

147 FERC 61,146
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dunkirk Power LLC

Docket No. ER14-1445-000

ORDER GRANTING WAIVER
AND EXTENSION OF TIME

(Issued May 27, 2014)

1. On March 6, 2014, pursuant to section 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ Dunkirk Power LLC (Dunkirk)² requested a waiver and an extension of time related to section 25.9.3.1 of Attachment S of the Open Access Transmission Tariff (OATT or Tariff) of the New York Independent System Operator, Inc. (NYISO). Specifically, Dunkirk seeks a waiver of the requirement that a facility be reactivated within three years in order to maintain its Capacity Resource Interconnection Service status and a twelve-month extension of the deadline to reactivate the facility. As discussed below, the Commission finds good cause to grant the requested waiver and extension for the time periods requested for Dunkirk's Units 3 and 4 of its Dunkirk, New York facilities.

I. Background and Filing Summary

2. According to Dunkirk, its facility consists of four coal-fired units located in Dunkirk, New York. On August 31, 2012, Dunkirk deactivated its units 3 and 4 (Dunkirk Units 3 and 4). Dunkirk Units 3 and 4 are coal-burning generation units that are interconnected to the 230kV transmission system of Niagara Mohawk Power Corporation d/b/a/National Grid (Niagara Mohawk) in NYISO Zone A. Dunkirk states that, on August 31, 2012, the Dunkirk Units 3 and 4 were deactivated in accordance with the NYISO Tariff. It states that, on December 15, 2013, it was announced that an

¹ 18 C.F.R. § 385.207(a)(5) (2013).

² Dunkirk Power is a subsidiary of NRG Energy, Inc.

agreement had been reached between Dunkirk and Niagara Mohawk under which the Dunkirk Units 3 and 4 would be repowered as a part of a new natural gas facility.³ Specifically, Dunkirk Units 3 and 4, together with another unit that is not at issue in this proceeding, will form a nominal 435 MW natural gas facility.⁴ It notes that the target date for completing the reactivation is September 1, 2015.

3. Dunkirk notes that section 25.9.3.1 of Attachment S of the NYISO Tariff addresses a facility's ability to retain its Capacity Resource Interconnection Service status when it has been deactivated. It states that, such status preserves the facility's interconnection rights and thereby allows the facility to avoid the necessity of re-entering the queue. However, it states that, under the NYISO Tariff, Capacity Resource Interconnection Service status terminates three years after deactivation unless the facility takes one of the following actions before the end of the three-year period: (1) returns to service and participates in NYISO capacity auctions or bilateral transactions, or (2) transfers capacity deliverability rights to another facility.⁵

4. Dunkirk states that it intends to retain its Capacity Resource Interconnection Service status for the Dunkirk Units 3 and 4 by returning to service, but notes that limited time remains to complete the reactivation in accordance with the deadlines set forth in the NYISO Tariff. It states that, since the Dunkirk Units 3 and 4 were deactivated as coal-fired units on August 31, 2012, under the NYISO Tariff, Dunkirk will lose its Capacity Resource Interconnection Service status on August 31, 2015, unless waiver of that deadline is granted. Accordingly, Dunkirk seeks waiver of the three-year reactivation requirement as well as an extension for an additional year.⁶ Dunkirk explains that the basic parameters of the new long-term agreement with Niagara Mohawk were only announced on December 15, 2013, fifteen and a half months into the three-year window for reactivation, thus leaving only twenty and a half months to complete the reactivation within three years.⁷

³ Dunkirk Transmittal at 7 (citing Attachment B (Press Release of New York Governor Andrew M. Cuomo at 1)).

⁴ *Id.*

⁵ NYISO Tariffs, [NYISO OATT, Attachment S, section 25.9.3.1, Retaining CRIS \(Capacity Resource Interconnection Service\) Status](#).

⁶ Granting an additional year will give Dunkirk a total of four years to reactivate its units.

⁷ Dunkirk Transmittal at 3.

5. Dunkirk states that, while it has every incentive to complete the reactivation of the Dunkirk Units 3 and 4, issues may arise that could delay the reactivation beyond the August 31, 2015 deadline.⁸ Dunkirk points to possible delays related to both the finalization and approval of the agreement with Niagara Mohawk and the permitting and approval process for constructing an approximately ten mile long gas pipeline and obtaining the rights-of-way for that pipeline. Dunkirk states the potential for such delays is beyond its control, and submits the consequences would be severe and result in significant harm to Dunkirk.⁹

6. Dunkirk explains that, if waiver is not granted and it appears that the August 31, 2015 deadline cannot be met for reactivating the Dunkirk Units 3 and 4 as natural gas facilities, it will need to begin efforts to reactivate the facilities temporarily as coal burning facilities in order to retain its Capacity Resource Interconnection Service status. Dunkirk estimates that it may cost as much as ten million dollars for the Dunkirk Units 3 and 4 to be temporarily reactivated as coal-fired units.¹⁰

7. Dunkirk asserts that good cause exists for the Commission to grant its request for waiver of the NYISO Tariff and an extension of time.¹¹ Dunkirk states that the requested waiver will remedy a concrete issue in that it would prevent Dunkirk from unnecessarily spending up to ten million dollars to preserve its interconnection rights. Dunkirk maintains that it has acted in good faith, as the time required to negotiate a long-term contract prevented Dunkirk from acting until well into the three-year period. Moreover, Dunkirk asserts that the waiver will not harm third parties since there are no generators in the existing interconnection queue seeking to use the physical points of interconnection at the Dunkirk Units 3 and 4. Dunkirk also states that there is enough headroom available that the requested waiver and extension would have no impact on the financial obligations of other projects that might be seeking interconnection service. Finally, Dunkirk asserts that the waiver is limited in scope since it only seeks a waiver of the three-year reactivation requirement and a twelve-month extension of the time by which the Dunkirk Units 3 and 4 must reactivate.

8. Dunkirk requests that the Commission issue an order by July 2, 2014, so that in the event this waiver is denied, Dunkirk would have enough time to restart the Dunkirk Units 3 and 4 as coal-burning units. According to Dunkirk, such time is required, because Dunkirk would need to (1) hire and train operations staff, (2) re-commission

⁸ Dunkirk Transmittal at 4.

⁹ Dunkirk Transmittal at 4 and 15.

¹⁰ Dunkirk Transmittal at 3-5.

¹¹ To the extent necessary, Dunkirk also requests waiver of Section 3.3.4 of the NYISO Transmission Expansion and Interconnection Manual A.3.

equipment and (3) complete Demonstrated Maximum Net Capability testing for purposes of the NYISO capacity market.¹²

II. Notice of Filing and Responsive Pleadings

9. Notice of Dunkirk's March 6, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 14,699 (2014), with protests and interventions due on or before March 27, 2014.

10. On March 27, 2014, the New York State Public Service Commission (NYPSC) filed a notice of intervention and comments. On March 26, 2014, Niagara Mohawk filed a motion to intervene and comments. On March 27, 2014, the Indicated New York Transmission Owners¹³ filed a motion to intervene and NYISO filed a motion to intervene and comments.

11. Niagara Mohawk states that it fully supports Dunkirk's request for waiver, noting the waiver is preferable to the risks, uncertainty and expense of Dunkirk's alternatives. Moreover, Niagara Mohawk explains that a provision included in its long-term agreement with Dunkirk would hold Niagara Mohawk responsible for the first ten million dollars in the event Dunkirk is forced to implement a coal contingency plan, and that such costs would be passed on to Niagara Mohawk's customers.¹⁴ The NYPSC similarly supports Dunkirk's request for waiver, arguing that granting such waiver would provide Dunkirk with the necessary flexibility to implement the fuel conversion. In addition, the NYPSC asserts that no other parties should be harmed by granting the waiver, since there are no other generators in the NYISO existing interconnection queue.¹⁵ NYISO states that it does not oppose Dunkirk's waiver request.

III. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹² Dunkirk Transmittal at 17-18.

¹³ For purposes of this filing, the Indicated New York Transmission Owners are: Central Hudson Gas & Electric Corporation, Consolidated Energy Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas & Electric Corporation.

¹⁴ Comments of Niagara Mohawk at 5-6.

¹⁵ Comments of NYSPC at 3-4.

IV. Commission Determination

13. We find good cause to grant Dunkirk a waiver of the three-year reactivation requirement under section 25.9.3.1 of Attachment S of the NYISO Tariff and a twelve-month extension of time to complete its reactivation, as requested. Although not the only basis for granting tariff waivers, the Commission has previously granted requests for waiver of tariffs in situations where, as relevant here: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver would address a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁶

14. We find that the requested waiver satisfies the aforementioned conditions. Dunkirk has demonstrated that it has acted in good faith, and that its potential inability to meet the Capacity Resource Interconnection Service three-year deadline in the NYISO Tariff results from the fact that the long-term service agreement with Niagara Mohawk was not reached until fifteen and a half months into the three-year window. Without a long-term service agreement in place, Dunkirk could not reasonably begin the reactivation process to repower the units with natural gas. Dunkirk's request is limited in scope in that it seeks only (1) a waiver of the three-year reactivation requirement and (2) a twelve-month extension of the time by which the Dunkirk Units 3 and 4 must reactivate in order to retain Capacity Resource Interconnection Service status; thereby extending the total reactivation period to four years, through August 31, 2016. Dunkirk's request remedies a concrete problem since granting the waiver will avoid the undesirable consequences of Dunkirk either losing its existing interconnection rights or spending potentially as much as ten million dollars to temporarily reactivate the Dunkirk Units 3 and 4 as coal-fired units. Granting this waiver will not harm third parties, since no generator in the existing interconnection queue is seeking to use the physical points of interconnection at the Dunkirk Units 3 and 4. Finally, we note that neither NYISO, nor any other entity, opposes this waiver and extension request.

The Commission orders:

Dunkirk's requests for waiver of section 25.9.3.1 of Attachment S of the NYISO Tariff and for a twelve-month extension of time are hereby granted for Dunkirk Units 3 and 4, as discussed in the body of this order.

By the Commission_____

¹⁶ See, e.g., *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *New York Independent System Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010).

(S E A L)

Kimberly D. Bose,
Secretary.