

131 FERC ¶ 61,059
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 22, 2010

In Reply Refer To:
Stony Creek Energy LLC
Docket No. ER10-935-000

The Dax Law Firm, P.C.
54 State Street, Suite 805
Albany, NY 12207

Attention: John W. Dax, Esq., on behalf of Stony Creek Energy LLC

Reference: Request for Limited Tariff Waiver

Dear Mr. Dax:

1. On March 25, 2010, you filed on behalf of Stony Creek Energy LLC (Stony Creek), a subsidiary of Invenergy LLC, a request for waiver of a new requirement¹ of the New York Independent System Operator's (NYISO) Class Year eligibility rules, which state that a Large Facility must notify NYISO by the study start date for the Annual Transmission Reliability Assessment whether the developer elects for its project to enter the Class Year. For good cause shown, the Commission grants the requested waiver to the extent necessary.

2. Stony Creek states that it is the developer of the Stony Creek Wind Farm located in the Town of Orangeville, Wyoming County, New York. Stony Creek further states that, despite having met all of the substantive eligibility requirements to participate in NYISO's Annual Transmission Reliability Assessment,² it was not aware of the Commission's acceptance of NYISO's additional requirement in Attachment X of its

¹ NYISO, FERC Electric Tariff, Original Volume No. 1, Attachment X, Third Revised Sheet No. 780A at section 8.1.

² See NYISO, FERC Electric Tariff, Original Volume No. 1, Attachment S, Seventh Revised Sheet No. 674 *et seq.*

tariff that a Large Facility must also provide notice to NYISO by March 1 of the relevant Class Year.³ Stony Creek did not submit the required notification until March 5, 2010.

3. Specifically, Stony Creek states that it has met all of the eligibility requirements for participation in NYISO's Class Year as set forth in NYISO's OATT, Attachment S, section VI.B.3, which requires that by March 1 of the relevant year (1) a Large Facility have its Interconnection System Reliability Impact Study approved by NYISO's Operating Committee; and (2) state regulators have determined that the Large Facility's environmental application is complete.

4. Stony Creek states that its System Reliability Impact Study was approved by NYISO's Operating Committee on February 26, 2010. Stony Creek also states that its permit application was deemed complete on February 18, 2010, when its Draft Environmental Impact Statement for the Stony Creek Wind Farm was accepted by the Town Board of Orangeville, acting as "lead agency" under New York State's State Environmental Quality Review Act. Stony Creek states that it notified NYISO of its eligibility by emailed letter dated March 5, 2010.

5. However, Stony Creek states that, in addition to meeting the substantive eligibility requirements of Attachment S, a recently proposed amendment to Attachment X also requires that a Large Facility provide notice to NYISO by March 1 of the relevant Class Year. Stony Creek states that, although it was generally aware of the filings NYISO made in Docket Nos. ER10-290 and ER10-573, it was unaware that letter orders issued in these dockets, respectively, on February 17 and 22, 2010, with an effective date of January 17, 2010, for the new notice requirement of Attachment X. It states that these letter orders were issued just at the time Stony Creek was completing the steps required to achieve eligibility for Class Year 2010 and that its representatives were unaware of their issuance. Stony Creek states its belief that NYISO is anxious to start the Class Year 2010, and Stony Creek is equally anxious to be included in that Class Year in order to maintain its project development schedule.

³ On January 8, 2010, in Docket No. ER10-573-000, NYISO filed, *inter alia*, revised tariff sheets Nos. 780 and 780A to modify the generator interconnection process contained in Attachments S and X of NYISO's tariff, which were accepted by unpublished letter order issued February 17, 2010, with the effective date conditioned upon the outcome in Docket No. ER10-290-000. The order in Docket No. ER10-290-000 was issued in an unpublished letter order on February 22, 2010, and the effective date of the tariff sheets revising Attachment X was established as January 17, 2010, pursuant to an unpublished letter order issued in Docket No. ER10-573-001 on April 6, 2010.

6. Notice of Stony Creek's filing was published in the *Federal Register*, with interventions and protests due on or before April 5, 2010. NYISO filed a motion to intervene and comments. On April 15, 2010, the NRG Companies (NRG)⁴ filed an untimely motion to intervene and comments.⁵

7. NYISO states that it takes no position on the merits of Stony Creek's request for a waiver. However, NYISO requests that the Commission issue an order on Stony Creek's waiver request as soon as possible, but no later than April 23, 2010, in order to avoid potential delays to NYISO's Class Year analysis process. NYISO indicates that the relief requested by Stony Creek would result in that project being a member of Class Year 2010, for which the study officially commenced on March 1, 2010.

8. NYISO states that it is moving forward with base case modeling and other activities related to the Class Year 2010 study and that it has issued Interconnection Facilities Study Agreements to all projects that have elected under the applicable tariff requirements to be a member of Class Year 2010, and that these developers are in the process of executing and returning these agreements to NYISO with the required data and deposit. It states that an order issued after April 23, 2010, that would result in adding a new member to the Class Year would potentially disrupt study work already completed and delay the ultimate completion of the Class Year Study.

9. Although not the only basis for a grant of waivers, the Commission has previously granted one-time waivers of tariffs 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.⁶

⁴ The NRG Companies are NRG Power Marketing LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC.

⁵ Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant NRG's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. We note that NRG does not oppose the instant waiver request and only raises an untimely argument regarding its pending rehearing petition in Docket No. EL09-57-001, which we need not address.

⁶ See *ISO New England--EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation, LLC*, 120 FERC ¶ 61,007 (2007).

10. The Commission finds that good cause exists to grant the request for waiver, to the extent necessary. First, Stony Creek's failure to adhere to the recently effective notice requirement to allow Stony Creek's proposed project be included in the Class Year 2010 was simply due to it not being aware of the issuance of the Commission's recent unpublished acceptance of NYISO's additional notice requirement; it was not due to any attempt by Stony Creek to circumvent or otherwise not comply with the requirement. Indeed, the order that establishes the January 17 effective date of the Attachment X revisions clarifying that notice is required by March 1 was not issued until April 6, 2010, almost a month after the March 1 deadline. Second, the waiver request is of limited scope; it will be solely for a one-time waiver of the deadline for the notice requirement for inclusion in the Class Year 2010. Third, grant of waiver will remedy the failure to meet a notice deadline that is preventing Stony Creek's project from being included in the 2010 Class Year. Fourth, because the Commission is acting on the waiver request by April 23, 2010, as urged by NYISO, there appears to be no undesirable consequence that would result from granting of a waiver. Finally, there is no dispute that Stony Creek has met all of the other substantive eligibility requirements of NYISO's OATT in a timely manner for its proposed project to be included in the 2010 Class Year's Annual Transmission Reliability Assessment.

11. Therefore, due to the specific and unique facts presented above, the Commission finds good cause to grant Stony Creek's request for a one-time waiver of the notification requirement of NYISO's Interconnection Study Procedures, to the extent necessary.

The Commission orders:

The request for waiver is hereby granted, to the extent necessary, as discussed above.

By direction of the Commission.

Kimberly D. Bose,
Secretary.