

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

New York Independent System Operator, Inc.))))	Docket No. ER17-2275-000
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**MOTION TO INTERVENE AND PROTEST OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 211, 212 and 214 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) moves to intervene in the above-captioned proceeding and protests the *Petition for Limited Waiver of Tariff Requirement* submitted by Green Power Energy LLC (“Green Power”) on August 9, 2017 (“2017 Waiver Request”).² The NYISO respectfully requests that the Commission reject the request by “Green Power for waiver of requirements in the NYISO’s Open Access Transmission Tariff (“OATT”)³ to extend the Commercial Operation Date of Green Power’s wind project to November 30, 2018. As described below, Green Power’s request does not satisfy the Commission’s criteria for granting a waiver and should be rejected.

I. COMMUNICATIONS AND CORRESPONDENCE

All communications and service with regard to this filing should be directed to:

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¹ 18 C.F.R. §§ 385.211, 385.212, 385.214.

² *New York Independent System Operator, Inc., Petition for Limited Waiver of Tariff Requirement, Expedited Action, and Shortened Notice Period*, Docket No. ER17-2275-000 (August 9, 2017) (“2017 Waiver Request”).

³ 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.

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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, Green Power is requesting waiver of a requirement of the interconnection process established in Attachment Z to 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

Green Power was evaluated in the NYISO's interconnection queue as a 10 MW wind generating facility proposing to interconnect to Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid")'s 115 kV system on the Fenner-Cortland Line #3 in Madison County, New York ("Green Power Project").⁴ National Grid initiated the interconnection study process for the Green Power Project prior to the implementation of Order No. 2006, and the project's studies were

⁴ The Interconnection Request date on the NYISO's queue for the Green Power Project was March 17, 2005, reflecting the fact that Green Power's interconnection request predated the effective date of Order No. 2006 and the NYISO's Small Generator Interconnection Procedures, and was therefore transitioned from National Grid's interconnection process to the NYISO's interconnection queue pursuant to Section 32.1.7 of Attachment Z to the OATT.

completed under the NYISO's Small Generator Interconnection Procedures. On August 20, 2009, the NYISO, National Grid, and Green Power executed a Small Generator Interconnection Agreement for the project ("SGIA").⁵

According to the original construction and procurement schedule in the SGIA, the Green Power Project was to be in commercial operation by October 2010. Numerous extensions of the Commercial Operation Date, however, have resulted in the project remaining in the NYISO's interconnection queue longer than any other project. At this point, it has been approximately 13 years since the Green Power Project was initially evaluated in National Grid's interconnection process.

Since transitioning to the NYISO's interconnection queue, Green Power's Commercial Operation Date has been extended on six separate occasions up to January 31, 2017.⁶ One of these extensions was the result of the Commission granting a one-time waiver requested by Green Power in 2014 to extend its Commercial Operation Date for fifteen months.⁷ On January 30, 2017, Green Power requested a seventh extension of the Commercial Operation Date until July 2018. As set forth in Sections 32.1.3.2 of Attachment Z to the OATT and 30.5.5.4.2 of Attachment X to the OATT, the NYISO may only extend the Commercial Operation Date for a project if the developer can demonstrate reasonable progress against its project milestones. The NYISO concluded that Green Power had not demonstrated reasonable progress against the milestones that it had agreed to satisfy by January 31, 2017.

⁵ The SGIA, designated as Service Agreement No. 1483, was filed as a non-conforming SGIA in Docket Number ER09-1693-000 and was accepted by the Commission on October 13, 2009. Letter Order, Docket No. ER09-1693-000 (October 13, 2009).

⁶ The NYISO detailed the numerous extensions of the Commercial Operation Date for the Green Power Project in its filing of a Notice of Cancellation of the SGIA for the Green Power Project. *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).

⁷ *Green Power Energy LLC*, 147 FERC ¶ 61,084 at P 15 (2014) ("2014 Waiver Order").

As Green Power failed to meet its Commercial Operation Date and did not satisfy the requirements for a further extension, the NYISO informed Green Power on February 17, 2017 that the Interconnection Request for its project was withdrawn from the NYISO's interconnection queue. As a result, the NYISO was required to terminate the SGIA.⁸ To effectuate this termination, the NYISO filed a Notice of Cancellation for the SGIA in Docket No. ER17-1624 on May 18, 2017. The Commission accepted this notice on June 15, 2017, with an effective date of July 17, 2017.⁹

On June 20, 2017, Green Power belatedly filed a motion to intervene out-of-time and requested rehearing concerning the Notice of Cancellation.¹⁰ The Commission denied this untimely intervention on July 10, 2017.¹¹ Notwithstanding the withdrawal of its project from the NYISO's interconnection queue over six months ago and the termination of its SGIA, Green Power now requests waiver of the requirement for extending the Commercial Operation Date in Section 32.1.3.2 of Attachment Z to the OATT and for the Commission to extend the Commercial Operation Date of the Green Power Project to November 30, 2018.

IV. PROTEST

The Commission considers a number of factors in determining whether to grant a waiver request, 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,

⁸ See Section 7.6.3 of the Standard Small Generator Interconnection Agreement located in Appendix 9 of Attachment Z of the OATT.

⁹ As the Commission has not stayed its order, the Notice of Cancellation became effective as of July 17, 2017.

¹⁰ *New York Independent System Operator, Inc.* Motion to Intervene Out of Time and Request for Rehearing and Stay of Letter Order Accepting New York Independent System Operator, Inc.'s Notice of Cancellation of Green Power Energy LLC's Small Generator Interconnection Agreement and Request for Order Directing Extension, Docket No. ER17-1624-001 (June 20, 2017)

¹¹ *New York Independent System Operator, Inc.*, Notice Denying Motion to Intervene and Rejecting Request for Rehearing, 160 FERC ¶ 62,016 (2017). Green Power has subsequently filed a request for reconsideration concerning the Commission's denial of its motion to intervene. *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).

if granted, will have undesirable consequences such as harming third parties.¹² As described below, Green Power has not satisfied these criteria and its requested waiver should be rejected.

A. Green Power's Request Does Not Satisfy the Good Faith Criterion

Green Power has not and cannot satisfy the good faith criterion. In the absence of reasonable progress against its milestones, Green Power's Interconnection Request was withdrawn from the NYISO's interconnection queue and its SGIA was terminated. Green Power had the opportunity to challenge this determination at the Commission, but failed to timely intervene in the relevant proceeding. The Commission should reject Green Power's attempt to perform an end run around the Commission's determination in Docket No. ER17-1624 and the extension requirements of the NYISO's OATT by means of a waiver request submitted nearly six months after the NYISO informed Green Power that the Interconnection Request for its project had been withdrawn. As described in Part IV.D below, reinstating Green Power's Interconnection Request after this lengthy delay could negatively impact other project developers.

Green Power has provided no basis for why it should not be subject to the same requirements for extending its project's Commercial Operation Date as any other developer participating in the NYISO's interconnection process.¹³ The Commission had previously granted a limited one-time waiver to Green Power of the extension requirements in 2014 because the NYISO's rules on extending the Commercial Operation Date had only recently changed to require developers to demonstrate reasonable progress against milestones in their SGIA.¹⁴ However, the Commission

¹² See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060 at P 17 (2013); *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P 16 (2013); *Hudson Transmission Partner, LLC*, 131 FERC ¶ 61,157 at P 10 (2010).

¹³ See *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 that failed to meet Commercial Operation Date and removal of project from the NYISO Interconnection Queue).

¹⁴ 2014 Waiver Order at P 12. The Commission also determined that the waiver would be limited in scope and would not have undesirable consequences, which is not the case in this instance. *Id.* at PP 13-14.

noted in its order granting such waiver request that “if Green Power requires any further extensions, it would have to qualify pursuant to NYISO’s currently effective tariff.”¹⁵ Since this order, Green Power has been on notice that future extensions required a showing that the project has made reasonable progress against its milestones, which it has failed to do.

When Green Power sought a sixth extension of its Commercial Operation Date in July 2016 for an additional fifteen month period, the NYISO instead granted a limited exception until January 31, 2017, with future extensions contingent upon Green Power meeting specific milestones that were proposed by Green Power, agreed upon by the parties, and that Green Power represented it would satisfy by January 31, 2017.¹⁶ On January 30, 2017, Green Power requested its seventh extension of the Commercial Operation Date until January 2018. Green Power provided minimal additional evidence of progress against the milestones set forth in the SGIA and the milestones that Green Power agreed to satisfy as a condition of its latest extension.¹⁷ Green Power’s milestone table broke down certain milestones into numerous sub-tasks. For example, 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. Overall, as of February 1, 2017, Green Power had failed to complete at least 29 tasks/subtasks of its milestone

¹⁵ *Id.* at n 19.

¹⁶ Green Power included these milestones in Exhibit A of the 2017 Waiver Request and its progress report as of January 31, 2017 in Exhibit B.

¹⁷ Green Power’s arguments concerning whether its milestones have been updated in the SGIA are irrelevant for purposes of the NYISO’s determination not to extend its Commercial Operation Date. *See* 2017 Waiver Request at pp 7-8. The NYISO reviewed Green Power’s project against both the milestones in the SGIA and its own proposed updated milestones that it provided in September 2016. Green Power only demonstrated minimal progress against these updated milestones and did not make the progress that it had agreed to make by January 31, 2017.

table that were to have been completed by January 31, 2017.¹⁸ Further, as demonstrated in Exhibit B of the 2017 Waiver Request, there are still at least 54 outstanding tasks/subtasks that Green Power must complete before the project can go into service. Accordingly, the NYISO appropriately determined that Green Power had not demonstrated reasonable progress against its milestones and is not aware of any material changes to these circumstances that demonstrate further progress in the project's development.

Green Power now asserts in the 2017 Waiver Request that it is nearing completion of a number of significant project milestones.¹⁹ However, in the approximately thirteen years since the Green Power Project has been pending in the interconnection process, it has made numerous claims concerning its anticipated progress in developing the Green Power Project that have not borne out or are no longer valid. For example, in its request for a waiver in 2014, Green Power stated that it had executed a turbine supply agreement with Gamesa, with turbines slated for delivery in September 2014.²⁰ Green Power also relied on this turbine supply agreement as the basis for demonstrating progress for a subsequent NYISO extension of its Commercial Operation Date. In support of its latest extension request, Green Power certified that it executed the turbine supply agreement on January 24, 2014 and that the turbines were scheduled for delivery in May 2017.²¹ However, Green Power has since represented to the NYISO, and acknowledged to the Commission, that the turbine supply agreement with Gamesa is no longer valid and that it has yet to enter into another turbine

¹⁸ Green Power blames the short-term absence of a National Grid employee for its inability to meet certain project milestones. *See* 2017 Waiver Request at pp 9-10. Green Power, however, does not explain why it took until late 2016 to make progress against these preliminary milestones. In addition, numerous other milestones proposed by Green Power as a condition of its latest extension of the Commercial Operation Date have passed that are unconnected with any actions of National Grid.

¹⁹ *See* 2017 Waiver Request at pp 9-10.

²⁰ *Green Power Energy LLC*, Petition for Waiver of Tariff Requirements; Request for Shortened Notice Period and Expedited Review, Docket No. ER14-1655 at p 4 (April 3, 2014) ("2014 Waiver Request").

²¹ *See* 2017 Waiver Request at Exhibit E.

supply agreement.²² There are, therefore, no turbines on site, Green Power has provided no evidence of any new agreement for the procurement of turbines, and it is inaccurate for Green Power to continue to assert that Milestone 6 is complete.²³

For all of the above-stated reasons, Green Power has failed to demonstrate that it satisfies the good faith criterion.

B. Green Power's Request Will Not Remedy a Concrete Problem

Green Power's requested waiver will not remedy the underlying problem concerning the development of its project, which is Green Power's failure to make timely progress. The Commercial Operation Date has been extended six times. The Commission has already granted Green Power a waiver of the NYISO's extension requirements based on its representation that the project would be completed within fifteen months. Yet, the only noticeable difference between the project now and the project at the time of the 2014 waiver is that there is a dirt access road and the turbine sites have been cleared and leveled.²⁴ No portion of the Green Power Project has been built, and Green Power has not demonstrated reasonable progress against many preliminary project milestones. This evidences a lack of readiness and certainty with the Green Power Project, and Green Power has provided no reasonable basis for concluding that its project would be able to meet its requested extended Commercial Operation Date on the seventh attempt.

²² In its motion filed with the Commission on July 10, 2017 in Docket No. ER17-1624, Green Power stated that it "is in final negotiations with a sponsor/turbine supplier," confirming that the turbine supply agreement with Gamesa is no longer valid and, as of July 10, 2017, it did not have a new agreement for turbines. *New York Independent System Operator, Inc.*, Motion for Leave to Answer and Answer and Request for Expedited Consideration of Stay, Docket No. ER17-1624-001, at p 2 (July 10, 2017).

²³ See 2017 Waiver Request at Exhibit A.

²⁴ Compare 2014 Waiver Request at p 4 (reporting that Green Power commenced construction of the 1,000 foot service road and the foundations for the wind turbines are being excavated, together with the substation engineering being underway); 2017 Waiver Request at Exhibit C (showing the state of the service road and the cleared sites for the wind turbines).

C. Green Power's Requested Waiver Is Not of Limited Scope

The 2017 Waiver Request is not limited in scope. When it requested a waiver in 2014, Green Power assured the Commission that “the waiver sought in this petition is limited in scope” as it was limited to fifteen months following the Commission’s order and the length of the extension was to accommodate the required construction schedule.²⁵ Green Power made clear that it “is not seeking an open-ended period in which to construct” its project.²⁶ Accordingly, when it granted the “one-time” waiver in 2014, the Commission found it to be limited in scope “because Green Power only requests waiver until a date no later than fifteen months following this order,”²⁷ and the Commission indicated that Green Power would be bound to the NYISO’s tariff requirements for further extensions.²⁸

Three years later, Green Power is back before the Commission requesting yet another, almost identical, waiver and the seventh extension of its Commercial Operation Date. Green Power again promises that it “is not seeking an open-ended period” to construct its project. If granted, the waiver would require the NYISO to reinstate Green Power in its interconnection queue with a Commercial Operation Date that the NYISO does not believe is feasible based on its review of Green Power’s progress against its milestones. If the requested waiver is granted, there are no guarantees that Green Power will not be back before the Commission at a future date requesting its third waiver and assuring the Commission anew that it is not seeking an open-ended period to construct its project.

²⁵ 2014 Waiver Request at p 6.

²⁶ *Id.* at pp 6-7.

²⁷ 2014 Waiver Order at PP 13, 15.

²⁸ *Id.* at n 19.

D. Green Power's Requested Waiver Will Have Undesirable Consequences

Green Power claims that its requested waiver will not cause any undesirable consequences. However, reinstating the Green Power Project into the NYISO's interconnection queue over six months after it was withdrawn could create considerable uncertainty for other projects that are proposing to interconnect near the proposed point of interconnection for the Green Power Project. 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.²⁹

Should the Commission grant the requested waiver, the NYISO would be required to re-insert the project into the base case with its associated System Upgrade Facilities. Other project developers would be relying on those System Upgrade Facilities going forward, despite Green Power's lack of progress in developing these facilities and the absence of security to ensure that the facilities will be constructed if Green Power does not proceed to construction. The continued uncertainty concerning the status of the Green Power Project, therefore, would create substantial uncertainty for these other developers, the scope of their projects, and their cost responsibility.

Green Power has not demonstrated that unique circumstances exist that warrant a waiver of the generally applicable Commercial Operation Date extension requirements and distinguish its project from all other projects that have had to demonstrate reasonable progress against their interconnection agreement milestones to obtain extensions. Green Power points vaguely to issues resulting from the impact of the recession, local town zoning requirements, and interfacing with the

²⁹ 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.

local Connecting Transmission Owner, all of which are concerns that are not unique to Green Power.³⁰ In the approximately 13 years since the Green Power Project was initially evaluated in the interconnection process, over 1,800 MW of renewable projects have successfully proceeded through the NYISO's interconnection queue and entered into service, while the Green Power Project has failed to meet and maintain basic milestones.

Granting the requested waiver would create an uneven playing field among project developers. It would permit one project developer to obtain an extension of its Commercial Operation Date without satisfying the NYISO's tariff requirements, while other similarly situated developers have not received such an extension.³¹ In granting the waiver, the Commission would encourage other project developers to seek a waiver of the extension requirements, rendering the tariff requirements largely meaningless going forward.

The NYISO's withdrawal of the Green Power Project from its interconnection queue need not be an end to the project. The NYISO encouraged Green Power, soon after its withdrawal in February 2017, to submit a new Interconnection Request for the project. Moreover, National Grid and NYISO agreed that they would waive the feasibility study if Green Power submitted a new Interconnection Request. However, Green Power has failed to take any action that could have mitigated the impact of the withdrawal of its project. Had Green Power immediately submitted a new Interconnection Request in February 2017, the parties would likely be through or nearly through with the System Impact Study for the project at this point.

³⁰ See 2017 Waiver Request at p 10.

³¹ See *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 that failed to meet Commercial Operation Date and removal of project from the NYISO Interconnection Queue).

V. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission: (i) grant this motion to intervene, and (ii) reject Green Power's 2017 Waiver Request.

Respectfully submitted,

/s/ Sara B. Keegan

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New York Independent System Operator, Inc.

August 31, 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 31st day of August 2017.

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