

148 FERC ¶ 61,038  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Erie Power, LLC

Docket No. ER14-2056-000

ORDER DENYING WAIVERS

(Issued July 15, 2014)

1. On May 28, 2014, Erie Power, LLC (Erie Power) submitted a request for waivers of section 25.9.3.1 of Attachment S and, to the extent necessary, section 30.3.3.1 of Attachment X of the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT or Tariff), such that Erie Power's currently deactivated 80 MW North East Cogeneration Plant (North East Plant) may be reinstated as an existing facility, with retention of its existing Energy Resource Interconnection Service (ERIS) and its existing Capacity Resource Interconnection Service (CRIS) rights.<sup>1</sup> The Commission denies the requested waivers for the reasons discussed below.

**I. Background and Filing Summary**

2. Erie Power states that the North East Plant was deactivated in November 2010. Erie Power states that it purchased the North East Plant in early 2014 and intends to reactivate the North East Plant as a baseload power facility without any material modifications to the facility itself or to its interconnection at South Ripley, New York.<sup>2</sup>

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<sup>1</sup> Erie Power Filing at 1. Erie Power also seeks waiver of section 3.3.4.A.3 of the NYISO Transmission Expansion and Interconnection Manual (TEI Manual). As an operating manual, the NYISO TEI Manual is not filed with the Commission for its review and approval and is not enforceable independent of the approved NYISO tariffs. Therefore, we will not address Erie Power's request to waive provisions of the manual.

<sup>2</sup> Erie Power states that the North East Plant's interconnection point is within NYISO, although the North East Plant is located in Pennsylvania. *Id.* at 4. Erie Power states that, if the requested waiver is granted, it intends to enter into a bilateral

(continued...)

According to Erie Power, there have been no known material changes to the North East Plant or to its interconnections since the North East Plant was deactivated in 2010.<sup>3</sup>

3. Under the NYISO Tariff, CRIS rights terminate three years after deactivation unless the generator takes certain actions as set forth in the Tariff.<sup>4</sup> In relevant part, section 25.9.3.1 of Attachment S of the Tariff states:

[A] facility becomes deactivated on the last day of the month during which (i) it ceases to offer capacity to NYISO capacity auctions, or (ii) it ceases to be registered as a Capacity Resource for a Load Serving Entity through a bilateral transaction(s) or self-supply arrangement.<sup>5</sup>

Additionally, section 25.9.3.1 provides in relevant part:

In the case of a deactivation, CRIS status at the capacity level eligible for CRIS found deliverable terminates three years after deactivation unless the deactivated Large Facility or Small Generating Facility takes one of the following actions before the end of the three-year period: (1) returns to service and participation in NYISO capacity auctions or bilateral transactions . . . .<sup>6</sup>

4. Erie Power is seeking reinstatement of the North East Plant as an existing Energy and Capacity Resource, and is thus requesting a waiver of Section 25.9.3.1 of Attachment S to the NYISO Tariff. To the extent required, Erie Power also seeks a waiver of Section 30.3.3.1 of Attachment X of the NYISO Tariff regarding the requirements to initiate an

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interconnection agreement with National Grid (Niagara Mohawk Power Corp. d/b/a National Grid). *Id.* at n.3.

<sup>3</sup> *Id.* at 2-3.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> NYISO, NYISO Tariffs, OATT, Attachment S (Rules to Allocate Responsibility for the Cost of New Interconnection Facilities), § 25.9.3.1 (1.0.0).

<sup>6</sup> *Id.*

Interconnection Request.<sup>7</sup> Erie Power states that its understanding is that, if it receives a waiver from the requirement to initiate an Interconnection Request in conjunction with a non-materiality finding by NYISO regarding changes to the North East Plant discussed herein, the North East Plant will not be required to participate in, or otherwise complete the steps associated with the interconnection study process (i.e., Feasibility Study, System Reliability Impact Study, Class Year Interconnection Study). Erie Power states that granting these waivers will facilitate Erie Power's ability to return the North East Plant to the NYISO markets as quickly as possible, and allow it to participate as an Energy and Capacity Resource during the 2014/2015 Winter Capability Period. Erie Power states that it anticipates that the North East Plant will be reactivated by January 1, 2015. However, Erie Power states, given the potential for delays outside of Erie Power's control, it is seeking a waiver in order to be treated as an existing facility with retention of its existing interconnection rights.<sup>8</sup>

5. Erie Power requests that the Commission grant the requested waivers, which it asserts the Commission has done for similar tariff deadline waivers in the past. Erie Power contends that the Commission has consistently granted tariff waiver requests when the following four factors are present: (1) the entity seeking the waiver acted in good faith; (2) the waiver is of a limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences, such as harming third parties. Erie Power argues that it meets this standard, and good cause exists for the Commission to grant its request for waivers.<sup>9</sup>

6. Erie Power first asserts that it has acted in good faith. According to Erie Power, it was unaware that the North East Plant was deactivated outside of the three-year reactivation window when it first learned of the opportunity to purchase the North East Plant in late 2013. Erie Power contends that, although it worked diligently and expeditiously to establish Site Control,<sup>10</sup> it could not do so before November 2013. Erie

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<sup>7</sup> Erie Filing at 1 n.2. Section 30.3.3.1 generally requires submittal of a non-refundable application fee, a study deposit, a completed application, and a demonstration of Site Control or an additional deposit.

<sup>8</sup> *Id.* at 1.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> Site Control is defined under NYISO's OATT, Attachment X, section 30.1, as: "documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Large Generating Facility or Merchant Transmission Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Developer and

Power argues that it neither intentionally nor purposefully failed to comply with Tariff obligations.<sup>11</sup>

7. Erie Power next contends that its circumstances are unique and this waiver is of limited scope. Erie Power states that it only requests that the North East Plant be reinstated as an existing facility. Erie Power states that this waiver will not create a precedent for other facilities, as other mothballed facilities are unlikely to match the North East Plant's unique circumstances. Erie Power contends that it intends to bring the North East Plant back on-line without any material changes from when the unit was last operational in November 2010.<sup>12</sup>

8. Erie Power also argues that granting this waiver will remedy a concrete problem. Erie Power asserts that, despite the expectation that the North East Plant will become operational by January 1, 2015, the North East Plant will be unable to serve as an Energy and Capacity Resource in the 2014/2015 Winter Capability Period absent the waiver. Erie Power asserts that the cost to reactivate without the waiver is difficult to determine given the unknown time and cost to participate in the interconnection study process. Erie Power asserts that, since the interconnection process often contains delays, a waiver would provide it with the timing and financial certainty that comes with the assurance that the North East Plant will be reinstated as an existing facility.<sup>13</sup>

9. Lastly, Erie Power argues that granting this waiver will not harm third parties. Erie Power contends that reinstating the North East Plant as an Energy and Capacity Resource will not delay interconnection by any parties in the interconnection queue nor will it disrupt generation interconnection or transmission service queues. Erie Power states that there are currently five interconnection requests with proposed interconnection dates in 2015 pending in NYISO Load Zone A, none of which interconnect at South Ripley. Erie Power also contends that granting this waiver will not cause NYISO any

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the entity having the right to sell, lease or grant Developer the right to possess or occupy a site for such purpose.”

<sup>11</sup> Erie Power Filing at 5. Erie Power asserts that, in *Demand Response Partners*, 140 FERC ¶ 61,093, at P 14 (2012), the Commission granted a waiver due to a good faith misunderstanding on using relatively new software and that, similarly in this instance, its misunderstanding on the timeframe to reactivate the North East Plant was made in good faith. *Id.* at n.16.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.*

administrative hardship or cause it to incur additional costs. Further, it asserts that this waiver will neither disrupt the market nor adversely impact any market participant. Accordingly, for the foregoing reasons, Erie Power contends that its request satisfies the Commission's four waiver requirements and, therefore, requests that the Commission issue an order granting its request on an expedited basis on or before July 15, 2014, in order for the North East Plant to participate in the NYISO markets in the 2014/2015 Winter Capability Period.

## **II. Notice of Filings and Responsive Pleadings**

10. Notice of Erie Power's waiver request was published in the *Federal Register*, 79 FR 32,930 (2014), with interventions and protests due on or before June 18, 2014. Welch Foods, Inc. (Welch) and DevelopErie filed comments. Niagara Mohawk Power Corp. d/b/a National Grid (National Grid) and NYISO filed motions to intervene and comments.

11. Welch, DevelopErie, and National Grid all support Erie Power's waiver request. Welch states that it would greatly benefit from the accelerated reactivation timeline for the North East Plant, as it uses process steam in connection with its processing facility; Erie Power's North East Plant can provide such process steam for its processing facility at a much lower cost than any other alternatives.<sup>14</sup> Similarly, DevelopErie explains that the North East Plant's reactivation would greatly help regional job creation and provide a needed economic stimulus, as the North East Plant has remained deactivated and unused for years.<sup>15</sup>

12. National Grid argues that reactivating the North East Plant will ameliorate congestion in Western New York and reduce costs to consumers in Load Zone A.<sup>16</sup> According to National Grid, recent generation retirements in Load Zone A have significantly changed power flows on the Western New York 230 kV system, resulting in considerable transmission constraints. Accordingly, National Grid asserts that, by virtue of its location in Erie, Pennsylvania, and its interconnection at National Grid's 230 kV South Ripley substation, the North East Plant can help relieve congestion on the Western New York system. Therefore, National Grid requests that the Commission grant Erie Power's waiver request.

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<sup>14</sup> Welch Comments at 1.

<sup>15</sup> DevelopErie Comments at 1.

<sup>16</sup> National Grid Comments at 5.

13. NYISO states that it has concerns regarding Erie Power's waiver request and requests that the Commission consider these concerns in its decision on the merits of the waiver request.<sup>17</sup> First, according to NYISO, there is no concrete problem for the Commission to remedy because Erie Power can easily reactivate the North East Plant via the Interconnection Process, and steps exist to speed up this process (e.g., agreeing with National Grid to forego the Interconnection Feasibility Study). NYISO states that, in fact, Erie Power has already submitted an Interconnection Request to NYISO, which is being processed under Attachment X to the Tariff. NYISO also contends that the parties have indicated that they will likely agree to forego the initial study—the Interconnection Feasibility Study—and move the project directly to a System Reliability Impact Study. NYISO adds that 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, and these steps include negotiating an interconnection agreement and potentially going in-service while the final study is in progress.<sup>18</sup>

14. Second, NYISO asserts that it is concerned the waiver is not of limited scope because it raises questions about its applicability to other projects. NYISO contends that more retired units and units in long-term outage states have been electing to reactivate. NYISO argues that it is not clear what unique circumstances exist here justifying the Commission granting this waiver.<sup>19</sup>

15. Lastly, NYISO states that the waiver, if granted, could potentially have undesirable consequences since the reactivation of the North East Plant would not be evaluated under applicable reliability criteria. NYISO explains that the requirement that a facility submit a new Interconnection Request if three years or more have passed since it was last in service is founded upon basic reliability concerns. NYISO contends that 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.<sup>20</sup> NYISO adds that

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<sup>17</sup> NYISO Comments at 5.

<sup>18</sup> *Id.* at n.8. NYISO states, however, that 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, has accepted its Project Cost Allocation, and has posted Security for any required System Deliverability Upgrades. *See* NYISO, NYISO Tariffs, OATT, Attachment X (Standard Large Facility Interconnection Procedures), § 30.3.2.3 (2.0.0).

<sup>19</sup> NYISO Comments at 6.

<sup>20</sup> *Id.*

the North East Plant has long been removed from the interconnection study base case and is not modeled in the current Class Year Interconnection Facilities Study base case, the Interconnection Feasibility Studies base case, or System Reliability Impact Studies. According to NYISO, 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 North East Plant. NYISO's position is that the North East Plant should be subject to evaluation in the Interconnection Process before simply being "reinstated" as an existing facility in the New York Control Area and thereby re-inserted into interconnection models.<sup>21</sup>

### **III. Discussion**

#### **A. Procedural Issues**

16. Pursuant to Rule 214 of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

#### **B. Commission Determination**

17. Erie Power states that the Commission has previously granted waivers of tariff provisions when: (1) the entity seeking the waiver acted in good faith; (2) the waiver is of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.<sup>22</sup> Erie Power argues that its requested waivers meet these criteria. We disagree. We find that Erie Power has not demonstrated good cause for the requested Tariff waivers. Accordingly, we deny the requested waivers.

18. First, we find that Erie Power has failed to demonstrate that it acted in good faith. It has provided no explanation of why it was unaware of the Tariff requirements governing participation in NYISO's energy and capacity markets. Nor has it provided us with any justification for why it could not have, or need not have, made itself aware of

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<sup>21</sup> *Id.* at 7.

<sup>22</sup> See *N.Y. Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012). See also, e.g., *PJM Interconnection, LLC*, 137 FERC ¶ 61,184, at P13 (2011); *ISO-New Eng., Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *Ca. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *ISO-New Eng., Inc.-EnerNOC*, 122 FERC ¶ 61,297 (2008); *Cent. Vt. Pub. Serv. Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation, LLC*, 1120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

such Tariff requirements, as NYISO's Tariff is readily accessible to the public and on file with the Commission.<sup>23</sup> The fact that Erie Power knowingly purchased a deactivated plant when the three-year window in the Tariff to reactivate the plant had already expired reflects a lack of due diligence on its part, and does not justify our granting waiver. In sum, Erie Power has not convinced us that it acted in good faith.<sup>24</sup>

19. We also find that Erie Power has not demonstrated that its circumstances are unique, or that its request is so limited in scope, that waiver should be granted. We agree with NYISO that, given the increase in the number of retired units or units in long term outage states, Erie Power's circumstances do not appear to be unique and limited to just Erie Power; we do not know what facts or circumstances would distinguish Erie Power from any other generator with a deactivated plant.

20. We also find that granting the requested waiver is not needed to remedy a concrete problem. The Commission agrees with NYISO that there is no concrete problem that requires Commission action; Erie Power is not precluded from reactivating the North East Plant and restoring its interconnection under NYISO's Tariff if it does not obtain a waiver. It can reactivate its facility and have those rights restored by proceeding through NYISO's interconnection process, and as noted above, can take steps to expedite that process. Simply having to follow NYISO's Tariff requirements in order to reactivate the North East Plant and restore the North East Plant's interconnection is not a concrete problem that warrants waiver of the Tariff's requirements.

21. Finally, we find that granting waivers to allow the North East Plant to participate in NYISO's markets without subjecting it to NYISO's interconnection requirements may have undesirable reliability and planning implications. As NYISO persuasively argues, the requirement that a facility must submit a new Interconnection Request if three years or more have passed since it was last in service is founded upon basic reliability concerns

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<sup>23</sup> See

[http://www.nyiso.com/public/markets\\_operations/documents/tariffs/index.jsp](http://www.nyiso.com/public/markets_operations/documents/tariffs/index.jsp).

<sup>24</sup> In a recent waiver case, Allegany sought waivers of the NYISO tariff to allow it to supply unforced capacity from a generating unit that was inoperable for 17 months prior to Allegany's acquisition and repair. The Commission denied waiver noting that Allegany had acquired the facility with full knowledge of its limited ability to participate in the NYISO capacity market. The Commission concluded that it "cannot find [that Allegany's] knowing purchase of the facility in the state that it was then in, coupled with its subsequent work on the facility, in and of itself warrants excepting Allegany from the requirements of the Tariff." *Allegany Generating Station LLC*, 147 FERC ¶ 61,147, at P 17 (2014).

that the grid can change over time.<sup>25</sup> Additionally, because the North East Plant has been removed from the interconnection study base cases, it has not allowed NYISO or other parties the opportunity to evaluate the impacts of the North East Plant on the reliability and deliverability of other projects. Accordingly, we agree with NYISO that, if a facility has been out of service for more than three years, it should be subject to interconnection studies to ensure applicable reliability criteria are met before being allowed to reactivate and interconnect.

22. Erie Power's waiver request can be distinguished from a recent waiver granted in Dunkirk Power LLC (Dunkirk).<sup>26</sup> In that case, Dunkirk sought a waiver to ensure continuation of its existing CRIS rights in the event that issues arose that delayed the facility's planned reactivation beyond the three-year period for retention of the facility's interconnection rights. Dunkirk's request was made before the facility's CRIS rights terminated,<sup>27</sup> and waiver would only be necessary if circumstances beyond Dunkirk's control caused the planned reactivation to extend beyond its expected in-service date. Further, Dunkirk had a 15½ month delay in starting the reactivation process after the commencement of the 3-year period under the NYISO tariff because of the need to have a long-term service agreement in place. Here, Erie bought an already deactivated facility and now essentially pleads ignorance of the tariff's three-year rule. Accordingly, unlike Dunkirk, the CRIS rights associated with the Erie Power's North East Plant have already expired, and Erie Power seeks to reinstate them well beyond the termination of the facility's CRIS rights. Additionally, NYISO argues that the North East Plant has long been removed from the interconnection study base cases, and NYISO and the other market participants have not had the opportunity to evaluate the impacts of the addition of the North East Plant capability on the reliability and deliverability of other projects, and Erie Power proposes to obtain CRIS rights without undergoing the necessary interconnection studies. Finally, as noted above, while NYISO did not oppose the Dunkirk waiver of NYISO's tariff, it does have concerns with granting the instant waiver of NYISO's tariff.

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<sup>25</sup> We agree with NYISO that, because the North East Plant has been deactivated, its reliability impacts and deliverability may be different today than they once were.

<sup>26</sup> *Dunkirk Power LLC*, 147 FERC ¶ 61,146, at P 14 (2014).

<sup>27</sup> Dunkirk's request was made on March 6, 2014, well within the three year period. Its coal-fired Units 3 and 4 were deactivated on August 31, 2012. Dunkirk stated that it plans to reactive these units as part of a new natural gas facility by September 1, 2015. *Id.* P 2.

23. For the above reasons, the Commission denies Erie Power's request for waiver of the specified sections of NYISO's Tariff.

The Commission orders:

Erie Power's request for waivers is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.