

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on April 18, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
Maureen F. Harris  
James L. Larocca  
Gregg C. Sayre

CASE 12-E-0503 - Proceeding on Motion of the Commission to  
Review Generation Retirement Contingency Plans.

ORDER UPON REVIEW OF PLAN TO ADVANCE TRANSMISSION, ENERGY  
EFFICIENCY, AND DEMAND RESPONSE PROJECTS

(Issued and Effective April 19, 2013)

BY THE COMMISSION:

INTRODUCTION

In an order issued on November 30, 2012, we initiated this proceeding to develop contingency plans to address reliability concerns arising from generator retirements. The Commission initially sought a Reliability Contingency Plan addressing the potential closure of the Indian Point Energy Center (IPEC) upon the expiration of its existing licenses at the end of 2015.<sup>1</sup> We directed Consolidated Edison Company of New York, Inc. (Con Edison), in consultation with the New York Power Authority (NYPA), Department of Public Service Staff (DPS Staff), and other appropriate agencies, to develop such a plan and file it by February 1, 2013.

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<sup>1</sup> Case 12-E-0503, Generation Retirement Contingency Plans, Order Instituting Proceeding and Soliciting Indian Point Contingency Plan (issued November 30, 2012) (November 30 Order).

On February 1, 2013, Con Edison and NYPA jointly submitted a filing in compliance with our November 30 Order (Con Edison/NYPA Filing). The Con Edison/NYPA Filing proposed an IPEC Contingency Plan whereby Con Edison, New York State Electric and Gas Corporation (NYSEG), and NYPA would pursue the initial development of three Transmission Owner Transmission Solutions (TOTS), while also soliciting generation and other transmission proposals through a Request for Proposals (RFP) to be issued by NYPA. The Con Edison/NYPA Filing further described an Energy Efficiency/Demand Reduction (EE/DR) set-aside program through which 100 MW of the anticipated need could be met through EE/DR projects.<sup>2</sup>

The Con Edison/NYPA Filing requested specific actions by the Commission, including: 1) an order in March 2013 that requests NYPA to issue an RFP for new generation and transmission solutions; 2) an order in April 2013 that directs the development of the 100 MW EE/DR program and of the three TOTS projects, authorizes the recovery of prudently incurred costs associated with the initial development of the TOTS projects, and finds, on a preliminary basis, that the proposed TOTS projects are a response to certain public policy requirements; and, 3) an order in September 2013 that identifies a preferred set of transmission and/or generation projects, and

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<sup>2</sup> Con Edison has also noted that it initiated discussions with NYPA and the New York State Energy Research and Development Authority (NYSERDA) and identified 68 MW in incremental EE/DR, and Combined Heat and Power (CHP) initiatives that are expected to be achieved under programs that were either previously approved by the Commission, or are proceeding under Executive Order, but were not reflected in the New York Independent System Operator, Inc.'s (NYISO) 2012 Reliability Needs Assessment (RNA) assumptions. Con Edison Reply Comments, pp. 3-4.

makes findings in connection with an authorization of cost allocation and cost recovery for such projects.

On March 15, 2013, we issued an order in response to the Con Edison/NYPA Filing, approving the proposal by Con Edison and NYPA to issue an RFP in connection with their IPEC Contingency Plan.<sup>3</sup> In this order, we respond to the second request in the Con Edison/NYPA Filing and advance the plan to secure permanent peak reduction from incremental EE/DR and other resources and to pursue the initial development of the TOTS projects, subject to certain conditions. We also direct DPS Staff to propose a cost allocation and cost recovery mechanism, which we will review after providing notice and an opportunity for comment. We address parties' comments regarding these aspects of the Con Edison/NYPA Filing that were filed pursuant to our February 13 Notice or the notice of proposed rulemaking published in the State Register on February 20, 2013.<sup>4</sup>

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<sup>3</sup> Case 12-E-0503, Generation Retirement Contingency Plans, Order Upon Review of Plan to Issue Request For Proposals (issued March 15, 2013) (March 15 Order)

<sup>4</sup> The November 30 Order established that comments on the Con Edison/NYPA Filing were due by February 22, 2013. On February 13, 2013, we issued a Notice Soliciting Comments (February 13 Notice) to clarify our intent that the February 22, 2013 deadline for comments concerning the Con Edison/NYPA Filing applied to the first requested action item (i.e., the issuance of the RFP, and related matters, such as the RFP terms, conditions, process, and timeline). However, various comments provided in response to our February 13 Notice went beyond the scope of our March 15 Order. Therefore, where these comments were relevant to the matters to be discussed in this order, we have also considered them in developing this Order. A list of the parties providing comments in this proceeding is contained in Appendix A.

THE CON EDISON/NYPA FILING

The first component of the proposal within the Con Edison/NYPA Filing consists of three TOTS projects that Con Edison and NYPA assert could be implemented by the summer of 2016. In particular, Con Edison plans to begin the development of a Second Ramapo to Rock Tavern 345 kV transmission line (RRT Line), and a Staten Island Un-bottling (SIU) project. NYPA and NYSEG would begin the development of a third project, referred to as the Marcy South Series Compensation and Fraser to Coopers Corners Reconductoring (MSSC) project.<sup>5</sup>

Con Edison and NYPA propose that these three projects should be subject to a halting mechanism and to cost recovery proposals. The halting mechanism would enable the Commission to halt any TOTS project at any time up to, and including, December 31, 2014. The Con Edison/NYPA Filing seeks full recovery of the costs, including any associated contractual cancellation costs, which would be incurred by Con Edison and NYPA up to the time of halting. Con Edison and NYPA provided estimates of the cost to halt the TOTS projects at selected intervals and to complete each of these projects. The total cost to complete these projects would be approximately \$511 million (i.e., \$123.1 million for the RRT Line, \$76 million for the MSSC Project, and \$311.64 million for the SIU Project). According to the Con Edison/NYPA Filing, the TOTS projects would ultimately be

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<sup>5</sup> The three TOTS are discussed in detail in Exhibits B, C, and D of the Con Edison/NYPA Filing.

transferred to and owned by an entity identified as the "New York Transmission Company" (NY Transco).<sup>6</sup>

The second component of the Con Edison/NYPA Filing entails an RFP process which would identify new generation proposals and new transmission proposals (other than the TOTS) that could meet the 2016 in-service date. The Con Edison/NYPA Filing contemplates that DPS Staff will evaluate both the TOTS projects and the results of the RFP in making a recommendation regarding the preferred combination of projects that should move forward. The Con Edison/NYPA Filing indicates that Con Edison and NYPA will provide the same information for the TOTS projects as is required of the RFP respondents, "so that the TOTS and [RFP] Proposals can be evaluated by DPS staff on a comparative basis."<sup>7</sup>

The third component of the Con Edison/NYPA Filing, as updated in Con Edison's Reply Comments, describes a targeted EE/DR/renewable distributed generation (DG) program whereby Con Edison could achieve 100 MW of permanent peak demand reduction by the summer of 2016. As proposed by Con Edison and NYPA, these 100 MW would be in addition to existing EE and DR targets. The EE/DR/DG program portfolio would include EE measures focused on "[f]uel switching and renewable DG projects ... , gas and steam

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<sup>6</sup> Con Edison and NYPA are active participants in the process of creating the NY Transco. While the NY Transco has not yet been formed, it is described by Con Edison and NYPA to be a state-wide transmission company which will seek to develop electric transmission projects in New York State, including the RRT Line, the MSSC Project and the SIU Project that are being submitted as solutions in this docket. Two of these projects, the RRT Line and the MSSC Project, along with three other transmission projects, were also submitted as NY Transco projects in Case 12-T-0502.

<sup>7</sup> Con Edison/NYPA Filing, p. 19. As noted above, the March 15 Order approved the plan to issue an RFP, which NYPA issued on April 3, 2013.

air conditioning projects," and "[b]uilding management and control systems, in combination with efficient air conditioning ... (i.e., super-efficient chillers)."<sup>8</sup> The Con Edison/NYPA Filing, as revised, estimates that the EE/DR/DG program would cost between \$150 million and \$300 million, and the Filing proposes the recovery of these costs through a surcharge. The EE/DR program, as proposed, would also be subject to a halting mechanism.

## DISCUSSION

### The TOTS Projects

#### Preliminary Planning Activities

The jurisdictional utilities (i.e., Con Edison and NYSEG) are obligated under the Public Service Law to provide and maintain safe and adequate service. The need to conduct both short-term and long-term planning arises directly from this fundamental obligation. By assigning to Con Edison, as the local Transmission Owner, responsibility for developing a plan to maintain reliability, we simply affirmed what is already expected of the company under the law. The potential retirement of IPEC after a Nuclear Regulatory Commission (NRC) decision not to relicense the plant is not a typical planning contingency; however, for all the reasons we stated in our November 30 Order and March 15 Order, we find it is reasonable for the jurisdictional utilities to prepare for that possibility. Thus, we find that it is consistent with the jurisdictional utilities' core responsibilities to ensure safe and adequate service to move forward with preliminary planning and development of the TOTS projects.

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<sup>8</sup> Con Edison Reply Comments, p. 9.

As we found in the March 15 Order, the TOTS projects that Con Edison and NYPA propose to pursue, along with NYSEG, "meet[] our objective by providing solutions that will contribute toward addressing the potential reliability deficiency that would arise in the summer of 2016 with the shutdown of IPEC at the end of 2015."<sup>9</sup> Based on the schedules provided in the Con Edison/NYPA Filing, which appear reasonable, there is a need for the TOTS projects to proceed with preliminary planning activities that are required to support the engineering, permitting, property acquisition, and procurement that will be necessary if the TOTS projects are among those identified for development in our anticipated September 2013 order. Further, in order to be available, if needed, by the June 2016 in-service date, these preliminary planning activities should be undertaken as soon as possible. We agree with Con Edison and NYPA that postponing these initial planning activities for the TOTS projects at this time will greatly diminish "the likelihood of having sufficient resources available by the In-Service Deadline to address the potential closure of IPEC."<sup>10</sup> Accordingly, we authorize Con Edison, NYSEG, and Central Hudson Gas & Electric Corporation (Central Hudson), with the assistance of NYPA, as appropriate, to move forward with the preliminary development activities for the TOTS projects.<sup>11</sup> However, we also find that the TOTS projects should

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<sup>9</sup> March 15 Order, p. 8.

<sup>10</sup> Con Edison/NYPA Filing, p. 13.

<sup>11</sup> We are aware and Central Hudson has confirmed in its comments that the RRT Line would interconnect with Central Hudson's 345 Rock Tavern Substation. For this reason, we would expect Con Edison to interact with Central Hudson so that this interconnection can be accomplished without delay to the RRT Line project.

proceed subject to certain conditions that will limit the risks to ratepayers.

Halting and Cost Cap

We acknowledge and share the concerns raised by various parties that ratepayers may be exposed to potentially significant costs associated with the development of the TOTS projects, if the TOTS projects are not preferred when compared with the potential generation and/or transmission projects that respond to the RFP, or if the TOTS projects are ultimately not be needed because the IPEC plants retain their NRC operating licenses. We therefore find that appropriate protections are necessary so that ratepayers are not exposed to unnecessary costs associated with the TOTS projects.

First, these protections will include the use of a halting mechanism to ensure that the financial exposure of ratepayers, at this time and prior to our anticipated September order, is limited to the costs of the preliminary planning activities of the TOTS projects up to September 30, 2013. As discussed below, we accept Con Edison's and NYPA's proposal to cap the expenses for these preliminary planning activities.

We anticipate that DPS Staff will make recommendations and that our September 2013 order will identify which of the proposals amongst the TOTS projects and RFP respondents are preferred for implementation of the IPEC Contingency Plan. Thus, it is through that order that the jurisdictional utilities will obtain our review of their proposals to continue the development of the TOTS projects beyond September 2013. This includes, but is not limited to, approval for any construction related activities, which the Con Edison/NYPA Filing indicates are not anticipated until sometime in 2014 for each of the TOTS projects. Just as projects identified through the RFP will have halting mechanisms applicable in the post-September 2013



period,<sup>12</sup> we anticipate that any preferred TOTS projects would also have comparable halting dates and mechanisms.

The Commission also seeks to protect ratepayers by applying a \$10 million cost recovery cap for initial planning and development activities associated with the three TOTS projects prior to September 30, 2013. This amount should be sufficient to allow the utilities to proceed with these activities through September 2013, while ensuring that the risks to ratepayers are limited in the event that one or more of the TOTS projects is determined not to be needed at that time.

While we provide assurance herein to the utilities that costs related to the TOTS projects, up to \$10 million, may be recovered, this assurance is not intended, and will not shift, the risk of imprudence from the utilities to ratepayers. Thus, while we acknowledge the prudence of the decision to proceed with initial development of the TOTS projects, we are not implying that expenditures to implement this decision will not be subject to the normal prudence review.

#### Cost Recovery

Con Edison and NYPA state that they are working with other parties to establish a federal rate that would apply to certain transmission projects, including the TOTS projects. Con Edison and NYPA acknowledge that the federal mechanism for cost recovery is not yet effective, and may not become effective until after Con Edison and NYPA have expended significant funds on project development. For this reason, Con Edison and NYPA ask us to ensure a State-approved cost recovery mechanism will be available to recover their TOTS project planning and development costs incurred prior to September 30, 2013.

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<sup>12</sup> March 15 Order, p. 20.

Given the circumstances present in this case, particularly the short lead-time before a potential reliability need arises, we find that a State rate recovery mechanism will be required to address the up to \$10 million in preliminary planning costs for the TOTS projects that may be incurred prior to our anticipated September 2013 order. This mechanism will ensure that each jurisdictional utility will recover the funds necessary to meet its portion of the up to \$10 million in preliminary planning costs, as well as the funds necessary to reimburse NYPA for its portion of these costs.<sup>13</sup> We disagree with New York City that we lack authority to develop a retail rate recovery mechanism that provides for the jurisdictional utilities to collect payments from their ratepayers for reliability-related activities. Further, we also conclude that this funding may be used to support actions taken by NYPA in support of their reliability-related activities undertaken in conjunction with the Indian Point Contingency Plan. We emphasize that we are not asserting jurisdiction over NYPA, the rates NYPA charges its customers, or wholesale transmission rates established by FERC.

In the Con Edison/NYPA Filing, Con Edison and NYPA set forth their views as to the appropriate mechanism for allocating the costs of developing and implementing the TOTS projects or any other projects that may ultimately be preferred as part of the IPEC Contingency Plan. With respect to cost allocation (i.e., the methodology used to allocate costs between utility

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<sup>13</sup> A State rate recovery mechanism will also be needed for the full amount of the post September 2013 development costs for the TOTS projects and for the RFP-identified projects which are part of the preferred portfolio which will be described in our anticipated September 2013 Order. We expect the DPS Staff straw proposal, discussed infra, to address the cost recovery/cost allocation for these costs as well as for the up to \$10 million in preliminary planning costs described above.

ratepayers for the affected utilities), Con Edison and NYPA request that we find the TOTS projects are consistent with the State's Public Policy Requirements as envisioned under FERC Order No. 1000. In accordance with the Order No. 1000 process outlined by FERC, the NYISO and NYTOs have made an Order No. 1000 compliance filing that proposes a load-ratio share as a default cost allocation approach when a more specific method has not been specified. Use of a load-ratio share methodology would mean that customers throughout the NYISO control area would bear the costs of developing the projects implemented under the IPEC Contingency Plan.

Regarding the allocation and recovery of costs for any preferred TOTS projects and/or projects identified in response to the RFP, we are mindful of the various comments that asserted upstate regions in the State would not receive any benefit from addressing the reliability impacts associated with the closure of the IPEC facility. As a consequence, it was further argued that these upstate regions should not be required to contribute to the payment of the costs to implement the Indian Point Contingency Plan. In general, we agree with the numerous comments that suggested the cost allocation methodology should adhere to the principle of "beneficiaries" pay, and that, in this case, the beneficiaries should be identified as those who receive the reliability benefits of the contingency plan projects.

More specifically, under the circumstances present here, we are seeking an IPEC Contingency Plan for reliability purposes. The shut-down of the IPEC facility would result in reliability deficiencies predominately in southeast New York, rather than New York State overall. Furthermore, the reliability in some affected zones may be impacted more significantly than in others. Therefore, the IPEC Contingency

Plan would primarily benefit zones in southeast New York, rather than statewide; and those benefits may accrue non-uniformly over the different zones in that region as well. This indicates that the default load-ratio share is not likely to be appropriate in this case.

However, while use of the default load-ratio share methodology for cost allocation, as proposed by the Con Edison/NYPA Filing, is unlikely to be appropriate in this case, we find that the cost allocation and recovery mechanism that will be used to recover the IPEC Contingency Plan costs requires further development and consideration. To accomplish this further development of the specific methodology to be used and of how to best identify the beneficiaries of the preferred projects that are part of the IPEC Contingency Plan, DPS Staff is directed to issue a cost allocation/cost recovery straw proposal for further comments by the parties.<sup>14</sup>

The cost allocation/cost recovery straw proposal should be based upon the "beneficiaries pay" principle, such that those harmed by a loss of reliability due to the retirement of the IPEC plants and correspondingly helped by the elimination of that deficiency, should be those responsible for the cost of the remedy on a proportional basis. The proposal should define how these reliability beneficiaries should be identified, and how the relative extent of their benefits should be measured. Thus, the straw proposal should propose a specific methodology

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<sup>14</sup> The straw proposal described here is different and should be developed independently from the cost allocation/recovery straw proposal which we expect to be developed in Case 12-T-0502.

to allocate the costs of all transmission, generation and demand-side solutions to retail ratepayers.<sup>15</sup>

We plan to seek comments from interested parties on DPS Staff's straw proposal. In a future order, we expect to adopt an appropriate mechanism for the allocation and recovery of incremental costs for the initial development of the TOTS projects, up to \$10 million, and for the allocation and recovery of costs associated with those preferred projects identified as part of the IPEC Contingency Plan. The DPS Staff straw proposal should be issued according to a schedule that recognizes we may need to render a cost recovery/cost allocation decision promptly and, in any case, by September 2013.

The Con Edison/NYPA Filing requests, inter alia, that the Commission find, on a preliminary basis, that the TOTS projects are public policy projects that meet the "public policy requirements" of the State. This request anticipates the recovery of the costs associated with the TOTS projects pursuant to the NYISO and New York Transmission Owners' (NYTO) filing to comply with FERC Order No. 1000, which mandated the adoption of federal tariff provisions to implement a transmission planning process for public policy purposes. As proposed, the NYISO/NYTO compliance filing envisions that the Commission will identify transmission needs driven by "Public Policy Requirements" and will identify which of the particular proposed transmission projects evaluated by the NYISO should receive recovery of the costs it incurs.

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<sup>15</sup> DPS Staff should also indicate whether this straw proposal is consistent with our Policy Statement on Backstop Project Cost Recovery and Allocation in Case 07-E-1507. In that case, the Commission chose to adopt a cost recovery approach in which reliability backstop project costs would be submitted by the utility or alternate developer to the Commission for recovery authorization via retail rates, rather than relying on NYISO tariffs that must be approved by FERC.

Several parties, such as IPPNY, MI, and Nucor, object to the proposed approach in the Con Edison/NYPA Filing, which relies upon the eventual approval by FERC of the NYISO/NYTO's proposed transmission planning process for public policy purposes. The Commission agrees with these parties that reliance on the NYISO's proposed public policy planning process is not feasible in this case. As an initial matter, FERC has not yet acted upon the NYISO/NYTO compliance filing and it is uncertain when it will do so. Second, the Commission intends to initiate a proceeding, pending the FERC's approval of the compliance filing, and to solicit input from interested stakeholders in developing procedures for carrying out our responsibilities under the planning process. Accordingly, there are currently no tariff provisions or procedures that can be applied to the action requested in the Con Edison/NYPA Filing.

Moreover, the proposed transmission planning process pending before FERC contemplates a formal analysis by the NYISO, followed by NYISO stakeholder review and NYISO Board approval of the planning studies. This process will take considerable time to complete. In contrast, the IP Contingency Plan requires the expeditious solicitation, analysis, and identification of preferred projects. We also note that the proposed process under FERC Order No. 1000 solely addresses cost recovery for transmission projects, whereas this case is considering a broader range of resources, including generation and demand reduction.

#### Analysis and Evaluation

Since the portfolio of projects preferred to meet the potential reliability may include one or more TOTS projects and one or more of the projects identified through the RFP, we expect DPS Staff's analysis will evaluate the TOTS projects and RFP-response projects individually and compared against each

other to identify the preferred portfolio of projects. We reiterate our finding in the March 15 Order that "DPS Staff may utilize the evaluation process listed in the [Con Edison/NYPA] Filing, but is not required to do so; we expect Staff will evaluate the RFP proposals and the TOTS [projects] in a manner that will assist us in determining what portfolio of resources will meet our reliability objectives at the least cost and with the greatest benefit to ratepayers and to the public interest."<sup>16</sup>

While this order is intended to facilitate the timely undertaking of preliminary planning work on the TOTS projects, we fully expect that additional information and analysis regarding each of the TOTS projects will be provided. For instance, we note that the Con Edison/NYPA Filing does not specify the contribution of the TOTS projects toward the capacity deficiency estimates. To ensure DPS Staff can conduct an independent review and evaluation of the TOTS projects on a comparable basis with qualifying RFP responses,<sup>17</sup> we expect that the contribution of each TOTS project toward the deficiency will be filed along with the additional TOTS information needed to assure there is a comparable level of information for all proposals is available.<sup>18</sup> This addresses several of the concerns raised by the Environmental Defense Fund and Entergy Nuclear Fitzpatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC and Entergy Nuclear Operations, Inc. (collectively, Entergy) regarding the Con Edison/NYPA Filing, which assert that insufficient information has been provided to compare the cost effectiveness of the proposed TOTS solutions with the cost effectiveness of other projects.

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<sup>16</sup> March 15 Order, p. 11.

<sup>17</sup> March 15 Order, p. 11.

<sup>18</sup> Con Edison/NYPA Filing, p. 19.

We reject the arguments raised by West Point Partners, LLC, Cricket Valley Energy Center LLC, NRG Energy, Inc., and IPPNY which assert that allowing the TOTS projects to proceed and to recover limited costs in advance of determining a preferred portfolio of resources is discriminatory, is biased in favor of the TOTS projects, or provides the Transmission Owners with an advantage over non-TO proposals. As stated in the March 15 Order, "[w]hile the RFP projects may receive a certain amount of ratepayer funding to address the 2016 reliability concern, these developers do not have the same regulatory responsibilities as the Transmission Owners. While we direct DPS Staff to evaluate TOTS and RFP-response projects on as comparable a basis as possible, including considering differences in cost certainty, it is neither necessary nor appropriate to provide identical cost recovery provisions for each."<sup>19</sup>

NY Transco

With respect to Con Edison and NYPA's indication that the TOTS projects will ultimately be transferred to NY Transco, we do not take a position at this time on whether such a transfer is appropriate.<sup>20</sup> We note that Nucor Steel Auburn, Inc. (Nucor) raises concerns that "[t]he NY Transco model will have permanent and far-reaching implications for transmission planning, construction and operations in New York with the rate-making consequences being placed beyond the Commission's jurisdiction to control."<sup>21</sup> We expect that the Transmission Owners will present a justification at an appropriate time as to

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<sup>19</sup> March 15 Order, p. 18.

<sup>20</sup> We anticipate that the NY Transco proposal will require certain Commission approvals, such as approval to transfer utility assets pursuant to Public Service Law §70.

<sup>21</sup> Nucor comments, pp. 8-9.



why the NY Transco approach best meets the needs of ratepayers and should be approved as in the public interest. We will review the NY Transco proposal at that time.

EE/DR/CHP/DG

As we have emphasized in other proceedings, EE/DR/CHP/DG can have significant benefits for ratepayers and the public interest.<sup>22</sup> Our objective here is to promote, as well as account for, a reasonably certain contribution of EE/DR/CHP and DG to the IPEC Contingency Plan. Con Edison's proposed EE/DR program, as clarified and modified by its Reply Comments, provides a worthwhile starting point for achieving our objective.

Con Edison seeks to achieve an incremental permanent peak demand reduction of 100 MW by the summer of 2016 (i.e., a permanent reduction in system peak that is 100 MW below the NYISO's 2012 baseline forecast). This target would be met through customer installations of EE and DR projects.

NYSERDA notes that a 100 MW permanent peak reduction target for EE and DR is "reasonably appropriate."<sup>23</sup> Con Edison and NYSERDA have years of experience working under EEPS and the system wide load reduction program. Both initiatives have given these parties an appreciation of the challenges inherent in achieving significant efficiency/peak reduction levels, and an awareness of the time it takes to achieve such gains. For that

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<sup>22</sup> Case 07-M-0548, Energy Efficiency Portfolio Standard, Order Establishing Energy Efficiency Portfolio Standard and Approving Programs (issued June 23, 2008); Cases 10-M-0457, et al., System Benefits Charge IV, Order Continuing the System Benefits Charge and Approving an Operating Plan for a Technology and Market Development Portfolio of System Benefits Charge Funded Programs (issued October 24, 2011); Case 03-E-0188, Retail Renewable Portfolio Standard, Order Instituting Proceeding (issued February 19, 2003).

<sup>23</sup> NYSERDA comments, p. 2

reason, we will give substantial weight to this shared estimate in the course of establishing targets and budgets to acquire these categories of resources.

Con Edison's most recent estimate of the cost of achieving this goal is within a range of \$150 to \$300 million.<sup>24</sup> NYSERDA suggests that a more reasonable cost to achieve a 100 MW peak reduction through incremental EE, load management and DR is on the order of \$155.5 million.<sup>25</sup> NYSERDA also provides a cost estimate of \$116.5 million to acquire an additional 50 MW of CHP. In the parties' further submission, as required below, we expect that the support for these estimates will be provided.

Categories of customer projects that Con Edison would seek to incentivize include: 1) fuel switching and renewable DG projects that impact peak demand, as well as gas and steam air conditioning projects; 2) lighting technology including LED lighting; and, 3) building management and control systems, in combination with efficient air conditioning that reduce peak electric demand (i.e., super-efficient chillers, variable refrigerant flow air conditioning, thermal (ice) storage, etc.)<sup>26</sup>

Con Edison has also added fuel switching/steam air conditioning projects to the list of alternative resources that should be considered. NYSERDA, similarly, points to such projects as a source of peak reduction.<sup>27</sup> We accept this additional category of possible projects as potentially consistent with our overriding objective to reduce peak.<sup>28</sup>

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<sup>24</sup> Con Edison Reply Comments, p. 9.

<sup>25</sup> NYSERDA Comments, p. 5

<sup>26</sup> Con Edison Reply comments, p. 9

<sup>27</sup> NYSERDA comments, p. 3.

<sup>28</sup> The listed categories are not intended to be limiting. Additional categories or types or projects may be determined to be consistent with the peak reduction objective.

NYSERDA suggests, however, that less reliance should be placed on LED-driven and traditional demand response projects and that more effort should be directed to customer load management and peak load management projects.<sup>29</sup>

To acquire these resources, Con Edison proposes to add to the incentives offered in its existing EEPS programs targeting large buildings, and to offer additional "project-level [cash] rebates" to the same customer group. These rebates would be offered to customers to the extent the customers achieve reductions in facility peak demand coincident with system peak.<sup>30</sup> As proposed, rebates would be scaled to increase directly with the magnitude of peak reduction, thus motivating customers to maximize peak reductions. Rebate levels would be determined following the outcome of customer outreach efforts, and would be made public by October 2013. Depending on customer response to initial rebates, initial rebate levels could subsequently be modified. Con Edison contemplates incentivizing 100% of the full cost of the project. NYSERDA believes, however, that incentives at this level are excessive and suggests that better results are delivered when customers and participants have "skin in the game" i.e., when private funds are contributed that leverage the ratepayer investment. Finally, the company proposes a cost-effectiveness test for potential projects, summarized as the ratio between the net present values of: (a) avoided energy, capacity, transmission and distribution (T&D), line loss and environmental costs, and (b) utility, customer, and program administrator costs.<sup>31</sup> The company urges us to afford it substantial flexibility in administering the

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<sup>29</sup> Id.

<sup>30</sup> Con Edison Reply Comments, pp. 5-6.

<sup>31</sup> Con Edison Reply Comments, p. 12.

program, given its ambitious goal and demanding timeframe. NYSERDA agrees with the need for flexibility.<sup>32</sup>

We find compelling NYSERDA's proposal that this element of the overall Contingency Plan be jointly managed by Con Edison and NYSERDA, and that NYPA continue to be engaged on a consultative basis.<sup>33</sup> NYSERDA has considerable expertise and known customer prospects for both efficiency/DR and on-site generation projects. Con Edison recognizes the need to "[c]oordinate marketing outreach and education with NYSERDA, including joint marketing and outreach efforts, to approach customers with a holistic solution that addresses all aspects of demand management and power quality"<sup>34</sup> and elsewhere observed the possibility of "joint opportunities with NYSERDA to achieve these incremental energy efficiency increases that contribute to peak load reductions."<sup>35</sup> We fully anticipate that joint management will eliminate the market confusion experienced under EEPS, which we attribute in part to competing programs, incentives and marketing of program administrators.

We find, as did a number of parties submitting comments, that this portion of the company's Contingency Plan requires expansion and/or added specificity in the following areas:

1. The Plan must address the potential contribution of on-site baseload generation - CHP and DG - beyond NYSERDA and NYPA CHP projects "in the pipeline." In that regard we take note of NYSERDA's proposal to

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<sup>32</sup> NYSERDA Comments, p. 2.

<sup>33</sup> NYSERDA also urges the Commission to consider requirements for closer coordination and clearer differentiation in roles between Program Administrators. NYSERDA Comments, p. 4.

<sup>34</sup> Con Edison Reply Comments, pp. 8-9.

<sup>35</sup> Compliance Filing, p. 11, n. 20.

increase the incremental contribution of CHP by 50 MW through an accelerated CHP development program.<sup>36</sup> Of particular interest is the prospect of taking advantage of resiliency initiatives including CHP that may be underway at hospitals and other institutional facilities.

2. The Plan must fully evaluate the potential contribution of large customers in the company's electric service territory, particularly those located in its steam service territory, who may be practically capable of switching from electric to steam driven chillers.
3. For efficiency, load management and demand response, the Plan must prioritize and segment the market. We agree with the company's focus on large customers, but we expect more detail on which building types (e.g., owner-occupied buildings, Class B office buildings, etc.) and other facilities the company and NYSERDA intend to pursue aggressively and why;
4. The Plan must include an integrated, fully justified "supply cost curve" for acquiring peak reduction MW from efficiency, demand response, load management, on-site baseload generation and fuel switching. Con Edison and NYSERDA's estimates of costs to achieve various targets are sobering, and for that reason we need to know approximately how many megawatts can be secured from what resource category at given cost/MW levels to make informed decisions on program targets and budget. The Plan must also propose the source and nature of any required financial incentive.

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<sup>36</sup> NYSERDA Comments, p. 5.

5. We share the concerns of several parties about the significant costs of the program.<sup>37</sup> The Plan must propose means to discipline and minimize the level of project support required. While use of RFPs, though time-consuming, could introduce such discipline; other means may be available. The Plan should also indicate the means for limiting financial support to projects that otherwise would not come on line in a timely fashion, including keeping incentives less than 100% of project costs.
6. New York City's concerns about the impact of the plan on other programs are reasonable. The revised Plan needs to provide further detail on how this new program will build on and/or be integrated with existing programs like EEPS, T&MD and RPS.

We direct Con Edison to work with NYSERDA, in consultation with NYPA, to jointly prepare and submit a revised plan accounting for the above discussion within 45 days. Based on this revised plan, which we will consider together with responses to the generation/transmission RFP, we expect to establish program goals and budgets before the end of the summer.

State Environmental Quality Review Act (SEQRA)

We have considered our responsibilities under SEQRA, and we conclude that the action we undertake with this order constitutes a "Type II action," not subject to environmental review under the statute.<sup>38</sup> Our approval of interim funding for preliminary development of the TOTS does not commit us or the project sponsors to implement any specific project or solution.

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<sup>37</sup> New York City Reply Comments, p. 5; Multiple Intervenors Reply Comments, p. 2.

<sup>38</sup> 6 NYCRR §617.2.

Thus, we do not know, at this stage of the planning process, whether any of the TOTS projects or some other project may eventually need to be implemented under the IPEC Contingency Plan, but we believe it is prudent for the utilities to plan for that possibility. The steps we take here are limited to confirming the utilities' obligation to undertake preliminary planning activities for the initial development of the TOTS projects, and EE/DR/CHP programs as a matter of electric system planning, and do not include approval of the siting or construction of any facilities or any authorization to take any action that would have a potentially significant impact on the environment. Further evaluations and determinations must be made before any project can move into the implementation phase and before any environmental impact is likely to occur; including a future determination of this Commission on which projects are eligible for funding through a cost allocation/cost recovery methodology which we have not yet adopted. Finally, the actual environmental impacts of any project for which we approve funding will be evaluated prior to construction under Article VII or Article 10 of the PSL, or pursuant to SEQRA, and this Order would not affect the need for or the scope of any such review at that time.

#### CONCLUSION

Because the potential retirement of IPEC raises significant reliability issues that could threaten the public health, safety, and welfare, we have required Con Edison, in consultation with NYPA, to develop a plan to address this contingency by ensuring safe and adequate service will be maintained. The prompt issuance of an RFP, as approved in the March 15 Order, was a reasonable initial step in planning what

resources could be available to meet the potential reliability need date of summer 2016.

This order provides that the TOTS projects and the EE/DR/CHP projects, as described in the Con Edison/NYPA Filing and further described in this order, will be advanced in parallel with the issuance of the RFP and the identification of the preferred RFP projects. This coordination will help ensure the timely development of the range of resources that may be needed.

While we have begun to describe the methodologies that will be used for cost allocation and recovery here for the preferred IPEC contingency projects, a further process, as described above, and order will be needed to complete our decision on these issues. In addition, as set forth in the March 15 Order and in this order, we expect to conclude our discussion of the other aspects of the Con Edison/NYPA Filing, particularly the identification of resources that may ultimately be preferred to meet the IPEC contingency need, in a future order.

The Commission orders:

1. Consolidated Edison Company of New York, Inc. and the New York Power Authority's plan to pursue the Transmission Owner Transmission Solutions projects is approved, subject to the conditions discussed in the body of this order.

2. Consolidated Edison Company of New York, Inc. (Con Edison) and New York State Electric and Gas Corporation shall coordinate with Central Hudson Gas & Electric Corporation and the New York Power Authority (NYPA), and shall undertake the preliminary planning activities related to the Transmission Owner Transmission Solutions, as discussed in the February 1,



2013 filing by Con Edison and NYPA, and as discussed in the body of this order.

3. Consolidated Edison Company of New York, Inc. and New York State Electric and Gas Corporation shall coordinate with Central Hudson Gas & Electric Corporation and the New York Power Authority, and file information for the Transmission Owner Transmission Solutions that is comparable with the information required in the Request for Proposals issued on April 3, 2013. This information shall be filed with the Secretary within 45 days after issuance of the Request for Proposals.

4. Department of Public Service Staff shall prepare a cost allocation/cost recovery straw proposal for further comments by the parties, as discussed in the body of this order.

5. Consolidated Edison Company of New York, Inc. shall work with the New York State Energy Research and Development Authority, in consultation with the New York Power Authority, to jointly prepare a revised plan for energy efficiency, demand reduction, combined heat and power, and distributed renewable generation initiatives, as discussed in the body of this order, and to file such plan within 45 days of the date of this Order.

6. The Secretary may extend the deadlines set forth in this Order.

7. This proceeding is continued.

By the Commission,

(SIGNED)

JEFFREY C. COHEN  
Acting Secretary

Commenting Parties

African American Environmentalist Association  
Boilermakers Local Lodge No. 5  
Business Council of New York State  
Business Council of Westchester  
Brookfield Renewable Energy Group  
Central Hudson Gas & Electric  
Cogen Technologies Linden Venture, LP  
Consolidated Edison Company of New York, Inc.  
Consolidated Edison Solutions, Inc.  
Consumer Power Advocates  
Cricket Valley Energy Center LLC  
Entergy Nuclear Indian Point 2, LLC, et al.  
Environmental Defense Fund  
H.Q. Energy Services  
Independent Power Producers of New York, Inc.  
Multiple Intervenors  
Natural Resource Defense Council and Pace Energy and Climate  
Center  
New York Affordable Reliable Electricity Alliance  
New York Battery and Energy Storage Technology Consortium, Inc.  
New York City Hispanic Chamber of Commerce, Inc.  
New York City Office of Long-Term Planning and Sustainability  
New York Energy Consumers Council, Inc.  
New York State Assemblyman Joseph D. Morelle  
New York State Assemblyman William A. Barclay  
New York State Department of Environmental Conservation  
New York State Energy Research and Development Authority  
New York State Senator George D. Maziarz  
New York State Senator Kevin S. Parker  
New York State Senator Mark Grisanti  
New York State Senator Ted O'Brien  
New York State Senator Timothy M. Kennedy  
NRG Energy, Inc.  
Nucor Steel Auburn, Inc.  
Pure Energy Infrastructure, LLC  
Retail Energy Supply Association  
Rockland Business Association  
Sierra Club  
Town of Huntington, New York

United Brotherhood of Carpenters and Joiners of America (New  
York City District Council of Carpenters)  
Utility Workers Union of America Local 1-2  
Westchester County Association  
West Point Partners, LLC