

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

Hecate Grid Swiftsure, LLC

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Docket No. ER24-1642-000

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

Pursuant to Rules 212 and 214 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) moves to intervene and submits comments in response to the request of Hecate Grid Swiftsure, LLC (“Hecate”) in the above-captioned proceeding for a waiver of certain requirements of the NYISO’s Open Access Transmission Tariff (“OATT”)² to extend the Commercial Operation Date for its battery energy storage project (the “Waiver Request”).³

The NYISO respectfully requests that the Commission consider these comments in its determination regarding the relief requested. In addition, as described below, the NYISO supports Hecate’s request for expedited action in this proceeding.

I. MOTION TO INTERVENE

The NYISO is the independent entity 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

¹ 18 C.F.R. §§ 385.212 and 385.214 (2024).

² Capitalized terms not defined in these comments shall have the meaning set forth in Attachments S or X of the NYISO’s Open Access Transmission Tariff (“OATT”) and, if not defined therein, in Section 1 of the OATT or Section 2 of the NYISO’s Market Administration and Control Area Services Tariff.

³ *Hecate Grid Swiftsure, LLC*, Request for Limited Tariff Waiver and Request for Expedited Action and Shortened Comment Period of Hecate Grid Swiftsure, LLC, Docket No. ER24-1642-000 (Mar. 28, 2024) (“Waiver Request”).

interconnection process for the New York State Transmission System and Distribution System pursuant to its Commission-approved OATT. In this proceeding, Hecate requests waiver of a requirement of the interconnection process established in Attachment X to the OATT. 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 it to intervene with all the rights of a party.

II. BACKGROUND

Section 30.4.4.5 of the NYISO's Large Facility Interconnection Procedures in Attachment X to the OATT establishes the requirements by which a Developer is permitted to extend the Commercial Operation Date for its Large Facility. Pursuant to Section 30.4.4.5.1, a Developer may extend its Commercial Operation Date as a matter of right if the new date is within four years from the completion of a project's Class Year Interconnection Facilities Study ("Class Year Study").

An extension beyond this four-year period is only permitted if a Developer: (i) has an executed interconnection agreement (or a filed unexecuted interconnection agreement), and (ii) demonstrates via an officer certification that it has made "reasonable progress against the milestones set forth in the Interconnection Agreement (*e.g.*, completion of engineering design, major equipment orders, commencement and continuation of construction of the Large Facility and associated System Upgrade Facilities, as applicable)."⁴ Modifications to the Commercial Operation Date that do not satisfy these requirements constitute Material Modifications to the Developer's Interconnection Request.

⁴ NYISO OATT, Attach. X, § 30.4.4.5.2.

Hecate is the Developer of a 650 MW standalone battery energy storage facility – the Swiftsure Energy Storage project – with NYISO Queue Position No. 840 (the “Project”). The Project seeks to interconnect to the transmission system of Consolidated Edison Company of New York, Inc. (“Con Edison”) that is part of the New York State Transmission System. Hecate submitted the interconnection request for the Project on May 9, 2019, and the Project entered Class Year 2021. The Class Year Study for Class Year 2021 concluded on January 11, 2023. Pursuant to Section 30.4.4.5.1, Hecate may extend its Commercial Operation Date as a matter of right up to January 11, 2027 – four years from the completion of Class Year 2021.

The NYISO tendered a draft Standard Large Generator Interconnection Agreement (“LGIA”) to Hecate and Con Edison on February 8, 2023. The NYISO has worked diligently with Con Edison and Hecate to negotiate the interconnection agreement. As explained in the Waiver Request, during LGIA negotiations it has become apparent that the Project’s proposed Commercial Operation Date of January 11, 2027 is infeasible due to the outage scheduling required for the interconnection work.⁵ On March 28, 2024, Hecate filed a request for waiver of the four-year deadline established by Section 30.4.4.5.1. Specifically, Hecate requested that the Commission grant a waiver of the requirement in Section 30.4.4.5.1 to permit it to extend the Commercial Operation Date for the Project until December 20, 2027.

The Waiver Request, if granted, would allow the NYISO to accept the inclusion of a Commercial Operation Date of December 20, 2027 in the LGIA. The proposed Commercial Operation Date is approximately eleven months beyond what would be automatically permissible under the OATT. Any further extensions of the Commercial Operation Date would be governed by Section 30.4.4.5.2, which would require that Hecate have an interconnection

⁵ Waiver Request at 7.

agreement and demonstrate reasonable progress against milestones in that interconnection agreement.

III. COMMENTS ON THE WAIVER REQUEST

The NYISO understands Hecate to be requesting a waiver of the tariff-imposed limitation on permissible extensions of its Project's Commercial Operation Date so that the NYISO, Con Edison, and Hecate may execute an interconnection agreement that reflects an extended milestone. Specifically, Hecate requested waiver of Section 30.4.4.5.1 of the OATT to allow Hecate

- (i) to set the milestone date in the Project's interconnection agreement on which the Project is expected to achieve Commercial Operation as December 20, 2027⁶ and
- (ii) to allow Hecate to extend the Commercial Operation Date subsequent to the execution of the Project's interconnection agreement by demonstrating to the NYISO that it has made reasonable progress against the milestones in its interconnection agreement, as required by Section 30.4.4.5.2.2 of the OATT.⁷

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

⁶ See Waiver Request at 1, 7.

⁷ See *id.* at 1.

⁸ 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).

the Commission has recognized 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

Under the circumstances described by Hecate, the NYISO does not oppose Hecate's Waiver Request.¹¹ The NYISO is not aware of any adverse impact the requested waiver could have on other projects in the NYISO's interconnection queue.

The NYISO notes that the tariff revisions under development for the NYISO's compliance with Order No. 2023 could result in changes to the extension rules from which Hecate requests a waiver. If the NYISO implements tariff changes that would impact Hecate's requested waiver prior to Commission action in this proceeding, the NYISO will coordinate with Hecate concerning such impacts.¹²

IV. COMMENTS ON THE REQUEST FOR EXPEDITED ACTION

The NYISO supports Hecate's request that the Commission expedite its review of Hecate's Waiver Request and issue an Order by May 27, 2024. This timeframe would minimize delays in finalizing and executing the LGIA for the Project.

⁹ 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 (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"); *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").

¹¹ While the NYISO is not aware of potential adverse impacts to other projects, it cannot state unequivocally that there may not be adverse impact. Indeed, construction sequencing issues may arise in the future with regard to other projects that rely on any of the upgrades or attachment facilities required for the Project.

¹² See Waiver Request at 5 n.8 (noting the potential for changes to the NYISO's extension rules and detailing what action Hecate may take to address any changes to the underlying rules).

V. COMMUNICATIONS AND CORRESPONDENCE

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

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VI. CONCLUSION

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission: (i) grant this motion to intervene, and (ii) consider these comments in making its decision on Hecate's Waiver Request.

Respectfully submitted,

/s/ Sara B. Keegan

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April 18, 2024

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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 18th day of April 2024.

/s/ Stephanie Amann

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