

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

Bear Ridge Solar LLC)))	Docket No. ER22-2085-000
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**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 June 8, 2022, Bear Ridge Solar LLC (“Bear Ridge”), the Developer of a proposed 100 MW solar photovoltaic generating facility (“Project”), filed a request for a waiver (“Waiver Request”) of tariff provisions requiring the Project to be withdrawn from the NYISO’s Interconnection Queue for failing to comply with certain requirements under the Large Facility Interconnection Procedures (“LFIP”).² Bear Ridge specifically requests waiver of (i) the requirement to satisfy an applicable regulatory milestone for the Project within six months of the tender of the Standard Large Generator Interconnection Agreement (“LGIA”) and (ii) the withdrawal provision in Attachment X of the NYISO Open Access Transmission Tariff (“OATT”)³ to allow the Project to remain in the NYISO’s interconnection queue under its existing queue position.

¹ 18 C.F.R. §§ 385.212 and 385.213 (2021).

² *Bear Ridge Solar LLC*, Request for Limited Relief from Regulatory Milestone Requirement, Docket No. ER22-2085-000 (June 8, 2022) (“Waiver Request”) (seeking that the Commission waive Sections 25.6.2.3.2 and 30.11.1 of the NYISO Open Access Transmission Tariff [“OATT”]).

³ *See generally*, OATT §§ 25.6.2.3.2, 30.11.1.

Under the LFIP, a facility study is performed for Large Facilities on a combined basis—or a “Class Year” of projects—that have met specific eligibility requirements and have elected to enter the Class Year Study. After completion of their System Reliability Impact Studies, projects are first eligible to enter a given Class Year Study when they have reached a certain level of development indicated by satisfying at least one of the “regulatory milestones” enumerated in Section 25.6.2.3.1.1 of the OATT.⁴

In response to concerns from Developers related to the challenges of obtaining the necessary regulatory determinations or actions for a project, the NYISO filed in 2017 and 2019, and the Commission accepted, alternative means by which a Large Facility can enter a Class Year Study without having yet satisfied an applicable regulatory milestone.⁵ Under the first option, a Developer can elect to make a voluntary two-part deposit consisting of \$100,000 and \$3,000/MW of Energy Resource Interconnection Service (“ERIS”) in lieu of satisfying a regulatory milestone.⁶ The second option allows a Developer to demonstrate that it has certain qualifying financial arrangements for the Large Facility in lieu of having obtained a regulatory milestone.⁷

If a Developer avails itself of an alternative to satisfying a regulatory milestone, it still must still obtain an applicable regulatory milestone within six months after the date on which the NYISO tenders the LGIA to remain in the NYISO’s Interconnection

⁴ OATT § 25.6.2.3.1.

⁵ *New York Indep. Sys. Operator, Inc.*, Transmittal Letter, Docket No. ER17-830-000 (January 23, 2017) (“2017 Filing”); *New York Indep. Sys. Operator, Inc.*, Letter Order, Docket No. ER17-830-000 (February 21, 2017) (accepting the revisions proposed in the NYISO 2017 Filing); *New York Indep. Sys. Operator, Inc.*, Transmittal Letter, Docket No. ER20-638-000, at 45 (December 19, 2019) (“2019 Filing”); *New York Indep. Sys. Operator, Inc.*, Letter Order, Docket No. ER20-638-000 (January 1, 2020) (accepting the revisions proposed in the 2019 Filing)

⁶ OATT § 25.6.2.3.1

⁷ *Id.* (specifying that a qualifying financial arrangement includes a New York State Energy Research and Development Authority [“NYSERDA”] Renewable Portfolio Standard agreement, a NYSERDA Renewable Energy Certificate agreement, a NYSERDA Market Acceleration Incentive agreement, or a power purchase agreement for the full output of the Large Facility).

Queue.⁸ The LFIP also requires the withdrawal of the project from the NYISO's Interconnection Queue in the event that a Developer fails to satisfy an applicable regulatory milestone by that date.⁹ The NYISO's addition of the alternatives to satisfying a regulatory milestone (i) recognizes the complexity of the initial steps that a Developer must complete before obtaining a regulatory determination or action¹⁰ and (ii) provides Developers flexibility by having the option to enter a Class Year Study while it continues to pursue the necessary regulatory determinations and actions.¹¹ A Developer, however, is responsible for deciding whether its project is sufficiently progressing—both in development and permitting—to avoid loss of the at-risk portion of the deposit in lieu of satisfying a regulatory milestone or withdrawal from the Interconnection Queue if the regulatory milestone is delayed.

As detailed in its Waiver Request, Bear Ridge entered Class Year 2019, which commenced on August 22, 2019, by posting a deposit in lieu of satisfying a regulatory milestone for the Project. Bear Ridge accepted its cost allocation in Class Year 2019 and timely posted Security for the necessary System Upgrade Facilities for its Project. On

⁸ OATT §§ 26.6.2.3.2, 26.6.2.3.3, 30.11.1. When the NYISO added the deposit in lieu of satisfying a regulatory milestone, it explained to the Commission that this alternative “provides Developers with additional time to complete the regulatory milestone, while ensuring that a project satisfies its regulatory milestone requirement within a specified time period after completion of the Class Year Study.” 2017 Filing at 6-7. The NYISO similarly noted to the Commission when adding the qualifying financial agreement alternative that “[n]otwithstanding a Developer’s use of a qualifying financial agreement for purposes of entering a Class Year, the Developer will still be ultimately responsible for satisfying a regulatory milestone.” 2019 Filing at 45.

⁹ OATT §§ 25.6.2.3.3; 30.11.1.

¹⁰ See 2017 Filing at 3-4 (explaining that the addition of alternatives to satisfying a regulatory milestone by the start of the Class Year was in response to Developers expressed concerns of the challenges from certain regulatory permitting processes that place most of the requirements on the Developer at the inception of the process).

¹¹ In the 2017 Filing, the NYISO explained that the two-part deposit in lieu incentivizes a Developer to strategize when it should enter the Class Year and to continue to expeditiously pursue its regulatory determinations or actions to avoid forfeiting the \$100,000 at-risk portion. See 2017 Filing at 7; see also *Flint Mine Solar LLC*, 178 FERC ¶ 61,174 at P 17 (2022) (noting that “the in-lieu-of payment provides some level of flexibility to developers that have failed to meet the requisite milestones while also serving to discourage non-ready projects from joining a Class Year”).

May 24, 2021, the NYISO tendered a LGIA to Bear Ridge, which established the deadline to satisfy at least one regulatory milestone for the Project. As the negotiations over the LGIA were coming to a close, the NYISO sought to verify that Bear Ridge satisfied an applicable regulatory milestone and requested such confirmation on February 25, 2022. Bear Ridge advised that the Project had not yet satisfied an applicable regulatory milestone. As a result, the Project was subject to withdrawal from the interconnection queue pursuant to Sections 25.6.2.3.3 and 30.11.1 of the OATT, and the NYISO issued a Notice of Initiation of Withdrawal to Bear Ridge on April 13, 2022. Bear Ridge then initiated informal dispute resolution and this proceeding.

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.

III. Comments

The NYISO understands that Bear Ridge requests the Commission to waive the requirements for the Project to satisfy a regulatory milestone pursuant to Sections 25.6.2.3.2 and 30.11.1 of the OATT within six months of the tender of the LGIA.

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.¹² 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.¹³

The NYISO takes no position on the merits of Bear Ridge's request for a waiver. However, the NYISO remains generally concerned that a waiver in this proceeding may raise questions regarding the applicability of the same regulatory milestone requirement to other projects.¹⁴ The Commission has previously recognized that the NYISO's regulatory milestone should not be taken lightly.¹⁵ The regulatory milestone requirement is an essential element in ensuring that projects that enter and/or complete a Class Year Study are at and remain at a level of development to limit delays in placing a project and its associated interconnection-related facilities into service. If the Commission grants the Waiver Request, the NYISO requests confirmation that waiver of tariff requirements is based solely on the circumstances related to Bear Ridge's Project and should not be construed as having any impact on the applicability of the same requirements to other Large Facilities.

¹² 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).

¹³ 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 (noting that the Commission's "grant of waiver is limited to the facts and circumstances of the case before [it]").

¹⁴ For example, the Commission emphasized in one of the instances that it has granted a waiver of tariff-mandated deadlines in the NYISO's interconnection procedures, "we emphasize the importance of meeting . . . deadlines and note that in the future, we expect parties to arrange for [compliance with such deadlines] to be submitted in sufficient time to meet the requirements of their tariffs." See *Innovative Energy Systems, LLC*, 131 FERC ¶ 61,066 at P 7 (2010).

¹⁵ See *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P 16 (noting that despite granting the requested waiver, "we do not intend that NYISO's regulatory milestones be taken lightly").

Moreover, the NYISO does not dispute Bear Ridge's assertion that no adverse harm will result in the near term to other projects in the NYISO's Interconnection Queue if the Commission grants the Waiver Request. While the NYISO does not believe that there will be an adverse effect to other projects in its Interconnection Queue in the near term, the NYISO agrees with Bear Ridge that there must still be a reasonable deadline by which the Project must satisfy a regulatory milestone to remain in the Interconnection Queue.¹⁶ Based on the Bear Ridge's assertions as to the current status of its permitting application with the Office of Renewable Energy Siting, the NYISO believes that September 30, 2022 is a reasonable deadline by which Bear Ridge must satisfy a regulatory milestone to avoid withdrawal of its Project from the Interconnection Queue.

IV. Communications and Correspondence

All communications and service regarding this filing should be directed to:

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¹⁶ See Waiver Request at 8.

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 Bear Ridge Solar LLC's Waiver Request.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan
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Counsel for the
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June 28, 2022

cc: Janel Burdick
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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 28th day of June, 2022.

/s/ Mohsana Akter

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