

**MOTION OF MULTIPLE INTERVENORS
IN OPPOSITION TO THE APPEALS OF
ENERGY NUCLEAR INDIAN POINT 2, L.L.C.,
ENERGY NUCLEAR INDIAN POINT 3, L.L.C.,
ENERGY NUCLEAR FITZPATRICK, L.L.C., AND
A NUMBER OF NEW YORK MUNICIPAL ELECTRIC UTILITIES**

PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 55 large commercial and industrial energy consumers with manufacturing and other facilities located throughout New York State, hereby submits to the New York Independent System Operator, Inc. (“NYISO”) Board of Directors (“Board”) its Motion in Opposition to the appeals filed by: (a) Entergy Nuclear Indian Point 2, L.L.C., Entergy Nuclear Indian Point 3, L.L.C., and Entergy Nuclear Fitzpatrick, L.L.C. (collectively, “Entergy”); and (b) a number of New York municipal electric utilities (“NY Municipals”).

The appeals challenge the decision of the Management Committee (“MC”), at its June 4, 2004 meeting, to establish, effective January 1, 2005, a straight percentage allocation of 80% to loads and 20% to suppliers (hereinafter, “80/20”) for that portion of Rate Schedule 1 charges attributable to the NYISO’s operating budget and Federal Energy Regulatory Commission (“FERC”) fees (hereinafter, “Rate Schedule 1 Charges”).¹ The motion that was approved – with 87.63% affirmative votes – also reflected the MC’s intent that the 80/20 allocation remain in place for at least the next five years and be eligible for review following the fourth year. For the reasons set forth below, the Board should deny the appeals by Entergy and the NY Municipals.

¹ Five members of Multiple Intervenors are active members of the MC.

ARGUMENT

In their appeals, Entergy and the NY Municipals argue that the 80/20 allocation of Rate Schedule 1 Charges should be rejected because it does not constitute a complete unbundling of NYISO charges, as had been anticipated initially. Those parties assert that the failure to unbundle Rate Schedule 1 Charges more fully results in the inequitable treatment of parties engaging in bilateral transactions. (Entergy at 2-3; NY Municipals at 2-4.) For several reasons, the arguments of Entergy and the NY Municipals should be rejected.

As part of its examination of Rate Schedule 1 Charges, the NYISO retained RJ Rudden & Associates (“Rudden”), an independent consulting firm, to develop a recommendation as to how those charges should be recovered from market participants. With respect to the possible implementation of a fully unbundled rate design for Rate Schedule 1 Charges, Rudden concluded after a thorough examination that:

- the NYISO’s current billing system cannot support multiple service categories and an unbundled rate design; and
- billing system changes would require months of work, millions of dollars, and could not be implemented until sometime in 2006 or later.²

Thus, although an unbundling of Rate Schedule 1 Charges may be advantageous for certain reasons, it is not practical or warranted at this time, or for the foreseeable future. Based on

² See “Schedule 1 Evaluation Project Business Issues Committee Presentation” (“Rudden Presentation”), May 19, 2004, at 18. Rudden further recommended that a revised, fixed allocation of Rate Schedule 1 Charges between loads and suppliers be adopted by the NYISO and filed with FERC for approval effective January 1, 2005. *Id.* at 19.

the substantial resources that would need to be expended to calculate and implement unbundled Rate Schedule 1 Charges, the vast majority of MC members concluded, reasonably, that a compromise solution that could be implemented expeditiously and inexpensively was preferable.

In their appeals, Entergy and the NY Municipals fail to demonstrate the extent to which bilateral transactions would be overcharged, if at all, pursuant to the 80/20 allocation of Rate Schedule 1 Charges approved by the MC. Moreover, those parties have not demonstrated that the benefits of eliminating the alleged inequity would outweigh the associated costs, including the expenditure of substantial time, resources and “millions of dollars” to unbundle the Rate Schedule 1 Charges by 2006 or thereafter.

Finally, in its appeal, Entergy argues that the existing allocation of Rate Schedule 1 Charges – which recovers 85% from loads and 15% from suppliers (hereinafter, “85/15”) – should be maintained until an unbundled rate design is implemented. (Entergy at 3-4.) Entergy’s argument lacks support and should be rejected.³

The study conducted by Rudden indicates convincingly that the current 85/15 allocation of Rate Schedule 1 Charges is not appropriate. According to Rudden’s study, an allocation of 77% to loads and 23% to suppliers – or a compromise reasonably close to that allocation (e.g., the 80/20 allocation approved by the MC) – is warranted based on an

³ The NY Municipals, on the other hand, advocate that the 80/20 allocation of Rate Schedule 1 Charges approved by the MC be implemented pending the development of an unbundled rate design. (NY Municipals at 1, 4.) If the Board chooses to deviate from the MC’s approval of the Rate Schedule 1 Charges, the NY Municipals’ approach is far more consistent with the Rudden study results than what Entergy has proposed.

evaluation of the services provided by the NYISO.⁴ In contrast, there is no justification for perpetuating the 85/15 allocation, which allocates too many costs to loads.

In this instance, the Board should accord considerable deference to the decision of the MC. As stated above, the MC approved the 80/20 allocation for Rate Schedule 1 Charges with 87.63% of the vote. Among market participants, the 80/20 allocation received majority support from all five sectors and unanimous support from three sectors. In terms of actual votes cast, the 80/20 allocation received 37 votes in support and only 3 votes in opposition. The one-sided nature of the vote is a testament to the reasonableness of the compromise allocation methodology that was negotiated on what ordinarily would be a highly contentious issue.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges the Board to deny the instant appeals by Entergy and the NY Municipals. The decision of the MC to approve an 80/20 allocation of Rate Schedule 1 Charges was reasonable and should be affirmed.

Dated: June 24, 2004
Albany, New York

Respectfully submitted,

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⁴ Rudden Presentation at 15-17 and 19.