

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

Erie Power LLC

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Docket No. ER14-2056-000

**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 its determination regarding the relief requested.

I. Background

This proceeding involves certain waivers requested by Erie Power LLC (“Erie”) related to the proposed return to service of a decommissioned cogeneration plant in Erie, Pennsylvania, known in the NYISO’s system as PTID 23901 (“Erie Facility”). On April 26, 2010, Energy Systems North East, LLC (“ESNE”), the prior owner of the Erie Facility, submitted a “Notice of Intent to Retire ESNE Generating Facility” to the New York State Public Service Commission. Niagara Mohawk Power Corporation d/b/a/ National Grid (“Niagara Mohawk”) submitted a Notice of Termination of the interconnection agreement between Niagara Mohawk and ESNE for the Erie Facility on

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

September 21, 2011.² In that filing, Niagara Mohawk stated that “the Interconnection Agreement terminated by its own terms, and the ESNE generation facility is no longer operating.” Niagara Mohawk further stated that “ESNE has informed Niagara Mohawk of its intention to discontinue operation of its generation facility as of November 2010.” ESNE did not intervene in that proceeding. FERC accepted the Notice of Termination on November 9, 2011. Erie indicates that it purchased the facility in early 2014.

On May 28, 2014, Erie filed a request for waiver of NYISO tariff and manual-provisions which required Erie to reactivate its 88.2 MW facility within three (3) years of its retirement in order to maintain certain interconnection rights. Such interconnection rights having now expired, Erie requests waiver of the NYISO’s tariff requirements that it submit an Interconnection Request and be subject to the NYISO’s interconnection study procedures before reactivating.³

Erie 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. Erie also requests a waiver of Section 3.3.4 of the NYISO Transmission Expansion and 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.*,

² *Niagara Mohawk Power Corporation d/b/a National Grid*, Notice of Termination of Service Agreement No. 121, Docket No. ER11-4594-000 (Sept. 21, 2011) (“Notice of Termination”).

³ *Erie Power LLC*, Request of Erie Power, LLC for Limited Tariff Waiver, Expedited Consideration and Commission Action by July 15, 2014, Docket No. ER14-2056-000 (May 28, 2014) (“waiver request”).

the facility loses its Energy Resource Interconnection Service (“ERIS”) if not reactivated within three (3) years).⁴

The prior interconnection rights for the Erie Facility consisted of 82.0 MW of ERIS and 82.0 MW of CRIS. The previous owners of the Erie Facility elected to retire the facility on November 1, 2010 – over three and one-half (3½) years ago. The Erie Facility therefore already lost its ERIS and CRIS, having not been reactivated by November 1, 2013. As a result, it is no longer modeled in interconnection or other planning studies.

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, Erie 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.

III. Comments

The NYISO understands Erie’s waiver request as requesting (1) that the Commission waive Section 25.9.3.1 under which the CRIS Rights for the Erie Facility

⁴ 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.

terminated; (2) that the Commission waive the manual provision requiring a new Interconnection Request for reactivation of the Erie Facility; (3) that the Commission order the NYISO to reinstate the Erie Facility's 82.0 MW of existing ERIS and CRIS if, by April 30, 2015, Erie has:

- obtained a non-materiality determination from the NYISO with respect to any modifications to the previously existing Erie Facility;
- reactivated the Erie Facility; and
- a fully executed two-party Interconnection Agreement between Erie and the Connecting Transmission Owner, Niagara Mohawk Power Corporation d/b/a National Grid, filed with the Commission, as applicable.

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.⁵ 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 waiver request is not precedent for granting future waiver requests.⁶ The Commission has further recognized that waiver of tariff requirements should not be construed as

⁵ 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).

⁶ 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").

having any impact on the applicability of the same requirements to other projects.⁷ 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.

The NYISO has concerns regarding Erie's waiver request and respectfully requests that the Commission consider these concerns in its decision on the merits of Erie's waiver request. First, Erie is requesting a waiver to remedy a purportedly "concrete problem" when in fact there is no concrete problem that requires Commission action. Erie can reactivate its facility by proceeding through the Interconnection process (*i.e.*, there is nothing in the NYISO's tariff precluding the Erie Facility from reactivating). Indeed, Erie has already submitted an Interconnection Request to the NYISO that is being processed under Attachment X of the NYISO's OATT. The parties have indicated that they will likely agree to forgo the initial study – the Interconnection Feasibility Study – and move the project directly to a System Reliability Impact Study (SRIS). Furthermore, the project can take certain steps during the final interconnection study – the Class Year Interconnection Facilities Study – to accelerate its ability to return to service. These steps include negotiating an interconnection agreement and potentially going in-service while the final study is in progress.⁸

⁷ 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.").

⁸ In doing so, however, the facility can only provide ERIS and cannot participate as an Installed Capacity Supplier until it has been evaluated for deliverability in the Class Year Interconnection Facilities Study and accepted its Project Cost Allocation and posted Security for any required System Deliverability Upgrades.

Second, the NYISO is concerned that the waiver is not of limited scope and may therefore raise questions regarding the applicability of the same manual and tariff requirements as applied to other projects. This is particularly true given that the NYISO is seeing more retired units or units in long term outage states elect to re-activate. It is not clear what unique circumstances exist here that warrant a waiver of the generally applicable requirements.⁹ The tariff provisions regarding the retention of CRIS rights are intended to provide certainty, which is eroded when such provisions are waived.

Third, the NYISO is concerned that the waiver, if granted, could potentially have undesirable consequences related to the reactivation of the Erie Facility with no evaluation of the project under applicable reliability criteria. The requirement that a facility submit a new Interconnection Request if three (3) years or more have passed since it was last in service is founded upon basic reliability concerns. The electric system is constantly evolving, no less so in Northern Pennsylvania and Southwestern New York along Lake Erie where system changes have taken place in recent years and additional changes are in progress or under study. For example, there are proposed projects in the NYISO Interconnection Queue that are proposing to connect near—although not directly at—the interconnection point of the Erie Facility.¹⁰ If a unit has been out of service for

⁹*Allegany Generating Station LLC*, Order Denying Waiver, Docket No. ER14-1680-000 (May 27, 2014) (denying Allegany’s requested waiver, reasoning that “Allegany was aware of its predecessor’s actions and the limitation on the amount of capacity the Allegany Facility would be able to offer in the capacity market due to the forced outage and the need for repairs. ... Thus, it appears that Allegany acquired the facility with full knowledge of its limited ability to participate in the NYISO capacity market in the future.”)

¹⁰ See NYISO Interconnection Queue available at http://www.nyiso.com/public/markets_operations/services/planning/documents/index.jsp.

more than three (3) years, it should be subject to interconnection studies to ensure applicable reliability criteria are met before being permitted to reactivate.

Furthermore, the Erie Facility has long been removed from the interconnection study base cases. The facility is not modeled in the current Class Year Interconnection Facilities Study base case, nor is it modeled in the base case for the Interconnection Feasibility Studies or System Reliability Impact Studies. This means that the reliability impacts and deliverability of proposed projects are being evaluated using a representation of the existing system that does not include the Erie Facility. The NYISO's position is that the Erie Facility should be subject to evaluation in the Interconnection procedures before simply being "reinstated" as an existing facility in the New York Control Area and thereby re-inserted into interconnection models.

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 Erie's waiver request.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan
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June 18, 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 18th day of June, 2014.

/s/ Joy A. Zimmerlin

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