124 FERC ¶ 61,182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Hudson Transmission Partners, LLC Docket No. EL07-70-002

v.

New York Independent System Operator, Inc.

ORDER ON REQUESTS FOR CLARIFICATION

(Issued August 22, 2008)

1. Hudson Transmission Partners, LLC (HTP) and Cross Hudson Corporation (Cross Hudson) are Developers planning to construct competing interconnection projects. Both projects would require access to the same vacant ring bus at Consolidated Edison Company of New York's (ConEd's) West 49th Street Substation in New York City. In the January 2008 Order in this proceeding,[1] the Commission stated that, regardless of queue position, whichever project is first completed must have access to the vacant ring bus. The Commission also stated that if Cross Hudson connects to the vacant ring bus, it must fund construction of a new ring bus for the higher queued HTP project. HTP and the New York Independent System Operator, Inc. (NYISO) have submitted separate requests for clarification of the January 2008 Order. For the reasons discussed below, we grant NYISO's request for clarification, and deny HTP's request for clarification.

I. Background

2. Cross Hudson is planning to construct a 550 MW transmission line that will connect generation in Ridgefield, New Jersey to ConEd's West 49th Street Substation. In

[1] *Hudson Transmission Partners, LLC*, 120 FERC ¶ 61,179 (2007) (August 2007 Order), *reh'g denied*, 122 FERC ¶ 61,024 (2008) (January 2008 Order).

May 2001, Cross Hudson submitted an interconnection request to NYISO and was assigned Queue Position No. 93. In February 2005, Cross Hudson submitted a letter to NYISO withdrawing its project. However, in June 2006 Cross Hudson revived its project and was reassigned its original queue position.

3. HTP is planning to construct a 660 MW controllable transmission line that will connect the Bergen Substation in Bergen County, New Jersey to ConEd's West 49th Street Substation. In December 2005, HTP submitted an interconnection request to NYISO and was assigned Queue Position No. 206.[2]

4. After Cross Hudson revived its project, HTP filed a complaint against NYISO alleging that NYISO misapplied its Open Access Transmission Tariff (OATT) by preserving Cross Hudson's queue position after Cross Hudson provided written notice to NYISO withdrawing its project. HTP stated that because NYISO preserved Cross Hudson's queue position, Cross Hudson would have access to the vacant ring bus at ConEd's West 49th Street Substation and HTP would have to construct a new ring bus costing approximately $25 million.[3]

5. In the August 2007 Order in this proceeding, the Commission granted HTP's complaint and found that NYISO failed to properly administer its OATT. The Commission directed NYISO to remove the Cross Hudson project from Queue Position No. 93 and ordered NYISO to determine the project's appropriate queue position after receiving a new interconnection request. Cross Hudson submitted a new interconnection request and received Queue Position No. 255.

6. In the January 2008 Order, the Commission denied rehearing of the August 2007 Order and affirmed its interpretation of NYISO's OATT. The Commission also addressed Cross Hudson's concern that it would complete its project before HTP, but would have to delay connecting to NYISO because its lower queue position would prevent it from connecting to the vacant ring bus. In order to minimize delays in the interconnection process, the Commission stated its expectation that ConEd, as the transmission owner, would follow a procedure similar to the procedure outlined in *VEPCO*,[4] where the Commission directed a transmission owner to allow a lower queued

---

[2] The August 2007 Order contains a detailed account of the background and history of this proceeding, and of the Cross Hudson and HTP projects. *See* August 2007 Order, 120 FERC ¶ 61,179 at P 8-28.

[3] *Id*. P 28.

[4] *Virginia Electric & Power Co*., 104 FERC ¶ 61,249, at P 18-19 (2003) (*VEPCO*).

generator to complete its interconnection using transmission capability set aside for a higher queued competitor, provided that the lower queued generator was ready to complete its interconnection before the higher queued competitor and that it funded the upgrades necessary for the higher queued competitor to complete its interconnection when its project was finished.[5] Thus, in the January 2008 Order, the Commission stated that, regardless of queue position, whichever Developer completes its project first must be given the option of completing its interconnection using the vacant ring bus:

> Should the higher queued HTP [p]roject complete its interconnection first, the HTP [p]roject would have access to the available bus position and Cross Hudson would be required to build a new ring bus, as contemplated by the August [2007] Order. However, should the lower queued Cross Hudson project complete its interconnection first, the Cross Hudson [p]roject would have access to the available bus position. Then, when the HTP [p]roject is completed, Cross Hudson will have to fund a new ring bus for HTP's use. As both the HTP and Cross Hudson projects are viable and expected to be completed, such first-come-first-served interconnection should encourage the completion of both projects that will meet the energy needs of New York City in a timely manner.[[6]]

II. Requests for Clarification

A. NYISO

7. NYISO reads the January 2008 Order as indicating that HTP should be assigned use of the vacant ring bus because of its higher queue position, and that Cross Hudson should be assigned the cost of constructing a new ring bus because of its lower queue position, subject to the caveat that if Cross Hudson completes its project first, it may connect to the vacant ring bus and fund construction of a new ring bus for the HTP project. Although NYISO agrees with the Commission's goal of avoiding unnecessary delay in the interconnection process, it states that the course outlined in the January 2008 Order does not reflect how costs are allocated or facilities assigned under its OATT. NYISO states that Attachments S and X of its OATT do not assign facilities or allocate costs based on queue position, and thus it is possible that NYISO will assign use of the vacant ring bus to the lower queued Cross Hudson project and allocate the cost of constructing a new ring bus to the higher queued HTP project.[7] NYISO explains that it conducts Facilities Studies for a group of eligible projects belonging to a particular Class

---

[5] January 2008 Order, 122 FERC ¶ 61,024 at P 33.

[6] *Id*. (citation omitted).

[7] NYISO Request for Clarification at 5 (NYISO).

Year, identifies the System Upgrade Facilities (upgrades) necessary for the projects, and allocates the costs of the upgrades among the projects. NYISO states that these cost allocations are *not* based on queue position, and that if two projects are competing to use the same vacant ring bus, the project that enters the earlier Class Year will be assigned use of the ring bus while the project that enters the later Class Year, even if higher queued, will be assigned the cost of constructing a new ring bus.[8] NYISO maintains that neither the HTP project nor the Cross Hudson project has entered a Class Year, and thus it does not yet know which project will be assigned use of the vacant ring bus and which project will be assigned the cost of constructing a new ring bus.[9]

8. NYISO requests that the Commission clarify that it did not intend to require NYISO to override its cost allocation and generator interconnection procedures in order to implement the course outlined in the January 2008 Order. NYISO contends that it should be allowed to implement a *VEPCO*-like procedure after it has allocated costs and assigned facilities pursuant to its OATT (which means that either HTP or Cross Hudson may be assigned use of the vacant ring bus in the first instance and that either may be in the position to invoke a *VEPCO*-like procedure).

9. NYISO also seeks clarification that it, not ConEd, should play the lead role in implementing any *VEPCO*-like procedure. NYISO states that *VEPCO* was decided before Virginia Electric and Power Company entered PJM Interconnection LLC (PJM), and consequently, that there was no independent system operator (ISO) or regional transmission organization involved in the interconnection process in that case. In contrast, NYISO states that it is involved in this case as the ISO and that it is consistent with its OATT for it to play the lead role in implementing any *VEPCO*-like procedure.

10. Finally, NYISO seeks clarification on how to determine which project is "first completed," and thus how to determine when either HTP or Cross Hudson may invoke a *VEPCO*-like procedure. NYISO argues that the Commission should clarify that neither Developer may invoke such a procedure until it has an interconnection agreement that has been executed and/or filed with the Commission, has received all required permits or regulatory approvals and has executed any necessary construction and procurement

---

[8] *Id*. NYISO states that a project is included in a Class Year if, before the start of the Class Year study, its interconnection System Reliability Impact Study has been approved by NYISO's Operating Committee, and state regulators have determined that the applicable permit application has been completed. NYISO further states that projects could be members of the same Class Year, which might result in the sharing of costs among Developers.

[9] *Id*. at 6.

agreements.[10] NYISO further argues that the Developer must also adequately demonstrate that its construction is "significantly ahead" of the project initially assigned use of the vacant ring bus.[11] NYISO also contends that no *VEPCO*-like procedure should be implemented until after it has evaluated the reliability and design consequences of changing assignments.

11. Cross Hudson filed an answer arguing that all that should be required before invoking a *VEPCO*-like procedure is a showing that the requesting party is eligible to execute an interconnection agreement and that it has the necessary authorization to commence construction.

B. Commission Determination

12. We clarify that the Commission did not intend to require NYISO to override the existing cost allocation and facility assignment procedures in Attachments S and X of its OATT.

13. In earlier pleadings in this proceeding, the parties focused exclusively on disputes over queue position and on the consequences of dislodging or not dislodging Cross Hudson from Queue Position No. 93. As a result, the January 2008 Order treats queue position as the determinative factor in deciding which Developer will be assigned the vacant ring bus and implies that NYISO should assign the vacant ring bus to HTP because of its higher queue position.[12]

14. NYISO has now indicated that its OATT does not assign facilities or allocate costs based on queue position. We clarify that it was not the Commission's intention to

---

[10] *Id*. at 7.

[11] *Id*. at 8.

[12] January 2008 Order, 122 FERC ¶ 61,024 at P 26 ("By suddenly having its Project's Queue Position lower than that of the Cross Hudson Project . . . HTP has faced and would have faced additional costs. Such additional costs would have included the funds and time needed to construct a new ring bus at ConEd's West 49th Street Substation should HTP not have been granted access to the vacant bus position which Cross Hudson had abandoned."), P 32 ("Cross Hudson expresses concern over delays and cost increases to its project since, by being in a lower queue position than HTP, it will end up funding the construction of a new ring bus."), P 33 ("Should the higher queued HTP Project complete its interconnection first, the HTP Project would have access to the available bus position and Cross Hudson would be required to build a new ring bus, as contemplated by the August [2007] Order.") (internal footnotes omitted).

displace NYISO's existing cost allocation and facility assignment procedures or its intention to elevate queue position to a significance beyond that which it already has under the OATT.[13]

15. We also clarify that by introducing the prospect of ConEd employing *VEPCO* to benefit the lower queued Cross Hudson project, the Commission did not intend to prejudge the outcome of NYISO's cost allocation and facility assignment process.[14] Rather, the Commission presumed that NYISO planned to assign use of the vacant ring bus to HTP because of its higher queue position, and therefore that it was not possible for Cross Hudson to be assigned use of the vacant ring bus in the first instance. Moreover, we clarify that the purpose of introducing *VEPCO* into this proceeding was to provide a solution that would minimize delays in viable and anticipated projects completing their interconnection,[15] and that although the Commission's discussion of *VEPCO* in the January 2008 Order took place within the framework of queue position, the purpose the Commission was attempting to further is still applicable in this proceeding.[16] Thus, we direct NYISO to assign facilities and allocate costs to HTP and Cross Hudson pursuant to its OATT, and if the Developer initially assigned the cost of constructing the new ring bus (which may be either HTP or Cross Hudson) completes its project before the Developer initially assigned the use of the vacant ring bus (which may be either HTP or Cross Hudson), NYISO must avoid unnecessary delays by following a procedure similar

---

[13] We emphasize that our decision today does not affect our conclusion in the August 2007 and January 2008 Orders that NYISO misapplied its OATT by failing to remove Cross Hudson's project from the queue. Moreover, nothing in today's order is intended to deprive HTP of any legitimate advantages that it may have as a consequence of its position as the higher queued project. Our decision today merely clarifies that the Commission did not intend to displace the existing rules of NYISO's cost allocation process with a rule that unduly privileges queue position.

[14] As NYISO has indicated, neither the HTP project nor the Cross Hudson project has entered a Class Year, and thus it is not yet known which project will be assigned the vacant ring bus and which project will be assigned the cost of constructing a new ring bus.

[15] January 2008 Order, 122 FERC ¶ 61,024 at P 33.

[16] It remains possible that whichever project is assigned the cost of constructing the new ring bus will be finished before the project assigned the use of the vacant ring bus and therefore be faced with a delay in completing its interconnection. It is also possible that the cost of constructing the new ring bus will be shared between Cross Hudson and HTP.

to the procedure in *VEPCO*.[17] We further clarify that NYISO, and not ConEd, should play the lead role in implementing any *VEPCO*-like procedure.

16. Finally, NYISO seeks clarification on how it should determine when a project is "first completed" for the purpose of invoking a *VEPCO*-like procedure. In *VEPCO*, the Commission directed a transmission owner to give a lower queued project the option of interconnecting to the transmission system using transmission capability set aside for a higher queued project if the lower queued project was next in the queue, executed an interconnection agreement (or asked that an unexecuted interconnection agreement be filed with the Commission), and was proceeding on a timeline that placed its in-service date ahead of the higher-queued project.[18] In the context of NYISO's interconnection process, which treats queue position differently than the interconnection process involved in *VEPCO*, we clarify that a project assigned to a later Class Year[19] may invoke a *VEPCO*-like procedure and use facilities assigned to a project in an earlier Class Year if it executes an interconnection agreement or asks that an unexecuted interconnection agreement be filed with the Commission and is proceeding on a time-line that places its in-service date ahead of the project originally assigned the facilities. We note, however, that NYISO is free to initiate a stakeholder process to develop and propose different criteria, to be applied prospectively, for determining when a project is "first completed."

C. **HTP**

17. HTP interprets the January 2008 Order as implying that its project has priority in connecting to the vacant ring bus because it has a higher queue position,[20] and requests that the Commission clarify how it will maintain this priority if Cross Hudson connects to the vacant ring bus, but construction of the new ring bus is not complete when HTP is ready to complete its interconnection. HTP argues that in order to maintain its priority, the Commission should clarify that if Cross Hudson connects to the vacant ring bus, it must fund the new ring bus in a way that ensures its timely completion, such that HTP is able to interconnect as soon as it is ready. HTP further argues that the Commission

---

[17] Thus, our decision today does not affect our conclusion in the January 2008 Order that whichever project is first completed, regardless of queue position, must have access to the vacant ring bus.

[18] *VEPCO*, 104 FERC ¶ 61,249, at P 19.

[19] In order to enter a Class Year, a project must have its System Impact Study approved by the NYISO Operating Committee and state regulators must determine that all applicable permits are completed.

[20] HTP Request for Clarification at 5-6.

should clarify that if the new ring bus is not finished when HTP is ready to connect, Cross Hudson must disconnect and surrender its ring bus to HTP without delay.

18. Cross Hudson filed an answer opposing HTP's requested clarification, arguing that it goes beyond the requirements of the January 2008 Order. HTP filed an answer to Cross Hudson's answer.

D. Commission Determination

1. Procedural Matters

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[21] prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept HTP's answer and will, therefore, reject it.

2. Substantive Matters

20. We find that the premise underlying HTP's request for clarification is inconsistent with our decision in this order to grant clarification to NYISO, and therefore we deny the petition. HTP contends that the January 2008 Order implies that it has priority in connecting to the vacant ring bus because of its higher queue position; however, NYISO has now explained that facility assignments and cost allocations depend more on Class Year than on queue position, such that if two projects are competing to use the same ring bus, the project that enters the earlier Class Year will be assigned use of the ring bus while the project that enters the later Class Year, even if higher queued, will be assigned the cost of constructing a new ring bus. Since neither the HTP project nor the Cross Hudson project has entered a Class Year, it is not yet known which project will be assigned use of the vacant ring bus. Thus, HTP is incorrect in asserting that it has a priority based on queue position.

21. We also find that resolution of the question of what steps are required to maintain a Developer's priority to a vacant facility when a competing Developer connects to that facility under a *VEPCO*-like procedure is premature and outside the scope of this proceeding. Accordingly, we deny HTP's request for clarification.

The Commission orders:

(A) NYISO's request for clarification is hereby granted, as described in the body of this order.

---

[21] 18 C.F.R. § 385.213(a)(2) (2008).

(B) HTP's request for clarification is hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.