

February 6th, 2023

Thinh Nguyen
New York Independent System Operator
10 Krey Boulevard
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Subject: NYISO's 2023 Project - Interconnection Process Reform – Suggested Tariff Modifications

Dear Thinh,

As the NYISO contemplates interconnection process reform in 2023, EDF Renewables has prepared two suggested modifications to consider:

- Suggestion #1: Commercial Operation Date Requirements – extend COD timeline to align with other regulatory requirements, to accommodate Covid-19 related supply chain disruptions, and extended permitting & construction timelines for complex projects.
- Suggestion #2: Treatment of Project Cost Allocations – require cost allocations from the Facility Study & Class Year to be a not-to-exceed amount

We are thankful for the opportunity to provide our viewpoint on improvement areas and to participate in this process.

Our aim is to improve the ability of independent power producers and developers to meet New York's renewable energy mandates set forth in the Climate Leadership and Community Protection Act (CLCPA) while maintaining a safe, reliable, and sustainable electric system in the State.

Please feel free to reach out to discuss.

Thank you



Jack B Honor
Director of Development
Grid Scale Power – New York
EDF Renewables

Suggestion #1: Commercial Operation Date Requirements

Pursuant to New York Independent System Operator (“NYISO”) Open Access Transmission Tariff (“OATT”) Attachment X, a project must achieve its Commercial Operation Date (“COD”) within four (4) years from completion of the applicable Class Year. If a Developer does not meet this deadline, it is considered a Material Modification to the Project.

However, the four-year deadline does not provide sufficient time for a developer to achieve COD and the NYISO should consider increasing this period as part of its 2023 Interconnection Queue Reform process.

Several factors can lead to delays in achieving COD including, but not limited to, the following:

- Delays in executing an interconnection agreement: Generally, an IA is tendered to the Developer around 30 days after completion of the class year. Attachment X contemplates that the Developer and Transmission Owner will submit a negotiated IA to the NYISO within six (6) months of its initial tender. The negotiation process, however, often exceeds six months, sometimes taking as much as two years to complete.
- Delays in constructing interconnection facilities: It can take the Transmission Owner a substantial amount of time to construct interconnection facilities. In at least one example, a Transmission Owner advised that construction of a three-ring breaker bus would exceed two years.
- Delays in obtaining equipment: Certain equipment necessary to construct a generating facility have long lead times. Transformers, for example, can take 18-24 months from order to delivery. Long lead times can be tied to the complexity of the equipment manufacturing process but also result from supply chain issues caused by Covid-19. Demand for solar facility components continues to grow and manufacturers and importers are unable to meet this demand for various reasons including workforce issues, component shortages and international tariffs.

The four-year deadline is also inconsistent with construction timeframes under the regulations adopted by the Office of Renewable Energy Siting (“ORES”). In seeming recognition of the inevitable delays in construction, ORES drafted regulations providing a reasonable period of time to reach COD. Under ORES’ rules, a siting permit will automatically expire if the facility does not achieve commencement of commercial operation within seven (7) years from the date of issuance.

Attachment X, on the other hand, essentially provides approximately half this time for a project to reach COD. Attachment X requires that a project reach its applicable regulatory milestone prior to entering a class year study which, for a project reviewed under § 94-c of the Executive Law, is a determination by ORES that an application is complete. Typically, it takes approximately two years for a class year study to be completed. Even if a developer receives a final permit from ORES while the class year studies are being conducted, a developer is not likely to spend significant amounts of money towards project development until the class year cost allocations are available. An extraordinary cost allocation could lead to project termination. Typically, final project design and construction commences in earnest after the class year closes and security posted. As discussed above, any delays in IA negotiation, interconnection construction and facility component delivery will not allow for COD in such a short period of time.

Developers appreciate the NYISO's desire for projects to have satisfied the regulatory milestone before entering the class year study. However, in many cases, various factors preclude satisfaction of this prerequisite requiring that a Developer, as an alternative to satisfying the regulatory milestone prior to commencement of the class year study, to post security. Attachment X then requires that an application be deemed complete by ORES within six months of an IA being tendered to the Developer. Under these circumstances, satisfying the four-year COD becomes increasingly difficult. If a completeness determination is obtained at this point, a Developer then, after receiving a final siting permit one year later, has approximately 2.5 years to reach COD – a significantly shorter period than contemplated by ORES' regulations.

Based on the above, the four-year deadline in Attachment X should be extended. A reasonable, technology neutral deadline would be seven (7) years from the date the class year closes.

Note that the above contemplates construction of land-based generation. Construction of offshore wind generation will undoubtedly require even longer periods to complete environmental review and construction. For example, for an offshore wind facility, the applicable regulatory milestone is a construction and operations plan ("COP") deemed sufficient by the Bureau of Ocean Energy Management ("BOEM") for which BOEM has issued a Notice of Intent to prepare a Draft Environmental Impact Statement. If a developer pays the deposit to enter a class year study, in lieu of satisfying this regulatory milestone, satisfaction of the milestone would not be required until six months after the IA is tendered. Assuming BOEM initiates environmental review of the COP at this time, approval could be expected approximately two years later. Once the COP is approved, it could take five years to construct the facility and achieve COD. Accordingly, a seven-year deadline for COD from the close of the class year would be more realistic for an offshore wind facility.

It is understood that the NYISO may extend the four-year deadline to achieve COD. Under Attachment X, a Developer may request an extension of its COD, without constituting a Material Modification only if: (1) the Developer has an executed IA, and (2) the Developer demonstrates that it has made reasonable progress against milestones set forth in the IA. However, as discussed above, Attachment X essentially provides as little as 2.5 years after a final siting permit is issued to achieve COD. Inevitable delays will occur allowing a project to achieve a few milestones during this period. If the NYISO does not consider achievement of a few milestones as evidence of progress "reasonable," a Developer is faced with project termination after spending years of development and significant sums of money.

Attachment S already contains sufficient safeguards to prevent Developers from maintaining queue positions without progressing toward project completion. Once the class year is closed, Developers are required to post significant, non-refundable security towards identified system upgrades. This requirement provides a sufficient deterrent to Developers to maintain queue positions for projects unlikely to proceed. It is not necessary for a project to expend significant additional funds toward satisfaction of regulatory milestones simply as a means to deter projects from occupying queue positions.

Presented with such uncertainty, Developers may not seek to site projects in New York and the goals of the Climate Leadership and Community Protection Act will not be achieved.

Suggestion #2: Treatment of Project Cost Allocations

According to the New York Independent System Operator's ("NYISO") Open Access Transmission Tariff ("OATT"), Attachment S, each Developer must notify the NYISO, in writing and via electronic mail, whether the Developer accepts its Project Cost Allocation reported to it by the NYISO for the Developer's Class Year Project. Once all Developers have accepted their respective cost allocations, each Developer must signify its willingness to pay the Transmission Owner for its share of the required System Upgrade Facilities ("SUF") and System Deliverability Upgrades ("SDU") that it accepted by paying cash or posting Security for the full amount of its respective Project Cost Allocation within five (5) business days.

Project Cost Allocations, however, are not fixed, rather just an estimate. According to the Standard Large Generator Interconnection Agreement ("LGIA"), "[w]ithin six months after completion of the construction of the Connecting Transmission Owner's Attachment Facilities and the [SUFs] and [SDUs], Connecting Transmission Owner shall provide an invoice of the final cost of the construction of the Connecting Transmission Owner's Attachment Facilities and the [SUFs] and [SDUs], determined in accordance with Attachment S to the ISO OATT, and shall set forth such costs in sufficient detail to enable Developer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates."

Developers have experienced significant cost over-runs from the Transmission Owners resulting from the interconnection build process. Based on the LGIA, however, a Developer may not know until after all interconnection facilities are constructed, and sometimes well after a project commences commercial operation, whether there are, and the extent of, cost deviations from the estimated Project Cost Allocation. Compounding this issue, and often the case, is that there is no transparency during the interconnection build process that cost overruns are occurring.

To remedy this issue, Project Cost Allocations should be provided to Developers as a "not to exceed" amount. Whether a project is economically viable often depends on a very thin margin. Developers must already commit substantial non-refundable security to cover Project Cost allocations and reliance on achieving commercial operation at these projected costs allows a Developer to determine whether a Project will go forward. If final costs significantly exceed estimated Project Cost Allocations, a project may no longer be economically viable. The Developer may not learn this, however, because, as discussed above, final costs may not be known until after a project commences commercial operation.

Moreover, Transmission owners have no incentive to contain costs. If a Project Cost Allocations were fixed, Transmission Owners would not be allowed to recoup cost overruns from Developers thereby incentivizing Transmission Owners to complete work at an amount less than or equal to the estimated Project Cost Allocation.

For these reasons, the NYISO should revise OATT Attachment S and the LGIA to incorporate provisions stating that Project Cost Allocations shall be a not to exceed amount.