

November 29, 2010

By Electronic Delivery

**CONTAINS CRITICAL ENERGY
INFRASTRUCTURE INFORMATION**

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

Re: Filing of an Executed Large Generator Interconnection Agreement Among the New York Independent System Operator, Inc., Consolidated Edison Company of New York, Inc., and Bayonne Energy Center, LLC and Request for Critical Energy Infrastructure Information Designation, Docket No. ER11- ____-000

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act,¹ Section 35.12 of the Commission's Regulations,² and Section 11.3 of its Large Facility Interconnection Procedures ("LFIP"), the New York Independent System Operator, Inc. ("NYISO") and Consolidated Edison Company of New York, Inc. ("Con Edison") ("Joint Filing Parties") hereby tender for filing an executed standard large generator interconnection agreement ("Interconnection Agreement") as Service Agreement No. 1668 among the NYISO, Con Edison as the Transmission Owner, and Bayonne Energy Center, LLC ("BEC") as the Developer.³ With the limited exceptions noted in Section II of this letter, the Interconnection Agreement conforms to the NYISO's *pro forma* Large Generator Interconnection Agreement ("LGIA") that is contained in Attachment X of the NYISO's OATT.

I. Background

The Interconnection Agreement governs the interconnection of BEC's Large Generating Facility ("BEC Facility"). The BEC Facility is a nominal 512 MW multi-unit, simple-cycle natural gas-fired (with ultra low sulfur diesel oil as a backup fuel) Large Generating Facility to be located in Bayonne, New Jersey. The BEC Facility has a net summer capability of 500 MW at 95° F, and a net winter capability of 500 MW at 10° F. The BEC Facility will not deliver in excess of 500 MW to the Point of Interconnection at any time.

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. § 35.12 (2008).

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

The Large Generating Facility will consist of eight 64 MW generating units connecting to a 138 kV ring bus. From the ring bus, power will be delivered to Con Edison's Gowanus 345 kV Substation via a two winding, 138-345 kV switchyard step up transformer (SSU) and a 6.75 mile AC land/submarine cable. The Point of Interconnection will be between Breakers #20 and #22 of the 345kV ring bus to be developed, at Gowanus, as a result of this project. The Point of Interconnection is identified on Figure A-1 of Appendix A of the Interconnection Agreement which is designated as CEII for the reasons discussed in Section III, *infra*.

II. Variations From the NYISO's Pro Forma LGIA

As noted above, the Interconnection Agreement is based on the NYISO's *pro forma* LGIA; however, the parties have agreed to make a limited set of modifications to the *pro forma* LGIA. These modifications are described below and are primarily necessary to reflect (A) the timing of the execution of the Interconnection Agreement vis-à-vis the Class Year 2009 Interconnection Facilities Study ("Class Year 2009 Study"); (B) the operational control of the Con Edison facilities affected by the Interconnection Agreement; and (C) the existence of pre-existing license and easement agreements between Con Edison and BEC. All of the parties to the Interconnection Agreement ("Parties") agree to these changes.

The Commission has accepted changes to the *pro forma* LGIA terms where, as here, there are unique circumstances associated with the interconnections, including "reliability concerns, novel legal issues or other unique factors."⁴ In fact, certain of the modifications to the *pro forma* LGIA in this Interconnection Agreement are substantially similar or identical to those previously accepted by the Commission.⁵ The Joint Filing Parties have included a blackline of the Interconnection Agreement against the NYISO's *pro forma* LGIA to highlight these changes. The NYISO respectfully requests that the Commission accept these modifications in light of the unique factors and novel legal issues explained below.

A. Revisions to reflect the timing of the execution of the Interconnection Agreement

The BEC Facility is completing its Interconnection Facilities Study as a member of Class Year 2009, which is not yet completed. Because the Interconnection Agreement was executed prior to completion of the Class Year Study, the Parties have modified Articles 2.3.1.1 and 2.3.1.2 regarding the effect of non-acceptance of Project Cost Allocation for Class Year 2009 and post termination responsibilities, should BEC elect not to accept its Project Cost Allocation for Class Year 2009. Specifically, BEC's election not to accept its Project Cost Allocation for Class Year 2009 shall be deemed a termination of the Interconnection Agreement

⁴ See *PJM Interconnection, LLC*, 111 FERC ¶ 61,163 at PP-10-11, *reh'g denied* 112 FERC ¶ 61,282 (2005).

⁵ See *New York Independent System Operator, Inc. and Consolidated Edison Company of New York, Inc.*, 123 FERC ¶ 61,093 (Apr. 29, 2008).

by BEC under Article 2.3.1. BEC may effect such election not to accept its Project Cost Allocation for Class Year 2009 by (i) providing Notice of Non-Acceptance of the Project Cost Allocation, or (ii) failing to post Security for SUFs for which it is responsible in accordance with Attachment S. Article 2.3.1.2 provides that once BEC elects not to accept its Project Cost Allocation for Class Year 2009, it shall promptly (i) demobilize and cease further construction at the Gowanus Substation site, and (ii) remove or cause the removal of all equipment, tools and materials of BEC, its contractors and vendors from the Gowanus Substation site. Article 2.3.1.2 further provides that Con Edison shall take such steps as reasonably necessary to return the Gowanus Substation location to a safe and reliable condition in accordance with Article 5.16 of this Agreement and bill BEC for the reasonable costs of same under Article 12 of the Interconnection Agreement.

BEC has elected to seek both Energy Resource Interconnection Service and Capacity Resource Interconnection Service. The Class Year Study includes evaluation of deliverability that determines eligibility for Capacity Resource Interconnection Service ("CRIS"). Accordingly, the Parties modified the Interconnection Agreement by making Article 4.1.1, which indicates that the project is taking CRIS, subject to the requirements of Appendix A, Section 5. Appendix A, Section 5 specifically provides that BEC may not supply Unforced Capacity to the New York Control Area from the BEC Facility until it has complied with the deliverability requirement pursuant to Attachment S of the NYISO OATT, including acceptance of any cost allocation for SDUs and the posting of associated security or payments.

B. Deviations required due to the operational control of the Connecting Transmission Owner's facilities

Con Edison Attachment Facilities and Stand Alone System Upgrade Facilities involved in the interconnection of the BEC Facility ("Con Edison Facilities") are classified as "Transmission Facilities Requiring ISO Notification" pursuant to Appendix A-2 of the Agreement Between NYISO and Transmission Owners (NYISO/TO Agreement), not as "Transmission Facilities Under ISO Operational Control" set forth in Appendix A-1 of the NYISO/TO Agreement. Accordingly, the Parties have modified Article 5.1.1 of the Interconnection Agreement to reflect that Con Edison will not transfer operational control of its Attachment Facilities and Stand Alone System Upgrade Facilities, but that such facilities will be treated as Transmission Facilities Requiring ISO Notification.

C. Deviations required due to the existence of related contractual agreements

Con Edison and BEC are parties to a license agreement and easement agreement described in section 2(g) of Appendix C of the Interconnection Agreement ("Additional Agreements"). Accordingly, the Parties have agreed to modifications to Articles 28.1.3 and 29.6 to address these Additional Agreements. With respect to the interaction between the Interconnection Agreement and the pre-existing contractual obligations set forth in the Additional Agreements, Appendix C, Section 2(g) indicates that "[i]t is the belief and intention of the Parties that nothing in this [Interconnection] Agreement conflicts in any material way with those Additional Agreements." Further, as reflected in Appendix C, Section 2(g), if the Parties

become aware of a conflict, the Parties will discuss “what, if any, amendment of this [Interconnection] Agreement would be appropriate under the circumstances.”

D. Deviations required to reflect principles associated with construction activity at Con Edison’s Gowanus Substation

The parties have also added new Appendix H to the Interconnection Agreement which provides the detailed principles associated with construction activity at Con Edison’s Gowanus substation. A similar such Appendix was added to the Interconnection Agreement accepted by the Commission on April 29, 2008 in Docket No. ER08-618-000.⁶

Appendix H specifically refers to an agreement executed, prior to the Interconnection Agreement, between Con Edison and BEC for certain engineering services. These agreements are a Master Services Agreement and Transaction Form 3 (Engineering Agreement) and are described in Appendix H, Section 2 and attached as H-2. These two agreements were previously filed with the Commission in Docket No. ER10-477-000 and accepted by letter Order dated February 17, 2010. Under the Interconnection Agreement, the Parties agree that Con Edison will complete these specific engineering services pursuant to the terms and conditions of the Engineering Agreement.

E. Deviations expressly contemplated by the LGIA

Article 29.2 of the Interconnection Agreement provides for discrepancies or conflicts between or among terms and conditions of the cover agreement and its Appendices. The language of this Article specifically provides that the terms and conditions of the cover agreement shall be given precedence over the Appendices, “*except as otherwise expressly agreed in writing by the Parties.*” (emphasis added) Exercising the rights afforded to them by this last clause, italicized above, the Parties added a provision to this article expressly agreeing that the terms and conditions of the Appendices shall take precedence over the provisions of the cover agreement in case of a discrepancy or conflict between or among the terms and conditions of same.

III. Request for CEII Treatment

Pursuant to the Commission’s regulations at 18 C.F.R. §388.112 and 18 C.F.R. § 388.113, Con Edison requests that the one-line diagram included as part of Appendix A to the Interconnection Agreement (Figure A-1) be protected from disclosure as Critical Energy Infrastructure Information (“CEII”). This one-line diagram contains detailed, one-line schematics of transmission lines, the Gowanus substation and generation facilities that, if disclosed, could pose a threat to the security and the reliability of the New York State bulk power

⁶ See *New York Independent System Operator, Inc. and Consolidated Edison Company of New York, Inc.*, 123 FERC ¶ 61,093 (Apr. 29, 2008).

system. This diagram provides more than simply the general location of critical infrastructure. Unlike publicly available maps of power transmission lines and generation and substation facilities, this schematic shows the exact nature and specific location of facilities and transmission lines used to maintain the reliability of the New York State bulk power system. This diagram, in Con Edison's assessment, reveals such critical information related to the facilities and transmission depicted therein that, if disclosed, could be useful to a person seeking to disable the power grid. Therefore, the disclosure of this CEII diagram would pose a threat to the reliability of the New York State bulk power system and to the health and safety of New York residents. Moreover, the information revealed in this schematic reveals CEII which FERC has determined to be exempt from mandatory disclosure under 5 U.S.C. § 552(b)(7)(F). The diagram has been omitted from the Public version of the Interconnection Agreement included in this filing. The diagram is included only in the CEII version of the Interconnection Agreement in the filing.

All communications relating to this request for CEII treatment should be addressed to the following:

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IV. Effective Date

The parties request an effective date of November 10, 2010, the date of execution of the Interconnection Agreement. The Commission has allowed interconnection agreements to become effective on the date of execution, even when that date precedes the date that an interconnection agreement is filed. Accordingly, the parties request that the Commission grant a waiver of its prior notice requirements to the extent necessary to accommodate this requested effective date.

V. Communications and Correspondence

Communications regarding this filing should be directed to:

For the NYISO

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*Designated to receive service.

VI. Documents Submitted

The NYISO submits the following documents:

- A. this filing letter;**
- B. a clean Public version of the Interconnection Agreement;**
- C. a blacklined Public version showing the Interconnection Agreement's changes from the body of the NYISO's pro forma LGIA and the addition of Appendix H; and**
- D. a clean CEII version of the Interconnection Agreement.**

VII. 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

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Service Commission, and to the electric utility regulatory agency of New Jersey. In addition, a complete copy of this filing will be posted on the NYISO's website at www.nyiso.com.

VIII. Conclusion

Wherefore, the NYISO respectfully requests that the Commission accept the attached Agreement effective as of November 10, 2010.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan
Counsel for the
New York Independent System Operator, Inc.

/s/Donald J. Stauber

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