

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

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

Hecate Energy Gedney Hill LLC
Sunset Hill Solar, LLC

Docket No. ER22-56-000

ORDER DISMISSING WAIVER REQUEST

(Issued November 29, 2023)

1. On October 6, 2021, pursuant to Rule 212 of the Commission's Rules of Practice and Procedure,¹ Hecate Energy Gedney Hill LLC and Sunset Hill Solar, LLC (collectively, the Hecate Companies) submitted a request for waiver of the then-effective procedural deadline in sections 23.4.5.7.13.1.1 and 23.4.5.7.13.4 of the New York Independent System Operator, Inc. (NYISO) Market Administration and Control Area Services Tariff (Services Tariff) to allow the Hecate Companies to apply for, and NYISO to evaluate, renewable exemption requests with respect to the Gedney Hill Solar Project and the Sunset Hill Solar Project (Projects). As discussed below, we dismiss as moot the Hecate Companies' waiver request.

I. Background

2. At the time that the Hecate Companies submitted the waiver request, section 23.4.5.7.2 of the Services Tariff provided that qualified Generators may seek an exemption from NYISO's buyer-side capacity market power mitigation (BSM) rules that require certain Installed Capacity Suppliers to offer their capacity at a price no lower than the applicable offer floor.² Section 23.4.5.7.13.1.1 of the Services Tariff provided that a generator may qualify for a renewable exemption if the generator is proposed in a Class Year Study and the generator is powered solely by an exempt renewable technology,

¹ 18 C.F.R. § 385.212 (2022).

² NYISO, NYISO Tariffs, NYISO MST, § 23 (Attach. H), § 23.4.5.7.2 (3.0.0), § 23.4.5.7.2(d). Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Services Tariff.

including intermittent power resources.³ Section 23.4.5.7.13.4 of the Services Tariff provided that a request for a renewable exemption must be received no later than the start of the relevant Class Year and required that NYISO determine whether the project is eligible for the exemption prior to the initial decision period for the Class Year.⁴ Class Year 2021, of which both Projects are members, began on March 11, 2021.⁵

3. On January 5, 2022, as amended on March 11, 2022, NYISO filed proposed revisions to the Services Tariff to, among other things, exclude resources that further the goals of New York State's Climate Leadership and Community Protection Act (CLCPA) from application of NYISO's BSM rules (BSM Excluded Facility Filing).⁶ NYISO's filing proposed to eliminate the renewable exemption and automatically exclude wind, solar, storage, hydroelectric, geothermal, fuel cells that do not use fossil fuel, and demand response resources from application of its BSM rules as "excluded facilities."⁷ NYISO stated that it intended to implement its changes to the BSM rules in time for Class Year 2021 projects to be evaluated with the excluded facility rule in effect.⁸ The Commission accepted NYISO's revisions on May 10, 2022, to be effective May 11, 2022.⁹

³ *Id.* § 23.4.5.7.13 (Eligibility) (6.0.0), § 23.4.5.7.13.1 (Eligibility), § 23.4.5.7.13.1.1. An exempt renewable technology is defined to include an intermittent power resource. *Id.* § 23.2 (Conduct Warning Mitigation) (45.0.0).

⁴ *Id.* § 23.4.5.7.13.4 (Timing of Requests for a Renewable Exemption, Required Submittals, and Determinations) (6.0.0).

⁵ See NYISO, *Notice of the Class Year 2021 Study Start Date* (Feb. 9, 2021), <https://www.nyiso.com/documents/20142/1396587/CY2021-Notice-of-Class-Year-Start-Date.pdf/bb6b9619-c8d5-fcb0-1697-1cc3f3adadca>.

⁶ *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,102, at P 1 (2022).

⁷ *Id.* PP 23-24. NYISO's proposal also allowed for the exclusion of additional types of new capacity resources that self-certified that certain conditions were met that demonstrated the resource furthered the goals of the CLCPA. *Id.* P 23.

⁸ *N.Y. Indep. Sys. Operator, Inc.*, BSM Excluded Facility Filing, Transmittal Letter at 43, Docket Nos. ER22-772-000 and ER22-772-001 (filed Jan. 5, 2022). NYISO further noted that initial determinations under the BSM rules for Class Year 2021 projects were likely to be made in July or August 2022. *Id.*

⁹ *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,102 at P 1.

II. Waiver Request

4. The Hecate Companies request a one-time, limited waiver of the then-effective procedural deadline set forth in sections 23.4.5.7.13.1.1 and 23.4.5.7.13.4 of the Services Tariff in order to allow the Hecate Companies to apply for, and for NYISO to evaluate, renewable exemption requests with respect to the Projects.¹⁰ The Hecate Companies state that the Projects are each intended to produce 20 MW of solar power using photovoltaic panels in the towns of New Baltimore and Coeymans, NY for a total of 40 MW.¹¹

5. The Hecate Companies argue that the waiver request satisfies the Commission's criteria for granting waiver.¹² First, they state that, due to an administrative oversight related to the COVID-19 pandemic, they inadvertently missed the deadline for submitting renewable exemption requests and submitted a waiver request as soon as they discovered the oversight in August 2021. Second, the Hecate Companies argue that the waiver request is limited in scope because they are requesting a one-time waiver of procedural deadlines and not of any of the substantive requirements.¹³ Third, the Hecate Companies state that the requested waiver is necessary to address the specific concrete problem of the Hecate Companies' inability to be evaluated for renewable exemptions and the associated risk of the Projects' capacity not clearing in NYISO's capacity auctions because they did not timely submit their exemption requests.¹⁴ Fourth, the Hecate Companies assert that granting the waiver will not result in any adverse consequences, such as harming third parties, and does not affect NYISO's substantive determination as to whether the Projects qualify for an exemption.¹⁵

III. Notice of Filing and Responsive Pleadings

6. Notice of the Hecate Companies' filing was published in the *Federal Register*, 86 Fed. Reg. 57,136 (Oct. 14, 2021), with interventions and protests due on or before October 27, 2021. NYISO filed a timely motion to intervene and comments.

¹⁰ Waiver Request at 1, 4. The waiver request was submitted on October 6, 2021, before the Commission accepted NYISO's BSM Excluded Facility Filing.

¹¹ *Id.* at 2.

¹² *Id.* at 4.

¹³ *Id.* at 5.

¹⁴ *Id.* at 5-6.

¹⁵ *Id.* at 6.

7. NYISO states that it does not oppose the “untimely” request¹⁶ for a one-time waiver and notes that Commission action to grant the request prior to the end of January 2022 should not disrupt the completion of the 2021 Class Year Study and the NYISO’s BSM determinations, which include the calculation of the renewable exemption limit.¹⁷

IV. Discussion

A. Procedural Matters

8. 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.

¹⁶ NYISO Comments at 2.

¹⁷ *Id.* (citing NYISO, NYISO Tariffs, NYISO MST, § 23.4.5.7.13.5 (6.0.0)). However, NYISO noted that such procedural deadlines should not be lightly altered:

Because the BSM Rules and Class Year Study process are so closely integrated, extending a deadline generally has the potential to cause delays and disruption to both. As such, the NYISO does provide a reminder to projects that may enter an upcoming Class Year Study that the deadline to request such explicit exemptions is the start of the Class Year. Thus, these procedural deadlines should not be altered lightly. In this instance, the NYISO would not expect the granting of a waiver of the procedural deadline to disrupt the Class Year 2021 Study process, the calculation of the Renewable Exemption Limit, or the timely award of Renewable Exemptions if the Commission grants the requested waiver prior to the end of January 2022. Based upon the facts known to the NYISO at this time, the low potential for adverse market impacts, and the Commission’s guidance in earlier waiver orders, the NYISO does not oppose the request made by the Hecate Companies. The NYISO defers to the Commission on the question of whether the Hecate Companies have met their burden of proof under the four-part criteria.

Id. at 3.

B. Substantive Matters

9. We dismiss as moot the Hecate Companies' request for waiver of sections 23.4.5.7.13.1.1 and 23.4.5.7.13.4 of the Services Tariff. On May 10, 2022, the Commission accepted NYISO's proposed tariff revisions in the BSM Excluded Facility Filing that eliminated the renewables exemption process at issue and adopted a new process that excludes solar projects, such as the Projects at issue here, from application of NYISO's BSM rules.¹⁸ In its filing in that proceeding, NYISO stated that "all resources in the ongoing Class Year 2021 interconnection study that are currently subject to review under the BSM Rules would be 'Excluded Facilities'" under its proposal.¹⁹ We find that these circumstances render the Hecate Companies' requested waiver moot, and we therefore dismiss the waiver request.

The Commission orders:

The Hecate Companies' waiver request is hereby dismissed as moot, as discussed in the body of this order.

By the Commission. Commissioner Danly is not participating. (S E
A L)

Kimberly D. Bose,
Secretary.

¹⁸ NYISO, NYISO Tariffs, NYISO MST, § 23.2 (Conduct Warning Mitigation) (52.0.0) (defining Excluded Facility to include solar generation); *id.* § 23.4.5.7 (BuyerSide Market Power Mitigation Measures for Installed Capacity) (28.0.0) (stating that Excluded Facilities do not need to offer at or above the offer floor).

¹⁹ N.Y. Indep. Sys. Operator, Inc., BSM Excluded Facility Filing, Transmittal Letter at 13, Docket Nos. ER22-772-000 and ER22-772-001 (filed Jan. 5, 2022).

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