

187 FERC ¶ 61,190  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Canisteo Wind Energy LLC

Docket No. ER24-1881-000

ORDER GRANTING WAIVER REQUEST

(Issued June 27, 2024)

1. On April 26, 2024, pursuant to Rules 207(a)(5) and 212 of the Commission's Rules of Practice and Procedure,<sup>1</sup> Canisteo Wind Energy LLC (Canisteo) submitted a request for waiver of section 30.4.4.5.1 of Attachment X to the New York Independent System Operator, Inc.'s (NYISO) Open Access Transmission Tariff (OATT). Section 30.4.4.5.1 of NYISO's OATT provides that extensions of the commercial operation date for interconnection requests will not be considered material modifications if the proposed commercial operation date is within four years of the date on which NYISO completed the Class Year Facilities Study. To ensure that its interconnection agreement accurately reflects the commercial operation date of its 290 MW wind-powered generating facility (Project), Canisteo requests waiver to permit it to include a commercial operation date in its draft interconnection agreement with NYISO and the New York State Electric & Gas Company (NYSEG) that is beyond the timeframe provided in section 30.4.4.5.1. As discussed below, we grant Canisteo's waiver request.

**I. Background**

2. Section 30.4.4.5.1 of Attachment X to NYISO's OATT provides, in relevant part:

Extensions of the proposed Commercial Operation Date<sup>2</sup> will not be Material Modifications if . . . [t]he proposed Commercial Operation Date is within four (4) 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>3</sup>

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

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

3. Section 30.4.4.5.2 of Attachment X to NYISO's OATT provides that a "Developer may request an extension of its Commercial Operation Date beyond the limit specified in Section 30.4.4.5.1."<sup>4</sup> Section 30.4.4.5.2 of Attachment X to NYISO's OATT further provides that such a request will not be a material modification under the condition that, 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 sixty (60) days of a FERC Order on the unexecuted Interconnection Agreement.<sup>5</sup>

4. Canisteo states that the Project will be located in Steuben County, New York and will interconnect to the Bennett Substation on the transmission system owned by NYSEG. Canisteo states that the New York State Energy Research and Development Authority (NYSERDA) issued a request for proposals that would achieve the goal of the New York State Public Service Commission's (New York Commission) new Tier 4 of renewable energy credits established as part of the New York Clean Energy Standard under New York's Climate Leadership and Community Protection Act. Canisteo asserts that its Project is included in Clean Path New York LLC's (Clean Path) portfolio that was submitted by Clean Path with the New York Power Authority in response to and selected in NYSERDA's solicitation.<sup>6</sup>

5. Canisteo states that it was a part of the 2019 Class Year study that was completed in February 2021, and that it has accepted its cost allocation and posted security to

<sup>3</sup> NYISO, NYISO Tariffs, NYISO OATT, attach. X, § 30.4 (Queue Position) (7.0.0), §§ 30.4.4.5, 30.4.4.5.1, 30.4.4.5.1.1.

<sup>4</sup> *Id.* § 30.4.4.5.2.

<sup>5</sup> *Id.* §§ 30.4.4.5.2, 30.4.4.5.2.1, 30.4.4.5.2.2.

<sup>6</sup> Waiver Request at 2-3. Canisteo asserts that Clean Path has entered into a NYSERDA contract, which was approved by the New York Commission in April 2022. *Id.* at 3.

NYSEG for the identified facilities. Canisteo states that because the Class Year study process was not completed until 2021, Canisteo's originally proposed December 2019 commercial operation date, as stated in its interconnection request, was infeasible by that date. Canisteo explains that, although NYISO tendered the Large Generator Interconnection Agreement (LGIA) before the end of the Class Year study,<sup>7</sup> LGIA negotiations were extended for several reasons, including: (1) time Canisteo needed to obtain its state siting permit and apply for rehearing of that ruling; (2) extended negotiations among Canisteo, NYSEG, NYISO, and the owner of another generation project connecting to the Bennett Substation with respect to an agreement that would govern the scope of work, costs, and other issues related to Canisteo and the owner of the other generation project; and (3) additional studies. Canisteo adds that, during this negotiation, it continued to actively develop the Project, including by executing contracts, completing necessary studies, issuing requests for proposals for contractors, and conducting work related to New York State siting certificate compliance.<sup>8</sup>

6. Canisteo states that, under section 30.4.4.5.1 of Attachment X to NYISO's OATT, unless an exception applies, a commercial operation date extension is deemed a material modification if the date is more than four years beyond the date of completion of the applicable Class Year. Canisteo further states that section 30.4.4.5.2 of Attachment X permits a developer with an executed LGIA to request that the NYISO extend a commercial operation date beyond four years, but this procedure is not available to Canisteo because it has not executed an LGIA or requested that an LGIA be filed unexecuted. Therefore, Canisteo asserts that, because the 2019 Class Year was completed on February 8, 2021, the latest commercial operation date available to it is February 8, 2025.<sup>9</sup>

7. Canisteo states that its Project is in jeopardy because it is not possible for Canisteo to achieve commercial operation by this date.<sup>10</sup> Canisteo explains that NYISO tendered a draft LGIA under NYISO's currently effective OATT in February 2024 and the parties are working to finalize it, but given the time required to complete the requirements under its permits and the long lead time to procure equipment and move forward on construction, Canisteo contends that a realistic commercial operation date for the Project is December 17, 2027.<sup>11</sup>

<sup>7</sup> Canisteo asserts that it has been negotiating the LGIA with NYISO and NYSEG since July 22, 2019. *Id.* at 1.

<sup>8</sup> *Id.* at 3-5.

<sup>9</sup> *Id.* at 5-6.

<sup>10</sup> *Id.* at 1-2.

<sup>11</sup> *Id.* at 5.

## II. Waiver Request

8. Canisteo states that it requests a prospective waiver of section 30.4.4.5.1 of Attachment X to NYISO's OATT so that the parties can execute an LGIA that accurately reflects a feasible estimated commercial operation date for the Project of December 17, 2027.<sup>12</sup>

9. Canisteo asserts that, absent waiver permitting NYISO to incorporate the December 17, 2027 commercial operation date in Canisteo's draft LGIA, Canisteo's interconnection request will be withdrawn from NYISO's queue and Canisteo will be required to submit a new request and start the interconnection process over, adding significant delays to the Project's development and construction schedule. Canisteo contends that any new interconnection request would be processed under new rules established in NYISO's Order No. 2023<sup>13</sup> compliance filing and will not be studied until NYISO completes the 2023 Class Year process and completes its transition to the new rules. Canisteo states that, under the new process, studies would not commence until late 2024 at the earliest and are expected to take approximately 1.6 years. Canisteo states that, because it cannot move forward on financing and construction until it secures an LGIA, if it is required to submit a new interconnection request, then a 2027 commercial operation date is unlikely to be feasible.<sup>14</sup> Canisteo contends that its waiver request is consistent with waivers the Commission has previously granted.<sup>15</sup>

10. Canisteo asserts that its waiver request satisfies the Commission's criteria for granting waiver.<sup>16</sup> First, Canisteo contends that it has acted in good faith in its development of the Project and LGIA negotiation efforts. Canisteo states that it has been actively developing the Project, and that it was not until February 2024 that NYISO completed the materiality study that will allow Canisteo to install the more advanced, efficient turbines that are now available.<sup>17</sup>

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<sup>12</sup> *Id.* at 7.

<sup>13</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).

<sup>14</sup> Waiver Request at 6.

<sup>15</sup> *Id.* at 7 (citing *Homer Solar Energy Ctr., LLC*, 183 FERC ¶ 61,170, at P 29 (2023); *Empire Offshore Wind LLC*, 177 FERC ¶ 61,215, at P 18 (2021)).

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

<sup>17</sup> *Id.* at 7-8.

11. Second, Canisteo asserts 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 NYISO's OATT to allow the draft LGIA for the Project to provide for an estimated commercial operation date of December 17, 2027. Canisteo argues that its requested waiver is limited because it only applies to a single tariff requirement, does not relieve Canisteo of any other NYISO OATT requirements, and does not affect any other facility.<sup>18</sup>

12. Third, Canisteo argues that the requested waiver is required to remedy a concrete problem. Canisteo states that, absent waiver, a draft LGIA cannot be completed and the Project would lose its current position in the NYISO interconnection queue because the latest commercial operation date for the Project permitted by section 30.4.4.5.1 of Attachment X to NYISO's OATT is inconsistent with the realities of the Project construction timeline. Canisteo contends that granting its requested waiver remedies a concrete problem because it will allow Canisteo to execute an LGIA with an accurate estimated commercial operation date and avoid withdrawal of the Project's interconnection request and subsequent delays that would result.<sup>19</sup> Canisteo asserts that its proposed December 17, 2027 commercial operation date is more realistic because of the time required to complete the requirements under its permits and the long lead time to procure equipment and move forward with construction.<sup>20</sup>

13. Fourth, Canisteo states that the waiver request will not harm third parties and asserts that granting the request will neither adversely affect NYISO nor cause any projects behind Canisteo in the queue to spend additional monies or be assigned additional upgrades. Canisteo states that studies for the Project have been completed and Canisteo has posted security for the upgrades identified by the studies. Canisteo also states that the waiver will not excuse Canisteo from any applicable NYISO OATT requirements.<sup>21</sup>

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

14. Notice of Canisteo's filing was published in the *Federal Register*, 89 Fed. Reg. 38,121 (May 7, 2024), with interventions and protests due on or before May 17, 2024. NYISO filed a timely motion to intervene and comments. On May 21, 2024, Canisteo filed an answer to NYISO's comments.

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<sup>18</sup> *Id.* at 8.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 5.

<sup>21</sup> *Id.* at 9.

**A. NYISO's Comments**

15. NYISO states that it submits comments for the Commission to consider in its determination regarding Canisteo's requested relief. NYISO highlights a recent proposed change in its rules for extending a project's commercial operation date that would replace the tariff requirements that are the subject of Canisteo's waiver request and establish a process by which Canisteo could extend the commercial operation date of the Project under NYISO's OATT.<sup>22</sup> NYISO explains that, at the time Canisteo submitted its waiver request, the relevant requirements for extending the commercial operation date were set out in section 30.4.4.5 in Attachment X to NYISO's OATT and did not allow Canisteo to extend the commercial operation date as requested absent waiver.<sup>23</sup> However, NYISO notes that, on May 1, 2024, it submitted its compliance filing in response to Order Nos. 2023 and 2023-A. NYISO 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>24</sup>

16. 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 Canisteo's waiver request and provide projects like Canisteo a tariff-prescribed process for seeking an extension without a waiver. NYISO contends that, if the Commission grants Canisteo's waiver request, NYISO understands that Canisteo will not be subject to the new tariff requirements set forth in its compliance filing. NYISO also contends, however, that further extensions of the commercial operation date would be subject to the new tariff requirements set forth in its compliance filing, absent a Commission order rejecting the proposed rules in the compliance filing.<sup>25</sup>

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<sup>22</sup> NYISO Comments at 1.

<sup>23</sup> *Id.* at 2-3.

<sup>24</sup> *Id.* at 3-4.

**B. Canisteo's Answer**

17. Canisteo reiterates that it is not possible for the Project to achieve commercial operation by February 8, 2025.<sup>26</sup> Canisteo acknowledges that NYISO's proposed interconnection rule changes could allow Canisteo to obtain an extension comparable to the one requested in its waiver request, but notes that the Commission has not yet acted on NYISO's Order Nos. 2023 and 2023-A compliance filing. Canisteo states that its waiver request is necessary because, until the Commission acts on NYISO's compliance filing, Canisteo faces the risk that the Commission does not accept NYISO's extension proposal or its requested effective date.<sup>27</sup> Canisteo states that granting waiver will allow it to execute its LGIA with certainty about milestone dates that will support development of the Project and that any further date extensions that Canisteo might request after it executes its LGIA will be subject to the tariff in effect at that time.<sup>28</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 motions to intervene serves to make it 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) (2023), prohibits an answer to a protest and/or an answer unless otherwise ordered by the decisional authority. We accept Canisteo's answer because it has provided information that assisted us in our decision-making process.

**B. Substantive Matters**

20. We grant Canisteo's request for waiver of section 30.4.4.5.1 of Attachment X to NYISO's OATT to permit Canisteo to include a commercial operation date in the LGIA of December 17, 2027. 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.<sup>29</sup> We find that the circumstances of Canisteo's waiver request satisfy these criteria.

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<sup>25</sup> *Id.* at 4-5.

<sup>26</sup> Canisteo Answer at 1.

<sup>27</sup> *Id.* at 2.

<sup>28</sup> *Id.* at 3.

21. First, we find that Canisteo has acted in good faith. Canisteo has made reasonable efforts to meet a February 8, 2025 commercial operation date, including posting security to NYSEG for identified facilities, executing contracts for equipment, completing additional necessary studies, soliciting contractors, and pursuing necessary state permits and approvals.

22. Second, we find that the waiver is limited in scope because it is a one-time waiver of section 30.4.4.5.1 of Attachment X to NYISO's OATT to allow a modification of the commercial operation date in the draft LGIA for the Project to December 17, 2027. The waiver applies to a single tariff requirement, does not relieve Canisteo of any financial or other requirements, and does not apply to any other facility. We note that, upon execution of an LGIA, any further extensions of time that Canisteo may request would be governed by section 30.4.4.5.2 of Attachment X to NYISO's OATT.<sup>30</sup>

23. Third, we find that the waiver addresses a concrete problem. Specifically, the requested waiver will allow Canisteo to execute the LGIA with a revised commercial operation date of December 17, 2027, providing Canisteo the time necessary to complete the requirements under its permits, procure equipment, and move forward with construction, thereby avoiding withdrawal of the interconnection request and the subsequent delay of the Project.

24. Fourth, we find that the requested waiver will not have undesirable consequences, such as harming third parties, because the waiver request does not affect any other facility seeking interconnection service under NYISO's OATT. Furthermore, we note that NYISO does not oppose the waiver request. Canisteo has already posted security for identified upgrades and, as Canisteo states, the waiver will not excuse it from any applicable tariff requirements.

The Commission orders:

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

By the Commission. Commissioner Rosner is not participating.

( S E A L )

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<sup>29</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>30</sup> NYISO, NYISO Tariffs, NYISO OATT, attach. X, § 30.4 (Queue Position) (7.0.0), § 30.4.4.5.2. 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.



Debbie-Anne A. Reese,  
Acting Secretary.