



**Public Service
Commission**

Public Service Commission

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Three Empire State Plaza, Albany, NY 12223-1350
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June 6, 2018

SENT VIA ELECTRONIC FILING

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Docket No. EL18-143-000 - Public Service Electric
and Gas Company v. Consolidated Edison Company of
New York, Inc.

Dear Secretary Bose:

Attached for filing in the above-referenced proceeding, please find the Protest of the New York State Public Service Commission. The parties have also been provided a copy of this filing, as indicated in the attached Certificate of Service. Should you have any questions regarding the attached, please feel free to contact me at (518) 402-1537.

Very truly yours,

S. Jay Goodman

S. Jay Goodman, Esq.
Assistant Counsel

Attachment
cc: Service List

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

Public Service Electric and Gas)	
Company)	
)	
v.)	Docket No. EL18-143-000
)	
Consolidated Edison Company)	
of New York, Inc.)	
)	

**NOTICE OF INTERVENTION AND PROTEST OF
THE NEW YORK STATE PUBLIC SERVICE COMMISSION**

INTRODUCTION

On May 3, 2018, Public Service Electric and Gas Company (PSEG) filed a complaint (the Complaint) regarding the "B" and "C" electric transmission lines interconnecting New York and New Jersey that are co-owned by PSEG and Consolidated Edison Company of New York, Inc. (Con Edison). In its Complaint, PSEG requests that the Federal Energy Regulatory Commission (Commission) direct Con Edison to remove dielectric fluid from the B and C lines and retire the transmission facilities from use.

The B and C transmission lines extend, in underwater conduit pipes, from New Jersey to New York City. PSEG and Con Edison own the lines on their respective sides of the bi-state border. On the New Jersey side, the lines transition from

traveling underground to traveling underwater near a pier owned by Newport.¹ PSEG asserts that portions of the pier collapsed in 2008 and 2009, thereby dropping hundreds of tons of concrete into the water and on top of the electric transmission lines. The Complaint presents information purporting to demonstrate that the conduit and pipe housing the B line have been damaged, but it presents no information purporting to demonstrate that the C line also was damaged.

A dielectric fluid leak was discovered in 2016. PSEG and Con Edison traced the leak to the B line. They repaired the leak and de-energized the lines in January 2018 while confirming there were no other leaks. PSEG asserts a concern about potential future leaks and seeks to drain the remaining dielectric fluid and retire both interconnecting transmission lines from service. Con Edison, however, maintains the integrity of the lines and intends to re-energize the B and C lines.²

As discussed below, the New York State Public Service (NYPSC) opposes the relief sought in the Complaint because PSEG inappropriately seeks an end-run around matters that are the subject of federal litigation currently pending before the U.S.

¹ The pier is owned by Newport Associates Development Company.

² Complaint, p. 5.

District Court for the District of New Jersey (D.N.J. Civil Action No. 16-08445).³ The litigation involves numerous claims and counterclaims between and among PSEG, Con Edison, and Newport that are fact-intensive and ill-suited to administrative resolution at this time. The Commission, therefore, should hold the Complaint in abeyance until the federal court litigation is complete. If, however, the Commission instead considers the substance of the Complaint, it should evaluate the inter-regional resilience of the B and C transmission lines, which interconnect the PJM Interconnection, L.L.C. (PJM) and New York Independent System Operator, Inc. (NYISO) control areas, before deciding whether to approve retirement of these transmission assets.

NOTICE OF INTERVENTION

The NYPSC hereby provides its Notice of Intervention and Protest pursuant to Rules 211 and 214(a)(2) of the

³ The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York State Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

Commission's Rules of Practice and Procedure, and the Notice of Extension of Time, issued on May 16, 2018.⁴

Copies of all correspondence and pleadings should be addressed to:

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PROTEST

I. The Commission Should Hold The Complaint In Abeyance Until The Pending Litigation Is Complete

PSEG alleges that the B and C transmission lines have been damaged to an extent that the only reasonable course of action is to drain the remaining dielectric fluid and retire the facilities permanently. The Complaint, however, does not justify Commission action regarding factual disputes that are the subject of the pending litigation before the United States District Court for the District of New Jersey.

⁴ 18 C.F.R. §§385.211 and 385.214(a)(2). The NYPSC is a regulatory body established under the laws of the State of New York with jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State, and is therefore a State Commission as defined in section 3(15) of the FPA (16 U.S.C. §796(15)).

The civil litigation involves numerous claims and counterclaims that present disputed factual issues including, for instance: (i) which party is responsible for the damage caused to the B line; (ii) the extent to which the lines are damaged; (iii) who is responsible for costs related to leak remediation and line repair; and (iv) the easement and contract rights and responsibilities of PSEG, Con Edison, and Newport. The NJ District Court has a full set of discovery tools available to build an evidentiary record on these issues, and will make factual findings and legal conclusions that are directly relevant to the relief requested in the Complaint.

The discovery tools available to the Commission are less robust and will not create as complete an evidentiary record as the pending litigation. This is problematic because the Complaint seeks relief based on the risk of a potential future leak from the B and/or C transmission lines. The Complaint, however, does not present sufficient evidence for the Commission to reach conclusions regarding this risk, or whether the potential risk outweighs the resilience value that the lines provide to the PJM and NYISO control areas. Developing a record adequate to address the factual disputes in this proceeding would require significant Commission and utility resources, and those resources would be duplicative of the on-going civil action in federal court. The Commission instead should hold the

Complaint in abeyance until the litigation is complete, and the resulting evidentiary record can inform this proceeding and ensure a consistent outcome.

Moreover, the Complaint represents an inappropriate attempt at forum shopping. PSEG initiated the pending civil action in federal court, but has not sought to include any relief with respect to Con Edison's removal of the dielectric fluid. PSEG's request to the Commission arises from the same nucleus of facts as the other claims presented in federal court litigation, and that request should have been presented to the NJ District Court for deliberation along with the other litigated issues.

Finally, PSEG fails to justify its request for expedited action by failing to present a compelling need for the Commission to act quickly - or at all - before the pending litigation is completed. PSEG acknowledges that the B line leak has been repaired, and there are no active leaks on either line.⁵ Consequently, Commission action is not needed to address an ongoing environmental harm. While PSEG asserts that there is a potential, future risk of a new leak, these speculative concerns

⁵ As noted above, PSEG's Complaint has not documented any damage to the C line.

do not outweigh the foregoing reasons to hold the Complaint in abeyance until the federal litigation concludes.

II. In The Alternative, If The Commission Considers The Substance Of The Complaint, It Should Examine The Resilience Value Of The B And C Lines Before Deciding Whether They May Be Retired

Notwithstanding the foregoing arguments, if the Commission considers the substance of the Complaint, it should evaluate the resilience value that the B and C transmission lines provide to the PJM and NYISO control areas before deciding whether they can be retired. These lines, and other transmission facilities that run between New York and New Jersey, interconnect the PJM and NYISO control areas and enable energy transfers in either direction, including under emergency conditions. This capability enhances grid resilience in the event of major disturbances.

The Commission recently instituted a proceeding to conduct a holistic examination of bulk power system resilience.⁶ The order instituting that proceeding directed Regional Transmission Owners (RTOs) and Independent System Operators (ISOs) to support the Commission's review by detailing how they

⁶ Grid Resilience in Regional Transmission Organizations and Independent System Operators, 162 FERC ¶61,012 (issued January 8, 2018) (Resilience Order).

address bulk system resilience.⁷ In so ruling, the Commission concluded that “resilience remains an important issue that warrants the Commission’s continued attention...”⁸

Against this backdrop, PSEG seeks to retire two regional interties that support system resilience. PSEG claims that the B and C transmission lines provide no resilience benefit because the potential for a future leak creates “an unacceptable risk” that one or both lines will be taken out of service unexpectedly, at some indeterminate future time.⁹ That is, PSEG alleges that the speculative and potential risk of a future forced outage eliminates any resilience value that the B and C lines might otherwise have.

This argument is fatally flawed for two reasons. First, every asset on the system has an inherent failure risk and, therefore, an inherent risk that equipment failure will cause a forced outage at some indeterminate time in the future. Under PSEG’s reasoning, the concept of resilience would be eviscerated by trivializing the resilience value of every system asset. This is illogical and inconsistent with Commission policy.¹⁰ Second, PSEG does not present any analysis or data to

⁷ Id., ¶1.

⁸ Id., ¶13.

⁹ Complaint, p. 25.

¹⁰ See generally, Resilience Order.

prop up its claim that the B and C transmission lines provide no resilience benefits. This lack of supporting evidence would be inadequate even if the Commission were not currently taking a hard look at how RTOs/ISOs ensure bulk system resilience.

For the foregoing reasons, the Commission should not address PSEG's request to retire the B and C transmission lines without carefully evaluating the resilience value these transmission assets provide to the PJM and NYISO control areas. Further, the B and C lines are only a subset of the transmission lines that connect these control areas. The Commission should take a holistic approach, and examine the resilience value that the B and C transmission lines provide to each control area in the context of all interties that connect the two control areas.

CONCLUSION

For the reasons detailed herein, the NYPSC respectfully asks that the Commission hold the Complaint in abeyance until the related civil litigation in federal court is complete. If, however, the Commission instead decides to consider the substance of the Complaint, it should not make any decision on PSEG's request to retire the B and C transmission lines without conducting a detailed and holistic review of the resilience value these assets provide to the PJM and NYISO control areas.

Respectfully submitted,

/s/ Paul Agresta

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Dated: June 6, 2018
Albany, New York

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: Albany, New York
June 6, 2018

/s/ S. Jay Goodman

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