

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

Erie Power LLC

)
)
)

Docket No. ER15-2225-000

**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 Erie Power, LLC's ("Erie") requested waiver of an eligibility requirement set forth in the NYISO's Open Access Transmission Tariff ("OATT") to permit the late entry of its facility into the Class Year Interconnection Facilities Study² for Class Year 2015 ("July 2015 Waiver Request").³

I. 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

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 and X of the NYISO's Open Access Transmission Tariff ("OATT").

³ *Erie Power LLC*, Request of Erie Power LLC for Limited Tariff Waiver and Motion for Expedited Action, Docket No. ER15-2225-000 (July 16, 2015) ("July 2015 Waiver Request").

Tel: (518) 356-8554
Fax: (518) 356-7678
skeegan@nyiso.com

*Persons designated for receipt of service.

II. Motion to Intervene

The NYISO is the independent entity responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. The NYISO administers the interconnection process for the New York State Transmission System and Distribution System pursuant to its Commission-approved OATT. In this proceeding, Erie is requesting waiver of a requirement of the interconnection process established in Attachment S of 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.

III. Background

A. The Proposed Reactivation of the Decommissioned Erie Facility

Erie is proposing to return to service a decommissioned 88.2 MW cogeneration plant (“Erie Facility”). The Erie Facility is located in Erie, Pennsylvania, but intends to electrically interconnect again to the New York State Transmission System at the South Ripley Substation owned by Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”). The previous owners of the Erie Facility elected to retire the facility on November 1, 2010. Erie purchased the decommissioned facility in early 2014, after it had already lost its Energy Resource Interconnection Service (“ERIS”) and Capacity Resource Interconnection Service (“CRIS”) in accordance with NYISO tariff requirements. Shortly after acquiring the facility, Erie filed a request for waiver of the

NYISO's tariff and manual-provisions that require a Market Participant to reactivate its facility within three (3) years of its retirement to maintain certain interconnection rights ("2014 Waiver Request").⁴ The Commission denied the 2014 Waiver Request.⁵ Erie, therefore, must satisfy the requirements of the NYISO's interconnection process to obtain ERIS and CRIS for the Erie Facility.

B. The Erie Facility's Progression through the NYISO's Interconnection Process

Erie submitted an Interconnection Request to the NYISO on June 2, 2014. Since then, the NYISO has acted diligently in assisting Erie to proceed through the interconnection process. The NYISO, with the agreement of National Grid, made use of the flexibility in the interconnection process to permit Erie to forego the first of the three (3) interconnection studies – the Interconnection Feasibility Study.⁶ As a result, Erie proceeded directly to the SRIS stage of the process.

As Erie recognized in the July 2015 Waiver Request, the NYISO made significant efforts to move the SRIS forward:

⁴ *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).

⁵ 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.")

⁶ The NYISO's interconnection process provides for up to three (3) successive interconnection studies for a Large Generator Facility such as the Erie Facility: (1) the Interconnection Feasibility Study, (2) the System Reliability Impact Study ("SRIS"), and (3) the Class Year Interconnection Facilities Study ("Class Year Study"). The Interconnection Feasibility Study can be waived pursuant to Section 30.6.1 of Attachment X, with the agreement of the NYISO, the Connecting Transmission Owner and the Developer. Given the importance of the Interconnection Feasibility Study, the NYISO and the New York Transmission Owners' practice has been to waive the study only in limited circumstances in which the technical work necessary for subsequent studies has already been completed or is inapplicable, such as the reactivation of a facility.

Erie Power acknowledges and notes to the Commission the significant efforts and cooperation of the NYISO in attempting to complete the SRIS in time to be considered at the June meetings of the Transmission Planning Advisory Subcommittee (“TPAS”) and OC. Although the attempt was not successful, Erie Power appreciates those efforts and the dedication of the NYISO personnel involved in the process.⁷

While Erie’s above-cited acknowledgement only specifically recognizes the NYISO effort, it is important to recognize that SRIS involved extensive participation and input from National Grid, as the Connecting Transmission Owner, FirstEnergy Corp (“FirstEnergy”), as an Affected System Operator, and PJM Interconnection, L.L.C. (“PJM”), also as an Affected System Operator.

The next step for the Erie Facility in the interconnection process is the Class Year Study – a detailed study that evaluates and identifies the upgrade facilities needed to reliably interconnect all the projects in a Class Year. The Class Year Study is comprised of projects that have met specified Class Year Study eligibility requirements, or “milestones,” by the time the combined group study begins. A project becomes eligible for participation in the Class Year Study for a given Class Year when it has satisfied by the Class Year Start Date the two critical developmental milestones identified in Attachment S of the OATT that reflect the progress of the project: (1) approval by the NYISO stakeholder Operating Committee of an SRIS for the project; and (2) the project’s satisfaction of a regulatory milestone.⁸

⁷ July 2015 Waiver Request at n 3.

⁸ See OATT, Attachment S, Section 25.6.2.3.1.

The Class Year Start Date for Class Year 2015 was March 1, 2015.⁹ Recognizing that it would not have a completed SRIS approved by the NYISO's Operating Committee prior to this date, Erie requested that the Commission waive this requirement for purposes of its entering into the Class Year 2015 ("February 2015 Waiver Request").¹⁰ The NYISO submitted comments expressing concerns with the impact of this requested waiver on the timely completion of the Class Year Study and the potential negative impacts on the members of the Class Year that had satisfied the eligibility requirements.¹¹ The Commission denied the February 2015 Waiver Request ("April 2015 Order").¹² The Commission reiterated the importance of parties satisfying the NYISO's tariff milestones, found that the requested waiver was not of limited scope, and indicated that it was not able to determine the impact on other members of the Class Year given the uncertainty as to whether and when Erie would receive Operating Committee approval of the SRIS for the Erie Project.¹³

Pursuant to its tariff requirements, the NYISO commenced Class Year 2015 on March 1, 2015. Class Year 2015 is composed of sixteen projects that timely satisfied the tariff-mandated eligibility requirements. In the four-and-a-half months since March 1,

⁹ The Class Year Start Date is determined in accordance with Section 25.5.9 of Attachment S of the OATT.

¹⁰ *Erie Power LLC*, Request of Erie Power LLC for Limited Tariff Waiver and Expedited Review, Docket No. ER15-1153-000 (Feb. 27, 2015).

¹¹ *Erie Power LLC*, Motion to Intervene and Comments of the New York Independent System Operator, Inc., ER15-1153-000 (March 20, 2015).

¹² *Erie Power LLC*, Order Denying Waiver, 151 FERC ¶ 61,062 (April 21, 2015) ("April 2015 Order").

¹³ April 2015 Order at PP 22-26.

the NYISO has taken extensive actions in furtherance of the performance of the 2015 Class Year Study as described in Part IV.B below.

The SRIS for the Erie Facility was approved by the NYISO's Operating Committee on July 16, 2015. Erie now submits to the Commission a third waiver request related to the Erie Facility. The NYISO understands Erie to be requesting that its project be permitted to enter Class Year 2015 without having satisfied the tariff-mandated eligibility requirement set forth in Section 25.6.2.3.1(i) of Attachment S¹⁴ for Operating Committee approval of its SRIS by the Class Year Start Date, as other Class Year members were required to do.

IV. Comments

The NYISO has certain concerns regarding Erie's request and respectfully requests that the Commission consider these in its decision on the merits of the July 2015 Waiver Request. The NYISO is primarily concerned about the potential delay to the Class Year 2015 Study which could lead to harm to Class Year 2015 projects that met the required milestones by the Class Year Start Date. The NYISO is also worried 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 in the future. This is particularly true since the requested waiver involves a substantive milestone reflecting the progress of a project, and is not simply an administrative deadline.

¹⁴ See OATT, Attachment S, Section 25.6.2.3.1; OATT Attachment X, Section 30.8.1. 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.

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.¹⁵ The Commission has recognized that the granting of a waiver request is not precedent for granting future waiver requests and should not be construed as having any impact on the applicability of the same requirements to other projects.¹⁶

The Commission has been hesitant to waive either of the Class Year eligibility milestones.¹⁷ In an order issued just a few months ago concerning this same Class Year 2015, the Commission denied another project's request for waiver of one of the Class Year eligibility requirements – specifically, the regulatory milestone.¹⁸ It is important that the Commission continue to reinforce the importance of the Class Year Study

¹⁵ See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060 at P17 (2013) (“TrAILCo Order”); *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P16 (2013) (“Air Energy Order”); *Hudson Transmission Partner, LLC*, 131 FERC ¶ 61,157 at P10 (2010).

¹⁶ See *TrailCo Order* at P 17 (noting that the granting of the requested waiver “is based on the specific facts and circumstances of the request”); *accord* *AirEnergy Order* at P 16 (noting that despite granting the requested waiver, “we do not intend that NYISO’s regulatory milestones be taken lightly.”).

¹⁷ See, e.g., *Astoria Gas Turbine LLC v. New York Independent System Operator, Inc.*, Order on Rehearing, 131 FERC ¶ 61,205 (2010) (“Nor do we find that it is inconsistent with fundamental principles of fairness, as NRG argues, to require NRG to meet the same tariff deadline that applies to all other applicants for entry into a given Class Year. On the contrary, it would be unfair to other applicants for all of the reasons cited above to allow the Astoria Repowering Project late entry into Class Year 2009.”).

¹⁸ See *Cassadaga Wind LLC*, 150 FERC ¶ 61,182 (March 11, 2015) at P18 (denying request for waiver of the requirement that a project satisfy the regulatory milestone in Attachment S to enter a Class Year Study).

eligibility milestones that enhance certainty and transparency in the NYISO's administration of the interconnection process.¹⁹

B. Erie's Waiver Request has the Potential to Delay Class Year 2015

The NYISO has concerns regarding the specific relief that Erie seeks and the possible impact on the sixteen Class Year 2015 projects that met the tariff-mandated eligibility requirements by the Class Year Start Date. The 2015 Class Year Study has now been underway for nearly five months.²⁰ The NYISO and the relevant Connecting Transmission Owners have made substantial progress in the study work during the past four-and-a-half months on both the "Part 1" and "Part 2" Class Year Study evaluations.²¹

Specifically, the Class Year 2015 Study work to date has included the following:

(1) all Part 1 Studies have been initiated and are moving forward; (2) the NYISO has made extensive progress in the modeling and development of the base cases needed for

¹⁹ Erie's reliance on the Commission's granting of a waiver request to Stony Creek in 2010 to permit it to enter into Class Year 2010 is misplaced. *Stony Creek Energy LLC*, 131 FERC ¶ 61,059 (2010) ("Stony Creek Order"). In that proceeding, Stony Creek had timely satisfied the two substantive eligibility requirements, but had not provided the NYISO with the proper notice to enter the Class Year required under then-recent NYISO tariff changes. Stony Creek Order at P 10 ("Finally, there is no dispute that Stony Creek has met all of the other substantive eligibility requirements of the NYISO's OATT in a timely manner for its proposed project to be included in the 2010 Class Year's Annual Transmission Reliability Assessment").

²⁰ In denying Erie's February 2015 Waiver Request, the Commission indicated that it was unable to determine the impact on third parties of granting the requested waiver, without knowing whether and when Erie would satisfy the eligibility requirements for entering into a Class Year. *See* April 2015 Order at P 25. Now that Erie has received the approval of the Operating Committee for its SRIS and seeks entry into the Class Year after the Class Year Start Date, the NYISO can identify the potential for delay to the Class Year 2015 Study.

²¹ Due to the complexity and extent of the study work, the Class Year Study is divided into two parts. A Part 1 Study is performed for each individual project to identify the Connecting Transmission Owner's Attachment Facilities ("CTOAFs"), the System Upgrade Facilities at the Point of Interconnection, and related metering, protection, and telecommunication facilities that are required for each project to reliably interconnect. A Part 2 Study is then performed by the NYISO to identify: (i) the remainder of the System Upgrade Facilities required for the aggregate of projects to reliably interconnect under the Minimum Interconnection Standard, and (ii) whether or not a project that requested evaluation for CRIS is deliverable and, if not, what System Deliverability Upgrades are necessary to make it deliverable.

the performance of the Part 2 Study, including completion of the Annual Transmission Baseline Assessment (“ATBA”) and Annual Transmission Reliability Assessment (“ATRA”) short circuit and power flow base cases; (3) the NYISO has conducted initial short circuit analysis and local thermal and voltage analysis for the ATBA and ATRA; and (4) the NYISO has completed the separate Deliverability Study base cases and has initiated the deliverability analysis for the Rest of State and Lower Hudson Valley Capacity Regions. If the Commission were to grant the requested waiver at this point in the Class Year Study process, the NYISO would be required to modify the base cases and re-perform analyses that have already been completed.

Furthermore, most time consuming, would be performance of the facility-specific study – the Part 1 Study – for the Erie Facility, which has not even begun.²² In comparison, the Part 1 Studies for other Class Year projects are already well underway. While the Erie Facility may be a reactivation of a former facility, the Class Year evaluations required for the project will be much more involved than Erie’s waiver request indicates. To reliably interconnect, the Erie Facility requires not only System Upgrade Facilities at two substations in New York, but also Affected System upgrades in PJM that must be further investigated and cost estimated in the Class Year Study. The Part 1 Study will therefore take considerable time to complete, as will making the necessary modifications to the various base cases and NYISO’s re-study of the System

²² To begin the Part 1 Study requires finalizing and executing the Class Year Facilities Study Agreement, collecting the required study deposit, and reviewing the data provided with the Facilities Study Agreement to ensure it is consistent with what was studied in the SRIS and to determine whether there have been any modifications since the SRIS. Any modifications would require further data submissions, review and evaluation.

Upgrade Facilities required for the reliable interconnection and deliverability of the aggregate of projects under the Part 2 Study.

Even if the Commission were to act promptly and grant the requested waiver, the Erie Facility would need to be added to the Class Year Study nearly six months after the Class Year Start Date has passed. Notwithstanding Erie's assertions to the contrary, the NYISO estimates that the inclusion of the Erie Facility in the Class Year Study at this late stage has the potential to delay the completion of the study work by four to six months, which delay could be longer depending on when the Erie Facility was included in the study.²³ This will only complicate and delay completion of the first Class Year Study to apply the recent tariff revisions adopted by the NYISO and its stakeholders to improve the timely performance of the Class Year Study.²⁴ Such a delay could negatively impact the sixteen Class Year members that timely satisfied the Class Year eligibility requirements.

C. Erie Understates the Impact of the Flexibility in the NYISO's Interconnection Process

Erie's representation that absent a waiver, the Erie Facility would suffer significant harm fails to take into account the anticipated timeframe for the NYISO's next

²³ The NYISO contrasts the potential for delay as related to this waiver request with the reduced potential for delay resulting from the complaint recently filed by a Class Year 2015 member. *See Caithness Long Island, LLC v. New York Independent System Operator, Inc.*, Complaint of Caithness Long Island II, LLC, Request for Fast Track Processing and Request for Action by September 30, 2015, Docket No. EL15-84-000 (July 10, 2015) ("Caithness II Complaint"). Unlike the Erie Facility, the Caithness II facility is already in the Class Year Study, has a Part 1 Study well underway and is already reflected in the base cases that have been developed and in the analyses that have been performed.

²⁴ *See New York Independent System Operator, Inc.*, Order Accepting Tariff Revisions with Modifications, 142 FERC ¶ 61,113 (February 15, 2013) (accepting with certain modifications the NYISO's proposed tariff revisions to the Class Year Study schedule); *New York Independent System Operator, Inc.*, Letter Order, Docket Nos. ER13-588-001, -002 (April 1, 2015) (accepting the NYISO's compliance revisions).

Class Year, the work identified in the SRIS that must be completed before the Erie Facility can enter into service and be eligible for these Capacity revenues, and the flexibility in the NYISO's process that would permit for the continued development of the Erie Facility outside of Class Year 2015.

As an initial matter, the NYISO currently estimates that the 2015 Class Year Study will go to the March 2016 Operating Committee with an anticipated completion (following the decision and settlement process) in May 2016. Therefore, Class Year 2016, into which Erie could opt to enter, could start as early as June 2016. Erie could continue to make progress on the development of the Erie Facility in the NYISO's interconnection process prior to the start of Class Year 2016. Specifically, Erie can request a Facilities Study Agreement for the next Class Year Study. As soon as it executes such agreement, Erie can request that the NYISO tender a draft interconnection agreement. The NYISO can perform a Part 1 Study for the Erie Facility in parallel with finalizing the interconnection agreement. Upon execution of the interconnection agreement, Erie could begin the engineering, design and construction work required to put the required upgrade facilities in place.

Notably, the SRIS for the Erie Facility requires the construction of CTOAFs and System Upgrade Facilities on National Grid's transmission facilities as well as Affected System upgrade facilities on FirstEnergy's transmission facilities in PJM. The construction schedule in the SRIS anticipates a minimum of one year to complete the necessary engineering, design and construction work required for these upgrades. These upgrades are required before the Erie Facility can go in-service. It is, therefore, likely that the Erie Facility will not be in-service until the second half of next year or later, regardless of the Class Year in which it participates. Based on its current estimates, the

NYISO may be well within Class Year 2016 at that point. While Erie, if it enters Class Year 2016, could not participate in the Capacity market until the Class Year Study concludes, it could potentially go in-service as an Energy-only resource during Class Year 2016 by availing itself of the flexibility outlined above.

V. 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 July 2015 Waiver Request.

Respectfully submitted,

/s/ Sara B. Keegan

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

July 30, 2015

Cc: Michael Bardee
Gregory Berson
Anna Cochrane
Morris Margolis
David Morenoff
Daniel Nowak
Kathleen Schnorf
Jamie Simler
Kevin Siqveland

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 30th day of July, 2015.

/s/ Joy A. Zimmerlin

Joy A. Zimmerlin
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144
(518) 356-6207