

131 FERC ¶ 61,066
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Innovative Energy Systems, LLC

Docket No. ER10-791-000

ORDER GRANTING WAIVER

(Issued April 23, 2010)

1. On February 22, 2010, Innovative Energy Systems, LLC (IES) filed a request for waiver of its obligation as a developer of one of the Class Year 2008 Projects¹ to submit a security deposit to New York State Electric & Gas (NYSEG) by no later than January 11, 2010 pursuant to section VIII(B)(1) of Attachment S to New York Independent System Operator's (NYISO) FERC Electric Tariff, Original Vol. No. 1.² IES requests extension of the security deposit deadline because an Escrow Agreement (Agreement) between IES, IES' lender, and NYSEG, was not finalized until after the security deposit deadline. As discussed below, the Commission grants the request for waiver for 60 days from the date of issuance of this order.

I. Background and Details of the Filing

2. IES is a developer of landfill gas to energy generation projects with facilities across the State of New York. As a developer of one of the Class Year 2008 Projects, IES states that it received notice from NYISO on or about December 28, 2009, that a required deposit to NYSEG, the relevant transmission owner, was due pursuant to the NYISO tariff by no later than January 11, 2010.

3. IES requests waiver of the security deposit requirement set forth in section VIII(B)(1) of Attachment S to NYISO's Open Access Transmission Tariff (OATT). Section VIII of Attachment S, Project Cost Allocation Decisions, provides that within 30 calendar days following approval of the Annual Transmission Reliability Assessment and

¹ Each year, NYISO takes applications from generators for interconnection to their system. These requests undergo a series of studies and are assigned a position in NYISO's Interconnection Queue for that year.

² Section VIII(B)(1) begins on First Revised Sheet No. 680A.

Class Year Deliverability Study by the Operating Committee (Initial Decision Period), or within 7 calendar days following NYISO's issuance of a revised Annual Transmission Reliability Assessment, Class Year Deliverability Study and accompanying Revised Project Cost Allocation and revised Deliverable MWs report (Subsequent Decision Period), each Developer shall provide notice to NYISO stating whether it will accept (Acceptance Notice) or not accept the Project Cost Allocation and Deliverable MWs. Section VIII(B)(1) provides: "If, following the Initial Decision Period or any Subsequent Decision Period, each and every Developer that remains eligible at that time provides Acceptance Notice(s), each Developer must signify its willingness to pay the Connecting Transmission Owner and Affected Transmission Owner(s) for its share of the required System Upgrade Facilities and System Delivery Upgrades by paying cash or posting Security³...for the full amount of its respective Project Cost Allocation within 5 business days after the end of the Initial Decision Period or Subsequent Decision Period, as applicable."

4. IES states that on December 28, 2009, NYISO distributed the Notice of Second Round Addendum to Class 2008 Facilities Studies and Cost Allocation for System Upgrade Facilities and System Delivery Upgrades – 2nd Round Decision to the remaining developers of Class Year 2008 Projects. IES states that in response, it sent the required Acceptance Notice to NYISO. IES states that upon receiving NYISO's demand for the required deposit by January 11, 2010, it began negotiations with its lender and NYSEG to finalize the Agreement that would govern the administration of the mandatory security deposit. IES states that on or about February 18, 2010, IES and NYSEG reached a consensus on the terms of the draft Agreement, and on February 19, 2010, IES and NYSEG received a final draft Agreement prepared by the financial institution, which was then approved and circulated for execution by all parties.

5. In support of its request for waiver, IES states that the intent of the security deposit requirement is to ensure that developers of generation plants have the financial wherewithal to reimburse the transmission owner for the labor and expenses associated with the necessary infrastructure improvements to enable the facility to deliver its power into the electric grid. IES asserts that it has had and continues to have the required capital

³ "Security" is defined in section VIII(B)(1) as: "a bond, irrevocable letter of credit, parent company guarantee or other form of security from an entity with an investment grade rating, executed for the benefit of the Connecting Transmission Owner and Affected Transmission Owner(s), meeting the requirements of these cost allocation rules, and meeting the respective commercially reasonable requirements of the Connecting Transmission Owner and Affected Transmission Owner(s)."

to support this project, but that there was not enough time for all parties to address all of the administrative and legal requirements associated with the finalization of the Agreement and still meet the security deposit deadline.

II. Notice of Filing

6. Notice of the IES' filing was published in the *Federal Register*, with interventions, protests, and comments due on or before March 15, 2010. No protests, comments, or interventions were filed.

III. Commission Determination

7. For the reasons given by IES, we find good cause to grant waiver of the security deposit requirement set forth in section VIII(B)(1) of Attachment S to NYISO's OATT for 60 days from the date of issuance of this order. We also note that no protests were filed. However, 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.

The Commission orders:

IES' request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.