

STATE OF NEW YORK DEPARTMENT OF PUBLIC  
SERVICE

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May 11, 2010

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, ER08-867-000, and EL02-23-000 - PJM Interconnection, L.L.C. and New York Independent System Operator, Inc.

Dear Secretary Bose:

For filing, please find the Reply Brief of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 474-1585.

Very truly yours,

Handwritten signature of Alan T. Michaels.

Alan T. Michaels  
Assistant Counsel

Attachment

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	Docket No. ER08-858-000
New York Independent System	)	ER08-867-000
Operator, Inc.	)	EL02-23-000

REPLY BRIEF OF THE NEW YORK STATE  
PUBLIC SERVICE COMMISSION

BACKGROUND

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 "roll-over" and 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.<sup>1</sup>

On February 19, 2010, the Federal Energy Regulatory Commission (FERC or Commission) issued an "Order Establishing Additional Procedures" (February 2010 Order) that identified threshold issues that need to be addressed before the Commission can determine whether the Settlement Agreement can be approved.<sup>2</sup> In particular, the February 2010 Order identified three outstanding issues regarding the roll over of the long-term contracts between Con Edison and PSE&G and whether the roll-over of those contracts would be unduly discriminatory. The first issue was whether the contracts in question are sufficiently "firm" to be rolled over under the FERC's Order No. 888. Second, if the contracts are eligible for roll-over, whether Con Edison is eligible only for Open Access Transmission Tariff (OATT) service, or whether the circumstances warrant a non-conforming agreement. Third, the Commission identified an issue

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<sup>1</sup> The New York State Public Service Commission (NYPSC) submitted a timely Notice of Intervention in Docket No. EL02-23-000 on January 22, 2001, and in Docket No. ER08-858-000, on May 13, 2008. On August 26, 2008, the Commission consolidated Docket Nos. ER08-858-000 and ER08-867-000 for purposes of settlement, hearing and decision. See, Docket Nos. ER08-858-000 et al., PJM Interconnection, L.L.C. and New York Independent System Operator, Inc., Order Establishing Hearing And Settlement Judge Procedures (issued August 26, 2008).

<sup>2</sup> 130 FERC ¶61,126 (2010).

regarding what effect the agreements would have on the rights of and prices paid by other parties, including the effect on the Locational Marginal Prices (LMP) in both PJM and NYISO, and the effect on the ability of other parties to transact business.<sup>3</sup>

On March 19, 2010, the Commission issued a "Notice of Extension of Time" (Notice), which sought input on the threshold issues identified by the Commission, and extended the dates for filing initial and reply briefs addressing those issues. On April 21, 2010, various parties filed Initial Briefs. Pursuant to the Commission's Notice, the NYPSC hereby submits its Reply Brief.

#### DISCUSSION

The NYPSC supports the roll-over of the 600 MW and 400 MW wheeling agreements, which provide critical reliability and consumer benefits throughout the entire year for New York City. This location is a constrained load pocket that is dependent upon imports from other control areas, including PJM.

We concur with the positions and arguments raised in Con Edison's Initial Brief that was filed on April 21, 2010. Regarding the issue of whether the contracts are sufficiently firm to be rolled over, we note that the Commission has determined that the 600 MW contract is as firm as firm OATT

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<sup>3</sup> February 2010 Order, supra, at ¶¶ 1 and 24.

service, and that the 400 MW contract is essentially firm and superior to all non-firm OATT service (including non-firm customers that pay congestion costs). Therefore, the contracts in question should be treated as sufficiently firm to be rolled over.

Considering the issue of whether the circumstances warrant non-conforming terms, the Commission should recognize that the non-conforming elements of the service are necessitated by the unique circumstances under which the service will be rendered. In particular, the circumstances involving a power flow from New York into PJM and back into New York require that PJM and the NYISO utilize certain procedures to effectuate the service. Thus, the circumstances warrant a non-conforming agreement.

Finally, approval of the roll-over would not alter the method by which inter-area transactions are scheduled, dictate energy flows over any specific transmission lines, or deprive other customers of transmission service over any transmission facility. However, we are particularly concerned that the Commission's rejection of the wheeling agreements could jeopardize reliability within New York City. If the contracts expire, replacement of imports lost would be difficult, and would likely require construction of new resources. Creating the required new infrastructure would not be achievable except

upon long lead-time. Moreover, the existence of the wheeling agreements in the future has been relied upon in all interconnection and planning studies performed by the NYISO in forecasting available resources over the next ten years. The wheeling agreements are an anticipated part of the supply structure for NYC.

CONCLUSION

For the reasons noted above, the Commission should approve the proposed Settlement Agreement, which will help ensure the reliability of service to New York City.

Respectfully submitted,



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

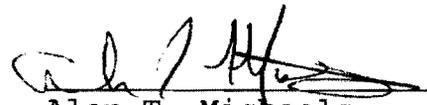
By: Alan T. Michaels  
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Albany, NY 12223-1305  
(518) 474-1585

Dated: May 11, 2010  
Albany, New York

CERTIFICATE OF SERVICE

I, Alan T. Michaels, do hereby certify that I will serve on May 11, 2010, the foregoing Comments of the New York State Public Service Commission upon each of the parties of record indicated on the official service list compiled by the Secretary in this proceeding.

Dated: May 11, 2010  
Albany, New York

  
Alan T. Michaels