

158 FERC ¶ 61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Norman C. Bay, and Colette D. Honorable.

H.Q. Energy Services (U.S.) Inc.

Docket No. ER17-505-000

ORDER GRANTING TARIFF WAIVER

(Issued January 31, 2017)

1. On December 7, 2016, pursuant to Rule 212 of the Commission's Rules of Practice and Procedure,¹ H.Q. Energy Services (U.S.) Inc. (HQUS) requested a limited, one-time waiver of certain provisions of the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff) (collectively, Tariff) to allow HQUS to enter NYISO's 2017 Class Year Study for deliverability evaluation of HQUS's transmission upgrade project. In this order, we grant the requested waiver, as discussed below.

I. Background

2. HQUS is planning a transmission upgrade project that would result in an 80 MW increase in transmission capacity on the Cedar Rapids Transmission Intertie between the province of Québec and NYISO's Rest of State² (HQUS Project). HQUS states that this additional 80 MW of capacity would be in excess of any emergency assistance capacity that is currently relied upon by NYISO and the New York State Reliability Council. HQUS states that two transmission owners, Alcoa Power Generating Inc.'s Long Sault Division and Niagara Mohawk Power Corporation, would construct and own the necessary HQUS Project upgrades, while HQUS would be responsible for the upgrade costs. HQUS states that, for the Canadian portion of the project, Hydro-Québec

¹ 18 C.F.R. § 385.212 (2016).

² Rest of State is defined as: "The set of all non-Locality [New York Control Area] (NYCA) [Locational Based Marginal Pricing] (LBMP) Load Zones. As of the 2014/2015 Capability Year, Rest of State includes all NYCA LBMP Load Zones other than LBMP Load Zones G, H, I, J and K." NYISO, Services Tariff, § 2.18 (16.0.0).

TransÉnergie (HQT) would construct and own the necessary upgrades on the HQT system.³

II. Request for Waiver

3. HQUS seeks a waiver of certain provisions of the NYISO Tariff to allow the HQUS Project to enter NYISO's 2017 Class Year Study for deliverability evaluation. HQUS states that waiver is necessary and appropriate to permit HQUS to obtain Capacity Resource Interconnection Service (CRIS)⁴ rights for the incremental transfer capability that the HQUS Project will create.

4. HQUS states that while a process is available under the NYISO Tariff to request capacity rights for certain new or upgraded transmission connected into a Locality,⁵ the Tariff does not include a similar mechanism for transmission upgrade projects to obtain rights to sell incremental capacity from an external control area into the NYISO Rest of State (EDRs).⁶ Rather, External CRIS rights are only available to be requested in the Class Year Study if the transfer capability supporting such rights is already reflected in the Class Year base case, i.e., External CRIS rights are limited, among other factors, to the current capacity import limit in effect when a Class Year Study begins. HQUS therefore argues that despite funding transmission upgrades that create the ability to provide incremental supply from out-of-state resources, an entity connecting into the NYISO Rest of State cannot obtain corresponding rights to participate in the NYISO capacity market.⁷

³ HQUS Filing at 4-5.

⁴ Capacity Resource Interconnection Service is defined as: "the service provided by NYISO to Developers that satisfy the NYISO Deliverability Interconnection Standard or that are otherwise eligible to receive CRIS in accordance with Attachment S to the NYISO OATT; such service being one of the eligibility requirements for participation as a NYISO Installed Capacity Supplier." NYISO, OATT, § 30.1.

⁵ Locality is defined as: "A single LBMP Load Zone or set of adjacent LBMP Load Zones within which a minimum level of Installed Capacity must be maintained, and as specifically identified in this subsection to mean (1) Load Zone J; (2) Load Zone K; and (3) Load Zones G, H, I, and J collectively (*i.e.*, the G-J Locality)." NYISO, Services Tariff, § 2.12 (16.0.0).

⁶ HQUS refers to capacity import rights associated with transmission upgrades sinking into the NYISO Rest of State system as "External to Rest of State Deliverability Rights" or "EDRs." HQUS states that its use of the term is intended only for ease of reference, and is not intended to denote a new product or set of rights. HQUS Filing at 2 n.2.

5. HQUS contends that NYISO has recognized this shortcoming in its Tariff and has already announced that it intends to seek to address this issue, and develop corresponding NYISO Tariff changes in 2018. HQUS asserts that these changes likely would not be implemented until late 2018 or 2019, which is more than one year after the next Class Year is expected to begin on March 1, 2017.⁸

6. HQUS specifically requests waiver of three provisions in the NYISO OATT and one provision of the Services Tariff. First, HQUS requests waiver of OATT Attachment S, section 25.7.11.1.4.2.2 to allow the proposed incremental transmission import capacity of the HQUS Project to be included in the 2017 Class Year Deliverability Study and to exclude any such import limits based on those currently in existence, which would allow HQUS to effectively request EDRs for the HQUS Project.⁹ Second, HQUS requests waiver of the definition of “Merchant Transmission Facility,” in Attachment X of the OATT, as the definition was revised in a pending NYISO compliance filing.¹⁰ HQUS states that the HQUS Project does not satisfy the revised definition in the pending compliance filing, which limits the definition to transmission projects eligible to request CRIS. HQUS explains that in order for the HQUS Project to enter Class Year 2017 and have its deliverability evaluated, a waiver of the definition is needed because the term is used throughout NYISO’s OATT Attachment S, which allows the HQUS Project to be studied and administered as a Large Facility in the Class Year Study.¹¹ Third, HQUS requests waiver of the related provisions in OATT Attachment S, section 25.7.10 and Services Tariff, section 25.7.10, which concern the annual import rights process. HQUS states that it requests a waiver of these provisions to prevent the incremental capacity created by the HQUS Project from being allocated through the annual import rights process before HQUS can obtain CRIS in the Class Year Study process, and to allow it to use the incremental capacity of the HQUS Project in the NYISO capacity market.¹²

7. HQUS asserts that it meets the Commission’s four criteria for granting tariff waivers because: (1) it acted in good faith; (2) the waiver is of limited scope; (3) the request presents a concrete problem that needs to be solved; and (4) the requested waiver avoids undesirable consequences, such as harming third parties.¹³

⁷ *Id.* at 1-2.

⁸ *Id.* at 3.

⁹ *Id.* at 10.

¹⁰ *Id.* at 10 (citing *N.Y. Indep. Sys. Operator, Inc.*, Compliance Filing, Docket Nos. ER13-102-009 and 010 (filed March 22 and May 24, 2016)).

¹¹ *Id.* at 11.

¹² *Id.* at 11-12.

8. HQUS asserts that its request for the waiver is made in good faith because it is filing the request after fully engaging in the NYISO stakeholder process, including: (1) creating and presenting multiple concepts over a span of several years to address issues raised by NYISO and various stakeholders; (2) ultimately gaining stakeholder acceptance and support; and (3) gaining NYISO's support in moving forward to develop the full EDR process as a 2018 project. HQUS also asserts that the HQUS Project requires relatively little in terms of preliminary approvals and construction of facilities, but would offer a material intertie expansion with immediate benefits to consumers and markets in New York, including allowing HQUS to supply 80 MWs of capacity and energy into NYISO markets.¹⁴

9. HQUS asserts that the waiver request remedies a unique situation and is limited in scope to only those specific NYISO Tariff provisions that prevent the HQUS Project from entering into and being evaluated in the Class Year Deliverability Study process in a manner comparable to other similarly situated large facilities requesting interconnection with CRIS rights. HQUS asserts that the HQUS Project is unlike other projects that are typically subject to the interconnection processes under the NYISO OATT. HQUS explains that the HQUS Project is unique because it would add incremental import capacity to an existing external tie line, it involves an AC transmission line that can be dispatched up and down to reflect system conditions, and its capacity sinks into NYISO's Rest of State, rather than into a Locality.¹⁵

10. HQUS asserts that the waiver request addresses a concrete problem to be solved – that the NYISO Tariff does not contemplate a situation where a developer wishes to become eligible to obtain EDR rights by adding incremental external transmission capacity into the Rest of State. HQUS explains that, in contrast, such a process exists for internal generation projects and for transmission projects sinking into a Locality. HQUS therefore states that its situation reflects a gap in the NYISO Tariff, which requires a waiver of the existing Tariff until NYISO can permanently resolve the situation by amending its Tariff.¹⁶ HQUS states that although NYISO recently committed to work on its Tariff to resolve the issue, such changes would only be adopted in 2018 or thereafter. HQUS therefore asserts that, absent a Commission order approving its waiver request, the deliverability determination for the HQUS Project would be delayed by at least another year and possibly longer.¹⁷

¹³ *Id.* at 13 (citing, e.g., *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006)).

¹⁴ *Id.* at 13.

¹⁵ *Id.* at 14.

¹⁶ *Id.* at 14-15.

11. HQUS also asserts that no third parties will be harmed by the waiver request because the waiver would simply allow the HQUS Project to be evaluated along with other proposed projects that are on the same timeline. HQUS states that the request does not involve any delay or reevaluation of the queue by NYISO since the 2017 Class Year Deliverability Study has not yet begun.¹⁸

12. HQUS requests expedited action on its waiver request by January 31, 2017 because the waiver relates to entry into the next Class Year, which is anticipated to begin March 1, 2017.

III. Notice of Filing and Responsive Pleadings

13. Notice of HQUS's request for wavier was published in the *Federal Register*, 81 Fed. Reg. 90,833 (2016), with comments due on December 21, 2016. On December 21, 2016, NYISO filed a timely motion to intervene and comments. On January 4, 2017, HQUS filed an answer to NYISO's comments.

A. NYISO's Comments

14. NYISO states that pending the development and approval of market rules to address this unique situation of an entity requesting CRIS for transmission upgrades over an external interface, NYISO believes that HQUS's requested waiver is an appropriate interim mechanism to allow HQUS to be evaluated for deliverability. NYISO also states that, when discussed in the stakeholder process, there were no objections to allowing HQUS to receive CRIS for the HQUS Project.¹⁹

15. NYISO states that if granted, the waiver request would permit HQUS to request and, depending on the results of the Class Year Deliverability Study, obtain CRIS rights corresponding to the incremental transfer capability created by its transmission upgrade project. NYISO also states HQUS recognizes that the requested CRIS rights may not be able to be used in NYISO's Installed Capacity market until NYISO develops market rules in 2018.²⁰ Because the market rules have not been modified or developed, NYISO asserts that the duration of the waiver and any CRIS obtained through the waiver should be defined. In particular, NYISO believes it would be appropriate for the waiver order to specify that any CRIS obtained through the waiver would expire upon the occurrence of any of the following events: (1) termination of the HQUS Project (i.e., the HQUS Project

¹⁷ *Id.* at 15-16.

¹⁸ *Id.* at 15.

¹⁹ NYISO December 21, 2016 Comments at 1.

²⁰ *Id.* at 4.

is withdrawn from the NYISO interconnection queue); (2) in the event that EDRs or a similar capacity market opportunity is developed in the 2018 project process and accepted by the Commission, HQUS's failure to pursue NYISO's procedures to obtain such EDRs or similar capacity market opportunity; or (3) the issuance of a final and non-appealable Commission order which has the result of the HQUS Project being ineligible to obtain EDRs or a similar capacity market opportunity.²¹

16. NYISO also supports HQUS's request for Commission action by January 31, 2017 to prevent delays to the Class Year Study and to provide certainty regarding HQUS's eligibility to enter the next Class Year Study.

B. HQUS's Answer

17. HQUS states that the limitations proposed by NYISO on its requested waiver are consistent with HQUS's goals, and that it accepts NYISO's proposed waiver limitations.²²

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motion to intervene serves to make NYISO a party to this proceeding.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest or comments unless otherwise ordered by the decisional authority. We will accept HQUS's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

20. We grant the requested waiver. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.²³ We find that HQUS's requested waiver satisfies these criteria.

²¹ *Id.* at 5.

²² HQUS January 4, 2017 Answer at 2.

²³ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Serv., Inc.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

21. First, we find that HQUS has acted in good faith by filing a request for waiver only after working with NYISO and all relevant stakeholders, which included creating and presenting multiple proposals to NYISO and its stakeholders over a span of several years, to address the problem. We note that this problem was not addressed earlier because other projects took priority, and not because NYISO or any stakeholder objected to HQUS's ultimate proposed solution. Second, we find that HQUS's request for waiver is of limited scope because the waiver is a one-time waiver concerning only those specific NYISO Tariff provisions that prevent the HQUS Project from entering into and being evaluated in the Class Year Deliverability Study process. Third, we find that HQUS's requested waiver addresses a concrete problem that needs to be remedied. Despite funding transmission upgrades that create the ability to provide incremental supply from out-of-state resources, an entity connecting into the NYISO Rest of State may not be able to obtain corresponding CRIS rights to participate in the NYISO capacity market. In addition, absent a waiver of the NYISO Tariff, HQUS would not be eligible to enter the 2017 Class Year Deliverability Study, which would delay the deliverability determination for the HQUS Project by at least another year and possibly longer. Finally, we find that HQUS's request for the waiver will not have undesirable consequences or harm third parties. HQUS represents that no third party will be harmed by the waiver and the waiver request does not involve any delay or reevaluation of the NYISO interconnection queue because the 2017 Class Year Deliverability Study has not yet begun. Accordingly, we grant HQUS's request for a limited, one-time waiver, effective January 31, 2017, as requested.²⁴

22. While we grant the requested waiver, such a waiver is granted based on the specific facts and circumstances of the request. Accordingly, the waiver is limited to HQUS and the HQUS Project, for the specific reasons set forth above. In addition, as proposed by NYISO and agreed to by HQUS, we require that any CRIS obtained through the waiver would expire upon the occurrence of any of the following events: (1) termination of the HQUS Project (i.e., the HQUS project is withdrawn from the NYISO interconnection queue); (2) in the event that EDRs or a similar capacity market opportunity is developed in the 2018 project process and accepted by the Commission, HQUS's failure to pursue NYISO's procedures to obtain such EDRs or similar capacity market opportunity; or (3) the issuance of a final and non-appealable Commission order which has the result of the HQUS Project being ineligible to obtain EDRs or a similar capacity market opportunity.

The Commission orders:

²⁴ We note that HQUS requested waiver of the definition of "Merchant Transmission Facility," in Attachment X of the OATT, as the definition was revised in a pending NYISO compliance filing before us in Docket Nos. ER13-102-009 and 010. Therefore, our granting of waiver of this provision is subject to the outcome of the Commission's action on this provision in Docket Nos. ER13-102-009 and 010.

HQUS's request for a limited, one-time waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.