

147 FERC ¶ 61,084
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 30, 2014

In Reply Refer To:
Green Power Energy LLC
Docket No. ER14-1655-000

Stoel Rives LLP
Attn: Jason A. Johns, Esq.
Counsel for Green Power Energy LLC
900 S.W. Fifth Avenue
Suite 2600
Portland, Oregon 97204

Dear Mr. Johns:

1. On April 3, 2014, you filed on behalf of Green Power Energy LLC (Green Power), a request for waiver of the commercial operation date requirements of Attachments X and Z of the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT) for Green Power's 10 MW Cody Road wind generation project (Project). Green Power requests a waiver to extend the commercial operation date of the Project to no later than 15 months from the date of this order and to have its position in the NYISO interconnection queue restored. For good cause shown, the Commission grants the requested waiver and relief, as discussed below.

2. Green Power states that it is developing the Project in the town of Fenner in Madison County, New York. Green Power states that the Project will interconnect to the transmission system owned by Niagara Mohawk Power Corporation d/b/a National Grid pursuant to a previously filed small generator interconnection agreement (SGIA), which was accepted by delegated order on October 13, 2009.¹ Green Power states that according to the original schedule, the Project was to be in commercial operation by October 2010; but, by mutual agreement, the SGIA parties later extended this date to

¹ *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER09-1693-000 (Oct. 13, 2009) (delegated letter order).

June 2013.² However, Green Power states that, although the parties extended the commercial operation date, they did not amend the milestones set forth in Green Power's SGIA, which are based upon the initial commercial operation date.

3. Green Power states that, on February 15, 2013, the Commission conditionally accepted NYISO's proposed revisions to the interconnection procedures set forth in Attachments S (Rules to Allocate Responsibility for the cost of New Interconnection Facilities), X (Standard Large Facility Interconnection Procedures), and Z (Small Generator Interconnection Procedures) of its OATT.³ The revised section 30.4.4.5 of Attachment X sets forth the procedures for extending the commercial operation date for interconnection customers.⁴ That section limits permissible extensions of the commercial operation date to four years from the tender of the SGIA unless an interconnection customer requests an extension beyond four years and: (1) has an interconnection agreement filed at the Commission; and (2) is able to demonstrate, through an officer certification, that it has made reasonable progress towards meeting the milestones set forth in its interconnection agreement.⁵ Green Power notes that the filing of its SGIA predates the revisions accepted by the February 15, 2013 Order.⁶

4. In support of its requested waiver, Green Power asserts that it has made significant progress in bringing the Project closer to commercial operation. Green Power states that it has executed a contract with the New York State Energy Research and Development Authority (NYSERDA) under the New York renewable portfolio standard program.⁷ It also states that it has negotiated a hedge agreement with a power broker to support its

² Green Power states that it requested the extension due to its inability to obtain financing during the recession when electricity loads and prices dropped. It states that NYISO determined that the extension would not constitute a material modification to the Project. Green Power April 3, 2014 Application at 4 (Application).

³ *Id.* 3 (citing *N.Y. Indep. Sys. Operator, Inc.*, 142 FERC ¶ 61,113 (2013) (February 15, 2013 Order)).

⁴ NYISO, NYISO Tariffs, OATT, Attachment X, § 30.4.4.5 (2.1.0).

⁵ Milestones include, *e.g.*, "completion of engineering design, major equipment orders, commencement and continuation of construction." *Id.* § 30.4.4.5.2.2 (2.1.0).

⁶ Application at 7.

⁷ NYSERDA administers the renewable portfolio standard program on behalf of the New York Public Service Commission. NYSERDA enters into contracts for the purchase of all renewable energy and environmental attributes from renewable energy producers who "sell and deliver their energy into the New York wholesale market." *Id.* 4.

project financing that has attracted investment and allowed Green Power to execute a balance-of-plant contract for Project construction. Additionally, Green Power states that construction has now commenced at the Project evidenced by the installation of a 1,000 foot service road, excavation of the foundations for the wind turbines, and commencement of substation engineering. It states that it also has executed a turbine supply agreement, with turbines slated for delivery in September 2014.⁸ Accordingly, Green Power maintains that the Project is not speculative.⁹

5. Green Power explains that prior to filing the instant waiver request with the Commission, it sought an extension of the commercial operation date from NYISO, but NYISO was unable to grant the requested extension because the evidence of Green Power's revenue-generating contracts and the construction that is underway at the Project do not align with the dates and particular activities that appear in the milestones contained in the SGIA.¹⁰ Green Power also states that NYISO withdrew the Project from NYISO's interconnection queue on February 13, 2014.¹¹

6. With respect to the length of the requested commercial operation date extension, Green Power explains that although it would seek a commercial operation date as soon as December 31, 2014, National Grid requires 15 months after the Commission acts on the instant request to construct the necessary interconnection upgrades. Accordingly, Green Power asks the Commission to grant waiver of section 30.4.4.5 of the Attachment X¹² and section 32.1.3.2 of Attachment Z of the OATT "so that National Grid may recommence activities under the SGIA and [Green Power] is informed as soon as possible whether it should continue directing capital" to developing the Project.¹³

⁸ *Id.* Green Power also states that it has changed the wind turbine manufacturer from that identified in the SGIA and acknowledges that this must undergo a material modification review with NYISO.

⁹ *Id.* 8.

¹⁰ *Id.* 5.

¹¹ Green Power states that it may require waiver of section 7.6.3 of its existing SGIA, which states that the SGIA will be terminated if the Project is removed from the interconnection queue, to restore the project to the interconnection queue. *Id.* n.12.

¹² Section 32.1.3.2 of Attachment Z refers to section 30.4.4.5 of Attachment X, which provides the procedures for extension of the commercial operation date.

¹³ *Id.* 9.

7. Green Power asserts that without the waiver, NYISO will maintain the Project's removal from the generator interconnection queue and eventually move to terminate its SGIA.¹⁴ This would result in forcing Green Power to repeat the financial burdens of redoing its interconnections studies, and likely result in the disappearance of Green Power's opportunity to develop the Project.

8. Green Power states that the Commission has previously granted one-time waiver of tariffs in situations where (i) the underlying error was made in good faith, (ii) the waiver is of limited scope, (iii) a concrete problem must be remedied, and (iv) the waiver does not have undesirable consequences, such as harming third parties. Green Power states that the Commission should grant the waiver because the recession that began in 2008 presented significant and unique obstacles that delayed the Project's development. Despite these setbacks, Green Power argues that it has made significant progress to develop the Project. It also argues that its requested waiver is of limited scope because it only requests an extension to a date no later than 15 months following the issuance of the Commission's order, an extension that it claims is necessary to accommodate National Grid's construction schedule. Furthermore, Green Power states that the waiver will resolve a concrete problem by restoring the Project's position in the interconnection queue. Finally, Green Power contends that the waiver will not have undesirable consequences because none of the Project's network upgrades is necessary to provide interconnection service to other customers, and, consequently, a delay to completing those upgrades will not harm other interconnection customers.¹⁵

9. Notice of Green Power's filing was published in the *Federal Register*, 79 Fed. Reg. 20,195 (2014), with protests or interventions due on or before April 17, 2014. On April 16, 2014, NYISO filed a notice of intervention and comments.

10. NYISO explains that because of the facts known at this time, the unique history of Green Power's Project in the NYISO's interconnection queue process vis-à-vis its 2013 tariff revisions, and the Commission's guidance on waiver requests, NYISO does not oppose Green Power's waiver request. NYISO asserts, however, that "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" and that if the Commission orders the Project be reinstated in the queue, any further extensions of the commercial operation date would be subject to the Attachment

¹⁴ NYISO states that, 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. NYISO April 16, 2014 Comments at 2-3 (NYISO Comments).

¹⁵ Application at 8.

X provisions.¹⁶ It also states that if the Commission denies the requested waiver, Green Power has the option of re-entering the NYISO interconnection queue by submitting a new interconnection request.

11. Although not the only basis for granting a waiver, the Commission has previously found good cause to grant one-time waivers of tariff provisions in situations where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem must be remedied; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁷

12. We find that good cause exists to grant the requested waiver. First, we find that, although it may be considered an error for Green Power and the other parties to the SGIA to fail to amend the milestones in its SGIA to reflect the approved extensions of the Project's commercial operations date, such error was made in good faith. In reaching this conclusion, we note that Green Power could not have known that the failure to amend the milestones in its SGIA would, because of future NYISO tariff revisions, later preclude it from receiving further extensions. Green Power states that it had requested three extensions of its commercial operations date prior to NYISO's tariff revisions¹⁸ which were granted without its having to demonstrate progress in meeting the milestones in its SGIA, so it was not apparent that such revisions to the SGIA were necessary. Green Power's latest request for extension was its first request after the effectiveness of the revisions to section 30.4.4.5 of Attachment X of NYISO's OATT that, for the first time, required alignment of a developer's SGIA milestones such that it would be able to demonstrate that it has made reasonable progress in bringing its project to commercial operation.

13. Second, we find that the waiver is of limited scope because Green Power only requests waiver until a date no later than fifteen months following this order. According to Green Power, this waiver period is necessary to accommodate National Grid's construction schedule. Third, the waiver will remedy a concrete problem - the inability of NYISO to permit the extension due to the milestone comparison now required by its

¹⁶ NYISO Comments at 5, n.3.

¹⁷ See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *N.Y. Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *Midwest Indep. Trans. Sys. Operator, Inc.*, 130 FERC ¶ 61,172, at P 13 (2010); *Midwest Indep. Trans. Sys. Operator, Inc.*, 130 FERC ¶ 61,124, at P 25 (2010); *Ill. Power Co.*, 120 FERC ¶ 61,237, at P 22 (2007).

¹⁸ NYISO Comments at 2.

OATT. Granting the waiver will restore the Project to its position in the interconnection queue so that Green Power may bring the Project to commercial operation.

14. Finally, we find, based on Green Power's uncontroverted assertions, that granting the requested waiver will not have undesirable consequences, such as harming third parties. As Green Power explains, most of the Project's network upgrades are stand-alone facilities that Green Power must construct and that are not necessary for any other customer's interconnection. Additionally, Green Power asserts that none of the Project's network upgrades are necessary to interconnect other interconnection customers and therefore a delay to completing those upgrades until mid-2015 will have no adverse impact on any other interconnection customers. We also rely on the fact that NYISO does not dispute Green Power's assertions and does not oppose the grant of waiver. Consequently, we conclude that granting the requested waiver will not have undesirable consequences.

15. Therefore, based on the specific and unique facts presented above, the Commission finds good cause to grant Green Power's request for a one-time waiver of the commercial operation provisions of section 30.4.4.5 of the Attachment X and section 32.1.3.2 of Attachment Z of the NYISO OATT, and any relevant provisions of the SGIA, to permit the amendment of the SGIA to reflect a revised commercial operation date of the Project of no later than 15 months from the date of this order and such other amendments to the SGIA milestones as required.¹⁹ In addition, we direct NYISO to restore Green Power's position in the interconnection queue.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁹ We note that if Green Power requires any further extensions, it would have to qualify pursuant to NYISO's currently effective tariff.