

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

Erie Power LLC

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Docket No. ER15-1153-000

**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-captioned proceeding. The NYISO requests that the Commission consider these comments in its determination regarding the relief requested.

I. Background

This proceeding involves a waiver requested by Erie Power LLC (“Erie”) related to the proposed return to service of a decommissioned cogeneration plant in Erie, Pennsylvania, known in the NYISO’s system as PTID 23901 (“Erie Facility”). The previous owners of the Erie Facility elected to retire the facility on November 1, 2010. Erie purchased the decommissioned Erie facility in early 2014, after the facility had already lost its Energy Resource Interconnection Service and Capacity Resource Interconnection Service.² Shortly after acquiring the facility, Erie filed a request for waiver of NYISO tariff and manual-provisions which required Erie to reactivate its 88.2

¹ 18 C.F.R. §§ 385.212 and 385.213 (2015).

² Capitalized terms not otherwise defined in this letter have the meaning set forth in Attachments S, X and Z of the NYISO’s Open Access Transmission Tariff (“OATT”), as amended by the enclosed proposed revisions to Attachments S, X and Z of the OATT.

MW facility within three (3) years of its retirement in order to maintain certain interconnection rights (“2014 waiver request”).³ The Commission denied Erie’s 2014 waiver request.⁴

After the Commission denied the 2014 waiver request, Erie proceeded through the NYISO’s interconnection process. Utilizing the flexibility in the NYISO’s interconnection procedures, and with the consent of the NYISO and the Connecting Transmission Owner, Erie was permitted to forego the Interconnection Feasibility Study.

⁵ As a result, Erie proceeded directly to an Interconnection System Reliability Impact Study (“SRIS”), which proceeded as follows:

- August 13, 2014: The NYISO provided a draft of the SRIS scope to Erie and the Connecting Transmission Owner for review and comment.
- August 19, 2014: The NYISO tendered the SRIS agreement to Erie and the Connecting Transmission Owner on August 19, 2014
- August 19, 2014 – August 27, 2014: Erie, the Connecting Transmission Owner and the NYISO (“the Parties”) developed the scope for the SRIS agreement (requiring input from and edits to address comments from the Parties).
- September 2, 2014: The NYISO presented the SRIS scope to the Transmission Planning Advisory Subcommittee (“TPAS”) – a subcommittee of the NYISO’s Operating Committee – for its review. TPAS recommended the scope proceed to the Operating Committee for approval.
- September 11, 2014: The NYISO’s Operating Committee approved the SRIS scope.

³ *Erie Power LLC*, Request of Erie Power, LLC for Limited Tariff Waiver, Expedited Consideration and Commission Action by July 15, 2014, Docket No. ER14-2056-000 (May 28, 2014).

⁴ *See Erie Power LLC*, Order Denying Waiver, 148 FERC ¶ 61,038 at P18 (2014) (noting, “The fact that Erie Power knowingly purchased a deactivated plant when the three-year window in the Tariff to reactivate the plant had already expired reflects a lack of due diligence on its part, and does not justify our granting waiver.”)

⁵ The Interconnection Feasibility Study was waived pursuant to Section 30.6.1 of Attachment X, with the agreement of the NYISO, the Connecting Transmission Owner and Erie.

- November 20, 2014: The SRIS agreement was fully executed.
- December 18, 2014: The NYISO circulated the SRIS base cases to the Parties for review and comment.⁶
- January 29, 2015: The NYISO received the last of the comments on the base cases from the Connecting Transmission Owner.
- February 13, 2015: After addressing the comments received, the NYISO finalized the base cases and immediately provided them to the NYISO's consultant to use for performing the SRIS.⁷

II. Erie's Waiver Request

Recognizing that it would not have a completed SRIS approved by the NYISO's Operating Committee prior to the Class Year Start Date for the March 1, 2015 Class Year Start Date for the 2015 Class Year Study, Erie filed the waiver request that is the subject of these comments ("2015 waiver request").⁸ The NYISO understands Erie to be requesting (1) that its project be permitted to enter Class Year 2015 without satisfying the tariff-mandated eligibility requirement set forth in Section 25.6.2.3.1(i) of Attachment S⁹ (*i.e.*, that it be permitted to enter Class Year 2015 without having an Operating

⁶ On various occasions in the period of September through December 2014, Erie provided project information inconsistent with prior submissions, triggering the need to clarify the project information and models, which delayed NYISO's efforts to develop the initial base cases for the study.

⁷ Contrary to Erie's implication of an undue or inexplicable delay in Erie's System Reliability Impact Study between December 18, 2014 and February 13, 2015, the NYISO circulated the base cases for review on December 18, 2014, requesting comments back within five (5) Business Days. However, NYISO did not receive all the comments until January 29, 2015.

⁸ *Erie Power LLC*, Request of Erie Power LLC for Limited Tariff Waiver and Expedited Review, Docket No. ER15-1153-000 (Feb. 27, 2015).

⁹ See Section 25.6.2.3.1 of Attachment S and Section 30.8.1 of Attachment X. Erie's waiver request does not specify any particular section of Attachment X from which it seeks waiver but presumably it is seeking waiver from Section 30.8.1 of Attachment X, which provides for rules applicable to Eligible Class Year Projects, as well as Section 25.6.2.3.1 of Attachment S, which is specifically referenced in the waiver request.

Committee-approved SRIS); and (2) that Erie be provided an open-ended extension within which to complete this Class Year eligibility requirement.¹⁰

Proposed Large Facilities such as the Erie Facility are subject to three (3) successive interconnection studies, as detailed in the NYISO's Large Facility Interconnection Procedures set forth in Attachment X of the OATT: the Interconnection Feasibility Study, the SRIS, and the Class Year Study. The Class Year Study is a comprehensive study that evaluates the cumulative impact of a group of projects that have met specified Class Year Study eligibility requirements by the Class Year Start Date. The Class Year Study identifies and allocates the costs of the upgrade facilities needed to reliably interconnect all the projects in a Class Year.

A project becomes eligible to enter a Class Year Study when it has satisfied the two critical developmental milestones identified in Attachment S of the OATT:

(1) Operating Committee approval of an SRIS; and (2) the regulatory milestone.¹¹ The Erie Facility has satisfied one of the two Class Year eligibility milestones – the regulatory milestone – but has not yet satisfied the second Class Year eligibility requirement – an SRIS approved by the NYISO Operating Committee.

In order to enter a Class Year Study, a project must have satisfied both of the above-mentioned milestones on or before the Class Year Start Date. Pursuant to Section 25.5.9 of Attachment S, the Class Year Start Date for Class Year 2015 was March 1, 2015. Erie did not have an Operating Committee-approved SRIS by March 1, 2015, and

¹⁰ The waiver request indicates that Erie anticipates obtaining Operating Committee approval of its System Reliability Impact Study as early as April 16, 2015, but provides no outer bound on when it may actually meet this Class Year milestone. Moreover, the NYISO notes that Erie meeting the April 16, 2015 date is unlikely.

¹¹ See Attachment S, Section 25.6.2.3.1.

therefore requests waiver of this Class Year Study eligibility requirement in order that it may enter Class Year 2015.

III. 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. In this proceeding, Erie is requesting waiver of a requirement of the interconnection process established by Attachment S and Attachment X of the NYISO OATT. 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 permit the NYISO to intervene with all the rights of a party.

IV. Comments

The NYISO has certain concerns regarding Erie's request and respectfully requests that the Commission consider these concerns in its decision on the merits of the waiver request. The NYISO is primarily concerned that the waiver is not of limited scope and may therefore raise questions regarding the applicability of the same tariff requirements as applied to other projects. This is particularly true given that this is a substantive milestone, and not simply an administrative deadline. The NYISO is also concerned that granting of the requested waiver could impact the Class Year 2015 schedule.

A. Commission Guidance on Similar Waiver Requests

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.¹² 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.¹³ 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.¹⁴

The Commission has never waived either of the Class Year eligibility requirements and to date, no project has ever been permitted to enter a Class Year without having satisfied both milestones prior to the Class Year Start Date. The Commission has consistently emphasized the importance of the Class Year Study eligibility milestones. In an order issued just last week, the Commission denied a request

¹² 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).

¹³ 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”).

¹⁴ 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.”).

for waiver of one of the Class Year eligibility requirements – specifically, the regulatory milestone.¹⁵ In last week’s order, the Commission noted:

In granting a previous waiver of these provisions of NYISO’s OATT, the Commission stated that “we do not intend that NYISO’s regulatory milestones should be taken lightly.” We reiterate here that we believe that it is important for parties to meet NYISO’s regulatory milestones.¹⁶

Similarly, as the Commission emphasized in one of the few instances in which 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.”¹⁷ It is important that the Commission continue to reinforce the importance of the Class Year Study eligibility milestones that enhance certainty and transparency in the NYISO’s administration of the interconnection process. The Commission’s statements from last week’s order should apply equally to the other Class Year eligibility requirement – an SRIS approved by the NYISO’s Operating Committee.

B. An Operating Committee-Approved SRIS is an Essential Pre-requisite to Class Year Entry

The requirement that a project have an Operating Committee-approved SRIS serves an important function in the NYISO’s interconnection process. Far from being a

¹⁵ See *Cassadaga Wind LLC*, 150 FERC ¶ 61,182 (March 11, 2013) (denying request for waiver of the requirement that a project satisfy the regulatory milestone in Attachment S in order to enter a Class Year Study).

¹⁶ See *id.* at P18.

¹⁷ See *Innovative Energy Systems, LLC*, 131 FERC ¶ 61,066 (2010) (granting a waiver of developer’s obligation as a Class Year 2008 project to submit a security deposit to its Connecting Transmission Owner within a date prescribed by Attachment S).

bureaucratic rule established for the NYISO's convenience, this milestone provides essential technical inputs to the Class Year Study. Allowing projects to be included in the Class Year Study before they have completed an SRIS could impact the Class Year 2015 schedule because NYISO will not have the technical outputs of the SRIS to use in the Class Year base cases.

To the extent FERC grants the requested waiver significantly after the March 1, 2015 Class Year Start Date, the NYISO would be required to add the Erie Facility to the Class Year after the Class Year membership has been finalized. The NYISO has already begun to work to build the base cases for the Class Year 2015 Study. Adding a facility after the notice period for Class Year entry has passed will only complicate and delay those efforts.

Should the Commission grant Erie's request, and Erie subsequently fails to obtain Operating Committee approval of its SRIS, the NYISO would be required to withdraw the project from Class Year 2015. If the Class Year is far along at that point, this could require the NYISO to (1) create new base cases; (2) delay the start or require the re-running of Class Year Study analyses; and (3) potentially identify and cost allocate new or different upgrades. This could delay the Class Year Study and increase the time and expense of the Class Year Study for other Class Year 2015 members that timely satisfied the Class Year eligibility requirements.

It is not clear what unique circumstances exist here that (1) warrant a waiver of the generally applicable requirement or (2) distinguish this project from the other projects that have not yet satisfied the same milestone but otherwise qualify for Class Year entry. To allow one project Developer to enter a Class Year Study without meeting the same requirements that other project Developers must meet would lead to an inequitable result.

Under the NYISO's interconnection process, the project has the flexibility to remain in the queue and enter a later Class Year Study. If it proceeds through a Class Year Study and accepts its Project Cost Allocations for required System Upgrade Facilities and System Deliverability Upgrades, if any, it can then participate in both the energy and capacity markets. Further, the NYISO's process permits projects to move forward with interconnection agreement negotiations and, under certain circumstances, to become operational before the project completes the Class Year study process. The NYISO is willing to continue to work with Erie to move its project forward and to help Erie utilize the flexibility that the existing interconnection procedures provide in this regard.

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) grant this motion to intervene, and (ii) consider these comments in making its decision on the Erie's waiver request.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan

Counsel for the

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March 20, 2015

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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 20th day of March, 2015.

/s/ Joy A. Zimmerlin

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