

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Dry Lots Wind LLC

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Docket No. ER16-1047-000

**MOTION TO INTERVENE AND COMMENTS OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) moves to intervene and submits comments in the above-referenced proceeding. The NYISO requests that the Commission consider these comments in the event the Commission grants the relief requested.

I. Background

A. Dry Lots Wind LLC Wind Project

On March 1, 2016, Dry Lots Wind LLC (“Dry Lots”), the Developer of a proposed 33 MW wind facility (“Project”), filed a request for waiver of a tariff-imposed deadline that, if not satisfied or waived, would result in the withdrawal of the Dry Lots project from the NYISO’s interconnection queue.² Dry Lots specifically requests waiver of the requirement in Attachment S of the NYISO Open Access Transmission Tariff (“OATT”) that requires a project to satisfy a regulatory milestone described in Section 25.6.3.2.1.1 within two years from the later of January 17, 2010 or the date the NYISO’s Operating Committee approved of the Interconnection System Reliability Impact Study

¹ 18 C.F.R. §§ 385.212 and 385.213 (2016).

² *Dry Lots Wind LLC*, Petition of Dry Lots Wind LLC for Expedited Limited Waiver of the Regulatory Milestone Deadline under the NYISO OATT and Request for Shortened Notice Period, Docket No. ER16-1047-000 (March 1, 2016) (“Waiver Request”).

for the project.³ A project that fails to satisfy the regulatory milestone within this period “will be deemed to be withdrawn in accordance with Section 30.3.6 of the Large Facility Interconnection Procedures contained in Attachment X.”⁴

Under the NYISO’s OATT, Large Facilities such as the Dry Lots Project are required to enter a Class Year Interconnection Facilities Study (“Class Year Study”). A project becomes eligible to enter a Class Year Study when it has satisfied the two developmental milestones identified in Attachment S of the OATT. As described in the Waiver Request, the Dry Lots Project satisfied one of its two milestones by securing Operating Committee approval of its Interconnection System Reliability Impact Study. The Interconnection System Reliability Impact Study for the Dry Lots Project was approved by the NYISO’s Operating Committee on March 13, 2014. Therefore, Dry Lots is required to complete its second milestone – the regulatory milestone required by Attachment S, Section 25.6.2.3.1.1 – by March 13, 2016 in order to remain in the NYISO interconnection queue and be eligible to enter into a Class Year Study.

Dry Lots, however, has thus far failed to complete the regulatory milestone and represents in its Waiver Request that it does not anticipate meeting its regulatory milestone requirement by the March 13, 2016 deadline. If, as Dry Lots anticipates, it is unable to satisfy the regulatory milestone requirement by March 13, 2016, the NYISO must, absent a waiver from the Commission as requested by Dry Lots in its Waiver

³ See Sections 25.6.2.3.2 and 25.6.2.3.3 of Attachment S to the OATT.

⁴ See *Id.*

Request, issue a withdrawal notice to Dry Lots pursuant to Section 25.6.2.3.2 deeming the project withdrawn in accordance with Section 30.3.6 of Attachment X.⁵

B. Proposed Tariff Revisions Pending in the NYISO's Stakeholder Process

As Dry Lots correctly notes in its Waiver Request, the NYISO has been discussing possible revisions to the regulatory milestone requirements in Attachment S with stakeholders in the NYISO Operating Committee's Transmission Planning Advisory Subcommittee ("TPAS"). On March 1, 2016, the NYISO posted for stakeholder review a proposal that was discussed at the March 4, 2016 TPAS. In its current form, NYISO proposes two modifications to the Attachment S regulatory milestone requirements.

First, NYISO proposes to allow a project more time to meet its regulatory milestone. Rather than requiring to meet its regulatory milestone within two years from Operating Committee-approval of its System Reliability Impact Study, NYISO proposes to allow a project three Class Year Studies to achieve its regulatory milestone. Under this proposal, a project will not be subject to withdrawal for failure to meet the regulatory milestone requirement if it meets its regulatory milestone in time to become of a member of the third Class Year beginning after Operating Committee-approval of its System Reliability Impact Study.

Second, NYISO's proposal pending approval by stakeholders would allow a project to provisionally enter a Class Year Study without having met its regulatory milestone requirement if it has an Operating Committee-approved System Reliability Impact Study. In order to remain a member of the Class Year, a provisional member of

⁵ The withdrawal provisions in Section 30.3.6 of the NYISO's LFIP provide that the fifteen (15) Business Day cure period provided under that section "does not extend specific deadlines set forth in Section[] ... 25.6.2.3.2 ... of Attachment S ...".

the Class Year would be required to satisfy its regulatory milestone requirement within 90 days of the Class Year Start Date.

The first prong of NYISO's proposal, if already in effect, would provide Dry Lots the very relief it seeks in its Waiver Request. Specifically, Dry Lots would be permitted to remain in the queue and have two remaining Class Years that it could enter if it timely achieved its regulatory milestone. Notably, at the TPAS meeting at which the proposal was discussed, there were no objections to the proposal and only two abstentions. The proposal will therefore move forward to the NYISO's Operating Committee, Management Committee and Board of Directors for approval. With the required approvals, the NYISO anticipates filing the proposed tariff revisions by May 1, 2016.

II. Motion to Intervene

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. Additionally, the NYISO administers the interconnection process pursuant to its Commission-approved tariffs. The NYISO is currently proposing to stakeholder modifications to the regulatory milestone requirements at issue in Dry Lots' Waiver Request. The NYISO, therefore, has a unique interest in this proceeding that cannot be adequately represented by any other entity and, therefore, requests that the Commission permits the NYISO to intervene with all the rights of a party.

III. Comments

The NYISO understands Dry Lots to be requesting (1) that the existing tariff-mandated deadline for meeting the regulatory milestone not apply to the Dry Lots Project in light of pending tariff revisions the NYISO intends to file with the Commission, with

stakeholder and Board of Directors' approval; (2) that the Dry Lots Project be provided an extension within which to complete the regulatory milestone required by Section 25.6.2.3.1.1 of Attachment S – until 90 days after the Class Year Start Date of the second Class Year Study to commence after completion of the Class Year 2015 Study or such other time as the Commission deems appropriate;⁶ and (3) that if the Commission grants the requested relief, that it do so with an effective date of March 12, 2016 to prevent the withdrawal, or if withdrawn, require the reinstatement of the Dry Lots Project in the NYISO's interconnection queue.

NYISO recognizes that the Commission evaluates a waiver request based on the specific facts and circumstances of the request, and upon a number of factors, including (i) whether the requestor is acting in good faith; (ii) whether the request will remedy a concrete problem; (iii) whether the request is of limited scope; and (iv) whether the waiver, if granted, will have undesirable consequences such as harming third parties.⁷ The Commission's evaluation of a waiver request is highly dependent on the specifics of a particular request, and the Commission has recognized, therefore, that the granting of a waiver request is not precedent for granting future waiver requests.⁸ The Commission

⁶ The tariff revisions the NYISO intends to file with the Commission are still subject to NYISO stakeholder and Board of Directors approval, and of course, approval by the Commission. The proposed extension the NYISO suggests is consistent with what the Dry Lots Project would have should the Commission ultimately approve the tariff revisions under consideration in the NYISO's stakeholder process. In the alternative, the Commission could an extension requested by Dry Lots in its waiver, such as the nine month extension Dry Lots mentions in its Waiver Request, by which time the NYISO anticipates having filed and obtained a FERC Order on the contemplated tariff revisions.

⁷ See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060 at P17 (2013); *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P16 (2013); *Hudson Transmission Partner, LLC*, 131 FERC ¶ 61,157 at P10 (2010).

⁸ See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060 at P17 (noting that the granting of the requested waiver "is based on the specific facts and circumstances of the request"); see also, *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P16 (2013) (noting that "our grant of waiver is limited to the facts and circumstances of the case before us").

has further recognized that waiver of tariff requirements should not be construed as having any impact on the applicability of the same requirements to other projects.⁹

The NYISO believes it is important that the Commission continue to reinforce the importance of tariffs and manual deadlines that enhance certainty and transparency in the NYISO's administration of the interconnection process. However, in this instance, in light of the proposed tariff revisions pending in its stakeholder process related to the regulatory milestone requirements, the NYISO does not oppose Dry Lots' Waiver Request. To the contrary, the NYISO finds the relief requested to be consistent with relief that would be accorded to the Dry Lots Project pursuant to proposed tariff revisions pending the NYISO stakeholder process and for which NYISO does not foresee stakeholder objections.

IV. Communications and Correspondence

All communications and service with regard to this filing should be directed to:

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⁹ See *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P16 (2013) (noting that despite granting the requested waiver, "we do not intend that NYISO's regulatory milestones be taken lightly."); *Innovative Energy Systems, LLC*, 131 FERC ¶ 61,066 at P7 (2010) (noting that despite granting the requested waiver, "we emphasize the importance of meeting financial security deadlines and note that in the future, we expect parties to arrange for deposits to be submitted in sufficient time to meet the requirements of their tariffs.").

V. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission (i) grant this motion to intervene, and (ii) consider these comments in making its decision on the Dry Lots' Waiver Request.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan

Counsel for the

New York Independent System Operator, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 11th day of March, 2016.

/s/ *Mohsana Akter*

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