

142 FERC ¶ 61,005  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

January 2, 2013

In Reply Refer To:  
Air Energy TCI, Inc.  
Docket No. ER13-296-000

Stoel Rives LLP  
Attn: Jason Johns, Esq.  
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Dear Mr. Johns:

1. On November 1, 2012, Air Energy TCI, Inc. (TCI) filed a request for waiver, of the 2 year deadline requirement in Attachment S of the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT), to allow an additional 45-day extension for the lead agency to determine that TCI's Draft Environmental Impact Statement (DEIS) is adequate for public review. The Commission dismisses the request for waiver as moot.

2. Attachment S of the NYISO OATT governs the requirements for a facility to be included in the Annual Transmission Reliability Assessment for a given Class Year. To be eligible for a Class Year Study, a project must: (i) have NYISO approve the Interconnection System Reliability Impact Study for the project and (ii) satisfy the regulatory milestone.<sup>1</sup> This milestone, in turn, can be satisfied in a number of ways, including submitting a DEIS for the project that the lead agency has deemed adequate for public review, pursuant to the New York State Environmental Quality Review Act (SEQRA).<sup>2</sup> If a project fails to meet the regulatory milestone within two years of the NYISO's approval of the system Reliability Impact Study for the Project, the project's interconnection request will be deemed withdrawn in accordance with section 30.3.6 of the Large Facility Interconnection Procedures in Attachment X of the OATT.<sup>3</sup>

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<sup>1</sup> NYISO OATT § 25.6.2.3.1.

<sup>2</sup> NYISO OATT § 25.6.2.3.1.1.3.

3. TCI states that it is the developer of the proposed 71 MW Crown City Wind Energy Project (Crown City Project) located in Cortland County, New York. It states that the Interconnection System Reliability Impact Study for the Crown City Project was approved by the NYISO Operating Committee on October 7, 2010. However, TCI states that it was required to complete the DEIS regulatory milestone by October 9, 2012 in order to maintain compliance with the two-year timeline imposed by NYISO's OATT.<sup>4</sup>

4. Under the New York State environmental review process, Cortland County Legislature (Cortland County) is acting as lead agency for TCI's DEIS. TCI states that in June 2012, it was advised by Cortland County that the Crown City Project would be required to undertake the SEQRA scoping process. TCI claims that Cortland County had previously informed TCI that scoping would not be required. TCI states that it worked with the Cortland County's special environmental and legal advisors to agree to a draft scoping document, concluding on June 25, 2012, and this draft scoping document was subsequently issued by TCI on July 3, 2012 to receive public and agency comment. TCI states that Cortland County initially agreed, on June 12, 2012, to a two-week public and agency scoping period, but on July 3, 2012, Cortland County extended the scoping period to thirty more days to enable a public meeting to receive final public comment on the scoping document. TCI notes that Cortland County introduced two further amendments (September 6, 2012 and September 13, 2012) to the wording of the scoping document that substantially increased the complexity of the requirements, thus making the demands of what the DEIS had to cover substantially more burdensome. TCI states that on October 30, 2012, Cortland County convened a special meeting where it determined that TCI's DEIS was not adequate for public review.

5. TCI argues that Cortland County created unnecessary delays late in the SEQRA scoping process and the DEIS review process. It further argues that a 45-day extension of NYISO's deadline, that is, until December 17, 2012,<sup>5</sup> will provide Cortland County with an opportunity to solicit feedback and revisit its decision within the statutory 30-day rehearing period.

6. TCI argues that granting the waiver is justified as its circumstances are unique given the multiple delays of Cortland County. Furthermore, it claims that the waiver will

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<sup>3</sup> NYISO OATT § 25.6.2.3.2. NYISO clarifies that "While TCI provides incorrect citations to the relevant section of Attachment S, these appear to be mere typographical errors, as it is clear from the context of TCI's waiver request that the section for which it is requesting a waiver is 25.6.2.3.2 of Attachment S." NYISO Comments at n.3.

<sup>4</sup> TCI states that the two-year timeline expired October 9, 2012 because October 7, 2012 was a Sunday and October 8, 2012 was a Federal holiday. TCI Petition for Waiver at 3, n.2.

<sup>5</sup> See NYISO Comments at 4.

have no adverse impact on any other interconnection customers. Finally, TCI argues that the Commission has granted similar waivers, in particular for failure to meet a NYISO interconnection milestone deadline.<sup>6</sup>

7. Notice of TCI's filing was published in the *Federal Register*, 77 Fed. Reg. 67,640 (2012) with interventions and protests due on or before November 23, 2012. The Commission received comments from (1) Supporting Citizens;<sup>7</sup> (2) NYISO; (3) Certain Citizens of Cortlandville, Homer, Solon, and Truxton (Private Citizens); and (4) Cortland County. Subsequently, TCI filed an answer and Private Citizens filed additional comments.

8. Supporting Citizens support TCI's request for waiver of the Tariff. They state that the Crown City Project will be a valuable addition to the community and New York state.

9. NYISO states that it takes no position on the merits of TCI's request for a waiver, but expresses concern that granting waiver of the DEIS deadline could raise questions regarding the applicability of the same regulatory milestone to other projects. NYISO notes that this is a substantive milestone reflecting the progress of the project, rather than an administrative deadline. NYISO states that on October 11, 2012, it issued a notice of withdrawal of the project and, pursuant to section 30.3.6 of Attachment X of NYISO's OATT, TCI had until November 1, 2012 "to either respond with information or actions that cure the deficiency or to notify NYISO of its intent to pursue Dispute Resolution." NYISO states that it received no notice within the fifteen day cure period. NYISO further states that by letter dated November 5, 2012, NYISO advised TCI that its project had been withdrawn from the NYISO interconnection queue.

10. In the event that the Commission grants TCI's request, NYISO requests that the Commission clarify whether the extension until December 17, 2012 is the maximum time permitted for TCI to satisfy the regulatory milestone or whether the fifteen business day cure period provided in section 30.3.6 of Attachment X of NYISO's OATT will apply to further extend TCI's requested extension in the event that TCI is unable to satisfy the requisite milestone by December 17, 2012.

11. Private Citizens argue that due to TCI's failure to commence the process early enough, it only allowed 96 days to complete scoping, to prepare a properly documented DEIS, to provide the lead agency 40-45 or more days to identify deficiencies, and to provide time for resubmission of a revised DEIS addressing the lead agency concerns. Private Citizens note that Cortland County attempted to expedite the process and called a

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<sup>6</sup> *Stony Creek Energy LLC*, 131 FERC ¶ 61,059 (2010).

<sup>7</sup> The Commission uses the term "Supporting Citizens" to refer to the comments jointly filed by Mike Joyner and 21 other individuals, most of them residing in Cortland County.

special meeting on July 3, 2012, to accept the draft scoping outline. Private Citizens state that TCI's failure to meet the NYISO requirement is a result of its own poor planning. Private Citizens also note that at the October 30, 2012 meeting of Cortland County, TCI's Project Manager stated, "The Project is Dead."

12. Cortland County states that there was never a determination by its deliberative bodies that the scoping process would not be required before submission of the DEIS. It also states that it never agreed to a two-week public and agency scoping period, although it did make the two amendments to the scoping document which increased the complexity of the requirements. Cortland County agrees that on July 3, 2012, it accepted TCI's scoping document and issued it for public and agency comment. Cortland County states that after time for public comment and hearing, it highlighted for TCI numerous deficiencies in the scoping document that would need to be addressed in the DEIS submission. Cortland County agrees with TCI that it approved the scoping document on September 13, 2012.

13. Cortland County states that TCI submitted its DEIS on September 17, 2012, but only some of the Legislators received the draft; other Legislators did not receive the draft DEIS until September 27, 2012. Cortland County asserts that at the September 27, 2012 meeting, the Legislators determined that with approximately 59 deficiencies remaining in the DEIS, the lead agency would not be able to accept it as adequate for public review. Cortland County provided TCI with more comments on October 11, 2012, including a list of inadequacies that Cortland County states it had previously identified for TCI. TCI submitted a revised DEIS on October 23, 2012. Cortland County states that at its October 25, 2012 meeting, TCI staff and counsel spoke to the Legislature and acknowledged that TCI had not planned the DEIS timetable with sufficient time.<sup>8</sup> Cortland County agrees with TCI that it called a special meeting on October 30, 2012, and continued to find the DEIS inadequate for public review.

14. In its answer, TCI states that, although TCI disagrees with various assertions made by Cortland County and Private Citizens in their respective comments, TCI is not undertaking in this answer to address the specific matters or allegations raised therein because such matters are not relevant to the central issue before the Commission — a request for relief from certain NYISO tariff requirements. TCI seeks a waiver from the NYISO tariff to allow time for DEIS evaluation to conclude and believes that the waiver would not impact any other interconnection customer until March 1, 2013.

15. In their additional comments, Private Citizens state that the circumstances of the delay asserted by TCI are not unique, and are to be laid at its own feet, not the Cortland County or NYISO.

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<sup>8</sup> Cortland County Comment at 3.

16. We dismiss the request for waiver as moot. We have not received notice or otherwise been informed that Cortland County acted by December 17, 2012, to make a determination regarding the sufficiency of the DEIS. The Commission's decision is without prejudice to TCI filing another request for waiver. Although not the only basis for a grant of waivers, the Commission has previously granted one-time waivers of tariffs in situations where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem must be remedied; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>9</sup>

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>9</sup> See *ISO New England--EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008); *Cent. Vermont Pub. Serv. Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation, LLC*, 120 FERC ¶ 61,007 (2007).