

**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. ER97-1523-036
OA97-470-034
ER97-4234-032**

**CERTIFICATION OF UNCONTESTED PARTIAL SETTLEMENT
(Issued June 21, 2000)**

TO THE COMMISSION:

CASE SUMMARY

On August 3, 1999 Niagara Mohawk Power Corporation (“Niagara Mohawk”), New York State Electric & Gas Corporation (“NYSEG”) and seven of the eight Members of the Transmission Owners Committee of the Energy Association of New York State (“Member Systems”)¹ filed proposed amendments to certain existing transmission service agreements (“TSAs”) between or among Member Systems and third party transmission customers. The purpose of the 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 the New York Independent System Operator (“NYISO”) and related entities. Among the TSAs sought to be modified in the August 3, 1999 filing was one between Niagara Mohawk and Lockport Energy Associates L.P. (“Lockport”).

Lockport is a qualifying facility (“QF”), as defined by the Public Utility Regulatory Policies Act of 1978 (“PURPA”). NYSEG purchases most of Lockport's output under a long-term Power Purchase Agreement (“PPA”) executed in 1990. Under a

¹ Formerly known as the Member Systems of the New York Power Pool.

1991 TSA between Niagara Mohawk and Lockport, Niagara Mohawk delivers a portion of that power to NYSEG. Niagara Mohawk has proposed to amend the instant TSA to require Lockport to pay charges for marginal losses, congestion-related costs, ancillary services under the NYISO tariff, and the New York Power Authority Transmission Adjustment Charge (“NTAC”).

In its September 30, 1999 Order, the Commission accepted the revised TSAs for filing, suspended them to take effect upon the effective date of the New York ISO open access transmission tariff (“OATT”), and set those amendments for hearing. The hearing ordered by the Commission is to commence on July 25, 2000. It is the final stage of a three phase process designed to narrow issues in dispute by encouraging settlements and resolution of legal issues. Many partial settlements have been filed, after settlement discussions held under the guidance of Judge H. Peter Young.² The instant agreement, a Stipulation and Settlement between Niagara Mohawk, NYSEG, and Lockport, was filed by the Member Systems on March 31, 2000.

² In addition to the instant Settlement, an agreement was reached between NYSEG, Niagara Mohawk and AES NY, LLC and filed on December 22, 1999. I certified that settlement to the Commission on February 7, 2000. A settlement was filed February 4, 2000 between Niagara Mohawk, NYSEG, the Member Systems, and Multiple Intervenors and was certified to the Commission on April 3, 2000. A third settlement was filed on March 9, 2000, between AES, Niagara Mohawk, and NYSEG, and certified to the Commission on May 11, 2000. On May 16, 2000, I certified a March 24, 2000 settlement among the Member Systems, the NYISO, and PG&E Energy Trading-Power, L.P. On March 24, 2000 a settlement was filed between Member Systems, the NYISO, and Selkirk Cogen Partners, L.P., and certified to the Commission on June 6, 2000. At this date, three other settlements are pending certification.

THE PROPOSED SETTLEMENT

The parties to this settlement agree that it constitutes a comprehensive and uncontested settlement of all the disputed issues between them, except for two issues expressly reserved for litigation. The issues which the parties agree to litigate are whether Lockport will be responsible for the payment of Intra-day congestion costs and whether Lockport will be required to schedule TSA deliveries directly with the ISO.

Under the settlement, Lockport will not be responsible for Ancillary Services 1 through 6 imposed by the NYISO OATT, or for the NTAC with respect to deliveries made under the TSA, except for withdrawals to serve load and exports from the New York Control Area. In addition, NYSEG agrees not to recover from Lockport delivery charges for deliveries made to NYSEG under the TSA.

In return, Lockport acknowledges its obligation to pay congestion-related costs other than those costs associated with the Intra-Day congestion issue, and losses associated with deliveries of energy made under the TSA, the Amendment, and the NYISO OATT. Lockport also agrees to withdraw its protest in this case, except as it pertains to the two issues reserved for litigation.

INITIAL COMMENTS ON THE SETTLEMENT AGREEMENT

Comments were filed by the Commission Trial Staff ("Staff") on April 20, 2000. Staff supported the instant offer of settlement as fair, reasonable and in the public interest. Staff pointed out that the instant settlement would significantly diminish Lockport's participation in this litigation, thus freeing up the parties to focus on resolving the remaining issues.

REPLY COMMENTS

Reply comments were not submitted by any party.

DISCUSSION AND CONCLUSION

The proposed Settlement Agreement provides a reasonable resolution of the issues in this case. The settlement as presented appears to be fair and reasonable and in the public interest. It is uncontested by any of the parties. For these reasons, I recommend that this settlement 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 Stipulation and Settlement constituting an Offer of Settlement among NYSEG, Niagara Mohawk, and Lockport, filed March 31, 2000;

(2) The Explanatory Statement filed March 31, 2000;

(3) Commission Trial Staff's Initial Comments supporting the settlement, filed April 20, 2000;

(4) All pleadings, orders and other documents of record in this proceeding.

William J. Cowan
Presiding Administrative Law Judge

DRAFT

**FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426**

In Reply Refer To:
Docket Nos. ER97-1523-036
OA97-470-034
ER97-4234-032

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Dear Messrs. Caplan and Pond:

On March 31, 2000, you filed a settlement among the New York State Gas & Electric Corporation, Niagara Mohawk Power Corporation, and Lockport Energy Associates, L.P. in the above-referenced dockets. On April 20, Staff submitted comments in support of the settlement. On June 21, 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 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. ER97-1523-036, OA97-470-034, and ER97-4234-032.

By direction of the Commission.

Secretary

cc: To All Parties

New York State Public Service Commission
Department of Public Service
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