

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

**Bull Run Energy LLC**

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**Docket No. ER23-2140-000**

**MOTION TO INTERVENE AND COMMENTS OF  
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) moves to intervene and submits comments concerning the request of Bull Run Energy LLC (“Bull Run”) in the above-captioned proceeding for a waiver of certain requirements of the NYISO’s Open Access Transmission Tariff (“OATT”) pursuant to which a Developer must demonstrate it satisfies a regulatory milestone within six months of the NYISO’s tendering of the draft Standard Large Generator Interconnection Agreement (“LGIA”) for its Large Facility (the “Waiver Request”).<sup>2</sup> The NYISO requests that the Commission consider these comments in its determination regarding the relief requested.<sup>3</sup>

**I. 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 requests that the Commission permit the NYISO to intervene with all the rights of a party.

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<sup>1</sup> 18 C.F.R. §§ 385.212 and 385.213 (2022).

<sup>2</sup> *Bull Run Energy, LLC*, Request of Bull Run Energy LLC for Prospective Tariff Waiver and Expedited Action, Docket No. ER23-2140-000 (June 12, 2023) (“Waiver Request”).

<sup>3</sup> Capitalized terms that are not otherwise defined in these comments shall have the meaning specified in Attachments S or X to the NYISO OATT, and if not defined therein, in the NYISO OATT and NYISO Market Administration and Control Area Services Tariff.

## II. Background

On June 12, 2023, Bull Run, the Developer of a proposed 449 MW wind generating facility with NYISO Queue Position No. 521 (“Project”), filed the Waiver Request requesting waiver of certain OATT provisions that would require the Project to be withdrawn from the NYISO’s interconnection queue for failing to comply with certain requirements under the NYISO’s Large Facility Interconnection Procedures (“LFIP”). Bull Run specifically requests waiver of the requirement that a Developer satisfy an applicable regulatory milestone for its Project within six months of the NYISO’s tender of the LGIA to allow the Project to remain in the NYISO’s interconnection queue under its existing queue position and to satisfy such milestone by August 9, 2024.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup> Under the first option, a Developer

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<sup>4</sup> OATT §§ 25.6.2.3.2 and 30.11.1.

<sup>5</sup> OATT § 25.6.2.3.1.

<sup>6</sup> *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).

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.<sup>7</sup> 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.<sup>8</sup>

If a Developer avails itself of an alternative to satisfying a regulatory milestone, it 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 queue.<sup>9</sup> 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.<sup>10</sup> 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 action,<sup>11</sup> 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.<sup>12</sup> A Developer, however, is responsible for deciding whether

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<sup>7</sup> OATT § 25.6.2.3.1.

<sup>8</sup> *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).

<sup>9</sup> 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.

<sup>10</sup> OATT §§ 25.6.2.3.3; 30.11.1.

<sup>11</sup> 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).

<sup>12</sup> 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”).

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, Bull Run entered Class Year 2021, which commenced on March 11, 2021, by posting a deposit in lieu of satisfying a regulatory milestone for the Project. Bull Run accepted its cost allocation in Class Year 2021 and timely posted Security for the necessary System Upgrade Facilities for its Project. On February 9, 2023, the NYISO tendered an LGIA to Bull Run, which established the six-month deadline to satisfy at least one regulatory milestone for the Project. The NYISO, Bull Run, and the Connecting Transmission Owner – the New York Power Authority – are currently negotiating the LGIA.

### **III. Comments**

The NYISO understands that Bull Run requests that the Commission 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 NYISO’s 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.<sup>13</sup> 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.<sup>14</sup>

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<sup>13</sup> 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).

<sup>14</sup> 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”);

The NYISO takes no position on the merits of Bull Run’s request for a waiver. However, the NYISO remains generally concerned that a waiver in this proceeding may raise questions regarding the applicability of milestone requirements for other projects.<sup>15</sup> The Commission has previously recognized the importance of milestones in the interconnection process,<sup>16</sup> as recently reiterated in its Notice of Proposed Rulemaking concerning modifications to interconnection procedures and agreements.<sup>17</sup> If the Commission grants the Waiver Request, the NYISO requests confirmation that the waiver of tariff requirements is based solely on the circumstances related to Bull Run’s Project and should not be construed as having any impact on the applicability of the same requirements to other Large Facilities.

The NYISO does not dispute Bull Run’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.<sup>18</sup> However, the longer the delay in satisfying the regulatory milestone, the greater the potential for adverse impacts to other projects due to delays in the Project or its inability to proceed. The NYISO, therefore, agrees with Bull Run that there must still be a reasonable deadline by which the Project must satisfy a regulatory milestone to remain in the interconnection queue.<sup>19</sup> Based on Bull Run’s representations concerning the status of its application process with New York’s Office of Renewable Energy Siting (“ORES”), the NYISO believes that August 9, 2024, would be a reasonable deadline by which Bull Run must satisfy a regulatory milestone to avoid withdrawal of its Project

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*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]”).

<sup>15</sup> 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).

<sup>16</sup> *See Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P 16.

<sup>17</sup> *See Improvements to Generator Interconnection Procedures and Agreements*, Notice of Proposed Rulemaking, 179 FERC ¶ 61,194 (2022) at P 103 (proposing more stringent financial commitment and readiness requirements for developers to remain in the interconnection queue).

<sup>18</sup> *See Waiver Request* at 16-17.

<sup>19</sup> *See Waiver Request* at 14.

from the interconnection queue. In addition, the NYISO supports Bull Run's proposal to include with its quarterly milestone status reports to the NYISO updates concerning its progress towards obtaining its regulatory milestone in the ORES process.<sup>20</sup>

Accordingly, if the Commission grants the requested waiver, the Commission should condition such waiver on Bull Run satisfying its regulatory milestone by no later than the August 9, 2024 deadline. Finally, the NYISO supports Bull Run's request for Commission action by August 7, 2023, to provide the parties with certainty concerning the application of the regulatory milestone tariff requirement.

#### **IV. Communications and Correspondence**

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

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<sup>20</sup> See Waiver Request at 14-15. Notwithstanding Bull Run's proposed condition, Bull Run remains subject to the reporting requirements in the NYISO's OATT and its procedures, including the requirements to provide updates concerning its permitting. See, e.g., OATT § 25.6.2.3.1.4 (requiring Developer to provide NYISO with a status update on its satisfaction of a regulatory milestone within 10 business days of NYISO request).

**V. Conclusion**

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission consider these comments in making its decision on Bull Run's Waiver Request and rule on the Waiver Request no later than August 7, 2023.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan

/s/ Michael J. Messonnier Jr.

Michael J. Messonnier Jr.

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July 3, 2023

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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 3rd day of July 2023.

/s/ Stephanie Amann

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