

February 27, 2004

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

Re: Appeal of Management Committee's Decision on DRP/DG Voting Rights

Dear Mr. Chairman:

Enclosed is Strategic Power Management, Inc.'s Motion in Opposition to the Appeal filed by IPPNY on behalf of 19 of its members ("Appellants") dated February 19, 2004.

If the Board authorizes oral argument as Appellants request, SPM would like to participate.

I have e-mailed this Motion in Opposition to Rob Fernandez and Mollie Lampe for distribution to the Management Committee and the Board.

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

Very truly yours,

Daniel P. Duthie

DPD:bsb  
w/enc

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 February 4, 2004 Authorizing  
Amendments to the ISO Agreement and Bylaws  
Establishing Voting Rights for  
Demand Response Providers and Distributed Generators

Dated: February 27, 2004

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

## INTRODUCTION

Since May of 2003, the By-Laws Subcommittee, with a representative cross section of the NY ISO Market Participants (“MPs”) including some representatives of Appellants, has spent a significant amount of time and effort laboring to enfranchise Distributed Generators (“DG”) and Demand Response Providers (“DRP”). Having finally reached a reasonable consensus position<sup>1</sup>, it was presented to and approved on February 4, 2004 by the Management Committee with a 65.27% favorable vote. If sector weightings were discounted, the per capita favorable vote rises to almost 75% (40 MPs voting in favor, 14 MPs voting against). Three sectors voted unanimously in favor of the following compromise.

In essence, DGs and DRPs are presumed to be eligible to become members of the Other Supplier Sector, except if the entity’s dominant characteristic places it in the Generator Sector, i.e., supplying power to the grid or the End Use Sector, i.e., if owned by an end user primarily for self-supply. In addition, a phase-in of NY ISO membership fees was also adopted by the Management Committee in order to reduce economic entry barriers for this fledging industry.

On February 19, 2004 via a “By Hand” submission, IPPNY on behalf of 19 appellants (hereinafter “Appellants”) filed a Notice of Appeal contending, *inter alia*, that the voting “would (1) eviscerate the already precarious balance of shared governance that currently exists between supply-oriented market participants (“Suppliers”) and load-

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<sup>1</sup> SPM thought that Appellants, or a majority of Appellants, were “on board” the consensus position. This assumption was based on the fact that IPPNY’s general counsel was one of the chief draftsmen of the final documents that were approved by the Management Committee. In addition, at least part of the calculus supporting SPM’s agreement to compromise was the fact that IPPNY was thought to have accepted the DG default option, i.e., Other Supplier Sector, when the logical default sector for DGs is the Generator Sector.

oriented market participants (“Load”) ...”<sup>2</sup>. IPPNY asserts that Suppliers will be discriminated against because the “voting percentages afforded to DGs and DRPs come primarily from Suppliers, rather than from all market participant sectors.” Even though this issue has been gestating for nine months, Appellants offered nothing by way of an alternative until the February 24, 2004 Special By-Laws Subcommittee meeting. That alternative, creating a new sub-sector with a 2% vote, did not achieve a consensus. In fact, it was SPM’s observation that the majority of MPs participating in that special meeting were opposed to the creation of a new sub-sector.

#### POINT I

##### THE MARKET PARTICIPANTS ARE NOT MONOLITHICALLY BIPOLAR

The MPs are not monolithically bipolar as the Appellants suggest. There are five major sectors, not two. There are eight sub-sectors within the End Use Consumer and Public Power sectors. Hence there are 11 distinct sectors and sub-sectors that are defy load versus supply pigeonholing. Indeed, even in sectors that one would perceive as having closely aligned interests, for example, Transmission Owners, there are spirited discussions and divergent votes on many occasions. SPM recalls a number of close votes on various issues, large and small, where the load versus supply alignment was not at all clear or consistent. Accordingly, one of Appellants’ underlying assumptions is invalid.

#### POINT II

##### DGs AND DRPs BUSINESS INTERESTS ARE ALIGNED WITH SUPPLIERS

Even more unreasonable is the second underlying assumption that Appellants know how DGs and DRPs will vote, i.e., always with load-oriented MPs. SPM who also

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<sup>2</sup> Notice of Appeal at 1.

participates in NY ISO demand response programs, views high market prices as a “good outcome”, a distinctly un-load like view. DGs with typically higher per kw costs and DRPs owe their existence to high market clearing prices. These are separate companies hoping to provide a service to, and make a profit from, their customers. This is no different than any other company that sells a product or service. Indeed, it is no different than the business goals of the companies in the Generator Sector.

DGs are, by function, generators and logically belong in that sector. Distributed generators supply power to their owner, tenants and to the grid. Depending on their size<sup>3</sup>, the predominant function could be to supply power to the grid. Hence these entities would clearly be characterized as generators, eligible for the generator sector. DGs also can qualify for and receive I-Cap payments, just like the entities in the Generator Sector. DGs can participate in the DADRP where they can bid in supply just like an entity that is a member of the Generation Sector. In addition, DGs, depending on configuration and host flexibility, can also supply megawatts for either the DADRP or the EDRP. Hence, DGs function like generators in all respects, with the added ability to facilitate the shedding of load whether due to reliability or price concerns.

Except for the typical size difference, DGs should be assumed to be eligible for the Generator Sector. The Management Committee proposal reasonably made concessions to the Generator Sector when establishing the default eligibility option for DGs as the Other Supplier Sector. SPM supported that compromise and continues to do so believing that such concessions were necessary to accomplish the goal of enfranchising these new entrants without upsetting the basic governance structure.

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<sup>3</sup> For example, a DG sized to satisfy thermal requirements may have excess electrical capacity that it can supply to the grid on a 24x7 basis.

Likewise, DRPs have the same business motivation as the Generation Sector. DRPs want higher prices which maximizes profits. Unlike DGs, DRPs function more like Other Suppliers since they are providing a supply (reduction in demand) service that can be critical to NY ISO operational reliability and additional price discipline. To suggest that DRPs business interests are aligned with load is illogical. Just because a business has a contract with a customer does not mean that the customer has the ability to tell the business how to behave or vote particularly where the number of customers are large and the number of DGs and DRPs are small.

### POINT III

#### SPECULATION DOES NOT SUPPORT OVERTURNING THE MANAGEMENT COMMITTEE'S DECISION

There is much to be said for the old adage “If it ain’t broke, don’t fix it.” Appellants conjure a future world where DGs and DRPs rush into the Other Supplier Sector and dilute their voting rights. SPM, and presumably a number of other MPs, see DGs and DRPs from a completely different perspective. SPM, from a voting perspective, does not want to see any new entrants into the largest (in terms of numbers) sector, but is unconvinced of the anticipated stampede. If it happens that the Other Supplier Sector is overwhelmed by entrants who have limited or no financial stake in the NY ISO, then the answer is not to reconfigure the sectors, but simply to put a cap or limit on how much of the vote the new members are entitled to.

Not only, according to Appellants, are the new entrants going to dilute the Supplier influence in the Other Supplier Sector, they have convinced themselves that DGs and DRPs are going to uniformly vote with the “load-oriented market participants”

because all MPs vote selfishly and solely for their own economic interests. Appellants' overly cynical view of MPs voting behavior is not only simplistic, it is flat out wrong. SPM has been active in the Management Committee since the inception of the NY ISO and views the shared governance structure as robust and functioning. There have been a number of serious and challenging issues that have been addressed, e.g., the abuse of the reserve markets in early 2000 and, more recently, the demand curve. While these issues were highly controversial, the governance process was capable of addressing them and ultimately obtaining resolution or improved operating procedures.

Today, the majority of votes are taken by a show of hands, consensus having been achieved through the working groups and lower committees who typically analyze issues and proposals very carefully and comprehensively before bringing them to the Management Committee. It has been SPM's experience that these working groups and lower committees benefit from the work of MPs who want to improve the market and other NY ISO operations for all participants more than to achieve an economic advantage over a competitor.

Finally, the NY ISO has been held up by FERC as a model of its vision for the future. If its governance structure were so fragile and delicately balanced how could it have withstood the many challenges faced over the last 3 and ½ years of operation? There are enough real problems to deal with. Speculation should never be the basis for attempting to fix a governance structure that has been tested, re-tested and has proven itself to work. If an imbalance in the sector representation occurs over time, it can be addressed. For now all that is needed is to allow the current Management Committee decision to be implemented and the Board can sit back and see what happens.

## SUMMARY

The Management Committee has adopted a very reasonable voting rights proposal for DGs and DRGs. It took nine months of discussion and debate to achieve that goal with many parties starting out with positions that were strikingly inapposite on sector location and fee mitigation. In the end, a solid compromise was fashioned and approved. Appellants offer nothing, other than their rank and counterintuitive speculation that DGs and DRGs will always vote with “load oriented” MPs to support their appeal that the Board should overrule the Management Committee. Implicit in Appellants position is a litmus test for sector location. Appellants appear to be saying that how they expect you to vote will determine a new member’s sector. This is completely at odds with the core interest and functional criteria for sector designation on which the current governance structure was founded.

While technically not before the Board at this point in time, Appellants at the Special By-Laws Subcommittee meeting on February 24, 2004 proposed the creation of a sixth sector to accommodate DGs and DRGs. It is expected that this new proposal will be vetted at the March 2, 2004 Management Committee meeting. Under the circumstances and in the interest of administrative efficiency, SPM suggests that the Board await the result of that vote and any further appeals before rejecting this appeal.

Respectfully submitted,

Daniel P. Duthie

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