STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 96-17

CASES 94-E-0952 *et al.* - In the Matter of Competitive Opportunities Regarding Electric Service.

OPINION AND ORDER DECIDING PETITIONS FOR CLARIFICATION AND REHEARING

Issued and Effective July 17, 1996

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

COMMISSIONERS:

John F. O'Mara, Chairman
Eugene W. Zeltmann
William D. Cotter
Thomas J. Dunleavy

CASES 94-E-0952 et al. - In the Matter of Competitive Opportunities Regarding Electric Service.[1]

OPINION NO. 96-17

OPINION AND ORDER DECIDING PETITIONS
FOR CLARIFICATION AND REHEARING

(Issued and Effective July 17, 1996)

BY THE COMMISSION:

INTRODUCTION

This order decides several petitions for clarification and rehearing of our opinion and order in the Electric Competitive Opportunities Case, issued May 20, 1996.[2] The following list shows who filed the petitions and provides a general overview of the concerns raised.

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[1] The other cases considered in this proceeding are listed in Appendix F to Opinion No. 96-12. Cases 94-E-0952 et al., Opinion No. 96-12 (issued May 20, 1996).

[2] Opinion No. 96-12, supra.

1. New York Energy Buyers Forum/Columbia University/Greater New York Hospital Association--regarding the collaborative process for resolving generic issues about the Independent System Operator (ISO) and Market Exchange;

2. Independent Power Producers of New York, Inc. (IPPNY) and ten other parties--also regarding a concern about the collaborative process in the ISO working group;[1]

3. Multiple Intervenors--regarding both the collaborative process and the consultative process for utility filings;

4. Municipal Electric Utilities Association (MEUA)-- regarding the following four issues:

   a. the application of our competitive vision and goals to municipal electric utilities;

   b. the composition of the ISO (suggests that all load serving utilities have representation);

   c. transmission pricing (suggests it be based on transmission costs only); and

   d. recovery of stranded costs (would like any recovery to be through a distribution surcharge on departing customers);[2] and

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[1] This concern about the collaborative process was actually expressed by letter dated June 19, 1996, to Chairman O'Mara, with copies to the Secretary, Commissioners, all active parties, and Administrative Law Judge Lee. The letter requested that it be considered a petition for clarification if it would be appropriate or necessary to grant the relief requested. Since the matters raised are identical to those raised by other parties in their petitions for clarification, it is reasonable to treat this letter as such a petition.

[2] As a final point which is not fully elaborated upon, MEUA asserts once again at the end of its petition that the wholesale bilateral model, which it supported throughout the proceeding, should be adopted. MEUA states its continued belief that such a model "would promote lower rates to consumers, consistent with federal and state law and contractual rights while insuring safe and reliable service." Request for Rehearing or Clarification of the Municipal Electric Utilities Association of New York State, pp. 13-14. This argument was considered previously and the adoption of the flexible retail poolco model (described in Appendix C of our opinion and order) was made after careful

evaluation of MEUA's and other parties' fully articulated positions. Opinion No. 96-12, supra, mimeo pp. 39-40.

5. Association for Competition in Electricity--asking that the utility filings proposing rate/restructuring plans, due October 1, 1996, also be required for the Long Island Lighting Company (LILCO).[1]

Responses to these petitions were filed by letters dated July 3, 1996 from the Energy Association of New York State (EA)[2] and LILCO.

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[1] The Association for Competition in Electricity's petition for rehearing was filed on June 20, 1996, 31 days after the opinion and order was issued. Public Service Law '22 requires that applications for rehearing be made within 30 days of the issuance of the order, "unless the commission for good cause shown shall otherwise direct." As discussed below, we are considering the merits of this petition.

[2] The Energy Association represents Central Hudson Gas &

Replies to EA's letter were submitted by MEUA[1] and IPPNY.[2] Replies to responses to petitions for rehearing are only entertained when there are "extraordinary circumstances."[3] No arguments have been presented in this regard, and we have no reason to consider these circumstances

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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 the Brooklyn Union Gas Company.

[1] MEUA asks that we not include EA's response in the record, arguing that it is untimely under '2.8(b) of our rules, which MEUA claims allows only five days for responses. However, MEUA refers to a section of our rules that was repealed. Under 16 NYCRR '3.7(c), parties have 15 days to respond. Therefore, EA's response was submitted in a timely manner. EA has also filed a letter dated July 15, 1996, so stating.

[2] IPPNY's response was submitted on behalf of eight other parties, all of whom expressed similar concerns previously.

[3] 16 NYCRR '3.7(c).

to be extraordinary. Therefore, we have not considered these replies in this opinion and order.[1]

This order addresses the issues raised by these petitions and finds that none of the issues raised warrants a change in our policy direction as established in our recently issued opinion and order. However, we take this opportunity to amplify parts of the opinion, to ensure that the implementation process proceeds as expeditiously as we intend. The areas amplified upon involve the collaborative process, the Federal Energy Regulatory Commission (FERC) filings, and the applicability to municipal utilities.

Collaborative Process for Resolution of Generic Issues

Our opinion and order stated its expectation that there would be collaboration among Department of Public Service staff (staff), the utilities, and other interested parties to address issues related to transmission pricing, the Independent System Operator and Market Exchange (ISO working group); market power problems related to load pockets; energy service companies; streamlined reporting requirements; and public educational forums.

[1] However, to the extent that the replies have revealed information that is relevant to the continuation of the collaborative process, we have asked Administrative Law Judge Lee to follow up appropriately, in accordance with our expectations described later in this opinion and order.

A total of 15 parties express concern through petitions and letters about the continuation of the collaborative process, particularly relating to unresolved ISO issues.[1] Although most of the parties appear to be

[1] The letter dated June 19, 1996, sent by IPPNY includes the following other signatories: Citizens Utility Board, Pace Energy Project, Owners Committee on Electric Rates, Sears Roebuck/May Department Stores, Joint Supporters of On-Site Generation and DSM, Nassau/Suffolk Water Commissioners, Sithe Energies, Inc., Enron Capital and Trade Resources, Public Utility Law Project of New York, Inc., and Citizens Advisory Panel. The New York State Consumer Protection Board stated its support for the letter, at the meeting of all parties on June 20, 1996. Separate petitions for clarification filed by the New York Energy Buyers

particularly concerned about the work of the ISO group, Multiple Intervenors expresses a generalized frustration about collaborative efforts being made in other areas as well.

Forum/Columbia Hospital/the Greater New York Hospital Association and Multiple Intervenors express essentially the same concerns about this issue. MEUA raises a similar concern about the collaborative process. MEUA also asks us to mandate other things, including the direct participation of MEUA and the City of Jamestown in the collaboration and certain principles contained in a FERC Order. The separate points MEUA raises are addressed infra.

As to the work being done by the ISO working group regarding the development of an ISO and Market Exchange, filings to us and the Federal Energy Regulatory Commission (FERC) are expected by October 1, 1996 to address issues related to "the structure, activities, authority, and procedures of the Independent System Operator and the Market Exchange" along with transmission pricing issues.[1] This entails significant technical work on very complex issues, and requires considerable work efforts on the part of all involved parties in order to meet our deadline.

The Energy Association's response states that we should endorse the collaborative process discussed and agreed to at the June 27, 1996 meeting of active parties and Administrative Law Judge Lee, regarding the ISO working group, when the parties agreed to a biweekly schedule of meetings. Also, the Energy Association claims that not all the work that needs to be accomplished can be conducted during collaborative meetings.

[1] Opinion No. 96-12, supra, mimeo pp. 63-64 and 73. The parties are expected to build on their prior efforts that culminated in an interim report on the Independent System Operator, filed with us on April 22, 1996, in accordance with the Recommended Decision issued in this case on December 21, 1995.

We have carefully reviewed the collaborative efforts that are currently proceeding and we are convinced that the parties are now communicating their views in a way that has the potential to narrow their differences and shape a consensus. We expect Administrative Law Judge Lee to monitor the process to ensure that it is proceeding collaboratively yet efficiently. The overall objective of the process as it relates to the work on an ISO and Market Exchange is to move toward a consensus document to be filed at the Federal Energy Regulatory Commission by October 1, 1996. FERC appears also to be interested in receiving a filing that was developed collaboratively, as stated in its recent rulemaking.[1] Collaborative efforts among these parties, therefore, appear to be a way to move toward a competitive market more expeditiously, which is consistent with the positions of the utilities, staff, and almost all of the intervenors.[2]

Finally, we clarify that the opinion did not actually order the utilities to make any filings at FERC, but rather expressed our expectation that such filings be accomplished in order to move the competitive agenda forward, an expectation that is entirely consistent with FERC Order 888.

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[1] RM 94-7-001 and RM 95-8-000, Order No. 888, FERC Stats. & Regs. &31,036 (1996) (issued April 24, 1996) (FERC Order 888).

[2] Throughout this proceeding, only one party, the International Brotherhood of Electrical Workers (IBEW), expressed its opposition to moving toward any form of competition. The IBEW was not persuaded that there was objective proof that competition in the electric industry would actually result in lower rates, and was very concerned that a movement toward competition would have a negative impact on utility employees. All other parties, including the utilities, expressed support for either wholesale or retail competition.

Consultative Process for Utility Filings

Multiple Intervenors requests that we clarify our expectations as to the development of individual utility filings. The opinion and order states that "the utilities are encouraged to consult with the Department of Public Service, and other interested parties as needed."[1] Multiple Intervenors states that its attempts to consult with the utilities were to no avail, and asks that we clarify that the utilities should be working with interested parties in developing their filings. Multiple Intervenors expresses concern that in the absence of meaningful input by interested parties into the utility filings, implementation of competition will be delayed.

The Energy Association, in its response, points out that we did not require utilities to collaborate with other parties as they prepare their individual utility filings.

[1] Opinion No. 96-12, supra, mimeo p. 75.

Our opinion and order places a burden on the utilities to accomplish a significant amount of work in a relatively short time. This requires that resources be used in a most efficient way.[1] In order to do this, the utilities should have the flexibility to contact those parties that are needed to assist in the development of these filings, and the opinion and order allows them to make rational decisions in this regard. However, we encourage the utilities to contact parties, especially their customers so that their filings are responsive to their customers' needs.

Matters Raised by the Municipal Electric Utilities Association

The Municipal Electric Utilities Association, representing municipally-owned electric utilities in New York State and the City of Jamestown, asks for rehearing or clarification on the following four discrete matters:[2]

1. the application of the vision and goals to municipal electric utilities;
2. the composition of the ISO;
3. transmission pricing; and
4. recovery of stranded costs.

[1] We are also clarifying that we expect each utility to file an environmental assessment form with its October 1 filing. This will enable us to comply with applicable New York State Department of Environmental Conservation rules. This matter was addressed briefly in our prior opinion and order. Opinion No. 96-12, supra, mimeo p. 78, n. 1.

[2] The Energy Association, in its response, objects to MEUA's petition regarding issues unrelated to the collaborative process, claiming that it is unbalanced for MEUA to ask for preferential consideration in certain matters while at the same time claiming that the overall competition policy should not be applied to municipal electric utilities.

This opinion and order next addresses each point raised.

1. Application to Municipal Electric Utilities

Our opinion and order states in a footnote that municipal utilities under our jurisdiction will "ultimately have to comply with the new policy but not at the present time."[1] We therefore did not require the municipal utilities to submit proposals for rates and restructuring by October 1, 1996, as we did for five out of the seven investor-owned utilities.[2]

According to MEUA, there is no reason for our vision and goals to be applied to municipal electric utilities, primarily because the high rates that exist for investor-owned utilities do not exist for municipal utilities. MEUA also argues that on procedural grounds, application of our conclusions to municipal utilities is defective, because the focus of the proceeding to this point has been on the investor-owned utilities. MEUA states that its participation has been on behalf of municipal utilities as wholesale transmission customers. Additionally, according to MEUA, applying the conclusions to municipal utilities would violate the New York Constitution, which "establishes the right of local governments to make a fair return on the value of property used in electric public utility service, and in using

[1] Opinion No. 96-12, supra, mimeo p. 75, n. 2.

[2] Niagara Mohawk Power Corporation and the Long Island Lighting Company were excluded from this requirement, because of ongoing proceedings addressing these matters for both utilities, either before us or in a different forum. Opinion No. 96-12, supra, mimeo p. 75. The exclusion of LILCO from this requirement is the subject of a rehearing petition by the Association for Competition in Electricity, which is addressed later in this opinion and order.

such returns to make refunds to consumers or for other lawful purposes."[1] Therefore, MEUA asks that we clarify that our vision and goals will be applied to municipal utilities "only as appropriate,"[2] or remove any compliance filing requirement.

MEUA is correct that our intention was that proposals for rate/restructuring plans would only be required from municipal utilities if such proposals were appropriate. The referenced footnote was intended to make clear that we are not now requiring such plans from municipal utilities.

2. Composition of the ISO

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[1] Request for Rehearing or Clarification of the Municipal Electric Utilities Association of New York State, p. 7. MEUA claims that our opinion "threatens the right of local governments to establish and operate electric utilities by apparently ordering retail access within the systems of jurisdictional municipal utilities." Id.

[2] Ibid., p. 5.

Our opinion and order stated that we expected filings to be made by the utilities to address ISO procedures. MEUA requests that we "clarify that load serving utilities in the state, including municipal electric utilities, must be directly involved in the formation of the ISO and power exchange."[1] According to MEUA, we should mandate the direct participation of MEUA and the City of Jamestown in order to "promote true collaboration."[2] MEUA also asks that the ISO principles contained in FERC Order 888 "be made mandatory on the New York ISO."[3] MEUA expresses concern that New York not replicate California's problems, where the FERC filing by the investor-owned utilities is opposed by the municipal utilities.

As stated previously, a main reason for asking parties to use a collaborative process for the organization of the ISO and Power Exchange is to strive toward a consensus filing that takes into account the interests of all appropriate parties. New York's municipal electric utilities present an important perspective in this effort, and their views should be carefully considered in the development of an alternative system to provide electric service to the state.

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[1] Ibid., p. 9.

[2] Id.

[3] Id.

However, mandating their direct participation is not necessary under these circumstances.

The participation of MEUA throughout the proceeding has been valuable and has helped parties to shape their ideas for how the future competitive world would best be structured. Accordingly, MEUA's active participation in the collaborative efforts continues to be important and is encouraged.

As to application of FERC's ISO principles, this need not be mandated by us. We expect that utility filings will be consistent with all appropriate FERC requirements.

3. Transmission Pricing

MEUA asks that we clarify that we expect the utilities' proposal for transmission pricing to be based solely on transmission costs, as it claims FERC requires.[1] MEUA expresses concern that the current proposals "for locational based pricing appear to base transmission charges on the prices of generation at various locations,"[2] and asserts that clarification is needed to state that "monopoly transmission services must continue to be provided at functionalized and cost-based rates."[3]

This clarification does not appear to be needed under the circumstances. It is expected that any utility filing at FERC will be consistent with FERC's requirements, and it is the utilities' joint responsibility to ensure that this occurs. Discussions about transmission pricing proposals are part of the work of the ISO group described above. MEUA

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1 Ibid., pp. 10-11, citing 61 Fed. Reg. at 21,595.

2 Ibid., p. 11.

3 Id.

should have an opportunity to assert the points it makes about the FERC requirement during the parties' ongoing collaborative efforts to address this important and complex subject matter.

4. Recovery of Stranded Costs

MEUA requests that we clarify that any allowed recovery of stranded costs be through a distribution surcharge imposed on a departing customer. MEUA asserts that this is consistent with principles of cost causation, since the customer who caused the cost should bear its recovery. MEUA objects to the imposition of any access fee or systems benefits charge on all customers.[1]

Our opinion and order explicitly left the mechanisms for recovery of strandable costs to be designed in accordance with the specific situation that exists for each individual utility and its customers. There do not appear to be persuasive reasons for modifying this approach at this time. The intention was to allow sufficient flexibility to take into account the specific circumstances for each utility and that still appears to be a laudatory goal. Any party who objects to the use of a specific mechanism should have an opportunity to assert that objection at the time such a mechanism is proposed.

Application of Filing Requirement to LILCO

[1] MEUA states its opposition to "a universal system benefits charge that includes any amount of strandable costs," and disputes the characterization in our opinion and order that it "strenuously" opposed the concept of such a charge. MEUA states that it "takes no exception to a system benefits charge that does not include stranded costs." Ibid., p. 12, n. 2. MEUA's concern about the characterization of its position is not of decisional importance.

The Association for Competition in Electricity asks for rehearing because LILCO was not required to file a rate/restructuring plan by October 1, 1996. The Association for Competition in Electricity expresses its concern about LILCO's high rates and the need for a rapid transition to a competitive environment on Long Island.

In a letter dated July 3, 1996, LILCO responds that we adequately justified why it does not need to make an October 1 filing, and also asserts that the petition violates Public Service Law '22 because it was filed beyond the 30-day requirement.

While LILCO is technically correct that the petition was filed one day late, we choose to deny the petition on substantive grounds. The Association for Competition in Electricity presents persuasive reasons for the institution of retail competition on Long Island, including the potential benefits of lowering rates and providing consumer choice. However, there do not appear to be sufficient reasons to alter our prior decision to exclude LILCO from the filing requirement when considering other ongoing efforts in this regard.

As stated in our earlier opinion and order, we are examining LILCO's electric rates in a proceeding that is expected to move forward expeditiously, and the Long Island Power Authority is currently analyzing LILCO's structure.[1] There is clearly a need for customers on Long Island to be able to receive the benefits of competition soon, and this is expected to occur through these efforts. It would be duplicative and inefficient to require LILCO to file a rate/restructuring plan, considering that these other, ongoing

[1] Opinion No. 96-12, supra, mimeo pp. 75 and 91, n. 1.

efforts are expected to produce similar results in a similar time frame.

CONCLUSION

In accordance with the above discussion, this order addresses the concerns raised by the parties in their petitions for clarification and rehearing and clarifies issues involving the nature and use of the collaborative process, the FERC filings, and the applicability of our policy to municipal utilities.

The Commission orders:

1. The petitions for clarification and rehearing filed by New York Energy Buyers Forum/Columbia University/Greater New York Hospital Association; Independent Power Producers of New York, Inc., *et al*.; Multiple Intervenors; Municipal Electric Utilities Association; and Association for Competition in Electricity are denied, except insofar as clarification is provided in the foregoing discussion.

2. This proceeding is continued.

By the Commission,

(SIGNED) JOHN C. CRARY
Secretary