

144 FERC ¶ 61,060
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

PJM Interconnection, L.L.C. and Trans-Allegheny
Interstate Line Company

Docket No. ER13-1645-000

ORDER GRANTING TARIFF WAIVER REQUEST

(Issued July 22, 2013)

1. On June 7, 2013, PJM Interconnection, L.L.C. (PJM) and Trans-Allegheny Interstate Line Company (TrAILCo) (Applicants) filed a petition requesting a one-time, limited waiver of the eligibility requirements of section 3 of the New York Independent System Operator (NYISO) Open Access Transmission Tariff (OATT or Tariff) so that the NYISO can complete the study process for two new transmission projects by the PJM-identified in-service dates of the projects. In this order, we grant the requested waiver.

I. Background

2. Applicants state that, as part of the PJM regional transmission expansion plan (RTEP), PJM has directed Pennsylvania Electric Company, an affiliate of TrAILCo, to construct two PJM regional transmission expansion projects, the Farmers Valley Project and the Mainesburg Project (Projects). Applicants state that PJM has determined that both projects are necessary for the reliability for the PJM transmission system in order to resolve numerous thermal and voltage planning criteria violations in northern Pennsylvania. Applicants state that the Projects have required in-service dates of June 1, 2015. Applicants state that the Projects will interconnect with transmission lines that are under the operational control of NYISO, and that NYISO has determined that it is required to study the Projects pursuant to the interconnection procedures in Attachment X of the NYISO OATT.

II. Request for Waiver

3. Applicants contend that, if the Projects are required to proceed through the NYISO interconnection procedures of Attachment X of its OATT, it could delay the engineering and construction of the Projects, and ultimately jeopardize TrAILCo's ability to place them in-service on schedule as required by PJM. Applicants state that NYISO could study the Projects in accordance with the requirements of section 3 of the NYISO

OATT¹ as opposed to the interconnection procedures in Attachment X.² However, Applicants state that the study procedures of section 3 of the NYISO OATT apply only to an “Eligible Customer” or “Transmission Owner” as defined in the NYISO OATT.³ Applicants state that TrAILCo does not meet the definition of either an Eligible Customer or a Transmission Owner under the NYISO OATT and, therefore, is unable to comply with section 3 of the NYISO OATT in good faith. Applicants also state that the requested waiver is of limited scope because it will modify the eligibility requirements of section 3 of the NYISO OATT only to the extent necessary to permit the Projects to meet their required in-service dates and will only apply to TrAILCo, and only to the two specified Projects. Moreover, Applicants state that they anticipate that, in light of the issues identified in the course of Order No. 1000⁴ compliance discussion, processes

¹ Applicants note that under sections 3.7.1 through 3.7.3 of the NYISO OATT, Eligible Customers, including Transmission Owners, may request a System Impact Study for a specific expansion project and are required to enter into a System Impact Study Agreement under which they agree to compensate NYISO for all costs incurred to conduct the study. Further, they note that, section 3.7.4 provides for a Bilateral Facilities Study between the Eligible Customer and the Transmission Owner and that after the completion of that study, the Eligible Customer may elect to proceed with construction of the project by agreeing to pay for required upgrades and to provide security. *See* NYISO OATT §§ 3.7.1 through 3.7.4.

² The Applicants state that the NYISO has agreed that, due to the reliability needs, it is appropriate to evaluate the Projects under section 3 of the NYISO OATT, provided a one-time, limited waiver of the eligibility requirements is granted.

³ The NYISO OATT defines “Eligible Customer” as (i) an entity that is engaged, or proposes to engage, in the wholesale or retail electric power business including any electric utility, power marketer, federal power marketing agency, or any person generating energy for sale for resale is an eligible customer under the Tariff, or (ii) any retail customer taking unbundled transmission service pursuant to a state requirement that the transmission owner offer the transmission service, or pursuant to a voluntary offer of such service by the transmission owner. *See* NYISO OATT, section 1.5.

The NYISO OATT defines “Transmission Owner” as the public utility or authority (or its designated agent) that owns facilities used for the transmission of energy in interstate commerce and provides transmission service under the Tariff. *See* NYISO OATT, section 1.20.

⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order*

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may be developed that might modify the manner in which such projects are processed in the future. However, they note that the waiver itself will not result in permanent modifications to the NYISO OATT.

4. Applicants state that the waiver will remedy identified reliability problems, that the reliability concerns cannot immediately be addressed through some means other than the construction of the Projects, and that the Projects may not be completed on schedule unless NYISO studies the Projects under section 3 of the NYISO OATT. Accordingly, the Applicants contend that a concrete problem will be remedied by granting the requested waiver.

5. Applicants state that the requested waiver will not disadvantage any market participant, nor displace any of the customers in the transmission service or generation interconnection queues. Applicants state that they have not identified any additional costs associated with the requested waiver, and given the reliability concerns that the Projects resolve, any additional costs that would be incurred are necessary and appropriate.

6. Applicants request that the Commission issue an order granting the requested waiver on or before July 22, 2013, so that NYISO can complete the study process for the two projects so that they may be constructed and placed into service no later than June 1, 2015.⁵

III. Notice, Comments, and Responsive Pleadings

7. Notice of Applicants' petition was published in the *Federal Register*, 78 Fed. Reg. 36,767 (2013), with interventions or protests due on or before June 28, 2013. The New York Transmission Owners filed a motion to intervene and comments.⁶ Exelon Corporation filed a motion to intervene. Applicants filed an answer.

on reh'g, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

⁵ Applicants state that, in order to meet the required in-service date, TrAILCo needs to commence construction of the Projects as soon as possible but no later than June 1, 2014.

⁶ Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and

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A. Comments

8. The New York Transmission Owners state that they do not object to the request for a waiver, but contend that the Commission should clarify two points. First, the New York Transmission Owners request that the Commission specify that the waiver would be a one-time waiver that will apply only to TrAILCo and only to the two PJM RTEP Projects, that no other entities or projects will be able to rely upon or be affected by the waiver, and that the waiver cannot be relied upon to support similar waiver requests in the future, and will not guide any future Commission action concerning this topic. Second, the New York Transmission Owners request that the Commission clarify that the issues raised by the waiver request have no bearing on the Order No. 1000 compliance process, and that, while NYISO may, in conjunction with PJM or separately, develop procedures that would govern the interconnection of such projects in the future, any such new interconnection processes would fall outside the scope of the Order No. 1000 compliance process.

B. Answer

9. In their answer, Applicants state that they do not oppose the New York Transmission Owners' request that the Commission specify that the one-time waiver will not set precedent. Applicants contend that this is consistent with their petition. However, the Applicants contend that the Commission should deny the New York Transmission Owners' request for clarification that the issues raised by the Petition are outside the scope of the Order No. 1000 compliance process. Applicants contend that such a clarification is unnecessary and unwarranted because the scope of the Order No. 1000 compliance process is not at issue in this proceeding. Applicants contend that they neither suggested that the requested waiver would implicate or affect the Order No. 1000 compliance process, nor requested any form of declaration with respect to the scope of the Order No. 1000 compliance process.

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ the timely, unopposed motions to intervene serve to make the entities that filed them, parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁸ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Applicants' answer because it has provided information that assisted us in our decision-making process.

B. Request for Waiver

12. We grant the requested waiver. The Commission has granted limited waivers of tariff provisions where: (i) the applicant has been unable to comply with the tariff provision at issue in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem will be remedied by granting the requisite waiver; and (iv) the waiver does not have undesirable consequences, such as harming third parties.⁹ We find that the requested waiver meets these criteria.

13. We find that waiver of section 3 of the NYISO OATT is appropriate here. PJM has found the Projects to be essential for its system reliability, and therefore are needed as soon as possible, and Applicants represent that application of section 3 procedures instead of the Attachment X procedures will permit the Projects to be constructed and go into service by the PJM-required in-service dates of the Projects.¹⁰

14. As Applicants note, while TrAILCo is a transmission owner in PJM, it does not meet the definition of either an Eligible Customer or a Transmission Owner under the NYISO OATT and, therefore, is unable to comply with section 3 of the NYISO OATT in

⁷ 18 C.F.R. § 385.214 (2012).

⁸ 18 C.F.R. § 385.213(a)(2) (2012).

⁹ See, e.g., *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at P 8 (2011); *Hudson Transmission Partners, LLC*, 131 FERC ¶ 61,157, at P 10 (2010).

¹⁰ We note that Applicants state that in order to meet the required June 1, 2015 in-service date, TrAILCo needs to commence construction of the Projects as soon as possible but no later than June 1, 2014.

good faith. Further, we find that the requested waiver is of limited scope because it is a one-time waiver that will permit Applicants to forego the eligibility requirements of section 3 of the NYISO OATT only to the extent necessary to permit the Projects to be reviewed under the provisions of section 3 of the NYISO OATT in order to meet their required in-service dates, and will only apply to TrAILCo and only with respect to the two specified Projects.

15. The waiver will also remedy identified reliability problems, the reliability concerns cannot immediately be addressed through some means other than the construction of the Projects, and, based on the Applicants' representations, the Projects may not be completed on schedule unless NYISO studies the Projects under section 3 of the NYISO OATT. Accordingly, we find that a concrete problem will be remedied by granting the requested waiver.

16. Finally, we find that the requested waiver will not have undesirable consequences, or harm third parties. The requested waiver will neither disadvantage any market participant; nor will it displace any of the customers in the transmission service or generation interconnection queues. Further, Applicants state that they have not identified any additional costs associated with the requested waiver, and, given the reliability concerns that the Projects resolve, any additional costs that would be incurred are necessary and appropriate.

17. While we grant the requested waiver, such waiver is granted based on the specific facts and circumstances of the request. Accordingly, the waiver is limited to TrAILCo, for the specific projects identified in the request, for the specific reasons set forth above. Further, what relevance, if any, this grant of waiver will have for future actions of the Commission, including future waiver requests or future modification of the manner in which interregional projects are addressed, is beyond the scope of the instant request and need not be addressed here.

The Commission orders:

Applicants' request for a limited, one-time waiver of section 3 of the NYISO OATT is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.