

155 FERC ¶ 61,005
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 1, 2016

In Reply Refer To:
Dry Lots Wind, LLC
Docket No. ER16-1047-000

Robert M. Rosenthal, Esq.
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54 State Street, 6th Floor
Albany, New York 12207

Dear Mr. Rosenthal:

1. On March 1, 2016, you filed, on behalf of Dry Lots Wind, LLC (Dry Lots), a request for an expedited limited waiver of the regulatory milestone deadline under the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT).¹ Dry Lots states that the waiver would allow it to remain eligible for NYISO's Class Year study process and not be removed from NYISO's interconnection queue. Dry Lots states that the waiver request is tied specifically to pending NYISO tariff changes that would automatically maintain Dry Lots' eligibility in NYISO's Class Year study process. Dry Lots requests an effective date of March 12, 2016. As discussed below, we grant the requested waiver.

2. Dry Lots states that, under the existing tariff, its Large Facility Project (Project)² would become ineligible for the Class Year study process unless the New York State Board on Electric Generation Siting and the Environment (Siting Board) provides it with a notice of complete application under New York State Public Service Law (PSL)

¹ Dry Lots Transmittal Letter at n.2 (citing NYISO OATT, Attachment S, §§ 25.6.2.3.1.1.7, 25.6.2.3.1, 25.6.2.3.2 and NYISO OATT, Standard Large Facility Interconnection Procedures (Attachment X) § 30.3.6).

² Dry Lots describes the Project as a wind energy facility with a nameplate capacity of up to 33 MW that will connect electrically to the National Grid medium voltage transmission line that serves the surrounding communities.

Article 10 by March 12, 2016, which is two years from the date NYISO's Operating Committee determined that the application was complete.

3. Dry Lots contends that its request for waiver is consistent with prior situations in which the Commission has granted a waiver. Dry Lots states that the Commission has granted waivers of tariff provisions where: (1) the petitioner has been unable to comply with the tariff provisions at issue in good faith; (2) the waiver is of limited scope; (3) the waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences such as harming third parties. Dry Lots asserts that all four of these criteria are satisfied here.

4. First, Dry Lots asserts that it has acted in good faith, explaining that its actions to date in completing the Article 10 process demonstrate the seriousness of its efforts (particularly considering the regulatory uncertainties related to that process). Further, Dry Lots notes that NYISO announced that it would soon propose an amendment to Attachment S of the OATT that would enable a project developer to retain its interconnection queue position as long as, within three Class Years, the developer's PSL Article 10 application is deemed complete.³ Dry Lots contends that NYISO staff's pending proposal recognizes that the two year period from approval of the System Reliability Impact Study by NYISO's Operating Committee may not be adequate.

5. Second, Dry Lots asserts that its waiver request is limited in scope because it seeks a narrow, one-time waiver of NYISO's OATT requirement to achieve the regulatory milestone within two years after NYISO's Operating Committee approval of the System Reliability Impact Study. Dry Lots further states that, absent a grant of the waiver, Dry Lots' prospects in developing the Project would be significantly diminished and this could result in the loss of a robust renewable energy resource for the State of New York.

6. Third, Dry Lots argues that its requested waiver would remedy a concrete problem, in that the PSL Article 10⁴ siting process is both lengthy and expensive and the existing timeframe to file a complete application through that process is insufficient.

³ Dry Lots Filing at 2.

⁴ PSL Article 10 – known as the “Power NY Act of 2011” was enacted into law on August 4, 2011. *See* McKinney's Consol. Laws of N.Y., Historical & Statutory Notes to PSL § 160. On July 17, 2012, the Siting Board subsequently promulgated regulations to implement Article 10. The Dry Lots Project is the first project to undergo review under Article 10.

7. Finally, Dry Lots asserts that granting the waiver request will not result in any undesirable consequences. Dry Lots states that, if its request for expedited waiver is accepted, the Project would simply remain eligible for NYISO's Class Year study process.

8. Notice of Dry Lots' filing was published in the *Federal Register*, 81 Fed. Reg. 11,787 (2016), with interventions and protests due on or before March 15, 2016. NYISO filed a timely motion to intervene and comments in support of the waiver request. No protests were filed. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵ NYISO's timely, unopposed motion to intervene serves to make it a party to this proceeding.

9. In its comments, NYISO asserts that it does not oppose Dry Lots' waiver request, noting that the waiver request is consistent with relief that would be accorded to Dry Lots pursuant to the proposed tariff amendments pending in the NYISO stakeholder process. NYISO states that it does not foresee stakeholder objections⁶ and anticipates filing the proposed tariff amendments with the Commission by May 1, 2016. NYISO further agrees with Dry Lots' account of its project status under current tariff provisions and Dry Lots' description of NYISO's proposed tariff amendments affecting its status in the interconnection queue and with respect to Class Year eligibility.

10. As Dry Lots maintains, the Commission has previously granted market participants one-time waivers of tariff provisions in situations where: (1) the applicant was unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) granting the waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁷

11. We find that Dry Lots' waiver request satisfies the criteria the Commission has applied in granting waiver. We find that Dry Lots acted in good faith, having completed many of the required studies in pursuit of approval under PSL Article 10. Second, we find that the requested waiver is limited in scope and is consistent with pending tariff changes that would maintain Dry Lots' eligibility in NYISO's Class Year study process. Third, we find that the waiver will remedy a concrete problem by allowing Dry Lots

⁵ 18 C.F.R. § 385.214 (2015).

⁶ NYISO Comments at 6.

⁷ See, e.g., *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,110, at P 10 (2014); *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,060, at P 12 (2013).

more time to meet its regulatory milestone. Fourth, we find that granting the requested waiver will not lead to undesirable consequences for NYISO or any third parties.⁸

12. Accordingly, we grant Dry Lots' request for a limited waiver of the applicable regulatory milestone effective as of March 12, 2016, as requested.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁸ NYISO Comments at 6-7.