

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

**New York Independent System Operator, Inc.        )        Docket No. ER13-588-000**

**ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.212 and 385.213 (2009), the New York Independent System Operator, Inc. (“NYISO”) submits this motion for leave to answer, and an answer to, the Protest of Cape Vincent Wind Power, LLC (“Cape Vincent”) (“Cape Vincent Protest”). The Cape Vincent Protest was filed in response to the NYISO’s December 19, 2012 filing in the above-captioned proceeding, pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission’s regulations, proposing revisions to the NYISO’s interconnection procedures (“December 19 Filing”).

**I.        REQUEST FOR LEAVE TO FILE ANSWER**

The NYISO recognizes that the Commission generally discourages answers to protests and answers. However, the Commission has the discretion to accept answers to protests and answers, and has done so when those answers help to clarify complex issues, provide additional information, or are otherwise helpful in the development of the record in a proceeding.<sup>1</sup> The NYISO submits that this answer will assist the Commission in its decision-making process and respectfully requests leave to answer the Cape Vincent Protest.

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<sup>1</sup> See e.g., *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 at P 39 (2008) (accepting answers to answers because they provided information that aided the Commission’s decision-making process); *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO’s answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was “helpful in the development of the record...”).

## II. ANSWER

### **A. The NYISO's Proposed Tariff Revisions Impose Much Needed Limits On Extended And/Or Repeated Extensions Of Commercial Operation Date For Projects In The NYISO's Interconnection Queue.**

Among other revisions, the December 19 Filing includes proposed changes to the NYISO's interconnection procedures related to extensions of Commercial Operation Date and the time within which to finalize an Interconnection Agreement.<sup>2</sup> The NYISO initiated discussions with its stakeholders regarding the need for these tariff revisions with guidance from the Commission in mind. The Commission has stated that while it is "in favor of allowing interconnection customers flexibility with respect to interconnection milestones," it also finds it "important to ensure that interconnection queues do not become clogged with speculative projects."<sup>3</sup> Accordingly, the NYISO and stakeholders worked extensively through many months of stakeholder meetings to develop mechanisms to encourage projects to move through the interconnection process without unnecessary delays, while balancing the need to allow Developers certain flexibility in the interconnection process.<sup>4</sup> Toward this end, the proposed tariff revisions place limitations on permissible extensions of Commercial Operation Dates and on permissible time frames within which to finalize an Interconnection Agreement.

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<sup>2</sup> 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.

<sup>3</sup> Virginia Electric and Power Company, 104 F.E.R.C. P61,249, *Order On Compliance Filing And Rehearing*, at P17 (Sept. 10, 2003). *See also*, Hudson Transmission Partners, LLC v. New York Independent System Operator, Inc., 120 F.E.R.C. P61,179, *Order on Complaint* (Aug. 22, 2007) (ordering NYISO to remove Cross Hudson's Project from Queue Position No. 93 as "consistent with our policy of reducing uncertainty and congestion in the queue that threaten the prompt and efficient development of interconnection projects")

<sup>4</sup> Projects that have demonstrated considerable delay in progressing toward completion of the interconnection process and Commercial Operation, should not be permitted to sit in the NYISO's Interconnection Queue indefinitely by continually requesting extensions of Commercial Operation Date. The longer a project sits in the interconnection queue after the completion of its studies, the greater is the likelihood that events will unfold due to the passage of time that would gradually degrade the inputs and results from the interconnection studies. For example, equipment that was originally studied may no longer be available due to the passage of time (*e.g.*, specific wind turbine models).

The NYISO proposes to revise Section 30.4.4.5 to limit permissible extensions of the Commercial Operation Date. As revised, Section 30.4.4.5 would permit extensions of Commercial Operation Date that are within four (4) years from the completion of the Class Year Study or tender of the SGIA, as applicable (“permissible extension period”).<sup>5</sup> As revised, Section 30.4.4.5 would further provide that a Developer may request an extension of its Commercial Operation Date beyond the permissible extension period and such extension would not be a Material Modification (and would therefore be permitted) if the following conditions have been met: (1) Developer must have an executed Interconnection Agreement for the project or have on file with FERC an unexecuted Interconnection Agreement; and (2) Developer must demonstrate (via an Officer certification) continuous progress against milestones set forth in the Interconnection Agreement (*e.g.*, completion of engineering design, major equipment orders, commencement and continuation of construction of the project and associated System Upgrade Facilities, as applicable). If the Developer does not satisfy the above conditions, an extension of Commercial Operation Date beyond the permissible extension period would not be allowed.

The NYISO’s proposed tariff revisions regarding extensions of Commercial Operation Date include a transition rule that was fully vetted with stakeholders and finalized only after considerable stakeholder discussions.<sup>6</sup> This transition rule, set forth in new Section 30.4.4.5.3 of

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<sup>5</sup> This proposed change to the current tariff language that allows for Commercial Operation Date extensions of up to three (3) years from the project’s original Commercial Operation Date, does not extend the three (3)-year suspension provision in the *pro forma* Interconnection Agreement. Such suspension provision operates in conjunction with the Material Modification provisions in Attachment X and, as the Commission has made clear, does not extend or expand permissible extensions of Commercial Operation Date permitted under the *pro forma* Large Facility Interconnection Procedures. See, *e.g.*, *Montgomery Great Falls Energy Partners LP v. NorthWestern Corp.*, 123 F.E.R.C. P61,181, 62, *Order Denying Complaint* (May 16, 2008) at P46 (finding, “[w]here, as here, a suspension causes the commercial operation date to be extended beyond three years, such extension can be considered a material modification.”). This would continue to be the case under the proposed tariff language.

<sup>6</sup> The NYISO notes that Cape Vincent did not raise its concerns during the NYISO stakeholder process.

Attachment X, applies to projects such as Cape Vincent's Queue Nos. 166/207 projects ("Cape Vincent Project")<sup>7</sup> that have already completed the interconnection study process. For such projects, the proposed transition rule requires the Developer to satisfy certain criteria within sixty (60) days of the effective date of these tariff revisions if, at the time these tariff revisions become effective, the proposed Commercial Operation Date is not within the permissible extension period. Those criteria are: (1) an executed Interconnection Agreement (or an unexecuted Interconnection Agreement filed with FERC); and (2) demonstrated progress against the milestones set forth in the Interconnection Agreement. Projects subject to the transition rule that fail to satisfy such criteria within sixty (60) days would be withdrawn from the interconnection queue.

Cape Vincent protests the NYISO's proposed tariff revisions regarding extensions of Commercial Operation Date and requests that the Commission direct the NYISO to modify its proposal to (1) provide that the proposed language in Section 30.4.4.5.3 does not apply to projects in the interconnection queue for which the NYISO has determined that a Commercial Operation Date extension is not a Material Modification;<sup>8</sup> and (2) for those projects that are subject to Section 30.4.4.5.3, modify the requirements a Developer must satisfy for Commercial Operation Dates beyond the permissible extension period.<sup>9</sup>

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<sup>7</sup>These two separate Queue positions merged into one project after the completion of both projects' Class Year Interconnection Facilities Studies.

<sup>8</sup> Cape Vincent Protest at 7.

<sup>9</sup> *Id.* at 7-9.

1. Cape Vincent's Proposed Exception for Projects with Previously Approved Extensions of Commercial Operation Date

Cape Vincent urges the Commission to direct the NYISO to clarify that the proposed transition rule does not apply to projects such as the Cape Vincent Project. Specifically, Cape Vincent requests that the Commission direct the NYISO to clarify that proposed Section 30.4.4.5.3 of Attachment X does not apply to projects in the interconnection queue for which the NYISO has previously determined that a Commercial Operation Date extension was not a Material Modification. Cape Vincent further asserts that such an exception “would not, in this circumstance, disturb what the NYISO has indicated it is trying to achieve with its proposal.”<sup>10</sup>

A blanket exception to the proposed Commercial Operation Date limitations for projects such as the Cape Vincent Project would, however, be a direct contravention to the intent of the NYISO's proposal. The proposal is designed to encourage projects to move forward in the interconnection process toward an Interconnection Agreement and Commercial Operation within a reasonable amount of time from completion of the interconnection study process. Projects with significant delays in their Commercial Operation Dates were the impetus for the NYISO's proposed tariff revisions. The Cape Vincent Project has already significantly extended its originally-proposed Commercial Operation Date. The two queue positions that currently make up Cape Vincent's project have extended their Commercial Operation Dates by eight and five years, respectively, to December 2014. Cape Vincent also modified its project *after* the interconnection study process was completed, combining two separately-queued projects into a single project.<sup>11</sup>

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<sup>10</sup> *Id.* at 7.

<sup>11</sup> The combined Cape Vincent Project changes required significant modification to the configuration evaluated in the completed interconnection study process. NYISO evaluated these proposed changes and

The NYISO's proposed tariff revisions would not, as Cape Vincent contends, "invalidate the Material Modification review" previously conducted for the December 2014 Commercial Operation Date for the Cape Vincent Project.<sup>12</sup> Rather, the proposed transition rule simply requires that for such extraordinary extensions the Developer satisfy certain concrete milestones. It is not onerous or unreasonable to require a project with such an extended Commercial Operation Date to move forward to an Interconnection Agreement and to begin progressing against milestones that are necessary for the project to reach Commercial Operation by its currently proposed Commercial Operation Date. Cape Vincent fails to explain why these very reasonable expectations are unattainable or unreasonable.

However, the NYISO would not oppose limited modifications of the transition mechanism to address, at least in part, the concerns expressed by Cape Vincent. Specifically, for those projects where the NYISO has already determined an extension of the Commercial Operation Date to be non-material, the new requirement regarding the Interconnection Agreement and progress against the stated milestones could apply only if and when the Developer requests a further extension. For example, in order for Cape Vincent to obtain an extension beyond its current December 2014 Commercial Operation Date, the project would have to have its Interconnection Agreement and demonstrate progress against the requisite milestones prior to December 2014.

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determined, after extensive review, that the proposed changes were not a Material Modification of the projects. However, Cape Vincent's decision to make such substantial changes to the projects after the completion of the interconnection studies necessarily required that technical details produced by such studies be updated prior to finalizing the Interconnection Agreement. Notably, it was Cape Vincent's decision to wait until after the completion of the interconnection studies to make such significant project changes.

<sup>12</sup> *Id.* at 5.

2. Cape Vincent's Proposed Modification to the Requirements for Projects with Proposed Commercial Operation Dates Beyond the Permissible Extension Period

Under the NYISO's proposal, as set forth in the December 19 Filing, a project's Commercial Operation Date must be within four (4) years from the completion of the Class Year Study. The proposed tariff revisions provide that in order to obtain an extension of Commercial Operation Date beyond this period requires: (1) an executed Interconnection Agreement (or an unexecuted Interconnection Agreement filed with the Commission); and (2) demonstrated progress against the milestones set forth in such Interconnection Agreement. Cape Vincent requests revisions to these requirements that would significantly weaken their efficacy.

a. Requirement 1: Executed Interconnection Agreement or Unexecuted Interconnection Agreement on File with the Commission

Cape Vincent asks the Commission to direct the NYISO to modify the first of the two requirements that a Developer show in order to have a Commercial Operation Date beyond the permissible extension period - that the Developer have either an executed Interconnection Agreement or that an unexecuted Interconnection Agreement has been jointly filed with the Commission by the NYISO and Connecting Transmission Owner.<sup>13</sup> Cape Vincent contends that "the [D]eveloper could lose its queue position if the NYISO and Connecting Transmission Owner inadvertently or intentionally fail to make the filing by the required deadline" and that it is "not fair or just and reasonable to place the viability of the [D]eveloper's project in the hands of third parties that the [D]eveloper cannot control."<sup>14</sup>

Cape Vincent suggests that the Interconnection Agreement requirement be modified such that a Developer need only show it has an executed Interconnection Agreement or that it has

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<sup>13</sup> *Id.* at 7-8.

<sup>14</sup> *Id.* at 8.

*requested* the NYISO and Connecting Transmission Owner to file an unexecuted Interconnection Agreement.<sup>15</sup> The NYISO’s current tariff, however, already requires that the NYISO and the Connecting Transmission Owner jointly file the unexecuted Interconnection Agreement with the Commission “[a]s soon as practicable, but not later than ten (10) Business Days after receiving ... the request to file an unexecuted [Interconnection Agreement].”<sup>16</sup> Cape Vincent is therefore requesting that the Commission direct the NYISO to revise its proposed tariff revision to anticipate the NYISO’s violation of its tariff. Since the NYISO has no history of violating this tariff provision and has no intention of doing so in the future, Cape Vincent’s requested modification is without basis.<sup>17</sup> A Developer requesting that an unexecuted Interconnection Agreement be filed simply needs to make its request at least ten (10) Business Days before the applicable deadline

Cape Vincent also suggests that the Commission direct the NYISO to modify its proposal to provide a grace period of sixty (60) days after issuance of the Commission’s Order on an unexecuted Interconnection Agreement for the Developer to demonstrate reasonable efforts against the milestones ultimately approved by the Commission. The NYISO would not oppose this limited modification.

b. Requirement 2: Progress Against Interconnection Agreement Milestones

Cape Vincent also requests that the Commission direct the NYISO to expand the list of permissible milestones that a Developer must meet in order to have a Commercial Operation

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<sup>15</sup> *Id.*

<sup>16</sup> *See* Attachment X, Section 30.11.3.

<sup>17</sup> Moreover, contrary to Cape Vincent’s contentions, the consequence of a Developer’s failure to satisfy the new tariff revisions is not a “death knell” to the project. *See* Cape Vincent Protest at 6. The project always has the option of submitting a new Interconnection Request.



Date beyond the permissible extension period.<sup>18</sup> Specifically, Cape Vincent suggests that the proposed language be revised to add, as a permissible milestone, a Developer “actively pursuing required governmental permits.”<sup>19</sup>

While the specific milestones the NYISO included in this tariff language are those that typically appear in an Interconnection Agreement, the satisfaction of which demonstrate the Developer’s earnest intention to move forward toward Commercial Operation, Cape Vincent’s proposed addition to this requirement would require a more subjective determination. Cape Vincent does not adequately describe what activities would constitute “active pursuit” of required permits. The NYISO’s tariff currently requires a project to complete a regulatory milestone in order to enter a Class Year, the final interconnection study.<sup>20</sup> This regulatory milestone generally requires a project to have a permitting application determined to be complete by the applicable agency. It is unclear what incremental, objective milestone Cape Vincent suggests that is beyond achievement of the currently required regulatory milestone, but before obtaining required permits. Depending on where on the spectrum of “active pursuit” a Developer is, Cape Vincent’s proposed milestone might not be any more than what is already required for a project to even enter a Class Year Study. The NYISO therefore respectfully requests that the Commission reject this portion of Cape Vincent’s Protest and not require the NYISO to modify the list of acceptable milestones against which the Developer’s intention to move forward should be measured.

**B. SUGGESTED MODIFICATIONS TO THE NYISO’S PROPOSED  
TARIFF REVISIONS TO ADDRESS CERTAIN OF CAPE VINCENT’S**

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See Attachment S, Sections 25.6.2.3.1.1.1 through 25.6.2.3.1.1.7.

## CONCERNS

As discussed above, the NYISO would not object to certain limited modifications requested by Cape Vincent to Section 30.4.4.5, as proposed in the NYISO's December 19 Filing. The following language reflects these modifications to the language proposed in its December 19 Filing:

30.4.4.5 Extensions of the proposed Commercial Operation Date will not be Material Modifications if:

30.4.4.5.1 The proposed Commercial Operation Date is within four (4) years from the following date:

30.4.4.5.1.1 For all Large Facilities and for Small Generating Facilities subject to Attachment S, the date the Developer and all other Developers remaining in the Class Year post security as part of a Class Year Interconnection Facilities Study (i.e., completion of the Class Year).

30.4.4.5.1.2 For Small Generating Facilities not subject to Attachment S, the date the NYISO tenders the SGIA to the Interconnection Customer.

30.4.4.5.2 Developer may request an extension of its Commercial Operation Date beyond the limit specified in Section 30.4.4.5.1. Such request will not be a Material Modification only if the following conditions have been met:

30.4.4.5.2.1 Developer must have an executed Interconnection Agreement for the project or have an unexecuted Interconnection Agreement jointly filed at FERC by the NYISO and Connecting Transmission Owner; and

30.4.4.5.2.1<sup>21</sup> Developer must demonstrate (via an Officer certification) that it has made reasonable progress against 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

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<sup>21</sup> This section inadvertently repeated the section number from the above section, but should read 30.4.4.5.2.2.

applicable). If Developer has requested an unexecuted Interconnection Agreement be filed with FERC, Developer must meet this requirement within sixty (60) days of a FERC Order on the unexecuted Interconnection Agreement.

30.4.4.5.3 For projects in the NYISO Interconnection Queue that as of February 18, 2013 have accepted Project Cost Allocations and posted Security for System Upgrade Facilities from the final round of a Class Year Interconnection Facilities Study, one of the following criteria must be satisfied with respect to the proposed Commercial Operation Date:

30.4.4.5.3.1 The project's proposed Commercial Operation Date posted on the NYISO interconnection queue as of February 18, 2013 must be within the limit specified in Section 30.4.4.5.1; or

30.4.4.5.3.2 The project's proposed Commercial Operation Date posted on the NYISO interconnection queue as of February 18, 2013 must have been reviewed by the NYISO and determined not to be a Material Modification prior to February 18, 2012; or

30.4.4.5.3.3 If the project's proposed Commercial Operation Date posted on the NYISO interconnection queue as of February 18, 2013 is beyond the limit specified in Section 30.4.4.5.1, the following conditions must be satisfied within sixty (60) days of February 18, 2013 or the project will withdrawn from the NYISO Interconnection Queue:

30.4.4.5.3.13.1 Within sixty (60) days of February 18, 2013, Developer must either (1) have an executed Interconnection Agreement for the project; or (2) have an unexecuted interconnection Agreement jointly filed at FERC by the NYISO and Connecting Transmission Owner; and

30.4.4.5.3.13.2 Within sixty (60) days of execution of an Interconnection Agreement or a FERC Order on an unexecuted Interconnection Agreement, as applicable, Developer must demonstrate (via an Officer certification) that it has made reasonable progress against 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 NYISO requests that the Commission consider these proposed revisions that the NYISO could incorporate in a compliance filing if so issued by the Commission in its Order on the December 19 Filing.

### **III. CONCLUSION**

Wherefore, for the reasons set forth herein, the NYISO respectfully requests that the Commission take action as specified herein.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan

Senior Attorney

New York Independent System Operator, Inc.

January 24, 2013

## **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 Commission's Rules of Practice and Procedure, 18 C.F.R. § 2010 (2013).

Dated at Rensselaer, New York this 24<sup>th</sup> day of January, 2013.

/s/ *Mohsana Akter*

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