

111 FERC ¶ 61,228  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Consolidated Edison Company of New York	Docket No. EL02-23-004
v.	EL02-23-005
Public Service Electric and Gas Company, PJM Interconnection, L.L.C., and New York Independent System Operator, Inc.	EL02-23-006

ORDER ON COMPLIANCE FILINGS

(Issued May 18, 2005)

1. In this order, we act on three filings submitted in compliance with the Commission's order in these proceedings.<sup>1</sup> We accept the filings by the regional transmission organizations, PJM Interconnection, L.L.C. (PJM) and the New York Independent System Operator, Inc. (NYISO), of revisions to their respective market monitoring procedures. We also accept the joint filing by PJM, NYISO, and Public Service Electric and Gas Company (PSE&G) (the Filing Parties) of a comprehensive operating protocol (Protocol) governing PSE&G's contractual obligation to wheel power for Consolidated Edison Company of New York, Inc. (ConEd). This order benefits customers by facilitating transmission of the service at issue here in today's electric industry.

**I. Background**

2. This proceeding began with ConEd's complaint to the Commission that PSE&G was not fulfilling its obligations under two contracts dating from 1975 (the 400 MW contract) and 1978 (the 600 MW contract) to wheel up to 1,000 MW for ConEd from upstate New York through northern New Jersey to New York City. These contracts pre-date the formation of independent system operators as

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<sup>1</sup> *Consolidated Edison Co. of New York, Inc. v. Public Service Electric and Gas Co.*, Opinion No. 476, 108 FERC ¶ 61,120 (2004), *reh'g pending* (Phase II Order).

managers of large parts of the transmission system. The transmission path for the wheel specified in the two contracts uses the J and K lines between New York and northern New Jersey, PSE&G's internal transmission lines, whose costs were partially paid by ConEd, and the A, B, and C lines across Upper New York Bay to New York City. The Commission set the complaint for hearing, and divided it into two phases so as to address swiftly the immediate problems facing ConEd during the summer of 2002.<sup>2</sup>

3. In Phase I, the Presiding Judge and the Commission,<sup>3</sup> required the parties to develop an operating protocol under which PSE&G's obligations to ConEd could be satisfied as nearly as possible under the open access transmission tariffs (tariffs or OATTs) of both PJM and NYISO. Final decision of certain issues was left to the Phase II proceedings. The Phase II hearing addressed these issues as well as the many issues concerning operation of the power transfers. Among other things, the initial decision in Phase II and the Phase II Order<sup>4</sup> instructed the parties to resolve, in the forthcoming operating protocol, how they would implement the Commission's directives.

4. The Phase II Order also found that the operating protocol should allow the market monitoring units of NYISO and PJM to conduct investigations necessary to ensure that gaming, abuse of market power, or similar activities do not take place with regard to the power transfers under the two contracts. It clarified that investigations by one regional transmission organization's market monitoring unit that go into the region of the other should be undertaken jointly. It directed NYISO and PJM to review their respective tariffs to determine whether amendment was needed for their market monitoring units to carry out these

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<sup>2</sup> *Consolidated Edison Co. of New York, Inc. v. Public Service Electric and Gas Co.*, 99 FERC ¶ 61,033 (2002).

<sup>3</sup> *Consolidated Edison Co. of New York, Inc. v. Public Service Electric and Gas Co.*, 99 FERC ¶ 63,028 (2002) (Phase I Initial Decision), *modified and aff'd*, 101 FERC ¶ 61,282 (2002) (Phase I Order), *order on reh'g*, 105 FERC ¶ 61,343 (2003) (Phase I Rehearing Order).

<sup>4</sup> *Consolidated Edison Co. of New York, Inc. v. Public Service Electric and Gas Co.*, 103 FERC ¶ 63,047 (2003) (Phase II Initial Decision), *modified and aff'd*, Phase II Order (note 1, *supra*). ConEd and PSE&G, but not NYISO or PJM, requested rehearing of the Phase II Order. The Commission will act on these rehearing requests at a later time.

responsibilities. If the tariff already authorizes such investigation, NYISO or PJM should so certify; if not, tariff amendments should be filed.<sup>5</sup>

5. On February 18, 2005, NYISO, PJM, and PSE&G jointly submitted the Protocol, which they negotiated with ConEd, as an attachment to NYISO's Market Administration and Control Area Services Tariff (Services Tariff) and, for PJM, as Rate Schedule No. 41 of the PJM FERC Electric Tariff.

6. On September 1, 2004, NYISO and PJM each submitted a compliance filing concerning amendments to its market monitoring plan with regard to investigations concerning power transfers under the two contracts.

## **II. Notices and Responsive Filings**

7. Notice of the filing of the Protocol (Docket No. ER02-23-006) was published in the *Federal Register*, 70 Fed. Reg. 10,391 (2005), with comments, motions to intervene, and protests due on or before March 11, 2005. ConEd and PSE&G filed comments. NRG Power Marketing, Inc., Indian River Power LLC, and Vienna Power LLC (collectively, NRG)<sup>6</sup> filed a joint motion to intervene and a protest. On March 28, 2005, NYISO, PJM, and PSE&G filed their joint answer to NRG's protest. On March 31, 2005, ConEd filed an answer to NRG's protest.

8. Notices of NYISO's and PJM's filings of market monitoring plan amendments (Docket Nos. ER02-23-005 and ER02-23-004, respectively) were published in the *Federal Register*, 69 Fed. Reg. 56,210 (2004), with comments, motions to intervene, and protests due on or before September 22, 2004. PSE&G filed a protest to NYISO's filing. On October 7, 2004, NYISO filed a motion for leave to answer PSE&G's protest and an answer. No responses to PJM's filing were filed.

## **III. Discussion**

### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), NRG's timely, unopposed motion to intervene serves to make its constituent entities parties to the Docket No. ER02-23-004 proceeding.

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<sup>5</sup> Phase II Order at P 215.

<sup>6</sup> NRG Power Marketing, Inc. is a power marketer participating in PJM markets. Indian River Power LLC and Vienna Power LLC are power generators that rely on the transmission systems in PJM areas.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the joint answer of NYISO, PJM, and PSE&G, and ConEd's answer in Docket No. ER02-23-006, and NYISO's answer in Docket No. ER02-23-005 because these filings have provided information that assisted us in our decision-making process.

## **B. The Protocol**

### **1. Description of Filing**

11. The Filing Parties state that they filed the Protocol as an attachment to NYISO's Services Tariff and as a PJM rate schedule because the two regional transmission organizations will have joint responsibility for administering it. They state that NYISO and PJM played the lead roles in developing it, but that PSE&G and ConEd were closely involved at every stage. The Filing Parties emphasize that they are not waiving any rehearing or appeal rights with respect to pending issues in the Phase II Order or any other Commission issuance in Docket No. EL02-23, and that the parties to these proceedings continue to dispute certain issues. Nevertheless, the Filing Parties state their belief that the Protocol complies with the Phase II Order and is a workable approach to implementing the disputed contracts.

12. The Filing Parties state that it is very important that the Protocol be sufficiently clear and detailed for system operators to follow its procedures in real time without regularly having to make subjective decisions. They say that the Protocol sets forth unambiguous rules that NYISO and PJM will be able to follow without having contract-related disagreements in the midst of real-time operations. They ask the Commission not to make changes that would make the Protocol less clear.

13. The Protocol provides, among other things:

(a) A "desired flow" methodology will be used to schedule contract service. Additionally, NYISO and PJM agree on transmission distribution factors to estimate how much of the flows on the lines result from loop flow and third-party transactions over the A-B-C and J-K interfaces to calculate the resulting expected net flow, and will attempt to maintain actual flows within a range close to the calculated desired flow.

(b) NYISO and PJM will be responsible for maintaining real-time desired flow at the A-B-C and J-K interfaces within defined bandwidths for periods when neither or both face the need to redispatch or operate off-cost; this practice

addresses the Commission's finding that the contracts contemplate power delivery much closer to contemporaneous than over time.<sup>7</sup>

(c) ConEd and PSE&G will continue to physically operate the phase angle regulators<sup>8</sup> but under the direction of NYISO and PJM.

(d) the A, B, C, J, and K lines will be available for others to use on an open access basis.

(e) ConEd will schedule contract service on a day-ahead basis but will have an opportunity to make real-time changes.

(f) PJM will provide reasonable advance notice of when it anticipates having to redispatch to support contract deliveries.

(g) PJM will redispatch, at PSE&G's expense, to support flows under the 600 MW contract. NYISO, rather than PJM, will redispatch to support the 600 MW contract when a "comparison of alternatives" analysis demonstrates that it would be appropriate to do so and to the extent that this would not raise power prices in New York.

(h) PJM will create a special category of service for the 400 MW contract, which will have higher priority than non-firm customers willing to pay congestion charges; PJM will not be required to redispatch to support the 400 MW contract unless ConEd pays to "firm it up."

(i) NYISO and PJM will establish the distribution of flows over the A, B, C, J, and K lines for their own day-ahead markets and will cooperate to determine a single real-time distribution of flows for the real-time market.

(j) NYISO and PJM will be authorized to perform joint market monitoring investigations relating to service under the Protocol in appropriate circumstances.

(k) Known and projected critical outages and impairments are listed; ConEd and PSE&G are required to notify NYISO and PJM respectively when attaching new generation to their systems under existing interconnection rules;

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<sup>7</sup> See Phase II Order at P 44.

<sup>8</sup> Phase angle regulators are electrical devices that have the ability within certain physical limits to control power flow through a particular component of the transmission network.

NYISO and PJM will deal with impairment and outage issues through their planning processes.

14. The parties agreed that emergency procedures should take precedence over the Protocol in order to ensure the reliability of the power system. Therefore, section 1.3 specifies that NYISO's and PJM's existing emergency procedures will take priority over the Protocol's rules in the event of a system emergency.<sup>9</sup>

15. The Filing Parties state that they will submit to the Commission any proposed changes to the Protocol initiated under section 1.5<sup>10</sup> before the changes take effect. They ask the Commission to permit such revisions to be filed as compliance filings since any revisions would be made to carry out the directives of the Phase II Order. Also, compliance filings would allow more rapid correction of problems by avoiding the delays that could come from requiring broad, non-party, stakeholder review before filing.

16. In response to the Phase II Order's requirement to report outstanding issues and the Presiding Judge's January 24, 2005 order establishing procedures, the Protocol also included, at Attachment V, a joint stipulation of disputed issues that ConEd had submitted. All parties agreed that an evidentiary hearing was unnecessary to address these issues.

17. The Filing Parties request that the Protocol become effective 45 days from the date of the order accepting it for filing. NYISO and PJM explain that they will need approximately one and one-half months to modify software and to train employees in the new procedures.

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<sup>9</sup> This section also incorporates the emergency "reverse wheel" of the 400 MW contract so that NYISO and PJM may alleviate PJM emergencies attributable to PSE&G by delivering 400 MW at Staten Island for re-delivery to PSE&G. Such emergency transfers would not be counted in the real-time desired flow.

<sup>10</sup> Section 1.5 states: "[T]he parties will review all aspects of this Operating Protocol on a periodic basis, initially, monthly and, after a six month period, annually, to determine if modifications are required to effectuate the Commission's [Phase II Order]."

## **2. Comments, Protest, and Answer**

### **a. ConEd's Comments**

18. ConEd disagrees that the Protocol implements the Commission's directives set forth in the Phase II Order, and refers to Attachment V as describing the most significant of these deviations.

19. ConEd then states that resolution of these issues would further delay the implementation of procedures for administering the contracts, which would not serve the interests of New York City customers. It hopes that the Protocol will prove to be a workable procedure for transmission service in accordance with the contracts, and supports rapid implementation of the submitted Protocol upon three conditions. First, the Protocol should be implemented subject to the outcome of judicial appeal of the Commission's underlying orders. Second, because the effectiveness of the Protocol depends in large part on the good faith and objectivity of NYISO and PJM when implementing it, the Commission should direct NYISO and PJM to exercise their discretion in a manner consistent with the terms and conditions of the underlying contracts and the Phase II Order. Third, because of need to monitor the initial implementation of the Protocol and adjust it as necessary, the Commission should direct NYISO, PJM, PSE&G, and ConEd to submit written compliance reports to the Commission no later than four months and seven months (presumably, at the end of the summer and the end of 2005) following initial implementation of the Protocol. These reports should set forth the extent to which compliance with the contracts and the Phase II Order has been achieved. The Commission should then take any appropriate action in response to these reports.

### **b. PSE&G's Comments**

20. PSE&G asks the Commission to approve the Protocol as proposed. It emphasizes that, in sponsoring the Protocol, it made very significant concessions, and that it "agreed to support the settlement protocol document only as a package that it deemed acceptable in the *totality* of the obligations and rights it creates." PSE&G describes certain revisions that it wants unless the Protocol is accepted without any major change. It reserves the right to oppose any aspect of a significantly changed document.

### **c. Protest and Answers**

21. NRG asks the Commission to reject the Protocol and to direct the parties to work with NRG and other interested parties to develop protocols that adequately account for market concerns.

22. NRG contends that the allocation of financial transmission rights (FTRs)<sup>11</sup> to support the flow of energy under the contracts reduces the availability of FTRs in PJM. NRG submits that the FTR provisions are designed to shield ConEd and PSE&G from congestion costs, and that the Protocol will impose additional costs on other PJM market participants and unreasonably impair existing and future allocations of FTRs.

23. The Filing Parties answer that PJM's existing FTR allocations already take into account the 1,000 MW contract wheel. Any FTRs provided to PSE&G will be from capacity already reserved for the two contracts. PJM's simultaneous feasibility analyses takes into account all grandfathered contracts, including these two contracts, so that PJM can honor all contracts and ensure that there will be sufficient revenues to pay all FTR obligations. Thus, there will be no change in the total available FTRs for other market participants.

24. NRG contends that it is unclear what FTRs are allocated to PSE&G under the protocol. The Filing Parties answer that the Protocol explicitly provides that the measurement of congestion under the contracts will be the difference in the locational marginal prices between the pricing points at the J-K lines and the A-B-C lines, and that corresponding FTRs will be provided to PSE&G. These FTR paths are the same paths that PJM already uses in its simultaneous feasibility analysis for the contracts.<sup>12</sup>

25. NRG contends that by holding PSE&G harmless from congestion associated with the 600 MW contract and by mitigating partially or fully ConEd's congestion costs associated with the 400 MW contract, the Protocol increases the congestion risk of suppliers presently serving load through the Basic Generation

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<sup>11</sup> FTRs are financial instruments that entitle the holder to receive revenues matching the congestion-related transmission charges between specified source and sink points that arise when the grid is congested and differences in locational prices result from the redispatch of generators out of merit order to relieve that congestion. The FTR holder is entitled to the revenues whether or not the holder takes physical transmission service.

<sup>12</sup> Filing Parties' Answer at 6 & n.10, citing Appendix 1, "Process Flow," at ¶¶ 14-15 & n.5. The Filing Parties clarify that although note 5 of Appendix 1 refers to a sentence that discusses only the 400 MW contract's wheel, the text is intended to apply to the wheel under both contracts.

Service auction,<sup>13</sup> because FTRs, which are used to hedge against congestion costs, are reallocated away from suppliers.

26. The Filing Parties answer that any excess congestion revenues paid to ConEd under the 400 MW contract will not reduce the ability to pay other FTR holders. Under the Protocol, ConEd will be credited only after congestion credits are paid to all other firm transmission customers. Moreover, unlike today, ConEd will be paying for congestion related to the 400 MW contract, thus creating both additional congestion revenues and additional excess congestion revenues for FTR holders. Because ConEd is entitled to credits only against the congestion it pays, other market participants can only be better off.

27. ConEd answers that NRG's objection is a collateral attack on the Phase II Order, which determined that the 400 MW contract should have an intermediate status between firm and non-firm OATT service, and thus clearly envisioned that ConEd would pay lower congestion charges than would non-firm OATT customers who are willing to pay for congestion. The Protocol's provision of congestion charge credits is an alternative to the Phase II Order's separate-category treatment. The congestion credits mitigate ConEd's congestion charges under the 400 MW contract only to the extent that PJM's congestion revenues exceed the congestion credit entitlements of firm OATT customers. Nor do the Protocol's proposed credits to ConEd unjustifiably shift costs to third parties. The congestion and redispatch-cost effects cited by NRG exist in connection with all PJM transmission services because PJM socializes congestion costs as a matter of practice. They have nothing to do with the Protocol's congestion charge credits.

28. NRG notes that both contracts will be dispatched as part of the overall day-ahead or real-time energy markets. It states that it is not clear how PJM will be able to separate out re-dispatch costs caused by the energy flow under the agreements from out-of-merit costs associated with the regular energy dispatch. Such a distinction is necessary because out-of-merit dispatch costs are generally paid by all PJM load on a socialized basis.

29. The Filing Parties acknowledge that the two grandfathered contracts may contribute to congestion, thereby affecting locational marginal prices applicable to both the two contracts and other loads on the PJM system. However, this effect is no different than the effect of any other transaction on the system; all transactions

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<sup>13</sup> NRG explains that the New Jersey Board of Public Utilities directed the four New Jersey distribution companies to bid out their Basic Generation Service loads through a common auction process for specified supply periods and classes of customers. NRG Protest at 6 n.13.

using open access service contribute to the loading of transmission facilities and resulting congestion and locational marginal prices. Both today and under the Protocol, contract flows affect locational prices.

30. NRG says that because both NYISO and PJM will include the two contracts' transactions in their transmission planning process, the Commission should require them to treat the two energy injections as "PJM load" located on the PJM-New York tie line. Such classification would 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. Additionally, all financial obligations associated with load in PJM attributable to these two transactions should be imposed on PSE&G and ConEd.

31. The Filing Parties answer that NRG's recommendation concerning load classification is unclear, and that there is no basis for special characterization of these two transmission contracts. The contracts are for transmission transactions that PJM will treat like any other transmission transactions. 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. Moreover, the Protocol explicitly provides for system emergencies, with NYISO and PJM emergency procedures taking priority over the Protocol.

32. ConEd answers that there is no justification for imposing a more burdensome treatment on its contracts. It points out that, under the contracts, it funded and constructed facilities that obviated the need for PSE&G to construct transmission facilities, thereby reducing congestion and the congestion costs borne by PJM market participants.

#### **d. Commission Response**

33. We will accept the Protocol for filing without modification. We find that the answers of Filing Parties and ConEd sufficiently refute NRG's objections.

34. With regard to ConEd's three conditions for agreement to the Protocol, we state first that, like all final Commission orders, an order on rehearing of our acceptance of the Protocol, or the Commission's future order on the pending rehearing requests in Docket No. EL02-23-003, is subject to the outcome of judicial appeal under section 313(a) of the Federal Power Act (FPA), 16 U.S.C. § 8251 (2000). Second, we would expect NYISO and PJM staff, as a matter of course, to show good faith and objectivity in implementing the Protocol, and to exercise their discretion in a manner consistent with the underlying contracts as discussed in the Phase II Order. Last, we agree with ConEd that Commission

supervision of the Protocol's implementation is warranted and will so modify the Protocol. We will direct NYISO, PJM, ConEd, and PSE&G, either individually or jointly, to report to the Commission on whether the Protocol is working as intended, adjustments that seem necessary, and the parties' observations on the extent to which actual operation under the Protocol complies with the contracts and the Phase II Order. We will require these reports to be filed by September 30, 2005 and December 31, 2005.

35. We must deny Filing Parties' request that any proposed revisions of the Protocol be treated as compliance filings. Proposed revisions to the Protocol would be changes to a rate already on file with the Commission. Therefore, they must be filed under section 205 of the FPA, 16 U.S.C. § 824d (2000).<sup>14</sup> In cases that need the Commission's immediate attention, NYISO and/or PJM can petition the Commission for authority to act on an emergency basis, as NYISO recognizes in its October 7, 2004 answer in Docket No. EL02-23-005.<sup>15</sup>

36. We will grant the Filing Parties' request for an effective date of one and one-half months after the Commission accepts the Protocol. We will make the Protocol effective 45 days after the date of issuance of this order.

37. We commend ConEd and PSE&G for their willingness to proceed with the Protocol despite each utility's misgivings about some of the provisions. Our hope is that good faith observance of the Protocol by all concerned parties will enable the contract transfers to be performed in a sufficiently satisfactory manner so that ConEd and PSE&G will withdraw those portions of their pending rehearing requests that involve the mechanics of performing the contract transfers.

### **C. Market Monitoring Plan Amendments**

#### **1. NYISO's Filing**

38. NYISO determined that it needed to revise its Market Monitoring Plan to permit its market monitoring unit and PJM's market monitoring unit to share certain confidential information in order to conduct the investigations required by the Phase II Order. These revisions to the NYISO Market Monitoring Plan are:

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<sup>14</sup> See, e.g., *Southwest Power Pool*, 111 FERC ¶ 61,118 at P 61 (2005).

<sup>15</sup> NYISO Answer in Docket No. EL02-23-005 at 3.

(a) NYISO and the NYISO Market Advisor<sup>16</sup> are permitted to release the confidential information of PSE&G and affiliates, ConEd and affiliates, and any Market Participant regarding generation and/or transmission facilities located within the ConEd Transmission District to the PJM Market Monitor.

(b) Confidential information may be released only to permit the NYISO and PJM market monitoring units to conduct joint investigations to ensure that gaming, abuse of market power, or similar activities do not take place with regard to power transfers under the contracts that are the subject of the Phase II Order.

(c) NYISO shall protect from disclosure confidential information received from PJM or the PJM Market Monitor to accomplish these goals.

(d) NYISO and the NYISO Market Advisor are permitted to release a Market Participant's confidential information to the PJM Market Monitor only if the PJM Market Monitor is subject to obligations limiting the disclosure of such information that are equivalent to or greater than the limitations specified in the NYISO Market Monitoring Plan.

## **2. PJM's Filing**

39. PJM certified that the existing provisions of the PJM Market Monitoring Plan<sup>17</sup> provide the PJM market monitoring unit with the necessary authority to conduct the investigations required by the Phase II Order. However, for PJM to share confidential information with NYISO, it needs to amend the confidentiality provisions of the PJM Operating Agreement by adding a new section to existing section 18.17, "Confidentiality." This new section 18.17.5 provides that:

(a) PJM and the PJM Market Monitor may release confidential information of PSE&G, ConEd, and their affiliates, as well as confidential information of any PJM member regarding generation and/or transmission facilities located within the PSE&G Zone, to the market monitoring unit of NYISO and the NYISO Market Advisor, to the limited extent that the PJM Market Monitor determines necessary

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<sup>16</sup> Under the NYISO Market Monitoring Plan, the Market Monitoring Unit is the group within NYISO that is responsible, in consultation with the NYISO Market Advisor, for implementing the plan. The NYISO Market Advisor is the entity that advises the NYISO Board of Directors on matters encompassed by the plan. NYISO Market Monitoring Plan at sections 2.3, 2.6, and 4.1 (July 26, 1999).

<sup>17</sup> Attachment M of the PJM OATT.

to carry out the responsibilities of PJM's and NYISO's market monitoring units under the Phase II Order.

(b) A PJM member's confidential information may be released to the NYISO market monitoring unit and the NYISO Market Advisor only if those entities are subject to obligations limiting the disclosure of such information that are equivalent to, or greater than, the limitations on disclosure specified in section 18.17.

(c) Information received from NYISO, the NYISO market monitoring unit, or the NYISO Market Advisor that is designated confidential shall be protected from disclosure pursuant to section 18.17.

### **3. PSE&G's Protest to NYISO's Filing**

40. PSE&G protests that the language of NYISO's filing is not broad enough to enable joint investigations to be conducted to the extent envisaged by the Phase II Order. It requests removal of the limiting phrase, "located within the ConEd transmission district" in connection with Market Participant information regarding generation and/or transmission. PSE&G states that information about generation and transmission facilities in other NYISO zones could be significant and should be available to PJM.

41. PSE&G points out that the substations located in Ramapo, New York, and portions of the J and K lines, between Ramapo, New York, and the New Jersey border, are in the service territory of Orange and Rockland Utilities, Inc. (O&R). It urges that PJM be given access to information about facilities located in the O&R transmission district. It adds that O&R is ConEd's subsidiary, that ConEd is able to direct operation of O&R's transmission system, and that any concern that ConEd might engage in gaming or exercise market power with its facilities applies also to facilities owned by O&R. It notes that the Phase II Order did not limit the scope of the geographic area for market monitoring purposes, and says that joint NYISO-PJM investigations might extend to transmission facilities in portions of NYISO other than the ConEd and O&R transmission districts.<sup>18</sup>

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<sup>18</sup> PSE&G offers that if the geographic limitation is removed from NYISO's amendments filing, then PSE&G would not object to deletion of the analogous limitation in PJM's amendments filing, which limits release to NYISO of confidential information to information in only the PSE&G zone.

#### 4. NYISO's Answer

42. NYISO answers that PSE&G's protest is based on pure speculation. The protest provides no basis for overturning the judgment of the independent market monitoring experts whom NYISO and PJM consulted. NYISO states that it and PJM agreed that the reciprocal geographic limitation on the scope of information disclosure in the amendments is consistent with the Phase II Order and would not impede effective joint investigation. PSE&G's suggestion of no geographic limitation contradicts the market monitors' determination, and NYISO's and PJM's judgment that confidential information outside the ConEd and PSE&G territories need not be shared.

43. NYISO states that the ConEd-PSE&G wheel affects and is affected by only a limited number of facilities. It would be impractical for a market participant to use generation or transmission facilities in upstate New York or western Pennsylvania to exercise market power that would affect the wheel. The NYISO and PJM market monitors determined that the limited geographic area and the facilities described in NYISO's amendments filing, for which they have requested authorization to share confidential information, should suffice for them to effectively perform joint investigations. Should additional authority be needed, PJM or NYISO can petition the Commission for expanded authority to conduct joint investigations on an emergency basis.

44. NYISO states that PSE&G has not explained why information about facilities in O&R's service territory must be made available to the PJM market monitor. The Ramapo substation and the J and K lines have limited market power significance. The phase angle regulators at Ramapo primarily influence flows over a different line than the J and K lines and are already under NYISO's direct control; the phase angle regulators that influence the J and K lines are in PSE&G's service territory, not O&R's service territory, and are under PJM's operational control. NYISO discounts the significance of O&R being a ConEd subsidiary, saying that the relevant portions of the O&R transmission system, including portions of the J and K lines, are under NYISO's operational control.

45. NYISO asks that if the Commission concludes that confidential information regarding facilities outside ConEd's service territory should be available for sharing with the PJM market monitor in the context of a joint investigation, then the confidential information made available to the NYISO market monitor should be reciprocally expanded, as PSE&G suggests.

### 5. Commission Response

46. We find that NYISO has amply refuted PSE&G's protest. Therefore, we will reject the protest and will accept for filing NYISO's revisions to its Market Monitoring Plan and PJM's revisions to Attachment M of its OATT. We will make these revisions effective concurrent with the effective date of the Protocol, 45 days after the date of issuance of this order. We will also direct NYISO and PJM to include, in the reports to be filed September 30, 2005, and December 31, 2005, evaluations by the NYISO Market Advisor and the PJM Market Monitor regarding the effect of the geographic limitation on sharing confidential information on their ability to perform investigations to ensure that gaming, abuse of market power, or similar activities do not take place, and whether further revisions are needed to the NYISO and PJM market monitoring plans.

The Commission orders:

(A) The Protocol filed by NYISO, PJM, and PSE&G, on February 18, 2005, in Docket No. EL02-23-003, is hereby accepted for filing as discussed in the body of this order, to be effective 45 days from the date of issuance of this order.

(B) ConEd, PSE&G, NYISO, and PJM are hereby directed to submit reports about the effectiveness of the Protocol in implementing the contract wheel and whether further revisions to the NYISO and PJM market monitoring plans are needed no later than September 30, 2005 and December 31, 2005.

(C) NYISO's September 9, 2004 filing of revisions to its Market Monitoring Plan, in Docket No. EL02-23-005, is hereby accepted for filing, to be effective 45 days from the date of issuance of this order.

(D) PJM's September 9, 2004 filing of revisions to Attachment M of its tariff, in Docket No. EL02-23-004, is hereby accepted for filing, to be effective 45 days from the date of issuance of this order.

(E) The protests filed by NRG, in Docket No. EL02-23-003, and by PSE&G, in Docket No. EL02-23-005, are hereby rejected.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

**APPENDIX**

Docket No. EL02-23-004

PJM Interconnection, L.L.C.  
Third Revised Rate Schedule FERC No. 24  
    Third Revised Sheet No. 5  
    First Revised Sheet No. 61E  
    Original Sheet No. 61E.01

Docket No. EL02-23-005

New York Independent System Operator Market Monitoring Plan  
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Docket No. EL02-23-006

New York Independent System Operator, Inc.  
FERC Electric Tariff  
Original Volume No. 2  
Attachment M-1 – Operating Protocol for the Implementation of  
    the Phase II Order

PJM Interconnection, L.L.C.  
FERC Electric Tariff  
Rate Schedule No. 41 -- Operating Protocol for the Implementation of  
    the Phase II Order