March 31, 2006

Via e-mail and Facsimile
Mr. Mark S. Lynch
President and CEO
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, N.Y. 12144

Re: Comments in Support Of Operating Committee Decision

Dear Mr. Lynch:

Attached are the Comments of Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., LIPA, the New York Power Authority, The City of New York, Consumer Power Advocates and the New York Energy Consumers Council, Inc. (collectively, the "Indicated Parties") in support of the NYISO Board's review and approval of the Operating Committee's March 28, 2006 decision to approve a correct locational capacity requirement for New York City and Long Island.

A copy of these comments have been electronically mailed to NYISO staff for posting on the NYISO website. Thank you.

Very truly yours,
/s/ Neil H. Butterklee
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COMMENTS OF CON EDISON, O&R, LIPA, NYPA, THE CITY OF NEW YORK, CONSUMER POWER ADVOCATES AND NEW YORK ENERGY CONSUMERS COUNCIL, INC.

SUMMARY AND BACKGROUND

Pursuant to the request of the NYISO Board, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., LIPA, the New York Power Authority, The City of New York, Consumer Power Advocates and the New York Energy Consumers Council, Inc. (collectively, the "Indicated Parties") hereby file these comments in support of the NYISO Board's review and approval of the Operating Committee's ("OC") decision to correct the locational capacity requirements ("LCRs') for 2006-2007.

At its February 9, 2006 meeting, the OC adopted LCRs for New York City ("NYC") of 83% and for Long Island ("LI") of 106%. Subsequently, a clerical error was discovered in the NYISO's database, which incorrectly transferred 704 MW of reserves from east of the Total East Interface to west of the Total East Interface, including 426 MW incorrectly transferred out of LI alone. Based on analysis conducted by NYISO Staff, the OC recognized that, but for this ministerial error, the LCRs for NYC would have remained at its historic level of 80%, and the LCRs for LI would have remained at its previous level of 99%. As a result, the OC members appropriately voted to correct these figures at its March 28, 2006 meeting, achieving a vote of over 70 percent in favor of the change. All parties in this controversy agree the NYISO database had an error and that correction of the error will result in LCRs for NYC and LI at 80% and 99%, respectively.

As an initial matter, the NYISO Board has the authority and the obligation to expeditiously review the OC determination and direct NYISO staff to immediately correct this error prior to the NYISO capacity auctions. Certain parties, however, object to the OC's decision to correct this clerical error, hoping instead to retain the erroneous LCRs approved on February 9, 2006, thereby providing certain parties with an approximately $40 million windfall, funded by NYC and LI consumers. This means that absent the change, NYC and LI customers will have to pay approximately $40 million more than they should, solely because of a NYISO clerical error. The NYISO Board must not let this miscarriage of justice occur. We commend the NYISO Board for taking swift and appropriate action in this matter.

ARGUMENT

I. THE NYISO BOARD HAS THE AUTHORITY AND AFFIRMATIVE OBLIGATION TO EXPEDITIOUSLY REVIEW THE OC DECISION AND IMPLEMENT THIS EXPEDITED PROCESS TO CORRECT THIS CLERICAL ERROR

The ISO Agreement clearly provides the NYISO Board with the authority to react to out-of-the-ordinary circumstances and correct errors such as the one in question here. Specifically, Section 5.07 of the ISO Agreement provides that the "ISO Board also may review any matter, complaint or Committee action on its own motion." Moreover, Section 5.07 of the ISO Agreement also provides that the Board may "establish[] procedures to assure prompt action on matters that are brought to it for action on an emergency or urgent basis." Further, Section 5.08 of the ISO Agreement provides that the Board has the "ultimate responsibility for the operation of the ISO and the effective implementation of its basic responsibilities including . . . the administration of centrally coordinated markets for Energy, Capacity and Ancillary Services and the administration

of Installed Capacity Requirements for LSEs."

The NYISO Board has correctly recognized that, in this instance, if the typical Management Committee ("MC") and Board appeals processes were to take place, the NYISO would be unable to establish a final set of LCRs in time to ensure that customers in NYC and LI are not forced to pay any additional costs for any months of the Summer and Winter 2006 capability periods. Accordingly, the Board's decision to undertake this expedited process is necessary, appropriate and well within its authority. Moreover, failure to act in this instance would be in direct conflict with the Board's ultimate responsibility to properly administer the Capacity market and establish minimum locational capacity requirements for LSEs.

II. THE NYISO HAS AN OBLIGATION TO CORRECT DATA ENTRY ERRORS

At the heart of this matter is the fact that the error in question is a clerical one. It does not involve policy matters, decision-making or an interpretation of the tariff. Rather, it is a typo. The error, which appears to have been in the NYISO's database since 2004, is the incorrect transfer of 704 MW of reserves from east of the Total East Interface to west of the Total East Interface, including 426 MW incorrectly transferred out of LI alone. When the error was corrected the LCRs for NYC and LI were correctly calculated to be at a considerably lower number.[1] Thus, the reason the LCRs were at the level previously approved by the OC on February 9th was because of this NYISO staff clerical mistake.

[1] Indeed, it appears that if the LCRs for 2004 and 2005 were to be correctly calculated the NYC and LI numbers would be lower than previously indicated. Moreover, it appears that NYC and LI consumers may have overpaid for capacity by approximately $40 million per year for the last two years.

In *Con Edison v. FERC*, 347 F.3d 964 (D.C. Cir. 2003), the Court of Appeals for the D.C. Circuit recognized that refunds and corrections were appropriate in cases where calculated numbers were incorrectly determined. In this case, all parties agree that the initial LCRs were incorrectly determined due to a NYISO database error, and that the initial calculated LCRs are now known to be incorrect. The only question is whether the NYISO should take appropriate action in a timely manner to correct a known clerical error thus enabling consumers to pay for capacity based on the LCRs that are developed with the correct database.

The NYISO has an affirmative obligation to ensure that the capacity purchase requirements are correct. Since these errors were caught at an early enough stage, the NYISO has the opportunity to correct its mistake before any financial harm is inflicted on consumers for the next capability year, May 1, 2006 through April 30, 2007.

III. THE NYISO'S OBLIGATION IS TO PROMULGATE MINIMUM LCRS

Section 5.10 of the NYISO Services Tariff provides that "the NYISO shall translate the NYCA Installed Reserve Margin, and thus the NYCA Minimum Installed Capacity Requirement, into a Minimum Unforced Capacity Requirement." Further, Section 5.11.1 of the Services Tariff provides that the "ISO shall allocate the NYCA Minimum Unforced Capacity Requirement among all LSEs serving Load in the NYCA prior to the beginning of each Capability Year." These provisions clearly provide that the NYISO (and the NYISO Board, consistent with section 5.08 of the ISO Agreement) is responsible for correctly assigning the minimum level of capacity that each LSE must provide (i.e., the basic requirement needed to maintain reliability).

The NYISO staff has already corrected the clerical database error and re-calculated the LCRs using the corrected data. The result from the updated and corrected analysis is that the minimum required LCR for NYC is 80% and not 83% as first approved by the OC. For LI, the minimum LCR is 99%, not 106%. Thus, approving an LCR other than 80% for NYC and 99% for LI would violate the express terms of the Services Tariff to adopt the minimum level of capacity.

Because the demand curve obligates load serving entities ("LSEs") to purchase all capacity that is economically offered in the Demand Curve spot auction at or below the demand curve clearing price, lowering the LCRs will not diminish reliability. During the OC discussion on this matter, certain parties argued that keeping the LCRs at an artificially high level (i.e., perpetuating the NYISO database error) would cause load to purchase more reliability. This argument is false since the same physical capacity will exist anyway. Thus, the issue is not about how much capacity will be purchased; rather it is about whether NYC and LI customers will be forced to purchase capacity at artificially inflated prices resulting from a NYISO database error. Using artificially high LCRs would mean that LSEs will pay approximately $40 million more for the same amount of reliability.

Leaving the incorrect LCRs in place means that capacity suppliers will be unjustly enriched and loads will be unjustly harmed solely due to a NYISO clerical error.

IV. CONCLUSION

For the reasons stated herein, the NYISO Board should approve the March 28th decision by the OC to set the NYC LCR at 80% and the LI LCR at 99%.

Dated: March 31, 2006

Respectfully submitted,

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