

~~May 24,~~June 9, 2004

Outline of TO Obligations and Reservation of Rights
Under NYISO Planning Process¹

This outline is submitted on behalf of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York State Electric and Gas Corporation, New York State Power Authority, Niagara Mohawk, a National Grid Company, and Rochester Gas and Electric Corporation.

It is contemplated that the obligations of the TOs under the NYISO planning process, as outlined below, will be included in a separate agreement between the NYISO and the TOs.

1. TO Obligations

(a) The TOs agree to participate in the NYISO planning process. Each TO would agree to implement projects necessary to meet reliability needs identified in the planning process in accordance with paragraph 3(~~dc~~), when the market has failed to adequately respond to the reliability needs. The TO role in the development of economic projects has not yet been defined.

(b) The appropriate TO(s) would proceed with a project to meet reliability needs in parallel with one or more market-based projects to meet the reliability need, if the NYISO Plan concludes that such a parallel effort is necessary to ensure that reliability needs are met.

2. Conditions

The assumption by the TO(s) of the foregoing obligations will be subject to the following conditions:

(a) Full recovery by the TO(s) of all ~~reasonable~~ **reasonably incurred** costs, including a **reasonable** return on investment, ~~incurred in~~ **and any approved incentives, related to** the development, construction, operation and maintenance of regulated projects identified in the NYISO Plan **as necessary to meet a reliability need**.

(b) Full recovery by the TO(s) of all ~~reasonable~~ **reasonably incurred** costs related to projects undertaken by the TO(s) pursuant to paragraphs 1(a) and 1(b) above to meet a need identified in the NYISO Plan that is subsequently determined by the NYISO not to be necessary to meet a reliability need, **or that cannot be completed because of the failure to obtain necessary federal, state or local authorization, or for any other circumstance beyond the reasonable control of the TO(s).**

(c) Approval by FERC of a separate rate mechanism limited to transmission related costs incurred pursuant to the NYISO planning process. The rate mechanism would allow any TO(s) to make a filing under Section 205 of the Federal Power Act limited to a request for recovery of any costs incurred pursuant to the NYISO planning process (including a return on any new investments). The mechanism would provide for the increased rates to go into effect subject to refund pending Commission approval as part of an expedited approval process.

¹ Given that the NYISO Comprehensive Planning Process is not yet fully developed, the limitation of this discussion to strictly reliability projects is not intended to preclude the incorporation of economic considerations into the comprehensive planning process.

~~(d) Satisfactory arrangements between each of the investor owned TOs and the PSC to ensure the full and immediate pass through to retail rates of FERC approved rates for recovery of costs incurred pursuant to the NYISO planning process.~~²(e) The right of a TO to request any incentives available under state and federal regulatory policies related to investments in transmission projects.

(~~f~~) Receipt by the TO(s) of all federal, state and local authorizations necessary for completion of the project, and recovery of related costs.

(~~g~~) Acquisition by the TO(s) of all necessary real property rights, and recovery of related costs.

(~~h~~) The conditions related to the TOs' obligations under the NYISO planning process would be subject to change by the mutual agreement of the NYISO and the TOs.

3. TO Reservation of Rights

(a) The TOs will expressly reserve all of their existing rights under the Federal Power Act (FPA) or other governing law including, but not limited to, the right of each TO to make unilateral filings under § 205 of the FPA.

(b) ~~The TOs will expressly reserve all of their existing rights under the ISO/TO Agreement including, but not limited to:~~

- ~~• the right of each TO to make unilateral filings under § 205 of the FPA to change the ISO OATT or to require the NYISO on behalf of NYPA or LIPA to make such a filing, a Service Agreement under the ISO OATT, or the ISO~~

² ~~The PSC has not agreed to the language in paragraph 2(d) and the TOs and the PSC are continuing to discuss this~~

~~Agreement to the extent necessary to recover all of its reasonably incurred costs, plus a reasonable return on investments related to services under the ISO OATT and (ii) to accommodate implementation of, and changes to, a TO's retail access program;~~

- ~~• the retention by each TO of all~~ **Notwithstanding the obligations voluntarily assumed by the TOs under the NYISO planning process, the TOs will expressly reserve all of their existing rights under the ISO/TO Agreement including, but not limited to the** rights ~~it has~~ incident to ~~its~~ ownership of ~~its~~ **their** assets, including, without limitation, the right to expand or modify ~~its~~ **their** transmission facilities on ~~its~~ **their** own initiative or in response to an order of an appropriate regulatory authority;
- ~~• the retention by each TO of the right to take whatever action it deems necessary to fulfill its obligations under local, state or federal law~~ **and the rights contained in Sections 3.10(a) and 3.10(g) of the ISO/TO Agreement.**

(c) ~~The TO obligations set forth in the NYISO tariff, and the conditions to which those obligations are subject, will not be inconsistent with the ISO/TO Agreement.~~ (d) ~~If transmission facilities are required on a regulated basis to meet a reliability need identified in the NYISO planning process, the TO(s) will have the right to construct, invest in, and own any such transmission facilities, subject to regulatory approval. Criteria will be developed and included in the filing at FERC for approval of the NYISO planning process to identify the TO(s) who will~~

~~provision.~~

~~have the right to construct, invest in, and/or own facilities constructed pursuant to the NYISO
Plan.~~

4. Non-Expansion of NYISO Authority

The NYISO's existing authority under the FPA and the ISO/TO Agreement will not be expanded as a result of the implementation of the NYISO planning process as described in the filing.

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