

186 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Edwards Calverton Battery Storage, LLC

Docket No. ER24-390-000

ORDER DENYING WAIVER REQUEST

(Issued February 1, 2024)

1. On November 9, 2023, pursuant to Rules 207(a)(5) and 212 of the Commission's Rules of Practice and Procedure,¹ Edwards Calverton Battery Storage, LLC (Edwards Calverton) submitted a request for waiver of section 25.6.2.3.1(ii)(2) of Attachment S to the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT). Edwards Calverton seeks waiver to allow Edwards Calverton's \$100,000 in-lieu of deposit to remain refund eligible until six months after NYISO tenders a draft Standard Large Generator Interconnection Agreement (LGIA) to Edwards Calverton. As discussed below, we deny Edwards Calverton's waiver request.

I. Background

2. Section 25.6.2.3.1 of Attachment S to the NYISO OATT provides, in relevant part:

[A] Large Facility is eligible to have its project included in a given Class Year Study (*i.e.*, become a Class Year Project), if on or before the Class Year Start Date (i) the Operating Committee has approved (1) an Interconnection System Reliability Impact Study for the project . . . and (ii) the regulatory milestone has been satisfied²

3. Section 25.6.2.3.1(ii)(2) of Attachment S to the NYISO OATT provides, in relevant part:

¹ 18 C.F.R. §§ 385.207(a)(5), 385.212 (2023).

² NYISO, NYISO Tariffs, NYISO OATT, § 25.6 (Attach. S Cost Allocation Methodology For ERIS) (10.0.0), § 25.6.2.3.1. Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the NYISO OATT.

[I]n lieu of satisfying a regulatory milestone by the Class Year Start Date, the Large Facility can . . . submit a two-part deposit consisting of \$100,000, and \$3,000/MW for the requested [Energy Resource Interconnection Service] of the Large Facility

The \$100,000 portion of the deposit submitted pursuant to subsection (ii)(2) of this Section 25.6.2.3.1 will be fully refundable if, within twelve months after the Class Year Start Date or the Operating Committee's approval of the Class Year Study, whichever occurs first, the Developer satisfies an applicable regulatory milestone and provides [NYISO] with adequate documentation that the Large Facility has satisfied an applicable regulatory milestone.³

4. Edwards Calverton states that it is developing a 60 MW battery storage system (Project) to be located in the Town of Riverhead in Suffolk County, New York (Town) that will interconnect with the Long Island Power Authority's system.⁴ Edwards Calverton states that the applicable regulatory milestone (Regulatory Milestone Requirement) for the Project would be satisfied by a negative declaration issued pursuant to the New York State Environmental Quality Review Act (SEQRA) or, if a Draft Environmental Impact Statement (DEIS) is required, a determination by the lead agency conducting the SEQRA review that the DEIS is adequate for public review or the issuance of a notice of competition of the DEIS.⁵

5. Edwards Calverton states that, in lieu of satisfying the Regulatory Milestone Requirement by the 2023 Class Year Start Date to be included in the 2023 Class Year, it exercised the option, under section 25.6.2.3.1(ii)(2), to submit its deposit on March 1, 2023.⁶ Edwards Calverton states that the 2023 Class Year Start Date is February 13, 2023, and under section 25.6.2.3.1(ii)(2), the \$100,000 portion of Edwards Calverton's deposit will be fully refundable if it satisfies its Regulatory Milestone Requirement by February 13, 2024.

6. Edwards Calverton states that, in December 2021, it held a pre-application meeting with the Town to discuss the proposed Project.⁷ Edwards Calverton states that, in February 2022, it

³ NYISO OATT, § 25.6.2.3.1(ii)(2)).

⁴ Waiver Request at 2.

⁵ *Id.* at 4.

⁶ *Id.*

⁷ *Id.*

submitted a Site Plan and Special Use Permit Application (Application) to the Town. Edwards Calverton states that in response, the Town indicated that it had received Edwards Calverton's Application, but that it could not fully process it because the Town had not adopted any local laws to regulate battery energy storage systems (BESS).⁸ Edwards Calverton states that the Town conducted public hearings to consider proposed laws to regulate BESS (BESS Law) in August and December 2022, and hired a consultant to assist the Town in conducting an environmental review of the BESS Law in January 2023.⁹ Edwards Calverton states that the Town Board voted to adopt the Town's BESS Law in April 2023. Edwards Calverton states that the Town made little to no progress on its review of Edwards Calverton's Application during the Town's consideration of the BESS Law.¹⁰ Edwards Calverton states that, over the approximately six-month long pendency of the BESS Law, the Town neither requested Edwards Calverton to provide supplemental information nor indicated whether the Town would consider a zoning variance so that the Project could be reviewed under existing local law.

7. Edwards Calverton states that, in June 2023, it submitted a revised Application to comply with the Town's BESS Law.¹¹ Edwards Calverton states that following multiple fire safety incidents at energy storage systems in New York and New York Governor Hochul's July 28, 2023 announcement of the creation of a new Inter-Agency Fire Safety Working Group to "ensure the safety and security of energy storage systems across the state,"¹² the Town informed Edwards Calverton that it would halt its review of Edwards Calverton's revised Application.¹³ Edwards Calverton states that, on October 3, 2023, the Town proposed a moratorium (BESS Moratorium), which would formally halt the processing of pending BESS applications for three months, and the Town conducted a public hearing on the proposed moratorium on October 3, 2023 and October 17, 2023.¹⁴ Edwards Calverton states that, at the earliest, the BESS Moratorium could be adopted at

⁸ *Id.* at 4-5.

⁹ *Id.* at 5.

¹⁰ *Id.* (citing attach. 1 (Aff. of G. Hadidi) at P 4).

¹¹ *Id.*

¹² *Id.* (citing Press Release, *Governor Hochul Convenes Inter-Agency Fire Safety Working Group Following Fires In Jefferson, Orange, And Suffolk Counties*, New York State Energy Research and Development Authority (July 28, 2023), <https://www.nyserda.ny.gov/About/Newsroom/2023-Announcements/2023-07-28-Governor-Hochul-Convenes-Inter-Agency-Fire-Safety-Working-Group>).

¹³ *Id.* (citing attach. 1 (Aff. of G. Hadidi) at P 8).

¹⁴ *Id.* at 5-6.

the Town Board's next scheduled meeting on November 9, 2023, which would formally halt the Town's review of BESS applications until four days before the \$100,000 portion of Edwards Calverton's deposit would be rendered non-refundable pursuant to section 25.6.2.3.1(ii)(2) of Attachment S to the NYISO OATT.¹⁵ Edwards Calverton states that, notwithstanding the proposed BESS Moratorium, the Town has already halted its review of Edwards Calverton's revised Application.¹⁶

II. Waiver Request

8. Edwards Calverton requests waiver of section 25.6.2.3.1(ii)(2) of Attachment S to the NYISO OATT to allow the \$100,000 portion of Edwards Calverton's deposit to remain refund eligible until six months after NYISO tenders a draft LGIA to Edwards Calverton.¹⁷ Edwards Calverton argues that its waiver request satisfies the Commission's criteria for granting waiver.

9. First, Edwards Calverton argues that it has acted in good faith to achieve the Regulatory Milestone Requirement.¹⁸ Edwards Calverton states that it began coordinating with the Town in December 2021 and submitted its original Application to the Town in February 2022. Edwards Calverton states that, after the Town adopted the BESS Law in April 2023, Edwards Calverton expeditiously revised its Application to comply with the new law and resubmitted it to the Town in June 2023. Edwards Calverton states that, throughout the process, it has maintained continuous communication with the Town and has proactively and promptly responded to the Town's requests to modify the Project and provide any needed additional information. Edwards Calverton states that, based on the development experience of Edwards Calverton's personnel and on the timelines for other BESS projects proposed in Suffolk County to satisfy their regulatory milestones,

it reasonably believed that the Project would timely satisfy the Regulatory Milestone Requirement when it submitted its deposit pursuant to section 25.6.2.3.1(ii)(2) to the NYISO OATT.

10. Second, Edwards Calverton asserts that the relief requested is limited in scope because it concerns only the 12-month timeline to satisfy the Regulatory Milestone Requirement so that the \$100,000 portion of its deposit can still be refunded.¹⁹ Edwards

¹⁵ *Id.* at 6. Edwards Calverton states that the Town's review of BESS applications would halt until February 9, 2024; the \$100,000 portion of the deposit would be rendered non-refundable on February 13, 2024.

¹⁶ *Id.* (citing attach. 1, Aff. of G. Hadidi at P 8).

¹⁷ *Id.*

¹⁸ *Id.* at 7.

Calverton states that it does not seek an indefinite waiver because, under the NYISO OATT, the Project is required to satisfy the Regulatory Milestone Requirement within six months after the date NYISO tenders a draft LGIA to Edwards Calverton or else the Project will be deemed withdrawn.²⁰ Edwards Calverton commits to continue to proactively work with the Town and to provide NYISO with adequate documentation that the Project has satisfied its Regulatory Milestone Requirement as soon as practicable.

11. Third, Edwards Calverton argues that waiver is required to remedy a concrete problem.²¹ Edwards Calverton states that, without the requested waiver, the \$100,000 deposit will be rendered non-refundable on February 13, 2024 and Edwards Calverton will be burdened with a significant unforeseen cost that will jeopardize the Project's economics. Edwards Calverton states that it could not have anticipated that the Town would abruptly cease its review of the Project's Application and consider a formal moratorium on all reviews of BESS applications, thereby causing substantial delays in satisfying the Regulatory Milestone Requirement. Edwards Calverton states that, while the Town's ultimate SEQRA determination is uncertain, certainty as to when the Town will recommence its review may not be available for several months. Edwards Calverton states that it, like every developer, undertook the risk that its project may not be approved. Edwards Calverton states, however, that there was no reasonable basis to expect that the Application would not be reviewed, especially because it fully complies with the Town's BESS Law, which makes approval of the Application largely ministerial.

12. Fourth, Edwards Calverton states that its requested relief will not create any undesirable consequences, such as harm to third parties.²² Edwards Calverton states that the waiver does not alter any substantive requirement or deadline in the NYISO interconnection process. Edwards Calverton points out that the 2023 Class Year Study has not been completed²³ and therefore NYISO has not yet tendered it a draft LGIA. Edwards Calverton states that the requested waiver will not delay the study process. Edwards Calverton also states that whether or not the deposit is ultimately refundable does not affect any other party and the waiver would not affect its ultimate responsibility to achieve the regulatory milestone to remain in the interconnection queue. Edwards

¹⁹ *Id.*

²⁰ *Id.* at 7-8 (citing NYISO OATT, §§ 25.6.2.3.2, 25.6.2.3.3, 30.11.1).

²¹ *Id.* at 8.

²² *Id.* at 8-9.

²³ Edwards Calverton notes that the 2023 Class Year process has extended beyond the original timeline estimated by NYISO and is not expected to be completed for at least a few months. *Id.* at 1.

Calverton therefore asserts that no other customer relies on, or is affected in any way by, the refundability status of Edwards Calverton's deposit.

13. Edwards Calverton requests a Commission order granting its waiver request by February 1, 2024 to provide it with financial certainty as it continues to develop the Project.²⁴

III. Notice and Responsive Pleadings

14. Notice of Edwards Calverton's filing was published in the *Federal Register*, 88 Fed. Reg. 80,710 (Nov. 20, 2023), with interventions and protests due on or before November 30, 2023. NYISO filed a timely motion to intervene and comments.

15. NYISO states that it takes no position on the merits of Edwards Calverton's waiver request.²⁵ NYISO states that it is not aware of any adverse harm that will result to other projects in NYISO's interconnection queue if the Commission grants the waiver request. NYISO, however, expresses its general concern that a waiver in this proceeding may raise questions regarding the applicability of milestone requirements for other projects.²⁶ NYISO requests that, if the Commission grants Edwards Calverton'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 also supports Edwards Calverton's request for Commission action by February 1, 2024 to provide the parties with certainty regarding the application of this tariff provision concerning the Regulatory Milestone Requirement.²⁷

²⁴ *Id.* at 9.

²⁵ NYISO Comments at 5.

²⁶ *Id.* NYISO explains that if a developer avails itself of an alternative, such as section 25.6.2.3.1(ii)(2), to satisfying a regulatory milestone for the project to remain in NYISO's interconnection queue, the developer still must obtain an applicable regulatory milestone within six months after the date that NYISO tenders the draft LGIA to the developer for the project, and if the developer fails to satisfy the applicable regulatory milestone by that date, the project will be withdrawn from NYISO's interconnection queue. *Id.* at 3 (citing NYISO OATT, §§ 26.6.2.3.2, 26.6.2.3.3, 30.11.1).

²⁷ *Id.* at 6.

IV. Discussion

A. Procedural Matters

17. 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

18. We deny Edwards Calverton's request for waiver of section 25.6.2.3.1(ii)(2) of Attachment S to the NYISO OATT. 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.²⁸ We find that the circumstances of Edwards Calverton's waiver request do not satisfy these criteria.

19. Specifically, we find that Edwards Calverton has not demonstrated that the potential to lose its \$100,000 deposit, pursuant to the NYISO OATT, is a concrete problem that warrants waiver of the NYISO OATT. Edwards Calverton asserts that without the requested waiver, the \$100,000 deposit will be rendered non-refundable on February 13, 2024, and Edwards Calverton will be burdened with a significant unforeseen cost that will jeopardize the Project's economics.²⁹ However, Edwards Calverton has not supported its general assertion that rendering the deposit non-refundable will put the Project in jeopardy.³⁰ Accordingly, we find that Edwards Calverton has not demonstrated that it has a concrete problem that warrants waiver of the NYISO OATT.³¹

²⁸ 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).

²⁹ Waiver Request at 8.

³⁰ Cf. *SAGE Dev. Auth.*, 186 FERC ¶ 61,006, at P 21 (2024) (finding that waiver would address a concrete problem in allowing the applicant extra time to secure credit in advance of the financial security deadline, in order to remain in the interconnection queue). We note that the denial of this waiver request does not affect Edwards Calverton's interconnection queue position. Pursuant to section 30.11.1 of the NYISO OATT, Edwards Calverton must satisfy the Regulatory Milestone Requirement (here, approval of its Application) within six months after the date NYISO tenders a draft LGIA to Edwards Calverton, which has not yet occurred, or else the Project will be deemed withdrawn.

³¹ See, e.g., *1000 Mile Solar, LLC*, 181 FERC ¶ 61,108, at P 22 (2022) (denying

The Commission orders:

Edwards Calverton's waiver request is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

waiver request on the basis that waiver applicant did not demonstrate that its potential to lose its posted financial security payment was a concrete problem); *Invenergy Wind Dev. LLC*, 177 FERC ¶ 61,131, at P 31 (2021) (same), *order on reh'g*, 178 FERC ¶ 61,169 (2022).