

187 FERC ¶ 61,141  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Hecate Grid Swiftsure, LLC

Docket No. ER24-1642-000

ORDER GRANTING WAIVER REQUEST

(Issued June 6, 2024)

1. On March 28, 2024, pursuant to Rules 207(a)(5) and 212 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> Hecate Grid Swiftsure, LLC (Hecate) submitted a request for waiver of section 30.4.4.5.1 of Attachment X to the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT). Hecate requests waiver to allow it to include a commercial operation date for its battery storage project of December 20, 2027, which is beyond the January 11, 2027 limit established by the OATT, in its Large Generator Interconnection Agreement (LGIA) with NYISO and Consolidated Edison Company of New York, Inc. (Con Edison). As discussed below, we grant Hecate’s waiver request.

**I. Background**

2. Section 30.4.4.5.1 of Attachment X to the OATT provides, in relevant part, that extensions of the proposed commercial operation date will not be material modifications if:

The proposed Commercial Operation Date is within four years from . . . the date the Developer and all other Developers remaining in the Class Year post security as part of a Class Year Interconnection Facilities Study (i.e., completion of the Class Year).<sup>2</sup>

3. Section 30.4.4.5.2 of Attachment X to the OATT provides that a “Developer may request an extension of its Commercial Operation Date beyond the limit specified in

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<sup>1</sup> 18 C.F.R. §§ 385.207(a)(5), 385.212 (2023).

<sup>2</sup> NYISO, NYISO Tariffs, NYISO OATT, § 30.4 (Attach. X - Queue Position) (7.0.0), § 30.4.4.5.1. Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the OATT.

Section 30.4.4.5.1.” Section 30.4.4.5.2 of Attachment X to the OATT further provides, in relevant part:

Developer must have an executed Interconnection Agreement for the project or have an unexecuted Interconnection Agreement jointly filed at FERC by the ISO and Connecting Transmission Owner; and . . . demonstrate (via an Officer certification) that it has made reasonable progress against milestones set forth in the Interconnection Agreement (e.g., completion of engineering design, major equipment orders, commencement and continuation of construction of the Large Facility and associated System Upgrade Facilities, as applicable). If Developer has requested an unexecuted Interconnection Agreement be filed with FERC, Developer must meet this requirement within 60 days of a FERC Order on the unexecuted Interconnection Agreement.<sup>3</sup>

4. Section 30.4.4.3 of Attachment X to the OATT provides that any request that does not meet the conditions in section 30.4.4.5.2 will be deemed material modification and may be either withdrawn or submitted in a new interconnection request.<sup>4</sup>

5. Hecate states that it is developing a standalone battery energy storage facility in Richmond County, New York (Project).<sup>5</sup> Hecate states that the Project will have a nameplate capacity of 650 MW and will interconnect with Con Edison’s Fresh Kills Substation. Hecate states that timely development, construction, and interconnection of the Project will provide reliability benefits to the New York City area and help facilitate achievement of New York State’s energy and climate requirements, including installation of 6,000 MWs of battery energy storage by 2030.<sup>6</sup>

6. Hecate states that it submitted its initial interconnection request for the Project to NYISO on May 9, 2019, and that the Project subsequently qualified for and entered the 2021 Class Year Study Process.<sup>7</sup> Hecate states that all developers in the 2021 Class Year

<sup>3</sup> *Id.* §§ 30.4.4.5.2, 30.4.4.5.2.1, 30.4.4.5.2.2.

<sup>4</sup> *Id.* § 30.4.4.3.

<sup>5</sup> Waiver Request at 4.

<sup>6</sup> *Id.* at 2 (citing 2019 N.Y. Laws ch. 106; Governor Kathy Hochul, *New York State of the State 2022* 146 (Jan. 2022), <https://www.governor.ny.gov/sites/default/files/2022-01/2022StateoftheStateBook.pdf>).

<sup>7</sup> *Id.* at 4, 7.

Study Process, including Hecate, either accepted their respective project cost allocations and posted security as required or withdrew their projects from the Class Year Study Process as of January 11, 2023. Hecate explains that NYISO then tendered a copy of the LGIA to Hecate on February 8, 2023, and that NYISO, Hecate, and Con Edison have been in negotiations regarding the LGIA since that time. Hecate also states that it filed a petition for a certificate of public convenience and necessity with the New York State Public Service Commission (New York Commission) on July 3, 2023, and expects the New York Commission to issue the certificate in July 2024.

7. Hecate explains that, during the LGIA negotiations with Con Edison and NYISO, the parties determined that Hecate's proposed commercial operation date of January 11, 2027 is not feasible due to a lack of outage availability, which is subject to NYISO and Con Edison's outage scheduling and reliability criteria.<sup>8</sup> Hecate states that it therefore requests a December 20, 2027 commercial operation date to align with NYISO and Con Edison's outage scheduling and reliability criteria, approximately 11 months past the four-year deadline established in the OATT.

8. Hecate asserts that it cannot avail itself of the remedies available under the OATT to extend the commercial operation date beyond the permitted four-year deadline.<sup>9</sup> Hecate explains that: (1) Hecate, NYISO, and Con Edison cannot execute the LGIA with a proposed January 11, 2027 commercial operation date because they know it is not feasible given Con Edison's outage availability; and (2) Hecate cannot file an unexecuted LGIA with the Commission because Hecate will not be able to certify that it has made reasonable progress against LGIA milestones within 60 days of the date of a Commission order given the inherent complexities of siting a 650 MW project in a dense urban environment. Therefore, Hecate explains that, absent waiver, it will be forced to withdraw its Project from the interconnection queue and consider restarting the interconnection process, which would delay the Project by multiple years and result in a material economic impact to the Project due to development and carrying costs—including nearly \$15 million in security submitted at the conclusion of the Class Year Study Process and more than one million dollars Hecate has spent developing the Project—thereby impacting long-term viability.

## **II. Waiver Request**

9. Hecate requests prospective waiver of section 30.4.4.5.1 of Attachment X to the OATT to: (1) allow an approximately 11-month extension (i.e., until December 20, 2027) of the requirement that a developer achieve commercial operation within four years of the date that the developers in its Class Year Study Process post security; and

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<sup>8</sup> *Id.* at 7-8.

<sup>9</sup> *Id.* at 8-9.

(2) provide Hecate the ability to extend its commercial operation date after the execution of its LGIA by demonstrating reasonable progress against the milestones in the LGIA in accordance with section 30.4.4.5.2 of Attachment X to the OATT.<sup>10</sup> Hecate asserts that a commercial operation date of December 20, 2027 will align with NYISO's and Con Edison's outage scheduling and reliability criteria.<sup>11</sup>

10. Hecate argues that its waiver request satisfies the Commission's criteria for granting waiver and is consistent with Commission precedent.<sup>12</sup> First, Hecate asserts that it has acted in good faith by making reasonable efforts to achieve a January 11, 2027 commercial operation date.<sup>13</sup> Hecate notes that its inability to meet the January 11, 2027 commercial operation date is not attributable to any delays or inactions on Hecate's part, but rather to bulk power system outage availability over which Hecate has no control. Further, Hecate states that it either timely met or received a waiver from the Commission for all other deadlines applicable to it under the OATT.<sup>14</sup> Hecate also adds that it entered into an Engineering and Procurement Agreement with Con Edison in early February 2024 to help facilitate Project advancement during the pendency of the LGIA negotiations. In addition, Hecate argues that it has shown good faith by posting \$14,937,000 in security with NYISO for system upgrades and pursuing required permits and approvals.

11. Second, Hecate argues that its requested relief is limited in scope because it is a one-time limited waiver of section 30.4.4.5.1 of Attachment X to reflect an accurate commercial operation date of December 20, 2027, in its LGIA—and that thereafter, Hecate would be able to avail itself of the extension mechanism under sections 30.4.4.5.2.1 and 30.4.4.5.2.2 of Attachment X.<sup>15</sup> Hecate states that it is not seeking to waive any other steps or financial requirements of the NYISO interconnection process.

12. Third, Hecate asserts that its requested relief will address a concrete problem.<sup>16</sup> Hecate contends that, absent waiver, it cannot execute an LGIA with NYISO and

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<sup>10</sup> *Id.* at 1, 9-10.

<sup>11</sup> *Id.* at 7.

<sup>12</sup> *Id.* at 10-11 (citing *Empire Offshore Wind LLC*, 177 FERC ¶ 61,215 (2021) (*Empire Wind*); *Homer Solar Energy Ctr., LLC*, 183 FERC ¶ 61,170 (2023)).

<sup>13</sup> *Id.* at 11-12.

<sup>14</sup> *Id.* at 11 (citing *Hecate Grid Swiftsure, LLC*, 184 FERC ¶ 61,085 (2023)).

<sup>15</sup> *Id.* at 12-13.

<sup>16</sup> *Id.* at 14.

Con Edison with either the unrealistic current commercial operation date or the OATT-non-conforming December 2027 commercial operation date. Hecate adds that, if it is unable to extend its commercial operation date and execute the LGIA, it will need to withdraw the Project from the NYISO interconnection process. Conversely, Hecate asserts that granting its waiver request would allow Hecate to reflect an accurate commercial operation date in its LGIA, execute the LGIA, and avoid withdrawal of the Project from the interconnection process.

13. Fourth, Hecate argues that its requested relief will not result in any undesirable consequences.<sup>17</sup> Hecate asserts that extending its commercial operation date would simply maintain the status quo and would not impact any other interconnecting projects nor shift costs to others. Hecate notes that it has already completed its interconnection studies and posted security for network upgrades. Conversely, Hecate argues that having to withdraw the Project from the interconnection queue if the requested waiver is not granted would significantly impact New York's ability to timely achieve its clean energy goals and undermine reliability in NYISO.

### **III. Notice and Responsive Pleadings**

14. Notice of Hecate's filing was published in the *Federal Register*, 89 Fed. Reg. 23,593 (Apr. 4, 2024), with interventions and protests due on or before April 18, 2024. NYISO filed a timely motion to intervene and comments. On May 24, 2024, NYISO filed supplemental comments.

15. NYISO notes that the Commission evaluates a waiver request based on the specific facts and circumstances of the request, and that the Commission has recognized that granting waiver is not precedent for granting future waiver requests and should not be construed as having any impact on the applicability of the same requirements to other projects.<sup>18</sup> NYISO states that, under the circumstances described by Hecate, NYISO does not oppose Hecate's waiver request. NYISO also states that it is not aware of any adverse impact the requested waiver could have on other projects in its interconnection queue.

16. In its supplemental comments, NYISO notes that, on May 1, 2024, it submitted its compliance filing in response to Order Nos. 2023 and 2023-A,<sup>19</sup> including revisions to the commercial operation date extension rules at issue in this proceeding. NYISO

<sup>17</sup> *Id.* at 14-16.

<sup>18</sup> NYISO Comments at 4-5.

<sup>19</sup> *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023, 184 FERC ¶ 61,054 (2023), *order on reh'g*, Order No. 2023-A, 186 FERC ¶ 61,199 (2024).

explains that under its revised rules, an interconnection customer may extend the commercial operation date of its project beyond the four-year period permitted as a matter of right, even in certain instances where the project does not have an interconnection agreement. NYISO states that those proposed rules, set forth in section 40.6.3.5 of Attachment HH in NYISO's OATT, provide for an extension if the interconnection customer satisfies three required components: (1) the interconnection customer must satisfy one of several potential bases for an extension, which, as relevant here, include extending the commercial operation date to on or before May 2, 2028; (2) the interconnection customer must provide an updated milestone schedule agreed to by the Connecting Transmission Owner; and (3) the interconnection customer must submit a security payment to address any required updated cost estimate.<sup>20</sup>

17. NYISO states that, while its compliance filing is currently pending, NYISO requested an effective date of May 2, 2024, and informed the Commission that it intends to implement its proposed rules in the absence of Commission guidance otherwise. NYISO asserts that these new tariff requirements will replace the prior commercial operation date extension rules that are the subject of Hecate's waiver request and provide projects like Hecate a tariff-prescribed process for seeking an extension without a waiver. NYISO contends that, if the Commission grants Hecate's waiver request, NYISO understands that Hecate will not be subject to the new tariff requirements set forth in its compliance filing but that further extensions of the commercial operation date would be subject to the new rules, absent a Commission order rejecting the proposed rules in the compliance filing.<sup>21</sup>

#### **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 (2023), 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 30.4.4.5.1 of Attachment X to the OATT to allow Hecate to include a commercial operation date for the Project in the LGIA of December 20, 2027.<sup>22</sup> The Commission has granted waiver of tariff provisions

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<sup>20</sup> NYISO Supplemental Comments at 2-3 (citing NYISO, Filing, Docket No. ER24-1915-000 (filed May 1, 2024)).

<sup>21</sup> *Id.* at 3.

<sup>22</sup> As for Hecate's request for the ability extend its commercial operation date after

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.<sup>23</sup> We find that the circumstances of Hecate's waiver request satisfy these criteria.<sup>24</sup>

20. First, we find that Hecate has acted in good faith. Hecate has made reasonable efforts to meet the existing January 11, 2027 commercial operation date deadline, including pursuing necessary permits and approvals over several years, posting \$14,937,000 in security for network upgrades, and entering into an Engineering and Procurement Agreement with Con Edison to help facilitate Project advancement during the pendency of the LGIA negotiations.<sup>25</sup>

21. Second, we find that the requested waiver is limited in scope because it is a one-time waiver of section 30.4.4.5.1 of Attachment X to the OATT to allow a one-time extension of the commercial operation date in the draft LGIA for the Project to December 20, 2027. The waiver only applies to a single tariff requirement, does not relieve Hecate of any financial or other requirements, and does not apply to any other facility. As Hecate acknowledges, any further extensions of time that Hecate may request would be governed by the OATT.<sup>26</sup>

22. Third, we find that waiver addresses a concrete problem because it will allow Hecate to include a commercial operation date for the Project that aligns with NYISO and Con Edison's outage scheduling and reliability criteria and, therefore, avoid the need to withdraw the Project from the NYISO interconnection process.<sup>27</sup>

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the execution of its LGIA by demonstrating reasonable progress against the milestones in the LGIA in accordance with section 30.4.4.5.2 of Attachment X to the OATT, we clarify that any further extensions of time that Hecate may request would be governed by the OATT. *See Empire Wind*, 177 FERC ¶ 61,215 at P 17.

<sup>23</sup> 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).

<sup>24</sup> NYISO's compliance filing in response to Order Nos. 2023 and 2023-A is still pending. NYISO, Filing, Docket No. ER24-1915-000 (filed May 1, 2024). Therefore, we decline to address NYISO's statements regarding the application of those proposed revisions to further extensions of the Project's commercial operation date.

<sup>25</sup> Waiver Request at 11-12.

<sup>26</sup> *Id.* at 13.

<sup>27</sup> *Id.* at 14.

23. Fourth, we find that the waiver request will not have undesirable consequences, such as harming third parties, because it requires Hecate's Project to achieve commercial operation by December 20, 2027, and maintains the status quo in the interconnection queue.<sup>28</sup> Hecate asserts, and no party disputes, that the requested waiver would neither impact any other interconnecting projects nor shift costs to others. Further, NYISO states that it is not aware of any adverse impact the requested waiver could have on other projects in its interconnection queue.<sup>29</sup>

The Commission orders:

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

By the Commission.

( S E A L )

Debbie-Anne A. Reese,  
Acting Secretary.

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<sup>28</sup> *Id.* at 15; NYISO Comments at 5.

<sup>29</sup> NYISO Comments at 5.