

March 28, 2005

Via E-Mail and Overnight Delivery

Mr. John W. Boston
Chairman of the Board
c/o Mr. Mark Lynch
President and CEO
New York Independent System Operator, Inc.
3890 Carman Road
Schenectady, N. Y. 12303

Re: Appeal of the Management Committee Decision on GRT

Dear Chairman Boston:

Pursuant to the "Procedural Rules for Appeals to the ISO Board," Consolidated Edison Company of New York, Inc. ("Con Edison"), Central Hudson Gas & Electric Corporation ("CH") and the New York Power Authority ("NYPA," and collectively, the "Companies") hereby file this motion in opposition to the March 15, 2005 appeals (the "Appeals") filed by Multiple Interveners and Fluent Energy. The appeals relate to the Management Committee's Decision to approve tariff language to eliminate the potential that the NYISO will incur Gross Receipt Tax liability.

If the Board decides to schedule an oral argument on this matter, the Companies would like the opportunity to participate. Please post this document on the NYISO website and serve a copy via e-mail to all members of the Management Committee. Thank you.

Very truly yours,
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**MOTION OF CON EDISON, CENTRAL HUDSON AND NYPA
IN OPPOSITION TO AN APPEAL**

Consolidated Edison Company of New York, Inc. (“Con Edison”), Central Hudson Gas and Electric Corporation (“CH”) and the New York Power Authority (“NYPA,” and collectively, the “Companies”) hereby file this motion in opposition to the appeals filed by Multiple Interveners (“MI”) and Fluent Energy (“FE”) with respect to the Gross Receipts Tax (“GRT”) tariff language approved by the Management Committee (“MC”) on March 2, 2005.

In response to a growing concern, the MC approved tariff language that will eliminate the possibility that the NYISO may incur a GRT liability. The new tariff language requires each customer, including customers that seek to purchase energy for their own use (“Direct Customers”), but excluding transmission owners, generators and municipalities, to provide the NYISO with: (1) a reseller’s certificate; (2) a statement that the Direct Customers’ energy transactions are exempt from local GRT; or (3) a direct pay arrangement between the customer and the localities that may assess a GRT levy on its transactions. Alternatively, such customers may demonstrate that their respective purchases occur in a locality that does not incur a GRT.

Contrary to the appeals of MI and FE, the tariff language adopted by the MC is reasonable in that it allows Direct Customers to participate in the NYISO’s wholesale electric markets provided that the transactions of such Direct Customers do not bring about a tax liability for the NYISO or for other NYISO market participants. More importantly, the tariff language eliminates the chance that taxes owed as a result of transactions entered into by Direct Customers are subsidized by other market participants.

Accordingly, the NYISO Board should affirm the tariff provisions adopted by the MC and file such tariff language with the FERC under Section 205 of the Federal Power Act (“FPA”).

ARGUMENT

The crux of the argument put forth by both MI and FE is that there is no potential for a NYISO tax liability because local governments are not enforcing their GRT.¹ For example, MI alleges that the enforcement of the local GRT is “speculative.”² MI further argues that the tariff language was advanced in part “to shield generator owners from a tax liability that is speculative and, upon information and belief, has never been enforced.”³ FE refers to potential GRT liability as an “unlikely and unproven liability.”⁴

Whether a local government is actively enforcing its tax codes is immaterial. New York State has several local governments (including New York City) that have a GRT as part of their tax code. Accordingly, a potential GRT liability is attached to energy transactions that take place within those jurisdictions. Purchases from the NYISO markets by Direct Customers bring about a potential GRT liability. Put another way, but for Direct Customers, there would not be a GRT liability associated with transactions in the NYISO markets.

MI further implies that even if there were a GRT liability assessed on the NYISO it should not be passed on to generators, thus leaving it to be passed on to all consumers

¹ MI Appeal, pp. 8, 9, 12. FE Appeal, pp. 6, 7.

² MI Appeal, p. 10.

³ MI Appeal, p. 9.

⁴ FE Appeal, p. 8.

through uplift.⁵

Many market participants believe that one or more of these local governments may seek to collect the GRT that is owed to them due to transactions by direct customers in the NYISO market. Due to the complexity of such transactions in the NYISO market, it is quite possible that a local government seeking to collect the amount of GRT owed to it would move to collect directly from the NYISO. This would result in such costs being passed on to all market participants through Rate Schedule 1. The MC's proposed tariff language eliminates this concern by eliminating from the NYISO markets those transactions that could bring about a GRT liability.

Both MI and FE also argue that the proposed tariff language could severely harm the ability of customers to purchase energy directly from the NYISO.⁶ Given, however, that any tax liability incurred as a result of those transactions would have to be paid by other market participants, what MI and FE are really asking for is a continued subsidy for their clients by the rest of the market. This is unacceptable.

CONCLUSION

To accept MI's and FE's position would be to countenance transactions premised on a theory that a local government will not enforce its tax code and even if it does, someone other than the transacting parties should pay the resultant tax.

Accordingly, Con Edison, CH and NYPA respectfully request that the NYISO Board reject the appeal and affirm the MC's decision.

⁵ MI states that "Multiple Intervenors agree with generator owners who assert that they are not subject to wholesale sales made into NYISO markets, notwithstanding the existence of Direct Customers." MI, p. 11. Under this scenario any GRT liability will be put in to the NYISO's Rate Schedule 1 and paid by all market participants.

⁶ MI Appeal, p. 8; FE Appeal, p. 4-5.

Respectfully submitted,

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