

UNITED STATES OF AMERICA 89 ferc ¶ 61,032
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Central Hudson Gas & Electric
Corporation
Consolidated Edison Company of
New York, Inc.

Docket No. ER99-4235-000

New York State Electric & Gas
Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities, Inc.
Rochester Gas and Electric
Corporation

ORDER ACCEPTING FOR FILING AND SUSPENDING COST RECOVERY PROPOSAL,
SUBJECT TO REFUND, AND ESTABLISHING HEARING

(Issued October 13, 1999)

This order addresses the filing of the Member Systems of the New York Power Pool (NYPP) (collectively Member Systems or Transmission Providers) and the Independent System Operator (New York ISO or ISO) (collectively, Applicants) establishing the mechanism which the ISO will use to recover costs associated with the start-up and formation of the New York ISO under the New York ISO Open Access Transmission Tariff and New York ISO Services Tariff. The order accepts the proposal, suspends it for a nominal period and sets it for hearing, as described below.

Background

The instant filing seeks recovery by the New York ISO of particular start-up and development costs¹ expended by the Member Systems with respect to the New York ISO. The New York ISO and the Member Systems state that the start-up costs include software development, transitional staff and administration, organizational development and regulatory costs, start-up of the Reliability Council, training, the purchase of land and buildings as well as the initial funding of the pension fund. The New York ISO has submitted actual cost data for 1997 and 1998 and estimated cost data through October 25, 1999.² Applicants state that the start-up costs will continue to accrue until the expected start-up date and during an initial operating period. The New York ISO will notify the Commission of the actual start-up date, the date the initial operating period ends, and the final actual amount of the start-up costs.

The New York ISO proposes to recover these start-up costs over a ten year period by billing its customers each month for 1/120 of the principal amount to be paid to the Member Systems plus interest. The start-up charge for any month will reflect the actual principal amount and interest divided by the actual billing units for that month. The monthly amount will be allocated to each customer in the proportion that its billing units bear to all billing units. The billing units are the actual energy withdrawals for all transmission service to supply load in the New York control area and the hourly energy schedules for all wheel through and exports.³ After the New York ISO determines the actual amount of start-up costs, the New York ISO will adjust the charge and amortize any unrecovered balance over the remainder of the ten-year period.⁴

The New York ISO requests an effective date of the first day of the first month that begins after the later of: (1) 60 days after the filing date; or (2) the date, following successful completion of an initial operating period, on which the NYPP assets and employees are formally transferred to the New York ISO, the ISO Related Agreements are executed and the New York ISO accepts the software systems,

¹ The Commission has accepted the ISO Open Access Transmission Tariff, which provides, as a general matter, for recovery by the ISO of start-up costs. However, it does not specify the particular costs or cost recovery mechanism, which are the subject of this filing. See *Central Hudson Gas & Electric Corp., et al.*, 86 FERC ¶ 61,062, order on reh'g, 88 FERC ¶ 61,138 (1999).

² The New York ISO has estimated its total start-up costs to be \$52.6 million. The ISO states that actual costs for 1997 and 1998 are \$10.7 million and \$17.7 million respectively and estimated 1999 costs through October 25, 1999, are \$26.1 million.

³ Based on an assumed interest rate of 7.75%, and 14.3 million MWh per month, the New York ISO proposes to charge \$0.04/MWh for start-up costs for the first year.

⁴ The New York ISO is seeking Commission authorization for the recovery of start-up costs based partially on estimates because Commission approval is a pre-requisite for the New York ISO to secure the financing necessary to repay the Member Systems.

operating procedures and communication systems. As of the date of the filing, the Applicants anticipate a start-up date of October 12, 1999.

Notice of Filing and Interventions

Notice of the filing was published in the Federal Register, 64 Fed. Reg. 49,003 (1999) with protests and motions to intervene due on or before September 14, 1999. A notice of intervention and comments were filed by the New York State Public Service Commission (New York Commission). Motions to intervene raising no substantive issues were filed by Duke Energy Trading and Marketing, L.L.C. (DETM) and Sithe/Independence Power Partners, L.P., (Sithe). Motions to intervene with protests and requests for hearing were filed by Municipal Electric Utilities Association of New York State (MEUA), Enron Power Marketing, Inc. and Coral Power, L.L.C. (Enron/Coral) and 1st Rochdale Cooperative Group and Coordinated Housing Services Inc. (1st Rochdale). Motions to intervene out-of-time were filed by Dynegy Power Marketing Inc. (Dynegy) and AES NY, L.L.C. (AES).

Several intervenors express concern regarding the appropriateness of the proposed costs that the ISO is seeking to recover in this filing. Protestors generally allege that the filing contains inadequate support for these costs, includes certain costs that were imprudently incurred, inappropriately allocates costs and may result in double recovery of certain costs.

On September 29, 1999, Applicants filed a response 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 New York Commission's timely notice of intervention and the timely, unopposed motions to intervene of DETM, Sithe, MEUA, Enron/Coral and 1st Rochdale serve to make them parties to this proceeding. In addition, given the stage of this proceeding, and the absence of undue delay or prejudice, we find good cause to grant the untimely, unopposed motions to intervene of Dynegy and AES.

The Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213(a)(2) (1999), do not permit answers to protests. Accordingly, we will reject the answer to the protests filed by the Applicants.

Cost Recovery Proposal

Applicants' filing meets the minimum threshold filing requirements and is not deficient. However, based upon a review of the filing, we find that the proposal submitted by the Applicants has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. The filing presents factual issues that are best resolved at hearing. Accordingly, we will accept the filing, suspend it for a nominal period, make it effective as requested by the Applicants (as described above), subject to refund, and set it for hearing.

The Commission orders:

(A) The cost recovery proposal filed by the Applicants is hereby accepted for filing, and suspended for a nominal period, to become effective as requested by the Applicants, subject to refund.

(B) Applicants are hereby directed to notify the Commission 10 days after the filing goes into effect.

(C) 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 justness and reasonableness of Applicants' proposed recovery of ISO start-up and formation costs.

(D) 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, DC 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 Applicants' case-in-chief, and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(E) Applicants will be informed of rate schedule designations at a later date.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.