

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, Inc.	Docket No. ER99-2251-002
Orange and Rockland Utilities, Inc.	Docket No. ER99-2252-003
Consolidated Edison Energy, Inc.	Docket No. ER98-2491-008
Consolidated Edison Solutions, Inc.	Docket No. ER97-705-013
Ocean Peaking Power, L.L.C.	Docket No. ER02-2080-002
CED Rock Springs, Inc.	Docket No. ER02-2546-003
Consolidated Edison Energy of Massachusetts, Inc.	Docket No. ER99-3248-005
Lakewood Cogeneration, L.P.	Docket No. ER99-1213-003
Newington Energy, L.L.C.	Docket No. ER01-1526-003

ORDER CONDITIONALLY ACCEPTING
UPDATED MARKET POWER ANALYSIS

(Issued May 5, 2005)

1. In this order, the Commission conditionally accepts an updated market power analysis filed by Consolidated Edison Company of New York, Inc. (Con Edison); Orange and Rockland Utilities, Inc. (O&R); Consolidated Edison Energy, Inc. (Con Edison Energy); Consolidated Edison Solutions, Inc. (Con Edison Solutions); Ocean Peaking Power, L.L.C. (Ocean Peaking); CED Rock Springs, Inc. (Rock Springs); Consolidated Edison Energy of Massachusetts, Inc. (CEEMI); Lakewood Cogeneration, L.P. (Lakewood); and Newington Energy, L.L.C. (Newington) (collectively, Applicants or

Con Edison Companies).¹ As discussed below, we conclude that, subject to the Commission's acceptance of the compliance filing directed herein, Applicants satisfy the Commission's standards for market-based rate authority. Applicants' tariffs incorporating the Commission's market behavior rules were previously accepted by the Commission.² This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. The Con Edison Companies' next updated market power analysis is due three years from the date of this order.

Background

2. On November 18, 2004, Applicants filed an updated market power analysis pursuant to the Commission's orders granting Applicants authority to sell electric energy and capacity at market-based rates.³ The November 18, 2004 Filing addresses the two

¹ The Con Edison Companies should have filed their updated market power analysis by June 9, 2003, which is three years from the date the Commission accepted their previous analysis. The Con Edison Companies did not file their next analysis until November 18, 2004. The Con Edison Companies' next updated market power analysis is due within three years of the date of this order and we expect that filing to be made in a timely fashion.

² *Consolidated Edison Energy, Inc.*, Docket No. ER00-865-002, Letter Order (December 6, 2004); *Lakewood Cogeneration, L.P., Consolidated Edison Energy Massachusetts, Inc., Newington Energy, L.L.C.*, Docket No. ER04-989-000, Letter Order (September 29, 2004); *Consolidated Edison Company of New York, Inc.*, Docket No. ER04-866-000, Letter Order (August 31, 2004); *Orange and Rockland Utilities, Inc.*, Docket No. ER04-905-000, Letter Order (August 4, 2004); *Ocean Peaking Power, LLC*, Docket No. ER02-2080-001, Letter Order (March 29, 2004); *CED Rock Springs, Inc.*, ER02-2546-002, Letter Order (March 29, 2004); *Consolidated Edison Solutions, Inc.*, Docket No. ER04-965-000, Letter Order (August 5, 2004)

³ *CED Rock Springs, Inc.*, Docket No. ER02-2546-000, Letter Order (December 4, 2002); *Ocean Peaking Power, L.P.*, Docket No. ER02-2080-000, Letter Order (July 12, 2002); *Lakewood Cogeneration, L.P.*, 86 FERC ¶ 61,194 (2001); *Newington Energy, L.L.C.*, Docket No. ER01-1526-000, Letter Order (July 18, 2001); *Con Edison Company of New York, Inc.*, Docket No. ER99-2251-001, Letter Order (June 9, 2000); *Consolidated Edison Energy, Inc.*, Docket No. ER99-2251-001, Letter Order (June 9, 2000); *Consolidated Edison Energy Massachusetts, Inc.*, 88 FERC ¶ 61,102 (1999); *Central Hudson Gas & Electric Corp.*, 86 FERC ¶ 61,062 (1999); *Consolidated Edison Energy, Inc.*, 83 FERC ¶ 61,236 (1998); *Consolidated Edison Company of New York, Inc.*, 78 FERC ¶ 61,298 (1998), 82 FERC ¶ 61,063 (1998).

market power screens that the Commission recently adopted for its generation market power analysis.⁴

3. The Con Edison Companies are all affiliated, direct or indirect subsidiaries of Consolidated Edison, Inc. Each of the Con Edison Companies has been authorized to sell power at market-based rates. Applicants state that all of the wholesale sales that the Con Edison Companies make at market-based rates are made in the markets and control areas administered by the New York Independent System Operator (NYISO), PJM Interconnection, LLC (PJM), and ISO-New England, Inc. (ISO-NE).

4. Applicants state that Con Edison owns only 698 MW of capacity in NYISO. Applicants further state that Con Edison and O&R operate retail access programs, which are subject to the oversight of the New York Public Service Commission (NYPSC). According to Applicants, the other Con Edison Companies own 806 MW of generating capacity in the ISO-NE control area and 901 MW in the PJM control area.

Notice of Filings and Responsive Pleadings

5. Notice of Applicants' November 18, 2004 Filing was published in the *Federal Register*, 69 Fed. Reg. 70,139 (2004), with interventions or protests due on or before December 9, 2004. A motion to intervene with no substantive comments was filed by NRG Companies.⁵

Discussion

Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214 (2004), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

Market-Based Rate Authorization

7. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and

⁴ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

⁵ NRG Companies consist of NRG Power Marketing, Inc., Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, NRG Illion LP LLC, and Oswego Harbor Power LLC.

transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁶

8. As discussed below, the Commission concludes that, subject to the Commission's acceptance of the compliance filing directed herein, the Con Edison Companies satisfy the Commission's standards for market-based rate authority.

Generation Market Power

9. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. The Con Edison Companies have prepared both the pivotal supplier and the wholesale market share screens for the PJM, NYISO, and ISO-NE markets, which are the markets in which the Con Edison Companies own generation and make wholesale sales at market-based rates. The Con Edison Companies state that they own relatively small amounts of generating capacity, with Con Edison and O&R having divested approximately 6,600 MW of capacity over the last five years to unaffiliated purchasers. Further, the Con Edison Companies state that they have transferred to the NYISO and PJM operational control of the companies' transmission facilities that are located in the respective NYISO and PJM control areas.

10. For each of the NYISO, ISO-NE, and PJM markets, the Con Edison Companies state that they pass both the pivotal supplier and wholesale market share screens.

11. The Commission has previously stated that uncommitted capacity is determined by adding the total nameplate capacity of generation owned or controlled through contract and firm purchases, less operating reserves, native load commitments and long-term firm non-requirement sales.⁷ Further, applicants are required to prepare the screens as designed.⁸ Applicants state that nameplate ratings were not available for resources owned and controlled by the Con Edison Companies. Therefore, the Con Edison Companies used summer ratings increased by 11 percent to reflect the increase in capacity of a simple cycle combustion turbine from summer conditions to the 59 degree nominal rating, which they state is equivalent to the nameplate rating. Consistent with our precedent, the Commission directs the Con Edison Companies to revise their submittal using nameplate capacity for all the Con Edison Companies' generating

⁶ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); accord *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

⁷ April 14 Order, 107 FERC ¶ 61,018 at P 95.

⁸ *Id.* at P 118.

capacity used in calculation of the screens, and submit the relevant work papers and documentation within 30 days of the date of this order.⁹

Transmission Market Power

12. The Con Edison Companies state that only Con Edison, O&R, and Rock Springs own transmission facilities. Further, the Con Edison Companies state that the three transmission-owning companies have conveyed control of their transmission facilities to independent system operators, NYISO and PJM, and do not provide transmission service. Accordingly, the Con Edison Companies state that they do not have and could not exercise market power with respect to transmission service. In addition, no intervenor has raised transmission market power concerns. Based on the Con Edison Companies' representations, the Commission finds that the Con Edison Companies satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

13. The Con Edison Companies state that they do not control gas production facilities, long-distance natural gas transmission facilities, or any significant fuel inputs. Further, the Con Edison Companies state that the local gas distribution systems owned by Con Edison and O&R are subject to regulation by the NYPSC, which oversees compliance with statutory and regulatory open-access requirements. The Con Edison Companies state that Con Edison and O&R continue to provide non-discriminatory service for any gas that an electric generator purchases from a third party. In addition, the Con Edison Companies state that they do not engage in the manufacturing of electric equipment or have the ability to hinder the siting of electric generation facilities. No intervenor has raised barrier to entry concerns. Based on the Con Edison Companies' representations, the Commission is satisfied that the Con Edison Companies cannot erect barriers to entry. However, should the Con Edison Companies or any of their affiliates deny, delay or require unreasonable terms, conditions or rates for natural gas service to a potential electric competitor in bulk power markets, that electric competitor may file a complaint with the Commission that could result in the suspension of the Con Edison Companies' authority to sell power at market-based rates.¹⁰

⁹ See *Westar Energy, Inc.*, 110 FERC ¶ 61,316 at P 20 (2005); *Tampa Electric Co.*, 110 FERC ¶ 61,206 at P 30 (2005).

¹⁰ See, e.g., *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

Affiliate Abuse

14. The Con Edison Companies state that they have on file Commission-approved codes of conduct governing their relationships with their corporate affiliates. In addition, no intervenor has raised affiliate abuse concerns. Based on the Con Edison Companies' representations, the Commission finds that the Con Edison Companies satisfy the Commission's concerns with regard to affiliate abuse.

Reporting Requirements

15. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.¹¹ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹²

16. Applicants must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.¹³ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, the Con Edison Companies are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to incorporate the following provision:

¹¹ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

¹² The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

¹³ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005).

[insert market-based rate seller name] must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

17. Applicants are directed to file an updated market analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Applicants' updated market power analysis is hereby conditionally accepted for filing, subject to Commission acceptance of the compliance filing directed in Ordering Paragraph (D), as discussed in the body of this order.

(B) Applicants' next updated market power analysis is due within three years of the date of this order as discussed in the body of this order.

(C) Applicants are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to include the change in status reporting requirement adopted in Order No. 652.

(D) Applicants are directed, within 30 days of the date of issuance of this order, to revise their generation market power analysis, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.