

135 FERC ¶ 61,264
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 28, 2011

In Reply Refer To:
New York Independent System
Operator, Inc. and
Consolidated Edison Company of
New York, Inc.
Docket No. ER11-3479-000

New York Independent System Operator, Inc.
Attention: Sara B. Keegan, Senior Attorney
10 Krey Boulevard
Rensselaer, NY 12144

Consolidated Edison Company of New York, Inc.
Attention: Paul A. Savage, Associate Counsel
4 Irving Place, Room 1815-S
New York, NY 10003

Dear Ms. Keegan and Mr. Savage:

1. On April 29, 2011, the New York Independent System Operator, Inc. (NYISO) and Consolidated Edison Company of New York, Inc. (ConEd) (collectively, Filing Parties) submitted for filing under section 205 of the Federal Power Act¹ an executed Merchant Transmission Facility Interconnection Agreement (Interconnection Agreement)² among NYISO, ConEd, and Hudson Transmission Partners, LLC (Hudson). NYISO and ConEd also request waiver of the 60-day prior notice requirement to allow an effective date of April 20, 2011, for the Interconnection Agreement. For the reasons discussed below, the Commission grants waiver of the 60-day prior notice requirement

¹ 16 U.S.C. § 824d (2006).

² Service Agreement No. 1719 to New York Independent System Operator, Inc.'s NYISO Agreements Tariff.

and accepts the Interconnection Agreement for filing, effective April 20, 2011, as requested.

2. The Interconnection Agreement governs the interconnection of Hudson's 660 MW back-to-back HVDC (AC input-DC conversion-AC output) transmission project that will connect the PSE&G Bergen Substation located in Ridgefield, New Jersey with Con Ed's West 49th Street Substation in New York City (HTP Project). The Filing Parties assert that the Interconnection Agreement substantially conforms to NYISO's *pro forma* Large Generator Interconnection Agreement (LGIA), which is contained in Attachment X of NYISO's Open Access Transmission Tariff (OATT). However, the Filing Parties state that the Interconnection Agreement has been modified from NYISO's *pro forma* LGIA to reflect that Hudson is developing a merchant transmission project and not a generating facility.

3. The Filing Parties include a list of the changes to the *pro forma* LGIA, which explains why the circumstances of this interconnection require a non-conforming agreement.³ The Filing Parties assert that the non-conforming modifications are necessary to reflect: (1) the unique characteristics of a merchant transmission facility spanning two separate control areas; (2) the absence of connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities; (3) the timing of the execution of the Interconnection Agreement vis-à-vis the award of Unforced Capacity Deliverability Rights; (4) principles associated with the construction activity at ConEd's 49th Street Substation; (5) modifications expressly contemplated by NYISO's *pro forma* LGIA; and (6) related ministerial changes.

4. The Filing Parties argue that the Commission has accepted interconnection agreements with changes to *pro forma* LGIAs in the past where there exist unique circumstances associated with the interconnections, including "reliability concerns, novel legal issues or other unique factors," that warrant such changes.⁴ They also assert that a number of the modifications to the *pro forma* LGIA in the Interconnection Agreement are substantially similar or identical to those previously accepted by the Commission.⁵ Therefore, the Filing Parties request that the Interconnection Agreement be accepted with an effective date of April 20, 2011, the date of execution of the Interconnection Agreement. They contend, in this regard, that the Commission has allowed

³ Filing Parties, April 29, 2011 Filing at 2-8.

⁴ Filing Parties, April 29, 2011 Filing at 3 (citing *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,163 (2005)).

⁵ *Id.* (citing *New York Independent System Operator, Inc., and Consolidated Edison Co. of New York, Inc.*, 123 FERC ¶ 61,093 (2008)).

interconnection agreements to become effective on the date of execution, even when that date is before the date that the agreement is filed.

5. Finally, the Filing Parties explain that, pursuant to sections 388.112 and 388.113 of the Commission's regulations,⁶ the one-line diagram included as Critical Energy Infrastructure Information (CEII) part of Appendix A to the Interconnection Agreement be protected from disclosure as CEII because the diagram shows the exact nature and specific location of facilities and transmission lines used to maintain the reliability of the New York State bulk power system. The Filing Parties also assert that the Commission has determined that this information is CEII that is exempt from mandatory disclosure under 5 U.S.C. § 552(b)(7)(F) (2006).

6. Notice of the April 29, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 26,041, with interventions and protests due on or before May 20, 2011.

7. On May 23, 2011, the New Jersey Board of Public Utilities (NJ Commission) filed an untimely notice of intervention and protest of the Interconnection Agreement. The NJ Commission states that approval of the Interconnection Agreement will result in up to 660 MW of capacity being transferred to New York City thereby increasing energy and capacity prices in PJM and negatively impacting reliability in northern New Jersey. The NJ Commission states that reliability concerns regarding northern New Jersey have been raised within the context of the PJM Regional Transmission Expansion Plan (RTEP) process, citing reliability concerns the NJ Commission raised if the Susquehanna-Roseland (Susquehanna) transmission line is not constructed in northern New Jersey.⁷

8. The NJ Commission further argues that it is concerned with reliability violations and the potential for brownouts or blackouts as a result of the Commission's April 12, 2011 decision in the PJM Minimum Offer Price Rule (MOPR) proceeding to

⁶ 18 C.F.R. §§ 388.112-388.113 (2011). The Commission notes that, under its CEII rules, a person obtains CEII treatment by filing the information for which privileged or CEII treatment is sought along with a justification for such treatment with the Commission's Secretary. The Secretary will place this information in a nonpublic file and also create a public file without the privileged or CEII information. By placing the documents in a nonpublic file, the Commission does not make a determination on any claim of privilege or CEII status and retains the right to make determinations with regard to these assertions.

⁷ New Jersey Commission, May 23, 2011 Protest at 3-4 citing PJM 2007 Regional Transmission Expansion Plan (February 27, 2008) at <http://www.pjm.com/documents/reports/rtep-report/~media/documents/reports/2007-rtep/2007-section4-nj.ashx> at 221-235.

increase mitigation applied to new capacity resources in the PJM market.⁸ It also raises a concern with that decision's determination to eliminate the exemption for state-sponsored projects from MOPR mitigation, asserting that such determination, if not reversed, will effectively impede the state's ability to take actions to foster the development of new, more efficient, cleaner generation. The NJ Commission requests that the Commission reject the Interconnection Agreement or, in the alternative, hold its decision in abeyance and establish a proceeding to ensure full and fair analysis on the impacts upon PJM and New Jersey.

9. On June 3, 2011, Hudson filed a motion to intervene out of time and answer to the NJ Commission's protest. On June 8, 2011, the Filing Parties filed a joint answer to the NJ Commission's protest. In their answers, Hudson and the Filing Parties contend that the issues raised by the NJ Commission already have been raised and addressed, or should have been raised, in other proceedings before the Commission such as the Susquehanna and MOPR proceedings, as well as the PJM proceeding accepting the PJM interconnection agreement with Hudson,⁹ and therefore are outside the scope of this proceeding and the NYISO interconnection process. They argue that the only issues properly before the Commission in this proceeding relate to the limited non-conforming provisions of the subject Interconnection Agreement. Hudson further notes that NJ Commission fails to raise any issues about the Interconnection Agreement itself. Therefore, Hudson and the Filing Parties argue that the NJ Commission's late-filed protest should be rejected and that the Commission should accept the Interconnection Agreement as proposed.

10. The NJ Commission requests that its pleading be accepted out of time because, as the administrative agency that oversees all public utilities, it has a direct interest in the outcome of the proceeding which cannot be represented by any other party. The NJ Commission states that its filing was late due to administrative oversight and was filed one business day after the intervention deadline. Further, it states that no party will be harmed by its late intervention.

11. Hudson asserts that it requests late intervention to respond to the NJ Commission's protest. Hudson states that it is the developer and owner of the HTP Project and it has a direct interest in the proceeding that cannot be adequately represented by any other party. Hudson argues that it did not seek party status prior to the end of the notice period because no one filed any protests or adverse comments. However, Hudson asserts that

⁸ *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011).

⁹ *PJM Interconnection, L.L.C.*, Docket No. ER10-1740-000 (Aug. 31, 2010) (unpublished letter order).

the NJ Commission's statements must be clarified the record. Hudson also states that it accepts the record in the proceeding as it has developed to date.

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁰ we will grant the NJ Commission's and Hudson's requests for intervention out-of-time given their interest in the proceeding, the early stage of the proceeding, and the absence of any under prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹¹ prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept Hudson's and the Filing Parties' answers because they have assisted us in our decision-making process.

14. We accept the Interconnection Agreement for filing, effective April 20, 2011, as requested.¹² The Filing Parties' Interconnection Agreement reflects a limited set of modifications to NYISO's *pro forma* LGIA. As the Commission has stated, the Commission may recognize deviations from *pro forma* interconnection agreements as "may be necessary for a small number of interconnections with specific reliability concerns, novel legal issues, or other unique factors"¹³ However, a transmission provider seeking such deviations "bears a high burden to justify and explain that its changes are not merely 'consistent with or superior to' the *pro forma* agreement, but are necessary changes."¹⁴ In this instance, we find that the proposed non-conforming provisions of the Interconnection Agreement are necessary changes to NYISO's *pro forma* LGIA. The *pro forma* LGIA does not include provisions for interconnection of merchant transmission facilities such as Hudson's proposed facility. Further, the non-conforming provisions of the Interconnection Agreement reflect the unique design of this facility which spans two control areas.

¹⁰ 18 C.F.R. § 385.214 (2011).

¹¹ 18 C.F.R. § 385.213(a)(2) (2011).

¹² See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹³ See *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,421, at P 11-12 (2005); see also *Southwest Power Pool, Inc.*, 132 FERC ¶ 61,062, at P 3 (2010) (*Southwest Power*)

¹⁴ *Southwest Power*, 132 FERC ¶ 61,062 at P 3.

15. We reject the NJ Commission's alternative requests to either reject the instant filing or hold our action "in abeyance"¹⁵ and set for it for further procedures. In its protest, the NJ Commission raises, among other things, concerns regarding reliability issues in New Jersey and PJM (e.g., the effect of certain Commission actions on PJM's capacity markets, and PJM's procedures for expanding its transmission system) raised in certain other PJM proceedings. The sole matter at issue in the instant proceeding, however, is the Interconnection Agreement among NYISO, ConEd and Hudson, and whether the proposed material deviations from NYISO's *pro forma* LGIA are appropriate. The NJ Commission did not object to the proposed material deviations from NYISO's *pro forma* LGIA reflected in the Interconnection Agreement at issue here and, instead, as noted above, raises matters beyond the scope of the instant proceeding.¹⁶ Therefore, we find no basis for us to not accept the Interconnection Agreement as filed.

The Commission orders:

The Interconnection Agreement is hereby accepted for filing, effective April 20, 2011, as requested.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁵ As the instant filing was made pursuant to section 205 of the FPA, within 60 days of filing, i.e., by June 28, 2011, we must act on it and either accept it, reject it, or accept and suspend its effectiveness (for a maximum of 5 months) and, therefore, we cannot hold our action on it indefinitely "in abeyance."

¹⁶ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 135 FERC ¶ 61,060 (2011) (rejecting issues as outside the scope of the proceeding); *PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,066, at P 32 (2011) (rejecting arguments as outside of the scope of the proceeding).