

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Central Hudson Gas &amp; Electric Corporation</b>	)	<b>Docket Nos. ER97-1523-011</b>
<b>Consolidated Edison Company of New York, Inc.)</b>		<b>OA97-470-010</b>
<b>LIPA</b>	)	<b>ER97-4234-008</b>
<b>New York State Electric &amp; Gas Corporation</b>	)	
<b>Niagara Mohawk Power Corporation</b>	)	<b>Docket Nos. ER97-1523-018</b>
<b>Orange and Rockland Utilities, Inc. )</b>		<b>OA97-470-017</b>
<b>Rochester Gas and Electric Corporation</b>	)	<b>ER97-4234-015</b>
	)	
	)	<b>Docket Nos. ER97-1523-019</b>
<b>New York Power Pool</b>	)	<b>OA97-470-018</b>
	)	<b>ER97-4232-016</b>

**To: The Honorable William J. Cowan  
Presiding Administrative Law Judge**

**STIPULATION AND AGREEMENT**

**Section I. Introduction**

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.602 (2000), Central Hudson Gas & Electric Corporation (“CHG&E”), Consolidated Edison Company of New York, Inc. (“Con Edison”), New York State Electric & Gas Corporation (“NYSEG”), Niagara Mohawk Power Corporation (“Niagara Mohawk”), Orange and Rockland Utilities, Inc. (“Orange and Rockland” or “O&R”), and Rochester Gas and Electric Corporation (“RGE”) (collectively, referred to as “Member Systems” or “Companies”); the Power Authority of the State of New York (“NYPA”); and the New York Independent System Operator, Inc. (“NYISO” or “ISO”) all of whom are Sponsoring Parties (“Sponsoring Parties”), hereby submit this Stipulation and Agreement (“Stipulation”) to resolve one of

the issues raised by Commission Staff in the above-captioned proceeding (“Settlement”)<sup>1</sup> with respect to updating the data used as the NYPA Transmission Adjustment Charge (“NTAC”) billing units in order to reflect the current New York loads and Load associated with Through Wheels and Exports (“NTAC Billing Determinant Update Issue”).

The Member Systems are six of eight members of the Transmission Owners Committee of the Energy Association of New York State (formerly known as Member Systems of the New York Power Pool) which, on August 3, 1999, unilaterally filed amendments (“Amendments”) to certain existing transmission agreements (“TSAs”). NYPA and LIPA, the other two former Member Systems of the New York Power Pool, did not join in that filing. The NYISO, which commenced operation on November 18, 1999, is an independent system operator which administers markets in transmission, energy, capacity and ancillary services in the New York Control Area.

This Settlement constitutes a complete resolution of the NTAC Billing Determinant Update Issue in the above-captioned proceeding. The Sponsoring Parties have undertaken extensive negotiations in a good-faith effort to resolve this issue in this proceeding. This Settlement does not address any other issues raised by Commission Staff concerning the NTAC issue in this proceeding (*e.g.*, imposition of the NTAC on certain grandfathered TSAs or removal of the load associated with certain grandfathered TSAs from the NTAC billing units).

## **Section II. Procedural History**

In tariff filings by the Member Systems in January and December 1997, and in several filings in 1999, the Companies and NYPA agreed to modify the TSAs to adapt them to NYISO operations and the NYISO Open Access Transmission Tariff (“NYISO OATT”). The Commission required the filing

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<sup>1</sup> The Sponsoring Parties anticipate that Commission Staff will file comments in support of this Settlement.

of specific amendments for all grandfathered agreements under the NYISO OATT, including the TSAs. On August 3, 1999, in the above-referenced Docket(s), the Companies filed the Amendments to the TSAs consistent with the Commission's Order. The Amendments require the customer under the respective TSA to pay NYISO charges for NTAC.

On October 14, 1999, the Presiding Judge designated Peter Young as a Settlement Judge. Thereafter, the Parties participated in many settlement conferences and conference calls. NYPA has consented to the Amendments to its TSAs. Hearings were held during the weeks of September 19 and September 26, 2000.

### **Section III. Terms of the Settlement**

1. The NYISO OATT provisions related to the NTAC shall be modified, as set forth in Appendix A hereto. Such modifications shall be retroactive to January 1, 2001, and shall be implemented on the first day of the second month after the Commission accepts or approves this Settlement.

2. Each January, beginning with January 2001, the ISO shall inform NYPA of its prior year's actual New York internal Load requirements and actual Wheels Through and Exports. NYPA shall change the BU component of the NTAC formula to reflect the prior calendar year's information with such change in the BU component to take effect beginning with the March NTAC of the current year. NYPA will calculate the monthly NTAC and provide this information to the ISO by no later than the fourteenth day of each month, for posting on the OASIS to become effective on the first day of the next calendar month.

3. Under the proposed tariff changes to become effective January 1, 2001, NYPA, upon Commission acceptance or approval of the Settlement, shall reconcile the monthly NTAC

revenues received for each month beginning January 1, 2001 to the monthly requirement that results from dividing its annual transmission revenue requirement as set forth in the NYISO OATT by twelve (12). NYPA shall provide that reconciliation to the NYISO consistent with the NYISO's OATT NTAC billing procedures.

4. NYPA shall pay to the NYISO amounts collected in 2000 or thereafter related to NYPA's year 2000 transmission revenues pursuant to the NYISO OATT or any transmission service agreements (whether bundled with a power sales contract or unbundled) that are in excess of NYPA's 2000 transmission revenue requirement, as set forth in the NYISO OATT ("NYPA Refund"). NYPA shall make the NYPA Refund within thirty days of the NYISO's completion of its billing adjustment for all of the months of 2000, which completion shall be determined by the NYISO and posted on its website. The NYPA Refund shall include the receipt of additional revenues from the NYISO, if any, that arise from the afore-mentioned billing adjustment. The NYISO expects to complete its billing adjustment and audit for all months of 2000 by the end of 2001.

5. The NYISO will use best efforts to develop a billing credit mechanism for returning the NYPA Refund to those NYISO customers that previously paid those revenues to the NYISO on the next bill issued by the NYISO after it receives the payment of the NYPA Refund from NYPA as described in the preceding paragraph. NYPA makes no representations as to the ultimate level of the amount to be distributed, which figure cannot be accurately forecast at this time.

6. For the first bill issued by the NYISO after Commission acceptance or approval of this Settlement, NYPA shall recalculate the NTAC for each month from January 1, 2001 to the current billing month as provided in Section III, paragraph 1 above and any difference between the

recalculated NTAC and the NTAC amount actually collected shall be applied as a credit to that first bill.

7. This Settlement is not intended to and shall not (a) affect the rights of any of the Sponsoring Parties under Section 205 or 206 of the Federal Power Act, with respect to any future amendments to the ISO Tariffs or any other existing or future tariff, agreement or rate schedule; or (b) limit any future filings by any Sponsoring Party with the Commission concerning the NYISO Tariffs and/or any other existing or future tariff, agreement or rate schedule.

8. The Sponsoring Parties agree to take all reasonable actions to support this Settlement and its implementation.

#### **Section IV. Other Provisions**

1. The Sponsoring Parties have all participated in the drafting of this Settlement and, therefore, no rule of construction should apply that would interpret this document more favorably to any particular Sponsoring Party.

2. The rights conferred and obligations imposed on any Sponsoring Party by this Settlement shall inure to the benefit of or be binding on that Party's successors in interest or assignees as if such successor or assignee was itself a Party.

3. This Settlement shall not be construed as creating any rights, or expanding or restricting any rights (to the extent any such rights exist), concerning whether any party is either a party or a third-party beneficiary under any agreement, rate schedule or tariff.

4. All provisions of this Settlement are material. This Settlement is conditioned upon acceptance by the Commission of the entire Settlement without material change or condition.

5. This Settlement is made upon the express understanding that it constitutes a negotiated settlement and no person or Sponsoring Party shall be deemed to have approved, accepted, agreed to or otherwise consented to any ratemaking or tariff principle or methodology underlying or supposed to underlie any of the provisions herein. This Settlement shall not be deemed to have established a “settled practice,” as that term is used in Public Service Comm’n of New York v. FERC, 642 F.2d 1335 (D.C. Cir.)(1980), cert. denied, 454 U.S. 879 (1981).

### **Signature Page for Settlement Agreement**

The undersigned party to this proceeding, by its signature, supports this Settlement Agreement.

The Members of the Transmission Owners Committee  
of the Energy Association of New York State

By: \_\_\_\_\_  
Elias G. Farrah, Esq.  
Rebecca J. Michael, Esq.  
LeBoeuf, Lamb, Greene & MacRae, L.L.P  
1875 Connecticut Ave. NW  
Washington, DC 20009

On Behalf of the Members of the Transmission Owners  
Committee of the Energy Association of New York  
State

Dated:

### **Signature Page for Settlement Agreement**

The undersigned party to this proceeding, by its signature, supports this  
Settlement Agreement.

The New York Independent System Operator, Inc.

By: \_\_\_\_\_

Arnold H. Quint, Esq.

Ted J. Murphy, Esq.

Hunton & Williams

1900 K Street, NW

Washington, DC 20006-1109

Of Behalf of the New York Independent System  
Operator, Inc.

Dated:



## **Signature Page for Settlement Agreement**

The undersigned party to this proceeding, by its signature, supports this  
Settlement Agreement.

Power Authority of the State of New York

By: \_\_\_\_\_

Edgar K. Byham, Esq.  
New York Power Authority  
123 Main Street  
White Plains, New York 10601-3170

Dated: