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** NOT ADMITTED IN DC

Via E-Mail and Mail

Honorable John W. Boston
Chairman of the Board
c/o William J. Museler
President and CEO
New York Independent System Operator
3890 Carman Road
Schenectady, NY 12303

Re: *Motion in Opposition to Appeal of March 2 Decision on Sub-Sector for Distributed Generators and Demand Response Providers*

Dear Chairman Boston:

On behalf of a number of New York municipal electric utilities ("NY Municipals"), we submit the attached Motion in Opposition to the appeal filed by the Independent Power Producers of New York, Inc. ("IPPNY") for the Management Committee's March 2, 2004 decision rejecting the proposal on a sub-sector for Distributed Generators and Demand Response Providers.

Please contact me if you have any questions about this motion.

Sincerely,

/s/ *Thomas L. Rudebusch*

Thomas L. Rudebusch
Attorney for NY Municipals

Motion in Opposition of New York Municipals to Appeal of Independent Power Producers of New York, Inc. of March 2 Decision of the Management Committee on Rejecting Proposal to Establish Sub-Sector for Distributed Generators and Demand Response Providers

A number of New York municipal electric utilities (“NY Municipals”), including the City of Jamestown Board of Public Utilities, which is an active Member of the Management Committee, oppose the appeal filed by the Independent Power Producers of New York, Inc. (“IPPNY”) of the Management Committee decision on March 2, 2004 to reject IPPNY’s proposal to establish a Committee sub-sector for Distributed Generators (“DGs”) and Demand Response Providers (“DRPs”). IPPNY’s appeal must be denied, along with its February 19 Appeal , and the DGs and DRPs should be allowed the opportunity to participate in accordance with the decision of the Management Committee.

IPPNY’s new Appeal, which represents a “second bite at the apple,” again requests that the Board “reject” the decision of the Management Committee to approve the long-negotiated and compromise February 4 Voting Procedures, and substitute the alternative sub-sector approach favored by IPPNY members. *See* IPPNY Second Appeal at 8. IPPNY’s request continues to rest on faulty premises, which it fails to correct even on its second chance. For the reasons described below, IPPNY’s Appeals must be denied.

I. *IPPNY’S Claim is False that a New Sub-sector is Required Because the DG/DRP Parties were not Contemplated in the Formation of the NYISO’s Governance.*

IPPNY claims that its new sub-sector proposal should be approved because “the DG/DRP parties were never discussed or even contemplated as a concept during the negotiations in 1998 that led to the formation of the NYISO’s governance framework.” *Id.*, at 2 . The Joint Supporters have been active since 1990, and they and other parties, for example, the National

Association of Energy Service Companies (“NAESCO”), were represented in, and were active in, the NYISO governance negotiations and were parties to the FERC proceedings examining the NYISO’s governance.

In FERC Docket No. ER97-1523, Joint Supporters filed comments on the original governance structure proposed by the Transmission Owners. Joint Supporters stated it was a coalition of:

providers of competitive energy services, including energy commodities, local generation, and value-added services that has advocated positions related to those in this comment in New York State’s regulatory and public policy settings consistently since 1990.

Motion to Intervene of the E Cubed Company on behalf of Joint Supporters, in Docket No. ER97-1523, dated March 24, 1997. The Motion, which was signed by Mr. Ruben S. Brown, went on to request that “smaller generators and marketers be granted a seat on the ISO...” *Id.* In point of fact, Mr. Brown went to have a seat on the 18 member Transition Team which was charged with overseeing the formation of the NYISO in 1998-1999.

NAESCO also filed a motion to intervene in Docket No. ER97-1523, in which it stated “NAESCO is a trade association based in Washington, DC, whose members include energy service companies (ESCOs)...” and that “NAESCO has been an active party in the generic workshops in the New York State actions.” Motion to Intervene of the National Association of Energy Service Companies, Inc., in Docket No. ER97-1523, dated March 24, 1997. NAESCO requested that “energy service companies and energy performance contractors [be allowed] to participate effectively in the ISO” and that “consideration be given on how to accommodate energy efficiency and energy performance contracting with measurable and

verifiable results.” *Id.* NAESCO was also represented at FERC and in the New York workshops by Mr. Brown. There were other similar parties who participated as well, *e.g.*, New Energy Ventures, Inc. and Entek. Power Services, Inc. Whether the parties called “smaller local generators” or Distributed Generators is irrelevant. Whether the parties are called “energy efficiency and energy performance contractors with measurable and verifiable results” or Demand Response Providers is also irrelevant. The DG/DRP parties were “contemplated” and indeed were vigorously represented in the formation of the NYISO governance.

After the original governance proposal was rejected by FERC, the Transmission Owners reached a settlement with 18 other parties, including NASECO and Joint Supporters (and also including IPPNY) that was filed at FERC on October 23, 1998. Based in part on protests filed by other parties, including the Municipals, FERC rejected that settlement on April 30, 1999, and directed the parties to negotiate a new proposal within 60 days. *Central Hudson, et al.*, 87 FERC P61,135 at 61,546 (1999). It was in the next few months that the current NYISO governance structure was settled. During those negotiations, the DG/DRP parties were represented, in part through Joint Supporters and NAESCO.

The current ISO Agreement and bylaws clearly reflect a governance structure that includes generators of all sizes in the Generation sector and that includes retail load aggregators and providers of comprehensive energy services (ESCOs) in the Other Supplier Sector. Absent the February 4 Voting Procedures, which represent a compromise accepted by the Management Committee, the DGs should go in the Generation Sector and the DRPs should go in the Other Suppliers Sector. In any event, the DG/DRP parties were active in the negotiations and that alleged lack is no basis for the new sub-sector proposal.

II. *IPPNY's Fails to Justify its Claim of Load/Supply Dichotomy of Votes*

IPPNY repeats its claim that there is a dichotomy between the supply and load sides of the market which is reflected in the NYISO voting. *See* Second Appeal at 4-5. IPPNY ignores the voting record evidence proffered by Con Edison despite having a chance to reply in its Second Appeal. In fact, it should be noted that NYPA, LIPA and the Municipals voted together only 8 times out of 30. During the same period, NYPA and LIPA voted with the majority of the Generators, and against the Municipals, 13 times out of 30. This fact should be added to the others demonstrated that there is no load/supply dichotomy in voting.

Even assuming, solely for the sake of argument, that there were a load/supply dichotomy, the DG and DRP parties see themselves as suppliers, not as load. *See* statements of NAESCO and Joint Suppliers above. To the extent DGs and DRPs depend on market prices to stay in business, IPPNY has it wrong, and these parties are more likely to vote with for higher prices and not lower prices.

III. *IPPNY's Sub-Sector Proposal is Itself Discriminatory in Selectively Targeting Certain Market Participants for Reductions in Voting Allocations.*

IPPNY claims its sub-sector proposal “maintains the existing balance” but it does not. Instead it selectively targets certain market participants for reduction, will increasing the voting share of parties which view themselves as suppliers by 2 percent. That 2 percent reallocation is achieved in a discriminatory manner which reduces the generators and other suppliers voting allocation by a smaller percent than it does to other parties including Transmission Owners, End-Users and Public Power Entities. *See* Motion in Opposition to IPPNY Appeal submitted by Strategic Power Management, Inc. at 2. It is no wonder, and should

be expected, that these parties voted against the IPPNY sub-sector proposal, not because they are “load” but because they been unfairly targeted for voting reductions.

For the above reasons, the Board should deny IPPNY’s appeals. If the Board declines to approve the February 4 Voting Procedures, then it should utilize the current functional definitions in the ISO Agreement.

Dated: March 24, 2004

Respectfully Submitted,

/s/ Thomas L. Rudebusch

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