

May 18, 2017

By Electronic Delivery

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

Re: Notice of Cancellation of Service Agreement No. 1483 to the New York Independent System Operator, Inc. Open Access Transmission Tariff, Docket No. ER17-____-000

Dear Secretary Bose:

Pursuant to Section 205(d) of the Federal Power Act¹ and Sections 35.9 and 35.15 of the Commission's Regulations,² the New York Independent System Operator, Inc. ("NYISO") hereby tenders for filing and acceptance a Notice of Cancellation of a Small Generator Interconnection Agreement among the NYISO, Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid" or "Connecting Transmission Owner") as the Connecting Transmission Owner, and Green Power Energy LLC ("Green Power" or "Interconnection Customer") as the Interconnection Customer (hereinafter the "SGIA").³ The SGIA is designated as Service Agreement No. 1483 in the NYISO's Open Access Transmission Tariff ("OATT") and relates to the Interconnection Request referred to as Queue Number 180A.

Pursuant to Section 3.3.2 of the SGIA, the NYISO and National Grid respectfully request that the Commission accept this Notice of Cancellation of Service Agreement No. 1483 effective as of July 17, 2017 – sixty days from the date of this filing. Pursuant to the terms of the SGIA in Section 7.6.3, the SGIA terminates upon withdrawal from the interconnection queue.

I. Background

This Notice of Cancellation comes after years of delay by the Interconnection Customer related to its Interconnection Request with little progress on the construction of the proposed

¹ 16 U.S.C. § 824d (2017).

² 18 C.F.R. §§ 35.9, 35.15 (2017).

³ Capitalized terms not otherwise defined in this letter have the meaning set forth in Attachments X and Z to the NYISO's Open Access Transmission Tariff ("OATT").

generating facility. Green Power entered the NYISO's interconnection queue in 2005 with a proposed wind generating facility that would have a planned capacity of 10 MW to be owned and operated by Green Power and located in Madison County, New York ("Green Power Project"). The Green Power Project went through the NYISO's Small Generator Interconnection Procedures ("SGIP") as a "transition project" under Section 32.1.7 of Attachment Z and had the designated queue position number 180A. As a transition project, the Interconnection Customer completed some of its interconnection studies with the Connecting Transmission Owner prior to the effective date of the SGIP. The Interconnection Facilities Study was completed pursuant to the SGIP on May 27, 2009. Thereafter, on August 20, 2009, the NYISO, National Grid, and Green Power executed the SGIA for the project. The SGIA, designated as Service Agreement No. 1483, was filed as a non-conforming SGIA in Docket Number ER09-1693-000 and was approved by the Commission on October 13, 2009.⁴

As of the date of this filing, no portion of the Green Power Project has been built, the first engineering package for the Connecting Transmission Owner Attachment Facilities and stand-alone System Upgrade Facilities have not been completed and delivered to the Connecting Transmission Owner, and the foundations have yet to be poured. According to the original construction and procurement schedule in the SGIA, the Green Power Project was to be in commercial operation by October 2010. By mutual agreement, the parties to the Interconnection Agreement extended the Commercial Operation Date three times, with the third extension to December 2013. After Green Power failed to meet the December 2013 Commercial Operation Date, it submitted to the NYISO a request for a further extension of the Commercial Operation Date to December 2014. The NYISO denied the extension under a recently revised section of its interconnection procedures for extending the Commercial Operation Date, and removed the Green Power Project from the interconnection queue.⁵

In April 2014, Green Power filed with the Commission a request for a waiver of the Commercial Operation Date requirements under Attachments X and Z to the OATT; to extend the Commercial Operation Date for the Green Power Project to no later than 15 months from the date of a Commission order granting the requested waiver; and to direct the NYISO to restore Green Power Project's position in the NYISO's interconnection queue. The Commission granted Green Power's application in an order issued on April 30, 2014,⁶ noting that the three prior extensions granted by the NYISO did not require Green Power to demonstrate progress in meeting milestones and that "Green Power could not have known that the failure to amend the milestones in its SGIA would, because of future NYISO tariff revisions, later preclude it from

⁴ Letter Order, Docket No. ER09-1693-000 (October 13, 2009).

⁵ See Section 30.4.4.5 of Attachment X to the OATT; Section 32.1.3.2 of Attachment Z to the OATT; *see generally New York Indep. Sys. Operator, Inc.*, 142 FERC ¶ 61,113 (2013).

⁶ *Green Power Energy LLC*, Waiver Application (April 3, 2014). In Green Power's application for a waiver filed in 2014, it explained that it would seek a commercial operation date as soon as December 31, 2014, but National Grid required 15 months following the Commission's action to construct the necessary interconnection upgrades. *See id.* at p 9.

receiving further extensions.”⁷ The Commission further stated that good cause existed to grant the waiver because the extension was of a limited duration to accommodate National Grid’s construction schedule and it would not prejudice third parties.⁸

The 15-month extension granted by the Commission pursuant to a waiver expired on July 31, 2015. Prior to the expiration of the Commission-granted extension, Green Power sought an additional extension and provided certain supporting documentation, including a Turbine Supply Agreement by and between Gamesa Wind US LLC and Green Power and five purchase orders for various equipment, claiming that the project had made certain progress in pre-construction activities and procurement.⁹ Based on the representations made by Green Power about the provided documentation and its progress – namely, execution of a Turbine Supply Agreement – the NYISO granted a subsequent extension of the Commercial Operation Date to July 2016.

In July 2016, Green Power sought another 15-month extension of the Commercial Operation Date until November 2017. The NYISO granted a limited extension until January 31, 2017, contingent upon Green Power meeting specific milestones proposed by Green Power and that Green Power represented it would satisfy by January 31, 2017. These milestones broke down into numerous sub-tasks certain upcoming milestones, such as (i) the submission of the first engineering package for the Connecting Transmission Owner Attachment Facilities and Stand Alone System Upgrade Facilities, which was required to be complete by December 2016; and (ii) the construction of the generating facility, which required completion of the turbine foundations by mid-November 2016. Milestone 9 in this schedule broke down the first engineering package for the Connecting Transmission Owner Attachment Facilities and Stand Alone System Upgrade Facilities into 36 separate sub-tasks, all of which Green Power anticipated completing by December 31, 2016. Yet as of February 1, 2017, Green Power represented to the NYISO and to National Grid that only 11 of the 36 subtasks had been completed. In September 2016, Green Power represented to the NYISO and National Grid that all of the following tasks would be completed prior to the date of this filing:

- First engineering package for the Connecting Transmission Owner Attachment Facilities and Stand Alone System Upgrade Facilities;
- Completion of engineering for Interconnection Customer Interconnection Facilities;
- Notice to Proceed with Construction from Chief of Environmental Certification and Compliance;

⁷ *Green Power Energy LLC*, 147 FERC ¶ 61,084 (2014), at P 12.

⁸ *Id.* at PP 13-14.

⁹ It later came to the attention of the NYISO and National Grid that the Turbine Supply Agreement may no longer be valid because Green Power was required to provide a notice to proceed no later than February 24, 2014 with a \$13 million deposit and there is no information that Green Power provided such notice and deposit, pursuant to Articles 2 and 6 of the agreement.

- Commencement of construction of Interconnection Customer's Interconnection Facilities;
- Completion of engineering for System Upgrade Facilities, including Stand Alone System Upgrade Facilities;
- Commencement of construction of System Upgrade Facilities, including Stand Alone System Upgrade Facilities;
- Completion of procurement for Interconnection Customer Interconnection Facilities; and
- Completion of erection of turbines.

As of the date of this filing, based on Green Power's representations, none of those milestones have been satisfied.

II. Notice of Cancellation

Commission precedent supports acceptance of a notice of cancellation of a service agreement if the applicant shows that the proposed cancellation is not unjust, unreasonable, unduly discriminatory, or preferential, or if it is consistent with public interest.¹⁰ Pursuant to this standard, the Commission should accept this Notice of Cancellation of Service Agreement No. 1483 because Green Power's Interconnection Request was properly withdrawn pursuant to Commission-approved tariff requirements set forth in Section 32.1.3.2 of Attachment Z to the OATT with respect to its requested extension of the Commercial Operation Date beyond January 31, 2017.

An Interconnection Customer of a proposed small generation facility that wishes to extend the Commercial Operation Date must comply with the provisions contained in the NYISO's Small Generator Interconnection Procedures under Attachment Z to the OATT.¹¹ Section 32.1.3.2 of Attachment Z refers to the requirements in Section 30.4.4.5 of Attachment X that specify permissible extensions of Commercial Operation Date. A Small Generating Facility such as the Green Power Project may extend its Commercial Operation Date up to four years following the tender of its Interconnection Agreement, but extensions beyond such date are only permitted if the project developer: (a) has an executed Interconnection Agreement (or filed an unexecuted agreement with the Commission) and (b) demonstrates through an officer certification that the project has made "reasonable progress against milestones set forth in the Interconnection Agreement."¹² Any request for an extension that does not satisfy the conditions

¹⁰ *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,198 (2014), at P 28 (citing Commission precedent).

¹¹ Section 32.1.3.2 of Attachment Z to the OATT.

¹² Section 30.4.4.5.2 of Attachment X to the OATT.

set forth in Section 30.4.4.5.2 of Attachment X requires withdrawal from the NYISO's interconnection queue.¹³

Under Section 7.6.3 of the SGIA, "if the Interconnection Request is withdrawn or deemed withdrawn pursuant to the SGIP during the term of th[e] Agreement, th[e] Agreement shall terminate."¹⁴ Termination of an SGIA will become effective after the parties have complied with "all Applicable Laws and Regulations applicable to such termination, including the filing with the Commission of a notice of cancellation of the SGIA (if required), which notice has been accepted for filing by the Commission."¹⁵

On January 30, 2017, Green Power requested its seventh extension of the Commercial Operation Date for the Green Power Project until January 2018. Green Power provided minimal additional evidence of progress against the milestones set forth in the SGIA or the milestones that Green Power agreed to satisfy as a condition of its latest extension. Specifically, the foundations have yet to be excavated or poured and Green Power has not submitted the first engineering package to National Grid for the Connecting Transmission Owner Attachment Facilities and Stand Alone System Upgrade Facilities. Due to the lack of progress against the milestones, the NYISO informed Green Power on February 17, 2017 that its Interconnection Request for the project was withdrawn because the project failed to make the requisite demonstration of reasonable progress against the applicable milestones.

Moreover, the Green Power Project has received numerous and continuing extensions of its Commercial Operation Date, despite repeated assertions that previous extensions were limited in scope. The NYISO and National Grid submit that the numerous extensions of the Commercial Operation Date and the failure of Green Power to demonstrate any reasonable progress during the previous extensions demonstrates a lack of readiness and certainty that the project will be able to meet any further extensions of the Commercial Operation Date. Even setting aside the failure to have poured the foundations or submit the first engineering package to National Grid for the Connecting Transmission Owner Attachment Facilities and Stand Alone System Upgrade Facilities, numerous other milestones proposed by the Interconnection Customer as a condition of its latest extension of the Commercial Operation Date have similarly passed as of the date of this filing that are unconnected with any actions of the Connecting Transmission Owner. For example, the turbines were to be delivered by May 1, 2017 and erected by May 2, 2017. However, Green Power has represented that the Turbine Supply Agreement it provided as the basis for a prior extension request is no longer valid and that it has yet to enter into another Turbine Supply Agreement. There are, therefore, no turbines on site and no agreement for the procurement of turbines.

¹³ Section 32.1.4 of Attachment Z to the OATT.

¹⁴ Section 3.3.2 of the SGIA (stating that any party may terminate the SGIA after default pursuant to Article 7.6).

¹⁵ Section of the SGIA.

Based on the Commission's 2010 Order and previous requests for waivers under Attachment X and Z to the OATT, Green Power was on notice that future extensions required a showing that the project made reasonable progress compared against its milestones, which it has failed to do. Moreover, an extension of the Commercial Operation Date at this point could begin to impact other projects in the NYISO's interconnection queue that will be connecting near Fenner/Cortland since Green Power Project's System Upgrade Facilities would be modeled in the Class Year 2017 base case and Green Power has not posted security for its System Upgrade Facilities to date.

The NYISO issued a withdrawal notice to Green Power (provided in Attachment II) on February 17, 2017, based on Green Power's failure to make the requisite demonstration pursuant to Section 30.4.4.5.2.2 that it has made reasonable progress against milestones set forth in the Interconnection Agreement – neither against the milestones in the original Interconnection Agreement nor against the draft milestones proposed by Green Power for inclusion in an Amended and Restated Interconnection Agreement, the draft of which the parties have been unable to finalize due to the continued delays in the Project's schedule and resulting repeated and ongoing modifications of the project milestones.

III. Documents Submitted

The NYISO respectfully submits the following documents with this filing letter:

1. This filing letter;
2. Notice of Cancellation of Service Agreement No. 1483 (Attachment I); and
3. Notice of Withdrawal dated February 17, 2017 (Attachment II).

IV. Communications and Correspondence

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

For the NYISO

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*Persons designated for receipt of service.

V. Effective Date

Pursuant to Section 3.3 of the SGIA, the NYISO and National Grid respectfully request that the Commission accept this Notice of Cancellation of Service Agreement No. 1483, effective July 17, 2017 – sixty days from the date of this filing.

VI. Service

In addition to the representatives of National Grid and Green Power designated above for receipt of 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.

VII. Conclusion

For the reasons stated above, the NYISO and National Grid respectfully request that the Commission accept this Notice of Cancellation of Service Agreement No. 1483, effective July 17, 2017.

Respectfully submitted,

/s/ Sara B. Keegan

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