

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

New York Independent System Operator, Inc. and Niagara Mohawk Power Corporation d/b/a National Grid)))))	Docket No. ER16-975-000
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**MOTION FOR LEAVE TO SUBMIT COMMENTS 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 for leave to submit comments in the above-captioned proceeding regarding the Notice of Termination of the Small Generator Interconnection Agreement (“SGIA”) among the NYISO, Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”), and Green Power Energy LLC submitted by the NYISO and National Grid. As explained below, the NYISO generally shares the concerns expressed by National Grid in its answer filed on March 31, 2016 (“National Grid Answer”). While termination of the subject SGIA is warranted, the NYISO notes that such termination is not necessarily fatal to development of the Green Power project. Should Green Power desire to move forward with its project, the NYISO’s tariff provides it with an opportunity to do so by submitting a new Interconnection Request.

¹ 18 C.F.R. §§ 385.212 and 385.213 (2016).

I. Motion for Leave to Submit Comments

The Commission has discretion to accept, and has accepted, comments and answers to responsive pleadings when doing so assures a complete record, provides helpful information, permits the issues to be narrowed or clarified, or aids the Commission in understanding and resolving issues. These comments satisfy these standards because they are narrowly drawn to address certain issues raised in the Green Power Protest – namely whether the Commission’s determination should consider the totality of the circumstances surrounding the history of the Green Power project leading up to the default that triggered the Notice of Termination.² The NYISO therefore requests leave to submit these comments and requests for the Commission’s consideration.³

II. Comments

The NYISO shares National Grid’s concerns regarding Green Power’s breach of the subject SGIA and submits that the termination of the SGIA is warranted. It is undisputed that Green Power is obligated to pay invoices for work performed by National Grid under the SGIA. It is also undisputed that nonpayment of invoices is a breach of Article 6.1.1 of the SGIA and, unless cured pursuant to Article 7.6.1 of the SGIA, constitutes default under the SGIA. As a result the non-defaulting parties – National Grid

² Green Power Protest at 2-3.

³ To the extent the Commission deems these comments to be time-barred by Rule 213(d) of the Commission’s Rules of Practice and Procedure, the NYISO requests waiver of Rule 213(d). *See* 18 C.F.R. § 385.2008(a) (providing that “the time by which any person is required or allowed to act under any statute, rule, or order may be extended by the decisional authority for good cause, upon a motion made before the expiration of the period prescribed or previously extended”); *see also* 18 C.F.R. § 385.101(e) (providing that “the Commission may, for good cause, waive any provision of this part or prescribe any alternative procedures that it determines to be appropriate”).

and the NYISO – were within their rights to terminate the SGIA in accordance with Article 3.3 of the SGIA.

The NYISO shares the concerns noted by National Grid regarding repeated delays in the project’s development since it first entered the NYISO’s interconnection queue in March 2005. The current Commercial Operation Date of July 31, 2015 does not appear feasible and Green Power has yet to demonstrate progress that would permit the NYISO to grant another extension of Commercial Operation Date.⁴ As a result, further Commission action will likely be necessary in order to save the Green Power project from withdrawal from the NYISO’s interconnection queue.

The NYISO notes that termination of the subject SGIA does not preclude the Green Power project from moving forward. Green Power is free to submit a new Interconnection Request in the event the Commission grants the requested termination. The time within which the requisite interconnection studies can be completed under a new Interconnection Request is largely driven by Green Power however, the NYISO’s Small Generator Interconnection Procedures provide flexibility in the study process and even allow the initial Interconnection Feasibility Study to be waived upon agreement of all the parties.

⁴ Under the NYISO’s Open Access Transmission Tariff in order to obtain further extensions of Commercial Operation Date, Green Power must demonstrate (via an Officer certification) that it has made reasonable progress against milestones set forth in the Interconnection Agreement. *See* Sections 30.4.4.5.2.2 and 32.1.3.2.

III. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission consider these comments and accept the Notice of Termination of the subject SGIA.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan

Senior Attorney

New York Independent System Operator, Inc.

April 1, 2016

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 1st day of April, 2016.

/s/ *Mohsana Akter*

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