

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

<b>PJM Interconnection, LLC</b>	)	<b>Docket Nos. ER08-858-000</b>
<b>New York Independent System Operator, Inc.</b>	)	<b>ER08-867-000</b>
	)	<b>EL02-23-000</b>

**INITIAL BRIEF OF THE  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

In compliance with the Commission's Rules of Practice and Procedure<sup>1</sup> and as required by the Commission's *Order Establishing Additional Procedures* ("Briefing Order"),<sup>2</sup> as modified by the March 19, 2010 *Notice of Extension of Time*, in the above-referenced proceedings, the New York Independent System Operator, Inc. ("NYISO") hereby respectfully submits its Initial Brief. As indicated below, the Commission should expeditiously issue an order approving the proposed February 23, 2009 Settlement (the "Settlement"). The Commission's approval would resolve nearly a decade of controversy and litigation among the Settling Parties<sup>3</sup> and provide needed certainty to Con Edison, PSEG, PJM, and the NYISO as they plan their respective systems for 2012 and beyond. It would also preserve the important reliability benefits that the existing wheeling arrangements bring to New York City.

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<sup>1</sup> It appears that Rule 706, 18 C.F.R. § 385.706 (2009), governs this Initial Brief given the relatively early stage of the proceedings in Docket No. ER08-858-000 and ER08-867-000. If the Commission determines that Rule 711 is applicable here, the NYISO respectfully requests waiver of its requirements to the extent that this Initial Brief is deemed not to conform to them.

<sup>2</sup> *PJM Interconnection, LLC and New York Independent System Operator, Inc.*, 130 FERC ¶ 61,126 (2010).

<sup>3</sup> The Settling Parties are the NYISO, the PJM Interconnection, LLC ("PJM"), the Consolidated Edison Company of New York, Inc. ("Con Edison"), the Public Service Electric & Gas Company ("PSE&G"), PSE&G Energy Resources & Trading LLC and the New Jersey Board of Public Utilities. In addition, although it was not a party to the Settlement, the New York State Public Service Commission has filed comments urging the Commission to approve it.

## **I. STATEMENT OF THE CASE**

These proceedings have a lengthy procedural history that is concisely summarized in the “Background” section of the Briefing Order,<sup>4</sup> which the NYISO hereby incorporates by reference.

Presently, the proceedings concern the proposed “roll-over,” pursuant to Section 2.2 of the PJM Open Access Transmission Tariff (“OATT”), of 1,000 MW of grandfathered transmission service. The service dates from the 1970s and the the contracts pursuant to which the service is currently rendered will expire in 2012. Con Edison contracted with PJM in 2008 to roll over the service, and PJM filed the contracts with the Commission that April. The roll-over would be implemented pursuant to a revised JOA Protocol<sup>5</sup> that is fundamentally similar to the one that the NYISO and PJM have been successfully administering since 2005. The roll-over and the JOA Protocol are the subject of a comprehensive Settlement that has been pending before the Commission for more than a year. It is opposed by a single contesting party, the NRG Companies (“NRG”).

It is imperative that the Commission issue an order as expeditiously as possible once the briefing schedule is complete. As the NYISO has previously indicated, it believes that the Settlement will bring substantial benefits and should be approved in its entirety. At a minimum, however, the Commission should rule as soon as practicable so that all market participants will be able to prepare for 2012 and so that the NYISO and PJM will be in a position to provide for the future reliable operation of their respective regional transmission systems.

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<sup>4</sup> See Briefing Order PP 2-6.

<sup>5</sup> Throughout this Initial Brief the NYISO will utilize the abbreviations and defined terms that the Commission used in the Briefing Order.

## **II. SCOPE OF THIS INITIAL BRIEF AND RESERVATION OF RIGHTS**

Paragraph 24 of the Briefing Order states that the parties should brief the following issues:

[W]hether these contracts are sufficiently firm to be rolled over under Order No. 888; whether, if they are eligible for rollover, Con Ed is eligible only for OATT service, or whether the circumstances here warrant a non-conforming agreement; and whether and what effect these agreements have on the rights of and prices paid by other parties, including the effect of the flow changes in the JOA on the Locational Marginal Prices in both PJM and NYISO and the effect of these provisions on the ability of other parties to transact business.

This Initial Brief therefore speaks only to these issues. NRG has argued on rehearing, however, that other questions that were referenced in the Commission's August 26, 2008 Hearing Order remain unresolved. It may be that NRG will seek to address those matters in its initial brief. If NRG does so, the NYISO reserves the right to object, and, without waiving any objections, to respond on the merits in its own Reply Brief. Regardless of what NRG does, if the Commission intended that issues not referenced in Paragraph 24 be briefed, it should so clarify and expressly direct the parties to brief them before drawing any negative inferences or initiating hearing procedures.

## **III. ARGUMENT**

The NYISO has reviewed a near-final draft of Con Edison's Initial Brief and supports its arguments, especially concerning the vital role that the continuation of dependable power deliveries from PSE&G would play in diversifying New York City's power supplies and in preserving reliability.

With respect to the first two issues that Paragraph 24 directed the parties to brief,<sup>6</sup> it appears that the arguments advanced by Con Edison, together with those that the NYISO

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<sup>6</sup> Those issues are: (i) whether the existing grandfathered transmission service agreements are sufficiently "firm" so as to be eligible for roll-over under PJM's OATT; and (ii) whether the non-conforming terms of the rolled-

understands will be advanced by PJM and other Settling Parties, are more than sufficient to support a Commission ruling upholding the Settlement without any need for further comment by the NYISO.

As for the third briefing issue, the NYISO would have never agreed to the Settlement, if it thought that the 2008 1000 MW TSAs would have a material adverse impact on the “rights of and prices paid by other parties, including the effect of the flow changes in the JOA on the Locational Marginal Prices in [the NYISO]<sup>7</sup> and the effect of those provisions on the ability of other parties to transact business.” Allowing the roll-over of grandfathered transmission rights invariably affects third parties to a degree, if only because the continuation of such rights will reduce the amount of transmission capacity available to them (which may in turn impact market prices to the extent that third parties would have used that capacity to support economic transactions). Commission policy and precedent, however, necessarily accepts these trade-offs to the extent that it permits roll-overs.

The NYISO anticipates that the acceptance of 2008 1000 MW TSAs, and the JOA Protocol, will put the all market participants in essentially the same position in 2012, with respect to both prices and transmission access in the NYISO, that they are in today. This is because the JOA Protocol implementing the 2008 1000 MW TSAs is fundamentally the same as the currently effective version of the operating protocol. The current version was previously accepted by the Commission and found to be beneficial to consumers, notwithstanding

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over transmission service are just and reasonable and warranted beyond the circumstances under which the rolled-over service would be rendered.

<sup>7</sup> The NYISO understands that PJM’s brief will explain that the Settlement will not have an adverse impact on prices, transmission rights, or parties’ ability to transact business in the PJM region.

objections by NRG.<sup>8</sup> The fact that the protocol, and the proposal to extend it, has earned the support of both of the parties to the original grandfathered transmission agreements, both of the independent transmission organizations charged with administering the protocol, the affected state public utility commissions, and the City of New York, is the best possible evidence that the Settlement will not harm market participants in New Jersey or New York.

The NYISO recognizes that NRG has a contrary view. NRG has argued that the Settlement would leave it worse off than it is under the current operating protocol because of the proposed elimination of the 13% distribution factor from the desired flow calculation during unconstrained hours.<sup>9</sup> As PJM and others have shown, however, NRG's concerns are speculative and have more to do with market rules that are outside the scope of this proceeding than they do with the roll-over.<sup>10</sup> In particular, the 13% distribution factor would only be eliminated during unconstrained hours, during which transmission capacity would, by definition, be available to support open access transactions. In the presence of congestion, the 13% distribution factor would continue to apply and would permit third party transactions to flow as is the case under the currently effective protocol.

Even if NRG's assertions regarding the negative impact of the roll-over had merit, its claims that a Commission order approving the Settlement would indefinitely perpetuate them is

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<sup>8</sup> See *Consolidated Edison Company of New York, Inc. v. Public Service Electric and Gas Company, et al.*, 111 FERC ¶ 61,228 at PP 1, 33 (2005).

<sup>9</sup> The NYISO understands Paragraph 24 of the Briefing Order to have been referring to this question when it directed the parties to address "the effect of the flow changes in the JOA . . . ."

<sup>10</sup> See, e.g., *Reply Comments of the PJM Interconnection, L.L.C* ("PJM Reply Comments"), Docket Nos. ER08-858-000, *et al.* at 5-8 (March 25, 2009); *Reply Comments of the PSEG Companies*, Docket Nos. ER08-858-000, *et al.* at 5-8 (March 25, 2009).

greatly exaggerated. NRG's concerns largely have to do with market rules unrelated to the proposed roll-over and NRG is free, like any other stakeholder, to seek changes through the NYISO and PJM stakeholder processes. Because the proposed roll-overs and revised JOA Protocol would not even go into effect until 2012, it is possible that market rule changes relevant to NRG's concerns might be in place before the Settlement is implemented. Like the current version of the operating protocol, the JOA Protocol also includes an "annual review" provision that allows for any necessary adjustments to be made over time.<sup>11</sup> In addition, the Settlement is subject to future modification under the "just and reasonable" standard of review, either at the Commission's own initiative or in response to a complaint.<sup>12</sup> Consequently, the public interest would be served by a Commission order approving the Settlement, which would capture the immediate benefits of resolving years of controversy and providing certainty without depriving NRG of an opportunity to seek redress in the future if circumstances warrant.

Finally, the NYISO respectfully requests that the Commission act expeditiously to approve the Settlement, which has now been pending for well over a year. The expiration of the existing grandfathered transmission arrangements and the current version of the operating protocol is rapidly approaching. Further delay in the resolution of this proceeding would only create uncertainty regarding a key source of electricity supply for New York City.

If the Commission concludes that there are factors that prevent it from approving the Settlement in its entirety it should decline to institute hearing procedures, which would only

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<sup>11</sup> See *Operating Protocol for the Implementation of Commission Opinion No. 476*, at § 1.5 <[http://www.nyiso.com/public/webdocs/documents/tariffs/market\\_services/ms\\_attachments/att\\_m.pdf](http://www.nyiso.com/public/webdocs/documents/tariffs/market_services/ms_attachments/att_m.pdf)>.

<sup>12</sup> See *Settlement Agreement and Offer of Settlement*, Docket Nos. ER08-858, *et al.*, at P 28 (February 23, 2009).

consume time and resources while fostering greater uncertainty. Whatever the ultimate disposition of the Settlement, it is clear that some kind of operating procedure will have to be developed in order to implement the transmission service that Con Edison has requested. PJM has accurately characterized the request as seeking a unique form of through-and-out service that originates and terminates in New York but is dependent on power flows across PJM.<sup>13</sup> Any “additional procedures” that may be initiated under Paragraph 25 of the Briefing Order should result in final determinations as quickly as possible in order to give the NYISO and PJM time to make all necessary arrangements in advance of 2012.

#### **IV. PROPOSED FINDINGS AND CONCLUSIONS**

In compliance with Rule 706(b)(1)(ii), and for the reasons set forth or referenced above, the NYISO respectfully requests that the Commission make the following findings and conclusions:

- that the 2008 1000 MW TSAs are sufficiently firm to be rolled over under Order No. 888 and Section 2.2 of the PJM OATT;
- that the special circumstances surrounding the existing grandfathered transmission agreements and their roll-over warrants Commission approval of non-standard transmission agreements;
- that acceptance of the 2008 1000 MW TSAs, and the JOA Protocol, would not have a material adverse effect on the rights of and prices paid by other parties or on their ability to transact business compared to currently effective arrangements; and

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<sup>13</sup> See, e.g., PJM Reply Comments at 8.

- that the Settlement is therefore consistent with the public interest and ought to be expeditiously approved by the Commission.

Respectfully Submitted,

/s/ Ted J. Murphy  
Ted J. Murphy  
Counsel to the  
New York Independent System Operator, Inc.

April 21, 2010



**CERTIFICATE OF SERVICE**

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

Dated at Washington, DC this 21st day of April, 2010.

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