

142 FERC ¶ 61,113
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

New York Independent System Operator, Inc.

Docket No. ER13-588-000

ORDER ACCEPTING TARIFF REVISIONS WITH MODIFICATIONS

(Issued February 15, 2013)

1. On December 19, 2012, New York Independent System Operator, Inc. (NYISO) filed proposed tariff sheets that revise the interconnection procedures set forth in Attachments S (Rules to Allocate Responsibility for the Cost of New Interconnection Facilities), X (Standard Large Facility Interconnection Procedures), and Z (Small Generator Interconnection Procedures) of its Open Access Transmission Tariff (OATT) pursuant to section 205 of the Federal Power Act.¹ Attachments S, X, and Z establish the procedures for the interconnection of large facilities and small generators to the New York State Transmission System (NY Transmission System) and the method for allocating associated costs. NYISO requests an effective date of February 18, 2013. As discussed below, we conditionally accept the proposed tariff revisions, subject to modifications to be effective February 18, 2013, as requested, as discussed further below. NYISO is directed to submit a compliance filing 15 days from the date of this order.

I. Proposed Revisions

2. NYISO states that Attachment X calls for three successive interconnection studies of an interconnection project: an Interconnection Feasibility Study, an Interconnection System Reliability Impact Study (SRIS), and a Class Year Interconnection Facilities Study (Class Year Study). NYISO proposes revisions to the OATT that modify its interconnection study process, in particular, the final study in its process-the Class Year Study. NYISO also proposes changes to its interconnection procedures related to

¹ 16 U.S.C. § 824d (2006).

extensions of Commercial Operation Date² and the time within which to finalize an interconnection agreement. NYISO states that it will apply as many of the proposed tariff revisions as early as possible (i.e., to Class Years 2011 and 2012 which are both in progress), but states there are certain modifications that are not practicable to apply to the two Class Year studies that are currently underway. NYISO's revisions modify *pro forma* language developed by the Commission in Order No. 2003.³ NYISO states that the proposed revisions are fully justified under the independent entity variation discussed in Order No. 2003⁴ because they have been approved by the NYISO stakeholders after an extensive and open process, have been endorsed by NYISO's independent Board of Directors, and revise or clarify the meaning of tariff provisions that have proven ambiguous or unduly difficult to implement in NYISO's experience. The specific revisions that NYISO proposes are discussed below.

A. Proposed Changes in Class Year Study Process

1. Class Year Study Schedule

3. NYISO states that Attachment S of the OATT provides the timing for the start of each Class Year Study and the eligibility requirements for entry into a Class Year Study. NYISO explains that Attachment S currently provides for a March 1 start date every year, regardless of the status of the prior Class Year Study, and that project developers are required to satisfy certain regulatory and other milestones by March 1 in order to be

² NYISO defines "Connecting Transmission Owner" as the New York public utility or authority (or its designated agent) that (i) owns facilities used for the transmission of energy and provides transmission service under the NYISO OATT, (ii) has an interest in the portion of the NY Transmission System at the point of interconnection, and (iii) is a Party to the Standard Large Interconnection Agreement. See NYISO, NYISO Tariffs, OATT, Attachment X (Standard Large Facility Interconnection Procedures), § 30.1 (1.0.0) (defining "Connecting Transmission Owner").

³ *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. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

⁴ See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 26, 827.

eligible to enter the Class Year Study. NYISO explains that as a result of this requirement, it must manage overlapping Class Year Studies, which diverts its resources, as well as transmission owner resources from the prior Class Year Study that is still in progress. NYISO also notes that the current tariff does not provide for milestones for completion of the Class Year Study, other than general language that the study will have a planned completion date six months after the study start date.

4. To address these issues, NYISO proposes to add a new Section 25.5.9 to Attachment S entitled, “Class Year Start Date and Schedule” to provide that after Class Year 2012, the Class Year Study will begin on the Class Year Start Date, which will be the earliest of the following dates after the completion of the prior Class Year Study: March 1, June 1, or September 1. It states that this will provide project developers some level of predictability as to when the next Class Year Study may begin and eliminate overlapping Class Year Studies. It states that, as revised, the Class Year Study will not be based on a calendar year schedule and therefore there may not be a Class Year Start Date every calendar year. NYISO also proposes revisions to establish reasonable, achievable expectations and to require accountability from the parties involved in the study process.

5. NYISO proposes that these tariff revisions apply beginning with the Class Year Study that starts after the completion of Class Year 2012.

2. Flexibility Within Class Year Study

6. NYISO states that the existing provisions in Attachments S and X, together with the terms of a Class Year Study agreement, require that a Class Year Project remain in the Class Year Study for the study’s duration at the full level of requested capacity and the project developer share study costs even if circumstances (such as the need for a very costly upgrade) arise that may alter a project developer’s decision to move forward. Currently only projects that withdraw from the interconnection queue can drop out of the Class Year Study prior to the completion of the Class Year Study process.

7. To address this limited flexibility, NYISO proposes to add a new Section 25.7.7.1 to provide the following additional options. If NYISO determines that additional detailed studies for System Deliverability Upgrades⁵ are required, it proposes to allow a Class

⁵ NYISO defines “System Delivery Upgrades” to mean the least costly configuration of commercially available components of electrical equipment that can be used, consistent with Good Utility Practice and Applicable Reliability Requirements, to make the modifications or additions to the existing NY Transmission System that are required for the proposed project to connect reliably to the system in a manner that meets

Project to (1) drop out of the Class Year Study; (2) withdraw its Capacity Resource Interconnection Service (CRIS) request and elect to be studied for Energy Resource Interconnection Service (ERIS) only; or (3) maintain its CRIS request, but elect to have no System Deliverability Upgrades identified to make the project deliverable at its full level of requested CRIS. Additionally NYISO proposes to revise Section 30.13.3.1 of Attachment X to clarify that any project that elects one of these options will not be responsible for the costs related to any additional detailed studies required for System Deliverability Upgrades.

8. NYISO proposes that the tariff revisions described here apply to Class Year 2012 and subsequent Class Years.

3. Preliminary Deliverability Evaluation

9. NYISO explains that the SRIS is conducted early in the interconnection study process and that its purpose is to evaluate the project's impact on the safety and reliability of the NY Transmission System and, if applicable, an affected system, to determine what upgrades are needed under the NYISO minimum interconnection standard.⁶ NYISO states that the scope of the SRIS does not include a deliverability analysis which is only performed later as part of the Class Year Study.

10. NYISO states that project developers have expressed an interest in having NYISO conduct a preliminary deliverability analysis for their projects. In response, NYISO proposes to revise Section 30.7.2 of Attachment X to reflect that a preliminary, nonbinding evaluation of deliverability may be completed at the project developer's option and expense, as part of the SRIS. The preliminary deliverability evaluation would require an additional \$30,000 deposit.

the NYISO delivery Interconnection Standard for Capacity Resource Interconnection Service. *See* NYISO, NYISO Tariffs, OATT, Attachment X (Standard Large Facility Interconnection Procedures), § 30.1 (1.0.0) (defining "System Delivery Upgrades").

⁶ NYISO defines "Minimum Interconnection Standard" to mean the reliability standard that must be met by any Large Generating Facility, or a Merchant Transmission Facility, proposing to connect to the NY Transmission System. The standard is designed to ensure reliable access by the proposed project to the NY Transmission System. The standard does not impose any deliverability test or deliverability requirement on the proposed interconnection. *See* NYISO, NYISO Tariffs, OATT, Attachment X (Standard Large Facility Interconnection Procedures), § 30.1 (1.0.0) (defining "Minimum Interconnection Standard").

11. NYISO proposes that the preliminary deliverability determination revisions described here apply to projects that do not have a SRIS scope approved by NYISO's Operating Committee as of February 18, 2013, the proposed effective date of the tariff revisions.

4. Streamlined Cost Allocation Decisions

12. NYISO states that it provides each Class Year Project with its share of the cost of the System Upgrade Facilities required for reliable interconnection of the project (SUF Project Cost Allocation), and for each Class Year Project requesting CRIS with (i) its share of the cost of the System Deliverability Upgrades required for the requested level of CRIS (SDU Project Cost Allocation), and (ii) the number of MW of Installed Capacity, if any, that are deliverable from the project developer's Class Year Project with no new System Deliverability Upgrades (Deliverable MWs). NYISO explains that Attachment S defines the decisional process through which a project developer must accept or reject its SUF Project Cost Allocation and, for project developers requesting CRIS, either its SDU Project Cost Allocation or its Deliverable MWs.

13. NYISO notes that currently a project developer can accept its Project Cost Allocation in one Class Year Study decision round but it may also reject that same allocation in a subsequent round, triggering additional decision rounds which would unnecessarily delay the settlement of the Class Year Study.

14. To address this issue, NYISO proposes to revise Section 25.8.2 of Attachment S to provide that, starting with Class Year 2012, a project developer that accepts a Project Cost Allocation will not have the opportunity to change its cost allocation decision in subsequent decision rounds unless the Revised Project Cost Allocation provides for (1) an increase in the Project Cost Allocation; or (2) a decrease in the Class Year Project's Deliverable MWs.

15. NYISO proposes that the tariff revisions described here apply to Class Year 2012 and subsequent Class Years.

5. Headroom Payment Options

16. NYISO states that Attachment S directs project developers to reimburse prior Class Year developers for "Headroom", i.e., the excess capacity associated with System Upgrade Facilities and System Deliverability Upgrades that was paid for by prior Class

Year developers.⁷ The subsequent project developer whose project interconnects and uses the Headroom must, under the current tariff, make Headroom payments as specified in Attachment S. NYISO notes that Attachment S does not specifically provide for a security option for satisfaction of Headroom obligations associated with upgrades that have not yet been constructed.

17. NYISO proposes to add a new Section 25.8.7.5 to Attachment S to provide that when Headroom obligations required for upgrades are not yet constructed, such Headroom obligations may be satisfied by a form of Headroom security. Further, NYISO states that this security must meet the commercially reasonable requirements of the Headroom payee.

18. NYISO proposes that the tariff revisions described here apply to Class Year 2012 and subsequent Class Years.

6. Security Reductions

19. NYISO states that, when the Class Year Study decision rounds are completed, all project developers that accepted a Project Cost Allocation are required to pay cash or post security for the full amount of their respective Project Cost Allocations to secure payment to the Connecting Transmission Owner for the cost of constructing such upgrades. NYISO states that project developers must post security in the full amount of their Project Cost Allocation “to cover the period ending on the date on which full payment is made to the Connecting Transmission Owner.” NYISO notes that once the upgrade is constructed, however, the purpose for which security was posted is no longer an issue because full payment for the upgrade is made. Project developers have shown concern that Security must be posted for the full Project Cost Allocation⁸ despite the fact that the construction of a System Upgrade Facility may be completed in discrete portions.

⁷ NYISO explains that “Headroom” is the functional or electrical capacity in excess of the capacity annually needed and used by the developer’s project. NYISO Transmittal Letter at 16.

⁸ NYISO defines “Project Cost Allocation” as the dollar figure estimate for a Developer’s share of the cost of the System Upgrade Facilities required for the reliable interconnection of its project to the transmission system and/or the share of the cost of the System Deliverability Upgrades required for the Developer’s project to meet the NYISO Deliverability Interconnection Standard. NYISO, NYISO Tariffs, OATT, Attachment S (Rules to Allocate Responsibility for the Cost of New Interconnection Facilities), § 25.1.2 (0.0.0) (defining “Project Cost Allocation”).

20. Accordingly, NYISO states that it is proposing to add language to Section 25.8.5 of Attachment S to allow for reductions in security after discrete portions of system Upgrade Facilities have been constructed to shorten the time period during which a project developer is required to maintain a security posting.

21. NYISO proposes that the tariff revisions described here apply to any security posted as of February 18, 2013, the effective date of these tariff revisions.

B. Extensions of Commercial Operation Date

22. NYISO states that Attachments X and Z require project developers to provide Commercial Operation Dates⁹ for their projects. Attachment X currently allows a project developer to extend a project's Commercial Operation Date by up to three years from the original in-service date provided in the Interconnection Request,¹⁰ simply by providing notification to NYISO. A project developer may also request an extension of the Commercial Operation Date beyond three years from the original in-service date, subject to a materiality determination by NYISO. NYISO states that its experience has shown that projects in the interconnection queue occasionally slow or completely halt their progress toward completion of the interconnection process and commercial operation and that such projects seek to continue in this fashion by continually requesting extensions of their Commercial Operation Date. NYISO is concerned that this may degrade the inputs and results of the Class Year Study and impact the accuracy of information to be included

⁹ NYISO defines "Commercial Operation Date" as the date upon which a project commences Commercial Operation, which is in turn defined as the status of a project "that has commenced generating or transmitting electricity for sale, excluding electricity generated or transmitted during Trial Operation." NYISO Transmittal Letter at 19 (citing NYISO, NYISO Tariffs, OATT, Attachment X (Standard Large Facility Interconnection Procedures), § 30.1 (1.0.0) (defining "Commercial Operation Date").

¹⁰ NYISO defines "Interconnection Request" to mean the developer's request, in the form of Appendix 1 to the Standard Large Facility Interconnection Procedures, in accordance with the NYISO OATT, to interconnect a new Large Generating Facility or Merchant Transmission Facility to the NY 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 NY Transmission System. *See* NYISO, NYISO Tariffs, OATT, Attachment X (Standard Large Facility Interconnection Procedures), § 30.1 (1.0.0) (defining "Interconnection Request").

in the interconnection agreement, as well as impact future interconnection projects that wish to use the same bus position or positions within a close proximity.

23. To address these concerns, NYISO proposes to place limitations on permissible extensions of Commercial Operation Date and completion of interconnection agreements. These proposed revisions are reflected in the following tariff amendments.

1. Commercial Operation Date Requirements Upon Submittal of an Interconnection Request

24. NYISO proposes revisions to Section 30.3.3.1 of Attachment X and Section 32.1.3.2 of Attachment Z to require project developers to provide a proposed Commercial Operation Date in its Interconnection Request that is within ten years from the date the Interconnection Request is submitted, subject to extension as discussed below.

2. Commercial Operation Date Requirements Upon Execution of a Class Year Study Agreement

25. NYISO also proposes to revise Section 25.8.1 of Attachment S and Section 30.8.1 of Attachment X to provide that, starting with the Class Year subsequent to Class Year 2012, each Class Year Project must update the proposed Commercial Operation Date upon execution of a Class Year Study Agreement and confirm its proposed Commercial Operation Date at the completion of the Class Year Study. In addition, NYISO proposes revisions to address projects that fail to provide a confirmed Commercial Operation Date in their acceptance notice or that provide a Commercial Operation Date that is beyond the permissible time period by reflecting the latest possible permissible date in NYISO's interconnection queue.

3. Material Modification Guidelines for Extensions of Commercial Operation Date

26. NYISO proposes to revise Section 30.4.4.5 of Attachment X to limit the permissible extensions of the Commercial Operation Date to four years from the completion of the Class Year Study or tender of the Small Generator Interconnection Agreement (SGIA).¹¹ However, NYISO also proposes to revise Section 30.4.4.5 further

¹¹ NYISO explains that at this point, only this four year requirement applies-it is not necessary that the project also have a Commercial Operation Date that is within ten years from the submittal of its Interconnection Request.

to provide that a project developer still may request an extension of its Commercial Operation Date beyond four years, which would not be a Material Modification (i.e., would be permitted), if the following conditions have been met: (1) the project developer must have an executed interconnection agreement for the project or have on file with the Commission an unexecuted interconnection agreement; and (2) the project developer must demonstrate (via an officer certification) continuous progress against milestones set forth in the interconnection agreement, such as completion of engineering design, major equipment orders, or commencement and continuation of construction of the project and associated System Upgraded Facilities. NYISO states that, if the project developer does not satisfy the above conditions, an extension of Commercial Operation Date that would put the project in commercial operation after the four-year period following completion of its Class Year Study or tender of the SGIA would only be permitted if the project developer seeks and obtains a waiver from the Commission.

4. Finalization of Interconnection Agreement

27. NYISO proposes to revise Section 30.11.1 of Attachment X to require that NYISO tender to both a large facility project developer and the Connecting Transmission Owner a draft interconnection agreement as soon as practicable upon completion of the Class Year Study and satisfaction of security posting requirements. NYISO also proposes to delete the requirement that the project developer execute and return the completed draft interconnection agreement within thirty days, and instead add a provision into Section 30.11.2 providing that, unless otherwise agreed by the parties, if a project developer has not executed the interconnection agreement, requested filing of an unexecuted agreement, or initiate dispute resolution procedures within six months of the NYISO's tender of the draft agreement, the Interconnection request will be deemed withdrawn.

28. Similarly, NYISO proposes to revise sections 32.3.5.7 and 32.4.8 of Attachment Z to require that NYISO tender to the small generator Interconnection Customer a draft interconnection agreement as soon as practicable upon completion of all required interconnection studies, and to require the Interconnection Customer to provide NYISO with an updated Commercial Operation Date.

29. If the small generator Interconnection Customer does not sign the interconnection agreement, or ask that it be filed unexecuted within six months after tender of the draft interconnection agreement, the Interconnection Request will be deemed withdrawn.

5. Application Date

30. NYISO proposes that these tariff revisions apply to all generation and merchant transmission projects in the NYISO interconnection queue that have not yet accepted their cost allocation through the Class Year Study process or that are not subject to Attachment S. For those projects that have already accepted their cost allocation, to the

extent their proposed Commercial Operation Date is not within the permissible time period, NYISO proposes that these projects will have sixty days after the proposed effective date of the tariff revisions, to satisfy the criteria for extensions specified in Section 30.4.4.5 of Attachment X. If these projects fail to satisfy such criteria within sixty days, NYISO proposes that they will be withdrawn from the interconnection queue.

C. Other Proposed Amendments

31. NYISO proposes other general, non-substantive amendments intended to clarify and clean up existing language in Attachments S, X, and Z of its OATT.

D. Requested Effective Date

32. NYISO requests a February 18, 2013 effective date for all of these tariff revisions.

II. Notice and Responsive Pleadings

33. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 77,702 (2012), with interventions and protests due on or before January 9, 2013. The NRG Companies,¹² CPV Valley, LLC, and the New York Transmission Owners¹³ filed motions to intervene. Cape Vincent Wind Power, LLC (Cape Vincent) filed a motion to intervene and protest. On January 25, 2013, NYISO filed an answer to the protest, including proposed revisions to address some of the issues raised.

¹² The NRG Companies include: NRG Power Marketing LLC, GenOn Energy Management, LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, GenOn Bowline, LLC, Huntley Power LLC, and Oswego Harbor Power LLC.

¹³ The New York Transmission Owners include: Central Hudson Gas & Electric Corp.; Consolidated Edison Co. of New York, Inc.; Long Island Power Authority; New York Power Authority; New York State Electric & Gas Corp.; Niagara Mohawk Power Corp. d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corp.

III. Discussion

A. Procedural Matters

34. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

35. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NYISO's answer because it has provided information that has assisted us in our decision-making process.

B. Substantive Matters

36. NYISO proposes that its revisions be accepted under the "independent entity variation" standard of Order No. 2003.¹⁴ The Commission intended that independent entities, including independent system operators (ISO) and regional transmission organizations (RTO), have flexibility to customize their interconnection procedures. Under this standard, the Commission will review the proposed variations to ensure that they do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable.¹⁵

37. The Commission concludes that NYISO has shown that its proposed revisions to its interconnection procedures, as modified in its answer and as discussed below, are just and reasonable. Therefore we will accept them under the independent entity standard of Order No. 2003.¹⁶

¹⁴ See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 26, 827.

¹⁵ *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,238, at P 17 (2008); *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025, at P 7 (2004), *order on reh'g*, 110 FERC ¶ 61,099 (2005).

¹⁶ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 827. ("This is a balanced approach that recognizes that an RTO or ISO has different operating characteristics depending on its size and location and is less likely to act in an unduly discriminatory manner than a Transmission Provider that is a market participant. The RTO or ISO shall therefore have greater flexibility to customize its interconnection procedures and agreements to fit regional needs.")

1. Projects with a Previously Approved Extension of Commercial Operation Date

a. Protest

38. Cape Vincent objects to the modifications proposed to Section 30.4.4 of Attachment X.¹⁷ These provisions would place limitations on Commercial Operation Dates such that a project developer's Commercial Operation Date must be within four years from the completion of the project developer's Class Year Study. If the developer desires to extend the Commercial Operation Date beyond this period, it would have to, within sixty days of the proposed effective date of the tariff revisions (i.e. February 18, 2013), (1) execute an interconnection agreement or have an unexecuted interconnection agreement on file with the Commission, and (2) demonstrate that it has made reasonable progress against milestones set forth in the interconnection agreement.

39. Cape Vincent states that it has accepted its Class Year allocations, has posted security, but does not have an executed interconnection agreement for the wind-powered generation project it is currently developing. Cape Vincent further explains that its project has two interconnection queue positions and will be interconnected to transmission facilities owned by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid). Cape Vincent notes that in March 2012, it requested a determination from NYISO of whether an extension of its project's Commercial Operation Date to December 31, 2014 (which is beyond the proposed four year limit), and the consolidation of both queue positions, would constitute a Material Modification. Cape Vincent states that it was informed by NYISO in August 2012 that these changes did not constitute a Material Modification. Moreover, Cape Vincent states that subsequent efforts to finalize the interconnection agreement for the Cape Vincent project with National Grid and NYISO have stalled because the final agreement requires studies that National Grid must complete.¹⁸

40. Cape Vincent states that the proposed revisions to Section 30.4.4.5.3 could be interpreted to apply to its project despite NYISO's determination that the extension of the Commercial Operating Date was not a Material Modification.¹⁹ Cape Vincent states that

¹⁷ Cape Vincent Protest at 3.

¹⁸ Cape Vincent states that it has entered into the required agreements for National Grid to complete the studies. Cape Vincent further asserts that the completion of the studies are not within its control. Cape Vincent Protest at 5.

¹⁹ Cape Vincent Protest at 5.

such interpretation would invalidate the purpose of Material Modification review. Therefore, Cape Vincent requests that the Commission direct NYISO to clarify that the proposed revisions to Section 30.4.4.5 of Attachment X do not apply to projects for which NYISO has determined that a requested extension does not constitute a Material Modification.

b. NYISO's Answer

41. NYISO responds that the intent of its revisions is to encourage project developers to move forward in the interconnection process without unnecessary delays and that the purpose of its revisions to Section 30.4.4.5 was to limit permissible extensions of the Commercial Operation Date.²⁰ NYISO notes that Cape Vincent has already significantly extended its Commercial Operation Dates for its two queue positions by five and eight years and that Cape Vincent consolidated its two queue positions after the completion of the interconnection studies, necessitating updating of the technical details prior to finalizing the interconnection agreement.²¹ NYISO states that it evaluated the proposed changes and determined that they were not a Material Modification. Additionally in its answer NYISO confirmed that its proposed tariff revisions would not invalidate its Material Modification determination for the Cape Vincent project. Rather NYISO states that the proposed tariff revisions merely require project developers to satisfy concrete milestones to qualify for extensions of the Commercial Operation Date, which is not unreasonable.

42. However, NYISO states that it would not oppose limited modifications of its proposed revisions to address Cape Vincent's concerns. NYISO would be agreeable to modifying Section 30.4.4.5.3 to expand the criteria that projects with accepted cost allocations and that have posted security can meet in order to retain their queue position. These modifications would include Section 30.4.4.5.3.2, which would allow a Material Modification determination by NYISO that was made prior to the effectiveness of NYISO's tariff revisions to stand. With such modifications, a project developer such as Cape Vincent would not be subject to a new Material Modification determination. NYISO states that its revised Commercial Operation Date requirements would apply only if the project developer requests an extension of its Commercial Operation Date beyond the date currently approved by NYISO.

²⁰ NYISO Answer at 3-5.

²¹ *Id.* at 5, n11.

c. Commission Determination

43. We find that the changes to Section 30.4.4.5 of Attachment X as modified in NYISO's answer are just and reasonable and are hereby accepted. We find that as modified in NYISO's answer, these revisions should adequately address Cape Vincent's concern that its extension request would be invalidated by NYISO's proposal. However, we note that the revision to Section 30.4.4.5.3.2, as provided by NYISO's answer, provides for NYISO's Material Modification determination to be prior to February 18, 2012 rather than the actual proposed effective date of the tariff revisions of February 18, 2013. Additionally, as written the revised Section 30.4.4.5.3.3 can be read to include projects that have been determined not to be Material Modification by NYISO before February 18, 2013. Therefore we direct NYISO to make the tariff modifications proposed in its answer, provided that it: (1) revise Section 30.4.4.5.3.2 to state that such determination is to be prior to February 18, 2013, and (2) revise Section 30.4.4.5.3 to clearly provide that projects exempted by Section 30.4.4.5.3.2 are not subject to the requirements of Section 30.4.4.5.3.3.

2. Unexecuted Interconnection Agreement on File with the Commission

a. Protest

44. Cape Vincent states that the Commission should require NYISO to modify Section 30.4.4.5.3 to allow a project developer to show that it has requested NYISO and the Connecting Transmission Owner to file an unexecuted interconnection agreement.²² Cape Vincent states that a project developer could lose its queue position if NYISO or the Connecting Transmission Owner inadvertently or intentionally fails to file an interconnection agreement with the Commission when asked to do so by a project developer. Cape Vincent asserts that it is not fair or just and reasonable to place the viability of the project developer's project in the hands of third parties that the project developer cannot control.

b. NYISO's Answer

45. In its answer, NYISO states that its tariff currently requires that NYISO and the Connecting Transmission Owner jointly file the unexecuted interconnection agreement with the Commission "as soon as practicable, but not later than ten (10) Business Days

²² Cape Vincent Protest at 8.

after receiving ... the request to file an unexecuted Interconnection Agreement.”²³ Therefore, NYISO argues that Cape Vincent’s requested modification has no basis because NYISO has never violated this provision and a project developer simply needs to make the request at least ten business days before the applicable deadline.

c. Commission Determination

46. We agree with NYISO that the requirement of Section 30.11.3 of Attachment X provides adequate assurances that the unexecuted interconnection agreement will be timely filed by NYISO after the project developer makes such a request. We therefore decline to adopt Cape Vincent’s proposed revision to Section 30.4.4.5.3.

3. Progress Made Against Interconnection Agreement Milestones

a. Protest

47. Cape Vincent states that the Commission should require NYISO to modify Section 30.4.4.5.3.1.2 of Attachment X to expand the scope of milestones a project developer can use to meet the conditions for progress beyond the examples provided in the proposed tariff revisions and the milestones set forth in Appendix B of a project developer’s interconnection agreement.²⁴ Cape Vincent contends that the active pursuit of obtaining required governmental permits is an example of an action that can be deemed sufficient in demonstrating reasonable progress against milestones.

48. Cape Vincent also contends that, where an interconnection agreement is filed unexecuted, the project developer (and possibly the Connecting Transmission Owner) might not agree with all the terms and conditions contained in the NYISO’s filing, including one or more of the milestones set forth in Appendix B of the interconnection agreement. Cape Vincent argues that the success of the project developer’s project may end up resting on the ability of the project developer to demonstrate progress against milestones with which it disagrees and which it had no input in developing.²⁵ Therefore, Cape Vincent asks the Commission to direct NYISO to modify its proposal to provide a grace period of sixty days after issuance of a Commission order on a contested

²³ NYISO Answer at 8 (quoting NYISO, NYISO Tariffs, OATT, Attachment X (Standard Large Facility Interconnection Procedures), § 30.11.3 (0.0.0)).

²⁴ Cape Vincent Protest at 8-9.

²⁵ *Id.* at 9.

interconnection agreement for the project developer to demonstrate reasonable efforts against milestones ultimately approved by the Commission.

b. NYISO's Answer

49. In its answer, NYISO argues that the milestones required by its proposal are those that typically appear in all interconnection agreements, while Cape Vincent's are more subjective. Further NYISO asserts that Cape Vincent has not sufficiently described what activities would symbolize "active pursuit" of required permits.²⁶ NYISO notes that its tariff already requires a project to meet a regulatory milestone, generally in the form of a required permit, in order to enter a Class Year. NYISO states that it is unclear what incremental objective milestone Cape Vincent suggests that is beyond achievement of the currently required regulatory milestone, and asks the Commission to reject Cape Vincent's request.

50. However, NYISO states that it would not oppose Cape Vincent's request to modify NYISO's proposal to provide a grace period of sixty days after issuance of a Commission order on an unexecuted interconnection agreement for the project developer to demonstrate reasonable efforts to meet milestones. To this end, NYISO suggests modifications to the language of its proposed revisions to address this requested modification.

c. Commission Determination

51. We accept NYISO's proposed milestones without the expansion proposed by Cape Vincent. Cape Vincent has not convinced us that NYISO's proposal to use the milestones set forth as examples in its tariff and in Appendix B of a project developer's interconnection agreement are unreasonable. We believe that such milestones provide adequate means for a project developer to show it is progressing in the development of its project. Further, we agree with NYISO that Cape Vincent's proposal lacks specificity and is overly subjective.

52. We will accept NYISO's commitment in its answer to provide a grace period of sixty days after issuance of a Commission order on an unexecuted interconnection agreement for the project developer to demonstrate reasonable efforts to meet the milestones. We direct NYISO to file the relevant tariff modifications consistent with its commitment.

²⁶ NYISO Answer at 9.

The Commission orders:

The proposed revisions to Attachments S, X, and Z are hereby accepted, effective February 18, 2013, subject to the modifications discussed above. NYISO is hereby directed to file such modifications within 15 days of this date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.