

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

New York Independent System)
Operator, Inc.)
)
Central Hudson Gas & Electric)
Corporation)
Consolidated Edison Company of)
New York, Inc.) Docket No. ER99-4235-000
Long Island Lighting Company)
New York State Electric & Gas Corporation)
Niagara Mohawk Power Corporation)
Orange & Rockland Utilities, Inc.)
Rochester Gas and Electric Corporation)
Power Authority of the State of New York)
)
New York Power Pool)

**JOINT RESPONSE OF THE MEMBER SYSTEMS
OF THE NEW YORK POWER POOL AND
THE NEW YORK INDEPENDENT SYSTEM OPERATOR**

In accordance with the Commission's Rules of Practice and Procedure, the Member Systems of the New York Power Pool¹ ("Member Systems") and the New York Independent System Operator, Inc. ("NYISO") respectfully respond to the protests, comments and requests for hearing

¹ 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").

submitted on September 14, 1999² to the joint proposal of the NYISO and the Member Systems to recover the costs associated with the start-up and the formation of the NYISO.³

The few protests and comments filed do not raise any factual issues which warrant delaying the Commission's acceptance of the August 25 Filing. Consistent with its practice in other ISO proceedings, the Commission has already approved in principle the Member Systems' proposal to recover such costs. The August 25 Filing simply identifies the specific start-up costs which have been, and will be incurred. The Commission should accept the Joint Proposal subject to refund.⁴

To respond to the requests for hearing, to assist the Commission in its analysis of the issues raised in the protests, and to facilitate the expeditious approval of the August 25 Filing,⁵ the Member

² See, e.g., Motion to Intervene of Sithe/Independence Power Partners, L.P. ("Sithe Motion"), Motion to Intervene, Protest and Request for Hearing of the Municipal Electric Utilities Association of New York State ("MEUA Protest"), Motion to Intervene and Protest of 1st Rochdale Cooperative Group, Ltd. and Coordinated Housing Services, Inc. ("Rochdale Protest"), Intervention and Comments of the Public Service Commission of the State of New York ("NYPSC Comments"), Motion to Intervene and Protest of Enron Power Marketing, Inc. and Coral Power, L.L.C. ("EPMI/Coral Protest").

³ ("August 25 Filing" or "Joint Proposal"). As described in the Transmittal Letter to the August 25 Filing, these costs include "locational based marginal pricing ("LBMP") software development, transitional staff and administration, organizational development and regulatory costs, set-up of the Reliability Council, training, the purchase of land and building as well as the initial funding of the pension fund." *Id.* at 2.

⁴ Any amounts the Commission might order to be refunded should be used to reduce the aggregate start-up amounts to be collected over the then remaining term of the collection period. All references to "refund" in the instant filing refer to this type of remedy.

⁵ At least two of the protests (MEUA and EPMI/Coral) include requests for a hearing. In addition, 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., Williams Natural Gas Co., 70 FERC ¶ 61,306 at 61,923 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).

Systems and the NYISO respectfully submit this response:

I. THE COMMISSION SHOULD APPROVE THE JOINT PROPOSAL WITHOUT RESORTING TO AN EVIDENTIARY HEARING

The few protests filed do not establish any basis to delay the recovery of the NYISO's start-up and formation costs or to require a formal evidentiary hearing.⁶ They simply raise policy concerns, or questions which can be addressed by the Commission without an evidentiary hearing. For instance, MEUA takes issue with the NYISO's attempt to recover legal and regulatory expenses on behalf of the Member Systems.⁷ Rochdale raises concerns with regard to the proper allocation of the NYISO start-up and development costs. It seeks to have all customers (grandfathered customers as well as new entrants) share in the cost responsibility.⁸ In addition to objecting to what it views as procedural deficiencies, EPMI/Coral challenges the recovery of the costs associated with the establishment of the NYISO Governance structure, as well as the allocation of costs related to the development of the LBMP software to the ISO OATT customers.⁹ These are policy issues as to whether certain categories of costs are recoverable and how start-up costs should be recovered. These issues can be

6 Although it only files an intervention, Sithe "fully reserves its rights to address the reasonableness of the Schedule 1 charge if and when the NYISO ever attempts to impose the charge on Sithe..." See Sithe Motion at 3.

7 MEUA Protest at 4-5.

8 Rochdale Protest at 5-7. Rochdale also questions the fluctuating nature of the monthly usage charge, the source of NYISO's projected usage levels of 14,300,000 Mwh per month, and the inadequate clarification of these costs as defined in the Joint Proposal. Id. at 7-9. In response to the second query, the 14,300,000 Mwh figure was derived from the 1997 FERC Form 714 Report.

9 EPMI/Coral Protest at 5-10.

squarely addressed either on the basis of the written record, or the Commission's prior orders.

The Commission has already approved the specific provision of Schedule 1 of the ISO Open Access Transmission Tariff ("OATT") allowing for the recovery of the NYISO's start-up costs through an amortization charge.¹⁰ Paragraph 4B, Original Sheet No. 145, expressly provides for the recovery of the "[c]osts associated with the start-up and formation of the ISO, including...items such as computer software development and licensing costs and computer hardware costs; and...costs related to regulatory filings."¹¹ The August 25 Filing implements the Commission's prior approval of the recovery of start-up costs by identifying and quantifying the types and amounts of costs to be collected and seeking authority to implement the specific recovery charge.¹²

As the NYPSC emphasizes, conditional approval of the Joint Proposal ensures that all interested parties can review the NYISO development costs prior to any final approval without further

10 Central Hudson Gas & Electric Corp., et al., 87 FERC ¶ 61,135 at 61,543 ("April 30 Order"), reh'g denied, 88 FERC ¶ 61,229 (1999)("September 15 Governance Order").

11 This tariff language, originally included in the Member Systems' December, 1997 Filing, was incorporated almost verbatim into the Member Systems' April 30 Compliance Filing. The April 30 Compliance Filing provided for both the ISO OATT and the New York Independent System Operator Market Administration and Control Area Services Tariff ("ISO Services Tariff"). On July 29, 1999, the Commission approved the April 30 Compliance Filing to be effective upon the commencement of NYISO operations. Central Hudson Gas & Electric Corp., et al., 88 FERC ¶ 61,138 (1999) ("July 29 Order").

12 As the Transmittal Letter to the August 25 Filing explains, the NYISO is seeking Commission "authorization subject to later verification of the actual expenditures in order to expedite the Commission's review and approval which is a pre-requisite for the NYISO to secure the financing necessary to repay the Member Systems." See Transmittal Letter, at 2 n. 2.

delaying the commencement of the amortization charge.¹³ The Member Systems do not seek to prevent any party from reviewing the start-up costs. Indeed, the Member Systems and the NYISO will provide interested parties with further information to address their specific concerns either in the form of written responses or, if necessary, within the context of a technical conference. However, there is no reason to convene evidentiary hearings unless and until a legitimate question is raised which cannot be addressed by the Commission through less burdensome means.

In sum, the Member Systems and the NYISO respectfully urge the Commission to follow the sensible procedure outlined by the NYPSC in its comments, and to allow the charges to go into effect subject to refund. For its part, the NYPSC has reviewed over two-thirds of the estimated start-up costs (\$ 35 million out of the \$ 52 million) that are the subject of the Joint Proposal. It has not identified any concerns, and does not object to any of the specific categories of the start-up costs.¹⁴ The Commission should also summarily reject the efforts to exclude categories of costs that fall squarely within its prior approval of the ISO OATT and other pre-existing precedent.

II. RECOVERY OF START-UP COSTS IS SUPPORTED BY PRIOR COMMISSION ORDERS INVOLVING THE NYISO

As noted above, the ISO OATT already provides for the recovery of the NYISO start-up and development costs subject to a further review of specific expenditures. The Commission, in the April 30

13 NYPSC Comments at 2-3. The NYPSC notes that "[a]llowing the rates to be recovered subject to refund will permit the PSCNY the opportunity to review and confirm the reasonableness of the costs contained in the [Joint Proposal]." *Id.* at 3.

14 NYPSC Comments at 3.

Order, expressly acknowledged its conditional acceptance of the Schedule 1 charge (Scheduling, System Control and Dispatch Service) including the proposed recovery of NYISO start-up costs:

[A]s noted by Member Systems, the ISO Tariff (Rate Schedule 1 - Scheduling, System Control and Dispatch Service) already provides as a general matter for the recovery by the ISO of costs associated with the start-up and formation of the ISO. Furthermore, the ISO Tariff provides for an amortized amount to be included in Schedule 1 of the ISO Tariff.¹⁵

The Commission has followed this approach in other ISO proceedings as well. For example, in Midwest Independent Transmission System Operator, Inc.,¹⁶ the Commission also approved over parties' objections an amendment to the Midwest ISO Agreement establishing specific categories of start-up costs (such as outside legal and consulting costs, and necessary equipment and software) for which the Midwest ISO Participants were to be reimbursed. However, the Commission also stated that parties could challenge the recovery of specific cost expenditures when the Midwest ISO filed for recovery.

The Commission's policy appropriately balances the interests of all parties. It recognizes that start-up costs are recoverable as legitimate costs incurred to establish ISOs pursuant to clearly articulated federal and state policy initiatives. It also allows parties to question specific expenditures. Indeed, any other approach would have a chilling effect on future industry efforts to establish ISO/RTO

15 The Commission also recognized that the recovery of start-up costs would require a further filing to identify the specific expenditures. April 30 Order, 87 FERC at 61,543 (footnotes omitted).

16 85 FERC ¶ 61,376 (1998)("Midwest ISO").

arrangements.

The August 25 Filing is consistent with the Commission's approach to recovery of ISO start-up costs by recognizing that interested parties must have the opportunity to review and comment upon specific expenditures. As stated above, the Member Systems and the NYISO are not proposing to deny parties the opportunity to contest actual expenditures. Instead, they respectfully request that the August 25 Filing be approved now, subject to refund, so that all parties' interests are preserved. In this regard, the Member Systems and the NYISO are in complete agreement with the NYPSC that the August 25 Filing should be accepted "subject to the actual and final costs being audited..."¹⁷ As stated previously, the NYPSC has reviewed over two-thirds of the costs proposed to be recovered, and the eight cost categories without identifying any concerns. Efforts by parties to delay the acceptance of the Joint Proposal should be rejected.

III. THE CHALLENGES TO THE MEMBER SYSTEMS' LEGAL AND REGULATORY COSTS ARE WITHOUT MERIT

MEUA and EPMI/Coral complain that certain regulatory costs (legal and consulting) should not be recoverable as part of the NYISO's start-up costs.¹⁸ The Commission should summarily dismiss these claims on the basis of its prior orders. These challenges are untimely collateral attacks on both

17 NYPSC Comments at 2.

18 MEUA Protest at 4-5; EPMI/Coral Protest at 7-12.

the January 27 and the July 29 Orders. As previously noted, the Commission specifically approved the tariff language providing for the recovery of start-up costs, including the “costs related to regulatory filings.” As the Commission is aware, the Member Systems expedited NYISO start-up by incurring many of these costs in the years and months between the first FERC filing in January, 1997 and the scheduled start-up date of October 12, 1999.

Moreover, the Commission’s orders in the NYISO proceedings are consistent with actions taken in proceedings involving other ISOs. For instance, in Midwest ISO, the Commission explicitly approved the proposed start-up cost categories (including outside legal and consulting costs). These orders are also consistent with longstanding Commission precedent involving such costs. The costs associated with regulatory filings are routinely recovered as line-item costs in electric utility and natural gas pipeline rate proceedings.¹⁹ Moreover, recovery of such expenditures is even more appropriate, where, as here, the parties have undertaken a three-year effort to effect a smooth transition from the New York Power Pool (“NYPP”) to the NYISO. The magnitude of this comprehensive statewide endeavor, involving eight individual Member Systems, is well known to the Commission. Dozens of regulatory filings have been made in this and other related proceedings including tariff filings, rate filings,

19 See City of College Station, Texas, 86 FERC ¶ 61,165 at 61,582 (1999) (“public utilities are permitted to seek recovery of reasonable regulatory expenses from their customers when the expenses are attributable to the service provided to those customers”); Houlton Water Co., et al., 62 FERC ¶ 63,023 at 65,096 (1993) (“[i]t is beyond dispute that utilities are permitted to recover legitimate and reasonably necessary regulatory expenses from their customers”); Central Illinois Public Service Co., 8 FERC ¶ 63,022 at 65,196 (1979) (“[i]t is a well established principle of utility regulation that reasonable regulatory expenses are an appropriate item to be included in the cost of service”).

compliance filings, errata filings, settlement offers, discovery responses, witness testimonies, to name just a few. The effort involved in this endeavor was essential to the establishment of the NYISO and the competitive electricity market in New York State.²⁰

MEUA's attempt to equate its own legal and consulting expenses in these proceedings with those incurred by the Member Systems is misplaced. The legal and consulting costs which the Joint Proposal seeks to recover are related only to work performed on behalf of the Member Systems collectively, not on their behalf as individual entities. Those costs incurred on behalf of Member Systems as a whole are proper items for NYISO recovery.

Finally, the recovery sought is clearly reasonable when compared to similar efforts by other ISOs.²¹ Again, the Commission should reject the challenges to the Member Systems' legal and regulatory expenses as untimely collateral attacks on the Commission's orders approving the ISO OATT, and as inconsistent with Commission precedent.

IV. THE COSTS ASSOCIATED WITH ISO GOVERNANCE ARE PROPERLY RECOVERABLE

20 The effort to implement the NYISO was in direct response to federal and state policy initiatives. In Order No. 888, the Commission directed that existing tight power pools such as the NYPP should operate under a single system wide transmission tariff on an open access non-discriminatory basis. In New York, the NYPSC approved a restructuring plan that included the creation of an ISO mechanism in its Competitive Opportunities Proceeding. Opinion and Order Regarding Competitive Opportunities for Electric Service, Opinion No. 96-12, issued May 20, 1996 ("Opinion No. 96-12") (Case 94-E--952).

21 See, e.g., California Independent System Operator Corp., 81 FERC ¶ 61,321 at 62,479 (1997) (approximately \$200 million); See also New England Power Pool, 86 FERC ¶ 61,262 at 61,966 (1999) (accepting amendment continuing a voting share formula for the remaining costs relating to ISO restructuring efforts, including legal and consultant costs). These costs have been estimated to be approximately \$56 million.

EPMI/Coral also claims that the Commission should disallow, or set for hearing, "all costs of the Start-up Cost Filing related to the development of the governance structures that were included in the December 1997 filing and the October 23, 1998 settlement."²²

In challenging the recovery of this portion of the Member Systems' start-up costs, EPMI/Coral has ignored well-settled Commission and judicial precedent. Utility expenditures are presumed to be prudent unless a party has created a "serious doubt" as to their reasonableness.²³ Rather than creating any serious doubts, EPMI/Coral has simply recited the history of the Member Systems' efforts to create an acceptable governance arrangement. This hardly qualifies as raising a serious doubt, and EPMI/Coral has clearly failed to satisfy its burden of demonstrating imprudence on the part of the Member Systems.

The Commission has never set a standard whereby regulatory costs are only recoverable if a proposal is adopted without modification. Not only would this lower the bar for prudency challenges, but it would also set a dangerous precedent for regulated utilities, and would serve to discourage any innovative proposals which any utility might seek to implement—such as the development of an ISO.

22 EPMI/Coral Protest at 10.

23 See Anaheim, et al. v. FERC, 669 F. 2d 799, 809 (D.C. Cir. 1981)(acknowledging "Supreme Court precedent for the proposition that a utility's costs are presumed to be prudently incurred"); See also Minnesota Power and Light Co., Opinion No. 86, 11 FERC ¶ 61,312 at 61,645, order on reh'g, Opinion No. 86-A, 12 FERC ¶ 61,264 (1980)(only when the party has raised a "serious doubt" that the utility acted prudently, or if there is an independent showing of inefficiency or improvidence, does the burden then shift to the utility to dispel those doubts); Midwestern Gas Transmission Co., 30 FERC ¶ 61,260 at 61,543 (1985)(in the absence of evidence to the contrary, a utility's costs enjoy the presumption that they have been prudently incurred, i.e. that they "reflect good faith and prudent management decisions").

Contrary to the premise underlying these protests, the Commission has also not established a “cookie cutter” approach with respect to ISO governance structures.²⁴ Indeed, Commission policy in this area has been evolving during the entire course of the NYISO restructuring proceedings. While the Member Systems had to amend certain aspects of their governance proposal before it was fully accepted by the Commission, their revisions were all good faith efforts to resolve difficult issues, and to comply with developing Commission ISO-governance policy. Initially, the Member Systems adopted the model filed by the California ISO. The second, filed in December 1997, was based, in part, on a Commission-approved NEPOOL proposal; the third, although not fully approved in the April 30 Order, was filed as part of an October 23, 1998 settlement in response to subsequent Commission orders with respect to both NEPOOL and the NYISO. This settlement represented the consensus of a wide range of interested parties. The efforts of the Member Systems ultimately resulted in a governance structure accepted by the vast majority of affected market participants. The final governance proposal, which the Commission accepted on September 15, 1999,²⁵ represented a collective achievement on an important issue critical to the timely establishment of the NYISO.

24 In her dissent to the April 30 Order rejecting the October 23, 1998 governance settlement, Commissioner Bailey stated that “[t]he question of independence of an ISO or other form of regional structure does not lend itself to easy or categorical rules or formulations.” See April 30 Order, 87 FERC at 61,546. The Commission echoed this theme less than a month later in the RTO NOPR when it stated that it was not “proposing a ‘cookie cutter’ organizational format for regional transmission institutions or the establishment of fixed or specific regional boundaries under section 202(a) of the FPA.” Regional Transmission Organizations, IV FERC Stats. & Regs. [Proposed Regulations] ¶ 32,541 at 33,686 (1999)(“RTO NOPR”).

25 September 15 Governance Order, 88 FERC ¶ 61,229.

In sum, there is absolutely no justification for disallowing the regulatory expenses incurred by the Member Systems in developing its governance structure during a time when the Commission's own position was unsettled.

V. THE START-UP COSTS SHOULD BE RECOVERED FROM ALL CUSTOMER LOAD WHICH BENEFITS FROM THE NYISO SYSTEM

Several parties question the proper allocation of the NYISO start-up costs among different groups of customers. Rochdale asserts that its reading of Schedule 1 suggests that only new transmission customers will be responsible for such costs.²⁶ This is not correct. The Schedule 1 charge will be paid by all transactions that serve load (as well as exports and wheels-through).²⁷ Accordingly, Rochdale's concern regarding the alleged discriminatory way in which the NYISO will recover its start-up costs under Schedule 1 is unfounded.²⁸

EPMI/Coral also raises a cost allocation argument. EPMI/Coral contends that the August 25 Filing improperly imposes the NYISO start-up costs only on those customers taking transmission

26 Rochdale Protest at 5-7.

27 See ISO OATT, Paragraph 7B.3, Original Sheet Nos. 44-45.

28 On August 3, 1999, certain of the Member Systems filed amendments to approximately forty grandfathered Third Party Transmission Wheeling Agreements ("TWAs") between and among the individual Members and various third party transmission customers. One of the purposes of the August 3 Filing was to reflect the uniform application of several charges, including those for ancillary services such as Schedule 1. The Commission issued its draft order accepting this filing subject to refund, and establishing a hearing after its September 29, 1999 Public Meeting.

service under the OATT.²⁹ In its view, costs associated with the establishment of the new energy market, such as the development of LBMP software, should also be borne by customers under the Services Tariff. It uses the example of a “transmission-only” customer to demonstrate the alleged unfairness of the Joint Proposal.

EPMI/Coral is incorrect. First, every customer under the Services Tariff will also pay the OATT Schedule 1 charge for the related transmission, unless the customer generates and consumes the energy at its own generation bus bar. EPMI/Coral's attempt to segregate these costs among different market participants is misguided, administratively unnecessary, and economically inefficient.³⁰ All transmission load benefits from all of the costs incurred with respect to the formation and the operation of the NYISO.³¹ The start-up costs were jointly incurred to create the ISO OATT and the Services Tariff. Together, the two Tariffs are required for the operation of the NYISO. Neither one could have been designed independently, or could be used independently, of the other.³² Separating costs

29 EPMI/Coral Protest at 12-14.

30 Unlike in California, here the NYISO is solely responsible for overseeing both the transmission and services markets. In California, there are two entities, the California ISO and the California Power Exchange Corporation ("PX"), which respectively administer the two markets. The PX is also a competitor of many of the participants in the energy markets. The need for separate cost structures in the California wholesale electric market is not present in its New York counterpart.

31 Indeed, transmission customers wheeling in, out, or through New York benefit substantially from the elimination of rate pancaking for new transactions.

32 In this regard, EPMI/Coral's claim that the LBMP software development costs should not be allocated to OATT customers should be rejected. All costs related to the NYISO start-up are inextricably linked, and those relating to developing the LBMP market are no exception, as LBMP is the basis for the entire NYISO transmission pricing scheme, including the Transmission Usage Charge applicable to all OATT customers.

between the two Tariffs is not possible necessary. Indeed, it could result in an uneven distribution of these costs across end-use customers. Hence, the proposal by the Member Systems and the NYISO to recover start-up and formation costs under Schedule 1 of the OATT will ensure that all transmission load on the system shares equally in these costs.

By subjecting all energy which is transmitted under the ISO OATT to the Schedule 1 charge, the proposal guarantees that these costs will only be collected once through a modest charge which is uniformly applied to every Mwh of transmission load. Placing this charge on transmission load in the OATT also avoids the possibility of creating uneconomic incentives to avoid the charge. Since these are sunk costs, it is appropriate to recover them in a manner which minimizes effects on day-to-day decisions in the competitive market. Since all load will benefit from the NYISO-administered transmission grid, and since all of the start-up costs will have been incurred in developing the NYISO structure, it is only fair that all load should therefore be responsible for defraying such costs.³³

VI. ROCHDALE GROSSLY OVERSTATES THE IMPACT OF POTENTIAL FLUCTUATIONS IN MONTHLY CHARGES FOR ISO START-UP COSTS

Rochdale expresses concern regarding the fact that the NYISO charges for start-up costs will

33 To the extent that the Commission disagrees with the Member Systems' and the NYISO's position, the question of splitting the costs between the ISO OATT and the Services Tariff can be revisited later. While the Commission directed the NYISO "to revise its funding mechanism to allocate costs for non-transmission services" in the January 27 Order, it did not require that such a revision be made prior to the commencement of start-up cost recovery. January 27 Order, 86 FERC at 61,215.

“likely vary every month for those customers who pay the charges.”³⁴ Such fluctuations, it asserts, will discourage new suppliers from entering the NYISO markets.

Rochdale exaggerates the potential impact of any monthly swings in start-up charges. As explained in the supporting testimony of Mr. Michael M. Mackles, Controller of the New York Power Pool, in the August 25 Filing, “the Schedule 1 charge attributable to start-up costs would be \$.04/Mwh averaged over the first year of operations.”³⁵ The principal amount to be collected each month will, in fact, not vary from month to month. Any potential impact of such variation will be negligible at best, and should certainly not provide a disincentive for new participants to enter the NYISO market.³⁶

VII. THERE IS NO NEED FOR AN EVIDENTIARY HEARING AT THIS TIME

Given the Commission’s prior approval of Schedule 1, as well as the Member Systems’ and the NYISO’s acknowledgment that the start-up and development costs are subject to later verification, the protests and comments do not provide a sufficient factual basis upon which the Commission should delay its acceptance of the August 25 Filing. The only issues raised at this juncture are either policy issues, or those which can be easily resolved without the necessity of a hearing. While the individual

34 Rochdale Protest at 7.

35 August 25 Filing, Testimony of Michael M. Mackles at 5.

36 Rochdale also seeks clarification regarding the NYISO’s \$2 million “contingency” fund. Rochdale Protest at 9. First, such amounts will not be included in the NYISO’s final recovery, as only those costs actually incurred are proposed to be collected. Second, this cost category is necessary given the non-profit nature of the NYISO and its inability to tap equity capital to ease cash-flow shortfalls. Finally, the Commission routinely permits other start-up entities, such as pipeline and hydroelectric projects, to allow for unforeseen budget contingencies. See Northern Border Pipeline Co., 80 FERC ¶ 61,150 at 61,610 (1997); Rivers Electric Company, Inc., 62 FERC ¶ 61,232 at 62,568 (1993).

start-up expenditures will be subject to further review by all interested parties, the Commission should not convene a formal evidentiary hearing unless and until an appropriate factual issue is raised that cannot be resolved either on the basis of the existing record, or in a technical conference.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Member Systems and the NYISO respectfully request that the Commission approve the August 25 Filing in its entirety, without modification, as expeditiously as possible.

Respectfully submitted,

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Dated: September 29, 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 29th day of September, 1999.

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