

185 FERC ¶ 61,081
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Oxbow Hill Solar, LLC

Docket No. ER23-2559-000

ORDER GRANTING WAIVER REQUEST

(Issued October 31, 2023)

1. On August 3, 2023, pursuant to Rules 207(a)(5) and 212 of the Commission's Rules of Practice and Procedure,¹ Oxbow Hill Solar, LLC (Oxbow) submitted a request for waiver of section 25.6.2.3.2 of Attachment S and section 30.11.1 of Attachment X to the New York Independent System Operator, Inc.'s (NYISO) Open Access Transmission Tariff (OATT), which require Oxbow to satisfy the applicable regulatory milestone (Regulatory Milestone Requirement). Oxbow seeks waiver of these provisions to allow a one-year extension to complete the Regulatory Milestone Requirement. As discussed below, we grant Oxbow's waiver request, allowing Oxbow to and including August 9, 2024, to complete the Regulatory Milestone Requirement.²

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

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

² Oxbow states that it requests one additional year to satisfy the Regulatory Milestone Requirement deadline by August 11, 2024. Waiver Request at 16. However, as discussed below, we calculate a one-year extension of the Regulatory Milestone Requirement deadline to extend to and include August 9, 2024. *See infra* PP 2, 5 & n.7.

the project pursuant to Section 30.11.1 of Attachment X to the ISO OATT.³

3. Section 30.11.1 of Attachment X to the NYISO OATT provides, in relevant part:

Within six (6) months after the date the ISO tenders the draft LGIA, the Developer must have satisfied the applicable regulatory milestone described in Section 25.6.2.3.1 of Attachment S. If the Developer has not done so, the ISO will withdraw the Interconnection Request pursuant to Sections [sic] 25.6.2.3 of Attachment S to the OATT and pursuant to Section 30.3.6 of this Attachment X.⁴

4. Oxbow states that it is developing a 140 MW utility-scale solar project in Fenner, New York (Project). Oxbow states that the Project will interconnect at the 115 kV Fenner substation and is expected to be commercially operable by year end 2026.⁵

5. Oxbow states that it filed a request for interconnection service with NYISO on March 22, 2019, and was assigned Queue No. 805.⁶ In addition, Oxbow states that in the Project's system reliability impact study, NYISO confirmed that no System Upgrade Facilities would be required to interconnect to the New York system. Oxbow explains that it accordingly participated in the NYISO Class Year 2021 study process and posted the required security upon completion. Oxbow states that NYISO tendered a draft LGIA to Oxbow on February 9, 2023, and that, therefore, it must satisfy the applicable regulatory milestone by August 11, 2023.⁷ Oxbow states that the applicable regulatory milestone for the Project requires securing a determination that its application under New York's state permitting process for siting and constructing large-scale renewable energy projects

³ NYISO, NYISO Tariffs, NYISO OATT, § 25 (Attach. S), § 25.6 (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.

⁴ NYISO, NYISO Tariffs, NYISO OATT, § 30 (Attach. X), § 30.11 (Standard Large Generator Interconnection Agreement) (6.0.0), § 30.11.1.

⁵ Waiver Request at 1, 6.

⁶ *Id.* at 6-7, 9-10.

⁷ *Id.* at 10. Contrary to Oxbow's assertion, we calculate the Regulatory Milestone Requirement deadline for the Project to be August 9, 2023 (i.e., six months after NYISO tendered the LGIA to Oxbow on February 9, 2023).

(Section 94-c Process) is deemed complete.⁸ Otherwise, Oxbow contends that its interconnection request will be withdrawn, and its queue position lost.

6. Oxbow states that it started the Section 94-c Process application for the Project in parallel with its efforts to complete NYISO's interconnection process.⁹ In addition, Oxbow states that it also simultaneously submitted Project proposals in response to the New York State Energy Research and Development Authority (NYSERDA) 2021 Renewable Energy Credit (REC) solicitation. Oxbow states that while it was preparing its Section 94-c Process application, NYSERDA, after incorporating more stringent energy deliverability requirements into its REC solicitation process, notified Oxbow that the Project faced energy deliverability limitations that needed to be redressed for it to receive a REC award. Oxbow contends that securing a REC award is currently a precondition to large scale renewable energy project development in New York, and that a transmission solution could impact some aspects of the Project's structure. Oxbow states, therefore, that it could not move forward on the Project's Section 94-c Process application without first rectifying the energy deliverability concerns. Oxbow states that it timely retained consultants to identify transmission alternatives and submitted Project proposals in response to NYSERDA's 2022 REC solicitation. Oxbow explains that ultimately, National Grid confirmed that independently-proposed transmission upgrades would redress the Project's energy deliverability limitations. Oxbow states that it informed NYSERDA of this confirmation in June 2023.

7. Oxbow explains that its efforts to redress NYSERDA's concerns delayed preparation of its Section 94-c Process application, which it now expects to submit by September 30, 2023, and to be subject to at least a 60-day review period.¹⁰ Oxbow therefore states that it cannot meet the Regulatory Milestone Requirement deadline.

II. Waiver Request

8. Oxbow requests waiver of the Regulatory Milestone Requirement set forth in section 25.6.2.3.2 of Attachment S and section 30.11.1 of Attachment X to the NYISO OATT to allow

⁸ *Id.* (citing NYISO, NYISO Tariffs, NYISO OATT, § 25 (Attach. S), §25.6 (Cost Allocation Methodology For ERIS) (10.0.0), § 25.6.2.3.1.1.8).

⁹ *Id.* at 5, 7-9.

¹⁰ *Id.* at 9-10.

Oxbow additional time to complete the Regulatory Milestone Requirement.¹¹ Oxbow argues that its waiver request satisfies the Commission's criteria for granting waiver.

9. First, Oxbow argues that it has acted in good faith in working diligently through the project development process, including NYISO's interconnection process, the Section 94-c Process, and NYSERDA's REC solicitation process.¹² Oxbow states that NYSERDA made enhancements to its REC solicitation process energy deliverability requirements after Oxbow had initiated NYISO's interconnection process and Section 94-c Process for the Project, which substantially delayed completion of the Regulatory Milestone Requirement. Oxbow states it dedicated significant resources to resolve the energy deliverability limitations so that the Project could proceed.

10. Second, Oxbow asserts that its requested relief is limited in scope because it applies solely to the Regulatory Milestone Requirement as it applies to the Project. Oxbow states that it seeks one additional year to satisfy the Regulatory Milestone Requirement due to circumstances beyond its control, and waiver would incorporate a deadline for Oxbow to satisfy the Regulatory Milestone Requirement.¹³

11. Third, Oxbow argues that its requested relief addresses a concrete problem.¹⁴ Oxbow states that, absent waiver, its interconnection request will be withdrawn and its queue position lost. Oxbow explains it would have to submit a new interconnection request and restart the interconnection process and Section 94-c Process, which could delay the Project's development by several years.

12. Fourth, Oxbow asserts that its requested relief will not create undesirable consequences, such as harm to third parties.¹⁵ Oxbow argues that granting its requested extension to meet the Regulatory Milestone Requirement will not impact NYISO, other market participants, nor New York consumers. Oxbow states that the requested relief will not harm, and, instead will materially benefit, New Yorkers.

¹¹ *Id.* at 10-12.

¹² *Id.* at 12-13.

¹³ *Id.* at 16.

¹⁴ *Id.* at 10, 13-14.

¹⁵ *Id.* at 15-16.

13. Oxbow requests Commission action on the waiver request by October 30, 2023, to provide commercial certainty to Oxbow.¹⁶ Oxbow commits to providing NYISO with quarterly status updates concerning its progress in achieving the Regulatory Milestone Requirement, as required under NYISO procedures.¹⁷

III. Notice and Responsive Pleadings

14. Notice of Oxbow's filing was published in the *Federal Register*, 88 Fed. Reg. 53,872 (Aug. 9, 2023), with interventions and protests due on or before August 24, 2023. NYISO filed a timely motion to intervene and comments.

15. NYISO states that it takes no position on the merits of Oxbow's waiver request. NYISO, however, expresses its concern that a waiver in this proceeding may raise questions regarding the applicability of milestone requirements for other projects.¹⁸ NYISO requests that, if the Commission grants Oxbow's waiver request, 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.

16. NYISO does not dispute Oxbow's assertion that granting the waiver request will not harm other projects in NYISO's interconnection queue in the near term.¹⁹ 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. NYISO states that, based on Oxbow's representations concerning the status of its Section 94-c Process application, NYISO believes that Oxbow's waiver request proposes a reasonable deadline by which Oxbow must satisfy the Regulatory Milestone Requirement and that the waiver request should only be granted until that deadline. NYISO also supports Oxbow's proposal to include with its quarterly milestone status reports to NYISO updates concerning its progress in the Section 94-c Process.

¹⁶ *Id.* at 16.

¹⁷ *Id.* at 2, 10, 17 (citing NYISO, *Manual 26: Reliability Planning Process Manual* 47 (July 2022), https://www.nyiso.com/documents/20142/2924447/rpp_mnl.pdf/67e1c2ea-46bc-f094-0bc7-7a29f82771de).

¹⁸ NYISO Comments at 5.

¹⁹ *Id.* at 5-6.

17. NYISO also supports Oxbow's request for Commission action by October 30, 2023, to provide the parties with certainty concerning the application of the Regulatory Milestone Requirement.²⁰

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 Oxbow's request for waiver of section 25.6.2.3.2 of Attachment S and section 30.11.1 of Attachment X to the NYISO OATT to allow Oxbow to meet the Regulatory Milestone Requirement on or before August 9, 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, such as harming third parties.²¹ As discussed below, we find that the circumstances of Oxbow's waiver request satisfy these criteria.²² We also accept Oxbow's commitment, as supported by NYISO, to include with its quarterly milestone status reports to NYISO updates concerning its progress towards obtaining its regulatory milestone in the Section 94-c Process.²³

20. First, we find that Oxbow has acted in good faith. Oxbow made reasonable efforts to meet the Regulatory Milestone Requirement, including participating in NYISO's interconnection study process over several years, posting security associated with its interconnection request, and dedicating significant resources to resolve energy

²⁰ *Id.* at 6.

²¹ 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).

²² As NYISO recognizes, waiver of tariff requirements for one project 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.

²³ Waiver Request at 2; NYISO Comments at 6.

deliverability limitations.²⁴ Second, we find that the waiver request is limited in scope because it entails a one-time waiver of section 25.6.2.3.2 of Attachment S and section 30.11.1 of Attachment X to the NYISO OATT to allow a one-year extension of the date by which Oxbow must satisfy the Regulatory Milestone Requirement (i.e., to and including August 9, 2024). The waiver only applies to a single tariff deadline, does not relieve Oxbow of any financial or other requirements, and does not apply to any other facility. Third, we find that the waiver request addresses a concrete problem. Absent waiver, Oxbow would be required to withdraw its interconnection request²⁵ and lose its position in NYISO's interconnection queue,²⁶ which Oxbow explains would prevent it from completing the Project on its current schedule.²⁷ Finally, we find that the requested waiver will not have undesirable consequences, such as harming third parties, because it requires Oxbow to meet the Regulatory Milestone Requirement no later than August 9, 2024, thus maintaining the status quo in the NYISO interconnection queue (i.e., Oxbow's Project will continue to be modeled as in-service in the Class Year 2023 base case).²⁸ Oxbow asserts, and no party disputes, that no other entities will be negatively affected by this milestone extension.

²⁴ Waiver Request at 6, 8-9, 13.

²⁵ See NYISO, NYISO Tariffs, NYISO OATT, § 30 (Attach. X), § 30.11 (Standard Large Generator Interconnection Agreement) (6.0.0), § 30.11.1.

²⁶ See NYISO, NYISO OATT, § 30 (Attach. X), § 30.3 (Interconnection Requests) (16.0.0), § 30.3.6.

²⁷ Waiver Request at 14.

²⁸ We note NYISO states it can only agree that “no adverse harm will result *in the near term* to other projects” and agrees that as a deadline is necessary, the duration of the extension requested by Oxbow is reasonable. However, NYISO states that a longer delay in reaching the milestone increases the risk of adverse impacts to other projects. NYISO Comments at 5-6 (emphasis added) (footnotes omitted). (“The NYISO does not dispute Oxbow’s assertion that no adverse harm will result in the near term to other projects in the NYISO’s interconnection queue if the Commission grants the Waiver Request. However, the longer the delay in satisfying the regulatory milestone, the greater the potential for adverse impacts to other projects due to delays in the Project or its inability to proceed. The NYISO, therefore, agrees with Oxbow that there must still be a reasonable deadline by which the Project must satisfy a regulatory milestone to remain in the interconnection queue. Based on Oxbow’s representations concerning the status of its application process with New York’s Office of Renewable Energy Siting . . . the NYISO believes that [the date proposed by Oxbow] would be a reasonable deadline by which Oxbow must satisfy a regulatory milestone to avoid withdrawal of its Project from the interconnection queue.”).

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The Commission orders:

Oxbow'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.

Document Content(s)

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