

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.

II. BACKGROUND

Section 30.4.4.5 of the NYISO's Large Facility Interconnection Procedures in Attachment X to the OATT establishes the requirements by which a Developer is permitted to extend the Commercial Operation Date for its Large Facility. Pursuant to Section 30.4.4.5.1, a Developer may extend its Commercial Operation Date as a matter of right if the new date is within four years from the completion of a project's Class Year Interconnection Facilities Study ("Class Year Study").

An extension beyond this four-year period is only permitted if a Developer: (i) has an executed interconnection agreement (or a 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)."⁴ Modifications to the Commercial Operation Date that do not satisfy these requirements constitute Material Modifications to the Developer's Interconnection Request.

Homer is the Developer of a 90 MW solar generating Large Facility – the Homer Solar Energy Center project – with NYISO Queue Position No. 276 (the "Project"). The Project seeks to interconnect to the transmission system of Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") that is part of the New York State Transmission System.

Due to a series of elections and decisions by the Developer, the Project is the longest outstanding project in the NYISO's interconnection queue. The Project entered the NYISO's

⁴ NYISO OATT, Attach. X, § 30.4.4.5.2.

interconnection queue on January 30, 2008, as the “Crown City Wind Farm”, a 90 MW wind generating facility project, which Interconnection Request was submitted by Homer’s predecessor, Air Energy TCI, Inc. (“TCI”). In 2012, the NYISO withdrew the Project from the interconnection queue for failure to meet the regulatory milestone required for the Project to move forward. However, TCI requested, and the Commission granted, a waiver request permitting a limited extension of time that enabled the Project to meet the milestone and remain in the queue.⁵ The Project subsequently changed its developer and its project type from a wind to a solar facility.⁶

Under the NYISO’s interconnection requirements, the Project was permitted to enter up to two of the next three Class Years. The Project elected to enter Class Year 2019, the last of the three Class Years it was permitted to enter. The Class Year Study for Class Year 2019 concluded on February 8, 2021.

The NYISO then tendered a draft Standard Large Generator Interconnection Agreement (“LGIA”) to Homer and National Grid on March 22, 2021. The NYISO has worked diligently with National Grid and Homer to negotiate the interconnection agreement. However, the negotiation has been delayed several times, in part to address Homer’s requests for, and the NYISO’s and National Grid’s assessments of, proposed modifications to the Project. Notwithstanding these delays, the terms of the draft LGIA are near final with the exception of addressing the Project’s Commercial Operation Date.

Homer and National Grid were unable to agree to a milestone schedule that was feasible for both parties and provides for an updated Commercial Operation Date for the Project that falls within the four-year period for which Homer may change the date as a matter of right.⁷ Specifically, as the

⁵ See *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 (2013); *Air Energy TCI, Inc.*, 142 FERC ¶ 61,005 (2013)

⁶ In May 2019, TCI requested a change to the Project from a wind farm to its current iteration as a solar facility, which change the NYISO determined was not a material modification, and in August 2019, the Project transferred to Homer’s parent company, EDF Renewables, Inc. (“EDFR”).

⁷ See Waiver Request at 6-7.

Class Year Study for Class Year 2019 was completed on February 8, 2021, Class Year 2019 projects may only extend their Commercial Operation Dates as a matter of right until February 8, 2025.

The NYISO cannot agree to execute an interconnection agreement with a Commercial Operation Date that is not permitted by the OATT. As Homer does not have an executed LGIA and has not requested that the agreement be filed unexecuted, Homer is not eligible in accordance with the requirements in Section 30.4.4.5.2 for an extension of the Commercial Operation Date beyond February 8, 2025.

On April 3, 2023, Homer filed a request for waiver of the four-year deadline established by Section 30.4.4.5.1. Specifically, Homer requested that the Commission grant a waiver of the requirement in Section 30.4.4.5.1 to permit it to extend the Commercial Operation Date for the Project until April 30, 2026.

The Waiver Request, if granted, would allow the NYISO to accept the inclusion of a Commercial Operation Date of April 30, 2026 in the LGIA. Any further extensions of the Commercial Operation Date would be governed by Section 30.4.4.5.2, which would require that Homer have an interconnection agreement and demonstrate reasonable progress against milestones in that interconnection agreement.

III. COMMENTS ON THE WAIVER REQUEST

The NYISO understands Homer to be requesting a waiver of the tariff-imposed limitation on permissible extensions of its Project's Commercial Operation Date so that the NYISO, National Grid, and Homer may execute an interconnection agreement that reflects an extended milestone.

Specifically, Homer requested waiver of Section 30.4.4.5.1 of the OATT:

- (i) to set the milestone date in the Project's interconnection agreement on which the Project is expected to achieve Commercial Operation as April 30, 2026⁸ and

⁸ See Waiver Request at 6, 8.

- (ii) to allow Homer to extend the Commercial Operation Date subsequent to the execution of the Project’s interconnection agreement by demonstrating to the NYISO that it has made reasonable progress against the milestones in its interconnection agreement, as required by Section 30.4.4.5.2.2 of the OATT.⁹

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.¹⁰ 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 requests.¹¹ 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.¹²

The NYISO respectfully requests that the Commission consider the following comments in assessing the Waiver Request.¹³

⁹ See Waiver Request at 8.

¹⁰ 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).

¹¹ 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”).

¹² 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”).

¹³ Consistent with Commission precedent, the NYISO has limited its response to those issues for which it believes that providing additional information will best assist the Commission’s decision-making process. The NYISO’s silence with respect to any particular argument or assertion raised by the Waiver Request should not be construed as acceptance or agreement.

First, the Waiver Request is premised on what Homer identifies as the “concrete problem” underlying its request – that the deadlines imposed by the NYISO’s interconnection process requirements are unreasonable and that it cannot achieve commercial operation within a four-year period. However, the NYISO’s tariff requirements permit extensions beyond this four-year period for projects that have an interconnection agreement and have demonstrated reasonable progress against agreement milestones.

In this case, the “concrete problem” appears to be that the project does not yet have an interconnection agreement. The status of the interconnection agreement is due in part to actions by the developer, including the submission of post Class Year Study project modifications which have resulted in delays in completing the interconnection agreement for the Project. While Homer refers in the Waiver Request to a 33-month estimate for construction of interconnection facilities,¹⁴ the time necessary to complete the construction of the interconnection facilities has become problematic for Homer because of such project modification requests that have impacted the timing of the execution of the interconnection agreement.¹⁵ This is different from the cited *Empire Wind* situation where the unique project timelines associated with offshore wind made it unable to meet a four-year construction timetable, even if the interconnection agreement for the project was executed immediately after the completion of the Class Year.¹⁶

The NYISO’s interconnection procedures also provide the option for a Developer to complete engineering design and place major equipment orders in advance of the execution of the

¹⁴ It is the NYISO’s understanding that the estimated time for engineering, procurement and construction is approximately 29 months.

¹⁵ In addition, Homer had the option under the NYISO’s interconnection procedures of requesting that the NYISO file its agreement with the Commission unexecuted if it was concerned with the timing of the completion of the agreement or disagreed with the parties concerning the provisions under negotiation, including the milestones. Homer elected not to pursue this option.

¹⁶ The NYISO has previously recognized, for example, the unique technical challenges inherent in offshore wind projects. *See, e.g., Empire Offshore Wind LLC*, Motion to Intervene and Comments of New York Independent System Operator, Inc., Docket No. ER22-98-000 (Oct. 28, 2021).

interconnection agreement by entering into an Engineering and Procurement (“E&P”) Agreement with the relevant Connecting Transmission Owner.¹⁷ Such agreements enable the Developer to make progress on the engineering and procurement for its project in parallel with the interconnection agreement negotiation process.¹⁸ This option enhances a Developer’s opportunity to meet its Commercial Operation Date within the permitted extension period. In addition, the E&P Agreement option enables a Developer to satisfy certain key engineering and procurement milestones that are prerequisites for, and can be used to obtain, an extension of the Commercial Operation Date beyond the permitted four-year period.¹⁹ The NYISO understands that Homer has recently initiated discussions with National Grid to enter into an E&P Agreement.

Second, Homer argues that the requested waiver will not harm third parties.²⁰ Specifically, Homer states that it has posted firm security for its network upgrades, which ensures that no other interconnection project will be adversely impacted.²¹ The NYISO cannot state unequivocally that there may not be any adverse impacts on other projects.²² Indeed, construction sequencing issues

¹⁷ NYISO OATT, Attachment X, § 30.9 (“Prior to executing a Standard Large Generator Interconnection Agreement, a Developer may, in order to advance the implementation of its interconnection, request and Connecting Transmission Owner shall offer the Developer, an E&P Agreement that authorizes the Connecting Transmission Owner to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection....”).

¹⁸ These benefits could be minimized where, as here, post-Class Year Study requests for project modifications created uncertainty concerning important interconnection details making engineering and procurement progress difficult during the period.

¹⁹ In cases in which the NYISO cannot execute an interconnection agreement for a project because its Commercial Operation Date is beyond the permitted four-year period, the Developer retains the option of requesting that the interconnection agreement be filed unexecuted. In such circumstances, the NYISO OATT provides the Developer with 60 days after a FERC order accepting the unexecuted agreement filing to demonstrate reasonable progress against the milestones to obtain an extension. A Developer that completed engineering designs or made major equipment purchases under an E&P Agreement during the LGIA negotiation process would have the opportunity to use such actions to obtain an extension in such cases. *See* NYISO OATT Attach. X Section 30.4.4.5.2.2 (“If Developer has requested an unexecuted Interconnection Agreement be filed with FERC, Developer must meet this requirement [to demonstrate reasonable progress against agreement milestones] within sixty (60) days of a FERC Order on the unexecuted Interconnection Agreement.”).

²⁰ *See* Waiver Request at 13.

²¹ *Id.*

²² The NYISO has identified four projects in its interconnection queue that are proposing to connect at or near the Project’s Point of Interconnection.

may arise in the future with regard to other projects that rely on any of the upgrades or attachment facilities required for the Project.²³

Finally, as the negotiation of this interconnection agreement for this Project has run well beyond the standard six-month negotiation period set forth in the NYISO OATT, the NYISO requests that, should the Commission grant the Waiver Request, the Commission condition the waiver on the following: (i) Homer providing to the NYISO and National Grid a revised detailed milestone schedule for the draft LGIA promptly following the Commission order that would support the requested Commercial Operation Date of April 2026, and (ii) execution of an LGIA within 30 calendar days of the Commission order or a request to file an unexecuted LGIA at the Commission within this time period.²⁴

IV. COMMENTS ON THE REQUEST FOR EXPEDITED ACTION

The NYISO supports Homer's request that the Commission expedite its review of Homer's Waiver Request and issue an Order by May 15, 2023. This timeframe would minimize delays in finalizing and executing the LGIA for the Project, which is near completion with the exception of the milestones at issue in this proceeding.

V. COMMUNICATIONS AND CORRESPONDENCE

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

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²³ 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 by the NYISO in the deliverability studies that currently model the Project and its CRIS in the existing system representation.

²⁴ The milestone schedule should include specific dates of when necessary work will commence and be completed by the relevant party in order to bring the Project into Commercial Operation no later than April 2026.

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VI. 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 Homer's Waiver Request.

Respectfully submitted,

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April 24, 2023

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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 24th day of April 2023.

/s/ Elizabeth Rilling

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