STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 19, 1999

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss

CASE 94-E-0098 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Electric Service. JOINT PETITION FOR AUTHORITY TO TRANSFER HYDROELECTRIC GENERATING ASSETS.

CASE 94-E-0099 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Electric Street Lighting Service.

ORDER APPROVING TRANSFER OF HYDROELECTRIC GENERATION FACILITIES AND MAKING OTHER FINDINGS

(Issued and Effective May 27, 1999)

BY THE COMMISSION:

BACKGROUND

One feature of Niagara Mohawk Power Corporation's (Niagara Mohawk) PowerChoice Rate and Restructuring Plan (PowerChoice) adopted in Opinion No. 98-8 is the auctioning of its generation facilities,[1] other than its interest in the Nine Mile I and Nine Mile II nuclear plants. Niagara Mohawk filed a Divestiture Plan for its non-nuclear facilities on December 1, 1997, and supplemented the filing on March 6, 1998. The

[1] Case 94-E-0098, et al., Niagara Mohawk Power Corporation - Rates, Opinion No. 98-8 (issued March 20, 1998).

Divestiture Plan was approved, with modifications, in the Auction Plan Order.[1]

In a petition dated February 5, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk) and Erie Boulevard Hydropower, L.P. (Erie Boulevard) jointly request authority to transfer Niagara Mohawk's 72 hydroelectric generating facilities to Erie Boulevard for $425 million, subject to adjustments at the closing of the transaction. Erie Boulevard was the winning bidder for these facilities in Niagara Mohawk's auction.

The Auction Plan Order

In the Auction Plan Order, Niagara Mohawk was authorized to conduct a two-phase auction process, soliciting non-binding preliminary bids in a Phase I and then winnowing the field of participants to binding bidders in a Phase II. If more than one of the Phase II bids clustered around a particular price, the clustered bidders would then compete against each other in a multiple-round ascending bid process, which would maximize the auction proceeds.

In Phase I, Niagara Mohawk would offer its fossil-fueled facilities as individual units, while packaging the hydroelectric plants into six bundles. Bids would be accepted on the fossil plants individually, any hydro bundle, or any combination of fossil plants and hydro bundles. The Phase II bundling would be determined after review of the Phase I bids.

Niagara Mohawk jointly owned some of the generating facilities, including a partnership with Rochester Gas & Electric Corporation (RG&E) at the Oswego steam station and with Central Hudson Gas & Electric Corporation (Central Hudson) and Consolidated Edison Company of New York, Inc. (Con Edison) at the Roseton steam station. Several hydro facilities were jointly

[1] Case 94-E-0098, supra, Order Authorizing Process For the Auctioning of Generating Facilities (issued May 6, 1998).

owned with a variety of other partners. The jointly-owned facilities, except for Roseton, were offered in the auction.[1]

The Divestiture Plan also provided for transition contracts with terms of three to five years, with the terms commencing prior to transfer of the plants to the new owners. The fossil plant transition contracts were designed as "swaptions," which would allow Niagara Mohawk to purchase the power at the lower of a market price or the option price in the contract, while the hydro transition contracts provided for Niagara Mohawk's continued purchase of electricity from those facilities over the contract term. It was intended that these contracts would assist the utility in meeting the PowerChoice Plan's rate reduction goals. In the auction, bidders were permitted to submit offers reflecting their different valuations of the transition contracts under the three and five-year terms, so that the best avenue to maximizing auction proceeds could be determined.

Niagara Mohawk was required to implement horizontal and vertical market power guidelines. Horizontal market power occurs if one, or a small number, of generation entities own a percentage share of generation supply large enough to improperly raise prices above competitive market levels. The horizontal market power guidelines, which generally track federal precedents, were incorporated in the Auction Plan Order.

Vertical market power occurs when an entity exercises market power at one stage of the production process and leverages that power to gain an advantage over its competition in a different stage of the production process. The Auction Plan Order suggested that vertical market power had been ameliorated, but additional guidelines were subsequently adopted, for

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[1] RG&E joint ownership issues were resolved in Case 94-E-0098, _et al._, _supra_, Order Approving Certain Provisions of Oswego Steam Station Agreement and Settlement (issued August 27, 1998), while Roseton will be sold in Central Hudson's future auction, subject to principles outlined in Case 94-E-0098, _supra_, Untitled Order (issued December 18, 1998).

circumstances where utility affiliates own both generation and transmission in the same region.[1] Market power and load pockets were addressed initially through the PowerChoice price freeze and the transition contracts.[2] Upon the expiration of those provisions, however, other means to mitigate market power, such as through transmission reinforcements, may be needed.

Labor and environmental issues were analyzed in the Auction Plan Order. Niagara Mohawk would require the purchasers of its generating facilities to honor all collective bargaining agreements. Moreover, a labor incentive mechanism, limited to a cost of $10 million, was adopted under Opinion No. 98-8, and could result in an offset against the auction proceeds.

Niagara Mohawk also planned to require the purchasers of the plants to assume all past, present, and future environmental liabilities. To ensure that other environmental considerations were satisfied, a Final Supplemental Generic Environmental Impact Statement (FSGEIS) was issued June 17, 1998 in this proceeding. In the FSGEIS, potential environmental, social, and economic impacts arising out of the divestiture process were evaluated. It was decided that the potential for discontinuance of informal land use agreements at some Niagara Mohawk generation sites was a potential adverse impact, beyond those addressed in the Final Generic Environmental Impact Statement (FGEIS) issued in conjunction with Opinion No. 96-12.[3] Moreover, the effect of divestiture on the value of the

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[1] Case 96-E-0900, et al., Generation Plant Auctions, Statement of Policy Regarding Vertical Market Power (issued July 17, 1998).

[2] A "load pocket" is a portion of a utility's service territory in which load levels, at certain times, will exceed the transfer capability into the area, and so local generators must serve some of the load. Depending on the specific circumstances, the local generators may or may not possess market power.

[3] Case 94-E-0952, In the Matter of Competitive Opportunities For Electric Service, Opinion No. 96-12 (issued May 20, 1996).

real property tax base in local communities was considered, and it was determined additional mitigation was warranted.

New owners of the plants were encouraged to continue all reasonable informal land use arrangements and to negotiate gradual, rather than immediate, changes in assessments for the plants. A voluntary mediation program, to facilitate resolution of assessment disputes between new owners and host communities, was established, with our Staff as the mediator.

Niagara Mohawk's proposed schedule for the auction was aggressive. Preliminary bids were scheduled for June 1998, final bids were due in September 1998, and the utility expected to announce winners by October 1998. Closing of the transactions, subject to regulatory approvals, was expected by mid-1999.

THE JOINT PETITION

In the Joint Petition, Niagara Mohawk and Erie Boulevard described the auction process; the generation assets that will be transferred to Erie Boulevard; the purchaser's ability to operate and manage the facilities; the contracts that were executed between the parties; and, related issues. The petitioners ask that the transfer be approved as in the public interest under PSL §70; that the transaction contracts be approved; that it be determined Erie Boulevard's purchase is in compliance with the vertical and horizontal market power guidelines; and, that exempt wholesale generator (EWG) findings be made under §32 of the Public Utility Holding Company Act (PUHCA).

The winning bidder for the hydro assets, Erie Boulevard, is an indirect subsidiary of Orion Power Holdings, Inc. (Orion). Orion, in turn, is ultimately owned jointly by the Goldman Sachs Group, L.P. (Goldman) and Constellation Power Source, Inc. (CPS), which is an indirect subsidiary of Baltimore Gas & Electric Company (BG&E). Orion is also affiliated with Carr Street Generating Station, L.P. (Carr Street), which operates a 105 MW gas-fired electric generation facility in

Syracuse.[1] Another Orion affiliate, Constellation Operating Services, Inc. (COSI) will operate the hydro facilities.

The Auction Process

Niagara Mohawk asserts it conducted the auction in conformance with the Auction Plan Order. It reports Merrill Lynch & Co. (Merrill Lynch) managed the auction process in conjunction with Donaldson, Lufkin & Jenrette Securities Corporation (DLJ). According to the Joint Petitioners, the auction process began in May 1998 with a solicitation directed to 170 prospective bidders. Approximately 70 entities responded, each executing a Confidentiality Agreement provided with the solicitation. During Phase I, these prospective bidders received an information memorandum describing Niagara Mohawk's non-nuclear generating facilities, and access to a data room where technical information was stored. Bidders were permitted to submit questions through the financial advisors, and were allowed to tour selected plants.

On June 30, 1998, 37 prospective purchasers submitted bid packages for all or part of the generation portfolio. Niagara Mohawk and Merrill Lynch ascertained that all the hydro assets should be sold in one bundle, and that the Albany, Dunkirk and Huntley steam stations should be packaged, to achieve maximum auction value. Ten bidders were then shortlisted for the Phase II binding bid round. After review of binding bids received on September 21, 1998, however, the utility and its advisor concluded that the bids were not acceptable and that the sale process should be extended. The sale of the hydro assets was thereafter pursued separately from the fossil plants.

Potential bidders for the hydro facilities were identified, and invited to participate in the extended process. After negotiations with interested bidders in pursuit of maximum

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[1] Carr Street's facility was formerly owned by East Syracuse Generating Co., L.P., an independent power producer whose contract Niagara Mohawk bought out under the Master Restructuring Agreement (MRA) described in Opinion No. 98-8.

value, Orion was accorded a two-week exclusive time period to submit a binding proposal. On December 2, 1998, Niagara Mohawk and Erie Boulevard, as Orion's subsidiary, executed definitive transaction agreements for the sale of the hydro facilities.

The Transaction Contracts

Niagara Mohawk entered into a number of transaction contracts with Erie Boulevard to effectuate the sale, including an Asset Sales Agreement (ASA), Site and Interconnection Agreements, a Transition Operating Services Agreement, and the Bennetts Bridge Agreement. The ASA delineates the conditions of sale and identifies the actions needed to close the transaction. Under the ASA, Erie Boulevard will assume all post-closing environmental liabilities at the facilities. Niagara Mohawk will retain pre-closing liabilities, as well as responsibility for identified Department of Environmental Conservation (DEC) consent orders, fines and penalties, transmission and distribution equipment on-site at the facilities, and off-site liabilities.

The ASA also provides that Erie Boulevard will offer to employ all Niagara Mohawk union-represented employees under the terms of the existing collective bargaining agreement, and hire non-union employees associated with the plants at compensation benefits at least comparable to what Niagara Mohawk provided. To the extent that Erie Boulevard is unsuccessful in retaining the Niagara Mohawk employees, it will pay $25,000 to Niagara Mohawk for each such employee up to a maximum of $2.8 million.

Through the property tax incentive provided for in the ASA, Niagara Mohawk and Erie Boulevard will work together to craft multi-year settlements of existing disputes between the utility and taxing localities. Payment in lieu of tax (PILOT) agreements similar to those structured for the Oswego Steam

Station and the Fulton hydro facilities will be pursued.[1] Niagara Mohawk will retain 25% of any annual tax savings achieved, up to a maximum of $20 million, with Erie Boulevard receiving the remaining 75%, after compensation for reasonable expenses.

A number of adjustments to the $425 million purchase price are identified in the ASA. For example, $7 million is set aside for repairs to the Schaghticoke Hydro Facility, where a penstock ruptured on April 17, 1998. If the repairs are not complete by closing, the difference between the $7 million and actual repair expenditures will be offset against the purchase price.

Moreover, Niagara Mohawk has been unsuccessful so far in purchasing a small minority ownership share in the 8 MW Beebee Island Facility from the City of Watertown. The purchase price will be adjusted, should Niagara Mohawk be unable to convey a 100% ownership interest in the plant.[2]

As recognized in the ASA, other hydro plants may be subject to condemnation. The ASA mechanism for addressing these situations should not affect ratepayers, because any successful condemnation price should equal the facility's market value. Under the ASA, other purchase price adjustments may be made for changes in inventory levels, land lease values, and the like.

The parties also executed Site and Interconnection Agreements, ensuring that transmission and generation plant are

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[1] See Case 98-M-1787, Niagara Mohawk Power Corporation and Rochester Gas & Electric Corporation - Joint Petition For Approval of Transfer, Order Approving Transfer of Leasehold Interest (issued November 20, 1998); Case 99-E-0221, Niagara Mohawk Power Corporation - Petition For Approval of Fulton Hydro Facilities Transfer, Order Approving Transfer of Leasehold Interests (issued February 25, 1999). The sale to Erie Boulevard will not affect these transfers.

[2] See Case 98-E-1517, Niagara Mohawk Power Corporation - Petition For Approval, Order Approving Purchase of Minority Shares of the Moreau Manufacturing Corporation and the Beebee Island Corporation By Niagara Mohawk Power Corporation (issued March 3, 1999).

properly segregated from each other and will be properly operated by the responsible party. Moreover, in the separate Bennetts Bridge Agreement, the parties provide that the Bennetts Bridge hydro facility will be available to provide back-up emergency power to the Nine Mile I nuclear plant. The Transition Operating Service Agreement allows Erie Boulevard to purchase operating services for the hydro facilities from Niagara Mohawk through September 30, 2001. Erie Boulevard would pay $50,000 per month, for access to Niagara Mohawk's systems for monitoring, controlling and operating the hydro facilities.

In addition to these Sales Contracts, a Transition Power Purchase Agreement (TPA) identifies the quantities and prices for the sale of energy, capacity and ancillary services from the 72 hydro facilities to Niagara Mohawk, through September 2001. The TPA, however, differs from the format allowed in Opinion No. 98-8. There, fixed payments were set at a level of $65 to $69 million, with an energy generation price of $10 per MWh. Erie Boulevard desired pricing set at a level more closely tied to market practices, which would allow it to attract financing. In exchange for the contract modifications it sought, Erie Boulevard offered a higher price in the auction.

Niagara Mohawk estimates that the transition contract modifications thereby increased the sale price by $43 million. The utility concludes with a request that the Sales Contracts and the TPA be approved.[1/]

The Market Power Guidelines

Niagara Mohawk asserts the sale falls within the market power guidelines. At the time of the purchase, Erie Boulevard was affiliated in New York only with Carr Street. BG&E, however, owns 5408 MW of generation in Maryland, and an additional 817 MW in Pennsylvania. Niagara Mohawk says it performed a horizontal

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[1/] A separate Equity Contribution Agreement with Erie Boulevard's parents ensures that Erie Boulevard will be able to discharge its obligations at the time of closing, through contributions from those parents if necessary.

market power study of New York and surrounding generation markets, including the Pennsylvania-Jersey-Maryland (PJM) interconnection while reflecting transmission limits. The change in the Herfindahl-Hirschmann Index (HHI) calculated as an outcome of these studies shows that ownership concentration in the New York market will improve or remain unchanged as a consequence of the sale. This outcome is automatic when the large supplier in a market sells some of its production capacity to a smaller seller in that market.

After the sale, Erie Boulevard and its affiliates' total market share in New York energy markets ranges from 2% to 4%. For capacity markets, in the longer term after transition contracts expire, the market share would be, at most, in the 10% to 12% range. Again, increasing ownership diversity reduces concentration of market share. Niagara Mohawk asserts that the transaction raises no vertical market power issues because neither Erie Boulevard nor its affiliates own transmission or distribution facilities in New York.

EWG Findings

Niagara Mohawk and Erie Boulevard interpret PUHCA as requiring a finding that new ownership of a generation facility will benefit customers, is in the public interest, and does not violate state law, before Erie Boulevard can be afforded EWG status at the hydro facilities it will purchase. Erie Boulevard seeks that status so that it may operate the hydro facilities free of burdensome federal regulation intended for monopoly utilities. Erie Boulevard sees the requisite benefit for the public in its participation in the wholesale competitive market, which will result in lower prices to consumers through increased competition. It also relates that the EWG findings have been made in similar circumstances.[1/]

Net Proceeds

Niagara Mohawk proposes to determine net proceeds from the sale of the plants to Erie Boulevard by deducting from the gross proceeds, the book value of the assets, the net present value difference of the transition contract price (as compared to the PowerChoice transition contract), transaction costs, taxes, and the auction incentive provided for in Opinion No. 98-8. While the calculation of net proceeds cannot be made precisely until after closing, Niagara Mohawk estimates the amount at $70 million, before transaction costs and application of the incentive.

ANALYSIS OF COMMENTS

A Notice Soliciting Comments issued February 19, 1999 in this proceeding established a deadline of March 23, 1999 for filing. The parties identified below responded, and Niagara Mohawk submitted a reply on April 21, 1999.

EEI

Energy Enterprises, Inc. (EEI), representing the City of Lockport, opposes completion of the sale. According to EEI, Lockport has not executed a replacement for an expired municipal franchise applicable to a transmission line leading out of the Hydraulic Race Hydro Plant located in Lockport. The franchise issue, says EEI, must be resolved before the transaction can be

[1/] Case 96-E-0891, New York State Electric & Gas Corporation - Petition For Approval of Sale, Order Approving Transfer of Electric Generation Facilities, Approving Contracts Upon a Condition and Making Other Findings (issued December 3, 1998).

approved. At a minimum, EEI asks that Erie Boulevard be advised no franchise exists.[1/]

Fourth Branch[2/]

Fourth Branch Associates (Mechanicville)(Fourth Branch) notes that Niagara Mohawk and Erie Boulevard have agreed to bifurcate the license transfer proceeding they had initiated with FERC, by segregating the license for the Mechanicville project from the other licenses and filing a separate petition for authorization of its transfer. Fourth Branch asks that approval of the transaction be conditioned upon Niagara Mohawk's consent to Fourth Branch's condemnation of the utility's interest in the Mechanicville hydro project, currently jointly owned by the two. According to Fourth Branch, Niagara Mohawk's acquiescence to the condemnation action it commenced in federal court is the most expeditious means to resolving disputes between it and the utility over Mechanicville.

Mr. Fragnito

Joseph P. Fragnito maintains the hydroelectric facilities are associated with the water resources that belong to the people of the state. He contends the use of this low-cost source of power should be directed towards retaining jobs in the state, and that the New York Power Authority (NYPA) is a more appropriate owner of the facilities than Erie Boulevard. As a result, Mr. Fragnito believes NYPA should purchase the hydro facilities from Niagara Mohawk, under the same terms and conditions that Erie Boulevard proposes.

[1/] EEI updated and restated its concerns in a letter dated May 14, 1999, received too late for consideration here.

[2/] Fourth Branch filed its comments late, saying it awaited a March 30, 1999 FERC decision on the license for Mechanicville.

Oswego

While the City of Oswego (Oswego) discerns that the divestiture of Niagara Mohawk's hydro facilities is in the public interest, it raises several issues it argues should be addressed before the transfer is approved. Oswego's first concern is that information it argues is essential to evaluation of the petition has been redacted, as a confidential trade secret. Focusing on the TPA contract, Oswego maintains redaction of the price and other terms is not warranted, and that FERC has rejected Niagara Mohawk's request for confidential treatment of the contract data. Oswego also reports, however, that FERC will permit the utility to delay public filing of the contract until 30 days after the provision of service under the contract commences.

Oswego criticizes the subtraction of a $43 million TPA contract adjustment from the $425 auction price. It also complains that further deductions from the remaining net proceeds are not quantified, and it perceives that these deductions are significant. Oswego asks that other sources for funding deductions be sought, so that the deductions may be applied instead towards electric rate reductions. Analyzing the Equity Contribution Agreement, Oswego discovers the potential for uncertainty over the ownership of the facilities after their transfer. It also seeks further review of the costs associated with the Operating Services Agreement and claims more information is needed on the effect of the sale on hydroelectric power licensing issues before FERC.

Oswego asserts further that other issues should be decided prior to approval of the sale, including: separation of Niagara Mohawk equipment and assets into transmission or distribution functions; requiring that existing interconnection points between independent generators and the utility be maintained; and, requiring that an allocation of the purchase price among the facilities be announced prior to approval of the sale. Moreover, prior to making any EWG determinations, Oswego would elicit more information on affiliates' involvement in Erie Boulevard's ownership. Finally, Oswego contends that specific language should be added to the ASA to reflect its own interest in the High Dam hydro site, and the condemnation proceeding brought by Green Island Power Authority over the Green Island hydro site.

SHAC

Seneca Hydro Acquisition Corporation (SHAC) argues that approval of the transaction should be withheld until Niagara Mohawk agrees to maintain existing points of interconnection. According to SHAC, relocating the interconnection between its hydro facility and the utility would undermine economic viability of its project. Both its FERC-approved water-sharing and power purchase contracts with the utility, SHAC continues, would be adversely affected.

SHAC reports that it filed a protest with FERC over a Niagara Mohawk plan to move its interconnection point. SHAC claims that a transmission line connecting the hydro facility to the grid is subject to FERC jurisdiction, and so FERC approval is needed before the interconnection point with the transmission line can be moved. Although SHAC concedes that relocation or rearrangement of the transmission facilities are referenced in a pre-existing contract between it and the utility, SHAC nevertheless argues that Niagara Mohawk should bear the cost of relocating the line.

Stuyvesant

The Town of Stuyvesant (Stuyvesant) reports that Niagara Mohawk has decided to surrender its license for the currently inoperable Stuyvesant Falls hydro site, rather than repair the facility and resume operations. According to Stuyvesant, it has sought judicial review of FERC’s acceptance of the license surrender, and approval of the sale to Erie Boulevard should be delayed until the courts have resolved the claim. Stuyvesant also asks for a determination that Niagara Mohawk must maintain the existing substation and transmission line formerly associated with the hydro project. Finally, the Town proposes that the site be excised from the auction, because it believes including the site induced bidders to reduce the prices they offered in the auction.

The Joint Petitioners’ Response

The Joint Petitioners answered a number of the parties’ contentions. Niagara Mohawk concedes its franchise in Lockport has expired, but reports that it is negotiating a new franchise with City representatives. The fact that negotiations are ongoing, the utility asserts, does not justify a delay in approving the transfer.

After pointing out that Oswego concedes the transfer is in the public interest overall, the Joint Petitioners oppose that City’s request for relief. They maintain that, as explained in their petition, disclosure of some terms and conditions of the transaction contracts would result in competitive disadvantage to either or both of them. This explanation, they claim, is sufficient to justify confidential treatment of the affected terms and conditions, especially considering that Oswego concedes it was able to find the transaction was in the public interest without the information.

As to Oswego’s request for a more detailed analysis of the net proceeds derived from the transaction, Niagara Mohawk explains that a full analysis cannot be completed until after the closing of this and its other auctions. It contends, however, that sufficient information exists now to support the conclusion that the transfer is in the public interest. Analyzing the $43 million discrepancy between the PowerChoice TPA contract and the TPA contract executed for this transaction, the Joint Petitioners claim the latter contract is still reasonable. They say the price paid in the auction would have fallen by more than the $43 million, had Niagara Mohawk insisted upon the PowerChoice contract terms, and so the $43 million deduction is appropriate.

The Joint Petitioners point out that they are not seeking approval of the Equity Contribution Agreement, and add that the agreement benefits ratepayers in any event, because it is a guarantee that Erie Boulevard will close the transaction. The Joint Petitioners also assert that the Operating Services Agreement is reasonable, explaining that its terms are not tied to other economic elements of the transaction and are otherwise justifiable. As Oswego has not shown these contracts are unjust or unreasonable, the Joint Petitioners conclude, no modifications to them are warranted.

On transmission issues, the Joint Petitioners note an Interconnection Agreement between them has been filed with FERC, which is empowered to address its impact on the transmission system. The Joint Petitioners further explain that interconnections between Niagara Mohawk and independent generators are subject to existing contracts, or our regulatory oversight, or FERC's jurisdiction, depending on the circumstances.

With respect to FERC hydro licensing issues, Niagara Mohawk claims it has not asked for any State relief that infringes on FERC's jurisdictional prerogatives. Oswego's requested modifications to the ASA premised upon FERC-related or condemnation issues, the Joint Petitioners contend, are without justification, and the contract, negotiated in good faith, should be allowed to stand as written.

Contrary to Oswego's position, the Joint Petitioners claim there is no need to allocate the purchase price among the hydro facilities until the time of closing, and so Oswego's request should be rejected. The Joint Petitioners also agree with Oswego that EWG status for Erie Boulevard is in the public interest, but they request that the eligible facility findings be granted expeditiously.

Analyzing SHAC's interconnection issue, Niagara Mohawk asserts that the interconnection is governed by a pre-existing contract and the proposed transaction does not affect that contract. Niagara Mohawk also argues that SHAC is attempting to enlarge its contract rights with its intervention here, by seeking relief beyond that it could obtain under the contract.

Responding to Stuyvesant, the Joint Petitioners explain that Erie Boulevard has asked FERC to substitute it into Niagara Mohawk’s place. With Erie Boulevard subject to the FERC licensing process, the Joint Petitioners continue, the proposed transfer of ownership will not prejudice Stuyvesant. The Joint Petitioners contend further that Stuyvesant’s request to exclude the Stuyvesant Falls site from the sale is not in the public interest, and defeats Niagara Mohawk’s objective of divesting substantially all of its non-nuclear generation through an auction. They also maintain Niagara Mohawk has demonstrated that bundling the hydro sites together enabled it to attain a higher value than it would have through individual sales.

DISCUSSION And CONCLUSION

Niagara Mohawk conducted its auction in substantial conformance with the Auction Plan Order and other prior Orders. The process which led to the sale of the hydro facilities was designed to maximize auction proceeds. The $425 million Erie Boulevard offer was the highest bid received, even after potential offsets are considered.

Erie Boulevard possesses the requisite financial and operational resources to capably operate and manage the plants in a competitive environment. Moreover, Erie Boulevard has satisfactorily demonstrated that, as a new entrant into the wholesale electric market, it will not be able to exercise horizontal or vertical market power. The transfer of the hydro facilities to Erie Boulevard is in the public interest, and is approved.

The Auction Process

In the Auction Plan Order, Niagara Mohawk was authorized to proceed with its plan for conducting the auction of its fossil and hydro generating facilities. Niagara Mohawk has satisfactorily demonstrated that it implemented its auction plan in substantial compliance with the Auction Plan Order. The review Niagara Mohawk and Merrill Lynch conducted of the Phase I bids resulted in a reasonable bundling of plants and selection of finalists for Phase II.

After the Phase II bids were received, however, Niagara Mohawk and Merrill Lynch concluded that the prices offered did not provide acceptable aggregate value. The utility therefore decided the sales process should be extended, and that the highest value for the generation assets would be achieved if each bundle were sold separately in a distinct process. Though this outcome was not anticipated in the Auction Plan Order, Niagara Mohawk acted properly. Rather than simply accepting Phase II results that were less than reasonably anticipated after Phase I, Niagara Mohawk and Merrill Lynch continued the process in an effort to maximize value. Moreover, the utility and its advisor promptly informed Staff that the outcome of Phase II had been unsatisfactory, and adequately explained the factors that had led to the unanticipated result.

The separate process for the sale of the hydro facilities was properly conducted. Solicitation of purchase proposals was pursued diligently, and each bidder was afforded the opportunity to make its best offer. Providing Erie Boulevard with an exclusive period near the end of the process, to conduct due diligence activities and fully investigate the purchase of the hydro facilities, was reasonable, and enabled Niagara Mohawk to obtain from it the best bid it could offer.

Market Power

The analysis Niagara Mohawk presents demonstrates that the outcome of the transfer falls within the horizontal and vertical market power guidelines.[1/] Two Erie Boulevard affiliates, CPS and COSI, will provide it with risk management,

[1/] Subsequent to selection of the winning bidder in this auction, Orion, Erie Boulevard’s parent, won the auction Con Edison conducted for its Astoria generation bundle, and any market power issues that might be raised by that transfer will be addressed when it is presented for our consideration.

power marketing, operating, and maintenance services. These two affiliates may also provide some of these services to other generating facilities, in addition to the Carr Street facility already identified as an Orion-owned affiliate located in New York. Were CPS and COSI to continue to expand their presence in New York, they could possibly coordinate the activities of a number of generators and so exercise horizontal market power through a cartel arrangement.

Such activity, however, would be in contravention of federal anti-trust laws, and will not be presumed. Moreover, collusion among sellers remains possible even if the sellers do not formally affiliate or enter into contracts with each other. Since Erie Boulevard has satisfied the horizontal market power guidelines, even after its affiliate relationships were considered, the possibility of anti-competitive activity is too remote to justify a finding that the transfer is not in the public interest.

The Transaction Agreements

A. The Sales Contracts

In the ASA, Site and Interconnection, Bennetts Bridge, and Transition Operating Services Agreements, Niagara Mohawk has preserved its authority to operate the transmission system, and respond to system emergencies. The contracts also compel Erie Boulevard to conform to good utility practice and reliably operate the plants. As a result, the sale should not adversely affect system reliability.[1/] The Site and Interconnection Agreements also provide that Erie Boulevard will operate the hydro facilities in parallel with Niagara Mohawk's transmission

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[1/] While the contracts as currently written assume the existence of the Independent System Operator (ISO) that is not yet operational, Niagara Mohawk has promised that the contracts will be made effective in the interim prior to ISO operations, in conformance with the existing New York Power Pool regime.

system, in compliance with standards that meet or exceed Niagara Mohawk's existing procedures.

The ASA and Site and Interconnection Agreements also properly capture the real property and assets that will be transferred to Erie Boulevard. Appropriate reservations have been made for assets excluded from the sale, such as electric substations, disconnect switches and other electric interface equipment, for most of the hydro sites. Niagara Mohawk, however, is still in the process of developing asset schedules at fourteen of the hydro sites. It is directed to file these schedules upon their completion.

Safety has also been properly considered. Moreover, since Erie Boulevard will be an electric corporation under the Public Service Law, it must continue to meet the safety requirements in our regulations, including 16 NYCRR Part 125.

The ASA also addresses environmental and labor issues. Applicable environmental and non-environmental permits are listed and transferred. Erie Boulevard will assume all post-closing environmental liabilities associated with the facilities and appurtenant property, but Niagara Mohawk will remain responsible for off-site liabilities and certain identified items. These arrangements are acceptable.

Erie Boulevard is also contractually obligated to offer employment to all union and non-union personnel at the plants. The existing collective bargaining agreement will be continued for union employees, while non-union employees are entitled to total compensation and benefits at least comparable to those Niagara Mohawk currently provides. These labor provisions, and the $2.8 million severance payment provision, are acceptable, although the ratemaking treatment of labor-related payments will be determined at a later time.

Under the property tax sharing mechanism in the ASA, Niagara Mohawk will receive 25% of the property tax savings garnered through on-going tax certiorari cases, up to a maximum of $20 million. This provision assists in arriving at collaborative resolution of these tax disputes. It accommodates a transition to lower tax assessments for the affected communities, while Niagara Mohawk retains the potential for receiving $20 million in additional proceeds, a reasonable recoupment of the overpaid taxes and expenses associated with these tax disputes.

Opinion No. 98-8 did not specifically address property tax refunds. In the past, however, Niagara Mohawk has been permitted to retain 10% of any property tax refunds as an incentive to aggressively pursue tax dispute issues. That approach will be adopted here, with 90% of the refunds returned to ratepayers through the Opinion No. 98-8 deferral mechanism. This outcome is reasonable, because the tax-sharing mechanism undoubtedly affected the price paid in the auction. If Niagara Mohawk had been permitted to retain a smaller amount of the tax refunds, presumably Erie Boulevard would have increased its bid by the amount it saved through reducing the amount it must pay under the tax sharing clause. The increased auction price would have redounded to the benefit of ratepayers.

The ASA also provides for a maximum of $7 million offset against the auction price for repairs to the Schaghticoke facility. Niagara Mohawk expects that repairs will cost $6.3 million, not including insurance payments of between $.4 and $.5 million. For ratemaking purposes, the offset to the auction price is capped at $6.3 million, less actual insurance reimbursements and actual expenditures as of the closing date. Recognition of this adjustment in rates will be determined according to the process described below.

The terms and conditions of the Sales Contracts further the objectives described in PowerChoice and the Auction Plan Order, and are otherwise reasonable. The contracts are approved, subject to the ratemaking considerations discussed below.

B. Year 2000 Issues

The ASA requires that Niagara Mohawk strive towards full readiness to meet the Year 2000 computer programming problem, and calls for coordination of Year 2000 planning activities between the utility and the purchaser. While the ASA allows Erie Boulevard to terminate the sale if Niagara Mohawk's failure to achieve Year 2000 compliance results in a material adverse affect, Niagara Mohawk's Year 2000 effort should be sufficient to avoid this consequence. Moreover, the utility will continue to work with Erie Boulevard to ensure a smooth Year 2000 transition after the transfer of ownership.

Niagara Mohawk has taken reasonable steps to confront Year 2000 computer programming issues outside the context of the ASA. In conformance with our Year 2000 Orders,[1/] Niagara Mohawk is expected to complete all Year 2000 readiness activities at the hydro sites by July 1, 1999. To the extent any exceptions to this deadline arise, Niagara Mohawk is expected to clearly identify them, and report to us.

In order to ensure that planning for Year 2000 is not disrupted, the parties shall take the following steps. If the plant transfer takes place prior to July 1, 1999, Erie Boulevard will assume responsibility for Year 2000 compliance. If the plant transfer takes place after July 1, 1999, Niagara Mohawk will provide its Year 2000 compliance plan to Erie Boulevard, which must then either accept the plan or file its own plan within 30 days after the closing. If the closing takes place after October 1, 1999, however, we require that Erie Boulevard accept Niagara Mohawk's plan.

C. The TPA Contract

The TPA allows Niagara Mohawk to purchase all the electricity the hydro facilities generate at set prices during the period from the closing of the sales transaction through September 31, 2001. As structured, the TPA acts as a hedge against rising energy costs.

[1/] Case 98-M-1432, Utility Year 2000 Readiness, Order (issued October 30, 1998); Case 98-M-1432, supra, Order (issued February 17, 1999).

The TPA pricing, however, deviates from the pricing assumed in Opinion No. 98-8 and the Auction Plan Order. Niagara Mohawk quantified the incremental costs of the TPA at $43.0 million, and would reduce the auction price by that amount. While the approach is reasonable, because Erie Boulevard would likely have reduced its bid to match any reduction in the TPA price, Niagara Mohawk did not calculate the incremental cost correctly. The TPA price should have been compared to the PowerChoice TPA. Correcting the error reduces the incremental cost to $37.8 million (NPV).

Further adjustment of this figure is dependent on the closing date for the sale, and the amount of the offset will be reduced if the closing occurs after June 30, 1999. Moreover, while the adjustment might have led to increasing the federal income tax liability on the sales proceeds, Niagara Mohawk proposes a deferred income tax offset. Ratemaking for the TPA adjustment, including recognition of tax impacts, will be determined upon a subsequent filing.

The modifications to the PowerChoice TPA Niagara Mohawk and Erie Boulevard negotiated will enable the utility to achieve the PowerChoice rate reduction goals and meet its provider of last resort responsibilities under Opinion No. 98-8. Because the TPA is consistent with those objectives, it is approved, subject to the ratemaking considerations discussed below.

<u>The Public Interest</u>

Under PSL §70, our consent is required before an electric corporation may transfer any of its assets to a new owner. The consent is furnished if the transfer is in the public interest. In making the public interest determination, a review is conducted of the qualifications of the purchaser to provide the utility service; the impact of the sale on the rates customers pay; and, the other details of the transaction.

Erie Boulevard, the selected purchaser of Niagara Mohawk’s hydro facilities, is ultimately affiliated with BG&E, a large fully-integrated electric utility, and Goldman Sachs, a well-known financial services company. Erie Boulevard, through its affiliates, also intends to hire existing Niagara Mohawk employees to operate the facilities. Moreover, Erie Boulevard and its affiliates have affirmed that the plants will be operated in a responsible and cost-effective manner. As a result, Erie Boulevard and its affiliates possess the management skills and financial backing needed to close the purchase, maintain the facilities, and operate them efficiently and reliably.

The price paid for the purchase of the facilities is sufficient to satisfy the public interest. Since the auction was conducted reasonably, the outcome was a price determined by participants in an open and free market. The price that a free market generates is presumably reasonable. Even after considering the potential adjustments to the final purchase price, Erie Boulevard's bid in the auction was still higher than any other offer.

Moreover, while differences in plant fuels, vintages, regional market prices and other variables make comparisons among fleet auctions difficult, the sales price is within the range of outcomes from other generation asset auctions. At the price of $425 million, or $643 per kW, the price compares acceptably to other auctions dominated by hydro assets. The price is also substantially above the $269 million book value of the plants.

None of the other details of the transaction countermand the conclusion that it is in the public interest. Niagara Mohawk's divestiture of its hydro facilities through its auction benefits ratepayers; contributes to the creation of a fully-functional wholesale market for electricity where none of the participants can exercise market power; and expands the operations of a company in the New York market, that is affiliated with two parents known for reliable electric operations and financial skills, respectively. As a result, it is approved.

A number of parties either oppose approval of the transfer, or ask that it be delayed. These arguments lack merit.

EEI insists a franchise is needed for a transmission line leading to Hydro Race facility in Lockport. A franchise, however, is a local government permit and issues associated with it must be addressed whether the owner of the Hydro Race facility is Niagara Mohawk or Erie Boulevard. The fact that the existing transmission franchise has expired is no reason to delay the transaction.

Contrary to Oswego's contention on confidentiality, the Joint Petitioners have justified trade secret treatment for the terms and conditions of the TPA contract they redacted from their filing. At this time, release of this information could harm Niagara Mohawk's competitive position, as it seeks purchasers for its remaining generation facilities, and Erie Boulevard, as it engages in other transactions. The information will eventually become public at the time Niagara Mohawk files the TPA contract in compliance with the FERC directive Oswego cites.

Moreover, keeping the data confidential did not prevent evaluation of the $43 million Niagara Mohawk claimed as the transition contract offset. Our Staff was able to analyze the offset, and make appropriate adjustments to it. Oswego also concedes that it was able to determine that the sale was in the public interest, based on publicly-available information regarding the TPA contract and the overall transaction.

Oswego's criticism of the Equity Contribution Agreement is unwarranted. That contract is a guarantee that protects ratepayers, by assuring the financial resources to close the transaction are available.

Oswego's request that the purchase price and auction costs be allocated among the hydro facilities at this time is denied. The allocation of the purchase price among sites will be made available at the time of closing, and approval of the transaction does not require imposition of an earlier date in order to determine that the overall sale is in the public interest. Because the hydro facilities were auctioned as a bundle, there is no need to allocate the auction costs among the facilities in order to determine that the overall cost of the sale was reasonable.

The allocation of equipment and assets between the transmission and distribution functions that Oswego requests need not be performed at this time. These issues are the subject of another proceeding, and Oswego's suggestion that allocation may have an impact on the transfer here is speculative.[1] Oswego's assertion that more information on potential ownership interests in Erie Boulevard is required before EWG status may be granted is also rejected. Oswego has not provided any foundation for its speculative concerns on Erie Boulevard's affiliate relationships, while Erie Boulevard and its affiliates have submitted information sufficient to justify approval of the transaction and the making of EWG findings.

The other regulatory concerns raised by Oswego, and similar concerns raised by Fourth Branch, SHAC and Stuyvesant, relate to judicial or federal regulatory matters outside the scope of the approval of the transaction. As the Joint Petitioners point out regarding Stuyvesant's allegations, once Erie Boulevard assumes ownership of the facilities, it will also assume liability for relevant ongoing Niagara Mohawk litigation in the courts on regulatory issues, as well as compliance with FERC regulatory directives. Moreover, contrary to Stuyvesant's allegations, Niagara Mohawk has adequately demonstrated that a bundled sale created more value for ratepayers than individual sales would have. As a result, none of the regulatory concerns presented by Oswego, Stuyvesant or Fourth Branch are sufficient to justify either delaying or disapproving the transaction.

As to SHAC, it concedes it entered into an interconnection agreement with Niagara Mohawk that governs the parties' relationship. We have repeatedly ruled that we will not intrude upon such disputes over this type of contract even where,

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[1] Case 97-E-0251, Proceeding to Distinguish Transmission From Distribution, Opinion No. 97-12 (issued July 26, 1997).

as here, one issue in dispute is the scope of the contract. As a result, SHAC's request for relief is rejected.[1]

The proposal to replace Erie Boulevard with NYPA as the purchaser of the hydro facilities is denied, because directing NYPA to make the purchase is beyond our jurisdiction. If NYPA were interested in owning these facilities, it could have participated in the auction. Erie Boulevard was a good faith participant in the auction process, and approving the sale to it after its successful bid is consistent with the public interest.

The Ratemaking Filing

Under Opinion No. 98-8, the proceeds from the auctioning of Niagara Mohawk's generation facility will be used to retire elements of the utility's capital structure associated with the generation assets. In a preliminary estimate, Niagara Mohawk calculates that net hydro auction proceeds of $70 million over book value, after federal income taxes. The $70 million figure, however, does not reflect the offset of auction costs or the auction incentive payable to utility shareholders under Opinion No. 98-8. Moreover, ratemaking impacts are also dependent upon completion of the auctions for Niagara Mohawk's other generation facilities.

As a result, the auction costs, adjustments to the purchase price, the auction incentive, and the labor cost incentive shall be reviewed at a later time, once the other plant auctions are complete. Niagara Mohawk is directed to file its final cost and proceeds figures within 30 days of the last

[1] Case 92-E-0032, Erie Energy Associates - Petition Regarding Power Purchase Contract, Declaratory Ruling (issued March 4, 1992); Case 94-E-0205, Kamine/Besicorp Allegany L.P. - Petition For An Order Restraining Rochester Gas & Electric Corporation, Order Denying Petition and Counter-Complaint (issued September 15, 1994); Case 96-E0775, Orange and Rockland Utilities, Inc. - Petition Regarding Crossroads Cogeneration Corp., Declaratory Ruling (issued November 29, 1996).

closing for a sale of generation facilities under the Auction Plan.

Niagara Mohawk shall submit a detailed calculation, with supporting workpapers, of the book gain or loss used in determining the auction incentive and a similar calculation of gain and loss after tax, for determining stranded cost impacts.[1] If the auction of the Roseton facility is delayed significantly beyond the end of 1999, Niagara Mohawk shall submit, by January 31, 2000, a filing detailing its plans for addressing the outcome of the other completed auctions, and for subsequent consideration of the impacts of the Roseton sale.

Niagara Mohawk currently estimates hydro auction costs at $9,509,000, with financial advisor fees pegged at $2,770,000, or .65% of the hydro assets sale price. The figure includes $1,042,000 in legal costs, but Niagara Mohawk has not demonstrated a direct connection between some of its legal bills and the implementation of the Auction Plan. Only legal costs directly related to the Plan may be offset against the auction proceeds. Moreover, $1,030,000 in Niagara Mohawk employee overtime costs are also reflected in the figure. Under PowerChoice and the Auction Plan, however, only external third party costs may be offset against auction proceeds. Employee overtime costs appear outside that category.

Other employee cost issues shall be addressed in the filing. Niagara Mohawk would defer unrecognized pension fund gain or loss allocable to transferred employees. More detail on this proposal is needed. Similarly, the $2.8 million employee severance credit requires further explication, in connection with the $10 million labor incentive.

Several provisions of the contractual arrangements between Niagara Mohawk and Erie Boulevard could have affected the auction price. As Oswego points out, under the Transition

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[1] Investment tax credit (ITC) issues will also be reviewed, and the utility is directed to fully explain its ITC assumptions and calculations.

Operating Services Agreement, Erie Boulevard will pay Niagara Mohawk $50,000 per month. This fee was linked to the price paid for the assets, because Erie Boulevard would have reduced its price if the utility had demanded a higher fee. As a result, the revenues from this contract are allocable to ratepayers, not shareholders. Moreover, Erie Boulevard will reimburse Niagara Mohawk for some interconnection expenses the utility is already recovering through rates under the PowerChoice Plan. These reimbursements also should be allocated to ratepayers. Niagara Mohawk shall describe the mechanism for flowing these revenues through to ratepayers in its filing.

Niagara Mohawk recently purchased ownership shares in the Beebee Island and Moreau facilities. Generation attributable to those ownership shares may have redounded to the financial benefit of the utility, in the period prior to the sale of the facilities to Erie Boulevard. Niagara Mohawk shall quantify the net benefit from the incremental generation supply and fully describe all assumptions and calculations used to arrive at the net benefit. This benefit shall be offset against the incremental costs attributable to the transition contracts.

Erie Boulevard also funded salaries and indirect labor costs of two Niagara Mohawk management employees during the pre-closing period. These funds, payable at closing, are also allocable to ratepayers and the filing shall quantify the amount and means for making the attribution.

State Environmental Quality Review Act Compliance

Pursuant to the State Environmental Quality Review Act (SEQRA), approval of Niagara Mohawk’s transfer of its hydro facilities to Erie Boulevard constitutes a subsequent action to the policy determinations made in Opinion No. 96-12 and Opinion No. 98-8 and in the Auction Plan Order. The FSGEIS issued in this proceeding analyzed all environmental, social, and economic impacts associated with the proposed divestiture.

Niagara Mohawk and Erie Boulevard filed an Environmental Assessment Form (EAF) with their petition, evaluating the potential impacts associated specifically with the transfer to Erie Boulevard. The EAF indicates that there are no further impacts beyond those addressed in the FSGEIS attached to the Auction Plan Order. That is, from the time the FSGEIS was issued to date, the only element of the analysis made there that has been affected is the identity of the new owner.

With respect to the existing informal land use agreements or rights of access at property appurtenant to the auction facilities resulting from the change of ownership, the FSGEIS imposed mitigation as follows:

1. Niagara Mohawk should inform the new owners of all informal land uses at each of its facilities;

2. The new owner should perform a cost/benefit analysis for each land use identified and consider continuing every reasonable land use for which the benefits outweigh the costs; and,

3. Prior to changing or terminating any land uses, the new owner should identify all affected individuals or communities, either directly or by publication, and provide a forum at which reasonable alternatives can be discussed.

Niagara Mohawk has advised it complied with the first condition listed above. By letter dated March 17, 1999, Erie Boulevard has agreed to comply with the second and third conditions. Erie Boulevard is required to continue that compliance.

The divestiture may have a potential impact on local tax base and assessment. The ASA provides for cooperation between Niagara Mohawk and Erie Boulevard in their negotiations with taxing entities, but does not impose any requirement for phasing-down assessments. Erie Boulevard is encouraged to work with taxing entities to minimize potential impacts on the tax basis of each. Additionally, we reaffirm the availability of our Staff to facilitate negotiations between Erie Boulevard and the taxing entities.

Based on the forgoing, no additional conditions are needed upon approval of the transfer, and no further SEQRA action is required.

Federal and State Regulation

Niagara Mohawk and Erie Boulevard ask that findings be made sufficient to justify a FERC decision that the facilities be awarded EWG status under federal law. Operating under that rubric, says Erie Boulevard, will avoid unnecessary federal regulation and will permit more efficient participation in the wholesale electric market. Accordingly, in conformance with PUHCA and FERC's regulations,[1] we find that allowing the hydro facilities to become eligible facilities, with Erie Boulevard owning the plants, either indirectly through one or more affiliates as defined under federal law,[2] or directly: 1) will benefit New York consumers; 2) is in the public interest; and, 3) does not violate New York law.

Making these findings is appropriate on the same basis as finding that the transaction is in the public interest under §70. It was previously determined in Opinion No. 96-12 that a competitive marketplace for the provision of electricity supply would benefit all of New York's consumers, and this transaction is directed towards that goal. Moreover, there is no violation of New York law in transferring the plants to the new owners.

While Erie Boulevard will become an electric corporation under New York law when it assumes ownership of the facilities, it qualifies for lightened regulation.[3] This approach to regulation has been previously approved for generators that intend to participate entirely or primarily in the wholesale market. Erie Boulevard has petitioned for that

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[1] 15 U.S.C.A. §79z-5a; 18 C.F.R. §365.

[2] 15 U.S.C.A. §79b(a)(11); 18 C.F.R. §365.3(a)(1)(i).

[3] Case 98-E-1670, Carr Street Generating Station, L.P. - Petition For Certification and Regulatory Regime, Order Providing For Lightened Regulation (issued April 23, 1999); Case 99-E-0148, AES Eastern Energy, L.P. and AES Creative Resources, L.P. - Petition For Lightened Regulation, Order Providing For Lightened Regulation (issued April 23, 1999).

status, under the procedures set forth in the State Administrative Procedure Act.[1/]

Erie Boulevard, however, will still be subject to State regulation with respect to matters such as enforcement, investigation, safety, reliability and system improvement. Moreover, Erie Boulevard's affiliation with COSI, CPS, and Orion affects the determination of the regulatory requirements that it will adhere to their operations. As a result, Erie Boulevard shall supplement its petition in Case 99-E-0679 with information on CPS, COSI, Orion and other affiliates, detailing any contractual relationships that may affect the wholesale market prices within New York. This information will assist in ascertaining the extent of regulation required. Finally, under PSL §69, we must approve issuance of electric corporation debt under certain circumstances. Erie Boulevard in its supplemental filing shall address application of this statute to its financing for the purchase of the facilities.[2/]

The Commission orders:

1. Niagara Mohawk Power Corporation's sale of its hydroelectric generation facilities to Erie Boulevard Hydropower, L.P. is approved, subject to the conditions discussed in the body of this Order.

2. The Sales Contracts and the Transition Power Purchase Agreement Niagara Mohawk Power Corporation entered into with Erie Boulevard Hydropower, L.P. are approved, subject to the discussion in the body of this Order.

[1/] Case 99-E-0679, Petition of Erie Boulevard Hydro Power, L.P. for a Declaratory Ruling that Lightened Regulation be applied to its purchase of certain hydropower assets from Niagara Mohawk Power Corporation.

[2/] See Case 99-E-0605, AES Eastern Energy, L.P. - Petition For Approval of Debt Issuance, Order Authorizing Issuance of Lease Obligation Notes and Entry Into Revolving Credit Agreements (issued May 6, 1999).

3. Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P. shall make the filings on Year 2000 issues described in the body of this Order.

4. Niagara Mohawk Power Corporation shall make a filing setting forth the amount of proceeds it earned and the costs it incurred in conducting the auctions of its generating facilities, in conformance with the discussion in the body of this Order, within 30 days of the closing on the last of its sales transactions, so long as that closing occurs on or before December 31, 1999. If the final closing occurs after that date, Niagara Mohawk Power Corporation shall, by January 31, 2000, file plans for making its filing or filings on auction proceeds and costs, in conformance with the discussion in the body of this Order.

5. Erie Boulevard Hydropower, L.P. shall make the supplemental filing on lightened regulation of its operations as an electric corporation, described in the body of this Order.

6. The findings on exempt wholesale generator status under the Public Utility Holding Company Act described in the body of this Order are made.

7. The findings under the State Environmental Quality Review Act described in the body of this Order are made.

8. These proceedings are continued.

By the Commission,

(SIGNED) DEBRA RENNER
Acting Secretary