



Independent Power Producers of New York, Inc.

Gavin J. Donohue
President and CEO

October 5, 2004

Via Email

Robert Fernandez, Esq.
General Counsel
New York Independent System Operator, Inc.
290 Washington Avenue Extension
Albany, NY 12065

Re: Gross Receipts Tax

Dear Mr. Fernandez:

As you know, during the September 22, 2004 meeting of the NYISO's Business Issues Committee ("BIC"), an attorney in the NYISO's legal department reported that the NYISO had secured an advisory opinion from the New York State Tax Department stating that the NYISO does not have liability for New York State Gross Receipts Taxes ("GRT"). He then made statements to the effect that, while the NYISO was still in the process of reviewing the issue, suppliers in the NYISO spot markets may potentially have liability for the GRT with respect to a portion of their sales into the NYISO markets by virtue of the fact that the NYISO tariff allows end users (so called "Direct Customers") to purchase electricity directly from the NYISO-administered market. These purchases, it was suggested, could be deemed retail transactions. The purpose of this letter is to state IPPNY's position on this matter.

The law is clear that that any sales into FERC-jurisdictional ISO-administered markets are solely wholesale transactions. IPPNY's members have submitted bids to the NYISO and otherwise have participated in the NYISO markets on that basis. Indeed, most, if not all, of IPPNY's members that participate in the NYISO markets either are owners of generation facilities that have received Exempt Wholesale Generator ("EWG") status under the Public Utility Holding Company Act or are wholesale suppliers that have been authorized by FERC to recover market based rates on the condition that they refrain from engaging in retail sales. To date, these entities have not engaged in retail transactions by virtue of their participation in the NYISO markets, nor will they engage in retail transactions in the future.

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Please be on notice that IPPNY's members have participated and will continue to participate in the NYISO market on a wholesale basis alone, and therefore, have no exposure to liability for the GRT. To that end, it is not sufficient for the NYISO's review of this issue to be limited only to an analysis of its exposure; it also must assess and address the potential impact of its actions on the parties that participate in its markets.

The NYISO's Services Tariff is a wholesale tariff and transactions made pursuant to such a tariff must be restricted to wholesale transactions only. Accordingly, as necessary, the NYISO must immediately cease entering into and/or facilitating any transactions that are potentially retail in nature. The NYISO must take such actions as necessary to ensure that no supplier is deemed to be engaging in retail sales to Direct Customers or otherwise, including, if necessary, requiring Direct Customers to secure a re-seller certificate, or effecting the immediate termination or modification of the tariff provisions that purportedly permit end users to engage in Direct Customer transactions. I look forward to hearing from you at your earliest convenience as to the manner in which the NYISO will ensure that suppliers to its markets are not exposed to retail transactions.

Thank you for your attention to this serious issue. Please don't hesitate to contact me with any questions or comments.

Sincerely,

/S/Glenn D. Haake/

Glenn D. Haake
General Counsel

Cc: Mr. William Museler