UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Central Hudson Gas & Electric Corporation	**)**	
Consolidated Edison Company of New York, Inc.	**)**	
Long Island Lighting Company	**)**	
New York State Electric & Gas Corporation	**)**	
Niagara Mohawk Power Corporation	**)**	**Docket Nos. ER97-1523-000**
Orange and Rockland Utilities, Inc.	**)**	**OA97-470-000 and**
Rochester Gas and Electric Corporation	**)**	**ER97-4234-000**
Power Authority of the State of New York	**)**	**(not consolidated)**
	)	
New York Power Pool	**)**	

ANSWER OF THE MEMBER SYSTEMS
OF THE NEW YORK POWER POOL

Pursuant to the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, the Member Systems of the New York Power Pool[1] ("Member Systems") hereby respond to the protests and comments[2] filed concerning the Member Systems' August 26, 1999 filing[3] in compliance with Commission's July 29, 1999 order[4] in the above-

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[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").

[2] See, e.g., Supplemental Motion to Intervene and Protest of Allegheny Electric Cooperative, Inc. ("Allegheny"), Protest of Coral Power, L.L.C. and Enron Power Marketing, Inc. ("Coral/EPMI"), Protest of the Municipal Electric Utilities Association of New York State ("MEUA"), Niagara Mohawk Energy Marketing, Inc.'s Intervention and Comments ("NMEM") and Comments of Sithe/Independence Power Partners, L.P. ("Sithe").

[3] "Filing in Compliance with the Commission's Order of July 29, 1999," Central

(continued...)

captioned dockets. The Commission has a well-established policy of evaluating the appropriateness of comments and protests filed in response to compliance filings:

> The sole relevant issue in reviewing the [utility's] . . . compliance filing is whether the filing complies with the direction in the . . . Order . . . . We have explained in numerous orders that we will not consider arguments raised in a compliance proceeding that are not responsive to the narrow issue of the filing utility's compliance with the explicit directives of the Commission in an earlier order." Delmarva Power & Light Co., 63 FERC ¶ 61,321 at 63,160 (1993)(citations omitted).

Indeed, the Commission has rejected protests that raise issues beyond the scope of a utility's compliance with a Commission order. See Central Illinois Public Service Co., 84 FERC ¶ 61,135 at 61,746 (1998); See also Algonquin Gas Transmission Co., 75 FERC ¶ 61,125 at 61,421-22 (1996).

In reviewing the filings submitted in response to the Member Systems' compliance filing, the comments and protests fail to demonstrate that there is non-compliance with the Commission's July 29 Order and, accordingly, should be summarily dismissed. Rather, the comments and protests oppose compliance with provisions that are the subject of pending requests for rehearing in this proceeding, collaterally attack provisions that are not appropriately raised in response to a compliance filing, or reflect a fundamental misunderstanding of the Commission's orders approving the establishment of the New York Independent System Operator.

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[3](...continued)
Hudson Gas & Electric Corp., et al., Docket No. ER97-1523-000 et al. (Aug. 26, 1999) ("August 26 Filing" or "Compliance Filing").

[4] Central Hudson Gas & Electric Corp., et al., 88 FERC ¶ 61,138 (1999)("July 29 Order").

The Member Systems request waiver of the Commission's Rules to submit this response and respectfully submit that this response will assist the Commission in its analysis of these issues and will facilitate the expeditious approval of the August 26 Compliance Filing.[5] In support hereof, the Member Systems state as follows:

I. The Member Systems Complied with the Commission's Order Concerning the One-Time Right to Change An Election of Physical Rights or TCCs.

Sithe requests that the Member Systems be directed to give grandfathered customers the right to change their election of physical rights or TCCs at any time after the first transitional TCC auction with no fixed deadline, as long as they provide sufficient notice to the ISO.[6] Sithe argues this is appropriate given the fact that there is inadequate time to evaluate election options and that conforming changes to other agreements likely is required.[7] Sithe reiterates its comments in its August 30 Request for Rehearing on this issue that such a clarification would not disrupt any of the planned TCC auctions.[8]

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[5] Rule 213 permits the filing of an answer to motions. Many of the so-called "protests" request substantive relief and constitute motions to which the Member Systems are entitled to answer. In any event, the Member Systems submit that good cause exists for the Commission to grant waiver of Rules 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 61,934 n.4 (1997); Natural Gas Pipeline Co. of America, 81 FERC ¶ 61,216 at 61,922 n.3 (1997); Pacific Interstate Transmission Co., 80 FERC ¶ 61,369 at 62,253 n.2 (1997); Florida Gas Transmission Co., 79 FERC ¶ 61,147 at 61,625 n.7 (1997); 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).

[6] Comments of Sithe at 1-3.

[7] Comments of Sithe at 3.

[8] Comments of Sithe at 3.

Sithe's comments are beyond the scope of the Compliance Filing. In its July 29 Order, the Commission responded to the request of Sithe. The Commission noted Sithe's concerns that the one-time right to make an election was irreversible and that it wanted the option to change its election between the transitional auction and the first initial auction.[9] The Commission further noted that the Member Systems had agreed to "modify the OATT to permit parties to elect to convert their existing rights to TCCs any time before the Spring 2000 initial auction" and that "any such election would be irrevocable."[10] Accordingly, in its July 29 Order, the Commission "direct[ed] the Member Systems to permit grandfathered customers a one-time right to change their election of physical rights or TCCs after the first transitional TCC auction."[11] The Member Systems revised Attachment M in compliance with this directive to provide that "[g]randfathered cusomers will have a one-time right to change their election of physical rights or TCCs on a prospective basis after the first Transitional Auction, but no later than two weeks prior to the First Centralized TCC Auction, to be held in the Spring of 2000."[12] Therefore, the Commission must reject this inappropriate supplemental request for rehearing of Sithe's own proposal masked as comments to the Compliance Filing.

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[9] July 29 Order, 88 FERC at 61,400-01. See also Comments and Protest of Sithe/Independence Power Partners, L.P., filed June 11, 1999, at 31-32 ("The election regarding whether to convert an existing contract to Grandfathered TCCs that is made prior to the first "Transitional Auction" should be *provisional* and non-binding, until shortly before the Initial Auction of Long-term TCCs takes place (which is scheduled for Spring, 2000).

[10] July 29 Order, 88 FERC at 61,401.

[11] July 29 Order, 88 FERC at 61,402.

[12] See ISO OATT, First Revised Sheet No. 292.

II. The Member Systems Complied with the Commission's July 29 Order Concerning Payments to NUGs.

Sithe notes that the amendments to Revised Sheet No. 118 of the ISO Services Tariff reflect the Commission's agreement with NYPP that a stipulation by a purchaser under a NUG's Power Purchase Agreement ("PPA") is appropriate in order for a NUG to receive payments for voltage support service provided to the ISO.[13] Sithe urges the Commission to reconsider the reasonableness of this modification, arguing that NUGs under existing PPAs generally do not address the voltage support issue explicitly and it would be unlikely that the purchasers, mostly the Member Systems, would provide the needed stipulation.[14] Sithe states that unless the PPA explicitly provides that voltage support service is sold to the PPA purchaser, there should be no requirement that the purchaser must stipulate that the NUG is entitled to payment by the ISO for such service.[15]

The Commission's July 29 Order is clear and the Commission specifically addressed the concerns of both Sithe and the Member Systems stating:

> We agree with Sithe that NUGs should be allowed to contract on their own with the ISO for voltage support service where permitted under the terms of their power purchase agreements. The Member Systems state that in cases where the purchaser agrees to stipulate to the ISO that the NUG should receive the payments, the Member Systems would not object to direct payments to the NUG. We direct the Member Systems to revise the tariff accordingly.[16]

Moreover, it is uncontroverted that the Member Systems complied by adding language to provide that ". . . the ISO shall pay this amount to the Non-Utility Generator if the purchaser under the

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[13] Comments of Sithe at 4.

[14] Comments of Sithe at 4.

[15] Comments of Sithe at 5.

[16] July 29 Order, 88 FERC at 61,387.

existing power purchase agreements agrees to stipulate that the Non-Utility Generator should receive such payments."[17] Sithe's comments on this issue are not properly before the Commission in the context of compliance with the July 29 Order. To the extent Sithe did not agree with the Commission's order, it should have requested rehearing, rather than attack this Compliance Filing.

III. The Energy Imbalance and Deviation Band Provisions Comply with the Commission's July 29 Order.

MEUA protests aspects of the Compliance Filing related to the energy imbalance charges and the deviation band, reflected in Revised Sheets Nos. 154 and 154A of the ISO Services Tariff.[18] First, MEUA requests substitution of the term "deviation" band for the Member Systems' use of the term "tolerance" band on Revised Sheet No. 154A, purportedly to be consistent with the definition of the term deviation band on the previous page.[19] Second, revisions to the following sentence advocated by MEUA include deleting the term "Actual" Energy delivery and substituting the term "scheduled" Energy delivery, as well as adding the phrase "and applicable deviation band."[20] MEUA claims that otherwise there would be a mismatch between over and under deliveries.[21] Third, MEUA also advocates that customers should receive some payment for inadvertent overscheduled energy and that the ISO should not

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[17] See ISO Services Tariff, First Revised Sheet No. 118 and Original Sheet No. 118A.

[18] Protest of MEUA at 2.

[19] Protest of MEUA at 3.

[20] Protest of MEUA at 3.

[21] Protest of MEUA at 3.

receive a windfall.[22] Fourth, MEUA disputes the language regarding the thirty-day period to correct energy imbalances, citing the fact that high penalties for underdeliveries are a disincentive to correct imbalances within the band.[23]

Again, these claims are beyond the scope of the issues that may be raised with respect to a filing in compliance with a Commission order. As an initial matter, the July 29 Order required that the Member Systems incorporate the provisions of the *pro forma* tariff which provide:

> for a deviation band of +/- 1.5% of the scheduled transaction with a 2 MW minimum. Energy imbalances within the band are to be returned in-kind within 30 days. Energy imbalances outside of this deviation band are subject to charges proposed by the transmission provider and those charges are generally penalty rates intended to create an incentive for minimizing energy imbalances. July 29 Order at 61,386.

The Member Systems complied with this directive and MEUA has failed to demonstrate any lack of compliance with the July 29 Order.[24] In responding to MEUA's specific concerns, the Commission, in summarizing the position and proposal of the Member Systems, interchangeably used the terms "deviation band" and "tolerance band" and MEUA's suggested change has not been shown to be warranted.[25] Additionally, the sentence which MEUA challenges merely provides that transmission customers shall not receive payment when actual energy deliveries exceed that customer's actual energy withdrawals. This language appeared in the original text and was not modified by the Commission in its July 29 Order. Therefore, it is not appropriately the subject of a protest to the Compliance Filing. Further, as MEUA noted, the issue of whether customers should receive payment for inadvertent overscheduled energy "was not an issue

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[22] Protest of MEUA at 3-4.

[23] Protest of MEUA at 4.

[24] See ISO OATT, First Revised Sheet Nos. 154 and 154A.

[25] July 29 Order, 88 FERC at 61,385-86.

directly addressed in the July 29 Order."[26] Thus, it is not an issue that can be raised with respect to the Compliance Filing. Finally, the thirty-day period challenged by MEUA is embodied in the *pro forma* tariff; thus, this claim represents a collateral attack on Order No. 888 and its progeny and is not appropriate in this forum.

IV. The Member Systems Complied with the Commission's July 29 Order To Clarify that Non-ICAP Providers Are Not Subject to Recall.

According to Coral/EPMI, non-ICAP resources must not be subject to recall as embodied in Sections 4.13 and 5.11 of the ISO Services Tariff citing two issues with the proposed language.[27] First, they state that the ability to recall energy should not extend to a generator that has expressed an interest to qualify as an ICAP provider, unless it is contractually bound to do so.[28] They argue that the language regarding the ability of the ISO to purchase energy from non-ICAP providers in an emergency is unclear.[29] They also state that Section 5.11 was not revised and arguably could be interpreted to mean that non-ICAP providers may be subject to recall.[30] Coral/EPMI request that the ISO be directed to provide that any purchase of non-ICAP energy purchased by the ISO should be strictly at the generator's option and purchases should be pursuant to pre-established, market-based, Commission-approved procedures.[31]

Similarly, NMEM comments that the filing requires further clarification by the Commission regarding the ISO's ability to recall energy produced by a non-ICAP provider

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[26] Protest of MEUA at 3.

[27] Protest of Coral/EPMI at 2-4.

[28] Protest of Coral/EPMI at 3.

[29] Protest of Coral/EPMI at 3.

[30] Protest of Coral/EPMI at 3-4.

[31] Protest of Coral/EPMI at 4.

serving external load.[32] NMEM claims that the revised language in Section 4.13 could be interpreted as requiring non-ICAP providers selling energy out of NYCA to recall their energy by effectively forcing a sale of it to the ISO in emergency situations.[33] NMEM notes that the ISO is to set the procedures and that the term "emergency" is not defined.[34] Recognizing that the Member Systems did not state that there would be any circumstance in which the ISO could recall energy from non-ICAP providers, they argue that a marketer or generator could suffer significant financial consequences if this is not the intended meaning of the provision.[35] NMEM asks for clarification that such sales would be on a voluntary basis.[36]

In the July 29 Order, the Commission noted that "[t]he Member Systems have clarified that they did not intend to recall energy produced by non-installed capacity generators serving external load" and that such clarification should be satisfactory to the intervenors.[37] In accordance with the July 29 Order, the Member Systems added such clarification.[38] Thus, given the Member Systems' resounding assurances, as noted by the Commission in the July 29 Order and in the Compliance Filing, that non-installed capacity providers are not subject to recall, these claims are without merit. Furthermore, the Commission should reject the request of Coral/EPMI to dictate how a generator must demonstrate, through contract or otherwise, that it desires to be

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[32] Comments of NMEM at 3.

[33] Comments of NMEM at 3.

[34] Comments of NMEM at 3.

[35] Comments of NMEM at 3-4.

[36] Comments of NMEM at 4.

[37] July 29 Order, 88 FERC at 61,390.

[38] See ISO Services Tariff, First Revised Sheet No. 56.

an installed capacity provider, regardless of whether it in fact provides such service, prior to being subject to recall. The Member Systems clarify that if a generator that is not providing installed capacity (and does not wish to qualify as an installed capacity provider) is providing energy in an export transaction that serves load in another control area, and the ISO faces the possibility of shedding load in the NYCA, the ISO will not curtail the export transaction. The ISO will be permitted to purchase emergency energy from the operator of the other control area, from the generator providing energy in that export transaction, or from any other entity in order to avoid load shedding within the NYCA.

V. The Member Systems Complied with the July 29 Order Regarding Certain Posting Requirements Related to Generators.

Coral/EPMI request further revisions to Section 4.11 to impose time limitations on posting and responding to requests by transmission owners to commit generators for local reliability reasons.[39] Noting the revision requires the posting of such generator requests, they argue that the postings must be timely and responses must be timely.[40] They advocate adding the term "promptly" and a sentence which provides that ISO actions in response to such requests must be posted promptly on the OASIS.[41]

As noted in their Protest, consistent with the Commission's directive, the tariff was revised to require the posting on the ISO's OASIS of requests to commit generators not otherwise committed by the ISO in the day-ahead market.[42] However, Coral/EPMI improperly seek to exact additional modifications that are more appropriately issues in a request for

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[39] Protest of Coral/EPMI at 4.

[40] Protest of Coral/EPMI at 4-5.

[41] Protest of Coral/EPMI at 5.

[42] Protest of Coral/EPMI at 4. See also July 29 Order 88 FERC 61,395-96.

rehearing and should be rejected in the context of evaluating whether the Member Systems complied with the July 29 Order.

VI. The Member Systems Complied with the Commission's July 29 Order Regarding the Posting of Bid Information.

Coral/EPMI also request that Section 6.3 be revised further to require the ISO to include Load Bid information in its OASIS postings. The July 29 Order reaffirmed that bid information must be public after 6 months and all bids must be public; however, while not requiring that names be posted, data must be posted to permit the tracking of historical individual bidder's bids.[43] The Member Systems complied with this directive. The Member Systems clarify that all bid information will be public, including Load and Generator bids. However, the addition of further language espoused by Coral/EPMI is unnecessary as the tariff provides that Bid information related to the energy, capacity or ancillary services markets will be public, without exception. Accordingly, the request of Coral/EPMI should be rejected.

VII. The Commission Did Not Require Modifications to the BME.

Coral/EPMI resurrect arguments that average hourly load rather than peak load should be utilized in the BME.[44] They recognize that their previous concerns raised concerning this issue were merely couched in terms of a request for clarification by the Commission and that the ISO's clarification that it indeed was basing the BME on peak load was accepted without further questions.[45] They reiterate their objections and urge the Commission to direct the ISO to modify the scheduling approach to determine external generators' schedules using a price forecast based

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[43] July 29 Order, 88 FERC at 61,396.

[44] Protest of Coral/EPMI at 6-7.

[45] Protest of Coral/EPMI at 7.

on average hourly load.[46] Based on Coral/EPMI's own admissions, this is not a subject properly raised with respect to the Compliance Filing.

VIII. Modifications Regarding Export Issues Are Appropriate.

Allegheny protests the change embodied in the ISO OATT, First Revised Sheet No. 157 regarding Schedule 5, Operating Reserve Service.[47] Specifically, it protests the addition of the phrase "or to support External Transmissions from the NYCA."[48] Allegheny claims there is no justification for this other than the mention of it in the transmittal letter.[49] It also notes that the filing proposes, on First Revised Sheet No. 154, to apply revised Schedule 4 to transactions which export power out of the NYCA.[50] Allegheny argues that this may be contrary to public interest, unjust, unreasonable, discriminatory and unlawful.[51] It further protests the filing on the basis that it fails to comply with the Commission's Rules and Regulations, Order No. 888 and earlier orders in this docket, claiming it is inappropriate to make a substantive change to the ISO OATT in what purports to be a compliance filing.[52] Allegheny further argues that the filing is procedurally defective in that Revised Sheet Nos. 154 and 157 are not in compliance, that specific waiver was not sought and that cost support is not offered.[53] Finally, Allegheny states

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[46] Protest of Coral/EPMI at 7.

[47] Protest of Allegheny at 5-6.

[48] Id.

[49] Protest of Allegheny at 6.

[50] Id.

[51] Id.

[52] Id.

[53] Protest of Allegheny at 7-8.

that the newly proposed energy imbalance service and operating reserve service should not be imposed on export transactions citing the Commission's ultimate acceptance of a service agreement between Allegheny and Niagara Mohawk in which Niagara Mohawk did not provide such services since the load served by the agreement was outside the control area. It contends that such justification is relevant here.[54]

The Member Systems identified the basis for this change in its August 26 Transmittal Letter. The Member Systems further submit that this modification is consistent with the Commission's orders in this proceeding and that such a modification is required to ensure the development of an efficient and effective ISO regime. The charges levied by Allegheny fail to accomplish anything other than a generic attack without substantiation. Accordingly, the protest of Allegheny should be rejected.

IX. Miscellaneous

MEUA claims that the substitution of the term "Transmission Customer" for the term "Generator" on First Revised Sheet Nos. 246 and 247 is a major change and not appropriate for a Compliance Filing.[55] Contrary to the assertions of MEUA, this change is appropriate as it is consistent with the other changes required by the July 29 Order with respect to clarifying the rights and obligations of generators and transmission customers.

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[54] Protest of Allegheny at 9-11.

[55] Protest of MEUA at 4.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Member Systems respectfully request that the Commission approve the August 26 Compliance Filing in its entirety, without modification, as expeditiously as possible.

Respectfully submitted,

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Dated: September 30, 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 30th day of September, 1999.

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