

**DRAFT 1/23/02**

**Small Consumer Proposal**

**Note: Changes from the relevant provisions in the current ISO Agreement are indicated in blackline below. These proposed changes result from discussions at the January 3 and January 16, 2002 meetings of the By-Laws & Governance Subcommittee. After the Subcommittee has finalized this proposal, identical changes will be made to the MC, OC and BIC By-Laws and submitted to the MC for the February 7 MC meeting.**

**1.31 End-Use Consumer.**

A Party that is (i) a Large Consumer, (ii) a Small Consumer, (iii) ~~a not-for-profit~~an organization that represents Small Consumers, (iv) a governmental agency that advocates on behalf of Small Consumers, or (v) a governmental agency that acts as a retail Load aggregator primarily for Small Consumers; or (vi) a Large Energy Using Governmental Agency; provided, however that an End-Use Consumer may not be an Affiliate of a Transmission Owner, Generator, Other Supplier, Public Power Party or Environmental Party regardless of where located.

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**1.57 Large Consumer.**

An Industrial Consumer or a Commercial Consumer, not under the Control of any federal, state or municipal government or government-owned agency, authority, corporation, or other similar entity, whose peak load in any month within the previous twelve months was two megawatts or more. Industrial and Commercial Consumers with common ownership of fifty percent or more may aggregate their usage in order to qualify to participate in ISO governance as Large Consumers.

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**1.87A Non-Voting Entity.**

**An individual or organization that meets the requirements to participate in the ISO's governance on a non-voting basis as set forth in Section 2.02 of this Agreement.**

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**1.110 Residential Consumer.**

An End-Use Consumer that (i) takes service under a Transmission Owner's residential rate classification or (ii) takes service at its residence but whose service is not submetered.

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**1.115 Small Consumer.**

A Residential Consumer, or an Industrial or Commercial Consumer whose peak Load did not equal or exceed two megawatts in any month within the previous twelve months. (For purposes of this definition, the Load of a Residential Consumer whose service is not submetered shall be determined by dividing the Load of the building in which the Residential Consumer takes service by the number of residential units in the building.) Small Consumers may participate in the Small Consumer subsector if they meet the requirements set out in Section 7.04 of this Agreement. ~~Industrial and Commercial Consumers with common ownership of fifty percent or more may aggregate their usage in order to qualify to participate in ISO governance as Large Consumers.~~

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## 2.02 Parties to the ISO Agreement.

All Incorporating Parties and any person or entity that meets the requirements for participation in any sector or subsector described in Sections 7.04 and 7.06 may become a Party to the ISO Agreement by (i) certifying, to the satisfaction of the ISO Board, that such person or entity satisfies the requirements for participation in the sector (and subsector, if applicable) in which such person or entity wishes to participate and (ii) signing the Agreement. A Party to this Agreement may participate in the governance of the ISO. There will be a \$5,000 annual fee for each Party, except that: Small Consumers shall be subject to a reasonable fee established by the ISO Board; and not-for-profit organizations that are Environmental Parties and not-for-profit organizations that represent Small Consumers shall pay a \$100 annual fee. The annual fees for Parties may be revised by the ISO Board with the concurrence of the Management Committee. Non-Market Participants also may become Parties to this Agreement and participate in the governance of the ISO. The ISO Board shall permit the following types of organizations or groups to participate in the governance of the ISO as Non-Market Participants:

- (a) Organizations that represent Small Consumers, including governmental agencies, with experience in electric utility regulatory or electricity-related matters in New York State, that in whole or in part advocate on behalf of Small Consumers in New York State, and governmental agencies that act as retail Load aggregators primarily for Small Consumers; provided that no such organization or agency may be an Affiliate of a Transmission Owner, a Generator, Other Supplier, Public Power Party or Environmental Party, regardless of where located.
- (b) ~~Organizations~~ organizations that are non-profit corporations, partnerships, associations or other non-profit entities having the primary purpose of protecting the environment, with experience in electric utility regulatory or electricity-related matters in New York State; provided that no such entity may be an Affiliate of a Transmission Owner, Generator Owner, Other Supplier or Public Power Party, regardless of where located. An organization meeting the foregoing requirements shall not be excluded from the definition of an Environmental ~~Organization~~ Party if it also has a purpose of promoting energy conservation or the generation of electricity from renewable resources.

The ISO Board shall certify that a Non-Market Participant organization or agency is eligible to be a Party to the ISO Agreement and participate in the ISO's governance.

Upon the filing of an application with the ISO and payment of a \$100 fee per annum, individuals and organizations that either (i) have a significant interest in a sector but do not qualify for membership in that sector or (ii) qualify for membership in a sector but choose not to join that sector (collectively, "Non-Voting Entities"), may participate on a non-voting basis in meetings of the Management Committee, the Operating Committee, the Business Issues Committee, and subcommittees and working groups thereof. Non-Voting Entities will: (i) be Parties to the Agreement; (ii) receive notice of, and agendas and other meeting materials for, meetings of the Management Committee, the Operating Committee and the Business Issues Committee; (iii) be allowed to attend meetings of the Management Committee, the Operating Committee, the Business Issues Committee, and subcommittees and working groups thereof, including meetings in executive session; (iv) be allowed to participate in discussions during these meetings; and (v) be allowed to present positions on issues during these meetings, including the right to make motions. Non-Voting Entities will not be allowed (i) to vote on matters brought for action before the Management Committee, the Operating Committee, the Business Issues Committee or any other subcommittee or (ii) to serve as the Chairman or the Vice-Chairman of the Management Committee, the Business Issues Committee, the Operating Committee or any other subcommittee.

Maintaining the integrity of the sectors and subsectors is important to the proper governance of the ISO. Therefore, any Party may challenge at any time the right of a person, entity or Party to participate in a sector or subsector, by filing a petition with the ISO Board, or by the ISO Board raising the issue on its own motion. Before acting on the petition or its own motion, the ISO Board will provide the person, entity or Party whose status is challenged an opportunity to respond and all interested parties shall be given an opportunity to comment. The ISO Board may request from any interested party, additional information that it considers relevant to its determination. The President of the ISO or the ISO Board may, at their discretion, prohibit the person, entity or Party whose status is challenged from voting on matters before the ISO Committees or subcommittees,

**pending the eventual decision on the petition by the ISO Board. A decision on the petition will be within the discretion of the ISO Board.**

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#### **7.04 Sectors.**

Voting on the Management Committee shall be by sector. The Management Committee shall be comprised of five sectors: Generator Owners; Other Suppliers; Transmission Owners; End-Use Consumers; and Public Power/Environmental Parties. A Party must, within thirty (30) days of the commencement of ISO operations or within thirty (30) days of becoming a Party and thereafter not later than the thirtieth day of November of each year, advise the President of the ISO, in writing, of the sector in which the Party is qualified to participate. If a Party is qualified to participate in more than one sector, it shall advise the ISO President, in writing, of the sector in which it chooses to vote; provided, however, that an Investor-Owned Transmission Owner must participate in the Transmission Owners sector, and a State Public Power Authority qualified to participate in the Public Power/Environmental Party sector must participate in that sector; and *provided further*, that a Party qualified to participate in the Large Energy Using Governmental Agency subsector of the End Use Consumer sector or in the government agency subsector of the End Use Consumer sector may not participate in the Large Consumer subsector of the End Use Consumer sector. **An ESCO, Municipal Electric System, Cooperatively Owned Electric System, Generator Owner, State Public Power Authority or Environmental Party may not participate in the End-Use Consumer sector.**

**A Party may participate in the Small Consumer subsector of the End-Use Consumer sector if it is either:**

- (a) a single Small Consumer that (i) did not have a peak Load of less than 500kw, (ii) is not under the employ or the control of the federal, state or municipal government or any government-owned or operated agency, authority, corporation or other similar entity that is actively involved in ISO matters, (iii) is not an officer, director, employee, owner, operator, partner, agent or affiliate of, or an entity with Control of, a Transmission Owner,**

Generator, Other Supplier, Public Power Party or Environmental Party, (iv) is not an officer, director, employee, owner, operator, partner, agent or affiliate of, or an entity with Control of, any person, entity or organization having an interest in becoming an Other Supplier or in developing generation or transmission facilities in New York State which would be subject to the administration of the ISO, and (v) does not have any significant interest in any aspect of the ISO markets or operations other than that of a Small Consumer; or

(b) an organization that represents the interests of at least ten (10) Small Consumers each of whom is reasonably expected to have a peak demand of less than 2,000 kW; provided that no such organization representing this interest, or any of the Small Consumers it represents, may be an owner, operator, partner, agent or affiliate of, or an entity with Control of, a Transmission Owner, a Generator, Other Supplier, Public Power Party or Environmental Party; and provided that such organization and the Small Consumers it represents do not have any significant interest in any aspect of the ISO markets or operations other than that of Small Consumers.

#### **7.05 Affiliated Parties.**

A Party, together with any Affiliate or Affiliates, may vote in only one sector and may cast only one (1) vote. If a Party and its Affiliate or Affiliates qualify to participate in more than one sector, the affiliated Parties must advise the ISO President in which sector their vote will be cast. A Party may split its vote within its chosen sector at its discretion. A Party and its Affiliates may participate in different sectors, provided they vote in only one sector.

#### **7.06 Voting.**

(a) The total votes on the Management Committee shall be allocated as follows: the Generator Owners sector shall be allocated twenty-one and one half (21.5) percent of the total votes; the Other Suppliers sector shall be allocated twenty-one and one half (21.5) percent of the total votes; the Transmission Owners sector shall be allocated twenty (20) percent of the total votes; the End-Use Consumer sector shall be allocated twenty (20) percent of the total votes; and the Public

Power/Environmental Parties sector shall be allocated seventeen (17) percent of the total votes.

**(b)** The voting by Parties within each sector shall be as ~~described below~~ **follows**:

- (a)** Generator Owners Sector: Each Party participating in the Generator Owners sector shall be entitled to cast one (1) vote. The 21.5 percent of the votes on the Management Committee allocated to the Generator Owners sector shall be split into an affirmative component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.
- (b)** Other Suppliers Sector: Each Party participating in the Other Suppliers sector shall be entitled to cast one (1) vote. The 21.5 percent of the votes on the Management Committee allocated to the Other Suppliers sector shall be split into an affirmative component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.
- (c)** Transmission Owners Sector: Each Party participating in the Transmission Owners sector shall be entitled to cast one (1) vote. The 20 percent of the votes on the Management Committee allocated to the Transmission Owners sector shall be split into an affirmation component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.
- (d)** End-Use Consumer Sector: The twenty (20) percent of the votes on the Management Committee allocated to the End-Use Consumer sector shall be divided among the following four (4) subsectors: (1) the Large Consumers subsector; (2) the Small ~~Consumers~~ **Consumer** subsector; ~~which shall include Small Consumers and not-for-profit organizations~~

~~representing Small Consumers; and (3) the governmental agency subsector, which shall include governmental agencies that advocate primarily on behalf of Small Consumers and governmental agencies that act as retail Load aggregators primarily for Small Consumers; and (4) the Large Energy Using Governmental Agency subsector. An ESCO, Municipal Electric System, Cooperatively Owned Electric System, Generator Owner, State Public Power Authority or Environmental Party may not participate in the End-Use Consumer sector.~~

(c) The allocation of voting shares among the subsectors shall be as follows:

- (i) Nine (9) percent of the total votes on the Management Committee shall be allocated to the Large Consumer subsector; and shall be allocated among Large Consumers using the following formula: seventy-five (75) percent of the subsector's voting share shall be allocated based on a Party's annual Energy usage for the preceding full calendar year; and twenty-five (25) percent of the subsector's voting share shall be allocated on a per capita basis. The votes of Parties in the Large Consumers subsector shall be split into an affirmative component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.
- (ii) Four and five-tenths (4.5) percent of the total votes on the Management Committee shall be allocated to the Small Consumer subsector ~~which shall include Small Consumers and not for profit organizations representing Small Consumers.~~ Organizations that participate in this subsector must be certified by the ISO Board under Section 2.02. Each Party that is a member of the Small Consumer ~~or a not for profit organization representing Small Consumers~~ subsector shall be entitled to cast one (1) vote. The four and five-tenths (4.5) percent of the votes on the Management Committee allocated to the Small Consumers ~~and not for profit organizations representing Small Consumers~~ Consumer subsector shall be split into an affirmative



component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.

- (iii) Four and five-tenths (4.5) percent of the total votes on the Management Committee shall be allocated to the governmental agency subsector, which shall include governmental agencies that advocate primarily on behalf of Small Consumers and governmental agencies that act as retail Load aggregators primarily for Small Consumers. Governmental agencies that participate in this subsector must be certified by the ISO Board under Section 2.02. Within the governmental agency subsector, two and seven-tenths (2.7) percent of the total votes on the Management Committee shall be exercised by the State-Wide Consumer Advocate selected by the ISO Board from among the governmental agencies that qualify as organizations that advocate primarily on behalf of Small Consumers. The ISO Board will select as the State-Wide Consumer Advocate the agency that it believes will best represent the interests of all classes of Small Consumers (including farms) throughout the State, giving due consideration to the demonstrated ability of the candidate agencies to provide sufficient resources to identify and to represent the interests of such consumers before federal, state and local governmental agencies, and to coordinate with other groups having similar interests. The remaining one and eight-tenths (1.8) percent of the total votes on the Management Committee allocated to the governmental agency subsector shall be exercised by governmental agencies that advocate on behalf of Small Consumers, other than the agency selected as the State-Wide Consumer Advocate, and governmental agencies that act as retail Load aggregators primarily for Small Consumers.
- (iv) Two (2) percent of the total votes on the Management Committee shall be allocated to the Large Energy Using Governmental Agency subsector; and shall be allocated among Large Energy Using Governmental Agencies

using the following formula: seventy-five (75) percent of the subsector's voting share shall be allocated based on a Party's annual Energy usage for the preceding full calendar year; and twenty-five (25) percent of the subsector's voting share shall be allocated on a per capita basis. The votes of Parties in the Large Energy Using Governmental Agency subsector shall be split into an affirmative component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.

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**7.08 Quorum.**

**(a)** The attendance, as provided for in Section 7.03, by a quorum of at least three (3) sectors shall constitute a quorum for action by the Management Committee.

**(b)** A quorum of a sector shall be five (5) members of a sector or fifty (50) percent of the Parties in a sector, whichever is less. Parties in a sector that has achieved a quorum, shall be entitled to cast the entire vote allocated to their sector. ~~It~~

**(c)** **Except as provided in Section 7.08(d) for the Small Consumer subsector, in a** sector that is divided into subsectors, if there is a quorum for the sector the Parties in each subsector shall exercise the full voting share allocated to their subsector. If none of the Parties in a subsector vote, the voting share of the subsector in which no Parties vote shall be reallocated to the other subsectors of that sector on a proportional basis according to the relative voting weight of the subsectors; provided, however, that (i) the governmental agency subsector shall never exercise more than four and five-tenths (4.5) percent of the total votes on the Management Committee, (ii) the Large Energy Using Governmental Agency subsector shall never exercise more than two (2) percent of the total votes on the Management Committee, and (iii) the Environmental Parties subsector shall never

exercise more than two (2) percent of the total votes on the Management Committee.

**(d) Notwithstanding the provisions of Section 7.08(c), the provisions of this Section 7.08(d) shall apply to the Small Consumer subsector. A quorum of the Small Consumer subsector shall be five (5) members of the subsector. If there is a quorum for the End-Use Consumer sector and a quorum for the Small Consumer subsector, the Parties in the Small Consumer subsector shall exercise the full voting share allocated to that subsector. If there is a quorum for the End-Use Consumer sector but there is not a quorum for the Small Consumer subsector, the Parties in the Small Consumer subsector who are present and eligible to vote shall be entitled to cast individual Party votes in accordance with the provisions of Section 7.09, and the remaining voting share of the Small Consumer subsector shall be reallocated to the other subsectors of the End-Use Consumer sector on a proportional basis according to the relative voting weight of the subsectors.**

**(e)** Parties in a sector that have not achieved a quorum shall be entitled to cast individual Party votes in accordance with the provisions of Section 7.09. No action may be taken by a sector unless a quorum of that sector is present, and no action may be taken by the Management Committee unless a quorum of the Management Committee is present. If a quorum of the Management Committee is not present, the Parties in attendance shall have the power to adjourn the meeting from time to time until a quorum is present.

#### **7.09 Voting in the Absence of a Quorum or When a Sector or Subsector is Inactive.**

A Party may vote on a matter before the Management Committee in the absence of a quorum of the sector to which the Party belongs. A Party also may vote on a matter if the sector or subsector to which the Party belongs has not been activated as provided in Section 7.07. In the absence of a quorum in a Party's sector, the Party's vote shall be counted and shall have a

weight equal to the fraction  $1/N$  times the voting share allocated to the Party's sector or subsector where  $N$  is the number of Parties in the sector or subsector. In the event a Party's sector or subsector is inactive, the Party's vote shall be counted and shall have a weight equal to the fraction  $1/N_m$  times the voting share allocated to the Party's sector or subsector voting percentage where  $N_m$  is the number of Parties to the ISO Agreement.