

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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June 15, 2001

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

Re: Docket No.EL01-45-000 and ER01-1385-000-
Consolidated Edison Company of New York, Inc.

Dear Secretary Boergers:

Enclosed for filing please find one original and fourteen copies of the Request for Rehearing of the New York State Public Service Commission in the above-entitled proceedings. Please date stamp and return the enclosed extra copy of the Request for Rehearing in the self-addressed, postage paid envelope provided. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

David G. Drexler
Assistant Counsel

Enclosure

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Consolidated Edison Company) Docket No. EL01-45-000
of New York, Inc.) Docket No. ER01-1385-000

**REQUEST FOR REHEARING ON AN EXPEDITED BASIS
OF THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK**

On May 16, 2001, the Federal Energy Regulatory Commission (Commission or FERC) issued an Order rejecting Consolidated Edison Company of New York, Inc.'s (Con Edison or ConEd) request to revise the "Localized Market Power Mitigation Measures Applicable to Sales of Capacity, Energy, and Certain Ancillary Services from Specified Generating Units in New York City" (mitigation measures) to close various loopholes.¹ Pursuant to Rule 713 of the Commission's Rules of Practice and Procedure (18 C.F.R. §385.713, the Public Service Commission of the State of New York (NYPS&C) hereby submits this request for rehearing of the Commission's Order on an expedited basis.

The Commission rejected Con Edison's request, without prejudice, based upon Con Edison's decision not to use the New York Independent System Operator, Inc. (NYISO) stakeholder process and representations made by the NYISO in their filings

¹ Consolidated Edison Company of New York, Inc., 95 FERC 61,216 (2001) (hereinafter referred to as "Order").

that additional measures are unnecessary. As explained more fully below, Con Edison should not be required to go through the NYISO stakeholder process before filing a complaint under section 206 of the Federal Power Act. Con Edison was not only statutorily entitled to file directly with FERC, but, under the circumstances, a filing was necessary. Further, the Commission relied upon misleading statements in the NYISO's filing. The NYISO has never mitigated bid production cost guarantees (BPCG)² of any kind since its November 1999 inception. Given these errors, the Commission should grant the NYPSC's request for rehearing and approve the revisions to the New York City mitigation measures. We request a rehearing on an expedited basis so that the urgently needed mitigation measures can be implemented in New York City during the summer 2001 capability period.

I. The Commission Erred in Rejecting Con Edison's Proposal Based Upon Con Edison Not Following the NYISO's Stakeholder Process

Con Edison filed its request to revise the mitigation measures pursuant to sections 205 and 206 of the Federal Power

² A BPCG is a mechanism, which pays a generator its bid, even when the bid is substantially higher than the prevailing market clearing price, due to particular circumstances such as the need to run the unit out-of-merit for local reliability requirements.

Act (FPA). As the Commission acknowledged in its May 16, 2001 Order, "under section 206 of the...FPA, ConEd is permitted (like any other party) to make such a filing for changes to procedures implemented by the NYISO."³ While Con Edison was admittedly entitled by statute to file directly with FERC, the Commission effectively imposed the stakeholder process as a condition precedent for Con Edison's filing.⁴

The stakeholder process is inappropriate to deal with the mitigation measures under these unique circumstances because the information that can establish current incidents of market abuse is treated confidentially by the NYISO.⁵ Consequently, Con Edison did not have access to that information, nor could it be shared with the stakeholder committees. The Commission does, however, have access to the information. Thus, the proper forum for Con Edison to seek a remedy is before the Commission.

³ Consolidated Edison Company of New York, Inc., 95 FERC 61,216 (2001) at p. 5.

⁴ The Commission noted that "if ConEd continues to believe that NYISO should have additional mitigation authority, it should work with NYISO within the NYISO stakeholder process to formulate a feasible mitigation proposal which NYISO may file under section 205 of the FPA." 95 FERC 61,216 (2001) at p. 6.

⁵ Under the NYISO's Services Tariff, bid information from the energy, capacity and ancillary services markets, but not the names of the bidders making those bids, is made public six months after the bids are submitted. Until such time, the NYISO considers the bid information confidential. NYISO Market Administration and Control Area Services Tariff Sheet No. 84.

II. Con Edison's Proposed Measures Are Not Duplicative of the NYISO's Existing Mitigation Authority

The Commission's Order also based its rejection of Con Edison's proposal upon the NYISO's position that "the proposed measures may be duplicative of the mitigation authority the NYISO already has."⁶ According to the NYISO "if circumstances in either Day-Ahead or Real-Time Markets cause a generator to be a 'must-run' unit, its bids are subject to being mitigated to the applicable Reference Price if the unit attempts to exploit its must-run status by raising its bids above the applicable thresholds in the Market Mitigation Measures."⁷ The NYISO suggested that it was easier to mitigate Bid Production Cost Guarantees than to mitigate energy or other market clearing prices.⁸

The ISO's statements are incorrect. The NYISO has informed us that, as of May 18, 2001, the NYISO not once mitigated bid production cost guarantees of any kind since its November, 1999 inception. Because the NYISO's market monitoring

⁶ Consolidated Edison Company of New York, Inc., 95 FERC 61,216 (2001) at p. 5.

⁷ Motion of NYISO to Intervene and Protest, April 4, 2001, at p. 7.

⁸ Id. pp 7-8.

unit does not review the BPCG data until it has gone through the billing process, the ISO becomes aware of the problem too late to mitigate. The result is that generation owners are able to exert market power in "must-run" situations without concern that these bids will be mitigated. This has led to "unjust and unreasonable" prices in numerous instances, which should not be allowed to continue. The Commission should seek the necessary data from the ISO regarding the prices paid to these must-run units in New York City.⁹ Most importantly, the Commission should reexamine its reliance on the NYISO claim regarding the sufficiency of its existing mitigation measures in New York City and approve the ConEd mitigation proposal.¹⁰

III. The NYISO's Inability to Implement Con Edison's Proposal for the Upcoming Summer Capability Period Should Not be a Basis for Denial

The Commission rejected Con Edison's proposal based, in part, upon the NYISO's representation that "it cannot fully

⁹ We estimate that in certain instances carriers have been bidding at ten times their variable costs because they could exert market power without fear of mitigation.

¹⁰ Even if the ISO were to apply its mitigation measures to must run units, those measures assume that the market is functioning in a competitive manner the majority of the time. The situation in New York City assumes the opposite. The City is a load pocket approximately 60% of the year, which, therefore, requires more aggressive mitigation than does the ISO's mitigation plan.

implement ConEd's proposal for the upcoming summer capability period and...that it prefers to devote all available time and resources to enhancing the administration of the MMP."¹¹ In addition, the Commission noted that the "NYISO already has an ambitious schedule of market enhancements and adjustments that it hopes to implement for the 2001 summer capability period."¹² Although there may be "market enhancements and adjustments" that the NYISO has given priority over Con Edison's proposal, the Commission should not delay its approval based on the NYISO's workload. By approving the revisions up front, the Commission will allow the NYISO to implement the amended mitigation measures as soon as practicable, given its other priorities. Further, in lieu of full implementation, a partial implementation may be possible during the capability period this summer.

¹¹ Consolidated Edison Company of New York, Inc., 95 FERC 61,216 (2001) at p. 5.

¹² Id. pp 5-6.

CONCLUSION

For the reasons stated above, the Commission should grant the NYPSC's request for rehearing on an expedited basis and approve the revisions to the mitigation measures in time for the summer capability period.

Respectfully submitted,

Lawrence G. Malone
General Counsel

By: David G. Drexler
Assistant Counsel
Public Service Commission
Of the State of New York
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-8178

Dated: June 15, 2001
Albany, New York

CERTIFICATE OF SERVICE

I, Naomi Tague, do hereby certify that I will serve on June 15, 2001, the foregoing request for rehearing on an expedited basis of the Public Service Commission of the State of New York 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.

Naomi Tague

Date: June 15, 2001
Albany, New York