

185 FERC ¶ 61,137
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Prattsburgh Wind, LLC

Docket No. ER24-179-000

ORDER GRANTING WAIVER REQUEST

(Issued November 21, 2023)

1. On October 20, 2023, as supplemented on November 2, 2023, pursuant to Rules 207(a)(5) and 212 of the Commission's Rules of Practice and Procedure,¹ Prattsburgh Wind, LLC (Prattsburgh) submitted a request for waiver of sections 25.6.2.3.2 and 25.6.2.3.3 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). These sections require Prattsburgh to satisfy the applicable regulatory milestone related to permitting by October 27, 2023 (Regulatory Milestone Requirement) in order to remain in the interconnection queue. Prattsburgh ultimately seeks waiver of these provisions to allow it to complete the Regulatory Milestone Requirement by October 30, 2023. As discussed below, we grant Prattsburgh'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.²

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

² NYISO, NYISO Tariffs, NYISO OATT, § 25 (Attachment 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.

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set forth in Section 25.6.2.3.2 of this Attachment S, the Interconnection Request of the project will be deemed to be withdrawn in accordance with Section 30.3.6 of the Large Facility Interconnection Procedures contained in Attachment X.³

4. 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

5. Prattsburgh states that it is developing a 147 MW wind-powered electric generating facility proposed to be located in the towns of Prattsburgh, Avoca, Cohocton, Howard, and Wheeler in Steuben County, New York (Project).⁵ Prattsburgh explains that the New York State Energy Research and Development Authority (NYSERDA) has awarded the Project a Renewable Energy Services Agreement as part of its 2019 solicitation. Pursuant to this agreement, Prattsburgh states that it posted \$8,543,369 of security, which will be subject to forfeiture if the Project is not constructed, and that the Project must achieve commercial operation by November 30, 2026.

6. Prattsburgh asserts that it submitted a request for interconnection service for the Project to NYISO on February 21, 2019.⁶ Prattsburgh states that the Project then completed the 2021 Class Year Facilities Study on January 11, 2023, and that Prattsburgh posted \$13,205,100 in firm security to cover the costs of its required System Upgrade Facilities. Prattsburgh states that NYISO tendered it a draft LGIA on April 27, 2023,

³ NYISO, NYISO Tariffs, NYISO OATT, § 25 (Attachment S), § 25.6 (Cost Allocation Methodology For ERIS) (10.0.0), § 25.6.2.3.3.

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

⁵ Waiver Request at 2-3.

⁶ *Id.* at 4-5.

thereby requiring Prattsburgh to satisfy the applicable Regulatory Milestone Requirement by October 27, 2023.

7. According to Prattsburgh, the applicable Regulatory Milestone Requirement 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 is complete.⁷ Prattsburgh states that, in August 2019, it began New York's state siting process under Article 10 of New York Public Service Law (Article 10), the then-applicable permitting regime in New York.⁸ Prattsburgh explains that, in April 2020, New York adopted the Accelerated Renewable Energy Growth and Community Benefit Act, which established an expedited process for reviewing renewable energy projects under a new section 94-c of the New York State Executive Law (Section 94-c Process). Prattsburgh states that it elected to pursue siting approval under the Section 94-c Process given the significant delays that other wind developers had faced under the Article 10 process. Prattsburgh asserts that, after completing the requisite consultation, analysis, and exhibit preparation required under the Section 94-c Process, it filed a Section 94-c Process application on September 26, 2022. Prattsburgh states that it responded to a request for supplemental information related to its application from the Section 94-c Process siting authority, the Office of Renewable Energy and Siting (ORES), on August 31, 2023. According to Prattsburgh, ORES has 60 days from this date to issue a completeness determination or request additional information—i.e., until October 31, 2023, which Prattsburgh observes is after its October 27, 2023 Regulatory Milestone Requirement deadline.

II. Waiver Request

8. Prattsburgh requests waiver of the Regulatory Milestone Requirement set forth in sections 25.6.2.3.2 and 25.6.2.3.3 of Attachment S and section 30.11.1 of Attachment X to the NYISO OATT in order to allow Prattsburgh to complete the Regulatory Milestone Requirement.⁹ Prattsburgh argues that its waiver request satisfies the Commission's criteria for granting waiver.

9. First, Prattsburgh argues that it has acted in good faith and will continue to work in good faith to advance the Project through the state siting process as rapidly as possible.¹⁰ Prattsburgh states that it has made reasonable efforts to satisfy the Regulatory Milestone

⁷ *Id.* (citing NYISO, NYISO Tariffs, NYISO OATT, § 25 (Attachment S), § 25.6 (Cost Allocation Methodology For ERIS) (10.0.0), § 25.6.2.3.1.1.8).

⁸ *Id.* at 5-7.

⁹ *Id.* at 7-8.

¹⁰ *Id.* at 9-10.

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 obtain a completeness determination from ORES. Prattsburgh asserts that the delays it has faced can be attributed to the unprecedented demands imposed on state siting authorities by New York's efforts to dramatically increase renewable generation in the state.

10. Second, Prattsburgh argues that its requested relief is limited in scope because it seeks a one-time waiver of the NYISO OATT's Regulatory Milestone Requirement provisions, and the waiver request does not affect any other provision of the OATT.¹¹ Moreover, Prattsburgh asserts that the relief requested is limited to Prattsburgh and does not involve any other project developers or market participants.

11. Third, Prattsburgh argues that waiver is required to remedy a concrete problem.¹² Prattsburgh states that, absent waiver, its inability to meet the Regulatory Milestone Requirement deadline will result in its Project being withdrawn from the interconnection queue. Prattsburgh contends that, given NYISO's proposed process to transition its Class Year process to a Cluster Study process in compliance with Order No. 2023,¹³ if the Project is withdrawn from the interconnection queue, Prattsburgh would not be able to enter the Cluster Study process until July 2024.¹⁴ Prattsburgh notes that, under that timeline, it would not be able to construct and operate the Project by its Renewable Energy Services Agreement deadline of November 30, 2026, and there would be no guarantee that the Project would be selected in a future NYSERDA Tier 1 solicitation. Prattsburgh avers that granting waiver will allow Prattsburgh to continue to develop the Project, and also protect Prattsburgh from the loss of \$13,205,100 in firm security posted in the NYISO interconnection process, over \$8 million in security posted with NYSERDA, and the substantial expenses incurred in developing the Project to date.¹⁵

12. Fourth, Prattsburgh asserts that its requested relief will not create any undesirable consequences, such as harm to third parties.¹⁶ Prattsburgh states that, because the Project

¹¹ *Id.* at 10-11.

¹² *Id.* at 5, 8-9.

¹³ *Id.* at 5; *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023, 184 FERC ¶ 61,054 (2023).

¹⁴ Waiver Request at 9.

¹⁵ *Id.* at 8-9.

¹⁶ *Id.* at 10.

has already completed all NYISO studies required for interconnection and has posted over \$13 million in firm security for its system upgrades, granting its waiver request will not adversely affect NYISO nor any other market participant.

III. Supplemental Filing

13. Prattsburgh states that ORES issued a Notice of Complete Application to Prattsburgh on October 30, 2023, thereby satisfying the regulatory milestone.¹⁷ Prattsburgh therefore requests waiver of the Regulatory Milestone Requirement set forth in sections 25.6.2.3.2 and 25.6.2.3.3 of Attachment S and section 30.11.1 of Attachment X to the NYISO OATT in order to allow Prattsburgh to complete the Regulatory Milestone Requirement by October 30, 2023.¹⁸

14. Prattsburgh requests that the Commission grant waiver expeditiously.¹⁹ Specifically, Prattsburgh asserts that it, New York State Electric and Gas Corporation, and NYISO cannot execute an LGIA for the Project, absent waiver. Prattsburgh contends that if an LGIA is not executed by November 30, 2023, Prattsburgh will be required to post additional security with NYSERDA in excess of \$2,000,000 pursuant to Project's Renewable Energy Services Agreement with NYSERDA.

IV. Notice and Responsive Pleadings

15. Notice of Prattsburgh's filing was published in the *Federal Register*, 88 Fed. Reg. 73,837 (Oct. 27, 2023), with interventions and protests due on or before November 13, 2023. NYISO filed a timely motion to intervene and comments.

16. NYISO states that it does not oppose Prattsburgh's waiver request to October 30, 2023 but NYISO takes no position on the merits of Prattsburgh's waiver request as to the delay.²⁰ NYISO notes that, as Prattsburgh has demonstrated to NYISO that it has satisfied the applicable milestone for its Project, the only remaining issue for the waiver request is Prattsburgh's three-day delay in satisfying the OATT requirement. NYISO states that, in this instance, it is not aware of any adverse harm that will result to other projects in its interconnection queue if the Commission grants Prattsburgh's waiver request. However, NYISO requests that, if the Commission grants Prattsburgh's waiver request, it confirm

¹⁷ Supplemental Filing at 2-3.

¹⁸ We note that in its original October 20, 2023 waiver request, Prattsburgh requested a waiver until May 27, 2024. Waiver Request at 1.

¹⁹ Supplemental Filing at 3.

²⁰ NYISO Comments at 1, 5.

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.

V. Discussion

A. Procedural Matters

17. 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

18. We grant Prattsburgh's request for waiver of sections 25.6.2.3.2 and 25.6.2.3.3 of Attachment S and section 30.11.1 of Attachment X to the NYISO OATT to allow Prattsburgh to meet the Regulatory Milestone Requirement by October 30, 2023. 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 Prattsburgh's waiver request satisfy these criteria.²²

19. First, we find that Prattsburgh has acted in good faith. Prattsburgh 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 Renewable Energy Services Agreement, and obtaining a completeness determination from ORES.²³ Second, we find that the waiver is limited in scope because it entails a one-time waiver of sections 25.6.2.3.2 and 25.6.2.3.3 of Attachment S and section 30.11.1 of Attachment X to the NYISO OATT to allow an extension of the date by which Prattsburgh must satisfy the Regulatory Milestone Requirement by three days to October 30, 2023. The waiver only applies to a single tariff deadline, does not relieve Prattsburgh of any financial or other requirements, and does not

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, the instant waiver 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 See Waiver Request at 9-10; Supplemental Filing at 2.

apply to any other facility. Third, we find that the waiver request addresses a concrete problem. Absent waiver, Prattsburgh's interconnection request will be withdrawn²⁴ and its queue position lost,²⁵ which Prattsburgh asserts would compromise its ability to begin operating the Project by November 2026 as required by its Renewable Energy Services Agreement with NYSERDA.²⁶ Finally, we find that the requested waiver will not have undesirable consequences, such as harming third parties, because it requires Prattsburgh to meet the Regulatory Milestone Requirement by October 30, 2023, which Prattsburgh has now done,²⁷ and Prattsburgh has already completed all NYISO studies required for interconnection and posted over \$13 million in firm security for its system upgrades. Prattsburgh asserts, and no party disputes, that no other entities will be negatively affected by this milestone extension.²⁸

The Commission orders:

Prattsburgh'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,
Deputy Secretary.

²⁴ See NYISO, NYISO Tariffs, NYISO OATT, § 25 (Attachment S), § 25.6 (Cost Allocation Methodology For ERIS) (10.0.0), § 25.6.2.3.3.

²⁵ See NYISO, NYISO Tariffs, NYISO OATT, § 30 (Attachment X), § 30.11 (Standard Large Generator Interconnection Agreement) (6.0.0), § 30.11.1; NYISO, NYISO Tariffs, NYISO OATT, § 30 (Attachment X), § 30.3 (Interconnection Requests) (16.0.0), § 30.3.6.

²⁶ See Waiver Request at 2.

²⁷ Supplemental Filing at 2; NYISO Comments at 5.

²⁸ NYISO states that "[i]n this instance, the NYISO is not aware of any adverse harm that will result to other projects in the NYISO's interconnection queue if the Commission grants the Waiver Request." NYISO Comments at 5.

Document Content(s)

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