

August 1, 2002

Mr. Richard J. Grossi
Chairman
New York Independent System Operator
3890 Carman Road
Schenectady, NY 12303

c/o Mr. William J. Museler
President and Chief Executive Officer
New York Independent System Operator
3890 Carman Road
Schenectady, NY 12303

**Re: Notice of Motion in Opposition to Appeal of the
Management Committee's July 11, 2002 Decision
Concerning DAM Modeling Implementation**

Dear Chairman Grossi:

Pursuant to the Procedural Rules for Appeals to the ISO Board, The City of New York hereby submits three copies of its Opposition to the Select Energy, Inc. appeal of the Management Committee's decision at its July 11, 2002 meeting to reject Select Energy's motion to delay the implementation of modeling changes to the NYISO Day-Ahead Market (DAM).

A copy of this appeal has been electronically transmitted to Ms. Kristen Kranz, who has agreed to serve it on the members of the Management Committee.

Very truly yours,

Michael J. Delaney, Esq.
City of New York

Attachment

**Motion in Opposition to Appeal of Select Energy, Inc.
of the July 11, 2002 Management Committee Decision Concerning
Modeling Changes in the NYISO Day-Ahead Market**

Pursuant to §§ 1.03 and 4.01 of the New York Independent System Operator's ("NYISO") Procedural Rules of Appeal, the City of New York ("City") hereby opposes the appeal of Select Energy, Inc. ("Select Energy") of the July 11, 2002 decision of the NYISO Management Committee concerning a Select Energy motion to postpone implementation of the NYISO's Day-Ahead Market ("DAM") modeling procedures.

At the July 11, 2002 Management Committee meeting, Select Energy made a motion to delay implementation of the NYISO's DAM modeling changes (which had been implemented on June 19, 2002) until April 30, 2003. This motion was overwhelmingly rejected¹ by the Management Committee. While the appellate decisions of this Board are of course entirely independent of the decisions made by the NYISO's constituent committees, a vote outcome such as that challenged here remains very telling.

Market design and mitigation measures in the NYISO and elsewhere are constantly evolving,² and any number of regulatory changes or other variables can logically be expected to affect the value of a Transmission Congestion Contract (TCC) that has already been purchased at auction or traded. Market participants cannot reasonably assume that developments in a dynamic regulatory environment will always precede TCC auction dates.

¹ As is reflected in the official NYISO Record of Motions from the July 11, 2002 Management Committee meeting, the Select Energy motion failed with an affirmative vote of 11.92%. Such a result clearly reflects a broad lack of support for the Select Energy motion among virtually all MC market participants.

² This fact was illustrated as recently as July 31, 2002 by the Federal Energy Regulatory Commission's issuance of a statement of market principles that will guide the formation of standard market design.

Sophisticated stakeholders such as Select Energy surely understand this fact. The election to participate in TCC auctions, like any other form of futures trading, carries with it inherent risks as well as potential benefits. Perhaps foremost among such considerations is that of regulatory actions that will affect the value of the contracts. In an electricity market that is widely understood to be in transition, and that remains subject to regulation by both federal and state authorities, the risk of such developments is borne by all those who choose to hedge against the future in the TCC market. The principle of regulatory risk for those who enter into contracts that might have their value affected by future regulatory changes has been widely recognized in appellate case law, and applies here with equal force.

We also note that any number of regulatory actions by the NYISO may redound to the benefit of a party holding TCC's, while others (such as the load pocket modeling challenged here) may conceivably operate to its detriment. For example, in the Comprehensive Mitigation Filing, altering the in-City DAM mitigation trigger from 5% to 7% should increase the value of a TCC. To the extent that is true, Select Energy as a TCC holder will benefit from an unanticipated regulatory change in the market.

This is simply the logical obverse of the purported harm that it claims to have suffered from the recent implementation of more sophisticated sub-load pocket modeling by the NYISO. No one has suggested that Select Energy should lose the enhanced TCC value associated with a regulatory development that operates to its benefit. For the same reason, a selective proposal to defer only those market changes that may arguably disadvantage the company should not be granted by the Board.

There is a larger issue at stake in this appeal as well. The NYISO has a mandate to eliminate or reduce market distortions in the New York City market. That market is characterized not only by general transmission constraints, but also by sub-load pockets in various areas of the City. To the extent that the SCUC is now capable of modeling DAM prices in the in-City sub-load pockets, mitigation of prices in those pockets becomes imperative in order to check market power. The NYISO properly recognized this fact in its June 19, 2002 revision of the DAM modeling. To now delay the implementation of corrective action because of the views of one holder of TCC's would work an injustice to consumers who are located in such sub-load pockets. Such a course cannot be justified, and should be rejected.

Conclusion

For all the above reasons, the City of New York urges the Board to reject the appeal of Select Energy.

Dated: August 1, 2002

Respectfully submitted,

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