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FEDERAL ENERGY
REGULATORY COMMISSION

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standardization of Generator Interconnection) Docket No. RM02-1-001
Agreements and Procedures)

REQUEST OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
AND THE NEW YORK TRANSMISSION OWNERS
FOR CLARIFICATION, REQUEST FOR WAIVER
OR, IN THE ALTERNATIVE, REQUEST FOR REHEARING

Pursuant to Rules 212 and 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.713 (2003), and Section 313(a) of the Federal Power Act ("FPA"), 16 U.S.C. § 8251(a) (2000), the New York Independent System Operator, Inc. ("NYISO") and the New York Transmission Owners¹ (collectively, the "Joint Filing Parties") hereby file this Request for Clarification, Request for Waiver, or, in the Alternative, Request for Rehearing of the Federal Energy Regulatory Commission's "Order on Rehearing" issued March 5, 2004 in this docket ("Order No. 2003-A").²

I. Introduction

Pursuant to Order No. 2003,³ the Joint Filing Parties submitted in Docket No. ER04-449-000, a Joint Compliance Filing on January 20, 2004. Most importantly, that filing proposed a single set of NYISO Interconnection Procedures and a single *pro forma*

¹ Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and Niagara Mohawk Power Corporation, a National Grid Company.

² Standardization of Generator Interconnection Agreements and Procedures, 106 FERC ¶ 61,220 (2004) ("Order No. 2003-A").

³ Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, III FERC Stats. & Regs. [Regs. Preambles] ¶ 31,146 (2003) ("Order No. 2003").

Interconnection Agreement that will apply to interconnections to any transmission facilities within the New York Control Area (“NYCA”) and that would be administered by the NYISO.⁴ The Interconnection Agreement would be executed by the NYISO, the Transmission Owner and the generator. The proposed Interconnection Procedures and Interconnection Agreement would apply, as is the case with the NYISO’s current procedures, without regard to the extent of the NYISO operational control, however that term is defined.

In this pleading, the Joint Filing Parties request that the Commission clarify that, under the Joint Compliance Filing proposal, the NYISO will have operational control as that term is used in Order No. 2003-A, over all of the transmission facilities in the NYCA. As a result, the Order No. 2003-A *pro forma* Large Generator Interconnection Agreement (“LGIA”) and Large Generator Interconnection Procedures (“LGIP”) will not govern the interconnections to any New York Transmission Owner facilities after the Joint Compliance Filing becomes effective. In addition, in order to avoid uncertainty and confusion for developers in New York, the Joint Filing Parties renew their request for clarification⁵ that the LGIA and LGIP shall not apply to New York Transmission Owner facilities for the period from January 20, 2004, when Order No. 2003 became effective, to the date when the Commission acts on the Joint Compliance Filing (“the Interim Period”). To reduce the length of any Interim Period, the Commission should promptly

⁴ The current NYISO interconnection procedures apply only to interconnections to transmission facilities at 115 kV and above. That voltage distinction would be eliminated by the Joint Compliance Filing. Under the Joint Compliance Filing, as under current procedures, the NYISO's Interconnection Procedures would continue to apply to both generator and merchant transmission interconnections.

⁵ Request of the NYISO and the New York Transmission Owners for Clarification of Notice Clarifying Compliance Procedures, Standardization of Generator Interconnection Agreements and Procedures, Docket No. RM02-1-004 (Feb. 9, 2004).

approve the Joint Compliance Filing and permit the NYISO to implement the Interconnection Procedures and Interconnection Agreement filed as part of the Joint Compliance Filing.

If the Commission determines that the NYISO does not have operational control over all of the NYCA transmission facilities, the NYISO and the New York Transmission Owners request that the Commission grant all necessary waivers of the requirements in Order Nos. 2003 and 2003-A to: (1) permit the NYISO, under the Joint Compliance Filing, to be responsible for interconnection of facilities rated above 20 MW to any and all transmission facilities within the NYCA; and (2) permit the current split of functions as between the NYISO and the New York Transmission Owners to remain in effect, without imposition of the LGIA and LGIP on the New York Transmission Owners, during the Interim Period.⁶

In the event that the Commission denies the requested clarification or the request for waivers, the Joint Filing Parties seek rehearing of Order No. 2003-A to the extent that it would require the adoption of multiple and conflicting sets of interconnection agreements and procedures in the NYCA in direct contravention of the policy goals announced in Order Nos. 2003 and 2003-A.

As part of the Commission's consideration of these requests, it is essential for the Commission to recognize that, since the start-up of the NYISO, the NYISO provides all transmission service in New York pursuant to its tariffs. The NYISO also administers the energy, capacity, ancillary services, and congestion management markets and related auctions. As a part of these functions, the NYISO is responsible for securing the transmission system for all contingencies that may have a significant impact on the bulk power system. While the NYISO currently administers generation and merchant transmission interconnection to all

facilities in the state at 115 kv and above, the Joint Compliance Filing would extend the NYISO's authority over *all* interconnections to *any transmission facilities* in New York. Accordingly, the present requests are designed to further the Commission's goals articulated in Order Nos. 2003 and 2003-A.

In further support hereof, the Joint Filing Parties state as follows:⁷

II. Background

Nearly two and a half years ago,⁸ the Commission launched its initiative to standardize generator interconnection agreements and procedures in order to promote the expansion or modification of existing generating facilities and the interconnection of new generating facilities to the transmission grid under just and reasonable terms and conditions and to establish standardized rules and procedures that govern this process. Towards this end, the Commission first issued an Advanced Notice of Proposed Rulemaking⁹ and subsequently issued a Notice of Proposed Rulemaking.¹⁰

On July 24, 2003, the Commission issued its Final Rule, Order No. 2003, in which it required all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to have on file standard procedures and a standard agreement for

⁶ Including any waiver, if any, required by Paragraph 55 of Order No. 2003-A

⁷ While the New York Power Authority supports and joins in this filing, references to obligations of transmission owners or non-independent transmission providers herein should be read to include only FERC-jurisdictional public utilities.

⁸ The procedural history of this proceeding is described in detail in the request for rehearing filed by the New York Transmission Owners on August 25, 2003, and is incorporated by reference herein.

⁹ Standardizing Generator Interconnection Agreements and Procedures, Advance Notice of Proposed Rulemaking, IV FERC Stats. & Regs., Notices of Inquiry ¶ 35,540 (2001).

¹⁰ Standardization of Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, FERC Stats. & Regs., [Proposed Regs.] ¶ 32,560 (2002).

interconnecting generating facilities larger than 20 MW to their transmission facilities.¹¹ Order No. 2003 included a *pro forma* LGIP and LGIA but permitted the filing of variations to reflect regional or reliability needs. The NYISO and the New York Transmission Owners have participated in every step of the process leading to the issuance of Order Nos. 2003 and 2003-A and are very supportive of the Commission's goal to encourage the development and interconnections of new generation. Indeed, the New York Transmission Owners have largely divested their generation and certain of the New York Transmission Owners are Load Serving Entities. Accordingly, the New York Transmission Owners are interested in the timely and efficient development of new generation by developers. However, as this pleading demonstrates, portions of Order No. 2003-A could be read so as to prevent uniform implementation of the comprehensive consolidated interconnection procedures included in the Joint Compliance Filing that are intended to accomplish that important goal and which has the support of all stakeholders.

Following the issuance of Order No. 2003, the NYISO initiated an extensive stakeholder process to provide an opportunity for market participants to provide input regarding interconnection rules for the NYCA. Through that process, market participants were invited to comment on multiple drafts of interconnection procedures and of the *pro forma* interconnection agreement and to participate in meetings at which the issues and documents were reviewed and discussed in detail.

On January 20, 2004, in accordance with Order No. 2003 and as a result of the extensive stakeholder process, the eight New York Transmission Owners and the NYISO filed, in Docket No. ER04-449-000, their Joint Compliance Filing seeking Commission acceptance or approval of a single three-party *pro forma* Interconnection Agreement and a single *pro forma* set of

¹¹ Order No. 2003, FERC Stats. & Regs. ¶31,146 (2003).

Interconnection Procedures to govern interconnections by generation projects larger than 20 MW to any and all transmission facilities in the NYCA.¹² The Joint Compliance Filing would give the NYISO authority over all interconnections to transmission facilities. The NYISO would administer the interconnection process for the NYCA and be a party to all related interconnection agreements. None of the comments on or protests of the Joint Compliance Filing objected to the proposal that the NYISO have such authority. Indeed, this aspect of the filing has wide support.

On January 8, 2004, the Commission issued a Notice Clarifying Compliance Procedures in this docket. On February 9, 2004, the Joint Filing Parties filed a Request for Clarification of the January 8 Notice Clarifying Compliance Procedures. By that filing, they sought clarification that the *pro forma* LGIA and LGIP should not govern the interconnections to New York Transmission Owner facilities that are not under the operational control of the NYISO and that the existing interconnection practices and procedures for New York should remain in effect until the Commission acts on the Joint Compliance Filing. This request was filed in order to provide certainty to New York developers and to avoid the confusion resulting from the January 8, 2004 Notice as to the status of interconnection requests in New York during the Interim Period. No answers were filed to the Request for Clarification. To date, the Commission has not acted on that Request for Clarification. On March 5, 2004, the Commission issued Order No. 2003-A.

¹² As noted above, the Interconnection Procedures would continue to apply to both generation and merchant transmission facilities, while the Interconnection Agreement would initially apply only to generation interconnections.

III. The Joint Compliance Filing Is in Compliance with the Concept of Operational Control as Provided in Order No. 2003-A.

A. The NYISO Has Operational Control with Respect to Order No. 2003-A.

In Order No. 2003-A, the Commission draws a distinction as to transmission facilities under the operational control of an RTO or ISO, and those that are not, in determining the applicable interconnection rules with respect to non-independent Transmission Providers participating in an ISO.¹³ However, the term operational control is not defined in Order No. 2003-A. Nor does Order No. 2003-A address the situation in New York in which the NYISO's existing and proposed authority to oversee interconnections to transmission facilities in New York does not turn on operational control, however defined.

As an initial matter, the NYISO and the New York Transmission Owners urge the Commission to interpret the term "operational control" in paragraphs 52-57 in Order No. 2003-A to refer to the extent to which transmission access, transmission service and interconnections to transmission facilities are controlled by an ISO or Transmission Owner.¹⁴ In New York, the NYISO now performs, or would perform pursuant to the Joint Compliance Filing, each of those functions with respect to all transmission facilities.

Significantly, since the inception of the NYISO nearly four and a half years ago, the NYISO has been the sole provider of all new transmission service in the NYCA. Since December 1999, all new transmission access and transmission service have been provided by the

¹³ Specifically, under Order No. 2003-A, an ISO's Commission-approved procedures would govern interconnections with facilities under the operational control of the ISO. Order No. 2003-A at P 52. However, Order No. 2003-A requires a non-independent Transmission Provider that belongs to an ISO but that retains operational control over portions of the transmission system to adopt the *pro forma* LGIP and LGIA with respect to that portion of its transmission system over which it retains operational control. *Id.* at P 53.

¹⁴ The term "operational control" for purposes of Order No. 2003-A and for purposes of this

NYISO under the NYISO's tariffs.¹⁵ The NYISO is the Control Area Operator and the NERC Security Coordinator and is responsible for the short-term reliability of the NYCA in accordance with the applicable reliability rules of the North American Electric Reliability Council, the Northeast Power Coordinating Council and the New York State Reliability Council. As part of these functions, the NYISO is responsible for securing the transmission system for all contingencies that may have a significant impact on the bulk power system. As part of its responsibility for managing congestion, the NYISO performs unit commitment and redispatch functions which recognize constraints on the transmission system in New York. The NYISO also is responsible for administering day-ahead and real-time energy and ancillary services markets, capacity and transmission congestion contracts (“TCCs”) markets (including related auctions) in New York.

Thus, the NYISO is the sole provider of transmission service and access to all transmission facilities as part of one grid and pursuant to one OATT. The Joint Compliance Filing, when accepted by the Commission, will provide that the NYISO is also responsible for interconnections to any and all transmission facilities with the NYCA. The NYISO thus will have operational control of the process which provides “one-stop shopping” for developers wishing to interconnect their facilities to the New York State Transmission System.

B. The Control Exercised By the New York Transmission Owners Does Not Inhibit the Provisions of Transmission Access or Interconnection Services by the NYISO

The New York Transmission Owners, however, retain some control with respect to a

filing should be construed to have this meaning.

¹⁵ See Central Hudson Gas & Electric Corp., et al., 86 FERC ¶ 61,062, order on reh'g, Central Hudson Gas & Electric Corp., 88 FERC ¶ 61,138 (1999).

discrete set of transmission facilities.¹⁶ For example, some transmission facilities are so intertwined with the distribution facilities that the reliability of the distribution system depends on maintenance and power flows being coordinated between those distribution and transmission facilities. Even in those instances, the maintenance schedules must be coordinated with the NYISO and are posted on the NYISO's website. The New York Transmission Owners must also follow the same reliability rules and procedures that apply to the NYISO, including the NYISO's operating procedures. The control exercised by the New York Transmission Owners does not inhibit or impact the provision of transmission access or interconnection services by the NYISO.

With respect to interconnections, the current Commission-approved interconnection procedures for New York (*i.e.*, those in effect prior to the effectiveness of Order No. 2003), include a division of authority between the NYISO and the New York Transmission Owners that does not turn on the issue of operational control, however defined.¹⁷ Rather, until the Joint Compliance Filing becomes effective, under interconnection procedures that pre-date Order Nos. 2003 and 2003-A, the NYISO administers the interconnection process and applies uniform interconnection procedures to both generation and merchant transmission projects larger than 10 MW that are seeking interconnection to any transmission facility rated at 115 kv or above in the NYCA. The New York Transmission Owners currently control interconnections of generators larger than 10 MW to transmission facilities below 115 kv.¹⁸ To date, there have been relatively

¹⁶ This "operational control" is addressed in the Agreement between New York Independent System Operator and Transmission Owners. Nothing in the Joint Compliance Filing or this filing is intended to modify this Agreement in any way.

¹⁷ The NYISO interconnection processes and procedures that are currently in place were the product of extensive, collaborative and open stakeholder processes and properly reflect the locational-based marginal pricing system in the NYCA.

¹⁸ It is important to note that, as of the date of this filing, the Commission has not issued a Final Rule in its Small Generator Interconnection proceeding in Docket No. RM02-12-000.

few interconnections to transmission facilities below 115 kv. It is expected that the few pending interconnection applications of generators larger than 20 MW currently being processed by New York Transmission Owners will be processed by the NYISO pursuant to the transition provisions of Section 5.1 of the Interconnection Procedures as soon as those procedures are approved by the Commission as part of the Joint Compliance Filing.

The Joint Filing Parties also believe it is important to note that, unlike most other non-independent transmission owners (whether in an ISO/RTO or not), the New York Transmission Owners have largely divested their generation as a result of both state and federal initiatives. Moreover, under state law, they still have obligations to serve retail customers. Thus, the Commission's concerns regarding the ability of vertically-integrated transmission providers to gain undue advantages in the interconnection process or to favor their own or affiliated generation are simply not valid in the case of New York. To the contrary, in light of the significant divestiture of generation by the New York Transmission Owners, it is particularly important to ensure that adequate generation resources are available to meet the growing needs of electricity customers and that sufficient competition in the generation market exists. The Joint Filing Parties have a significant interest in supporting the development of new generation resources and have actively supported the Commission's efforts in this regard. In fact, the Joint Compliance Filing is designed to further the Commission's goals.

C. The Operational Control Test Must Be Interpreted to Avoid Disruption of the Interconnection Process

In light of the extensive authority of the NYISO as described above, the Commission should find the NYISO has operational control as that term is utilized in Order No. 2003-A. Any other interpretation would require implementation by the New York Transmission Owners and

the NYISO of multiple interconnection processes and nine interconnection queues during the Interim Period until the Joint Compliance Filing is approved.¹⁹ Disrupting the current process that is in effect for the short period prior to the implementation of the Joint Compliance Filing would be impractical and counterproductive to the goals established by the Commission. The Joint Filing Parties do not believe that having multiple sets of procedures and possibly nine interconnection queues is the result that the Commission intended when it sought to develop “a single, uniformly applicable set of procedures and agreements to govern the process of interconnecting Large Generators to a Transmission Provider’s Transmission System.” Order No. 2003-A at P 2. In addition, the *pro forma* LGIA and LGIP, unlike the Joint Compliance Filing, do not properly reflect regional variations necessary to incorporate the NYISO structure.

As discussed above, through the Joint Compliance Filing, the Joint Filing Parties have proposed that the NYISO offer one-stop shopping for interconnection service with respect to any transmission facility in the NYCA effectively granting the NYISO control over the entire interconnection process without regard to the voltage level of the transmission facility. The Commission should clarify that the New York Transmission Owners and the NYISO may continue to implement their firmly established, pre-Order No. 2003, interconnection procedures for the Interim Period. Failure to grant this clarification would not only result in unnecessary confusion, but it also would completely undermine the Commission’s articulated goal to establish uniform interconnection procedures and agreements.

To minimize the Interim Period, the Joint Filing Parties urge the Commission to act swiftly on the Joint Compliance Filing in order to bring certainty to the developers in New York.

¹⁹ One queue for each of the eight New York Transmission Owners and one for the NYISO.

IV. The Commission Should Grant Waivers, as Needed, to Permit the NYISO Procedures to Govern Interconnections to All Transmission Facilities in New York.

For all the reasons stated above, to the extent that the requested clarification is not granted, the Joint Filing Parties urge the Commission to act quickly on the Joint Compliance Filing and grant waivers of any provisions of Order Nos. 2003 and 2003-A that are necessary to: (1) permit the Joint Compliance Filing to go into effect, rather than to effectuate changes that may be unintended, disruptive, and counterproductive in terms of the Commission's goals of furthering the development and interconnection of new generation; and (2) permit the current split of functions as between the NYISO and the New York Transmission Owners to remain in effect without imposition of the *pro forma* LGIA and LGIP on the New York Transmission Owners, during the Interim Period between the effective date of Order No. 2003-A and the effective date of the Joint Compliance Filing.

V. In the Event That the Commission Denies The Requested Clarifications and/or the Requests For Waiver, The Joint Filing Parties Seek Rehearing of the Commission's Ruling In Order No. 2003-A That The NYISO And The New York Transmission Owners File Separate Sets Of Interconnection Procedures And Agreements.

The failure to grant the requested clarification or waiver would be inconsistent with and, indeed, would wholly thwart the stated purpose of Order Nos. 2003 and 2003-A. In the event that the Commission does not grant the requested clarification or waivers, the Joint Filing Parties seek rehearing. The Commission has failed to adequately explain or justify the need for a separate set of interconnection rules and procedures by the NYISO and the New York Transmission Owners. Therefore, this ruling must be set aside.²⁰

²⁰ FPC v. United Gas Pipe Line Co., 393 U.S. 71, 73 (1968) (case remanded when there was "no articulation of 'any rational connection between the facts found and the choice made.'"); Association of Oil Pipe Lines v. FERC, 83 F.3d 1424, 1431 (D.C. Cir. 1996) (FERC's orders must articulate "a rational connection between the facts found and the choice made.") (quoting

Any requirement to deviate from the Joint Filing Parties' current interconnection procedures pending Commission action on the Joint Compliance Filing, and any inability to implement the Joint Compliance Filing, would result in multiple, inconsistent interconnection rules in the NYCA. Thus, generators would be subject to nine interconnection queues and at least two, and possibly nine, sets of interconnection procedures and agreements. Multiple queues create numerous problems with respect to study groups and cost allocations. Assigning a generation project to a queue based on mere location also would counteract the impact of market signals intended by locational based marginal pricing. Given the orderly system that New York already employs and is contemplating in the future, such a result surely cannot be what the Commission intended.

Accordingly, the Joint Filing Parties urge the Commission to reverse its ruling on this aspect of Order No. 2003-A on several grounds. First, as discussed above, the ruling is predicated on several erroneous assumptions regarding the nature and extent of the NYISO's current and proposed operational control over transmission facilities in the NYCA. The NYISO is the party which has been responsible for the provision of open access transmission service and the administrator of the wholesale electric market since its inception in November 1999. Under the pending Joint Compliance Filing, the NYISO also will be responsible for administering the process for interconnections to any transmission facility without regard to the extent of the NYISO's operational control. Thus, with respect to Order No. 2003-A, it is the NYISO that has operational control. Accordingly, the concept of operational control is not, and should not be, an

Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983)). The Commission must provide an adequate and adequately supported explanation for its findings, conclusions or actions; otherwise, they should be set aside. See 5 U.S.C. § 706(2)(A) (2000) (under the Administrative Procedure Act, an agency's actions, findings and conclusions which

issue with respect to interconnections in the NYCA.

Second, the Commission fails to take into account that the existing Commission-approved NYISO interconnection process also applies without regard to the extent of the NYISO's operational control. The pending Joint Compliance Filing extends this to all transmission facilities without regard to the voltage level. Rather than having multiple, conflicting interconnection procedures and queues in the NYCA, the Joint Filing Parties have voluntarily established a uniform process applicable to interconnections to all transmission facilities by generation projects that are larger than 20 MW.

Third, this aspect of Order No. 2003-A, if literally interpreted, completely undercuts Order No. 2003's recognition of the need to allow greater flexibility for ISOs and to permit regional variations in developing the interconnection rules. The Joint Compliance Filing meets the Commission's stated objectives and goals in Order Nos. 2003 and 2003-A to establish workable and uniform interconnection rules and procedures. The Commission's ruling, however, would replace this orderly system with multiple, inconsistent procedures and queues without regard to the existing realities in the NYCA. The Commission has failed to justify or explain such action.

Fourth, the rulings are unsupported by applicable Commission precedent, including the orders establishing the NYISO and the existing interconnection and transmission rules and procedures already in place in the NYCA. Finally, significant time and efforts, involving the NYISO, the New York Transmission Owners and other market participants, have been devoted to develop the Joint Compliance Filing. The Commission's ruling will likely impose improper, unnecessary, and significant costs and delays with respect to interconnections in the NYCA.

are arbitrary, capricious, an abuse of discretion or otherwise contrary to law should be set aside).

Accordingly, the Commission's decision to require the New York Transmission Owners to adopt the *pro forma* LGIP and LGIA is arbitrary and capricious and constitutes clear and reversible error. Because the Commission has failed to provide an adequate and adequately supported explanation for its ruling, it must be set aside.

SPECIFICATIONS OF ERROR

The Commission erred in the following respects:

- A. The Commission erred in requiring the New York Transmission Owners to adopt the *pro forma* LGIA and LGIP to govern the interconnections to New York Transmission Owner facilities that are not under the operational control of the NYISO.
- B. The Commission erred in failing to engage in reasoned decision-making with respect to its decision to require the filing of different interconnection rules and procedures by the NYISO and the New York Transmission Owners pending Commission action on the Joint Compliance Filing.

The NYISO and the New York Transmission Owners respectfully request rehearing on each of these issues.

CONCLUSION

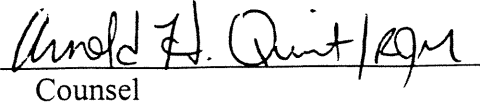
WHEREFORE, for the above stated reasons, the Joint Filing Parties respectfully request that the Commission grant the requested clarification and waivers. In the alternative, the Joint Filing Parties request that the Commission grant rehearing and reverse its rulings consistent with the comments set forth herein.

Respectfully submitted,

NEW YORK TRANSMISSION OWNERS

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC

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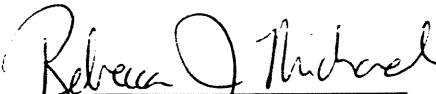
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CERTIFICATE OF SERVICE

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 this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2003).

Dated at Washington, DC this 5th day of April, 2004.

By: 
Rebecca J. Michael