

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.

Consolidated Edison Company of New York, Inc.

Docket No. ER07-803-000

ORDER ACCEPTING REVISED AND RESTATED INTERCONNECTION
AGREEMENT

(Issued May 30, 2007)

1. On April 27, 2007, Consolidated Edison Company of New York, Inc. (Con Edison) filed a Revised and Restated Interconnection Agreement (Revised Agreement) between Con Edison and the Power Authority of the State of New York (NYPA) and requests waiver of the Commission's applicable regulations so that the order may become effective May 1, 2007. In this order the Commission accepts the Revised Agreement effective May 1, 2007.

Background

2. In 2001, NYPA constructed ten 44 MW gas turbine electric generators that were subsequently connected to Con Edison's transmission facilities in New York City. On November 29, 2001, the Commission accepted, effective August 1, 2001, subject to one modification, an Interconnection Agreement (Agreement) for these facilities between Con Edison and NYPA.¹ On March 27, 2003, the Commission accepted a modified Agreement filed in compliance with the *November 29 Order*.

¹ *Consol. Edison Co. of New York, Inc.*, Docket No. ER02-46-000 (Nov. 29, 2001)(unpublished letter order) (*November 29 Order*).

Con Edison's Filing

3. On April 27, 2007, Con Edison submitted a Revised Agreement,² stating that the only proposed change to the Agreement is a change in the point of interconnection of the Gowanus Gas Turbines from a point on a transmission line connecting the Gowanus and Greenwood Substations to a connection at the Greenwood substation. Con Edison further states that this change was initiated at the request of the customer, NYPA, and that this change will increase the value of the generators to NYPA, will enhance electric reliability in New York City, and will not alter Con Edison's rates or revenues.

4. Con Edison requests an effective date of May 1, 2007, and a waiver of applicable Commission regulations necessary to permit expedited treatment. Con Edison asserts that this relief is warranted inasmuch as the Revised Agreement was initiated at the request of the customer, it will enhance system reliability, and it will not adversely affect any other party. Con Edison adds that NYPA supports the filing and the request for expedited relief, and the New York Independent System Operator (NYISO) has no objections to the filing or the request for expedited relief. Con Edison also states that the NYISO's Transmission Planning Advisory Subcommittee (TPAS) ruled that the proposed change in the point of interconnection does not constitute a major modification and does not require additional NYISO review.

Notice and Responsive Filings

5. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 26,088 (2007), with interventions, comments, or protests due by May 8, 2007. NYPA filed a timely motion to intervene and comments. The 330 Fund I, L.P. (the Fund) filed a timely motion to intervene and protest. Con Edison filed an answer to the Fund's protest and the Fund filed an answer to Con Edison's answer.

6. NYPA filed comments in support of the filing and the shortened notice period and expedited decision, stating that, for over a year, it has been working diligently toward a May 1, 2007 in-service date for the new interconnection at Greenwood substation. NYPA states that all engineering and construction work is finished and that any delay past May 1, 2007, in making this interconnection operational will cause substantial economic penalties for NYPA.

² The Revised Agreement will be designated Second Revised Service Agreement No. 315 under NYISO's FERC Open Access Transmission Tariff, Original Volume No. 1.

7. The Fund states that it operates under a Commission-approved market-based rate tariff and is active in the electricity and related financial markets administered by the NYISO. The Fund only protests Con Edison's request for waiver of the 60-day notice period to allow agreement to go into effect on May 1, 2007. It does not protest the substance of the Revised Agreement, stating that the only relief it seeks is a denial of waiver of the notice requirement.³ Relying on Commission policy developed in *Central Hudson Gas & Electric Corporation* and subsequent clarification,⁴ it asserts that Con Edison was aware of this project for some time and made no showing of good cause for its failure to file the revised interconnection in a timely manner.

8. The Fund argues that *Central Hudson* establishes three situations where the Commission will grant waiver: 1) uncontested filings that do not change rates, 2) filings that reduce rates and charges, and 3) filings that increase rates when the rate change and effective date are prescribed by contract. The Fund contends that none of these situations applies in the instant proceeding. It asserts that this is a contested filing, the filing was not sanctioned by a Commission-approved agreement providing for periodic updates with specific effective dates, and the change in interconnection adversely impacts the Fund and other market participants.

9. In regard to adverse impact, the Fund states that, while the Interconnection Project may decrease congestion into the Staten Island/Greenwood load pocket (SI/G Load Pocket), it will also adversely impact parties, including the Fund, holding Transmission Congestion Contracts (TCCs) with a point of withdrawal in the SI/G Load Pocket and TCCs with a point of injection at the Gowanus Gas Turbines.

10. The Fund states that it lacks sufficient information to determine whether the new interconnection will increase reliability but even if this is the case, it does not believe the increase will be appreciable. It asserts that if the most material change associated with the waiver and acceleration of the new interconnection would be a transfer of economic benefits to NYPA and economic detriment to the Fund and similarly situated parties, then

³ The Fund states that it is in the process of investigating the Interconnection Project and the associated transmission line outages and reserves all rights to initiate proceedings concerning these events. 330 Fund I, L.P. May 8, 2007 Motion to Intervene and Protest at 5–6.

⁴ 60 FERC ¶ 61,106 at 61,337, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*). *See also*, *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61, 139 (*Prior Notice Order*) *reh'g granted and denied in part*, 65 FERC ¶ 61,081 (1993).

waiver and acceleration of the interconnection would be manifestly unfair. It notes that NYPA indicates in its filing that it stands to gain economically from the interconnection project.

11. In its answer, Con Edison responds that waiver in the instant proceeding is consistent with Commission policy subsequent to *Central Hudson* that waives the 60-day notice requirement for service agreements that are filed under tariffs up to 30 days following the commencement of service.⁵ It argues that the revised interconnection service is filed under the NYISO Open Access Transmission Tariff, and, moreover, is much more limited than those that were retrospectively effectuated in *ISO-NE* and *MISO*, where entirely new service agreements were filed and the full notice requirement was waived.

12. Con Edison further states that in scheduling the transmission outages associated with the reconnection of NYPA's generator, it fully complied with the NYISO's notice and scheduling procedures and, thus, the Fund had ample notice of the circumstances of which it complains. In addition, Con Edison asserts that the Fund has vacillated with respect to the timing of reconnection, having first requested Con Edison to expedite the project and now seeking to delay the reconnection.

13. Con Edison contends that this case affects competing economic interests among market participants. On the one hand, the Fund opposes a shortened notice period because it would profit from continued higher levels of congestion. On the other hand, consumers who pay congestion costs and any TCC holders on the other side of the transaction would be adversely affected by continued higher levels of congestion. Con Edison argues that the decision should not turn upon the divergent equitable interests but rather upon the Commission's established practice regarding waiver of the notice requirement.

14. The Fund, in its response to Con Edison's answer, cites *Georgia Power Company*⁶ and *San Diego Gas & Electric Company*,⁷ both contested proceedings, as more relevant and applicable than *MISO* and *ISO-NE*. In *Georgia Power*, the Commission denied

⁵ Citing *Prior Notice Order*, 64 FERC at 61,984; *ISO New England, Inc. and New England Power Co.*, 115 FERC ¶ 61,339 (2006) (*ISO-NE*); *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,024 (2006) (*MISO*).

⁶ 89 FERC ¶ 61,157 at 61,443 (1999) (*Georgia Power*).

⁷ 112 FERC ¶ 61,149 at P 19 (2005) (*San Diego Gas*).

waiver of prior notice even though the interconnection agreement was filed within 30 days of the commencement of service, while in *San Diego Gas*, the Commission granted waiver, but did so only after finding that the applicant demonstrated good cause. The Fund states that there is no legal or regulatory issues associated with the change in point of interconnection that would warrant waiver; nor is there any emergency condition associated with the physical change to the grid. Thus, waiver is not appropriate.

15. The Fund also states that Con Edison has misstated the Fund's position, in stating that the Fund has vacillated with respect to timing of the reconnection. It adds that this new point of interconnection has the effect of moving two generators from outside a load pocket to within a load pocket, and such change without notice of the timing to TCC investors like the Fund needlessly destabilizes the TCC market.

16. The Fund agrees with Con Edison that this is a case of competing economic interests; however, it states that Con Edison claims the Fund seeks to continue higher congestion costs when, in fact, NYPA seeks to take advantage of higher prices in the SI/G load pocket.

Discussion

Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest and answer unless otherwise ordered by the decisional authority. We will accept Con Edison's and the Fund's answers because they have provided information that has assisted us in our decision-making process.

Commission Determination

19. NYPA has requested a change of interconnection point for one gas turbine generating facility. Our review of the changes to the Agreement indicates that they are just and reasonable. Further the changes have not been protested. We therefore accept the Revised Agreement. The only issue is whether Con Edison qualifies for a waiver of the sixty-day prior notice requirement to permit the Revised Agreement to become effective May 1, 2007. It is this issue that has been protested by the Fund. We find that Con Edison does qualify for the reasons discussed below, and thus, we will waive the notice requirement and accept the Revised Agreement effective May 1, 2007.

Waiver of the Sixty Day Notice Requirement

20. Section 205 of the Federal Power Act, permits waiver of the sixty day notice requirement for proposed rate changes upon a showing of good cause.⁸ In *Central Hudson* the Commission stated, in relevant part, “[w]e will generally grant waiver of the 60-day notice requirement in the following instances: (1) uncontested filings that do not change rates – such as . . . changes in non-rate terms. . . .”⁹

21. The Fund asserts that Con Edison does not meet the *Central Hudson* test. We do not agree. We believe Con Edison’s filing falls within the *Central Hudson* criteria quoted above. Con Edison’s filing is uncontested on the merits. The Fund does not contest the Revised Agreement but protests only the waiver of the notice requirement.¹⁰ NYPA, the other party to the agreement, supports the change. Moreover, the revision to the Agreement is a change to a non-rate term. Con Edison is not changing rates but rather changing a point of interconnection.

22. The Commission’s waiver of the notice requirement does not rest on *Central Hudson* alone. Subsequent to *Central Hudson*, the Commission has provided additional guidance as to when it is likely to grant waiver of the prior notice requirement. The Commission will generally grant waiver for service agreements under “umbrella tariffs” *i.e.*, tariffs of general applicability, if the service agreement is filed within 30 days after the service begins.¹¹ Here the Agreement is filed under NYISO’s Open Access Transmission Tariff, an “umbrella tariff,” and it was filed on April 27, 2007, before service commenced. A finding of good cause is further supported by the fact that both parties to the Revised Agreement support the filing. Thus, we find good cause to grant the requested waiver of the notice requirement.

⁸ 16 U.S.C. § 824d (2000).

⁹ *Central Hudson*, 60 FERC ¶ at 61,337.

¹⁰ 330 Fund I, L.P. May 8, 2007 Motion to Intervene and Protest at 6.

¹¹ *Prior Notice Order*, 64 FERC at 61,984. See also ¶*PJM Interconnection, L.L.C.*, 112 FERC ¶ 61,059 at P 16 (2005); *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,456 at P 20 (2005); *Carolina Power & Light Co.*, 84 FERC ¶61,103 at 61,521 & n.7 (1998); *order on reh’g*, 87 FERC ¶ 61,083 (1999); *Florida Power Corp.*, 76 FERC ¶ 61,070 at 61,436 (1996).

23. The Fund cites *Georgia Power* in support of its argument. *Georgia Power*, however, may be distinguished from the instant proceeding in that in *Georgia Power*, a party was protesting terms and conditions of an agreement,¹² and the Commission found the agreement had not been shown to be just and reasonable.¹³ Here the Fund does not protest the substance of the Revised Agreement, and the Commission has found the Revised Agreement to be just and reasonable.

24. The Fund also cites to *San Diego Gas* as an exemplar of good cause to grant waiver of the notice requirement. However, a finding of good cause in one set of circumstances does not preclude finding good cause under other circumstances. In *San Diego Gas*, the Commission found that the applicant's assertion that it accelerated completion of the project in order to reduce congestion costs constituted good cause for waiver of required notice. In addition, much of the protestor's concern had been resolved through an agreement reached subsequent to filing. Nothing in the facts related to the grant of waiver in *San Diego Gas* suggests that it would be inappropriate to grant a waiver in the instant proceeding.

25. Accordingly, we will grant the requested waiver of the 60-day notice requirement and accept the Revised Agreement effective May 1, 2007, as requested.

The Commission orders:

The Revised Agreement is hereby accepted effective May 1, 2007.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹² *Georgia Power*, 89 FERC at 61,442.

¹³ *Id.* ¶ 61,443.