

May 9, 2001

Richard J. Grossi
Chairman of the Board of Directors
New York Independent System Operator
3890 Carman Road
Schnectady, NY 12303

RE: *MEUA Motion in Opposition to Appeals of Management Committee April 18, 2001 Decision Approving the Penalties and Public Disclosure Amendments to the Market Monitoring Plan*

Dear Mr. Grossi:

The Municipal Electric Utilities Association of New York State (AMEUA), acting through the MEUA Members on the ISO Management Committee, respectfully submits this letter as a Motion in Opposition to the two appeals of the Management Committee's decision to approve the Penalties and Public Disclosure amendments to the Market Monitoring Plan (A Amendments). The appeals noticed to date are by: (i) Independent Power Producers of New York (AIPPNY) on behalf of its members on the Management Committee, and (ii) Aquila Energy Marketing Corp. and Morgan Stanley Capital Group, Inc.

The appeals must be denied. The Amendments are a necessary component of effective market monitoring. Without effective market monitoring, market-based rates in the ISO administered markets cannot be Ajust and reasonable@ as required by the Federal Power Act. As FERC stated in authorizing the ISO, Aour approval of market-based rate authority depends, in part, on adequate monitoring.@ *See Central Hudson Gas & Elec. Corp., et al.*, 86 FERC & 61,062 at 61,238 (January 27, 1999); *rehearing denied, Central Hudson Gas & Elec. Corp., et al.*, 88 FERC & 61,138 (July 29, 1999), *appeal pending, Municipal Electric Utilities Association v. FERC, DC Cir. No. 99-1398, et al.*

Moreover, FERC has specifically noted that Athe ISO and the advisor ... will establish sanctions that they deem appropriate for violations.@ *Id.*, 86 FERC at 61,237. The

penalties provided for in the Amendments are appropriate sanctions for conduct that warrants mitigation action. While retroactive rate correction authority may also prove to be necessary, the Amendments offer a step in the direction of deterring the exercise of market power.

While MEUA does not question the right of the appealing generators and other suppliers to make their appeal, it must be remembered that the Amendments were offered in the spirit of compromise with the generators. Representatives of generators played a hand in crafting the final Amendments, which passed with over 60 percent of the vote on the Management Committee. It is perhaps unseemly, for example, for parties to argue now that the ISO has too much discretion in imposing penalties, when that provision was put into the Amendments precisely at the request of generators.

Similarly, the appealing generators and other suppliers argue that the Amendments are fatally defective in not being applied to loads as well as generators. To the contrary, FERC specifically required that:

the monitor should be allowed to target its monitoring efforts, thereby more intensively monitor[ing] generators with certain characteristics that are more likely to be associated with the exercise of market power (such as high market share). There is no reason why monitoring should be uniformly applied to all generators, as opportunities to exercise market power are not uniformly distributed throughout the market.

86 FERC at 61,238. The appealing parties fail to explain why loads should be included in the Amendments and they are unable to even explain why loads may have the means to exercise market power. Certainly, FERC did not think loads were a danger. In any event, targeting the Amendments to generators in the Amendments is fully consistent with FERC's requirements.

MEUA respectfully requests that the Board of Directors join with the Management Committee in submitting to FERC the tariff changes necessary to implement the Amendments. If the end results of market-based rates in the ISO markets are not kept within the zone of reasonableness, then market-based rate authorization is not appropriate in New York.

Sincerely,

Thomas L. Rudebusch
Attorney for the Municipal Electric
Utilities Association of New York State