

NOTICE OF PETITION
(IPAA-32 - IPAA-89)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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In the matter of

THE ENERGY ASSOCIATION OF NEW YORK
STATE; CENTRAL HUDSON GAS & 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.;
and ROCHESTER GAS AND ELECTRIC
CORPORATION,

Petitioners,

For a Judgment Under Article 78 of
the Civil Practice Law and Rules

- against -

PUBLIC SERVICE COMMISSION OF THE
STATE OF NEW YORK,

Respondent.

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PLEASE TAKE NOTICE that upon the annexed Petition of petitioners The Energy Association of New York State, Central Hudson Gas & 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., and Rochester Gas and Electric Corporation, verified on the 16th and 17th days of September, 1996, upon the exhibits to the said Petition, upon the memorandum of law in support of the said Petition, and upon the affidavits of Paul L. Gioia, Patrick J. Curran, James M. Dewey,

Margaret Ruffin Horvath, and J. Gregory Sidak in support of the said Petition, and the exhibits thereto, petitioners will apply to this Court at a Special Term thereof, to be held at the Court House, Albany, New York 12227, on the 1st day of November, 1996, at 9:30 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard, for a judgment pursuant to Article 78 of the Civil Practice Law and Rules (1) annulling and setting aside the opinions and orders issued on May 20, 1996 and July 17, 1996 in Cases 94-E-0952, et al. (the "Order") by respondent Public Service Commission of the State of New York (the "Commission") on the grounds that such Order is contrary to lawful procedure, vague, arbitrary and capricious, affected by errors of law, and in excess of the statutory and constitutional authority of the Commission; (2) declaring that the Order has no binding regulatory effect upon the petitioners and provides no legally sufficient basis for future decisions by the Commission; (3) enjoining the Commission from implementing the Order in any way; (4) declaring that the Commission has no statutory or legal authority to (a) disallow a reasonable opportunity for the utility petitioners to recover past expenditures prudently incurred to fulfill their legal obligations to provide electricity service to the public, (b) mandate retail wheeling, (c) deregulate the rates charged by electricity generators or the energy services sector, (d) order divestiture of utilities' assets, or (e) require the utility petitioners to submit filings and restructuring plans to the extent such filing requirements are outlined in vague terms in the Order or direct the utility

petitioners to implement actions which are beyond the authority of the Commission to mandate; and (5) granting such other and further relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR § 7804(c), the answer and supporting affidavits, memorandum of law, and other supporting papers, if any, shall be served on or before October 25, 1996.

Petitioners designate Albany County as the place of trial. The basis of venue is CPLR § 506(b)(2).

Dated: September 18, 1996

GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
202-955-8500

GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166
212-351-4000

DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, New York 10017
212-450-4000

COUNSEL FOR PETITIONERS

ADDITIONAL COUNSEL FOR PETITIONERS:

Howard Shapiro
Stuart I. Silbergleit
THE ENERGY ASSOCIATION OF NEW
YORK STATE
111 Washington Avenue
Albany, New York 12210

Paul L. Gioia
LEBOEUF, LAMB, GREENE & MACRAE
One Commerce Plaza
Albany, New York 12210-2820

COUNSEL FOR THE ENERGY
ASSOCIATION OF NEW YORK STATE

Robert J. Glasser
William P. Reilly
GOULD & WILKIE
One Chase Manhattan Plaza
New York, New York 10005

COUNSEL FOR CENTRAL HUDSON GAS
& ELECTRIC CORPORATION

Edwin W. Scott
Sara Schoenwetter
Gerard A. Maher, Of Counsel
CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.
4 Irving Place
New York, New York 10003

COUNSEL FOR CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC.

Leonard P. Novello
Richard A. Visconti
LONG ISLAND LIGHTING COMPANY
175 East Old Country Road
Hicksville, New York 11801

COUNSEL FOR LONG ISLAND
LIGHTING COMPANY

Kenneth M. Jasinski
HUBER, LAWRENCE & ABELL
605 Third Avenue
New York, New York 10158

COUNSEL FOR NEW YORK STATE
ELECTRIC & GAS CORPORATION

Franklin K. Breselor
NIAGARA MOHAWK POWER
CORPORATION
111 Washington Avenue
Albany, New York 12210-2257

COUNSEL FOR NIAGARA MOHAWK
POWER CORPORATION

G.D. Caliendo
John L. Carley
ORANGE AND ROCKLAND UTILITIES,
INC.
One Blue Hill Plaza
Pearl River, New York 10965

COUNSEL FOR ORANGE AND ROCKLAND
UTILITIES, INC.

Richard N. George
NIXON, HARGRAVE, DEVANS & DOYLE
Clinton Square
P.O. Box 1051
Rochester, New York 14603

COUNSEL FOR ROCHESTER GAS AND
ELECTRIC CORPORATION

T O:

MAUREEN O. HELMER
Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, New York 12223


Attorney for Respondent

DENNIS C. VACCO
Attorney General of the
State of New York
State Capitol
Albany, New York 12224

74. To the extent that the Commission concluded it has authority to mandate retail wheeling, or has sought to implement retail wheeling, the Order is contrary to the Public Service Law, in excess of the Commission's statutory authority, and is preempted by federal statute. The Order thus was affected by errors of law, and constituted arbitrary and capricious action.

C. The Commission May Not Deregulate Generation Or Energy Services In The Manner Suggested In Its May 20 Order

75. Sections 65, 66, 71 and 72 of the Public Service Law require the Commission to regulate the generation and sale of electricity in the State of New York. These provisions were enacted as part of a comprehensive regime for regulating public utilities. Once the Legislature has established such a regime, the Commission may not arbitrarily withdraw from regulating electricity generation and abandon the public's interest without a thoughtful and reasoned transition to a market-driven environment.

 76. The Public Service Law of the State of New York sets forth detailed requirements regarding the obligation to serve, complaint procedures, billing, termination of service and other such matters. The Commission has no authority to exempt energy service companies that may arise in a deregulated environment from these statutory customer service requirements.

77. Under the Commission's model of wholesale and retail competition, the charges made or demanded by electricity

generators, including utility generators, would be determined and prescribed by unfettered market forces, rather than by the Commission. In the Order, the Commission also suggested that it has legal authority to exempt energy service companies from statutory customer service requirements. [REDACTED]

78. To the extent the Order states that the market rather than the Commission shall determine the charges made or demanded by electricity generators, the Commission has essentially summarily, and unlawfully, abdicated its legislatively mandated regulatory role with respect to generation without giving any indication as to how it intends to carry out its regulatory obligations in the future. Such action is contrary to statute, and furthermore constitutes legal error and arbitrary and capricious action.

[REDACTED] 79. To the extent the Order states that energy service companies may be exempted from customer service requirements contained in the Public Service Law, the Commission has essentially summarily, and unlawfully, abdicated its legislatively mandated regulatory role with respect to energy services. Such action is contrary to statute, and furthermore constitutes legal error and arbitrary and capricious action. [REDACTED]

D. The Commission Lacks Legal Authority To Require Divestiture of Utility Assets

80. The Public Service Law delegates certain regulatory powers to the Commission. Under the Public Service Law, the Commission is granted the authority and the duty to set