

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

**Consolidated Edison Company
of New York, Inc.,
Complainant,**

v.

**Docket No. EL02-23-000
(Phase II)**

**Public Service Electric and Gas
Company,
PJM Interconnection, L.L.C. and
New York Independent System
Operator, Inc.,
Respondents.**

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

Arnold H. Quint
Ted J. Murphy
HUNTON & WILLIAMS LLP
1900 K Street, N.W.
Washington, D.C. 20005
(202) 955-1500

Attorneys for
New York Independent System
Operator, Inc.

May 1, 2003

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To: The Honorable Isaac D. Benkin
Presiding Administrative Law Judge

The New York Independent System Operator, Inc. (“NYISO”), pursuant to the Chief Administrative Law Judge’s March 17 order,¹ the Presiding Judge’s March 21 order,² and Rule 706 of the Commission’s Rules of Practice and Procedure,³ respectfully submits its reply brief in this proceeding.

¹ Order of Chief Judge Extending Procedural Schedule, Docket No. EL02-23-000 (Phase II) (March 17, 2003).

² Presiding Administrative Law Judge’s Order Prescribing Outline for Post-Hearing Briefs, Docket No. EL02-23-000 (March 21, 2003).

³ 18 C.F.R. § 385.706 (2002).

SUMMARY

The NYISO's initial brief explained that there was no merit to the Public Service Electric and Gas Company's ("PSE&G") claim that the NYISO's System Reliability Impact Study ("SRIS") procedures contributed to impairments under the 1975 and 1978 Agreements (the "Agreements").⁴ PSE&G conceded the point in its initial brief when it abandoned its argument position that the NYISO be forced to incorporate a "physical deliverability" requirement into the SRIS procedures.⁵ Given the change in PSE&G's position, there is no basis for the Presiding Judge to order the NYISO to modify its planning criteria. The Presiding Judge should likewise reject Staff's recommendation that the NYISO be directed to "immediately" rectify Staten Island transmission constraints. It has not been shown that prescriptive non-market action is necessary and the NYISO is not, in any event, authorized to take such action.

The NYISO's initial brief supported a method, first presented by Mr. Calimano, for economically evaluating redispatch options that is consistent with the approach that the Commission's December 9 Order appeared to favor.⁶ The initial brief also emphasized that the NYISO and PJM could work together to develop a "hybrid" protocol for implementing the Agreements based on the December 9 Order's guidance, as it may or may not be modified in the future. Nothing in the other parties' initial briefs has caused the NYISO to change these views. At the same time, the NYISO does not oppose the core components of the implementation

⁴ See Initial Brief of the New York Independent System Operator, Inc., ("Initial Brief") at 9-13.

⁵ See Initial Brief of Public Service Electric and Gas Company, ("PSE&G") at 32.

⁶ See Consolidated Edison Co. of New York v. Pub. Serv. Elec. and Gas Co., PJM Interconnection, L.L.C. and New York Independent System Operator, Inc., 101 FERC ¶ 61,282 at PP 37-38 and n. 37 (2002) ("December 9 Order").

proposals submitted by the Consolidated Edison Company of New York, Inc. (“ConEd”) and Arthur Kill Power LLC (“Arthur Kill”) in their initial briefs.

Specifically, the NYISO’s support for the use of Mr. Calimano’s method is premised on an assumption that the Commission’s interpretation of the Agreements, and its preliminary endorsement of certain operating principles, will ultimately be upheld. This does not mean that the NYISO, which has always been neutral on the contract interpretation issues,⁷ actively supports or opposes the Commission’s holdings. To be clear, the NYISO neither endorses nor opposes ConEd’s proposal that PJM treat the Agreements the same as it treats grandfathered “Homer City” contracts,⁸ or Arthur Kill’s “preferred market solution.”⁹ If the Presiding Judge determines that either of these approaches are appropriate, the NYISO would not object. This is true even though the proposals might make less use of Mr. Calimano’s method or deviate from PJM’s “desired flow” operating principles.

The NYISO will thus support any reasonable resolution of the contract issues that can be implemented by the ISOs as a practical matter. The hybrid protocol described in the NYISO’s initial brief would meet the “implementability test,” but it could be that other proposed solutions would satisfy that test as well.

⁷ In particular, the NYISO reiterates that it is not taking any position on the Commission’s determinations regarding the parties redispatching obligations at PP 33-39 of the December 9 Order. The NYISO similarly clarifies that its statement at p. 11 of its Initial Brief in support of “firming up” the 400 MW contract was based on the premise that the December 9 Order’s findings would be upheld but should not be interpreted as a statement supporting those findings.

⁸ As is discussed below, however, the NYISO objects to ConEd’s suggestion it be given real-time access to sensitive market information in order to conduct its own economic evaluation of redispatch options.

⁹ As is discussed below, however, the NYISO objects to various aspects of Arthur Kill’s proposed “alternative solution.”

Finally, Arthur Kill’s initial brief suggests that the Presiding Judge should use this case as a vehicle to develop a “cookie cutter” approach to solve all of the NYISO-PJM seams issues and “to address seams issues as new ISOs and RTOs develop.”¹⁰ This suggestion is overly ambitious and misguided. Many kinds of seams have existed between the NYISO and PJM, and between other system operators across the country. Seams issues are often highly technical, complex and distinct from each other. Most have nothing to do with the disputed contract issues that have dominated this case, or with contract interpretation questions of any kind. It is unrealistic to think that there could be any one “cookie cutter” solution to the diverse universe of seams. Moreover, numerous efforts are already underway to resolve seams between the NYISO and PJM, and between other systems. There is no reason for the Presiding Judge to preempt these efforts by trying to solve seams issues that have nothing to do with this case. The focus should be on resolving the underlying contract issues and allowing the ISOs to develop an operating protocol that solves the seams that matter in this proceeding.

ARGUMENT

I. THE NYISO HAS DONE NOTHING TO IMPAIR SERVICE TO PSE&G UNDER THE 1975 AND 1978 AGREEMENTS

The NYISO is taking no position on Issues I.A., I.B, I.C.1, or I.D.

C.2 THERE IS NO LONGER ANY BASIS IN THE RECORD FOR FORCING THE NYISO TO ADOPT A PHYSICAL DELIVERABILITY REQUIREMENT OR TO TAKE ANY OTHER ACTION TO REMEDY ALLEGED IMPAIRMENTS OF THE AGREEMENTS

The NYISO is pleased that PSE&G has renounced its previous position that the NYISO’s SRIS procedures must be modified to include a physical deliverability requirement. In light of this development, the portion of Mr. Snow’s testimony that calls for a change in the SRIS

¹⁰ See, e.g., Initial Brief of Arthur Kill Power LLC, (“Arthur Kill”) at 49.

procedures should be deemed to be withdrawn. Absent his recommendation, there is no record basis for requiring the NYISO to adopt a physical deliverability requirement that neither it, nor its stakeholders, support.¹¹ Moreover, in a somewhat different context, the Commission has recently reaffirmed that that deliverability requirements are not needed in systems, such as the NYISO's, that employ locational installed capacity rules.¹² The Presiding Judge should therefore not take any action that would require the NYISO to change its SRIS procedures.

Staff's initial brief asserts that the "Staten Island situation needs to be addressed by some entity immediately," and that "the NYISO appears to be the most appropriate entity to do so." Both assertions should be rejected.

First, there is no record evidence indicating that the markets are not already sending price signals that give market participants incentives to invest in new infrastructure. It may be that new transmission construction on Staten Island is blocked by non-market factors such as state regulatory obstacles. It may also be that the Staten Island grid does not require major improvements. Indeed, to the best of the NYISO's knowledge, ConEd's transmission system, including the Staten Island components, is in compliance with all applicable North American Electric Reliability Council, Northeast Power Coordinating Council, and New York State Reliability Council standards. Absent clear evidence of a need for emergency action there is no reason for the NYISO to intervene.

Second, it would not be appropriate to require the NYISO to take action to "address Staten Island" because it does not currently have authority to take the kind of measures that Staff

¹¹ The Presiding Judge should likewise disregard ConEd's description of how it would proceed in the event that the NYISO were required to adopt a physical deliverability requirement. See ConEd at 17.

¹² See Devon Power, L.L.C., et al., 103 FERC ¶ 61,082 at PP 31, 37 (2003) (equating deliverability and locational installed capacity requirements.)

seems to envision. The NYISO's tariff does not empower it to order particular improvements or even to give interested participants special financial incentives to build facilities. Its role is limited to administering markets that provide efficient locational price signals, conducting transmission planning and interconnection studies, and coordinating other parties' transmission reinforcement plans. It would be extremely controversial, and unfair to non-party stakeholders that were not on notice that the issue might arise, for this proceeding to end with an order dramatically expanding the NYISO's planning responsibilities.

II. PROSPECTIVE TRANSMISSION AND OPERATING PROTOCOL ISSUES

A. Combining the NYISO's Proposed Redispatching Cost Comparison and Equalization Methodology with the Operating Protocol Concepts Proposed by PJM Could Produce a Successful "Hybrid" Protocol But Alternative Solutions Are Also Possible

The NYISO is pleased that its proposed redispatching cost comparison and equalization method, as described by Mr. Calimano in his corrected testimony and at the hearing, has attracted support from PJM and PSE&G.¹³ In response to ConEd, the NYISO emphasizes that it does not endorse the uncorrected version of Mr. Calimano's proposal.¹⁴ In response to Staff, which expressed confusion about the NYISO's proposal, the NYISO is providing the following, more detailed, description of how it would work.

The NYISO's proposal would apply at any time when transmission system in New York City or PSE&G's northern zone was constrained, at least in part due to flows associated with the Agreements, and the congestion cannot be alleviated without at least one of the ISOs going off-cost. Under the NYISO's method, the ISOs would compare the relevant New York "congestion redispatch cost," which would equal the difference between the NYISO LMPs at Ramapo and

¹³ PJM at 19-20; PSE&G at 35.

¹⁴ See ConEd at 20.

Farragut/Goethals, to the relevant northern New Jersey “congestion redispatch cost,” which would equal the difference between the PJM LMPs at Waldwick and Hudson/Linden. The ISO facing the lower congestion redispatch cost would dispatch its internal resources until its congestion redispatch cost equaled that of the “higher cost” ISO. At that point, both ISOs would redispatch and incur costs equally to the extent required by the Commission.¹⁵

As an example example, assume that the expected relevant New York redispatch cost was \$50/MWhr, corresponding to the dispatch of a New York City combustion turbine generator, and the relevant Northern New Jersey redispatch cost was \$30/MWhr, corresponding to an oil-fired steam generator in PSE&G’s northern zone. PJM would first be required to redispatch the \$30/MWhr resource, and any other internal PJM resources to facilitate any required increase in the level of contract power flows until the PJM redispatch cost reached \$50/MWhr. If it were necessary to redispatch further to address congestion in New York City, the NYISO would also be required to redispatch and incur the \$50/MWhr cost. Both ISOs would thus be incurring equal incremental congestion redispatch costs.

The NYISO continues to believe that this economic evaluation method could be combined with PJM’s preferred operating principles to form the basis of a workable operating protocol. As was emphasized above, however, the NYISO’s review of the other briefs suggests that other alternatives could be viable. There is no reason why Arthur Kill’s “market solution,” under which PJM would redispatch to support the 600 MW flow, and the NYISO’s method

¹⁵ Under the December 9 Order, PJM would have to redispatch when it was economic to do so in order to support the 600 MW contract while the NYISO would redispatch to reduce New York City congestion. As the NYISO explained at p. 11 of its Initial Brief, its proposed method could also be applied to the entire 1000 MW flow, or solely to the 400 flow, depending on how the Commission ultimately rules on the contract issues.

would be used to determine redispatching obligations for the 400 MW flow,¹⁶ could not be implemented. Similarly, the NYISO has no implementation-oriented objection to ConEd’s recommendation that PJM treat the Agreements the same as other “Homer City” contracts, although it rejects ConEd’s view that ConEd should make the redispatching decisions itself.¹⁷ Thus, the NYISO could support either the Arthur Kill or the ConEd proposals if they are deemed to be consistent with the Agreements.

B. A “Desired Flow” Calculation Could Be a Workable Component of an Operating Protocol

As the NYISO has previously stated, the “desired flow” scheduling model outlined in Mr. Kormos’ testimony could be part of a successful operating protocol, although a number of complex issues must be resolved first. The Presiding Judge could facilitate the ISOs’ discussions by clarifying two issues relating to the desired flow model that are not fully developed in PJM’s initial brief. First, PJM appears to believe that the distribution factors established under the “5018” or “Ramapo” Agreement,” should be recalculated periodically, to conform to whatever operating protocol is instituted to implement the Agreements.¹⁸ The NYISO believes that it would be inappropriate to revise an existing protocol that affects many stakeholders not involved in this case, to reflect a new protocol that concerns fewer stakeholders. The Presiding Judge should clarify that the ISOs should take the Ramapo Agreement as their starting point and then conform any new protocol to its terms. If PJM believes it is necessary to update the Ramapo

¹⁶ See Arthur Kill at 22 (suggesting that the 400 MW flow should be “facilitated physically only when economical to do so under routine hourly dispatch and system optimization by the NYISO and PJM.”) The NYISO believes that its proposed comparison and equalization method could serve as a routine inter-ISO dispatching and optimization arrangement.

¹⁷ See Section II.F below.

¹⁸ See PJM at 14.

Agreement's distribution factors, or any other aspect of the agreement, it should be required to negotiate with all of the affected parties.

Second, if the initial decision endorses a hybrid protocol, it should unambiguously state that the NYISO's proposed cost comparison and equalization method, not the Ramapo Agreement, will govern redispatching decisions arising in connection with the 1975 and 1978 Agreements. PJM's initial brief is silent on this point. The initial decision should therefore establish that the NYISO's proposed redispatch method will trigger any time that there is congestion in New York City or PSE&G's northern zone that is attributable to the Agreements and that cannot be mitigated without at least one ISO having to go off-cost. Otherwise, either ISO could try to escape redispatching by arguing, for example, that its obligation to redispatch was superceded by the Ramapo Agreement's "desired flow" provisions. A clear initial decision will prevent inter-ISO disputes about this issue from arising during both the development of an operating protocol and in real-time. It will also ensure that the protocol is a true hybrid that gives equal dignity to the Ramapo Agreement and the NYISO's proposed congestion redispatch cost comparison method.

C. The Operating Protocol Should Provide for ISO Control of the Phase Angle Regulators Located on the PSE&G - ConEd Interties

A number of the initial briefs¹⁹ argue that the ISOs must exercise "total" physical control of the phase-angle regulators ("PARs") on the "A," "B," "C," "J," and "K" lines. The NYISO continues to believe that the operating protocol should provide for NYISO control over the New

¹⁹ See, e.g., Arthur Kill at 25-32.

York PARs.²⁰ Nevertheless, the NYISO also believes that it is appropriate for ConEd and PSE&G, as the transmission owners, to establish line and equipment ratings and to maintain physically safe operations of the equipment that they own. This would include the ability to determine, in consultation with the ISOs, an appropriate level of PAR tap reservations given the dictates of good utility practice and applicable reliability criteria. It would be misguided and overly simplistic to require that the transmission owners play no role whatsoever in PAR operations.

D. The NYISO’s Position That Third Party Transactions Should Be Allowed to Flow Across the A, B, and C Lines to the Extent That They Do Not Interfere with Flows Under the Agreements Is Consistent With Commission Precedent

PJM has either misunderstood, or misrepresented, the NYISO’s position on the extent to which “third party transactions,” *i.e.*, those not associated with the Agreements, should be allowed to flow over the A, B, and C lines. PJM’s initial brief states that the NYISO’s proposal to allow third party transactions to the extent they do not interfere with grandfathered flows under the Agreements, would “elevate those flows to a higher priority than all PJM Tariff Transactions”²¹ Assuming that PJM means “Tariff Transactions” to refer to non-grandfathered PJM transactions this statement is literally true, but misleading.

As the NYISO’s initial brief explained, the Commission allows the holders of “unconverted” grandfathered transmission contracts in New York to retain their physical rights within a LMP market framework. The record in this case shows that the same is true for at least

²⁰ Specifically, the NYISO believes that the New York PARs located on the “A,” “B,” and “C” lines should be added to the “A-1” list of transmission facilities that are under the NYISO’s operational control pursuant to the ISO/TO Agreement.

²¹ See PJM at 24.

one category of grandfathered contracts in PJM.²² There is thus nothing unlawful, or inconsistent with precedent, in the suggestion that third party “tariff” transactions not interfere with grandfathered rights. Describing this practice as giving flows associated with the Agreements as a “super-priority” is an attempt to create an impression that it is somehow inappropriate but the reality is that it is fully consistent with Commission precedent.

By the same token, the NYISO opposes Arthur Kill’s “alternative solution” insofar as it would ignore grandfathered rights under the Agreements.²³ While the NYISO takes no position on how these contracts should be interpreted it does not think it would be appropriate to acquiesce in their total abrogation. It would be neither reasonable, nor lawful, to accept Arthur Kill’s proposal and treat grandfathered physical rights as if they were mere “preferential uses” of the system.

The NYISO is taking no position on Issue II.D.1.

2. The ISOs Should Not Be Required to Establish New Proxy Buses at this Time

In their initial briefs, ConEd and Arthur Kill both called for the creation of additional “external proxy buses” in New York to more accurately model the PJM system.²⁴ As the NYISO specified in its initial brief, it is not necessary to establish new proxy buses in order to have a successful operating protocol²⁵ Moreover, trying to introduce new proxy buses at this time

²² See ConEd at 32-35.

²³ See Arthur Kill at 22.

²⁴ See ConEd at 28-30; Arthur Kill at 33-34.

²⁵ Initial Brief at 15-16.

could introduce gaming problems that outweigh the benefits of improved system modeling.²⁶ PJM concurs with this position.²⁷

Some of the initial briefs mention that Mr. Calimano expressed interest in PJM's new practice of dynamically weight-averaging its New York proxy bus prices based on actual flows to the east and the west of the NYISO-PJM interconnections.²⁸ The Presiding Judge should not leap to the conclusion that it would necessarily be appropriate for the NYISO to adopt a dynamic weight-averaging procedure for calculating prices at its PJM proxy bus. PJM's new approach is interesting and is currently being studied by the NYISO staff. It may ultimately be adopted. It would be premature, however, to mandate that the NYISO adopt this practice before it is thoroughly vetted by its staff and through the NYISO stakeholder process. Because of software differences, and other technical factors, procedures that work well for one ISO may be difficult to adopt, or may not work at all, when translated to another system. There is no reason to prevent the NYISO's review and stakeholder processes from running their normal course in this case.

The NYISO has nothing to add to the statements made in its initial brief with respect to Issue II.E.

F. If the Presiding Judge Adopts ConEd's "Homer City" Proposal He Should Not Give ConEd Access to Confidential Market Information

The NYISO has noted that it neither supports nor opposes ConEd's proposal that the operating protocol require PJM to treat the Agreements in the same way that PJM treats the "Homer City" contracts.

²⁶ Id.

²⁷ See PJM at 35-38.

²⁸ See, e.g., PJM at 36.

The NYISO objects, however, to ConEd's proposal that it make the cost comparison itself and have access to confidential market information to assist its decisionmaking.²⁹ As the Commission has often noted,³⁰ giving any market participant preferential access to sensitive transmission and market information would endow it with an unfair competitive advantage. Even worse, it would greatly undermine other participants' confidence in the fairness of the ISO-administered markets. Making the ISOs responsible for conducting any cost comparison is the only approach that will avoid these effects. Giving them this responsibility will not undermine their independence or convert them into market participants. Moreover, ISO involvement is necessary because the ISOs' redispatching decisions have an effect on their entire markets, not just the two utilities that are parties to the Agreements. It would be improper to provide this kind of confidential market information to any market participant.

Making the ISOs responsible for conducting the comparison would neither violate the Agreements nor subvert their grandfathered status. As ConEd notes, the Commission concluded that an economic evaluation of redispatching costs was appropriate based on its interpretation of certain ConEd-PSE&G operating procedures.³¹ The Commission used those procedures as an aid to its interpretation of the Agreements, but did not consider them to be part of the Agreements themselves. Modifying the procedures to reflect the realities of the move to large, centralized ISO-administered markets is therefore entirely consistent with the Commission's policy of protecting grandfathered contract rights.

²⁹ See ConEd at 38-42.

³⁰ See, e.g., Remedying Undue Discrimination Through Open-Access Transmission Service and Standard Electricity Market Design, FERC Stats. & Regs. ¶ 32,563 at PP 20, 46, (2002).

³¹ See ConEd at 38.

The NYISO has nothing to add to the statements made in its initial brief with respect to Issues II.G and II.H.

I. The ISOs Should Schedule Service Under the 1975 and the 1978 Agreements In Their Respective Day-Ahead Markets

All of the initial briefs profess to agree that flows associated with the Agreements should be “scheduled,” but it is unclear whether there is a common understanding of what scheduling entails. The initial decision should clarify that the operating protocol should require the ISOs to schedule the Agreements in their respective day-ahead markets in a coordinated manner. The operating protocol should not allow one ISO to set up its schedules without reference to the other’s. Each ISO should be able to clearly identify the expected levels of contract flows in real-time and can thus model them consistently in its day-ahead market. The NYISO agrees with PJM that consistent modeling of the contract flows in day-ahead and real-time is an important objective. Having consistent day-ahead and real-time prices within each ISO will avoid the market inefficiencies and gaming that can artificial price divergences can create.

The NYISO has nothing to add to the statements in its initial brief with respect to Issues II.J, II.K, or II.L.

M. The NYISO’s Proposed Redispatching Cost Comparison and Equalization Method Will Have the Potential to Override the Inflexible Flow Distribution Rules Proposed by Certain Parties

In its initial brief, the NYISO stated its neutrality on the question of how flows should be distributed over the A, B, and C lines, except in cases where a particular flow allocation was dictated by its proposed redispatching cost comparison method.³² In response to ConEd’s and Arthur Kill’s initial briefs, the NYISO clarifies that its method would override the inflexible

³² See Initial Brief at 19-20.

distribution rules they favor. When the NYISO's economic evaluation method is applied, it will determine the most economically efficient distribution of flows over the "A," "B," and "C" lines. The NYISO's method would not, however, prescribe particular flow distributions at other times.

N. There Should Be Binding Joint Studies of Critical Bulk Facility Outages on the Northern Portion of PSE&G's System

ConEd's initial brief maintains that any joint studies of critical facility outages on the northern portion of PSE&G's system must be "regarded as guidelines that indicate the occurrence and level of curtailment that might be associated with outages . . ." but that the results cannot be regarded as "definitive grounds for curtailment . . ." ³³ The NYISO disagrees that the study results should be viewed as mere guidelines. The point of conducting the studies in the first place is to exactly define how much the contract flows should be reduced in the event that specific, pre-defined outage events occur. This information will be incorporated into the operating protocol which will establish unambiguous operating rules for the ISOs to follow in real-time operations and when scheduling their respective day-ahead markets. Non-binding guidelines are inadequate for these purposes and will not prevent real-time disagreements from impeding operations. Efficient operations require clear rules that both ISOs can be certain will be followed, albeit with exceptions for emergency situations that threaten reliability.

Similarly, although ConEd is right to argue that PSE&G must justify any curtailments of service it would not be feasible to require PSE&G to make that showing in real-time as the ISOs try to make other critical operating decisions. The better procedure is to require PSE&G to meet its burden as soon as possible following the declaration of a facility outage.

³³ See ConEd at 58.

O. The Presiding Judge Should Reject the “Additional Provisions” that PSE&G Proposes Be Included in the Operating Protocol

The Presiding Judge should reject all three of the “additional provisions” that PSE&G’s initial brief recommends be included in the operating protocol.³⁴

First, PSE&G suggests that the existing operating protocols for the Ramapo PARs “should be modified to accord with whatever operating protocols are adopted to implement power flows under the Agreements.” This is exactly backwards for the same reasons discussed above under Issue II.B. The correct approach would be for the ISOs to leave the existing Ramapo procedures undisturbed and to design the operating protocol in this proceeding around them. Moreover, there are a number of parties to the Ramapo Agreements, including several New York transmission-owning utilities, that are not parties to the 1975 or 1978 Agreements and that have not participated in this case. It would be unfair and possibly unlawful to order modifications to the Ramapo Agreement without giving these parties adequate advance notice that the issue would arise.

Second, PSE&G states that “the operating protocols should provide that neither ISO will make changes in PAR tap positions to address operational needs other than performance under the Agreements if doing so will force the other ISO to be required to redispatch generation under its control.” There is no justification for preventing ISOs from making PAR tap changes for other legitimate reasons, such as to address emergency conditions. PSE&G’s proposal would also go far beyond the scope of this proceeding by requiring the ISOs to account for each other’s potential redispatching obligations when making decisions that have nothing to do with the Agreements. It is therefore inappropriate and should be rejected.

³⁴ See PSE&G at 94-95.

Third, PSE&G claims that the “operating protocols should include a provision to implement the requirement in the 1975 Agreement, as amended, that to the extent that PSE&G is required to upgrade its system to provide service under that contract, Con Ed shall compensate PSE&G for a share of the cost of these upgrades, with the share to be determined by a joint study by the parties.” This is a commercial issue between ConEd and PSE&G that pertains to their financial obligations to each other but has nothing to do with operations. There is thus no reason to address it in the operating protocol. It would be appropriate for the ISO’s to determine whether future upgrades might be required to meet reliability criteria, but they should not be inserted into the middle of a commercial and contractual dispute over who should pay for any such facilities.

III. TRANSFORMER REPLACEMENT ISSUES

The NYISO is taking no position on Issues III.A, III.B, and III.C.

IV. MARKET POWER ISSUES

The NYISO is taking no position on Issues IV.A or IV.B and has nothing to add to the views expressed in its initial brief on Issue IV.C.

CONCLUSION

For the reasons specified above, the NYISO respectfully requests that the Presiding Judge issue an initial decision that resolves the clearly resolves the contractual issues in this case and adopts the positions advocated by the NYISO in its briefs.

Respectfully submitted.

/s/ Ted J. Murphy
Arnold H. Quint
Ted J. Murphy
HUNTON & WILLIAMS LLP
1900 K Street, N.W.
Washington, D.C. 20005
(202) 955-1500

Attorneys for
New York Independent System
Operator, Inc.

May 1, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Commission in this proceeding.

Dated at Washington, D.C., this 1st day of May, 2003.

/s/ Ted J. Murphy
Ted J. Murphy
HUNTON & WILLIAMS LLP
1900 K Street, N.W.
Washington, D.C. 20006
(202) 955-1500