

June 26, 2020

**By Electronic 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:

The New York Independent System Operator ("NYISO") submits this filing to the Commission in this docket for informational purposes only, as required by its Market Administration and Control Area Services Tariff ("Services Tariff"). No action is requested.

**I. Background**

In this filing, NYISO submits a copy of the Consolidated Edison System Restoration Plan ("Con Edison Plan") dated June 1, 2020. This informational filing is made pursuant to Section 15.5 of the Services Tariff, which states that the NYISO will submit to the Commission a copy of the Con Edison Plan, if revised, within 30 days of receipt. NYISO requests that the Con Edison Plan be treated as Critical Energy Infrastructure Information ("CEII") for the reasons outlined below.

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

The information that the NYISO is providing is CEII. In accordance with 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(b)) for the enclosed Con Edison Plan.

**Critical Energy Infrastructure Information Justification**

As defined by 18 C.F.R. § 388.113(2), 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 and should be designated as such 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 detail than simply the general location of critical infrastructure.

Further, the NYISO respectfully requests that the Con Edison Plan be re-designated as CEII should the designation expire pursuant to 18 C.F.R. § 388.113(e)(1), as the NYISO anticipates that this information will indefinitely continue to satisfy the definition of CEII for the reasons set forth herein.

### **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).

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.

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." 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 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 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.

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

Respectfully submitted,

/s/ Christopher R. Sharp

Christopher R. Sharp, Senior Compliance Attorney  
New York Independent System Operator, Inc.  
Tel: 518-356-7537  
csharp@nyiso.com

cc. Walter Hedeman, Esq., Consolidated Edison Company of New York, Inc.  
Anna Cochrane, Federal Energy Regulatory Commission  
Jignasa Gadani, Federal Energy Regulatory Commission  
Jette Gebhart, Federal Energy Regulatory Commission  
Kurt Longo, Federal Energy Regulatory Commission  
John C. Miller, Federal Energy Regulatory Commission  
David Morenoff, Federal Energy Regulatory Commission  
Daniel Nowak, Federal Energy Regulatory Commission  
Larry Parkinson, Federal Energy Regulatory Commission  
Douglas Roe, Federal Energy Regulatory Commission  
Frank Swigonski, Federal Energy Regulatory Commission  
Eric Vandenberg, Federal Energy Regulatory Commission  
Gary Will, Federal Energy Regulatory Commission