

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

**Silver Lake Solar, LLC**

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**Docket No. ER20-69-000**

**MOTION TO INTERVENE 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,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) moves to intervene and submits comments in the above-referenced proceeding. The NYISO requests that the Commission consider these comments in its determination regarding the relief requested.

**I. Background**

On October 9, 2019, Silver Lake Solar, LLC (“SLS”), the Developer of a proposed 24.9 MW solar facility (“Project”) in the NYISO’s interconnection queue as Queue No. 629, filed a request for waiver of a tariff-imposed deadline that would result in the withdrawal of the Project from the NYISO’s interconnection queue.<sup>2</sup> SLS specifically requests waiver of the deadline in Attachment X (Section 30) of the NYISO Open Access Transmission Tariff (“OATT”) for return of the required study deposit along with an executed Class Year Interconnection Facilities Study Agreement (“Facilities Study Agreement”) described in Section 30.8.1 of the OATT, as well as the withdrawal requirements under Section 30.2.3 of the OATT.

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<sup>1</sup> 18 C.F.R. §§ 385.212 and 385.213 (2019).

<sup>2</sup> *Silver Lake Solar, LLC*, Petition of Silver Lake Solar, LLC for Limited Waiver of the NYISO Tariff, Shortened Comment Period, and Expedited Consider for Commission Action by November 10, 2019, Docket No. ER20-69-000 (October 9, 2019) (“Waiver Request”).

Under the NYISO's OATT, the Class Year Interconnection Facilities Study ("Class Year Study") is performed on a combined basis for a "Class Year" of projects. Projects are first eligible to enter a given Class Year Study when they have satisfied the developmental milestones identified in Attachment S of the OATT.<sup>3</sup> Once the NYISO tenders a Facilities Study Agreement to an eligible project Developer, the Developer must deliver to the NYISO, within 30 Calendar Days, all of the following: (1) the required technical data specified in the data sheet appended to the *pro forma* Facilities Study Agreement; (2) the Class Year Project's interconnection service evaluation election; (3) for Large Facilities not yet In-Service, an updated proposed In-Service Date, Initial Synchronization Date and Commercial Operation Date; (4) a study deposit of \$100,000;<sup>4</sup> and (5) if the Developer has not satisfied the applicable regulatory milestone described in Section 25.6.2.3.1.1 of Attachment S to the OATT, a two-part deposit consisting of \$100,000 plus \$3,000/MW deposit as required by Section 25.6.2.3.1(ii)(2) of the NYISO OATT.<sup>5</sup> If the Developer fails to satisfy the above requirements within the specified time period, the project does not become a member of the Class Year Study and must be withdrawn from the interconnection queue pursuant to Section 30.3.6 of the OATT.

As SLS indicated in its Waiver Request, the Project satisfied all but one of the above requirements by the September 16, 2019 deadline, failing only to submit the \$100,000 study deposit. Despite having satisfied the Class Year entry requirements four days within the tariff deadline, the Project is nonetheless unable to enter the Class Year

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<sup>3</sup> See Attachment S, Section 25.6.2.3.1.

<sup>4</sup> If the project requests only an evaluation of the deliverability of a Capacity Resource Interconnection Service request, the study deposit is \$50,000.

<sup>5</sup> See Attachment X, Section 30.8.1.

Study and is subject to withdrawal from the interconnection queue, absent a waiver from the Commission.

## **II. Motion to Intervene**

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. Additionally, the NYISO administers the interconnection process pursuant to its Commission-approved tariffs. The NYISO, therefore, has a unique interest in this proceeding that cannot be adequately represented by any other entity and, therefore, requests that the Commission permits the NYISO to intervene with all the rights of a party.

## **III. Comments**

The NYISO understands SLS to be requesting waiver of the tariff-mandated deadline for submitting the \$100,000 Class Year Study deposit and withdrawal provisions in order that the Project may retain its queue position and be included in the Class Year 2019 Interconnection Facilities Study.

NYISO recognizes that the Commission evaluates a waiver request based on the specific facts and circumstances of the request, and upon a number of factors, 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, if granted, will have undesirable consequences such as harming third parties.<sup>6</sup>

The Commission's evaluation of a waiver request is highly dependent on the specifics of

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<sup>6</sup> 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).

a particular request, and the Commission has recognized that the granting of a waiver request is not precedent for granting future waiver requests.<sup>7</sup> The Commission has further recognized that waiver of tariff requirements should not be construed as having any impact on the applicability of the same requirements to other projects.<sup>8</sup>

The NYISO believes it is important that the Commission continue to reinforce the importance of tariff and manual deadlines that enhance efficiency, certainty, and transparency in the NYISO's administration of the interconnection process. However, in light of the very unique circumstances surrounding this request, the NYISO does not oppose SLS's Waiver Request.

The NYISO does not dispute that SLS acted in good faith and that its failure to provide the full study deposit by the due date—September 16, 2019—appears inadvertent. The NYISO also does not dispute that almost immediately after NYISO's September 19, 2019, communication to SLS regarding its failure to submit the required deposit, SLS proceeded to wire funds to the NYISO to cover the deficiency, which was received on September 20, 2019. Further, the NYISO is not aware of harm that would result to other Class Year 2019 members or future Class Year members if the

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<sup>7</sup> See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060 at P 17 (noting that the granting of the requested waiver “is based on the specific facts and circumstances of the request”); see also, *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P 16 (2013) (noting that “our grant of waiver is limited to the facts and circumstances of the case before us”).

<sup>8</sup> See *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P 16 (2013) (noting that despite granting the requested waiver, “we do not intend that NYISO's regulatory milestones be taken lightly”); *Innovative Energy Systems, LLC*, 131 FERC ¶ 61,066 at P 7 (2010) (noting that despite granting the requested waiver, “we emphasize the importance of meeting financial security deadlines and note that in the future, we expect parties to arrange for deposits to be submitted in sufficient time to meet the requirements of their tariffs”).

Commission grants the Waiver Request, subject to the Commission doing so by November 12, 2019.<sup>9</sup>

#### **IV. Comments in Support of Expedited Treatment**

The NYISO requests that the Commission issue an order on SLS's Waiver Request as soon as possible, but no later than November 12, 2019. Commission action by this date is necessary to avoid potential delays to the Class Year process. The relief requested by SLS would result in that project being a member of Class Year 2019. The study officially commenced on August 9, 2019, and the NYISO is currently in the process of reviewing project data submitted with the Facilities Study Agreements for nearly 100 projects that have requested entry into Class Year 2019. Part of this process involves base case modeling and other preparatory activities related to the Class Year 2019 study, which requires knowing and modeling all of the projects in the study. Adding a new member to the Class Year after completion of the base cases would potentially disrupt finished study work and delay the ultimate completion of the Class Year Study for all members.

The NYISO's support for an expediting decision so that the Class Year Study proceeds expeditiously and avoids delays is not for the sake of simply enforcing tariff-mandated deadlines. Rather, the Class Year process benefits a group of projects that have met certain developmental milestones in the interconnection process. Avoiding delays related to a single project or small number of projects protects the process and benefits all of the projects in the Class Year Study and other projects in the interconnection queue.

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<sup>9</sup> SLS has requested Commission action no later than November 10, 2019; however, November 10, 2019 is a Sunday and the November 11, 2019 is a federal holiday. Accounting for these non-workdays for the Commission, the NYISO requests Commission action not later than Tuesday, November 12, 2019. NYISO believes that it needs to know whether the Project can be a member of the Class Year Study by that date to avoid potential delays in the Class Year Study.

With Commission action no later than November 12, 2019, the NYISO expects that if the waiver is granted, modifications to the base cases due to the inclusion of the Project can be incorporated without delays to the entire Class Year Study.

**IV. Communications and Correspondence**

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

Robert E. Fernandez, General Counsel  
Raymond Stalter, Director of Regulatory Affairs  
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**V. Conclusion**

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission (i) rule on the Waiver Request by November 12, 2019 and (ii) consider these comments in making its decision on SLS's Waiver Request.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan  
Brian R. Hodgdon  
Counsel for the New York Independent  
System Operator, Inc.

cc:	Anna Cochrane	Kurt Longo	Larry Parkinson
	James Danly	John C. Miller	Douglas Roe
	Jignasa Gadani	David Morenoff	Frank Swigonski
	Jette Gebhart	Daniel Nowak	Gary Will

**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 23rd day of October, 2019.

*/s/ Mohsana Akter*

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