READ AND LANIADO, LLP
ATTORNEYS AT LAW
25 EAGLE STREET
ALBANY, NEW YORK 12207-1901

(518) 465-9313

KEVIN R. BROCKS
CRAIG M. INDYKE
DAVID B. JOHNSON
SAM M. LANIADO
HOWARD J. READ

ROBERTO BARBOSA
JEFFREY B. DUROCHER
STEVEN D. WILSON

TELEFAX NO.
(518) 465-9315

Via Hand Delivery

August 1, 2002

Hon. Richard J. Grossi
Chairman, New York Independent System
Operator Board of Directors
C/O William J. Museler
President and CEO
New York Independent System Operator, Inc.
3890 Carman Road
Schenectady, NY 12303

Re: Motion in Opposition to Appeal of Select Energy, Inc.

Dear Chairman Grossi:

Pursuant to Section 4.01 of the Procedural Rules for Appeals to the ISO Board, please find enclosed the "Motion of the Independent Power Producers of New York, Inc., in Opposition to the Appeal to the NYISO Board Regarding the Decision of the Management Committee to Deny a Motion to Defer the Implementation of Modeling Changes to the In-City Day Ahead Market." A copy of the Motion has been e-mailed to Kristen Kranz, of the ISO's staff, who has agreed to serve it on the members of the Management Committee today.

Very truly yours,

David B. Johnson

Enclosures

cc: Kristen Kranz, via e-mail

MOTION OF THE INDEPENDENT POWER PRODUCERS OF NEW YORK, INC., IN OPPOSITION TO THE APPEAL TO THE NYISO BOARD REGARDING THE DECISION OF THE MANAGEMENT COMMITTEE TO DENY A MOTION TO DEFER THE IMPLEMENTATION OF MODELING CHANGES TO THE IN-CITY DAY AHEAD MARKET

The Independent Power Producers of New York, Inc. ("IPPNY"),[1] acting through its members on the ISO Management Committee,[2] hereby moves in opposition to Select Energy, Inc.'s ("Select") appeal of the Management Committee's July 11, 2002, decision to deny Select's motion to defer the implementation of modeling changes to the in-City day-ahead market ("DAM").[3]

Select requests that the New York Independent System Operator's ("NYISO") change in modeling for the in-City DAM be deferred for approximately nine months because the NYISO "fundamentally changed the assumptions under which TCCs are calculated."[4] Select asserts that the ISO's modeling change has caused a diminution in the value of certain TCCs that the NYISO sold and that were subsequently traded in the market. Select seeks the nine month delay "so that the parties may study the impacts of this change on the market, including existing TCCs holders."[5] For the reasons discussed below, the NYISO Board should deny Select's appeal.

First, it would be bad policy for the NYISO Board to grant Select's appeal. Every change in the NYISO's market rules will impact some market participant, but this is no reason not to implement a needed enhancement to the market in a timely manner, especially when those enhancements have been fully reviewed with market participants. For example, the NYISO's

[1] IPPNY is a not-for-profit trade association representing more than 100 companies involved in the development, operation, marketing and sale of electric power in New York.

[2] These members are identified in Attachment A.

[3] Select's motion was rejected by 88 percent of the vote in the Management Committee.

[4] Select Appeal at 8.

[5] Select Appeal at 8.

approval of an interconnection request for a new generating facility or a transmission upgrade to relieve congestion could have a major impact on the value of TCCs that a market participant purchased under assumptions that no such upgrades would be made. In addition, a developer could have invested hundreds of millions of dollars in a generating facility only to find that its facility is no longer a good investment after the NYISO modifies its market mitigation measures.

If Select's requested nine month review shows that it will be harmed financially by the NYISO's modeling changes to the in-City DAM, it is likely that Select will demand some form of compensation. If Select is compensated, however, then why shouldn't the TCC holders and developer be compensated in the examples above? Based on the logic of Select's argument, the market participants that believe themselves harmed financially due to the nine month deferment should also expect to be compensated. If the NYISO ultimately compensates Select, then it should expect to be inundated with requests for the same treatment from other market participants every time enhancements are made to the market. The result would be that scarce resources would be tied up addressing requests for compensation rather than working to design and implement critically needed improvements to the NYISO's market. If the NYISO will not compensate Select, which it should not, then Select's requests for a nine month deferment of the modeling changes is pointless and should be rejected.

Second, Select has no basis to argue that "fundamental fairness" requires its interests to be addressed, because Select was fully forewarned that changes to the modeling of the in-City DAM would be implemented by the NYISO. Select contends that the "NYISO did not study the impacts of this change in advance . . . and did not provide sufficient information to market participants to enable them to evaluate it before it was implemented."[6] The NYISO is not in a position to advise market participants on how compliance with directives from the Federal Energy Regulatory Commission ("FERC") is going to impact their proprietary business

[6] Select Appeal at 2.

decisions. In spite of this, the NYISO did describe to market participants the changes that were going to be made to the in-City DAM.

In a presentation by the NYISO staff to the AMP/In-City Mitigation Task Force on January 4, 2002, the NYISO clearly demonstrated that it was planning to alter the DAM modeling to represent in-City load pockets.[7] The presentation states that out-of-merit generation ("OOM") has been used to secure the New York City 138 kV facilities, that the goal is to minimize the need for OOM requests, that the SCUC/BME will be used to secure transmission facilities in the DAM and hour ahead market ("HAM"), there will be additional constraint modeling of 138 kV in the DAM and HAM, and that this would lead to consistent pricing in the DAM, HAM, and real time market ("RTM").[8]

In addition, Select acknowledges that load pocket congestion was managed by Consolidated Edison Company of New York, Inc. using OOM generation, which indicates that Select fully understood that load pocket modeling by the NYISO would reflect that congestion in clearing prices. Select was fully forewarned that there would be new congestion patterns appearing in the NYISO DAM, because it was clear that the NYISO modeling was intended to represent conditions that resulted in units being taken out of merit. Modeling these constraints and letting these previously OOM units set clearing prices would clearly result in congestion on the heretofore ignored constraints.

Further, the fact that Select says that it asked the NYISO for information about the impact of the modeling on TCCs indicates that Select recognized that there was likely to be an impact due to the changes. In short, Select waited to see what would happen in the market after the modeling changes were implemented. If Select was concerned about the impact of the modeling changes on its TCCs, the time to have protested the implementation of the changes was before

[7] According to the attendance log of the meeting that day, Select's representative, Jim Scheiderich, was present at the meeting.

[8] http://www.nyiso.com/services/documents/groups/bic_amp_icm_task_force/01_04_02/in_city_2001.pdf

they were implemented. Select's requested remedy for its "buyer's remorse," a nine month deferment of the modeling changes, is simply not a matter that requires NYISO Board intervention; nor is it a rational way to provide compensation to Select. What Select essentially is asking for is that the DAM and the RTM be purposely out of sync for nine months. This type of remedy affects all other market participants, not merely Select, by maintaining a market flaw based upon the illogical argument that Select should be compensated for its buyer's remorse.

Third, Select's contention that its evaluation of the potential value of TCCs at the time it made its decision to purchase the TCCs was based on its review of "historical congestion levels (which flow from the contemporaneous ISO modeling assumptions)"[9] is no justification for deferring the modeling of the in-City DAM for nine months. While a backward looking data analysis may be helpful in estimating the value of TCCs, TCCs should be valued by a look forward, because it is the forward conditions that will determine their value. Select's position is akin to saying that a stock should be purchased based upon its historic returns and that the purchaser deserves compensation if future returns do not match historic returns. Contrary to Select's argument, the NYISO did not change the basic product represented by the TCC. The TCC still serves as a hedge for congestion in the DAM. This is the purpose attributed to it in the ISO Market Administration and Control Area Services Tariff, which states that "TCCs are financial instruments that enable Energy buyers and sellers to hedge fluctuations in the price of transmission."[10] The change in the modeling of the DAM had no impact on the primary purpose of the TCC.

Finally, contrary to Select's contention that the "ISO's modeling change for the DAM . . . was not required to implement [the] mitigation measures",[11] the fact is that FERC did require the

---

[9] Select Appeal at 3.

[10] NYISO Services Tariff, Original Sheet No. 70.

[11] Select Appeal at 3.

NYISO to take over the dispatch of the in-City 138 kV system.[12] To contend that the implementation of the FERC order would be satisfied with making the changes in only the real-time market is tantamount to "institutionalizing" non-convergence between the real-time and day-ahead markets. Furthermore, it is IPPNY's understanding that the modeling that has now been done in SCUC is consistent with the modeling that was done by the ISO to allocate the TCC's.

CONCLUSION

In light of the foregoing, IPPNY respectfully requests that the NYISO Board deny Select's appeal.

Respectfully submitted,

READ AND LANIADO, LLP
25 Eagle Street
Albany, New York 12207
(518) 465-9313 (phone)
(518) 465-9315 (fax)

Attorneys for
Independent Power Producers
of New York, Inc.

By: ____________________
David B. Johnson

Dated: August 1, 2002
Albany, New York

[12] *Consolidated Edison Company of New York, Inc*., 97 FERC ¶ 61,241, slip op. at 10 (2001).

Attachment A

AES
American National Power, Inc.
Calpine Corporation
Edison Mission Marketing and Trading
Entergy Nuclear Northeast
Indeck Energy Services
KeySpan Energy
NRG Energy, Inc.
Reliant Energy
PG&E National Energy Group
Sithe Energies
TransCanada Power
Aquila
Constellation Energy Group
HQ Energy Services US
Duke Energy
El Paso Merchant Energy
FPL Energy, Inc.
PPL Energy Plus, LLC
Consolidated Edison Energy, Inc.