

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

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

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

In compliance with the Commission’s Rules of Practice and Procedure¹ and with the Commission’s orders in the above-captioned proceedings,² the New York Independent System Operator, Inc. (“NYISO”) hereby respectfully submits this Reply Brief. The NYISO responds to two arguments that were set forth in the initial brief of the NRG Companies (“NRG”). The NYISO anticipates that NRG’s other claims will be addressed by other Settling Parties in their reply briefs.³

Once again, NRG is the only entity to oppose the proposed February 23, 2009 settlement (the “Settlement”). It alone stands in the way of the numerous benefits that the Settlement would bring to the Settling Parties and to the NYISO and PJM regions as a whole.⁴ For the most part,

¹ It appears that Rule 706, 18 C.F.R. § 385.706 (2009), governs this Reply 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 Reply Brief is deemed not to conform to them.

² See *Order Establishing Additional Procedures, PJM Interconnection, LLC and New York Indep. Sys. Operator, Inc.*, 130 FERC ¶ 61,126 (2010) (“*Briefing Order*”); *Notice of Extension of Time* (March 19, 2010).

³ 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 along with PSE&G Energy Resources & Trading LLC (“PSE&G”) and the New Jersey Board of Public Utilities (“NJBPU”). In addition, although it was not a party to the Settlement, the New York State Public Service Commission (“NYPSC”) has filed comments urging the Commission to approve it.

⁴ These benefits include, but are not limited to: (1) ending a dispute between PSE&G and Con Edison that dates to at least 2001; (2) resolving emerging questions regarding Con Edison’s potential responsibility to pay a portion of Regional Transmission Expansion Plan costs in PJM that have the potential to bring New York and New Jersey into conflict; (3) providing needed certainty to Con Edison, PSE&G, PJM, and the NYISO as they plan their respective systems for 2012 and beyond. See *NYISO Reply Comments*, Docket Nos. ER08-858-000, ER08-867-000 and EL02-23-000 at 2 (filed March 25, 2009).

NRG has merely recycled arguments from its previous pleadings. To the extent that NRG makes new assertions, they are limited to claims that the Settlement will create the kinds of inefficiencies that are the accepted consequences of the Commission's roll-over policy and to gross exaggerations of the Settlement's potential to hinder future market improvements.

NRG continues to try to distract attention from the fundamental facts supporting the Settlement, namely: (i) the Commission's prior rulings that the 1000 MW Contracts⁵ are "for essentially firm service;"⁶ (ii) PJM exercise of its independent expert judgment as the administrator of its Open Access Transmission Tariff ("OATT") and its conclusion that the "essentially firm" 1000 MW Contracts are eligible for roll-over thereunder; (iii) Con Edison's desire to continue to receive through and out transmission service across PJM that both originates and concludes in the NYISO; and (iv) the practical reality that implementing such service raises unique operational issues that necessitate special procedures. The JOA Protocol included in the Settlement is an appropriate mechanism for addressing these operational issues that departs minimally from the Commission-approved procedures that have proven themselves over the last five years. The Settlement is therefore in the public interest and ought to be expeditiously approved by the Commission.

I. RESPONSES TO NRG

A. THE PROPOSED SETTLEMENT IS CONSISTENT WITH THE NYISO OATT AND THERE IS NO REASON FOR A HEARING TO ADDRESS NYISO OATT ISSUES

NRG's initial brief repeats verbatim its assertion last year that the Settlement's consistency with the NYISO OATT is a question "ripe for consideration and the taking of

⁵ Throughout this Reply Brief the NYISO will utilize the abbreviations and defined terms that the Commission used in the Briefing Order.

⁶ *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Elec. & Gas Co.*, 119 FERC ¶ 61,071 at P 4 (2007).

evidence.”⁷ The NYISO objects to NRG’s attempt to revisit an issue that the Commission did not direct the parties to brief⁸ and which should have no bearing on the approval of the Settlement.

If the Commission nevertheless takes up the question it should find that the Settlement is consistent with the NYISO OATT. As the NYISO has previously explained,⁹ there is nothing in the NYISO tariffs that would be “violated” by the Settlement. The NYISO generally employs a “financial reservation” based transmission model that differs from the “physical reservation” model contemplated under the *pro forma* OATT. Non-financial rules apply, however, to special cases, such as grandfathered physical transmission rights. The currently effective version of the operating protocol establishes a set of special procedures that the Commission concluded were necessary for the implementation of Con Edison’s contractual entitlement to transmission service across PJM. The currently effective protocol is an approved part of the NYISO’s Market Administration and Control Area Services Tariff and any claim that its special procedures “violated” the NYISO tariffs would be inherently circular. If the Settlement were approved, the JOA Protocol would likewise be part of the NYISO tariffs. Under the JOA Protocol, the NYISO would continue to follow pricing and operational procedures for Con Edison’s service that represent an appropriate exception to its standard rules, not a violation of them. Even NRG acknowledges this point when it claims that the Settlement is “incompatible” with NYISO

⁷ See *NRG Initial Brief* at 23; compare *NRG Comments in Opposition to Settlement* at 12-13, Docket Nos. ER08-858-000, ER08-867-000 and EL02-23-000 (filed March 16, 2009).

⁸ See *Briefing Order* at P 24.

⁹ See *NYISO Request to Submit Limited Answer and Answer* at 2-4, Docket No. ER08-867-000 (filed May 28, 2008).

pricing provisions while conceding that this could only be true “absent the provisions of the JOA Protocol.”¹⁰

In addition, even if the Commission believed that there was an issue regarding the NYISO OATT, NRG is wrong to claim that the question is somehow “ripe” for hearing. Any possible question regarding the consistency of the Settlement with the NYISO tariffs would be purely legal, not factual, in nature. Such a question could be quickly resolved based on the existing record, or through “additional procedures” other than a hearing. Given the need for a final resolution in this case as far in advance of 2012 as possible,¹¹ and considering that the Settlement has been pending for more than a year (and that PJM’s proposed roll-over of Con Edison’s service was filed more than two years ago), the NYISO respectfully renews its request that the Commission issue a decisive ruling in these proceedings as expeditiously as possible.

B. THE SETTLEMENT WOULD NOT IMPEDE ONGOING OR FUTURE EFFORTS TO IMPROVE MARKETS AND RESOLVE SEAMS IN THE NORTHEAST

NRG repeatedly asserts that the Settlement would “permanently allow one company to dominate in perpetuity one-third of the transmission capacity between two of the largest energy markets in the world”¹² Its hired expert echoes the same theme, contending that the Settlement “would give the TSAs an infinite number of roll-overs so that the system would be effectively frozen from now forward.”¹³

¹⁰ *NRG Initial Brief* at 22.

¹¹ See e.g., *PSE&G, Reply Comments*, Docket Nos. ER08-858-000, ER08-867-000 and EL02-23-000 at 1, 9 (filed March 25, 2009); *NYISO Reply Comments*, Docket Nos. ER08-858-000, ER08-867-000 and EL02-23-000 at 2-4 (filed March 25, 2009); *PJM Reply Comments*, Docket Nos. ER08-858-000, ER08-867-000 and EL02-23-000 at 2-3, 11 (filed March 25, 2009).

¹² *NRG Initial Brief* at 4. It should be noted that even NRG’s suggestion that the Settlement could affect “one third” of the capacity between PJM and the NYISO appears to ignore capacity over Merchant Transmission Facilities and other factors, thereby further exaggerating the issue.

¹³ *NRG Initial Brief, Affidavit of Dr. Miles O. Bidwell* at 19 (“Bidwell”).

Such assertions are incorrect. By its terms, the proposed roll-over would only continue Con Edison's transmission service for five years, *i.e.*, from 2012 until 2017, and Con Edison would need to seek another roll-over at the end of that period.¹⁴ As the NYISO has already noted, the JOA Protocol itself includes an "annual review" provision that allows for any necessary adjustments to be made over time.¹⁵ 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.¹⁶ More broadly, NRG remains free, like any other NYISO stakeholder, to pursue market rule changes that would address the seams issues that NRG has referenced, but which NRG acknowledges are outside the scope of this proceeding.¹⁷

NRG is also wrong to suggest that the Settlement would somehow impede the NYISO's proposed "Broader Markets Initiative."¹⁸ In particular, the "Buy Through Congestion" proposal, would in no way be "incompatible" with the Settlement. Similarly, Con Edison's transmission service is not identified as a market seam in either the *Seams Resolution Reports*¹⁹ that are prepared by the Northeast ISOs/RTOs or in the *State of the Market Reports*²⁰ developed by the NYISO's independent market monitoring unit. Indeed, if Con Edison's transmission service truly represented a significant obstacle to inter-regional trade, entities besides NRG would

¹⁴ See *PJM Initial Filing*, Docket No. ER08-858-000, at Attachment B - Original Service Agreement No. 1873 and Original Service Agreement No. 1874, which include the Addendum (Apr. 22, 2008) (specifying a termination date of 2017).

¹⁵ 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>.

¹⁶ See *Settlement Agreement and Offer of Settlement*, Docket Nos. ER08-858-000, ER08-867-000 and EL02-23-000 at P 28 (February 23, 2009).

¹⁷ *NRG Initial Brief* at 19-20.

¹⁸ *Id.* at 20.

¹⁹ See *Northeast ISOs Seams Resolution Report, History of Seams Resolution* (April 14, 2010) available at <<http://www.iso-ne.com/regulatory/seams/index.html>>.

²⁰ See Potomac Economics, *State of the Market Report New York ISO*, available at <<http://www.potomaceconomics.com/documents/C9&C10>>.

presumably be challenging the Settlement, and the affected public utilities commissions, the City of New York, PJM and the NYISO, as well as PSE&G and Con Edison, would not be jointly supporting it.

Finally, NRG argues at great length that Con Edison's transmission rights are harmful and should be terminated because they "*like all physical rights to transmit electricity*, are inconsistent with least-cost dispatch."²¹ Such claims are really collateral attacks on the Commission's roll-over policy because, as NRG says, the existence (and roll-over) of physical transmission rights will always be sub-optimal compared to using economic dispatch mechanisms to allocate all transmission capacity to those customers that value it the most. The Commission, however, made the policy determination over a decade ago to accept these economic trade-offs and allow transmission customers to roll-over their rights under certain circumstances. Thus, if the Commission determines that Con Edison's rights are eligible for roll-over under the terms of the PJM OATT, as the NYISO believes it should, then NRG's economic efficiency arguments would be irrelevant.

IV. CONCLUSION

For the reasons set forth or referenced above, the NYISO respectfully requests that the Commission expeditiously issue an order approving the Settlement.

Respectfully Submitted,

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May 11, 2010

²¹ Bidwell at 3 (emphasis added), *see also NRG Initial Brief* at 14-16.

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 11th day of May, 2010.

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