

UNITED STATES OF AMERICA 88 ferc ¶ 61,306  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;  
Vicky A. Bailey, William L. Massey,  
Linda Breathitt, and Curt Hébert, Jr.

Central Hudson Gas & Electric  
Corporation  
Consolidated Edison Company  
of New York, Inc.  
Long Island Lighting Company  
New York State Electric and  
Gas Corporation  
Niagara Mohawk Power Corporation  
Orange and Rockland Utilities, Inc.  
Rochester Gas and Electric Corporation  
and  
New York Power Pool

Docket Nos. ER97-1523-011  
OA97-470-010  
and ER97-4234-008

ORDER ACCEPTING FOR FILING AND SUSPENDING REVISED  
TRANSMISSION AGREEMENTS, SUBJECT TO REFUND, AND  
ESTABLISHING HEARING

(Issued September 30, 1999)

In this order, for the reasons stated below, we accept for filing the revised transmission agreements filed by certain member systems of the New York Power Pool (NYPP) (Member Systems)<sup>1</sup> in effect between and among the individual Member

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<sup>1</sup>Six of the eight member systems of the NYPP joined in this filing: Central Hudson Gas & Electric Corporation (Central Hudson); Consolidated Edison Company of New York, Inc. (ConEd); New York State Electric and Gas Corporation (NYSEG); Niagara Mohawk Power Corporation (Niagara Mohawk); Orange and Rockland Utilities, Inc. (O&R); and Rochester Gas and Electric Corporation (Rochester G&E). The filing states that Long Island Power Authority (LIPA) also joins in the filing.

Systems and/or various third party transmission customers, suspend them for a nominal period, make them effective upon the effective date of the New York ISO Open Access Tariff (NYISO OATT), subject to refund, and set them for hearing.

### Background

In the Commission's January 27, 1999 order in this proceeding,<sup>2</sup> the Commission denied the Member Systems' request to generically modify the rates, terms and conditions of existing transmission agreements to incorporate various provisions of the NYISO OATT. The Commission concluded that Section 205 or 206 filings, 16 U.S.C. § 824d, e (1994), were required to effect the proposed changes to the individual existing transmission agreements.

The Member Systems have submitted unexecuted amendments to 38 existing transmission agreements, concerning ancillary services, marginal losses, scheduling, conversion to transmission congestion contracts (TCCs), the New York Power Authority (NYPA) transmission adjustment charge (NYPA charge), and certain transmission information. Generally, the Member Systems assert that efficient and reliable operation of the NYISO requires that all transactions conform to the NYISO OATT provisions concerning ancillary services, marginal losses, and scheduling. The Member Systems request that the proposed changes become effective upon the effective date of the NYISO OATT. While NYISO OATT was then scheduled to be effective on September 1, 1999, in an August 18, 1999 status report, the NYISO informed the Commission that the NYISO Board of Directors had approved a revised start-up date of October 12, 1999, for commencement of NYISO operations.

### Notice and Interventions

Notice of the Member Systems' filing was initially published in the Federal Register, 64 Fed. Reg. 44,206 (1999), with comments, protests and motions to intervene due on or before August 20, 1999. However, by notice issued August 20, 1999, the due date for these filings was extended to September 3, 1999. The parties filing motions to intervene, notices of intervention, and/or protests are listed in Appendix A to this order.

Among other things, many intervenors are concerned about the effect of the proposed revisions on the cost of electricity they receive pursuant to New York State's Expansion Power (EP), Economic Development Power (EDP), and Power for Jobs (PFJ) programs. Sithe/Independence Power Partners, L.P. (Sithe) and various other intervenors maintain that Member Systems' filing should be

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<sup>2</sup>Central Hudson Gas & Electric Corporation, et al., 86 FERC ¶ 61,062 (1999), order on reh'g, 88 FERC ¶ 61,138 (1999).

rejected because under the Mobile-Sierra line of cases,<sup>3</sup> utilities are not permitted to propose modifications to existing rate schedules under Section 205 of the Federal Power Act (FPA) unless they specifically reserve their contractual rights to do so. Sithe and other intervenors also allege that the proposed charges are excessive, not cost-based and cost justified, and duplicative of existing charges. On September 21, 1999, the Member Systems filed an answer to the protests.

## Discussion

### Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1999), the notices of intervention and the timely, unopposed motions to intervene of the entities listed in Appendix A serve to make them parties to this proceeding.

### Contract Issues

Based upon a review of the filing, the Commission finds that the revised agreements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the revised agreements for filing, suspend them, make them effective upon the effective date of the NYISO OATT, subject to refund, and establish a hearing.<sup>4</sup> We will grant waiver of our prior notice requirement to the extent necessary to allow the Member Systems' proposal to become effective upon the effective date of the NYISO OATT.

In setting this case for hearing, we note that we are not deciding any issue concerning whether, and to what extent, the Mobile-Sierra doctrine may apply to any of the transmission agreement revisions proposed by the Member Systems. Such Mobile-Sierra issues should, in this case, be addressed in the first instance by the presiding judge.

### The Commission orders:

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<sup>3</sup>United Gas Pipe Line Co. v. Mobile Gas Serv. Corp., 350 U.S. 332 (1956); FPC v. Sierra Pac. Power Co., 350 U.S. 348 (1956).

<sup>4</sup>The Public Service Commission of New York states that considerable progress has been made in negotiations concerning the economic development program issues, and requests that the Commission not act now on the aspects of the Member Systems' filings that affect these programs, or appoint a settlement judge. The presiding judge should consider how best to deal with such concerns.

(A) The proposed revised transmission agreements filed by the Member Systems are hereby accepted for filing, and suspended, to become effective upon the effective date of the NYISO OATT, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the Member Systems' filing, as discussed in the body of this order.

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding, to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, including a date for the submission of the Member Systems' case-in-chief, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(D) The Member Systems will be informed of the rate schedule designations at a later date.

By the Commission.

( S E A L )

David P. Boergers,  
Secretary.

## Appendix A

Motions to Intervene, Notices of Intervention, and Protests  
in Docket Nos. ER97-1523-011, OA97-470-010, and ER97-4234-008

AES NY, L.L.C.

Air Products and Chemicals, Inc. and BOC Gases

Allegheny Electric Cooperative, Inc.

American Municipal Power-Ohio, Inc.

Carbide/Graphite Group, Inc.

City of Jamestown, New York, Board of Public Utilities

Connecticut Municipal Electric Energy Cooperative

County of Westchester & County of Westchester Public Utility Service Agency

Erie County Industrial Development Agency

Indeck-Corinth Limited Partnership

Independent Power Producers of New York, Inc.

Lockport Energy Associates, L.P.

Massachusetts Municipal Wholesale Electric Company

and the Pascoag, Rhode Island Fire District

Multiple Intervenors

Municipal Electric Utilities Association of New York State

New York City Public Utility Service

New York Power Authority

New York State Department of Economic Development

New York State Rural Electric Cooperative Association

New York State Public Service Commission

Niagara County Industrial Development Agency

Paper, Allied/Industrial, Chemical, Energy Workers International Union

Public Power Association of New Jersey

Rome Area Chamber of Commerce

Rome Industrial Development Corporation

Selkirk Cogen Partners L.P. and PG&E Energy Trading-Power, L.P.

Sithe/Independence Power Partners, L.P.

United Steelworkers of America, District 4