

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

New York State Reliability Council, LLC) Docket No. ER08-414-000

**MOTION FOR LEAVE TO RESPOND AND RESPONSE TO CONSOLIDATED
EDISON COMPANY OF NEW YORK, INC. AND ORANGE AND ROCKLAND
UTILITIES, INC., AND ENERGY CURTAILMENT SPECIALIST, INC.**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213 (2007), the New York State Reliability Council, LLC (“NYSRC”) moves for leave to respond and submits this response to the comments and protests filed in the above-captioned proceeding. In support hereof, the NYSRC states as follows:

MOTION FOR LEAVE TO FILE RESPONSE

On January 4, 2008, pursuant to Section 3.03 of the New York State Reliability Council Agreement (“Agreement”), the NYSRC submitted a filing to advise the Commission that the NYSRC has revised the Installed Reserve Margin (“IRM”) for the New York Control Area (“NYCA”) for the Capability Year beginning on May 1, 2008 and ending on April 30, 2009 (the “2008-2009 Capability Year”) to be 15.0% and to request that the Commission accept and approve the filing effective no later than March 1, 2008.¹ The NYSRC requested that the Commission grant any and all waivers of its regulations that it deems necessary to accept and approve the filing effective no later than March 1, 2008.²

¹ “Filing of the New York State Reliability Council Revising the Installed Capacity Requirement for the New York Control Area,” Docket No. ER08-414 (Jan. 4, 2008) (“NYSRC January 4 Filing”).

² NYSRC January 4 Filing at 1.

On February 11, 2008, the NYSRC filed a motion for leave to respond and response; additionally, on that same date Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (collectively the “Companies”) and Energy Curtailment Specialist, Inc. (“ECS”) made similar filings.. This instant filing serves to respond to those filings.

Through this instant filing, the NYSRC respectfully requests that the Commission grant the necessary waivers of its regulations to permit this response to the comments submitted in this proceeding. The Commission has permitted answers where, as here, the information provided in an answer will narrow the matters at issue, clarify the record, facilitate the Commission’s decisional process and aid in the Commission’s understanding of the issues.³ Under the Commission’s Rules of Practice and Procedure and Commission precedent, the NYSRC is entitled to respond to affirmative requests, including affirmative requests for relief, set forth in the pleadings submitted in this proceeding.⁴ The NYSRC’s response will ensure that the record is complete and accurate to enable the Commission to reach expeditious resolution of these issues.

I. The Answer of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. Should Not Be Accepted By the Commission

In their joint filing,⁵ the Companies purport to respond to comments made by other parties to this proceeding, but in actuality this filing is a protest to the original NYSRC filing which should have been filed by the January 25, 2008 deadline. The Companies raise new issues that are not discussed in prior filings. Furthermore, the Companies’ Answer contains several

³ See, e.g., *N.Y. Power Auth. v. Consol. Edison Co. of N.Y., Inc.*, 112 FERC ¶ 61,304, at P 41 (2005) (“We will accept . . . [the] reply, . . . [the] response, . . . and [the] answer because these supplemental pleadings serve to narrow the matters at issue in this proceeding and provide information that facilitates our decision-making process.”).

⁴ See, e.g., *Iroquois Gas Transmission System, L.P.*, 61 FERC ¶ 61,341, at n.9 (1992); *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 53 FERC ¶ 61,026, at 61,101 (1990).

⁵ “Answer of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.,” Docket No. ER08-414 (Feb. 11, 2008) (“Companies’ Answer”).

incorrect statements concerning actions taken by the NYSRC which, if left uncorrected, would hinder rather than facilitate the Commission's decisional process and its understanding of the issues and this proceeding. The NYSRC requests that the Commission reject the Companies' Answer because it is an impermissible protest. In the event that the Commission decides to accept the Companies' Answer, the NYSRC respectfully requests that the Commission also accept this brief response to correct factual inaccuracies in that filing.

II. The Companies' Answer Contains Several Incorrect Statements with Respect to NYSRC Actions

A. The NYSRC's IRM Voting Process

The Companies' Answer states that "the NYSRC voted on the 15% [IRM] contained in its base case and once it passed, the NYSRC did not consider any IRM level, including those predicated on various sensitivity analyses contained in the 2008 IRM Study."⁶ The Companies also state, referring to the NYSRC's voting procedures, state that "[a]rguably, the NYSRC's own rules hinder its ability to exercise reasonable judgment"⁷

These statements incorrectly suggest that the NYSRC Executive Committee voted on the IRM without having considered the sensitivity studies. The NYSRC Executive Committee approved the base case IRM of 15.0% and the list of sensitivity studies to be studied at its meeting in November of 2007.⁸ All of the sensitivity study results were included in the 2008 IRM Study, which was discussed and approved unanimously by the Executive Committee at its meeting in December of 2007 prior to the vote on the IRM.⁹ Furthermore, the sensitivity studies were discussed by the Chairman of the NYSRC's Installed Capacity Subcommittee at the

⁶ Companies' Answer at 4 (footnotes omitted).

⁷ Companies' Answer at 4, n. 4.

⁸ The NYSRC Executive Committee meeting minutes for November 9, 2007 can be found at <http://www.nysrc.org/pdf/ECMeetingMinutes/ECMinutes103Final.pdf> at 4.

⁹ The NYSRC Executive Committee meeting minutes for December 14, 2007 can be found at <http://www.nysrc.org/pdf/ECMeetingMinutes/ECMinutes104Final.pdf> at 5.

December Executive Committee meeting prior to the vote on the IRM.¹⁰ Finally, prior to the Executive Committee's vote on the IRM each Executive Committee member was free to raise any issue related to the IRM, including any of the sensitivity studies contained in the 2008 IRM Study. The suggestion that the Executive Committee voted on the IRM without consideration of the sensitivity studies, therefore, is totally unwarranted. Furthermore, there simply is no basis for the unexplained and unsupported statement that "Arguably, the NYSRC's own voting rules hinder its ability to exercise reasonable judgment in adopting a new IRM."¹¹

B. NYSRC Comments on the Regional Greenhouse Gas Initiative ("RGGI")

The Companies' Answer states that "[t]he NYSRC's decision to set the IRM at 15 percent is inconsistent with positions it has taken before various New York State Agencies."¹² The Companies' Answer further states that "[t]he NYSRC felt so strongly about the impact of RGGI on future IRMs that in the *NYSRC's December 21 Comments*, it argued that 'if the assumptions in the RNA RGGI analysis regarding the availability of allowances for 2010 were applied to the 2008 IRM requirement, the IRM could increase from 15.0% to approximately 17.1%.'¹³

These statements misrepresent the meaning and purpose of the NYSRC's RGGI comments and the relationship between those comments and the NYSRC's IRM determination. As explained in our Response,¹⁴ the RGGI sensitivity study in the New York Independent System Operator, Inc.'s ("NYISO") RNA was designed to demonstrate the relationship between

¹⁰ *Id.* at 4-5.

¹¹ Companies' Answer at 4, n. 4.

¹² Companies' Answer at 6.

¹³ Companies' Answer at 7. The RNA is the New York Independent System Operator's ("NYISO") Reliability Needs Assessment, which is available on the NYISO's website at http://www.nyiso.com/public/webdocs/newsroom/press_releases/2007/RNA_and_Supporting_FINAL_REPORT_12-12-07.pdf.

¹⁴ "Motion for Leave to Respond and Response of the New York State Reliability Council," Docket No. ER08-414 (February 11, 2008) ("Response").

the availability of CO₂ allowances and the ability of energy resources to provide sufficient electricity to meet the needs of the NYCA.¹⁵ The sensitivity study by the NYISO identified a level of allowances below which system reliability could be affected. The NYSRC translated that assumption into an IRM to illustrate the potential impact on IRM requirements. Neither the NYISO nor the NYSRC purported to predict the actual impact of the RGGI program on reliability, since the amount of allowances that will be available to New York resources is unknown at this time, and may be more than sufficient to meet their needs. The purpose of the NYSRC RGGI comments was to explain to New York policymakers that there is a relationship between the allowances available to New York energy resources and reliability, and that they should take that relationship into consideration in designing the final rules for the RGGI program, particularly with respect to the rules pertaining to allowances. The suggestion in the Companies' Answer that the NYSRC had reached a conclusion that the RGGI program would, in fact, increase the IRM in 2010, therefore, is totally incorrect. It also should be noted that even if the RGGI program takes effect in 2010, under the proposed RGGI program there will be a three year compliance period, with the first compliance period from 2010 to 2012.

The Companies' Answer further states that “[d]espite believing that the RGGI allowances create such a realistic threat to reliability in the next two years that the IRM should be *increased* to 17.1%, the NYSRC failed to follow its own judgment and proposed to decrease the IRM.”¹⁶ As explained above, this statement misrepresents the NYSRC's RGGI comments and the relationship between those comments and its IRM determination. The NYSRC has not concluded and has never stated that the RGGI program poses “such a realistic threat to reliability

¹⁵ Response at 5.

¹⁶ Companies' Answer at 7.

in the next two years that the IRM should be *increased* to 17.1%”¹⁷ as the Companies state. At this point, no one knows whether the RGGI initiative will affect a future IRM. The recommendations made by the NYSRC to state policymakers were that the program should include “a provision for monitoring the impact of RGGI requirements on New York State electric power system reliability,” and that the appropriate state agencies “have the authority to take appropriate measures to modify or suspend the RGGI program if necessary to maintain electric system reliability.”¹⁸ The NYSRC, however, did not advise state policymakers that it had concluded that the RGGI program would, in fact, adversely affect system reliability.

The Companies’ Answer also is misleading with respect to the NYSRC’s comments in relation to the High Electric Demand Day (“HEDD”) program. The NYSRC RGGI comments refer to the HEDD sensitivity study in the NYISO’s 2008 RNA. The Companies’ Answer states that “[a]ccording to the NYSRC, this analysis showed that ‘approximately 2,330 megawatts may be removed from the system as a result of HEDD restrictions, increasing the need for alternative resources or load reductions.’”¹⁹ As a result of the impact of the HEDD program, the NYSRC stated that this “scenario indicates that the IRM would increase from 15.0% to more than 20.0%.”²⁰

As we explained in our Response, New York State has not yet drafted proposed regulations on the HEDD initiative.²¹ The sensitivity study included in the NYISO’s RNA and referred to by the NYSRC in its RGGI comments was intended to inform New York policymakers of the potential impact of the HEDD program for their consideration in drafting the

¹⁷ *Id.*

¹⁸ Companies’ Answer, Exhibit A (Comments to the Department of Environmental Conservation and the New York State Energy Research Development Authority on the Proposed RGGI Rule) at 4.

¹⁹ Companies’ Answer at 7-8.

²⁰ *Id.* at 8 (citation omitted).

²¹ Response at 5.

HEDD regulations. As also noted in our Response, the sensitivity study does not consider any compliance strategies or control measures to offset the potential reliability impact of the HEDD initiative, such as the possible replacement of the affected generating units with new, clean multi-fueled and operationally flexible generation in load pocket areas (RNA at I-25) nor the possible installation of emissions reduction technology on affected resources. In addition, the HEDD sensitivity study did not consider existing state programs designed to substantially reduce demand and increase renewable resources. For example, the RNA also included a sensitivity study for the state's "15 x 15" load reduction program, and found that the successful implementation of the program "will assist in realizing the goals of both environmental initiatives . . . in a manner that augments, rather than degrades, reliability." (RNA at I-22). The HEDD Sensitivity Study, therefore, represents a worse case planning scenario and not a determination of expected results. It is important to note that the NYISO has not included the results of either of the environmental sensitivity studies in the base case of its ten year RNA.

Thus, despite the Companies' contentions to the contrary, the NYSRC's comments to state policymakers on the REGGI and HEDD environmental initiatives and its IRM determination are entirely consistent.

C. The NYSRC's Consideration of the Neptune Transmission Line

The Companies' Answer also refers to the Neptune Transmission Line ("Neptune") and the sensitivity study in the 2008 IRM Study that shows that if the Neptune line were removed from service the IRM would increase.²² The Companies further state that if the Neptune line were modeled as a Long Island resource rather than as an emergency resource the IRM would increase.²³ The Companies also refer to authorization by the LIPA Board of a contract for

²² Companies' Answer at 5.

²³ *Id.* at 6.

generation in PJM Interconnection, L.L.C. (“PJM”) to be used with Neptune as a Long Island Resource.²⁴

First, it should be noted that the sensitivity study referred to by the Companies was intended to illustrate the positive impact of the Neptune line on the IRM. The higher IRM indicated in the sensitivity study was based on the assumption that the Neptune line is out of service for an entire year, which is an extremely unlikely event. The Neptune line was modeled in the 2008 IRM Study consistent with the LIPA Unforced Capacity Deliverability Rights (“UDR”) election made last August as required by the NYISO tariff. If LIPA should elect to make a different use of the Neptune line, it would have to notify the NYISO by the August preceding the start of the next Capability Year. If that should occur, it would be considered in the IRM Study for the next Capability Year. While a different use of the Neptune line could have an impact on a future IRM, a number of other factors also could affect future IRMs in either direction. The net effect on the IRM of a potential change in the use of the Neptune line in some future Capability Year is impossible to know at this time, and cannot affect the IRM for the 2008-2009 Capability Year.

III. Motion to Intervene Out-of-Time and Comments of Energy Curtailment Specialist, Inc.

ECS characterizes its filing²⁵ as comments, but it is actually a protest. The NYSRC requests that the Commission reject this filing because it is a protest which should have been filed by January 25, 2008. In the event that the Commission decides to accept the protest, the NYSRC respectfully requests that the Commission also accept this brief response to factually incorrect statements contained in ECS Comments.

²⁴ *Id.*

²⁵ “Motion to Intervene Out-of-Time and Comments of Energy Curtailment Specialist, Inc.” Docket No. ER08-414 (February 11, 2008) (“ECS Comments”).

The ECS Comments state that “[l]owering the IRM by 1.5% will require much less capacity to be purchased, thereby lowering the amount of generation obligated and committed to the day-ahead energy market.”²⁶ However, under the NYISO demand curve, all certified capacity is obligated to participate in the day-ahead market regardless of the IRM level. As a result, the amount of unforced capacity clearing the NYISO’s capacity auctions for the 2006-2007 Summer Capability Period were roughly the same as the amount of capacity clearing the NYISO’s capacity auctions for the 2007-2008 Summer Capability Period, notwithstanding a reduction in the IRM for the 2007-2008 Capability Period.²⁷

The ECS Comments also state that “[w]ith less available generation to be called upon day-ahead, the NYISO will be looking at demand response resources to assist in managing the load during what could amount to increased SCR [Special Case Resource] event calls. Significantly increased SCR event calls will drive demand response customers from the SCR program”²⁸

As explained above, it is not reasonable to assume that a reduction in the IRM will result in less generation being committed in the day-ahead market. Furthermore, SCR event calls are not likely to occur more or less often due to a reduced IRM. While there were six SCR event calls in the 2006 Summer Capability Period, there were no SCR event calls in 2007 Summer Capability Period, despite a reduction in the IRM.²⁹

The ECS Comments do not in any way contest the analysis contained in the 2008 IRM Study, nor contend that the study results do not support the NYSRC’s IRM determination.

²⁶ ECS Comments at 2.

²⁷ Derived from NYISO Automated ICAP Market System (“AIM”). Monthly spot market auction excess award capacity plus IRM Requirement.

²⁸ ECS Comments at 2-3.

²⁹ See NYISO website:

http://www.nyiso.com/public/webdocs/products/demand_response/general_info/eventhistory_/100107.pdf

CONCLUSION

For the foregoing reasons the NYSRC respectfully requests that the Commission:

1. Not accept the answer filed by the Companies or the comments filed by ECS in this proceeding or, in the alternative, accept this response to the answer and comments; and
2. Accept and approve the NYSRC's January 4 Filing effective no later than March 1, 2008.

Respectfully submitted,

/s/

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Dated: February 20, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Washington, D.C. this 20th day of February, 2008.

/s/

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