

July 10, 2015

**By Hand Delivery**

Hon. Kimberly D. Bose Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: *New York Independent System Operator, Inc.*'s Informational Filing in Docket  
No. **ER12-2568-000**

Dear Ms. Bose:

This filing is submitted to the Commission on behalf of the New York Independent System Operator ("NYISO") in the above docket for informational purposes only. No action is requested.

**I. Background**

On October 31, 2012, the Federal Energy Regulatory Commission ("FERC" or "Commission") issued an *Order Accepting Proposed Tariff Revisions Subject to Conditions* ("October Order") that conditionally accepted a filing made by the NYISO on August 31, 2012 ("August Filing"), that substantially revised section 15.5 (Rate Schedule 5) of NYISO's Services Tariff, as well as Sections 6.6 and 30.2 of its Open Access Transmission Tariff. Those changes revised numerous aspects of the program under which Consolidated Edison Company of New York, Inc. ("Con Edison") provides System Restoration and Black Start Services to the New York City Area. The NYISO submitted its compliance filing on November 30, 2012, making minor changes to the process by which a unit obtains a unit-specific rate as well as adding an obligation for the NYISO to submit, to the Commission, a copy of the Con Edison System Restoration Plan ("Con Edison Plan") within 30-days of receipt. The Commission issued an order on January 8, 2013 accepting NYISO's compliance filing.

In the instant filing, NYISO is submitting to the Commission, for informational purposes, a copy of the Con Edison Plan, titled "Start-Up Procedure for Rapid Energization of the Con Edison Electrical System after Complete System Blackout" dated June 2015. NYISO is requesting non-public and Critical Energy Infrastructure Information ("CEII") designation for this document for the reasons outlined below. The NYISO submitted the version of the Con Edison Plan dated June 2014 to the Commission on July 22, 2014. NYISO will continue to

submit updated copies to the Commission in a similar manner as outlined in Section 15.5.4 of its Services Tariff.

## **II. CEII Designation/ Request for Exemption from FOIA**

The information that the NYISO is providing includes CEII. In accordance with 18 C.F.R. § 388.107, 18 C.F.R. § 388.112 and 18 C.F.R. 388.113 the NYISO hereby requests CEII designation and an exemption from disclosure under the Freedom of Information Act (“FOIA”) (5 U.S.C. 552) for the enclosed document “Start-Up Procedure for Rapid Energization of the Con Edison Electrical System After a Complete System Blackout.”

### **Critical Energy Infrastructure Information Designation**

The NYISO respectfully requests the information submitted herewith be treated as non-public and exempt from disclosure pursuant to 18 C.F.R. § 388.107 and 18 C.F.R. §388.113. The information that the NYISO is providing to the Commission includes CEII. As defined by 18 C.F.R. § 388.113, CEII is “specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

- (i) Relates details about the production, generation, transportation, transmission, or distribution of energy;
- (ii) Could be useful to a person in planning an attack on critical infrastructure;
- (iii) Is exempt from mandatory disclosure under FOIA, 5 U.S.C. 552; and
- (iv) Does not simply give the general location of the critical infrastructure.”

The Con Edison Plan meets the definition of CEII set forth in 18 C.F.R. § 388.113 because (i) it identifies and provides connectivity information about the generators and bulk power transmission substations that are critical for the operation of the bulk power system in the New York City Area and Westchester County; (ii) such information, if disclosed, could be useful to a person planning an attack on the New York State power system; (iii) it is exempted from mandatory disclosure under FOIA (*see* discussion of FOIA exemptions 5 U.S.C. § 552(b)(3) and 5 U.S.C. § 552(b)(7)(F) below); and (iv) it provides more than simply the general location of critical infrastructure.

### **Request for Exemption from FOIA Disclosure**

The Con Edison Plan is exempt from the public disclosure requirements under FOIA pursuant to 5 U.S.C. § 552(b)(3) and §552 (b)(7)(F) for the reasons set forth below.

First, 5 U.S.C. § 552(b)(3) protects documents and data from disclosure under FOIA if the documents or data are specifically exempted from disclosure by statute. Here, the Con Edison Plan is specifically exempted from disclosure by statute – specifically, 18 C.F.R.

§ 388.113. As evidenced above, the Con Edison Plan satisfies the definition of CEII in 18 C.F.R. § 388.113. It is therefore exempt from disclosure under 5 U.S.C. § 552(b)(3).

Second, 5 U.S.C. § 552(b)(7)(F) specifically exempts from disclosure under FOIA, records or information that “could reasonably be expected to endanger the life or physical safety of any individual.” In the NYISO’s assessment, the disclosure of the Con Edison Plan could pose a threat to the reliability of the New York State Electric System and to the health and safety of New York residents supplied from the electric system. Specifically, the Con Edison Plan reveals the detailed plans on how to restore the electric system in the New York City Area following an area wide power outage. The Con Edison Plan identifies the key generation and transmission facilities of the bulk power system and provides details of the specific actions Con Edison will take to reenergize the system during a blackout event. It contains detailed system diagrams and equipment information. This information could be used to thwart efforts to restore power to the New York City Area. The Con Edison Plan therefore contains CEII. FERC has determined that CEII is exempt from mandatory disclosure under this subsection of FOIA.<sup>1</sup> For these reasons, the Con Edison Plan is exempt from mandatory disclosure under 5 U.S.C. § 552(b)(7)(F).

The NYISO respectfully requests that, in the event the Commission receives a FOIA request pertaining to the NYISO’s submittal, the Commission protect the confidentiality of the information identified above by applying the applicable FOIA exemption (or other applicable confidentiality provisions) to exempt the Con Edison Plan from disclosure.

Before the Commission determines that it is necessary or appropriate to make public any information submitted herewith (whether submitted pursuant to a claim of exemption from FOIA disclosure, or otherwise), the NYISO respectfully requests that it be given prior notice and an opportunity to comment on, or object to, the public disclosure of the information it has submitted.

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<sup>1</sup> See, e.g. In re Hala Ballouz, No. CE07-121-000, 119 F.E.R.C. P62,204, 2007 FERC LEXIS 1058 (June 8, 2007); In re Baumgardner, No. CE08-18-000, 122 F.E.R.C. P62,068, 2008 FERC LEXIS 158 (Jan. 25, 2008); In re Kritikson, No. CE08-26-000, 122 F.E.R.C. P62,020, 2008 FERC LEXIS 33 (Jan. 11, 2008).

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Please feel free to contact me at the number or email address below with any questions regarding the enclosed document or NYISO's requests for exemption from public disclosure.

Respectfully submitted,

/s/ Christopher R. Sharp

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2014).

Dated at Washington, D.C. this 10<sup>th</sup> day of July, 2015.

/s/ Catherine A. Karimi  
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Hunton & Williams LLP  
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