

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

Empire Offshore Wind LLC

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Docket No. ER22-98-000

**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 its determination regarding the relief requested.

I. Background

On October 14, 2021, Empire Offshore Wind LLC (“Empire Wind”) filed a request for waiver of the tariff-imposed limit on the length of time a proposed In-Service Date, Initial Synchronization Date and Commercial Operation Date (collectively, “In-Service Date”) may be extended.² Empire Wind specifically requests waiver of the requirement in Section 30.4.4.5.1 of Attachment X to the NYISO Open Access Transmission Tariff (“OATT”) in order to obtain an extension of proposed Commercial Operation Date beyond the standard four-year extension period provided to projects “as of right.”

¹ 18 C.F.R. §§ 385.212 and 385.213 (2019).

² *Empire Offshore Wind LLC*, Request for Limited, Prospective Tariff and for Expedited Action, Docket No. ER22-98-000 (October 14, 2021) (“Waiver Request”).

Section 30.4.4.5.2 of the OATT explicitly permits a Developer to extend its Commercial Operation Date if the new date is within four years from the project's completion of its Class Year Study. Section 30.4.4.5.2 allows an extension beyond that four-year deadline if the Developer (i) has an executed interconnection agreement (or filed unexecuted interconnection agreement), and (ii) 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)."

The Waiver Request, if granted, would allow the NYISO to accept Empire Wind's proposed In-Service Date of June 14, 2025 and proposed Commercial Operation Date of December 14, 2026. This proposed Commercial Operation Date is approximately one year beyond what would be automatically permissible under the OATT. Any further extensions would be governed by Section 30.4.4.5.2, which would require an interconnection agreement and a demonstration of reasonable progress against milestones that interconnection agreement.

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, therefore, has a unique interest in this proceeding that cannot be adequately represented by any other entity and, accordingly, requests that the Commission permits the NYISO to intervene with all the rights of a party.

III. Comments

The NYISO understands Empire Wind to be requesting waiver of the tariff-imposed limitation on permissible extensions of an In-Service Date in order that the Project may execute an Interconnection Agreement that reflects these milestone extensions. Specifically, Empire Wind requests waiver of Section 30.4.4.5.1 of the OATT to:

- set the milestone date in the Project’s IA on which Empire Wind’s interconnection facilities are expected to be energized and placed “In Service” as June 14, 2025;
- set the milestone date in the Project’s IA on which Empire Wind’s project is expected to achieve Commercial Operation as December 14, 2026; and
- allow Empire Wind to extend of either or both of these dates subsequent to the execution of the Project’s IA by demonstrating to NYISO that it has made reasonable progress against the milestones in the Project’s Interconnection Agreement, as required by Section 30.4.4.5.2.2 of the OATT.³

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.⁴ The Commission’s evaluation of a waiver request is highly dependent on the specifics of a particular request, and the Commission has recognized that the granting of a waiver request is not precedent for granting future waiver

³ *Id* at 7.

⁴ See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060 at P 17 (2013); *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P 16 (2013); *Hudson Transmission Partner, LLC*, 131 FERC ¶ 61,157 at P 10 (2010).

requests.⁵ The Commission 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.⁶

Under the circumstances described by Empire Wind, the NYISO does not oppose Empire Wind's Waiver Request.⁷ The NYISO is not aware of any adverse impact the requested waiver could have on other projects in the NYISO's interconnection queue.

IV. Comments in Support of Expedited Treatment

The NYISO supports Empire Wind's request that the Commission expedite its review of this waiver request and issue an Order by December 23, 2021 in order to avoid delays in finalizing the Project's Interconnection Agreement.

⁵ See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060 at P 17 (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 P 16 (2013) (noting that "our grant of waiver is limited to the facts and circumstances of the case before us").

⁶ See *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P 16 (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 P 7 (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").

⁷ While the NYISO is not aware of potential adverse impacts to other projects, it cannot state unequivocally that there may not be adverse impact. Indeed, construction sequencing issues may arise in the future with regard to other projects that rely on any of the upgrades or attachment facilities required for the Empire Wind Project.

V. Communications and Correspondence

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

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VI. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission (i) rule on the Waiver Request by December 23, 2021 and (ii) consider these comments in making its decision on Empire Wind’s Waiver Request.

Respectfully submitted,

/s/ Sara B. Keegan
Sara B. Keegan
Brian R. Hodgdon
Counsel for the New York Independent System
Operator, Inc.

October 28, 2021

cc:	Janel Burdick	Leanne Khammal	Douglas Roe
	Matthew Christiansen	Kurt Longo	Frank Swigonski
	Jignasa Gadani	John C. Miller	Eric Vandenberg
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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 28th day of October, 2021.

/s/ Mohsana Akter

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