

January 22, 2013

By Electronic Delivery

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

Re: Filing of an Executed Amended and Restated Small Generator Interconnection Agreement Among the New York Independent System Operator, Inc., New York State Electric & Gas Corporation, and AES ES Westover, LLC and Request for Waiver of the 60-Day Notice Period, Docket No. ER13-____-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 New York State Electric & Gas Corporation ("NYSEG") (collectively, the "Joint Filing Parties") hereby tender for filing an executed Amended and Restated Small Generator Interconnection Agreement ("Amended Agreement") as Service Agreement No. 1677 among the NYISO, NYSEG as the Transmission Owner, and AES ES Westover, LLC ("Westover") as the Interconnection Customer.³

The Joint Filing Parties respectfully request that the Commission accept the Amended Agreement for filing. Further, as described in Part III of this letter, the Joint Filing Parties respectfully request a waiver of the Commission's prior notice requirements to make the Amended Agreement effective as of the date of execution of the Amended Agreement – December 26, 2012.

I. Background

The Amended Agreement supersedes a Small Generator Interconnection Agreement ("SGIA") among the parties that was filed in Docket No. ER11-2631-000, as Service Agreement No. 1677 ("Original Agreement"). The Original Agreement was accepted by the Commission on February 3, 2011.⁴

¹ 16 U.S.C. § 824d (2013).

² 18 C.F.R. § 35.12 (2013).

³ Capitalized terms not otherwise defined in this letter have the meaning set forth in Attachments S, X and Z of the NYISO's Open Access Transmission Tariff ("OATT").

⁴ *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Order, Docket No. ER11-2631-000 (Letter Order issued February 3, 2011).

The Original Agreement stated that Westover was constructing a 20 MW battery-based energy storage system (“Facility”) that would 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 Union, New York. The Original Agreement provided that the Facility would consist of ten 2 MW batter/inverter units interconnecting at NYSEG’s Goudey Substation. The Original Agreement anticipated that the Facility would initially consist of two 4 MW modules in what was characterized in the Original Agreement as “Phase I” for a total of 8 MW, to be in operation in December 2010. The Original Agreement then provided for a Phase II, described as the addition of three 2MW modules for an additional 12 MW, to be in operation in April 2011.

As reflected in the Original Agreement, the interconnection of the Facility reflected a unique arrangement involving third-party ownership of the Interconnection Facilities required for the Facility to interconnect. The Facility’s interconnection required existing Interconnection Facilities owned by AEE2 and associated with the retired Unit 7 at the Westover Generating Station. Indeed, the Original Agreement anticipated that the Facility would be stepped up to 115kV and 34.5 kV through the AES Westover Generating Station Transformer Bank 7, owned by AEE2. Westover leased these Interconnection Facilities through a Lease Agreement between Westover and AEE2 filed with the Commission on December 9, 2010.⁵ The Original Agreement specified that Westover had the right, pursuant to the Lease Agreement, to use the Interconnection Facilities listed in the Original Agreement for the purpose of interconnecting the Facility and fulfilling its obligations under the Original Agreement.

II. Discussion of Changes

Since the filing of the Original Agreement, the ownership of the Interconnection Facilities that were subject to the Lease Agreement has been transferred to NYSEG as part of the Chapter 11 Bankruptcy proceeding pending in the U.S. Bankruptcy Court, District of Delaware, Case No. 11-14138-KJC. The AES Westover Generating Station has retired, and it is anticipated that the Westover Generating Station will be sold and dismantled in 2013. Pursuant to a Stipulation Among Debtors, Purchaser and Westover dated October 9, 2012, Westover is obligated, at its sole cost and expense, to remove certain Interconnection Facilities from the Westover Generating Station to a new building to be constructed by Westover on property that it owns by the later of February 28, 2013 or 60 days after the closing of the sale of the Westover Generating Station. Westover is also required to perform certain work related to the relocation of these facilities. As a result of these developments, the Original Agreement requires modification, including:

- Revisions to references and descriptions of the now retired Westover Generating Station;

⁵ See *AEE2, L.L.C.*, Docket No. ER11-2328-000 (December 9, 2010).

- Deletion of provisions regarding the Lease Agreement between AEE2 and Westover (the Interconnection Facilities covered by the Lease Agreement are now owned by NYSEG, not AEE2 and therefore the Lease Agreement is not relevant to the Facility's interconnection); and
- Revised description of the Point of Change of Ownership and re-classification of certain equipment from "Interconnection Customer's Interconnection Facilities" to "CTO Interconnection Facilities" to reflect the conveyance of certain Interconnection Facilities to NYSEG.

In addition, economic and other factors have led to a delay in the completion of the originally anticipated Phase II. As a result of the delay in completion of Phase II, the description of Phase II in Attachment 2 and the Milestones specified in the Original Agreement require modification. The Joint Filing Parties therefore submit this Amended Agreement to reflect the modifications to the Original Agreement.

Specifically, the Amended Agreement modifies the SGIA as follows:

- The body and attachments to the Amended Agreement reflect modifications to the Original Agreement required by the current *pro forma* SGIA, certain provisions of which were not in existence at the time the Original Agreement was executed;
- The body of the Amended Agreement reflects the following modifications to the body of the Original Agreement: (1) a new effective date – the date of execution of the Amended Agreement; (3) changes to reflect that this is the "Amended and Restated" version of the Interconnection Agreement; and (4) ministerial corrections to correct outdated contact information for individuals referenced in the Notice provision in Section 13.4;
- The body of the Amended Agreement removes a non-conforming provision that appeared in the Original Agreement regarding O&M. In the Original Agreement, the parties agreed to and the Commission accepted, a non-conforming revision to Section 4.1 to reflect the unique circumstance requiring the Facility to interconnect with the New York State Transmission System through NYSEG's existing Interconnection Facilities, expense related to which were already covered by a preexisting operating and maintenance agreement previously entered into by NYSEG. As NYSEG had already covered the expenses for the Connecting Transmission Owner's Interconnection Facilities through this previous agreement, the parties agreed that NYSEG was the appropriate party to be responsible for the expenses associated with owning, operating, maintaining, repairing, and replacing the Connecting Transmission Owner's Interconnection Facilities. As revised in the Original Agreement, Section 4.1 therefore provided that NYSEG, and not Westover, is responsible for these expenses. In the Amended Agreement, the parties removed this non-conforming revision to Section 4.1.2, thereby putting the O&M responsibility back on Westover, as anticipated by the *pro forma* SGIA. The parties further explain Westover's O&M obligations in Attachment 2;

- Attachment 2 has been modified to (1) reflect existing equipment (equipment that was anticipated at the time of the Original Agreement) and the current status of the Phase II expansion of the Facility; (2) reflect the changes in ownership and status of the AES Westover Generating Station; (3) delete references to the lease agreement between AEE2 and Westover and are no longer relevant; (4) revise the description of the Point of Change of Ownership in light of the changes in ownership of certain Interconnection Facilities to NYSEG; (5) add language regarding the sale and anticipated dismantling of the Westover Generating Station and the requirement that Westover remove the 07-31 breaker and the Unit 7 13.8 kV Switchgear lineup, along with certain other equipment; (6) reclassify certain facilities from Interconnection Customer Interconnection Facilities to Connecting Transmission Owner's Interconnection Facilities and resulting changes to responsibilities for upgrade work and O&M; and (7) add language to address Westover's responsibilities with respect to relocation of Breaker 07-31 and the Unit 7 13.8 kV Switchgear lineup;
- Attachment 3 has been modified to reflect an updated one-line diagrams; and
- Attachment 4 has been modified to reflect (1) updated Milestones associated with the original Phase I and Phase II of the Facility, noting which Milestones are now completed and which Phase II Milestones have been updated; and (2) new Milestones associated with the relocation work.

The blacklined Amended Agreement attached to this filing shows all of these changes that were made to the currently effective Original Agreement. The Joint Filing Parties respectfully request that the Commission accept this Amended Agreement.

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

The Joint Filing Parties request an effective date of December 26, 2012 for the Amended Agreement, which is the date of execution. The Joint Filing Parties respectfully request that the Commission waive its 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.⁶

⁶ 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).

IV. Communications and Correspondence

Communications regarding this filing should be directed to:

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V. Documents Submitted

The NYISO submits the following documents:

- this filing letter;
- a clean version of the Amended Agreement (Attachment I);
- a blacklined version showing the changes between the Original Agreement and the Amended Agreement (Attachment II); and
- a graphic showing the original signatures obtained for the Amended Agreement (Attachment III).

VI. Service

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 Public documents included with this filing will be posted on the NYISO's website at www.nyiso.com.

VII. Conclusion

Wherefore, the NYISO respectfully requests that the Commission accept the Amended Agreement effective as of December 26, 2012.

Respectfully submitted,

/s/ Sara B. Keegan

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/s/ Jeffrey A. Rosenbloom

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