

95 FERC ¶ 61, 216
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

Consolidated Edison Company of
New York, Inc.

Docket Nos. EL01-45-000 and
ER01-1385-000

ORDER REJECTING MARKET POWER
MITIGATION MEASURES

(Issued May 16, 2001)

In this order, the Commission rejects the revised market power mitigation measures proposed by Consolidated Edison Company of New York, Inc. (ConEd). This action is without prejudice to refiling after the proposed revisions, which are to be administered by New York Independent System Operator (NYISO), have first been considered through the NYISO stakeholder process.

BACKGROUND

A. ConEd's Localized Market Power Mitigation Measures

In an order issued on September 22, 1998, the Commission addressed certain Localized Market Power Mitigation Measures (LMM) proposed by ConEd.¹ ConEd proposed that the LMM be attached to generation units located within New York City that it planned to divest.² ConEd requested the Commission's approval of the LMM before the units' divestiture so that their potential purchasers could evaluate the impact of the LMM on their revenue streams.

¹Consolidated Edison Company of New York, Inc., 84 FERC ¶ 61,287 (1998) (September Order).

²ConEd divested the units to three entities: KeySpan-Ravenswood, Inc., purchased 2149.55 MW of ConEd's capacity; NRG Power, Inc., purchased 1456.3 MW of capacity; and Orion Power New York GP, Inc. purchased 1831.4 MW of capacity.

In support of the LMM, ConEd noted that there were significant constraints on the transmission of energy into New York City and that in-city loads therefore must frequently be met by in-city generation to maintain reliability. ConEd also noted that the in-city generation supply was not adequate to support competition among three or four suppliers, as it expected would remain after divestiture. Therefore, ConEd claimed that the transmission constraints would allow generators located in the city to exercise market power during constrained periods and that some sort of market power mitigation would be needed. ConEd explained that its proposed LMM were designed to alleviate concerns that the new owners of the divested generation would exercise market power.³

ConEd's proposed LMM applied to four generation-related energy products, two of which are relevant here: Energy and Unit Commitment

For Energy Dispatch, bids submitted by in-city generators are used to set in-city market-clearing prices. Whenever (a) the incremental energy bid for a unit divested by ConEd is above its mitigated bid and (b) the ex ante unmitigated spot price at a divested unit's location would have been above 105 percent of the locational-based marginal price (LBMP) at the Indian Point 2 bus⁴ in any hour of the Day-Ahead Market (DAM), energy bids for that day are mitigated to a fuel cost-indexed average of bids accepted during similar but unconstrained periods during the prior 90 days, provided that there were at least 15 such bids. Otherwise, a default bid based on the unit's heat rate, the fuel price index, and a variable O&M component is used.

For Unit Commitment, whenever a second contingency constraint causes NYISO to commit a unit that it would not otherwise have committed under its day-ahead least-bid cost commitment and dispatch (that is, when a unit is dispatched out-of-merit), the unit's start-up bid is mitigated to the start-up BTUs multiplied by the fuel price index and the minimum generation bid is mitigated to the unit commitment reference price (determined by multiplying a specified heat-rate curve by the fuel price index and a variable O&M component).

³The LMM were the result of the New York Public Service Commission's restructuring process, which obligated ConEd to develop a divestiture plan that would facilitate competition within the City and at the same time address localized market power concerns.

⁴The Indian Point 2 bus is located outside of New York City, in Westchester County; this bus was chosen as a point that would reflect eastern New York prices not subject to market power.

In the September Order, the Commission accepted ConEd's LMM. It agreed that it was reasonable to adopt mitigation measures to address the potential for in-city generation owners to exercise generation dominance in the City. It found that ConEd's LMM were a reasonable way to address such potential because, among other things, the LMM only intervened in the market place under limited circumstances and, when they did so, turned to market-driven prices to establish the mitigation whenever feasible. The Commission also noted that the LMMs' implementation would be in addition to any market power mitigation measures that may be established for the New York markets as a whole. The LMM are implemented by the NYISO under its Market Monitoring Plan (MMP).

B. This Filing

On March 1, 2001, ConEd filed revisions to the LMM. ConEd claims that the revisions are necessary to make the LMM operate as originally intended, and to close certain loopholes in their coverage that have become apparent during the first year and a half of NYISO operations. ConEd identifies the following loopholes in the LMM: (1) they do not apply to energy sales in the real-time market; (2) they do not apply when certain must-run conditions require in-city generation to be operated out of economic merit to meet local reliability requirements; (3) they do not mitigate high bids for start-up costs and minimum generation costs ⁵ in the energy market; and (4) they do not cover all of the in-city units that have localized market power.

ConEd's proposed revisions would expand the application of the LMM to: (1) bids for sales of energy in the real-time market during constrained periods; (2) bids for minimum generation and start-up in all instances where generation must be operated out-of-merit due to local reliability requirements; (3) bids for start-up and minimum generation (*i.e.*, whenever mitigation would apply to a unit's incremental energy bid) during constrained periods; and (4) all generators located electrically within New York City, not just those divested by ConEd.

ConEd requests that the Commission grant an effective date of May 1, 2001, for its proposed revisions so that they may be in place before the summer capability period.

Notice and Interventions

⁵Minimum Generation and Start-up Bid is defined in Section 2.106 of the NYISO Services Tariff as "the payment required by a supplier to bring a generator to, and operate at, its minimum safe and stable operating level."

Notice of ConEd's filing was published in the Federal Register, 66 Fed. Reg. 14,894 (2001), with comments, protests and motions to intervene due on or before March 22, 2001. In response to intervenors' requests, the time to file motions to intervene and comment was extended until April 4, 2001. Motions to intervene were filed by the entities listed in the Appendix to this order. Protests were AES Eastern Energy, L.P., AES NY, L.L.C., Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dynegy Power Marketing, Inc., Electric Power Supply Association, Independent Power Producers of New York, Inc., KeySpan-Ravenswood, Inc., Mirant Companies,⁶ NYISO, NRG Companies,⁷ Orion Power New York GP, Inc., and the Power Authority of the State of New York. Supporting comments were offered by the City of New York and by the Member Systems.⁸

DISCUSSION

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), the filing of a timely motion to intervene that has not been opposed makes the movant a party to the proceeding. In addition, the Commission will grant the untimely motion to intervene of Calpine Eastern (Calpine), since doing so will not adversely affect any other party at this early stage of the proceeding. ConEd and NYISO filed answers to protests. The City of New York, NRG Companies, Calpine, ConEd, Orion Power New York GP, Inc., Mirant Companies, and the New York Public Service Commission filed responses. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2000), prohibits the filing of answers to protests unless otherwise permitted by the decisional authority. We are not persuaded to allow the answers and therefore will reject them.

⁶Mirant Companies include Mirant Americas Energy Marketing, L.P., Mirant Americas Development, Inc., Mirant New York, Inc., Mirant Bowline, LLC, Mirant Lovett, LLC, and Mirant NY-Gen, LLC.

⁷NRG Companies are NRG Power Marketing, Inc., Arthur Kill Power LLC, and Astoria Gas Turbine Power LLC.

⁸Members of the Transmission Owners Committee of the Energy Association of New York State, formerly known as Member Systems of the New York Power Pool (Member Systems). The five Member Systems joining the supporting intervention are Central Hudson Gas & Electric Corporation, Orange and Rockland Utilities, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, and Rochester Gas and Electric Corporation.

B. ConEd's Proposal

The Commission first accepted the LMM in the September Order. ConEd, as a member of NYISO, now seeks to revise the LMM on its own motion under sections 205 and 206 of the FPA and outside of the NYISO's procedures and stakeholder process. The LMM were accepted by the Commission as a ConEd Rate Schedule that was to remain in effect until the Commission acted on a request for termination or modification. Thus, ConEd has filed under section 205 to amend its own rate schedule and under section 206. Further, under section 206 of the Federal Power Act (FPA),⁹ ConEd is permitted (like any other party) to make such a filing for changes to procedures implemented by the NYISO. However, we are confronted with several significant issues in assessing ConEd's proposal.

First, ConEd circumvented the NYISO stakeholder process by unilaterally filing revisions to the in-City mitigation measures. ConEd's failure to use the NYISO stakeholder process has resulted in vigorous opposition to its proposal. We strongly encourage market participants to use the stakeholder process, especially in this type of situation, *i.e.*, where a market participant seeks to modify market measures that impact all market participants.

Second, NYISO is responsible for the administration and implementation of both the LMM and MMP. NYISO notes that it cannot fully implement ConEd's proposal for the upcoming summer capability period and states that it prefers to devote all available time and resources to enhancing the administration of the MMP, rather than modifying the LMM. NYISO offers further that the proposed measures may be duplicative of the mitigation authority that NYISO already has. As NYISO states, the MMP applies to generation located throughout the state of New York, including all generation located in New York City. The MMP applies to the RTM as well as the DAM in New York, and encompasses energy, minimum generation, start-up and ancillary services bids. In addition, the Commission is aware that NYISO already has an ambitious schedule of market enhancements and adjustments that it hopes to implement for the 2001 summer capability period.¹⁰

For these reasons, we will reject ConEd's proposal. We wish to prevent uncoordinated development of market mitigation proposals that could result in duplicative or conflicting mitigation measures within New York, and which may discourage additional

⁹16 U.S.C. § 824e (1994)

¹⁰See Attachment VI to NYISO's initial technical conference comments filed February 8, 2001 in Docket No. ER00-3591-00, *et al.*, which is a list of NYISO projects to be implemented by Summer 2001.

investment and thus prevent rather than support the development of effective competition. Our rejection here does not preclude NYISO from addressing ConEd's proposed mitigation through the stakeholder process. In fact, the NYISO states that it is not opposed to revisiting the price effects levels for specific markets if the current thresholds can be shown to permit sustained super-competitive pricing. Therefore, if ConEd continues to believe that NYISO should have additional mitigation authority, it should work with NYISO within the NYISO stakeholder process to formulate a feasible mitigation proposal which NYISO may file under section 205 of the FPA.

Conclusion

Accordingly, we reject ConEd's proposed revised LMM.

The Commission orders:

ConEd's proposed revised LMM is hereby rejected.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.

Interventions in Docket Nos. EL01-45-000 and ER01-1385-000

AES Eastern Energy, L.P. *
AES NY, L.L.C.*
Arthur Kill Power LLC *
Astoria Gas Turbine Power LLC *
Calpine Eastern +
Central Hudson Gas & Electric Corporation
City of New York *
Dynergy Power Marketing, Inc. *
Electric Power Supply Association *
El Paso Merchant Energy, L.P.
Enron Power Marketing, Inc.
Independent Power Producers of New York, Inc. *
KeySpan-Ravenswood, Inc. *
Mirant Americas Energy Marketing, L.P., Mirant Americas Development, Inc., Mirant New
York, Inc., Mirant Bowline, LLC, Mirant Lovett, LLC, and Mirant NY-Gen, LLC.*
New York Independent System Operator, Inc.*
New York State Attorney General's Office
New York State Electric & Gas Corporation
New York State Public Service Commission
Niagara Mohawk Energy Marketing, Inc.
Niagara Mohawk Power Corporation
NRG Power Marketing, Inc.*
Orange and Rockland Utilities, Inc.
Orion Power New York GP, Inc.*
Power Authority of the State of New York*
PPL EnergyPlus, LLC
Public Service Enterprise Group Incorporated
Reliant Energy Power Generation, Inc.
Rochester Gas and Electric Corporation
Tractebel Energy Marketing, Inc.
Tractebel Power, Inc.

+ late filed

* protest