

131 FERC ¶ 61,274  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Consolidated Edison Company of New York, Inc.

Docket No. ER10-1135-000

ORDER REJECTING FILING

(Issued June 28, 2010)

1. On April 29, 2010, Consolidated Edison Company of New York, Inc. (Con Edison), submitted for filing, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and part 35 of the Commission's regulations,<sup>2</sup> a Memorandum of Understanding (MOU) between Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC and Con Edison,<sup>3</sup> concerning compliance with North American Reliability Corporation (NERC) Reliability Standard NUC-001, *Nuclear Plant Interface Coordination* (NUC-001).<sup>4</sup> Con Edison requests that the Commission determine: 1) whether the MOU and NUC-001 obligate Con Edison to reserve capacity on its distribution and transmission facilities to deliver the maximum station power load of the Indian Point 2 and Indian Point 3 generating facilities specified in the MOU; and 2) if so, whether that capacity

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<sup>1</sup> 16 U.S.C. § 824d(c) (2006).

<sup>2</sup> 18 C.F.R. Part 35 (2009).

<sup>3</sup> The MOU is dated April 1, 2010 and is designated as Original Service Agreement No. 1572 under the New York Independent System Operator, Inc.'s (NYISO) Open Access Transmission Tariff (OATT), Original Volume No. 1.

<sup>4</sup> On November 19, 2007, NERC filed its petition for Commission approval of NUC-001 in Docket No. RM08-3-000 and supplemented the filing on December 11, 2007. The Commission approved NUC-001-1 on October 16, 2008 in *Mandatory Reliability Standard for Nuclear Plant Interface Coordination*, Order No. 716, 125 FERC ¶ 61,065 (2008) (Order No. 716), *order on reh'g*, Order No. 716-A, 126 FERC ¶ 61,122 (2009) (Order No. 716-A). The current version of the standard, NUC-001-2, was adopted by the NERC Board of Trustees on August 5, 2009 with an effective date of April 1, 2010 and was approved by the Commission on January 21, 2010 in *North American Reliability Corp.*, 130 FERC ¶ 61,051 (2010).

reservation is a jurisdictional undertaking that requires the filing of the MOU. For the reasons discussed below, we reject Con Edison's filing.

### **I. Background and Details of the Filing**

2. Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC (collectively, Entergy) are wholly-owned subsidiaries of Entergy Corporation and the respective owners of nuclear generating facilities, Indian Point Energy Center Unit 2 (IP2) and Unit 3 (IP3), in Westchester County, New York.<sup>5</sup> Both facilities are within the NYISO control area and are interconnected to Con Edison's Buchanan substation.<sup>6</sup> IP2 delivers energy into the Buchanan substation via a 345 kV transmission line owned by Entergy Nuclear Indian Point 2, LLC, and IP3 delivers energy into the Buchanan substation via a separate 345 kV transmission line owned by Entergy Nuclear Indian Point 3, LLC.<sup>7</sup> Con Edison states that Entergy receives interconnection service from Con Edison. Con Edison further states that Entergy self-supplies its station power requirements for IP2 and IP3 under the NYISO tariff and does not take related transmission or delivery service from Con Edison. Con Edison notes that the MOU specifically states that Con Edison will not sell station power to Entergy.

3. Con Edison and Entergy entered into a MOU dated April 1, 2010, which "delineates the procedures that [Entergy and Con Edison] will use in compliance with Reliability Standard NUC-001."<sup>8</sup> Reliability Standard NUC-001 "requires coordination between Nuclear Plant Generator Operators (NPGO) and Transmission Entities (TE) for the purpose of ensuring nuclear plant safe operation and shutdown."<sup>9</sup> The standard requires NPGOs and TEs to develop expectations and procedures for coordinating operations to meet nuclear plant interface requirements (NPIR) and to develop agreements or arrangements reflecting those expectations and procedures.<sup>10</sup> Reliability Standard NUC-001 permits NPGOs and TEs to rely on pre-existing arrangements so long as the parties can document that the fact that they have agreed that the pre-existing arrangements address all of the NPIRs, cover all required facilities and otherwise fulfill

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<sup>5</sup> Entergy Protest at 2.

<sup>6</sup> *Id.*

<sup>7</sup> Entergy Protest at 2-3.

<sup>8</sup> MOU at 1.

<sup>9</sup> NUC-001-2 ("Purpose Statement").

<sup>10</sup> Order No. 716 at P 4.

the requirements of NUC-001.<sup>11</sup> Con Edison states that the MOU identifies the agreements and procedures by which Entergy and Con Edison will comply with the NPIRs, including the Interconnection Agreements that Con Edison and Entergy executed in 2000 with respect to IP2 and IP3.<sup>12</sup>

4. Con Edison states that NUC-001 is applicable to Entergy as an NPGO and to Con Edison as a TE with respect to IP2 and IP3, which Entergy owns and operates, and which are interconnected to Con Edison's transmission and distribution systems. Con Edison states that it is filing the MOU with the Commission because the MOU could be construed as imposing on Con Edison a transmission-related obligation that may be subject to the Commission's jurisdiction. Specifically, Con Edison references a provision of the MOU that states: "Con Edison's obligation to maintain transmission and distribution capacity for the delivery of power to IP2 and IP3 is limited to the quantities stated in Section 9.2.1 of this MOU." Section 9.2.1 of the MOU sets forth the "maximum loading of off-site power" for IP2 and IP3, respectively.<sup>13</sup>

5. In its transmittal letter, Con Edison requests that the Commission determine: 1) whether the MOU and NUC-001 obligate Con Edison to reserve capacity on its distribution and transmission facilities to deliver the maximum station power load of IP2 and IP3; and 2) if so, whether that capacity reservation is a jurisdictional undertaking that requires the filing of the MOU. Con Edison requests that, if the Commission concludes that the MOU establishes such a commitment, that it accept the MOU for filing effective April 1, 2010 and grant waiver of the 60-day notice requirement pursuant to 18 C.F.R. § 35.11. If the Commission does not find that the MOU establishes such an obligation, Con Edison requests that the filing be rejected as unnecessary.

6. Con Edison states that the Interconnection Agreements do not obligate Con Edison to deliver station power or to reserve capacity for the delivery of station power. Con Edison also states that Entergy does not purchase delivery service or sales service from

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<sup>11</sup> *Id.* at P 87.

<sup>12</sup> Indian Point Continuing Site Agreement By and Between Consolidated Edison Company of New York, Inc. and Entergy Indian Point 2, LLC, dated Nov. 9, 2000 and amended Sept. 6, 2001 (designated as Service Agreement No. 316 under the NYISO OATT); Indian Point 3 Interconnection Agreement By and Between Consolidated Edison Company of New York, Inc. and Entergy Nuclear Indian Point 3, LLC, dated Nov. 9, 2000 (designated as Service Agreement No. 264 under the NYISO OATT).

<sup>13</sup> Section 9.2.1 of the MOU states: "Maximum loading of off-site power is as follows: IP2: 33.81 MW, 22.04 MVAR. IP3: 38.41 MW, 18.02 MVAR."

Con Edison and that the MOU specifically provides that Con Edison will not sell station power to Entergy. Con Edison also states that NYISO is the sole provider of transmission service in New York.<sup>14</sup>

## **II. Notice of Filing and Procedural Matters**

7. Notice of Con Edison's filing was published in the *Federal Register*, 75 Fed. Reg. 26,217 (2010), with protests and interventions due on or before May 20, 2010. A motion to intervene and protest was timely filed by Entergy. Con Edison filed an answer on June 4, 2010. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>15</sup> prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We therefore reject Con Edison's answer.

8. In its protest, Entergy argues that the Commission should reject Con Edison's filing as procedurally deficient because Con Edison is seeking a Commission determination that should be properly requested through either a petition for declaratory order or through a request for interpretation from NERC. Alternatively, Entergy argues that the Commission should reject Con Edison's filing as unnecessary because the MOU does not obligate Con Edison to provide a capacity reservation for the provision of station power or any other new service. Entergy argues that the MOU merely documents pre-existing service obligations and procedures for the limited purpose of demonstrating compliance with NUC-001. Additionally, Entergy asserts that the MOU does not demonstrate any intent to serve as a service agreement, as demonstrated by the fact that the MOU does not contain any rates or terms of a new capacity reservation service obligation or the supporting information required by part 35 of the Commission's regulations, nor does it incorporate by reference any provisions of the NYISO OATT.

9. Entergy also asserts that Con Edison's request amounts to a collateral attack on the Commission's finding in Order No. 716-A that entities can request a NERC interpretation if they are unsure whether NUC-001 applies to them. Entergy also asserts that any argument by Con Edison that the MOU requires Con Edison to provide a capacity reservation for the provision of station power should be deemed a collateral attack on prior Commission orders regarding the provision of station power to Entergy's facilities.<sup>16</sup>

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<sup>14</sup> Con Edison Filing at 3, n. 13.

<sup>15</sup> 18 C.F.R. § 385.213(a)(2) (2009).

<sup>16</sup> Entergy Protest at 21-22, citing *Entergy Nuclear Operations, Inc. v. Consolidated Edison Co. of New York, Inc.*, 110 FERC ¶ 61,312 (2005), *reh'g denied*, 112 FERC ¶ 61,117 (2005).

### III. Commission Determination

10. The Commission rejects Con Edison's filing, as discussed below.

11. Reliability Standard NUC-001 does not contain any provision that would require Con Edison to file the MOU with the Commission. In Order No. 716, the Commission stated that NUC-001 "does not require responsible entities to file information with the Commission."<sup>17</sup> Furthermore, NUC-001 does not impose any express obligation requiring a utility to reserve capacity on its facilities to comply with the standard.

12. The MOU appears to set forth the agreements and procedures by which Entergy and Con Edison will comply with NUC-001. Con Edison points to only one provision in the MOU that may impose a new jurisdictional service obligation.<sup>18</sup> Even assuming, *arguendo*, that this provision establishes such an obligation, Con Edison's filing is patently deficient as a section 205 filing. Section 35.1(a) of the Commission's regulations requires that rate schedules submitted pursuant to section 205 "clearly and specifically" set forth "all rates and charges for any transmission or sale of electric energy subject to the jurisdiction of this Commission" and the "classifications, practices, rules, and regulations affecting such rates, charges, classifications, services, rules, regulations or practices."<sup>19</sup> Con Edison's filing fails to state (or even incorporate by reference) a specific rate for any service or the terms and conditions of any purported service, and it does not contain any supporting information. Con Edison itself concedes that the "rates and terms for such a capacity reservation are not addressed by the MOU or this filing."<sup>20</sup> Therefore, we reject the filing.

13. We agree with Entergy that Con Edison should have submitted its questions regarding the MOU as a request for declaratory order. However, Con Edison submitted the filing as a section 205 filing so we have considered the filing as submitted and reject it as discussed above.

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<sup>17</sup> Order No. 716 at P 195. We have rejected section 205 filings as unnecessary in other contexts. *E.g.*, *Virginia Elec. & Power Co.*, 131 FERC ¶ 61,171 (2010); *Virginia Elec. & Power Co.*, 92 FERC ¶ 61,161 (2000).

<sup>18</sup> *See supra* P 4.

<sup>19</sup> 18 C.F.R. § 35.1(a) (2009).

<sup>20</sup> Con Edison Filing at 4, n. 20.

The Commission orders:

Con Edison's filing is rejected, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.