

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

New York Independent System Operator, Inc.)))	Docket No. ER17-1624-002
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**REQUEST FOR LEAVE TO ANSWER AND ANSWER OF
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this request for leave to answer and answer (“Answer”). This Answer responds to the *Petition for Reconsideration or, in the Alternative, Request for Rehearing and Clarification* (“Reconsideration Request”) of Green Power Energy LLC (“Green Power”).² Green Power submitted the Reconsideration Request in response to the Commission’s July 10, 2017 denial (“July 2017 Order”)³ of its out-of-time motion to intervene and request for rehearing of the Commission’s acceptance of a Notice of Cancellation of the Small Generator Interconnection Agreement (“SGIA”)⁴ among the NYISO, Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”), and Green Power.⁵ Green Power requests that the Commission reconsider its July 2017 Order denying Green Power’s motion to intervene out-of-time and rejecting Green Power’s request for rehearing. Green Power also requests clarification regarding whether the July 2017 Order dismissed Green Power’s request for stay of the June 15, 2017 order accepting cancellation of

¹ 18 C.F.R. § 385.213.

² *New York Independent System Operator, Inc.*, Petition for Reconsideration or, in the Alternative, Request for Rehearing and Clarification, Docket No. ER17-1624-002 (August 9, 2017) (“Reconsideration Request”).

³ *New York Independent System Operator, Inc.*, Notice Denying Motion to Intervene and Rejecting Request for Rehearing, 160 FERC ¶ 62,016 (2017).

⁴ Capitalized terms not defined in this Answer shall have the meaning set forth in Attachments X, Y, or Z of the NYISO’s Open Access Transmission Tariff (“OATT”) and, if not defined therein, in Section 1 of the OATT or Section 2 of the NYISO’s Market Administration and Control Area Services Tariff.

⁵ *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER17-1624-000 (June 15, 2017).

Green Power's SGIA. For the reasons described below, the Commission should reject the Reconsideration Request and deny the request for a stay.

I. REQUEST FOR LEAVE TO ANSWER

The NYISO recognizes that the Commission generally discourages answers to requests for rehearing and requests for reconsideration.⁶ Nonetheless, the Commission has the discretion to accept answers and has done so when those answers help to clarify complex issues, provide additional information, or are otherwise helpful in the development of the record or assist in its decision-making process.⁷ This Answer satisfies those standards and should be accepted because it addresses inaccurate and misleading statements and provides additional information that will help the Commission fully evaluate the arguments raised by Green Power. The NYISO, therefore, respectfully requests that the Commission accept this answer.⁸

II. ANSWER

For the reasons stated below, the Commission should reject the Reconsideration Request and, to the extent that it has not already done so, deny Green Power's request for stay.

A. The Commission Appropriately Determined that Green Power Has Not Satisfied the High Burden for a Late Intervention

The Commission appropriately determined in the July 2017 Order that Green Power's purported excuse of failure to timely obtain counsel did not meet the high burden of justifying a

⁶ See 18 C.F.R. § 385.213(a)(2). The Commission has treated answers to requests for reconsideration similarly to answers to request for rehearing. See *Kootenai Electric Cooperative, Inc.*, 145 FERC ¶ 61,229 at P 12 (2013); *JD Wind I, LLC*, 130 FERC ¶ 61,127, at P 13 (2010); *CGE Fulton, L.L.C.*, 71 FERC ¶ 61,232, at 61,880-81 (1995); *Connecticut Light & Power Co.*, 71 FERC ¶ 61,035, at 61,151 (1995).

⁷ See, e.g., *Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,042 at P 14 (2008) (accepting answer to rehearing request because the Commission determined that it has "assisted us in our decision-making process."); *FPL Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,289 at P 12 (2008) (accepting "PJM's and FPL's answers [to rehearing requests], because they have provided information that assisted us in our decision-making process").

⁸ The NYISO may answer Green Power's motion for stay as a matter of right. See 18 C.F.R. § 385.213(a)(3).

late intervention after the Commission’s issuance of a dispositive order. As the Commission has held, an out-of-time intervention filed *after* a dispositive order carries a higher burden due to the increased likelihood of prejudice to other parties and the burden upon the Commission, and “generally it is Commission policy to deny late intervention at the rehearing stage.”⁹

Green Power asserts that it satisfied the higher burden to intervene out of time based on its inability to timely obtain counsel in combination with its lack of knowledge of the Commission’s public notice setting a deadline for comments.¹⁰ However, such assertion fails to satisfy the higher burden for a late intervention under Rule 214, and the Commission therefore should reject this request.¹¹ Notwithstanding its claims to the contrary made for the first time in the present motion,¹² Green Power had considerable notice concerning the NYISO’s May 18, 2017 filing of the Notice of Cancellation of the SGIA (“May 2017 Filing”) and Green Power’s responsibility to timely intervene.¹³ The NYISO specifically advised Green Power of the potential filing of a Notice of Cancellation weeks before it submitted the notice. Upon filing the

⁹ See *San Diego Gas & Elec. Co.*, 112 FERC ¶ 61,330, at P 7 (2005); accord *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,248, at P 15 (2012); *DC Energy LLC*, 144 FERC ¶ 61,024, at P 19 (2013); *AES Sparrows Point LNG, LLC*, 129 FERC ¶ 61,245, at P 5 (2009).

¹⁰ See Reconsideration Request at pp 6-7.

¹¹ See 18 C.F.R. 385.214(d)(1)(i); see also *California Trout v. FERC*, 572 F.3d 1003, 1025 (9th Cir. 2009) (“All in all, the Commission has steadfastly and consistently held that a person who has actual or constructive notice that his interests might be adversely affected by a proceeding, but who fails to intervene in a timely manner, lacks good cause under Rule 214.”); *Power Co. of America, L.P. v. FERC*, 245 F.3d 839, 843 (D.C. Cir. 2001) (“Failure to establish good cause is . . . a sufficient condition to deny intervention, so the Commission was not obligated to consider any other factor.”).

¹² In its original motion for out-of-time intervention filed on June 20, 2017, Green Power did not specifically claim that it lacked actual notice of its responsibility to timely intervene. In the current motion, Green Power raises the claim for the first time before the Commission. As further detailed in Section II.B, below, Green Power should be precluded from now raising it.

¹³ *New York Independent System Operator, Inc.*, Notice of Cancellation of Service Agreement No. 1483 to the New York Independent System Operator, Inc. Open Access Transmission Tariff, Docket No. ER17-1624-000 (May 18, 2017).

notice, the NYISO served the sole representative of Green Power. See Attachment A.¹⁴ The Commission then publicly posted the deadline for timely interventions.¹⁵ Green Power cannot now reasonably claim that it did not have notice of its responsibility to timely intervene.

Green Power has been before the Commission on prior occasions with regard to this same project addressing similar procedural issues. In a 2016 proceeding in which the NYISO and National Grid requested cancellation of the same SGIA that is the subject of this docket due to Green Power's breach and default for nonpayment of invoices, Green Power successfully obtained counsel and timely intervened.¹⁶ In fact, Green Power has involved counsel with its project since at least 2014 when it filed its initial waiver request with the Commission seeking waiver of the same tariff provision that served as the basis for the project's withdrawal from the interconnection queue, and ultimately, cancellation of its SGIA.¹⁷ Having been on notice of its project's withdrawal from the NYISO's interconnection queue since at least February 17, 2017, when the NYISO issued a withdrawal notice to Green Power, Green Power had ample time to obtain or re-engage legal counsel and or find other means to timely intervene.

Moreover, in accordance with its tariff, the NYISO withdrew Green Power's Interconnection Request from its interconnection queue in February 2017 and has proceeded to evaluate the interconnection of other projects without the Green Power project in their base cases. Other project developers benefit from certainty concerning the timing, scope, and costs of the interconnection facilities and upgrades required to interconnect their projects. Reinstating

¹⁴ See Attachment A (May 18, 2017 electronic mail message serving Green Power representative David Senehi with the Notice of Cancellation).

¹⁵ See Combined Notice of Filings #2, Docket No. ER11-1858-006, *et al.* (May 18, 2017).

¹⁶ See *New York Independent System Operator, Inc.*, Motion to Intervene and Protest of Green Power Energy LLC, Docket Nos. ER16-975-000, -001 (March 16, 2016).

¹⁷ See *Green Power Energy LLC*, Petition for Waiver of Tariff Requirements, Docket No. ER14-1655-000 (April 3, 2014).

Green Power’s Interconnection Request into the queue many months after its withdrawal and a dispositive order on the matter has the potential to be disruptive to the NYISO’s interconnection process and create uncertainty for other project developers, particularly those interconnecting near Green Power’s proposed Point of Interconnection. Specifically, five proposed projects – two other wind projects, a solar project, a cogeneration project, and an energy storage project – are currently in the NYISO’s interconnection queue with proposed points of interconnection located electrically close to or within one bus away from the point of interconnection for the Green Power Project.¹⁸

B. Green Power Inappropriately Raises Arguments for the First Time in its Reconsideration Request

Green Power has used its Reconsideration Request to raise issues that were not raised in its original motion filed on June 20, 2017.¹⁹ As the Commission has previously recognized, “[i]t is well established that a request for rehearing is not the appropriate procedural vehicle for raising issues for the first time because it is disruptive to the administrative process and denies the parties the opportunity to respond.”²⁰ As a result, Green Power’s intervention at this point would be prejudicial to the Commission, the NYISO, National Grid, and other potentially interested Developers or other stakeholders who have not had an opportunity to comment on these newly raised issues.

¹⁸ These five projects are identified on the NYISO’s interconnection queue as Queue No. 276 Crown City Wind; Queue No. 449 Stockbridge Wind; Queue No. 545 Sky High Solar; Queue No. 601 Hood Cogen; and Queue No. 634 Champagne Energy Storage. See NYISO Interconnection Queue, available at the following link: http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/Interconnection_Studies/NYISO_Interconnection_Queue/NYISO%20Interconnection%20Queue.xls.

¹⁹ See *New York Independent System Operator, Inc.*, Motion to Intervene Out of Time and Request for Rehearing and Stay, Docket No. ER17-1624-000 (June 20, 2017).

²⁰ See, e.g., *W. Grid Dev., LLC*, 133 FERC ¶ 61,029, at P 14 (2010) (citation omitted).

C. The NYISO Acted In Accordance with Its Tariff and the SGIA in Withdrawing Green Power’s Interconnection Request and Terminating the SGIA

If the Commission were to allow Green Power’s intervention and consider the merits of the withdrawal of Green Power’s Interconnection Request and termination of the SGIA raised in the Reconsideration Request, it should reject the request. The NYISO acted in accordance with its Small Generator Interconnection Procedures (“SGIP”) in Attachment Z of its Open Access Transmission Tariff (“OATT”) when it withdrew Green Power’s Interconnection Request from the NYISO’s interconnection queue. By the terms of the SGIA, this withdrawal triggered the termination of the SGIA.²¹ The Commission has specifically acknowledged the validity of applying Section 30.4.4.5 of Attachment X to Small Generating Facilities under similar circumstances.²²

Section 32.1.3.2 of Attachment Z establishes that the Commercial Operation Date for a new Small Generating Facility shall be no more than ten years from the date that the Interconnection Request is received by the NYISO, with any extension to that date subject to the modification requirements in Section 30.4.4.5 of Attachment X of the OATT. Therefore, by its own specific terms, the SGIP apply Section 30.4.4.5 of Attachment X to Small Generators with respect to requests for extensions of Commercial Operation Date.

Green Power’s Interconnection Request has been pending in the NYISO’s interconnection queue for approximately 13 years. As detailed in the May 2017 Filing, the project has extended its Commercial Operation Date six times. One of the extensions was

²¹ The NYISO has limited its response to those issues for which it believes that providing additional information will best assist the Commission to reach its decision. The NYISO’s silence with respect to any particular argument or assertion raised by Green Power should not be construed as acceptance or agreement.

²² See *Green Power Energy LLC*, Letter Order, 147 FERC ¶ 61,084, at PP 12, 15 & n 19 (April 30, 2014); see also *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER17-1816-000 (August 4, 2017) (accepting Notice of Cancellation of SGIA following issuance of withdrawal notice to Interconnection Customer based on the same tariff provision on which Green Power’s withdrawal was based).

ordered by the Commission when it granted Green Power a waiver in 2014 from the requirements under Section 30.4.4.5 of Attachment X that allowed an extension of its Commercial Operation Date beyond what would otherwise be permissible under the NYISO's tariff.²³ Even in light of the multiple extensions, on January 31, 2017, Green Power requested yet another extension of the Commercial Operation Date until January 2018. The NYISO evaluated whether the latest extension request would constitute a material modification²⁴ of its Interconnection Request based on the extension requirements set forth in Section 30.4.4.5.2 of Attachment X.²⁵ Pursuant to this section, the NYISO was required to evaluate whether the project made reasonable progress against regulatory and developmental milestones based on an Officer certification and information in the NYISO's possession.²⁶ As detailed in the May 2017 Filing, Green Power did not demonstrate reasonable progress against the milestones previously agreed upon by the parties. The NYISO, therefore, was required by its tariff to deny a further extension of the Commercial Operation Date.

As Green Power failed to reach its Commercial Operation Date and further extensions of that date would constitute a material modification, the NYISO appropriately withdrew Green

²³ *Green Power Energy LLC*, Letter Order, 147 FERC ¶ 61,084, at P 15 (April 30, 2014).

²⁴ Green Power erroneously asserts that the NYISO has not made a determination of a Material Modification. Reconsideration Request at pp 10-11. Section 30.4.4.5.2 provides that a Developer's request for an extension of its Commercial Operation Date will not be a Material Modification only if it has executed an interconnection agreement and demonstrated that it has made reasonable progress against its milestones. As the second condition was not met, Green Power's requested extension constitutes a Material Modification.

²⁵ Green Power incorrectly asserts that the terms of Section 30.4.4.5 apply solely to projects that have completed a Class Year Interconnection Facilities Study and met certain requirements as of February 18, 2013. Reconsideration Request at p 10. However, Section 30.4.4.5.1.2 expressly provides that the extension requirements apply to Small Generating Facilities that are not participating in the Class Year Study process set forth in Attachment S of the OATT.

²⁶ Contrary to Green Power's assertion, a developer's provision of an Officer certification does not result in an automatic extension of the Commercial Operation Date. The NYISO must affirmatively review a request to determine whether the developer has demonstrated progress against the milestones and whether the extension would harm other parties (*i.e.*, would be a Material Modification). Green Power's interpretation would render the extension requirement as superfluous and a nullity.

Power's Interconnection Request. As guidance for the appropriate procedures for withdrawing the Interconnection Request, the NYISO relied on the withdrawal provisions in its Large Generator Interconnection Procedures ("LGIP") only with regard to the remedies available to Green Power in response to the withdrawal notice.²⁷ The NYISO provided notice of withdrawal on February 17, 2017 and afforded Green Power an opportunity to cure the deficiencies and/or commence the Dispute Resolution Process—all of which was to Green Power's benefit. The NYISO submitted the May 2017 Filing only after the cure period applicable to the withdrawal of the Interconnection Request expired and the Dispute Resolution process was completed without Green Power having demonstrated reasonable progress.

As a result of the withdrawal, the NYISO was required to terminate the SGIA among the NYISO, National Grid, and Green Power pursuant to Section 7.6.3 of the SGIA.²⁸ Section 7.6.3 is clear that withdrawal of the Interconnection Request serves as an immediate default and termination of the SGIA.²⁹ To effectuate the termination, the NYISO filed with the Commission for its acceptance the Notice of Cancellation to comply with Section 3.3 of the SGIA and Section 35.15 of the Commission's Rules. Under Section 35.15 of the Commission's Rules, the NYISO was required to provide sixty (60) days' notice of the cancellation. Here, the NYISO satisfied

²⁷ The NYISO's reliance on the LGIP is appropriate and consistent with the Commission's direction in Order No. 2006 to use the provisions of the LGIP as guidance for interpretation and implementation in situations where the *pro forma* SGIP lacks specific provisions. See *Standardization of Small Generator Interconnection Agreement and Procedures*, Order No. 2006, at PP 47-48, 59 (2005).

²⁸ Green Power overlooks that there are two different types of default available under Article 7.6 by conflating the requirements under Sections 7.6.1 and 7.6.2 with Section 7.6.3. Sections 7.6.1 and 7.6.2 provide that when a party breaches a term or condition under the SGIA and fails to cure it, the breach results in a default under which a non-defaulting party may seek to terminate the SGIA. Section 7.6.3, on the other hand, provides for an immediate default and withdrawal of the SGIA if the Interconnection Request is withdrawn.

²⁹ Section 7.6.3 applies when the Interconnection Request had been studied under a facilities study and is subsequently withdrawn from the NYISO's interconnection queue. Green Power takes the position that Section 7.6.3 of the SGIA cannot apply because there is no Section 3.5.3 of the SGIP. This is simply wrong. A reference to "Section 3.5.3 of the SGIP" is the same as Section 3.5.3 of Section 32 (Attachment Z) of the OATT – *i.e.*, Section 32.3.5.3.

that requirement by affording Green Power sixty days' notice by requesting an effective date of July 17, 2017 for the cancellation. Accordingly, the NYISO appropriately applied its tariff and the SGIA requirements and complied with the necessary regulatory requirements in filing the Notice of Cancellation.

D. The Commission Should Deny Green Power's Request for a Stay

It is unclear what the motion for stay attempts to remedy at this procedural stage. Absent the Commission taking the extraordinary step of reconsidering and reversing its well-supported July 2017 Order, a stay of the cancellation of the SGIA is meaningless. Nevertheless, Green Power has failed to satisfy the standard for obtaining the extraordinary remedy of a stay. In determining whether to grant a stay, the Commission will consider several factors, which typically include: "(1) whether the party requesting the stay will suffer irreparable injury without a stay; (2) whether issuing the stay may substantially harm other parties; and (3) whether a stay is in the public interest."³⁰ In particular, Green Power has not demonstrated irreparable harm.³¹ Green Power has an avenue to proceed with its project as planned if it chooses to use it. The NYISO and Green Power have already discussed the flexibility contained in the NYISO's interconnection process to move the project along in a timely manner if Green Power re-entered the interconnection queue under a new Interconnection Request.³² To date, Green Power has elected not to pursue this option and instead seeks relief through the Commission.

³⁰ See *AES Sparrows Point LNG, LLC*, 129 FERC ¶ 61,245, at P 18; accord *Midwestern Gas Transmission Co.*, 116 FERC ¶ 61,182, at P 158 (2006).

³¹ *AES Sparrows*, 129 FERC ¶ 61,245, at P 18 ("If the party requesting the stay is unable to demonstrate that it will suffer irreparable harm absent a stay, [the Commission] need not examine the other factors.").

³² For example, the NYISO and National Grid could agree to waive the feasibility study. If Green Power had submitted a new Interconnection Request in February 2017, it is likely that the parties would have already completed the system impact study for the project.

Moreover, a stay, and the resulting uncertainty as to whether the Commission could reinstate the Interconnection Request, would have the potential to disrupt the NYISO's interconnection process and create substantial uncertainty for other developers. Other developers should not be harmed by Green Power's failure to make reasonable progress against its milestones and its untimely action at the Commission. Accordingly, to the extent that the Commission has not already done so, the Commission should not grant a stay.

III. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission grant its Motion for Leave to Answer and accept this Answer, and that the Commission take action consistent with this Answer.

Respectfully submitted,

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August 24, 2017

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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 24th day of August 2017.

/s/ Joy A. Zimmerlin

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Attachment A

From: [Cutting, John](#)
To: michael.bard@ferc.gov; nicole.buell@ferc.gov; anna.cochrane@ferc.gov; kurt.longo@ferc.gov; david.moreno@ferc.gov; Daniel.nowak@ferc.gov; larry.parkinson@ferc.gov; arnie.quinn@ferc.gov; douglas.roe@ferc.gov; kathleen.schnorf@ferc.gov; Jamie.simler@ferc.gov; gary.will@ferc.gov; william.heinrich@dps.ny.gov; Elizabeth.Grisaru@dps.ny.gov; jay.goodman@dps.ny.gov; Sharon.hobdy@bpu.state.nj.us
Cc: [Keegan, Sara](#); [Fernandez, Robert](#); [Hodgdon, Brian R.](#); [Stalter, Raymond X](#); [Zimmerlin, Joy](#); [Akter, Mohsana](#); kathryn.cox@nationalgrid.com; david.lodmore@nationalgrid.com; davidsenehi@localnet.com
Subject: NYISO filing re: Notice of cancellation of Service Agreement 1483 (ER17-1624-000)
Date: Thursday, May 18, 2017 1:02:31 PM
Attachments: [image001.png](#)
[20170518 Cnclltn Grn Pwr SGIA1483 Cmplt.pdf](#)

On May 18, 2017 NYISO efiled a Notice of Cancellation of a Small Generator Interconnection Agreement ("SGIA") among the NYISO, Niagara Mohawk Power Corporation, and Green Power Energy LLC. The SGIA is designated as Service Agreement No. 1483 in the NYISO's Open Access Transmission Tariff.

A copy of the filing is attached above for your use and will soon be available in FERC's eLibrary and on the NYISO website.

Acceptance for Filing

The FERC Office of the Secretary has accepted the following electronic submission for filing (Acceptance for filing does not constitute approval of any application or self-certifying notice):

-Accession No.: 201705185062
-Docket(s) No.: ER17-1624-000
-Filed By: New York Independent System Operator, Inc.
-Signed By: Sara Keegan
-Filing Type: Tariff Filing
-Filing Desc: Notice of cancellation of of a Small Generator Interconnection Service Agreement No. 1483 of New York Independent System Operator, Inc. under ER17-1624.
-Submission Date/Time: 5/18/2017 11:49:10 AM -Filed Date: 5/18/2017 11:49:10 AM

Your submission is now part of the record for the above Docket(s) and available in FERC's eLibrary system at:

http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20170518-5062

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