

April 23, 2021

By Electronic Delivery

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: *New York Independent System Operator, Inc.*, Errata to Filing of The New York Independent System Operator, Inc., Docket No. ER21-1674-000

Dear Ms. Bose:

Earlier today, the New York Independent System Operator, Inc. (“NYISO”) submitted for filing and acceptance in the above-captioned proceeding a Motion to Intervene and Protest in response to the *Request for Limited Waiver of Tariff* submitted by TBE Montgomery, LLC (“TBE”) on April 9, 2021 (“Initial Filing”). It has since come to the NYISO’s attention that in the Initial Filing, its comments were inadvertently captioned and described as a “protest.”

Enclosed in Attachment I is a revised submission captioned, “Motion to Intervene and Comments” reflecting this correction to the Initial Filing (“Revised Motion and Comments”). Attachment II is a blacklined version showing the correction to the initial filing. The NYISO respectfully requests that the Commission accept this Errata Filing and substitute the Initial Filing with the Revised Motion and Comments included in Attachment I hereto.

I. LIST OF DOCUMENTS SUBMITTED

1. The errata letter;
2. A clean version of the revised Motion to Intervene and Comments (Attachment I); and
3. A blacklined version of the revised Motion to Intervene and Comments with the Motion to Intervene and Protest (Attachment II).

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II. SERVICE

This errata will be posted on the NYISO's website at www.nyiso.com. In addition, the NYISO will email and electronic link to this filing to the official representative of each party to this proceeding, to each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan

Counsel for the

New York Independent System Operator, Inc.

cc: Janel Burdick
Matthew Christiansen
Jignasa Gadani
Jette Gebhart
Leanne Khammal
Kurt Longo
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David Morenoff
Douglas Roe
Frank Swigonski
Eric Vandenberg
Gary Will

Attachment I

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

TBE Montgomery, LLC

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Docket No. ER21-1674-000

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

Pursuant to Rules 211, 212 and 214 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) moves to intervene in the above-captioned proceeding and submits comments in response to the *Request for Limited Waiver of Tariff* submitted by TBE Montgomery, LLC (“TBE”) on April 9, 2021 (“Waiver Request”).² The NYISO requests that the Commission consider these comments in its determination regarding the relief requested.

I. OVERVIEW

On April 9, 2021, TBE, the Developer of a proposed biomass generation facility (“Project”) in the NYISO’s interconnection queue as “Queue No. 349,” filed a request for waiver of a tariff provision that only permits extension of Commercial Operation Dates upon a demonstration that the Developer has made reasonable progress against milestones in the Project Interconnection Agreement. TBE specifically requests waiver of the Material Modification provisions of Section 30.4.4.5 in Attachment X of the NYISO Open Access Transmission Tariff (“OATT”).

Section 30.4.4.5.2 of Attachment X to the OATT provides for a four-year period within which a Developer may extend its Commercial Operation Date – four years after completion of

¹ 18 C.F.R. §§ 385.211, 385.212, 385.214.

² *TBE Montgomery, LLC*, Request of TBE Montgomery, LLC for Limited Waiver, Shortened Comment Period, and Expedited Consideration, Docket No. ER21-1674-000 (April 9, 2019) (“Waiver Request”).

its Class Year Study. Section 30.4.4.5.2 allows an extension beyond that four-year deadline if the Developer demonstrates via an Officer Certification that it has made “reasonable progress against the milestones set forth in the Interconnection Agreement (*e.g.*, completion of engineering design, major equipment orders, commencement and continuation of construction of the Large Facility and associated System Upgrade Facilities, as applicable).”³

The Waiver Request, if granted, would allow TBE to extend the Project Commercial Operation Date to June 2023, maintain the existing queue position of the Project in the NYISO’s interconnection queue and avoid termination of its Interconnection Agreement.

II. BACKGROUND

As detailed in its Waiver Request, TBE entered the NYISO’s interconnection queue in December 2009, proposing to interconnect a 22.5 MW biomass generation facility to Central Hudson Gas & Electric Corporation’s (“Central Hudson”) 69 kV transmission facilities in Montgomery, NY. The Project proceeded through the interconnection study process and, in July 2015, TBE executed a Large Generator Interconnection Agreement (“LGIA”) designated as Service Agreement No. 2208 with the NYISO and Central Hudson.

According to the original construction and procurement schedule in the LGIA, the Project was to be in commercial operation by May 15, 2017. Since execution of the LGIA, the Project has experienced delays and TBE has requested several extensions of the Commercial Operation Date. Commercial Operation Date was extended twice, up to April 15, 2021. In December 2016, TBE requested a 14-month extension from April 15, 2018 to June 15, 2019. With its requested extension, TBE provided at that time a revised milestone schedule demonstrating some progress toward its LGIA milestones. Specifically, TBE demonstrated that it had ordered a steam turbine generator, ordered a transformer, and had issued purchase orders for other major equipment. The NYISO

³ See Section 30.4.4.5.2 of Attachment X to the OATT.

determined that TBE had demonstrated a sufficient amount of progress to allow extension of the Project Commercial Operation Date under the “reasonable progress” standard in Section 30.4.4.5.2 of Attachment X to the OATT. A year later, in December 2017, TBE requested a subsequent 3-year extension of the Project Commercial Operation Date from April 15, 2018 to April 15, 2021. The NYISO approved this extension based on information provided by TBE indicating that additional progress had been made in pre-construction activities and procurement, including certain engineering design work, foundation work, installation of equipment for the fuel-feed conveyor system, and fabrication of structure and vessels for the biomass gasifier.

On June 12, 2020, TBE requested a third extension of the Project Commercial Operation Date, the NYISO’s denial of which is the subject of the Waiver Request. In this third request, TBE requested the Project Commercial Operation Date be extended another two years to June 2023. In support of its requested extension, TBE provided a revised milestone schedule which showed that no milestone has been fully completed since the prior extension request in December 2017, even though it had completed some work and expended money that potentially supports a specified milestone or subtask in the LGIA milestone schedule. The NYISO, therefore, determined that TBE did not demonstrate reasonable progress against the milestones documented in the LGIA and that its requested extension of Commercial Operation Date was a Material Modification of its existing Interconnection Request.

Since the Project’s currently approved Commercial Operation Date has now expired—as of April 15, 2021—the Project is subject to withdrawal from the NYISO interconnection queue and its LGIA is subject to termination, absent an order from the Commission granting the Waiver Request.

III. MOTION TO INTERVENE

The NYISO is the independent entity responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity,

capacity, and ancillary services in New York State. The NYISO administers the interconnection process for the New York State Transmission System and Distribution System pursuant to its Commission-approved OATT. In this proceeding, TBE is requesting waiver of a requirement of the interconnection process established in Attachment X to the OATT. The NYISO, therefore, has a unique interest in this proceeding that cannot be adequately represented by any other entity and requests that the Commission permit it to intervene with all the rights of a party.

IV. COMMENTS

The NYISO understands TBE to be requesting waiver of the provision in Section 30.4.4.5 of the Large Facility Interconnection Procedures in the OATT that requires the Developer to demonstrate reasonable progress to obtain an extension of the Project Commercial Operation Date. The NYISO further understands TBE to be requesting waiver of this tariff provision in order to remain in the interconnection queue through June 2023—its proposed Commercial Operation Date—and to maintain its currently effective LGIA.

The Waiver Request appears to be premised on what TBE characterizes as “regulatory burdens” imposed by the 2019 New York State Climate Leadership and Community Protection Act (“CLCPA”) with respect to the purported elimination of biomass as a renewable energy source under the CLCPA.⁴ TBE indicates in its Waiver Request that its ability to secure financing to satisfy the remaining project milestones under the LGIA and reach commercial operation turns on whether the TBE project will be grandfathered under the CLCPA.⁵ The NYISO takes no position on the merits of TBE’s interpretation of the CLCPA, but notes that it is not clear on what basis this situation is unique and distinguishable from any other project that cannot obtain financing. The NYISO also offers the following additional comments for the Commission’s consideration.

⁴ Waiver Request at 6.

⁵ Waiver Request at 7.

First, the 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. 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. The Commission has also recognized that waiver of tariff requirements should not be construed as having any impact on the applicability of the same requirements to other projects. While the NYISO does not dispute that TBE submits this waiver in good faith, 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.

Second, the NYISO is not aware, at this time, of a proposed project in the NYISO's interconnection process that would be impacted by the requested extension. Specifically, the NYISO has not identified other projects currently in the NYISO's interconnection queue with proposed points of interconnection located electrically close to, or within one bus away from the point of interconnection for the Project that might be adversely impacted if the Waiver Request is granted. However, that assessment is based on current facts and is subject to change based on new Interconnection Requests. Additionally, the NYISO is not able to assess whether any distribution-level resources subject to state jurisdictional interconnection processes may be impacted by the extension. Such projects often seek to become Installed Capacity Suppliers and are evaluated through NYISO's deliverability studies in order to obtain Capacity Resource Interconnection Service ("CRIS"). As such requests come from facilities not in the NYISO interconnection queue, the possibility of such requests cannot be anticipated in advance. If

FERC grants an extension, any such requests would be evaluated in the deliverability studies that currently model the Project and its CRIS in the existing system representation.

Third, the NYISO notes that, to the extent the Commission denies the requested relief, the TBE has many options in the NYISO's interconnection process to move forward with the Project. TBE has the option of re-entering the NYISO's interconnection queue by submitting a new Interconnection Request. Under current rules, despite the Project having a maximum net capability of 21.9 MW, TBE could propose control technologies to limit the Project output to 20 MW in order to proceed through the Small Generator Interconnection Procedures ("SGIP"). Under the SGIP, the new Interconnection Request can skip the Feasibility Study. Additionally, with agreement of the NYISO and Central Hudson, it can skip the System Impact Study and Facilities Study. While a new Interconnection Request would likely require at least the Facilities Study, such study could be completed and immediately followed by a Small Generator Interconnection Agreement ("SGIA").⁶

Finally, should the Commission grant TBE's Waiver Request, the NYISO requests that the Commission provide the following guidance. The NYISO requests that the Commission order TBE to cooperate with amendment of its existing LGIA with execution within 90 days of the Commission's order. The NYISO also requests that the Commission order TBE to develop a revised, detailed milestone schedule to be incorporated into Appendix B to the Amended and Restated LGIA that would support the requested Commercial Operation Date of June 2023.⁷ The NYISO also requests that the Commission order TBE to provide quarterly status reports to the NYISO after execution of the Amended and Restated LGIA to report its progress against the revised milestone schedule. The NYISO requests that the Commission specifically allow for withdrawal of the Project

⁶ In parallel with its Facilities Study, the project can proceed through an Expedited Deliverability Study for CRIS in order to obtain the CRIS it needs to participate as an Installed Capacity Supplier. The project can finalize its SGIA and go in-service prior to being evaluated for deliverability and receiving CRIS rights.

⁷ Such milestone schedule should include specific dates of when necessary work will commence and be completed in order to bring the Project into Commercial Operation by June 2023.

and termination of the LGIA or Amended and Restated LGIA, as applicable, upon failure to comply with any of the above requirements.

V. COMMUNICATIONS AND CORRESPONDENCE

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

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Karen Georgenson Gach, Deputy General Counsel
Raymond B. Stalter, Director, Regulatory Affairs
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*Persons designated for receipt of service.

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 TBE's waiver request.

Respectfully submitted,

/s/ Sara B. Keegan
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Attachment II

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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and termination of the LGIA or Amended and Restated LGIA, as applicable, upon failure to comply with any of the above requirements.

V. COMMUNICATIONS AND CORRESPONDENCE

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

Robert E. Fernandez, Executive Vice President &
General Counsel
Karen Georgenson Gach, Deputy General Counsel
Raymond B. Stalter, Director, Regulatory Affairs
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*Persons designated for receipt of service.

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 TBE's waiver request.

Respectfully submitted,

/s/ Sara B. Keegan
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April 23, 2021

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David Morenoff
Douglas Roe
Frank Swigonski
Eric Vandenberg
Gary Will

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 23rd day of April 2021.

/s/ Joy A. Zimmerlin

Joy A. Zimmerlin
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