all DGs fall firmly in the supply camp. In contrast, the IPPNY Proposal would require End-Use Consumers, Public Power/Environmental Parties and Transmission Owners – the three sectors IPPNY classifies entirely as load – to sacrifice 1.2% of the total vote to entities whose business interests are

most closely aligned with IPPNY members populating the Other Suppliers and Generator Owners sectors. Thus, rather than maintain the status quo, the IPPNY Proposal actually would strengthen the voting interests of the Other Suppliers and Generator Owners vis-à-vis the other three sectors.

### **CONCLUSION**

For all the foregoing reasons, IPPNY's Second Appeal should be denied. The decisions of the MC to approve the Subcommittee Proposal on February 4, 2004 and reject the IPPNY Proposal on March 2, 2004 should be affirmed in all respects.

Dated:           March 24, 2004  
                  Albany, New York

Respectfully submitted,

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