

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

Long Island Lighting Company)

Docket No. ER98-11-000

**ANSWER OF LONG ISLAND POWER AUTHORITY OPPOSING
MOTION TO CONSOLIDATE OF CONSUMERS
AND POTENTIAL COMPETITORS OF LILCO AND LIPA**

Pursuant to Rule 213 of the Rules of Practice and Procedure¹ of the Federal Energy Regulatory Commission (“Commission”), the Long Island Power Authority (“LIPA”) hereby responds in opposition to the request for consolidation included in the “Joint Motion to Intervene, Protest, Request for Hearing and Motion to Consolidate with Docket No. EC97-45-000 by Consumers and Potential Competitors of LILCO and LIPA” (“CPC Motion”). Although LIPA is not the applicant in the above-captioned rate proceeding, LIPA will be the sole customer under the wholesale capacity contract for which Long Island Lighting Company (“LILCO”) seeks approval in this proceeding. LIPA opposes consolidation of this proceeding with Docket No. EC97-45-000 because there are no common issues of law or fact justifying consolidation, and the delay that consolidation would cause (and that LIPA

¹18 C.F.R. § 385.213.

believes to be the principal objective of CPC's Motion) will directly and adversely affect LIPA.

This Answer is limited to CPC's motion to consolidate and responds neither to its protest nor its motion to intervene. The CPC Motion relies on a variety of intertwined arguments to support its various requests for relief but does not specifically isolate the purported common issues of law or fact that might justify consolidation. Insofar as LIPA is able to understand the consolidation aspect of CPC's Motion, CPC's principal complaint appears to be that LIPA should not have contracted to purchase the capacity from present-day LILCO's generating facilities for the 15 year term of the Power Supply Agreement ("PSA").² CPC made essentially the same argument in its pleadings filed in EC97-45-000, the Merger Proceeding. Rather than attempt to respond to each of CPC's arguments again in detail herein, LIPA hereby incorporates its Response to the CPC Request for Hearing and its Response to the previous CPC Motion to Consolidate, both filed in Docket No. EC97-45-000.

I. The Merger Proceeding Should Not be Consolidated With the Instant Proceeding

LIPA itself has asked for a hearing and other relief in the instant proceeding because the filed rates are excessive and the rate adjustment

²See CPC Motion at 19-23.

procedures do not conform to the PSA. LIPA nevertheless opposes consolidation of this case with the Merger Proceeding for several reasons.

First, there are no common questions of law or fact between the two proceedings. LILCO's application in the Merger Proceeding requests authority to sell its transmission facilities and certain jurisdictional contracts to LIPA. Upon consummation of that transaction, a generating subsidiary of the merged Brooklyn Union Gas Company and LILCO intends to sell the capacity from present day LILCO generating facilities on Long Island to LIPA under the PSA. For purposes of analysis under Section 203 of the Federal Power Act, the Commission need only satisfy itself that the PSA does not increase concentration of market power on Long Island as part of its review of the effect of the proposed transaction on competition. The Commission need not examine the PSA or rates therein as part of the Section 203 proceeding to answer that question. Indeed, since the PSA results from divestiture of LILCO's generation from its transmission and distribution facilities, the transaction does not increase market concentration and is procompetitive.

Second, to the extent the Commission determines that there are legitimate issues of material fact related to the PSA, those issues are properly resolved in this proceeding under Section 205. There are no wholesale customers, other than LIPA, whose wholesale rates could possibly

be affected by the approval of the merger application under Section 203. Even if the Commission determines in this proceeding that the PSA and the rates filed thereunder must be modified, that outcome bears no relationship to the very different question whether the sale of the transmission facilities and jurisdictional contracts to LIPA is consistent with the public interest under Section 203. The CPC Motion fails, therefore, to demonstrate how the determination of issues in the Section 205 proceeding will affect the outcome of the 203 proceeding, or vice versa.

It is entirely conceivable that the Commission may decide that disputes about material facts regarding rates and rate adjustment procedures raised by the pleadings in this proceeding will warrant a hearing into the justness and reasonableness of the PSA. That does not mean, however, that a hearing on PSA issues is warranted in the Merger Proceeding or that the Merger Proceeding should be delayed while the rate and related issues are resolved in this case. If the Commission determines in the Merger Proceeding that the PSA will not have an adverse effect on competition and the merger application meets the Commission's other criteria, the analysis is at an end and the merger application should be approved. If the Commission later orders changes to the PSA and its accompanying rates in this proceeding, those changes will not detract from, and may even enhance, the value of the comprehensive merger transaction to LIPA and its ratepayers.

Thus, there is no connection between the 203 and 205 proceedings that warrants consolidation.

II. Conclusion

WHEREFORE, LIPA respectfully requests that the Commission:

- (i) reject the CPC Motion's request to consolidate this proceeding with the Merger Proceeding; and
- (ii) to grant LIPA any other appropriate relief.

Respectfully submitted,
LONG ISLAND POWER AUTHORITY

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Dated: November 19, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 19th day of November, 1997.

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