

152 FERC ¶ 61,183
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Erie Power LLC

Docket No. ER15-2225-000

ORDER DENYING WAIVER

(Issued September 8, 2015)

1. On July 16, 2015, Erie Power LLC (Erie Power) submitted a request for a waiver of section 25.6.2.3.1 of Attachment S (Rules To Allocate Responsibility for the Cost of New Interconnection Facilities) to the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT), which requires participants in NYISO's 2015 Class Year¹ to have received approval of their System Reliability Impact Study from NYISO's Operating Committee by March 1, 2015. For the reasons discussed below, the Commission denies the waiver request.

I. Background

2. This proceeding concerns the third waiver request by Erie Power for its North East Cogeneration Plant (North East Plant). In 2014, Erie Power purchased the North East Plant, a decommissioned electric generating facility in North East, Pennsylvania, after the facility had already lost its Capacity Resource Interconnection Service (CRIS) rights. Shortly after acquiring the North East Plant, Erie Power filed its first request for waiver of section 25.9.3.1 of Attachment S and section 30.3.3.1 of Attachment X (Standard Large Facility Interconnection Procedures) of the NYISO OATT with the Commission in its effort to restore the North East Plant's CRIS rights. On July 15, 2014, the Commission denied Erie Power's first waiver request, finding that Erie Power knowingly purchased a deactivated plant when the three-year window in the OATT to reactivate the plant had already expired and had failed to justify waiver.²

¹ Class Year is defined in section 25.1.2 as "[t]he Group of generation and merchant transmission projects included in any particular Class Year Interconnection Facilities Study (Annual Transmission Reliability Assessment and/or Class Year Deliverability Study), in accordance with the criteria specified in Attachment S and Attachment Z for including such projects."

3. On February 27, 2015, Erie Power filed a second request for waiver of section 25.6.2.3.1 of Attachment S to the NYISO OATT which requires participants in NYISO's 2015 Class Year to have received approval of their Interconnection System Reliability Impact Study from NYISO's Operating Committee by March 1, 2015. On April 21, 2015, the Commission denied Erie Power's second waiver request, finding that the waiver was not of limited scope and that Erie Power's waiver request might harm third parties.³

II. Waiver Request

4. Section 25.6.2.3.1 of Attachment S of the NYISO OATT sets forth the criteria required for a project to be eligible to participate in the Class Year process. Under that section, a project becomes eligible to participate in the Class Year if, on or before the Class Year Start Date, it satisfies two developmental milestones: (i) the Operating Committee has approved the Interconnection Reliability Impact Study for the project, and (ii) the regulatory milestone has been satisfied.⁴ Erie Power asserts that, for purposes of the 2015 Class Year, it has satisfied all of the criteria except receipt of Operating Committee approval of its System Reliability Impact Study by March 1, 2015. Therefore, Erie Power requests a waiver of this requirement.⁵

5. In support of its request for a waiver, Erie Power states that it did everything it could to meet the March 1, 2015 deadline, and its inability to do so was due, at least in part, to circumstances beyond its control. Erie Power explains that it commenced the interconnection process, and submitted an interconnection request to NYISO in May 2014, concurrent with its first waiver request to restore its CRIS rights. Erie Power states that NYISO formally processed its interconnection request on June 2, 2014. Erie Power asserts that, based on NYISO's representations, it expected the preparation of the System Reliability Impact Study report to begin in early January 2015, and that the draft report would be available 60 days thereafter. Erie Power states that the draft System Reliability Impact Study report did not become available until the first week of May 2015 and it was approved by NYISO's Operating Committee on July 16, 2015.⁶

6. Erie Power argues that the facts and circumstances of this case demonstrate good cause to grant the requested waiver. Erie Power also argues that the Commission has

² *Erie Power LLC*, 148 FERC ¶ 61,038 (2014) (*Erie Power I*).

³ *Erie Power LLC*, 151 FERC ¶ 61,062 (2015) (*Erie Power II*).

⁴ See NYISO OATT, Attachment S, Section 25.6.2.3.1.

⁵ Erie Power July 16, 2015 Filing at 5.

⁶ *Id.* at 3-4.

granted similar waiver requests in the past.⁷ Specifically, Erie Power asserts: (1) it is seeking the waiver in good faith; (2) the waiver is of limited scope; (3) there exists a concrete problem that must be remedied; and (4) granting the waiver will not harm any other market participant or other third party.⁸ First, Erie Power emphasizes that it proceeded in good faith to comply with all procedural requirements of the NYISO OATT.⁹ Erie Power maintains that it worked diligently to comply with and provide responses to all information and other requests from NYISO related to its interconnection request. Erie Power adds that it has demonstrated its motivation to recommence operations at the North East Plant by seeking to preserve its CRIS rights while simultaneously commencing NYISO's interconnection process. Erie Power states that its study scope and base cases were developed in sufficient time to meet the March 1, 2015 deadline, and that it sought and obtained agreement from the interconnecting transmission owner to expedite its review of the System Reliability Impact Study once it became available. Erie Power also argues that its inability to obtain timely approval of its System Reliability Impact was due, at least in part, to circumstances beyond its control.

7. Second, Erie Power claims that the requested waiver is of limited scope because its request is limited to timing rather than substance.¹⁰ Erie Power maintains that it has satisfied all OATT requirements required to participate in the 2015 Class Year and that it only seeks a waiver of one milestone, specifically the March 1, 2015 deadline.

8. Erie Power is concerned that, if its waiver request is not granted, it could be years before it has another opportunity to enter another Class Year since, for example, the 2012 Class Year commenced in 2012 and was not completed until 2015. Erie Power argues that there are many benefits associated with granting its request for waiver. Specifically, Erie Power contends that the inclusion of the North East Plant in NYISO's markets would aid system reliability, reduce congestion, and benefit electric customers.¹¹ Erie Power argues that, unlike brand new plants that enter the Class Year process before or during construction, the North East Plant is already constructed and most of the interconnection facilities are already in place. Erie Power asserts that, given the potential duration of the Class Year process and NYISO's prior acknowledgement that a short

⁷ *Id.* at 6-8 (citing *Dynegy Kendall Energy, LLC et al.*, 147 FERC ¶ 61,094 (2014) (*Dynegy*); *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 (2013) (*Air Energy*); *Footprint Power LLC, et al.*, 142 FERC ¶ 61,051 (2013) (*Footprint*); *Stony Creek Energy LLC*, 131 FERC ¶ 61,059 (2010) (*Stony Creek*)).

⁸ *Id.* at 5.

⁹ *Id.* at 6.

¹⁰ *Id.* at 6-7.

¹¹ *Id.* at 8-9.

delayed entry of a generator to the process would not adversely affect the process,¹² the limited waiver would not hinder NYISO from timely completing the Class Year studies or process.

9. Next, Erie Power claims that there exists a concrete problem to be remedied.¹³ Erie Power states that it has an existing cogeneration facility that it seeks to restart and participate in both the energy and capacity markets, and that participation in both markets is necessary because the energy market revenues may not be sufficient to cover all of the plant's costs. Erie Power asserts that timely restart of the plant would also be helpful to Welch Foods, a consumer of low cost process steam from the North East Plant. Erie Power argues that there can be no legitimate dispute in this case that the public interest is best served by the expeditious re-entry of the North East Plant into NYISO's markets.

10. Finally, Erie Power also claims that granting the waiver request will not harm any other market participant.¹⁴ Erie Power asserts that granting the waiver request should not delay NYISO's Class Year process beyond a few weeks or unduly burden any other Class Year participant.¹⁵ Erie Power states that its North East Plant is the only project in Zone A and that none of the 2015 Class Year projects are connected to the same transmission line as the North East Plant, and therefore, would not affect other projects. Erie Power contends that it is cognizant of NYISO's concerns about setting precedent regarding deadlines in the OATT, but that an administrative rule should not become a barrier to the ability of a generator to participate in the wholesale electricity and capacity markets. Erie Power argues that the facts and circumstances of this situation are very unique because there are no other known existing cogeneration facilities that are similarly situated to the North East Plant.¹⁶

11. Erie Power requests expedited Commission action on its waiver request to ensure that there are no material delays in the 2015 Class Year process and that no other Class Year members are harmed.¹⁷

¹² *Id.* (citing *Stony Creek Energy LLC*, 131 FERC ¶ 61,059 at PP 7-8).

¹³ *Id.* at 10-11.

¹⁴ *Id.* at 11.

¹⁵ *Id.* at 11 (citing John Marczewski Affidavit at P 15).

¹⁶ *Id.* at 12. Erie Power adds that there are no known existing facilities seeking to recommence electrical and thermal operations in New York, that are able to do so essentially in the exact manner they formerly operated, and that would provide immediate reliability and economic benefits to the local community and the state in general.

¹⁷ *Id.* at 13.

III. Notice of the Filing and Responsive Pleadings

12. Notice of Erie Power's waiver request was published in the *Federal Register*, 80 Fed. Reg. 44,950 (2015), with interventions and protests due on or before August 6, 2015. Timely motions to intervene and protests were filed by Greenidge Generation LLC (Greenidge) and H.Q. Energy Services (U.S.) Inc. (HQUS), and a motion to intervene and comments were filed by NYISO. On August 5, 2015, Erie Power filed an answer in response to the comments and protests.

A. Protests and Comments to Erie Power's Requested Waiver

13. Greenidge opposes Erie Power's waiver request, asserting that granting such waiver would materially delay the completion of either the Minimum Interconnection Standard or the Deliverability Interconnection Standard Study and would thereby postpone the resumed operation of Greenidge's existing generating facilities either as an energy resource or a capacity resource. Greenidge states that it was informed by NYISO that the delay caused by Erie Power's waiver request is likely to be more than the few weeks asserted by Erie Power.¹⁸ Greenidge states that the Commission previously denied a waiver request under similar circumstances.¹⁹ Greenidge states that, unless Erie Power can prove that any delay resulting from its waiver request is less than three weeks, Erie Power's waiver request should be rejected. Greenidge states that it would incur financial harm as a result of a longer delay because it would be unable to resume sales of installed capacity on its generating station.²⁰

14. HQUS also protests Erie Power's waiver request. First, HQUS asserts that Erie Power's waiver request is not limited. HQUS states that it sells its electricity directly into the NYISO Rest of State market, and therefore could potentially be harmed if the Commission grants Erie Power's waiver request.²¹ HQUS claims that incorporating Erie Power into the 2015 Class Year late in the process would cause delays and cost overruns in the 2015 Class Year.²² Second, HQUS claims that the addition of a generator in any zone can have significant consequences for another zone's headroom and therefore, could have an impact on the deliverability test results for generators in each zone.²³ Finally,

¹⁸ Greenidge July 28, 2015 Comments at 3.

¹⁹ *Id.* at 4 (citing *Cassadaga Wind LLC*, 150 FERC ¶ 61,182, at P 20 (2015) (*Cassadaga Wind*)).

²⁰ *Id.* at 5-6.

²¹ HQUS July 30, 2015 Comments at 3.

²² HQUS July 30, 2015 Comments at 4.

HQUS argues that granting Erie Power's waiver request is unfair because other similarly situated generators might have been able to enter the Class Year if they had known the process would be delayed to August 2015.²⁴

15. In its comments, NYISO states that it is concerned that Erie Power's waiver request is not of limited scope and that it would raise questions regarding the applicability of the same OATT requirements as applied to other projects in the future, especially since it involves a substantive milestone.²⁵ NYISO states that it is important for the Commission to reinforce the importance of the Class Year Study eligibility milestones since they enhance certainty and transparency in NYISO's administration of the interconnection process.²⁶ NYISO states that granting Erie Power's waiver request has the potential to delay the 2015 Class Year as NYISO has made significant progress on modeling the base cases and performing analyses of the Class Year Study. NYISO argues that it made substantial progress in the study work on both the "Part 1" and "Part 2" Class Year Study evaluations.²⁷ NYISO states that inclusion of Erie Power's facility at this point would delay the Class Year Study by four to six months, or longer. NYISO argues that such a delay could negatively impact the 16 other 2015 Class Year members who satisfied the Class Year Eligibility requirements in the required time.²⁸ NYISO argues that while the North East Plant may be a reactivation of a former facility, the Class Year evaluations required for the project will be much more involved than Erie's waiver request indicates. NYISO asserts that to reliably interconnect, the North East Plant requires not only System Upgrade Facilities at two substations in New York, but also

²³ *Id.* at 5.

²⁴ *Id.* at 1.

²⁵ NYISO July 30, 2015 Comments at 6.

²⁶ *Id.* at 7.

²⁷ *Id.* at 8. NYISO explains that, due to the complexity and extent of the study work, the Class Year Study is divided into two parts. A Part 1 Study is performed for each individual project to identify the Connecting Transmission Owner's Attachment Facilities, the System Upgrade Facilities at the Point of Interconnection, and related metering, protection, and telecommunication facilities that are required for each project to reliably interconnect. A Part 2 Study is then performed by the NYISO to identify: (i) the remainder of the System Upgrade Facilities required for the aggregate of projects to reliably interconnect under the Minimum Interconnection Standard, and (ii) whether or not a project that requested evaluation for CRIS is deliverable and, if not, what System Deliverability Upgrades are necessary to make it deliverable.

²⁸ *Id.* at 9-10.

Affected System upgrades in PJM Interconnection, L.L.C. (PJM) which must be further investigated and cost estimated in the Class Year Study.²⁹ NYISO states that Erie Power underestimates the flexibility of the interconnection process and that, after completion of the work identified in the System Reliability Impact Study, Erie Power's generating facility could go into service as an energy-only resource while participating in the 2016 Class Year Study. NYISO states that it is likely that the time required for completion of the work identified in the System Reliability Impact Study would take at least one year to complete and thus it is not likely that Erie Power's facility would be in service until the second half of 2016 regardless of which Class Year Erie Power participates.³⁰

B. Erie Power's Answer

16. In response to NYISO, Erie Power contends that there will be no lengthy delays associated with its entry into the 2015 Class Year. According to Erie Power, NYISO was able to make revisions to completed studies within a few days after the removal of two projects and should be able to make revisions quickly with the addition of Erie Power's North East Plant. Erie Power also argues that the pre-processing, analysis, and post-processing of data is mostly automated and only requires the addition of the data that already exists for the North East Plant. Erie Power believes that these additions and revisions can be accomplished in a few days. Erie Power states that NYISO had been working on the 2015 Class Year for only 45 days at the time Erie Power's waiver request was submitted to the Commission, and not the five months stated by NYISO.³¹

17. Erie Power argues that granting its waiver request should not cause harm to other 2015 Class Year members. Erie Power claims that the Class Year process is fluid and that many factors can change or delay the process, such as projects exiting the study or projects declining the cost allocation and exiting the process. Erie Power states that any material delays will likely be caused by Class Year projects being withdrawn from the process and not Erie Power's inclusion into the 2015 Class Year.³²

18. Erie Power further claims that it would be harmed if its waiver request is denied. Erie Power states that no Class Year process to date has been completed on time and that the likelihood of the 2015 Class Year being completed by June 2016 is questionable. Erie Power also states that upgrades needed to the North East Plant are not a reason to deny Erie Power admission into the 2015 Class Year. Erie Power states that energy markets do not produce revenues needed to cover the fixed costs of generating facilities

²⁹ *Id.* at 9.

³⁰ *Id.* at 11-12.

³¹ Erie Power August 5, 2015 Answer at 4-7.

³² *Id.* at 7-8.

and that Erie Power would incur financial harm from its inability participate in NYISO's markets.³³

19. In response to Greenidge's comments, Erie Power points out that Greenidge's opposition to Erie Power's waiver request is limited and conditional. Erie Power states that its North East Plant should not have any effect on the studies now underway for other projects and that NYISO has not indicated that these studies would be delayed. Erie Power argues that Greenidge's protest does not establish that Greenidge would be harmed, or that the process would be delayed by months, by granting Erie Power's waiver request.³⁴

20. Next, Erie Power argues that Greenidge's comments present a concern regarding the processing of Erie Power's interconnection request. Erie Power states that it took NYISO three months longer, from submission of Erie Power's interconnection request to NYISO's completion of the System Reliability Impact Study, than it took for Greenidge. Erie Power argues that it cannot explain the delay in completing the System Reliability Impact Study since it was under NYISO's control and, had NYISO processed Erie Power's application in the same manner as it processed Greenidge's application, Erie Power would likely have received approval of its System Reliability Impact study by the March 1, 2015 deadline.³⁵

21. In response to HQUS's comments, Erie Power states that the Commission rejected Erie Power's second waiver request without prejudice, allowing Erie Power to file another waiver request once it had satisfied the developmental milestones.³⁶ Erie Power states that its waiver request demonstrates the limited nature of the request and that HQUS's claims that the waiver request is not limited are unfounded. Erie Power contends that, since HQUS is seeking External Capacity Resource Interconnection Service rights, and are thus not in the process of being studied by NYISO in this phase of the interconnection process, HQUS would not be harmed by granting Erie Power's waiver request. Also, Erie Power states that HQUS has provided no factual support for its claim that granting Erie Power's waiver request will increase costs and that the Commission should not evaluate conclusory allegations. Erie Power argues that NYISO's determination of system deliverability upgrade costs are as equally likely to decrease as they are to increase as a result of the inclusion of the North East Plant and that Erie Power could end up bearing some of HQUS's deliverability costs. Erie Power states that the Commission should take into account the possibility that the inclusion of

³³ *Id.* at 8-9.

³⁴ *Id.* at 10-11.

³⁵ *Id.* at 3-4.

³⁶ *Id.* at 12 (citing *Erie Power II*, 151 FERC ¶ 61,062 at P 26).

Erie Power's North East Plant could have a beneficial impact on other 2015 Class Year participants.³⁷

IV. Discussion

A. Procedural Issues

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Erie Power's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

23. The Commission has previously granted waivers of tariff provisions when: (1) the entity seeking the waiver acted in good faith; (2) the waiver is of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.³⁸ Erie Power argues that its request for waiver meets these criteria. We disagree. Accordingly, we deny Erie's requested waiver.

24. In taking this action, we emphasize that NYISO's regulatory and developmental milestones should not be taken lightly and the Commission has generally denied waiver of these milestones because it is important for parties to meet them.³⁹ Indeed, the Commission has previously granted waiver requests related to certain milestones only when doing so did not delay the Class Year process or harm third parties. For example, in *Stony Creek*, the Commission granted Stony Creek Energy LLC's (Stony Creek) request for waiver of the March 1, 2010 deadline, because the Commission had accepted the tariff provisions implementing that deadline just a month before Stony Creek filed its waiver request.⁴⁰ The Commission noted that it was acting prior to April 23, 2010 at

³⁷ Erie Power August 5, 2015 Response at 12-14.

³⁸ See *Clean Energy Future – Lordstown, LLC*, 152 FERC ¶ 61,076 (2015) see also *Air Energy*, 143 FERC ¶ 61,172; *Aragonne Wind, LLC*, 145 FERC ¶ 61,106 (2013); *WM Renewable Energy, L.L.C.*, 134 FERC ¶ 61,022 (2011); *Central Vermont Pub. Serv. Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

³⁹ See *Cassadaga Wind*, 150 FERC ¶ 61,182 at P 20.

⁴⁰ *Stony Creek*, 131 FERC ¶ 61,059 at PP 8-10.

NYISO's urging, as NYISO had explained that doing so would avoid potential delays to the Class Year analysis process.⁴¹ Additionally, in *Air Energy*, the Commission granted Air Energy TCI, Inc.'s (Air Energy) waiver request,⁴² explaining that because Air Energy had already satisfied the milestone at issue, albeit late, the waiver was not open-ended. Further, because the relevant Class Year had not yet started, the Commission stated that "granting the waiver will not harm other members of the Class Year or cause undue hardship for NYISO."⁴³

25. Unlike the foregoing cases upon which Erie Power relies, here we find that granting Erie Power's waiver request may both cause harm to third parties and have undesirable consequences.⁴⁴ Specifically, we find that the inclusion of the North East Plant into the 2015 Class Year six months after the start of the Class Year may cause significant delays to the Class Year Process and in turn expose 16 projects that successfully complied with the regulatory milestones to financial harm. NYISO states that granting Erie Power's requested waiver could cause a delay of four to six months or potentially longer.⁴⁵ As NYISO explains in its comments, the Part 1 studies are well underway for the other 16 projects, but not yet for Erie Power. NYISO further explains that a study for Erie Power will take considerable time to complete since, according to NYISO, the interconnection of the North East Plant will require System Upgrade

⁴¹ *Id.* PP 7-8.

⁴² *Air Energy*, 143 FERC ¶ 61,172 at P 16.

⁴³ *Id.*

⁴⁴ While Erie Power also references the Commission's decisions in *Footprint* and *Dynegy* in support of its assertion that the Commission has granted similar waiver requests, the circumstances in those proceedings are not similar to the instant one. In *Footprint*, Footprint Power LLC sought to be included as a capacity resource in an ISO New England Inc. (ISO-NE) forward capacity auction which had not yet begun. Thus, the Commission did not believe, based on the statements made by ISO-NE, that granting the waiver would harm third parties. *See Footprint*, 142 FERC ¶ 61,051 at P 35. In *Dynegy*, Dynegy Kendall Energy, LLC and Dynegy Marketing and Trade, LLC requested a waiver of PJM's tariff deadlines to allow them to apply for a minimum offer price rule exemption for an upcoming auction. Granting the waiver would not affect PJM's determination as to whether the capacity qualified for an exemption from the minimum price offer rule nor did any party protest that granting the waiver would harm their interest. Therefore, the Commission granted the waiver determining that it would not harm third parties. *See Dynegy*, 147 FERC ¶ 61,094 at PP 8-11.

⁴⁵ We note that, unlike *Stony Creek*, there is no indication here that Commission action by a date certain could ameliorate concerns regarding potential delays or harm to third parties.

Facilities at two substations in New York, as well as Affected System Upgrades in PJM. Thus, granting the waiver harms the other 16 projects—two of which filed protests in this proceeding—that successfully complied with the requirements under NYISO's OATT.

26. While Erie Power raises concerns with how NYISO processed its interconnection request, particularly in comparison to Greenidge, the record reflects that NYISO expended considerable effort to move Erie Power's project through the interconnection process. For example, NYISO allowed Erie Power to forego the first of three interconnection studies, which permitted Erie Power to proceed directly to the System Reliability Impact Study. Accordingly, we find that the record does not support Erie Power's concerns as to how its interconnection request was processed.

27. For the reasons discussed above, the Commission denies Erie Power's request for waiver of section 25.6.2.3.1 of Attachment S of NYISO's OATT.

The Commission orders:

Erie Power's request for waiver is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.