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January 5, 2011

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

**Re: Filing of an Executed Small Generator Interconnection Agreement by and among the New York Independent System Operator, Inc., New York State Electric & Gas Corporation, and AES ES Westover, LLC, and Request for Waiver of 60-Day Notice Period, Docket No. ER11- \_\_ -000**

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act<sup>1</sup> and Section 35.12 of the Commission's regulations,<sup>2</sup> the New York Independent System Operator, Inc. ("NYISO") and New York State Electric & Gas Corporation ("NYSEG") (together, the "Joint Filing Parties") hereby tender for filing an executed Small Generator Interconnection Agreement entered into by the NYISO, NYSEG, as the Connecting Transmission Owner, and AES ES Westover, LLC ("Westover"), as the Interconnection Customer (the "Westover Agreement").<sup>3</sup> The Westover Agreement is labeled as Service Agreement No. 1677.

The Joint Filing Parties respectfully request that the Commission accept the Westover Agreement for filing. With the limited exceptions described in Section I.B of this letter, the Westover Agreement conforms to the NYISO's *pro forma* Small Generator Interconnection Agreement ("Pro Forma SGIA") as accepted by the Commission and contained in Attachment Z to the NYISO's OATT.<sup>4</sup> Further, as described in Section II of this letter, the Joint Filing Parties

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<sup>1</sup> 16 U.S.C. § 824d (2008).

<sup>2</sup> 18 C.F.R. § 35.12 (2009).

<sup>3</sup> Capitalized terms not otherwise defined have the meaning ascribed to them in the NYISO's OATT and Attachments S and Z to the NYISO OATT.

<sup>4</sup> See *New York Independent System Operator, Inc., New York Transmission Owners*, 113 FERC ¶ 61,130 (2007), *order on reh'g*, 119 FERC ¶ 61,333 (2007) and *New York Independent System Operator, Inc., New York Transmission Owners*, Letter Order, Docket Nos. ER06-311-004 and 005 (March 3, 2008).

respectfully request a waiver of the Commission's prior notice requirements<sup>5</sup> to make the Westover Agreement effective as of December 9, 2010, the date of its execution.

## I. Discussion

### A. Background

Westover is constructing a 20 MW battery-based energy storage system ("Facility") that will be located in the footprint of the retired Unit 7 at the existing coal-fired Westover Generating Station owned by AEE2, L.L.C. ("AEE2") in the Town of Union in Broome County, New York. The Facility will consist of ten 2 MW battery/inverter units.<sup>6</sup> Westover plans to use the Facility to provide regulation service to the NYISO markets. Additional details regarding the interconnection of the Facility can be found in Attachment 2 of the Westover Agreement.

The Facility will interconnect with the New York State Transmission System at NYSEG's Goudey Substation by means of existing Interconnection Facilities owned by AEE2 and associated with the retired Unit 7 at the Westover Generating Station. Westover has leased these Interconnection Facilities through a Lease Agreement between Westover and AEE2 executed on December 9, 2010, and filed with the Commission on December 9, 2010.<sup>7</sup> As described in Section A of Attachment 2 of the Westover Agreement, the Lease Agreement provides Westover with control over the Interconnection Facilities sufficient to fulfill its responsibilities under the Westover Agreement. The Facility's Points of Interconnection will be the 115 kV bus tap in NYSEG's 115 kV Goudey Substation and the 34.5 kV bus tap in NYSEG's 34.5 kV Goudey Substation. Attachment 3 to the Westover Agreement provides a one-line diagram showing the Points of Interconnection.

### B. The Westover Agreement Closely Conforms to the Pro Forma SGIA Contained in Attachment Z of the NYISO OATT

The Westover Agreement was executed on December 9, 2010, by the NYISO, NYSEG, and Westover. The Westover Agreement closely follows the language in the Pro Forma SGIA contained in Attachment Z of the NYISO OATT. However, the Westover Agreement does contain limited variations from the Pro Forma SGIA that are necessary because of the unique circumstances of Westover's project described in Sections I.B.1 and I.B.2 below. The Joint Filing Parties submit that the changes specified below satisfy the Commission's standard for variations from the Pro Forma SGIA, because unique circumstances exist that require a non-

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<sup>5</sup> See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶61,139, *reh'g denied*, 65 FERC 61,081 (1993).

<sup>6</sup> Four of these units (8 MW) have already been installed and are expected to be operational in December 2010. Westover plans to install six additional units (12 MW) that will be operational in the second quarter of 2011.

<sup>7</sup> See *AEE2, L.L.C.*, Docket No. ER11-2328-000 (December 9, 2010).

conforming agreement.<sup>8</sup> Therefore, the Joint Filing Parties respectfully request that the Commission accept the Westover Agreement with these limited non-conforming changes.

### **1. Change to Section 4.1**

Section 4.1 of the Pro Forma SGIA states that the Interconnection Customer will be responsible for the expenses associated with owning, operating, maintaining, repairing, and replacing the Interconnection Customer's Interconnection Facilities and the Connecting Transmission Owner's Interconnection Facilities. However, in this instance, the Facility will interconnect with the New York State Transmission System through the Connecting Transmission Owner's existing Interconnection Facilities. Expenses associated with the Connecting Transmission Owner's Interconnection Facilities are already covered by a pre-existing operating and maintenance agreement previously entered into by the Connecting Transmission Owner.<sup>9</sup> As the Connecting Transmission Owner has already covered the expenses for the Connecting Transmission Owner's Interconnection Facilities through this previous agreement, the parties to the Westover Agreement have agreed that the Connecting Transmission Owner is the appropriate party to be responsible under the Westover Agreement for the expenses associated with owning, operating, maintaining, repairing, and replacing the Connecting Transmission Owner's Interconnection Facilities. Therefore, the Joint Filing Parties propose to revise Section 4.1 to state that the Connecting Transmission Owner, and not the Interconnection Customer, is responsible for these expenses.

### **2. Change to Section 7.3**

Section 7.3 of the Pro Forma SGIA establishes general indemnity requirements stating that each party will be protected from liability incurred to third parties as a result of carrying out the provisions of the Pro Forma SGIA. However, as part of the Westover Agreement, NYSEG and Westover will perform certain work to relocate lines in proximity to the Facility, and the parties have agreed on separate indemnity and release provisions specific to this line relocation work as detailed in Section F of Attachment 2 of the Westover Agreement. Therefore, the Joint Filing Parties propose to revise Section 7.3 to state that any liability associated with this line relocation work will be addressed through the indemnity and release provisions agreed-upon for such work as set forth in Section F of Attachment 2 of the Westover Agreement.

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<sup>8</sup> See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,188 at P 8 (2007) (requiring that deviations from the *pro forma* SGIA be clearly identified and an explanation be provided that indicates "why the unique circumstances of the interconnection require a non-conforming interconnection agreement").

<sup>9</sup> This Agreement Regarding Standby Service, dated June 27, 2003, is described in Section G of Attachment 2 of the Westover Agreement. This agreement was entered into between NYSEG and AES Eastern Energy, LLC, and establishes that AES Eastern Energy, LLC will pay for the expenses to own, operate, maintain, repair, and replace certain Interconnection Facilities that include the Connecting Transmission Owner's Interconnection Facilities that will be utilized by the Facility.

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## **II. Proposed Effective Date and Request for Waiver of Notice Requirement**

The Joint Filing Parties request a December 9, 2010, effective date for the Westover Agreement, which is the date of execution. The Joint Filing Parties respectfully request that the Commission waive the prior notice requirement in order to permit the requested effective date. The Commission has previously permitted interconnection agreements to become effective upon the date of execution.<sup>10</sup>

## **III. Communications and Correspondence**

The following persons should be included in the official service list in this proceeding and all communications concerning this filing should be addressed to them:

### **For the NYISO**

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<sup>10</sup> See, e.g., *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Letter Order, Docket Nos. ER09-159-000 and 001 (December 11, 2008); *New York Independent System Operator, Inc. and Niagara Mohawk Power Corp.*, Letter Order, Docket No. ER08-985-000 (June 26, 2008).

<sup>11</sup> The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, Virginia.

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**For NYSEG**

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**IV. Documents Submitted**

The NYISO submits the following documents:

1. This filing letter;
2. A clean version of the Westover Agreement (“Attachment I”); and
3. A blacklined version of the Westover Agreement showing the changes from the body of the Pro Forma SGIA (“Attachment II”).

**V. Service**

The NYISO will send a paper copy of this filing to NYSEG and Westover. The NYISO will send an electronic link to this filing to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the electric utility regulatory agency of New Jersey. In addition, the complete public version of this filing will be posted on the NYISO’s website at [www.nyiso.com](http://www.nyiso.com).

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**VI. Conclusion**

For the foregoing reasons, the Joint Filing Parties respectfully request that the Commission accept this Westover Agreement for filing with an effective date of December 9, 2010.

Respectfully submitted,

*/s/ Ted J. Murphy*

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Ted J. Murphy  
Counsel for the  
New York Independent System Operator, Inc.

*/s/ Jeffrey R. Clark*

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Jeffrey R. Clark  
Counsel for  
New York State Electric & Gas Corporation

Enclosures