Direct Dial: 455-5505

March 13, 2003

Hon. Richard J. Grossi
Chairman, Board of Directors
New York Independent System Operator, Inc.
c/o William J. Museler, President & CEO
New York Independent System Operator, Inc.
3890 Carman Road
Schenectady, NY 12303

Re: **New York State Electric & Gas Corporation's and Rochester Gas and Electric Corporation's Motion In Opposition To Appeals of Consolidated Edison Company of New York, Inc. and Long Island Power Authority and LIPA of the Management Committee's February 20, 2003 Decision on the Supplemental Congestion Reduction Proposal**

Dear Chairman Grossi:

Pursuant to Section 5.07 of the ISO Agreement and Article IV of the Procedural Rules for Appeals to the ISO Board, New York State Electric & Gas Corporation ("NYSEG") and Rochester Gas and Electric Corporation ("RG&E") (the "Companies") hereby submit their Notice of and Motion in Opposition to the Appeals submitted by Consolidated Edison Company of New York, Inc. ("Con Edison") and Long Island Power Authority and LIPA ("LIPA") regarding the Management Committee's February 20, 2003 decision to approve the Supplemental Congestion Reduction Proposal (the "Proposal"). A copy of this Motion in Opposition has been electronically transmitted to NYISO Staff for purpose of service on the members of the Management Committee. The Companies respectfully request that the Board reject Con Edison's and LIPA's requests for appeal in their entirety, and the Companies support the Management Committee's decision, which was arrived at following over a year of discussion and was duly approved through the ISO committee process.

Con Edison and LIPA participated extensively during development of the Proposal in the Business Issues Committee ("BIC") and in the Management Committee. Market Participants considered the concerns raised by LIPA and Con Edison and, in the aggregate, concluded that the benefits to be gained strongly outweighed the concerns raised by LIPA and Con Edison. The Congestion Reduction Proposal was approved by a majority of the participants in the BIC and by the Management Committee. A hearing is unlikely to lead to the discovery of any additional relevant information, and LIPA and Con Edison have already stated their positions in motions to the various committees and in the instant appeals. The record is complete.

However, to the extent that the Governance Committee finds it necessary to grant Con Edison's request for a hearing, the Companies request an opportunity to respond during that hearing to comments by Con Edison, LIPA or any other party.

The Companies further request that the ISO establish an expedited process for the appeal pursuant to Section 2.06 of the Procedural Rules for Appeals to the ISO Board.

Respectfully submitted,

____

Stuart A. Caplan
Robert G. Grassi
Huber Lawrence & Abell
605 Third Avenue
New York, NY 10158
(212) 455-5505
scaplan@huberlaw.com
rgrassi@huberlaw.com
Authorized Agent and Counsel for
New York State Electric & Gas Corporation
Rochester Gas and Electric Corporation

cc: Ira Freilicher (via in-hand delivery)
Robert Fernandez, Esq. (via e-mail)
Molli Lampi, Esq. (via e-mail)
Kristen Kranz (via e-mail)

Motion of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation in Opposition to Notices of Appeal of Consolidated Edison Company of New York, Inc. and Long Island Power Authority and LIPA of The Management Committee's February 20, 2003 Decision to Approve the Supplemental Congestion Reduction Proposal

Summary

New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (the "Companies") respond to the arguments of Consolidated Edison Company of New York, Inc. ("Con Edison") and the Long Island Power Authority and LIPA ("LIPA") in their Notices of Appeal of the Management Committee's February 20, 2003 decision approving the Supplemental Congestion Reduction Proposal ("Proposal").[1] The Companies respectfully request that the New York Independent System Operator ("ISO") Board of Directors ("Board"): (1) reject these appeals in their entirety; (2) support the Management Committee's approval of the Proposal and direct ISO staff to expeditiously work with Market Participants to develop any needed tariff changes; and (3) join with the Management Committee in the expeditious filing of those changes with the Federal Energy Regulatory Commission ("FERC"). Alternatively, the Companies urge immediate implementation of the Proposal, at least for the Reconfiguration Auctions. These auctions are in violation of the ISO's Tariff and produce illogical results that are unjust and unreasonable. To help reach consensus on the other key Proposal elements before the Fall 2003 auction, the Companies recommend a process that we believe is fair and reasonable. The Companies further request an expedited appeal process, pursuant to section 2.06 of the Procedural Rules for Appeals to the ISO Board.

---

[1] The Con Edison Notice of Appeal is dated March 5, 2003, and LIPA Notice of Appeal is dated March 6, 2003. Both appeals were posted on the ISO website on March 6, 2003.

Background

For over a year, the Companies have been patiently and cooperatively working within the ISO committees and with ISO staff to attempt to reach consensus on a congestion reduction proposal. The first proposal was approved by the Management Committee on February 7, 2002, and following appeals by Con Edison and LIPA, the Board declined, at that time, to proceed with a FERC filing.[2] The Board based its decision on the likelihood of significant future congestion rent shortfalls and the possible inequities in the allocation of both congestion rent surpluses and shortfalls. The Board asked the parties to work together through the committee process to attempt to develop a comprehensive solution, with the "hope" of consensus support of all sectors. The Board further directed ISO staff to work to develop a comprehensive proposal that would reduce congestion rent shortfalls to a more reasonable level.

Approximately a year had passed before the second Proposal was approved by the Management Committee on February 20, 2003. It was approved by a 66.79 percent majority. The current Proposal is fully consistent with the Board's April 17, 2002 directive: First, it proposes a method to allocate congestion rent shortfalls and surpluses for TCC auctions (including both capability period and monthly reconfiguration auctions) to the Transmission Owner ("TO") responsible for the shortages effective May 1, 2003.[3] Second, it proposes that the ISO, in consultation with the Management Committee, develop a method to apply an "availability adjustment" to TCCs in an effort to balance

---

[2] NYISO Board of Directors Decision on Con Edison's and LIPA's Appeals of Management Committee Vote on a Congestion Reduction Proposal (April 17, 2002).

TCCs with anticipated average transmission capacity. The method is to be brought back to BIC for approval for implementation in time for the Fall 2003 auctions.[4] Third, it establishes a process that can lead to implementing a dynamic rating program.[5]

The Companies support the current Proposal (as they did the 2002 proposal) and recommend that the Board deny the Con Edison and LIPA appeals. Contrary to the claims of Con Edison and LIPA, the Proposal complies with the spirit and intent of the April 17, 2002 Decision. The Board should direct ISO staff to expeditiously implement all elements of the Proposal as approved by the Management Committee.

Alternatively, if the ISO believes that it is necessary to delay implementing certain elements of the Proposal, in light of Con Edison's or LIPA's concerns, the Companies urge the ISO, to immediately implement the Proposal with respect to the monthly Reconfiguration Auctions. It is the Company's belief that the manner in which the ISO has been conducting these auctions is in violation of the filed NYISO Open Access Transmission Tariff ("Tariff") and produces results that defy logic. The Companies have, for over a year, worked through the committee process to attempt to reach a consensus resolution. We are concerned, however, that the ISO continues to violate the filed Tariff, as discussed below, by failing to conduct auctions based on a feasible set of TCCs and by assessing the resulting shortfalls in a manner that is not

---

[3] Item I of the Proposal provides an allocation methodology for the allocation of shortfalls and surpluses to TOs effective as of May 1, 2003, and item II proposes similar changes to the Monthly Reconfiguration Auction revenue/cost allocations effective as of May 1, 2003.

[4] Currently, there is full funding of TCCs, and the Proposal does not seek to change this. The adjustment is intended to avoid creating excessive TCC revenue shortfalls or surpluses. Proposal item III.

[5] Item IV directs the Congestion Reduction Task Force to meet to discuss the feasibility and desirability of developing a Transmission Facility Dynamic Rating Program to allow TOs to change facility limits to take advantage of ambient conditions and thereby reduce shortfalls or increase surpluses over short periods.

supported by the Tariff. Assuming that conducting auctions based on an infeasible set of TCCs and allocating the resulting shortfalls to parties other than the one(s) causing the shortfall is consistent with the Tariff, this produces illogical results that are neither just nor reasonable. Prompt ISO action is required to stop the mounting financial exposure caused by a clearly inequitable allocation not authorized by Tariff.[6]

Argument

The Con Edison and LIPA Appeals Seek Unreasonable Delay and Should Be Denied

A primary concern of Con Edison and LIPA appears to be timing. For example, Con Edison requests that the Board reject the Proposal in its current form and require the availability adjustment and shortfall reallocation to be implemented simultaneously and as soon as practicable. LIPA states that it supports the development of each of the elements of the Proposal (though it apparently believes they could be made more "comprehensive") and supports their contemporaneous implementation.[7]

The effect of these Appeals is to seek to delay fixing problems in the administration of TCC auctions that are resulting in enormous cost shifts. If the Board delays implementation of the Proposal, it will continue rewarding TOs financially for transmission service that they do not provide. The Proposal was developed to provide a financial incentive to all TOs to reduce transmission system congestion by scheduling

---

[6] If the ISO does not move forward to correct the aforementioned serious problems now with respect to at least the monthly Reconfiguration Auctions commencing May 1, 2003, the Companies will have no other choice but to make a FERC filing (including seeking retroactive relief, as well as prospective relief). If FERC determines the ISO has not been in compliance with its Tariff, then retroactive relief would also be available. The Companies believe that Con Edison and LIPA would be interested in promptly resolving the extent of any retroactive refund exposure associated with the mis-allocation of congestion rent shortfalls at this stage as opposed to waiting for a FERC order.

[7] Specifically, LIPA requests that the ISO Board: (1) reject the Proposal; (2) direct ISO Staff to work with the ISO's consultant (LECG) on a "comprehensive" proposal in place of Proposal; (3) direct ISO

system outages at times of low congestion, and to complete planned or unplanned outages quickly and safely. Of all the New York TOs, only Con Edison and LIPA oppose this improvement.

The method in which the ISO administers the Reconfiguration Auctions underscores the unreasonableness of the current approach and why immediate action is necessary. It is the Company's belief that the manner in which the ISO has been conducting these auctions is a clear violation of the filed Tariff and produces illogical, unjust and unreasonable results. First, in conducting TCC reconfiguration auctions, the ISO does not ensure that the auction is starting with a simultaneously feasible set of TCCs. This is in direct violation of the express provisions and spirit of the Tariff.[8] Second, the Companies incur costs as a result of starting with an infeasible set of TCCs in the auction. Ironically, it is outages on other TO's facilities (like Con Edison or LIPA) that create costs but these other TOs whose facilities caused the shortfall bear no cost responsibility. Incredibly, the ISO allocates 100 percent of such shortfalls to the other nonresponsible TOs.[9] This violates the principle of cost causation.[10] This allocation

---

Staff and LECG to present options for implementing such a proposal to the ISO Committees; and (4) require the elements of any finally adopted comprehensive proposal be implemented simultaneously.

[8] Attachment M of the Tariff sets forth the requirements for the sale of TCCs. With respect to Reconfiguration Auctions, the Tariff expressly provides that these monthly auctions are to "capture short-term changes in transmission capacity." (Attachment M, Section 8.6) This is consistent with the general principle underlying the Tariff that TCCs must correspond to a "simultaneously feasible" Power Flow. (See e.g., Attachment M sections 1.0, 2.0, 9.1, and 9.7.) To the extent the ISO reflects transmission facility outages in determining the capacity available for Reconfiguration Auctions and this results in starting the auction with a simultaneously infeasible set of TCCs, the ISO is in violation of its Tariff. It is our understanding that ISO staff has taken the position that the simultaneous feasibility requirement applies to the annual TCC auctions but not the monthly auctions. Such a position violates both the spirit and the letter of the Tariff.

[9] In fact, the February and March 2003 Reconfiguration Auction alone imposed over $350,000 in additional costs on the Companies as a result of the existing flawed cost allocation method.

[10] As FERC explained in its recent draft order concerning Stormwatch, "Cost causation principles require that cost responsibility match as closely as practicable the cost of providing the service" (citation

method is contrary to the filed Tariff.[11] For these reasons, the Companies urge the Board to immediately rectify these serious problems without further delay.

Further, it is perfectly reasonable to first implement the shortfall/surplus allocation method (effective May 1, 2003) and then the availability adjustment (effective for the Fall 2003 TCC auction). Con Edison and LIPA object to the fact that there is a six-month delay before the availability adjustment is implemented. It is clearly unjust and unreasonable to continue with an unfair cost allocation of congestion rent shortfalls and excesses because it will take an additional six months to finalize the methodology to reduce the quantity of TCCs sold. Con Edison and LIPA have enjoyed the benefits of the current inequitable congestion rent shortfall for over three years. Moreover, the TO that is being assessed the shortfalls during this six-month period nevertheless collects revenues associated with the oversubscribed capacity in the form of transmission revenues.[12]

---

omitted). *New York Independent System Operator, Inc.*, Docket No. ER97-1523-071, *et al.* [Draft Order on Compliance Filing issued at FERC's March 12, 2003 meeting].

[11] The ISO relies on section 3.5 of Attachment N of the Tariff to conduct these allocations. However, assuming, *arguendo*, that this provision applies to Reconfiguration Auctions, the ISO misapplies the method. Section 3.5 states that "all negative Interface revenue allocations are set to zero and the resulting Interface revenue allocations are decreased proportionately to compensate for the negative values." In implementing this clause, the negative values are so large that the ISO causes the other interface revenues to go negative in violation of the Tariff provision. Therefore, the TO that has the outage and the initial negative value has zero dollar exposure and those other TOs that had positive auction revenue not only do not receive the revenue they had on their interfaces, they incur an expense to the ISO for the negative value that is now shifted to their interface.

[12] The method of allocating congestion rent shortfalls produces unjust and unreasonable results. If a TO has sold transmission service under a grandfathered agreement, it is receiving 100 percent of the transmission revenue under that agreement. If the facilities supporting the grandfathered interface are not available, all TOs are required to fund the resulting congestion rent shortfall. The other TOs pay a significant percentage of the shortfall, but get none of the grandfathered revenues associated with the interface.

Too much time has passed since the issues were first brought to the ISO's attention to send the matter back again to the ISO committees or staff for further study or to develop a "perfect" solution. This Proposal was duly approved by the Management Committee. As discussed above, Con Edison's and LIPA's main concern appears to be over the staggered implementation of different Proposal elements.[13] The ISO should not delay once again with the hope of someday finding the "perfect" solution that will satisfy all parties. This may never happen. For this reason, the Companies are proposing a process that includes FERC alternative dispute resolution ("ADR") to help facilitate agreement on certain key Proposal elements, as discussed below.

The Companies respectfully request that the Board support the Management Committee's approval of the Proposal. In the interest of addressing the concerns raised by Con Edison and LIPA, without delaying the implementation of the Proposal, the Companies support a two-pronged approach to implementing the key elements of the Proposal. Accordingly, the Companies recommend that the Board reject the Con Edison and LIPA appeals and take the following steps to implement the Proposal expeditiously:

1.) Implement Proposal items I and II (allocation of shortfalls and surpluses), as provided in the February 20th Resolution, and promptly make a filing with FERC under FPA Section 205, to the extent needed, to revise the Tariff effective as of May 1, 2003.

2.) If the Board agrees that additional changes are needed for the availability adjustment (item III), the Board should direct the ISO staff to expeditiously work with

[13] In its Appeal, Con Edison points out that the Management Committee and BIC vote included a number of abstentions, particularly in the generation sector. Con Edison does not challenge the validity of the committee vote, but apparently raises this issue to argue that there was less than a full consensus on this issue. While a consensus would be optimal, the ISO Board never mandated that there had to be full consensus.

Market Participants to develop an alternative proposal, with the goal of a section 205 filing, to the extent needed, by no later than the July 31, 2003. As a last resort, the Board should propose its own plan and file it with FERC under FPA section 206, to the extent required. The Board needs to act now so future TCC auctions (commencing with the Fall 2003 auction) will reflect a realistic representation of the system during the relevant time period. The ISO may seek the assistance of FERC ADR staff, to the extent needed to help resolve the open issues in time to meet the above described Fall 2003 deadline.[14]

At a minimum, the Companies request a firm commitment from the ISO that the allocation method for the Reconfiguration Auctions be implemented effective as of May 1, 2003, and the availability adjustment and shortfall/surplus method for all auctions will be in place by the Fall 2003 auctions. As stated previously, the Companies have attempted to work cooperatively through the ISO Committee process. However, the costs that are being shifted unreasonably to the Companies are mounting. Therefore, the Companies urge prompt action by the Board. Prompt ISO action is required to stop the mounting financial exposure caused by a clearly inequitable allocation not authorized by Tariff.[15] To the extent that the Board believes that there are genuine issues that are preventing its ratification of the entire Proposal to meet the above schedule, the Companies recommend, as discussed above, that the Board bring in FERC's ADR staff

---

[14] Concerning item IV, the dynamic rating proposal, there is no need to delay the effectiveness of the other elements to implement this part of the proposal. Dynamic rating programs are complex and there may be other simpler approaches to making capacity adjustments in the short-term. To tie the other parts of the Proposal to this item, as suggested by LIPA, will result in inexcusable delay.

[15] As discussed above, if the Reconfiguration Auction problems are not promptly remedied, the Companies will have no choice but to seek relief from FERC. If FERC determines the ISO has not been in compliance with its Tariff, then retroactive relief would also be available. The Companies believe that Con Edison and LIPA would be interested in promptly resolving the extent of any retroactive refund exposure associated with the mis-allocation of congestion rent shortfalls.

or settlement judges to help work through the issues and facilitate a resolution so that the above schedule can be met.

In addition, the Companies have reviewed the Motion in Opposition of Niagara Mohawk Power Corporation ("NMPC"). NMPC responds to each of the issues raised by Con Edison and LIPA. As NMPC explained, these issues do not warrant delaying implementation of the Proposal.

Conclusion

WHEREFORE, the Companies respectfully request that the ISO Board reject the appeals submitted by Con Edison and LIPA and that the Board instead support the Management Committee's approval of the Supplemental Congestion Reduction Proposal and direct NYISO Staff to work with the Market Participants expeditiously to develop the necessary tariff amendments and join with the Management Committee in the expeditious filing of those amendments with FERC consistent with the Proposal and the recommendations contained herein.

Respectfully submitted,

____

Stuart A. Caplan
Robert G. Grassi
Huber Lawrence & Abell
605 Third Avenue
New York, NY 10158
(212) 455-5505
scaplan@huberlaw.com
Authorized Agent and Counsel for
New York State Electric & Gas Corporation
Rochester Gas and Electric Corporation

Dated: March 13, 2003