

150 FERC ¶ 61,182  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

March 11, 2015

In Reply Refer To:  
Cassadaga Wind LLC  
Docket No. ER15-1056-000

Morgan, Lewis & Bockius LLP  
Attention: Floyd L. Norton, IV  
1111 Pennsylvania Ave., NW  
Washington, DC 20004

Dear Mr. Norton:

1. On February 13, 2015, Cassadaga Wind LLC (Cassadaga) submitted a request for a waiver of the regulatory milestones under Attachment S and Attachment X of the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT). Waiving the Attachment S and Attachment X regulatory milestone requirements would allow Cassadaga's proposed wind energy project inclusion into the NYISO Class Year 2015 Annual Transmission Reliability Assessment (ATRA).<sup>1</sup> As discussed below, we deny Cassadaga's request for waiver.

2. Cassadaga states that it is developing the Cassadaga Wind Project (Wind Project), a 126 MW wind powered electric generation facility in Chautauqua County, New York and that it entered the NYISO generator interconnection queue on July 19, 2012. According to Cassadaga, NYISO identified the Wind Project as a potential candidate for inclusion into the Class Year 2015 on January 15, 2015, but denied the January 28, 2015 application submitted by Cassadaga on February 4, 2015. Cassadaga states that Class Year 2015 is scheduled to begin March 1, 2015, and notice of project developers' intent to enter Class Year 2015 is required by March 6, 2015.

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<sup>1</sup> NYISO OATT Section 25.1.2 defines "Class Year" as "The group of generation and merchant transmission projects included in any particular Class Year Interconnection Facilities Study (Annual Transmission Reliability Assessment and/or Class Year Deliverability Study), in accordance with the criteria specified in this Attachment S and in Attachment Z for including such projects."

3. Under NYISO's OATT, proposed Large Facilities, such as the Wind Project, are required to proceed through three successive interconnection studies, as detailed in Attachment X to the OATT.<sup>2</sup> First is the Interconnection Feasibility Study, which is a high level evaluation of the configuration and local system impacts.<sup>3</sup> Second is the Interconnection System Reliability Impact Study, a detailed single-project study that evaluates the project's impact on transfer capability and system reliability.<sup>4</sup> The third and final study in the process is the Class Year Study.<sup>5</sup> The Class Year Study evaluates the cumulative impact of a group of projects that have met specified Class Year Study eligibility requirements by the Class Year Start Date.<sup>6</sup>

4. A project becomes eligible to enter a Class Year Study when it satisfies two developmental milestones identified in Attachment S of the OATT: (1) NYISO's Operating Committee approval of an Interconnection System Reliability Study; and (2) the regulatory milestone.<sup>7</sup> The Wind Project recently received approval of NYISO's Operating Committee on February 13, 2015, thus satisfying one of the eligibility requirements. However, the Wind Project has not yet satisfied the second Class Year eligibility requirement—the regulatory milestone required by Attachment S, section 25.6.2.3.1.1. The OATT further describes the regulatory milestone referred to in section 25.6.2.3.1 as “a determination pursuant to Article 10 of the Public Service Law that the Article 10 application filed for the Large Generator is in compliance with Public Service Law §164.”<sup>8</sup> This requires a determination that the Article 10 application is “complete” but does not require approval of the application.

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<sup>2</sup> Attachment X contains the procedures for processing FERC-jurisdictional interconnections of Large Generating Facilities and Merchant Transmission Facilities, collectively defined in Attachment X as “Large Facilities.”

<sup>3</sup> See NYISO OATT, Attachment X, Section 30.6.

<sup>4</sup> See NYISO OATT, Attachment X, Section 30.7. Cassadaga states that a System Reliability Impact Study (SRIS) is expected to be completed by NYISO before March 1, 2015. Request for Waiver at 3.

<sup>5</sup> See NYISO OATT, Attachment X, Section 30.8.

<sup>6</sup> See NYISO OATT, Attachment X, Section 30.8.1; *see also*, Attachment S, Section 25.6.2.3.1,

<sup>7</sup> See NYISO OATT, Attachment S, Section 25.6.2.3.1,

<sup>8</sup> NYISO OATT § 25.6.2.3.1.1.7.

5. Cassadaga states that Article 10 is part of the Power NY Act of 2011, which established a new process for the siting of electrical generating facilities and repowering projects in New York.<sup>9</sup> Cassadaga states that the NY Board on Electric Generation Siting and the Environment (Siting Board) promulgated regulations under the Power NY Act of 2011 on July 17, 2012, two days prior to the date Cassadaga's Wind Project entered the NYISO interconnection queue.<sup>10</sup>

6. Cassadaga states that, in order to file an application for siting an electric generating facility in New York, Article 10 established pre-application requirements. Cassadaga states that a Public Involvement Program Plan (Program Plan) must be filed at least 150 days prior to filing a Preliminary Scoping Statement (Scoping Statement)<sup>11</sup> which must be filed at least 90 days prior to the filing of an application.<sup>12</sup> It states that the Siting Board then has 60 days to review and determine whether or not the application is complete (It is this determination that satisfies the regulatory requirement of section 25.6.2.3.1.1.7 of the OATT). Thus, Cassadaga states, a minimum of 300 days (10 months) must pass from the time a Program Plan is filed before an Article 10 application can be deemed complete. However, Cassadaga estimates that greater than 12 months is a more reasonable time frame from the Program Plan filing to a complete application because delays are likely in the Program Plan implementation and Scoping Statement phase, as well as the likelihood that the Siting Board will take more than 60 days to deem the application complete.<sup>13</sup> Cassadaga states that, to date, no project (renewable or conventional) has completed both the Program Plan and Scoping Statement phases or submitted an application to the Siting Board, let alone had an application be deemed "complete" and meeting the regulatory milestone under section 26.5.2.3.1.1.7 of the OATT. Cassadaga states that it filed a Program Plan on November 5, 2014, which was finalized on January 5, 2015 after public review and comment.<sup>14</sup> Cassadaga asserts that it has: (1) made good faith progress toward completing the regulatory milestone, (2) been

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<sup>9</sup> NY Public Service Law §160 *et seq.*

<sup>10</sup> 16 NYCRR § 1000.1 *et seq.*

<sup>11</sup> 16 NYCRR § 1000.4(d).

<sup>12</sup> 16 NYCRR § 1000.5(c).

<sup>13</sup> Request for Waiver at 5 (citing *Application of National Grid for a Certificate of Environmental Compatibility and Public Need*, Case No. 13-F-0464 (filed December 3, 2013)).

<sup>14</sup> *Id.* at 7.

diligently pursuing development of a completed Article 10 application, and (3) made significant and meaningful progress on project development.

7. Cassadaga states that the development process is further complicated by the unpredictability of the timing of NYISO Class Year studies and that missing a class year qualification could result in extended development timelines that could dampen the viability of the Wind Project. It states that a Class Year study has not taken less than 14 months and average 18 months since the 2006 Class Year. Cassadaga notes, however, that a recent revision to NYISO's OATT provides that "... all parties engaged in performing study work as part of ... the Class Year Interconnection Facilities Study are required to use Reasonable Efforts to complete the basic required evaluations and cost estimates ... within twelve (12) months from the Class Year start date."<sup>15</sup>

8. Cassadaga states that Commission has granted waivers of tariff provisions 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.<sup>16</sup> Cassadaga asserts that its request meets all four criteria.

9. Cassadaga asserts that, despite a good faith effort, it will not meet the regulatory milestones of section 25.6.3.2.1.1.7 of the OATT in time to qualify for Class Year 2015 because it will not have a "complete" Article 10 application. Cassadaga states that it has been meeting with state and local permitting agencies and other stakeholders to provide the requisite outreach and information required by the new Article 10 process.<sup>17</sup> Cassadaga asserts that the waiver would be of limited scope as it is for a one-time extension of the regulatory milestone until March 31, 2016. Cassadaga also asserts that exclusion from Class Year 2015 creates a concrete problem because the likelihood that it could bid into the upcoming New York State Energy Research and Development Authority (NYSERDA) 2015 solicitation under the New York Renewable Portfolio Standard (RPS) would be significantly decreased and that this may be the last RPS solicitation.<sup>18</sup> Cassadaga asserts it is unlikely that it would be able to risk entering into a contract under the 2015 NYSEDA solicitation if it is excluded from Class Year 2015.<sup>19</sup>

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<sup>15</sup> *Id.* at 5 (citing Section 25.5.9 of the NYISO OATT).

<sup>16</sup> *Id.* at 9.

<sup>17</sup> *Id.* at 7-8 and 9 (Cassadaga provides a chart illustrating stakeholder outreach and studies completed).

<sup>18</sup> *Id.* at 13-14.

<sup>19</sup> Cassadaga states that if it were to enter a subsequent class year, it may not be

Cassadaga maintains that the waiver does not have undesirable consequences on third parties because granting the requested waiver would allow it to be included in the 2015 Class Year study before the study begins and not cause any disruptions to other customers' study assumptions. Finally, Cassadaga requests Commission action by March 6, 2015, the deadline by which it states it must notify NYISO that it will enter Class Year 2015.

10. Notice of Cassadaga's waiver request was published in the *Federal Register*, 80 Fed. Reg. 9706 with interventions and protests due on or before February 27, 2015. On February 27, 2015, a timely motion to intervene and comments were filed by NYISO. Pursuant to Rule 214 of the Commission's Rules and Practice and Procedures, 18 C.F.R. § 385.214 (2014), the timely, unopposed motion to intervene serves to make the entities that filed them parties to this proceeding.

11. In its comments, NYISO states that it understands Cassadaga to be requesting: (1) that its Wind Project be permitted to enter Class Year 2015 without satisfying the tariff-mandated eligibility requirement set forth in section 25.6.2.3.1(ii) of Attachment S (i.e., that it be permitted to enter Class Year 2015 without satisfying the regulatory milestone requirement); and (2) that Cassadaga be provided a 13-month extension of time until March 31, 2016 within which to complete the regulatory milestone required by Section 25.6.2.3.1.1 of Attachment S.

12. NYISO asserts that it has concerns regarding Cassadaga's waiver request and it requests that the Commission consider these concerns in its decision. NYISO states that it is primarily concerned that the waiver is not of limited scope and may, therefore, raise questions regarding the applicability of the same tariff requirements to other projects. NYISO argues that this is particularly true given that this is a substantive milestone reflecting the progress of the project, rather than an administrative deadline. NYISO states that the regulatory milestone serves an important function in NYISO's interconnection process, ensuring that projects have reached a certain stage of project development before they are evaluated in this comprehensive final study with other projects. Further, NYISO asserts that allowing projects to be included in the Class Year Study before they have satisfied this developmental milestone will tend to slow down the Class Year Study process.

13. In addition, NYISO states that it is not clear what unique circumstances exist here that warrant waiver of the generally applicable requirements, or distinguish this project from the other projects that have not yet satisfied the regulatory milestone but otherwise

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able to meet the commercial operation date of 22 to 36 months from the date of the solicitation required by NYSERDA, assuming the 2015 solicitation uses the same terms as prior NYSERDA solicitations. Request for Waiver at 13.

qualify for Class Year entry. NYISO argues that to allow one project developer to enter a Class Year Study without meeting the same requirements that other project developers must meet would lead to an inequitable result.

14. NYISO states that Cassadaga emphasizes that the Article 10 milestone was added to the tariff after the project entered the queue. NYISO notes, however, that the general framework of the regulatory milestone—that a permitting application must be deemed complete by the applicable regulatory agency—has been in NYISO’s tariff since 2001. NYISO states that, when the regulations implementing the new Article 10 became effective on July 17, 2012, it was appropriate to explicitly describe how a project subject to Article 10 can satisfy the regulatory milestone. NYISO asserts that the tariff revisions proposing to do so were first posted for stakeholder review on August 2, 2012, which was 11 days after Cassadaga submitted its interconnection request.

15. Moreover, NYISO argues that it is not clear how the facts presented in the waiver request demonstrate a concrete problem that requires Commission action. NYISO states that Cassadaga points to anticipated delays in project development that it assumes will occur if its project is not included in Class Year 2015. NYISO states that such statements appear to be based on the misconception that no project development can commence prior to completion of a Class Year Study and does not appear to recognize the flexibility in NYISO’s tariff. NYISO states that, in fact, under NYISO’s interconnection process, the project has the flexibility to remain in the queue and enter a later Class Year Study. Further, NYISO states that its process permits projects to move forward with interconnection agreement negotiations and, under certain circumstances, to become operational before the project completes the Class Year study process.<sup>20</sup>

16. Finally, NYISO asserts that the granting of the requested waiver could impact the Class Year 2015 schedule. NYISO states, if the Commission grants the waiver significantly after the March 1, 2015 Class Year start date, NYISO would be required to add the Cassadaga project to the Class Year after the Class Year membership has been finalized. NYISO also argues that, should the Commission grant Cassadaga’s request and Cassadaga subsequently fails to meet its regulatory milestone by the extended deadline, NYISO would be required to withdraw the project from Class Year 2015 that may well be near completion by then, if not already completed. NYISO states that adding or withdrawing a project from a Class Year so far along could require the NYISO to: (1) create new base cases; (2) delay the start or require the re-running of Class Year Study analyses; and (3) potentially identify and cost allocate new or different upgrades.

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<sup>20</sup> NYISO February 27, 2015 Comments at 7 (citing OATT Attachment X, section 30.11.2). NYISO asserts that it is willing to continue to work with Cassadaga to move its project forward and to help Cassadaga utilize the flexibility that the existing interconnection procedures provide in this regard.

NYISO states that this could delay the Class Year Study and increase the time and expense of the Class Year Study for other Class Year 2015 members.

17. The Commission has previously granted requests for waivers of tariffs in situations including, but not limited to, where: (1) the applicant has been unable to comply with the tariff provision at issue 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.<sup>21</sup> As discussed below, we find that Cassadaga has not shown good cause to waive the NYISO tariff as it has not shown that it has satisfied the foregoing waiver criteria and, therefore, we deny its request for waiver of Attachments S and X of the NYISO OATT.<sup>22</sup>

18. In granting a previous waiver of these provisions of NYISO's OATT, the Commission stated that "we do not intend that NYISO's regulatory milestones should be taken lightly."<sup>23</sup> We reiterate here that we believe that it is important for parties to meet NYISO's regulatory milestones.

19. Cassadaga's waiver request reflects considerable uncertainty as to whether, even with the Commission's grant of a waiver, it would be eligible to participate in the 2015 Class Year and, therefore, does not appear to be limited in scope. In other circumstances, the Commission has granted tariff waivers for limited periods that would result in the inclusion of a project in the requested Class Year. For instance, in *Air Energy, Air Energy TCI, Inc.* (TCI) had received the necessary regulatory approvals five months after the deadline for satisfying NYISO's regulatory milestones. In granting TCI's waiver request, the Commission found that it was "not granting an open-ended waiver, but rather a limited extension of the time allowed to meet the regulatory milestone."<sup>24</sup> However, granting waiver in this instance is complicated by the fact that Cassadaga has not received the necessary regulatory approvals; at this time, Cassadaga has not yet completed even the pre-application requirements for a completed Article 10 application.

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<sup>21</sup> See, e.g., *New York 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); *California Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010).

<sup>22</sup> Cassadaga does not specify the section of Attachment X for which it requests a waiver.

<sup>23</sup> *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172, at P 16 (2013) (*Air Energy*); accord, *Stony Creek Energy LLC*, 131 FERC ¶ 61,059 (2010).

<sup>24</sup> *Air Energy*, 143 FERC ¶ 61,172, at P 16.

Therefore, we cannot determine whether or when Cassadaga will be able to satisfy NYISO's regulatory milestones. At best, Cassadaga estimates that, if it is successful at completing an Article 10 Application, it will not be able to do so until March 31, 2016.<sup>25</sup> In this instance, Cassadaga's requested waiver is for a much longer period of 13 months, which could potentially cross over into the deadline for entry into the next Class Year (2016).

20. Furthermore, Cassadaga's waiver request has the potential to harm third parties, particularly given the uncertainty as to whether and when Cassadaga will be able to satisfy NYISO's regulatory milestones. Should Cassadaga fail to meet the regulatory milestones by March 31, 2016, NYISO would be required to remove the Wind Project from Class Year 2015 after the Class Year analysis would likely be nearly complete, if not already completed. We share NYISO's concern that this could disrupt the Class Year 2015 assessment process and adversely impact other projects in Class Year 2015. As NYISO states, adding or withdrawing a project from a Class Year so far along could require it to: (1) create new base cases; (2) delay the start or require the re-running of Class Year Study analyses; and (3) potentially identify and cost allocate new or different upgrades. Such a disruption could delay the Class Year Study and increase the time and expense of the Class Year Study for other Class Year 2015 members. Thus, Cassadaga has not convinced us that there will be no harm to third parties.

21. In addition, with regard to Cassadaga's concern that the interconnection process changed with the addition of the Article 10 pre-application requirements, we note that the process changed contemporaneously with Cassadaga entering the NYISO queue in July of 2012. As NYISO explains, regulations implementing the revised Article 10 process became effective on July 17, 2012, only two days after Cassadaga entered the NYISO queue. NYISO states that it later proposed tariff revisions explicitly describing how a project subject to Article 10 could satisfy the regulatory milestone, which we note resulted in greater flexibility and did not alter the basic framework established by the regulations implementing the Article 10 process. As NYISO states, these revisions were first posted for stakeholder review on August 2, 2012, which was only 11 days after

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<sup>25</sup> See Request for Waiver at 12.

Cassadaga submitted its interconnection request. Also, as NYISO notes, the OATT requirement of the regulatory milestone to have an application deemed complete has been in the tariff since 2001.<sup>26</sup>

22. Accordingly, we deny Cassadaga's request for waiver of the NYISO OATT.

By direction of the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>26</sup> We note that Cassadaga's parent, EverPower Wind Holdings, Inc., has experience developing wind projects in New York and should therefore be familiar with the market and regulatory processes. *See* Request for Waiver at 2. Cassadaga also argues that no project has been approved under the pre-application process by referencing the status of a fossil-fueled repowering project on Long Island. *See* Request for Waiver at 5. However, as the two projects are significantly different, the example is inapposite.