

**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. ER97-1523-033
OA97-470-031
ER97-4234-029**

**CERTIFICATION OF UNCONTESTED PARTIAL SETTLEMENT
(Issued May 11, 2000)**

TO THE COMMISSION:

CASE SUMMARY

On August 3, 1999, Niagara Mohawk Power Corporation (“Niagara Mohawk”), New York State Electric & Gas Corporation (“NYSEG”) and the other Member Systems of the New York Power Pool (“Member Systems”)¹ filed proposed amendments to certain transmission service agreements between or among the Member Systems and third party transmission customers. The purpose of these proposed amendments was to facilitate the growth and development of a competitive wholesale electric market in New York State through reformation of the identified contracts. In doing so, the parties hoped to foster the operation of an Independent System Operator and related entities. By order issued September 30, 1999, the Commission accepted for filing the revised transmission agreements, and suspended them to take effect upon the effective date of the New York Independent System Operator (“NYISO”) open access transmission tariff, and set those amendments for hearing. By order issued October 14, 1999, Chief Judge Curtis L. Wagner, Jr. designated me to preside over the hearings in this proceeding.

¹ Now described as the Members of the Transmission Owners Committee of the Energy Association of New York State. In this document, I will refer to this party as the Member Systems.

Among the transmission service agreements sought to be modified in Member Systems' August 3, 1999 filing is the Remote Load Wheeling Agreement (“RLWA” or “the Agreement”), executed on January 1, 1990 between Niagara Mohawk and AES (as successor in interest to NYSEG), as amended and supplemented. Under the RLWA, Niagara Mohawk, among other things, provides firm transmission service to AES from the Kintigh (formerly Somerset) Generating Facility, which AES operates in Niagara Mohawk's service territory. AES acquired this facility from NGE Generation, Inc., a NYSEG subsidiary, in August, 1998.

On October 5, 1999, AES filed a complaint, docketed as Docket No. EL00-1-000, asserting that it should be entitled to change to non-firm service under the RLWA. AES's complaint asserts that a provision of the RLWA, as amended, allowed AES to unilaterally convert the service it receives under the RLWA to nonfirm service on six months' prior notice. AES also requested that any nonfirm service provided under the RLWA be priced consistent with the rates for nonfirm service in the applicable Open Access Transmission Tariff (“OATT”), or, if the Commission found that the Agreement requires service to be priced at firm rates, AES requested that the Commission modify the RLWA to eliminate any such requirement. Judge Carmen A. Cintron was appointed Presiding Judge for the complaint proceeding. Following a successful settlement judge process conducted by Judge H. Peter Young, settlement documents in the complaint proceeding were filed on March 9, 2000.

On March 9, 2000, AES, NYSEG and Niagara Mohawk submitted a settlement agreement in this case which is conditioned upon Commission approval of the settlement in Docket No. EL00-1-000.

DESCRIPTION OF THE SETTLEMENT

The Settlement stipulates that the RLWA issue concerning the form of service is separate and distinct from other issues relating to implementation of the NYISO, that the Member Systems' proposed amendments to the RLWA do not affect the RLWA issue, that the RLWA issue is not appropriately resolved in the instant docket and should be raised and decided exclusively in the AES complaint proceeding in Docket No. EL00-1-000. The Settlement further states that by accepting the Settlement, the Commission orders that the RLWA issue will be removed from the instant docket and be decided in the Docket No. EL00-1-000 proceeding. Under this settlement, AES agrees to withdraw its pleadings and protests filed in this proceeding within seven days of executing this settlement. The settlement in the instant proceeding is expressly conditioned upon the

Commission's acceptance or approval without material modification of the settlement submitted in Docket No. EL00-1-0000.

INITIAL COMMENTS ON THE SETTLEMENT AGREEMENT

Initial Comments on the Settlement Agreement were received from Commission Trial Staff ("Staff") on March 29, 2000. Staff agrees that it would be most efficient for the RLWA issue to be resolved in the complaint proceeding, Docket No. EL00-1-000, rather than in the instant proceeding. The current proceeding involves many complex issues, which are of a different nature than the RLWA issue. Therefore, it would be in the public interest, according to Staff, to resolve the issue in a different forum.

AES also submitted initial comments on March 29, 2000. AES states that the settlement is reasonable and satisfactorily addresses AES's concerns in these matters, while providing fair provisions for all parties. AES observes that the settlement represents a complete resolution of all issues that were raised or could have been raised by AES in this proceeding. Together with the settlement in the complaint proceeding, it represents a reasonable accommodation of issues associated with adapting the RLWA to the NYISO regime. AES supports the settlement as in the public interest and asks that it be certified to the Commission.

REPLY COMMENTS

No reply comments were received.

DISCUSSION AND CONCLUSION

In a case as complicated as the instant proceeding, it is more sensible to deal with an issue such as the RLWA issue in a separate complaint proceeding. The Commission saw fit to bifurcate this proceeding to specifically deal with the RLWA issue in a separate forum, with the result that the parties were able to resolve their differences.

The proposed settlement agreement provides a reasonable resolution of the issues involving AES in this case. The settlement as presented is fair and reasonable and in the public interest. It is uncontested by any of the parties. For these reasons, I recommend that it be approved by the Commission.

CERTIFICATION

Pursuant to 18 C.F.R. § 385.602(g), I hereby certify for the Commission's consideration:

- (1) The Settlement Agreement constituting an Offer of Settlement, filed March 9, 2000;
- (2) The Explanatory Statement in support of the Settlement Agreement, filed March 9, 2000;
- (3) Commission Trial Staff's Initial Comments, filed March 29, 2000;
- (4) AES NY, L.L.C.'s Comments in Support of Settlement Agreement, filed March 29, 2000;
- (5) All pleadings, orders and other documents of record in this proceeding.
- (6) The draft letter order of the Commission approving the Settlement Agreement attached to this certification.

William J. Cowan
Presiding Administrative Law Judge

FEDERAL ENERGY REGULATORY COMMISSION

DRAFT

**In Reply Refer To:
Dockets No. ER97-1523-033
OA97-470-031
ER97-4234-029**

Swidler Berlin Shereff Friedman, LLP
ATTN: J. Philip Jordan, Esq.
Richard P. Sparling, Esq.
Counsel for Niagara Mohawk Power Corporation
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116

Dear Mr. Jordan:

On March 9, 2000, you filed a settlement among Niagara Mohawk Power Corporation (“Niagara Mohawk”), New York State Electric & Gas Corporation (“NYSEG”) and AES NY, LLC (“AES”) in the above-referenced dockets. On March 29, staff submitted comments in support of the settlement. AES also submitted comments supporting the settlement on March 29, 2000. On May 11, 2000, the presiding administrative law judge certified the uncontested settlement to the Commission.

The subject settlement is in the public interest and is hereby approved. The Commission's approval of this 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 Dockets No. ER97-1523-033, OA97-470-031, and ER97-4234-029.

By direction of the Commission.

Secretary

cc: To All Parties

New York State Public Service Commission
Department of Public Service
3 Empire State Plaza
Albany, New York 12223-1350

Niagara Mohawk Power Corporation

Docket No. ER97-1523-033

Rate Schedule Designation

Effective Date: November 18, 1999

Designation

Description

Supplement No. 23 to Rate
Schedule 165

Offer of Settlement with AES NY,
LLC