

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

Air Energy TCI, Inc.

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Docket No. ER13-296-000

**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-referenced proceeding. The NYISO requests that the Commission consider these comments in the event the Commission grants the relief requested.

I. Background

On November 1, 2012, Air Energy TCI, Inc. ("TCI"), the developer of Crown City Wind Farm,² filed a request for waiver of a tariff-imposed deadline so that the developer may have additional time to meet its regulatory milestone. TCI specifically requests waiver of the requirement in Attachment S of the NYISO Open Access Transmission Tariff ("OATT") that requires a project to satisfy the regulatory milestone described in Section 25.6.3.2.1.1 within two years from the later of January 17, 2010 or the date the NYISO's Operating Committee approved

¹ 18 C.F.R. §§ 385.212 and 385.214 (2012).

² TCI refers to the project in its waiver request as the "Crown City Wind Energy Project," however the Interconnection Request for the project referred to the project as the "Crown City Wind Farm," which is how the project was listed on the NYISO interconnection queue. The project was listed in the NYISO interconnection queue at Queue Position 276.

of the Interconnection System Reliability Impact Study for the project.”³ A project that fails to satisfy the regulatory milestone within this period “will be deemed to be withdrawn in accordance with Section 30.3.6 of the Large Facility Interconnection Procedures (“LFIP”) contained in Attachment X.”⁴

Under the NYISO’s OATT, Large Facilities such as the Crown City Wind Energy Project are required to enter a Class Year Interconnection Facilities Study (“Class Year Study”). A project becomes eligible to enter a Class Year Study when it has satisfied the two developmental milestones identified in Attachment S of the OATT. As described in the waiver request, the Crown City Wind Energy Project satisfied one of its two milestones by securing Operating Committee approval of its Interconnection System Reliability Impact Study. The Interconnection System Reliability Impact Study for the Crown City Project was approved by the NYISO’s Operating Committee on October 7, 2010. Therefore, TCI was required to complete its second milestone – the regulatory milestone required by Attachment S, Section 25.6.2.3.1.1⁵ – by October 7, 2012 in order to remain in the NYISO interconnection queue and be eligible to enter into a Class Year.⁶

TCI, however, failed to complete the regulatory milestone by October 7, 2012. NYISO issued a withdrawal notice to TCI on October 11, 2012 pursuant to Section 325.6.2.3.2 deeming

³ See Section 25.6.2.3.2 of Attachment S to the OATT. While TCI provides incorrect citations to the relevant section of Attachment S, these appear to be mere typographical errors, as it is clear from the context of TCI’s waiver request that the section for which it is requesting a waiver is 25.6.2.3.2 of Attachment S.

⁴ See *Id.*

⁵ TCI asserts that the two-year timeline expired October 9, 2012 because October 7, 2012 was a Sunday and October 8, 2012 was a federal holiday.

⁶ With respect to TCI’s representation that the next Class Year will not form “until March 1, 2013, at the earliest,” the NYISO provides the following clarification: Under the NYISO’s current OATT, the next Class Year would start on March 1, 2013; however, NYISO’s stakeholders recently approved proposed revisions to the NYISO’s OATT that would provide for a later start date for the Class Year subsequent to Class Year 2012. The NYISO will file these proposed tariff revisions with the Commission shortly.

the project withdrawn in accordance with Section 30.3.6 of Attachment X. Under Section 30.3.6 of the LFIP, the Project has fifteen business days from receipt of the withdrawal letter “to either respond with information or actions that cure the deficiency or to notify the NYISO of its intent to pursue Dispute Resolution.” The NYISO received no notice within this fifteen day cure period -- that expired on November 1, 2012 -- curing the deficiency. By letter dated November 5, 2012, the NYISO advised TCI that the Crown City Wind Farm had been withdrawn from the NYISO interconnection queue.⁷

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. In this proceeding, TCI is requesting waiver of a requirement of the interconnection process established by the NYISO OATT. The NYISO, therefore, has a unique interest in this proceeding that cannot be adequately represented by any other entity and, therefore, should be permitted to intervene with all the rights of a party.

III. Comments

The NYISO takes no position on the merits of TCI’s request for a waiver, but notes that the Crown City Wind Farm is free to submit a new Interconnection Request in the event the Commission does not grant the requested waiver. In addition, the NYISO respectfully requests

⁷ The withdrawal of the Q276 Crown City Wind Farm from the interconnection queue will be reflected on the public queue posted on the NYISO website in the next regularly scheduled update to the queue posting in early December 2012.

that the Commission address the following in any Order granting the County's requested relief in order for the NYISO to properly implement any relief the Commission may order.

The NYISO understands TCI's request as requesting (1) that the tariff-mandated deadline for meeting the regulatory milestone not apply to the Crown City Wind Farm; (2) that the Crown City Wind Farm be provided a forty-five (45) day extension within which to complete the regulatory milestone required by Section 25.6.2.3.1.1 of Attachment S -- until December 17, 2012 (forty-five (45) days from November 1, 2012 expiration of the cure period for the withdrawal letter the NYISO issued on October 11, 2012); and (3) that upon satisfaction of the Section 25.6.2.3.1.1 milestone within this extended time period, NYISO reinstate the Crown City Wind Farm in the NYISO interconnection queue. Should the Commission grant TCI's request, the NYISO requests that such Order clarify whether the extension until December 17, 2012 is the maximum time permitted for TCI to satisfy the regulatory milestone or whether the fifteen (15) business day cure period provided in Section 30.3.6 of Attachment X will apply to further extend the requested extension in the event the Crown City Wind Farm is unable to satisfy the requisite milestone by December 17, 2012.

Furthermore, the NYISO is concerned that a waiver in this proceeding may raise questions regarding the applicability of the same regulatory milestone requirement to other projects.⁸ This is particularly true given that this is a substantive milestone reflecting the progress of the project, rather than an administrative deadline.

⁸ As the Commission emphasized in one of the few instances in which 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 (2010) (waiver of developer's obligation as a Class Year 2008 project to submit a security deposit to its Connecting Transmission Owner within a date prescribed by 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 (i) grant this motion to intervene, and (ii) consider these comments in making its decision on the TCI's request.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan
Senior Attorney
New York Independent System Operator, Inc.

November 21, 2012