PRESENTATION OF MULTIPLE INTERVENORS AT FERC OCTOBER 20, 2003 TECHNICAL CONFERENCE

Good afternoon. Thank you for the opportunity to speak to you today regarding "Transmission Planning and Incentives for Infrastructure Development. My name is Michael Mager and I am counsel for Multiple Intervenors, which is an association of 57 large commercial and industrial energy consumers with facilities located throughout New York State. Multiple Intervenors is a very active participant in New York ISO committees, and in various proceedings before the New York Public Service Commission and FERC.

Initially, Multiple Intervenors would like to commend the New York ISO for initiating a planning process that will address the need for additional investment in transmission infrastructure. The members of Multiple Intervenors require reliable electric service for their businesses. Although it appears that the August 14th black-out was caused by circumstances unrelated to the New York bulk power system, that event does serve as an important reminder that reliability cannot be taken for granted, and infrastructure cannot be neglected.

At the same time, how capital investment in transmission infrastructure should proceed in unregulated markets, and who should pay for it, are incredibly complex issues. Any rush to spend money must be weighed against the fact that unregulated electricity prices in New York during 2003 have been highest since the New York ISO began operations. These high prices are having an adverse impact on the competitiveness of New York businesses and the State's economy as a whole. Thus, any evaluation of transmission infrastructure requirements must proceed deliberately, with full consideration of the effects on New York's nascent marketplace and on consumers.

There is general recognition that, ideally, transmission planning should take place at the regional level. Transmission planning in New York cannot ignore what is happening outside of the State's borders, particularly in adjoining control areas. Given the mixture of regulated entities and competitive energy markets, it is not clear at this time precisely what entity or entities should be responsible for planning. Therefore, we urge that the roles of the New York ISO, the New York PSC and FERC be darified with respect to transmission planning.

It is Multiple Intervenors' expectation that the New York ISO's initial planning efforts will be informational in nature. Clearly, the planning studies must be cognizant of what the market is doing to solve constraint problems. For example, in the New York ISO's markets, generators have responded to price signals by obtaining permits to site power plants on the constrained side of the system. This is precisely what LBMP was designed to do. The fact that actual construction has been delayed or postponed is a reflection of uncertain credit markets and other factors, but not incorrect price signals. Moreover, to the extent that planning efforts indicate that new generation will not be available to solve a constraint and, therefore, that additional transmission investment is needed, it is Multiple Intervenors' hope that the market will respond to those signals in a timely manner.

However, if the market fails to respond, it may be necessary for some entity to step in to ensure that needed transmission investment is made to preserve reliability. Multiple Intervenors believes that the New York ISO, the New York PSC and FERC all possess the requisite authority to take certain steps to ensure that

necessary infrastructure investments are made. For instance, the New York PSC still regulates the State's transmission owners and could direct one or more such companies to construct a transmission line that is needed to maintain reliability. However, because such a mandate could interfere with unregulated markets, that authority must be exercised judiciously. Potential transmission upgrades for reliability purposes must be evaluated on a case-by-case basis. And, the responsible entity should strive to ensure that, to the greatest extent practicable, the beneficiaries of the upgrade pay for the investment and hold other customers harmless from any adverse price impacts. For instance, customers on the unconstrained side of a constrained system should not be required to fund upgrades that will increase their prices with no offsetting benefit.

This "hold harmless" principle applies with even greater force when transmission upgrades are proposed for economic purposes. Such upgrades affect market participants on both sides of the constraint and could result in financial harm to generators, marketers and consumers who made investments, entered into contracts, or otherwise hedged their positions based on their forecast of market forces

undisturbed by governmental interference. Regulators should be extremely cautious about ordering transmission upgrades for economic purposes only and, if they do, they should follow this "hold harmless" principle.

Turning to the issue of incentives, Multiple Intervenors is very concerned that consumers not be asked to fund excessive rates of return to ensure a reliable electric infrastructure. For regulated transmission service, Multiple Intervenors supports cost-based ratemaking.

On March 13, 2003, Multiple Intervenors filed Comments in response to FERC's Notice of Proposed Policy Statement in the docket entitled, "Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid." In those Comments, Multiple Intervenors recommended that FERC refrain from adopting its proposed policy, which would have provided financial incentives, in the form of higher authorized rates of return, to entities that transfer operational control of transmission facilities to an RTO and/or that participate in an ITC. While Multiple Intervenors

supports efforts to increase investment in transmission infrastructure, it has a number of concerns regarding the direction of FERC's proposed policy.

First, the proposed policy creates significant opportunities for free ridership. For instance, in New York the State's transmission owners already have transferred operational control of their transmission assets to the New York ISO. These entities do not require additional financial incentives to do what they already have done.

Second, it has not been demonstrated that the formation of ITCs would provide substantial financial benefits to consumers. Multiple Intervenors is unaware of any economic analysis which demonstrates that ITC participation in an RTO or ISO will promote transmission grid investment, and a commensurate reduction in prices, to justify the cost of inflated rates of return. Moreover, the free ridership concerns that I mentioned earlier also are present with respect to ITCs. For instance, a number of New York's transmission owners have expressed an interest in forming or joining an ITC, even without the promise of financial incentives that may be wholly unnecessary.

Third, the financial incentives discussed in the proposed Policy Statement are substantial and would result in higher prices for consumers. As noted earlier, consumers, particularly New York businesses, cannot afford higher electricity prices. Moreover, there has been no demonstration that the benefits of the desired transmission investment – assuming it materializes – would offset the impact of layering substantial financial incentives on top of cost-based rates. Without the proper analyses being undertaken, the proposed policy is just a big gamble with consumers' money.

In conclusion, Multiple Intervenors supports competitive energy markets and, in the first instance, would like to see the marketplace address the need for additional transmission investment. The New York ISO's planning process represents an important first step in identifying what investments may be needed and providing market participants with helpful information to evaluate potential investments. However, if the market fails to respond, there must be a way to ensure that necessary investments are in fact made, particularly those needed to ensure reliability. The New

York ISO, the New York PSC and FERC must work together to ensure that reliability is maintained, even if it means directing that certain upgrades be undertaken. However, in considering possible transmission investments, due consideration must be accorded to the potential cost impacts on consumers.

Thank you for the opportunity to present Multiple Intervenors' positions on these important issues.

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