

**SUPPLEMENTAL MOTION OF CON EDISON AND O&R**  
**IN OPPOSITION TO AN APPEAL**

Consolidated Edison Company of New York, Inc. (“Con Edison”) and Orange and Rockland Utilities, Inc. (“O&R,” collectively, the “Companies”) hereby file this supplemental motion to dismiss Mirant New York, Inc.’s (“Mirant”) appeal of the Management Committee’s (“MC”) decision approving future payments and rigorous testing requirements for the provision of Black Start services in New York City by existing New York City suppliers (the “Proposal”).

Subsequent to the filing of that appeal, O&R notified the NYISO that it had revised its Black Start and Restoration Plan and would no longer require the services of Mirant.<sup>1</sup> In response to O&R’s determination, the NYISO requested additional pleadings addressing the issue as to whether O&R’s determination renders Mirant’s appeal moot.

The short answer to the question is yes; Mirant’s appeal is moot.

**Argument**

The Proposal approved by the MC dealt solely with the future payments and testing provisions associated with the provision of Black Start services in New York City. It did not consider the issue of the amount of money owed to New York City suppliers by New York City load serving entities (“LSEs”) for prior-period Black Start service. The issue of prior-period payments was to be dealt with in a separate settlement agreement, which was not before the MC for approval.

Mirant argues that the filing of the Proposal with the Federal Energy Regulatory Commission (“FERC” or “Commission”) should be delayed pending the resolution of the

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<sup>1</sup> In its notification to the NYISO, O&R stated that its revised Black Start and Restoration Plan resulted from its three recent and significant upgrades to its transmission system.

O&R Black Start program. Given, however, that Mirant will no longer provide Black Start services in the O&R service territory, no aspect of the O&R Black Start program requires resolution by the NYISO Board. As such, the issue forming the basis of Mirant's complaint (i.e., future period payments for Black Start services in the O&R service territory) no longer exists. In similar instances, the Commission has dismissed protests as moot upon finding that the underlying reasons for the protest no longer exist.<sup>2</sup>

Mirant's other argument, that it is entitled to payment for prior periods, is not relevant to this matter. Since the Proposal approved by the MC did not address prior period payments, the issue of prior period payments for the O&R service area is not germane to this matter and is being addressed through ongoing negotiations.<sup>3</sup>

Since the underlying predicate to Mirant's protest no longer exists, Mirant's appeal should be dismissed as moot.

### **Conclusion**

Accordingly, for the reasons set forth above, the Companies respectfully request that the NYISO Board dismiss Mirant's appeal as moot, affirm the MC's decision to adopt the Proposal and expeditiously file the Proposal with the FERC.

Dated: October 27, 2005

Respectfully submitted,

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<sup>2</sup> See *Midwest Independent Transmission System Operator, Inc.*, Order On Rehearing and Compliance Filings, 111 FERC P 61,176 (2005), where the Commission found that since a certain Midwest ISO plan was no longer in effect, "there is no need to rule on the issues raised by [protestor] because the issues it raises have become moot." See also *Midwest Independent Transmission System Operator, Inc.*, Order Rejecting Compliance Filing and Tariff Sheets, 112 FERC P 61,169 (2005), where the Commission found that since it was "rejecting the proposed Schedule 24-A, the protestors' arguments about the rate design in Schedule 24-A are moot."

<sup>3</sup> O&R, the NYISO and Mirant are currently engaged in settlement discussions with respect to the amount of prior period Black Start payments, if any, Mirant is entitled to. The issue of prior period payments by LSEs in the O&R service territory can be resolved outside of the resolution of future period payments and testing requirements for New York City suppliers.

Consolidated Edison Company of New York, Inc. and  
Orange and Rockland Utilities, Inc.

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