

**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 & Gas
Corporation**

**Niagra Mohawk Power Corporation
Orange & Rockland Utilities, Inc.
Rochester Gas & Electric
Corporation, and
New York Power Pool**

**Docket Nos. ER97-1523-000,
ER97-1523-044,
OA97-470-000,
OA97-470-042,
ER97-4234-000, and
ER97-4234-040**

CERTIFICATION OF UNCONTESTED SETTLEMENT

(Issued June 20, 2000)

TO THE COMMISSION:

CASE SUMMARY

On January 31, 1997, the Members of the Transmission Owners Committee of the Energy Association of New York State ("Member Systems")¹ filed a conditional proposal with the Commission to establish an Independent System Operator ("ISO") and related entities in New York State. On December 19, 1997, the Member Systems submitted a

¹ The Member Systems are formerly known as the Member Systems of the New York Power Pool. The Member Systems originally comprised of 7 public utilities and one non-utility. The original seven public utilities are as follows: Central Hudson Gas & Electric Corporation ("Central Hudson"), Consolidated Edison of New York, Inc. ("ConEd"), Long Island Lighting Company ("LILCO") (which has subsequently sold its transmission facilities to the Long Island Power Authority ("LIPA"), which is not a public utility), Niagra Mohawk Power Corporation ("Niagra Mohawk"), New York State Gas and Electric Company ("NYSEG"), Orange and Rockland Utilities ("O&R") (which has subsequently merged with ConEd), and Rochester Gas and Electric Corporation ("Rochester G & E"). The final original Member System, the New York Power Authority ("NYPA"), is not a public utility.

supplemental filing following extensive discussions with the New York Public Service Commission and the market participants.

On January 27, 1999, the Commission issued an order accepting certain tariff and market rules, approving certain rates, and ordering specific issues to a hearing judge. The issues set before the hearing judge concerned the justness and reasonableness of: 1.) the divisor used to develop the hourly charge for the New York ISO Tariff; 2.) the formulas used to compute the service transmission charge; 3.) the methodology used to compute marginal losses and the information made available to customers to allow informed decision making; and 4.) the criteria used to accredit generation as meeting the installed capacity requirement. On July 29, 1999, the Commission issued a supplemental order approving the ISO Open Access Transmission Tariff ("OATT"), approving the ISO Services Tariff, approving each of the ISO Agreements submitted by the Member Systems, and granting and denying certain rehearing requests of its January 27, 1999 Order.

A procedural schedule was adopted on February 18, 1999, amended several times, and later completely suspended on November 30, 1999, in order to promote settlement. Settlement discussions between the parties led to the filing of the Joint Offer of Settlement of the Member Systems of the New York Power Pool and the Interested Parties ("Joint Offer"), filed on November 17, 1999. The Joint Offer represented a settlement of all issues set by the Commission except for the marginal losses issue. It was certified to the Commission on January 5, 2000, and is still pending before the Commission. A procedural schedule was adopted on the marginal loss issue on December 6, 1999, but was suspended without date on December 15, 1999. Ultimately, on May 16, 2000, the interested parties filed a Settlement Agreement ("Settlement") concerning the marginal loss issue. Staff filed initial comments on the Settlement on June 5, 2000. No other comments were received. The Settlement constitutes a resolution of the final issue set for hearing by the Commission in this proceeding.

THE PROPOSED SETTLEMENT

The Settlement resulted from extensive negotiations among the Member Systems, the New York ISO, and Sithe, and is their joint product. It consists of a separate Explanatory Statement, a Settlement Agreement, and a draft letter order approving the Settlement.

The substantive terms are contained in a section styled "Terms of the Settlement." Paragraph 1 provides brief background information and indicates that the Settlement represents a complete resolution of the marginal loss issue.

Paragraph 2 provides that the New York ISO agrees to develop potential software changes to better implement the currently approved marginal loss methodology in the Day-Ahead Market and the calculation of losses in the Balance Market Evaluation, as those terms are defined in the New York ISO OATT, to better reflect hourly variations in marginal losses during all periods of the day. Sithe agrees not to pursue further in this proceeding any marginal loss issues. The Settlement provides, however, that nothing therein affects Sithe's rights to litigate marginal loss issues in proceedings involving its grandfathered Transmission Services Agreement (TSA) with Niagra Mohawk in Docket Nos. ER97-1523-011, *et al.*, EL95-38-000, or EL99-65-000, or in its challenge to the January 27 Order before the D.C. Circuit Court of Appeals.

Paragraph 3 states that the New York ISO agrees to submit a proposal to implement the software changes described above for discussion with all interested market participants no later than June 1, 2000. Any such changes ultimately adopted by the New York ISO would go into effect no later than September 1, 2000, to the extent reasonably possible. The New York ISO will use good faith efforts to support and implement such changes.

Paragraph 4 provides that after September 1, 2000, Sithe or any interested market participant may initiate a proceeding under section 206 of the Federal Power Act based on information in the New York ISO's June 1, 2000 submittal.

Paragraph 5 states that the supporting parties agree to request postponement of any further procedural dates or rulings pending certification and approval of the Settlement.

Under a section entitled "III. General Reservations," the Settlement sets forth certain standard provisions regarding lack of precedential effect of the Settlement, agreement of the supporting parties to support the Settlement, waiver of Commission regulations, and the right to withdraw from the Settlement if it is not approved in its entirety by the Commission.

INITIAL COMMENTS ON THE SETTLEMENT AGREEMENT

Initial comments on the Settlement were filed on June 5, 2000 by Staff (Commission Trial Staff's [Initial] Comments in Support of Settlement Agreement ("Staff's Initial Comments")). No comments in opposition to the Settlement were filed.

Staff

Staff begins its comments on the Settlement by stating that it is a fair and reasonable settlement resulting from "arm's-length" bargaining and resolves the parties differences in a sensible and expedient manner. Staff's Initial Comments at p. 5. Claiming that acceptance of the Settlement will allow the New York ISO to move forward with its duties, Staff notes that the Settlement resolves the remaining issue in this proceeding, namely, the marginal loss issue. *Id.* Concluding, Staff states it is in full support of the Settlement and requests that it be certified to the Commission and thereafter approved by the Commission. *Id.* at p. 6.

DISCUSSION AND CONCLUSION

The Settlement provides a reasonable resolution of the final issue set for hearing by the Commission. Together with the Joint Offer currently pending before the Commission, the Settlement represents a resolution to these proceedings. The Settlement, as presented, is reasonable and uncontested by 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 of Member Systems, filed on May 16, 2000;
- (2) The Explanatory Statement of Member Systems filed on May 16, 2000;
- (3) The Draft Letter Order attached hereto;
- (4) Commission Trial Staff's [Initial] Comments in Support of Settlement Agreement, filed on June 5, 2000; and,
- (5) All pleadings, orders, and other documents of record in this proceeding.

Jacob Leventhal
Presiding Administrative Law Judge

DRAFT

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

In Reply Refer To:
Docket Nos. ER97-1523-044,
OA97-470-042, and
ER97-4234-040

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
ATTN: Elias Farrah, Esq.
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Transmission Owners Committee of the
Energy Association of New York State
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Dear Mr. Farrah:

On May 16, 2000 you filed in the above referenced dockets, on behalf of the Member Systems,² a Settlement Agreement ("Settlement") between Member Systems, the New York Independent System Operator, Inc., and Sithe/Independence Power Partners, L.P.

On June 5, 2000, Commission Trial Staff submitted comments in support of the Settlement. No other comments were received. On June 20, 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 the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to

²The Member Systems include: Central Hudson Gas & Electric Corporation ("Central Hudson"), Consolidated Edison of New York, Inc. ("ConEd"), Long Island Power Authority ("LIPA"), Niagra Mohawk Power Corporation ("Niagra Mohawk"), New York State Gas and Electric Company ("NYSEG"), Orange and Rockland Utilities ("O&R") (which has subsequently merged with ConEd), Rochester Gas and Electric Corporation ("Rochester G & E"), and the New York Power Authority ("NYPA").

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 order terminates Docket Nos. ER97-1523-000, ER97-1523-044, OA97-470-000, OA97-470-042, ER97-4234-000, and ER97-4234-040.

By direction of the Commission.

Secretary

cc: To All Parties

William R. Derasmo
New York Public Service Commission
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