

January 23, 2017

By Electronic Delivery

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: *New York Independent System Operator, Inc., Proposed Tariff Revisions Regarding Interconnection Process Improvements, Request for Expedited Commission Action, Request for Waiver of Prior Notice Requirement, and Request for Shortened Comment Period; Docket No. ER17-_____*

Dear Secretary Bose:

In accordance with Section 205 of the Federal Power Act¹ and Part 35 of the Federal Energy Regulatory Commission's ("Commission") regulations,² the New York Independent System Operator, Inc. ("NYISO") respectfully submits proposed revisions to the interconnection procedures set forth in Attachments S (Section 25) and X (Section 30) of its Open Access Transmission Tariff ("OATT").³

The proposed revisions improve upon the NYISO's interconnection study process by providing Developers with additional flexibility in addressing the regulatory milestone requirement that must be met for a project to enter into a Class Year Interconnection Facilities Study ("Class Year Study"). The tariff revisions were developed as part of an ongoing effort by NYISO staff and stakeholders to identify and implement improvements to current tariff requirements related to the interconnection process. The revisions address a specific concern raised by Developers and were broadly approved by stakeholders with limited abstentions.

The NYISO respectfully requests that the Commission issue an order no later than February 22, 2017, that the Commission waive its prior notice requirements to make the tariff revisions effective no later than February 22, 2017, and that the Commission adopt a shortened comment period of seven days to allow these proposed tariff revisions to apply to the next Class Year Study, which is scheduled to start on March 1, 2017. As described in Part IV of this letter, there is good cause for the Commission to adopt a shortened comment period and to expeditiously issue an order with a February 22, 2017 effective date. The requested effective

¹ See 16 U.S.C. § 824d (2000).

² 18 C.F.R. § 35 *et seq.* (2009).

³ Capitalized terms not otherwise defined in this letter have the meaning set forth in Attachments S, X and Z of the OATT.

date and expedited treatment may significantly benefit up to 18 Developers in the NYISO's interconnection queue and will not, to the NYISO's knowledge, prejudice any stakeholder. NYISO stakeholders and interested parties have been on notice since December 9, 2016 of the proposed tariff revisions, which were approved without stakeholder objection.

I. Documents Submitted

The NYISO submits the following documents with this filing letter:

- A clean version of the proposed revisions to Attachments S and X of the OATT ("Attachment I"); and
- A blacklined version of the proposed revisions to Attachment S and X to the OATT ("Attachment II").

II. Background

Attachment X to the OATT contains the NYISO's procedures for evaluating proposed interconnections of Large Generating Facilities and Merchant Transmission Facilities to the New York State Transmission System or Distribution System. Attachment X establishes three successive Interconnection Studies of each proposed project. The first study is the Interconnection Feasibility Study, which is a high-level evaluation of the configuration and local system impacts.⁴ The second study is the Interconnection System Reliability Impact Study ("SRIS"), which is a detailed single-project study that evaluates the project's impact on transfer capability and system reliability.⁵ The third and final study is the Class Year Study.⁶

The Class Year Study is a detailed study that evaluates the cumulative impact of a group of projects – a "Class Year" of projects – that have met specified eligibility requirements by the Class Year Start Date and have elected to enter that Class Year Study.⁷ The Class Year Study identifies the upgrade facilities needed to reliably interconnect all of the projects in the Class Year.⁸ The Class Year Study procedures are primarily contained in Attachment S to the OATT.⁹

⁴ See Attachment X, Section 30.6.

⁵ See Attachment X, Section 30.7.

⁶ See Attachment X, Section 30.8.

⁷ See Attachment X, Section 8.2; see also Attachment S, Sections 25.6.2.3.1 and 25.6.2.3.4 (Class Year eligibility and re-entry criteria).

⁸ Specifically, the Class Year Study allocates the cost of System Upgrade Facilities and System Deliverability Upgrades identified in the study among the projects in the Class Year in accordance with the cost allocation methodologies set forth in Attachment S to the OATT.

⁹ Attachment X details the obligations related to execution of a Class Year Study Agreement and provides a high-level scope of the Class Year Study and Class Year Study procedures, but it incorporates by reference the terms of Attachment S, which provide more detailed Class Year Study procedures.

The hallmark of the NYISO's Class Year Study process is that it is performed for a group of projects that have achieved similar developmental milestones to determine the cumulative impact of such projects. Specifically, to enter a Class Year, a Developer's project must: (i) have an SRIS approved by the NYISO's stakeholder Operating Committee and (ii) must have satisfied one of the regulatory milestones described in Section 25.6.2.3.1 of Attachment S. The regulatory milestones are primarily state regulatory determinations or actions related to siting and permitting requirements for the facility.

For generators, the most commonly applicable regulatory milestone is a determination by the New York Department of Public Service ("DPS") that a facility's Article 10 application concerning the siting of power plants over 25 MW is in compliance with New York Public Service Law § 164 (*i.e.*, that the application is "deemed complete").¹⁰ Section 25.6.2.3.1.1.7 of Attachment S requires:

For a Large Generator that is larger than 25 MW, a determination pursuant to Article 10 of the Public Service Law that the Article 10 application filed for the Large Generator is in compliance with Public Service Law § 164.

The milestone is satisfied when a project's Article 10 application has been deemed complete by DPS.

The NYISO intended this Article 10 milestone to be comparable to a Developer satisfying one of the following milestones relied on under the former power plant siting process that preceded the relatively new Article 10 process: (i) the application is deemed complete or (ii) the Draft Environmental Impact Statement is deemed complete.¹¹ The new Article 10 process places much of the developer requirements at the inception of that process, and developers have raised concerns through the NYISO's stakeholder process regarding their ability to timely complete this milestone within the NYISO's Class Year Study eligibility time frame. As a result, projects may not be able to reach the completed application stage in time to enter a desired Class Year Study.

In response, the NYISO recently proposed, and the Commission accepted, revisions to the interconnection process that were intended to permit additional time within which a Developer can satisfy regulatory milestones, while still encouraging projects to move through the interconnection process without unnecessary delays.¹² Specifically, the NYISO revised the

¹⁰ See Attachment S, Section 25.6.2.3.1.1.7. For Merchant Transmission Facilities, the most commonly applicable regulatory milestone is a determination by the DPS that the facility's Article VII application is in compliance with New York Public Service Law § 122. See Attachment S, Section 25.6.2.3.1.1.7.

¹¹ See *New York Independent System Operator, Inc.*, 142 FERC ¶ 61,113 (2013) (accepting insertion of Article 10 regulatory milestone in Section 25.6.2.3.1.1.7 of Attachment S).

¹² See *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER16-1627-000 (June 6, 2016) (accepting tariff revisions proposed by the NYISO in its May 5, 2016, filing in this docket).

Class Year requirements to allow a project to provisionally enter a Class Year Study without having met its regulatory milestone. The project would then be withdrawn if it has not satisfied the regulatory milestone requirement within 90 days of the Class Year Start Date. In addition, the recent tariff revisions provide a project more time to meet its regulatory milestone before it is subject to withdrawal from the NYISO's interconnection queue. Rather than having to meet the milestone within two years after the approval of the SRIS for the project by the Operating Committee, the tariff now allows a project three Class Years to achieve its regulatory milestone.

Notwithstanding these improvements, Developers have continued to express concerns regarding the challenges they face to timely enter and complete a Class Year Study due to the regulatory milestone requirement. Absent further process changes, as many as 18 projects may not be eligible to enter the next Class Year Study. In light of these concerns, the NYISO proposes the tariff revisions described in Part III to provide Developers with additional flexibility to satisfy the regulatory milestone requirement, and is seeking expedited treatment of this proposal from the Commission in order to address these issues in time for the next Class Year Study.

The proposed revisions to Attachments S and X were approved by the NYISO's stakeholders after an extensive and open process, including four stakeholder meetings. This process resulted in a consensus among stakeholders on the amendments proposed in this filing. While there were stakeholders who abstained from the Operating Committee and Management Committee votes approving the proposal and tariff language, no stakeholders opposed the proposal or proposed tariff revisions. The tariff revisions have been approved by the NYISO's Board of Directors.

III. Description of the Proposed Tariff Modifications

A. Deposit In Lieu of Satisfying Regulatory Milestone

The NYISO proposes to revise the Class Year eligibility requirements in Section 25.6.2.3.1 of Attachment S to provide Developers with an alternative to satisfying the regulatory milestone requirement to enter a Class Year. As revised, Section 25.6.2.3.1 provides that a Developer that has obtained Operating Committee approval of the SRIS for its project may enter a Class Year by either: (i) demonstrating that its project has satisfied one of the applicable Attachment S regulatory milestones (as is currently required), or (ii) submitting a two-part deposit¹³ in lieu of satisfying the regulatory milestone.¹⁴

The first part of the deposit is an "at risk" refundable deposit of \$100,000. This amount is fully refundable to the Developer if it proceeds to satisfy the applicable regulatory milestone

¹³ These deposits in lieu of the regulatory milestone are in addition to the \$100,000 Class Year study deposit.

¹⁴ The NYISO proposes conforming revisions to Section 30.8.1 of the OATT.

by the earlier of: (i) twelve months after the Class Year Start Date or (ii) the Operating Committee's approval of the Class Year Study. The second part of the deposit is a fully refundable deposit in the amount of \$3,000 per MW. This portion of the deposit is refundable upon the earlier of the Developer's satisfaction of the applicable regulatory milestone or its withdrawal of its project from the NYISO's interconnection queue.

The proposed revisions will enable Developers of projects that are prepared to proceed, but have not completed the Article 10 application process, to enter into a Class Year Study. The NYISO has set the two-part deposit at a level that is sufficient to indicate that the Developer making the deposit is likely to proceed with its project, which is consistent with the purpose of the regulatory milestone for entering into a Class Year. The Commission has previously indicated that the use of a deposit can demonstrate a project's commercial viability and its ability to proceed to construction.¹⁵ Moreover, the Commission has accepted both in the NYISO's interconnection process and in other regions the use of a deposit as an appropriate mechanism for demonstrating a project's capability to proceed in the interconnection process.

Both the Southwest Power Pool, Inc. ("SPP") and the Midcontinent Independent System Operator, Inc. ("MISO") use a Developer's provision of deposits in an amount comparable to the NYISO's proposal as milestones for the project to advance in the interconnection process.

SPP requires that an Interconnection Customer submit with its executed Definitive Interconnection System Impact Study Agreement a security deposit in the amount of \$1000 per MW, which deposit is refundable at commercial operation or if the interconnection request is withdrawn prior to executing the Facilities Study agreement.¹⁶ In addition, the Interconnection Customer must provide an additional security deposit with an executed Interconnection Facilities Study Agreement equal to \$3000 per MW that is refundable unless the withdrawal of the project increases the upgrade costs to other customers or the cost estimate for network upgrades has increased between studies by at least 25%.¹⁷

MISO requires an Interconnection Customer to make an initial milestone payment of \$4000 per MW before its preliminary System Impact Study and to make subsequent milestone payments prior to the Revised System Impact Study and the Final System Impact Study of 10% and 20% of the costs of the required Network Upgrades (less previously paid amounts), respectively.¹⁸ As the Interconnection Customer makes further milestone payments, its previous milestone payments become at risk.

¹⁵ See *Midwest Independent Transmission System Operator, Inc.*, 138 FERC ¶ 61,233 (2012) at P 148 ("By placing the risk of losing the capital contribution on the customer, each interconnection customer must consider its project and the accompanying risks before making the commitment to enter the Definitive Planning Phase and proceed to commercial operation. In so doing, we believe that the M2 milestone payment will help to ensure that projects that enter the Definitive Planning Phase are commercially viable and likely to proceed to commercial operation.")

¹⁶ See SPP OATT, Attachment V Section 8.2.f.

¹⁷ See SPP OATT, Attachment V Section 8.9.

¹⁸ See *Midcontinent Independent System Operator, Inc.*, 158 FERC ¶ 61,003 (2017) at PP 37-43.

Finally, the NYISO's OATT includes an analogous deposit process by which a Developer that does not possess Site Control may provide a deposit for its project to proceed through the interconnection process in lieu of demonstrating Site Control.¹⁹ The deposit will become non-refundable if the Developer does not demonstrate Site Control within a set period.

B. Time Frame for Satisfying Regulatory Milestone

The NYISO's proposed revisions do not eliminate a Developer's requirement to satisfy a regulatory milestone prior to completing the NYISO's interconnection process, even if the Developer satisfies the Class Year eligibility requirements and enters a Class Year Study by submitting a deposit in lieu of satisfying a regulatory milestone at that time. As described above, the NYISO recently revised Attachment S to modify the time frames by which a Developer must satisfy the regulatory milestone. In light of the additional revisions proposed in this filing, the NYISO proposes to revise these timing requirements to ensure that the applicable Attachment S regulatory milestones have been satisfied within a specified time after the completion of the Class Year Study.

First, the NYISO proposes to eliminate in Sections 25.6.3.1 and 25.6.2.3.3 the requirements that permit a project to enter a Class Year provisionally as long as it proceeds to satisfy a regulatory milestone with 90 days.²⁰ This provisional process is no longer needed as a Developer can enter into a Class Year by submitting a deposit to the NYISO.

Second, the NYISO proposes to revise the requirement in Section 25.6.2.3.2 that a project must enter a Class Year and satisfy a regulatory milestone within 90 days after the Class Year Start Date of the third Class Year Study after the Operating Committee's approval of the project's SRIS. Instead, the NYISO proposes to require that a Developer must satisfy a regulatory milestone within six months after the date the NYISO tenders the Developer with the draft Standard Large Generator Interconnection Agreement ("Interconnection Agreement").²¹ This aligns with the time frame under the tariff within which an Interconnection Agreement must be executed (or a request submitted by the Developer to file an unexecuted Interconnection Agreement). Unless requested earlier, the NYISO tenders the Interconnection Agreement as soon as practicable after completion of the Class Year in which the project accepted its Project Cost Allocation and posted Security.²² Under the NYISO's proposed tariff revisions, if a Developer does not satisfy its regulatory milestone within six months of the NYISO's tender of

¹⁹ See OATT, Attachment X Section 30.3.3.1.

²⁰ The NYISO also proposes to relocate from Section 25.6.2.3.1 to Section 25.6.2.3.1.1 the requirement that the applicable regulatory body must determine that a permitting application is complete.

²¹ The NYISO proposes conforming revisions to Section 30.11.1 of the OATT.

²² The proposed revisions are only applicable to Large Facilities. Small Generating Facilities are not subject to the regulatory milestone requirement in Attachment S. The only Small Generating Facilities subject to a Class Year Study are those with non-Local System Upgrade Facilities or those that request Capacity Resource Interconnection Service – in either case, they may enter the Class Year Study without satisfying a regulatory milestone.

the draft Interconnection Agreement, its project will be withdrawn from the NYISO's interconnection queue.

The revised process provides Developers with additional time to complete the regulatory milestone, while ensuring that a project satisfies its regulatory milestone requirement within a specified time period after completion of the Class Year Study. Moreover, notwithstanding the additional time provided to the Developer, the Developer still has an incentive to satisfy its regulatory milestone as soon as possible. Otherwise, as described above, the Developer may forfeit the \$100,000 first part of its deposit.

IV. Request for Expedited Consideration, Waiver of Prior Notice Period and Request for Shortened Comment Period

The NYISO requests that the Commission act expeditiously and issue an order accepting the proposed tariff revisions no later than February 22, 2017. The NYISO also requests waiver of the prior notice requirements²³ in order that its proposed tariff revisions may become effective on or before February 22, 2017.

There is good cause for the Commission to shorten the usual 60 day notice period²⁴ and issue an order by February 22, 2017, making the tariff revisions effective on or before February 22, 2017. The scheduled Class Year Start Date for the next Class Year is March 1, 2017. The requested effective date will provide up to 18 Developers²⁵ proposing over 2,600 MW of new generation (over 2,000 MW of which is from proposed renewable resources) with additional options to meet the Class Year eligibility requirements, so that their projects may be eligible to enter into the next Class Year Study. The requested effective date is not expected to prejudice any stakeholder as the tariff revisions provide all Developers with additional flexibility to participate in the Class Year Study.

On the other hand, an effective date after February 22, 2017 will harm up to 18 Developers that may not be able to satisfy the existing eligibility requirements and would, therefore, be unable to enter into a Class Year Study beginning March 1, 2017. The subsequent Class Year Study will likely not begin before March 1, 2018.

²³ 18 C.F.R. §§ 35.3 and 35.11.

²⁴ Section 35.11 of the Commission's regulations provides that "[u]pon application and for good cause shown, the Commission may, by order, provide that a rate schedule, tariff, or service agreement, or part thereof, shall be effective as of a date prior to the date of filing or prior to the date the rate schedule or tariff would become effective in accordance with these rules."

²⁵ Ten projects in the NYISO's interconnection queue that may be impacted by these tariff revisions have Operating Committee-approved SRISs and an additional 8 such projects have SRISs in progress that might be approved prior to March 1, 2017 scheduled Class Year Start Date. With these proposed tariff revisions in place, all of these 18 projects with Operating Committee-approved SRISs could be eligible to enter the Class Year 2017 Study.

NYISO stakeholders and interested parties have been on notice since December 9, 2016 of the proposed tariff revisions.²⁶ In developing the tariff revisions, the NYISO informed stakeholders of its intent to request an effective date that would permit the application of the new tariff revisions to Class Year 2017.²⁷ These tariff revisions were approved without stakeholder objection.

The requested effective date of no later than February 22, 2017 will allow the NYISO to advise potential Class Year Project Developers whether these tariff revisions have been approved and whether they will be eligible to enter the Class Year Study without having satisfied the regulatory milestone requirement. Eligible projects would then have time to consider their options and notify the NYISO as to whether they seek to enter Class Year 2017.

V. Requisite Stakeholder Approval

The tariff revisions proposed in this filing were the product of discussions with stakeholders in the NYISO's Transmission Planning Advisory Subcommittee of the Operating Committee beginning on December 1, 2016. The proposed changes to the OATT were first vetted with stakeholders on December 9, 2016 and were ultimately unanimously approved (with abstentions) by the Operating Committee on December 15, 2016, and by the Management Committee on December 21, 2016. The NYISO Board of Directors also approved the filing of these proposed changes and authorized the NYISO to make this filing.

VI. Communications and Correspondence

All communications and services in this proceeding should be directed to:

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²⁶ See, e.g., *New York Independent System Operator, Inc.*, 135 FERC 61,014 (2011) at P 11 (waiving 60 day prior notice requirement for good cause, noting that interested parties were aware of the proposed tariff revisions months in advance and the earlier effective date was required to enable the revisions to be implemented for timely application).

²⁷ See Slide 11 of *Modifications to Class Year Regulatory Milestone Requirements* (presented by NYISO to December 21, 2016 Management Committee meeting), available at: http://www.nyiso.com/public/webdocs/markets_operations/committees/mc/meeting_materials/2016-12-21/Agenda%2005_Regulatory%20Milestone%20Proposal.pdf.

²⁸ The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) to permit service on counsel for the NYISO

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VII. Service

The NYISO will send an electronic link to this filing to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com.

VIII. Conclusion

For the foregoing reasons, the NYISO respectfully requests that the Commission act expeditiously by adopting a shortened comment period of seven days and issuing an order accepting for filing the proposed revisions to the OATT that are attached hereto no later than February 22, 2017, with the changes becoming effective no later than February 22, 2017.

Respectfully submitted,

/s/ Sara B. Keegan

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