

March 22, 2018

By Electronic Delivery

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

NON-PUBLIC VERSION

**CONTAINS CEII, PRIVILEGED, AND
CONFIDENTIAL INFORMATION
PURSUANT TO 18 C.F.R. §§ 388.112
AND 388.113 - DO NOT RELEASE**

Re: Joint Filing of an Executed Second Amended and Restated Large Generator Interconnection Agreement Among the New York Independent System Operator, Inc., Consolidated Edison Company of New York, Inc., and Bayonne Energy Center, LLC; Request for Critical Energy Infrastructure Information Designation and Privileged and Confidential Treatment; Request for Waiver of the 60-Day Notice Period; Docket No. ER18-____-000

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act¹ and Section 35.12 of the Commission's regulations,² the New York Independent System Operator, Inc. ("NYISO") and Consolidated Edison Company of New York, Inc. ("Con Edison") (together, the "Joint Filing Parties") hereby tender for filing an executed Second Amended and Restated Large Generator Interconnection Agreement among the NYISO, Con Edison, as the Connecting Transmission Owner, and Bayonne Energy Center, LLC ("Bayonne"), as the Developer (the "Second Amended Agreement"). The Second Amended Agreement is labeled as Service Agreement No. 1668 under the NYISO's Open Access Transmission Tariff ("OATT").

The Joint Filing Parties respectfully request that the Commission accept the Second Amended Agreement for filing. The Second Amended Agreement conforms to the NYISO's *pro forma* Large Generator Interconnection Agreement ("Pro Forma LGIA") that is contained in Attachment X to the OATT with: (i) limited non-conforming exceptions that are described in Part I of this letter and (ii) limited non-conforming exceptions previously accepted by the Commission for prior versions of this agreement. Further, as described in Part II of this letter, the Joint Filing Parties respectfully request a waiver of the Commission's prior notice requirements³ to make the Second Amended Agreement effective as of February 22, 2018, which is the date of its full execution.

Finally, as described in Part III of this letter, Con Edison requests: (i) that the one-line diagrams included in Figures A-1 and A-2 in Appendix A of the Second Amended Agreement be protected from disclosure as Critical Energy Infrastructure Information and (i) that its 2017 Accommodation Billing Schedule Rates included in Attachment G-4 to Appendix G of the

¹ 16 U.S.C. § 824d (2016).

² 18 C.F.R. § 35.12 (2016).

³ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, clarified, 65 FERC ¶ 61,081 (1993).

Second Amended Agreement be protected from disclosure as privileged and confidential information.

I. Discussion

A. Background

The Second Amended Agreement supersedes the Amended and Restated Large Generator Interconnection Agreement among the NYISO, Con Edison, and Bayonne (“Amended Agreement”) that was filed in Docket No. ER14-239-000 on October 31, 2013 and accepted by the Commission on December 23, 2013.⁴ The Amended Agreement superseded a Large Generator Interconnection Agreement among the parties that was filed in Docket No. ER11-2199-000 (“Original Agreement”) and accepted by the Commission on December 28, 2010.⁵ These agreements substantially conformed to the Pro Forma LGIA, but included certain non-conforming modifications that were accepted by the Commission.

As reflected in the Second Amended Agreement, Bayonne has constructed and operates a nominal 512 MW multi-unit, single-cycle natural gas fired facility located in Bayonne, New Jersey (“BEC I Facility”). Bayonne is now adding two Siemens Trent 60 combustion turbine generators capable of generating a nominal output of 132 MW (“BEC II Facility”). Additional details concerning the facilities are set forth in Appendix C of the Second Amended Agreement.

The BEC II Facility will have the same Point of Interconnection and Point of Change of Ownership as the existing BEC I Facility. Specifically, the BEC I Facility and BEC II Facility will interconnect to transmission facilities of Con Edison that are part of the New York State Transmission System at Con Edison’s 345 kV Gowanus Substation between ring bus breakers #20 and #22. The Point of Change of Ownership is downstream of the G27 cable pothead at the Gowanus Substation. Figure A-1 of Appendix A of the Second Amended Agreement provides a one-line diagram showing the Point of Interconnection and Point of Change of Ownership.

B. The Second Amended Agreement Closely Conforms to the Pro Forma LGIA Contained in Attachment X of the NYISO OATT

The Second Amended Agreement was fully executed on February 22, 2018 by the NYISO, Con Edison and Bayonne. As described above, the Amended Agreement and Original Agreement largely conformed to the Pro Forma LGIA with certain limited exceptions accepted by the Commission. The Second Amended Agreement includes these limited exceptions and certain other non-conforming exceptions to the Pro Forma LGIA described below. These variations are necessary to address the unique circumstances associated with the BEC II Facility. The Joint Filing Parties submit that the changes specified below satisfy the Commission’s standard for variations from the Pro Forma LGIA, because unique circumstances exist that

⁴ See *New York Independent System Operator, Inc., and Consolidated Edison Company of New York, Inc.*, Letter Order, Docket No. ER14-239-000 (December 23, 2013).

⁵ See *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER11-2199-000 (December 28, 2010).

require a non-conforming agreement.⁶ Therefore, the Joint Filing Parties respectfully request that the Commission accept the Second Amended Agreement with the limited additional non-conforming changes.

1. Modifications to Address Execution of Second Amended Agreement Prior to Completion of Class Year Study

Bayonne is participating in the current Class Year Interconnection Facilities Study (“Class Year Study”) for Class Year 2017 for the BEC II Facility, which study is still underway. The Class Year Study identifies required System Upgrade Facilities for the reliable interconnection of all of the facilities in the Class Year and determines whether any System Deliverability Upgrades are required for the Facility to be fully deliverable at its requested level of CRIS.

Since the Class Year Study was not completed at the time the parties executed the Second Amended Agreement, the parties modified Section 4.1.1 of the Interconnection Agreement to provide that the NYISO’s provision of Energy Resource Interconnection Service and Capacity Resource Interconnection Service are subject to the requirements in Section 5 of Appendix A. Section 5 of Appendix A provides that Bayonne will accept its Project Cost Allocation and post related Security or payments for any System Upgrade Facilities identified in the Class Year Study. In addition, if the Connecting Transmission Owner’s Attachment Facilities, System Upgrade Facilities, or System Deliverability Upgrades in the Class Year Study differ in any material way from the facilities described in the Second Amended Agreement, the parties will amend the agreement to incorporate the results of the Class Year Study. Section 5 of Appendix A also provides that Bayonne may not supply Unforced Capacity from the BEC II Facility to the New York Control Area until it has complied with the deliverability requirements set forth in Attachment S of the OATT, including acceptance of any cost allocation for System Deliverability Upgrades and the posting of associated security or payments.

The Commission has previously accepted these types of changes to the Pro Forma LGIA where, as here, the Developer was participating in a pending Class Year Study at the time the interconnection agreement was executed.⁷

2. Modifications to Address Limited Operation of the Facility Prior to Completion of Certain Upgrade Facilities

The parties have determined that Bayonne may be responsible pursuant to the Class Year Study for a share of the costs of an Other Upgrade that is required to resolve a short circuit issue created by another developer’s project. Consistent with Section 5.9 of the Second Amended Agreement, the NYISO performed, in conjunction with Con Edison, a limited operation study to

⁶ See, e.g., *PJM Interconnection, LLC*, 111 FERC ¶ 61,163 at PP 10-11, *reh’g denied*, 112 FERC ¶ 61,282 (2005).

⁷ See, e.g., *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER11-2199-000 (December 28, 2010) (accepting revisions to CRIS requirements in Pro Forma LGIA to reflect the timing of the execution of the interconnection agreement).

determine whether and the extent to which the BEC II Facility may go in service and operate following the Initial Synchronization Date at maximum generating capability (or at some lower capability) prior to the completion of any required Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities, or Other Upgrades. As described in Section 5 of Appendix A, the NYISO and Con Edison have agreed that Developer may operate the BEC II Facility in accordance with the results of the study and the NYISO's testing procedures and requirements. Accordingly, the parties have modified Section 4.1.1 of the Second Amended Agreement to provide that the NYISO's provision of ERIS and CRIS are subject to the requirements in Section 5 of Appendix A. The Commission has previously accepted this type of changes to the Pro Forma LGIA where, as here, a facility's provision of ERIS and CRIS is subject to the results of a limited operation study.⁸

3. Modifications to Previously-Accepted Non-Conforming Changes

As described above, the Commission has previously accepted non-conforming changes to previous versions of the Second Amended Agreement. Certain of these modifications require further revisions.

First, Section 2.1 was modified in the Amended Agreement to indicate that upon its effectiveness, the Amended Agreement would supersede the Original Agreement without prejudice to any rights, claims, or obligation that had accrued under the Original Agreement. The parties have agreed to update this language, so that it now applies to the circumstances of the Second Amended Agreement superseding the Amended Agreement.

Second, Sections 2.3.1.1 and 2.3.1.2 were inserted in the Original Agreement, which was executed prior to the completion of the Class Year Study for Class Year 2009 for the BEC I Facility, to establish the terms applicable if Bayonne did not accept its Project Cost Allocation for the Class Year. The parties have agreed to delete this outdated language from the Second Amended Agreement as Bayonne accepted its Project Cost Allocation for Class Year 2009 and has constructed the BEC I Facility.

Finally, Section 29.6 was modified in the Original Agreement to address the existence of related contractual agreements. The parties have agreed to update the list of related contractual agreements in Section 29.6 of the Second Amended Agreement.

4. Modifications to Address Power Factor Requirements

The parties have inserted power factor design criteria and voltage schedule requirements in Sections 2(c) and 2(d) of Appendix C of the Second Amended Agreement to address the different power factor and voltage requirements applicable to the existing BEC I Facility, the new BEC II Facility, and the combined facilities based on Con Edison's local requirements. Accordingly, the parties have agreed to revise Sections 9.5.1.1 and 9.5.2 to reference these requirements.

⁸ See, e.g., *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER17-352-000 (January 5, 2017) (accepting revisions to make provision of ERIS and CRIS subject to results of limited operation study).

5. Modifications to Recent NYISO Interconnection Queue Reform Revisions

On October 16, 2017, the NYISO submitted in Docket No. ER18-80-000 modifications to its interconnection procedures and agreements, including the Pro Forma LGIA, which revisions the Commission accepted on December 7, 2017.⁹ The Second Amended Agreement incorporates these revisions to the Pro Forma LGIA. The parties have agreed to make the following modifications in the Second Amended Agreement to correct certain modifications from the recent filing:

- Correction of the cross-reference in Section 2.1 from Article 3.1, which no longer exists, to Article 3;
- Correction to the first reference to “Indemnified Party” in Section 18.1.2 of the OATT, which was inadvertently changed to “Indemnifying Party;”
- Correction of two cross-references in Section 18.3.12; and
- Correction of a cross-reference in Section 22.4.

6. Non-Inclusion of Compliance Revision Accepted by Commission During Conclusion of Negotiation Process

On February 15, 2018, the Commission issued an order in the NYISO’s Order No. 1000 regional transmission planning proceeding in Docket No. ER13-102, which include minor revisions to the definition of “Affected Transmission Owner” in Article 1 of the Pro Forma LGIA.¹⁰ These revisions were not included in the Second Amended Agreement as the parties were in the process of their final review of the agreement at that time.

The Joint Filing Parties respectfully request that the Commission accept the Second Amended Agreement without these minor revisions. The revisions to the term Affected Transmission Owner, which incorporate references to the NYISO’s Transmission Interconnection Procedures in Attachment P of the OATT and the Small Generator Interconnection Procedures in Attachment Z of the OATT, do not impact the terms of the Second Amended Agreement applicable to the BEC I Facility and the BEC II Facility. The Commission has previously accepted similar changes to the Pro Forma LGIA.¹¹

⁹ See *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER18-80-000 (December 7, 2017).

¹⁰ See *New York Independent System Operator, Inc.*, Order Conditionally Accepting Tariff Revisions and Requiring Further Compliance, 162 FERC ¶ 61,107 (2018). The NYISO proposed certain other changes to the Pro Forma LGIA in Docket ER13-102, which changes were superseded by the NYISO’s revisions as part of its interconnection queue reform revisions in Docket No. ER18-80.

¹¹ See, e.g., *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER17-352-000 (January 5, 2017) (accepting the exclusion of certain pending tariff revisions with a requested effective date prior to the execution date of the agreement).

C. Additional Modifications

In addition to the non-conforming revisions described above, the parties have made the following modifications to the Second Amended Agreement:

- Modifications to reflect revisions to the Pro Forma LGIA that have been approved by the Commission since the execution of the Amended Agreement;
- Modifications to reflect that this is the “Second Amended and Restated” agreement;
- Revisions to Appendix A to address the new Developer’s Attachment Facilities and Other System Upgrade Facilities associated with the BEC II Facility, to improve the description of the existing facilities, and to address the additional information that will be supplied in the Class Year Study;
- Revision to Section 5 of Appendix A to address the execution of the Second Amended Agreement prior to the completion of the Class Year Study for the BEC II Facility, the description of a potential Other Upgrade identified in the Class Year Study, and the ability of BEC II Facility to operate prior to the completion of any required additional facilities;
- The insertion of updated one-line diagrams in Appendix A;
- The insertion of milestones associated with the BEC II Facility;
- Revisions to Appendix C to address the new BEC II Facility and related operating requirements;
- Updates to the related additional contractual agreements in Section 2(g) of Appendix C and in Appendix G; and
- Updates to the parties’ notice information in Appendices E and F.

II. Proposed Effective Date and Request for Wavier of the 60-Day Notice Period

The Joint Filing Parties request an effective date of February 22, 2018 for the Second Amended Agreement, which is the date of its full execution. The Joint Filing Parties respectfully request that the Commission waive its prior notice requirement to permit the requested effective date. The Commission has previously permitted interconnection agreements to become effective upon the date of execution.¹²

III. CEII and Privileged and Confidential Information

Pursuant to Sections 388.112 and 388.113 of the Commission’s regulations,¹³ Con Edison requests that the Commission protect from disclosure the following CEII and privileged and confidential material included in the Second Amended Agreement.

¹² See, e.g., *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Docket No. ER11-2953-000 (April 7, 2011) (accepting interconnection agreement effective as of date of execution); see also *New York Independent System Operator, Inc. and Niagara Mohawk Power Corp., Letter Order*, Docket No. ER08-985-000 (June 26, 2008) (same); *New York Independent System Operator, Inc. and New York Power Authority, Letter Order*, Docket No. ER08-861-000 (May 27, 2008) (same); *New York Independent System Operator, Inc. and New York Power Authority, Letter Order*, Docket No. ER08-699-000 (May 16, 2008) (same).

¹³ 18 C.F.R. §§ 388.112 and 388.113.

First, Con Edison respectfully requests that the one-line diagrams included as Figures A-1 and A-2 in Appendix A of the Second Amended Agreement be protected from disclosure as Critical Energy Infrastructure Information (“CEII”).¹⁴ The diagrams contain detailed, one-line schematics of Con Edison’s Gowanus transmission substation that, if disclosed, could pose a threat to the security and the reliability of the New York State bulk power system. The diagrams provide more than simply the general location of critical infrastructure. Unlike publicly available maps of power transmission lines and generation and substation facilities, the schematics show the exact nature and specific location of facilities used to maintain the reliability of the New York State bulk power system.

The diagrams, in Con Edison’s assessment, reveal such critical information related to the facilities 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 the health and safety of New York residents. Moreover, the information revealed in this schematic reveals CEII, which the Commission has determined to be exempt from mandatory disclosure under 5 U.S.C. § 552(b)(7)(F). The diagrams have been omitted from the Public version of the Second Amended Agreement included in this filing.

Second, Con Edison also respectfully requests privileged and confidential treatment of its 2017 Accommodation Billing Schedule Rates, which are included as an attachment to the September 22, 2017 Transaction Form between Con Edison and Bayonne that was included as Attachment G-4 to Appendix G of the Second Amended Agreement. The information included in the 2017 Accommodation Billing Schedule is confidential and commercially sensitive information. Disclosure of this information would cause competitive harm to Con Edison. The information is non-public and is exempt from disclosure under the Freedom of Information Act.¹⁵

The Joint Filing Parties are electronically submitting a non-public version of this filing. The diagrams and billing schedule rates are included only in the non-public version of the Second Amended Agreement in the filing. The non-public diagrams are marked: **“FIGURE CONTAINS CEII – DO NOT RELEASE PURSUANT TO 18 C.F.R. §§ 388.112 and 388.113.”** The non-public billing schedule rates are marked: **“NON-PUBLIC SUBMISSION; CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION – DO NOT RELEASE.”** The non-public materials should be treated as CEII and privileged and confidential

¹⁴ As required by Section 388.113(d)(1)(i) of the Commission’s regulations, Con Edison has described in the filing letter how the one-line diagrams in Figures A-1 and A-2 satisfy the definition of critical energy infrastructure information as that term is defined in Section 388.113(c)(1). In addition, as required by Section 388.113(d)(1)(ii) the cover page of the filing letter and the relevant pages of the Second Amended Agreement that contain critical energy infrastructure information are labelled as including CEII and marked DO NOT RELEASE, and a Public and CEII version of the Second Amended Agreement are being filed with this letter. The CEII material is redacted in the Public version. Finally, as required by Section 388.113(d)(1)(i), Con Edison requests that the Commission designate the CEII material submitted on March 23, 2018, with the full five-year CEII designation provided for in Section 388.113(e)(1) as the information provided in the one-line diagrams will continue to satisfy the definition of critical energy infrastructure information for this entire period.

¹⁵ 5 U.S.C. 552.

materials reviewable by Commission Staff. In accordance with the Commission's April 14, 2017 notice on labeling of non-public information, each page of the non-public version of the filing is marked "CUI//CEII/PRIV."¹⁶ A placeholder has been included in place of the non-public materials in the public version of the Second Amended Agreement.

All communications relating to this request for privileged and confidential treatment should be addressed to the following:

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IV. Communications and Correspondence

All communications and service in this proceeding should be directed to:

For the NYISO¹⁷

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¹⁶ See Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff (Apr. 14, 2017) (unreported).

¹⁷ The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2014) to permit service on counsel in both Washington, D.C. and Richmond, VA.

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V. Documents Submitted

The Joint Filing Parties submit the following documents with this filing letter:

- A clean version of the Second Amended Agreement (Attachment I);
- A blacklined version of the Second Amended Agreement showing the changes from the Amended Agreement (Attachment II);
- A clean CEII and confidential and privileged version of the Second Amended Agreement (Attachment III); and
- The signature pages for the Second Amended Agreement (Attachment IV).

VI. Service

On behalf of the Joint Filing Parties, 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 New Jersey Board of Public Utilities. In addition, a complete copy of the documents included with this filing will be posted on the NYISO's website at www.nyiso.com.

VII. Conclusion

Wherefore, the Joint Filing Parties respectfully request that the Commission accept the Second Amended Agreement for filing with an effective date of February 22, 2018.

Respectfully submitted,

/s/ Sara B. Keegan

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/s/ Paul Savage

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