

To: NYISO By-Laws Subcommittee, By-Laws Subcommittee Chairman, MC Chairman

From: Rick Mancini, Executive Director of the Price Responsive Load Coalition

Re: Ability of Generators to Participate in the "Other Supplier" Sector

Date: May 21, 2009

The Price Responsive Load Coalition (PRLC) represents Integrys, Energy Curtailment Specialists, EnerNOC, Pace Energy and Climate Center, Alcoa, Energy Analytics, Galt Power and Ace Energy. The PRLC is concerned with a trend that has developed over the last several years that threatens to upset the carefully-crafted balance that has been the basis for the NYISO's successful shared governance approach since its inception.

The trend in question is the significant and growing presence in the "Other Supplier" Sector of companies that own large amounts of generation. These companies generally express views that are consistent with, if not identical to, the views of Generators, and more often than not, vote in concert with the members of the Generator Sector.

We acknowledge that the definition of "Other Supplier" does not categorically exclude companies that own generation, even though such companies clearly meet the definition of Generator Owners. Thus, the NYISO has apparently interpreted the NYISO Agreement as providing such companies the choice of which sector to join. We believe that this interpretation, while understandable and possibly unavoidable given the plain language of the Agreement, does not comport with the intent of the ISO Agreement as negotiated.

In our view, the definition of "Other Supplier", by its very name, is clear in its intent to include those companies that "supply" a product or service transacted in the NYISO-administered markets "other" than the explicitly accommodated Generators, Transmission Owners, Power Authorities, Munis and Co-Ops, and End-Users. That definition, in and of itself, should be sufficient to consign owners of Generation to the Generator Sector.

The issue we are raising is not merely a theoretical one. In two recent votes of the Business Issues Committee, the Generator members in "Other Supplier" sector voted in lockstep with each other and, more importantly, with all of the voting members of the Generation Owner sector. In contrast, the constituencies other than the Demand Response (DR) Providers were split on the issues.

Those members of the Subcommittee who were involved when the ISO Agreement was originally negotiated will recall that the intent of the Other Supplier sector was to provide voting rights to the "middlemen," (e.g., the entities like ESCOs, power marketers, brokers, and aggregators) that aided the efficient operation of the NYISO's Markets by facilitating commerce between End-Users and Suppliers. Some years later, as DR Providers grew in number and significance, it was determined that these entities also fit into this same "middleman"/facilitator role and should be able to vote in the Other Supplier sector.

The crucial attribute of "Other Suppliers" is that they have a mixed disposition to the key pocketbook issue of energy and capacity prices. Insofar as they are selling a product into the NYISO Market, their economic interests are served by higher prices. However, as the providers of services to end-users, they also share their customers' interest in lower prices. As a result of the balance created by these conflicting interests, the Sector as a practical matter should not be expected to vote as a block on such issues, as some of the other sectors often do.

On May 18, 2004, the NYISO Board denied an appeal by the Independent Power Producers of New York (IPPNY) of a Management Committee decision to allow DR providers to participate in the “Other Suppliers” sector. In its response, the Board stated that:

“...the Board is committed to maintaining a balanced and workable voting structure. We would be concerned if evidence in the future indicated that the voting balance in stakeholder governance was trending in favor of load or supply. Such a trend could jeopardize the continued competitiveness of the NYISO markets. Therefore, the Board is directing its staff to monitor future MC votes for evidence of skewing in either direction.”

It is worth noting that Generator sector members were adamant in those discussions that DR Providers should **not** be allowed to participate in their sector. As a result, language to that effect was included in the definition of Generator.

It is ironic that, having explicitly eliminated the possibility of DR providers “infiltrating” their sector, some of those same Generators have subsequently done exactly the reverse. Additional direction and clarification is plainly necessary if the original role and constituency of the “Other Supplier” sector – and with it the original balance struck in the NYISO’s governance structure – is to be restored.

Our proposal is simple and there are two ways to accomplish the stated goal. Either the definition of Generation Owner can be amended to require that owners of generation must participate only in that sector. Alternatively, the definition of “Other Supplier” can be amended to make it clear that it does not include Generation Owners. We have no preference as to which option the Subcommittee should endorse.

ISO Agreement Definitions

1.38 Generator.

A facility, other than a Distributed Generator or Demand Response Provider, that:

- (a) is located in the NYCA, or
- (b) is supplying capacity to the NYCA, or
- (c) for the purposes of ISO governance, has filed an application for siting approval pursuant to Article X of the New York State Public Service Law, or other applicable law, which is deemed complete by the Article X Board or other such agency. An entity that qualifies under subsection (c) will retain its status until the entity’s application is denied or withdrawn.

1.39 Generator Owner.

A Party that owns, or leases with rights equivalent to ownership, a Generator. Purchasing all or a portion of the output of a Generator shall not be sufficient to qualify a Party for participation in the Generation Owner sector for purposes of ISO governance.

1.96 Other Supplier.

A Party that is a seller, buyer, broker, aggregator, Power Exchange, ESCO or transmitter of capacity or energy in, from or through the New York Control Area, provided, however, that for the purposes of ISO governance a Municipal Electric System, a Cooperatively Owned Electric System and a governmental agency that acts as a retail Load aggregator shall not qualify as an Other Supplier.