

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

New York Independent System Operator, Inc.

Docket No. ER06-558-000

ORDER GRANTING WAIVER

(Issued February 27, 2006)

1. On January 23, 2006, the New York Independent System Operator, Inc. (NYISO) submitted a request for a one-time waiver of certain tariff provisions of Attachment S to NYISO's Open Access Transmission Tariff (OATT).<sup>1</sup> NYISO states that it is requesting a waiver of the March 1 date shown on Attachment S to prevent unnecessary delay to NYISO's cost allocation process for new projects interconnecting with the New York State Transmission System. As discussed below, the Commission grants the requested waiver.

**Background**

2. NYISO states that litigation and the resulting settlement in *KeySpan Energy Development Corp. v. New York Independent System Operator, Inc.*<sup>2</sup> (Settlement Agreement) regarding the cost allocation report for Class Year 2001 have affected the schedule set forth in Attachment S of the NYISO OATT. NYISO explains that a cost allocation that is normally performed on an annual basis for a class year of projects had not been performed while the litigation was pending, and thus, created a backlog of projects. Therefore, the Settlement Agreement provided for the finalization of the cost allocation study for Class Year 2002 that was nearly complete when the litigation commenced, and a separate process for a "Catch Up Class" to address the Class Year 2003, 2004, and 2005 projects, allowing NYISO to become current in its annual cost allocation process.

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<sup>1</sup> Attachment S, "Rules to Allocate Responsibility for the Cost of New Interconnection Facilities," of NYISO's OATT establishes the procedures by which the costs of system upgrade facilities are allocated to new projects interconnecting with the New York State Transmission System.

<sup>2</sup> 101 FERC ¶ 61,099 (2002). In the complaint, KeySpan and others alleged that the cost allocation report for Class Year 2001 projects was inconsistent with NYISO's OATT.

3. NYISO states that the Settlement Agreement requires that once all developers in the Catch Up Class accept their cost allocation or drop out, NYISO will resume its annual Class Year cost allocation process according to the time frames specified in Attachment S. NYISO states that existing tariff language in Attachment S specifies that the Class Year cost allocation study will begin on March 1 following the completion of the Catch Up Class cost allocation study. Because of the number of projects included in the Catch Up Class and the later than normal study start date<sup>3</sup> established by the Settlement Agreement, NYISO estimates that the Catch Up Class study will not be completed until on or about May 1, 2006.

### **Instant Filing**

4. In the instant filing, NYISO requests a one-time waiver of the two sections of Attachment S that specify a March 1 date. First, NYISO requests waiver of the March 1 date on Third Revised Sheet No. 673A, which is the date on which NYISO is to begin its Annual Transmission Reliability Assessment (ATRA) each year. The ATRA is an assessment to determine the system upgrade facilities required for each generation and merchant transmission project included in the Class Year assessment to interconnect reliably to the New York State Transmission System. NYISO claims that because the Catch Up Class cost allocation study is not expected to be completed until on or about May 1, 2006, a waiver of this March 1 date will permit the next ATRA to begin immediately after completion of the Catch Up Class cost allocation process. Without the waiver, the next ATRA would not begin until March 1, 2007.

5. Second, NYISO requests waiver of the March 1 date on Fourth Revised Sheet No. 674, which is the date by which developers must satisfy two milestones for inclusion in a Class Year: (1) the project's System Reliability Impact Study (SRIS) has been completed and approved by NYISO's Operating Committee; and (2) the draft Environmental Impact Study (DEIS) for construction of the project has been accepted by the lead agency responsible for coordinating the application under New York's State Environmental Quality Review Act (SEQRA). NYISO explains that waiver of the March 1 date will permit inclusion in Class Year 2006 of those projects that meet the milestones contained in Attachment S by the date NYISO commences the next ATRA. NYISO states that, absent such waiver, projects satisfying the Class Year eligibility requirements by the date on which NYISO commences the next ATRA would nevertheless have to wait until 2007 to be included in a Class Year.

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<sup>3</sup> Pursuant to the conditions set forth in the Settlement Agreement, the study start date was June 27, 2005.

6. NYISO proposes that the start date of the next ATRA and the date by which projects must meet the milestones to enter the Class Year both be established as the later of May 1, 2006 or 15 business days after all developers in the Catch Up Class have either (a) provided notice of their acceptance of their cost allocation and posted security as required in Attachment S, or (b) dropped out of the Catch Up Class. NYISO claims that its proposal reflects the fact that it cannot be certain how long the process will take, and that it is requesting this waiver in order to prevent an unnecessary delay in commencing the next Class Year study. NYISO states that, if this request for waiver were denied, the next Class Year study would not commence until March 1, 2007. This would cause significant delays for projects that would otherwise be qualified to enter a Class Year by May 2006. NYISO requests approval of this waiver request by March 1, 2006.

### **Notice of Filing and Responsive Pleadings**

7. Notice of NYISO's filing was published in the *Federal Register*, 71 Fed. Reg. 6467 (2006), with interventions and protests due on or before February 7, 2006. Timely interventions were filed by the New York State Public Service Commission (NYPSC) and the New York Transmission Owners (New York TOs). The American Wind Energy Association (AWEA) and the Alliance for Clean Energy New York (ACENY) filed a motion to intervene out-of-time and comments in support of the instant filing. In addition, Invenergy filed an intervention and protest.

8. In its protest, Invenergy argues that the Commission has granted waiver only where two fundamental requirements have been satisfied: (1) the party seeking waiver must demonstrate good cause; and (2) the record must clearly reflect that no party will be adversely impacted by the requested waiver. Invenergy claims that it faces the prospect of delayed market access and higher interconnection costs if NYISO is permitted to extend the cut-off date for Class Year 2006 from March 1, 2006 to May 1, 2006, and potentially longer. Therefore, Invenergy requests that the Commission reject NYISO's waiver request. In the alternative, Invenergy requests that the Commission grant a waiver of the annual cut-off date on the condition that the cut-off date be set for a date at least five months after the issuance of the Commission's order granting such a waiver.

9. In their comments, AWEA and ACENY state that they support NYISO's request for a one-time waiver. They state that NYISO's request for a waiver should be granted as a reasonable solution to the problems created by the delay in commencing the Catch Up Class cost allocation study, as well as delays in processing interconnection requests, and to ensure that a cost allocation study is conducted in 2006. Moreover, they claim that there is no rational reason to exclude projects that have met the required milestones by the time the Class Year 2006 cost allocation study begins.

## Discussion

### Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>4</sup> the notice of intervention filed by NYPSC, and the timely, unopposed motions to intervene filed by Invenergy, and the New York TOs serve to make these entities parties to this proceeding. We will grant the motions to intervene out-of-time filed by AWEA and ACENY given their interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

### Commission Determination

11. As discussed below, the Commission finds that NYISO's request for a one-time waiver is appropriate, and will grant the request. The Commission rejects the arguments set forth by Invenergy in its protest.

12. The Commission will grant NYISO's request for one-time waiver of the March 1 date in Attachment S of the NYISO OATT. The scope of the waiver is of a limited duration since it will only apply to the Class Year following the Catch Up Class. The requested waiver remedies a concrete problem, *i.e.*, a delay until March 1, 2007 of the cost allocation process for post-Catch Up Class projects interconnecting with the New York State Transmission System. Finally, the waiver will not have undesirable, unavoidable consequences as explained below.

13. In its protest, Invenergy claims that NYISO's undue delay and inaction on its interconnection request has caused Invenergy to be precluded from Class Year 2006. It states that it first filed a request for interconnection of its High Sheldon Project (High Sheldon) on February 18, 2004, and that NYISO accepted Invenergy's proposed scope of a SRIS on or about April, 29, 2004 and provided Invenergy with an "acceptable" SRIS Study Agreement on August 6, 2004. Invenergy goes on to state that on October 12, 2004, to conform to NYISO revision to its OATT to implement Order No. 2003,<sup>5</sup> Invenergy re-applied for interconnection, and on December 20, 2004, NYISO assured Invenergy that it would perform the SRIS. Invenergy notes that on February 8, 2005 a

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<sup>4</sup> 18 C.F.R. § 385.214 (2005).

<sup>5</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005).

competing interconnection request was filed with NYISO. According to the protest, in the summer of 2005 Invenergy concluded that there was simply no way that the SRIS would be done in time for the March 1, 2006 cut-off for the Class Year 2006 Facilities Study, so it concluded that it would be imprudent to expend the resources required to obtain lead agency approval of its DEIS.

14. Invenergy states that, on July 22, 2005, it informed NYISO that it intended to change the type of wind turbines used in High Sheldon. On September 8, 2005, NYISO requested detailed information on the new wind turbines. Invenergy states that it provided the requested information to NYISO on September 22, 2005. Invenergy claims that, after numerous inquiries on the status of the study, on February 2, 2006 NYISO informed Invenergy that it had retained a consultant to perform the SRIS for High Sheldon and that it expected the study to be ready for submission to NYISO's operating committee in March 2006.

15. Invenergy explains that extending the cut-off date from March 1 to at least May 1, if not longer, would permit other competing developers, whose projects are behind High Sheldon in NYISO's interconnection queue, to complete both their SRIS and their DEIS by the new cut-off date. It states that, under Attachment S of the NYISO OATT, all developers whose projects fall into the same Class Year are required to share the costs of any upgrades to the New York State Transmission System necessitated by their particular projects. As a result, projects assigned to an earlier Class Year may have a substantial cost advantage over projects assigned to a later Class Year, if the existing transmission system can accommodate some but not all of those projects with little or no upgrading.

16. Invenergy argues further that if NYISO's requested waiver is granted it may be excluded from the facilities study for Class Year 2006. As a result, Invenergy states that it faces the risk of a dramatic increase in its share of the costs of any required upgrades above the levels that would otherwise apply. Therefore, Invenergy faces not only the prospect of delayed market access but also higher interconnection costs.

17. Invenergy also contends that NYISO made no attempt to satisfy the procedural or timing requirements of section 205 of the Federal Power Act (FPA).<sup>6</sup> If NYISO had submitted its request to extend the cut-off date as a tariff filing under section 205 of the FPA rather than as a waiver request, the Commission would have had the discretion under section 205(e) to suspend the filing for up to five months.

18. The Commission finds Invenergy's arguments unconvincing. NYISO did not preclude Invenergy from seeking lead agency approval of its DEIS, an action that could place High Sheldon in position to be included in Class Year 2006. Rather, Invenergy

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<sup>6</sup> 16 U.S.C. § 824d (2000).

decided in the summer of 2005 not to obtain lead agency approval of its DEIS. It was Invenenergy's own decision-making that may prevent its inclusion, not NYISO's request to extend the deadline for completion of the requirements to be included in Class Year 2006. Moreover, it was Invenenergy that altered the design of High Sheldon in July 2005, changing the type of wind turbines to be used, thus requiring NYISO to obtain additional, detailed information regarding the new design and thereby delaying the process.

19. The Commission also notes that Invenenergy's claim that it will incur higher costs due to the potential loss of its interconnection queue position is speculative. Even assuming that Invenenergy will not be able to meet the deadlines to be included in Class Year 2006, it can not be known with any certainty at this time whether the upgrade costs to be borne by any future Class Year will be more or less than those of Class Year 2006. Moreover, granting NYISO's requested waiver provides Invenenergy even more time to complete its SRIS and DEIS in order to qualify High Sheldon for inclusion in Class Year 2006. Therefore we reject the arguments in Invenenergy's protest and grant NYISO's request for waiver.

The Commission orders:

NYISO's request for one-time waiver is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.