

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

NYC Energy LLC)	
)	Docket No. ER20-629-000
)	

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

I. Background

On December 18, 2019, NYC Energy LLC (“NYC Energy”), the Developer of a proposed 79.9 MW battery storage facility (“Project”) formerly in the NYISO’s interconnection queue as “Queue No. 522” filed a request for waiver (“Waiver Request”) of a tariff provision requiring the Project to be withdrawn from the NYISO’s Interconnection Queue for failing to comply with the requirements under the Large Facility Interconnection Procedures (“LFIP”) to enter a Class Year Interconnection Facilities Study (“Class Year Study” or “Class Year”).² NYC Energy specifically requests waiver of the withdrawal provision in Attachment X of the NYISO

¹ 18 C.F.R. §§ 385.212 and 385.213 (2019).

² *NYC Energy LLC*, Petition of NYC Energy LLC for Limited Waiver of the NYISO Tariff, Request for Shortened Notice Period, and Expedited Review, Docket No. ER20-629-000 (December 18, 2019) (“Waiver Request”) (specifically seeking the Commission to waive Section 30.3.6 of the NYISO Open Access Transmission Tariff [“OATT”]).

Open Access Transmission Tariff (“OATT”)³ to allow the Project to be retained in the NYISO’s interconnection queue.

Under the LFIP, the facilities study is performed on a combined basis for a “Class Year” of projects. Projects are first eligible to enter a given Class Year when they have satisfied the developmental milestones identified in Attachment S of the OATT.⁴ Once the NYISO tenders a Class Year Interconnection Facilities Study Agreement (“Class Year Study Agreement”) to a 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* Class Year 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; 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 as required by Section 25.6.2.3.1(ii)(2).⁵ If the Developer fails to satisfy the above requirements within the specified time, the project does not become a member of the Class Year and is subject to withdrawal in accordance with Section 30.3.6 of Attachment X to the OATT.

As detailed in its Waiver Request, NYC Energy failed to demonstrate to the NYISO that its Project satisfied a regulatory milestone identified in Attachment S of the OATT by the Class Year Start Date or, in the alternative, to submit the two-part deposit in lieu of satisfying a regulatory milestone within 30 Calendar Days of the tender of a Class Year Study Agreement.⁶

³ See generally, OATT §§ 25.6.2.3.1, 30.8.1.

⁴ See OATT § 25.6.2.3.1.

⁵ See OATT § 30.8.1.

⁶ In 2019, NYC Energy modified its project by changing the technology from a combustion gas turbine facility to a battery storage facility. When NYC Energy sought to enter Class Year 2019, it asserted that a Conditional

As NYC Energy notes in its Waiver Request, the NYISO advised that the OATT does not allow a project to provide the two-part deposit in lieu of satisfying a regulatory milestone more than 30 calendar days from the date the Class Year Study Agreement was tendered.⁷ Additionally, despite having multiple opportunities to supply information, NYC Energy failed to sufficiently demonstrate either that it satisfied a regulatory milestone or that no regulatory milestone under Section 25.6.2.3.1 of Attachment S applied. As a result, the Project was subject to withdrawal from the interconnection queue, and the NYISO withdrew the Project on November 25, 2019.

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 permit the NYISO to intervene with all the rights of a party.

Negative Declaration under the State Environmental Quality Review Act and/or City Environmental Review Act issued on January 10, 2000 applied to the Project as modified. *See* Waiver Request at p 3. The NYISO advised that the Conditional Negative Declaration did not satisfy the regulatory milestone requirements under Section 25.6.2.3.1 of Attachment S as it did not appear to apply to the Project and requested additional information from NYC Energy. On September 24, 2019, the NYC Energy corrected its original understanding of the Conditional Negative Declaration and reported to the NYISO that no regulatory milestones applied to the Project. The NYISO then sought additional information on multiple instances in an attempt to validate NYC Energy's assertion that no regulatory milestones applied.

⁷ Section 30.8.1 of the OATT requires a Developer to submit no later than 30 calendar days after the tender of the Class Year Study Agreement all required deposits, which includes the two-part deposit in lieu of the Project satisfying a regulatory milestone under Section 25.6.2.3.1 of Attachment S. Section 30.3.6 of Attachment X governs the withdrawal of a project that fails to comply with the requirements under the LFIP and specifically prohibits extending the deadline for the submittal of deposits required under Section 25.6.2.3.1 of Attachment S. Absent a waiver from the Commission, the NYISO could not accept the two-part deposit for the Project after September 16, 2019.

III. Comments

The NYISO understands NYC Energy to be requesting waiver of the withdrawal provision in the LFIP so that the Project can be reinstated in the NYISO's interconnection queue as Queue No. 522.

The 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.⁸ The Commission's evaluation of a waiver request is highly dependent on the specifics of a particular request, and the Commission has recognized, therefore, that the granting of a waiver request is not precedent for granting future waiver requests.⁹ 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.¹⁰

The NYISO believes it is important that the Commission continue to reinforce the importance of tariffs and manual deadlines that enhance certainty and transparency in the NYISO's administration of the interconnection process. However, in this instance and in light of the unique circumstances surrounding this request and recently filed proposed revisions pending

⁸ See *PJM Interconnection, L.L.C. & Trans-Allegheny Interstate Line Co.*, 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).

⁹ See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Co.*, 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").

¹⁰ 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."); see also *Innovative Energy Sys., LLC*, 131 FERC ¶ 61,066 at P 7 (2010).

before the Commission in Docket No. ER20-639-000 related to Class Year entry, the NYISO supports the Waiver Request for the Project to be reinstated in the NYISO interconnection queue as Queue No. 522.

The NYISO does not dispute NYC Energy's assertion that no adverse harm will result to other projects in the NYISO Interconnection Queue if the Commission grants the Waiver Request given that the Project no longer seeks to participate in Class Year 2019.¹¹ Nor will the Project likely adversely affect other projects in the interconnection queue given the NYISO's Class Year structure. If reinstated, the Project will have the ability to enter the next two Class Years upon meeting the entry requirements before it exhausts the number of Class Years it can enter pursuant to Section 25.6.2.3.4 of Attachment S.¹² As a result, it will be similarly situated with other projects that have met similar developmental milestones to enter a Class Year.

The NYISO also recently filed, pursuant to Section 205 of the Federal Power Act, proposed revisions to the Class Year entry process and requirements to expedite and streamline the process for entering a Class Year and to modify the existing rules regarding withdrawal from the interconnection queue if a project elects to retract its request to enter a Class Year.¹³ First, when a Developer wishes to enter a Class Year Study, it will need to address the regulatory milestone requirement at the same time it requests entry.¹⁴ When a Developer provides a

¹¹ See *id.* at p 3.

¹² See OATT § 25.6.2.3.4 (affording a Large Facility the ability "enter up to two, but no more than two, of the next three consecutive Class Year Studies" after the NYISO Operating Committee approves the System Reliability Impact Study ["SRIS"]). If the Commission grants the Waiver Request, Class Year 2019 will have been the first of three consecutive Class Year Studies that the Project may enter following the Operating Committee's approval of the SRIS. Accordingly, the Project will have the ability to enter up to two of the next two consecutive Class Year Studies.

¹³ *New York Indep. Sys. Operator, Inc.*, Proposed Tariff Revisions Regarding Interconnection Process Improvements, Docket No. ER20-638-000 at pp 42–43 (December 19, 2019).

¹⁴ *Id.* at p 41. The proposed revisions would require a Developer, within five Business Days of the posting of the notice of a Class Year Start Date, to either (i) demonstrate that the project satisfies an applicable regulatory milestone or (ii) notify the NYISO that, within 10 Business Days of the tendering of the Class Year Study

demonstration that its project satisfies a regulatory milestone, the NYISO, prior to tendering the Class Year Study Agreement, will confirm whether an applicable regulatory milestone has been met. This proposed revision will afford a Developer that is unable to adequately demonstrate that its project satisfies a regulatory milestone an opportunity to rely on one of the other options to satisfy the regulatory milestone requirements prior to the tender of the Class Year Study Agreement.¹⁵ The NYISO also proposed a second revision that will no longer require the NYISO to withdraw a project from the interconnection queue if the project retracts its request to enter a Class Year after the tender of a Class Year Study Agreement.¹⁶

The aforementioned revisions, if accepted by the Commission, could have produced a different outcome for NYC Energy or afforded an avenue for the very relief that NYC Energy now seeks. As a result, the present Waiver Request, if granted, would place the Project back in the NYISO's interconnection queue with two more opportunities to enter the next two consecutive Class Year Studies, which is similar outcome for the Project had the proposed revisions been available.

Agreement, the Developer will submit the required deposit in lieu of the applicable regulatory milestone or a qualify contract. *See id.*

¹⁵ *See id.*

¹⁶ *See id.* at p 43. Under the proposed revisions, a project that retracts its request to enter a Class Year after the tender of a Class Year Study Agreement and after the deadline to submit all required items will be considered to have used one of the two Class Year Studies that a project is permitted to enter under Section 25.6.2.3.4 of Attachment S.

IV. Communications and Correspondence

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

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V. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission grant the motion to intervene and consider these comments in making its decision on NYC Energy's Waiver Request.

Respectfully submitted,

/s/ Brian R. Hodgdon

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cc:	Anna Cochrane	David Morenoff
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