

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

Linden VFT, LLC)	
)	
v.)	Docket No. EL12-64-000
)	
New York Independent System Operator, Inc.)	

**REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE, REHEARING OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 713 of the Commission’s Rules of Practice and Procedure¹ the New York Independent System Operator, Inc. (“NYISO”) requests clarification or, in the alternative, rehearing of the Commission’s October 1, 2012 *Order on Complaint* in the above-captioned proceeding (“October Order”).² The October Order directed the NYISO to adjust the 300 MW Capacity Resources Interconnection Service (“CRIS”)³ value previously awarded to the Linden VFT, LLC project (“Linden VFT”), without requiring a new Interconnection Request, up to 315 MW on the basis of a performance test that established the facility’s actual maximum transmission capacity to be 315 MW. The NYISO seeks to clarify that the Commission did not intend in a footnote to create a broad exemption to the NYISO’s current interconnection procedures. Instead, the NYISO seeks to clarify that the language in the October Order—indicating that Linden VFT did not need to submit a new Interconnection Request—is only applicable to facilities permitted to increase their grandfathered CRIS⁴ on the basis of a

¹ 18 C.F.R. §§ 385.212 and 713 (2012).

² *New York Independent System Operator, Inc.*, 141 FERC ¶ 61,008 (2012) (“October Order”).

³ Terms with initial capitalization that are not otherwise defined herein shall have the meaning set forth in the NYISO’s Open Access Transmission Tariff, or if not defined therein in the NYISO’s Market Administration and Control Area Services Tariff.

⁴ “Grandfathered CRIS” refers to the level of CRIS provided to facilities, as part of the implementation of the deliverability requirement, without conducting the deliverability test in OATT

performance test conducted after their establishment of the initial grandfathered CRIS level.

Further, as explained in more detail below, the Commission should clarify that any other increases in capacity or material changes to the operating characteristics existing facilities continue to require a new Interconnection Request pursuant to the NYISO's tariff.

To the extent the Commission finds that the October Order applies to any wider group of facilities, the NYISO submits that it is an error that must be reversed on rehearing.

I. COMMUNICATIONS

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Attachment S. Requests for CRIS above the grandfathered CRIS level must be evaluated for deliverability. *See* OATT Attachment S § 25.9.3.1.

⁵ The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2012) to permit service on counsel for the NYISO in both Richmond, VA and Houston, TX.

II. REQUEST FOR CLARIFICATION

The NYISO respectfully requests clarification of footnote 53 of the October Order, which states:

Even though NYISO argues that Linden VFT is not grandfathered from the Interconnection Procedures, Linden VFT points to materials presented in the NYISO stakeholder process that the new tariffs for implementation of the Interconnection Procedures (effective on October 5, 2004), which permitted “no increase,” would only be applied “once the transition of pre-existing projects in the queue has been completed.” This evidence justifies our finding that Linden VFT was also grandfathered from the Interconnection Procedures. (citations omitted).

The NYISO understands the footnote to mean that facilities able to increase their grandfathered CRIS based on a “performance test”⁶ do not need to submit an Interconnection Request in order to operate at the higher MW level and receive the additional grandfathered CRIS.⁷ However, a facility that seeks any other increase to its capacity, or to make material changes to its operating characteristics, will be required to submit a new Interconnection Request pursuant to the NYISO’s tariff.⁸ The NYISO asks the Commission to make this clarification.

⁶ Intermittent Power Resources do not perform applicable performance tests since such resources’ Dependable Maximum Net Capability (“DMNC”) level and grandfathered CRIS level are set at nameplate. *See* Installed Capacity Manual Section 4.2.2 at 4-6 (January 2012) *available at* <http://www.nyiso.com/public/webdocs/documents/manuals/operations/icap_mnl.pdf>; *see also* OATT Attachment S §25.9.3.1.

⁷ Under its OATT, the NYISO offers two levels of interconnection service. Facilities interconnected taking Energy Resources Interconnection Service (“ERIS”) are eligible to sell Energy and Ancillary Services in the NYISO administered markets, but not Capacity. Facilities electing to take CRIS in addition to ERIS are eligible to sell Energy Ancillary Services and Capacity. *See* OATT Attachment X § 30.3.2.

⁸ The submission of an Interconnection Request requires the performance of necessary Interconnection Studies under OATT Attachments S, X and/or Z, as applicable. If a facility is required to submit an Interconnection Request, the NYISO evaluates the reliability impact of the facility under ERIS. Such a facility may also request CRIS, which requires the NYISO to also evaluate whether the facility is deliverable under OATT Attachment S Section 25.7. A facility that is already interconnected under ERIS, but has no CRIS, or only partial CRIS, can request evaluation for additional CRIS up to the permitted levels without submitting an Interconnection Request (this option does not relieve a facility of the requirement to submit an Interconnection Request if changes are made to the facility). *See* OATT Attachments S § 25.9.1 and X § 30.3.2.6.

The Commission must grant the requested clarification because it is consistent with: (1) the Commission’s interpretation of the applicable sections of the NYISO’s tariff; (2) the transition rule in Order No. 2003 and the NYISO’s Commission-accepted Large Facility Interconnection Procedures (“LFIP”); (3) Commission precedent addressing when new Interconnection Requests are required; (4) the purpose of the interconnection procedures which is to ensure predictability in the interconnection process and to evaluate the reliability impacts of such modifications; and (5) the scope of the issues raised in the Complaint and considered in the October Order.

The October Order relied on Section 25.9.3.1 of OATT Attachment S in granting Linden VFT’s request for an additional 15 MW of grandfathered CRIS. Section 25.9.3.1 states, in relevant part:

For a generator pre-dating Class Year 2007 and not having DMNC levels recorded for five Summer Capability Periods prior to October 5, 2008, its CRIS capacity level will be set, and reset if necessary, at the maximum DMNC level achieved during successive Summer Capability Periods until it has DMNC levels recorded for five Summer Capability periods.

This section identifies a limited set of generators—those having DMNC levels from fewer than five Summer Capability Periods—that had the ability to increase their grandfathered CRIS based on certain DMNC tests performed after October 5, 2008. The October Order indicates that Section 25.9.3.1 also allows Linden VFT to increase its grandfathered CRIS to 315 MW based on the facility’s performance test.⁹ The statement in footnote 53 that Linden VFT is “grandfathered from the Interconnection Process” appears to indicate that, in order to achieve

⁹ In its Complaint, Linden VFT argued that it had conducted, on October 15, 2009 a performance test comparable to the DMNC test used by Generators to establish its actual maximum capacity transmission capability to be 315 MW. The Commission agreed and directed the NYISO to adjust the CRIS value of 300 MW previously awarded to Linden VFT upward to the established actual maximum of 315 MW. *See* October Order at P 32.

that higher grandfathered level permitted by Section 25.9.3.1, no new Interconnection Request is required.¹⁰

The Commission should clarify, however, that a new Interconnection Request¹¹ must be submitted for all increases in capacity other than those permitted by Section 25.9.3.1, including those that are due to a physical equipment change, and for any material change in the operating characteristics of a facility.¹² That requirement is necessary because any material change in the physical equipment or operating characteristics could impact reliability and, thus, should be the subject of a new Interconnection Request. For example, if Linden VFT seeks additional MW above the maximum 315 MW value it established under Section 25.9.3.1 using performance testing, it would need to submit a new Interconnection Request. So would all generators that already established their actual maximum grandfathered CRIS value through DMNC tests from five Summer Capability Periods.

¹⁰ Every Generator and Merchant Transmission Facility taking CRIS under the NYISO OATT also takes ERIS. Thus, under the October Order, when a facility increases its CRIS under Section 25.9.3.1 it also increases its ERIS level by the same number of MW.

¹¹ The NYISO's OATT Attachment X defines "Interconnection Request" as a "Developer's request, in the form of Appendix 1 to the Standard Large Facility Interconnection Procedures, in accordance with the Tariff, to interconnect a new Large Generating Facility or Merchant Transmission Facility to the New York State Transmission System, or to increase the capacity of, or make a material modification to the operating characteristics of, an existing Large Generating Facility or Merchant Transmission Facility that is interconnected with the New York State Transmission System."

¹² Such changes include any increases in capacity or any material modifications to a facility as it was previously evaluated in prior Interconnection Studies.

The NYISO's requested clarification is also consistent with the interconnection procedure transition rules established in Order Nos. 2003¹³ and 2006,¹⁴ and the NYISO's Commission-accepted Tariff. Those orders, and the NYISO's tariff, required all but a precisely defined, narrow group of facilities to be processed under the newly-established interconnection procedures. It is inappropriate for the October Order to be interpreted in a manner that would, eight years after the establishment of those interconnection procedures, expand the set of facilities grandfathered in all respects from the NYISO's interconnection procedures.

Pursuant to Order No. 2003, facilities that had outstanding Interconnection Requests at the time of that order's effectiveness were to transition to the new procedures "within a reasonable period of time."¹⁵ Order No. 2003 clearly established transition rules that required facilities that had not executed an Interconnection Study Agreement as of the effective date to be transitioned to the new interconnection procedures.¹⁶ Similarly, Order No. 2006 required that any new Interconnection Study Agreements executed after the effective date of the Final Rule be processed pursuant to the new interconnection procedures for small generating facilities.¹⁷

The NYISO's LFIP complied with the Order No. 2003 transition period directive requiring that "if an Interconnection Study Agreement has not been executed as of the effective date of these Large Facility Interconnection Procedures, then such Interconnection Study, and

¹³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Natl Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

¹⁴ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006).

¹⁵ Order No. 2003 at n.55.

¹⁶ *See id.* at PP 179-190.

¹⁷ Order No. 2006 at P 556.

any subsequent Interconnection Studies, shall be processed in accordance with these Large Facility Interconnection Procedures.”¹⁸ The tariff also required that any facility that, at the time of the LFIP’s effective date, did not have an interconnection agreement that had been submitted for Commission-approval would be transitioned to the LFIP within sixty days.¹⁹ Those Commission-accepted tariff provisions required facilities like Linden VFT, which had submitted an Interconnection Request for the originally requested 300 MW of capacity but had not executed a study agreement, to complete the Interconnection Study process under the LFIP.²⁰ The statements made at a NYISO Transmission Planning Advisory Subcommittee meeting regarding the transition are fully consistent with the tariff requirement that most then-pending facilities be evaluated under the new procedures.²¹

Similarly, the requested clarification is necessary to avoid a direct conflict with Commission precedent requiring the submittal of an Interconnection Request where there is any increase in capacity or material modification to an existing facility. Order No. 2003 clearly established that, after the effective date of the Final Rule, a new Interconnection Request had to be submitted to “increase the capacity of, or modify the operating characteristics of, an existing

¹⁸ OATT Attachment X § 30.5.1.1. These Commission-accepted tariff provisions were taken nearly verbatim from the *pro forma* OATT provisions established by Order No. 2003. *See* Order No. 2003 at Appendix C § 5.1.1.1 (providing that “If an Interconnection Study Agreement has not been executed as of the effective date of th[ese interconnection procedures], then such Interconnection Study, and any subsequent Interconnection Studies, shall be processed in accordance with” these interconnection procedures). *See New York Independent System Operator, Inc.*, 108 FERC ¶ 61,159 (2004).

¹⁹ OATT Attachment X § 30.5.1.2.

²⁰ *See Notice to Market Participants Concerning Transition to New Interconnection Procedures* and attachment (dated October 1, 2004) (stating that “[w]hether and how a specific project will transition to the new procedures will depend on the project’s status as of the effective date of the LFIP” and providing that facilities in “Group C - Have Not Executed a Study Agreement: The projects in Group C [which included Linden VFT] must complete all studies and enter into a three-party IA under the new procedures”). *See Answer of the New York Independent System Operator, Inc.* at 20-21 and Attachment 4, Docket No. EL12-64 (filed May 24, 2012).

²¹ *See id.* at 21-22.

Generating Facility that is interconnected with the Transmission Provider's Transmission System.”²² Commission precedent interpreting this requirement has clearly required the submission of a new Interconnection Request in such circumstances,²³ including where there is a material change in a facility's equipment or operating characteristics from those that were studied. The requested clarification is also consistent with the NYISO's Commission-accepted definition of a new Interconnection Request.²⁴

The Commission's stated purpose for requiring the submittal of a new Interconnection Request in such circumstances is to ensure predictability and minimize disputes, while also preserving bulk power system reliability. As Order No. 2003 held, the interconnection procedures' purpose was to “*resolve most disputes*, minimize opportunities for undue discrimination, foster increased development of economic generation, *and protect system reliability*.”²⁵ Order No. 2003-A affirmed that purpose, stating that:

We reaffirm here the legal and policy conclusions on which Order No. 2003 is based. Adoption of the LGIP and LGIA will prevent undue discrimination, *preserve reliability*, increase energy supply, and lower wholesale prices for

²² Order No. 2003 at n.5.

²³ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 124 FERC ¶ 61,277 at P 11 (2008) (finding that “any increase in generation capacity from an existing generator requires a new interconnection request and a new LGIA conforming to the transmission provider's current pro forma LGIA” when interpreting Midwest ISO provisions regarding the submittal of Interconnection Requests which use similar language to that found in the NYISO's OATT Attachment X); *Midwest Independent Transmission System Operator, Inc.*, 132 FERC ¶ 61,241 at P 33 (2011) (same); *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,019 at P 16 (2008) (holding that “[i]n Order No. 2003, and in company-specific cases, the Commission has found that any increase in generation capacity from an existing generator requires a new LGIA conforming to the Transmission Provider's current pro forma LGIA” citing, *New England Power Co.*, 109 FERC ¶ 61,364 at P 13 (2004); *Pacific Gas and Electric Co.*, 109 FERC ¶ 61,392 (2004); *Southern California Edison Co.*, 109 FERC ¶ 61,375 at P 10 (2004); *Jersey Central Power & Light Co.*, 110 FERC ¶ 61,273 (2005); *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,125 at P 3 (2006).

²⁴ See *supra* n.11.

²⁵ Order No. 2003 at P 12; see also *Midwest Independent Transmission System Operator, Inc.*, 124 FERC ¶ 61,277 at P 11 (2008) (finding that “[i]nsisting that parties file new pro forma LGIAs when electing to increase generation capacity ... provides consistency and eliminates confusion”).

customers by increasing the number and variety of generation resources competing in wholesale electricity markets *while ensuring that the reliability of the Transmission System is protected*.²⁶

Interpreting footnote 53 to grandfather any facility that was already interconnected and operating, or that was being processed by the NYISO pursuant to an interconnection request submitted, prior to August 6, 2004²⁷ from the LFIP would reduce predictability and raise concerns regarding reliability, by creating uncertainty regarding what, if any, interconnection process would apply to those facilities.

Also, this clarification is consistent with the scope of the Complaint and the October Order which concerned the narrow question of the applicability, to Linden VFT, of the Section 25.9.3.1 provisions allowing for a maximum CRIS level to be set using performance testing. The October Order²⁸ clearly establishes that the Commission's holdings are intended to allow Section 25.9.3.1 to be interpreted in a manner that enabled Linden VFT to establish its maximum 315 MW CRIS level based on its performance test,²⁹ without broadly exempting the nearly 700 facilities already interconnected as of August 6, 2004.³⁰

²⁶ Order No. 2003-A at P 3.

²⁷ August 6, 2004 is the effective date of the LFIP. *See New York Independent System Operator, Inc.*, 108 FERC ¶ 61,159 (2004).

²⁸ *See* October Order at PP 29-32.

²⁹ *See, e.g.*, October Order at P 29 (discussing the application of Section 25.9.3.1 to increases in CRIS); P 30 (establishing that Linden VFT is to be treated as a pre-2007 Generator for purposes of Section 25.9.3.1); P 31 (finding that the NYISO's ICAP Manual supports treating Linden VFT as a Generator under Section 25.9.3.1); and P 32 (finding that Linden VFT is to be treated as a Generator, and thus eligible to adjust its grandfathered CRIS level pursuant to Section 25.9.3.1).

³⁰ *See* NYISO, *2012 Load and Capacity Data – “Gold Book”* (April 2012), available at <http://www.nyiso.com/public/webdocs/services/planning/planning_data_reference_documents/2012_GoldBook_V3.pdf>.

Thus, the Commission's statement in footnote 53 must be limited to the narrow instance where a facility is eligible to increase and reset its maximum CRIS pursuant to Section 25.9.3.1.

III. ALTERNATIVE REQUEST FOR REHEARING

In the alternative, if the Commission denies the requested clarification, the October Order must be reversed on rehearing because it is arbitrary and capricious and does not reflect "a reasoned decision made based upon substantial evidence in the record."³¹ Such a finding would be a significant departure from prior Commission holdings requiring the transition of facilities to the Order Nos. 2003³² and 2006³³ processes. It would also directly conflict with the explicit language in the NYISO's tariff and the Commission's well-established precedent requiring the submittal of a new Interconnection Request where there is an increase in the capacity or material modification of an existing facility's operating characteristics.³⁴ It would also be contrary to the stated purpose of Order Nos. 2003³⁵ and 2006,³⁶ as it would create uncertainty in the NYISO's interconnection process.

Additionally, such an interpretation of the October Order would create an entirely new grandfathering provision over eight years after the interconnection procedures were implemented in New York. This type of departure from the Commission's prior precedent would raise concerns over the NYISO's ability to confirm that reliability requirements are satisfied since it introduces uncertainty regarding what, or even if any, interconnection process would apply to

³¹ *Pacific Gas & Electric Co. v. FERC*, 373 F.3d 1315, 1319 (D.C. Cir. 2004) (internal citations omitted).

³² See Order No. 2003 at n.55 and PP 179-190.

³³ See Order No. 2006 at P 556.

³⁴ See *supra* n. 23.

³⁵ See Order No. 2003 at P 12 and Order No. 2003-A at P 3.

³⁶ See Order No. 2006 at P 36 (holding that the small generator interconnection procedures "we adopt in this Final Rule serve the same purposes as the" large generator interconnection procedures).

these newly grandfathered facilities. The October Order's creation of such a potential process gap could also have a significant impact outside the NYISO, as it could be applicable to any other Independent System Operator/Regional Transmission Operator and other entity that has the same standardized language in its tariff. If the Commission's purpose was to depart from its well-established precedent, it failed to provide a reasoned, or any, explanation for such an abrupt and complete reversal.³⁷ Thus, the Commission must overturn the October Order on rehearing to the extent it would exempt any broader group of facilities from the NYISO's interconnection processes.

IV. SPECIFICATION OF ERRORS AND STATEMENT OF ISSUES

In accordance with Rule 713(c),³⁸ the NYISO submits the following specification of error and statement of the issues on which it seeks rehearing of the October Order to the extent that its request for clarification is denied:

- The October Order is arbitrary and capricious and is not based on reasoned decision-making to the extent that it would require the NYISO to grandfather, from the interconnection procedures, any facility that was already interconnected and operating, or that was being processed by the NYISO pursuant to a pending interconnection request submitted, prior to the effective date of the LFIP because it: (1) contravenes Order Nos. 2003 and 2006; (2) departs without reasonable explanation from well-established Commission precedent requiring the submittal of a new Interconnection Request where there is an increase in the capacity or modification of an existing facility's operating characteristics; (3) would directly conflict with the explicit language in the NYISO's tariff; (4) would create uncertainty in the NYISO's interconnection process creating disputes and affecting the NYISO's ability to evaluate the reliability impacts of such modifications; and (5) would create an entirely new grandfathering provisions over eight years after the implementation of the interconnection procedures, which could have an impact not only on the NYISO but any other entity with an OATT that contains these provisions. *Pacific Gas & Electric Co. v. FERC*, 373 F.3d 1315, 1319 (D.C. Cir. 2004); *ANR Pipeline Co. v. FERC*, 71 F.3d 897, 901 (D.C. Cir. 1995); *Standardization of*

³⁷ *ANR Pipeline Co. v. FERC*, 71 F.3d 897, 901 (D.C. Cir. 1995) (holding that an "where an agency departs from established precedent without a reasoned explanation, its decision will be vacated as arbitrary and capricious").

³⁸ 18 C.F.R. § 385.713(c) (2012).

Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Natl Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *Midwest Independent Transmission System Operator, Inc.*, 124 FERC ¶ 61,277 at P 11 (2008); *Midwest Independent Transmission System Operator, Inc.*, 132 FERC ¶ 61,241 at P 33 (2011); *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,019 at P 16 (2008); *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,125 at P 3 (2006).

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission grant clarification, or in the alternative rehearing, of the October Order, as described above.

Respectfully submitted,

/s/Vanessa A. Colón

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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 31st day of October, 2012.

/s/ Joy A. Zimmerlin

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