

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

H.Q. Energy Services (U.S.) Inc.

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Docket No. ER17-505-000

**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 in this proceeding and submits comments in support of the relief requested by H.Q. Energy Services (U.S.) Inc. (“HQUS”, such filing, the “HQUS Request”). The NYISO agrees that waiver of the requested tariff provisions is appropriate in this unique situation - an entity requesting Capacity Resource Interconnection Rights (“CRIS”) associated with transmission upgrades over an external interface. The NYISO has committed to work with stakeholders to develop market rules to specifically provide for requests under facts such as those generally presented by the project. Pending the NYISO’s development of such rules and stakeholder consensus in support of such rules, the NYISO finds HQUS’s requested waiver to be an appropriate interim mechanism to allow it to be evaluated for deliverability. Notably, when discussed in the stakeholder process, there have been no objections to allowing HQUS to obtain CRIS for the transmission upgrades at issue.

¹ 18 C.F.R. §§ 385.212 and 385.213 (2014).

I. Background

On December 1, 2016, HQUS filed a request for waiver of tariff provisions to allow it to enter the NYISO's next Class Year Deliverability Study for an evaluation of CRIS related to its transmission upgrade project over the HQ-New York external interface.² As HQUS notes in its waiver request, this is not a scenario specifically contemplated by the NYISO's tariff.

While the NYISO's Open Access Transmission Tariff ("OATT") provides for an entity such as HQUS to request External CRIS Rights for the incremental megawatts ("MW") its transmission upgrade creates, an entity cannot request such rights until the incremental MW from the transmission upgrade are reflected in the annual process for establishing import rights. The annual process for establishing import limits reflects the incremental MW once the transmission upgrade is in-service or is expected, by the NYISO, to be in-service by the beginning of the applicable Capability Year, such that it has been included in the appropriate analyses associated with the capacity market. That process also takes into account whether any emergency assistance is modeled over the upgraded transmission facilities. If the incremental MW are not fully utilized by emergency assistance, they might be available in the import rights process and through a request for External CRIS Rights. However, the entity that funded the upgrades may have to compete with other entities that may enter the Class Year Study to request External CRIS Rights for the incremental MW the transmission upgrade permits. NYISO understands that HQUS's waiver request is intended to protect against this scenario. As HQUS correctly notes in its waiver request, addressing this scenario is a specific project that NYISO has committed to pursue as a 2018 project.

² *H.Q. Energy Services (U.S.) Inc.*, Request for Limited Waiver and Expedited Approval, Docket No. ER17-505-000 (Dec. 7, 2016) ("waiver request").

HQUS specifically requests waiver of three provisions in the NYISO OATT and one provision of the Market Administration and Control Area Services Tariff (“MST”). First is Section 25.7.11.1.4.2.2 of Attachment S to the OATT. This tariff section limits the CRIS that a Class Year project can request over an external interface. As applied to the HQUS project, this tariff provision, if not waived, prevents the NYISO from being able to review HQUS’ CRIS request in light of the incremental MW that its transmission upgrade will add to the external interface over which it seeks CRIS.

The second tariff provision, in Attachment X to the OATT, for which HQUS requests waiver is the definition of Merchant Transmission Facility as revised in a pending NYISO compliance filing.³ Absent this waiver, the only mechanism through which a transmission project can be evaluated in a Class Year Study is as a merchant transmission project seeking CRIS in the form of Unforced Capacity Deliverability Rights (“UDRs”). Not being eligible for UDRs, HQUS would not be eligible to enter a Class Year Study absent a waiver of the definition of Merchant Transmission Facility.

The third provision of the OATT and the MST provision for which HQUS seeks waiver relate to the annual import rights process. NYISO understands that HQUS requests waiver of these provisions to prevent the incremental MW created by its transmission upgrade from being made available to be allocated out through the annual import rights process before HQUS can obtain CRIS in the Class Year and the right to use it in the capacity market corresponding to those incremental MW.

HQUS also requests that the Commission expedite its consideration of the waiver request, including an expedited notice and comment period, and that the Commission issue an

³ See *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-009 (March 22, 2016).

order approving the waiver request by January 31, 2017. This request recognizes the likelihood of a March 1, 2017 Class Year Start Date for the next Class Year Study.

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 energy, capacity, and ancillary services in the New York Control Area. Additionally, the NYISO administers the interconnection process pursuant to its Commission-approved tariffs. In this proceeding, HQUS is requesting waiver of provisions in the Large Facility Interconnection Procedures established by the 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 permits the NYISO to intervene with all the rights of a party.

III. Comments

A. The NYISO Supports HQUS's Waiver Request as Described Below

The NYISO understands HQUS's waiver request as requesting that the Commission allow it to enter the next Class Year Study in order for the Queue No. 430 transmission upgrade project proposed by HQUS to be evaluated in the Class Year Deliverability Study for CRIS. If granted, this waiver request would permit HQUS to request and, depending on the results of the Class Year Deliverability Study, obtain CRIS Rights corresponding to the incremental transfer capability created by its proposed Queue No. 430 transmission upgrade project. The NYISO also understands that HQUS is requesting this relief while recognizing that the CRIS it requested to receive in the Class Year Study may not be able to be used in the NYISO's Installed Capacity market until rules are developed in 2018 that may ultimately determine the specific form of CRIS right HQUS may be eligible to obtain in the Class Year Study and the manner in which such form of rights might be implemented in the market.

The NYISO understands that the purpose of the CRIS that HQUS may obtain through the waiver, if granted by the Commission, is solely to allow HQUS to pursue a participation opportunity in the NYISO's Installed Capacity ("ICAP") market via a rule modification the NYISO intends to pursue in the stakeholder process as a 2018 project.⁴ However, because the outcome of that process and the eligibility rules for any such ICAP market participation opportunity are not yet fully developed, the NYISO believes that it is appropriate for the duration of the waiver, and any CRIS rights obtained through the waiver, to be defined. Accordingly, the NYISO believes it is appropriate for the waiver order to specify that any CRIS obtained through the waiver would expire upon the occurrence of any of the following: (1) termination of the HQUS Queue No. 430 transmission upgrade project (*i.e.*, the HQUS project is withdrawn from the NYISO interconnection queue); (2) in the event that "External to ROS Deliverability Rights" ("EDRs") or a similar capacity market opportunity is developed in the 2018 project process and accepted by the Commission, HQUS's failure to pursue the NYISO's procedures to obtain such EDRs or similar capacity market opportunity; or (3) the issuance of a final and non-appealable Commission order which has the result of the HQUS project being ineligible to obtain EDRs or a similar capacity market opportunity.

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,

⁴As such, any CRIS obtained through the waiver are not "rights" that can be transferred to a third party pursuant to Sections 25.9.5 or 25.9.6 of Attachment S to the OATT.

will have undesirable consequences such as harming third parties.⁵ 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.⁶ 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.⁷ It is important that the Commission continue to reinforce the importance of tariffs and manual deadlines that enhance certainty and transparency in the NYISO's administration of the interconnection process.

Based upon (i) the NYISO's review of HQUS's waiver request, (ii) facts known to the NYISO at this time, and (iii) the Commission's guidance on waiver requests, the NYISO fully supports HQUS's waiver request subject to the time limitation described above.

B. The NYISO Supports HQUS's Request for a Commission Order by January 31, 2017

The NYISO anticipates that the next Class Year Study will begin on March 1, 2017. In order to prevent delays to the next Class Year Study and to provide HQUS and the NYISO with certainty regarding HQUS's eligibility to enter the next Class Year Study, the NYISO requests Commission action on HQUS's waiver request by January 31, 2017.

⁵ 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).

⁶ 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").

⁷ 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.").

IV. Communications and Correspondence

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

Robert E. Fernandez, General Counsel
Raymond Stalter, Director of Regulatory Affairs
Karen Georgenson Gach, Deputy General Counsel
*Sara B. Keegan, Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-8554
Fax: (518) 356-7678
skeegan@nyiso.com

* Person designated for receipt of service.

V. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission (i) grant this motion to intervene, (ii) accept these comments; and (iii) grant the relief requested by HQUS in its waiver request.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan
Counsel for the
New York Independent System Operator, Inc.

December 21, 2016

cc: Michael Bardee
Nicole Buell
Anna Cochrane
Kurt Longo
Max Minzner
Daniel Nowak
Larry Parkinson
J. Arnold Quinn
Douglas Roe
Kathleen Schnorf
Jamie Simler
Gary Will

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 21st day of December 2016.

By: /s/ John C. Cutting

John C. Cutting
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144
(518) 356-7521