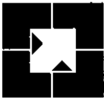
New York City
Economic Development
Corporation

110 William Street
New York, NY 10038
212.619.5000

www.nycedc.com

July 15, 2009

Via Federal Express

Ms. Karen Antion
Chairwoman
Board of Directors
New York Independent System Operator
10 Krey Boulevard
Rensselaer, NY 12144

C/o Mr. Stephen G. Whitley
President
New York Independent System Operator
10 Krey Boulevard
Rensselaer, NY 12144

Re: Motion in Opposition to IPPNY Appeal of the June 24, 2009 Management Committee Decision Concerning Revisions to NYISO Creditworthiness Policies

Dear Chairwoman Antion:

Pursuant to the Procedural Rules for Appeals to the NYISO Board, The City of New York hereby submits three (3) copies of its Motion in Opposition to the Appeal by the Independent Power Producers of New York, Inc. to the June 24, 2009 decision of the Management Committee to reject implementation of accelerated cash clearing, or weekly invoicing, by the NYISO.

A copy of this Motion in Opposition has been electronically transmitted to Ms. Deborah Eckels to facilitate service on the members of the Management Committee and electronic website posting.

Very truly yours,

Michael Delaney

Michael J. Delaney, Esq.

Attachments

New York Independent System Operator

Board of Directors

Motion in Opposition by City of New York to Appeal by Independent Power Producers of New York of Management Committee Decision of June 24, 2009 Concerning Accelerated Invoicing by NYISO

July 15, 2009

I. Introduction

The City of New York ("City") hereby opposes the Appeal by the Independent Power Producers of New York, Inc. ("IPPNY") of an action taken by the Management Committee ("MC") on June 24, 2009. The MC vote in question relates to a motion to introduce weekly invoicing instead of monthly cycle billing. The City urges denial by the Board of the appeal for the reasons set out below.

Consideration of context is important to the assessment of the MC decision in this matter. As the official voting summary of the meeting of June 24 reflects, seven discrete creditworthiness enhancements were actually supported overwhelmingly – by a greater than 90% affirmative vote – in Motion # 2. In contrast, two different votes concerning weekly invoicing, Motion # 1 as part of a larger suite of measures, and # 2a as a stand alone vote on accelerated billing, were able to command affirmative votes of only 40.85% and 43% respectively. Members of three of the five voting sectors offered no votes at all for the proposal for weekly invoicing.

The disparity in voting results is telling: there were clearly serious misgivings among about the justification and likely consequences of going to weekly billing by the NYISO, particularly for creditworthy entities that are themselves limited to a monthly billing cycle, and have exhibited no likelihood of being a source of default concerns, nor any history thereof. This consideration is one that the Federal Energy Regulatory Commission ("FERC" or "Commission") has recognized in the past. And despite the efforts by IPPNY to suggest that FERC policy is fixed and immutable on the issue of seeking shortened billing cycles, the actual record at FERC is considerably more nuanced, and exhibits much deference to the views of stakeholders.

As will be seen, there remains a large measure of discretion accorded to individual RTOs and ISOs by FERC, particularly where there is a clear statement of voting sentiment among those most affected by credit risk, the ISO constituent parties themselves. This is precisely the situation that obtains here, and no reasonable basis exists for the Board to overturn the decision of the MC to strongly reject a weekly billing cycle.

II. FERC Policy Does Not Mandate Shortened Billing Cycles And Exhibits Considerable Deference to ISO Stakeholder Positions

The IPPNY appeal herein suggests that prior FERC policy pronouncements and recent rulings in other ISOs or RTOs virtually compel the result sought by IPPNY, the Board imposition of weekly billing cycles. However, despite the artful attempt by IPPNY to gloss over certain key distinctions, an examination of the actual record at FERC reveals that there is no bar to a different result in the NYISO, and that the retention of monthly billing with appropriate safeguards (including the numerous creditworthiness measures that the MC adopted on June 24) is entirely permissible when circumstances justify it. This is particularly true where, as here, the parties most at risk in a credit default – the NYISO stakeholders – strongly support the outcome reached.

As to the 2004 FERC Policy Statement on Electric Creditworthiness cited by IPPNY, it takes the form of a request rather than a directive – a request that the ISOs/RTOs "evaluate their current processes and standards, and determine the sufficiency and adequacy of their [creditworthiness] terms and conditions, and report back to the Commission…."[1] Indeed, Commissioner Brownell dissented from the Policy

[1] Policy Statement on Credit-Related Issues, 109 FERC ¶ 61,186, Separate Statement of Commissioner Brownell, at p. 3 (Issued November 19, 2004)

Statement on the basis that it was a "non-binding" action that was "merely 'requesting' rather than directing" action by the RTOs/ISOs.[2]

Moreover, there are a number of key distinctions between the circumstances when the Policy Statement was issued those that apply today. First, it was issued nearly five years ago, in a climate in which the billing cycle issue was very different and of greater concern. Billing cycles in 2004 were far longer than they are today; indeed, the 2004 Statement notes that "[c]urrently, settlement cycles in...ISOs/RTOs are as high as 90 days"[3] The NYISO has already taken numerous steps over the years to materially shorten the billing and true-up processes, and invoking a statement from five years ago as IPPNY does here is of little current utility to the Board in resolving this matter.

Another key distinction recognized in the Policy Statement is the effect of monthly billing on load-serving entities' cash flow, and the critical consideration of stakeholder input in resolving differences on such issues as appropriate billing cycles:

> The Commission acknowledges that some regulated load-serving entities have expressed a wish to remain on at least a monthly billing schedule due to cash flow concerns that could arise from a more frequent payment schedule.[4]

Even more relevant to the Board's deliberation here than this implicit recognition by FERC of a legitimate concern for load-serving entities' working capital requirements associated with weekly billing is what immediately follows the passage quoted above:

> However, the Commission notes that it appears that *all of the load-serving entities in ISO-NE were supportive of NEPOOL's move to a weekly billing cycle and thus encourages other ISOs/RTOs to work through their stakeholder processes to resolve*

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[2] *Ibid.*

[3] Policy Statement on Credit-Related Issues, 109 FERC ¶ 61,186, at ¶ 23, p.10

[4] *Id.* at ¶ 24 and fn. 23, at p.10

this issue. [emphasis added]

Thus, two key distinctions are studiously ignored by IPPNY while it invokes the FERC Policy Statement: First, in the MC vote, in contrast to the ISO-NE situation recounted by FERC, no load-serving entity supported the move to weekly billing. In addition, no members of either the end user or the public power sector supported the move. The 40% support for the move came solely from two sectors only, generators and other suppliers, thus revealing the essentially parochial nature of that vote.

Secondly, not only is the Policy Statement non-binding as a guide to NYISO action, FERC explicitly encourages use of the stakeholder process to resolve issues such as the optimal billing cycle. In fact, FERC was at some pains to make this point in the Policy Statement, both reiterating it, and noting in effect that ISOs/RTOs are not monolithic, and therefore should have a large measure of self-determination over issues of credit risk:

> The Commission recognizes that not all ISOs/RTOs are at the same stage of evolution, and, therefore, that they should be able to determine for themselves at what point these measures to reduce the mutualized default risk would be cost effective and compatible with their markets and therefore should be implemented.
>
> [T]he Commission encourages, to the extent practicable, each ISO/RTO to improve its credit practices through its stakeholder processes (assuming it uses such a process), allowing its members to determine what practices are the most cost-effective for reducing the credit risk that the members ultimately bear.[5]

It needs hardly be said that the NYISO has done precisely that here, and the stakeholders in the MC, the principal governance committee, rejected weekly billing by a considerable margin. And there is a sound reason for reliance on stakeholders to resolve

[5] *Id.* at ¶ 32, p. 13

this issue; it is ultimately they, not the NYISO, who bear what FERC has characterized as the mutualized default risk. If one market participant defaults, it falls upon the remaining participants to make up any shortfall. Thus, Board intervention in such a matter as resolving the precise parameters of creditworthiness policy following a decisive MC vote should be undertaken only under extreme circumstances – and IPPNY has made no showing that such circumstances exist here.

Rather, the appeal here cites a FERC decision that ratifies a stakeholder decision and attempts to convert that decision into a form of authority under which the NYISO Board is asked to overturn an unambiguous stakeholder vote in the Management Committee. It thus in effect attempts to blur the key distinction between Section 205 and 206 filings. In the recent PJM matter cited by IPPNY that, *inter alia*, shortened the billing cycle to a weekly period, the proposal to do so was endorsed by PJM stakeholders "by acclamation" with only scattered opposition and abstentions. In fact, PJM in its filing letter to the Commission characterized the credit risk revisions as "having received the support of an overwhelming stakeholder majority."[6]

This is a critical difference, and one that directly undercuts any claim that the FERC action in the PJM case in April of this year should in some fashion govern the Board's decision here. And the IPPNY contention that the Board should reject the claims of the opponents of weekly invoicing for the same reasons FERC rejected them in the *PJM* Order is entirely without merit. In the latter instance, the opponents were a scattered few, not a nearly 60% majority as was the case in the MC vote.

[6] *PJM Interconnection, LLC*, Docket No ER09-650-000, PJM Interconnection Section 205 submission letter to FERC, at page 12 (filed February 3, 2009)

The cases are simply not comparable. And what FERC has taught in this area is a large measure of deference to the views of stakeholders, particularly in those instances where mutualized risk terms will place the risk of default on those very same voting parties. For example, in *New York Independent System Operator, Inc.*, FERC Docket No. ER03-552-000 *et al.*, the Commission, while recognizing the need to find creditworthiness provisions just and reasonable, also noted the deference due to such measures that are approved through the stakeholder process.[7]

What is properly sought in these matters is an appropriate balance – provisions that recognize and to the extent possible reconcile the competing concerns associated with billing cycles and their implications for market participants. And the Commission has suggested that more frequent billing and payment cycles might be required of "customers that do not have investment grade debt"[8] Such a description does not extend to well-capitalized entities like Con Edison, which in part illustrates why the proposal rejected soundly by the MC could reasonably be viewed as unduly broad or overinclusive.

As the NYISO itself stated in the same case, "different requirements for differently situated customers accurately reflect the different risks of loss posed by each" and "an Investment Grade customer, by virtue of its demonstrated financial strength, poses less risk of nonpayment…."[9]

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[7] *New York System Operator, Inc.*, Docket Nos. ER03-552-000 though -003, and ER03-984-000 though -001, 104 FERC ¶ 61,311, at ¶ 29, p. 10 (Issued September 22, 2003)
[8] *Id.* at ¶¶ 29-30, p. 10, citing the "appropriate balance" between preventing defaults and avoiding overly stringent billing or credit requirements
[9] *Id.* at ¶ 38, p. 12

In the absence of any showing that a decision was manifestly unfair or unjust, it is not sound policy for the NYISO Board to revisit actions taken in the governance process, particularly votes taken by a strong majority in the Management Committee. While the Board of course has the power to act independently to correct a manifest injustice, or to address actions that are unfair or discriminatory, the vote under review here does not give rise to any circumstances requiring Board intervention.

Rather, the vote of June 24th reflected a measured decision to address well recognized issues with an affirmative vote for a significant suite of NYISO credit policy reforms, while rejecting a measure that a strong majority of market participants viewed as operating to unduly disadvantage load-serving entities without a sufficient and demonstrable rationale for doing so.

As reflected in the discussion herein, prior FERC rulings and policy statements concerning credit policy require no more of the NYISO and its constituent members, and the action taken by the Management Committee here was entirely appropriate.

III. Conclusion

For all the above reasons, the City urges the Board to deny the appeal filed by IPPNY in this matter, and uphold the decision of the Management Committee.

Dated: July 15, 2009

Respectfully submitted,

Michael J. Delaney

Michael J. Delaney, Esq.
Director – Regulatory Affairs
Energy Policy Department
New York City
Economic Development Corporation
110 William Street, 4th Floor
New York, NY 10038