

March 23, 2004

VIA EXPRESS MAIL

Mr. 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:

Please find enclosed an original and three copies of Strategic Power Management, Inc.'s "Motion to Dismiss and Opposition to IPPNY's Appeal of the Management Committee's Decision of March 2, 2004 Denying IPPNY's Motion to Establish a Separate Sub-sector for Demand Response Providers and Distributed Generators."

SPM supports IPPNY's request for oral argument.

If you have any questions, please do not hesitate to call me

Very truly yours,

Daniel P. Duthie
Vice President and General Counsel

cc: Management Committee via e-mail request of NY ISO Staff.

NEW YORK INDEPENDENT SYSTEM OPERATOR
BOARD OF DIRECTORS

Strategic Power Management, Inc.'s Motion to Dismiss and in Opposition to
IPPNY's Appeal of the Management Committee's
Decision of March 2, 2004 Denying IPPNY's
Motion to Establish a Separate Sub-sector for
Demand Response Providers and Distributed Generators

Dated: March 24, 2004

Strategic Power Management, Inc.
51 Greenwich Avenue
Goshen, NY 10924

INTRODUCTION

By letter of March 16, 2004, IPPNY, on behalf of 19 appellants (“Appellants”), filed an appeal (“Appeal 2”) with the NY ISO’s Board of Directors seeking to overturn the Management Committee’s decision to reject its motion to create a separate sub-sector within the Public Power/Environmental Parties Sector for DG and DRP entities. The new sub-sector would have a 2% vote created by carving out 0.4% from each of the five existing sectors. This carve out would be accomplished in such a manner that the Environmental Parties and Governmental Agency sub-sectors would not be reduced from their original voting allocation. The following table presents a comparison between the current voting allocation and Appellants’ proposal.

		NY ISO Voting Allocation			
		Current		Proposed	%
			0.40%		Reduction
Generators		21.50%		21.10%	-1.86%
Other Suppliers		21.50%		21.10%	-1.86%
Transmission Owners		20.00%		19.60%	-2.00%
End Users					
	Large Consumer	9.00%	0.20%	8.80%	-2.22%
	Large Cons. Gov Agency	2.00%	-	2.00%	-
	Small Consumer	4.50%	0.20%	4.30%	-4.44%
	Gov. State-wide Cons. Adv.	2.70%	-	2.70%	-
	Gov. Sm Cons. & Retail Aggr.	1.80%	-	1.80%	-
	Total Sector	20.00%	0.40%	19.60%	-2.00%
Public Power					
	State Power Authorities	8.00%	0.21%	7.80%	-2.67%
	Munis and Coops	7.00%	0.19%	6.80%	-2.67%
	Environmental	2.00%	-	2.00%	
	DGs/DRPs		2.00%	2.00%	
	Total Sector	17.00%	0.40%	18.60%	

At the prior Management Committee meeting, a proposal was adopted, after nine months of discussions and negotiations to presumptively include DGs and DRPs in the Other Supplier Sector. However, if the DG was predominately a generator, then it would go into the Generation Sector. Likewise, if a DRP was primarily load it would go into the End Use Sector. Appellants here are the same appellants seeking the Board's review of the earlier Management Committee determination ("Appeal 1")

Appellants sought to consolidate both appeals. The Board agreed and set oral argument for April 19, 2004. Strategic Power Management, Inc. ("SPM") opposed the first appeal and now sets forth the reasons why this appeal should be denied as well.

**THE MANAGEMENT COMMITTEE MADE A FAIR AND REASONABLE
DECISION TO ACCOMMODATE THE VOTING RIGHTS OF DG AND DRP
PARTICIPANTS IN THE NEW YORK MARKET**

After considerable debate, the By-Laws Committee operating by consensus as is its custom, made a recommendation to the Management Committee on how to enfranchise the DG and DRP participants in the New York electric market place who wish to participate in the NY ISO's governance. As noted above, the Management Committee, despite the complete surprise¹ wherein Appellants voted against the consensus proposal, adopted that recommendation. The Management Committee then logically rejected Appellants' last minute "new sub-sector" proposal at the following meeting. The reasonableness of accepting the By-Laws Subcommittee recommendation

¹ Appellants are active participants in virtually all working groups, subcommittees, and committees of the NY ISO. Appellants participated actively in the By-Laws Subcommittee. At the outset, a number of the parties, SPM included, viewed the Generator Sector as the only logical home for DG entities. The Generation Owners were adamant that they did not want their sector to be home for these entities, and so a compromise was struck to achieve consensus, or so it was thought, until the votes came in and these appeals ensued. While parties have a right to change their minds, the consensus building process is harmed by such an abrupt change in position, particularly where so much time was spent on coming to what was thought to be a position that virtually all could support.

was set forth in the parties' papers opposing Appeal 1 and will not be repeated here. Nor will SPM address the block voting perception that seems to underlie Appellants' position because that assertion has been quantitatively demonstrated by the Transmission Owners to be factually wrong in their opposition to Appeal 1.

**APPELLANTS HAVE NOT DEMONSTRATED WHY THEIR 11TH HOUR SUB-
SECTOR PROPOSAL IS SUPERIOR TO THE NOW ACCEPTED BY-LAWS
SUBCOMMITTEE RECOMMENDATION**

Appellants assert their proposal is necessary so as to keep “intact the balance of market participant interests necessary for workable shared governance.” A casual review of the table presented at the beginning of this opposition demonstrates that Appellants are calling for significant voting allocation changes. The 0.4% reduction on a per sector basis has a decidedly unequal effect due to the unequal sector weightings. Intra-sector impacts are even greater because four sub-groups of market participants do not contribute any voting allocation to the proposed new sector. In short, the Generator and the Other Supplier Sector cede the least, while the Small Customer Sector cedes almost 240%² more on a relative basis than the Generator Sector is contributing to the new DG/DRP sub-sector. Why these impacts are fair to those whose ox is being gored is not discussed.

What is clear when reading both appeals together is the fact that Appellants are not happy with NY ISO governance both as to structure and form. Appellants claim that the supply side cannot block any proposals, while the load side (everyone else in their two dimensional world) can. Technically, the Generator and Other Supplier sectors can block a proposal if all in those two sectors vote against and produce a 43% vote, thereby

² The Generator contribution is 1.86% of their 21.5% sector vote. The small customer sector is contributing 4.4% of its sub-sector vote which is almost 240% more (4.44%/1.86%).

defeating any proposal that needs a super majority of 58% to pass. But Appellants are apparently upset that it cannot control all of the Other Supplier Sector some of which it characterizes as “load.” By creating a new sub-sector using uniform percentage contributions from all five major sectors while exempting four sub-sectors, Appellants attempt to claw back more voting power than they were provided in the ISO Agreement.

Appellants also contend that a new sub-sector is required because no one foresaw DGs and DRPs. This argument is disingenuous at best. Emergency generators and co-generators have been around for decades. “Distributed generation” is simply a new phrase that is intended to provide a higher level of conceptualization to the planning and operating processes. Demand Response Providers are also not new. Energy efficiency companies, energy service companies, and demand side managers have also been around for decades. That fact that these entities now fall under the DRP umbrella does not mean that they were not foreseen. Why did the “Other Supplier Sector” get that name? Just look at the definition of OSS in the NY ISO Agreement.

1.96 Other Supplier.

A Party that is a seller, buyer, broker, aggregator, Power Exchange, ESCO or transmitter of capacity or energy in, from or through the New York Control Area, provided, however, that for the purposes of ISO governance a Municipal Electric System, a Cooperatively Owned Electric System and a governmental agency that acts as a retail Load aggregator shall no qualify as an Other Supplier.

That definition is broad enough to cover generators, i.e., “transmitter of capacity or energy in, from or through” the NYCA. Without the compromise approved by the Management Committee, DGs could choose either the Generator or OSS under the NY

ISO Agreement. DRPs appear to be more comfortably included in the OSS, but as indicated below, an argument could be made for their inclusion in the Generator Sector.

Appellants do not explain how creating a new sub-sector fixes their “we can’t block a proposal” problem. Nor do Appellants explain why the new sub-sector should be within the Public Power/Environmental Parties Sector other than to state that DGs and DRPs provide services that benefit all market participants. As with any market system to remain viable, all market participants must be benefited so that statement does not justify or even explain why that particular sector was chosen.

Why 2%? Why not 1% or 3%? If there is only 1 DRP or DG who shows up, why should that presumably undercapitalized entity needing and receiving fee concessions get such a large vote? Why are the Environmental Parties and the Governmental Agency sub-sectors left with their original voting allocation thus causing other sub-sectors to yield more of their precious voting allocation? These questions remain unanswered by Appellants.

The presumptive inclusion of DGs and DRPs in the Other Supplier Sector, as approved by the Management Committee, automatically accommodates an appropriate voting allocation. An artificially created 2% sub-sector cannot. If 20 members of the OSS vote then each one receives a 1.075% share of the 21.5% allocation. If a DG enters the OSS, then its allocation will be $21.5\%/21$ or 1.0238%. If more enter then their allocations will be adjusted accordingly. Besides, as shown above, generators apparently have a free option and can relocate to the OSS if they choose to as some have done³.

³ Perhaps a predominantly functional test should be applied for admission into the OSS. If one is predominately a generator, as measured by assets or sales, then one cannot opt to be in the OSS.

If the goal is to accommodate the voting interest of DGs and DRPs then putting them in a limited sub-sector is inconsistent with the goal of enfranchising these market participants.

WHAT DO APPELLANTS REALLY WANT?

Appellants really want the supply side to be able to block any proposal it does not like. It really wants the OSS to be a “puppet” sector. In addition, SPM believes that Appellants really want to terminate shared governance and go to an advisory form of governance. Thus, these appeals may be a pretext to a FERC filing that will put those goals on the table.

WHAT DOES SPM WANT?

While one can only speculate about what Appellants really want to accomplish, SPM can state unequivocally that its position before agreeing to the currently approved compromise is that Distributed Generators belong in the Generator Sector. Just look at the definition provided in the ISO Agreement.

1.38 Generator.

A facility that:

- (a) is located in the NYCA, or*
- (b) is supplying capacity to the NYCA, or*
- (c) for the purposes of ISO governance, has filed an application for siting approval pursuant to Article X*

That definition contains no size or operating qualifications. The only relevant fact is whether the facility is located in the New York Control Area, or is supplying capacity to the New York Control Area, or is in the New York siting process. DG facilities located in New York or supplying capacity to New York are generators, and, therefore, belong in the Generator Owner Sector. Indeed, as it turns out because of this language

which is unambiguous, it appears the NY ISO Agreement, not just the By-Laws will have to be amended as a result of the Management Committee decision. Certainly, Appellants' proposal demands a new NY ISO Agreement.

In fact, Distributed Response Providers (generators of negawatts) can also be appropriately included in that sector to the extent that the reduction of demand either by operational load shedding or emergency generation pick-up is equivalent to an equal amount of I-Cap. Thus, DRPs whose clients are located in New York supply the equivalent of I-Cap to the NYCA.

CONCLUSION

In view of the long debate and negotiations that led to the approval of the By-Laws Subcommittee proposal to fairly and reasonably accommodate DGs and DRPs in the governance structure and the lack of support for Appellants' 11th hour new sub-sector proposal, SPM urges the Board to deny both appeals. If Appellants desire a governance fight at FERC, then let us get to it quickly.

Respectfully submitted,

Daniel P. Duthie
Vice President and General Counsel

March 24, 2004
Goshen, NY 10924