

May 9, 2001

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

Re: Motion in Opposition to the Notices of Appeal to the NYISO Board of Directors Regarding the April 18, 2001 Management Committee Approval of Penalties and Public Disclosure for Conduct that Results in Application of Market Mitigation.

Dear Chairman Grossi:

The New York State Research and Development Authority (NYSERDA) submits this letter as its Motion in Opposition to the jointly filed Notice of Appeal of Aquila Energy Marketing Corporation and Morgan Stanley Capital Group Inc., and the Independent Power Producers of New York, Inc. on behalf of its members (together, the Appellants) in the above referenced matter.

Summary

NYSERDA voted in favor of Motion #8 at the April 18, 2001 Management Committee meeting. This motion requests the ISO Board to concur in a joint Section 205 filing to the Federal Energy Regulatory Commission (FERC) to amend the Market Mitigation Plan to include the Penalties and Public Disclosure proposal for market participant conduct that results in application of Market Mitigation. NYSERDA, like the majority of market participants who voted for this proposal, agreed to several compromises in order to advance the position to the ISO Board for their concurrence.

The action of the Management Committee, now the subject of an appeal, is a responsible action. It fills a significant gap in the NYISO's authority to address market power abuses. This authority is limited to prospective mitigation only. Market participants could still perform actions which warrant mitigation and receive substantial financial rewards until their actions are detected and mitigated. The Management Committee approved proposal is crafted not to be a retroactive market clearing price correction program or a subsidy program for consumers to compensate for market prices resulting from abuse of market power. Rather, the Management Committee proposal as provided to the ISO Board is: (1) focused at correcting conduct of specific market participants that warrant mitigation; (2) graduated in penalty levels based on the frequency of conduct requiring mitigation; and, (3) coordinated with the Automatic Mitigation Program (AMP) approved by the ISO Board of Directors on February 20, 2001.

NYSERDA has reviewed the New York State Consumer Protection Board's (CPB) Motion in Opposition to Notice of Appeal that will be filed with the ISO Board in this matter. NYSERDA concurs with the issues and arguments advanced by the CPB. In addition, NYSERDA wishes to emphasize the following points:

THE APPELLANTS' CLAIM THAT THE PENALTY PROGRAM CREATES ADDITIONAL UNCERTAINTY AND AMBIGUITY FOR MARKET PARTICIPANTS IGNORES THE LINKAGE TO THE ISO BOARD'S AUTOMATIC MITIGATION PROGRAM AND THE FERC APPROVED MARKET MONITORING PLAN.

The Appellants argue that the timing of new efforts to penalize actions warranting mitigation will create such uncertainty that suppliers will follow more conservative bidding practices. Appellants claim these new practices can result in a reduction of supplies at the time they are most needed. The Appellants ignores that the Penalties and Disclosure proposal is crafted specifically to work with the ISO Board's AMP.

Moreover, the definitions which could impose penalties based on past conduct are the same as used by the AMP which was approved by the Board in February of this year. In turn, both the AMP and the Penalties and Disclosure proposal use predefined categories of "conduct inconsistent with competition" that are contained in the existing Market Monitoring Plan approved by FERC in April, 2000. Appellants have no basis to claim that the Penalties and Disclosure proposal will increase uncertainty and as a result discourage suppliers from selling energy in New York. The ground rules from the AMP and the Market Monitoring Plan are used in the Penalties and Disclosure proposal to minimize any surprise and resulting uncertainty that a supplier could encounter. Finally, the Penalties and Disclosure proposal, like the AMP and the Market Monitoring Plan, provide a supplier consultation mechanism to determine if questioned conduct is consistent with competitive behavior. If satisfactory explanations exist, no further actions leading to penalties or disclosure will be taken.

THE APPELLANTS CLAIM THAT THE PENALTIES AND DISCLOSURE PROPOSAL IS

DISCRIMINATORY IS INCORRECT.

Appellants assert that the Penalties and Disclosure proposals are discriminatory because they only pertain to energy suppliers and do not include loads serving entities and transmission owners. Appellants fail to mention that no participant was able to demonstrate how the proposal could be made applicable to load serving entities and transmission owners. Last minute attempts via an unfriendly amendment were made at the April 18, 2001 Management Committee meeting to expand Penalties and Disclosure applicability to loads serving entities. However, the Management Committee rejected the amendment from current consideration.

NYSERDA does not object to considering adequately developed proposals for applying Penalties and Disclosure provisions to other market participant sectors that engage in conduct warranting mitigation, including load serving entities.

NYSERDA has at least two specific concerns regarding applicability of Penalties and Disclosure actions to load serving entities. First, any expanded proposal must avoid any attempt to include Price Responsive Load actions as conduct warranting mitigation and resulting penalties. This NYISO Board is firmly on record as to the need for enhanced price responsive load to support full competition in the electricity industry. Progress towards this objective should not be inadvertently impeded or halted. Second, equal treatment of all participants should not result in penalties that are excessively harsh. The proposal approved by the Management Committee prescribes penalties limited to the specific supplier actions, volumes and duration at its generator's bus. Extension of penalty to load serving entities may result in zonal or multi-zonal volumes and prices used for penalty calculations. Equal application of this calculation method to other participants such as generators could result in penalties of truly "draconian" impacts.

Conclusion

NYSERDA requests that the ISO Board of Directors deny the Appellants' requests. We urge the Board to concur with the Management Committee's action and file expeditiously with FERC amendments to the Market Mitigation Plan that will include the Penalties and Disclosure proposals approved by the Management Committee on April 18, 2001.

Respectfully submitted,

Paul A. DeCotis
Director, Energy Analysis Program