

184 FERC ¶ 61,085
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 Swiftsure, LLC

Docket No. ER23-2455-000

ORDER GRANTING WAIVER REQUEST

(Issued August 7, 2023)

1. On July 19, 2023, pursuant to Rules 207(a)(5) and 212 of the Commission's Rules of Practice and Procedure,¹ Hecate Grid Swiftsure, LLC (Hecate) submitted a request for waiver of section 25.6.2.3.2 and section 25.6.2.3.3 of Attachment S to the New York Independent System Operator, Inc.'s (NYISO) Open Access Transmission Tariff (OATT), which require Hecate to satisfy the applicable regulatory milestone (Regulatory Milestone Requirement). Hecate seeks waiver of these provisions to allow a one-year extension to complete the Regulatory Milestone Requirement by August 8, 2024.² As discussed below, we grant Hecate's waiver request.

I. Background

2. Section 25.6.2.3.2 of Attachment S to the NYISO OATT provides:

A project must satisfy the applicable regulatory milestone in Section 25.6.2.3.1.1, above, within six (6) months after the date the ISO tenders to the project Developer the Standard Large Generator Interconnection Agreement [(LGIA)] for the project pursuant to Section 30.11.1 of Attachment X to the ISO OATT.³

¹ 18 C.F.R. §§ 385.207(a)(5), 385.212 (2022).

² Hecate states that it requests a one-year extension of the Regulatory Milestone Requirement to August 10, 2024. Waiver Request at 12. However, as discussed below, we calculate a one-year extension of the Regulatory Milestone Requirement to extend to and include August 8, 2024. *See infra* PP 2, 5 & n.9.

³ NYISO, NYISO Tariffs, NYISO OATT, § 25.6 (Attachment S - Cost Allocation Methodology For ERIS) (10.0.0), § 25.6.2.3.2. Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the NYISO OATT.

3. Section 25.6.2.3.3 of Attachment S to the NYISO OATT provides:

If a project fails to satisfy the regulatory milestone within the time period set forth in Section 25.6.2.3.2 of this Attachment S, the Interconnection Request of the project will be deemed to be withdrawn in accordance with Section 30.3.6 of the Large Facility Interconnection Procedures contained in Attachment X.⁴

4. Hecate states that it is developing a 650 MW standalone battery energy storage facility in Richmond County, New York (Project).⁵ Hecate explains that the Project will interconnect at Consolidated Edison Company of New York, Inc.'s Fresh Kills Substation, and has an anticipated commercial operation date of June 1, 2028. Hecate explains that the timely development, construction, and interconnection of the Project is necessary to help facilitate achievement of New York State's energy and climate requirements, including the installation of 6,000 MW of battery energy storage by 2030. Hecate states that the Project will represent more than 10% of the state's 2030 battery storage goal, is significant to the state's ability to meet its goals, and will provide reliability benefits to the New York City area (NYISO Zone J).

5. Hecate states that it submitted its initial interconnection request to NYISO on May 9, 2019, and that NYISO tendered a copy of the LGIA to Hecate on February 8, 2023.⁶ Hecate states that, because it submitted a deposit in lieu of regulatory milestone to enter NYISO's Class Year Study Process for the Project, sections 25.6.2.3.2 and 25.6.2.3.3 of Attachment S to the NYISO OATT require it to meet the Regulatory Milestone Requirement for the Project by August 10, 2023.⁷ Otherwise, Hecate contends that its interconnection request will be deemed withdrawn and its interconnection queue position lost, pursuant to section 30.3.6 of Attachment X to the NYISO OATT.⁸

6. Hecate contends that the only regulatory milestones that are available to the Project pertain to New York State Environmental Quality Review Act review, which it anticipates

⁴ NYISO, NYISO Tariffs, NYISO OATT, § 25.6 (Attachment S - Cost Allocation Methodology For ERIS) (10.0.0), § 25.6.2.3.3.

⁵ Waiver Request at 2, 4.

⁶ *Id.* at 4-5.

⁷ *Id.* at 5. Contrary to Hecate's assertion, we calculate the Regulatory Milestone Requirement for the Project to be August 8, 2023 (i.e., six months after NYISO tendered the LGIA to Hecate on February 8, 2023).

⁸ *Id.* (citing NYISO, NYISO Tariffs, NYISO OATT, § 25.6 Attachment S - Cost Allocation Methodology For ERIS) (10.0.0), § 25.6.2.3.3; NYISO, NYISO Tariffs, NYISO OATT, § 30.3 (Attachment X - Interconnection Requests) (16.0.0), § 30.3.6).

will occur through the New York Public Service Commission (New York Commission) Certificate of Public Convenience and Necessity application review.⁹ Hecate states that it has been diligently preparing its Certificate of Public Convenience and Necessity application since October 2022 and expects to file its request with the New York Commission on or before July 31, 2023. Hecate further states that it expects it will be several months, at a minimum, before the New York Commission is able to complete its review.

II. Waiver Request

7. Hecate states that it requests a limited waiver of section 25.6.2.3.2 and section 25.6.2.3.3 of Attachment S to the NYISO OATT, in order to allow a one-year extension for Hecate to satisfy the Regulatory Milestone Requirement.¹⁰ Hecate contends that its waiver request satisfies the Commission's criteria for granting waiver.

8. First, Hecate argues that it has acted in good faith throughout the interconnection process, including diligently advancing the Project since its initial submission to NYISO.¹¹ Hecate states that it did not have certainty regarding the final interconnection upgrade costs and deliverability in NYISO Zone J until the Class Year Study Process ended on January 11, 2023. Hecate contends that it could not reasonably have been expected to advance a design concept and permitting process without certainty. However, Hecate states that it has acted in good faith by working diligently since October 2022 to finalize its Certificate of Public Convenience and Necessity application to submit to the New York Commission on or before July 31, 2023.

9. Second, Hecate contends that its request is limited in scope because it is a one-time request only to extend its Regulatory Milestone Requirement deadline by one year.¹² Hecate notes that it does not seek to waive requirements associated with any other steps of the NYISO interconnection process and acknowledges that it must continue to adhere to reporting requirements in the NYISO OATT, including section 25.6.2.3.1.4 of Attachment S, which requires Hecate to respond to a NYISO regulatory milestone status request within 10 business days.¹³

⁹ *Id.* at 6-7 (referencing NYISO, NYISO Tariffs, NYISO OATT, § 25.6 (Attachment S - Cost Allocation Methodology For ERIS) (10.0.0), §§ 25.6.2.3.1.1.2, 25.6.2.3.1.1.3; N.Y. Pub. Serv. Law § 68 (McKinney)).

¹⁰ *Id.* at 1, 9.

¹¹ *Id.* at 9-11.

¹² *Id.* at 12-13.

¹³ *Id.* at 13 (referencing NYISO, NYISO Tariffs, NYISO OATT, § 25.6 (Attachment S - Cost Allocation Methodology For ERIS) (10.0.0), § 25.6.2.3.1.4).

10. Third, Hecate argues that its requested relief addresses a concrete problem.¹⁴ Hecate contends that, absent waiver, Hecate's near certain inability to receive a New York State Environmental Quality Review Act review determination from the New York Commission by the Regulatory Milestone Requirement deadline will result in the Project being withdrawn from NYISO's interconnection queue. Hecate contends that if the Project is withdrawn from the interconnection queue, it will not be constructed, which will harm reliability and timely achievement of New York State's clean energy goals. Hecate also states that "such withdrawal may cause Hecate to lose the nearly \$15 million security that it submitted at the conclusion of the Class Year Study Process, in addition to the nearly one million dollars Hecate has spent developing the Project to date."¹⁵

11. Fourth, Hecate asserts that its requested relief will not have any undesirable consequences, such as harming third parties.¹⁶ Hecate states that granting waiver would allow the Project to retain its queue position pending completion of its regulatory milestone within an additional year, thus maintaining the status quo. Hecate contends that no other entities will be negatively harmed by the extension of this milestone and Hecate's continued participation in the interconnection process.

12. Hecate requests expedited Commission action by August 8, 2023, to ensure the Project is not deemed withdrawn from the NYISO interconnection queue.

III. Notice and Responsive Pleadings

13. Notice of Hecate's filing was published in the *Federal Register*, 88 Fed. Reg. 48,237 (July 26, 2023), with interventions and protests due on or before July 31, 2023. NYISO filed a timely motion to intervene and comments. Alliance for Clean Energy New York (ACE NY) and the New York Battery and Energy Storage Technology Consortium (NY-BEST) filed comments.

14. NYISO states that it takes no position on the merits of Hecate's request for waiver. NYISO, however, raises its concern that a waiver in this proceeding may raise questions regarding the applicability of milestone requirements for other projects.¹⁷ NYISO states that, if the Commission grants Hecate's waiver request, it requests that the Commission confirm that waiver is based solely on the circumstances related to the Project and should not be construed as having any impact on the applicability of the same requirements to other large facilities in NYISO.

¹⁴ *Id.* at 2, 7-8, 13, 15-16.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 14-15.

¹⁷ NYISO Comments at 5.

15. NYISO does not dispute Hecate's assertion that granting the waiver request will not harm other projects in NYISO's interconnection queue in the near term. NYISO, however, notes that the longer the delay in satisfying the Regulatory Milestone Requirement, the greater the potential for adverse impacts to other projects due to delays in the Project or its inability to proceed.¹⁸ NYISO states that, based on Hecate's representations concerning the status of its application process with the New York Commission, NYISO believes that Hecate's waiver request proposes a reasonable deadline by which Hecate must satisfy the Regulatory Milestone Requirement and that waiver should not be granted beyond that requested deadline.

16. NYISO also supports Hecate's request for Commission action by August 8, 2023, to provide the parties with certainty concerning the application of the Regulatory Milestone Requirement.¹⁹ In addition, NYISO emphasizes that it does not understand Hecate to be requesting waiver of NYISO's Commercial Operation Date tariff rules.

17. ACE NY and NY-BEST support and recommend that the Commission grant Hecate's waiver request.²⁰ ACE NY and NY-BEST state that waiver will enable the Project to move through NYISO's interconnection process without incurring a damaging delay, and, in doing so, will help New York in its effort to achieve its nation-leading clean energy goals in a timely manner.²¹

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 (2022), NYISO's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

19. We grant Hecate's request for waiver of section 25.6.2.3.2 and section 26.6.2.3.3 of Attachment S to the NYISO OATT to allow Hecate to meet the Regulatory Milestone Requirement by August 8, 2024. 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,

¹⁸ *Id.* at 5-6.

¹⁹ *Id.* at 6.

²⁰ ACE NY Comments at 1-3; NY-BEST Comments at 1-3.

²¹ ACE NY Comments at 1-3; NY-BEST Comments at 2-3.

such as harming third parties.²² As discussed below, we find that the circumstances of Hecate's waiver request satisfy these criteria.²³

20. First, we find that Hecate has acted in good faith. Hecate has made reasonable efforts to meet the Regulatory Milestone Requirement, including participating in the NYISO interconnection study process over several years, incurring significant development costs, posting security associated with its interconnection request, and working to finalize its Certificate of Public Convenience and Necessity application to submit to the New York Commission.²⁴ Second, we find that Hecate's waiver request is limited in scope because it is for a one-time waiver of section 25.6.2.3.2 and section 25.6.2.3.3 of Attachment S to the NYISO OATT to allow a one-year extension of the date by which Hecate must satisfy the Regulatory Milestone Requirement (i.e., until August 8, 2024). The waiver only applies to a single tariff deadline, and Hecate does not seek to waive requirements associated with any other steps of the NYISO interconnection process and acknowledges that it must continue to adhere to reporting requirements in the NYISO OATT. Third, we find that the waiver request addresses a concrete problem. Absent waiver, Hecate's interconnection request is likely to be deemed withdrawn²⁵ and its interconnection queue position lost,²⁶ which Hecate claims will force it to abandon the Project, harming reliability and timely achievement of New York State's energy goals.²⁷ Finally, we find that the requested waiver will not have undesirable consequences, such as harming third parties, because it requires Hecate to meet the Regulatory Milestone Requirement no later than August 8, 2024, thus maintaining the status quo in the NYISO interconnection queue. Hecate asserts, and no party disputes, that no other entities will be negatively affected by both the milestone extension and Hecate's continued participation in the interconnection process.

The Commission orders:

²² See, e.g., *Citizens Sunrise Transmission LLC*, 171 FERC ¶ 61,106, at P 10 (2020); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

²³ As NYISO recognizes, waiver of tariff requirements should not be construed as having any impact on the applicability of the same requirements to other projects. NYISO Comments at 5. The Commission considers requests for waiver of tariff requirements on a case-by-case, fact-specific basis.

²⁴ See Waiver Request at 4, 7-8, 13.

²⁵ See NYISO, NYISO Tariffs, NYISO OATT, § 25.6 (Attachment S - Cost Allocation Methodology For ERIS) (10.0.0), § 25.6.2.3.3.

²⁶ See NYISO, NYISO Tariffs, NYISO OATT, § 30.3 (Attachment X - Interconnection Requests) (16.0.0), § 30.3.6.

²⁷ Waiver Request at 2, 7-8, 15-16.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.