

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

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March 25, 2009

SENT VIA ELECTRONIC FILING
Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket Nos. ER08-858-000 - PJM Interconnection,
L.L.C.; ER08-867-000 - New York Independent
System Operator, Inc.

Dear Secretary Bose:

For filing, please find the Reply Comments of the New York State Public Service Commission in the above-entitled proceedings. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

David G. Drexler
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.)	Docket Nos. ER08-858-000
)	
New York Independent System Operator, Inc.)	ER08-867-000

REPLY COMMENTS OF THE NEW YORK STATE
PUBLIC SERVICE COMMISSION
ON OFFER OF SETTLEMENT

INTRODUCTION

On February 23, 2009, PJM Interconnection, L.L.C. (PJM) filed a Settlement Agreement and Offer of Settlement among the New York Independent System Operator, Inc. (NYISO), Consolidated Edison Company of New York, Inc. (Con Edison), Public Service Electric and Gas Company (PSE&G), PSEG Energy Resources & Trade LLC, and the New Jersey Board of Public Utilities (NJBPU) (Settling Parties), whereby the Settling Parties agreed to the provisions necessary to allow Con Edison to continue taking service under two grandfathered contracts between Con Edison and PSE&G. The grandfathered contracts, which pre-date the Commission's policy on open access, provide for Con Edison to deliver up to 1000 MW (i.e., a 600 MW and 400 MW wheel) to PSE&G in northern New Jersey, and for PSE&G to redeliver the same power to Con Edison in New York City.

The Settlement Agreement provides the terms and conditions necessary for the contracts to be "rolled over," and for Con Edison to take firm point-to-point service under the PJM tariff.¹ The terms and conditions for that service would closely resemble those prescribed by the Protocol that governs Con Edison's existing service, except that Con Edison will pay rates prescribed by PJM's tariff, as well as allocated costs for upgrades included in the PJM Regional Transmission Expansion Plan (RTEP).²

On March 16, 2009, NRG Companies (NRG) filed comments in opposition to the Settlement Agreement. NRG argues that the proposed Settlement Agreement violates the Commission's open access and rollover policies, by affording Con Edison service under terms and conditions not available under PJM's Open Access Transmission Tariff (OATT). The New York State Public Service Commission hereby submits its Reply Comments in response to NRG, pursuant to Rule 602 of the Federal Energy Regulatory

¹ Under the PJM tariff, existing firm service customers with a contract term of five years or more, have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed.

² As part of the original wheeling agreements, Con Edison agreed to pay for the upgrades to PSE&G's system necessary to enable the wheel. In addition, Con Edison continues to pay a maintenance fee on the facilities. This arrangement suggests that Con Edison intended the service to be treated as comparable to firm service.

Commission's (FERC or Commission) Rules of Practice and Procedure, 18 C.F.R. § 385.602.

DISCUSSION

Under the Commission's precedent, a contested settlement may be approved if the overall benefits of the settlement outweigh the nature of the contesting parties' objections, and those parties' interests are too attenuated.³ The Settlement Agreement should be approved because it contains various benefits that would satisfy a majority of the parties' interests, and outweighs NRG's objections that seek to make significant market changes and allow the scheduling of certain transactions preferential to the company. The Commission should not allow NRG's attenuated interest to scuttle the significant compromises reflected in the Settlement Agreement, so that NRG may seek market changes through the settlement process that may only be effectuated through the NYISO's and PJM's respective stakeholder processes (i.e., changes in the NYISO's and PJM's transaction-pricing practices).

Most importantly, the 1000 MW wheeling arrangement provides critical reliability benefits, especially during

³ Trailblazer Pipeline Company, 85 FERC ¶61,345 (1998), order on reh'g, 87 FERC ¶61,110 (1999), reh'g denied, 88 FERC ¶61,168 (1999).

emergency conditions, for New York City, which is a constrained load pocket. NRG ignores the reliability benefits of the Settlement Agreement by suggesting that there are "no demonstrated benefits" to the Settlement Agreement, other than resolving litigation matters. However, the reliability benefits to New York City are significant and should not be overlooked. The wheeling arrangements fulfill a substantial portion of New York City's in-city generation capacity requirement. In the absence of the contracts, or an arrangement for similar service, which the Settlement Agreement would accommodate, it is uncertain whether, and at what cost, Con Edison would be able to obtain replacement in-city generation. The Settlement Agreement addresses these matters by ensuring the reliability benefits are retained, and resolves the reliability concerns raised by the NJBPU.

The Settlement Agreement also ensures Con Edison will contribute toward future transmission system needs within PJM by paying an allocated share of annual RTEP costs. Moreover, the proposal generally conforms with the rates, terms, and conditions of the PJM OATT, while recognizing the need to implement the rolled over services in a manner that accommodates the unique wheeling arrangement.

In addition, we note that the grandfathered contracts have resulted in contentious and lengthy administrative hearings

and litigation among some of the Signatory Parties. The Settlement Agreement would put an end to the protracted administrative and legal proceedings. NRG also seeks to diminish the significant reduction in litigation that would occur if the Settlement Agreement were approved, by characterizing the only demonstrated benefit as a "potential" to decrease litigation. In fact, there would be a very real reduction in litigation due to PSE&G and Con Edison's agreement to dismiss their pending claims and appeals. Specifically, PSE&G and Con Edison would withdraw their individual petitions for review pending before the United States Court of Appeals for the District of Columbia in Case Nos. 07-1210, 07-1220 and 07-1377. Ironically, adopting NRG's request to initiate hearing procedures would likely give rise to significant additional litigation, as parties would be compelled to re-litigate issues that the Settlement Agreement would otherwise resolve.

Moreover, adopting the Settlement Agreement would not prevent NRG from selling power into PJM. The limitations that NRG is concerned about arise from practices that PJM and the NYISO use in pricing sales between their control areas. Those pricing practices exist separate and apart from the service to Con Edison. If the service to Con Edison were not rolled-over, NRG's issues would still remain. In other words, the limitations on the pricing of NRG's sales into PJM would

continue to exist. Furthermore, the relief that NRG seeks can only be obtained through stakeholder processes that are outside the scope of this proceeding because it requires a change in market rules that must be properly vetted among all market participants before being implemented. Since there would likely be significant concerns with such a change, including the ability of NRG to exercise market power, NRG should not be allowed to circumvent the stakeholder process by seeking to resolve this issue in the context of this settlement.

In balancing the overall benefits with the objecting parties' interests, the Commission should determine that the benefits of the Settlement Agreement clearly outweigh any potential disadvantages, and that the final result is just and reasonable. Similarly, the Commission should find that the Settlement Agreement will not inappropriately interfere with the Commission's policies.

CONCLUSION

As discussed above, the Commission should approve the Settlement Agreement and reject NRG's comments in opposition to the Settlement Agreement.

Respectfully submitted,



Peter McGowan
General Counsel
Public Service Commission
of the State of New York

By: David G. Drexler
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-8178

Dated: March 25, 2009
Albany, New York

CERTIFICATE OF SERVICE

I, David Drexler, do hereby certify that I will serve on March 25, 2009, the foregoing Reply Comments of the New York State Public Service Commission, upon each of the parties of record indicated on the official service lists compiled by the Secretary in these proceedings.



David Drexler

Dated: March 25, 2009
Albany, New York