

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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Secretary

August 30, 2001

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

Re: Consolidated Edison Company of New York, Inc.

Docket Nos. EL01-45-002, EL01-45-05, ER01-1385-003, and ER01-1385-006

Dear Secretary Boergers:

For filing please find the Answer of the Public Service Commission of the State of New York to the Supplemental Implementation Schedule filed by the NYISO in the above-captioned proceedings. Should you have any questions, please feel free to contact me at 518-486-2652.

Very truly yours,

Penny Rubin
Managing Attorney

Enclosures

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

Consolidated Edison Company)	Docket Nos.	EL01-45-002
of New York, Inc.)		ER01-45-005
			ER01-1385-003
			ER01-1385-006

**ANSWER OF THE PUBLIC SERVICE COMMISSION OF THE
STATE OF NEW YORK TO NYISO'S SUPPLEMENTAL
IMPLEMENTATION SCHEDULE**

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure¹ and Notice of Filing, dated August 17, 2001, the Public Service Commission of the State of New York (NYPSC) submits this Answer to the Supplemental Implementation Schedule filed by the New York Independent System Operator, Inc. (NYISO) on August 14, 2001. Inasmuch as the NYISO's proposed implementation schedule would preclude the evaluation directed by the Commission, the NYPSC respectfully requests that the Commission direct the NYISO to evaluate the required changes necessary to implement Real-Time mitigation.

BACKGROUND

On July 20, 2001, the Commission issued an Order on Rehearing Accepting Revised Market Power Mitigation Measures, as Modified, for Filing (Revised Mitigation Measures

¹ 18 C.F.R. § 385.214 (2000).

Order) in the above dockets.² In accepting revisions to the In-City Market Power Mitigation Measures (Revised In-City Mitigation Measures) proposed by the Consolidated Edison Co. of New York, Inc. (Con Edison) for use in New York, the Revised Mitigation Measures Order expanded the application of the Revised In-City Mitigation Measures to:

(1) bids for sales of energy in the real-time market during constrained periods; (2) bids for minimum generation and start-up in all instances where generation must be operated out-of-merit due to local reliability requirements; (3) bids for start-up and minimum generation during constrained periods (*i.e.*, whenever mitigation would apply to a unit's incremental energy bid); and (4) all generators located electrically within New York City, not just those divested by ConEd.³

The Commission called for termination of these new measures on October 31, 2001. The Commission explained that it would “allow the proposed mitigation to be in place during NYISO’s 2001 summer capability period while NYISO and the market participants gain experience with the operation of these procedures and consider whether ConEd’s proposal should be incorporated into NYISO’s overall mitigation measure program.”⁴ It also directed the NYISO, working with the market participants through the stakeholder process, to address concerns regarding the coordination of the NYISO’s mitigation measures.⁵

On July 30, 2001, in accordance with ordering paragraph C of the Revised Mitigation Measures Order, the NYISO filed a timetable for implementing the revisions to the In-City Mitigation Measures. The NYISO advised that it could implement revisions (2), (3), and (4) in

² *Consolidated Edison Company of New York, Inc.*, 96 FERC ¶61,095, *slip op.* (issued July 20, 2001).

³ *Id.* at 2.

⁴ *Id.* at 5.

⁵ *Id.*

the Day-Ahead Market (DAM) at the end of this August, but that implementation of the Revised In-City Mitigation Measures “in the Real-Time Market would require automated procedures that are not feasible prior to the October 31, 2001 expiration date” set by the Commission. July 30 Filing Letter, at 3. On August 14, 2001, the NYISO filed a Supplemental Implementation Schedule that now includes several features of the Revised In-City Mitigation Measures for implementation before the end of August (implementation of measures applied to energy, start-up, and minimum generation payments made to units operated out-of-merit in real-time).⁶

DISCUSSION

The NYISO is to be commended for committing to these important enhancements regarding out-of-merit commitments because they will help protect consumers from the exercise of market power in New York City. The August 14 letter demonstrates a strong commitment to understanding and satisfying the interests of stakeholders.

We remain concerned, however, that the NYISO is unable to apply in Real-Time before October 31, 2001 the Indian Point 2 trigger (unmitigated market-clearing price at a generator’s location exceeds 105 percent of the price at the Indian Point 2 generator bus) because of the 12 to 16-week effort required to make the necessary modifications to software programs. Although we understand the ISO’s practical considerations, we believe it should continue to develop the energy dispatch mitigation measure in Real-Time that currently exists in the day-ahead market.

⁶ NRGs attempt to re-litigate the Commission’s in-city mitigation order should be rejected. First, the August 20, 2001 Comments and Protests of NRG Power Marketing Inc., Arthur Kill Power LLC, and Astoria Gas Turbine Power LLC (“NRG”), ignores that the ISO has committed to applying the LMM mitigation measures to energy, start-up and minimum generation payment made to units operated out-of-merit in Real Time; second, NRGs’ Request for a Rehearing of the in-city mitigation measures order dated August 20, 2001 should be denied for all the reasons stated in our Answer and Opposition to NRGs’ Motion to Stay.

As we explained in our filings in this docket, application of the Revised In-City Mitigation Measures to the Real-Time Market is a critical consumer protection measure that must be in place for the load pockets in New York City during the transition to a fully competitive market. The relationship between the Day-Ahead and Real-Time Markets vis-a-vis the operation of constraints and exercise of market power requires application of mitigation to Real-Time. A well functioning competitive Real-Time Market is crucial for forward/day-ahead market transactions to occur at competitive prices.

The NYISO's generic mitigation measures are insufficient to protect consumers in a New York City market that, due to transmission constraints, is not generally competitive on an almost daily basis (unlike the rest of the State). The generic mitigation measures contain a lag between observation of Real-Time mitigation conditions and commencement of mitigation. During this period, high, uncompetitive, prices can persist to the detriment of consumers. In contrast, the Revised In-City Mitigation Measures are automatic, with no lag. The generic measures contain large thresholds that keep them from triggering except for only the most egregious instances of market power. Such an approach is not acceptable for the constrained New York City market in which the lack of sufficient competition is a regularly occurring problem.

Still another deficiency currently exists. Day-Ahead Market (DAM) In-City mitigation measures do not automatically mitigate Real-Time since (a) Real-Time circumstances can lead to transmission constraints (thunderstorm alert) on the same days that the Day-Ahead model fails to show transmission constraints, and therefore, fails to trigger the DAM In-City mitigation measures, and (b) the Real-Time bids of generators are not necessarily required to be less than or equal to mitigated Day-Ahead bids, even on days where the DAM is constrained and DAM In-City mitigation is triggered.

Consequently, while the Commission ordered that the Revised In-City Mitigation Measures expire on October 31, 2001, it also requested an evaluation of how the measures worked during the summer capability period. Since the NYISO will not have all the measures in place for that evaluation, an assessment cannot be completed. Accordingly, because data will not be available before October 31, 2001 regarding some of the key measures and very little data on other measures (which are to be implemented the end of August), and due to the amount of time required to implement the measures in Real-Time, the ISO should be directed to evaluate the Real-Time Mitigation Measure beyond October 31, 2001.

Respectfully submitted,

Lawrence G. Malone
General Counsel

By Penny Rubin
Managing Attorney

Dated: August 30, 2001
Albany, New York

CERTIFICATE OF SERVICE

I, Karen Houle, do hereby certify that I will serve on August 30, 2001, the foregoing Motion and Answer 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.

Date: August 30, 2001
Albany, New York

Karen Houle