

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

Air Energy TCI, Inc.

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Docket No. ER13-1341-000

**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 April 25, 2013, Air Energy TCI, Inc. (“TCI”), the developer of Crown City Wind Farm,² filed a request for waiver of a tariff-imposed deadline to allow the Crown City Wind Farm project to be reinstated in the NYISO interconnection queue and be eligible for the next Class Year Study.³ TCI specifically requests waiver of the requirement in Section 25.6.2.3.3 of Attachment S of the NYISO Open Access Transmission Tariff (“OATT”) that requires a project to satisfy the regulatory milestone

¹ 18 C.F.R. §§ 385.212 and 385.213 (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.

³ Pursuant to Section 25.5.9 of Attachment S of the OATT, the next Open Class Year will begin on the earliest of the following dates after completion of Class Year 2012: March 1, June 1 or September 1.

described in Section 25.6.2.3.1.1 within two years from the date the NYISO's Operating Committee approved of the Interconnection System Reliability Impact Study for the project.⁴ A project that fails to satisfy the regulatory milestone within this period "will be deemed to be withdrawn in accordance with Section 30.3.6 of the Large Facility Interconnection Procedures contained in Attachment X."⁵

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 25.6.2.3.1.1⁶ – by October 7, 2012 in order to remain in the NYISO interconnection queue and be eligible to enter into a Class Year.⁷

⁴ See Section 25.6.2.3.2 of Attachment S to the OATT.

⁵ See *Id.*

⁶ 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.

⁷ At the time in question – October 2012 – Class Year 2012 was already closed to new members except for certain members of Class Year 2011 specified in Section 25.5.9 of Attachment S. Had TCI achieved its regulatory milestone by the requisite date, it would have been eligible for the next Open Class Year. Pursuant to Section 25.5.59, the next Open Class Year will begin on the earliest of the following dates after completion of Class Year 2012: March 1, June 1 or September 1.

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 25.6.2.3.2 deeming the project withdrawn in accordance with Section 30.3.6 of Attachment X. Under Section 30.3.6 of the Large Facility Interconnection Procedures, 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.⁸

On November 1, 2012, TCI filed a request for waiver of the same tariff-imposed deadline at issue in this docket, to allow the developer to have additional time to meet its regulatory milestone.⁹ At that time, TCI requested a 45-day extension of time to meet the requisite regulatory milestone – until December 17, 2013.¹⁰ The Commission dismissed as moot TCI’s November 1, 2012 waiver request.¹¹ TCI eventually did achieve what would have met the regulatory milestone requirement on March 29, 2013 – 173 days after the tariff defined deadline to meet such requirement.

⁸ 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.

⁹ *Air Energy TCI, Inc.*, Petition for Waiver of Tariff Requirements, Docket No. ER13-296-000 (Nov. 1, 2012).

¹⁰ *Id.* at 5.

¹¹ *Air Energy TCI, Inc.*, Letter Order, Docket No. ER13-296-000 (Jan. 2, 2013).

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

III. Comments

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, essentially permitting a 173 day extension within which TCI was able to complete the regulatory milestone required by Section 25.6.2.3.1.1 of Attachment S; and (2) that NYISO reinstate the Crown City Wind Farm in the NYISO interconnection queue.

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. This is particularly true given that this is a substantive milestone reflecting the progress of the project, rather than an administrative deadline. When the NYISO proposed to the Commission the two-year deadline within which to meet the regulatory milestone, the NYISO emphasized that the proposal sought "to balance the benefits of the existing

flexibility provided to developers with the need to remove projects from the queue that are not making progress towards development.”¹² The Commission accepted the NYISO’s proposal to require Developers to meet this two-year deadline¹³ and has since emphasized the importance of meeting deadlines in the interconnection procedures.¹⁴

The NYISO 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. Contrary to TCI’s supposition in footnote 22 of its waiver request, it does have an opportunity to submit a new Interconnection Request and obtain Operating Committee approval of an Interconnection System Reliability Impact Study in time to join the next Open Class Year. The time within which such a study is completed is largely driven by the developer; however, the NYISO’s Large Facility Interconnection Procedures provide flexibility in the study process and even allow the initial Interconnection Feasibility Study to be waived upon agreement of all the parties.¹⁵

¹² See *New York Independent System Operator, Inc.*, Proposed Tariff Revisions Improving the Interconnection Study Queue Process, Docket No. ER10-290-000 (Nov. 18, 2009) at 4.

¹³ See *New York Independent System Operator, Inc.*, Letter Order on Revisions to the Interconnection Study Queue Process, Docket No. ER10-290-000 (Feb. 22, 2010).

¹⁴ 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).

¹⁵ See, e.g., Section 30.6.1 of Attachment X of the OATT, which provides that the parties may agree to forego an Interconnection Feasibility Study and proceed directly to an Interconnection System Reliability Impact Study.

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.

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 these proceedings 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 10th day of May, 2013.

/s/ Mohsana Akter

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