

March 28, 2005

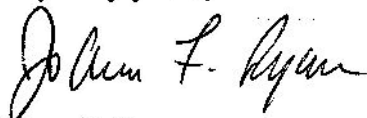
Hon. John W. Boston
Chairman of the Board
c/o Mr. Mark S. Lynch
President and CEO
New York Independent System Operator
3890 Carman Road
Schenectady, NY 12303

**Re: Notice of Appeal of the Management Committee's March 2, 2005 Decision
Concerning Gross Receipts Tax Tariff Language**

Dear Chairman Boston:

Pursuant to the Procedural Rules for Appeals to the New York Independent System Operator Board, Consolidated Edison Solutions, Inc. hereby submits three copies of its Motion in Opposition to appeals taken by Fluent Energy Corporation and Multiple Intervenors to the action of the Management Committee at its March 2, 2005 meeting concerning the Gross Receipts Tax Tariff Language.

Very truly yours,



JoAnn F. Ryan
President and CEO
ConEdison Solutions

cc: Rob Fernandez, Esq.
Mollie Lampi, Esq.

Motion in Opposition By Consolidated Edison Solutions, Inc. To Appeals of The Management Committee's March 2, 2005 Decision Concerning Gross Receipts Tariff Language

In accordance with Article 5 of the New York Independent System Operator ("NYISO") Agreement, and Section 4.01 of the Procedural Rules for Appeals to the ISO Board, Consolidated Edison Solutions, Inc. ("Con Edison Solutions") hereby files this Motion in Opposition to the appeals taken by Fluent Energy Corporation and Multiple Intervenors. Appellants challenge an action taken by the NYISO's Management Committee at its March 2, 2005 meeting concerning tariff language to address issues related to the applicability of gross receipts taxes on electricity sales to direct customers of the NYISO ("Direct Customers"). The Management Committee has requested the NYISO Board to file tariff amendments pursuant to Section 205 of the Federal Power Act that would require Direct Customers to demonstrate either 1) that their electricity purchases from the NYISO market were for purposes of ultimate resale therefore not subject to any gross receipts tax liability or 2) that the transaction was not subject to gross receipts tax.

As background, a gross receipts tax (when applicable) is a tax assessed on the seller of electric and natural gas commodity at the time it makes a sale to a retail customer.

Similar to sales taxes, gross receipts taxes vary depending on the jurisdiction, that is, whether or not there is any gross receipts tax applicable to a transaction and if so what rate is applied depends on the municipality in which the transaction occurs. However, gross receipts taxes differ from sales taxes in so far as an applicable gross receipts tax is an obligation of the *seller*, whereas the *buyer* is ultimately responsible for paying any applicable sales tax. Because any gross receipts tax obligation applies to the seller in a

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retail transaction, the potential for direct participation by retail customers in the NYISO markets creates a significant problem for both wholesale and retail marketers.

For retail marketers, Direct Customers are avoiding a tax that retail load serving entities (“LSEs”) are obligated to pay when they make retail sales within a municipality that applies a gross receipts tax to electricity sales. Thus LSEs are unfairly disadvantaged if Direct Customers are avoiding a gross receipts tax that applies to all similar retail transactions in a municipality simply because the Direct Customers are dealing directly with the NYISO. The effect on the LSEs’ ability to compete in such a retail market is obvious.

For wholesale marketers, the situation presented by the NYISO sales to Direct Customers creates a risk that electric sales into the NYISO administered markets may be considered sales to retail customers that, depending on where the transactions occur, could impose an unforeseen gross receipts tax liability on sellers that otherwise would have thought they were entering into a wholesale transaction without any such tax liability.

While the participation of Direct Customers in the NYISO markets has existed since the NYISO was formed, it was never contemplated that Direct Customers should benefit from the avoidance of taxes that would otherwise have been included in the cost of electricity in their purchases from either their local utility or competitive retail LSEs. Recent efforts on the part of Fluent Energy and other consultants have apparently increased the number of customers who purchase electricity directly from the NYISO markets, in part by advertising that such a purchase “**Creates new tax advantages – A**

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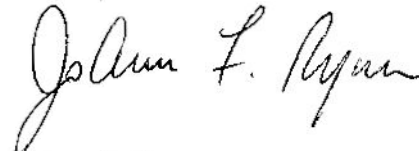
variety of tax advantages are available to organizations that elect to purchase energy on the wholesale market, and would be fully explained when applicable.”¹

Con Edison Solutions has no objections to fair competition and has worked with the NYISO and other market participants to develop a proposal that will allow the continued participation of Direct Customers in the NYISO markets by requiring them to either resell the electricity to an affiliate (thereby triggering a taxable transaction with gross receipts tax liability) or to demonstrate that their purchase of electricity has no municipal gross receipts tax liability. However, Con Edison Solutions objects to the practice of some parties using Direct Customer status to avoid gross receipts taxes that would otherwise be applicable.

Conclusion

For all the above reasons, Con Edison Solutions urges the Board to uphold the March 2, 2005 decision of the Management Committee.

Respectfully submitted,



JoAnn F. Ryan
President and CEO
ConEdison Solutions
March 28, 2005

¹ See <http://www.fluentenergy.com/benefit.html>