

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

Niagara Mohawk Power Corporation            )  
  )       Docket Nos. ER07-1019-000,  
  )       ER07-1020-000, and ER07-1021-000

**MOTION TO INTERVENE OUT OF TIME AND COMMENTS OF  
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the New York Independent System Operator, Inc. (“NYISO”) respectfully moves to intervene out of time in the above-captioned proceedings. In addition, the NYISO submits comments on the deficiency letter issued by the Commission in these proceedings on July 31, 2007 (“Deficiency Letter”) with respect to the Deficiency Letter’s direction that the NYISO become a signatory to three amended, pre-Order No. 2003<sup>1</sup> interconnection agreements (collectively referred to herein as “the Alliance IAs”) between Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) and, respectively, AG Energy, LP, Seneca Power Partners, LP, and Sterling Power Partners, LP (collectively referred to herein as “the interconnection customers”).

In support thereof, the NYISO states:

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<sup>1</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at 30,584 (2003), *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004); *order on reh’g and directing compliance*, 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*, *National Association of Regulatory Commissioners v. FERC*, 475 F. 3d 1277 (D.C. Cir. 2007).

**I. Communications and Correspondence**

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**II. Motion to Intervene Out of Time**

On June 8, 2007, National Grid filed the amended, pre-Order No. 2003 Alliance IAs in these proceedings. The Deficiency Letter directs National Grid to add the NYISO as a signatory to the Alliance IAs. Although the immediate impact of the Deficiency Letter's direction will be with respect to the Alliance IAs, it could also have broader implications for the NYISO and impact interconnection agreements outside the scope of these proceedings. As is discussed in Part III, below, the request in the Deficiency Letter appears contrary to applicable Commission precedent. Because Commission action on the Alliance IAs will directly impact the NYISO, the NYISO has a direct and substantial interest in this proceeding that cannot be adequately represented by any other party.

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<sup>2</sup> The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2007) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, Virginia.

Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2007), provides that the Commission may grant an untimely motion to intervene for good cause shown. The NYISO respectfully submits that good cause exists in this case. Here, National Grid filed the Alliance IAs in the captioned proceedings without the involvement of the NYISO. Neither National Grid nor the NYISO believed that the NYISO should be, or was required to be, a party to the Alliance IAs. It was not until the issuance of the Deficiency Letter on July 31, 2007 that the NYISO's interests became directly and substantially impacted when National Grid was directed to add the NYISO as a party to the Alliance IAs.

The NYISO also submits that no one will be prejudiced by its participation at this stage of these proceedings. These proceedings are limited to a small number of parties (*i.e.*, National Grid and the interconnection customers) and the Commission has not yet issued a dispositive order. The NYISO is submitting this motion on the date National Grid's response to the Deficiency Letter is due. The NYISO will accept the record as it stands.

For the foregoing reasons, the NYISO has a direct and substantial interest in these proceedings that cannot be adequately represented by any other party, it has demonstrated good cause for its late intervention, and it has shown that its intervention at this stage will not prejudice other parties or otherwise disrupt the proceeding. Accordingly, it should be permitted to intervene in these proceedings with all the rights of a party.

### **III. Comments**

The Deficiency Letter directs National Grid to include the NYISO as a signatory to the Alliance IAs, citing Commission precedent that required the Midwest Independent

Transmission System Operator, Inc. (“Midwest ISO”) to be added as a signatory to amended interconnection agreements.<sup>3</sup> However, as explained below, the cases cited in the Deficiency Letter are distinguishable from the situation presented here.

As the Commission itself has recognized, there were unique circumstances that required the Midwest ISO to be a party to the agreement in *Cinergy*. In particular, the Midwest ISO has in place operating protocols that requires it to be a signatory to pre-Order No. 2003 interconnection agreements that are amended, regardless of the reason for the modification. However, other Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”), including the NYISO, do not have such protocols in place. In a proceeding involving a different RTO, PJM Interconnection, L.L.C. (“PJM”), the Commission discussed this significant difference:

With regard to the requirement that PJM be a signatory to the revised interconnection agreement, we find, after reconsideration, that our reasoning in *American Transmission Company, LLC* is inapplicable to this case, which involves an interconnection agreement that pre-dates PJM's Order No. 2003 compliance provisions. In that order and another case [*Cinergy*], the Commission considered amended interconnection agreements in the Midwest ISO. We noted there that Midwest ISO's Operating Protocol specifically provides that interconnection agreements predating the Midwest ISO remain in effect until modified or terminated by the parties pursuant to section 205 or 206 of the FPA, but that when such a change occurs, Midwest ISO has authority to supersede the prior agreements. PJM, however, lacks similar authority. As we noted above, PJM's interconnection procedures, filed in compliance with Order No. 2003, apply to pre-existing interconnection agreements only when there is an increase in the capacity of the generating facility. Therefore, the requirement that PJM be a signatory to interconnection agreements does not apply to the revisions at issue here.<sup>4</sup>

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<sup>3</sup> See Deficiency Letter at 2. The Deficiency Letter cites *Cinergy Services, Inc.*, 107 FERC ¶ 61,260 (2004) (“*Cinergy*”) and *American Electric Power Service Corp.*, 110 FERC ¶ 61,276, order on reh’g, 112 FERC ¶ 61,128 (2005) (“*AEP*”).

<sup>4</sup> *Jersey Central Power & Light Co.*, 110 FERC ¶ 61,273 at P 12 (2005) (“*JCPL*”).

Consistent with its finding in *JCPL*, the Commission explicitly determined that ISO-New England, Inc. (“ISO-NE”) was not required to be a signatory to amended, pre-Order No. 2003 interconnection agreements between New England Power Company and generators.<sup>5</sup> In *NEPCO*, the Commission concluded that “[b]ecause there are no proposed increases in capacity or material modifications of the characteristics of an existing generating facility, the Proposed Agreements are not ‘new interconnection requests.’ Therefore, Order No. 2003 does not apply and ISO-NE is not required to be a party.”<sup>6</sup>

The *AEP* orders cited in the Deficiency Letter required both the Midwest ISO and PJM to become signatories to an interconnection agreement. However, the agreement at issue in *AEP* is distinguishable from those in *JCPL* and *NEPCO* for several reasons. First, the agreement in *AEP* involved a utility-to-utility interconnection, not a generator interconnection. *JCPL* and *NEPCO*, on the other hand, involved generator interconnection agreements. Moreover, the agreement in *AEP* concerned an interconnection that spanned the regions of two RTOs, which may cause unique operating issues. Finally, the Midwest ISO was one of the two RTOs that was directed to become a party to the agreement. As is discussed above, the Midwest ISO is required, on the basis of its operating protocol, to become a signatory to an amended interconnection agreement, regardless of the reason for the amendment.

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<sup>5</sup> See *New England Power Co.*, 109 FERC ¶ 61,364 (2004) (“*NEPCO*”).

<sup>6</sup> *NEPCO* at P 13.

The NYISO is in a similar position with the Alliance IAs as the situations presented in *JCPL* and *NEPCO*,<sup>7</sup> where the Commission did not require the ISO/RTO to become a party to an amended interconnection agreement executed prior to Order No. 2003. First, those cases are applicable because they involve generator interconnection agreements, not utility-to-utility interconnection agreements. Second, unlike the Midwest ISO, the NYISO does not have procedures requiring it to become a signatory to grandfathered interconnection agreements when there is no increase in the generating capacity of the subject generation project. Further, the Alliance IAs do not involve any increases in capacity or material modifications to the operating characteristics of the respective generation projects that would require the submission of an Interconnection Request. Finally, the interconnections that are the subject to the Alliance IAs are confined to the boundaries of the New York Control Area and thus do not raise the sort of operational issues that may have been present in the *AEP* proceeding. Accordingly, and consistent with applicable Commission precedent, the NYISO submits that there is no requirement that it become a signatory to the Alliance IAs.<sup>8</sup>

If, however, the Commission's policy is now to require all ISOs and RTOs to become signatories to all amended, pre-Order No. 2003 interconnection agreements in all circumstances, notwithstanding precedent to the contrary, then it should clearly articulate that policy and apply it on a prospective basis.

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<sup>7</sup> The NYISO recognizes that, unlike the Alliance IAs, the original interconnection agreements in *JCPL* and *NEPCO* appear to have been filed with the Commission.

<sup>8</sup> The NYISO also notes that other amended, pre-Order No. 2003 interconnection agreements have been filed with the Commission by transmission owners in New York, and the Commission has not required the NYISO to be a party to those agreements. *See, e.g., Consolidated Edison Co. of New York, Inc.*, 119 FERC ¶ 61,206 (2007).

**IV. Conclusion**

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission grant its motion to intervene out of time and consider the comments included herein.

Respectfully submitted,

**Michael E. Haddad**

Michael E. Haddad

Counsel for  
New York Independent System Operator, Inc.

August 30, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that I have electronically served the foregoing document on the official service list compiled by the Secretary in these proceedings in accordance with 18 C.F.R. § 385.2010 (2007).

Dated at Washington, DC, this 30<sup>th</sup> day of August, 2007.

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