

July 2, 1999

The Honorable David P. Boergers  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: Central Hudson Gas & Electric Corp., et al.  
Docket Nos. ER97-1523-000, OA97-470-000, and  
ER97-4234-000 (not consolidated)

Dear Secretary Boergers:

By this letter, the Member Systems of the New York Power  
Pool ("Member Systems")<sup>1</sup> hereby submit the materials developed in

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<sup>1</sup> The Member Systems include Central Hudson Gas & Electric Corporation ("Central Hudson"), Consolidated Edison Company of New York, Inc. ("Con Edison"), LIPA, New York State Electric & Gas Corporation ("NYSEG"), Niagara Mohawk Power Corporation ("Niagara Mohawk"), Orange and Rockland Utilities, Inc. ("O&R"), Power Authority of the State of New York ("NYPA"), and Rochester Gas and Electric Corporation ("RG&E").

The New York State Power Authority objects to the provision in Section 7.04 of the revised ISO Agreement that would prevent the future migration of the New York State Power Authority out of the State Public Power Authority subsector, and will be making a separate filing on that issue.

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compliance with Ordering Paragraph (C) of the Commission's Order issued on April 30, 1999, concerning the governance structure of the New York Independent System Operator ("New York ISO" or ISO").<sup>2</sup>

Enclosed are an original and fourteen copies of the following documents:

1. The ISO Agreement, revised to reflect the changed ISO governance structure;
2. The ISO Agreement redlined against the ISO Agreement filed with the Member Systems' compliance filing on April 30, 1999;<sup>3</sup>
3. A form of notice suitable for publication in the Federal Register;
4. A computer diskette containing the proposed Federal Register Notice; and
5. A computer diskette containing the revised ISO Agreement.

**I. Commission Order**

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<sup>2</sup> Central Hudson Gas & Electric Corp., et al., 87 FERC ¶ 61,135, at 61,546 (1999) ("April 30 Order"). The deadline for this filing was extended to July 2, 1999 by Notice issued June 29, 1999.

<sup>3</sup> "Filing in Compliance with the Commission's Order of January 27, 1999 Regarding the Comprehensive Proposal to Restructure the New York Wholesale Electric Market" ("April 30 Filing" or "Compliance Filing").

In the April 30 Order, the Commission directed the Member Systems "to submit a new proposal concerning governance that eliminates the control of the vertically integrated utilities in the NYPP".<sup>2</sup> The Commission stated that an acceptable method may follow the governance model used by PJM or the governance structure for the Operating and Business Issues Committees proposed in the previously submitted settlement agreement, as modified by the Order.<sup>3</sup> The Commission encouraged the Member Systems to initiate an alternative dispute resolution process and to consult with the Commission's Dispute Resolution Service.<sup>4</sup>

## **II. Dispute Resolution Process**

In response to the Commission's suggestion, the Member Systems contacted Richard L. Miles, Director of the Commission's Dispute Resolution Service. Judge Judith Lee, an administrative law judge with the New York Public Service Commission who has been actively involved in assisting interested parties resolve other issues related to the establishment of the New York ISO, offered to take the lead in mediating the ISO governance issues, in conjunction with the New York ISO's counsel, Ira Freilicher, and Mr. Miles. Both Mr. Freilicher and Mr. Miles accepted Judge

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<sup>2</sup> April 30 Order at 61,541.

<sup>3</sup> Id. at 61,542.

<sup>4</sup> Id. at 61,542 n.31.

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Lee's suggestion and actively participated in the dispute resolution process.

Meetings of all interested parties were convened by Judge Lee on May 25, June 3, June 4, June 16 and June 29, 1999. Those meetings involved a full discussion of all relevant governance issues and a free exchange of the positions of the various parties. Multilateral discussions among various parties also occurred within the context of the all parties meetings, as well as separately. At the final all parties meeting on June 29, 1999, it appeared that a broad based agreement among virtually all of the interested parties and all industry sectors had been achieved. That consensus is reflected in the revised ISO Agreement filed by the Member Systems today. The Member Systems expect a joint motion in support of this compliance filing to be filed by the various interested parties.

### **III. The Summary of Revised ISO Governance Provisions**

The governance provisions in the revised ISO Agreement fully comply with the requirements set forth by the Commission in its April 30 Order. As noted, the revised ISO governance procedures are the product of a dispute resolution process and have widespread support among parties from all major segments of the industry. The major revisions to the ISO governance structure are as follows:

Management Committee

Voting Methodology: Voting on the Management Committee has been changed from weighted voting to sector voting.

Sectors: Five sectors will be represented on the Management Committee:

1. Transmission Owners
2. Generator Owners
3. Other Suppliers, including marketers and ESCOs
4. End-Use Consumers, and
5. Public Power/Environmental Parties.

Two of the sectors are divided into subsectors. The End-Use sector is divided into three subsectors:

- a) the Large Consumer subsector, including industrial and commercial consumers with a peak load in excess of 2 megawatts;
- b) the Small Consumer subsector, including residential consumers, commercial and industrial consumers with a peak load of less than two megawatts, and not-for-profit organizations that represent small consumers; and
- c) the Governmental Entity subsector, including governmental agencies that advocate primarily

on behalf of small consumers, and governmental agencies that act as retail load aggregators primarily for small consumers.

The Public Power/Environmental Parties subsector also is divided into three subsectors:

- a) the State Public Power Authorities subsector, including public authorities created by the State of New York to produce, transmit or distribute electricity for the benefit of the citizens of the entire State or for the citizens of two or more counties of the State;
- b) the Municipal Electric Systems and Cooperatively Owned Electric Systems subsector; and
- c) the Environmental Parties subsector.

Voting Shares: The sectors and subsectors are assigned the following voting shares on the Management Committee:

Transmission Owners - Twenty (20) percent;

Generator Owners - Twenty-one and one half (21.5) percent;

Other Suppliers - Twenty-one and one half (21.5) percent;

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End-Use Consumers - Twenty (20) percent. The twenty percent voting share of the End-Use Consumer sector is divided among its subsectors as follows:

Large Consumer subsector - Ten (10) percent;

Small Consumer subsector - five (5) percent;

Governmental Agency subsector - five (5) percent.

Of the five percent allocated to the Governmental Agency subsector, three (3) percent is allocated to a State-Wide Consumer Advocate, which will be selected by the ISO from among the qualified governmental agencies that advocate primarily on behalf of small consumers as best able to represent all classes of small consumers. The remaining two percent is allocated to other qualified governmental agencies.

The Public Power/Environmental Parties sector - seventeen (17) percent.

The seventeen percent voting share of the Public Power/Environmental Parties sector is divided among its subsectors as follows:

a) State Public Power Authorities subsector - eight (8) percent

b) Municipal Electric Systems and Cooperatively Owned Electric Systems subsector - seven (7) percent; and

c) Environmental Parties subsector - two (2) percent.

Vote Required to Approve a Measure: The vote required to approve a measure before the Management Committee is reduced from sixty-seven percent to fifty-eight percent of the total votes cast.

Activation of a Sector or Subsector: In order to be activated, a sector or subsector must have at least five Parties. This requirement, however, does not apply to the Transmission Owners sector, the State Public Power Authorities subsector or the Governmental Agency subsector.

Quorum: A quorum of the Management Committee is the attendance by a quorum of three sectors. A quorum of a sector is the presence of five members of a sector or fifty percent of the Parties in a sector whichever is less. There is no separate quorum requirement for subsectors.

Voting in the Absence of a Quorum or When a Sector or Subsector Is Inactive: A provision has been made to allow Parties to vote who are in a sector or subsector that is inactive or in a sector in which a quorum is not present. The weight of the vote of such Parties is described in Section 7.09.

Appeals: Specific procedures are provided for the appeal of actions of lower committees to the Management Committee.



(Section 7.13). These provisions are designed to encourage the prompt and efficient handling of appeals. Provision also is made for the prompt and efficient handling of requests that the Management Committee stay an action of a lower committee, including the creation of a Stay Review Subcommittee, consisting of five members, one from each sector, with the authority to stay the effect of an action taken by a lower committee until the appeal is determined or unless the stay is vacated by the Management Committee or the ISO Board.

#### **IV. Operating Committee and Business Issues Committee**

Representation: The representation on the Operating and Business Issues Committees is changed from twenty-five member committees, representing various sectors, to committees in which all Parties participate.

Structure And Voting Rules: The structure and the voting rules of the Management Committee, described above, are applicable to both the Operating Committee and the Business Issues Committee.

#### **V. Miscellaneous Revisions**

Dispute Resolution: The timeframe for the handling of disputes under the dispute resolution process under Article 10 is shortened. The Dispute Resolution Administrator is given ten days, rather than thirty days, to decide whether a dispute should

be sent to non-binding mediation or arbitration (Section 10.02). And, disputing parties have thirty days, rather than ninety days, to resolve a dispute that has been referred to non-binding mediation (Section 10.4).

Amendments to ISO Governance Provisions: The governance provisions reflected in this compliance filing were achieved through extensive and difficult negotiations, in which the various parties made compromises in certain areas in order to achieve agreement in other areas. In order to preserve the benefits and the balance achieved in the revised ISO Agreement, the Agreement provides that any proposal to amend the governance provisions set forth in Sections 7.03 through 7.13 must be made under Section 206 of the Federal Power Act.

Transmission Owner Reservation of Rights: Article 17A of the revised ISO Agreement expressly provides for the basic rights retained by Transmission Owners, including the right to seek full recovery of the revenue requirement related to their transmission assets.

## **VI. Discussion**

The Member Systems have committed an extraordinary amount of time, effort and resources to plan, develop and implement an ISO in New York State, consistent with Commission requirements. ISO governance has been one of the most difficult and contentious

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issues to address. Over the past sixty days extensive discussions and negotiations have taken place, under the general oversight of an administrative law judge of the New York PSC, the ISO's counsel, and the Director of the Commission's Dispute Resolution Service. The resulting ISO governance provisions fully address the concerns raised by the Commission in its April 30 Order, and also reflect a broad consensus among interested parties. The Member Systems, the New York ISO and numerous interested parties are working diligently to have the New York ISO commence operations on September 1, 1999. The Commission's

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prompt approval of the revised governance provisions is essential  
for the New York ISO to meet this target date.

Respectfully Submitted,

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Of Counsel to the Member Systems of  
the New York Power Pool

cc: Official Service List