



# Independent Power Producers of New York, Inc.(IPPNY)

**Gavin J. Donohue**  
*Executive Director*

**Via Overnight Courier**

June 22, 2001

Hon. Richard J. Grossi  
Chairman, New York Independent System  
Operator Board of Directors  
C/O William J. Museler  
President and CEO  
New York Independent System Operator, Inc.  
3890 Carman Road  
Schenectady, NY 12303

**Re: IPPNY Motion in Opposition to Consolidated Edison Company of New York  
Appeal of Interconnection Cost Allocation Rules**

Dear Chairman Grossi:

Pursuant to the "Procedural Rules for Appeals to the ISO Board," please find enclosed an original and three copies of the Independent Power Producers of New York, Inc.'s (IPPNY) Motion in Opposition, on behalf of those of its members who also are members of the New York Independent System Operator's Management Committee, as identified on Attachment 1 hereto, to the Appeal of Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities, Inc. concerning the Management Committee's decision with respect to cost allocation rules for system upgrade facilities.

Please do not hesitate to contact me, if you have any questions or I may be of assistance to you.

Very truly yours,

Glenn D. Haake  
General Counsel

Enclosures

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## Attachment 1

AES-NY  
East Coast Power  
Edison Mission Marketing & Trading  
Entergy Nuclear Northeast  
Indeck Energy Services, Inc.  
Keyspan- Ravenswood, Inc.  
Mirant New York, Inc.  
NRG Power Marketing, Inc.  
Orion Power New York  
PG&E National Energy Group  
Sith Energy, Inc.  
TransCanada Power Marketing, Ltd.  
Automated Power Exchange ( APX )  
Dynergy  
El Paso Merchant Energy  
Enron Power Marketing, Inc.  
HQ Energy Services US  
Merchant Energy Group of The Americas, Inc.  
PSEG Power New York

**Motion in Opposition of the Management Committee Members of the  
Independent Power Producers of New York, Inc. to the Appeal of  
Consolidated Edison Company of New York, Inc. and  
Orange and Rockland Utilities, Inc. Concerning the Management  
Committee’s Decision With Respect to Cost Allocation Rules  
for System Upgrade Facilities**

Notwithstanding the fact that support for the Rules to Allocate Responsibility for the Cost of New Interconnection Facilities (“Cost Allocation Rules”) was so widespread at both the May 24, 2001 Business Issues Committee and the June 6, 2001 Management Committee meetings that the motion to approve these Rules passed in both committees by a show of hands, Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities, Inc. (collectively, “Con Edison”)<sup>1</sup> now seek to eviscerate this carefully balanced proposal by separating out and substantially modifying two critical components thereof. As demonstrated more fully herein, Con Edison’s assertions are wholly without merit and only serve to further delay the implementation of much needed rules to define the interconnection cost responsibility of proposed projects in New York State.

Accordingly, pursuant to Section 2.06 of the NYISO’s Procedural Rules for Appeals to the ISO Board (“Procedural Appeal Rules”), the Management Committee members of the Independent Power Producers of New York, Inc. (“IPPNY”)<sup>2</sup> respectfully urge the NYISO Board: (i) to determine expeditiously that the nearly unanimous decision of

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<sup>1</sup>As a subsidiary of Con Edison, Orange and Rockland Utilities, Inc. can participate but cannot vote in the ISO committees.

<sup>2</sup> The Management Committee members of IPPNY filing this motion in opposition to Con Edison’s Appeal are as follows: i) AES-NY; ii) East Coast Power; iii) Edison Mission Marketing & Trading; iv) Entergy Nuclear Northeast; v) Indeck Energy Services, Inc.; vi) Keyspan-Ravenswood, Inc.; vii) Mirant New York, Inc.; viii) NRG Power Marketing, Inc.; ix) Orion Power New York GP, Inc.; x) PG&E National Energy Group; xi) Sithe Energies, Inc.; xii) TransCanada Power Marketing, Ltd.; xiii) Automated Power Exchange (APX); xiv) Dynegy; xv) El Paso Merchant Energy; xvi) Enron Power Marketing, Inc.; xvii) HQ Energy Services US; xviii) Merchant Energy Group of the Americas, Inc.; xix) PPL EnergyPlus, Inc.; and xx) PSEG Power New York.

the Management Committee approving the Cost Allocation Rules must be upheld; and (ii) to direct its counsel to file the Cost Allocation Rules with the Federal Energy Regulatory Commission (“FERC”) under Section 205 of the Federal Power Act (“FPA”) as soon as possible.

## **ARGUMENT**

### **POINT I**

#### **The Cost Allocation Rules Constitute a Comprehensive, Fair and Carefully Balanced Approach To Allocate Costs for New Interconnection Facilities**

Baselessly characterizing the two percent threshold used in the Cost Allocation Rules to define a material impact for short circuit contribution purposes (“Material Impact Threshold”) as “totally arbitrary” (see Appeal at 1), Con Edison self-servingly argues that the NYISO Board should reject the decision of the Management Committee in favor of Con Edison’s approach. What Con Edison fails to mention in its Appeal – much less address – is that the Cost Allocation Rules, including the Material Impact Threshold Rule, are a comprehensive set of carefully balanced, inextricably intertwined rules that were fully considered and addressed in innumerable Interconnection Issues Task Force (“IITF”) meetings and conference calls. Nor does Con Edison mention that the Cost Allocation Rules were approved overwhelmingly by members from every sector of the Business Issues Committee and the Management Committee.

Acting in accordance with the directive issued by the FERC in its July 29, 1999 order (“Order”)<sup>3</sup>, NYISO Staff and a large number of market participants – including Con Edison -- actively have participated in the IITF over the past sixteen months to jointly

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<sup>3</sup> See FERC Docket Nos. ER97-1523-003, et al., Central Hudson Gas & Electric Corporation, “Order Denying in Part and Granting in Part Rehearing and Clarification and Conditionally Accepting Compliance Filing” (issued July 29, 1999) at 15.

develop guidelines for cost responsibility with regard to new interconnections. The Cost Allocation Rules, meticulously debated and carefully structured, are the compromise solution that resulted from this collaborative process.

Indeed, the Material Impact Threshold Rule targeted by Con Edison in its Appeal was a subject of at least two meetings and two conference calls. This Rule was included in the working draft of the Cost Allocation Rules during the IITF meeting held on February 7, 2001. Following a complete debate at that meeting, IITF participants reached consensus that it was appropriate to establish a threshold to exempt projects that were located farther away from, and consequently did not have a significant impact on, breakers in a substation. Taking the opportunity to gain from the experience gleaned by PJM as of that date concerning this aspect of its interconnection rules, IITF participants further determined that the Material Impact Threshold to measure short circuit impacts should be set at 3%.

Five meetings and six drafts of the Cost Allocation Rules later, Con Edison first raised concerns about the level of the Material Impact Threshold in a letter sent to IITF members by e-mail on May 8, 2001. Con Edison's letter was given top priority at the May 9, 2001 IITF meeting. During the full and lengthy discussion concerning the level of the Material Impact Threshold that ensued, IITF participants re-evaluated and ultimately confirmed the determination reached three months earlier that a threshold level to define a material impact for short circuit contribution purposes should be included as part of the comprehensive package. To address Con Edison's concerns, however, IITF participants indicated that while they may be willing to further compromise on the threshold level, the level chosen must continue to meet the underlying purpose for this provision.<sup>4</sup> IITF

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<sup>4</sup> While Con Edison assails the 2% level as "arbitrary" and "inequitable," it is, in fact, linked to actual operating experience. In contrast, Con Edison provides no evidence that its approach has been implemented anywhere. Indeed, Con Edison's approach would have the untoward result of requiring plants located electrically as far Upstate as the Athens area to pay for upgrades to breakers in New York City.

participants then reached consensus that the Material Impact Threshold level contained in the Cost Allocation Rules could be lowered to 2%.<sup>5</sup>

Thus, Con Edison's baseless assertions notwithstanding,<sup>6</sup> the Material Impact Threshold Rule is, in fact, well-reasoned and supported by real world operating experience.<sup>7</sup> Indeed, support for the Cost Allocation Rules, which included the Material Impact Threshold Rule, was so broad-based that it was not necessary to call a roll call vote on this motion at either the Business Issues Committee or the Management Committee meeting.<sup>8</sup> Accordingly, the NYISO Board should honor the decision reached by the Management Committee and reject Con Edison's request to modify the Material Impact Threshold Rule.

## **POINT II**

### **NO FURTHER ANALYSES ARE NECESSARY**

Using the NYISO's processes, the parties that participated in the innumerable IITF meetings and conference calls have worked long and hard to develop a compromise to resolve issues that at the beginning of the process seemed entirely insurmountable. Now that

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<sup>5</sup> When this compromise was reached, Con Edison did not object to using 2% as the threshold level for short circuit contribution purposes.

<sup>6</sup> In its Appeal, Con Edison erroneously asserts that PJM has replaced its 3% threshold level with a 2% level. This is not accurate. The threshold level for short circuit contribution purposes remains at 3% in PJM.

<sup>7</sup> Given the fact that a number of the breakers on the Con Edison system are very close to their limits (e.g., Sprainbrook currently is within 200 amps of its limit), it is expected that many of these modifications will be included in the Baseline Plan and will not be a developer expense in any event.

<sup>8</sup> As established in the draft minutes of the May 24, 2001 Business Issues Committee meeting disseminated by NYISO Staff, the motion to accept the Cost Allocation Rules passed by a majority show of hands with only two of the approximately seventy-five members participating at the meeting opposed to it, one of which was Con Edison. A similar result occurred at the June 6, 2001 Management Committee meeting.

the Cost Allocation Rules have received nearly unanimous support from both the Business Issues Committee and the Management Committee, Con Edison attempts to support its position that its approach should supplant the Material Impact Threshold Rule, in part, by asserting that an analysis of the 2% level was not conducted. (See Appeal at 3-4.) Here, too, Con Edison's argument is unavailing.

Indeed, it only begs the question of why, as an active IITF participant, Con Edison did not ensure that a study was completed much earlier in this process. Surely as the entity that owns a number of the facilities in question Con Edison was in a choice position to perform this analysis and provide it to the IITF members for their consideration.<sup>9</sup> However, it did not. Alternatively, in the numerous meetings in which Con Edison actively participated, Con Edison could have requested that the IITF or the NYISO Staff -- present at every IITF meeting -- perform this analysis. Again, it did not.

Nor can either a lack of time or notice possibly be the issue in this case. FERC's Order directing market participants and NYISO Staff to develop the Cost Allocation Rules was issued nearly two years ago. In addition, beginning in February, 2000, meetings and conference calls have been held to address the interconnection cost and other related issues at least once a month, and near the end of the process, several times a month.<sup>10</sup> Con Edison has been an active participant at these meetings. In fact, due to the time and efforts that have been dedicated to this issue, Con Edison's motion to table the Cost Allocation Rules motion at the Business Issues Committee meeting failed by a wide margin, only garnering 20 percent of the vote.

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<sup>9</sup> This is particularly true given that Con Edison, to date, has controlled the as yet to be divulged but newly revised Con Edison Global Solution, its study of, and proposed solution concerning, the upgrades that may need to be made to its short circuit system.

<sup>10</sup> These issues initially were addressed by the Transmission Planning Advisory Subcommittee. The IITF subsequently was formed in August, 2000.

If Con Edison truly believed that further analyses were warranted, it had both abundant time and opportunities either to conduct or request a study. Having failed to do so, the NYISO Board should not now countenance its eleventh hour attempt to shatter this carefully balanced proposal.

### **POINT III**

#### **The Cost Allocation Rules Are Consistent With The NYISO OATT**

In its Appeal, Con Edison argues that there is a contradiction between the NYISO OATT and the Cost Allocation Rules concerning the execution of binding cost allocation agreements. (See Appeal at 5-6.) From the two paragraphs that Con Edison has dedicated to this point, it is difficult to decipher where exactly Con Edison believes the contradiction lies.<sup>11</sup> In any event, the alternative agreement provision of the Cost Allocation Rules (“Alternative Agreement Rule”) is, in fact, consistent with the NYISO OATT.

The Alternative Agreement Rule initially provided that agreements that were executed prior to the effective date of the Cost Allocation Rules would not be superseded. During the June 4, 2001 IITF conference call, Con Edison proposed that the Alternative Agreement Rule should be extended beyond the effective date of the Cost Allocation Rules to allow parties to enter into side agreements going forward. IITF participants recognized that this added contractual flexibility may be beneficial. However, IITF participants also strongly believed that entities that chose to enter into contracts using the process set forth in the Cost Allocation Rules must not be disadvantaged by these side agreements. Thus, IITF

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<sup>11</sup> Con Edison’s challenge to this provision is particularly perplexing given the fact that counsel submitting this Appeal took the position during the Management Committee meeting that this clause was not necessary because it was covered by the Code of Conduct. Con Edison’s action in its Appeal now demonstrates that it was, in fact, necessary expressly to include this clause in the Cost Allocation Agreement Rule.



participants agreed to make this revision only if entities that are not parties to a side agreement: 1) do not face increased cost responsibility as a result of the side agreement; or 2) do not face a material adverse change in their circumstances, e.g., an adverse schedule impact, as a result of the side agreement.

The provision of the NYISO OATT cited by Con Edison in its Appeal addresses construction contracts for system modifications. The NYISO OATT, however, currently does not specify how parties would reach an agreement concerning the terms of these contracts. The Cost Allocation Rules, as approved, allow for these construction contracts to be achieved in one of two ways, either through the process delineated in the Cost Allocation Rules or as a side agreement. Thus, contrary to Con Edison's position, the Cost Allocation Rules, including the Alternative Agreement Rule, complement, not contradict, the existing provisions of the NYISO OATT.

#### **POINT IV**

##### **Expeditious Action by the NYISO Board Denying Con Edison's Appeal Is Critical**

In the concluding paragraph of its Appeal, Con Edison asserts that, if the NYISO Board does not substantially modify the two provisions of the Cost Allocation Rules in the manner proposed by Con Edison, the NYISO Board alternatively should send this issue back to the committee structure to address the issues identified by Con Edison in its Appeal. (See Appeal at 6.) Having had these very same arguments repeatedly rejected throughout the committee process, Con Edison must not now be permitted to further delay implementation of the Cost Allocation Rules — rules that are critical to the developers of proposed projects that are sorely needed in New York State.

Recognizing in its March 2001 Report "Power Alert: New York's Energy Crossroads" that reliability-wise New York is on the "thin edge," the NYISO determined

that, based on the facts, New York State must move aggressively to build new plants. (See Report at 4, 10.) To satisfy its future needs, the NYISO recommended in its Report that New York State should approve 4,000 to 5,000 MW of new generation during 2001 and an additional 1,000 MW of generating capacity statewide each year for the next three to four years. (Id.)

The costs that a developer will be assessed to interconnect its project to the transmission system is an important component of its project. Finally, after working painstakingly over the past sixteen months to achieve a result that is both fair and balanced, a mechanism has been approved by the NYISO committees to provide developers with this critical information. Any further delay at this juncture to rehash previously raised and rejected arguments is untenable.

Thus, acting pursuant to its authority under Section 2.06 of the Procedural Appeal Rules, IPPNY respectfully requests that the NYISO Board expeditiously address and deny Con Edison's Appeal in its entirety.

### **CONCLUSION**

For the foregoing reasons, IPPNY respectfully requests that the NYISO Board expeditiously issue a determination: i) denying Con Edison's Appeal in its entirety; and ii) directing its counsel to file the Cost Allocation Rules with the FERC under Section 205 of the FPA as soon as possible.

Dated: June 21, 2001  
Albany, New York

Respectfully submitted,

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Glenn D. Haake  
General Counsel