

City of New York

June 24, 2004

Via Hand Delivery

Mr. John W. Boston
Board Chairman
New York Independent System Operator
3890 Carman Road
Schenectady, NY 12303

c/o Mr. William J. Museler
President and Chief Executive Officer
New York Independent System Operator
3890 Carman Road
Schenectady, NY 12303

**Re: Notice of Motion in Opposition to Appeal of the Management
Committee's June 4, 2004 Decision Concerning Revisions to the
Allocation of Rate Schedule One Charges**

Dear Chairman Boston:

Pursuant to the Procedural Rules for Appeals to the NYISO Board, The City of New York hereby submits three copies of its Motion in Opposition to appeals taken by Entergy Nuclear, LLC, and by certain New York municipal electric utilities to the action of the Management Committee at its June 4, 2004 meeting concerning the allocation of Rate Schedule One charges.

A copy of this Notice of Appeal has been electronically transmitted to Ms. Kristen Kranz to facilitate service on the members of the Management Committee and electronic website posting.

Very truly yours,

Michael J. Delaney

Michael J. Delaney, Esq.

Attachments

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

**Motion in Opposition By The City of New York
To Appeals of The Management Committee's June 4, 2004
Decision Concerning Reallocation of Rate Schedule One Charges**

In accordance with Article 5 of the NYISO Agreement, and Section 4.01 of the Procedural Rules for Appeals to the ISO Board, the City of New York (City) hereby files its Motion in Opposition to the appeals by Entergy Nuclear Indian Point, LLC *et al.* (Entergy Nuclear), and by certain New York State Municipal Electric Utilities (New York Municipals). Appellants challenge an action taken by the Management Committee (MC) on June 4, 2004 to reallocate the formula for imposition of Rate Schedule 1 charges associated with the NYISO operating budget and fees imposed by the Federal Energy Regulatory Commission (FERC). Under the terms of the Management Committee vote, the present allocation formula of 85% to load and 15% to suppliers was revised to 80% load and 20% suppliers, effective January 1, 2005. It is noteworthy that the vote to do so was overwhelming, with more than 87% of those market participants voting favoring adoption of the amended allocation.

As is reflected in the Motions from the June 4 Management Committee meeting, the MC vote was an outgrowth of a lengthy review process in the Budget Standards and Performance Committee (BSP), which itself resulted from a FERC directive to the NYISO, and a subsequent charge from the Management Committee to BSP to review the allocation of Rate Schedule 1 charges. In addition, the NYISO retained RJ Rudden & Associates (Rudden) to provide expert analysis, and to make recommendations for an unbundled rate structure.

The principal objection of the appellants is that the unbundled rate structure was ultimately not adopted, and in particular that those market participants who enter into bilateral agreements are being disproportionately charged under the new formula. In their view, they should be subject to lower Schedule 1 charges as they assume their own credit risk in bilateral transactions, and that in so doing, they do not avail themselves of the full range of credit risk protection benefits embodied in the current NYISO structure.

Appellants' stated position in this regard calls to mind the adage that the perfect should not be made the enemy of the good. Here, a demonstrable improvement – one that is almost universally recognized as making the load and supply allocation formula more equitable – should not be rejected because it does not resolve every issue. As the MC Motion to accept the BSP recommendation reflects, technical implementation difficulties related to programming costs and attendant delays caused Rudden to alter its approach and to recommend a ratio of 77%-23% between load and supply in lieu of full unbundling of costs.

Subsequently, the BSP reviewed a number of underlying assumptions and methodological issues in the Rudden study, and achieved a consensus that the ratio should be 80%-20%. NYISO Staff participated in the BSP meetings on this subject and conducted an independent review of market structures and costs associated therewith. The Staff fully concurred in the revised allocation ratio.

In characterizing the revised allocation formula as “artificial” (New York Municipals, p. 3), and “disproportionate” (Entergy Nuclear, p. 2), appellants fail to recognize that any such allocation method ultimately represents a judgment call. Certain load interests would undoubtedly have preferred to see the original 77%-23% formula

implemented, and if armed with the original Rudden report, might well have had a plausible claim for doing so. Similarly, supply sector representatives might prefer to retain the current allocation. In the interest of fairness and effective governance, however, a middle ground was found, and was overwhelmingly adopted by the Management Committee members.

In addition, it is not sound policy for the NYISO to retain an allocation formula that is clearly inequitable simply because its replacement does not address all conceivable concerns. Thus, the Board should reject the contention by Entergy Nuclear that the existing allocation methodology be retained until a fully unbundled Rate Schedule 1 structure can be implemented (Entergy Nuclear, pp.1, 3-4). Given the considerable obstacles to such full unbundling in the current NYISO system, there is no reasonable basis for failing to deal with flaws in the current allocation scheme that are both known and easy to correct.

While not minimizing the concern over bilateral contracts, the City notes that they form a relatively small portion of NYCA transactions, and as such should not create a basis for declining to implement a needed reform by the NYISO. The New York Municipals appear to recognize this distinction by urging implementation of the revised allocation formula approved by the MC, but deleting the five-year freeze provision that accompanied it (New York Municipals, pp. 1, 4).

The City notes that the rationale for the freeze in the discussions that led to its adoption was in large part the value of achieving some measure of closure on this issue, and avoiding the need to constantly revisit a contentious and time-consuming issue that does not easily lend itself to resolution. The countervailing consideration is that the five-

year term needlessly locks in a provision that does not fully address the concerns expressed by FERC and by a number of market participants.

Conclusion

For all the above reasons, the City urges the Board to uphold the June 4, 2004 decision of the Management Committee to revise the Rate Schedule One allocation formula.

Dated: June 24, 2004

Respectfully submitted,

Michael J. Delaney

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