



A PROFESSIONAL CORPORATION
1050 Thomas Jefferson Street, N.W.
Washington, D.C. 20007-3877
(202) 298-1800 Telephone
(202) 338-2416 Facsimile

Seattle, Washington
(206) 623-9372

Joseph B. Nelson
(202) 298-1894
jbn@vnf.com

June 12, 2009

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E. Room 1A
Washington, D.C. 20426

Re: Errata Filing for Joint Submittal of Motion for Leave to Respond and Response to Indicated LSEs Comments, Docket No. ER09-405-000.

Dear Ms. Bose:

On June 12, 2009, Long Island Power Authority and its subsidiary, the Long Island Lighting Company d/b/a LIPA, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, and New York Power Authority (collectively, the "Responding NYTOs"), jointly submitted for electronic filing a Motion for Leave to Respond and Response to the Indicated LSEs Comments. Subsequently, it has been determined that Attachment A to that Response was inadvertently excluded from that submittal. Accordingly, the Responding NYTOs are re-submitting a complete filing that includes Attachment A.

Sincerely,

/s/ Joseph B. Nelson
Joseph B. Nelson
Van Ness Feldman, P.C.
1050 Thomas Jefferson St., N.W.
Seventh Floor
Washington, D.C. 20007-3877
jbn@vnf.com

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

New York Independent System Operator, Inc.) Docket No. ER09-405-000

**MOTION OF THE LONG ISLAND POWER AUTHORITY AND LIPA,
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ORANGE &
ROCKLAND UTILITIES, INC., CENTRAL HUDSON GAS & ELECTRIC
CORP., NIAGARA MOHAWK POWER CORP. d/b/a NATIONAL GRID, AND
NEW YORK POWER AUTHORITY FOR LEAVE TO FILE A RESPONSE AND
RESPONSE TO COMMENTS OF THE INDICATED LSEs**

Pursuant to Rules 212 and 213 of Rules of Practice and Procedure for the Federal Energy Regulatory Commission (“FERC” or “Commission”),¹ the Long Island Power Authority and its subsidiary, the Long Island Lighting Company d/b/a LIPA, (collectively “LIPA”), Consolidated Edison Company of New York, Inc. (“Con Edison”), Orange and Rockland Utilities, Inc. (“O&R”), Central Hudson Gas & Electric Corporation (“Central Hudson”), Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”), and New York Power Authority (“NYPA”) (collectively, the “Responding NYTOs”) submit this motion for leave to file a response and response to comments (“Comments”) submitted by the New York Municipal Power Agency (“NYMPA”), the Municipal Electric Utilities Association of New York (“MEUA”), New York State Electric & Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RG&E”) (collectively, the “Indicated LSEs”) on the Report on Restitution Discussions and Request for Deferral of Ruling filed by the New York Independent System Operator, Inc. (“NYISO”) on May 11, 2009 (“May 11 Status Report”) in the above-captioned docket.

¹ 18 C.F.R. §§ 385.212 and 385.213 (2008).

The Responding NYTOs submit this motion for leave to file comments in order to correct the misrepresentation of their prior and existing position in this docket as well as other misstatements and misrepresentations made by the Indicated LSEs.

I. Motion for Leave to File Comments

The Commission permits an answer to a responsive pleading such as the Indicated LSEs Comments when it “will not delay the proceeding, will assist the Commission in understanding the issues raised, and will insure a complete record upon which the Commission may act.”² A grant of leave to file responding comments is necessary to correct factual misstatements included in the Indicated LSEs Comments and ensure that the Commission’s administrative record in this proceeding is complete as well as to otherwise assist the Commission in understanding and resolving the issues presented. Accordingly, there is good cause for the Commission to accept this answer.

II. Correction of the Record

A. The Indicated LSEs Mischaracterize the Existing and Prior Position of the Responding NYTOs in this Proceeding

The Indicated LSEs have wrongly claimed that certain of the NYTOs, including LIPA, Central Hudson, NYPA and National Grid, have twice taken the position that the requested tariff waiver should be denied on substantive grounds.³ LIPA, Central Hudson, NYPA and National Grid have joined two separate pleadings in this docket, in which the consistent position has solely been that the NYISO’s request for a tariff waiver is

² *FirstEnergy Solutions Corp.*, 107 FERC ¶ 61,139 at P 14 (2004); *see also PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,154 at P 14 (2003).

³ Indicated LSEs Comments at 3.

premature and a ruling on the merits of the waiver should be deferred until further information is made available to stakeholders.⁴

The position of LIPA, Central Hudson, NYPA and National Grid is clearly stated in the two previous pleadings submitted by the NYTOs—which not only included LIPA, Central Hudson, NYPA and National Grid, but also two entities, NYSEG and RG&E, that have now filed comments as part of the Indicated LSEs. In the joint Motion to Intervene, the NYTOs (other than Con Edison and O&R) unequivocally stated that “[t]he Commission should *defer* acting on the requested waiver” and further requested that the Commission “direct the NYISO to work with stakeholders to provide additional information with respect to the impact of its errors.”⁵ Similarly, on March 22, 2009 the NYTOs filed comments in response to a March 11, 2009 NYISO report, once again, clearly stating that “the NYISO’s renewed request to grant the request[ed] waiver is *premature*.”⁶ Further, the NYTOs requested that the Commission should defer granting the requested waiver “*until* the NYISO has fully complied with the Commission’s February Order and all stakeholders and market participants have had a chance to provide further input consistent with the order.”⁷

This position, of deferral of action on the requested waiver until further information is provided and further stakeholder discussion occurs, was ultimately adopted by the Commission in its February 2009 Order:

⁴ See Motion to Intervene and Protest of the New York Transmission Owners at 1, Docket No. ER09-405-000 (filed Dec. 31, 2008); Comments of the New York Transmission Owners at 3-4, Docket No. ER09-405-000 (filed Apr. 1, 2009). Con Edison and O&R did not participate in the NYTOs’ December 31, 2008 or April 1, 2009 comments.

⁵ Motion to Intervene and Protest of the NYTOs at 3 (stating that the Commission “should not grant the NYISO’s request for waiver *at this time*.” (emphasis added)).

⁶ Comments of the NYTOs at 2 (emphasis added).

⁷ *Id.* at 3-4 (emphasis added).

NY Transmission Owners and Alcoa state that additional information is needed before the assessment of harm can be determined, and request that waiver not be granted until further investigation is completed. Based on the record presented to us, we cannot, at this time, find that good cause exists to grant the requested waiver and will, for that reason, *defer* action on the request.⁸

Given this clear and unambiguous record, the Indicated LSEs' mischaracterization of the position of the NYTOs must be removed from the administrative record.

B. The Indicated LSEs Wrongly Ascribe Motives to the Responding NYTOs Regarding the NYISO's Waiver Request

The Indicated LSEs also falsely claim that stakeholder consensus on this pending matter "is unlikely because some LSEs that underpaid do not want to pay restitution to those LSEs that overpaid."⁹ The Indicated LSEs also imply, without providing any basis, that this was the reason that Con Edison and O&R were silent on the issue of the NYISO's waiver request. The Indicated LSEs' unsupported and mischaracterized position of Con Edison and O&R must be removed from the administrative record.

Moreover, despite the generalized statements in the Indicated LSEs Comments that underpaying parties would matter-of-factly oppose restitution, a significant number of stakeholders hold reservations about the feasibility of restitution given the difficulty of recalculating market outcomes when erroneous model inputs are introduced into the NYISO's Security Constrained Unit Commitment ("SCUC") software for a successive number of days, as happened in January 2008. Contrary to the unjustified claims of the Indicated LSEs, the NYISO has not yet been able to sort through the complex recreation of market outcomes to provide individual LSEs with enough information to determine which market participants may or may not have benefited from the NYISO SCUC input

⁸ *N.Y. Indep. Sys. Operator*, 126 FERC ¶ 61,100 at P 16 (2009) (emphasis added) ("February 9 Order").

⁹ Indicated LSEs Comments at 2.

errors. While the Indicated LSEs claim that “[t]he NYISO has provided each injured LSE with an estimate of that harm,” this is factually incorrect.¹⁰ In support of this incorrect claim the Indicated LSEs refer to a March 11, 2009 memorandum (“March 11 Memorandum”) from the NYISO to all market participants.¹¹ The Indicated LSEs incorrectly note that this memorandum describes the calculation the NYISO used to determine which market participants underpaid and overpaid and that each market participant was notified by the NYISO whether they specifically underpaid or overpaid. To the contrary, the NYISO’s March 11 Memorandum would be better described as a collection of arguments as to why the NYISO cannot and should not be required to calculate individual market participant impacts. At no time has the NYISO provided individual market participants with any comprehensive calculation of what they have overpaid or underpaid as a result of the NYISO SCUC errors. Moreover, the NYISO has certainly not provided the Indicated LSEs with a list containing the amount of money that each LSE overpaid or underpaid, a fact borne out by the Indicated LSEs’ request to make this data public. As such, the claims made by the Indicated LSEs as to the motives behind the NYTOs’ positions and whether the NYTOs over or under paid is unsupported and based on fiction. In the March 11 Memorandum, the NYISO states that provisions of the NYISO tariff do not permit changes to the actual Day-Ahead Market Locational Based Marginal Prices (“DAM LBMPs”) calculated during the waiver period.¹² Furthermore, the NYISO notes that even if it could recalculate DAM LBMPs after the fact, the price impacts that were demonstrated during the Waiver Period were reversed in

¹⁰ *Id.* at 3.

¹¹ *Id.* at 2-3 & n.5, exhibit A, Memorandum of Rick Gonzales, NYISO to NYISO Market Participants regarding Provision of Analysis and Data to Market Participants (Mar. 11, 2009).

¹² March 11 Memorandum at 12.

the days following the Waiver Period due to market participant reactions to the Waiver Period.¹³ Thus, it is not clear nor has it been made clear to the NYTOs whether there was any systematic customer or geographic benefit from the SCUC errors.

Other data deficiencies remain. The NYISO also has not provided individual market participants with information sufficient to determine impacts on individual Transmission Congestion Contracts. Further, the NYISO has not provided any information that would allow a market participant to determine the impact on their generation resources including whether LSEs with significant generation portfolios would have been hedged from adverse market impacts if the modeling errors had not been introduced in the first place.

Notwithstanding the incomplete nature of the NYISO data compilation and stakeholder consideration, the Indicated LSEs now suggest that a simple restitution can be calculated using the very limited data provided to stakeholders by the NYISO in the March 11 Memorandum.¹⁴ Reliance on this narrow data set is not appropriate since these data sets are limited to estimates associated with Day-Ahead Market congestion rent surpluses and overpayments by LSEs for Balancing Congestion Residuals and do not reflect anything close to even a rough estimate of market participant impact from the SCUC modeling errors.

III. The Indicated LSEs Appear to Misinterpret the Data Provided by the NYISO and their Proposed Remedy is Infeasible

As part of their comments, the Indicated LSEs, suggest that a “rough justice” remedy can be made so as to simply reimburse those that overpaid Balancing Congestion

¹³ *Id.* at 6-10.

¹⁴ Indicated LSEs Comments at 2.

Residuals from funds from those LSEs that underpaid Balancing Congestion Residuals.

The Indicated LSEs argue that:

The Commission should direct the NYISO to collect from those LSEs that underpaid the amount of that underpayment, which the NYISO has already identified. Those funds should then be paid to the LSEs that overpaid in an equitable manner. To the extent the revenues collected do not fully reimburse the LSEs that overpaid, the Indicated LSEs do not recommend recovering any difference through an uplift charge.¹⁵

The Indicated LSEs further assert that NYMPA's members overpaid by \$174,000, and NYSEG and RG&E overpaid by \$750,000. In support of this argument, the Indicated LSEs provide, as documentation, Exhibit B which contains the NYMPA calculation provided by the NYISO—which upon review appears to be NYMPA's specific values for the Balancing Congestion Residuals as provided to each LSE by the NYISO.¹⁶ But, the Indicated LSEs appear to misunderstand the nature of the data provided by the NYISO to each LSE.

Since the NYMPA, NYSEG and RG&E restitution proposal is based on refunding positive Balancing Congestion Residual values, the Indicated LSEs restitution proposal is infeasible. The Balancing Congestion Residual values provided by the NYISO to each LSE, *by definition*, are a positive value for all LSEs since the NYISO's estimated total of \$10.5 million is allocated to individual LSEs through Rate Schedule 1 and must be positive for any LSE with a non-negative load (which would be the total universe of

¹⁵ *Id* at 4.

¹⁶ On March 12, 2009 the NYISO provided by email to each LSE separate estimates for Day Ahead Market congestion rent surpluses and overpayments by LSEs for Balancing Congestion Residuals. By definition, each LSE would have been overpaid DAM congestion rent surpluses and overcharged Balancing Congestion Residuals. Based on Attachment B, the Indicated LSEs seem to ignore the surpluses they were paid and instead focus on the Balancing Congestion Residuals they paid. According to the NYISO March 11 Memorandum, in total LSEs were paid \$3.5 Million in DAM congestion rent surpluses and charged \$10.5 million in Balancing Congestion Residuals, for a total net LSE impact of \$7.0 million from these limited uplift categories alone.

LSEs). Indeed, it is the understanding of the Responding NYTOs that all of the NYTOs were informed by the NYISO that they overpaid Balancing Congestion Residuals. Thus, according to the rough justice restitution approach laid out by the Indicated LSEs, NYMPA, NYSEG and RG&E would be due no refunds since consistent with this “rough justice” approach all LSEs would have overpaid and there would be no funds available from LSEs that underpaid to fund any reimbursement. Interestingly, as documented in Attachment A to these comments, the Long Island Power Authority’s Balancing Congestion Residuals of \$1,056,000 were larger than the combined overpayment claimed by NYMPA, NYSEG, and RG&E. According to their “rough justice” approach, LIPA would be due a higher refund than the Indicated LSEs combined (except for the fact that a larger proportion of \$0 is still \$0).

The Indicated LSEs’ misunderstanding of the analysis in the NYISO’s March 11 Memorandum and its individual LSE data sets demonstrates the complexity of both “rough justice” as well as more accurate means of restitution. Further, this contravenes the Indicated LSEs’ claims that “restitution is obviously feasible.” Given the clear misinterpretation of data and misunderstanding of the present NYISO analysis and data sets, the Commission cannot rely upon the representations and arguments made in the Indicated LSEs Comments regarding the feasibility of restitution based on the NYISO’s March 11 Memorandum or the limited data sets provided by the NYISO to individual LSEs.

IV. Conclusion

For the reasons set forth herein, the Responding NYTOs respectfully request that the Commission grant its motion and accept this clarification of the administrative record in this proceeding.

Respectfully submitted,

/s/ Roxane E. Maywalt
Roxane E. Maywalt, Esq.
National Grid USA Service Company, Inc.
300 Erie Boulevard – West
Syracuse, NY 13202-4250
roxane.maywalt@us.ngrid.com

Counsel for Niagara Mohawk Power
Corporation d/b/a/ National Grid

/s/ Raymond B. Wuslich
Donald K. Dankner, Esq.
Raymond B. Wuslich, Esq.
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006
ddankner@winston.com
rwuslich@winston.com

Counsel for Central Hudson Gas & Electric
Corporation

/s/ Joseph B. Nelson
Joseph B. Nelson
Meaghan S. Curry
Van Ness Feldman, P.C.
1050 Thomas Jefferson St., N.W.
Seventh Floor
Washington, D.C. 20007-3877
jbn@vnf.com

Counsel for LIPA

/s/ Neil H. Butterklee
Neil H. Butterklee
Assistant General Counsel
Consolidated Edison Company of New
York, Inc.
4 Irving Place
Room 1815-S
New York, N.Y. 10003
212-460-1089
butterkleen@coned.com

Counsel for Con Edison and O&R

/s/ Carlos E. Gutierrez by NJJ
Carlos E. Gutierrez, Esq.
New York Power Authority
123 Main Street
White Plains, NY 10601-3170
carlos.gutierrez@nypa.gov

Counsel for New York Power Authority

June 12, 2009

Attachment A

Date	Balancing Congestion Residuals		Additional DAM Congestion Rents Collected		Org ID	Org Name	Amount
11-Jan-2008	\$1,036,704.42	\$290,797.71	4840	Long Island Power Authority	\$	108,586.25	
14-Jan-2008	\$271,675.21	\$182,034.70	4840	Long Island Power Authority	\$	27,077.59	
15-Jan-2008	\$178,841.90	\$291,162.16	4840	Long Island Power Authority	\$	18,022.45	
16-Jan-2008	\$697,613.36	\$201,541.88	4840	Long Island Power Authority	\$	71,310.32	
17-Jan-2008	\$1,218,959.04	\$222,701.05	4840	Long Island Power Authority	\$	126,997.83	
18-Jan-2008	\$941,882.98	\$19,151.43	4840	Long Island Power Authority	\$	90,376.42	
19-Jan-2008	\$1,188,670.46	\$225,839.68	4840	Long Island Power Authority	\$	119,955.16	
20-Jan-2008	\$1,352,205.97	\$427,067.53	4840	Long Island Power Authority	\$	133,827.34	
21-Jan-2008	\$270,687.51	\$659,215.24	4840	Long Island Power Authority	\$	26,709.55	
22-Jan-2008	\$1,555,796.52	\$400,917.28	4840	Long Island Power Authority	\$	153,121.98	
23-Jan-2008	\$752,271.47	\$95,235.08	4840	Long Island Power Authority	\$	73,930.81	
24-Jan-2008	\$ 1,076,786.53	\$ 512,996.11	4840	Long Island Power Authority	\$	106,337.19	
	\$10,542,095.37	\$3,528,659.85				\$1,056,252.89	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Washington, D.C., this 12th day of June, 2009.

/s/ Meaghan S. Curry
Meaghan S. Curry
Van Ness Feldman, P.C.
1050 Thomas Jefferson Street, N.W.
Washington, D.C. 20007-3877
(202) 298-1800