

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

Hudson Transmission Partners, LLC,)	
)	
v.)	Docket No. EL07-70-002
)	
New York Independent System Operator, Inc.)	

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

Pursuant to Rule 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2007), the New York Independent System Operator, Inc. (“NYISO”) respectfully seeks clarification or, in the alternative, rehearing of limited aspects of the Commission’s January 17, 2008 order in the above-captioned proceeding.¹

As described in more detail below, the NYISO requests that the Commission clarify that, in discussing the applicability of *Virginia Electric and Power Co.* (“VEPCO”),² the January 17 Order did not imply that the NYISO’s existing processes contained in Attachment S and Attachment X of its Open Access Transmission Tariff (“OATT”) would be supplanted. Furthermore, any application of a *VEPCO*-like process must be implemented in a manner that permits adequate review of the reliability and engineering impacts of a changed configuration should a “completed” project move ahead of a competing one. Finally, the NYISO asks the Commission to confirm that the NYISO’s role as the independent administrator of its interconnection process would not be in any way diminished to the extent that a *VEPCO*-like process is applied.

¹ *Hudson Transmission Partners, LLC v. New York Independent System Operator, Inc.*, 122 FERC ¶ 61,024 (2008) (“January 17 Order”).

² 104 FERC ¶ 61,249 (2003).

The NYISO submits that clarification on these limited points will provide needed certainty for both the NYISO and all project Developers,³ including the two Developers that are involved in this proceeding. Clarification will also provide certainty regarding the respective roles of the NYISO and the Transmission Owners, including Consolidated Edison Company of New York, Inc. (“Con Edison”), the relevant Transmission Owner in this proceeding, in the interconnection process.

If the Commission denies the requests for clarification, the NYISO respectfully seeks rehearing of these issues.

I. The January 17 Order

In the January 17 Order, the Commission denied the requests for rehearing and clarification filed by the NYISO and Cross Hudson Corporation (“Cross Hudson”) of its August 22, 2007 order.⁴ The August 22 Order addressed a complaint filed by Hudson Transmission Partners, LLC (“HTP”), which is also developing a project that would interconnect at the same substation. In the August 22 Order, the Commission held that Cross Hudson had taken actions that constituted withdrawal from the NYISO interconnection queue, and therefore that the NYISO must remove the project from the queue.

Although it denied the rehearing and clarification requests, the Commission recognized that “this case raises issues about how to encourage the development of much needed interconnection projects in a rapidly growing yet energy constrained area such as New York City”⁵ Thus, the January 17 Order stated that the Commission “expect[s] that Con Edison, as the transmission owner, will use a procedure similar to the one outlined in [VEPCO], where the issue

³ Capitalized terms not otherwise defined have the meaning ascribed to them in the NYISO’s OATT.

⁴ *Hudson Transmission Partners, LLC v. New York Independent System Operator, Inc.*, 120 FERC ¶ 61,179 (2007) (“August 22 Order”).

⁵ January 17 Order at P 32.

of cost responsibility for network upgrades between two competing interconnection projects was also raised.”⁶ The January 17 Order explained that regardless of either project’s queue position, “the interconnection project that is first completed . . . must be given the option to complete its interconnection using the vacant bus ring at Con Edison’s West 49th Street Substation.”⁷ Thus, the right to use the vacant bus position would be on a first-come, first-served basis regardless of queue position. The January 17 Order also indicates that queue position would be used to allocate responsibility for the cost of interconnection upgrades. If a new ring bus would have to be constructed, Cross Hudson, the lower-queued project, would be responsible for the costs of adding a new ring bus (whether it would be used by Cross Hudson itself or by HTP).⁸

II. Request for Clarification

The NYISO agrees with the January 17 Order’s goals of providing projects that are ready to move forward in the interconnection process with an opportunity to do so. Adopting a *VEPCO*-like process may, under certain circumstances, prevent the unnecessary delay of a project that is prepared to complete its interconnection. Under *VEPCO*, if a lower-queued project is ready to interconnect its project ahead of a higher-queued one, then that project must be given the option of interconnecting using the transmission capability that had been “set aside” for the higher-queued project.⁹ *VEPCO* stated that this approach ensures that a project that moves ahead would only be required to fund upgrades if the competing project goes forward.¹⁰ The NYISO supports *VEPCO*’s core policy objectives that capacity should not be set aside for a project indefinitely and that generators should not pay for costly upgrades if they are rendered

⁶ *Id.* at P 33.

⁷ *Id.*

⁸ *See id.*

⁹ *See VEPCO* at P 19.

¹⁰ *See id.*

unnecessary by the competing project's exit from the interconnection queue. However, as discussed below, the NYISO believes that certain clarifications are necessary to avoid confusion regarding the implementation of a *VEPCO*-like process in a manner that is compatible with the NYISO's Commission-approved cost allocation mechanism and Large Facility Interconnection Procedures ("LFIP").

First, the Commission should confirm that the process discussed in the January 17 Order is intended to complement, but not to supplant or to otherwise revise, the NYISO's Commission-approved cost allocation mechanism in Attachment S and its LFIP in Attachment X. In particular, the January 17 Order indicates that cost responsibility for required upgrades should be based on queue position. However, Attachment S, which has been approved by the Commission as an appropriate mechanism to allocate the costs of interconnection-related upgrades, does not allocate cost responsibility by queue position. These established rules, however, are compatible with *VEPCO*'s core objectives noted above.

Second, the NYISO seeks clarification regarding the January 17 Order's statement that "the interconnection project that is first completed" must have the option to complete its interconnection using the vacant bus position at the West 49th Street Substation. When an interconnection is "completed" may be susceptible to different interpretations, so clarification will facilitate the implementation of the January 17 Order.

Finally, the NYISO requests that the Commission clarify that the January 17 Order is not intended to diminish the NYISO's role as the independent administrator of its interconnection process or to exclude the NYISO from the administration of a *VEPCO*-like process in this case.

A. The Commission Should Clarify that a *VEPCO*-Like Process Complements, but does not Supplant, the NYISO's Existing Cost Allocation Rules and Interconnection Procedures

The January 17 Order states that a process like the one set forth in *VEPCO* should be applied in this case because of the similarity of the factual circumstances. As was noted above, the NYISO supports the core policy objectives of *VEPCO*. However, the NYISO asks the Commission to clarify that the January 17 Order did not intend for a *VEPCO*-style process to supersede or override any of the NYISO's current tariff provisions. In particular, the January 17 Order states that Cross Hudson will under all circumstances pay for the expansion of the substation, if both Cross Hudson's and HTP's projects go forward. However, under the NYISO's Commission-approved tariff, while Cross Hudson may be allocated the costs of expanding the substation under certain circumstances, that will not always be the case.

Specifically, under the NYISO's cost allocation procedures and the LFIP, the NYISO conducts Facilities Studies for a group of eligible projects that belong to a particular Class Year. For a given Class Year, the NYISO identifies all of the System Upgrade Facilities ("SUFs") necessary to reliably interconnect that group of projects and allocates the costs of those SUFs among the projects in the Class Year based on the detailed requirements of Attachment S. Importantly, the cost allocation under Attachment S is *not* based on queue position. Once a project enters a Class Year, its queue position relative to other Class Year members is not considered and all projects in the Class Year share in the available capacity of the system.¹¹

¹¹ Specifically, Attachment S (at Sheet No. 679) states:

There will be no prioritization of projects grouped or studied together in a Class Year. Each such project will share in the then currently available electrical capacity of the transmission system, and share in the costs of System Upgrade Facilities required to interconnect its respective project, in accordance with the rules set forth herein.

Accordingly, which project can utilize available capacity, *e.g.*, a vacant bus position, is determined, not by queue position, but by which project is first eligible for a Class Year. Under Attachment S, a project will be included in a given Class Year if, before the start of the Class Year study, the project's interconnection System Reliability Impact Study has been approved by the NYISO's Operating Committee and state regulators have determined that the applicable permit application has been completed.¹² If two projects are competing to use a vacant bus position, the project that enters an earlier Class Year will be able to use the vacant bus position and will have the benefit of not being allocated the cost of any expansion. The Developer of a project that is part of a later Class Year would be required to pay for any expansion of the system necessary to accommodate its project.¹³ Because neither HTP nor Cross Hudson¹⁴ have entered a Class Year, it is not yet known which project will have access to any vacant bus position and which will have to pay to expand the substation.¹⁵ The NYISO's existing cost allocation process can and should be used to resolve this issue.

A *VEPCO*-like process could be accommodated within the existing NYISO tariff framework.¹⁶ Once both HTP and Cross Hudson go through the cost allocation process and execute interconnection agreements, a *VEPCO*-like process could be used to address the situation where the project initially assigned the available bus position ("Project A") is not ready

¹² See Attachment S at Sheet No. 674.

¹³ Projects also could be members of the same Class Year. This might result in the sharing of costs among Developers.

¹⁴ This refers to Cross Hudson in its current queue position.

¹⁵ The NYISO is not taking a position here on what facilities might be required to interconnect these two projects. The interconnection studies for these projects will identify the required facilities.

¹⁶ For example, the NYISO's existing rules contain specific provisions governing cost responsibility for SUFs when a lower-queued project is accelerated and "leapfrogs" over a higher-queued one. Attachment S provides that once a Developer has accepted its cost allocation (and has posted security for that amount), then that Developer's liability is capped. Attachment S then states that if another project is accelerated (or otherwise modified), then the Developer "is responsible only for the agreed-to and secured amount for its project." Attachment S at Sheet Nos. 684-85.

to use it, while the other project--the project assigned the cost of the substation expansion ("Project B") -- is ready. Under *VEPCO*, Project B would be permitted to connect using the vacant bus position, but would be obligated to fund the substation expansion when and if Project A was completed.

It is important, however, that all interconnecting projects adhere to the cost allocation rules set forth in Attachment S and the LFIP in Attachment X, and that exceptions to these rules should not be carved out. These cost allocation rules were designed to ensure that all Developers are treated comparably in the interconnection process. Allowing these rules to be supplanted in some cases may undermine that goal. Therefore, the NYISO requests that the Commission clarify that the existing cost allocation and generator interconnection processes contained in Attachment S and Attachment X must be followed by HTP and Cross Hudson, and that any *VEPCO*-like process will be accommodated within the framework that these rules establish.

B. The Commission Should Clarify When an Interconnection Project is "First Completed."

The January 17 Order states that the "interconnection project" -- HTP's or Cross Hudson's -- "that is first completed ... must be given the option to complete its interconnection using the vacant ring bus" at Con Edison's West 49th Street Substation.¹⁷ This statement is potentially open to different interpretations, and the NYISO therefore requests clarification.

The NYISO believes that a Developer should be able to request the use of a *VEPCO*-like process only after an interconnection agreement is executed and/or filed with the Commission, the Developer has received all required permits or regulatory approvals and has executed any necessary construction and procurement agreements, and construction of the project has progressed significantly. This approach recognizes the reality that the connection point for a

¹⁷ January 17 Order at P 33.

project should be known before the project is fully constructed and ready to begin operation, and that any changes to the connection point should be evaluated, as discussed below. However, this approach also recognizes that before a Developer can pursue a *VEPCO*-like process, it must adequately demonstrate the advanced status of its project. The Developer also must demonstrate that it is significantly ahead of construction efforts of the project initially assigned to open bus position. This is important since the project initially assigned the open bus position will now need to wait until the ring bus is constructed. The NYISO requests that the Commission confirm that this interpretation is reasonable, or clarify when it views an interconnection as complete.

In addition, the NYISO requests clarification that a Developer's invocation of the *VEPCO*-like process can only be implemented after the change in configuration is evaluated by the NYISO for reliability and design impacts. When projects are studied in a Class Year, the reliability impacts and design of each project are analyzed by the NYISO assuming a specific configuration, including the applicable bus position. This applicable configuration will be reflected in each project's respective interconnection agreement and will be the basis for the detailed engineering work to be performed under that agreement. If a project that was expected to connect to a position in an expanded substation seeks to use the vacant bus position, this change will need to be studied by the NYISO from a reliability and design perspective. It will not necessarily be the case that Developers could swap connection points without reliability impacts.¹⁸ There might also be engineering and design issues that must be addressed before the projects could switch connection points. In this case, for example, HTP's and Cross Hudson's projects may have different routes and approaches to the substation that would need to be

¹⁸ While not likely, it is possible that the reliability impact of two Developers changing connection points may be so significant as to prevent the use of a *VEPCO*-type process.

evaluated. Additionally, any change in configuration would trigger the need to modify the impacted interconnection agreements.

C. The Commission Should Clarify the Respective Roles of the NYISO and Con Edison

The January 17 Order indicates that Con Edison, as the affected local Transmission Owner, will be the entity that administers a process similar to that in *VEPCO*. The NYISO asks the Commission to clarify that it did not intend to reduce the NYISO's role in the administration of a *VEPCO*-like process.

VEPCO was decided prior to the implementation of Virginia Power's participation in PJM Interconnection, L.L.C. Thus, there were only two parties involved in the interconnection process. By contrast, in this case both the NYISO and Con Edison are involved in the process with their respective roles defined in the LFIP. Under these circumstances, it is appropriate for the NYISO, as the independent administrator of the interconnection process in New York, to play the lead role in the implementation of any *VEPCO*-type process. Con Edison should play no greater role under a *VEPCO*-like process than under any other part of the NYISO's interconnection regime. Accordingly, the NYISO seeks clarification on this issue.

III. Alternative Request for Rehearing

Should the Commission deny the NYISO's requests for clarification detailed above, the NYISO respectfully requests rehearing on these issues.

The NYISO submits that it would be arbitrary and capricious to override the NYISO's Commission-approved Attachment S cost allocation mechanism and LFIP. As explained above, the NYISO's cost allocation and interconnection rules were designed to treat all Developers comparably. If the Commission allows the rules to be disregarded in this case, then it would undermine their comparability goals. Moreover, the Commission has not explained its rationale

in requiring a *VEPCO*-like process to supplant the NYISO's tariffs and thus the January 17 Order does not reflect reasoned decision-making.¹⁹

In addition, it would be arbitrary and capricious for the Commission not to clarify that the NYISO's understanding of when an interconnection is "completed." Whether an interconnection is "complete" is not defined in the tariff and is thus susceptible to different interpretations. In the absence of granting the NYISO's requested clarification of what a "completed" interconnection means, the NYISO and Developers are in the position of having to discern what the Commission means, which will lead to uncertainty and controversy in the interconnection and cost allocation processes.

Finally, it would be arbitrary and capricious to elevate the role of Con Edison beyond that which is expressly provided for in the LFIP, and to diminish the role of the NYISO. The NYISO is the independent administrator of the interconnection queue and has a clearly defined role in the LFIP. Con Edison, too, has its defined role. Absent clarification, the January 17 Order indicates that Con Edison is to play the primary role in the interconnection process, which is contrary to the LFIP and Commission policy on the three-party interconnection process in regions where there is an Independent System Operator.²⁰ Moreover, the Commission did not articulate a rationale for elevating Con Edison's role in the interconnection process, and diminishing the NYISO's, and therefore the January 17 Order does not reflect reasoned decision-making.²¹

¹⁹ See, e.g., *Panhandle Eastern Pipe Line Co. v. FERC*, 881 F.2d 1101, 1118 (D.C. Cir. 1989) ("The agency's determination must reflect reasoned decisionmaking that has adequate support in the record and must include an 'understandable' agency analysis and rationale.") ("*Panhandle*").

²⁰ See, e.g., *New York Independent System Operator, Inc., New York Transmission Owners*, 118 FERC ¶ 61,130 at P 21 (2007) (conditionally accepting the NYISO and New York Transmission Owners' Order No. 2006 compliance filing and stating that it "continues to believe that an ISO/RTO should have control over the interconnection process . . .").

²¹ See *Panhandle*.

IV. Specification of Errors and Statement of Issues

In accordance with 18 C.F.R. § 385.713(c)(1) and (2), the NYISO respectfully submits the following specification of errors and statement of issues.

1. The Commission should confirm that use of a *VEPCO*-like process will not supplant the NYISO's existing, Commission-approved tariff provisions governing the allocation of costs of interconnection-related upgrades contained in Attachment S of its OATT or the NYISO's LFIP contained in Attachment X.

In the absence of the requested clarification, the Commission erred in requiring that a *VEPCO*-like process would supplant the NYISO's tariff provisions, and the Commission failed to engage in reasoned decision-making. *See, e.g., Panhandle Eastern Pipe Line Co. v. FERC*, 881 F.2d 1101, 1118 (D.C. Cir. 1989).

2. The Commission should clarify what the January 17 Order is intended to mean when it discusses an interconnection that is first completed because when an interconnection is complete is potentially susceptible to different interpretations. Specifically, the Commission should confirm that the NYISO's interpretation of when an interconnection is "completed" is reasonable.

In the absence of the requested clarification, the Commission erred in failing to provide guidance on the January 17 Order's statement regarding when an interconnection is "complete." Absent an express clarification, the NYISO and Developers are in the position of having to discern what the Commission means, which will lead to uncertainty and controversy in the interconnection and cost allocation processes.

3. The NYISO asks the Commission to clarify that the January 17 Order did not intend to elevate the role of Con Edison beyond what is specifically provided for in the LFIP or diminish the NYISO's role in the interconnection process.

In the absence of the requested clarification, the Commission erred in elevating the role of Con Edison beyond what is expressly provided for in the LFIP, and reducing the NYISO's role in the interconnection process. Because the Commission did not articulate a rationale for this determination, it failed to engage in reasoned decision-making. *See, e.g., Panhandle Eastern Pipe Line Co. v. FERC*, 881 F.2d 1101, 1118 (D.C. Cir. 1989).

V. Conclusion

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission grant the request for clarification of the limited issues discussed above.

Respectfully submitted,

/s/ Ted J. Murphy

Ted J. Murphy
Hunton & Williams LLP
1900 K Street, NW
Washington, DC 20006
(202) 955-1500

Counsel for
New York Independent System Operator, Inc.

February 19, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all parties included on the official service list compiled by the Secretary in this proceeding, in accordance with the requirements of 18 C.F.R. § 385.2010 (2007).

Dated at Washington, DC, this 19th day of February 2008.

/s/ Ted J. Murphy

Ted J. Murphy
Hunton & Williams LLP
1900 K Street, NW
Washington, DC 20006
(202) 955-1500

Submission Contents

Request for Clarification and Alternative Request for Rehearing of the NYISO RequestforRehearing.pdf.....	1-14
--	------