

October 25, 2004

VIA FEDERAL EXPRESS

Jaclyn A. Brillong, Secretary
State of New York Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

Re: Proceeding on Motion of the Commission
Regarding a Retail Renewable Portfolio Standard
Case 03-E-0188

Dear Secretary Brillong:

On behalf of Ridgewood Renewable Power L.L.C. (“Ridgewood”), this letter motion for reconsideration (original and 26 copies) is submitted to the Public Service Commission (“PSC”) based on a change in circumstances warranting reconsideration of the PSC’s decision to establish a monthly matching requirement for renewable energy delivery under the Renewable Portfolio Standards (“RPS”). In short, recent actions taken by the New England Power Pool (“NEPOOL”) and the New York Independent System Operator (“NYISO”) have removed impediments to scheduling intermittent resources. For that reason, Ridgewood urges the PSC to reconsider its September 24, 2004 Order in the above-referenced matter (“RPS Order”) and to adopt a strict delivery standard that would require hourly matching of energy deliveries to renewable energy attributes.

In its RPS Order, the PSC imposed a monthly matching requirement for renewable energy because a strict delivery requirement “may present a significant barrier to intermittent renewable generation that by its nature is difficult to schedule with certainty” RPS Order, at 59. Monthly matching allows “intermittent renewable generation that is difficult to

schedule [to be] sold into the spot market of the control area it is located in as it is generated without simultaneous transmission into the New York Control Area, so long as an equal quantity of energy is eventually transmitted out of the affected spot market into the New York Control Area during the same calendar month". Ibid. The PSC reasoned as follows:

. . . [I]t is important that we structure the RPS in a manner that maximizes the benefits that can accrue to New York from an RPS, consistent with all applicable laws and treaties. The structure of the delivery requirement affects the contractual flow of electricity, the location of pollution reduction and economic development activities, and the levels of wholesale energy and capacity prices, resource diversity and energy security.

Id., at 61.

However, since the PSC issued its RPS Order, a significant change in circumstances affecting the ability of intermittent resources to schedule has occurred. Effective December 1, 2004, under rules recently adopted by the NEPOOL and the NYISO, scheduling intermittent renewable generation will be no more difficult or more costly than scheduling any other generation resource.

On June 21, 2004, NYISO and the New York Transmission Owners¹ filed with the Federal Energy Regulatory Commission ("FERC") revisions to the NYISO Open Access Transmission Tariff ("OATT") to eliminate charges on exports from NYISO to NEPOOL, to be effective on the same date that export charges from NEPOOL to NYISO are

¹ Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

eliminated.² On September 30, 2004, NEPOOL submitted to FERC a copy of the One Hundred Eighth Agreement Amending New England Power Pool Agreement (“108th Agreement”) eliminating charges on exports from NEPOOL to the NYISO.³

As explained by NEPOOL, coupled with the NYISO OATT amendments, “[t]he amendments contained in the 108th Agreement will allow for more efficient market transactions between New England and New York”. Exhibit B, at 1. By eliminating export charges, NEPOOL and NYISO have made it easier for generators to schedule exports on an hourly basis, even if those generators rely on intermittent resources. Simply put, as of December 1, 2004, any generator may schedule transmission for every hour of the month without incurring additional costs if its deliveries do not match the scheduled load. Accordingly, intermittent resources incur the same costs, and receive the same benefits, as any other generator on the system.

In its RPS Order, the PSC adopted the monthly matching requirement in order to

strike[] a balance between the need to provide flexibility and to accommodate the difficulties of scheduling intermittent renewable generation with the need to rely on imports to meet our goals and to preserve our ability to verify delivery of renewable electricity from renewable resources. We expect monthly matching will limit the potential for gaming or manipulation because it matches the energy transaction settlement period in use by the NYISO in the New York Control Area and that of other neighboring jurisdictions while providing sufficient flexibility to accommodate intermittent power sources and their potential to reduce wholesale prices.

RPS Order, at 61-62. However, in eliminating the charges on exports from each of their systems, NEPOOL and NYISO have struck the balance needed to provide flexibility and to accommodate

² Elimination of Rate Pancaking on Exports from the New York Control Area to the New England Control Area, Docket No. ER04-943-000. A copy of the NYISO filing is attached hereto as Exhibit A.

³ A copy of the NEPOOL filing is attached hereto as Exhibit B.

the difficulties of scheduling intermittent renewable generation with New York's potential need to rely on imports to meet its RPS goals and to preserve the State's ability to verify delivery of renewable electricity from renewable resources. Hence, a monthly matching requirement is no longer necessary to accommodate intermittent resources.

Moreover, the PSC has acknowledged the benefits of a delivery requirement, including its ability to reduce costs to ratepayers. While the monthly matching requirement may reduce costs to ratepayers, by the PSC's own reasoning, the monthly matching requirement will merely "limit potential gaming". On the other hand, a strict delivery requirement will eliminate gaming. In doing so, the strict delivery requirement will absolutely "ensure that New York State ratepayers enjoy the benefits from the costs they will incur to support the RPS program and its objectives". Id., at 61.

For these reasons, Ridgewood respectfully requests that the PSC to reconsider its decision to adopt a monthly matching requirement, and, instead, adopt a strict delivery requirement for renewable energy.

Kindly stamp one of the enclosed copies of this letter motion as "filed" and return to the undersigned in the enclosed, self-addressed stamped envelope.

Thank you in advance for your consideration.

Respectfully submitted,

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June 21, 2004

BY HAND

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FEDERAL ENERGY
REGULATORY COMMISSION

ER04-943-2100

Elimination of Rate Pancaking on Exports from
the New York Control Area to the New England Control Area

Dear Ms. Salas:

The New York Independent System Operator, Inc. ("NYISO") and the New York Transmission Owners¹ (the "Joint Filing Parties") hereby submit, pursuant to Section 205 of the Federal Power Act, revisions to the NYISO Open Access Transmission Tariff ("OATT") to eliminate the charges the NYISO currently imposes on exports to the New England Control Area. As described in detail below, the elimination of the export charges will take place on the same date on which the New England transmission owners and ISO New England Inc. ("ISO-NE") or its successor eliminates similar charges on exports to New York. The Joint Filing Parties are also prepared to eliminate the fees on exports to other regions as soon as those regions eliminate their charges on a reciprocal basis on exports to New York. The support of the New York Transmission Owners for elimination of export fees to other regions is based upon the commitments by the New York Public Service Commission ("NYPSC") that will allow the New York Transmission Owners to recover the revenues otherwise recovered from those export fees through retail rates.

¹ Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. ("Con Edison"), LIPA, New York Power Authority ("NYPA"), New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation ("Niagara Mohawk"), a National Grid Company, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation.

Disk/osec

The Honorable Magalie R. Salas, Secretary
June 21, 2004
Page 2

I. Overview of the Filing

The NYISO, the NYPSC and the New York Transmission Owners have been working diligently to eliminate the fees charged in New York on Exports² and Wheel-Through Transactions. These fees are reflected in the Transmission Service Charge ("TSC"), which is applicable to all of the New York Transmission Owners, and the NYPA Transmission Adjustment Charge ("NTAC").

Two conditions necessary for the elimination of these fees for transactions to the New England Control Area have been met or are expected to be met in the near future. First, the New York Transmission Owners have reached agreements with the NYPSC that would allow the Transmission Owners to be made whole for revenues that would otherwise be unrecoverable. The formula already embodied in the wholesale TSC will permit the New York Transmission Owners to recover a small portion of the lost revenues. The NYPSC has agreed to take the appropriate actions to ensure the recovery in retail rates of the balance of the lost transmission revenues.³ The total charges on exports from New York to New England have been approximately \$10 million per year, based upon historic data.

Second, the proposed tariff changes will become effective on the same date on which New England export fees to New York are also eliminated on a reciprocal and unconditional basis. Elimination of New York's export fees is explicitly conditioned upon the simultaneous elimination of the parallel charges imposed on exports to New York. Unless the export fees on transactions to and from New York and New England are eliminated on a reciprocal and unconditional basis, consumers will not be able to receive the benefits of the market efficiency improvements that are anticipated for both regions.

II. Stakeholder Process

The NYISO's Management Committee, with an affirmative vote of 93 percent, supports this filing.

III. Documents Submitted

The Joint Filing Parties are submitting the following documents:

1. This filing letter;

² Capitalized terms that are not otherwise defined herein shall have the meaning set forth in the NYISO OATT.

³ See April 30, 2004 letter from William Flynn, Chairman, New York Public Service Commission, and others to Commissioner Nora Mead Brownell. A copy is provided as Attachment I hereto.

The Honorable Magalie R. Salas, Secretary

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2. Letter dated April 30, 2004 from William Flynn, Chairman, New York Public Service Commission, and others to Commissioner Nora Mead Brownell (Attachment I);
3. Clean sheets for the NYISO OATT (Attachment II);
4. Blacklined sheets for the NYISO OATT (Attachment III); and
5. A form of *Federal Register* Notice (Attachment IV);

IV. The Filing

In its order conditionally granting RTO status to RTO-NE, the Commission directed the Filing Parties to “include a proposal for eliminating Through and Out Service Charges between RTO-NE and the New York ISO” by December 2004.⁴ This filing provides for the elimination of these charges on transactions from New York to New England. In a January 9, 2004 letter to William J. Museler, President of the NYISO, Chairman Wood indicated that “Elimination of export fees within the Northeast will improve interregional coordination and reduce ‘seams’ within the region.” This filing provides the Commission with a speedy resolution of that issue.

The Joint Filing Parties are hereby revising the necessary sections of the NYISO OATT to eliminate the charges for Exports and Wheel-Through Transactions to the New England Control Area. The changes are to Section 7B of the OATT and to Attachment H of the OATT. Any other charges for exports including, for example, Scheduling, System Control and Dispatch Service, Reactive Supply, and Operating Reserve Service, will remain in place. The language is limited to charges on transactions to the New England Control Area because we anticipate that the New England transmission owners and ISO-New England will agree to make a reciprocal change by simultaneously eliminating its charges for exports (including wheel-through transactions) to New York.

Indeed, as noted, the changes proposed herein will only become effective when charges on exports from the New England Control Area to the New York Control Area are comparably eliminated. Such reciprocity shall not require the NYISO or the New York Transmission Owners to modify existing provisions that are designed to protect the tax exempt status of bonds issued by LIPA, NYPA and Con Edison.⁵ Without limiting the generality of the foregoing sentence, reciprocity shall not require changes in: (1) any of the following sections of the NYISO OATT: Sections 5.0, 5.1 and 5.2, including all subsections thereunder; (2) any of the following provisions of the Agreement Between New York Independent System Operator and Transmission Owners (“ISO/TO Agreement”): Sections 3.04(D); 3.12 and 6.2; and (3) any of the following sections of the NYISO Agreement: Sections 15.01, 15.02, 15.03, 15.04, 15.05 and 15.06.

⁴ *ISO New England, et al.*, 106 FERC ¶ 61,280 P 95 (2004).

⁵ Niagara Mohawk takes no position on this issue.

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V. Reservation of Rights

The elimination of export charges to the New England Control Area does not in any way waive or diminish the rights of the New York Transmission Owners to make unilateral filings under Section 205 of the Federal Power Act to recover their reasonably incurred costs including those recovered through the charges on Exports and Wheels Through Transactions that will be eliminated pursuant to this filing.

LIPA's and NYPA's participation in this filing shall in no way be considered a waiver of their non-jurisdictional status pursuant to Section 201(f) of the Federal Power Act ("FPA") with respect to the Commission's exercise of the FPA's general ratemaking authority.

VI. Communications

The following persons should be included on the official service list in this proceeding, and all communications concerning these comments should be addressed to the following:

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The Honorable Magalie R. Salas, Secretary
June 21, 2004
Page 5

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The Honorable Magalie R. Salas, Secretary
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Page 6

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VII. Effective Date and Request for Waiver

The tariff revisions included in this filing should become effective on the date the Commission permits ISO-NE or its successor to eliminate charges on exports and wheel-through transactions to New York. Consistent with the compliance filing expected to be made by ISO-NE on June 22, 2004, in Docket No. RT04-2-000, that date is currently projected to be December 22, 2004.

The Joint Filing Parties request waiver of 18 C.F.R. § 35.3 (2003) so as to permit this filing to be made more than 120 days in advance of the effective date. The advance lead time will permit: (1) the Commission to review this filing in the context of the compliance filing in Docket No. RT04-2-000; and (2) the change in New England to be implemented under the RTO New England tariff.

VIII. Service List

Copies of this filing are being served on each customer under the NYISO OATT and its Market Administration and Control Area Services Tariff ("Services Tariff"), on the New York State Public Service Commission and on the electric utility regulatory agencies in New Jersey and Pennsylvania.

The Honorable Magalie R. Salas, Secretary
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IX. Federal Register Notice

A form of *Federal Register* Notice is provided as Attachment IV hereto. Also enclosed is a diskette with a copy of the notice in Word format.

X. Conclusion

WHEREFORE, for the foregoing reasons, the Joint Filing Parties respectfully request that the Commission accept this tariff filing to become effective as proposed herein.

Respectfully submitted,

NEW YORK TRANSMISSION OWNERS

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

By: Paul L. Gioia / A.H.Q.
Counsel

By: Arnold H. Quint
Counsel

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The Honorable Magalie R. Salas, Secretary
June 21, 2004
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The Honorable Magalie R. Salas, Secretary
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cc: All Signatories to NYISO OATT and Services Tariff
Daniel L. Larcamp
Alice M. Fernandez
Robert E. Pease
Michael A. Bardee

Attachment I

April 30, 2004

**The Honorable Nora Mead Brownell
Commissioner
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426**

Dear Commissioner Brownell:

In November 2003, and again in January 2004, during meetings with key commissioners from New York, New England and the Mid-Atlantic states, you stressed the importance of eliminating rate pancaking between the regions and offered the assistance of FERC staff to facilitate further discussions on this issue. Since that time, we have had several conference calls during which considerable progress has been made. We are pleased to report that, on April 22, 2004 a conference call was held among state commissioners from New York and New England, the NYISO and ISO-NE during which an agreement in principle was reached to support the elimination of pancaked rates between these two regions on, or possibly before, the date specified in your RTO New England Order.

The participants on the call have agreed to work together to accomplish this as soon as possible. The participants on the call agreed that the state commissions would take the appropriate actions to ensure the recovery of lost transmission revenues to the Transmission Owners within their respective regions.

This agreement demonstrates our support of the Commission's goals and our commitment to take the actions necessary to enhance the efficiency of the Northeast wholesale markets for the mutual benefit of consumers. We appreciate the support of Sarah McKinley and Colin Mount of FERC staff, both of whom helped to facilitate our resolution of this important issue. Most importantly, we appreciate your leadership which initiated this important initiative.

We look forward to working with you and the rest of the Commission in the future on further enhancements to the wholesale markets in the Northeast. If you have

any further questions concerning this matter, or any other, please feel free to contact any of the undersigned.

Thank You.

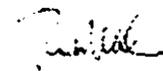
Sincerely,



William Flynn

Chairman

NYS Public Service Commission



Thomas L. Welsh

Chairman

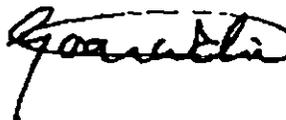
Maine Public Service Commission



William J. Museler

President and CEO

NYISO



Gordon Van Welie

President and CEO

ISO-NE

cc: Chairman Wood
Commissioners Kelly, Kelliher

Attachment II

New York Independent System Operator, Inc.
FERC Electric Tariff
Original Volume No. 1

First Revised Sheet No. 73
Superseding Original Sheet No. 73

Grandfathered Agreements are described in Attachment K.

7B.1 Transmission Service Charge - General Applicability

The TSC charge is applied to all Actual Energy Withdrawals from the NYS Power System under Part II or Part III of this Tariff, except for withdrawals by a Transmission Owner to provide bundled retail service or scheduled withdrawals associated with grandfathered transactions as specified in Attachments K and L. The TSC charge also is applied to Transactions to destinations outside the NYCA (Export or Wheel-Through Transactions), except as provided for in Section 7B.1(iv) of this Tariff.

Subject to the foregoing, the TSC applies to all Actual Energy Withdrawals regardless of whether the withdrawals occur in conjunction with a Bilateral Transaction or through the purchase of Energy from an LBMP Market. The TSC is payable under this Section regardless of whether the withdrawal is scheduled under Part II or Part III of this Tariff. Customers buying Energy from a Transmission Owner as part of a bundled retail rate will pay a portion of the Transmission Owner's transmission revenue requirement as part of their retail rates. Sales to these customers will be included in the billing units used to calculate each Transmission Owner's TSC under this Tariff in accordance with Attachment H.

Issued by: William J. Museler, President
Issued on: June 21, 2004

Effective:

New York Independent System Operator, Inc.
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First Revised Sheet No. 75
Superseding Original Sheet No. 75

regardless of whether such withdrawals are associated with Transmission Service under Part II or Part III of this Tariff or purchases from an LBMP Market, whether the withdrawals are scheduled or unscheduled, and regardless of whether the withdrawals were made on the Load's behalf by the LSE or by another Transmission Customer.

- (iv) **Payable by Eligible Customers Scheduling Export or Wheel-Through Transactions:** Eligible Customers scheduling Transactions to destinations outside the NYCA (Export or Wheel-Through Transactions) are subject to a TSC as calculated in Attachment H. The TSC charge shall be eliminated on all Exports and Wheel-Through Transactions scheduled with the ISO to destinations within the New England Control Area; provided that the following conditions shall continue to be met: (1) a Commission approved tariff provision is in effect that provides for unconditional reciprocal elimination of charges on Exports and Wheel-Through Transactions from the New England Control Area to the New York Control Area; (2) no change in the provisions in this Tariff related to Local Furnishing Bonds and Other Tax Exempt Financing shall be

Issued by: William J. Museler, President
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Original Sheet No. 75A

required for the reciprocal elimination of charges on Export and Wheel-Through Transactions to the New York Control Area; and (3) the New York Transmission Owners have the ability to fully recover the revenues related to the charges on Export and Wheel-Through Transactions that are eliminated. The ISO and the New York Transmission Owners, jointly or separately, shall have the right to make a Section 205 filing with the Commission to reimpose the charge on Exports and Wheel-Through Transactions if at any time any of the foregoing conditions is no longer satisfied. The ISO will perform the requisite calculation and inform the Transmission Customer of the applicable Transmission Owner(s) of the TSC charge. The TSC will be payable by the Transmission Customer directly to the Transmission Owner(s).

7B.2 Transmission Usage Charge (TUC)

- (i) **Payable to the ISO:** Transmission Usage Charges include Congestion Rents and charges for Marginal Losses. They are payable directly to the ISO. Attachment J explains the calculation of the TUC.

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Issued on: June 21, 2004

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New York Independent System Operator, Inc.
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First Revised Sheet No. 78
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(iv) **Payable by Transmission Owners Serving Bundled Retail Customers:**

Transmission Owners scheduling Transmission Service or purchases from the LBMP Market to serve of bundled retail customers shall pay the ISO Ancillary Services charges as described in Schedules 1 to 6 based on Actual Energy Withdrawals.

7B.4 NYPA Transmission Adjustment Charge (NTAC)

(i) **Payable to the ISO:** NTAC charges are calculated in Attachment H. All NTAC charges are payable to the ISO.

(ii) **Payable by LSEs Serving Non-Retail Access Load in NYCA:** LSEs serving Load in the NYCA that is not part of a retail access program, such as municipal electric systems, shall pay an NTAC to the ISO. The NTAC will be based on all Actual Energy Withdrawals of Energy by the Load on whose behalf the LSE acts as scheduling agent, regardless of whether the transmission service was rendered on the Load's behalf by the LSE or by another Transmission Customer.

(iii) **Payable by Eligible Customers Scheduling Export or Wheel-Through Transactions:** Eligible Customers scheduling Export or Wheel-Through Transactions shall pay an NTAC based on their Transaction schedules. The NTAC charge shall not apply to Exports and Wheel-Through

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Issued on: June 21, 2004

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Transactions scheduled with the ISO to destinations within the New
England Control Area provided that the conditions listed in Section
7B.1(iv) of this Tariff are satisfied.

Issued by: William J. Museler, President
Issued on: June 21, 2004

Effective:

New York Independent System Operator, Inc.
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Attachment H

First Revised Sheet No. 388
Superseding Original Sheet No. 388

ATTACHMENT H

**ANNUAL TRANSMISSION REVENUE REQUIREMENT FOR POINT-TO-POINT
TRANSMISSION SERVICE
AND NETWORK INTEGRATION TRANSMISSION SERVICE**

I. TSC

1.0 Applicability of the Transmission Service Charge to Wholesale Customers

Each month, each wholesale Transmission Customer shall pay to the appropriate Transmission Owner the applicable Wholesale Transmission Service Charge ("Wholesale TSC") calculated in accordance with Section 2.2 of this Attachment for the first two months of LBMP implementation and in accordance with Section 2.1 of this Attachment thereafter. The TSC shall apply to Transmission Service:

- (a) from one or more Interconnection Points between the NYCA and another Control Area to one or more Interconnection Points between the NYCA and another Control Area ("Wheels Through");²
- (b) from the NYCA to one or more Interconnection Points between the NYCA and another Control Area, including transmission to deliver Energy purchased from the LBMP Market and delivered to such a Control Area Interconnection Point ("Exports");² or

² The TSC shall not apply to Wheels Through or Exports scheduled with the ISO to destinations within the New England Control Area provided that the conditions listed in Section 7B.1(iv) of this Tariff are satisfied.

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Issued on: June 21, 2004

Effective:

New York Independent System Operator, Inc.
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Attachment H

First Revised Sheet No. 410
Superseding Original Sheet No. 410

Fairport	1.0%
Brockport	1.0%
Scottsville	1.0%
East Rochester	1.0%

6.0 TSC For Retail Access Customers (RTSC)

Customers who apply for unbundled Transmission Service in accordance with the provisions of a Transmission Owner's retail access program filed with the PSC or, in the case of LIPA, approved by the Long Island Power Authority's Board of Trustees, will be responsible for paying a retail transmission service charge as detailed in Part IV of this Tariff.

7.0 NYPA Transmission Service Charge

The NYPA TSC for service to its directly connected Loads (Reynolds Metals, GM-Massena, Town of Massena and the City of Plattsburgh) shall, at the Eligible Customer's option, be (a) \$1.30 per kilowatt-month or (b) no more than \$3.75 per MWh; not to exceed \$60.00 per MW Day applied to peak MWh scheduled any hour each day; not to exceed \$300.00 per MW-Week applied to the peak MWh scheduled any hour each week. The TSC applicable to service over the Vermont intertie* and the Ontario-Hydro intertie shall be the same as (b). The TSC applicable to service over the Hydro-Quebec intertie shall be no more than \$4.62 per MWh; not to exceed \$73.85 per MW-Day applied to peak MWh scheduled each day; not to exceed

* The NYPA TSC shall not apply to service over the Vermont intertie provided that the conditions listed in Section 7B.1(iv) of this Tariff are satisfied.

Issued by: William J. Museler, President
Issued on: June 21, 2004

Effective:

New York Independent System Operator, Inc.
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Attachment H

First Revised Sheet No. 414
Superseding Original Sheet No. 414

II. NYPA TRANSMISSION ADJUSTMENT CHARGE (“NTAC”)

1.0 Applicability of the NYPA Transmission Adjustment Charge

Each month, the ISO shall charge, and each Transmission Customer shall pay, the applicable NYPA Transmission Adjustment Charge (“NTAC”) calculated in accordance with Section 2.2 of this Attachment for the first two (2) months of LBMP and in accordance with Section 2.1 of this Attachment thereafter. The NTAC shall apply to Transmission Service:

- (a) from one or more Interconnection Points between the NYCA and another Control Area to one or more Interconnection Points between the NYCA and another Control Area (“Wheels Through”);^{*} or
- (b) from the NYCA to one or more Interconnection Points between the NYCA and another Control Area, including transmission to deliver Energy purchased from the LBMP Market and delivered to such a Control Area Interconnection (“Exports”);^{*} or
- (c) to serve Load within the NYCA.

In summary the NTAC will be applied to all Energy Transactions, including internal New York State Loads and Wheels Through and Exports out of the NYCA at a uniform, non-discountable rate.

^{*} The NTAC shall not apply to Wheels Through or Exports scheduled with the ISO to destinations within the New England Control Area provided that the conditions listed in Section 7B.1(iv) of this Tariff are satisfied.

Issued by: William J. Museler, President
Issued on: June 21, 2004

Effective:

Attachment III

New York Independent System Operator, Inc.
FERC Electric Tariff
Original Volume No. 1

First Revised Sheet No. 73
Superseding Original Sheet No. 73

Grandfathered Agreements are described in Attachment K.

7B.1 Transmission Service Charge - General Applicability

The TSC charge is applied to all Actual Energy Withdrawals from the NYS Power System under Part II or Part III of this Tariff, except for withdrawals by a Transmission Owner to provide bundled retail service or scheduled withdrawals associated with grandfathered transactions as specified in Attachments K and L. The TSC charge also is applied to Transactions to destinations outside the NYCA (Export or Wheel-Through Transactions), except as provided for in Section 7B.1(iv) of this Tariff.

Subject to the foregoing, the TSC applies to all Actual Energy Withdrawals regardless of whether the withdrawals occur in conjunction with a Bilateral Transaction or through the purchase of Energy from an LBMP Market. The TSC is payable under this Section regardless of whether the withdrawal is scheduled under Part II or Part III of this Tariff. Customers buying Energy from a Transmission Owner as part of a bundled retail rate will pay a portion of the Transmission Owner's transmission revenue requirement as part of their retail rates. Sales to these customers will be included in the billing units used to calculate each Transmission Owner's TSC under this Tariff in accordance with Attachment H.

Issued by: William J. Museler, President Effective: September 1, 2000
Issued on: November 10, 2000 June 21, 2004
Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. RM99-12-000, issued March 31, 2000, 90 FERC ¶ 61,352 (2000).

New York Independent System Operator, Inc.
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First Revised Sheet No. 75
Superseding Original Sheet No. 75

regardless of whether such withdrawals are associated with Transmission Service under Part II or Part III of this Tariff or purchases from an LBMP Market, whether the withdrawals are scheduled or unscheduled, and regardless of whether the withdrawals were made on the Load's behalf by the LSE or by another Transmission Customer.

- (iv) **Payable by Eligible Customers Scheduling Export or Wheel-Through Transactions:** Eligible Customers scheduling Transactions to destinations outside the NYCA (Export or Wheel-Through Transactions) are subject to a TSC as calculated in Attachment H. The TSC charge shall be eliminated on all Exports and Wheel-Through Transactions scheduled with the ISO to destinations within the New England Control Area; provided that the following conditions shall continue to be met: (1) a Commission approved tariff provision is in effect that provides for unconditional reciprocal elimination of charges on Exports and Wheel-Through Transactions from the New England Control Area to the New York Control Area; (2) no change in the provisions in this Tariff related to Local Furnishing Bonds and Other Tax Exempt Financing shall be

Issued by: William J. Museler, President
Issued on: November 10, 2000 June 21, 2004

Effective: September 1, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. RM99-12-000, issued March 31, 2000, 90 FERC ¶ 61,352 (2000).

New York Independent System Operator, Inc.
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Original Sheet No. 75A

required for the reciprocal elimination of charges on Export and Wheel-Through Transactions to the New York Control Area; and (3) the New York Transmission Owners have the ability to fully recover the revenues related to the charges on Export and Wheel-Through Transactions that are eliminated. The ISO and the New York Transmission Owners, jointly or separately, shall have the right to make a Section 205 filing with the Commission to reimpose the charge on Exports and Wheel-Through Transactions if at any time any of the foregoing conditions is no longer satisfied. The ISO will perform the requisite calculation and inform the Transmission Customer of the applicable Transmission Owner(s) of the TSC charge. The TSC will be payable by the Transmission Customer directly to the Transmission Owner(s).

7B.2 Transmission Usage Charge (TUC)

- (i) **Payable to the ISO:** Transmission Usage Charges include Congestion Rents and charges for Marginal Losses. They are payable directly to the ISO. Attachment J explains the calculation of the TUC.

Issued by: William J. Museler, President
Issued on: June 21, 2004

Effective:

New York Independent System Operator, Inc.
FERC Electric Tariff
Original Volume No. 1

First Revised Sheet No. 78
Superseding Original Sheet No. 78

(iv) **Payable by Transmission Owners Serving Bundled Retail Customers:**

Transmission Owners scheduling Transmission Service or purchases from the LBMP Market to serve of bundled retail customers shall pay the ISO Ancillary Services charges as described in Schedules 1 to 6 based on Actual Energy Withdrawals.

7B.4 NYPA Transmission Adjustment Charge (NTAC)

(i) **Payable to the ISO:** NTAC charges are calculated in Attachment H. All NTAC charges are payable to the ISO.

(ii) **Payable by LSEs Serving Non-Retail Access Load in NYCA:** LSEs serving Load in the NYCA that is not part of a retail access program, such as municipal electric systems, shall pay an NTAC to the ISO. The NTAC will be based on all Actual Energy Withdrawals of Energy by the Load on whose behalf the LSE acts as scheduling agent, regardless of whether the transmission service was rendered on the Load's behalf by the LSE or by another Transmission Customer.

(iii) **Payable by Eligible Customers Scheduling Export or Wheel-Through Transactions:** Eligible Customers scheduling Export or Wheel-Through Transactions shall pay an NTAC based on their Transaction schedules.

The NTAC charge shall not apply to Exports and Wheel-Through

Issued by: William J. Museler, President
Issued on: ~~November 10, 2000~~ June 21, 2004

Effective: September 1, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. RM99-12-000, issued March 31, 2000, 90 FERC ¶ 61,352 (2000).

New York Independent System Operator, Inc.
FERC Electric Tariff
Original Volume No. 1

Original Sheet No. 78A

Transactions scheduled with the ISO to destinations within the New
England Control Area provided that the conditions listed in Section
7B.1(iv) of this Tariff are satisfied.

Issued by: William J. Museler, President
Issued on: June 21, 2004

Effective:

New York Independent System Operator, Inc.
FERC Electric Tariff
Original Volume No. 1
Attachment H

First Revised Sheet No. 388
Superseding Original Sheet No. 388

ATTACHMENT H

**ANNUAL TRANSMISSION REVENUE REQUIREMENT FOR POINT-TO-POINT
TRANSMISSION SERVICE
AND NETWORK INTEGRATION TRANSMISSION SERVICE**

I. TSC

1.0 Applicability of the Transmission Service Charge to Wholesale Customers

Each month, each wholesale Transmission Customer shall pay to the appropriate Transmission Owner the applicable Wholesale Transmission Service Charge ("Wholesale TSC") calculated in accordance with Section 2.2 of this Attachment for the first two months of LBMP implementation and in accordance with Section 2.1 of this Attachment thereafter. The TSC shall apply to Transmission Service:

- (a) from one or more Interconnection Points between the NYCA and another Control Area to one or more Interconnection Points between the NYCA and another Control Area ("Wheels Through");²
- (b) from the NYCA to one or more Interconnection Points between the NYCA and another Control Area, including transmission to deliver Energy purchased from the LBMP Market and delivered to such a Control Area Interconnection Point ("Exports");² or

² The TSC shall not apply to Wheels Through or Exports scheduled with the ISO to destinations within the New England Control Area provided that the conditions listed in Section 7B.1(iv) of this Tariff are satisfied.

Issued by: William J. Museler, President Effective: September 1, 2000
Issued on: November 10, 2000/June 21, 2004
~~Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. RM99-12-000, issued March 31, 2000, 90 FERC ¶ 61,352 (2000).~~

New York Independent System Operator, Inc.
FERC Electric Tariff
Original Volume No. 1
Attachment H

First Revised Sheet No. 410
Superseding Original Sheet No. 410

Fairport	1.0%
Brockport	1.0%
Scottsville	1.0%
East Rochester	1.0%

6.0 TSC For Retail Access Customers (RTSC)

Customers who apply for unbundled Transmission Service in accordance with the provisions of a Transmission Owner's retail access program filed with the PSC or, in the case of LIPA, approved by the Long Island Power Authority's Board of Trustees, will be responsible for paying a retail transmission service charge as detailed in Part IV of this Tariff.

7.0 NYPA Transmission Service Charge

The NYPA TSC for service to its directly connected Loads (Reynolds Metals, GM-Massena, Town of Massena and the City of Plattsburgh) shall, at the Eligible Customer's option, be (a) \$1.30 per kilowatt-month or (b) no more than \$3.75 per MWh; not to exceed \$60.00 per MW Day applied to peak MWh scheduled any hour each day; not to exceed \$300.00 per MW-Week applied to the peak MWh scheduled any hour each week. The TSC applicable to service over the Vermont intertie^a and the Ontario-Hydro intertie shall be the same as (b). The TSC applicable to service over the Hydro-Quebec intertie shall be no more than \$4.62 per MWh; not to exceed \$73.85 per MW-Day applied to peak MWh scheduled each day; not to exceed

^a The NYPA TSC shall not apply to service over the Vermont intertie provided that the conditions listed in Section 7B.1(iv) of this Tariff are satisfied.

Issued by: William J. Museler, President Effective: September 1, 2000
Issued on: November 10, 2000 ~~June 21, 2004~~
Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. RM99-12-000, issued March 31, 2000, 90 FERC ¶ 61,352 (2000).

New York Independent System Operator, Inc.
FERC Electric Tariff
Original Volume No. 1
Attachment H

First Revised Sheet No. 414
Superseding Original Sheet No. 414

II. NYPA TRANSMISSION ADJUSTMENT CHARGE (“NTAC”)

1.0 Applicability of the NYPA Transmission Adjustment Charge

Each month, the ISO shall charge, and each Transmission Customer shall pay, the applicable NYPA Transmission Adjustment Charge (“NTAC”) calculated in accordance with Section 2.2 of this Attachment for the first two (2) months of LBMP and in accordance with Section 2.1 of this Attachment thereafter. The NTAC shall apply to Transmission Service:

- (a) from one or more Interconnection Points between the NYCA and another Control Area to one or more Interconnection Points between the NYCA and another Control Area (“Wheels Through”);² or
- (b) from the NYCA to one or more Interconnection Points between the NYCA and another Control Area, including transmission to deliver Energy purchased from the LBMP Market and delivered to such a Control Area Interconnection (“Exports”);² or
- (c) to serve Load within the NYCA.

In summary the NTAC will be applied to all Energy Transactions, including internal New York State Loads and Wheels Through and Exports out of the NYCA at a uniform, non-discountable rate.

² The NTAC shall not apply to Wheels Through or Exports scheduled with the ISO to destinations within the New England Control Area provided that the conditions listed in Section 7B.1(iv) of this Tariff are satisfied.

Issued by: William J. Museler, President Effective: ~~September 1, 2000~~
Issued on: ~~November 10, 2000~~ June 21, 2004
Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. RM99-12-000, issued March 31, 2000, 90 FERC ¶ 61,352 (2000).

Attachment IV

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

New York Independent System Operator, Inc.) Docket No. ER04-

NOTICE OF FILING

Take notice that on June 21, 2004, the New York Independent System Operator, Inc. ("NYISO") and the New York Transmission Owners filed a joint filing to eliminate export charges on exports to the New England Control Area.

The NYISO has served a copy of this filing upon all parties that have executed Service Agreements under the NYISO's Open Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designed on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's website at <http://www.ferc.gov>, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or call toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the "e-filing" link. The Commission strongly encourages electronic filings.

Comment Date:

**Magalie R. Salas, Esq.
Secretary**

Day, Berry & Howard LLP

C O U N S E L L O R S A T L A W

David T. Doot
Direct Dial: (860) 275-0102
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September 30, 2004

VIA OVERNIGHT DELIVERY

The Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

*Re: New England Power Pool, Docket No. ER05-_____-000
 One Hundred Eighth Agreement Amending New England Power Pool Agreement
 (Elimination of New England/New York Through or Out Charges)*

Dear Secretary Salas:

Pursuant to Section 205 of the Federal Power Act (“Section 205”), 16 U.S.C. § 824(d) (2004) and Part 35 of the Commission’s Regulations, 18 C.F.R. § 35 (2004), the New England Power Pool (“NEPOOL”) Participants Committee¹ hereby submits an original and six (6) copies of this transmittal letter, the One Hundred Eighth Agreement Amending New England Power Pool Agreement (the “108th Agreement”) and additional supporting information. The 108th Agreement amends the NEPOOL Tariff in order to reduce to zero the Through or Out service charges for transactions through or out of NEPOOL and that have the New York Control Area boundary as their point of delivery. The New York Independent System Operator (“NYISO”) has a similar provision in its tariff that will eliminate its through or out charges for transactions through or out of New York on a reciprocal basis on the same date that amendments proposed in the 108th Agreement become effective. The amendments contained in the 108th Agreement will allow for more efficient market transactions between New England and New York.

The transmission owners in New England (the “TOs”) and ISO New England (“ISO-NE”) (collectively, the “RTO Filing Parties”) have worked within the NEPOOL process to help develop these changes to the existing NEPOOL Tariff and thereby implement them faster than through the RTO implementation process. Although this is a NEPOOL filing, the RTO Filing

¹ Capitalized terms used but not defined in this filing are intended to have the meanings given to such terms in Section 1 of the Restated New England Power Pool Agreement (“Restated NEPOOL Agreement” or “RNA”), Section 1 of the Restated NEPOOL Open Access Transmission Tariff (the “NEPOOL Tariff”) or Market Rule 1.

Parties intend to adopt these proposed amendments into the RTO Tariff upon implementation of that tariff.

This transmittal letter sets forth the background of the filing, describes the amendments, and provides the Commission with additional supporting information related to the 108th Agreement.

NEPOOL requests a December 1, 2004 effective date for the amendments contained in the 108th Agreement. ISO-NE and the New England Conference of Public Utility Commissioners, Inc. (“NECPUC”) each supports the elimination of the Through or Out Service charges between New England and New York on December 1, 2004.

I. BACKGROUND

The genesis of the 108th Agreement is the proposal submitted by the RTO Filing Parties to establish a Regional Transmission Organization for New England (the “RTO”). In their proposal, the RTO Filing Parties recognized the desirability of eliminating obstacles to efficient energy trading between New England and New York and proposed to try to eliminate them as expeditiously as possible.²

In its March 24, 2004 Order Granting RTO Status Subject to Fulfillment of Requirements and Establishing Hearing and Settlement Judge Procedures (the “March 24 Order”),³ the Commission required that, within 90 days of the March 24 Order, the Filing Parties make a compliance filing containing a proposal for eliminating Through or Out service charges between New England and New York within six months of the date of the Filing Parties’ compliance filing.⁴

On June 21, 2004, NYISO and the New York transmission owners submitted revisions to the NYISO Open Access Transmission Tariff (“NYISO OATT”) to eliminate the charges that NYISO currently imposes on exports to the New England Control Area. The proposed changes to the NYISO OATT are designed to become effective on the same date on which the RTO Filing Parties eliminate similar charges on exports through or out of New England to New York.⁵

² See proposed RTO Open Access Transmission Tariff (“RTO OATT”) at Section 25.2.

³ *ISO New England Inc., et al.*, 106 FERC ¶ 61,280 (2004).

⁴ March 24 Order at P 95.

⁵ See *New York System Operator, Inc.*, Docket No. ER04-943-000, NYISO and New York transmission owners’ transmittal letter to Elimination of Rate Pancaking on Exports from the New York Control Area to the New England Control Area, at p. 1.

In accordance with the Commission's March 24 Order, on June 22, 2004, the RTO-NE Filing Parties submitted a compliance filing (the "RTO Filing Parties' Compliance Filing") in which they proposed to make a filing, as soon as reasonably practicable and in a timeframe that allows full public comment and Commission consideration, that will eliminate Through or Out service charges by December 22, 2004. Additionally, the Filing Parties requested an extension of the time for filing the RTO OATT sheets to October 22, 2004 to comply with the Commission's directives to propose the elimination of Through or Out Service charges between New England and New York within six months of the RTO Filing Parties' Compliance Filing.⁶

In early Summer 2004 the RTO Filing Parties concluded that New England/New York Through or Out service charge elimination could occur faster if changes were made to the existing NEPOOL Tariff and then adopted into the RTO tariff upon implementation of the RTO.⁷ Accordingly, proposed amendments to the NEPOOL Tariff were developed through the NEPOOL Tariff Committee and recommended for Participants Committee approval by a vote of the Tariff Committee on August 20, 2004.

On September 10, 2004 the NEPOOL Participants Committee discussed and voted on the 108th Agreement with a vote of approximately 92% in favor of balloting the 108th Agreement as presented in this filing.⁸ At the September 10 meeting there was one issue that was raised and debated. That issue involved a provision that had been in the proposed language that was recommended by the Tariff Committee. The provision would have provided that Through or Out Service charge revenues received in 2004 would be excluded from the annual transmission revenue requirements, calculated in accordance with the NEPOOL Tariff formula rate (Attachment F), for rates effective June 1, 2005. Participants decided overwhelmingly that such revenues should be included in the rate as calculated pursuant to the formula rate mechanism in Attachment F and the provision was removed from the proposed 108th Agreement.⁹

⁶ See Filing Parties' Compliance Filing at p. 8; *see also* March 24 Order at P 95.

⁷ In early Summer 2004 there was still considerable uncertainty about whether and when a settlement could be achieved regarding the issues associated with the RTO filing and the March 24 Order.

⁸ All Participants present voted in favor of balloting the amendments contained in the 108th Agreement, with the following exceptions: Central Maine Power and Vermont Electric Company voted against and Northeast Utilities and Bangor Hydro abstained.

⁹ One TO objected to this language being removed, stating that the decision to accelerate the elimination of Through and Out Service charges was premised on this exception to the formula rate. Further, the TO suggested that, since TOs would not be receiving these revenues in the future, they should not be reflected as a future credit in calculating revenue requirements. In response, however, Participants supporting the removal of this language noted that no Through or Out Service charge revenues were reflected in the first year the NEPOOL Tariff was in effect (when it was known that such revenues would be received) and that these export revenues are properly included in the formula as a revenue credit. They also noted that the March 24 Order required the elimination of Through or Out Service charges, not any

Since the September 10, 2004 Participants Committee, the 108th Agreement has been successfully balloted and approved by a NEPOOL Vote of 96% in accordance with the requirements of the Restated NEPOOL Agreement. No appeal of the September 10 vote was filed within the ten-day appeal period and the action of the Participants Committee is final.

II. DESCRIPTION OF THE AMENDMENTS

The 108th Agreement amends Section 20 the NEPOOL Tariff by dividing it into three subsections, one of which will provide for the reduction to zero of the Through or Out Charge for transactions out of or through New England to New York.

Specifically, Section 20.1 provides that:

each Participant or Non-Participant which takes Through or Out Service shall pay to NEPOOL a charge per Kilowatt of Reserved Capacity based on an annual rate (the "T or O Rate") which shall be the Pool PTF Rate, except as provided for in Section 20.3. The Transmission Customer shall also be obligated to pay any ancillary service charges and any charges required to be paid pursuant to this Tariff and Market Rule 1.
(Emphasis added.)

The underlined language in Section 20.1 provides the exception for those transactions across the New England/New York control area boundary. The rest of the language in Section 20.1 is already in the NEPOOL Tariff.

Section 20.2 provides that:

The rate per hour for Through or Out Service shall be the annual Pool PTF Rate divided by 8760. The Pool PTF Rate shall be the Rate determined annually in accordance with paragraph (2) of Schedule 8.

This language is already in the NEPOOL Tariff and has merely been broken out into a separate subsection.

Section 20.3 is the key substantive change to the NEPOOL Tariff. It provides as follows:

The T or O Rate shall be reduced to zero for any Through or Out Service transaction that (a) goes through or out of the NEPOOL Control Area and (b) has the NEPOOL/New York Control Area boundary as its Point of Delivery, provided that a FERC-approved

adjustment in the formula rate mechanism, and transmission customers should not be required to make that adjustment in exchange for compliance.

New York ISO tariff provision is in effect that reduces charges to zero on transactions through or out of the New York Control Area to the NEPOOL Control Area boundary. The reduction to zero of the T or O Rate to New York shall become effective on January 1, 2005 (or such other later date as the Commission directs) and shall only apply to the Schedule 8 charges. The reduction of the T or O Rate to zero pursuant to this Section 20.3 shall not apply to transmission customers taking service under Section 43.3 of this Tariff; such transmission customers shall continue to pay charges for such service based on the full T or O Rate as applied to the amount reserved for the Network Load which is not physically interconnected with the PTF.

The elimination of the New England/New York Through or Out Service charge has been expressed in this provision as a “reduction to zero of the T or O rate”, because the TOs wanted to be clear that although the Through or Out Service charge is being eliminated, there will still be ancillary services associated with New England/New York transactions that will be required and these will still be paid for under the NEPOOL Tariff.

Additionally, the last sentence of this provision, which refers to customers taking service under Section 43.3 of the NEPOOL Tariff, is intended to apply to customers that are not physically interconnected to the PTF but are part of a Participant’s Network Load, such as load outside the NEPOOL Control Area in New York. Without this language, the reduction of the Through or Out Service rate to zero could be misinterpreted to also apply to an elimination of the Regional Network Service charges for NEPOOL customers physically located in New York. Such customers would take regional network service not under the NYISO OATT but under the NEPOOL Tariff, which utilizes the Through or Out Service rate to determine their Regional Network Service charge. As such, the concern is that such customers would not pay for any regional network transmission service under the tariff of either NYISO or NEPOOL but they would still receive such service under the NEPOOL Tariff. To date, no transmission customer has taken service under Section 43.3 of the NEPOOL Tariff, nor is NEPOOL aware of any customers seeking such service.

In addition to these changes to Section 20 of the NEPOOL Tariff, there are three minor conforming or clarifying change proposed to Section 1 of Schedule 8. First, language has been added that makes clear that transmission customers continue to have an obligation to pay the Through or Out Service charges “[e]xcept as provided for in accordance with Section 20.” Second, the words “the Pool PTF Rate” have been added to clarify what is being paid when payments are made. Third, the words “this Tariff” have been added to clarify that the charges for energy transactions that use Through or Out Service are made pursuant to the NEPOOL Tariff as well as Market Rule 1.

III. CONCLUSION

The Commission should approve the amendments contained in the 108th Agreement. They will enhance the efficiency of electricity transactions between New England and New York and will help carry out the objective-- held by NEPOOL, the TOs, ISO-NE, NECPUC, and the

Commission-- of markets seams reduction between New England and New York. The proposed amendments have the overwhelming support of NEPOOL. Additionally, the elimination of the Through or Out Service charge between New England and New York is supported by NECPUC and ISO-NE. ISO-NE is prepared to implement these changes as of December 1, 2004, the requested effective date, and is coordinating with NYISO for NYISO's implementation of reciprocal elimination of through or out service charges for transaction out of or through New York to the New England Control Area boundary.

IV. ADDITIONAL SUPPORTING INFORMATION

The Participants Committee submits the following additional information pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824(d), and 18 C.F.R. § 35.13:

35.13(b)(1) - Materials included herewith are as follows:

- This transmittal letter;
- The 108th Agreement (Attachment 1);
- Revised sheets of the NEPOOL Tariff reflecting all changes made by the 108th Agreement (Attachment 2);
- Relevant sections of the NEPOOL Tariff marked to show the changes to be effected by the 108th Agreement (Attachment 3);
- A list of NEPOOL Participants Committee members and alternates and Non-Participant Transmission Customers to which a copy of this filing has been sent (Attachment 4).
- A list of governors and utility regulatory agencies in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut to which a copy of this filing has been sent (Attachment 5);
- Tabulation of votes in balloting of 108th Agreement (Attachment 6); and
- A draft form of notice, suitable for the publication in the *Federal Register* (Attachment 7), and a diskette containing this form of notice.

35.13(b)(2) – The NEPOOL Participants Committee requests that the Commission accept the 108th Agreement to become effective on December 1, 2004.

35.13(b)(3) – Attachment 4 to this transmittal letter contains the names and addresses of all Non-Participant Transmission Customers and Participants Committee members and alternates, which include all of the electric utilities rendering or receiving services under the

Restated NEPOOL Agreement, as well as each of the independent power producers, power marketers, power brokers, load aggregators, end users, and merchant transmission providers that are currently Participants in NEPOOL. All Participants have been furnished with a copy of this filing.¹⁰ This transmittal letter and the accompanying materials have also been sent to the governors and electric utility regulatory agencies for the six New England states that comprise the NEPOOL Control Area, and to the NECPUC. The names and addresses of these governors and regulatory agencies are shown in Attachment 5. In accordance with the Commission's rules and practice, there is no need for the entities identified in Attachments 4 and 5 to be included on the Commission's official service list in this proceeding unless such entities become intervenors in this proceeding.

35.13(b)(4) - A description of the materials submitted pursuant to this filing is contained in this transmittal letter.

35.13(b)(5) - The reasons for this filing are discussed in the background section to this transmittal letter.

35.13(b)(6) - Actions by the NEPOOL Participants Committee regarding amendments to the Restated NEPOOL Agreement, which includes the NEPOOL Tariff, must be approved by an affirmative vote equal to, or in excess of, two-thirds of the aggregate Sector Voting Shares, provided the Minimum Response Requirement of the Restated NEPOOL Agreement has been satisfied. The 108th Agreement has been approved by the NEPOOL Participants Committee. Sector Voting Shares totaling 96% voted in favor of the 108th Agreement, as reflected in the tabulation of the vote set forth in Attachment 6 hereto.¹¹

35.13(b)(7) - The NEPOOL Participants Committee has no knowledge of any relevant expenses or costs of service that have been alleged or judged in any administrative or judicial proceeding to be illegal, duplicative, or unnecessary costs that are demonstrably the product of discriminatory employment practices.

35.13(b)(8) - Submitted as Attachment 7 to this transmittal letter is a draft form of notice concerning this filing that is suitable for publication in the *Federal Register* in accordance with

¹⁰ Pursuant to changes to Section 21.13(e) of the RNA, which was accepted by the Commission in *New England Power Pool*, 90 FERC ¶ 61,019 (2000), NEPOOL Participants are being served electronically rather than by hard copy.

¹¹ The NEPOOL Transmission Owners Committee has not yet taken any action with respect to the 108th Agreement. The issue of the locus of unilateral filing rights with respect to the transmission-related provisions of the Restated NEPOOL Agreement and the NEPOOL Tariff is the subject of dispute which is reserved pursuant to Section 17A.7 of the Restated NEPOOL Agreement. Nothing in this submittal is intended to express, assert or concede any position on behalf of any NEPOOL Participant or group of Participants (including the NEPOOL Participants Committee and the NEPOOL Transmission Owners Committee) as to the reserved issue.

Section 35.8 of the Commission's Regulations. A diskette containing this form of notice is also enclosed.

35.13(c)(1) - The 108th Agreement is not expected to effect any rate increase, except to the extent that the Attachment F formula rate mechanism will no longer adjust the Regional Network Service rate downwards, as of June 2006, by the amount of Through or Out Service charge revenues that would otherwise have been received for transactions between New England and New York.

35.13(c)(2) - The Participants do not jointly provide services under other rate schedules that are similar to the wholesale for resale and transmission services jointly provided by them under the Restated NEPOOL Agreement.

35.13(c)(3) - No specifically assignable facilities have been or will be installed or modified in order to supply service under the 108th Agreement.

All correspondence and communications to NEPOOL in this proceeding should be addressed to:

Donald Sipe
Chair, NEPOOL Participants Committee
45 Memorial Circle
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The Honorable Magalie Roman Salas
September 30, 2004
Page 9

Please acknowledge receipt of the foregoing by date-stamping and returning the enclosed extra copy of this filing in the self-addressed, postage pre-paid envelope provided herewith.

Respectfully submitted,
NEPOOL PARTICIPANTS COMMITTEE

By: _____

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Its Attorneys

EKR/mrc
Attachments

cc : Entities listed in Attachments 4 and 5

ATTACHMENT 1

ONE HUNDRED EIGHTH AGREEMENT AMENDING
NEW ENGLAND POWER POOL AGREEMENT
(ELIMINATION OF THROUGH AND OUT CHARGES)

THIS ONE HUNDRED EIGHTH AGREEMENT AMENDING NEW ENGLAND POWER POOL AGREEMENT, dated as of September 10, 2004 (“One Hundred Eighth Agreement”), amends the New England Power Pool Agreement (the “NEPOOL Agreement”), as amended.

WHEREAS, the NEPOOL Agreement as in effect on December 1, 1996 was amended and restated by the Thirty-Third Agreement Amending the New England Power Pool Agreement dated as of December 1, 1996 (the “Thirty-Third Agreement”) in the form of the Restated New England Power Pool Agreement (“Restated NEPOOL Agreement”) attached to the Thirty-Third Agreement as Exhibit A thereto, and the Thirty-Third Agreement also provided for the NEPOOL Open Access Transmission Tariff (the “NEPOOL Tariff”) which is Attachment B to the Restated NEPOOL Agreement; and

WHEREAS, the Restated NEPOOL Agreement and the NEPOOL Tariff have subsequently been amended numerous times; and

WHEREAS, the Participants desire to amend the Restated NEPOOL Agreement, including the NEPOOL Tariff, as heretofore amended, to reflect the revisions detailed herein.

NOW, THEREFORE, upon approval of this One Hundred Eighth Agreement by the NEPOOL Participants Committee in accordance with the procedures set forth in the NEPOOL Agreement, the Participants agree as follows:

SECTION 1
AMENDMENTS TO THE TARIFF

1.1 Amendment to Section 20. Section 20 of the NEPOOL Tariff is amended to read as follows:

20 Payment & Rate for Through or Out Service

20.1 Payment for Through or Out Service: Each Participant or Non-Participant which takes Through or Out Service shall pay to NEPOOL a charge per Kilowatt of Reserved Capacity based on an annual rate (the “T or O Rate”) which shall be the Pool PTF Rate, except as provided for in Section 20.3. The Transmission Customer shall also be obligated to pay any ancillary service charges and any charges required to be paid pursuant to this Tariff and Market Rule 1.

- 20.2 Rate for Through or Out Service (“T or O Rate”): The rate per hour for Through or Out Service shall be the annual Pool PTF Rate divided by 8760. The Pool PTF Rate shall be the Rate determined annually in accordance with paragraph (2) of Schedule 8.
- 20.3 Through or Out Service Charges to the New York Control Area: The T or O Rate shall be reduced to zero for any Through or Out Service transaction that (a) goes through or out of the NEPOOL Control Area and (b) has the NEPOOL/New York Control Area boundary as its Point of Delivery, provided that a FERC-approved New York ISO tariff provision is in effect that reduces charges to zero on transactions through or out of the New York Control Area to the NEPOOL Control Area boundary. The reduction to zero of the T or O Rate to New York shall become effective on December 1, 2004 (or such other later date as the Commission directs) and shall only apply to the Schedule 8 charges. The reduction of the T or O Rate to zero pursuant to this Section 20.3 shall not apply to transmission customers taking service under Section 43.3 of this Tariff; such transmission customers shall continue to pay charges for such service based on the full T or O Rate as applied to the amount reserved for the Network Load which is not physically interconnected with the PTF.

- 1.1 Amendment to Schedule 8. Schedule 8 of the NEPOOL Tariff is amended to read as follows:

Through or Out Service - The Pool PTF Rate

- (1) Except as provided for in accordance with Section 20, a Transmission Customer shall pay to NEPOOL the Pool PTF Rate for Through or Out Service reserved for it in accordance with Section 18 of the Tariff. The Transmission Customer shall also be obligated to pay any applicable ancillary service charges and any charges required to be paid pursuant to this Tariff and Market Rule 1.
- (2) The Pool PTF Rate in effect at any time shall be determined annually on the basis of the information for the most recent calendar year contained in Form 1 filings (or similar information on the books of Transmission Providers that are not required to submit a Form 1 filing) and shall be changed annually effective as of June 1 in each year. The Pool PTF rate shall be equal to (i) the sum for all Participants of Annual Transmission Revenue Requirements determined in accordance with Attachment F divided by (ii) the sum of the coincident Monthly Peaks (as defined in Section 46.1) of all Local Networks, excluding from the Monthly Peak for each Local Network as applicable the loads at each applicable Point of Delivery of each Participant or Non-Participant which has elected to take Internal Point-To-Point Service in lieu of Regional Network Service at one or more Points of Delivery; plus the Long-Term Firm Reserved Capacity

amount for each such Participant or Non-Participant which has elected to take Firm Internal Point-To-Point Service in lieu of Regional Network Service at one or more Points of Delivery plus any Long-Term Reserved Capacity amount reserved prior to the SMD Effective Date for each Participant or Non-Participant for Firm Through or Out Service. Revenues associated with Short-Term Point-To-Point reservations will be credited to the sum of all Participants' Annual Transmission Revenue Requirements referred to in (i) above.

- (3) Discounts: Three principal requirements apply to discounts for Through or Out Service as follows (1) any offer of a discount made by the Participants must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, the Participants must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same Point(s) of Delivery on the PTF.

SECTION 2 MISCELLANEOUS

- 2.1 This One Hundred Eighth Agreement shall become effective December 1, 2004, or on such other date as the Commission shall provide that the amendments reflected herein shall become effective.
- 2.2 Terms used in this One Hundred Eighth Agreement that are not defined herein shall have the meanings ascribed to them in the NEPOOL Agreement and the NEPOOL Tariff.

ATTACHMENT 2

any Backyard Generation, at a Point of Delivery to cover the greater of (i) the maximum amount of energy that it will receive in any hour, as determined from meters and adjusted for losses, or (ii) in the case of a Participant, the portion of its Installed Capability Responsibility which must be satisfied with the resources covered by its Completed Applications and from Interchange Transactions or (iii) in the case of a Non-Participant the portions of its reliability obligations to be satisfied with such resources. Any load-serving entity may use Internal Point-To-Point Service to effect sales in bilateral arrangements, whether or not it elects to take Point-To-Point Service to serve its load.

20 Payment & Rate for Through or Out Service

20.1 Payment for Through or Out Service: Each Participant or Non-Participant which takes Through or Out Service shall pay to NEPOOL a charge per Kilowatt of Reserved Capacity based on an annual rate (the “T or O Rate”) which shall be the Pool PTF Rate, except as provided for in Section 20.3. The Transmission Customer shall also be obligated to pay any ancillary service charges and any charges required to be paid pursuant to this Tariff and Market Rule 1.

20.2 Rate for Through or Out Service (“T or O Rate”): The rate per hour for Through or Out Service shall be the annual Pool PTF Rate divided by 8760. The Pool PTF Rate shall be the Rate determined annually in accordance with paragraph (2) of Schedule 8.

20.3 Through or Out Service Charges to the New York Control Area: The T or O Rate shall be reduced to zero for any Through or Out Service transaction that (a) goes through or out of the NEPOOL Control Area and (b) has the NEPOOL/New York Control Area boundary as its Point of Delivery, provided that a FERC-approved New York ISO tariff provision is in effect that reduces charges to zero on transactions through or out of the New York Control Area to the NEPOOL Control Area boundary. The reduction to zero of the T or O Rate to New York shall become effective on December 1, 2004 (or such other later date as the Commission directs) and shall only apply to the Schedule 8 charges. The reduction of the T or O Rate to zero pursuant to this Section 20.3 shall not apply to transmission customers taking service under Section 43.3 of this Tariff; such transmission customers shall continue to pay charges for such service based on the full T or O Rate as applied to the amount reserved for the Network Load which is not physically interconnected with the PTF.

SCHEDULE 8

Through or Out Service - The Pool PTF Rate

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ATTACHMENT 3

any Backyard Generation, at a Point of Delivery to cover the greater of (i) the maximum amount of energy that it will receive in any hour, as determined from meters and adjusted for losses, or (ii) in the case of a Participant, the portion of its Installed Capability Responsibility which must be satisfied with the resources covered by its Completed Applications and from Interchange Transactions or (iii) in the case of a Non-Participant the portions of its reliability obligations to be satisfied with such resources. Any load-serving entity may use Internal Point-To-Point Service to effect sales in bilateral arrangements, whether or not it elects to take Point-To-Point Service to serve its load.

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SCHEDULE 8

Through or Out Service - The Pool PTF Rate

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ATTACHMENT 5

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ATTACHMENT 6

NEPOOL PARTICIPANTS COMMITTEE

One Hundred Eighth Agreement

Balloting Ended 9/21/04

TALLY

<u>GENERATION SECTOR</u>	<u>Votes *</u>	<u>% IN FAVOR</u>	<u>% OPPOSED</u>	<u>ABSTAINED</u>
ANP Funding I, LLC	F	2		
Boston Generating, LLC	F	2		
Consolidated Edison Energy, Inc.	F	2		
Dominion Energy Marketing, Inc.	F	2		
Duke Energy North America LLC	F	2		
FPL Energy LLC	F	2		
Generation Group Member	F	2		
Mirant New England, LLC	F	2		
TransCanada Power Marketing Ltd.	F	2		
USGen New England, Inc.	F	2		
Subtotal.....	10	20	0	0

While there are 13 voting members in the Generation Sector, only 10 members voted on this amendment. Because this satisfied the Sector Quorum Requirements for the Generation Sector, the Member Adjusted Voting Share for voting Participants was 2%.

<u>TRANSMISSION SECTOR</u>	<u>Votes *</u>	<u>% IN FAVOR</u>	<u>% OPPOSED</u>	<u>ABSTAINED</u>
Boston Edison Company	F	4		
Central Maine Power Company	O		4	
New England Power Company	F	4		
Northeast Utilities System Companies	A			1
The United Illuminating Company	F	4		
Vermont Electric Power Company, Inc.	F	4		
Subtotal.....	5	16	4	1

While there are 7 voting members in the Transmission Sector, only 5 members voted on this amendment, (abstentions are not counted). Because this satisfied the Sector Quorum Requirements for the Transmission Sector, the Member Adjusted Voting Share for voting Participants was 4%.

<u>SUPPLIER SECTOR</u>	<u>Votes *</u>	<u>% IN FAVOR</u>	<u>% OPPOSED</u>	<u>ABSTAINED</u>
Black Oak Energy, LLC	F	1.667		
BOC Energy Services	F	1.667		
Calpine Energy Services, L.P.	F	1.667		
Constellation Power Sources, Inc.	F	1.667		
DC Energy, LLC	F	1.667		
El Paso Merchant Energy, LP	F	1.667		
Exelon Generation, LLC	F	1.667		
Great Bay Power Corporation	F	1.667		1
LIPA	F	1.667		
PSEG Energy Resources & Trade LLC	F	1.667		
Unitil Corporation Participants Companies	F	1.667		
Williams Power Company, Inc.	F	1.667		
Subtotal.....	12	20	0	1

While there are 53 voting members in the Supplier Sector, only 12 members voted on this amendment (abstentions are not counted). Because this satisfied the Sector Quorum Requirements for the Supplier Sector, the Member Adjusted Voting Share for voting Participants was 1.667%.

NEPOOL PARTICIPANTS COMMITTEE

One Hundred Eighth Agreement

Balloting Ended 9/21/04

TALLY

<u>PUBLICLY OWNED ENTITY SECTOR</u>	<u>Votes *</u>	<u>% IN FAVOR</u>	<u>% OPPOSED</u>	<u>ABSTAINED</u>
Ashburnham Municipal Light Plant	F	0.6452		
Belmont Municipal Light Department	F	0.6452		
Boylston Municipal Light Department	F	0.6452		
Braintree Electric Light Department	A			1
Concord Municipal Light Plant	F	0.6452		
Danvers Electric Division	F	0.6452		
Georgetown Municipal Light Department	F	0.6452		
Groton Electric Light Department	F	0.6452		
Hingham Municipal Lighting Plant	F	0.6452		
Holden Municipal Light Department	F	0.6452		
Holyoke Gas & Electric Department	F	0.6452		
Hudson Light and Power Department	F	0.6452		
Hull Municipal Lighting Plant	F	0.6452		
Ipswich Municipal Light Department	F	0.6452		
Littleton Electric Light Department	F	0.6452		
Mansfield Municipal Electric Department	F	0.6452		
Marblehead Municipal Light Department	F	0.6452		
Mass. Municipal Wholesale Electric Company	F	0.6452		
Middleborough Gas and Electric Department	F	0.6452		
Middleton Municipal Electric Department	F	0.6452		
North Attleborough Electric Department	F	0.6452		
Pascoag Utility District	F	0.6452		
Paxton Municipal Light Department	F	0.6452		
Peabody Municipal Light Plant	F	0.6452		
Rowley Municipal Lighting Plant	F	0.6452		
Shrewsbury Electric Light Plant	F	0.6452		
South Hadley Electric Light Department	F	0.6452		
Sterling Municipal Electric Light Department	F	0.6452		
Vermont Public Power Supply Authority	F	0.6452		
Wakefield Municipal Gas and Light Department	F	0.6452		
West Boylston Municipal Lighting Plant	<u>F</u>	0.6452		
Westfield Gas & Electric Light Department	<u>F</u>	<u>0.6452</u>		
Subtotal.....	31	20	0	1

While there are 45 voting members in the Publicly Owned Entity Sector, only 31 members voted on this amendment (abstentions are not counted). Because this satisfied the Sector Quorum Requirements for the Publicly Owned Entity Sector, the Member Adjusted Voting Share for voting Participants was 0.6452%.

<u>END USER SECTOR</u>	<u>Votes *</u>	<u>% IN FAVOR</u>	<u>% OPPOSED</u>	<u>ABSTAINED</u>
Associated Industries of Massachusetts	F	1.8182		
Connecticut, State of, Office of Consumer Counsel	F	1.8182		
Industrial Energy Consumer Group	F	1.8182		
J&L Electric	F	1.8182		
Maine Skiing, Inc.	F	1.8182		
Mead Oxford Corporation	F	1.8182		
New Hampshire Office of Consumer Advocate	F	1.8182		
Praxair, Inc.	F	1.8182		
The Energy Consortium	F	1.8182		
The Energy Council of Rhode Island	F	1.8182		

NEPOOL PARTICIPANTS COMMITTEE

One Hundred Eighth Agreement

Balloting Ended 9/21/04

TALLY

Union of Concerned Scientists	<u>F</u>	<u>1.8182</u>		
Subtotal.....	11	20	0	0

While there are 25 voting members in the End User Sector, only 11 members voted on this amendment. Because this satisfied the Sector Quorum Requirements for the End User Sector, the Member Adjusted Voting Share for voting Participants was 1.8182%.

	<u>Votes *</u>	<u>% IN FAVOR</u>	<u>% OPPOSED</u>	<u>ABSTAINED</u>
TOTAL	69	96.00	4	3

- *Votes: F = In Favor
- *Votes: O = Opposed
- *Votes: A = Abstention

ATTACHMENT 7

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

New England Power Pool

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Docket No. ER05-____-000

NOTICE OF FILING

(October , 2004)

Take notice that on October 1, 2004, the New England Power Pool (“NEPOOL”) Participants Committee submitted the One Hundred Eighth Agreement Amending New England Power Pool Agreement (108th Agreement) which amends the NEPOOL Tariff in order to reduce to zero the Through or Out service charge for transactions through or out of NEPOOL that have the New York control area boundary as their point of delivery. NEPOOL requests a December 1, 2004 effective date.

The NEPOOL Participants Committee and ISO-NE state that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, D.C. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on _____.

Magalie R. Salas
Secretary