

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

Consolidated Edison Company of	)	Docket No. ER01-1385-000
	)	
New York, Inc.	)	Docket No. EL01-45-000

**MOTION OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.  
TO INTERVENE AND PROTEST REQUEST OF  
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.  
TO REVISE LOCALIZED MARKET POWER MITIGATION MEASURES**

The New York Independent System Operator, Inc. (“NYISO”), in accordance with Rules 211 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> and the Commission’s *Notice of Extension of Time* issued March 16, 2001, hereby moves to intervene in the above-captioned proceedings, and for the reasons set forth below protests the Request of Consolidated Edison Company of New York, Inc. to Revise Localized Market Power Mitigation Measures (“ConEd Filing”).

Consolidated Edison Company of New York (“ConEd”) is justifiably concerned about the potential for abuse of market power in New York City when supply is constrained relative to demand, particularly during the periods of high demand typical of hot summer months. The NYISO shares that concern, but believes that has in place or is implementing appropriate monitoring and mitigation processes to deal with market power or other competitive problems throughout the State, including in New York City, pursuant to its existing Market Mitigation Measures.

In its Filing, ConEd identifies four “loopholes” in the current in-City mitigation measures (“I-CMM”) approved by the Commission at ConEd’s request for certain generation units

divested by ConEd prior to the formation of the NYISO.<sup>2</sup> The NYISO does not disagree that there may be gaps, such as those identified by ConEd, in the coverage of the I-CMM as presently constituted. Those loopholes are not present, however, in the NYISO's Market Mitigation Measures, as approved by the Commission as Addendum A to the NYISO's Market Monitoring Plan.<sup>3</sup> The NYISO's Market Mitigation Measures apply to generation located throughout the state of New York, including *all* generation located in New York City. They apply to the Real-Time Market as well as the Day-Ahead Market in New York, and encompass energy, minimum generation, start-up and ancillary services bids.

Moreover, the Market Mitigation Measures are not supplanted by the automated mitigation procedures, at one time referred to as the "Circuit Breaker" and now known as the "Automated Mitigation Procedure" or "AMP," being implemented by the NYISO. To the contrary, the AMP makes no changes to the Market Mitigation Measures, but merely puts in place automated procedures for applying the existing Market Mitigation Measures to the New York Day-Ahead Market. By focusing exclusively on the AMP, the ConEd Filing does not acknowledge the broader scope of the Market Mitigation Measures underlying the AMP, or that putting in place the AMP would not in any way limit the scope of the underlying Market Mitigation Measures. Since the NYISO's existing Market Mitigation Measures cover generation located in New York City and do not have the loopholes identified by ConEd, revision of the I-CMM to establish unique market mitigation measures for New York City is not necessary.

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<sup>1</sup> 18 C.F.R. §§ 385.211 and 212 (2000).

<sup>2</sup> *Consolidated Edison Co. of N.Y., Inc.*, 84 FERC ¶ 61,287 (1998).

<sup>3</sup> *Central Hudson Gas & Electric Corp., et al.*, 89 FERC ¶ 61,196 (1999).

## **I. Correspondence and Communications**

All correspondence and communications concerning this Answer should be sent to the following persons, who should be added to the official service list, at the addresses shown:

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## **II. Statement of Interest**

The NYISO is the independent entity authorized by the Commission to operate the bulk-power transmission grid in New York on an open-access basis, and to administer a range of competitive wholesale energy and ancillary services markets in New York. Its responsibilities include implementing a Commission-approved Market Monitoring Plan in order to monitor the New York bulk power transmission grid and energy and ancillary services markets for abuses of market power or other anticompetitive conduct. While the I-CMM were established prior to the operation of the NYISO, the NYISO's market monitoring responsibilities include administering the I-CMM. Accordingly, the NYISO has a direct interest in the matters raised by the ConEd Filing that cannot be adequately represented by any other party.

### **III. Protest**

#### **A. The NYISO Is Prepared to Mitigate Market Power in the Real-Time Market**

Since development of broader automated procedures prior to this coming summer is not feasible, ConEd is correct in noting that the Automated Mitigation Procedure being implemented by the NYISO (referred to by ConEd as the “Circuit Breaker”) will only be applied to the New York Day-Ahead Market (“DAM”) during its initial implementation for the Summer 2001 Capability Period. The underlying Market Mitigation Measures, however, encompass all of the markets administered by the NYISO, including its Real-Time energy and ancillary services markets, and establish appropriate thresholds for the imposition of mitigation measures in all of those markets.<sup>4</sup>

In deploying its market mitigation resources, the NYISO has given priority to the DAM over the Real-Time market, since the volume of sales transacted in the DAM is overwhelmingly greater than in the Real-Time market. This fact is reflected in the initial focus on the implementation of the AMP in the DAM as opposed to Real-Time markets. At the same time, however, the NYISO is now actively and effectively monitoring the Real-Time markets. NYISO Market Monitoring Unit personnel continuously monitor the Real-Time markets for bids that exceed applicable Reference Price levels by the threshold amounts specified in the Market Mitigation Measures, with particular focus on hours exhibiting substantial movements in prices or bids. This monitoring includes automated comparisons of all Real-Time bids against appropriate Reference Prices or other benchmarks. If bids and prices are detected that meet the

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<sup>4</sup> In addition, ConEd can minimize its exposure to Real-Time price spikes by bidding the full amount of its load into the Day-Ahead Market.

conduct and market impact thresholds of the Market Mitigation Measures, action is taken as quickly as possible to impose the appropriate mitigation measure as specified in the Market Mitigation Measures. As recently as the first two weeks of this past March, for example, action was taken by the NYISO to mitigate Real-Time prices in one instance, while in another it was determined through a prompt investigation that the Real-Time market was clearing at relatively high prices resulting from legitimate market forces.

In addition, the NYISO is taking steps to enhance its capabilities and resources for the application of the Market Mitigation Measures to Real-Time markets. This includes evaluation of the integration of automated mitigation procedures into the Balancing Market Evaluation (“BME”) as a means of automating Real-Time mitigation, although as noted above, implementation of automated mitigation measures in the BME will not be feasible prior to the coming summer season. The NYISO is also taking all other practical steps to ensure that the Market Mitigation Measures are being implemented in all the markets administered by the NYISO, including the Real-Time markets, on the most timely and efficient basis practicable. This includes, for example, ensuring that the staffing of the NYISO Market Monitoring Unit is sufficient to apply the Market Mitigation Measures to all of the markets that the NYISO is responsible for monitoring. As a result, the NYISO anticipates that any violation of its Market Mitigation Measures thresholds in the Real-Time markets this coming summer will be detected by its Market Monitoring Unit, and the mitigation specified in the Market Mitigation Measures will be applied.

Thus, while the NYISO agrees with ConEd that the implementation of automated mitigation measures for Real-Time markets prior to this summer would be desirable, the NYISO

cannot agree that doing so is feasible, and respectfully submits that ConEd has not shown that it would be feasible to do so with respect to either the I-CMM or the Market Mitigation Measures. At the same time, the NYISO believes it would be preferable for all available time and resources to be devoted to enhancing the administration of the Market Mitigation Measures, rather than modifying the I-CMM. As a general matter, the Market Mitigation Measures provide a uniform approach to dealing with market mitigation throughout the market area administered by the NYISO. While the in-City area may have its own set of facts, this is true of any number of areas in the state in which mitigation issues may arise. Any such area should be subject to the same standards for assessing market power or other competition problems as other areas in the state. Federal antitrust enforcement standards for assessing market concentration or other competition concerns, for example, do not vary from one part of the country to another.

If uniform mitigation standards are to be applied throughout the State, those standards should be the ones set forth in the NYISO's Market Mitigation Measures. The Market Mitigation Measures were approved by the Commission subsequent to the I-CMM for application by the NYISO throughout its area of responsibility, and were formulated after extensive consultations with the Market Participants and the New York Market Advisor and in light of the alternative model available in the I-CMM. The two-part conduct and market impact standards of the Market Mitigation Measures focus more directly on the existence and abuse of market power than the single price trigger of the I-CMM. The Market Mitigation Measures thus reduce the potential for mitigation measures to be implemented in the absence of material market power. In addition, the cost-based mitigated price levels in the I-CMM may not reflect the full marginal cost, including accurate fuel and environmental costs, of running a unit needed in the real-time market that was not scheduled in the Day-Ahead Market unit commitment. Mitigating

units to levels below their marginal cost could create unintended market consequences, such as providing an incentive for suppliers to withhold the units from the market, thus exacerbating rather than remedying market power concerns. In sum, the NYISO believes that the Market Mitigation Measures are an appropriate model for mitigation of market power in the markets administered by the NYISO that should be implemented on a uniform, state-wide basis.

B. The NYISO Is Prepared to Mitigate Local Must-Run Units

Local must-run units in New York City, like all generation units throughout the State, are subject to the Market Mitigation Measures. Thus, if circumstances in either Day-Ahead or Real-Time Markets cause a generator to be a “must-run” unit, its bids are subject to being mitigated to the applicable Reference Price if the unit attempts to exploit its must-run status by raising its bids above the applicable thresholds in the Market Mitigation Measures.

As discussed further below, the Market Mitigation Measures also apply to attempts to inflate Bid Production Cost Guarantee payments through the exercise of market power by submitting excessive start-up and minimum generation bids. As part of the NYISO’s procedures for the coming summer season, start-up or minimum generation bids and unit operating parameters for local must-run—or any other—units will be analyzed under the Market Mitigation Measures thresholds near the beginning of the Supplemental Resources Evaluation (“SRE”) process, and a determination made as to whether such bids violate the conduct and market impact standards of the Market Mitigation Measures. If so, mitigated Bid Production Cost Guarantee payments can then be determined in the billing process, without any need to redetermine the dispatch of generation, or to redetermine energy or other market clearing prices. Mitigation of Bid Production Cost Guarantee payments is thus significantly easier than mitigation of energy or

other market clearing prices, and effective provisions for mitigation of excessive Bid Production Cost Guarantee payments can be implemented under the Market Mitigation Measures.

C. The NYISO Is Prepared to Mitigate Start-Up and Minimum Generation Bids

The NYISO agrees with ConEd that start-up and minimum generation bids should generally be mitigated if appropriate whenever energy bids are mitigated, and this is in fact done under the Market Mitigation Measures. Excessive start-up and minimum generation bids affect either (a) the Bid Production Cost Guarantee payment to the generator if a unit is scheduled, or (b) energy and ancillary services prices if the high start-up or minimum generation bids cause a unit not to be scheduled. With respect to Bid Production Cost Guarantee payments, section 2.2(a)(1) of the Market Mitigation Measures states that the NYISO has authority to remedy market conduct that would “result in a material change in . . . production cost guarantee payments (‘guarantee payments’) to a Market Party.” *See also* § 2.3(d) (stating “The NYISO shall monitor New York Electric Markets for other categories of conduct, whether by a single firm or by multiple firms acting in concert, that have material effects on prices or guarantee payments in a New York Electric Market.”). Section 3.1.2(a)(1) of the Market Mitigation Measures specifies thresholds for identifying non-competitive minimum generation bids (300% increase or increase of \$100/MWh, whichever is lower), and § 3.1.2(a)(4) specifies a threshold for identifying non-competitive start-up bids (200% increase). Finally, § 3.2(a) of the Market Mitigation Measures states that:

In order to avoid unnecessary intervention in the New York Electric Markets, Mitigation Measures shall not be imposed unless conduct identified as specified above (i) causes or contributes to a material change in one or more prices in a New York Electric Market administered by the NYISO, or (ii) substantially increases guarantee payments to participants in the New York Electric Market.



Section 3.2(a)(2) specifies a market effect threshold for guarantee payments of a 200% increase. Consequently, under the Market Mitigation Measures, start-up and minimum generation bids do not provide a loophole for evading mitigation measures.

As explained above, the NYISO monitors for undue increases in start-up or minimum generation bids that result in excessive guarantee payments, which can then be mitigated through the correction of payment levels in the subsequent billing process. When excessive start-up and minimum generation bids affect energy prices, they are mitigated prospectively under the Market Mitigation Measures. In addition, the NYISO intends to incorporate automated mitigation of start-up and minimum generation bids in the AMP as soon as practicable, in order to address more quickly the potential effects of those bids on energy prices. The resources required to implement any such automation of start-up and minimum generation mitigation will be the same whether undertaken under the Market Mitigation Measures or the I-CMM. Consequently, revision of the I-CMM to implement a different form of automated mitigation for start-up and minimum generation would significantly delay implementation of the comparable element of the AMP.

D. The NYISO Is Prepared to Mitigate All Generation in New York City, not Just Units Divested by ConEd

The NYISO concurs in ConEd's reading of the I-CMM, as currently in force, as applying only to a specifically enumerated set of generation units. Thus, issues may arise about the potential application of the I-CMM to other units, such as the Astoria II unit identified in the ConEd Filing, at 19-20. The Market Mitigation Measures, however, already apply to all units in

New York City, whether they are currently subject to the I-CMM or not; while there may be a loophole that allows some in-City units to escape the I-CMM, there is no such loophole in the Market Mitigation Measures. As noted above, uniform market mitigation standards should apply throughout the State. To this end, all units in New York City can and should be treated for mitigation purposes under the Market Mitigation Measures, rather than extending the I-CMM piecemeal to a changing set of in-City units.

**IV. Conclusion**

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully asks that the Commission assess ConEd's request for revision of the In-City Mitigation Measures in light of the provisions of the NYISO's Market Mitigation Measures described above.

Respectfully submitted,

NEW YORK INDEPENDENT  
SYSTEM OPERATOR, INC.

By \_\_\_\_\_

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April 4, 2001

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each party designated on the official service list compiled by the Secretary in Docket Nos. ER01-1385-000 and EL01-45-000, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 2010 (2000).

Dated at Washington, DC this 4th day of April, 2001.

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