

123 FERC ¶ 61,093
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER08-618-000

ORDER ACCEPTING INTERCONNECTION AGREEMENT FOR FILING

(Issued April 29, 2008)

1. On February 29, 2008, the New York Independent System Operator, Inc. (NYISO) and Consolidated Edison Company of New York, Inc. (Con Ed) submitted for filing¹ under section 205 of the Federal Power Act (FPA)² an unexecuted Interconnection Agreement (IA) governing the interconnection of Linden VFT, LLC's (Linden) merchant transmission project (VFT Project) with Con Ed's Goethals Substation.³ For the reasons discussed below, we accept the proposed IA for filing.

I. Background

2. The VFT Project will increase by approximately 300 MW the transmission transfer capacity of an existing 345 kV oil-filled pipe-type transmission line that runs from Linden's cogeneration facility (Cogen Facility) in Linden, New Jersey to Con Ed's Goethals Substation. The VFT Project consists primarily of three 100 MW variable frequency transformers, air-cooling (i.e., a radiator) for circulating dielectric fluid through the annular space surrounding the cables of the existing 345 kV line, a new 230 kV three-breaker ring bus switchyard connecting the VFT Project to the PJM Interconnection, L.L.C. (PJM) transmission system, and approximately 1,000 feet of new 345 kV transmission cable connecting the VFT Project to a spare breaker position in the

¹ NYISO and Con Ed submitted the filing together; however the filing states NYISO's position.

² 16 U.S.C. § 824d(a) (2000 & Supp. V 2005).

³ NYISO, Con Ed, and Linden are all parties to the IA: NYISO as the Transmission Provider, Con Ed as the Transmission Owner, and Linden as the Developer.

Cogen Facility's 345 kV ring bus.⁴ The VFT Project will interconnect with the Goethals Substation at a point on the existing 345 kV line that is the legal boundary between the State of New York and the State of New Jersey.

3. The VFT Project was studied pursuant to the interconnection study process in Attachments S and X to NYISO's Open Access Transmission Tariff (OATT). The process covered a period of 61 months and included an Interconnection System Reliability Impact Study and an Interconnection Facilities Study. The Final Study Report was issued on August 16, 2007.

II. Description of Filing

4. NYISO states that the proposed IA substantially conforms to the *pro forma* Large Generator Interconnection Agreement (LGIA) in Attachment X to its OATT. However, NYISO states that the parties have made limited revisions to the *pro forma* LGIA to reflect that Linden is constructing a merchant transmission project rather than a generation project.⁵ NYISO states that the parties have deleted or revised provisions of the *pro forma* LGIA that do not apply to the VFT Project,⁶ revised or modified provisions to account for the VFT Project's specific metering⁷ and reactive power requirements,⁸ and revised other provisions to reflect the negotiated mutual agreement

⁴ The VFT Project will be isolated from the Cogen Facility by a disconnect switch.

⁵ NYISO states that the parties have attempted to keep the number of deviations from the *pro forma* LGIA to a minimum.

⁶ For example, the parties have deleted or revised provisions related to power system stabilizers, under and over frequency, protection requirements, and information supplementation. The parties have also deleted the *pro forma* terms "Large Generating Facility" and "Standard Large Generator Interconnection Agreement," added the terms "Merchant Transmission Facility" (defined as "the Developer's facility for the transmission of electricity") and "Point of Connection" (defined as the point where the VFT Project connects to the Cogen Facility ring bus) and, in limited circumstances, replaced the words "export," "generated," or "produced," with the word "transmit."

⁷ For example, the parties added the term "Delivery Point," revised the definition of the term "Metering Equipment," and substituted a revised Article 7 that specifically addresses the meters that the VFT Project will use, mandates that the metering requirements for Linden adhere to the metering requirements described in Appendix C to the Interconnection Agreement, and provides specific equipment testing requirements.

⁸ For example, section 9.5.1 (Power Factor Design Criteria) has been modified to provide that the power factor will be measured at the Delivery Point and must have a
(continued...)

between Con Ed and Linden. NYISO also states that the parties have deleted the *pro forma* Appendix G and replaced it with an Appendix G negotiated by Con Ed and Linden. NYISO asserts that all the parties agree on these modifications.

5. NYISO states that there are provisions in the proposed IA that remain in dispute. NYISO states that section 4.1.1 of the *pro forma* LGIA requires NYISO to provide Network Access Interconnection Service to Linden at the Point of Interconnection. NYISO states that this service is based on the Minimum Interconnection Standard and does not impose any deliverability test or requirement. NYISO states that Con Ed supports a deliverability test.

6. NYISO states that the proposed IA calls for the reconfiguration of certain equipment in the Goethals Substation into a ring bus. NYISO states that the reconfiguration includes an overhead feeder that crosses over one section of the ring bus before connecting to another section of the ring bus. NYISO states that Con Ed opposes this configuration based on the concern that multiple resources would be lost in the event that the overhead feeder collapsed onto the ring bus. NYISO states that the proposed reconfiguration was studied in the Interconnection Facilities Study required by NYISO's OATT, that Con Ed participated in the study, and that Con Ed has cited no reliability rule or standard to support its objection.

7. NYISO states that Con Ed has indicated that one consequence of the VFT Project is that a future Developer at the Goethals Substation will be required by applicable reliability standards to relocate feeder nos. 25 and 26 when constructing a future project. NYISO states that Con Ed has proposed that Linden bear the relocation costs. NYISO opposes Con Ed's position. NYISO states that the interconnection cost allocation rules in its OATT provide that a Developer like Linden shall have no responsibility for the future interconnection costs of future Developers, and that these rules are explicitly incorporated in section 5.17.3 of the *pro forma* LGIA. NYISO claims that the relocation of feeder nos. 25 and 26 was not part of the Interconnection Facilities Study, and that there is no basis in the OATT for Con Ed's argument.

range of 0.85 lagging to 0.95 leading, section 9.5.2 (Voltage Schedules) has been revised to provide that voltage at the Point of Interconnection is within the range of 346 kV to 362 kV, in accordance with specific Con Ed engineering requirements, and sections 9.5.2.1 (Governors and Regulators) and 9.5.3 (Payment for Reactive Power) have been deleted.

8. NYISO further states that the Interconnection Facilities Study identified the System Upgrade Facilities⁹ needed for the VFT Project. NYISO states that sections 5.1.3 and 5.2 of the Proposed IA (Option to Build) specify that Linden will perform the design, procurement, and construction work needed for these System Upgrade Facilities. NYISO states that Con Ed wants Linden to also reimburse Con Ed for the costs that Con Ed will incur overseeing Linden's engineering and construction work, operating and maintaining the System Upgrade Facilities, and paying property taxes assessed on the System Upgrade Facilities. NYISO opposes Con Ed's proposal. NYISO states that Attachment S allocates responsibility only for the costs associated with the design, procurement, and construction of System Upgrade Facilities. NYISO states that its OATT does not in any way address the cost allocation for operating and maintaining the System Upgrade Facilities once they are installed, and that this issue is the subject of current discussions among Con Ed, NYISO, and other New York Transmission Owners. NYISO states that there is currently no basis in its OATT for Con Ed's proposal.

9. Finally, NYISO requests that the Commission waive the sixty day notice requirement and accept the Proposed IA, effective February 29, 2008.

III. Notice of Filing and Responsive Pleadings

10. Notice of NYISO's filing was published in the *Federal Register*,¹⁰ with comments and interventions due on or before March 21, 2008. The New York State Public Service Commission filed a notice of intervention. Con Ed and Linden filed separate motions to intervene and comments. NYISO filed an answer to Con Ed's comments.

⁹ System Upgrade Facilities is defined in the proposed IA as:

[T]he least costly configuration of commercially available components of electrical equipment that can be used, consistent with good utility practice and Applicable Reliability Requirements, to make the modifications to the existing transmission system that are required to maintain system reliability due to: (i) changes in the system, including such changes as load growth and changes in load pattern, to be addressed in the form of generic generation or transmission projects; and (ii) proposed interconnections. In the case of proposed interconnection projects, System Upgrade Facilities are the modifications or additions to the existing New York State Transmission System that are required for the proposed project to connect reliably to the system in a manner that meets the NYISO Minimum Interconnection Standard.

¹⁰ 73 Fed. Reg. 13,878 (2008).

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹¹ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹² prohibits an answer to a comment or protest unless otherwise ordered by the decisional authority. We will accept NYISO's answer because it has provided information that assisted us in our decision-making process.

A. Deliverability Requirement

1. Con Ed's Comments

13. Con Ed argues that the proposed IA improperly excuses Linden from compliance with the deliverability requirement that NYISO proposed on October 5, 2007 in Docket No. ER04-449-003. Con Ed explains that the deliverability requirement is NYISO's response to the Commission's directive in Order No. 2003¹³ to establish a new interconnection service (Capacity Resource Interconnection Service (CRIS)) that assures that the power produced by a generation project or delivered by a transmission project will be deliverable over the transmission system to relevant markets.

14. Con Ed states that the issue of whether the deliverability requirement should apply to Linden is currently pending before the Commission in another proceeding. Con Ed argues that the issue should be decided there, and that in this proceeding the Commission should either defer acting on the proposed IA until it decides the deliverability issue, or specify that its decision in this proceeding is contingent on its holding on the deliverability issue.

15. Con Ed also argues that the Commission should defer acting on the proposed IA because it would render moot a petition for clarification filed by NYISO regarding Linden's request for Unforced Capacity Deliverability Rights (UDRs).

¹¹ 18 C.F.R. § 385.214 (2007).

¹² *Id.* § 385.213(a)(2).

¹³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 21 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at P 416 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

2. Commission Determination

16. In *New York Independent System Operator, Inc.*,¹⁴ the Commission held that the deliverability requirement does not apply to the VFT Project. The Commission also addressed NYISO's petition for clarification regarding Linden's request for UDRs. Accordingly, we dismiss this argument as moot.

B. Ring Bus Reconfiguration and Relocation of Feeder Nos. 25 and 26

1. Con Ed's Comments

17. Con Ed argues that the proposed reconfiguration of the Goethals Substation into a ring bus with an overhead feeder (feeder no. 22) crossing over one section of the ring bus before connecting to another section raises several reliability concerns. For example, Con Ed claims that this configuration poses a contingency concern because the failure and collapse of feeder no. 22 would cause the loss of other resources or loads that are connected to the bus below the crossing. Con Ed states that a collapse of feeder no. 22 would disable feeder no. 25, a major 345 kV connection between Staten Island and Brooklyn, and most likely disable feeder no. 21, a 345 kV feeder that indirectly serves distribution networks on Staten Island.

18. Con Ed also claims that the proposed ring bus configuration will constrain system operations during periods when maintenance (scheduled or unscheduled) is done on feeder no. 25. Con Ed states that because of height restrictions caused by the crossing, feeder no. 22 will have to be taken out of service in order to safely perform maintenance on feeder no. 25. Con Ed states that this would effectively limit its ability to deliver power to Brooklyn and Staten Island, adversely impact system reliability, and necessitate a re-dispatch of generation that would increase prices for all power that is purchased in the NYISO in-city markets.

19. Con Ed argues that the proposed reconfiguration will frustrate the second-contingency design criterion that Con Ed applies in designing and operating its own system. Con Ed states that, unlike most utilities, it designs and operates its high voltage system to survive two contingencies, rather than one, without loss of load. Con Ed claims that if the reconfiguration proceeds as proposed, it will have to operate and possibly upgrade its system to assure that a third contingency (which would be the second contingency, absent the crossing) would not result in a loss of load. Con Ed argues that consumers should not be required to bear these costs, particularly because they arise from facility modifications that benefit only Linden.

¹⁴ 122 FERC ¶ 61,267, at PP 63-67 (2008).

20. Con Ed states that the avoidance of overhead crossings of busses is a local reliability concern, and that they are not prohibited by national or regional Reliability Standards. Con Ed admits that it has previously allowed such overhead crossings, but states that it has recently amended its System Operating Procedure No. EP-7100-5 to avoid overhead crossings and single contingencies.¹⁵

21. Con Ed claims that there is no good reason to exempt the VFT Project from its procedures. Con Ed claims that the proposed ring bus crossing was not addressed previously because no Feasibility Study was done for the VFT Project¹⁶ and because the System Reliability Impact Study was limited to voltage, thermal, and stability issues. Con Ed states that the proposed reconfiguration was indicated for the first time in the formulation of the Facilities Study Report in mid-2007, and that after reviewing the report, Con Ed notified NYISO and Linden of its concerns. Con Ed states that these concerns would be alleviated and the reconfiguration accomplished by “undergrounding” feeder no. 22 rather than crossing it overhead.

22. Similarly, Con Ed claims that the proposed ring bus reconfiguration is inconsistent with the design basis for the Goethals substation and will require the next Developer to relocate feeder nos. 25 and 26 in order to avoid a reliability problem.

23. Con Ed explains that the design basis for the Goethals Substation is a breaker-and-a-half configuration, which means that generation resources and load are connected to parallel bus bays and that the ends of each bay are connected to the ends of the other bays by two synchronizing (syn) buses. Con Ed states that it advised Linden of this design configuration, and that this design configuration was reviewed in the Facilities Study. Con Ed claims that Linden nevertheless chose to convert the existing configuration of two independent buses into a ring bus. Con Ed claims that this step was viewed as a transition to the breaker-and-a-half configuration, and that it could in fact serve as a transition, but for Linden’s proposal to connect feeder nos. 25 and 26 to segments of the ring bus that will become the syn buses of the breaker-and-a-half configuration.

24. Con Ed claims that the connection of generation resources or transmission lines to a syn bus poses a reliability concern similar to the concern associated with the ring bus reconfiguration. For example, Con Ed states that if feeder nos. 25 and 26 are connected

¹⁵ Con Ed Comments at 15. The amendments Con Ed refers to are to a section of the System Operating Procedure No. EP-7100-5 entitled “Transmission Planning Criteria,” dated February 2008. *See* Con Ed at 15, Attachment No. 2.

¹⁶ In its answer, NYISO states that a feasibility study was not part of NYISO’s interconnection procedures when Linden filed its application in July 2002. NYISO Answer at n.17.

to syn buses and a breaker is out of service for maintenance, a fault on either of those feeders would cause all of the adjacent breakers on the interconnected bays to open and result in the loss of a second feeder.

25. Con Ed states that it has syn bus connections in a number of substations, and that its experience with those arrangements has highlighted a reliability concern that has led it to prohibit such connections prospectively. Con Ed states that new syn bus connections are specifically barred by its System Operating Procedure No. EP-7100-5.

26. Con Ed states that a ring bus configuration “is ordinarily a reliable arrangement,” but that the “virtual certainty” that the Goethals Substation will be further developed and converted to a breaker-and-a-half configuration suggests that more is required under the proposed IA.¹⁷ Con Ed argues that by modifying the substation in a way that leaves feeder nos. 25 and 26 connected to a prospective syn bus, Linden is imposing a foreseeable burden on the next developer to remove the feeders from the syn bus. Con Ed asserts that Linden’s modifications of the Goethals Substation are not required for system reliability and merely advance Linden’s economic interests. Con Ed argues that under these circumstances, Linden should bear the cost of relocating feeder nos. 25 and 26 when relocation is needed to accommodate the next connection to the Goethals Substation.

2. Linden’s Comments

27. Linden argues that Con Ed’s reliability concerns are a pretext for Con Ed to impose on Linden a more costly reconfiguration of the Goethals Substation than the reconfiguration approved by NYISO. Linden claims that Con Ed wants Linden to reconfigure the Goethals Substation into a breaker-and-a-half substation in order to reduce Con Ed’s expenses when it expands the Goethals Substation.

28. Linden states that the ring bus configuration proposed in the IA is the configuration that has been studied and approved by NYISO throughout the multi-tiered review process set forth in NYISO’s OATT. Linden states that it has fully complied with NYISO’s interconnection study process, and that Con Ed was an active participant in the development and completion of the Interconnection Facilities Study. Linden states that Con Ed did not raise any reliability concerns until December 21, 2007, four months after the Interconnection Facilities Study became final.¹⁸

¹⁷ Con Ed Comments at 18.

¹⁸ The Interconnection Facilities Study became final on August 16, 2007. Linden states that Con Ed sent a letter one month later, on September 14, 2007, that outlined

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29. Linden argues that Con Ed cannot enforce the recent amendments to Con Ed's System Operating Procedure No. EP-7100-5 against Linden. Linden states that Con Ed has not claimed that these amendments qualify as an Applicable Reliability Standard or a Local Reliability Rule under NYISO's OATT, and that there is no other basis in the OATT for applying them to Linden. Linden contends that even if the amendments qualified as a Local Reliability Rule, Con Ed cannot allocate to itself all decision making authority over the NYISO interconnection processes within its service area. Linden claims that Commission precedent forecloses the possibility of Con Ed imposing local reliability requirements without the prior approval of NYISO and the New York State Reliability Council (NYSRC).¹⁹

30. Linden contends that even if the amendments were properly adopted, NYISO's OATT prohibits their application to Linden. Linden states that Attachment S to NYISO's OATT provides that the reliability requirements that are applied in all interconnection studies are those in effect when the particular study is commenced. Linden states that Con Ed's recent amendments were adopted in February 2008, a full 20 months after NYISO commenced (in June 2006) its study of the VFT Project, and approximately six months after the Interconnection Facilities Study became final.

3. NYISO's Comments

31. NYISO states that the ring bus configuration proposed in the IA was studied in the Interconnection Facilities Study, and that Con Ed participated in this study. NYISO states that the Class Year interconnection and cost allocation report that included the VFT Project was thoroughly vetted through the NYISO stakeholder process during the spring and summer of 2007, and that the NYISO Transmission Planning Advisory Subcommittee discussed and revised the report over the course of three meetings. NYISO states that Con Ed participated in these meetings and commented on aspects of the draft report other than the VFT Project. NYISO states that the NYISO Operating Committee approved the Class Year Facilities Study Report on May 10, 2007, without objection from Con Ed, even though Con Ed was in attendance. NYISO states that Con Ed raised its reliability concerns for the first time during negotiations over the Proposed IA, and that during these negotiations, Con Ed cited no written reliability rule or standard to support its objections.

concerns regarding the timing and estimated cost of construction, but contained no reliability concerns.

¹⁹ Linden Comments at 14-15 (*citing Central Hudson Gas & Electric Corp.*, 83 FERC ¶ 61,352, at 62,412-13 (1998), *order on reh'g*, 87 FERC ¶ 61,135 (1999) (*Central Hudson*); *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,159, at P 94, 96 (2004), *reh'g denied*, 111 FERC ¶ 61,347 (2005) (*NYISO*)).

32. NYISO argues that Con Ed may not apply the recent amendments made to its System Operating Procedure No. EP-7100-5 to the VFT Project. NYISO states that Attachment S contains the rules that allocate responsibility for the cost of the System Upgrade Facilities that are necessary for the reliable interconnection of Developers' projects. NYISO explains that it determines what System Upgrade Facilities are necessary for reliable interconnection by evaluating the electrical system impact of each proposal against Applicable Reliability Requirements, which are defined in Attachment S as the reliability rules and other criteria, standards, and procedures used to ensure that projects do not detract from the reliability of the New York State Transmission System.²⁰ NYISO further states that Attachment S provides that "[t]he Applicable Reliability Requirements applied are those in effect when the particular assessment is commenced," and that therefore, Con Ed's amendments cannot apply because the Interconnection Facilities Study that included the VFT Project commenced on March 1, 2006.²¹

33. NYISO argues that restricting the Applicable Reliability Requirements to those in effect when the study of a project is commenced is essential to the successful administration of the NYISO interconnection process. NYISO states that the Attachment S cost allocation study process takes months to complete, and that it would never be finished if NYISO had to revise or restart its work every time some entity codified a new criterion, standard, or procedure. NYISO emphasizes that nothing in its Applicable Reliability Requirements or interconnection process is incompatible with rigorous maintenance of system reliability, and that if Con Ed now has a reliability concern about the previously studied and approved configuration for the Goethals Substation, it may propose a change. However, NYISO asserts that Con Ed must bear any additional expense associated with its decision to change the configuration included in the Interconnection Facilities Study. NYISO argues that Attachment S provides that either the Transmission Owner or the Developer may install System Upgrade Facilities that are larger or more extensive than what is required, but that in every such case the party making the election is responsible for the cost.²²

²⁰ NYISO Answer at 10 (*citing* New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No.1, Fourth Revised Sheet No. 655 (NYISO OATT)).

²¹ *Id.*

²² *Id.* at 11. NYISO OATT, Fourth Revised Sheet No. 670 states:

If a Transmission Owner or Developer elects, for whatever reason, to construct System Upgrade Facilities that are larger or more extensive than the minimum facilities required to reliably interconnect the proposed project, then the

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34. Similarly, NYISO characterizes Con Ed's claim that Linden should pay for the relocation of feeder nos. 25 and 26 as inconsistent with NYISO's interconnection procedures. NYISO argues that there is no basis in the OATT for requiring Linden to pay these costs. As with the ring bus configuration, NYISO states that Con Ed is free to propose changes, but must bear the associated costs. NYISO further asserts that Attachment S provides that Developers shall have no responsibility for the future interconnection costs of future developers,²³ and that this rule is incorporated into the Proposed IA through section 5.19.3.

4. Commission Determination

35. We agree with Linden and NYISO and reject Con Ed's arguments. Attachment S provides that "[t]he Applicable Reliability Requirements applied [to the assessment of a project] are those in effect when the particular assessment is commenced." Con Ed's amendments prohibiting overhead crossings and syn bus connections were not promulgated until February 2008, a full 20 months after NYISO commenced its study of the VFT Project. Moreover, as Linden points out, Con Ed has made no claim that its amendments qualify currently as Applicable Reliability Rules or Local Reliability Rules. Linden is correct in asserting that Commission precedent requires that any change (barring the type of emergency orders specifically allowed for in *Central Hudson*) to a Local Reliability Rule must be approved by NYSRC and is subject to protest by NYISO.²⁴

Transmission Owner or Developer is responsible for the cost of those System Upgrade Facilities in excess of the minimum System Upgrade Facilities required by the Developer projects.

NYISO also states that Attachment S provides that if the actual cost of the System Facilities Upgrade for a Developer's project exceeds the cost estimate in the Interconnection Facilities Study due to factors in the control of the Connecting Transmission Owner, as would be the case here, then the Connecting Transmission Owner is responsible for the incremental cost.

²³ NYISO OATT Sheets 687C-688 state:

Once a Developer has posted Security for its share of the System Upgrade Facilities required for its project, then that Developer has no further responsibility for the cost of additional Attachment Facilities and System Upgrade Facilities that may be required in the future.

²⁴ NYISO, 108 FERC ¶ 61,159 at P 96.

36. Similarly, Con Ed's request that Linden assume the cost of future modifications to the Goethals Substation is inconsistent with Attachment S, which provides that a Developer "has no further responsibility for the cost of additional Attachment Facilities and System Upgrade Facilities that may be required in the future." Con Ed's only rationale for requesting that the Commission require Linden to assume the costs of relocating feeder nos. 25 and 26 is its speculation that these feeders will have to be relocated to accommodate future modifications to the Goethals Substation. However, Con Ed has not articulated any reason why, as with all other future System Upgrade Facilities, these costs should not be incurred by the Developer of the next project. Further, requiring a developer to pay for speculative costs is inconsistent with our policy of providing sponsors of merchant transmission projects a "timely upfront determination of costs."²⁵

37. Finally, with respect to Con Ed's reliability concerns, we note that Con Ed itself has acknowledged the existence of similar overhead crossings and syn bus connections on its system. Moreover, Con Ed has acknowledged that these configurations do not violate any national or regional reliability standards and ordinarily constitute reliable arrangements.²⁶

C. Oversight, O&M and Property Tax Costs

1. Con Ed's Comments

38. Con Ed argues that it should not bear the costs of overseeing Linden's engineering and construction of the System Upgrade Facilities, operating and maintaining the System Upgrade Facilities, and paying property taxes assessed on the System Upgrade Facilities (collectively, continuing costs). Con Ed claims that Linden elected to construct facilities in excess of those required for system reliability. Con Ed asserts that NYISO did not conclude that the System Upgrade Facilities at issue are required for system purposes.²⁷ Con Ed asserts that only Linden will benefit from the modifications, and that it would be

²⁵ *Neptune Regional Transmission System, LLC*, 111 FERC ¶ 61,455, at P 23 (2005), *aff'd sub nom. Public Serv. Elec. & Gas Co. v. FERC*, 485 F.3d 1164 (D.C. Cir. 2007).

²⁶ Con Ed Comments at 15, 18.

²⁷ Con Ed claims that Linden adopted these modifications when an earlier interconnection project was discontinued, in order to avoid restarting the NYISO interconnection process for the VFT Project.

inequitable to shift cost responsibility for the continuing costs to consumers. Accordingly, Con Ed argues that Linden should bear the continuing costs, and that the proposed IA should be amended to reflect this cost responsibility.²⁸

39. Con Ed further argues that Attachment S dictates that Linden should bear the continuing costs.²⁹ Con Ed argues that the governing principle of Attachment S is that a Transmission Owner is responsible for all reliability costs that would arise in the absence of a project, while a Developer is responsible for all other costs that are caused by its project.³⁰ Con Ed contends that when applied to this case, this principle dictates that Linden should bear the continuing costs because they result from modifications to the Goethals Substation that would not have been undertaken but for the VFT Project.

40. Con Ed also argues that specific language in Attachment S dictates that Linden bear responsibility for the continuing costs. Con Ed asserts that Attachment S provides that if a “Developer elects, for whatever reason, to construct System Upgrade Facilities that are larger or more extensive than the minimum facilities required to reliably interconnect the proposed project,” the Developer is responsible for costs in excess of the

²⁸ Con Ed proposes to add a new section to Appendix C of the proposed Interconnection Agreement stating that:

[N]otwithstanding any other provision of the Agreement, Linden will reimburse Con Ed for the incremental costs that it incurs for (1) overseeing Linden’s engineering and construction work, (2) operating and maintaining the System Upgrade Facilities, and (3) property taxes assessed on the System Upgrade Facilities.

²⁹ Con Ed cites NYISO OATT Sheets 653A-654:

A Developer is held responsible for the cost of the interconnection facilities that are required by its project, facilities that would not be required but for its project Transmission Owners are, in accordance with the NYISO OATT and [Commission] precedent, responsible for the cost of the facilities that are, without considering the impact of the Developer’s project, required to maintain the reliability of the New York Transmission System.

³⁰ Con Ed Comments at 10.

minimum required facilities.”³¹ Con Ed also states that Attachment S provides that the “cost responsibility of the Transmission Owner for System Upgrade Facilities will be no greater than it would have been without the Developer’s project.”³²

2. Linden’s Comments

41. Linden argues that Con Ed may recover the continuing costs only to the extent provided for under Attachment S,³³ which Linden asserts disclaims any applicability to the allocation of costs for operating and maintaining new interconnection facilities once they are installed.³⁴ Linden also argues that the System Upgrade Facilities are network facility upgrades that will provide benefits to all users of the transmission system and that, under Commission precedent, Linden cannot be charged the continuing costs. Similarly, Linden claims that the Commission has previously determined that the Transmission Owner cannot charge construction oversight expenses to a Developer exercising the option to build. Finally, Linden claims that Con Ed has misrepresented the NYISO OATT. Linden argues that the OATT language Con Ed cites addresses the allocation between Developer and Transmission Owner of the *capital costs* of constructing the System Upgrade Facilities and does not apply to the continuing costs at issue in this proceeding.³⁵

³¹ *Id.* at 11 (quoting Attachment S, Sheet 670).

³² *Id.* (quoting Attachment S, Sheet 671).

³³ Attachment X to the NYISO OATT (and the proposed IA) states that a Transmission Owner is entitled to recover incremental operating and maintenance expenses associated with System Upgrade Facilities if and to the extent provided for under Attachment S.

³⁴ Linden Comments at 7. Linden cites NYISO OATT, Third Revised Sheet No. 662:

The interconnection facility cost allocated by these rules is comprised of all costs and overheads associated with the design, procurement and installation of the new interconnection facilities. These rules do not address in any way the allocation of responsibility for the cost of operating and maintaining the new interconnection facilities once they are installed. Nor do these rules address in any way the ownership of the new interconnection facilities.

³⁵ Linden Comments at 8.

3. NYISO's Comments

42. NYISO argues that there is no basis in the OATT for charging Linden the continuing costs. NYISO states that Con Ed and other New York Transmission Owners have proposed to amend Attachment S to allocate to future Developers a portion of the property tax and other ongoing costs associated with System Upgrade Facilities, but that these discussions remain inconclusive.

43. NYISO agrees with Linden's assertion that Attachment S only allocates responsibility for capital costs, such as the design, procurement, and construction of the System Upgrade Facilities, and that it does not in any way address the allocation of continuing costs. NYISO further argues that the OATT language cited by Con Ed address the allocation of capital costs for elective System Upgrade Facilities. NYISO also argues that in Order Nos. 2003 and 2003-A the Commission rejected proposals to assign oversight and engineering costs to Developers, finding that these costs were properly incurred by the Transmission Owner as a part of doing business.

4. Commission Determination

44. We agree with Linden and NYISO and reject Con Ed's argument. Contrary to Con Ed's assertion, Attachment S does not require that Linden pay the continuing costs. In fact, Attachment S specifically states that it "do[es] not address in any way the allocation of responsibility for the cost of operating and maintaining the new interconnection facilities once they are installed."³⁶ This point is further highlighted by the fact that Con Ed and other New York Transmission Owners are in discussions with NYISO over adding a provision to the OATT that will allocate some or all of operating and maintenance costs for future projects to future Developers.

45. We also agree with Linden and NYISO that the OATT language cited by Con Ed applies to capital costs. Attachment S specifically states that "the interconnection facility cost allocated by these rules is comprised of all costs and overheads associated with the design, procurement and installation of the new interconnection facilities."

46. We further agree with Linden that the System Upgrade Facilities at issue are network facilities, and that as network facilities, NYISO cannot charge only Linden for

³⁶ NYISO OATT Sheet 662. NYISO defines "interconnection facilities" to include Attachment Facilities, which are facilities that "physically attach that project to the existing transmission system" and System Upgrade Facilities, which are "the modifications or additions to the existing transmission system that are required for the proposed project to reliably interconnect to the system in a manner that meets the NYISO Minimum Interconnection Standard." *Id.* 661-62.

their operating and maintenance expenses. In *Niagara Mohawk*, the Commission found that the three-breaker ring bus configurations at issue were network facilities, and as such, directed that Niagara Mohawk remove all language in the proposed IA in that case permitting it to directly charge only the Developer for their operating and maintenance expenses.³⁷ Similarly, in Order Nos. 2003 and 2003-A the Commission rejected proposals to assign construction oversight costs to Developers, characterizing such costs as “the cost of doing business.”³⁸

D. Waiver

47. Finally, we will grant waiver of the Commission’s 60-day prior notice requirement,³⁹ and accept the proposed IA, effective February 29, 2008.

³⁷ *Niagara Mohawk Power Corp.*, 121 FERC ¶ 61,104, at P 19 (2007) (“[T]he . . . three-breaker ring bus configurations are network facilities. We find that they provide benefits to both the generator and Niagara Mohawk’s other customers . . . and, as such, Niagara Mohawk cannot directly charge only [the Developer] for the [operating and maintenance expenses] performed on the three-breaker ring bus configurations Accordingly, Niagara Mohawk is directed to remove all language from the unexecuted IAs with [the Developer] that would permit it to recover [operating and maintenance expenses] on these facilities from [the Developer]”); *see also Nevada Power Co.*, 111 FERC ¶ 61,161 at P12 (“Commission policy has also long held that the cost of network upgrades may not be directly assigned to the interconnection customer because network upgrades provide a benefit to all transmission system users”), *order on reh’g*, 113 FERC ¶ 61,007 (2005).

³⁸ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 358, *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 218-219.

³⁹ *See Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *order on reh’g*, 65 FERC ¶ 61,081 (1993) (*Prior Notice*); *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *reh’g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*).

The Commission orders:

The Commission accepts the proposed IA, effective February 29, 2008.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.