

MEMORANDUM

DATE: May 29, 2009

TO: NYSRC Executive Committee

FROM: Paul L. Gioia

RE: Amendments to NYSRC Agreement and Code of Conduct

At the March Executive Committee meeting, it was agreed that the Executive Committee would support amendments to the NYSRC Agreement and the Code of Conduct to eliminate the prohibition against members of the Executive Committee or alternates serving as members of a NYISO committee, provided that the Executive Committee members agreed that they would not use the FERC filing as an occasion to propose or support any other amendment to the NYSRC Agreement. The proposed amendments (attached) would retain the current prohibition against Executive Committee members and alternates serving as a member of the NYISO board, and would extend the prohibition to serving as an officer, employee or paid consultant for the NYISO. The prohibition against serving as a member of a NYISO committee would be eliminated. The Code of Conduct may be amended by the Executive Committee, but FERC approval is required to amend the NYSRC Agreement.

A filing would have to be made at FERC to request approval of the proposed amendment to Section 9.02 of the NYSRC Agreement. The following is an outline of the points that would be made in the FERC filing:

- The NYSRC Executive Committee has a balanced governance structure with unaffiliated members as well as members affiliated with entities in various sectors of the electricity industry.
- Section 9.01 of the NYSRC Agreement requires that the Executive Committee adopt a Code of Conduct that ensures that members of the Executive Committee and their representatives do not favor their own commercial interests in carrying out their NYSRC responsibilities.
- In conformity with the requirements set forth in Section 9.01, the NYISO Code of Conduct expressly provides that the NYSRC and its personnel shall carry out the NYSRC's mission with no intent to advantage or disadvantage any market participant's commercial interests.
- The Code further provides that in the performance of their responsibilities related to the NYSRC, members of the Executive Committee and other NYSRC personnel shall not engage in activities which: 1) intentionally advantage or disadvantage any market participant's commercial interests, 2) are unlawful, or 3) interfere with the duties owed to the NYSRC (Code of Conduct, Section D).
- In addition to the above provisions, Section 9.02 of the Agreement prohibits a member or alternate member of the NYSRC Executive Committee

from serving on the ISO Board or on any NYISO committee. While the NYSRC Executive Committee considers the prohibition against serving on the NYISO Board appropriate, it was determined, based on its experience over the ten years of its existence, that the prohibition against serving on a NYISO committee is unnecessarily restrictive.

— The NYSRC Executive Committee views the basic purpose of Section 9.02 to the NYSRC Agreement as maintaining the separate but cooperative relationship between the NYISO and the NYSRC (See NYISO/NYSRC Agreement, Section 2.4)

— Many individuals with experience and expertise in the reliability issues that the NYSRC must address are actively involved in the NYISO committees, subcommittees, working groups or task forces. The NYSRC Executive Committee has determined that involvement by an individual in NYISO activities does not create a conflict with service on the NYSRC Executive Committee. In fact, the Executive Committee has concluded that involvement in NYISO activities and an understanding of how the NYISO functions and the issues being addressed at the NYISO enhances the value of an individual's participation in the NYSRC.

— It should be noted that membership on NYISO committees is not restricted and is open to all interested parties. In fact, most individuals knowledgeable about the electric industry in New York are involved in some way with the NYISO and its committees. As a result, NYISO committees are comprised of dozens of members from all sectors of the electricity industry.

— In order to limit the disqualification of knowledgeable individuals from serving as members of the NYSRC Executive Committee, the Executive Committee has limited the application of Section 9.02, to the greatest extent possible. Currently, the application of Section 9.02 is limited to the three major standing NYISO committees and does not apply to participation in a NYISO subcommittee, working group or task force. Also, the provision does not apply to individuals who serve as alternates on NYISO committees or who serve as an attorney or other representative of a voting member (Code of Conduct, Section D).

— Despite its limited application, the provisions of Section 9.02 continue to restrict the participation by qualified individuals on the NYSRC Executive Committee and to impose unnecessary burdens on current members,

— The proposed amendment to Section 9.02 retains the prohibition against Executive Committee members serving on the NYISO board, and extends the

prohibition to serving as an officer, employee or paid consultant of the NYISO.

Thus, the revised provision will continue to maintain the separate identities of the NYISO and NYSRC. The prohibition against a member or alternate on the NYSRC Executive Committee serving a member of a NYISO committee, which the NYSRC considers unnecessary and unreasonably restrictive, will be eliminated.