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99 WASHINGTON AVENUE
SUITE 2020
ALBANY, NY 12210-2820
(518) 626-9000
FACSIMILE: (518) 626-9010

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February 8, 2006

VIA HAND DELIVERY

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

Re: Appeal of Management Committee Decision not to Approve a Reasonable
Limitation on an Exemption from the Timing Requirements of the Close-
Out Settlement Provisions of the NYISO Tariffs, for Settlements Calculated
Pursuant to Attachment N of the NYISO OATT and Attachment B of the
ISO Services Tariff

Dear Mr. Boston:

Pursuant to the "Procedural Rules for appeals to the ISO Board, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, d/b/a National Grid, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, LIPA and the New York Power Authority ("Appealing Parties") hereby appeal the action of the Management Committee at its meeting on January 26, 2006, not to approve a motion that would have established a reasonable limitation on an exemption from the timing requirements of the close-out settlement provisions of the NYISO tariffs, for billing adjustments made pursuant to Sections 2.4 and 2.5 of Attachment N of the NYISO OATT and Sections 2.4 and 2.5 of part V of Attachment B of the ISO Services Tariff.

The Appealing Parties request the opportunity to present oral argument to the Board's Governance Committee with respect to this appeal.

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The Appealing Parties also request that the NYISO post this document on its website, and serve a copy via e-mail on all members of the Management Committee

Sincerely,

A handwritten signature in black ink, appearing to read "Paul L. Gioia". The signature is written in a cursive style with a large, sweeping initial "P".

Paul L. Gioia
Counsel to the Appealing Parties

Cc: Robert E. Fernandez, Esq.
al93894

Appeal of Management Committee Action

Pursuant to the Procedural Rules for Appeals to the ISO Board, the Appealing Parties appeal the described action of the Management Committee at its meeting on January 25, 2006, on the grounds that it is unreasonable; would result in NYISO close-out settlement provisions in the NYISO tariffs that unfairly discriminate against the Appealing Parties; and would impose significant risks and burdens on the Appealing Parties and their customers that are not imposed by the NYISO on other market participants. The specific Management Committee action appealed from is its decision not to approve a motion (Motion #4.a.a) that would have established October 31, 2006 as the expiration date of an exemption from the timing requirements of the close-out settlement provisions of the NYISO's tariffs for billing adjustments made pursuant to Sections 2.4 and 2.5 of Attachment N of the NYISO OATT and Sections 2.4 and 2.5 of Attachment B of the NYISO Services Tariff (these provisions to be generally referred to as "Attachment N").

While the NYISO staff is under pressure to eliminate the extensive backlog of bills that have not been finally closed-out, that goal cannot be honestly achieved by simply creating an exemption for a major billing element, that unfairly disadvantages one segment of market participants, and then declaring that the bills have been "finally" closed.

The Action Taken by the Management Committee Would Result in NYISO Tariff Provisions That are Unreasonable and Discriminatory

At its meeting on January 26, 2006, the Management Committee acted on a request by NYISO staff that it approve amendments to the NYISO tariffs that would exempt from the close-out settlement provisions, billing adjustments related to congestion shortfall charges and

congestion surplus payments (Motion #4.a.). Prior to approving this motion, the Management Committee, at the urging of NYISO staff, rejected an amendment to the motion that would have established October 31, 2006 as the expiration date or “sunset” for this exemption to the NYISO’s tariff provisions for close-out settlements. Approval of these changes to the NYISO tariffs, without the sunset provision, would establish an open-ended exemption from the close-out settlement provisions in the NYISO’s tariffs for a very important element of the NYISO’s billing process – adjustments related to congestion shortfalls and surpluses. By establishing this exemption, the NYISO would undermine the concept of a “final” close-out settlement. The exception will likely result in significant manual adjustments to future NYISO bills in order to correct the under and over collections associated with Attachment N provisions. There can be no final close-out settlement when a major component of the NYISO’s billing process remains uncompleted.

Furthermore, the absence of finality with respect to congestion shortfalls and surpluses does not affect all market participants equally. The exemption affects primarily the Appealing Parties and their customers. Consequently, while other market participants will benefit from the tariff provisions establishing time requirements for final close-out settlements, the Appealing Parties will not. In fact, in urging the Management Committee to reject the proposed sunset provision, NYISO staff expressly stated that the exemption affects only a small number of market participants and that the members of the Management Committee should consider their own interests when voting on the proposed sunset provision.

Accordingly, the Appealing Parties respectfully request that the Board overturn the decision of the Management Committee, and approve an October 31, 2006 expiration date for the

exemption of Attachment N adjustments from the NYISO tariffs' close-out settlement provisions.

Attachment N Background

Attachment N of the NYISO OATT and Attachment B of the ISO Services Tariff address the allocation of congestion surplus payments and shortfall charges among transmission owners. The Appealing Parties have worked diligently over a period of several years to revise these provisions to establish a more equitable allocation of congestion balancing payments and charges, and to introduce incentives to encourage the prompt restoration of transmission facilities and increase the efficiency of the NYISO markets. In February of 2003, the Management Committee approved revisions to the Attachment N procedures. Further refinements to Attachment N were approved by the Management Committee in May and June of 2003. The NYISO filed tariff language with FERC to implement these changes in October of 2003, to take effect on January 1, 2004.

After implementation of the Attachment N revisions, NYISO staff informed market participants that the program was not working as intended and was not allocating revenues consistent with the intent of the tariff revisions approved by FERC. The NYISO staff worked on correcting the Attachment N allocation procedures, in consultation with the transmission owners. Finally, at the most recent Management Committee meeting in January of 2006, the NYISO staff presented revisions to Attachment N. The proposed revisions will be retroactive to January of 2004, since the current Attachment N allocation process is not consistent with the filing approved by FERC.

It was not until the past month that the NYISO staff informed market participants that there would be an extended period before the billing adjustments related to Attachment N could be implemented. At the BIC meeting on January 4, 2004, the NYISO staff presented a motion to establish an exemption to close-out settlement provisions for Attachment N adjustments. In the absence of a satisfactory explanation from NYISO staff of the justification for the exemption, how it would be implemented, and how long it would last, the motion was withdrawn. Without further consultation with market participants, virtually the same motion was presented to the Management Committee at its January meeting. The NYISO staff urged the members of the Management Committee to adopt the motion it had proposed and to reject a proposed amendment to establish an October 31, 2006 sunset for the exemption, on the grounds that such action was in the best interests of a majority of NYISO market participants. It is interesting to note that among the parties participating in the Management Committee meeting, 38 parties abstained on the motion to establish a sunset, and only 14 parties voted against the proposal, 11 of which were municipal systems.

Impact of an Exemption for Attachment N Adjustments

As a result of the action taken by the Management Committee, “final” bill close-outs will not be final for the Appealing Parties, nor for their millions of customers at both the wholesale and retail levels, who are ultimately affected by billing adjustments related to Attachment N. The exemption for Attachment N adjustments undermines the “final” bill close-out process, and renders it inapplicable to one segment of market participants. This situation is exacerbated by the NYISO staff’s unwillingness to accept a reasonable expiration date for this exemption.

Leaving open billing adjustments related to Attachment N will have significant adverse effects for the Appealing Parties. Attachment N adjustments affect the TSC rates payable by

wholesale transmission customers, wheel throughs and external deliveries (except to New England). In addition, the wholesale rate adjustment affects the bills of millions of retail customers. These adjustments also affect NYPA's NTAC, which is paid by retail customers. Consequently, while the exemption proposed by staff may adversely affect a minority of the voting members of the Management Committee, virtually all end-use electricity consumers in New York State pay or receive a credit related to congestion shortfalls or surpluses, and will be adversely affected by the NYISO staff's open-ended delay in the implementation of the NYISO tariffs requirements for close-out settlements for Attachment N billing adjustments.

Furthermore, the NYISO staff has not provided any information to market participants as to how it will implement the back-log of Attachment N adjustments, an estimate of the financial impact for each transmission owner, nor any plan for periodic updates of potential bill impacts. Despite knowing for two years that their implementation of the allocations under Attachment N has been inconsistent with the filing approved by FERC and would have to be adjusted, it appears that the NYISO staff is not prepared or is unwilling to discuss with the affected parties how it plans to make those adjustments within a reasonable time period.

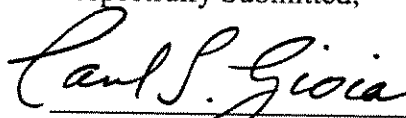
As noted, the exemption proposed by NYISO staff for Attachment N billing adjustments will render illusory any contention by the NYISO that it has successfully eliminated its long-standing backlog of invoices that have not been finalized.

Conclusion

The Appealing Parties have been cooperating with NYISO staff on the implementation of revisions to Attachment N in order to fairly allocate congestion balancing surpluses and shortfalls and provide the correct incentives to encourage the most efficient utilization of the

New York bulk power system. After several years, and repeated difficulties in implementing Attachment N revisions, it appears that the NYISO staff is prepared to make a FERC filing to put in place an acceptable Attachment N process. At virtually the same time that NYISO staff announced that it is prepared to make a FERC filing to correct the defects in the current Attachment N process, it announced that it is not prepared to make the necessary billing adjustments within the time requirements set forth in the NYISO tariffs. In order to proceed with its "final" close-out settlement program, the NYISO staff proposed an exemption from the close-out settlement tariff requirements for Attachment N, and has refused to accept a reasonable time limitation for the exemption. As a result, the tariff revisions supported by NYISO staff, and approved by the Management Committee, would unreasonably deny one segment of market participants the benefits of the NYISO tariff provisions related to final close-out settlements, which are clearly intended to apply, without discrimination, to all market participants. Consequently, the NYISO Board should reverse the action of the Management Committee and approve a limitation on the exemption for Attachment N billing adjustments to October 31, 2006.

Respectfully Submitted,



Paul L. Gioia, Esq.
Counsel for the Appealing Parties
LeBoeuf, Lamb, Greene & MacRae LLP
One Commerce Plaza
99 Washington Avenue, Suite 2020
Albany, N.Y. 12210
(518) 626-9000
(518) 626-9010 Fax
pgioia@llgm.com