

Edwards Calverton Battery Storage, LLC ) Docket No. ER24-390-000  
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Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) moves to intervene and submits comments concerning the request of Edwards Calverton Battery Storage, LLC (“ECBS”) in the above-captioned proceeding for a waiver of certain requirements under the NYISO’s Open Access Transmission Tariff (“OATT”) concerning ECBS’s eligibility for a refund of the \$100,000 deposit it made in lieu of satisfying the regulatory milestone for its Large Facility (the “Waiver Request”).<sup>2</sup> The NYISO respectfully asks that the Commission consider these comments in its determination regarding the relief requested.<sup>3</sup>

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 requests that the Commission permit the NYISO to intervene with all the rights of a party.

<sup>3</sup> Capitalized terms that are not otherwise defined in these comments shall have the meaning specified in Attachments S or X to the NYISO OATT, and if not defined therein, in the NYISO OATT and NYISO Market Administration and Control Area Services Tariff.

## II. Background

On November 9, 2023, ECBS, the Developer of a proposed 60 MW battery storage system with NYISO Queue Position No. 1257 (“Project”), filed the Waiver Request. ECBS seeks waiver of certain OATT provisions that, according to ECBS, will likely render it ineligible to receive a refund of the \$100,000 portion of the deposit that it submitted to the NYISO on March 1, 2023, in lieu of satisfying the regulatory milestone for the Project. ECBS specifically requests waiver of the OATT requirement that a Developer must satisfy an applicable regulatory milestone for its Project within twelve months of the Class Year Start Date to be refunded the \$100,000 portion of its deposit.<sup>4</sup> ECBS requests that this timeframe for refund eligibility be extended until six months after the NYISO tenders ECBS a Standard Large Generator Interconnection Agreement (“LGIA”).<sup>5</sup> ECBS maintains that this relief is necessary in light of the recent moratorium on applications for battery energy storage system projects proposed by the Town of Riverhead, Suffolk County, New York.<sup>6</sup>

Under the NYISO Standard Large Facility Interconnection Procedures (“LFIP”), a facility study is performed for Large Facilities on a combined basis—or a “Class Year” of projects—that have met specific eligibility requirements and have elected to enter the Class Year Study. After completion of their System Reliability Impact Studies, projects are first eligible to enter a given Class Year Study when they have reached a certain level of development indicated by satisfying at least one of the “regulatory milestones” enumerated in Section 25.6.2.3.1.1 of the OATT.<sup>7</sup>

In response to concerns from Developers related to the challenges of obtaining the necessary regulatory determinations or actions for a project, the NYISO filed in 2017 and 2019, and the Commission accepted, alternative means by which a Large Facility can enter a Class Year Study

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<sup>4</sup> Waiver Request at 6

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 5-8.

<sup>7</sup> OATT § 25.6.2.3.1.1.

without having yet satisfied an applicable regulatory milestone.<sup>8</sup> As relevant here, a Developer can elect to make a voluntary two-part deposit consisting of \$100,000 and \$3,000/MW of Energy Resource Interconnection Service (“ERIS”) in lieu of satisfying a regulatory milestone.<sup>9</sup> The \$100,000 portion is “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 the [NYISO] with adequate documentation that the Large Facility has satisfied an applicable regulatory milestone.”<sup>10</sup> The second portion of the deposit (\$3,000/MW) is always refundable with the timing of the refund tied to the occurrence of a certain prescribed events (*e.g.*, satisfaction of applicable milestone, acceptance of cost allocation in Class Year Study, withdrawal from the queue, etc.).<sup>11</sup>

If a Developer avails itself of an alternative to satisfying a regulatory milestone, for the Project to remain in the NYISO’s interconnection queue, the Developer still must obtain an applicable regulatory milestone within six months after the date on which the NYISO tenders the draft LGIA for the Project.<sup>12</sup> The LFIP also requires the withdrawal of the project from the NYISO’s interconnection queue in the event that a Developer fails to satisfy an applicable regulatory milestone by that date.<sup>13</sup> The NYISO’s addition of the alternatives to satisfying a regulatory milestone: (i) recognizes the complexity of the initial steps that a Developer must complete before obtaining a

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<sup>8</sup> *N.Y. Indep. Sys. Operator, Inc.*, Transmittal Letter, Docket No. ER17-830-000 (January 23, 2017) (“2017 Filing”); *N.Y. Indep. Sys. Operator, Inc.*, Letter Order, Docket No. ER17-830-000 (February 21, 2017) (accepting the revisions proposed in the NYISO 2017 Filing); *N.Y. Indep. Sys. Operator, Inc.*, Transmittal Letter, Docket No. ER20-638-000, at 45 (December 19, 2019) (“2019 Filing”); *N.Y. Indep. Sys. Operator, Inc.*, Letter Order, Docket No. ER20-638-000 (January 1, 2020) (accepting the revisions proposed in the 2019 Filing).

<sup>9</sup> OATT § 25.6.2.3.1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* §§ 26.6.2.3.2, 26.6.2.3.3, 30.11.1. When the NYISO added the deposit in lieu of satisfying a regulatory milestone, it explained to the Commission that this alternative “provides Developers with additional time to complete the regulatory milestone, while ensuring that a project satisfies its regulatory milestone requirement within a specified time period after completion of the Class Year Study.” 2017 Filing at 6-7. The NYISO similarly noted to the Commission when adding the qualifying financial agreement alternative that “[n]otwithstanding a Developer’s use of a qualifying financial agreement for purposes of entering a Class Year, the Developer will still be ultimately responsible for satisfying a regulatory milestone.” 2019 Filing at 45.

<sup>13</sup> OATT §§ 25.6.2.3.3, 30.11.1.

regulatory determination or action,<sup>14</sup> and (ii) provides Developers flexibility by having the option to enter a Class Year Study while it continues to pursue the necessary regulatory determinations and actions.<sup>15</sup> A Developer, however, is responsible for deciding whether its project is sufficiently progressing—both in development and permitting—to avoid loss of the at-risk portion of the deposit in lieu of satisfying a regulatory milestone or withdrawal from the interconnection queue if the regulatory milestone is delayed.

ECBS entered the Class Year for Class Year 2023, which commenced on February 13, 2023, by making a voluntary, two-part deposit of (i) \$100,000 and (ii) \$3,000/MW of ERIS in lieu of satisfying the regulatory milestone. ECBS therefore has until February 13, 2024, to demonstrate to the NYISO that the Project has satisfied the regulatory milestone, or ECBS will forfeit the \$100,000 portion of its deposit.

### **III. Comments**

The NYISO understands that ECBS: (i) requests waiver of the requirement under OATT Section 25.6.2.3.1 that the Project must satisfy the regulatory milestone within twelve months after the Class Year Start Date to be refunded the \$100,000 portion of its deposit submitted in lieu of a regulatory milestone and (ii) requests that this timeframe for refund eligibility be extended until six months after the NYISO tenders ECBS an LGIA.

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

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<sup>14</sup> See 2017 Filing at 3-4 (explaining that the addition of alternatives to satisfying a regulatory milestone by the start of the Class Year was in response to Developers' expressed concerns of the challenges from certain regulatory permitting processes that place most of the requirements on the Developer at the inception of the process).

<sup>15</sup> In the 2017 Filing, the NYISO explained that the two-part deposit in lieu incentivizes a Developer to strategize when it should enter the Class Year and to continue to expeditiously pursue its regulatory determinations or actions to avoid forfeiting the \$100,000 at-risk portion. See 2017 Filing at 7; *see also Flint Mine Solar LLC v. N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,174, at P 17 (2022) (“[T]he in-lieu-of payment provides some level of flexibility to developers that have failed to meet the requisite milestones while also serving to discourage non-ready projects from joining a Class Year.”).

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.<sup>16</sup> 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.<sup>17</sup>

The NYISO takes no position on the merits of the Waiver Request. The NYISO is not aware of any adverse harm that will result to other projects in the NYISO’s interconnection queue if the Commission grants the Waiver Request.<sup>18</sup> However, the NYISO remains generally concerned that a waiver in this proceeding may raise questions regarding the applicability of milestone requirements for other projects.<sup>19</sup> The Commission has previously recognized the importance of milestones in the interconnection process,<sup>20</sup> as recently reiterated in its Order No. 2023 concerning modifications to interconnection procedures and agreements.<sup>21</sup> Accordingly, if the Commission grants the Waiver Request, the NYISO requests confirmation that the waiver of OATT requirements (i) is based solely on the circumstances related to the Project and (ii) should not be construed as having any impact on the applicability of the same requirements to other Large Facilities.

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<sup>16</sup> See *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,060, at P 17 (2013); *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172, at P 16 (2013); *Hudson Transmission Partners, LLC*, 131 FERC ¶ 61,157, at P 10 (2010).

<sup>17</sup> See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Co.*, 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 (noting that the Commission’s “grant of waiver is limited to the facts and circumstances of the case before [it]”).

<sup>18</sup> See Waiver Request at 8.

<sup>19</sup> For example, the Commission emphasized in one of the instances that it has granted a waiver of tariff-mandated deadlines in the NYISO’s interconnection procedures, “we emphasize the importance of meeting . . . deadlines and note that in the future, we expect parties to arrange for [compliance with such deadlines] to be submitted in sufficient time to meet the requirements of their tariffs.” See *Innovative Energy Systems, LLC*, 131 FERC ¶ 61,066 at P 7 (2010).

<sup>20</sup> See *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P 16.

<sup>21</sup> See *Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC ¶ 61,054 (2023), at PP 690-691 (adopting more stringent financial commitment requirements for developers to remain in the interconnection queue).

The NYISO also supports ECBS's request for Commission action by February 1, 2024, to provide the parties with certainty concerning the application of the regulatory milestone tariff requirement.

#### **IV. Communications and Correspondence**

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

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**V. Conclusion**

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission consider these comments in making its decision on the Waiver Request and rule on the Waiver Request no later than February 1, 2024.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan

/s/ C. Dixon Wallace III

C. Dixon Wallace III

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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 29th day of November 2023.

/s/ Stephanie Amann

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