

169 FERC ¶ 61,106
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Silver Lake Solar, LLC

Docket No. ER20-69-000

ORDER GRANTING WAIVER

(Issued November 12, 2019)

1. On October 9, 2019, Silver Lake Solar, LLC (Silver Lake) submitted a request, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ for a one-time, limited waiver of the procedural deadline in Section 30.8.1 of Attachment X and the withdrawal provision in Section 30.3.6 of Attachment X of New York Independent System Operator, Inc.'s (NYISO) Open Access Transmission Tariff (OATT).² Granting waiver would allow NYISO to accept Silver Lake's late payment, thereby allowing Silver Lake's solar energy facility (SLS I) to enter NYISO's 2019 class year study (2019 class year) and maintain its currently assigned interconnection queue position. As discussed below, we grant Silver Lake's waiver request.

I. Background

2. Under Section 30.8.1 of NYISO's OATT, for an eligible class year project to enter the upcoming NYISO class year, NYISO must receive an executed class year interconnection facilities study agreement (FSA) within thirty calendar days after the developer's receipt of the FSA. Additionally, the class year project must deliver to NYISO:

(1) the required technical data; (2) the class year project's interconnection service evaluation election; (3) for large facilities not yet in-service, an updated proposed in-service date, an updated proposed initial synchronization date and an updated proposed commercial operation date (subject to the

¹ 18 C.F.R. § 385.207(a)(5) (2019).

² NYISO, NYISO Tariffs, NYISO OATT, 30.8 OATT Att. X Interconnection Facilities Study (4.0.0), § 30.8.1; NYISO, NYISO Tariffs, NYISO OATT, 30.3 Att. X Interconnection Requests (10.0.0), § 30.3.6.

ten-year limitation set forth in Section 30.3.1); (4) a study deposit of \$100,000, or \$50,000 if requesting only Capacity Resource Interconnection Service; and (5) if the developer has not satisfied the applicable regulatory milestone described in Section 25.6.2.3.1.1 of Attachment S to the NYISO OATT, a two-part deposit consisting of \$100,000 plus \$3,000/MW deposit as required by Section 25.6.2.3.1(ii)(2).³

3. Under Section 30.3.6 of NYISO's OATT, "if the developer fails to adhere to all requirements of . . . large facility interconnection procedures, . . . [NY]ISO shall deem the interconnection request to be withdrawn and shall provide written notice to the developer of the deemed withdrawal and an explanation of the reasons for such deemed withdrawal."⁴ Section 30.3.6 of NYISO's OATT further provides that "[w]ithdrawal shall result in the loss of the developer's queue position."⁵

II. Waiver Request

4. Silver Lake states that it is a Delaware limited liability company wholly-owned by Geronimo Energy, LLC that is seeking to construct, own, and operate a 24.99 MW photovoltaic solar electric generating station, located in Castile, New York, referred to herein as SLS I.⁶ Silver Lake states that SLS I holds NYISO interconnection queue position number 629, and will be connected to New York State Electric and Gas Corporation's system at the 34.5 kV South Perry Substation in Castile, New York.⁷ Silver Lake explains that SLS I initiated NYISO's large facility interconnection procedures in 2017. In addition, according to Silver Lake, the New York State Energy Research & Development Authority (NYSERDA) awarded SLS I a 20-year renewable

³ NYISO, NYISO Tariffs, NYISO OATT, 30.8 OATT Att. X Interconnection Facilities Study (4.0.0), § 30.8.1.

⁴ NYISO, NYISO Tariffs, NYISO OATT, 30.3 OATT Att. X Interconnection Requests (10.0.0), § 30.3.6.

⁵ *Id.*

⁶ Silver Lake Filing at 3.

⁷ *Id.*

energy credit contract pursuant to NYSERDA's 2018 large scale renewable competitive procurement process.⁸

5. Silver Lake explains that projects intending to be included in NYISO's 2019 class year, like SLS I, had to notify NYISO of their intent to enter the class year no later than August 16, 2019. Silver Lake states that NYISO acknowledged SLS I's request to enter the 2019 class year on August 12, 2019.⁹ Silver Lake states that it received its FSA from NYISO on August 16, 2019, and that NYISO directed Silver Lake to submit all application materials by September 16, 2019. This submission was to have included payment of: (1) a \$100,000 FSA study deposit; and (2) an additional \$100,000 deposit plus \$3,000/MW for the nameplate capability of the facility in lieu of reaching the requisite regulatory milestone described in Section 25.6.2.3.1.1 of Attachment S to the NYISO OATT.¹⁰ Silver Lake states that it submitted to NYISO all application materials, including what it believed to be a correct payment of \$175,000, on September 9, 2019.¹¹

6. Silver Lake explains that on September 20, 2019, NYISO notified Silver Lake that its application required an additional \$100,000 payment. Silver Lake states that it immediately wired the outstanding fee to NYISO, which accepted the funds.¹² Nevertheless, Silver Lake states that on October 2, 2019, NYISO notified Silver Lake that the failure to submit sufficient payment by the September 16, 2019, deadline meant that SLS I would not be permitted to participate in the 2019 class year and would lose its interconnection queue position pursuant to Section 30.3.6 of NYISO's OATT.¹³

7. Silver Lake requests a waiver of the procedural deadline in Section 30.8.1 of Attachment X of NYISO's OATT to allow NYISO to accept Silver Lake's late payment and to allow NYISO to grant Silver Lake's request for SLS I to participate

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ *Id.*; *see also* NYISO, NYISO Tariffs, NYISO OATT, 30.8 OATT Att. X Interconnection Facilities Study (4.0.0), § 30.8.1; NYISO, NYISO Tariffs, NYISO OATT, 25.6 OATT Att. S Cost Allocation Methodology for ERIS (7.0.0), § 25.6.2.3.1.

¹¹ Silver Lake Filing at 4.

¹² *Id.* at 5.

¹³ *Id.*

in the 2019 class year.¹⁴ Silver Lake also requests waiver of the withdrawal provision in Section 30.3.6 of Attachment X of NYISO's OATT so that SLS I is able to retain its interconnection queue position. Silver Lake asks that the Commission issue an order granting the waiver request by November 10, 2019, to avoid causing any delay in the NYISO class year 2019 process.¹⁵

8. Silver Lake argues that if SLS I does not retain its interconnection queue position, the project will not be built as a result of the additional costs of repeating the interconnection process, renewing expired permitting studies, and the anticipated loss of tax incentives.¹⁶ Silver Lake also notes that it has made substantial investment in SLS I, both on its development over the past several years and on NYSERDA renewable energy credit contract security payments, and plans to reach its regulatory milestone in 2020 and enter commercial operation in 2021.¹⁷

9. Silver Lake argues that the Commission has granted similar waivers pertaining to milestone deadlines in NYISO and other regional transmission organization interconnection procedures, and where: (1) the underlying error was made 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.¹⁸

10. Silver Lake argues that its waiver request satisfies the Commission's waiver criteria and is consistent with Commission precedent.¹⁹ First, Silver Lake asserts that it acted in good faith. Silver Lake states that it inadvertently failed to submit a portion of the payment required by the September 16, 2019, deadline, in part, because: (1) Silver Lake misunderstood how to compute the required payment amount; and (2) NYISO notified Silver Lake of the deficient payment after the 2019 class year deadline had

¹⁴ *Id.* at 8.

¹⁵ *Id.*

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 6-7 (citing *Lincoln Clean Energy, LLC*, 169 FERC ¶ 61,016 (2019); *Spruance Genco, LLC*, 167 FERC ¶ 61,211 (2019); *Bayonne Energy Center, LLC*, 160 FERC ¶ 62,060 (2017); *NRG Energy, Inc.*, 160 FERC ¶ 62,100 (2017); *Cricket Valley Energy Center, LLC*, 160 FERC ¶ 62,101 (2017); *Stony Creek Energy LLC*, 131 FERC ¶ 61,059 (2010); *Innovative Energy Sys., LLC*, 131 FERC ¶ 61,066 (2010)).

¹⁹ *Id.* at 7.

already passed.²⁰ Silver Lake states that following the notification from NYISO on September 20, 2019, that the required payment for SLS I was deficient, Silver Lake immediately remitted the additional funds to NYISO.²¹ Silver Lake argues that this action substantiates Silver Lake's position that it was acting in good faith to comply with NYISO's 2019 class year requirements.²²

11. Second, Silver Lake argues that the waiver request is limited in scope because Silver Lake requests a one-time, limited waiver of Sections 30.8.1 and 30.3.6 of Attachment X of NYISO's OATT to allow NYISO to allow SLS I to participate in the 2019 class year and maintain its interconnection queue position.²³

12. Third, Silver Lake contends that granting the waiver request would remedy a concrete problem. Silver Lake states that the waiver would allow SLS I to participate in the 2019 class year and to maintain its existing interconnection queue position.²⁴ Silver Lake asserts that, without a waiver, Silver Lake will lose substantial investment and commitment of resources in SLS I.²⁵ According to Silver Lake, the waiver would help ensure that SLS I can participate in the 2019 class year and continue to push toward achieving commercial operation in 2021.²⁶ Silver Lake also explains that the waiver would allow SLS I to fulfill its renewable energy credit contract obligations with NYSERDA.²⁷

13. Fourth, Silver Lake asserts that granting the waiver request will not result in any adverse consequences. Silver Lake argues that, because the 2019 class year is in an early stage, there will be no prejudice to any party if Silver Lake's good faith delay in supplementing its payment to NYISO is permitted.²⁸ In support of its argument, Silver

²⁰ *Id.*

²¹ *Id.* at 7-8.

²² *Id.* at 8.

²³ *Id.* at 2, 8.

²⁴ *Id.* at 8.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

Lake notes that NYISO has not yet identified the projects participating in the 2019 class year.

III. Notice of Filing and Responsive Pleadings

14. Notice of Silver Lake's filing was published in the *Federal Register*, 84 Fed. Reg. 55,569 (2019), with interventions and protests due on or before October 23, 2019. NYISO filed a timely motion to intervene and comments. No protests were filed.

15. NYISO states that it does not oppose Silver Lake's waiver request.²⁹ NYISO states that it does not dispute that Silver Lake acted in good faith when it failed to provide full payment to NYISO and states that Silver Lake's failure "appear[ed] inadvertent."³⁰ NYISO also does not dispute that Silver Lake corrected its error almost immediately upon learning of the deficient payment.³¹ NYISO affirms that it is not aware of any harms that would result to other 2019 class year members or future class year members if the Commission grants Silver Lake's waiver request by November 12, 2019.³² Finally, NYISO requests that the Commission issue an order on Silver Lake's waiver request as soon as possible, but no later than November 12, 2019, in order to avoid potential delays to the class year process.³³

IV. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³⁴ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

²⁹ NYISO Comments at 4.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 4-5.

³³ *Id.* at 5.

³⁴ 18 C.F.R. § 385.214 (2019).

B. Substantive Matters

17. We grant Silver Lake's waiver request. The Commission has previously granted waiver of tariff provisions where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.³⁵

18. We find that the circumstances of Silver Lake's waiver request satisfy these criteria. First, we find that the error made by Silver Lake in failing to timely submit the required payment was made in good faith. Silver Lake submitted its executed FSA a week prior to the deadline. Silver Lake understood the need to make the required payment by the deadline and took measures to ensure that the required deposits would be forwarded to NYISO in a timely manner. Nevertheless, Silver Lake's misunderstanding of the total payment required, combined with the fact that it did not receive notice of the deficient payment until after the deadline passed, resulted in the deposit not being timely paid. Silver Lake corrected the error immediately upon learning of the mistake. Second, we find that Silver Lake's waiver request is limited in scope, as it is a one-time waiver of a procedural deadline relating to only one of several interrelated requirements that Silver Lake otherwise met, including submitting contracts and data that clearly indicate Silver Lake's intent to proceed. Third, we find that granting the waiver request addresses a concrete problem because it will enable Silver Lake to proceed with SLS I's interconnection request in the 2019 class year and maintain SLS I's interconnection queue position. Finally, we find that granting the waiver request does not have undesirable consequences, such as harming third parties. The other queue positions and any third-party interests will be in the same position as they would have been had SLS I moved forward and not been removed from the queue. In addition, NYISO states that granting waiver by November 12, 2019 would likely not cause any delay in the 2019 class year.

³⁵ See, e.g., *Black Rock Wind Force, LLC*, 168 FERC ¶ 61,009, at P 16 (2019); *New Brunswick Energy Mktg. Corp.*, 167 FERC ¶ 61,252, at P 12 (2019); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

The Commission orders:

Silver Lake's waiver request is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.