Law Offices

Duncan, Weinberg, Genzer & Pembroke, P.C.

WALLACE L. DUNCAN
EDWARD WEINBERG (1918-1995)
JAMES D. PEMBROKE
ROBERT WEINBERG
JANICE L. LOWER
JEFFREY C. GENZER
THOMAS L. RUDEBUSCH
MICHAEL R. POSTAR
TANJA M. SHONKWILER
ELI D. EILBOTT*
LISA S. GAST
PETER J. SCANLON
KATHLEEN L. MAZURE
DEREK A. DYSON
MONICA GONZALEZ**
HOLLY JAMES MCMICKLE
BHAVEETA K. MODY**
SEJAL C. SHAH**

RICHMOND F. ALLAN+
FREDERICK L. MILLER, JR.+
TERRY E. SINGER+
FREDERICK H. HOOVER, JR.**+

SUITE 800
1615 M STREET, N.W.
WASHINGTON, D.C. 20036

(202) 467-6370
FACSIMILE (202) 467-6379
www.dwgp.com

California Offices
915 L STREET, SUITE 1410
SACRAMENTO, CALIFORNIA 95814
(916) 320-5577
SEAN M. NEAL

100 PARK CENTER PLAZA, SUITE 501
SAN JOSE, CALIFORNIA 95113
(408) 288-2080
BARRY F. MCCARTHY+
C. SUSIE BERLIN+

Northeast Regional Office
2700 BELLEVUE AVENUE
SYRACUSE, NEW YORK 13219
(315) 471-1318
THOMAS J. LYNCH+

* REGISTERED TO PRACTICE BEFORE THE U.S. PATENT AND TRADEMARK OFFICE
** NOT ADMITTED IN D.C.
\+ OF COUNSEL

November 1, 2005

Honorable John W. Boston
Chairman of the NYISO Board
C/o Mr. Mark S. Lynch
President & CEO
New York Independent System Operator, Inc.
3890 Carman Road
Schenectady, NY 12303

RE: Motion in Opposition of the New York Association of Public Power To the IPPNY and LIPA Appeals on Voltage Support Service

Dear Chairman Boston:

In accordance with the Procedural Rules of Appeals to the NYISO Board, the New York Association of Public Power ("NYAPP") hereby submits its Motion in Opposition to the IPPNY and LIPA appeals of the Management Committee's disapproval of Motions #6a and #6b on Voltage Support Service.

NYAPP does not believe there is a need for oral argument on this issue, but reserves the right to participate if the Board requires oral argument.

Sincerely,

Thomas L. Rudebusch

Thomas L. Rudebusch

Enclosure

{D0007734.DOC / 1}

MOTION IN OPPOSITION
OF THE
NEW YORK ASSOCIATION OF PUBLIC POWER
TO IPPNY AND LIPA APPEALS ON VOLTAGE SUPPORT SERVICE

The New York Association of Public Power ("NYAPP"), on behalf of all of its members, and through its members on the Management Committee,1 submits this Motion in Opposition to the Appeals of (1) the Independent Power Producers of New York ("IPPNY") and (2) the Long Island Lighting Company d/b/a LIPA ("LIPA") of Management Committee decisions to not approve motions related to compensation for Reactive Supply and Voltage Control from Generation Sources Service ("Voltage Support Service" or "VSS"), which were submitted on October 25, 2005.

In support, NYAPP states as follows:

I. SUMMARY

The Transmission Customers of the New York Independent System Operator ("NYISO"), including NYAPP members, currently pay what are believed to be among the highest rates in the country for Voltage Support Service. The current VSS rate, which IPPNY and LIPA seek to increase, is the product of a consensus among stakeholders reached in 2001 that the cost basis for the original Voltage Support Service rate was outdated, and that a study was needed to produce a new cost basis and rate methodology to compensate suppliers. In the interim, for the year 2002, the consensus was that the rate of $3919/MVAr per year was to be filed with the Federal Energy Regulatory Commission ("FERC").

That consensus was reached again in the years, 2003, 2004 and 2005. But, that consensus is now gone. The IPPNY and LIPA appeals would require that the Board make NYISO Tariff

---

1 NYAPP's members on the Management Committee are the Freeport Electric Department, Jamestown Board of Public Utilities and the Village of Rockville Centre.

changes that would increase the consensus-based rate. The appeals are fatally flawed because, first and most importantly, there is no cost basis for the proposed rates and, second, there is no longer a consensus behind them. To implement what IPPNY and LIPA request would require the Board to make a filing under Section 206 of the Federal Power Act. Such a filing may not pass FERC scrutiny because there is no cost basis for the rate for Voltage Support Service.

Among all the other reasons for denying the IPPNY and LIPA Appeals, the Board must deny them because it should not attempt the Section 206 filing at FERC that would be required.

NYAPP urges the Board to instead direct the NYISO staff to, at long last, do the study that would determine how much Voltage Support Service is needed in New York and how it can be provided in a least-cost fashion, and to do so in a timely manner.

II. ARGUMENT

NYAPP opposes the Appellants' motions to overturn the Management Committee disapproval of Motion #6a (to add an inflation factor to the VSS rate) and Motion #6b (to pay merchant non-generator transmission sources the VSS rate).

A. IPPNY's Proposal to Add an Inflation Factor to the VSS Rate Is Not Cost Justified, Is Not Proper Ratemaking, and Would Require the Board to Make a Section 206 Filing that Is Not Just and Reasonable.

IPPNY's Appeal of the disapproval of Motion #6a,2 is based on a cost of service analysis that is long outdated, as was recognized in 2001, and that constitutes improper ratemaking. The consensus has been lost that allowed the NYISO filings for the VSS rates to be effective in 2002-2005. The Board must not make a filing under Section 206 that is demonstrably unjust and unreasonable.

2 LIPA also appeals the Management Committee disapproval of Motion #6a, but presents no specific argument. LIPA's appeal should be denied for the same reasons as IPPNY's.

1. The $3919/MVAR per year rate is out-dated and not cost justified.

IPPNY's appeal depends on the assertion that the existing VSS rate is cost-based, because the single adjustment IPPNY proposes to make to the $3919/MVAr rate is the 3 percent adder for inflation. But, even IPPNY admits that the rate it is not cost based -- with reference to the May 2, 2005 report filed at FERC, "the NYISO noted that all parties agreed that the current rate of $3919/MVAr is based on cost information that is out of date...." IPPNY Appeal at 3. IPPNY's proposal cannot be credible if the existing rate is out-dated and not cost-justified.

In 2001, the NYISO and its stakeholders concluded that the NYISO Tariff rate for Voltage Support Service was outdated. With the approval of the NYISO Committees, and "in response to requests from Suppliers of Voltage Support Service," the NYISO made a Section 205 filing on December 27, 2001 in Docket No. ER02-617-000 ("2001 VSS filing"). *See* NYISO 2001 VSS filing at 1. The 2001 VSS filing changed the basis of the VSS rate from a cost-based to a "consensus-based" methodology. *Id.*, at 5. The consensus-based approach simply continued the old rate for one annual period until agreement could be reached on a new accepted methodology. The consensus-based approach continued for the annual periods in 2003-2005.

The 2001 VSS filing shows that the "old" NYISO VSS rate was supported by an averaging of the costs of the New York Transmission Owners (then eight in number). *See* Exhibit One to the 2001 VSS filing, which is attached to this motion as Exhibit 1. The rates were the then-filed OATT rates of the eight New York Transmission Owners effective **in 1997**. *Id.* Those rates were applied to the individual Transmission Owner "Annualized Billing Units" **as of 1997** to yield a "Total Cost 1997." *Id.* This cost-support, such as it is, is certainly out-dated in 2005, especially since it was recognized to be outdated in 2001 (and confirmed in May 2005 by the NYISO filing to FERC). The $3919.MVr rate is nor cost-justified.

2. The proposed addition of an Inflation Component to out-of-date data is not proper ratemaking and is not cost justified.

IPPNY proposes to take the current VSS rate, which is out-dated with the acknowledgement of "all parties," and apply an Inflation Component to that VSS rate for 2006 and forward. Even if the underlying rate were cost-justified, which it is not, it is not proper ratemaking to make a "spot adjustment" to that rate without examining all the other costs that contribute to the rate. It is "Black Letter" law that it is not proper to make a spot adjustment to adjust a rate (up or down) without examining all the other costs which may have gone up or down. *See, e.g., Entergy Services, Inc.*, 112 FERC ¶ 61,074 at P 17 (July 19, 2005) ("Entergy is seeking to change only one component of its reactive power rate, without examination of the other components. [...] To evaluate Entergy's cost-of-service based rate for reactive power, the Commission must look at all the costs that go into developing that rate.")

The current VSS rate is explained to FERC in the 2001 VSS filing. The current "consensus-based" VSS rate takes the eight Transmission Owner costs in 1997, and grosses them up by Capacity Additions from 1997 -2002. *See* Exhibit Two, attached as Exhibit 2. The 2002 New York Generation is then divided by the "System Average Power Factor" to yield a 2002 Expected MVAr total of 15,573 MVAr. *See* Exhibit Three, attached as Exhibit 3. The generation total for 2002 (Exhibit Two) is used to gross up the 1997 costs in Exhibit Four, and applied to the 2002 estimated, not actual, 2002 MVAr to yield the $3919/MVAr per year current rate. *See* Exhibit Four, attached as Exhibit 4.

It is not proper ratemaking to make adjustments to one cost component without examining others. The NYISO cannot approve a proposal to add an Inflation Factor without examining and updating, *e.g.*, the Annualized Billing Units (Exhibit 1, still 1997 data!); the New

York Capacity Addition from 2002 to 2005 (Exhibit 2); the current System Annual Power Factor (Exhibit 3), and the actual Program Cost for 2006, compared to previous years (Exhibit 4). Failure to update all costs components when seeking a change to one cost component is not proper ratemaking.

3. A Fixed Charge Rate methodology typically includes an inflation factor and the proposed addition of another Inflation Component is not cost justified.

IPPNY supports the affidavit of a witness who testifies that the addition of an Inflation Component to the existing VSS rate is "easily justified." Affidavit of Mark D. Younger at P 3, attached to IPPNY's Appeal. The witness "looked at the underlying components of the cost based methodology for determining VSS payments that was included in the NYISO's original tariff." *Id.*, at P 4. However, that "original" methodology no longer produced cost based results by 2001, as admitted by IPPNY, and as further submitted to FERC by the NYISO in its May 20, 2005 report.

That "original" methodology for Voltage Support Service sponsored by most or all of the eight Transmission Owners in 1997 was a Fixed Charge Rate methodology. As the NYISO submitted to FERC in the 2001 VSS filing, it is "virtually impossible for the independent generators to determine what their 'annual fixed charge rate' is with any reasonable certainty." NYISO Transmittal Letter at 5. How the original fixed charge rate methodology, which was "impossible" to apply to independent generators, and led to the "consensus-based" current VSS rate, can be said to produce a "cost-based" rate (with the addition of a single Inflation Component), is a mystery.

The common methodology at FERC for transmission cases is to the test year approach, which is based on the net depreciated plant investment of a transmission owner, and adds actual and projected expenses, including O&M, A&G, etc. The less favored approached, suggested by FERC after Order No. 888 and then rejected for transmission service, is the Fixed Charge Rate methodology. This approach starts with the gross plant investment, and applies to it an annual Fixed Charge Rate. The Fixed Charge Rate typically includes factors for O&M. A&G, taxes, depreciation, and inflation, among other cost factors. On its face, it would appear to be double-counting to add an Inflation Component to a fixed charge rate that included a factor for inflation. There has been no demonstration by IPPNY that the 1997 fixed charge rates of the eight Transmission Owners did not include an inflation factor. In any event, IPPNY has failed to demonstrate that its proposal to add an additional Inflation Component is cost-justified.

4. The NYISO Board must decline to make a Section 206 filing at FERC where the proposal is not cost justified and is not proper ratemaking.

Because there is no longer consensus, the NYISO would have to make a Section 206 filing rather than Section 205 filing to change the NYISO's Tariff, and such a filing carries a higher burden of proof. The Board must deny the IPPNY and LIPA appeals because they are not cost-justified and the proposal is not the result of proper ratemaking.

B. LIPA's Proposal to Apply the Current VSS Rate to Merchant Dynamic Transmission Facilities Is Not Consistent with Current FERC Policy.

LIPA proposes that the Board overturn the Management Committee's disapproval of Motion #6b, which would make non-generator dynamic VAR sources eligible for payments under the VSS rate of $3919/MVAr per year, plus the Inflation Component proposed by IPPNY. NYAPP does not unconditionally oppose VSS payments to dynamic transmission sources. However, such payments are not consistent with FERC policy under Order No. 888.

Under Order No. 888-style OATTs, such as the one the NYISO operates under, Transmission Providers are required to offer ancillary services, including the mandatory service under Rate Schedule No. 2, "Reactive Power and Voltage Control from Generation Sources Service." *See* NYISO OATT, Schedule 2, Original Sheet No. 246. Suppliers of Reactive Power and Voltage Control "from generation sources" are ancillary to transmission service, and should be compensated separately. In FERC's view, Reactive Power and Voltage Control (whether static or dynamic) from transmission sources are presumed to be cost recovered through transmission service rates. Under FERC's current policy, it would be double-counting to include the cost of an Insulated Gate Bipolar Transistor ("IGBT") technology in both regulated transmission rates and through a Rate Schedule 2 ancillary service charge.

NYAPP makes no claim here that the IGBT costs are included in LIPA's Transmission Service Charge. (Presumably, however, the IGBT costs are being recovered through the LIPA charges to use the merchant transmission facilities at issue.) NYAPP's point is that LIPA cannot recover the costs of transmission facilities through a charge designed for generation sources without further examination.

C. NYAPP Recommends that the Board Direct the NYISO Staff to Develop Rate for Voltage Support Service that Complies With the Principles in the FERC Staff Report in Docket No. AD05-1-000.

NYAPP urges the Board to direct the NYISO Staff to develop (or hire a competent rate consultant to develop) a "least-cost" approach to compensating all suppliers of reactive and voltage control. The NYISO should also consider how much reactive power supply is necessary to support the New York Control Area. This approach must be consistent with that described by FERC in its February 4, 2005 Staff Report. In the cover letter to that report, the FERC Chairman stated the tasks: "how much reactive power supply is necessary to support the system and what are the proper incentives to install this supply in a least-cost fashion." Letter of Chairman Wood, February 4,2005, Docket No. AD05-1-000.

The NYISO has the time to make a proper cost-based study. Some have suggested that the VSS will expire after December 31, 2005. Under the filed rate doctrine, properly construed, the existing rate will continue for services until a valid filing is made to change it or a Commission order is issued.

WHEREFORE, for the foregoing reasons, the New York Association of Public Power respectfully requests that the Board:

1. Deny the IPPNY and LIPA Appeals of the Management Committee decisions to disapprove Motions #6a and #6b; and

2. Direct the NYISO Staff to develop a cost-based rate for Voltage Support Service that is just and reasonable.

Dated: November 1, 2005

Respectfully submitted,

/s/ ***Thomas L. Rudebusch***
Thomas L. Rudebusch
DUNCAN, WEINBERG, GENZER
& PEMBROKE, P.C.
1615 M Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 467-6370
tlr@dwgp.com

Counsel for the
New York Association of Public Power

CERTIFICATE OF SERVICE

I certify that I have this day served the forgoing document upon each person designated by the NYISO by electronic means and by U.S. Mail. Dated at Washington, D.C. this 1st of November 2005.

/s/ ***Thomas L. Rudebusch***
Thomas L. Rudebusch
DUNCAN, WEINBERG, GENZER
& PEMBROKE, P.C.
1615 M St., N.W.
Suite 800
Washington, D.C. 20036
(202) 467-6370

ATTACHMENTS

NYAPP
Exhibit 1

EXHIBIT ONE

New York Utilities	OATT Rates Voltage Support Service 1997[1]		Annualized Billing Units			Total Cost 1997
Central Hudson	$0.15000 per kW-month	X	9,086,000 kW months	(2)	=	$1,362,901
Consolidated Edison	$0.31700 per MWh	X	58,992,732 MWh	(3)	=	$18,700,696
Long Island Lighting Company	$0.12600 per kW-month	X	35,800,000 kW months	(2) (4)	=	$4,510,800
New York Power Authority	$2.52000 per kW-year	X	2,840,000 kW year	(5)	=	$7,156,800
New York State Electric & Gas	$0.10000 per kW-month	X	28,085,000 kW months	(2)	=	$2,808,500
Niagara Mohawk Power Corporation	$0.19490 per kW-month	X	96,161,000 kW months	(2)	=	$18,741,780
Orange & Rockland	$0.71900 per MWh	X	5,532,133 MWh	(3)	=	$3,977,604
Rochester Gas & Electric	$0.21890 per kW-month	X	13,708,000 kW months	(2)	=	$3,000,681
			Total:			$60,259,762

(1) From OATTs, Rate Schedule 2
(2) Sum of the Average of the Monthly Peaks, plus the year's Billing Demand, as found in 1997 FERC Form 1, or as found in 1998 FERC Form 1 for Rochester Gas & Electric
(3) From 1997 FERC Form 1
(4) From 1997 Keyspan Generation FERC Form 1
(5) Average of 1997 Summer and Winter Peaks as found in the 1998 New York Power Pool Load & Capacity Data Book

NYAPP
Exhibit 2

EXHIBIT TWO

New York Utilities	Generation In-Service for each Service Territory 1997[1]		MW Capacity Additions 1998-2001[2]		Generation Available in 2002
Central Hudson	1,127 MW	+	0	=	1,127 MW
Consolidated Edison	10,723 MW	+	151	=	10,874 MW
Long Island Lighting Company	4,573 MW	+	0	=	4,573 MW
New York Power Authority	7,648 MW	+	413.6	=	8,062 MW
New York State Electric & Gas	3,209 MW	+	0	=	3,209 MW
Niagara Mohawk Power Corporation	6,371 MW	+	0	=	6,371 MW
Orange & Rockland	982 MW	+	0	=	982 MW
Rochester Gas & Electric	1,305 MW	+	55	=	1,360 MW
Total:	35,938 MW		Total:		36,558 MW

(1) 1998 New York Power Pool Load and Capacity Data Book
(2) 1999-2001 New York ISO Load and Capacity Data Books

NYAPP
Exhibit 3

EXHIBIT THREE

2002 New York Generation	=	36,558 MW
System Average Power Factor (pf)	=	.92[1]
2002 Expected MVAr	=	$(MW)\sqrt{\frac{1}{(pf)^2} - 1}$
	=	$(36{,}558)\sqrt{\frac{1}{(.92)^2} - 1}$
	=	15,573 MVAr
2000 MVAr	=	15,480 MVAr
2001 MVAr	=	13,681 MVAr

(1) Average tested power factor of current Suppliers

EXHIBIT FOUR

New York Utilities	Total Cost 1997	Generation Change from 1997 to 2002 (%)	Total Cost 2002
Central Hudson	$1,362,901	0.00%	$1,362,901
Consolidated Edison	$18,700,696	1.41%	$18,964,037
Long Island Lighting Company	$4,510,800	0.00%	$4,510,800
New York Power Authority	$7,156,800	5.41%	$7,543,836
New York State Electric & Gas	$2,808,500	0.00%	$2,808,500
Niagara Mohawk Power Corporation	$18,741,780	0.00%	$18,741,780
Orange & Rockland	$3,977,604	0.00%	$3,977,604
Rochester Gas & Electric	$3,000,681	4.21%	$3,127,147
Total:	$60,259,762	Total:	$61,036,605

Actual Program Cost, 2000: $62,327,673

Actual Program Cost, 2001: $65,721,523

(2002 Cost) ÷ (2002 MVAr) = 2002 MVAr Rate

(61,036,605) ÷ (15,573) = $3919/MVAr/Year