

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

**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. ER97-1523-025
OA97-470-023
ER97-4234-021**

CERTIFICATION OF UNCONTESTED PARTIAL SETTLEMENT

(Issued February 7, 2000)

CASE SUMMARY

On December 22, 1999, a Settlement Agreement ("Settlement Agreement") between Niagara Mohawk Power Corporation ("Niagara Mohawk"), New York State Electric & Gas Corporation ("NYSEG"), and AES NY, LLC ("AES") was filed in this proceeding to remove from consideration here the issue whether AES may convert to non-firm service the service under Niagara Mohawk Rate Schedule No. 165, the Assigned Portion of the Remote Load Wheeling Service (hereinafter "RLWA").

Earlier, on August 3, 1999, Niagara Mohawk, NYSEG and other Members Systems of the New York Power Pool ("Member Systems") filed proposed amendments to certain Transmission Agreements between Member Systems and third party customers, including one between Niagara Mohawk and AES known as the RLWA. These amendments were submitted to reform the identified contracts to foster operation of the New York Independent System Operator and related entities. By order issued September 30, 1999, the Commission accepted the revised transmission agreements for filing, suspended them, and established a hearing to consider the issues raised by the proposals.

AES, in a protest filed September 3, 1999, requested that the Commission reject the proposed changes to the RLWA to the extent that such changes affected the right of AES, if any, to change service under the RLWA to non-firm service. Niagara Mohawk and NYSEG clarified that it was not the Member Systems' intent to affect by the filing of the proposed agreements any right that AES might have under the RLWA to change to non-firm service (discussed below as "the RLWA Issue").

AES then filed, on October 5, 1999, a complaint against Niagara Mohawk, arguing, *inter alia*, that it should be entitled to change service under the RLWA to non-firm service. That complaint was docketed as Docket No. EL00-1-000, and remains pending as of this date.

THE PROPOSED SETTLEMENT

Niagara Mohawk, NYSEG, and AES stipulate and agree that the RLWA Issue is distinct from issues relating to implementation of the ISO, and that the Member Systems' proposed amendments to the RLWA do not affect the RLWA Issue raised here by AES. Accordingly, they agree that the RLWA Issue is not appropriately addressed in the captioned ISO dockets. They agree that the RLWA Issue should be raised and decided in Docket No. EL00-1-000. The Settlement Agreement further states that, by accepting it, the Commission orders that the RLWA Issue will be removed from the instant docket and decided in the Docket No.EL00-1-000 complaint proceeding.

COMMENTS ON THE SETTLEMENT AGREEMENT

The only comment filed in response to the Settlement Agreement was received from the Commission Staff ("Staff"), which advised that removal of the RLWA Issue from the instant docket in favor of the complaint docket would be administratively efficient and desirable. Staff observes that the instant proceeding is extremely complex, and involves issues such as whether the Member Systems may unilaterally modify existing transmission agreements, and, if so, what standard should be applied in determining the merits of their proposal. Staff sees the RLWA Issue as a qualitatively different one that may turn on specific contract language. Such an issue, Staff states, may better be resolved in the context of the pending complaint filed by AES. For these reasons, Staff supports the Settlement Agreement as fair and reasonable and in the public interest.

DISCUSSION AND CERTIFICATION

The Settlement Agreement expresses the desire of the settling parties to remove the RLWA Issue from the larger, complex proceeding where more fundamental issues are being considered and resolved, and to deal with the question of AES' rights under the RLWA in the pending complaint proceeding. Niagara Mohawk, NYSEG and the Member Systems have clarified that they did not intend that the proposed transmission agreement amendments would affect whatever rights AES might have under the RLWA.

For the reasons set forth in the document submitting the Settlement Agreement ¹ and Staff's supporting comments, it seems to make eminently good sense to remove the RLWA Issue from those being addressed in the instant docket, and to consider that issue in Docket No. EL00-1-000, the pending complaint proceeding initiated by AES.

By order issued January 28, 2000, after comments had been filed in this matter, the Commission set for hearing the complaint filed in Docket No. EL00-1-00, and dismissed a related motion to consolidate that complaint into the instant proceeding. This action effectively moots the issue being settled here, but the settlement is certified for procedural completeness in this docket. \

Accordingly, pursuant to 18 C.F.R. § 385.602(g)(1), I hereby certify to the Commission the Settlement Agreement filed on December 22, 1999, the comments filed by the Commission Staff on January 10, 2000, and the attached draft letter order of the Commission approving the Settlement Agreement.

William J. Cowan
Presiding Administrative Law Judge

¹ As Staff points out, the Settlement filing did not contain an Explanatory Statement, as required by Rule 602(c)(1)(ii), or a draft letter order approving the Settlement, as required by the Chief Judge's Notice of New Procedures for Certifications of Uncontested Settlements, issued on December 21, 1999. The former deficiency is one of form only, since the Settlement Agreement itself contains a sufficient explanation of the settlement, and Staff has graciously prepared a draft letter order, which it attached to its comments, to remedy the latter deficiency.

In Reply Refer To:
Docket Nos. ER97-1523-025

OA97-
470-
023
and ER97-4234-021

Swidler Berlin Shereff Friedman, LLP.
ATTN: Julia Moore, Esquire
Counsel for Niagara Mohawk
Power Corporation
3000 K Street, N.W.Suite 300
Washington, D.C. 20007-5116

Dear Ms. Moore:

On December 22, 1999, you filed, on behalf of Niagara Mohawk Power Corporation (Niagara Mohawk), a settlement agreement among Niagara Mohawk, New York State Electric and Gas Corporation and AES NY, LLC in the above-referenced dockets. On January 11, 2000, staff filed comments in support of the settlement agreement. No other comments were filed. On February 7, 2000, the presiding administrative law judge certified the uncontested partial settlement to the Commission.

The subject settlement is in the public interest and is hereby approved. The Commission's approval of the settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C § 824e.

This letter terminates Docket Nos. ER97-1523-025, OA97-470-023, and ER97-4234-021.

By direction of the Commission.

Secretary

ER97-1523-025

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cc: To All Parties

