

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

Consolidated Edison Company	)	
of New York, Inc.	)	
	)	
v.	)	Docket No. EL02-23-006
	)	(Phase II)
Public Service Electric and Gas Company,	)	
PJM Interconnection, L.L.C., and	)	
New York Independent System Operator, Inc.	)	

**ANSWER OF  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.,  
PJM INTERCONNECTION, L.L.C., AND PUBLIC SERVICE ELECTRIC AND  
GAS COMPANY TO PROTEST OF THE NRG COMPANIES**

After nearly three and one-half years of litigation of this matter, including two full-blown hearings, two decisions of the presiding administrative law judge, four previous orders of the Commission, and, most recently, successful efforts by a settlement judge to bring the contracting parties to agreement, there remains only a single market participant that raises any concern with the final operating protocols that the New York System Operator, Inc. (“NYISO”), PJM Interconnection, L.L.C. (“PJM”), Consolidated Edison Company (“ConEd”), and Public Service Electric & Gas Company (“PSE&G”) have negotiated and filed to implement the Commission’s directives in this case. The contracting parties and the independent system operators are in agreement that the protocols are a workable solution to implement the Commission’s decisions.<sup>1</sup> The

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<sup>1</sup> Letter from D. Stauber to M. Salas (Mar. 11, 2005), at 2 (“Con Edison hopes that the Protocol will prove to be a workable procedure for provision of transmission service in accordance with the contracts.”); Comments of Public Service Electric (continued)

Commission can and should put this matter to bed. It should approve the protocols and end this long-standing, contentious proceeding over the proper implementation of decades-old transmission contracts.

Only the NRG Companies<sup>2</sup> oppose the protocols.<sup>3</sup> They contend, erroneously, that the protocols “could” negatively impact the availability of fixed transmission rights (“FTRs”) in PJM, that the FTRs contemplated by the protocols “may” be infeasible, and that, therefore, the protocols “could” unfairly shift costs to other FTR holders and market participants.<sup>4</sup> The NRG Companies’ concerns are unfounded and are based entirely on a misunderstanding of existing operations under the contracts at issue and the manner in which they will be implemented under the protocols. The NRG Companies’ speculations about potential impacts of the protocols are unsupported by any record evidence or other factual submissions and have no merit.

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(continued)

and Gas Company (Mar. 11, 2005), at 2 (“PSE&G respectfully asks the Commission to approve the filing as proposed and without further revision.”).

<sup>2</sup> NRG Power Marketing, Inc., Indian River Power LLC, and Vienna Power LLC.

<sup>3</sup> The Commission did not specifically provide for answers to protests to the protocols that it ordered to be developed. However, this is the only opportunity that NYISO, PJM, and PSE&G have to address the NRG Companies’ issues. In their submission of the protocols, the parties reserved the right to comment and respond to comments regarding the protocols. Joint Compliance Filing, Transmittal Letter (Feb. 18, 2005), at 4 (“Transmittal Letter”). To the extent necessary, the parties request that the Commission permit this response under its rules as it clarifies issues and assists in creating a complete record. See, e.g., Idaho Power Co., 95 FERC ¶61,482, at 62,717 (2001).

<sup>4</sup> Motion to Intervene and Protest of the NRG Companies (Mar.11, 2005), at 4, 6-8 (“NRG Protest”).

The NRG Companies' concerns center on two aspects of the protocols: (1) the allocation of FTRs to PSE&G in connection with the 600 megawatt grandfathered firm contract for energy transfers through PJM; and (2) the agreement to partially reimburse ConEd for congestion it experiences for service under the 400 megawatt non-firm contract from "excess" congestion revenues that PJM collects from transmission customers. NRG believes these provisions of the protocols could adversely affect the availability of FTRs for, and the congestion experienced by, other market participants.

As explained in the parties' submission of the protocols, the parties have adopted procedures to schedule and maintain the flows under the contracts, the primary issue in contention over the years. Within the proposed implementation procedures, the protocols include provisions requiring PJM to redispatch generation to support flows under the contracts under specified circumstances. For the firm 600 MW contract, such redispatch will be at PSE&G's expense, while PSE&G will be allocated commensurate FTRs for these flows. For the 400 MW contract, which the Commission determined was inferior to firm service but superior to other non-firm service, PJM will create a special category of service. Under this special category of service, ConEd will be responsible for congestion costs if it elects to schedule the service when there is congestion, but PJM will reduce ConEd's congestion charges by crediting ConEd from any excess congestion revenues that PJM still holds after paying congestion credits to all other holders of FTRs.<sup>5</sup> In this manner, ConEd's service under the 400 MW contract is less than firm (unlike firm customers, ConEd will not hold FTRs for this contract), but has a status superior to other

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<sup>5</sup> See PJM Tariff, Attachment K – Appendix § 5 which describes the distribution of "excess" congestion revenues after all holders of FTRs receive their target allocations.

non-firm service (other non-firm service customers receive no credits from congestion revenues).<sup>6</sup>

The NRG Companies' concern that these arrangements could adversely affect other market participants stems from a single erroneous premise. The NRG Companies state that it is not clear that the protocols' FTR allocations are "currently feasible" because "the existing FTR allocation does not include the 1000 MW injection" that is the subject of this proceeding.<sup>7</sup> Thus, they are concerned that including the 1000 megawatts in the simultaneous feasibility of FTRs in the future will affect others.

In fact, the NRG Companies' premise is wrong. PJM's existing FTR allocations already do take account of the 1000 megawatts of transaction flow permitted by the contracts. In its simultaneous feasibility analyses, PJM accounts for these and other contracts to ensure that it both can honor all grandfathered contracts, including the two contracts that are the subject of this proceeding, and ensure that there are sufficient revenues to pay all FTR obligations and that there are sufficient FTR auction revenues to satisfy all Auction Revenue Rights ("ARRs") obligations.<sup>8</sup> This is true today and will be true following the implementation of the protocols. There will be no effect on other market participants.

The record of this proceeding establishes these facts. As to the current allocation of FTRs (i.e., as they exist today before the new protocols are implemented), the hearing record made clear that PJM already accounts for the 1000 megawatts of flow under the

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<sup>6</sup> See Transmittal Letter at 11.

<sup>7</sup> NRG Protest at 8.

<sup>8</sup> See PJM Tariff, Attachment K – Appendix § 7.5 (Simultaneous Feasibility).

contracts to ensure that all other FTRs are feasible along with service under these contracts. As PJM's witness, Mr. Kormos, testified in response to questioning from the presiding administrative law judge:

We only grant [FTRs] based on what the system can accommodate. We have in fact factored in at this point 1,000 megawatts for this wheel. So, therefore, we have actually not granted firm service above what we think we financially can honor.

Hearing Transcript (Mar. 10, 2003) at 1276 (emphasis added) ("Transcript").

In response to cross examination by ConEd, Mr. Kormos further confirmed that FTRs were available and could be awarded for the 1000 megawatts without adversely affecting other FTR holders:

**Q. In fact this Exhibit indicates that PJM in its simultaneous feasibility analyses has reflected the 1000 megawatt flow under the Public Service Wheel, has it not?**

A. That is correct.

**Q. It is fair to say that in fact FTRs do exist and could be issued with respect to the 1000 megawatt wheel?**

A. Yes it is.

Transcript at 1389-90.

The protocols continue this pre-existing feasibility to accommodate both the 1000 MW contracts and all other FTRs. As the parties stated in their filing of the protocols, "PJM will also include the 1,000 MW of contract deliveries in its simultaneous feasibility analyses for FTRs."<sup>9</sup> This will ensure that the FTRs provided to PSE&G under the protocols remain feasible along with all other allocated FTRs. Any FTRs provided to

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<sup>9</sup> Transmittal Letter at 16.

PSE&G under the protocols will be from capacity already reserved today for these contracts. By continuing to include the 1000 megawatts in the simultaneous feasibility analysis, there will be no change in the total available FTRs for others, as compared to today's allocations.<sup>10</sup>

Further, any excess congestion revenues paid to ConEd under the 400 MW contract will not impact the ability to pay other FTR holders. By definition, "excess" congestion revenues arise in an hour only after congestion revenues have been used to fully pay all other holders of FTRs.<sup>11</sup> As the protocols state, ConEd will be credited only "to the extent of any excess congestion revenues collected by PJM that remain after congestion credits are paid to all other firm transmission customers."<sup>12</sup> Moreover, unlike today, ConEd will be paying for congestion related to the 400 MW contract, creating additional congestion revenues and additional excess congestion revenues for FTR holders. ConEd will be entitled to credits only against the congestion it pays; so other market participants can only be better off. By the same token, because PJM already factors in the 1000 megawatts in its simultaneous feasibility, and will continue to do so,

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<sup>10</sup> The NRG Companies state that it is not clear what FTRs are allocated to PSE&G. NRG Protest at 6. In fact, the protocols are explicit that the measurement of congestion under the contracts will be the difference in locational marginal prices between the pricing points at the JK lines and ABC lines, and that corresponding FTRs will be provided to PSE&G. Joint Compliance Filing, Operating Protocol for the Implementation of Commission Opinion No. 476, Appendix 1 (Feb, 18, 2005) at ¶¶ 14, 15 and n.5 ("Protocol"). (Although n.5 of the Protocol footnotes the 400 MW contract, it was intended to apply to the 600 MW contract as well, and the parties so clarify here.) These FTR paths are the same paths that PJM already uses in its simultaneous feasibility analysis for these contracts.

<sup>11</sup> See PJM Tariff, Attachment K – Appendix § 5.2.6.

<sup>12</sup> Protocol, Appendix 1 at ¶ 15 (emphasis added).

ConEd is likely to receive significant credits to its congestion payments -- after FTR holders are paid -- under the 400 MW contract.<sup>13</sup> However, this will not be at the expense of other market participants.

The NRG Companies also contend that it is not clear how PJM will “separate out re-dispatch costs” caused by the contracts from out-of-merit dispatch costs associated with regular energy dispatch. They contend this is necessary so that other users of the transmission system do not pay for congestion arising from these contracts.<sup>14</sup> That these grandfathered transmission contracts may contribute to congestion, thereby affecting locational marginal prices applicable to both the contract transactions and other loads on the system, is no different than the effect of any other transactions on the system. All transactions using open access transmission service contribute to the loading of transmission facilities and resulting congestion and locational marginal prices. All users are subject to the resulting locational prices on the same basis. The contract flows exist today and affect locational prices, and they will exist under the protocols and affect locational prices. The NRG Companies are not entitled to special prices different from those applicable to other legitimate users of the transmission system.

Finally, the NRG Companies argue that the transactions under the contract should be “considered as PJM load.”<sup>15</sup> It is not clear what the import of this request is. However, there is no basis for this special characterization of these transmission contracts. The transactions under the 1000 MW contracts are transmission transactions

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<sup>13</sup> See Transmittal Letter at 11.

<sup>14</sup> NRG Protest at 9.

<sup>15</sup> Id. at 10.

that PJM will treat like any other transmission transactions. As grandfathered transmission transactions, just like other transmission transactions, they have the status of transmission service entitled to use the PJM transmission system. NRG has not described for what purpose a special characterization is required, and no special characterization of the transactions should be ordered by the Commission.<sup>16</sup>


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<sup>16</sup> The NRG Companies state, without explanation, that such a classification “will insure that reliability in the northeastern portion of the PJM system is not threatened by these firm energy flows out of PJM and into New York.” Id. Firm transmission transactions, whether under grandfathered contracts or open access contracts, do not threaten reliability any more than firm service to load, as they use available transmission capacity, no more and no less. Moreover, the protocols are explicit in providing that “[d]uring system emergencies, the appropriate emergency procedures of the NYISO and PJM, if necessary, shall take priority over the provisions of this Operating Protocol.” Protocol ¶ 1.3



Accordingly, the Commission should reject the NRG Companies' protest and accept the protocols as early as possible, for implementation by June 1, 2005.<sup>17</sup>

Respectfully submitted,



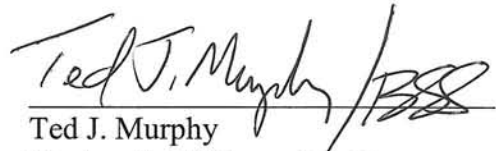
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March 28, 2005

pjm/el02-23 answer to NRG


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<sup>17</sup> As stated in the filing, the parties believe they will be able to implement the protocols on June 1, 2005, if the Commission acts on the filing at its April 13, 2005 open meeting.

**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.

Dated at Washington, D.C. this 28th day of March, 2005.

By: 

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