

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Power Authority and)	
Consolidated Edison Company)	Docket No. ER12-1624-000
of New York, Inc.)	
)	

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER TO
THE LIMITED PROTEST AND ANSWER OF THE NRG COMPANIES
BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

In accordance with Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or “the Commission”) Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully requests leave to respond to the Motion to Intervene and Limited Protest of the NRG Companies (“Limited Protest”) filed in the above-referenced docket on May 11, 2012 and the Answer of the NRG Companies (“NRG”) filed in the above-referenced docket on May 30, 2012 (the “May 30 Answer”).² The NYISO requests that the Commission consider this Answer before issuing an Order in the above-captioned proceeding³ as the Limited Protest and May 30 Answer are not premised upon an accurate interpretation of the NYISO’s Open Access Transmission Tariff (“OATT”).

¹ 18 C.F.R. §§ 385.212 and 385.213 (2012).

² NYISO submitted a Motion to Intervene in the above-referenced docket on May 8, 2012.

³ Filing of an Executed Interconnection Agreement Between the New York Power Authority and Consolidated Edison Company of New York, Inc., Docket No. ER12-1624-000 (April 26, 2012) (“Interconnection Agreement Filing”).

I. MOTION FOR LEAVE TO FILE ANSWER

Rule 213(a)(2) of the Commission Rules of Practice and Procedure, provides that “an answer may not be made to a protest, an answer, a motion for oral argument, or a request for rehearing, unless otherwise ordered by the decisional authority.”⁴ The NYISO requests the Commission to exercise its discretion to grant leave to the NYISO to submit this answer. The Commission has accepted responses not permitted by the Commission’s Rules of Practice and Procedure when they help to clarify complex issues, provide additional information that will assist the Commission, correct inaccurate statements, or provide otherwise helpful information to develop the record in a proceeding or assist in the Commission’s decision-making process.⁵ The NYISO respectfully requests that the Commission accept the NYISO’s answer in this instance as well, as it is limited in scope to clarifications of representations made in the Limited Protest and the May 30 Answer and will therefore clarify the record and assist the Commission in its deliberations.

II. BACKGROUND

On April 26, 2012, New York Power Authority (“NYPA”) and Consolidated Edison Company of New York, Inc. (“Con Edison”), collectively “the Parties”, filed a Transmission Facility Interconnection Agreement (“Interconnection Agreement”) requesting that the Commission accept the Interconnection Agreement effective May 1, 2012. In the Interconnection Agreement, the Parties propose a new transmission tie to connect the Con Edison Astoria East Substation to the NYPA Astoria Annex Substation (“the Astoria PAR”).

⁴ 18 C.F.R. §385.213(a)(2) (2012).

⁵ *See, e.g., New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 at P 39 (2008) (accepting answers to answers because they provided information that aided the Commission’s decision-making process); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was “helpful in the development of the record . . .”).

The Astoria PAR was proposed by Con Edison as a solution for the local reliability deficiency that could result in the event of the mothballing of the Astoria No. 2 generator and the concurrent unavailability of Astoria No. 4 generator. It has proceeded on an accelerated basis in order to be available before the beginning of the 2012 Summer Capability Period.⁶ The Parties sought a waiver of the 60-day notice period, to accommodate the requested effective date. The Commission issued a notice on April 26, 2012 setting a Comments due date of May 17, 2012.

On May 11, 2012, NRG filed its Limited Protest. NRG states that its protest is limited to cost allocation issues: “In short, the NRG Companies request that the Commission clarify that, for purposes of cost allocation, 2012 Class Year participants be held harmless from any adverse impacts caused by the emergency transmission fix proposed by the parties.”⁷ On May 23, 2012, NYPA filed a Motion for Leave to Answer and Answer to the Limited Protest (“NYPA Answer”). Similarly, Con Edison filed an Initial Response to the limited Protest and a Response to the Limited Protest on May 15 and May 24, 2012, respectively (collectively “Con Edison Answer”). On May 30, 2012, NRG filed an Answer to the NYPA Answer and the Con Edison Answer.

III. ANSWER TO NRG’S LIMITED PROTEST AND NRG’S MAY 30 ANSWER

The NYISO provides this answer in response to both NRG’s Limited Protest and NRG’s May 30 Answer to clarify issues regarding its administration of the OATT and to clarify

⁶ Capitalized terms not otherwise defined in this letter have the meaning set forth in Attachments S and X of the OATT.

⁷ See *Limited Protest* at pg. 1.

statements in the Limited Protest which do not accurately characterize the OATT or the NYISO's administration of the interconnection process under the OATT.⁸

A. Impact on Class Year 2012 Projects

NRG asserts in its answer that its project in Class Year 2012 is “next in line” for access to an open bus position at the Astoria Annex substation.⁹ However, NRG's project does not have pre-established rights to any bus position. The project's cost allocation for upgrades necessary to interconnect to the transmission system, including any required upgrades at Astoria Annex, will be established during the ongoing Class Year 2012 study in accordance with applicable tariff provisions.¹⁰ Because the upgrades and associated cost responsibility have not yet been determined, it is not appropriate or consistent with the NYISO's tariff to require that “2012 Class Year participants be held harmless.”¹¹

Under the NYISO's tariff, interconnection costs are allocated to proposed generation projects and Merchant Transmission Facilities through the Class Year Interconnection Facilities Study (“Class Year Study”).¹² The Class Year Study evaluates the impacts of a group of qualifying projects on a combined basis.¹³ Each project in a Class Year shares in the then

⁸ The NYISO also seeks to clarify that NRG's fault current concerns are without basis and indeed, do not accurately represent the 2012 fault current assessment for the Astoria East substation. Contrary to NRG's assertion, the Astoria PAR will not prohibit existing generation from operating. As indicated by the results of the NYISO's 2012 Fault Current Assessment approved by the Operating Committee on May 17, 2012, the Astoria PAR does not trigger any modification to the current operating protocol for fault current mitigation (“the Operating Protocol”). Moreover, the Operating Protocol does not prohibit existing generation from operating.

⁹ See *Id.* at pg. 4.

¹⁰ The interconnection procedures administered by the NYISO for Large Generating Facilities and Merchant Transmission Facilities are contained in Attachment X of the OATT. The Small Generator Interconnection Procedures are contained in Attachment Z of the NYISO OATT.

¹¹ See *Limited Protest* at pg. 1.

¹² See *Attachment S*, § 25.6.

¹³ The Class Year is comprised of projects that have met specified Class Year eligibility requirements specified by Attachment S.

currently available electrical capability of the transmission system, and each Class Year project shares in the cost of upgrades required to interconnect its respective project based on the *pro rata* electrical impact of its project.¹⁴

The Class Year Study measures the incremental impact of the Class Year projects over a tariff-defined baseline system. Under Attachment S, the baseline is defined, for the Minimum Interconnection Standard, as the Annual Baseline Transmission Assessment (“ATBA”).¹⁵ The Annual Transmission Reliability Assessment (“ATRA”) is then performed on a group basis¹⁶ to determine the upgrades required for each generation and merchant transmission project included in the Class Year.¹⁷ Accordingly, whether facilities are modeled or not modeled in the ATBA can impact cost allocation.

The tariff requires the NYISO to include in the Existing System Representation¹⁸ for purposes of the ATBA for a given Class Year, specified existing and planned generation and transmission facilities, specified generation and transmission retirements and derates, and:

(iv) all other changes to existing facilities, other than changes that are subject to Class Year cost allocation but that have not accepted their Class Year cost allocation, ***that are identified in the Load and Capacity Data Report*** or reported by Market Participants to the NYISO as scheduled to occur during the five year cost allocation study planning period.¹⁹

The Astoria PAR is a transmission facility identified in the NYISO’s 2012 Load and Capacity Data Report (“2012 Gold Book”), which is the Gold Book that will be the existing

¹⁴ See Attachment S, §§ 25.5.7, 25.6.2.5.1.

¹⁵ The ATBA identifies the SUFs that Transmission Owners are expected to need to ensure reliability.

¹⁶ The ATRA is created by adding the Class Year projects to the ATBA and is performed on a group basis with the exception of the Attachment Facilities and Local SUFs required to accommodate an interconnection, which are studied on an individual project basis.

¹⁷ A similar process is followed in the Class Year Deliverability Study which determines the SDUs required for each generation and merchant transmission project included in a Class Year.

¹⁸ The Existing System Representation is defined as “[t]he representation of the New York State Power System developed as specified in Section 25.5.5 of these rules.” See Attachment S, § 25.1.2.

¹⁹ Attachment S, § 25.5.5.1 (emphasis added).

Gold Book when the ATBA for the Class Year 2012 Study is finalized. Accordingly, the NYISO anticipates that it will model the Astoria PAR and its interconnection to an available bus positions at the Astoria Annex substation in the Existing System Representation in the ATBA for the Class Year 2012 Study.²⁰ This means that the incremental impact of Class Year 2012 projects, including NRG’s project, will be measured over a baseline system that includes the Astoria PAR

B. NRG’s Reference to the Commission’s “First-in-Time” Precedent is Misplaced.

Relying on its “higher” queue position, NRG insists that “the OATT and Commission precedent require that the Astoria PAR project hold the 2012 Class Year participants harmless from any increases in costs as a result of allowing the interconnection to proceed Con Ed has no right to jump to the front of the queue.”²¹ However, the Astoria PAR is not subject to the NYISO interconnection process under Attachments S and X, and, accordingly, is not evaluated as a project in the Class Year Study.²² Attachment X applies to both generation and merchant transmission; however, merchant transmission does not include Transmission Owner transmission projects such as the Astoria PAR.²³

²⁰ NRG’s project in Class Year 2012 had the opportunity to have its cost allocation determined in earlier Class Years that did not model the Astoria PAR in the ATBA. NRG’s project was a member of Class year 2010, but NRG elected not to accept its cost allocation from that study. NRG’s project also could have entered Class Year 2011, but NRG chose instead to enter Class Year 2012.

²¹ See *Limited Protest* at pgs. 4-5.

²² See *Attachment S* (Rules to Allocate Responsibility for the Cost of New Interconnection Facilities); *Attachment X* (Large Generator Interconnection Procedures).

²³ See *Attachment X*, § 30.1, *Merchant Transmission Facility* (providing, in part, “Merchant Transmission Facilities shall be those transmission facilities developed by an entity that is not a Transmission Owner . . . shall not include upgrades or additions to the New York State Transmission System made by a Transmission Owner . . .”)

Contrary to NRG’s assertion that the Astoria PAR “skipped the process (an interconnection request and System Impact Study),”²⁴ Transmission Owner transmission projects such as the Astoria PAR have been treated as outside the defined scope of the NYISO interconnection process and require only a two-party Interconnection Agreement – an Interconnection Agreement to which the NYISO is not a party.²⁵ Even if the Astoria PAR required a System Impact Study under Section 3.7 of the NYISO OATT, and had a queue position, it would not be evaluated as a proposed project in a Class Year, nor would the manner in which it is modeled in the Class Year 2012 ATBA be any different.

Transmission Owners are, however, allocated the cost of any upgrades required in the ATBA, including any upgrades that could be triggered by a new Transmission Owner project (*i.e.*, Class Year projects do not share in the cost responsibility for such upgrades). Therefore, NRG’s contention that the Astoria PAR should “take its place in line behind already planned projects in the 2012 Class Year ...”²⁶ is not consistent with the NYISO interconnection process.

Furthermore, NRG’s apparent reference to a “first-in-time” process articulated by the Commission in *Virginia Electric and Power Company (“VEPCO”)*²⁷ is misplaced under these circumstances. NRG contends that because Class Year 2012 projects have a higher queue position than the Astoria PAR, Commission precedent allows the Astoria PAR to use existing system facilities, “so long as [Con Edison] commits to pay for any facilities needed to interconnect new generators with queue priority if and when those projects are ready to

²⁴ See *NRG’s May 30 Answer* at pg. 5.

²⁵ Similar projects have likewise been treated as outside the defined scope of the NYISO interconnection process. See, e.g., *Consolidated Edison Company of New York, Inc.*, Docket No. ER10-1193-000, Letter Order dated June 3, 2010; *Consolidated Edison Company of New York, Inc.*, Docket No. ER09-1515-000, Letter Order dated September 3, 2009; *Niagara Mohawk Power Corporation*, 121 FERC ¶ 61,183 (2007); *Consolidated Edison Company of New York, Inc.*, 119 FERC ¶ 61,206 (2007).

²⁶ See *Limited Protest* at pg. 4.

interconnect.”²⁸ NRG seems to rely on the standard set forth in *VEPCO*, in which the Commission directed Dominion Virginia Power to allow a lower-queued project (“Project 2”) to use the transmission capability that had been set aside for a higher-queued project (“Project 1”), explaining:

Then, if and when [Project 1] completes its project and interconnection, [Project 2] will have to fund the network upgrades needed for [Project 1]’s interconnection to the extent that the need for the upgrades is due to [Project 2]’s use of the excess transmission capability and [Project 2]’s decision to have its interconnection completed ahead of [Project 1].²⁹

Notably, however, the Commission subsequently clarified the manner in which the *VEPCO* standard would apply in the context of the NYISO interconnection process. In an August 2008 Order on Requests for Clarification of a previous order – the January 2008 order NRG relies on in its Limited Protest³⁰ – the Commission clarified the significance of queue priority with respect to cost allocation in the NYISO interconnection process.³¹ Recognizing that the NYISO OATT does not assign facilities or allocate costs based on queue position, the Commission stated:

We clarify that it was not the Commission’s intention to displace NYISO’s existing cost allocation and facility assignment procedures or its intention to

²⁷ See *Virginia Electric and Power Company*, Docket Nos. ER03-743-001, ER03-743-002, 104 F.E.R.C. ¶ 61,249 Orders on Compliance Filing and Rehearing (Sept. 10, 2003). *VEPCO* addressed a situation where the project that was assigned use of an open bus position was not the first project to be in a position to use it – the second project to which cost of the expansion was allocated was the first to be ready to use the bus position. That is inapposite to the situation here vis-à-vis NRG and the Astoria PAR.

²⁸ See *Limited Protest* at pg. 5.

²⁹ See *VEPCO at P19* (adding, in note 21 that “[Project B] would also be responsible for any additional study costs”).

³⁰ See *Limited Protest* at pg. 5 (citing *Hudson Transmission Partners, LLC v. New York Independent System Operator, Inc.*, 122 FERC ¶ 61,024 (2008) at P 33).

³¹ See *Hudson Transmission Partners, LLC v. New York Independent System Operator, Inc.*, 124 FERC ¶ 61,182 (2008) at P12.

elevate queue position to a significance beyond that which it already has under the OATT.³²

As the Commission's above-referenced Order makes clear, the *VEPCO* standard is not intended to disrupt the cost allocation established under the NYISO OATT. Likewise, NRG's requests to alter the cost allocation that would be required by the NYISO's OATT should be denied.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission accept and consider its answer to the Limited Protest before issuing an Order in the above-captioned proceeding.

Respectfully submitted,

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³² See *Id.* at P14; see also *Id.* at P20 (adding that, "HTP is incorrect in asserting that it has a priority based on queue position.").

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, New York this 31st day of May, 2012.

By: /s/ John C. Cutting
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