

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

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SEAN M. NEAL
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

June 17, 2004

Via E-Mail and Overnight Express

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: *Notice of Appeal of Management Committee Decision of June 4 (Motion #4)
on Allocation Methodology for Rate Schedule 1 Charges***

Dear Chairman Boston:

On behalf of a number of New York municipal electric utilities ("NY Municipals"), we submit the attached Notice of Appeal of the Management Committee's June 4, 2004 decision (Motion #4) on the allocation methodology for Rate Schedule 1 charges.

Please contact me if you have any questions about this notice.

Sincerely,

/s/ Thomas L. Rudebusch

Thomas L. Rudebusch
Attorney for NY Municipals

Notice of Appeal by New York Municipals to June 4 Decision of the Management Committee (Motion #4) on Allocation Methodology for Rate Schedule 1 Charges

Summary:

A number of New York municipal electric utilities (“NY Municipals”), including among others, the City of Jamestown Board of Public Utilities, the Village of Freeport Electric Department, and the Village of Rockville Centre Electric Department, each which is an active Member of the Management Committee and a Party to the NYISO Agreement, submit this appeal of the Management Committee decision on June 4, 2004 to approve Motion # 4. Motion #4 adopts a “compromise” allocation of the NYISO’s Rate Schedule 1 charges at 80 percent to load withdrawals and 20 percent to supplier injections to the grid, and fixes this allocation in place for a five-year period. The Management Committee decision is in violation of applicable orders and directions of the Federal Energy Regulatory Commission (“FERC”) respecting the unbundling of the NYISO’s charges to its customers; contrary to the original market participant motion directing the NYISO to study the unbundling issue; and inconsistent with study performed by the NYISO’s consultant, R.J. Rudden and Associates.

Because the Management Committee’s “compromise” decision continues to discriminate against market participants with bilateral contracts and forces those parties to unduly subsidize parties in the NYISO’s markets. The Board of Directors should direct the NYISO Staff to re-examine the Rudden study to provide unbundled service categories and appropriate billing units for each service, and further direct that the NYISO billing system be modified to accommodate unbundled billing. In the interim, the Board should file the 80/20 allocation at FERC *without* the five-year freeze.

Argument:

I. *The Management Committee decision is in violation of FERC orders that direct the NYISO to “unbundled” its rates and charge customers for the services they receive.*

The Commission originally ordered that the Transmission Owners separate the transmission related aspects of the ISO proposal from the energy market aspects, in its January 27, 1999 Order in *Central Hudson Gas & Electric Corp.*, 86 FERC ¶ 61,062 (“January 1999 Order”), *order on rehearing*, 88 FERC ¶ 61,138 (1999). The intent was that market participants which have bilateral contracts for energy, and that primarily require transmission and transmission-related services from the NYISO, would pay for those services, and not for services that they do not take. With respect to the NYISO’s charges, the Commission directed that the NYISO “revise its funding mechanism to allocate costs for non-transmission services to the parties that benefit from these services.” January 1999 Order at 61,215. The Commission reiterated its instruction when the ISO failed to comply with this directive. *Central Hudson Gas & Elec. Corp.*, 90 FERC ¶ 61,045 at 61,204 (1999) (“January 2000 Order”).

In its February 11, 2000 Letter to the Commission (“February 11, 2000 Letter”), the NYISO again did not comply with the Commission’s January 1999 and January 2000 Orders. Instead, the ISO stated that it would take a significant amount of time to compile actual cost data to comply with the January 27 Order. The Commission directed that the NYISO comply with its orders by February 1, 2001.

In the most recent Notice of Further Extension of Time in Docket Nos. ER97-01523-028, *et al.*, (issued April 2, 2001), the Commission stated that additional time was needed to allow for further input from market participants and final approval. That Notice established

July 2, 2001, as the most recent deadline for the revised funding mechanism. No further extensions have been granted by FERC.

In response, a market participant-driven motion to examine the allocation of Rate Schedule 1 costs passed the Business Issues Committee in December 2002. The presentation that accompanies that motion specifically requested that a new study “identify specific Rate schedule 1 functions and assess if charges should be allocated to NYISO customers according to the benefits received.” It was this motion that led to the Rudden study.

II. The Management Committee’s “compromise” fails to unbundle the Rate Schedule 1 charges and unfairly discriminates against bilateral customers.

Contrary to the relevant FERC orders and the intent of the motion requesting the Rudden study, the Management Committee decision of June 4, 2004 fails to unbundle the Rate Schedule 1 charges and unreasonably locks in place an artificial 80/20 allocation for five years. Bilateral customers that rely on the NYISO for transmission and transmission related services should not be required to continue to subsidize the NYISO costs to serve parties, which also purchase from the NYISO-administered markets. The NY Municipals have seen their costs increase since the establishment of the NYISO. The Board of Directors should not allow the continued subsidization of the parties, which are not paying their full share of the NYISO’s costs.

Once before the Board wisely decided to reject a “compromise” related to the allocation of rate Schedule 1 costs. At the July 12, 2001 Management Committee meeting a coalition of market participants votes overwhelmingly to adopt an allocation of Rate Schedule 1 costs that was 98 percent to loads and 2 percent to wheel-through and export transactions. That vote was seen as a compromise that would end lengthy debate on cost allocation. However, the

Board correctly decided not to file that cost allocation “compromise” at its July 17, 2001 meeting.

The Board should follow that course again. The June 4, 2004 Management Committee decision locking in the 80/20 split for five years is unreasonable and not responsive to the concerns of customers with bilateral contracts. The Board should direct that the NYISO staff re-examine the Rudden study and determine that appropriate unbundled service categories be developed. The necessary billing changes should also be developed to correct the situation.

In the interim, or in the alternative, the NYISO should file the 80/20 allocation without the five-year freeze.

For the above reasons, the Board should grant this appeal and decline to file the Management Committee’s recommended 80/20 allocation with a five year freeze.

Dated: June 17, 2004

Respectfully Submitted,

Thomas L. Rudebusch, Esq,
DUNCAN, WEINBERG, GENZER
& PEMBROKE, PC
1615 M Street, Suite 800
Washington, DC 20036
(202) 467-6370

For the NY Municipals