

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

Prattsburgh Wind, LLC

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Docket No. ER24-179-000

**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,¹ the New York Independent System Operator, Inc. (“NYISO”) moves to intervene and submits comments concerning the request of Prattsburgh Wind, LLC (“Prattsburgh”) 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”).² The NYISO does not oppose the requested waiver and requests that the Commission consider these comments in its determination regarding the relief requested.³

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

¹ 18 C.F.R. §§ 385.212 and 385.213 (2022).

² *Prattsburgh Wind, LLC*, Petition for Limited Waiver and Expedited Commission Approval, Docket No. ER24-179-000 (Oct. 20, 2023).

³ 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.

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.

II. Background

On October 20, 2023, Prattsburgh, the Developer of a proposed 147 MW wind-powered generating facility with NYISO Queue Position No. 801 (“Project”), filed the Waiver Request requesting waiver of certain OATT provisions that would require the Project to be withdrawn from the NYISO’s interconnection queue for failing to comply with certain requirements under the NYISO’s Large Facility Interconnection Procedures (“LFIP”). Prattsburgh 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 LGIA⁴ to allow the Project to remain in the NYISO’s interconnection queue under its existing queue position and to satisfy such milestone by May 27, 2024.

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.⁵

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

⁴ OATT §§ 25.6.2.3.2, 30.11.1.

⁵ OATT § 25.6.2.3.1.1.

without having yet satisfied an applicable regulatory milestone.⁶ 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.⁷ 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.⁸

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.⁹ 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.¹⁰ 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,¹¹ and (ii) provides Developers flexibility by having the option to enter a Class Year Study while it continues to pursue the necessary

⁶ *N.Y. Indep. Sys. Operator, Inc.*, Transmittal Letter, Docket No. ER17-830-000 (January 23, 2017) (“2017 Filing”); *N.Y. Indep. Sys. Operator, Inc.*, Letter Order, Docket No. ER17-830-000 (February 21, 2017) (accepting the revisions proposed in the NYISO 2017 Filing); *N.Y. Indep. Sys. Operator, Inc.*, Transmittal Letter, Docket No. ER20-638-000, at 45 (December 19, 2019) (“2019 Filing”); *N.Y. Indep. Sys. Operator, Inc.*, Letter Order, Docket No. ER20-638-000 (January 1, 2020) (accepting the revisions proposed in the 2019 Filing).

⁷ OATT § 25.6.2.3.1.

⁸ *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).

⁹ 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.

¹⁰ OATT §§ 25.6.2.3.3, 30.11.1.

¹¹ 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).

regulatory determinations and actions.¹² 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.

Prattsburgh entered Class Year 2021, which commenced on March 11, 2021, by posting a deposit in lieu of satisfying a regulatory milestone for the Project. Prattsburgh accepted its cost allocation in Class Year 2021 and timely posted Security for the necessary System Upgrade Facilities for its Project. On April 27, 2023, the NYISO tendered an LGIA to Prattsburgh, which established the six-month deadline of October 27, 2023, to satisfy at least one regulatory milestone for the Project. The NYISO, Prattsburgh, and the Connecting Transmission Owner—New York State Electric & Gas Corporation—are currently negotiating the LGIA.

On October 20, 2023, Prattsburgh submitted the Waiver Request. Prattsburgh subsequently provided the NYISO evidence demonstrating that the Project satisfied the regulatory milestone on October 30, 2023 – three days after the six-month deadline.

III. Comments

The NYISO understands that Prattsburgh 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)

¹² 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 v. N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,174, at P 17 (2022) (“[T]he 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.”).

whether the request is of limited scope; and (iv) whether the waiver, if granted, will have undesirable consequences such as harming third parties.¹³ 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.¹⁴

As Prattsburgh has demonstrated to the NYISO that it has satisfied the applicable regulatory milestone for its Project, the only remaining issue for the Waiver Request is Prattsburgh’s three-day delay in satisfying the tariff requirement. The NYISO takes no position on the merits of Prattsburgh’s request for a waiver concerning this delay. In this instance, the NYISO is not aware of any adverse harm that will result to other projects in the NYISO’s interconnection queue if the Commission grants the Waiver Request.¹⁵ However, 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 Prattsburgh’s Project and should not be construed as having any impact on the applicability of the same requirements to other Large Facilities.

The NYISO supports Prattsburgh’s request for Commission action by November 15, 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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¹³ See *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,060, at P 17 (2013); *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172, at P 16 (2013); *Hudson Transmission Partners, LLC*, 131 FERC ¶ 61,157, at P 10 (2010).

¹⁴ 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]”).

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V. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission consider these comments in making its decision on Prattsburgh's Waiver Request and rule on the Waiver Request no later than November 15, 2023.

Respectfully submitted,

/s/ Sara B. Keegan
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/s/ C. Dixon Wallace III
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*Counsel for the
New York Independent System Operator, Inc.*

November 13, 2023

cc:	Janel Burdick	Jignasa Gadani	Kurt Longo
	Emily Chen	Jette Gebhart	David Morenoff
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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 13th day of November 2023.

/s/ Elizabeth Rilling

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