76 FERC - 101 FERC, 83 FERC ¶61,352, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc.,, Federal Energy Regulatory Commission, (Jun. 30, 1998)

Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool, Docket Nos. ER97-1523-000 and OA97-470-000

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Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool, Docket Nos. ER97-1523-000 and OA97-470-000

Order Conditionally Authorizing Establishment of Independent System Operator

(Issued June 30, 1998)

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

In this order, the Commission conditionally authorizes the establishment of an Independent System Operator (ISO) by the Member Systems [1] of the New York Power Pool (NYPP) (collectively, Member Systems or Transmission Providers). The order makes an interim finding that the Member Systems' conditional proposal to restructure the New York electric wholesale market, as modified herein, satisfies the principles enunciated in Order No. 888 [2] pertaining to

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the establishment of an ISO. At this time, we will defer consideration of the unexecuted tariff and agreements filed pursuant to Section 205 of the Federal Power Act. [3] We will address these filings in a future order. Moreover, recognizing the preliminary nature of the instant applications, the modifications noted herein should be incorporated in the Member Systems' future filings in this proceeding.

I. Background

On January 31, 1997, the Member Systems filed with the Commission a conditional proposal (January 31 Filing) to establish an ISO and related entities in order to form a fully competitive wholesale electricity market in New York. The Member Systems stated that the proposed structure was intended to complete the transition to full compliance with all requirements of Order No. 888 . [4] The filing included the following documents, which will be discussed further below: (1) ISO Agreement; (2) New York Power Exchange (NYPE) Agreement; (3) New York State Reliability Council (NYSRC) Agreement; (4) ISO-NYSRC Agreement; (5) ISO-Transmission Provider Agreement; (6) ISO Tariff; and (7) NYPE Tariff. The Member Systems submitted a filing on May 2, 1997, to supplement information concerning the NYSRC included in its January 31 Filing.

On December 19, 1997, the Member Systems submitted an additional supplemental filing (December 19 Filing). The Member Systems explain that the changes included in this supplemental filing were motivated by extensive discussions with the New York Public Service Commission (New York Commission), and

various market participants, and by recent Commission guidance regarding implementation of ISO principles and transmission pricing policies. The Member Systems state that while the December 19 Filing does not alter the framework and structure of the original filing, revisions have been made to certain areas of the restructuring proposal. Most significantly, the Member Systems have included a revised ISO governance structure, revised descriptions of locational based marginal pricing and congestion pricing, as well as additional details in such areas as ancillary services and treatment of existing transmission rights. The filing includes modifications to the previously submitted ISO Agreement, ISO Tariff, the NYSRC Agreement, the ISO-NYSRC Agreement, and the ISO Transmission Provider Agreement. [5]

We note that the filing is conditional upon both the Member Systems' execution and Commission approval, without condition or material modification, of the aforementioned agreements. In addition, the formation of the New York ISO is conditioned upon the Commission granting approval of the transfer of control of all necessary facilities to the New York ISO under a future Section 203 filing and similar authorization from the New York Commission. [6] Furthermore, the formation of the New York ISO is contingent upon a ruling of the Internal Revenue Service that the formation and operation of the New York ISO will not jeopardize the tax-exempt status of the New York Power Authority.

II. The ISO Proposal

The Member Systems state that their conditional proposal has been guided by the eleven ISO principles articulated in Order No. 888 , with the primary objective of developing an effective competitive wholesale power market in New York. According to the Member Systems, the proposed structure meets this goal by providing all market participants with equal access to unbundled transmission services across the systems of all eight Transmission Providers [7] in New York State. Under the proposal, the NYPP will be dissolved and its functions will be assumed by the New York ISO. In addition, the proposal contemplates the formation of other institutions, such as the NYSRC and the NYPE which will play significant roles in the proposed restructuring.

The Member Systems explain that the most significant components of the ISO proposal are as follows: (1) locational based marginal pricing (LBMP); (2) the use by the ISO of a two-settlement process for establishing schedules and energy prices for the day-ahead and real-time markets; (3) the ability of the ISO to optimize unit commitment and dispatch based on the bids of market participants; (4) the existence of the NYSRC to establish reliability standards for the bulk power system in the

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state; and (5) a governance structure which will ensure the independence and effectiveness of the ISO board. The Member Systems state that they consider each of these five components to be interrelated and essential parts of the ISO proposal.

As noted, the conditional proposal includes various documents, as discussed below.

A. *The ISO Agreement*

The Member Systems state that the proposed ISO Agreement will establish the scope of the ISO's duties and will prescribe such matters as the ISO voting procedures, the ISO's relationship with the NYSRC, penalty provisions and dispute resolution. They explain that under the agreement, the ISO will implement and operate New York's Open Access Same Time Information System (New York OASIS). In addition, the ISO Agreement sets forth the creation of four classes of members for the ISO, including transmission providers, buyers, sellers, and environmental and customer groups.

B. *The NYPE Agreement*

The NYPE Agreement provides for the establishment of the NYPE, a power exchange with membership open to all market participants. The proposed Agreement establishes the membership and voting criteria of the organization, as well as energy pricing principles, billing procedures and other provisions necessary to operate the NYPE in compliance with the ISO's requirements.

The Member Systems explain that the NYPE would be non-exclusive and would have no preferred roles in the ISO structure as compared to other power exchanges. In addition, market participants are not required

to access the ISO through a power exchange. NYPP explains that the proposed model is a “flexible poolco,” whereby, transactions in the day-ahead market will be scheduled through the power exchange, while all transactions in the real-time market may be scheduled through a power exchange or the ISO. In either market, generators may schedule bilateral transactions with buyers.

The Member Systems note that while the power exchange does not need to be in place for the commencement of ISO operations, they believe that the establishment of the NYPE will facilitate and enhance commercial transactions and efficiency in the competitive market structure. [8]

C. *The NYSRC Agreement*

The proposed NYSRC Agreement will establish an organization--the NYSRC--to develop reliability standards. The NYSRC will be an unincorporated association formed by agreement among the Transmission Providers, with primary responsibility for setting bulk power system reliability rules that address the particular reliability needs of the state. The filing states that the rules will be based on the reliability rules and criteria of entities such as the North American Electric Reliability Council, the Northeast Power Coordinating Council and the New York Commission as well as the Local Reliability Rules of the Transmission Providers. The ISO will, however, have full responsibility for day-to-day operation of the system, and will have the discretion to develop operating procedures based on the NYSRC’s reliability rules.

The Member Systems state that the governance of the NYSRC will be structured to provide for an open process which will allow for all market participants to be aware of actions taken or under consideration by the NYSRC.

D. *ISO-NYSRC Agreement*

The Member Systems state that this proposed agreement will establish the relationship between the ISO and the NYSRC and will define the duties of the ISO with respect to implementation of the standards developed by the NYSRC to be adhered to by the ISO in its day-to-day operation of the bulk power system. The agreement includes a dispute resolution process for resolving disputes between the two organizations, including addressing the roles of the New York Commission and FERC.

E. *ISO-Transmission Provider Agreement*

This proposed agreement between the ISO and the Transmission Providers (ISO-TP Agreement) defines the conditions under which the Transmission Providers will provide the ISO with the authority to operate their transmission assets. The agreement also defines the transmission assets the ISO will control for purposes of operating the bulk power system.

F. *ISO Tariff*

The proposed ISO Tariff sets forth the services that the ISO will provide as well as the rights and obligations of market participants and the ISO. The ISO Tariff also provides eligibility requirements for transmission service, registration procedures, a description of the transmission pricing proposal and procedures

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for developing and operating the market for Transmission Congestion Contracts.

G. *NYPE Tariff*

This proposed tariff describes the terms and conditions for taking and/or providing services through the NYPE. It also addresses the responsibilities of participants to provide information as required by the ISO’s rules and procedures. The tariff includes a description of the process to resolve disputes related to the commercial transactions of the NYPE.

III. Notice of Filings and Interventions

Notices of the Member Systems’ filings in Docket Nos. ER97-1523-000 and OA97-470-000 were published in the *Federal Register*, 62 *Fed. Reg.* 8232, 27,243 (1997), and 63 *Fed. Reg.* 69 (1998), with protests and motions to intervene due on or before January 23, 1998. Motions to intervene and protests, and notices of intervention, in the respective dockets were filed by the parties listed in Appendix A.

IV. Discussion

A. *Procedural Matters*

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (1997), the notices of intervention and the timely, unopposed motions to intervene serve to make the intervenors listed in Appendix A parties to this proceeding. 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.

Certain parties also filed answers to various requests for relief and protests. Although the Commission's Rules of Practice and Procedure do not permit answers to protests, [9] given the complex nature of this proceeding, and given that the answers help in clarifying certain issues, we will accept the answers.

In addition, parties have filed motions to set for evidentiary hearing certain aspects of the Member Systems' proposal, as well as requests for a technical conference. At this juncture, we do not find that the parties have demonstrated a need to convene an evidentiary hearing or a technical conference. However, as those requests primarily concern pricing and rate issues, they will be addressed in a later order.

B. *ISO Principles*

In Order No. 888 , the Commission set out eleven principles for evaluating future ISO proposals. The Commission stated that these principles are applicable to ISOs that would be control area operators. The following analysis evaluates the Member Systems' proposal with regard to these principles. We find that the proposal generally comports with our eleven ISO principles and we will allow conditional formation of the New York ISO.

Below, we discuss how the proposed ISO complies with the eleven ISO principles outlined in Order No. 888 .

ISO Principle No. 1: The ISO's governance should be structured in a fair and non-discriminatory manner.

The Member Systems' proposal provides that the ISO Board of Directors (ISO Board) will consist of ten members which will have no affiliation with any market participant. The initial nine directors will be appointed by an 18 member Selection Committee. [10] The Selection Committee will employ an executive search firm to develop a pool of qualified candidates and will establish procedures for the appointment process. A two-thirds vote by the Selection Committee will be required to appoint a member to the ISO Board. While the ISO Board will not be affiliated with any market participant, the members must possess a cross-section of skills and experience (*e.g.*, electric utility management, experience in Commission electric regulatory affairs, corporate finance, public policy, consumer advocacy, environmental affairs, business management and information systems). Once appointed, the initial nine directors of the ISO Board will select the Executive Director of the ISO, who will serve as the tenth member of the ISO Board. [11] The qualifications of the Executive Director will include extensive experience in the operation of electric power systems and in management.

The ISO Board will have ultimate responsibility for the operation of the ISO and the administration of the ISO Tariff. An affirmative vote by six Directors shall be required to pass a measure. [12] The ISO Board will control the ISO budget and will have authority over

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the Executive Director and the ISO staff. The ISO Board will have the authority to review the actions of any ISO committee, and to suspend committee actions pending its review. The initial three ISO standing committees are discussed below.

1. The Management Committee will review the work of the Operating and Business Issues committees and review appeals from actions taken by these committees. Other duties include preparing the annual budget for review and approval of the ISO Board, and assisting in the identification and evaluation of candidates to fill vacancies on the ISO Board.

Each party to the ISO Agreement will be a member of the Management Committee. [13] Each member of the Management Committee will have a voting share determined in accordance with a formula based on a participant's level of participation in the electric market. Under the proposal, voting is weighted based on industry factors, including the ownership of generation, electric sales, electric purchases and ownership of transmission and distribution facilities. Ten percent of the total voting shares will be set aside and allocated

to all members of the Management Committee on a per capita basis. Initially, the vertically integrated utilities will receive the bulk of the weighted vote. The proposal provides for a cap on the combined utility vote such that if the combined utility vote exceeds 60 percent, for or against any issue, the excess above 60 percent will be reallocated to other members on a pro-rata basis. A 67 percent vote will be required for action by the Management Committee. Therefore, the cap will ensure that the utilities cannot approve an action without support from other members of the committee. [14] Management Committee decisions may be appealed to the ISO Board, which has the authority to overrule a decision. Provisions also will be made for attendance at committee meetings by a representative of the Commission and the New York Commission. [15]

2. The Operating Committee will establish operating procedures for the ISO, perform operating and performance studies, establish maintenance procedures, determine operating reserve requirements and locational installed capacity requirements, and review transmission expansion proposals.

The Operating Committee shall consist of a minimum of fourteen members. Each party to the ISO Agreement with at least a three percent voting share, or with ownership shares of transmission or distribution facilities in excess of 100 circuit miles rated at 115 kV or above, will appoint one member to the Operating Committee. There will also be one committee member for each of the following six industry groups: (1) generators; (2) load-serving entities; (3) wholesale marketers; (4) municipal systems and cooperatives; (5) large industrial and commercial customers; and (6) public interest representatives. A 67 percent vote of the Operating Committee will be required for action to be approved. Actions taken by the Operating Committee would be implemented by the ISO staff unless overruled or suspended by the Management Committee or the ISO Board. The ISO Board may assign a member of its staff to attend and participate in meetings of the Operating Committee on a non-voting basis. The ISO Board representative may propose committee actions and appeal committee actions to the Management Committee. Provisions also will be made for attendance at the committee meetings by a representative of the Commission and the New York Commission.

3. The Business Issues Committee will establish procedures related to the efficient and non-discriminatory operation of electric markets centrally coordinated by the ISO, including rules and procedures related to bidding, settlements and the calculation of market prices.

The Business Issues Committee will be subject to the same membership and procedures rules as the Operating Committee.

Commission Response

The Independent Power Producers of New York (IPPNY) and other intervenors [16] object to the governance structure proposed by the Member Systems. These intervenors argue that the proposed board and committee governance structure and voting rules require modification because they allow the transmission owners to dominate the committees. In addition, they argue that several flaws remain in conjunction with the NYSRC. For example, they contend

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that the NYSRC is not a truly independent body, that it should not fall outside of the ISO structure, and that it should not retain control over reliability issues.

The filing explains, however, that the proposed unaffiliated ISO Board and the weighted voting in the ISO committees are based in large part on the New England Power Pool (NEPOOL) ISO governance proposal conditionally approved by the Commission. [17] According to the application, the proposed unaffiliated ISO Board model provides a greater degree of assurance that the ISO Board will actually achieve the independence essential to an ISO. Consistent with our *NEPOOL* order, we will accept the unaffiliated ISO Board model proposed by the Member Systems.

The selection process for an unaffiliated ISO Board raises a separate governance issue regarding the qualifications of proposed board candidates. [18] The instant application has adequately addressed this issue. The Selection Committee will employ an executive search firm to develop a pool of candidates with a cross-section of skills and experience. We are satisfied that the proposed selection process will ensure that the board members will possess the knowledge necessary to effectively administer the ISO.

The application states that the proposed weighted voting structure for the ISO committees also is based on the NEPOOL proposal. Various intervenors have objected to the proposed weighting structure. Consistent with our finding in *NEPOOL II*, we are concerned that the proposed formulas assign excessive voting power to the vertically integrated utilities.

As in *NEPOOL II*, the NYPP members contend that they are entitled to such voting power but that their share will diminish as a result of competition and restructuring. As the Commission noted in *NEPOOL II*, while divestiture might ultimately diminish the voting power of vertically integrated utilities (assuming neither they nor their affiliates re-enter the market as "independent" generators), it is unlikely that retail access will impact voting shares substantially because the transmission owning utilities intend to continue competing for retail load. As a result, for the foreseeable future, utilities will continue to exercise substantial voting power.

Consistent with our guidance in *NEPOOL II*, we believe that it is better for the affected parties to reach a consensus on revised governance procedures than for us to impose a solution at this time. Accordingly, we direct the Member Systems and all interested parties to negotiate and propose a modified voting structure.

Issues relating to the independence of the ISO Board as it relates to the NYSRC are addressed in ISO Principle No. 4.

ISO Principle No. 2: An ISO and its employees should have no financial interest in the economic performance of any power market participant. An ISO should adopt and enforce strict conflict of interest standards.

The Member Systems propose a code of conduct for the ISO that is intended to comply with the requirements of Order No. 888 . The proposed ISO conflict of interest policy prohibits an ISO Director, ISO Employee or his/her immediate family from owning, controlling, or holding, with power to vote, securities of a market participant or any of their affiliates.

In addition, the conflict of interest policy prohibits an ISO Employee or his/her immediate family from purchasing securities of any market participant or any affiliate of any market participant while an ISO Employee, provided, however, any matching contributions made in the securities of a market participant in connection with any savings, pension, or 401(k) plans of a former employee of a market participants will be allowed until the completion of the transfer, spin off and merger of assets and liabilities of such plans to new plans maintained by the ISO. This provision does not apply to any purchase of securities of a market participant or any affiliate of such market participant by a spouse of an ISO employee who was, as of the effective date of the ISO Tariff, employed by a market participant or any affiliate of such market participant and is required to purchase securities of such market participant or affiliate as a part of his/her employment. Any such purchases by a spouse must be disclosed to the ISO Board which shall have the authority to consider appropriate limitations on the duties of the ISO Employee, including changing his/her duties to avoid an appearance of a conflict. [19]

In addition, if an ISO Director, ISO Employee or his/her immediate family owns, controls,

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or has the power to vote such securities, the ISO shall require the divestiture of those securities within a reasonable time in accordance with the ISO's divestiture procedure. [20]

If an ISO Director or his/her immediate family owns, controls, or holds with the power to vote prohibited securities, divestiture must occur as follows: (1) upon initial election as a Director such securities must be divested within one year of election; (2) if ownership, control or the power to vote such securities results from an entity becoming a market participant, divestiture must occur within one year of receipt of the ISO's list of prohibited securities referencing such securities; and (3) if ownership, control or the power to vote such securities is as a result of a gift, inheritance, distribution of marital property or other involuntary acquisition, divestiture must occur within one year of the acquisition. [21]

For ISO Employees employed at the effective date of the ISO Tariff, divestiture of prohibited securities must occur within three years. ISO Employees hired after the effective date must divest prohibited securities within one year of commencement of employment. [22]

With respect to the financial interest of covered consultants or contractors, the ISO Board shall establish reasonable and objective criteria to be used as conflict of interest screening guidelines. In applying the guidelines to individual cases, the ISO Board will consider the following; (1) the nature of the services provided by the consultant or contractor; (2) whether the consultant or contractor is engaged by the ISO on a substantially full-time basis; (3) whether such consultant or contractor is required to comply with its own professional conflict of interest standards; and (4) whether such consultant or contractor will have access to market information. The guidelines will be made known to the appropriate ISO Employees authorized to enter into contracts for outside services, and application of the Board's criteria by the ISO Employee will be monitored by the compliance officer. In the event that any entity disputes a determination regarding a consultant or contractor, the matter may be referred to Alternative Dispute Resolution (ADR). [23]

Commission Response

The Commission will require that all NYPP Board members, as well as officers and employees of the ISO divest their holdings of any market participant within six months of the effective date of the ISO Tariff. In the future, all officers, employees and NYPP Board members (hired or elected after the effective date of the ISO Tariff) must divest their interest in any market participant within six months of their hire or election. A six-month period is consistent with both the divestiture period suggested in Order No. 888 for employees of a newly formed ISO and the Commission's most recent order in the California restructuring proceeding. [24] The Member Systems have provided no economic justification for adopting a longer divestiture period.

ISO Principle No. 3: An ISO should provide open access to the transmission system and all services under its control at non-pancaked rates pursuant to a single, unbundled, gridwide tariff that applies to all eligible users in a non-discriminatory manner.

The Member Systems maintain that the ISO will provide open access to the New York State Power System (NYSPS), and that all services will be provided at non-pancaked rates which are applicable to all eligible users in a non-discriminatory manner.

Commission Response

The parties have raised issues regarding the justness and reasonableness of the rates, (*e.g.*, locational based marginal pricing) and the terms and conditions of services offered under the proposed ISO Tariff. These issues will be addressed in detail in future orders in these proceedings.

ISO Principle No. 4: An ISO should have the primary responsibility in ensuring short-term reliability of grid operations. Its role in this responsibility should be well-defined and comply with the applicable standards set by NERC and the regional reliability council.

The ISO-TP Agreement transfers many of the NYPP's functions to the New York ISO. The ISO-TP Agreement also delineates many of the New York ISO's responsibilities for maintaining the short-term reliability of the grid. For example, the New York ISO will: (a) assume responsibility for control area operations of the NYSPS from the NYPP; (b) perform balancing of generation and load while ensuring the safe, reliable and efficient operation of the NYSPS; (c) exercise operational control over certain facilities of the NYSPS under normal operating conditions and system emergencies to maintain system reliability; (d) coordinate the NYSPS equipment outages and maintenance; and (e) maintain the safety and

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short-term reliability of the NYSPS. [25] The New York ISO will also act as the NERC-defined control area operator for the NYSPS.

In addition, the ISO Agreement requires the New York ISO to obtain by contract or tariff sufficient control over generators, transmission facilities, and other NYSPS facilities necessary for the reliable and efficient operation of the NYSPS. [26]

The NYSRC Agreement will create an organization that will develop and promulgate Reliability Rules that the New York ISO must comply with when operating and maintaining the reliability of the grid. The NYSRC will be governed by an Executive Committee that will consist of 13 members. Each of the Transmission Providers will appoint a member to the Executive Committee. The New York ISO Board will develop procedures for the selection of the remaining five members of the Executive Committee. Parties that are:

(1) primarily engaged in the business of selling power in the wholesale market; (2) large commercial or industrial customers; and (3) municipally or cooperatively owned utilities, each shall appoint a member to the Executive Committee. The final two members may not be affiliated with any market participant. Nine votes are required in order for the Executive Committee to pass a measure.

Initially, the NYSRC will adopt as its Reliability Rules the existing rules, policies, and procedures of the NYPP that relate to or affect the reliability of the NYSPS. [27] The NYSRC will create any additional Reliability Rules that it deems necessary to meet the reliability needs of New York State. The NYSRC also will adopt all new mandatory compliance rules of NERC and the regional reliability council, the Northeast Power Coordinating Council (NPCC), unless the existing Reliability Rules are more stringent. [28] The NYSRC will represent New York State at NERC and the NPCC.

Furthermore, the NYSRC will adopt as Reliability Rules each Transmission Provider's Local Reliability Rule in existence at the time that the NYSRC Agreement becomes effective. [29] These Local Reliability Rules cannot be modified or eliminated by the NYSRC without consent of the Transmission Provider that originally implemented the rule. Furthermore, a Transmission Provider may adopt any new Local Reliability Rules it deems necessary to protect the reliable delivery of electricity over its transmission and/or distribution facilities. The NYSRC will adopt any new Local Reliability Rules and the ISO must immediately operate the grid in compliance with these rules. [30] The ISO Board or the NYSRC may request that the New York Commission review a Local Reliability Rule. However, a Local Reliability Rule may only be modified or eliminated pursuant to an order by the Commission or New York Commission. [31]

The NYSRC also will establish the state-wide Installed Capacity requirements for New York State consistent with NERC and NPCC standards. Initially, the NYSRC will adopt the Installed Capacity requirements found in the NYPP Agreement currently filed with the Commission. According to the Member Systems, consistent with the NYSRC Agreement, any changes to the Installed Capacity requirement will be filed with the Commission. [32]

The ISO-NYSRC Agreement defines the relationship between the New York ISO and the NYSRC. The New York ISO and the NYSRC will function as two separate and distinct entities. [33] However, the New York ISO must comply with the Reliability Rules (including Local Reliability Rules) established by the NYSRC and the NYSRC will monitor the New York ISO for compliance with these rules. The New York ISO will provide the NYSRC with any information that it needs to audit the New York ISO's compliance with the provisions of the ISO-NYSRC Agreement.

Disputes between the New York ISO and the NYSRC will go to the New York Commission for arbitration. If the dispute involves the implementation of a new Reliability Rule or the modification of an existing one, the ISO Board may request that the NYSRC suspend implementation of the rule pending resolution of the

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dispute by the New York Commission. [34] Under the proposal, the New York Commission may direct that the Reliability Rule be put into place immediately if it determines that suspension of the rule could jeopardize the reliability of the NYSPS. However, the New York Commission has no authority to modify or change any agreement or the ISO Tariff, or create any additional rights or obligations for any party. [35] Any New York Commission arbitration decision that affects matters subject to the jurisdiction of the Commission will be filed with the Commission. In addition, any party disputing a Reliability Rule may, at any time, file a complaint with the Commission under the Federal Power Act. [36]

Commission Response

Intervenors argue that the NYSRC rather than the New York ISO will be responsible for the short-term reliability of the grid. [37] IPPNY contends that an organization such as the NYSRC (separate and distinct from the New York ISO), violates the Commission's ISO principles concerning the independence of the ISO. Furthermore, intervenors argue that because the incumbent investor-owned utilities compose the majority of the Executive Committee members, they will use the NYSRC to govern the New York ISO. By adopting the existing rules and procedures of the NYPP and requiring nine votes to pass a measure by the Executive

Committee, intervenors argue that it will be impossible to ensure that the existing and future Reliability Rules are fair to all market participants.

Contrary to the protests of the intervenors in this proceeding, the New York ISO's responsibility for ensuring the short-term reliability of the grid is well-defined and consistent with NERC and NPCC standards. Moreover, while the task of developing Reliability Rules for the NYSPS rests with the NYSRC, it remains the New York ISO's primary responsibility to ensure the reliable operation of the grid consistent with the Reliability Rules.

As explained by the Applicants, the role of the NYSRC is limited to the promulgation of basic reliability standards within a narrowly defined scope, and monitoring of the ISO's compliance with the Reliability Rules. [38] The NYSRC has no ability to direct any activities of the New York ISO. Moreover, any existing or new Reliability Rule that the New York ISO objects to is subject to immediate suspension by the NYSRC if requested to do so by the New York ISO.

As also correctly noted by the New York Commission, the NYSRC has no enforcement authority. [39] The NYSRC is limited to monitoring compliance with and reporting violations of Reliability Rules.

Therefore, the Commission believes that there are ample safeguards in place to ensure that the New York ISO may reliably operate the NYSPS without undue influence by the NYSRC.

Applicants propose that any dispute between the New York ISO and the NYSRC concerning the Reliability Rules should be subject to dispute resolution by the New York Commission and that the New York ISO also may appeal the resolution of the disputed Reliability Rule to the Commission.

We find the ISO's proposed procedures acceptable, as modified below. Any dispute between the New York ISO and the NYSRC concerning a Reliability Rule that affects not only reliability but also matters subject to the Commission's jurisdiction under the FPA (such as a transmission line loading relief rule that affects the curtailment provisions of the ISO Tariff) must be resolved directly by the Commission, and not submitted first to the New York Commission. Other matters may be resolved in the first instance by the New York Commission, as proposed.

However, the Applicants have provided no justification for requiring the New York ISO to immediately implement a Local Reliability Rule even though the New York ISO and the NYSRC may oppose the rule. As previously discussed, unlike Reliability Rules developed by the NYSRC, the New York ISO may not suspend the implementation of the Local Reliability Rules developed by the Transmission Providers. The disparate treatment of these rules could provide the Transmission Providers with short-term competitive advantages.

This provision would undermine one of the fundamental purposes of an ISO: to move beyond functional unbundling so as to remove transmission control from Transmission Providers that have an affiliate with an interest in the power market. It would permit an individual transmission owner to dictate reliability

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rules for immediate implementation--some of which could have a significant effect on transmission operations affecting commercial practices--without review or approval by either the NYSRC or the NY ISO. [40] These Local Reliability Rules may be inconsistent with regional reliability practices. We can permit the individual transmission owner to recommend a Reliability Rule for immediate adoption by either the NYSRC or the New York ISO, but not to unilaterally set such rules where an ISO is responsible for ensuring the short-term reliability of the grid.

We see no rationale for deviating from the procedures established for NYSRC-developed Reliability Rules. Therefore, we will require that Local Reliability Rules follow the same procedures as outlined for Reliability Rules. We note that the ISO-NYSRC Agreement also states,

If the enactment of a new Reliability Rule or a modification of an existing Rule leads to a dispute, the ISO Board of Directors may request that the effectiveness of the new Reliability Rule or the modification be suspended pending the outcome of the dispute resolution process. Upon such a request by the ISO Board, the NYSRC shall suspend implementation of the new Reliability Rule or the enactment of the modification pending resolution of the dispute by the [New York Commission]. Notwithstanding the foregoing, the [New

York Commission] may direct that the new Reliability Rule or modification go into effect immediately upon a finding that suspension of the rule could put the reliability of the NYS Power System at risk. [[41]]

Therefore, any Local Reliability Rule written by the NRC or the New York Commission may be immediately implemented, even if the ISO Board requests suspension of the rule, if the New York Commission deems it necessary to maintain the reliability of the NYSPS.

The Commission will not require that all Reliability Rules be filed with the Commission. [42] Rather, the NYSRC Agreement requires the secretary of the Executive Committee to be responsible for updating and maintaining a Reliability Rules manual. The Commission will require that the Member Systems post these Reliability Rules via the ISO OASIS. [43]

In a related but separate matter, we note that various intervenors object to the proposed structure and governance of the NYSRC. Intervenors express concerns regarding the potential of the Member Systems to dominate the NYSRC. These concerns are at present speculative, and, in any event, as previously stated, the role of the NYSRC is limited. Therefore, we are not persuaded that action on our part is required at this time. However, to the extent a factual basis to these concerns should arise, parties are free to raise their concerns with the Commission at that time.

ISO Principle No. 5: An ISO should have control over the operation of interconnected transmission facilities within its region.

Pursuant to the ISO Agreement, the ISO-TP Agreement and the ISO-NYSRC Agreement, the ISO shall exercise operational control over transmission facilities of the Transmission Providers (*i.e.*, the ISO will direct the Transmission Providers to physically operate the equipment). These transmission facilities are listed in Appendix A-1 of the ISO-Transmission Provider Agreement. In addition, certain transmission facilities, as listed in Appendix A-2 of the ISO-Transmission Provider Agreement, require ISO notification prior to the Transmission Providers making operational changes. Moreover, transmission facilities may be added to, or deleted from, the lists of facilities by mutual written agreement of the ISO and the owner of the facilities. A current list of both classes of facilities will be maintained and posted on the ISO's OASIS. Some facilities, typically 69 kV or below, do not fall under either ISO operational control or notification requirements. Those facilities nevertheless are also considered to be part of the NYSPS and service on the facilities will be provided under the ISO Tariff.

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The ISO will direct the operation of, and coordinate the maintenance scheduling of, certain facilities of the NYSPS, including coordination with control centers maintained by each of the Transmission Providers. Such control centers shall include the equipment and facilities necessary for the ISO to exercise operational control over transmission facilities under ISO operational control. Each Transmission Provider shall continue to receive telemetering from existing generators in its control area and provide for the receipt of such information from new generators.

Member Systems propose that the ISO will assume responsibility for the control area operations of the NYSPS previously performed by NYPP. These responsibilities include: (1) performing balancing of generation and load while ensuring the safe reliable and efficient operation of the NYSPS; (2) exercising operational control over certain facilities of the NYSPS under normal operating conditions and system emergencies to maintain system reliability; (3) coordinating NYSPS equipment outages and maintenance; and (4) maintaining the safety and short-term reliability of the NYSPS. [44]

Commission Response

Intervenors [45] raise concerns that the Member Systems' proposal does not place sufficient transmission facilities under the control of the ISO. They request that the NYPP should be required to place all facilities classified as transmission facilities by the Commission under ISO control. For facilities that cannot be subject to actual operational control by the ISO because of technical reasons, they argue that the ISO-TP Agreement should be modified to provide for complete functional control over such facilities.

We find that the proposal satisfies ISO Principle No. 5. We believe that the initial set of facilities proposed to be under ISO control or subject to ISO notification is reasonable. In this regard, we note that the initial

designation of these facilities is consistent with the current operation of the NYPP. Under the proposal, additional facilities may be added by mutual written agreement of the ISO and the owner of the facilities. Intervenors have not adequately supported their proposal to expand the facilities placed under the direct control of the ISO. Accordingly, we will not order a revision to the proposal.

In addition, the New York Commission argues that direct telemetry to the Member Systems' control centers should be discontinued and that direct telemetry to the ISO should be requested as soon as possible.

We will not direct the Member Systems to transfer the direct receipt of telemetering data that they presently receive from generators in their respective service areas to the New York ISO. To facilitate the transition from the NYPP to the New York ISO, it is reasonable for the New York ISO to receive telemetering data only from the eight member systems rather than a multitude of individual generators. Requiring the direct receipt of telemetering data from individual generators by the New York ISO at this time would be time consuming and expensive.

We note that each Transmission Provider will maintain a strict code of conduct to prevent such telemetering data from reaching any generation affiliate it may have. We direct the Transmission Providers to modify their code of conduct to preclude any marketing affiliates (and generating affiliates) from receiving any telemetering information. We will require each Transmission Provider to post its individual code of conduct and standards of conduct on the ISO OASIS. Moreover, under the Transmission Providers' Codes of Conduct, these data shall not be shared with any wholesale merchant, whether affiliated or unaffiliated, unless such information is simultaneously made available to all market participants. We direct the Member Systems and the ISO to jointly develop a timetable and plan of action to transfer the receipt of such telemetering data to the New York ISO. This information should be filed with the Commission shortly after the ISO becomes operational.

ISO Principle No. 6: An ISO should identify constraints on the system and be able to take operational actions to relieve those constraints within the trading rules established by the governing body. These rules should promote efficient trading.

The ISO, in the real-time market, will administer both the transmission system and the energy market. The ISO will use a security-constrained system dispatch system to identify system constraints and to dispatch generating units (based on information supplied by market participants) to meet load, provide necessary ancillary services and accommodate bilateral transactions while not violating any security-related constraints. The ISO will also be able to mitigate transmission constraints by nondiscriminatory redispatch of generation. The LBMP used in both markets will be available for all market participants on OASIS and

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will provide incentives for the efficient use of the transmission system. [46]

Commission Response

The ISO will be capable of identifying constraints and relieving those constraints within the established trading rules in compliance with ISO Principle No. 6. In principle, the use of LBMP pricing is an acceptable method of relieving constraints. [47] However, the evaluation of the bid rules for New York's LBMP will be addressed in a future order in these proceedings.

ISO Principle No. 7: The ISO should have appropriate incentives for efficient management and administration and should procure the services needed for such management and administration in an open competitive market.

Under the Member Systems' proposal, the ISO Board has the authority to take whatever actions it deems necessary to ensure that the ISO provides efficient management and administration for the NYSPS. The ISO Board will be comprised of Directors unaffiliated with any market participant. Therefore, according to the application, the Member Systems' proposal enables the ISO and the ISO Board to freely develop and implement economic incentives. Further, no market participant will have any control over the ISO's procurement practices. The application states that the ISO will not be influenced in its procurement practices either directly through a market participant's exercise of control over the ISO or indirectly through the affiliation of the ISO Directors and therefore, will be able to procure goods and services in an objective and efficient manner. [48]

Commission Response

We are satisfied that the proposed ISO will be managed in an efficient and independent manner and will be able to procure necessary services in an open and competitive manner. Accordingly, we find that these procedures satisfy ISO Principle No. 7. Moreover, all ISO costs will be recovered through a cost-based rate, subject to the Commission's filing requirements and review.

ISO Principle No. 8: An ISO's transmission and ancillary services pricing policies should promote the efficient use of and investment in generation, transmission and consumption. An ISO or an RTG of which it is a member should conduct such studies as may be necessary to identify operational problems or appropriate expansions.

The general approach of relying on LBMP and markets should promote efficiency. Specific transmission and ancillary services pricing policies will be addressed in a future order in these proceedings. Further, the ISO will conduct studies to identify operational problems and to evaluate transmission expansions. [49]

ISO Principle No. 9: An ISO should make transmission system information publicly available on a timely basis via an electronic information network consistent with the Commission's requirements.

The Member Systems state that the ISO will make transmission system information publicly available on a timely basis via an electronic information network consistent with the requirements of Order No. 889 .

Commission Response

This satisfies ISO Principle No. 9.

ISO Principle No. 10: An ISO should develop mechanisms to coordinate with neighboring control areas.

The Member Systems' proposal states that the ISO shall act as the NERC-defined control area operator for the NYSPS. [50] The ISO will continue to perform the same functions as the existing Transmission Providers with respect to coordinating its activities with neighboring control areas. The application also indicates that additional arrangements with neighboring pools needs to be developed for coordinating transaction scheduling.

Commission Response

While this principle is satisfied in part, the application admits the need to develop additional arrangements with neighboring pools. This commitment needs to be fulfilled in order to fully satisfy ISO Principle No. 10. To the extent the ISO adopts all of the existing contractual obligations of the NYPP with neighboring control areas, the New York ISO will satisfy ISO Principle No. 10.

ISO Principle No. 11: An ISO should establish an ADR process to resolve disputes in the first instance.

Disputes between the ISO and NYSRC are addressed above under ISO principle No. 4. However, the ISO Tariff also contains ADR procedures for resolving disputes. In the event

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any disputes arise between or among Direct Customers and/or the ISO involving transmission service under the ISO Tariff, ISO Procedures or any Service Agreement entered into under the ISO Tariff, they shall be presented directly to a senior representative of each Party to the dispute for resolution on an informal basis. In the event that the designated representatives are unable to resolve the dispute by mutual agreement within thirty days, such dispute may be submitted to the Dispute Resolution Administrator (DRA). Within thirty days, the DRA shall decide whether the dispute should be referred to non-binding mediation and/or arbitration to be resolved in accordance with Section 12 of the ISO Tariff. [51]

Any arbitration decision that affects matters subject to the Commission's jurisdiction under the FPA may be filed with the Commission. Any arbitration decisions that affect matters subject to the New York Commission under the New York State Public Service Law may be filed with the New York Commission. The judgment of the Arbitrator may be entered on the award by any court in New York having jurisdiction. [52]

Commission Response

We find that this proposal satisfies ISO Principle 11. However, we require that any arbitration decision subject to the jurisdiction of the Commission must be filed with the Commission. The Member Systems should modify their tariff accordingly.

Future Filings and Other Issues

The Member Systems indicate that they will submit a separate Section 203 filing to request specific authorization to transfer control of the Member Systems' transmission facilities. [53] Member Systems also state that at the end of the restructuring process, they will transfer assets to the ISO, including the existing NYPP building, the existing control center and also intellectual property such as system software. Member Systems acknowledge that this transfer will also require Section 203 authorization. [54] These future Section 203 filings will be assigned separate dockets and will be addressed in future orders.

The Commission orders:

(A) The motions to intervene out-of-time in this proceeding are hereby granted, as discussed in the body of this order.

(B) The answers in this proceeding are hereby accepted for filing, as discussed in the body of this order.

(C) Member Systems' application to establish the New York Independent System Operator is hereby conditionally authorized, as modified, as discussed in the body of this order, and subject to further orders.

Commissioner Massey concurred with a separate statement attached.

Appendix A

Motions To Intervene and Notices of Intervention in Docket No. ER97-1523-000

Akwesanse Power Authority

Allegheny Electric Cooperative, Inc.

Allegheny Power Service Corporation

American Municipal Power-Ohio, Inc.

Athens Generating Company

CalEnergy Company, Inc.

City of New York

City of Oswego, New York

CNG Transmission Corporation

Coalition for a Competitive Electric Market

Cogen Technologies Linden Venture, LP

Constellation Power Source

Duke/Louis Dreyfus L.L.C.

Dupont Power Marketing, Inc.

E-Cubed Company

Edison Electric Institute

Electric Clearinghouse, Inc.

Electric Power Supply Association

Electricity Consumers Resource Council

Energetix, Inc. *

Enron Power Marketing

Hydro-Québec

Indeck Energy Services, Inc.
Independent Power Producers of New York
LG&E Power, Inc. *
Long Island Power Authority
Multiple Intervenors
Municipal Electric Utilities Association of New York State
National Association of Energy Service Companies
New Energy Ventures, Inc., *etal.*
New York City Department of Law
New York Energy Buyers Forum and Greater New York Hospital Association
New York Mercantile Exchange
New York Public Service Commission
New York State Consumer Protection Board
New York State Department of Economic Development
Northeast Utilities Service Company
NYPA Industrial Intervenors
Ontario Hydro
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PECO Energy Company
Pennsylvania Power & Light Company
Plum Street Energy Marketing, Inc. *
Potomac Electric Power Company
Project for Sustainable FERC Energy Policy
Prudential Securities Incorporated
Public Interest Intervenors
Public Service Electric and Gas Company
SEF Power Corp. *
Selkirk Cogen Partners, L.P. *
Sithe/Independence Power Partners, L.P.
Starrett City, Inc. *
Suffolk County Electrical Agency
Tractebel Energy Marketing, Inc.
U.S. Generating Company
US Gen Power Services, L.P.
Wheeled Electric Power Company
Williams Energy Services Company

Motions To Intervene and Notices of Intervention in Docket No. OA97-460-000

Akwesanse Power Authority
Allegheny Electric Cooperative, Inc.
Allegheny Power Service Corporation

American Municipal Power-Ohio, Inc.
Athens Generating Company
Bio Resources, Ltd.
CalEnergy Company, Inc.
City of New York
City of Oswego, New York
CNG Transmission Corporation
Coalition for a Competitive Electric Market
Cogen Technologies Linden Venture, LP
Colorado Interstate Gas Co.
Constellation Power Source
Duke/Louis Dreyfus L.L.C.
Dupont Power Marketing, Inc.
Electric Clearinghouse, Inc.
Electric Power Supply Association
Energetix, Inc. *
Enron Power Marketing
Equitable Resources
Hydro-Québec
Indeck Energy Services, Inc.
Independent Power Producers of New York
LG&E Power, Inc. *
Long Island Power Authority
Multiple Intervenors
Municipal Electric Utilities Association of New York State
National Association of Energy Service Companies
NEPOOL Stakeholder Coalition
New England Power Company
New Energy Ventures, Inc., *etal.*
New York City Department of Law
New York Department of Public Service
New York Energy Buyers Forum and Greater New York Hospital Association
New York Mercantile Exchange
New York Public Service Commission
New York State Consumer Protection Board
New York State Department of Economic Development
Northeast Utilities Service Company
NYPA Industrial Intervenors
Ontario Hydro
Pan Energy Trading and Market Services

PECO Energy Company

Pennsylvania Power & Light Company

Plum Street Energy Marketing, Inc. *

Potomac Electric Power Company

Project for Sustainable FERC Energy Policy

Prudential Securities Incorporated

Public Interest Intervenors

Public Service Electric and Gas Company

SEF Power Corp. *

Selkirk Cogen Partners, L.P. *

Sithe/Independence Power Partners, L.P.

Starrett City, Inc. *

Suffolk County Electrical Agency

Tractebel Energy Marketing, Inc.

U.S. Generating Company

US Gen Power Services, L.P.

Williams Energy Services Company

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* Motion to intervene or notice of intervention out-of-time. ET]

William L. MASSEY, Commissioner, *concurring*:

I am concurring separately to this order on the issue of the proposed structure of the New York State Reliability Council (NYSRC). Although I am voting for our order, I continue to have concerns that there is the potential for transmission owners to dominate the NYSRC and thus the ISO.

The council as proposed in the current filing is made up of 13 members, of which nine represent transmission owners. Several intervenors in this proceeding have objected to the proposed structure and governance. [1] Progress has been made since the original filing was made on January 31, 1997, with the composition of the council expanding from an 11 member board to the current 13 member board. In both proposals, the number of transmission owners on the council has remained the same--eight, and nine votes are needed to pass a measure.

Intervenors have acknowledged this expansion of the board membership as a positive step. [2] But some, like the New York PSC, remain

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concerned about the voting strength of the transmission owners in the short term. Specifically, the New York PSC states in its comments that "[I]f the governance does not provide a diverse representation of utility and non-utility market participation in the SRC, it would be necessary for the ISO and PSCNY to scrutinize carefully SRC activities to ensure fairness."

My support for this order is influenced by three factors that diminish the influence of the NYSRC. First, the New York ISO is headed by a Board of Directors (ISO Board) that will have no affiliation with any market participant. Second, the ISO Board and the NYSRC will function as two separate and distinct entities. Any existing or new reliability rule that the New York ISO objects to is subject to immediate suspension by the NYSRC. And last, as conditioned by this order, any dispute between the NYSRC and the New York ISO that affects matters subject to our jurisdiction under the Federal Power Act must be resolved directly by this Commission.

These three factors form the basis for my support of this order, yet I continue to have some concerns. Two points that were made in a November 1996 order [3] providing guidance to the PJM power pool underscore my concern. Number one, the Commission said that "[T]he principle of independence is the bedrock upon which the ISO must be built if stakeholders are to have confidence that it will function in a manner consistent with the Commission's pro-competitive goals." [4] Number two, we said in the same order that "[W]e believe it is critical for the ISO to make determinations with respect to reliability independent of the economic interests of any particular market segment." [5] These two principles guide my thinking on structure and governance as I evaluate ISO filings that are presented to us.

With these two principles in mind, my preference would be for the NYSRC to evolve toward a more balanced structure. I would encourage the parties to consider either expanding the membership or making it more diverse. It is important that members of a reliability organization have expertise in developing the rules, but I do not believe that this expertise is found only with the owners of the transmission system. Other groups such those that will be occupying the remaining positions on the NYSRC also possess relevant expertise required to make sound reliability decisions. These include municipalities, cooperatives, and large industrial and commercial customers.

In urging the NYSRC to evolve further, I am influenced by the positive restructuring efforts currently being undertaken by the North American Electric Reliability Council (NERC) as a result of the Blue Ribbon Panel's recommendation. [6] I applaud their efforts. This Commission does not want to be in the business of writing reliability rules. It would be infinitely preferable to defer to rules written by a private reliability organization. If we are to give deference, we must be satisfied that such reliability organizations are not dominated by any particular industry segment.

For these reasons, and having expressed my concern, I will concur in this otherwise excellent order.

-- Footnotes --

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Footnotes

1 The seven public utility Member Systems are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation. The eighth Member System, the New York Power Authority, is not a public utility. For the ease of reading, rather than distinguishing repeatedly between the two, we shall refer to all eight together as Member Systems or Transmission Providers.

2 *SeePromoting Wholesale Competition Through Open Acess Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888 , 61 *Fed. Reg.* 21,540, *FERC Statutes and Regulations, Regulations PreamblesJanuary 1991-June 1996* ¶31,036 (1996), *order on reh'g*, Order No. 888-A , 62 *Fed. Reg.* 12,274 (1997), *FERC Statutes and Regulations*¶31,048 (1997), *order on reh'g*, Order No. 888-B , 81 FERC ¶61,248 (1997), *order on reh'g*, Order No. 888-C , 82 FERC ¶61,046 (1998).

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3 16 U.S.C. §824 d (1994).

4 In response to the Commission's requirement in Order No. 888 that tight power pools, such as the NYPP, file reformed pooling agreements, NYPP filed in Docket No. ER97-986-000 a compliance filing on December 30, 1996.

5 This filing also included a request for market-based rate authorization, which was separately docketed as ER97-4234-000. The Member Systems are not at this time requesting approval of this part of the filing. Accordingly, we will address this request in a future order.

6 The Member Systems have not filed a Section 203 application with the Commission.

7 Again, as noted, *supra* note 1, the New York Power Authority is not a public utility, (and thus would not be directly subject to the requirements of Order No. 888 , but rather would be indirectly subject to them through reciprocity), but for the ease of reading is not separately distinguished.

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8 NYPP notes that it is currently considering alternative approaches for the establishment and operation of the NYPE. It states that if the original proposal is altered, it will file to modify the NYPE Tariff and related documents.

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9 *See*18 C.F.R. §385.213 (a)(2) (1997).

10 The 18 members of the Selection Committee will be selected as follows: eight current members of the NYPP will each select one member; two members will be chosen from the New York Commission staff; and the remaining eight members will be chosen by interested parties, including generators (2), consumer representatives (2), municipal systems (1), marketers (1), energy service companies (1) and environmental/public interest advocates (1).

11 December 19 Filing, Volume I, Filing Summary at 41.

12 Upon request, the ISO Board shall make provisions for representatives of the Commission and the New York Commission to attend meetings of the ISO

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Board. These representatives may participate, but not vote, in meetings of the ISO Board.

13 The ISO will establish criteria for environmental and residential organizations to join the ISO as non-market participants. December 19 Filing, Volume IV, ISO Agreement, Section 2.02.

14 A party and its affiliated entities will not be permitted to exercise more than 25 percent of the total voting shares. Voting shares exceeding 25 percent will be reallocated to other members of the Management Committee on a pro-rata basis in accordance with their unadjusted voting strength.

15 December 19, 1997, Volume I, Filing Summary at 42-43.

16 Coalition for a Competitive Electric Market (CCEM), Electric Power Supply Association (EPSA), Sithe/ Independence Power Partners, L.P. (Sithe).

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17 *See**New England Power Pool*, 79 FERC ¶61,374 (1997) *reh'g pending* (*NEPOOL*); *seealso*, *New England Power Pool*, 83 FERC ¶61,045 (1998) (*NEPOOL II*).

18 *Id.* at p. 62,585 (the applicant should address the Commission's concern that there be knowledgeable and effective administration of the ISO).

19 December 19 Filing, Volume III, ISO Tariff, Attachment F at 184-86.

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20 *Id.*

21 *Id.*

22 *Id.*

23 *Id.*

24 *Pacific Gas and Electric Company,etal.*, 81 FERC ¶61,122, at p. 61,455 (1997).

[62,411]

25 December 19, 1997, submittal, Volume IV, ISO-TP Agreement, Section 3.01.

26 December 19, 1997, submittal, Volume IV, ISO Agreement, Section 6.02.

27 December 19, 1997, submittal, Volume IV, NYSRC Agreement, Section 3.01.

28 *Id.*

29 Local Reliability Rules for generation, transmission and distribution facilities are established by each Transmission Provider based upon meeting specific reliability concerns in their respective service

areas, including meeting Nuclear Regulatory Commission (NRC) requirements. December 19, 1997, submittal, Volume I, Definitions, Section 2.106.

30 December 19, 1997, submittal, Volume IV, NYSRC Agreement, Section 3.02.

31 *Id.* All parties reserve their rights under the FPA to appeal to the Commission to review a specific Local Reliability Rule.

32 *Id.* at 3.03.

33 December 19, 1997 Filing, Volume IV, ISO/NYSRC Agreement, Section 2.4.

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34 Local Reliability Rules may not be suspended pending Commission or New York Commission review unless specifically ordered to do so by either commission.

35 December 19, 1997 Filing, Volume IV, ISO/NYSRC Agreement, Section 5.5a.

36 *Id.* at Section 5.8.

37 *See*, *e.g.*, IPPNY, Multiple Intervenors, Sithe, EPSA and CCEM.

38 December 19, 1997, submittal, Volume I, Filing Summary at 46.

39 New York Commission's May 22, 1997, comments at 3.

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40 A transmission owner may protect the value of its assets through the ISO-TP Agreement. However, a transmission owner in an ISO may not unilaterally impose new provisions on the ISO.

41 December 19 Filing, Volume IV, ISO-NYSRC Agreement, Section 5.3.

42 *SeePJM Interconnection,etal.*, 81 FERC ¶61,257, at p. 62,267 (1997).

43 However, any reliability rule that has the effect of altering a fundamental term or condition of transmission in interstate commerce must be filed. As the Commission has stated in *Coalition Against Private Tariffs*, *etal.*, 83 FERC ¶61,015, at p. 61,039 (1998) *reh'g pending*:

> Public utilities are bound by the terms and conditions of the Open Access Tariffs. . . . To the extent that a public utility seeks to depart from these terms and conditions, whether due to the NERC tagging plan or otherwise (*e.g.*, by denying transmission service on a basis not allowed by the Open Access Tariff, or by adopting curtailment priorities that differ from those specified in the Open Access Tariff), it must obtain Commission authorization to revise its Open Access Tariff and, in doing so, must show that the revisions are consistent with or superior to the *proforma* Tariff.

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44 December 19 Filing, Volume IV, ISO-TP Agreement, Section 3.01.

45 EPSA at 10-11; Sithe at 39-40.

[62,415]

46 December 19 Filing, Volume I, Filing Summary at 51-52.

47 *SeePJM Interconnection,et al.*, 81 FERC ¶61,257, at p. 62,256 (1997), *order on reh'g*, 82 FERC ¶61,047 (1998).

48 December 19 Filing, Volume I, Filing Summary at 52.

49 *Id.* at 53.

50 December 19 Filing, Volume IV, ISO Agreement, Section 6.01.

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51 December 19 Filing, Volume III, ISO Tariff, Sections 12.2, 12.3.

52 *Id.*

53 December 19 Filing, Volume I, Filing Summary at 58.

54 *Id.* at 30.

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1 *See*, *e.g.*, Independent Power Producers of New York, Inc., Coalition for a Competitive Electric Market.

2 *See*, *e.g.*, Multiple Intervenors, Public Service Commission of the State of New York (New York PSC).

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3 *Atlantic City Electric Company,etal.*, 77 FERC ¶61,148 (1996).

4 *Id.* at p. 61,574.

5 *Id.* at p. 61,577.

6 "Reliable Power: Renewing the North America Reliability Oversight System," NERC Electric Reliability Panel, December 22, 1997.