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**FEDERAL ENERGY
REGULATORY COMMISSION**

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FILE NO: 55430.000045

October 26, 2004

The Honorable Isaac Benkin
Administrative Law Judge
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Consolidated Edison Company of New York v. Public Service Electric and Gas Company, et al.*, Docket No. EL02-23-000

Dear Judge Benkin:

This is to advise you, in accordance with P 72(A) of your initial decision in *Consolidated Edison of New York v. Public Service Electric & Gas Company, et al.*, 103 FERC ¶ 63,047 (2003), as affirmed by the Commission on August 2, 2004, at 108 FERC ¶ 61,120 at P 216, that the New York Independent System Operator, Inc. ("NYISO"), PJM Interconnection L.L.C. ("PJM"), Consolidated Edison Company of New York ("ConEd"), and Public Service Electric and Gas Company ("PSE&G") are continuing to hold regularly scheduled meetings to develop an operating protocol for power transfers under the contracts at issue in this proceeding. The parties most recently discussed an expanded and revised draft protocol on October 19 and have agreed to hold another meeting in early November.

All of the parties agree that additional progress has been made and that further discussions are warranted.¹ At the same time, the parties agree that it will not be possible to finalize and file a protocol by the November 1 deadline established by the Commission's August 2 Order.

The parties are therefore concurrently submitting a joint motion to the Commission requesting an additional seventy five days (until January 15, 2005) to make the required

¹ Any such resolution would, however, be subject to certain parties' reservation of rights concerning issues that are currently pending on rehearing or appeal.

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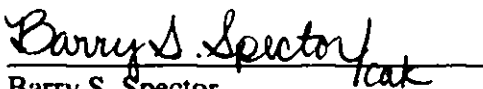
The Honorable Isaac Benkin

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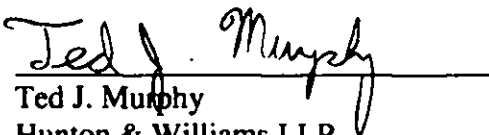
protocol filing. The joint motion also proposes that the Parties identify any unresolved issues by December 1, and confer with you regarding a process for resolving these issues as soon as possible thereafter. The dual goals of the concurrently filed motion are to allow the parties additional time to seek agreement, while relying selectively on your intervention to ensure that disputed issues are addressed swiftly. A copy of the joint motion is attached to this letter for your information.

Respectfully submitted,



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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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Consolidated Edison Company of New York Inc.

Docket No. EL02-23-003
(Phase II)

FEDERAL ENERGY REGULATORY COMMISSION

v.

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

**JOINT MOTION FOR EXTENSION OF TIME AND PROPOSAL FOR RESOLVING
OUTSTANDING ISSUES OF CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC., NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.,
PJM INTERCONNECTION, L.L.C., AND PUBLIC SERVICE ELECTRIC
AND GAS COMPANY**

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R.

§ 385.212 (2004), the Consolidated Edison Company of New York, Inc. ("ConEd"), New York Independent System Operator, Inc. ("NYISO"), PJM Interconnection, L.L.C. ("PJM"), and Public Service Electric and Gas Company ("PSE&G") (together, the "Parties") respectfully request an approximately 75 day extension of time, to and including January 17, 2005, to file an operating protocol in compliance with Ordering Paragraph "C" of the Commission's August 2, 2004 order in this proceeding.¹ The Parties also propose an approach for identifying and resolving all outstanding issues prior to the filing of the protocol.

I. Motion for Extension of Time to File the Operating Protocol

Ordering Paragraph "C", and P 216, of the August 2 Order required the Parties to file an operating protocol to implement the power transfers that are at issue in this proceeding within

¹ *Consolidated Edison of New York v. Public Service Electric & Gas Company, et al.*, 108 FERC ¶ 61,120 (2004).

ninety days. If there were “outstanding issues” at that time, the Parties were directed to “explain why they have not been able to resolve them.” P 216 also affirmed Ordering Paragraph “A” of the Phase II Initial Decision,² which required the Parties to report to the Presiding Judge in this proceeding on their progress in developing the operating protocol every thirty days.

The Parties have worked diligently to develop a mutually acceptable operating protocol. The NYISO and PJM have held many technical discussions to address the complex issues involved in implementing the power flows in light of the Commission’s various rulings. They are jointly drafting a protocol and have discussed it with ConEd and PSE&G. There has been a four-party conference call and two day-long, face-to-face four-party meetings to discuss particular protocol provisions. All Parties agree that progress has been made to date, and that further discussions are warranted.³ In compliance with the August 2 Order, the Parties have kept the Presiding Judge apprised of their progress.

At the same time, the Parties have concluded that it will not be possible to finalize and file a protocol by November 1. No single unresolved issue or group of issues is to blame. Rather, more time is needed because the discussions to date have made it clear that any proposed solution must be both broad in scope and complex in nature if it is to adequately address the requirements of the August 2 Order. The Parties have committed to continue working towards an agreement that resolves the remaining issues as soon as possible.

Accordingly, the Parties respectfully ask that the Commission extend the deadline for filing an operating protocol by approximately 75 days to and including January 17, 2005. This

² *Consolidated Edison of New York v. Public Service Electric & Gas Company, et al.*, 103 FERC ¶ 63,047 (2003).

³ Any resolution would, however, be subject to certain Parties’ reservation of rights concerning issues that are currently pending on rehearing or appeal.

will give the Parties adequate time to finish assessing technical questions, find common ground, and, as is noted below, identify and address unresolved issues.⁴ Denying the extension would prematurely end the Parties' efforts to achieve a consensus, squander much of the work that has been done so far, almost certainly lead to the filing of multiple rounds of pleadings, and leave the Commission in the undesirable position of having to decide issues that it has already recognized are best left to resolution by the Parties.

II. Resolution of Outstanding Issues


If the Commission grants the requested extension, the Parties will identify the issues that they do not believe they can resolve without assistance by December 1, 2004. They will then confer with the Presiding Judge at his earliest convenience, consistent with Ordering Paragraph "A" of the Phase II Initial Decision, to discuss a process for resolving these disputed issues. The Parties' hope is that this process will ensure that any disputes are addressed quickly, and facilitate their resolution before the final protocol is filed with the Commission. Because it is not yet clear whether there will be unresolved issues, or what the nature of any outstanding disputes will be, the Parties do not believe that it would be appropriate to propose a more specific dispute resolution mechanism at this time.

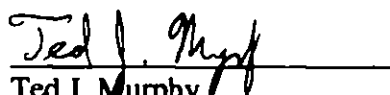
⁴ The protocol will address all of the issues identified by the August 2 Order, including, as required by P 215, market monitoring.

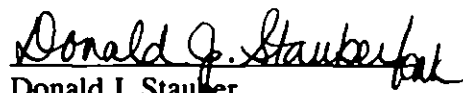
III. Conclusion

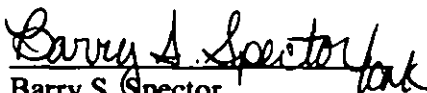
Wherefore, for the foregoing reasons, the Parties respectfully request that the Commission grant their motion for an extension of time to and including January 17, 2005, to file the protocol and accept their proposed plan for identifying and resolving outstanding issues.

Respectfully submitted,


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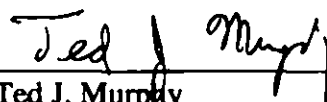

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October 26, 2004

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 Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2004).

Dated at Washington, DC this 26th day of October, 2004.

By: 
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