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NON-PUBLIC ATTACHMENT
CONTAINS CRITICAL ENERGY
INFRASTRUCTURE INFORMATION

By Electronic Delivery

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

Re: *Consolidated Edison Company of New York, Inc.*
Docket No. ER14-____-000

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act and pursuant to the Commission's regulations at 18 C.F.R. Section 35.13, Consolidated Edison Company of New York, Inc., ("Con Edison") hereby files the following contract and amendment relating to an operating and maintenance service agreement by Con Edison on behalf of the New York Power Authority ("NYPA"):

- (1) Amended and Composite Agreement between Con Edison and the New York Power Authority for the Operation and Maintenance of the Facilities Associated With Astoria Annex Substation 345kV Gas-Insulated Substation, dated as of January 2013, (the "Restated Agreement"), and
- (2) Revised First Amendment to the Agreement between Consolidated Edison Company of New York, Inc. and the New York Power Authority for the Operation and Maintenance of the Facilities Associated with Astoria Annex Substation 345kV Gas-Insulated Substation, dated as of March 1, 2013 ("Restated First Amendment") (the Restated

Agreement and Restated First Amendment are jointly referred to as the “Superseding Agreement”).¹

The Superseding Agreement sets forth the terms and conditions pursuant to which Con Edison will perform certain operations and maintenance services (“O&M Service”) with regard to the Astoria Annex Substation (“Annex Substation”), a 345 kV substation that is owned by NYPA and is located in Queens, New York. The Superseding Agreement consists of an agreement and a separately stated amendment because, as discussed in Section 3(B) below, the agreement and amendment could not be integrated without further negotiations between Con Edison and NYPA that might alter other terms and/or implementation of the agreement.

As discussed in Section 4 below, the Restated Agreement contains material that constitutes Critical Energy Infrastructure Information (“CEII”), which should be protected from disclosure. Accordingly, this filing consists of the following documents:

- this transmittal letter,
- the Restated Agreement - Public Version (Attachment A),
- the Restated First Amendment (Attachment B), and
- the Restated Agreement - Non-Public Version (Attachment C),

1. BACKGROUND

Con Edison is a public utility located in New York State and is subject to the Commission’s jurisdiction. As relevant to this filing, Con Edison owns the Astoria complex, located in the City of New York. Sited on that complex are certain electric generating and transmission facilities that are owned separately by NYPA and third parties and certain transmission facilities that are owned by Con Edison.

NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York (“State”), organized under the laws of the State, and operating pursuant to Title 1 of Article 5 of the New York Public Authorities Law. In 2011, NYPA constructed the Annex Substation on the Astoria complex, in response to a request by Astoria Energy II LLC (“Astoria Energy”), in order to interconnect Astoria Energy’s proposed generating facility with transmission lines owned by NYPA.

The Annex Substation utilizes gas insulated technology because of space limitations and the substation’s high operating voltage. NYPA continues to own the Annex Substation. But

¹ The Superseding Agreement has been designated as Original Service Agreement No. 2013 under the *New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 1*.

because Con Edison had more experience with the operation and maintenance of gas-insulated substations, NYPA and Con Edison agreed that Con Edison would operate and maintain the Annex Substation, on NYPA's behalf, in accordance with negotiated terms and conditions.

2. THE AGREEMENTS

The terms and conditions of the O&M Service, as set forth in the Superseding Agreement, were negotiated and agreed to by NYPA and Con Edison. The following is a summary of the major terms and conditions of the agreement:

- The term shall be for 20 years, with an option for an additional 10 years by agreement of the parties. Either party may terminate the agreement by giving at least one year's notice. (Sections 2.1 and 2.2).
- NYPA has the responsibility for managing compliance with the NERC Reliability Standards until Con Edison performs the test or analysis required by the individual reliability standards. After Con Edison performs the test or analysis, Con Edison shall be responsible for the specific NERC standard tested or analyzed. (Sections 3.1.3 and 3.1.4). NYPA shall obtain all necessary permits, licenses and approvals that are necessary for the operation and maintenance of the substation. (Section 3.4).
- NYPA shall obtain and pay for insurance associated with the O&M activities. (Sections 4.1.10 and 18.1).
- Con Edison shall perform specified work prior to acceptance of the O&M responsibility, such as facility inspections, acceptance of the facility, and review of engineering documents and drawings. (Section 4.2).
- In the event of a conflict between Con Edison's operating and maintenance standards and NYPA's corresponding requirements concerning sulfur hexafluoride gas, NYPA's requirements control. (Section 4.2.1).
- Con Edison shall operate, monitor, inspect, and perform ordinary preventative and corrective maintenance, testing and protective system operations assessments. However, Con Edison shall not be responsible for any operation, monitoring, inspection, preventative or correction maintenance, testing or protective system operation assessment relating to construction defects of the Annex Substation. (Sections 4.2.5 and 4.3.1).
- Con Edison may subcontract any part of the O&M services without NYPA's consent. (Section 4.2.6).
- NYPA shall perform the maintenance and calibration of the revenue meters and telemetry equipment. (Section 4.3.4).

- Con Edison shall operate and maintain NYPA's data and control RTUs. (Section 4.3.5).
- NYPA shall procure and stock all spare parts. (Section 4.3.6).
- NYPA shall reimburse Con Edison for all costs and expenses associated with the O&M services. (Sections 6.1 and 6.2).
- NYPA shall be responsible, at its cost, for any construction, modification or alteration necessary for the Annex Substation to comply with any future legal requirement. (Section 14.1).

3. WAIVER REQUESTS

A. Request for Waiver of the Prior Notice Requirement

Con Edison initially did not believe that it was necessary to file the agreement for the O&M Service with the Commission. But on further review, Con Edison decided that it would file the Superseding Agreement out of an abundance of caution.² The proposed effective date for the Superseding Agreement is one day after the date of this filing. Con Edison requests that the Commission waive the Prior Notice requirement with respect to the Superseding Agreement to the extent of allowing it to become effective on that date.

That waiver of the Prior Notice requirement is warranted by the circumstances. Con Edison undertook the O&M Service in support of the interconnection of Astoria Energy's new 650 MW generator to the Annex Substation. That generation interconnection arose out of a request by NYPA for proposals of new generation sources to support electric markets and consumers in New York City. NYPA selected Astoria Energy's proposal as the most desirable option and executed a power purchase agreement with Astoria Energy. NYPA and Astoria Energy agreed that the new generator would be connected to the then-proposed Annex Substation, which for technical reasons had to utilize gas-insulation technology.³ Because it had substantial experience with gas-insulated equipment, as an accommodation to NYPA, Con Edison agreed to operate and maintain the Annex Substation.

The compensation that NYPA pays to Con Edison is limited to reimbursement of Con Edison's costs:

² Indeed, Con Edison consulted the Commission Staff as to whether Con Edison was required to file the Superseding Agreement. In response to Con Edison's inquiry, the Staff suggested that it was not necessary to file the agreement.

³ The Commission accepted the Interconnection Agreement for the Astoria Energy generator in February 2011. New York Independent System Operator, Inc., Docket No. ER11-2654-000, Letter Order, dated February 9, 2011.

The Power Authority will reimburse Con Edison for all costs and expenses associated with its O&M Services, including, but not limited to, its Preparatory Work and Scope of Work and related services, equipment, materials, expenses, and any work, services, or materials that Con Edison provides in an emergency. (Emphasis added)⁴

Thus, Con Edison is merely made whole for its costs and does not profit from the O&M Service.

The reimbursement for Con Edison's service is based on Con Edison's Accommodation Services charges.⁵ Those charges are formulated in accordance with Con Edison's New York Public Service Commission ("NYPSC") tariff.⁶ Con Edison assesses those charges to its retail customers for services that they request beyond those that are provided to all customers under the NYPSC tariff. In addition, the Commission has repeatedly approved the application of Con Edison's Accommodation Services rates to various Commission-jurisdictional services that Con Edison has performed for electric generators, other transmission owners, and transmission customers.⁷

The foregoing considerations establish good cause for waiver of the Prior Notice requirement in accordance with 18 CFR § 35.11. Granting the requested waiver would not affect other persons because NYPA is the only customer under the Superseding Agreement, and the agreement is sui generis.

B. Request For Waiver of Order No. 614 Requirement

Order No. 614 requires that amended agreements filed with the Commission be revised to include all effective terms and to exclude non-effective and superseded language.⁸ Consistent with this integration requirement, the Restated Agreement integrates, to the extent possible, the

⁴ Sections 6.1 of the Original Agreement and the Restated Agreement.

⁵ *Id.*

⁶ *Id.* Sections 6.2 of the Original Agreement and Restated Agreement describe the formulation of the labor component of the Accommodation Services charge.

⁷ *Consolidated Edison Company of New York, Inc.*, Docket No. ER09-786-000, Letter Order, dated April 8, 2009 (applied Con Edison's accommodation services rates to services under a generic Accommodation Services Tariff); *Consolidated Edison Company of New York, Inc.*, 107 FERC ¶ 61,103 (2004) (applied the accommodation services rates to technical support provided for a generation-project developer (Interconnection Agreement, Annex IV filed in Docket No. ER04-934)); *Consolidated Edison Company of New York, Inc.*, Docket No. ER08-799-000, Letter Order, dated November 19, 2008 (applied the accommodation services rates to services provided to a project developer pursuant to an Engineering and Procurement Agreement under the NYISO OATT); *Consolidated Edison Company of New York, Inc.*, Docket No. ER08-895-000, Letter Order, dated October 24, 2008 (applied the accommodation services rates as compensation for cost of a customer-requested transmission system enhancement).

⁸ *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed.Reg. 18,221 at 18,224 (2000); *Boston Edison Company*, Docket No. ER02-170-000, Letter Order, dated December 17, 2001, Order on Rehearing, 98 FERC 61,292 at PP20-21 (2002).

terms and conditions of the O&M Service. That is, the terms and conditions of the service are stated in the Restated Agreement to the extent possible, and the remaining terms and conditions that could not be integrated are stated in the Restated First Amendment. Con Edison requests that the Commission accept that level of integration as compliant with Order No. 614.

Some history regarding the origin of the Superseding Agreement may be helpful. Before the negotiation and execution of that agreement, Con Edison and NYPA had negotiated and executed a prior agreement.⁹ That Original Agreement provided that Con Edison would commence the O&M Service upon the satisfaction of specified conditions. But because of a change in circumstances, NYPA and Con Edison subsequently agreed that Con Edison would commence the service prior to the satisfaction of the conditions, subject to other terms and conditions that were stated in two amendments to the Original Agreement. The Original Agreement was not restated to incorporate the two amendments because Con Edison and NYPA sought to preserve the differing conditions stated in the Original Agreement and the two amendments.

That preservation concern carried over to the Superseding Agreement. In preparing this filing, Con Edison attempted to integrate the terms and conditions of the Original Agreement and its amendments, in compliance with Order No. 614. But with certain exceptions, the conditions in the Original Agreement could not be integrated with those of the two amendments without altering some of the conditions. The terms and conditions that could be integrated without alteration were incorporated into the Restated Agreement. Those that could not, are stated in the Restated First Amendment.

Con Edison requests that the Commission find that this arrangement satisfies the integration requirement of Order No. 614. Integration of the remaining provisions stated in the Restated First Amendment could not be accomplished without further negotiations between Con Edison and NYPA and alteration of the previously agreed-upon terms. The integration of those terms and conditions into the Restated Agreement would require reconciliation with and redrafting of certain contract provisions. Because the full integration of the Original First Amendment would present those substantive concerns, Con Edison requests that the Commission waive the integration requirement of Order No. 614 to the extent necessary for acceptance of this filing.

C. Request for Waiver of Requirements of Section 35.13

This filing does not create any new rates or increase Con Edison's net revenues. Accordingly, the filing should be treated as a rate schedule change other than a rate increase

⁹ Agreement between Con Edison and the New York Power Authority for the Operation and Maintenance of the Facilities Associated with Astoria Annex Substation 345kV Gas-Insulated Substation, dated as of February 1, 2011 ("Original Agreement").

under 18 CFR Section 35.13(a)(2)(iii). No costs reflected in the proposed rates have been alleged or judged in any administrative proceeding to be illegal, duplicative or unnecessary costs that are demonstrably the result of discriminatory practices. On the contrary, the proposed rate formulation has been accepted and applied repeatedly by both the Commission and the NYPSC. Accordingly, Con Edison requests any waivers necessary to make the filed agreements effective without modification.

4. REQUEST FOR CRITICAL ENERGY INFRASTRUCTURE INFORMATION TREATMENT

Pursuant to the Commission's regulations at 18 C.F.R. §§388.112 and 388.113, Con Edison requests that the lists of equipment and spare parts to be used in performing the O&M services, contained in the following documents, be protected from disclosure as CEII: Restated Agreement Exhibits A and D. Public disclosure of the equipment and spare parts lists could pose a threat to the security and the reliability of the New York State bulk power system. The Astoria Annex is a 345 kV substation in New York City, and the equipment and spare parts lists contain detailed design information regarding critical components of this facility. In addition, Con Edison requests that the draft survey map also be protected from disclosure as CEII material: Restated Agreement Exhibit E. The survey contains detailed information concerning the ductwork and the substation. The disclosure of this information could be useful to a person seeking to disable the power grid and would thus pose a threat to the reliability of the New York State bulk power system and to the health and safety of New York residents. Accordingly, the information revealed in these equipment lists and survey constitute CEII that is exempt from mandatory disclosure under 5 U.S.C. §552(b)(7)(F). The equipment and spare parts lists and the survey have been omitted from the public version of the Restated Agreement included in this filing. These items are included only in the non-public version of the Restated Agreement attached to this filing (i.e., Attachment C)

All communications relating to this request for CEII treatment should be addressed to the following:

Peter Yost
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5. Communications and Service

Con Edison requests that questions or other communications regarding this filing be addressed to:

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Con Edison has served a copy of this filing on NYPA, the New York Public Service Commission, and the New York Independent System Operator, Inc.

6. CONCLUSION

For the reasons discussed above, Con Edison requests that the Commission grant the requested waivers, accept the enclosed agreements for filing, and allow them to become effective as proposed.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Marc Richter". The signature is fluid and cursive, with the first name "Marc" being more prominent than the last name "Richter".

Marc Richter

Attachments