

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

<b>New York Independent System Operator, Inc.</b>	)	
<b>Central Hudson Gas &amp; Electric Corporation</b>	)	
<b>Consolidated Edison Company of New York, Inc.</b>	)	
<b>Long Island Lighting Company</b>	)	
<b>New York State Electric &amp; Gas Corporation</b>	)	
<b>Niagara Mohawk Power Corporation</b>	)	<b>Docket No. ER00-556-000</b>
<b>Orange and Rockland Utilities, Inc.</b>	)	
<b>Rochester Gas and Electric Corporation</b>	)	
<b>Power Authority of the State of New York</b>	)	

**RESPONSE OF THE MEMBER SYSTEMS AND THE NEW YORK INDEPENDENT  
SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the Members of the Transmission Owners Committee of the Energy Association of the State of New York<sup>1</sup> ("Member Systems")<sup>2</sup> and the New York Independent System Operator, Inc. ("NYISO" or "ISO") hereby respond to the protests and comments<sup>3</sup> filed concerning

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<sup>1</sup> As successor to the Member Systems of the New York Power Pool.

<sup>2</sup> The Member Systems include: Central Hudson Gas & Electric Corporation ("Central Hudson"), Consolidated Edison Company of New York, Inc. ("Con Edison"), LIPA, New York State Electric & Gas Corporation ("NYSEG"), Niagara Mohawk Power Corporation ("Niagara Mohawk"), Orange and Rockland Utilities, Inc. ("O&R"), Power Authority of the State of New York ("NYPA"), and Rochester Gas and Electric Corporation ("RG&E").

<sup>3</sup> See, e.g., Comments of the Public Service Commission of the State of New York  
(continued...)

their joint November 12, 1999 Section 205 filing<sup>4</sup> ("November 12 Filing") in the above-captioned docket.

This Response is properly filed in answer to the requests of certain parties for the Commission to reject certain portions of the November 12 Filing. The Member Systems and the ISO respectfully submit that this response will assist the Commission in its analysis of these issues and will facilitate the expeditious approval of the November 12 Filing.<sup>5</sup> In support hereof, the Member Systems and the ISO state as follows:

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<sup>3</sup>(...continued)

("NYPSC"), Motion to Intervene and Protest of Selkirk Cogen Partners, L.P. ("Selkirk"), Motion to Intervene and Protest of 1st Rochdale Cooperative Group, Ltd. and Coordinated Housing Services, Inc. ("Rochdale"). Motions to Intervene also were filed by AES, NY, LLC ("AES"); Dynege Power Marketing, Inc. ("Dynege"); Orion Power New York GP, Inc. ("Orion"); Enron Power Marketing, Inc. ("EPMI"); Sithe/Independence Power Partners, LP ("Sithe"); Southern Energy Bowline, L.L.C., Southern Energy Lovett, L.L.C. and Southern Energy NY-Gen, L.L.C. (collectively, the "Southern Parties"); and Connecticut Municipal Electric Energy Cooperative ("CMEEC").

<sup>4</sup> "Filing of the Member Systems of the New York Power Pool and the New York Independent System Operator, Inc. to Revise Certain Provisions of the ISO Open Access Transmission Tariff and the ISO Services Tariff," Central Hudson Gas & Electric Corp., et al., ER00-556-000 (1999) ("November 12 Filing").

<sup>5</sup> The Member Systems and the ISO respectfully request waiver of the Commission's regulations to the extent necessary to permit this response. The Member Systems and the ISO submit that good cause exists for the Commission to grant waiver of Rule 213(a)(2) regarding the filing of answers to protests. The Commission has consistently waived the requirements of Rule 213(a)(2) where, as here, a responsive pleading will assist the Commission's analysis, provide useful and relevant information, or otherwise facilitate a full and complete record upon which the Commission can base its decision. See, e.g., East Tennessee Natural Gas Co., 81 FERC ¶ 61,219 at n.4 (1997); Natural Gas Pipeline Co. of America, 81 FERC ¶ 21,216 at n.3 (1997); Pacific Interstate Transmission Co., 80 FERC ¶ 61,369 at n.2 (1997); Florida Gas Transmission Co., 79 FERC ¶ 61,147 at n.7 (1997); Williams Natural Gas Co., 70 FERC ¶ 61,306 at 61,932 n.6 (1995); Tennessee Gas Pipeline Co., 55 FERC ¶ 61,437 at 62,306 n.7 (1991); Michigan Consolidated Gas Co., 55 FERC ¶ 61,001 at 61,006 (1991).

## Background

On November 12, 1999, the Member Systems and the NYISO tendered for filing certain revised tariff sheets containing proposed revisions to the Commission-approved ISO Open Access Transmission Tariff ("ISO OATT") and the ISO Market Administration and Control Area Services Tariff ("ISO Services Tariff").<sup>6</sup> These amendments were filed pursuant to Section 205 of the Federal Power Act and the Commission's October 28, 1999 Order in these proceedings.<sup>7</sup> As discussed below, the changes proposed by the Member Systems and the NYISO in the November 12 Filing are just and reasonable and should be made effective November 18, 1999, the date the ISO commenced operations.

**A. NYPSC Comments Concerning Payments by Generators not Providing Regulation Service (ISO Services Tariff Revised Sheet No. 136 and Original Sheet No. 136A).**

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<sup>6</sup> On January 27, 1999, the Commission issued an "Order Conditionally Accepting Tariff and Market Rules, Approving Market-Based Rates, And Establishing Hearing and Settlement Judge Procedures" in the above-captioned dockets. See Central Hudson Gas & Electric Corp., et al., 86 FERC ¶ 61,062 (1999) ("January 27 Order"), order on reh'g, 88 FERC ¶ 61,138 (1999) ("July 29 Order"). In compliance with the January 27 Order, the Member Systems filed the ISO OATT, the ISO Services Tariff and ISO Related Agreements on April 30, 1999 ("April 30 Compliance Filing"). The Commission approved the ISO OATT and the ISO Services Tariff in its July 29 Order, 88 FERC ¶ 61,138 (1999). On September 23, the Commission issued an order granting rehearing for purposes of further consideration of the July 29 Order. On September 27, 1999, certain parties filed a petition for review of the January 27 and July 29 Orders in the United States Court of Appeals for the District of Columbia Circuit.

<sup>7</sup> Central Hudson Gas & Electric Corp., et al., 89 FERC ¶ 61,110 (1999) ("October 28 Order"). On September 1, 1999, the Member Systems submitted a filing that was intended to make corrections to the ISO OATT and ISO Services Tariff which were filed as part of the April 30 Compliance Filing. In its October 28 Order, the Commission found that a number of the proposed changes were beyond the scope of the April 30 Filing. The Commission rejected the September 1 Filing without prejudice to refile. The instant filing contains certain of the previously rejected as well as additional tariff sheets that contain revisions essential to the commencement of ISO operations.

The NYPSC expresses concern with the proposal reflected in Sheet Nos. 136 and 136A, Schedule 3 regarding "Payments by Generators not Providing Regulation Service."<sup>8</sup> This revision provides an exemption for qualifying facilities ("QFs") from regulation charges.<sup>9</sup> In particular, the NYPSC notes that it is impossible, at this time, to determine the magnitude of costs associated with the exemption of regulation charges for QFs with existing PURPA contracts, and, thus, to evaluate the proper allocation of such costs among market participants and their customers.<sup>10</sup> Notwithstanding this concern, the NYPSC urges the Commission to approve the November 12 Filing, subject to the condition that the apportionment of costs be revisited by a collaborative process within six months of ISO start-up.<sup>11</sup>

The Member Systems and the ISO do not object to the NYPSC request.

**B. Selkirk's Protest Regarding the Treatment of Transmission Agreements Entered into by Selkirk and Other Generators that Operate QFs (ISO OATT Original Sheet No. 249A and ISO Services Tariff Revised Sheet Nos. 59 and 176 and Original Sheet Nos. 59A and 176A).**

Selkirk protests three related provisions of the November 12 Filing -- amendments which were made in response to protests and concerns previously raised by QF generators, such as Selkirk.<sup>12</sup> Specifically, the amendments provide for retroactive adjustment of (i) the scheduled output for certain generators pursuant to existing must-take power purchase contracts for QFs, so that the scheduled

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<sup>8</sup> NYPSC Comments at 1 (December 2, 1999).

<sup>9</sup> See ISO Services Tariff at First Revised Sheet No. 139 and Original Sheet No. 136A.

<sup>10</sup> NYPSC Comments at 1-2 (September 20, 1999).

<sup>11</sup> NYPSC Comments at 2 (September 20, 1999).

<sup>12</sup> Selkirk Protest at 1.

output for such QF is adjusted to equal the actual output in each hour;<sup>13</sup> and (ii) Transmission Service for certain generators, so that the Transmission Service scheduled hour-ahead in the Balancing Market Evaluation is adjusted to equal the generator's actual output in the hour.<sup>14</sup>

The amendments were made following discussions with market participants as to how the ISO should deal with qualifying facilities and also to respond to protests raised by Selkirk and other generators in another proceeding before the Commission.<sup>15</sup> Selkirk maintains that the amendments fail to fully reflect the actual practices in which the NYISO has adopted to implement merchant transactions by QFs in the NYISO-administered markets and that the rights of QFs are not adequately protected.<sup>16</sup>

The ISO is operating its system so as to accommodate QFs like Selkirk while attempting to negotiate a settlement that would resolve the issue raised by Selkirk here and in Docket Nos. ER97-1523-011, et al. If those negotiations are successful, any changes in operating practices that are not consistent with the filed tariff language will result in a change in that language. Selkirk does not object to the tariff provisions as far as they go. Selkirk simply points out that it objects to the application of the tariff to its contract, because the tariff and the proposed amendments do not go far enough, in its view, to protect its QF status. Because Selkirk does not object to the application of the amendments to the QF contracts, the amendments should be approved in their current form. With respect to the merchant

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<sup>13</sup> ISO Services Tariff at Revised Sheet No. 59 and Original Sheet No. 59A.

<sup>14</sup> ISO OATT at Original Sheet No. 249A; ISO Services Tariff at Revised Sheet No. 176 and Original Sheet No. 176A.

<sup>15</sup> Selkirk Protest at 3. On August 3, 1999, the Member Systems filed amendments to certain existing transmission agreements, which were accepted and set for hearing in Docket Nos. ER97-1523-011, et al. Central Hudson Gas & Electric Corp., et al., 88 FERC ¶ 61,306 (1999). Settlement negotiations are continuing in that proceeding.

<sup>16</sup> Selkirk Protest at 3.

transactions in which it is engaged, these issues are the subject of another proceeding before the Commission and would more appropriately be addressed in that forum.

**C. Rochdale's Protests to the Schedule 1 Charges, Excess Congestion Rents and Other Issues.**

Rochdale protests Rate Schedule 1 in light of the absence of specific cost figures and the requisite ratemaking support.<sup>17</sup> Rochdale further argues that excess congestion rents should be credited to those transmission customers which actually pay the rents.<sup>18</sup> Once again, Rochdale's filing is an untimely collateral attack on the Commission's prior approval of the Schedule 1 formula, which bears no relationship to the current filing. This filing does not change the detailed description of the costs recovered through the Schedule 1 charge or the method for recovering such costs. Rather, the amendment merely clarifies the nature of the capital costs included in the Commission-approved formula.<sup>19</sup> Rochdale's contentions, therefore, are without merit.

Rochdale further questions why the NYISO has been designed to collect "excess" congestion rents, and why excess congestion rents from the Day-Ahead market should automatically revert to the Transmission Owners.<sup>20</sup> This allegation is an untimely collateral attack on the Commission's orders. In the July 29 Order, in response to Rochdale's claim that revenues from TCCs should not be guaranteed in the event of a line derating, the Commission agreed with the Member Systems that this argument was untimely because this proposal was approved in the January 27 Order.

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<sup>17</sup> Rochdale Protest at 4-7.

<sup>18</sup> Rochdale Protest at 7-9.

<sup>19</sup> January 27 Order, 86 FERC ¶ 61,062, order on reh'g, July 29 Order, 88 FERC ¶ 61,138.

<sup>20</sup> Rochdale Protest at 8.

**D. ISO OATT Revised Sheet No. 320**

Rochdale also protests the proposal that if a Transmission Congestion Contract's ("TCC") market clearing price is negative, its value will be set at zero.<sup>21</sup> Rochdale argues that this represents an unjustified departure from market signals.<sup>22</sup> Rochdale's protest was vague and conclusory. No other party to this proceeding has commented on the allocation process.

Rochdale's comments reflect a fundamental misunderstanding of this proposal. The revision to the tariff applies only to the allocation of auction revenues from the sale of Residual TCCs and capacity associated with Existing Transmission Capacity for Native Load ("ETCNL") as among the Transmission Owners. This revision in no way affects what market participants pay, and in some cases receive, for successfully bidding on TCCs in the auction. In other words, the TCC market clearing price is unaffected.

The proposed revision is intended to clarify that Transmission Owners that release Residual TCCs or ETCNL for reconfiguration and sale through the Centralized TCC Auction shall not incur a payment obligation to other Transmission Owners if the market clearing prices of associated TCCs are negative. This clarification to tariff language reflects the allocation process the NYISO currently implements and was originally incorporated into the ISO software and procedures. It applies only to the allocation of such revenues among the Transmission Owners and has no effect on the rights of market participants. Moreover, this allocation process was an important incentive to Transmission Owners who chose to maximize capacity available for sale in the auction by agreeing to mandate the release of ETCNL capacity and Residual TCCs into the market. The release of these TCCs and

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<sup>21</sup> Rochdale Protest at 9.

<sup>22</sup> Rochdale at 10.

capacity to the market provided considerably more TCCs for use by market participants.

Furthermore, Transmission Owner's apply the revenues associated with additional TCCs to reduce the Transmission Service Charges paid by transmission customers under the OATT.

Contrary to the assertions of Rochdale, the effect of setting the value of a TCC to zero for this limited allocation does not send the wrong pricing signals to market participants or cause market participants to pay a higher cost. It sends no pricing signal because the allocation process is transparent to market participants.

**E. ISO OATT Revised Sheet No. 75-77**

Rochdale also protests the changes to the ICAP requirements "to ensure the calculation of the LSE ICAP as an annual requirement applicable to both capability periods" because it allegedly increases costs for LSEs and dilutes seasonal market signals.<sup>23</sup> Rochdale's protest is incorrect and should be rejected on two grounds. First, the Commission approved the annual ICAP requirement for each capability period.<sup>24</sup> The amendment merely clarifies that the ICAP requirement is an annual requirement for both capability periods. On this issue, Rochdale's protest is too late. Second, contrary to Rochdale's protest, the ICAP requirement has always been designed to address reliability issues. The primary focus of the ICAP requirement is, therefore, reliability, and not to send market signals.

**F. ISO Services Tariff Revised Sheet No. 136 and Original Sheet No. 136A**

Finally, Rochdale protests the proposal to accommodate existing contracts for generation by exempting some from paying regulation charges, as unsupported and unduly discriminatory.<sup>25</sup> The

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<sup>23</sup> Rochdale at 10-11.

<sup>24</sup> January 27 Order at 61,221; July 29 Order at 61,393.

<sup>25</sup> Rochdale at 12.



Member Systems and the ISO clarify that these amendments are appropriate given the inability of such generators to control the output of their facilities, with respect to their PURPA obligations. As noted above in response to the NYPSC comments, the Member Systems and the ISO do not object to the November 12 Filing being approved on the condition that the apportionment of costs associated with this exemption be reviewed six months after commencement of ISO operations.

### CONCLUSION

WHEREFORE, for the foregoing reasons, the Member Systems and the ISO respectfully request that the Commission accept the November 12 Filing to be effective as of November 18, 1999, or as otherwise provided in that filing.

Respectfully submitted,

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Dated: December 17, 1999

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served by first class mail the foregoing document upon each person who is designated on the service list compiled by the Secretary in these proceedings in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure.

Dated at Washington, D.C., this 17th day of December, 1999.

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