

Law Offices
Duncan, Weinberg, Genzer & Pembroke,
P.C.

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DEREK A. DYSON
TAMIR BEN-YOSEPH**

OF COUNSEL
RICHMOND F. ALLAN
FREDERICK L. MILLER, JR.
TERRY E. SINGER
FREDERICK H. HOOVER, JR.**

SUITE 800
1615 M STREET, N.W.
WASHINGTON, D.C. 20036

(202) 467-6370
FAX (202) 467-6379
www.duncanweinberg.com

California Office
SUITE 140
2005 HAMILTON AVENUE
SAN JOSE, CALIFORNIA 95125
(408) 558-0950
BARRY F. McCARTHY
C. SUSIE BERLIN
OF COUNSEL

Northeast Regional Office
2700 BELLEVUE AVENUE
SYRACUSE, NEW YORK 13219
(315) 471-1318
THOMAS J. LYNCH
OF COUNSEL

* REGISTERED TO PRACTICE
BEFORE THE U.S. PATENT
AND TRADEMARK OFFICE

** NOT ADMITTED IN DC

February 27, 2004

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 February 4 Decision on Voting Procedures 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 February 4, 2004 decision on voting procedures 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 February 4 Decision of the Management Committee on Voting Procedures 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 February 4, 2004 to establish voting rights and procedures for Distributed Generators (“DGs”) and Demand Response Providers (“DRPs”). The appeal must be denied, and the DGs and DRPs should be allowed the opportunity to participate in accordance with the decision of the Management Committee.

IPPNY’s Appeal requests that the Board “reject” the decision of the Management Committee, and allow for the substitution of alternative procedures favored by IPPNY members. *See* IPPNY Appeal at 1. IPPNY’s conclusion is based on two main premises. If either premise is false, then IPPNY’s conclusion is false. In fact, both of IPPNY’s premises are false for the reasons described below, and IPPNY’s Appeal must be denied.

I. *IPPNY’s First Premise is False that the DG/DRPs will Vote as Load and Upset the “Precarious Balance between Suppliers and Load.”*

IPPNY begins by claiming, in the broadest fashion, that there is a precarious balance between the supply and load sides of the market, each of which “vote their pocketbooks.” *See id.* at 2.

IPPNY asserts that the three sectors of End-Use Consumers, Public Power/Environmental and Transmission Owners are “Load” (57 % of the vote) and that the two sectors of Generators and Other Suppliers are primarily “Suppliers” (with 43 % of the vote). With 58 percent needed to approve a

motion, IPPNY thinks it has discovered a precarious balance between Suppliers (who want to increase prices) and Load (who want to decrease prices).

This is a cartoon view of NYISO governance that fails to explain both the fact that the overwhelming number of committee votes are unopposed and close to unanimous, and the fact that on the close votes the same parties do not always vote the same way. In point of fact, there are five sectors and several subsectors, and the parties are often not aligned within their own groups. Most parties do vote on the merits at least some of the time, and it is always a matter of interpretation, and not always straightforward, for parties to determine what their “pocketbook” tells them to vote.

A review of the recent major contested votes (demand curve, credit policy, Schedule 1 cost allocation, etc.) shows that a lockstep Supply versus Load analysis will not do. There are a number of “cross-cutting cleavages” that divide not only sectors, but parties within sectors, along different lines. The fact that over 65 percent of the Management Committee voted in favor of the February 4 motion shows that there is no precarious balance.

Even more astonishing is IPPNY’s claim that the the DGs and DRPs will vote as Load and not Supply. The heart of IPPNY’s argument is that these parties will vote as Load and not Supply. *See id.* at 4. But this claim is very thinly reasoned. IPPNY states that DRPs do not own demand or generation resources, but act as “aggregators.” *Id.* That course is why DRPs meet the definition of “Other Suppliers” in the ISO Agreement (Section 1.96). Since DRPs do business with consumers, IPPNY states that the consumers will control the “product” and therefore, by implication, the DRPs’ votes. But this proves too much. Since all many Suppliers do business with consumers, then why do any vote as Suppliers.

IPPNY has no justification when it comes to the DGs. It simply says that “the situation is much the same” for the DGs. *Id.* This is an empty assertion. In fact, to extent DGs and DRPs depend on market prices to stay in business, IPPNY has it wrong . These parties are more likely to vote with Supply (higher prices) and not Load (lower prices).

II. *IPPNY’s Second Premise is False that the Voting Procedures are Discriminatory Because the DG/DRPs would Vote in the Other Suppliers Sector.*

IPPNY’s second premise is that the Voting Procedures approved by the Management Committee are discriminatory because a number of DG/DRPs would be assigned to the Other Suppliers sector. This is discriminatory if these parties are expected, by IPPNY, to vote as Load. IPPNY’s second premise is not valid, however, because it is more likely than not that the DG/DRPs would vote as Suppliers, not Load. That is why the “representative of DG and DRP entities” stated that these parties should be in the Other Supplier sector. *Id.* at 4-5.

IPPNY really misses the mark because of its mistaken view that when new parties come to the NYISO they should be assigned to sectors based how they are expected to vote (Supply versus Load). To the contrary, the NYISO governance definitions assign parties to sectors, and subsectors, based on their function. If an environmental party joins, it goes in that subsector, if a generator joins, it goes in that sector, based on the objective criteria. Trying to guess how parties are going to vote and then assigning them to sectors on that basis is an error.

III. *The Board should deny the IPPNY Appeal because the Premises are false, and the Board should Affirm the Management Committee’s Voting Procedures.*

Because both premises of IPPNY's appeal are false, then the appeal must be denied.

The Board should affirm the decision of the Management Committee, and concur in a Section 205 filing at FERC.

It should be noted that the Voting Procedures approved by the Management Committee are a compromise. Obviously, the DGs meet the definition of Generator and should go in the Generator sector (ISO Agreement, Section 1.38). As a compromise with the generators, only DGs above 20 MWs are allowed in that sector, all others are assigned to the Other Suppliers sector. Other provisions were also a part of the compromise.

If the Board declines to approve the Management Committee's decision, then it should utilize the functional definitions in the ISO Agreement. The Board should not be put in the position of permitting a minority to further compromise the compromise.

Dated: February 27, 2004

Respectfully Submitted,

/s/ Thomas L. Rudebusch

Thomas L. Rudebusch, Esq,
Duncan, Weinberg, Genzer &
Pembroke, PC
1615 M Street, Suite 800
Washington, DC 20036

For the NY Municipals