

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

Dunkirk Power LLC

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Docket No. ER14-1445-000

**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 March 6, 2014, Dunkirk Power LLC (“Dunkirk”), the owner of four (4) coal-fired generating units in Dunkirk, New York, filed a request for waiver of tariff and manual-imposed deadlines within which Dunkirk must reactivate two (2) of these units – Unit 3 and Unit 4 – in order to maintain its existing interconnection rights.² Dunkirk specifically requests waiver of the requirement in Section 25.9.3.1 of Attachment S of the NYISO Open Access Transmission Tariff (“OATT”) that provides for termination of an existing facility’s Capacity Resource Interconnection Service (“CRIS”) rights after the facility has been “deactivated” for three (3) years. Dunkirk also requests a waiver, “to the extent necessary,” of Section 3.3.4 of the NYISO Transmission Expansion and

¹ 18 C.F.R. §§ 385.212 and 385.213 (2014).

² *Dunkirk Power LLC*, Requests of Dunkirk Power LLC for Limited Tariff Waiver, Extension Under the Tariff and Commission Action by July 2, 2014, Docket No. ER14-1445-000 (March 6, 2014) (“waiver request”).

Interconnection Manual, Version 2.0 (“Manual”), which provides that a previously existing facility that intends to reactivate will have to submit an Interconnection Request if three (3) years or more have passed from the date the facility retired or mothballed (*i.e.*, the facility loses its Energy Resource Interconnection Service (“ERIS”) if not reactivated within three (3) years).³

The existing interconnection rights for Dunkirk’s Units 3 and 4 consist of a combined 400.5 MW of existing ERIS and a combined 400.5 MW of existing CRIS. Dunkirk Units 3 and 4, which Dunkirk elected to mothball on September 11, 2012, lose their ERIS if not reactivated by September 11, 2015 and lose their CRIS rights if not reactivated and participating in the Installed Capacity market as required by Section 25.9.3.1 of Attachment S by August 31, 2015.

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, Dunkirk is requesting waiver of a requirement of the interconnection process and grandfathered CRIS procedures 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.

³ The Manual specifies that “[f]or purposes of this manual, ‘retirement’ includes facilities whose status is characterized as retirement, mothball, reserve shutdown, protective layup or standby. See Manual at § 3.3.4.

III. Comments

The NYISO understands Dunkirk's waiver request as requesting (1) that the Commission waive Section 25.9.3.1, which provides a deadline of August 31, 2015 for reactivation and participation in the Installed Capacity market (as required by Section 25.9.3.1) to prevent losing its 400.5 MW of existing CRIS rights; (2) that the Commission waive the manual provision requiring a new Interconnection Request if Units 3 and 4 are not reactivated by September 11, 2015; and (3) that Dunkirk have until August 31, 2016 to (a) reactivate the facility and participate in an Installed Capacity Spot Market Auction without losing its 400.5 MW of existing CRIS rights; and (b) reactivate the facility without being subject to a new Interconnection Request. Dunkirk points out that it could achieve the same result by restarting Units 3 and 4 on coal, but at a cost of as much as \$10 million and with undesirable environmental impacts.

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.⁴

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

⁴ See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060 at P17 (2013); *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P16 (2013); *Hudson Transmission Partner, LLC*, 131 FERC ¶ 61,157 at P10 (2010).

waiver request is not precedent for granting future waiver requests.⁵ 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.⁶ It is important that the Commission continue to reinforce the importance of tariffs and manual deadlines that enhance certainty and transparency in the NYISO's administration of the interconnection process.

Based upon (i) the NYISO's review of Dunkirk's waiver request, (ii) facts known to the NYISO at this time, and (iii) the Commission's guidance on waiver requests, the NYISO does not oppose Dunkirk's waiver request and defers to the Commission as to whether Dunkirk has satisfied its burden of proof under the applicable waiver criteria.

IV. Communications and Correspondence

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

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⁵ See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060 at P17 (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 P16 (2013) (noting that "our grant of waiver is limited to the facts and circumstances of the case before us").

⁶ See *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P16 (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 P7 (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.").

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 Dunkirk's waiver request.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan

Counsel for the

New York Independent System Operator, Inc.

March 27, 2014

cc: Michael Bardee
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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 27th day of March, 2014.

/s/ Mohsana Akter

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