



COUCH WHITE, LLP
counselors and attorneys at law

October 9, 2019

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**Re: *Rochester Gas and Electric Corporation*
Interconnection Agreement with RED-Rochester, LLC
ER20-_____ -000**

**Request for Expedited Comment Period and Waiver of 60-day Prior
Notice Period**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d and Section 35 of the Federal Energy Regulatory Commission's ("Commission") regulations, Rochester Gas and Electric Corporation ("RGE") and RED-Rochester LLC ("RED") jointly submit an Amended and Restated Interconnection Agreement ("IA") between RGE and RED. For the reasons discussed below, RGE and RED jointly request a shortened comment period on this filing and waiver of the 60-day prior notice period with expedited Commission action to permit the IA to become effective as of September 16, 2019. The IA is labeled as Service Agreement No. 2484 under the New York Independent System Operator, Inc.'s ("NYISO") Open Access Transmission Tariff.

I. DESCRIPTION OF PARTIES

RGE is public utility subject to the Commission's jurisdiction that owns transmission facilities under the operational control of the NYISO. RGE serves residential, commercial, and industrial retail electric customers in its service territory in and near Rochester, New York, which territory contains a population of approximately 900,000.

RED is a private company owned by Ironclad Energy Ventures LLC, a joint venture of Ironclad Energy Partners and Stonepeak Infrastructure Partners. RED owns and operates the former Eastman Kodak industrial complex in Rochester, New York, now known as the Eastman Business Park ("Park"). RED also owns and operates a series of generating units located within the Park that provide electricity, steam, and refrigeration to the businesses operating within the Park.



COUCH WHITE, LLP

counselors and attorneys at law

II. BACKGROUND AND OVERVIEW OF THE FILING

The generation facilities within the Park were initially constructed to support Kodak's manufacturing operations. In total, the generating capacity is approximately 117 MW. The Park is also connected to RGE's electric distribution system.

The electric generation facilities have been considered Qualifying Facilities under the Public Utility Regulatory Policies Act and Section 2 of the New York Public Service Law. For many years, the entire output from the generation facilities was utilized by the manufacturing operations. As the on-site demand declined, some of the excess power was sold to RGE in accordance with applicable law and a bilateral agreement between the parties.

Because a portion of the output of the electric generation facilities always has been needed to serve the Park's businesses, there has been no reason to install interconnection facilities with RGE equal to the total output from the on-site generation. Because of the limited capacity of those facilities, the ability to export power from the Park onto RGE's electric system was and is limited to approximately 41 MW. At this time, there are no plans to modify the interconnection facilities or otherwise add equipment to increase the power flows into or out of the Park.

A few years ago, the NYISO undertook a project to establish market and operational rules to allow facilities such as the Park (collectively known as "Behind-the-Meter Net Generators") to participate in NYISO's markets as suppliers. The rule changes were approved by the Commission in 2016.¹ RED qualifies as a Behind-the-Meter Net Generator and is desirous of becoming a participant in the NYISO's wholesale markets as such. It is now in the process of registering as a market participant with NYISO.

As part of the governance of the relationship between RGE and RED, the parties entered into an interconnection agreement that was subject to the oversight of the New York Public Service Commission and consistent with New York policies and procedures. During the registration process, NYISO informed RGE and RED that their interconnection agreement would need to be revised to be subject to the Commission's oversight and jurisdiction. However, NYISO indicated that because the agreement was preexisting and would remain a two-party agreement, the use of NYISO's *pro forma* large generator interconnection agreement ("LGIA") would not be required.

The original interconnection agreement had been rigorously negotiated, and the parties agreed that they preferred to continue those terms to the maximum extent possible. Accordingly, they agreed to amend their agreement to conform to the LGIA to the extent possible without substantively changing their respective obligations and commitments. The IA that is the subject

¹ *New York Indep. Sys. Op.*, 155 FERC ¶ 61,166 (2016).



COUCH WHITE, LLP

counselors and attorneys at law

of this matter, and which is attached to this transmittal letter, is the product of the parties' efforts. Although NYISO is not a signatory to the IA, NYISO has reviewed the document and provided advice and guidance to the parties regarding its provisions. The parties modified the IA based on that advice and guidance, and NYISO authorized RGE to report that NYISO has no objections to the IA.

RED would like to begin participating in NYISO's markets as expeditiously as possible. As part of the requirements to do so, it needs to have a Commission-jurisdictional interconnection agreement in place. Most other registration steps have been completed, and RED anticipates being able to commence selling energy by November 2019, with capacity sales commencing shortly thereafter. RED's ability to do so is contingent, in part, on this IA being filed with the Commission. In the event that RED is able to commence selling energy before the Commission takes action on this filing, RED's participation will be conditional until it receives Commission approval or acceptance of the IA.

The Parties respectfully request a shortened comment period, expedited Commission action and an effective date of September 16, 2019 for the IA. That effective date will help ensure that RED is fully able to participate in NYISO's markets as soon as possible, and that there will be no question or dispute regarding RED's legal ability to do so. Further, until such time as RED commences participation in NYISO's markets, the existing interconnection agreement between the parties will remain in effect. Setting the effective date for the IA as the date of execution of the IA will ensure that there is certainty and clarity between the parties regarding when the new terms take effect and that there will not be any gaps in coverage between the existing and new agreements. That is, the IA provides that the termination date of the existing interconnection agreement will be the date of execution of the IA. If the effective date of the IA is some date after the execution date, there will be a period of time when neither agreement is in effect – a possibility that neither party wants.

III. DESCRIPTION OF IA

The rates, terms, and conditions of the IA were agreed to by RGE and RED and are generally consistent with the *Pro Forma* LGIA. Key differences include:

- Because of the nature and configuration of RED's generation facilities and the Park's connection to RGE's distribution system, some provisions from the Parties' initial interconnection agreement, including a requirement that RED bear all costs associated with any changes required to RGE's electric system to accommodate RED's present and future needs, were deemed to be more comprehensive and provide more clarity than the similar terms of the *pro forma* LGIA;
- The LGIA provisions generally make reference to a single interconnection point between a generating facility and a transmission owner's transmission system. Here, however, the interconnection is with RGE's distribution system, and there are multiple generating units connected to RGE's distribution system at three discrete



COUCH WHITE, LLP

counselors and attorneys at law

locations. The parties' initial interconnection agreement better reflected this unique arrangement than the terms of the *pro forma* LGIA;

- Other provisions of the *pro forma* LGIA are relevant only to new interconnections, but no new interconnections or equipment are required for RED to commence participation in NYISO's markets, and no additional work or incurrence of interconnection-related costs is contemplated. RGE and RED respectfully submit that, in total, the differences between the IA and *pro forma* LGIA satisfy the Commission's "consistent with or superior to" standard for deviations from the *pro forma* LGIA;²
- The *pro forma* LGIA includes NYISO as a party. As noted above and below, NYISO is not a party to the IA. However, the provisions of the *pro forma* LGIA that give certain rights to NYISO are included in the IA such that it essentially is the equivalent of the LGIA from NYISO's perspective. This approach is consistent with the other pre-existing PURPA-type interconnection agreements that were converted, *inter alia*, from New York Public Service Commission to Commission-jurisdictional documents. As in the prior cases, the IA here does not involve a proposed increase in capacity or material modifications to any existing facilities;³
- Additional differences agreed upon by RGE and RED to reflect the unique circumstance of the interconnection.

The Parties respectfully request that the Commission accept the IA for filing as executed as submitted with this letter.

IV. REQUEST FOR CEII TREATMENT

Pursuant to the Commission's regulations at 18 C.F.R. §388.112 and 18 C.F.R. § 388.113, the Parties request that the one-line diagrams included as part of Appendix D to the Agreement be protected from disclosure as Critical Energy Infrastructure Information ("CEII"). The one-line diagrams contain one-line schematics of the electric substation which, if disclosed, could pose a threat to the security and the reliability of the New York State bulk power system. These diagrams provide more than simply the general location of critical infrastructure. Unlike publicly available maps of power transmission lines and generation and substation facilities, these diagrams provide the exact nature, specific location, and additional potentially

² *Standardization of Generator Interconnection Agreements and Procedure*, Order No. 2003 at P 26, FERC Stats. & Regs., ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs., ¶ 31,160, *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. Natl. Assn. of Regulatory Util. Commrs. v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

³ *See, e.g., Niagara Mohawk Power Corporation d/b/a National Grid*, 121 FERC ¶ 61,104 at P 22 (2007).



COUCH WHITE, LLP

counselors and attorneys at law

harmful information of facilities and transmission lines used to maintain the reliability of the New York State bulk power system. They reveal critical information related to the facilities and transmission lines depicted therein that, if disclosed, could be useful to a person seeking to disable the power grid.

Therefore, the disclosure of these CEII diagrams would pose a threat to the reliability of the New York State bulk power system and to the health and safety of New York residents. Moreover, the information revealed in these diagrams reveals CEII that FERC has determined to be exempt from mandatory disclosure under 5 U.S.C. § 552(b)(7)(F). These diagrams have been omitted from the Public version of the Interconnection Agreement included in this filing. The diagrams are included only in the CEII version of the Interconnection Agreement in the filing.

V. REQUEST FOR SHORTENED COMMENT PERIOD AND PROPOSED EFFECTIVE DATE

The Parties respectfully request that the Commission grant waiver of the 60-day notice requirement and accept the IA effective September 16, 2019. The Commission's regulations specify that tariff filings will normally become effective after a 60-day notice period and that 21 days will normally be allowed for interested parties to submit protests.⁴ The Commission has discretion, however, to shorten both periods for good cause. As the Commission noted in *Central Hudson Gas & Electric Corp.*,⁵ waiver of the 60-day prior notice requirement is appropriate where the customer and the utility agree and where there is no rate impact:

[W]aiver of the notice requirement will generally be appropriate when an uncontested filing has no rate impact or when a filing reduces rates or charges, or when a rate increase and its effective date are prescribed by a contract on file with the Commission or by a settlement agreement accepted by the Commission.⁶

In this case, there is good cause for the Commission to grant this waiver because waiver of the notice will not have a rate impact and both RGE and RED support the instant filing and the requested effective date. . The Commission previously has granted waiver of the 60-day prior notice requirement where an agreement was filed within 30 days of the commencement of service.⁷

⁴ See 18 C.F.R. §§ 35.3 and 35.8.

⁵ *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,089 (1992).

⁶ *Id.*, slip op at 2.

⁷ See, e.g., *Ameren Illinois Co.*, Docket No. ER15-370-000 (Dec. 15, 2014) (unpublished letter order); *S. Cal. Edison Co.*, Docket No. ER15-76-000 (Nov. 17, 2014) (unpublished letter order); *MidAmerican Energy Co.*, Docket No. ER13-2399-000 (Nov. 6, 2013) (unpublished letter order).



COUCH WHITE, LLP

counselors and attorneys at law

The Parties respectfully request a waiver of any Commission requirements not specifically addressed herein necessary to allow the IA to become effective as of September 16, 2019.

VI. COMMUNICATIONS

The individuals indicated below are designated for service under Rule 2010 of FERC's Rules of Practice and Procedure. Please direct all correspondence and communications regarding this filing to:⁸

Justin Atkins
Counsel
Avangrid Service Company
One City Center 5th Floor
Portland, ME 04101
207.629.1293
Justin.atkins@avangrid.com

Timothy J. Lynch
Director – Electric Transmission Services
New York State Electric & Gas Corporation
18 Link Drive, PO Box 5224
Binghamton, NY 13902
585.484.6352
tjlynch@nyseg.com

Kevin M. Lang, Esq.
Couch White, LLP
Counsel for RED-Rochester, LLC
540 Broadway
P.O. Box 22222
Albany, NY 12201-2222
518-320-3421
klang@couchwhite.com

VII. CONTENTS OF FILING

In accordance with the Commission's eTariff regulations and other filing requirements,⁹ in addition to this transmittal letter this filing consists of:

- the CEII Version of the IA; and
- the Public Version of the IA.

Copies of this filing have been served upon the New York Public Service Commission and NYISO.

⁸ The Parties respectfully request waiver of 18 C.F.R. § 385.203(b)(3) to allow more than two persons to be added to the service list in this proceeding.

⁹ 18 C.F.R. § 35.3(a)(2).



COUCH WHITE, LLP

counselors and attorneys at law

Please feel free to contact the undersigned with any questions concerning the instant filing. Thank you for your assistance in this matter.

Respectfully submitted,

/s/ Justin Atkins

Justin Atkins

Counsel for Rochester Gas and Electric
Corporation

/s/ Kevin M. Lang

Kevin M. Lang

Counsel for RED-Rochester, LLC