

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**New York Independent System Operator, Inc.     )     Docket No. EL08-\_\_\_\_-000**

**REQUEST FOR LIMITED TARIFF WAIVER OF THE  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

The New York Independent System Operator, Inc. ("NYISO") hereby respectfully requests a limited tariff waiver to address an issue that has arisen with respect to two members of the NYISO Board of Directors ("NYISO Board"). The NYISO has recently determined that these directors are associated with entities that have interests in resources that are eligible to provide demand reductions in the NYISO-administered markets. As outlined below, the amounts of demand reductions provided by these resources are *de minimis*, and the revenues earned by such entities from their demand response activities are negligible. However, under a strict reading of the Independent System Operator Agreement ("ISO Agreement"), these *de minimis* demand response services could disqualify the two directors from continuing to serve on the NYISO Board. The other members of the NYISO Board have unanimously concluded that these associations can be addressed in a way that will permit them to continue to fulfill their responsibilities, and all agree that they should be allowed to continue to serve. The requested waiver will have no adverse effects on the administration or oversight of the NYISO, or on its markets, and will ensure that the NYISO is able to retain the services of these talented Board members. The issue has been reviewed with Market Participants and, at their request, a paper has been made available to them, summarizing the considerations related to director conflicts. In support of its request, the NYISO states as follows:

## **I. Communications**

Communications regarding this proceeding should be sent to:

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## **II. Background**

This request involves two current Directors on the NYISO Board -- Christopher O. Ward and Erland E. Kailbourne. Mr. Ward joined the NYISO Board only recently. Mr. Kailbourne has been a member since the Board was formed.

Shortly after Mr. Ward's election to the NYISO Board, the new Governor of New York State, David Paterson, tapped Mr. Ward to serve as the Executive Director of the Port Authority of New York and New Jersey ("Port Authority"). The Port Authority manages and maintains the bridges, tunnels, airports, seaports, and at least some of the commuter trains in and around metropolitan New York City, and, in 2007, had gross operating revenues in excess of \$3.1 billion.<sup>1</sup>

Mr. Ward's unexpected appointment to be Executive Director of the Port Authority raises an issue with respect to Section 5.01 of the ISO Agreement because the Port Authority owns assets that qualify as Demand Side Resources<sup>2</sup> in the NYISO's Emergency Demand Reduction

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<sup>1</sup> See Financial Statements and Appended Notes Year 2007, Port Authority of New York and New Jersey, issued December 31, 2007, at pg. 7.

<sup>2</sup> Unless otherwise noted, capitalized terms set forth herein have the meanings set forth in the NYISO's Market Administration and Control Area Services Tariff.

Program ("EDRP"), which is governed by the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"). Specifically, the Port Authority owns three bridges that are eligible to be compensated for providing load reductions at the NYISO's request under emergency conditions. The Port Authority is a relatively small EDRP participant, received no EDRP revenues during calendar year 2007, and would not reasonably be expected to receive more than *de minimis* EDRP revenues in comparison to the Port Authority's size. Nonetheless, because the Port Authority is eligible to provide Demand Side Resources, it is a Market Participant pursuant to Section 1.27 of the ISO Agreement.<sup>3</sup> Under a strict reading of the ISO Agreement, Mr. Ward could not hold his NYISO Board seat and serve as Executive Director of the Port Authority at the same time.<sup>4</sup>

Once this issue emerged, the other directors reviewed their own associations, and Mr. Kailbourne discovered a similar issue. Mr. Kailbourne is the Chairman of Board of Directors of Albany International Corporation ("AIC"), a manufacturer and supplier of structured products and related services to the pulp and paper industry that had more than \$1 billion in net sales during 2007.<sup>5</sup> AIC, which has manufacturing operations in New York State, recently registered to provide Demand Side Resources in the NYISO markets. Like the Port Authority, AIC

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<sup>3</sup> Section 1.27 of the ISO Agreement defines a Market Participant as "[a]n entity, excluding the ISO, that is a Transmission Customer under the ISO OATT, Customer under the ISO Services Tariff, Power Exchange, Transmission Owner, Primary Holder, LSE, Supplier, Distributed Generator, Demand Response Provider, and their designated agents. Market Participants also include entities buying or selling TCCs."

<sup>4</sup> Specifically, Section 5.01 of the ISO Agreement, in turn, prohibits any NYISO Director from "being affiliated with any Market Participant." Mr. Ward's status as Executive Director of the Port Authority and a member of the NYISO Board does not require prior FERC approval of an interlocking directorate under Section 305 of the Federal Power Act because the Port Authority is not a public utility under FPA Section 201.

<sup>5</sup> See Albany International Corporation, Form 10K for the fiscal year ended December 31, 2007, filed at the Securities and Exchange Commission on February 29, 2008, at pg. 37.

received no revenues for the provision of Demand Side Resources during 2007, and its total revenues from the provision of such services will be *de minimis* in relation to AIC's size and operating revenues. Nonetheless, AIC is a Market Participant under the terms of the ISO Agreement.<sup>6</sup>

To address the potential conflict-of-interest issues presented by the fact that Mr. Ward and Mr. Kailbourne are associated with providers of Demand Side Resources in the NYISO markets, the NYISO Board, with the concurrence of Messrs. Ward and Kailbourne, immediately walled Mr. Ward and Mr. Kailbourne off from decisions that would directly affect the Port Authority or AIC in their capacity as Demand Side Resource providers. Specifically, both Mr. Ward and Mr. Kailbourne have recused themselves from any decision of the NYISO Board that directly affects providers of Demand Side Resources.

### **III. Request for Waiver**

To ensure that Mr. Ward and Mr. Kailbourne may continue to serve as members of the NYISO Board, the NYISO respectfully asks that the Commission waive the prohibition on association with any Market Participant as that prohibition applies to (1) Mr. Ward's status as Executive Director of the Port Authority, and (2) Mr. Kailbourne's status as Chairman of the Board of Directors of AIC. The Commission's evaluation of whether it should permit waivers in similar circumstances has focused on several key points, including whether: (1) the entity seeking the waiver acted in good faith; (2) the waiver is of a limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences, such

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<sup>6</sup> As with Mr. Ward, Mr. Kailbourne's status as both Chairman of the Board of Directors of AIC and a member of the NYISO Board does not implicate the FPA's interlocking directorate provisions because AIC is not a public utility as defined in FPA Section 201.

as harming third parties.<sup>7</sup> A waiver is justified, and should be granted, under these circumstances.

As an initial matter, both the NYISO and Mr. Ward and Mr. Kailbourne acted in good faith at all times. Neither Mr. Ward nor Mr. Kailbourne was associated with a Market Participant when he became a member of the NYISO Board. Rather, Mr. Ward became associated with a Market Participant only when he was appointed to be the Executive Director of the Port Authority, and Mr. Kailbourne became associated with a Market Participant only when AIC registered to provide Demand Side Resources in the NYISO markets. Furthermore, the NYISO acted in good faith, and moved quickly, in its discovery of the association of Mr. Ward and Mr. Kailbourne with Demand Side Resource providers, and its efforts to wall Mr. Ward and Mr. Kailbourne off from decisions implicating such providers. Indeed, although both the Port Authority and AIC engage in core business activities that are far removed from the provision of services in the NYISO markets, the NYISO was able to identify and address these issues with alacrity.

Furthermore, the waiver requested is only of limited scope. The NYISO does not seek a blanket waiver to permit Mr. Ward or Mr. Kailbourne to become associated with any Market Participant and still retain their seats. Instead, the NYISO seeks only a waiver under the precise circumstances presented here. Neither the Port Authority nor AIC is a public utility under the FPA, and both provide Demand Side Resources only on a very limited basis. Indeed, neither the Port Authority nor AIC was paid for providing Demand Side Resources during 2007, and -- through their participation in the NYISO's demand side resources programs -- both entities

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<sup>7</sup> See *ISO New England, Inc.*, 117 FERC ¶ 61,171 at P 21 (2006); see also *Wisvest-Connecticut*, 101 FERC at 62,551 (observing that error was "an inadvertent mishap"); *Great Lakes Gas Transmission Limited Partnership*, 102 FERC ¶ 61,331 (2003); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330 (2003); *Northern Border Pipeline Co.*, 76 FERC ¶ 61,141 (1996).

clearly will receive only limited payments for their Demand Side Resources. Both the Port Authority and AIC have annual revenues in excess of \$1 billion, and revenues from the sale of Demand Side Resources can be expected to be only a miniscule portion of those totals. Under these facts, the requested waiver is a limited one, and does not establish any negative precedent with respect to future NYISO Board members.

In addition, the waiver is necessary to remedy a concrete problem. Specifically, without the waiver, the NYISO could lose two talented Board members. Mr. Kailbourne has been a NYISO Board member since the inception of the NYISO, and brings to the position a wealth of experience developed as the Chairman and Chief Executive Officer of Fleet National Bank (New York Region), and now as the Chairman of AIC's Board of Directors. Similarly, Mr. Ward brings to the position substantial experience developed over many years in both government and the private sector. It would be difficult to replace their expertise.

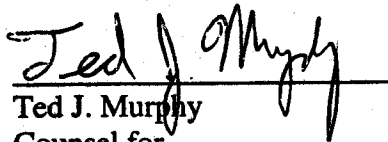
Also, there is the potential for such *de minimis* associations with respect to many prospective Board members. Indeed, directors often are drawn from large corporations operating in New York State, and the participation of such corporations in demand side management programs is essential to the success of such programs in reducing usage and moderating market prices. The NYISO plans to explore with its Market Participants an amendment that would allow officers, directors, and other employees of large corporations that provide *de minimis* amounts of demand response service to serve as NYISO Board members. In the meantime, the requested waiver will minimize potential disincentives to service as a NYISO Board member, and thus will address potential difficulties that the NYISO might have in recruiting highly qualified candidates for Board positions.

Finally, the waiver will not harm third parties, or have any other undesirable consequences. As explained above, the NYISO has put in place a system under which Mr. Ward and Mr. Kailbourne will recuse themselves from any decision of the NYISO Board that directly affects providers of Demand Side Resources. Thus, the requested waiver would not harm third parties.

#### **IV. Conclusion**

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission grant the limited waivers that are requested herein.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Ted J. Murphy", is written over a horizontal line.

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