

183 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

Hecate Grid Clermont 1 LLC

Docket No. ER23-1255-000

ORDER DENYING WAIVER REQUEST

(Issued April 7, 2023)

1. On March 3, 2023, as supplemented on March 24, 2023, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ Hecate Grid Clermont 1 LLC (Clermont) submitted a request for waiver of the procedural deadline in section 30.8.1 of Attachment X and the withdrawal provision in section 30.3.6 of Attachment X to the New York Independent System Operator Inc.'s (NYISO) Open Access Transmission Tariff (OATT). Clermont seeks waiver of these provisions to allow NYISO to accept Clermont's late deposit payment and allow Clermont to retain its queue position in NYISO's 2023 Class Year Interconnection Facilities Study.² As discussed below, we deny Clermont's waiver request.

I. Background

2. Under section 30.8.1 of Attachment X to NYISO's OATT, NYISO will tender a Class Year Interconnection Facilities Study Agreement (FSA) to an Eligible Class Year Project. Within 10 calendar days after the Eligible Class Year Project's receipt of the FSA, the Eligible Class Year Project must complete the FSA and deliver to NYISO:

(1) the required technical data (including data required by the Connecting Transmission Owner, to the extent such data is requested by the ISO when it provides notice of a Class Year Start Date or tenders the Class Year Interconnection Facilities Study Agreement); (2) the Class Year Project's interconnection ~~service evaluation~~ election; (3) for Large Facilities not yet

¹ 18 C.F.R. § 385.207(a)(5) (2022).

² Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in NYISO's OATT.

In-Service, an updated proposed In-Service Date, an updated proposed Initial Synchronization Date and an updated proposed Commercial Operation Date (subject to the ten (10) year limitation set forth in Section 30.3.1); (4) a study deposit of \$100,000 (if the Class Year Project seeks evaluation for ERIS or ERIS and CRIS), or \$50,000 (if the Class Year Project seeks only CRIS); and (5) if the Developer has not satisfied the applicable regulatory milestone described in Section 25.6.2.3.1.1 of Attachment S to the ISO OATT, either a demonstration of a qualifying contract pursuant to Section 25.6.2.3.1(ii)(1) of Attachment S to the OATT or a two-part deposit consisting of \$100,000 plus \$3,000/MW deposit as required by Section 25.6.2.3.1(ii)(2).³

3. Under section 30.3.6 of Attachment X to NYISO's OATT, "if the Developer fails to adhere to all requirements of these Large Facility Interconnection Procedures, . . . [NY]ISO shall deem the Interconnection Request to be withdrawn and shall provide written notice to the Developer of the deemed withdrawal and an explanation of the reasons for such deemed withdrawal."⁴ Section 30.3.6 further provides that "[w]ithdrawal shall result in the loss of the Developer's Queue Position."⁵

4. Clermont states that it is a wholly owned subsidiary of Hecate Grid LLC.⁶ Clermont also states that it is currently developing a 100 MW standalone battery storage facility in Lindenhurst, New York. Clermont asserts that, on February 7, 2023, NYISO informed Clermont that its project qualified as an Eligible Class Year Project for Class Year 2023 and tendered an FSA to Clermont. Clermont continues that NYISO's email directed Clermont to provide certain materials⁷ by February 21, 2023, to become a member of Class

³ NYISO, NYISO Tariffs, NYISO OATT, § 30.8 attach. X (Interconnection Facilities Study) (7.0.0), § 30.8.1.

⁴ NYISO, NYISO Tariffs, NYISO OATT, § 30.3 attach. X (Interconnection Requests) (16.0.0), § 30.3.6.

⁵ *Id.*

⁶ Waiver Request at 4.

⁷ Clermont states that it was required to provide: (1) a completed, but unexecuted, FSA; (2) required technical data set in the form specified in Attachment B to the FSA; (3) a study deposit equal to the non-binding good faith estimate of the cost to perform the Class Year Interconnection Facilities Study; and (4) one of the following: evidence of satisfaction of an applicable regulatory milestone, a deposit consisting of \$100,000 plus

Year 2023.⁸ Clermont states that this email was inadvertently deleted due to a good faith administrative error. Clermont explains that it was unaware of this error until approximately 6:00 pm on February 21, 2023, when NYISO sent an email to Clermont noting the tender date of the FSA and stating that Clermont had until the end of the day on February 21, 2023, to submit the FSA and its deposit. Clermont contends that NYISO's email also stated that failure to submit the required materials by February 21, 2023, would result in withdrawal of Clermont from the 2023 Class Year Interconnection Facilities Study and loss of its queue position.

5. Clermont states that it promptly responded to NYISO's email and provided updated contact information and returned its completed FSA on February 21, 2023. However, Clermont explains that due to the time at which it received NYISO's email, it could not complete the wire transfer of its \$200,000 deposit until the morning of February 22, 2023, when banks resumed business.⁹ Clermont states that, as a result, NYISO has deemed Clermont to have failed to adhere to the requirements of NYISO's Large Facility Interconnection Procedures and has indicated that Clermont's project will lose its queue position in the 2023 Class Year. Clermont states that it has since been in contact with members of NYISO's technical and legal staff concerning Clermont's desire to retain its queue position in Class Year 2023 and avenues for resolving the issue concerning the procedural deadline in Attachment X to NYISO's OATT.¹⁰

II. Waiver Request

6. Clermont requests waiver of the procedural deadline in section 30.8.1 of Attachment X and the withdrawal provision in section 30.3.6 of Attachment X to NYISO's OATT. Clermont asserts that, because NYISO has not yet removed Clermont from the 2023 Class Year Interconnection Facilities Study, the waiver request is prospective in nature.¹¹ Clermont argues that its waiver request satisfies the Commission's criteria for granting waiver.

7. First, Clermont argues that the waiver request is made in good faith.¹² Clermont states that it has complied with all steps of NYISO's Large Facility Interconnection

\$3000/MW, or a fully executed qualifying contract. *Id.* at 5.

⁸ *Id.* at 2, 4-5.

⁹ *Id.* at 3.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 2 n.5.

¹² *Id.* at 6.

Procedures to date, except for the procedural requirement that Clermont's deposit be received by February 21, 2023. Clermont explains that it provided its deposit one day late on the morning of February 22, 2023, solely as a result of a good faith administrative error, and upon being notified of the error, Clermont acted immediately to remedy it. Clermont asserts that it has not indicated that it intends to abandon or terminate its queue position and, since February 21, 2023, it has been in frequent communication with NYISO concerning Clermont's desire to retain its queue position.

8. Second, Clermont contends that its waiver is limited in scope because it is requesting a one-time waiver of the procedural deadline in section 30.8.1 of Attachment X to NYISO's OATT to allow NYISO to accept Clermont's deposit on February 22, 2023, one day after the deadline specified by NYISO's OATT.¹³ Clermont explains that its request for waiver of section 30.3.6 of Attachment X to NYISO's OATT is necessary to effectuate waiver of section 30.8.1 of Attachment X to NYISO's OATT, such that Clermont will be allowed to retain its current queue position in Class Year 2023.¹⁴

9. Third, Clermont asserts that waiver will remedy a concrete problem. Clermont states that absent waiver, it will lose its current queue position. Clermont also states that, because it sought entry into the Class Year Interconnection Facilities Study process in a prior year, it may not be eligible to enter another Class Year without waiver.

10. Fourth, Clermont contends that the waiver request will not have any undesirable consequences or harm third parties.¹⁵ Clermont explains that NYISO informs developers of their eligibility for inclusion in class year interconnection studies on a rolling basis. Clermont states that this process is ongoing and that granting the waiver request will not provide an undue advantage to Clermont over other projects that may be eligible for Class Year 2023 and have not yet received notification. Clermont asserts that, in order to ensure that NYISO has ample time to finalize the base case for the 2023 Class Year, Clermont commits to work with NYISO to cure any deficiencies that may be identified in the technical data Clermont provided in its completed FSA promptly upon notification of any such deficiency.

11. In a supplement to the waiver request, Clermont clarifies that the February 7, 2023, email from NYISO to Clermont was not opened or accessed by Clermont prior to its inadvertent deletion.¹⁶ Clermont also provides a copy of an email communication

¹³ *Id.*

¹⁴ *Id.* at 7.

¹⁵ *Id.*

¹⁶ Supplement at 1.

demonstrating that Clermont initiated the process of wiring the deposit to NYISO on the evening of February 21, 2023.¹⁷

III. Notices and Responsive Pleadings

12. Notice of Clermont's March 3, 2023 filing was published in the *Federal Register*, 88 Fed. Reg. 15,389 (Mar. 13, 2023), with interventions and protests due on or before March 13, 2023. NYISO filed a timely motion to intervene and comments.

13. Notice of Clermont's March 24, 2023 supplement was published in the *Federal Register*, 88 Fed. Reg. 19,129 (Mar. 30, 2023), with interventions and protests due on or before March 28, 2023. None was filed.

14. NYISO states that it does not oppose Clermont's waiver request.¹⁸ NYISO requests that any Commission action on the waiver request allow for sufficient time for execution of the FSA for Clermont's project prior to the anticipated completion date of the Annual Transmission Baseline Assessment base cases for Class Year 2023. NYISO explains that requiring that membership in the Class Year be determined prior to the completion of the Annual Transmission Baseline Assessment base cases for Class Year 2023—which NYISO anticipates will occur in mid-April 2023—will minimize disruption to Class Year activities.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), NYISO's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

16. We find that Clermont's March 3, 2023 request for waiver of sections 30.8.1 and 30.3.6 of Attachment X to NYISO's OATT to extend the February 21, 2023 deadline for submitting a completed FSA and deposit to NYISO is retroactive in nature and is prohibited by the filed rate doctrine.¹⁹ We disagree with Clermont's assertion that because NYISO has not yet removed Clermont from the 2023 Class Year Interconnection Facilities Study, Clermont's March 3, 2023 request for waiver of the February 21, 2023

¹⁷ *Id.* at 1-2 & attach. 1, at 2.

¹⁸ NYISO Comments at 4.

¹⁹ See *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821 (D.C. Cir. 2021); *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223 (D.C. Cir. 2018).

deadline is prospective in nature. Accordingly, we deny Clermont's waiver request.²⁰ Because we are denying Clermont's waiver request on the basis that it is prohibited by the filed rate doctrine, we need not address whether Clermont's request would satisfy the criteria used by the Commission to evaluate waiver requests.

The Commission orders:

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

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

²⁰ Although the filed rate doctrine and rule against retroactive ratemaking prevent us from granting Clermont's waiver request in this case, to prevent such inequitable results in the future, NYISO should consider revising its OATT to permit the Commission to waive such deadlines. *See, e.g., NRG Power Mktg. LLC*, 178 FERC ¶ 61,055, at 10 (2022) (granting retroactive waiver where section 7.4 of NYISO's tariff provides sufficient notice to customers that finalized metering data could be subject to further correction by order of the Commission outside of the otherwise applicable time bar). *See also, e.g., Talen Energy Mktg. LLC*, 178 FERC ¶ 61,139 (2022) (granting retroactive waiver where the PJM Interconnection, L.L.C. tariff contained a provision permitting capacity market sellers to seek a remedial waiver from the Commission if the seller does not timely take actions to remove its resource from the capacity market or exempt its resource from the must-offer requirements); *Upstream Wind Energy LLC*, 173 FERC ¶ 61,057, at PP 5, 22 (2020) (granting retroactive waiver of a missed settlement dispute deadline in the Southwest Power Pool, Inc. tariff where a separate tariff provision provided that "Resettlements for a given Operating Day will be considered by the Transmission Provider for the following reasons: . . . (3) Per FERC or court order (a) The Transmission Provider will resettle Operating Days as required by FERC or court order.").