

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Con Edison Company of New York, Inc.**

**v.**

**Cogen Technologies Linden Venture, L.P.**

)  
)  
)  
)  
)  
)  
)

**Docket No. TX14-1-000**

**MOTION TO INTERVENE AND LIMITED COMMENTS OF  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 211, 212, and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) moves to intervene and submits comments concerning one aspect of Consolidated Edison Company of New York, Inc.’s (“Con Edison’s”) March 18, 2014 *Application for Interconnection Order* (“Application”) in the above-captioned proceeding.<sup>2</sup>

In its Application, Con Edison requests that the Commission direct Cogen Technologies Linden Venture, L.P. (“Linden Venture”) to modify the physical connection at its substation between its facilities and those of Con Edison to permit Con Edison to comply with a directive of the New York State Public Service Commission. As part of its Application, Con Edison argues that Linden Venture should be required to adopt an Open Access Transmission Tariff (“OATT”). Con Edison proposes that Linden Venture might satisfy this requirement by adopting the NYISO’s OATT and requests that the Commission make a determination that Linden Venture is

---

<sup>1</sup> 18 C.F.R. §§ 385.211, 385.212, and 385.214.

<sup>2</sup> *Consolidated Edison Company of New York, Inc. v. Cogen Technologies Linden Venture, L.P.*, Application for Interconnection Order, FERC Docket No. TX14-1-000 (March 18, 2014) (“Con Edison Application”).

a “Transmission Owner” under the NYISO’s OATT and subject to certain transmission expansion provisions contained in the OATT.

The NYISO does not take a position regarding Con Edison’s request that the Commission direct Linden Venture to modify its facilities or adopt an OATT. However, in making this determination, the Commission need not, and should not, address the definition of “Transmission Owner” under the NYISO OATT or the application of the NYISO’s transmission expansion requirements, for the reasons discussed herein.

## **I. COMMUNICATIONS**

Communications and correspondence regarding this filing should be directed to:

Robert E. Fernandez, General Counsel  
Raymond Stalter, Director of Regulatory Affairs  
\*Sara B. Keegan, Senior Attorney  
New York Independent System Operator, Inc.  
10 Krey Boulevard  
Rensselaer, NY 12144  
Tel: (518) 356-6000  
Fax: (518) 356-4702  
rfernandez@nyiso.com  
rstalter@nyiso.com  
skeegan@nyiso.com

\*Ted J. Murphy  
Hunton & Williams LLP 2200  
Pennsylvania Ave, NW  
Washington, DC 20037  
Tel: (202) 955-1500  
Fax: (202) 778-2201  
tmurphy@hunton.com

\*Michael Messonnier<sup>3</sup>  
Hunton & Williams LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, VA 23219  
Tel: (804) 788-8712  
Fax: (804) 343-4646  
mmessonnier@hunton.com

\* -- Persons designated for service.

---

<sup>3</sup> Waiver of the Commission’s regulations (18 C.F.R. § 385.203(b)(3) (2012)) is requested to the extent necessary to permit service on counsel for the NYISO in both Richmond, VA and Washington, DC.

## **II. MOTION TO INTERVENE**

The NYISO is a not-for-profit corporation responsible for providing open-access transmission service, maintaining reliability, conducting bulk electric system planning, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. Con Edison's Application calls for the Commission to apply the term "Transmission Owner" under the NYISO's OATT to Linden Venture. Accordingly, the NYISO has a direct and substantial interest in the Application. This interest cannot be adequately represented by any other party, and the NYISO should thus be permitted to intervene in this proceeding.

## **III. COMMENTS**

The Commission need not, and should not, address in this proceeding on a generic basis the meaning of the term "Transmission Owner" under the NYISO's OATT or the application of the NYISO's transmission expansion requirements. As described below, a generally applicable finding regarding the term "Transmission Owner" is not required to address Con Edison's Application, could raise additional issues regarding the classification, rights and obligations of market participants under the NYISO's tariffs and agreements, and could impact an existing proceeding currently before the Commission in response to Order No. 1000.

In its Application, Con Edison argues that Linden Venture should be required to adopt an OATT and to grant Con Edison non-discriminatory access to Linden Venture's transmission facilities.<sup>4</sup> Con Edison suggests that Linden Venture could satisfy its open access obligations by adopting the NYISO's OATT, provided that the requirements in Section 3.7 of the NYISO OATT regarding the construction by Transmission Owners of customer-requested enhancements

---

<sup>4</sup> Con Edison Application at p 27.

to the transmission system apply to Linden Venture.<sup>5</sup> Con Edison requests that the Commission make a determination regarding the scope of the term “Transmission Owner” under the NYISO’s OATT to clarify that Linden Venture is a Transmission Owner that is subject to these transmission expansion requirements.<sup>6</sup>

As an initial matter, the Commission is not required to make a determination regarding the meaning of the term “Transmission Owner” under the NYISO’s OATT to conclude whether Linden Venture should be required to modify its facilities or adopt an OATT. Con Edison merely describes the possibility of Linden Venture adopting the NYISO OATT as one option that could be pursued by Linden Venture to satisfy any open access obligations that the Commission may find.<sup>7</sup> The Commission, however, need not determine in this proceeding whether Linden Venture is a Transmission Owner under the NYISO’s OATT or whether it is subject to the NYISO’s transmission expansion requirements.

Any broad Commission determination regarding the scope of the term “Transmission Owner” under the NYISO’s OATT could raise additional issues regarding the classification of market participants and their rights and obligations under the NYISO’s tariffs and agreements. The potential issues go well beyond the application of the NYISO’s transmission expansion requirements contained in Section 3.7 of the NYISO OATT. The NYISO’s tariffs and agreements establish extensive rights and obligations for entities categorized as “Transmission Owners,” both for individual Transmission Owners and for all of the New York Transmission Owners acting collectively. These rights and obligations concern, among other things, indemnity

---

<sup>5</sup> Con Edison Application at p 28.

<sup>6</sup> Con Edison Application at pp 28-31.

<sup>7</sup> Con Edison Application at p 28 (“Linden Venture *might satisfy* its open access obligation by adopting the NYISO OATT provided that Section 3.7 of that tariff is applicable to Linden Venture.”) (emphasis added).

and limitation of liability requirements specific to Transmission Owners, filing rights specific to Transmission Owners, the requirements for Transmission Services Charges and NYPA Transmission Adjustment Charges, and the administration of the NYISO's Transmission Congestion Contract auctions.<sup>8</sup> This proceeding is not the appropriate venue for properly vetting these issues.

The NYISO notes that these issues are already being addressed in response to Order No. 1000. In response to the Commission's directive in the NYISO's regional planning process filing under Order No. 1000,<sup>9</sup> the NYISO has proposed tariff provisions establishing the process by which an entity, if selected to develop a transmission project, can enroll to be a new Transmission Owner in New York.<sup>10</sup> This process prescribes requirements for the entity to execute either the existing Agreement Between the New York Independent System Operator and Transmission Owners ("NYISO/TO Agreement") or a separate agreement with the NYISO under terms comparable to the NYISO/TO Agreement, and to turn over operational control of its transmission facilities to the NYISO.<sup>11</sup> The NYISO is currently evaluating the changes to the NYISO's existing tariffs and agreements that may be required to accommodate the enrollment of a new Transmission Owner in New York. In responding to Con Edison's request in this proceeding, the Commission should not preempt its determination on the NYISO's regional planning compliance filing in the Order No. 1000 proceeding by establishing different,

---

<sup>8</sup> Terms with initial capitalization not defined herein have the meaning set forth in the NYISO's OATT or, if not therein, in the NYISO's Market Administration and Control Area Services Tariff.

<sup>9</sup> *New York Independent System Operator, Inc.*, Order on Compliance Filing, 143 FERC ¶ 61,059 (2013) at P 27.

<sup>10</sup> *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-000 (October 15, 2013) at pp 2-3; see OATT Section 31.1.7.

<sup>11</sup> *Id.*; see OATT Section 31.1.7.

potentially conflicting requirements regarding the meaning and use of the term “Transmission Owner” under the NYISO’s OATT.

For the above-stated reasons, the Commission should not make a generic determination in this proceeding regarding the meaning of the term “Transmission Owner” under the NYISO’s OATT or the applicability of the NYISO’s transmission expansion requirements.

#### **IV. CONCLUSION**

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission grant this motion to intervene and accept these comments.

Respectfully Submitted,

/s/ Sara B. Keegan

Sara B. Keegan

Counsel to the

New York Independent System Operator, Inc.

April 17, 2014

cc: Michael Bardee  
Gregory Berson  
Anna Cochrane  
Jignasa Gadani  
Morris Margolis  
Michael McLaughlin  
David Morenoff  
Daniel Nowak

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Rensselaer, NY this 17<sup>th</sup> day of April, 2014.

By: /s/ John C. Cutting

John C. Cutting  
New York Independent System Operator, Inc.  
10 Krey Blvd.  
Rensselaer, NY 12144  
(518) 356-7521