

# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

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## PUBLIC SERVICE COMMISSION

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*Secretary*

September 13, 2004

Honorable Linda Mitry, Acting Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Room 1-A209  
Washington, D.C. 20426

Re: Docket No. EL04-126-000 – PSEG Power In-City I, LLC v. Consolidated  
Edison Co. of New York, Inc.

Dear Acting Secretary Mitry:

For filing, please find the Notice of Intervention and Protest 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) 474-7687.

Very truly yours,

John C. Graham  
Assistant Counsel

Attachment

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

PSEG Power In-City I, LLC	)
Complainant,	)
	)
v.	) Docket No. EL04-126-000
	)
Consolidated Edison Co. of New York, Inc.	)
Respondent.	)

**NOTICE OF INTERVENTION AND PROTEST**

On August 23, 2004, PSEG Power In-City I, LLC (In-City) filed a complaint (Complaint) under section 206 of the Federal Power Act, 16 U.S.C. § 824e, and section 206 of the Federal Energy Regulatory Commission’s (FERC or Commission) Rules of Practice and Procedure, 18 C.F.R. § 206, against Consolidated Edison Co. of New York, Inc. (Con Ed) requesting that the Commission extend by eighteen months the interconnection date of In-City’s Interconnection Agreement with Con Ed concerning interconnection of In-City’s Bergen 2 electric generating plant into Con Ed’s West 49<sup>th</sup> Street Substation.

The New York State Department of Public Service (NYDPS) submits its Notice of Intervention and Protest pursuant to the Commission’s Notice of Filing issued in the above-entitled proceeding on August 23, 2004, and Rule 214 of the Commission’s Rules of Practice and Procedure. Copies of all correspondence and pleadings should be addressed to:

Dawn Jablonski Ryman  
General Counsel  
New York State Department of  
Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350

Howard Tarler  
Chief – Bulk Transmission Systems  
New York State Department of  
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Three Empire State Plaza  
Albany, New York 12223-1350

## INTRODUCTION AND SUMMARY

The Commission should deny In-City’s request for a modification of its interconnection agreement with Con Ed to extend the interconnection date by eighteen months, with the understanding that In-City may request extension of the interconnection date after it demonstrates that it is fully prepared to construct its project in a timely manner. Under its interconnection agreement with Con Ed, In-City reserves until May, 2006 the exclusive use of the last available vacant position on the ring bus at Con Ed’s West 49<sup>th</sup> Street Substation (“West 49<sup>th</sup>”) for interconnection into Con Ed’s facilities serving New York City. Because substantial construction would be required in order to create additional bus positions (interconnect points) for other developers to utilize, access to this vacant bus position is crucial for expedited interconnection. Thus, the vacant bus position should remain available to the first project ready to interconnect if In-City cannot meet the May 2006 interconnection date.

## DISCUSSION

Under the Mobile-Sierra doctrine, the Commission may only modify a contract under its jurisdiction if such modification is in the public interest.<sup>1</sup> In the instant matter,

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<sup>1</sup> See Atlantic City Elec. Co. v. F.E.R.C., 295 F.3d 1, 14 (D.C. Cir. 2002); Northeast Utils. Serv. Co. v. F.E.R.C., 55 F.3d 686 (1<sup>st</sup> Cir. 1995).

the public interest does not support a modification of the interconnection agreement because In-City's reservation of the last remaining vacant bus position at West 49<sup>th</sup> should not be extended for another eighteen months.

Because expeditious interconnection of new lines into New York City is essential to the New York market, this vacant bus position is a valuable asset. If this position were reserved but not used, other projects requesting interconnection at West 49<sup>th</sup> would likely incur substantial expenditures and delay. Therefore, Con Ed's sole remaining vacant bus position at West 49<sup>th</sup> should be made available either to an electricity supplier who demonstrates readiness to interconnect once In-City's reservation expires in May 2006, or to be used for bulk transmission system reinforcements that may become necessary.

Moreover, In-City has already obtained one Commission-ordered eighteen month time extension of its interconnection agreement with Con Ed.<sup>2</sup> In its Complaint, In-City now argues that it cannot make further preparation to interconnect absent another time extension.<sup>3</sup> It ought to be the other way around; the Commission should require In-City to demonstrate readiness before the Commission considers a limited extension. If In-City cannot make such a showing, its reservation of the vacant bus position should be allowed to expire so that the position may be made available to the first needed interconnection after May 2006.<sup>4</sup> This approach would avoid unduly withholding the vacant bus position

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<sup>2</sup> Consolidated Edison of New York, Inc., 101 FERC ¶ 61,185, 61,731 (2002).

<sup>3</sup> Complaint at 4.

<sup>4</sup> Moreover, the New York Power Authority (NYPA) recently accepted proposals for the supply of 500 megawatts of power into New York City. NYPA has indicated that it will announce the winner by the end of 2004. If another supplier wins the NYPA bid, it may have a legitimate need for the vacant bus position. If In-City wins the bid, it would still have ample time and opportunity to petition the Commission for an extension of its interconnection agreement with Con Ed.

from equal access by all developers, does not unfairly prejudice In-City, and would promote a reliable supply of power to the New York City market.

Therefore, the Commission should deny, without prejudice, the relief requested in the Complaint, in order to avoid unnecessarily extending In-City's reservation of the West 49<sup>th</sup> vacant bus position. Should In-City, in the future, be able to demonstrate that it has obtained necessary construction and financing commitments and that it is ready to move forward with its proposed interconnection, it should then seek an appropriate extension if necessary. Any other action, at this time, is not in the public interest.

Respectfully submitted,

Dawn Jablonski Ryman  
General Counsel

John C. Graham  
Assistant Counsel  
Public Service Commission  
of the State of New York  
Three Empire State Plaza  
Albany, New York 12223-1350

Dated: September 13, 2004  
Albany, New York

CERTIFICATE OF SERVICE

I, Ellen L. Jeffers, do hereby certify that I will serve on September 13, 2004 the foregoing Notice of Intervention and Protest of the New York State Public Service Commission by depositing a copy thereof, first class postage prepaid, in the United States mail, properly addressed to each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Dated: September 13, 2004  
Albany, New York

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Ellen L. Jeffers