

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

Green Power Energy LLC

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Docket No. ER14-1655-000

**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 3, 2014, Green Power Energy LLC (“GPE”) filed a request for waiver of tariff-imposed limitations on extensions of Commercial Operation Date and requested reinstatement in the NYISO’s interconnection queue with respect to its proposed ten (10) MW Cody Road wind facility (the “Project”).²

The Project went through the NYISO’s Small Generator Interconnection Procedures (“SGIP”) as a “transition project” under Section 32.1.7 of the SGIP, with queue position number 180A. As a transition project, it had completed some of its interconnection studies with the Connecting Transmission Owner – Niagara Mohawk

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

² *Green Power Energy LLC*, Petition for Waiver of Tariff Requirements, Docket No. ER14-1665-000 (April 3, 2014) (“waiver request”).

Power Corporation d/b/a National Grid (“National Grid”) – prior to the effective date of the SGIP. The Interconnection Facilities Study was completed pursuant to the SGIP on May 27, 2009. Subsequently, on August 20, 2009, NYISO, National Grid and GPE executed a Small Generator Interconnection Agreement (“SGIA”) for the Project. The SGIA – Service Agreement Number 1483 – was filed with the Commission as a non-conforming SGIA in Docket Number ER09-1693 and was approved by the Commission on October 13, 2009.

In its SGIA, the Project had a proposed Commercial Operation Date of October 2010. Subsequent to the execution of the SGIA, GPE has requested three (3) extensions of its proposed Commercial Operation Date. The last approved extension was to December 31, 2013. In December 2013, GPE requested another extension to December 31, 2014, which the NYISO denied pursuant to the newly revised limitations on Commercial Operation Date added to Section 30.4.4.5.2.2 of Attachment X of the NYISO OATT, effective February 18, 2013 (“2013 tariff revisions”). Having failed to commence Commercial Operation by the last approved Commercial Operation Date of December 31, 2013, the Project was subject to withdrawal from the NYISO’s interconnection queue and the NYISO tendered a withdrawal notice to GPE on February 13, 2014.

The Project’s SGIA remains in effect at this time; however Section 7.6.3 of the SGIA provides, in relevant part, that, “if the Interconnection Request is withdrawn or deemed withdrawn pursuant to the SGIP during the term of this Agreement, this Agreement shall terminate.” Pursuant to Section 3.3 of the SGIA, no termination shall become effective until a notice of termination has been filed with the Commission, which

notice has been accepted for filing. A notice of termination of the SGIA has not yet been filed with the Commission.

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, GPE is requesting waiver of requirements 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 permits the NYISO to intervene with all the rights of a party.

III. Comments

The NYISO understands GPE's waiver request as requesting the following relief: (1) that the Commission waive Section 32.1.3.2 of the SGIP and Section 30.4.4.5.2.2 of Attachment X, which limit extensions of Commercial Operation Date; (2) that the Commission permit GPE to be reinstated into the NYISO's interconnection queue with a proposed Commercial Operation Date of fifteen (15) months from the Commission's Order; and (3) that the Commission order that the existing SGIA not be terminated, but be amended by GPE, the NYISO and National Grid, based upon required updates to

technical specifications, equipment descriptions, cost estimates and milestones.³ The NYISO further understands GPE's waiver request as premised on the following aspects of the Project's unique history in the NYISO's interconnection process – (1) that this was a transition project already under review by the Connecting Transmission Owner when the SGIP went into effect; (2) that this Project has an effective SGIA dating back to 2009; (3) that this Project had an extension of Commercial Operation Date beyond the four year limit prescribed by the 2013 tariff revisions that was approved prior to the effective date of the 2013 tariff revisions; and (4) that in order to further extend its Commercial Operation Date under the 2013 tariff revisions, the project would be required to demonstrate progress against SGIA milestones drafted at a time when the parties were not aware that they would be used for such purpose.

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.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

³ If the Commission orders the project be reinstated into the NYISO's interconnection queue with a specific Commercial Operation Date, the NYISO understands that any further extensions of such Commercial Operation Date would be subject to Section 30.4.4.5.2 of Attachment X under which GPE would have to demonstrate reasonable progress against the milestones in its SGIA, as amended.

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, particularly here, where the basis of this request is not generally applicable 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 GPE's waiver request, (ii) facts known to the NYISO at this time, (iii) the unique history of GPE's Project in the NYISO's interconnection process vis-à-vis the 2013 tariff revisions; and (iv) the Commission's guidance on waiver requests, the NYISO does not oppose GPE's waiver request. The NYISO defers to the Commission as to whether GPE has satisfied its burden of proof under the applicable waiver criteria, but notes that, to the extent the Commission denies the requested relief, that GPE has the option of re-entering the NYISO's interconnection queue by submitting a new Interconnection Request.

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.”).

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 GPE's waiver request.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan
Counsel for the
New York Independent System Operator, Inc.

April 16, 2014

cc: Michael Bardee
Gregory Berson
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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 16th day of April, 2014.

/s/ Mohsana Akter

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