

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 19, 2013

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Garry A. Brown
Gregg C. Sayre
Diane X. Burman

CASE 13-E-0232 - In the Matter of the Distribution of
Constellation Energy Commodities Group, Inc.
Settlement Funds in Accordance with Federal
Energy Regulatory Commission Directive.

ORDER DISTRIBUTING CONSTELLATION SETTLEMENT
REFUNDS TO ELECTRIC UTILITY CUSTOMERS

(Issued and Effective September 20, 2013)

BY THE COMMISSION:

INTRODUCTION

On March 9, 2012, the Federal Energy Regulatory Commission (FERC) approved a settlement between Constellation Energy Commodities Group, Inc. (Constellation) and FERC Enforcement Staff, which resulted in Constellation paying a civil penalty and \$110 million in disgorged profits due to market manipulation.¹ Of the disgorged profits, FERC designated \$78 million to be used within the wholesale electricity market of the New York Independent System Operator (NYISO) for the benefit of electric energy consumers. The Public Service

¹ See, Constellation Energy Commodities Group, Inc., 138 FERC ¶61,168 (March 9, 2012) and attached Stipulation and Consent Agreement (March 8, 2012) (March 9 FERC Order).

Commission (PSC, Commission) submitted a proposal that included a \$48 million refund to all customers within the NYISO including customers of the New York Power Authority.² A FERC Administrative Law Judge approved the PSC's Allocation Proposal in an Order Approving New York Public Service Commission's Allocation and Distribution Proposal (October 2012 FERC Order).³ To implement the refund allocation, on April 20, 2013, FERC transferred to the New York State Energy Research and Development Authority (NYSERDA) \$48 million to hold until the PSC directed refunds.

Upon issuance of this order, NYSERDA shall distribute to Consolidated Edison Company of New York, Inc. (Con Edison), Central Hudson Gas & Electric Corporation (CHG&E), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (NMPC), Rochester Gas and Electric Corporation (RG&E), and Orange & Rockland Utilities, Inc. (O&R) (collectively the Electric Utilities) their portion of the \$48 million approved by FERC for refunds, as more fully described below. The Electric Utilities, in turn, are ordered to issue refunds to their customers in accordance with this order. NYSERDA shall distribute to the Long Island Power

² In addition to the \$48 million in customer refunds, \$10 million will be used to support a Wholesale Electric Market Consumer Advocacy Project (WEMCAP) at the NYISO and \$20 million will be used to promote advanced technologies to optimize transmission system performance. See New York Public Service Commission Motion to Approve Allocation of Constellation Funds (PSC Allocation Proposal).

³ Constellation Energy Commodities Group, Inc., IN12-7-000 (Oct. 18, 2012) Order Approving New York Public Service Commission's Allocation and Distribution Proposal (October 2012 FERC Order). The New York Attorney General and the Department of State's Utility Intervention Unit supported the PSC's proposal.

Authority (LIPA) and the New York Power Authority (NYPA) their share of the \$48 million, as described herein, in accordance with October 2012 FERC Order requiring that such funds be returned to LIPA and NYPA electric customers in the form of refunds. LIPA's and NYPA's refund commitments are described in the body of this order.

BACKGROUND

On March 9, 2012, FERC issued an order approving a Stipulation and Consent Agreement reached between FERC Enforcement Staff and Constellation to resolve an investigation of potential violations of the FERC's Anti-Manipulation Rule, 18 C.F.R. § 1c.2, and of the FERC's regulation prohibiting the submission of inaccurate information, 18 C.F.R. § 35.41(b). In the Stipulation and Consent Agreement, Constellation agreed to pay a civil penalty and \$110 million, including interest, in disgorgement of unjust profits. The \$110 million was divided among the three Independent System Operator (ISO) markets affected by Constellation's actions based upon electric deliveries made during the time period in which Constellation acted unlawfully. The Stipulation and Consent Agreement required that the settlement funds be used for the benefit of affected electric ratepayers. FERC assigned to the NYISO \$78 million of the settlement.⁴

On September 10, 2012, following a state agency authorization process established by FERC, the PSC submitted to FERC a Motion to Approve Allocation of Constellation Funds (PSC Allocation Proposal) describing how the NYISO's portion of the Constellation Settlement would be used in a manner that

⁴ March 9 FERC Order at 5, ¶22. The PJM and New England ISOs were also affected by Constellation's actions and received apportionments of the remaining \$32 million.

benefitted New York State's electric customers. This PSC Allocation Proposal was supported by the New York State Attorney General (NYSAG) and the New York State Department of State's Utility Intervention Unit (NYDOS-UIU), both of whom filed separate comments. Among the other proposed uses of the NYISO portion of the settlement funds, the PSC proposed using \$48 million in direct refunds to customers of the Electric Utilities, LIPA and NYPA. On October 18, 2012, Deputy Chief Administrative Law Judge McCartney approved the PSC Allocation Proposal in the October 2012 FERC Order. Consistent with that FERC approval, on April 20, 2013, FERC transferred \$78 million to NYSERDA, \$48 million of which will be used for the refunds.⁵ NYSERDA has been holding the \$48 million in an interest bearing account pending issuance of this order.

A SAPA notice seeking submissions from the Electric Utilities proposing the manner in which each company's refunds would be made was published on June 12, 2013. A Secretary's Notice Seeking Comments was also published on the Commission's website. The notices also sought comments from NYPA and LIPA describing the manner in which each Authority would provide refunds to their electric customers. Comments were due by Monday, August 12, 2013. We received proposals from each of the Electric Utilities as well as commitments from NYPA and LIPA on the manner in which each would effectuate electric customer refunds.

⁵ 143 FERC ¶ 63,008, Constellation Energy Commodities Group, Inc. Docket No. IN12-7-000, FERC Final Report (issued May 22, 2013) at ¶5.

DESCRIPTION OF PROPOSED INVESTOR
OWNED UTILITY DISBURSEMENTS

Central Hudson Gas & Electric (CHG&E)

CHG&E proposes to refund \$1.6 million, its share of the Constellation settlement, on a volumetric basis to all retail delivery customers through the Company's Miscellaneous (MISC) charge component of its Energy Cost Adjustment Mechanism.⁶ As a volumetric rate, the MISC is reset monthly and often includes other types of refunds and charges.

CHG&E states in its filed comments that its customers who participate in the Recharge New York (RNY) program may receive overlapping refunds, one from CHG&E and a separate refund from NYPA's share of the Constellation funds. CHG&E is incorrect. The Electric Utilities are solely responsible for providing reimbursement to delivery customers, even if they receive NYPA energy for which the utilities provide retail delivery service.⁷ This includes RNY power. Therefore, no overlap of credits exists. CHG&E proposes to issue the refunds in the month following the Commission's approval and NYSERDA's transfer of the funds to CHG&E.

Consolidated Edison Company of New York (Con Edison)

Con Edison proposes crediting its allocated refund of \$15.1 million to its full service and retail access customers through the Company's Monthly Adjustment Charge (MAC). Con Edison uses the MAC to apply to delivery customers' bills various charges and credits associated with customers' utility service, to which the Constellation refund would be added. Con Edison proposes that its customers' share of the Constellation

⁶ PSC Tariff No. 15 - Electricity. CHG&E Filing at 3.

⁷ The only exceptions to this are customers served under Con Edison's tariffs P.S.C. No 11 and 12.

refund be deferred pending resolution of its petition for rehearing in Case 09-E-0428.⁸ Con Edison states that if the Commission grants its petition for rehearing and allows the Company to recover the Company's PJM OATT charges through the MAC, the Constellation refund and the PJM OATT charges would largely offset or negate one another. Alternatively, Con Edison proposes that the refund be credited in a single month as soon as practically possible after this order is issued. Con Edison would file amendments to P.S.C. No. 10 denoting the Constellation refund.

For consistency among the Electric Utilities, we reject Con Edison's proposal to defer its Constellation refunds for later distribution to ratepayers. Case 09-E-0428, which Con Edison requests be used as the vehicle to distribute its refunds, is not ripe for Commission decision. Linking the two cases, therefore, would delay refunds for Con Edison's customers. Con Edison is directed to credit customers through its MAC as soon as practically possible.

Niagara Mohawk Power Corp. (NMPC)

NMPC proposes to distribute its \$10.4 million share of the Constellation settlement in a separate line-item on customers' delivery bills. The Company will include a bill message explaining the refund. Because NMPC's credit will be based upon forecast usage in the month in which it is credited, the Company will reconcile the bill credit three months later based upon actual usage. If the reconciliation amount is too small to establish a billing factor (i.e. less than \$0.00001/kWh), NMPC will include the reconciliation in the

⁸ Con Edison Filing at 1-2. Case 09-E-0428, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service.

Company's Revenue Decoupling Mechanism (RDM). Any funds remaining after the initial reconciliation will be refunded or collected through the RDM.

New York State Gas & Electric and
Rochester Gas & Electric (NYSEG and RG&E)

NYSEG and RG&E propose to credit customers their portions, \$4.8 million and \$2.3 million, respectively, of the Constellation refund through company-specific per kWh credits included in each utility's Transition Charge. Transition Charges are included on most NYSEG and RG&E customers' delivery bills. The Companies will perform a true up in a following month. In the event certain customers are exempt from the Transition Charges, the Companies will apply a separate line-item credit to those customers' delivery bills. For customers who are credited on a separate delivery line-item, the Companies are directed to include a brief message explaining the credit.

Orange and Rockland Utilities (O&R)

O&R proposes to use its Energy Cost Adjustment (ECA) mechanism to refund its allocated \$1.4 million share of the Constellation settlement to its full service and retail access customers. The ECA is a component of customers' delivery bills. To implement this credit, O&R will file tariff amendments to add the Constellation refunds to its list of ECA-authorized items. The Company will issue the refund "as soon as practicable" after it is ordered to do so.

Long Island Power Authority (LIPA)

In its comments, LIPA has committed to refund its customers their \$6.4 million share of the Constellation settlement through LIPA's fuel and purchased power accounts. The refund will be distributed among all customers receiving

retail service on an equal per kWh basis through LIPA's Power Supply Charge in the month following NYSERDA's transfer of LIPA's share of the Constellation refunds.

The only customers to whom LIPA stated it would not distribute refunds through this mechanism are Brookhaven National Laboratories hydro-power and RNY customers. This is because LIPA presumes that NYPA, not LIPA, is responsible for distributing the Constellation refunds to both Brookhaven National Laboratories hydro-power and RNY customers.⁹ This is not entirely correct. While NYPA will provide refunds to Brookhaven National Laboratories hydro-power customers, NYPA will not be providing refunds to RNY customers at any utility. Unlike LIPA, the Electric Utilities are distributing their refunds through delivery rates that are paid by RNY customers. Therefore, we recommend that LIPA credit RNY customers their portion of the refund on an equal per kWh basis through a billing mechanism of LIPA's choosing.

New York Power Authority (NYPA)

As explained in its comments, NYPA provides energy services to seven market segments, each of which NYPA will proportionally credit with refunds through either NYPA's Energy Cost Adjustment tariff mechanism or through a separate bill credit. Customers who were NYPA customers in 2011 but are no longer NYPA customers will receive a refund check. While NYPA does not state when it would issue refunds, it is our understanding that it, too, would do so promptly upon receipt of the funds from NYSERDA.

⁹ LIPA at 2.

DISCUSSION

Upon issuance of this order, NYSERDA will disburse \$48 million, plus earned interest, to the Electric Utilities, NYPA, and LIPA.¹⁰ Consistent with the proposals submitted to this Commission and accepted by FERC, each Electric Utility shall refund to its customers the amounts listed below, plus any interest disbursement from NYSERDA. NYSERDA's eight (8) disbursements of the \$48 million, not including interest, shall be made to the following entities in the following amounts:

Central Hudson Gas and Electric Corp., representing a 3.35% allocation, \$1,608,000;

Consolidated Edison Company of New York, Inc., representing a 31.53% allocation, \$15,134,400;

New York State Electric and Gas Corp., representing a 10.06% allocation, \$4,828,800;

Niagara Mohawk Power Corporation, representing a 21.71% allocation, \$10,420,800;

Orange & Rockland Utilities, Inc., representing a 2.83% allocation, \$1,358,400;

Rochester Gas & Electric Corp., representing a 4.80% allocation, \$2,304,000;

Long Island Power Authority, representing a 13.37% allocation, \$6,417,600; and

New York Power Authority, representing a 12.35% allocation, \$5,928,000.

Individual Utility Proposals

The individual utility proposals are accepted as discussed herein. The Electric Utilities are directed to file any tariff changes necessary to effectuate the Constellation

¹⁰ The amounts listed can also be found in Attachment 1 to the PSC's Allocation Proposal to FERC.

refunds on not less than one day's notice to become effective no later than October 1, 2013.

CONCLUSION

Upon issuance of this order and in accordance with the FERC Allocation Order, NYSERDA shall distribute to each of New York's Electric Utilities, NYPA, and LIPA, their proportionate share of the \$48 million that was transferred to NYSERDA by FERC, in the amounts contained herein, plus earned interest. Any interest that NYSERDA has earned on the \$48 million will be divided according to the percentage of refunds each Electric Utility, NYPA and LIPA, receive. Each Electric Utility shall issue refunds to their customers consistent with this order. Typical residential customers served by the Electric Utilities should expect to see reductions in their delivery bills by approximately \$1 to \$3 depending on their electricity usage in the month the credits are applied.

The Commission orders:

1. Upon issuance of this order, the New York state Research and Development Authority should distribute to each major New York electric utility, the New York Power Authority, and the Long Island Power Authority, the amounts as set forth in the body of this order, plus earned interest;

2. Consolidated Edison Company of New York, Inc., Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Rochester Gas and Electric Corporation, and Orange & Rockland Utilities, Inc., shall implement their plans for customer refunds as described in this order and shall file any necessary tariff amendments to implement the refund, on not

less than one day's notice to become effective no later than October 1, 2013.

3. The requirement of Public Service Law Section 66(12) and 16 NYCRR 720-8.1 regarding newspaper publication of the tariff filings directed in Clause 2 is waived.

4. As soon each major electric utility completes the refund process, each shall submit a compliance filing to the Secretary showing that such refunds have been made.

5. The New York Power Authority and the Long Island Power Authority are asked to submit a letter to the Secretary after they have distributed the funds to their customers confirming that their FERC-ordered refunds have been completed.

6. The Secretary may extend the deadlines set forth in this order upon good cause shown, provided the request for such extension is in writing and filed on a timely basis, which should be on at least one day's notice.

7. This proceeding is continued until all of the electric utilities named herein have submitted their compliance filings and the entirety of the \$48 million in refunds, with interest, has been distributed to electric customers at which time it is closed.

By the Commission,

KATHLEEN H. BURGESS
Secretary