

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Erie Power, LLC

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Docket No. ER14-__-000

**REQUEST OF ERIE POWER, LLC
FOR LIMITED TARIFF WAIVER, EXPEDITED CONSIDERATION AND
COMMISSION ACTION BY JULY 15, 2014**

Pursuant to Rule 207(a)(5) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),¹ Erie Power, LLC (“Erie Power”) respectfully requests that the Commission waive the provisions in: (1) Section 3.3.4 of the NYISO Transmission Expansion and Interconnection Manual (“TEI Manual”), which states that a new Interconnection Request is required for a facility that intends to reactivate if more than three years have passed since its date of deactivation; and (2) Section 25.9.3.1 of Attachment S of the New York Independent System Operator Inc.’s (“NYISO”) Open Access Transmission Tariff (hereinafter the “Tariff”) such that Erie Power’s unmodified 80 MW cogeneration plant in Erie, Pennsylvania (“North East Cogeneration Plant” or “NECP”) may be reinstated as an existing facility, inclusive of its *Energy Resource Interconnection Service* (“ERIS”) and *Capacity Resource Interconnection Service* (“CRIS”) rights (“Waiver Request”).² Granting this Waiver Request will facilitate Erie Power’s ability to return NECP to the NYISO markets as an Energy and Capacity Resource as quickly as possible.³ It is anticipated that NECP will reactivate by January 1, 2015, and will participate as an Energy and Capacity Resource during the 2014/2015 Winter Capability Period. However, given the potential for delays outside of Erie Power’s control, Erie Power is seeking a waiver in order to be treated as an existing facility with retention of its CRIS and ERIS rights until the end of the 2014/2015 Winter Capability Period (*i.e.* April 30, 2015).

Erie Power respectfully submits that granting its requested waiver will not adversely

¹ 18 C.F.R. § 385.207(a)(5) (2013).

² To the extent required, Erie Power seeks a waiver of Section 30.3.3.1 of Attachment X to the NYISO Tariff regarding the requirements to initiate an Interconnection Request. Erie Power’s understanding is that if it receives a waiver from the requirement to initiate an Interconnection Request, in conjunction with a non-materiality finding by NYISO regarding changes to NECP discussed herein, NECP will not be required to participate in, or otherwise complete the steps associated with the interconnection study process (*i.e.*, Feasibility Study, System Reliability Impact Study, Class Year Interconnection Study). Erie Power submitted a request to the NYISO to make a formal materiality determination (“Materiality Request”) per its procedures on May 13, 2014. The Materiality Request is appended at Attachment A. NYISO will begin its process to review the Materiality Request if the instant Waiver Request is granted, and NECP is reinstated as an existing facility. The relief requested herein is not seeking to override or circumvent the NYISO’s authority to make a materiality determination independent of the Commission’s determination on the waiver request made herein.

³ If the requested waiver is granted, Erie Power intends to enter into a bi-lateral interconnection agreement with National Grid.

impact system reliability, disturb NYISO's energy and capacity markets, or otherwise harm third parties, including NYISO's market participants. Erie Power requests that the Commission grant its Waiver Request as the Commission has done for similar waivers in the past regarding tariff deadlines.⁴

In order to avoid any delay in reactivating NECP, and to allow NECP to participate in the 2014/15 Winter Capability Period as an Energy and Capacity Resource, Erie Power respectfully requests expedited treatment and a shortened comment period, which would allow the Commission to issue an order granting this requested waiver on or before July 15, 2014.

I. Communications

All communications and service with regard to this Waiver Request should be directed to the following:

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II. Background

Erie Power intends to reactivate NECP as a baseload power facility without any material modifications to the facility itself or its interconnection at South Ripley PTID 23901 ("S. Ripley"). Erie Power purchased NECP in early 2014. NECP was deactivated in November 2010. There have been no known material changes to NECP, or the interconnection facility since it was last in service in November 2010, and there have been no interconnections to the S. Ripley interconnection facility since NECP was deactivated in 2010. Erie Power seeks to return

⁴ *Dunkirk Power LLC*, 147 FERC ¶ 61,146 (2014) (Commission grants waiver of three-year reactivation deadline for deactivated generation facilities where no third parties would be harmed); *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 (2013) (Commission grants waiver of two-year deadline for regulatory milestone in NYISO, despite NYISO concerns, because failure to meet the deadline was not due to a lack of diligence by the petitioner, and as stated by the Commission, ". . . granting the waiver will not harm the other members of the Class Year or cause undue administrative hardship for NYISO."); *Demand Response Partners*, 140 FERC ¶ 61,093 (2012) (Commission grants waiver of reporting data deadline in NYISO due to good faith misunderstanding on using reporting software in order to allow petitioners to fully participate in the next auction despite some administrative hardship for NYISO); *Stony Creek Energy, LLC* 131 FERC ¶ 61,059 (2010) (Commission grants waiver of notice deadline in NYISO for entering into relevant class year); *American Municipal Power Inc.*, 140 FERC ¶ 61,102 (2012) (Commission grants extension of deadline for submission of information for interconnection request in PJM because deadline was missed due to inability to discuss concerns regarding estimates with PJM); *Beaver Run Solar Farm, LLC*, 139 FERC ¶ 61,146 (2012) (Commission grants waiver of deadline in PJM for returning study agreement and deposit and reinstates queue position when agreement was not returned because it contained incorrect information which could not be timely corrected); *Hudson Transmission Partners, LLC*, 131 FERC ¶ 61,157 (2010) (Commission grants limited waiver of 120-day deferred security deadline in PJM where extension of deadline was needed due to actions of third parties).

NECP to its November 2010 operational state without any changes to its operational characteristics. Under the NYISO Tariff and TEI Manual, facilities' ERIS and CRIS rights terminate three years after deactivation. Thus, as of November 2013, in order to restore NECP's ERIS & CRIS rights, NECP is required to submit an Interconnection Request under Attachment X to the NYISO Tariff to resume its status as an Energy and Capacity Resource. As there have been no significant changes to NECP, or its interconnection facility, Erie Power, on behalf of NECP, is seeking a waiver from the tariff and manual provisions discussed below, and reinstatement as an Energy and Capacity Resource with a commercial operation date on or before April 30, 2015.⁵

A. Relevant Tariff and TEI Manual Sections

Erie Power is seeking reinstatement of NECP as an existing Energy and Capacity Resource, and is thus requesting a waiver of Section 25.9.3.1 of Attachment S to the NYISO Tariff and Section 3.3.4.A.3 of the TEI Manual.

Section 25.9.3.1 of Attachment S to the NYISO Tariff covers the standard for determining when a facility is deactivated with respect to retention of CRIS rights, describes how it can retain its CRIS rights after deactivation, and, in turn, explains how a facility can lose its CRIS rights under the NYISO Tariff. The section states, “. . . a facility becomes deactivated on the last day of the month during which (i) it ceases to offer capacity into NYISO capacity auctions, or (ii) it ceases to be registered as a Capacity Resource for a Load Serving Entity through a bilateral transaction(s) or self-supply arrangement.” Section 25.9.3.1 goes on to state that “[i]n the case of a deactivation, CRIS status at the capacity level eligible for CRIS found deliverable terminates three years after deactivation unless the deactivated Large Facility or Small Generating Facility takes one of the following actions before the end of the three-year period: (1) returns to service and participation in NYISO capacity auctions or bilateral transactions”⁶

The TEI Manual adds that “[i]f a previously existing facility intends to reactivate, the facility will be considered an ‘existing facility’ requiring a new Interconnection Request if three (3) years or more have passed from the date listed in the Gold Book as the retirement date for such facility. Reactivation of a previously existing facility before such three (3) year time period has passed will not be considered a new interconnection requiring a new Interconnection Request if the facility and its interconnection to the NYS Transmission System are intact and have not undergone any material modifications since the facility was last active.”⁷

As discussed below, waiver of the above Tariff and Manual sections is appropriate in this instance.

⁵ While Erie Power anticipates it will reactivate before April 30, 2015, and that the relief requested herein will be sufficient to complete reactivation, it reserves the right to seek a further extension for good cause shown.

⁶ NYISO Tariffs, OATT, Attachment S § 25.9.3.1.

⁷ TEI Manual § 3.3.4.A.3, Ver. 2 (2012).

B. Status of NECP as a Market Resource

NECP was last mentioned in the 2010 Gold Book, where NECP's energy and capacity resource statistics were reported as follows:

- Nameplate rating – 88.2 MW;
- CRIS Rights – 82 MW;
- Summer capability⁸ – 79.4 MW; and
- Winter capability – 88 MW.⁹

NECP's interconnection point is within NYISO, and yet, NECP, located in PA, has access to gas resources outside of New York State. As market conditions allow, Erie Power will resume acquiring its natural gas supply from local resources. NECP intends to use the same plant operator that it used prior to November 2010.

NECP is interconnected in Zone A. According to the 2013 Gold Book, various facilities with a collective nameplate capacity of nearly 600 MW have been retired¹⁰ in Zone A between 2012 and 2013. Specifically:¹¹

Facility	Nameplate Capacity
Niagara Bio Generator	56 MW
Dunkirk 1	100 MW
Dunkirk 3	217.6 MW
Dunkirk 4	217.6 MW

Further, Dunkirk 2 (100 MW) is scheduled to be retired on 6/1/15¹² and there are currently no baseload facilities in the Interconnection Queue in Zone A.¹³

Erie Power anticipates that NECP will have a Commercial Operation Date of January 1, 2015. Erie Power has every incentive to complete reactivation by January 1, 2015. Inevitably, however, despite Erie Power's best efforts, issues may arise that would delay the reactivation of NECP beyond January 1, 2015. Such delay may be caused by obtaining and installing the

⁸ "Summer 2010 capability reflects the most recent unadjusted DMNC values. DMNC stands for Dependable Maximum Net Generating Capability." *2010 Load and Capacity Data: A Report by the New York Independent System Operator*, ("2010 Gold Book"), P. 52.

⁹ *Id.* at P. 33.

¹⁰ The term "retirement", as used in the *2013 Load & Capacity Data, A Report by the NYISO System Operator* ("2013 Gold Book"), is defined per NYPSC Order in Case 05-E-0889, footnote 1: "The Instituting Order defined "retirements" to collectively include shut-downs, abandonments, mothballing, and other circumstances where a generating unit is taken out of service for a substantial period of time, excluding scheduled maintenance and forced outages."

¹¹ *Id.* at P. 60.

¹² *Id.*

¹³ *Id.* at P. 57. The only facilities coming online in Zone A in 2015 are intermittent power supply (wind turbines). Further, intermittent power supply is deemed more reliable when coupled with natural gas facilities.

replacement transformers and breakers, environmental approvals, etc. The potential for such delays is beyond Erie Power's control, and for that reason, Erie Power requests a waiver to become operational until April 30, 2015.

III. Request for Waiver

FERC has consistently granted tariff waiver requests when the following four factors are present: 1) the entity seeking the waiver acted in good faith; 2) the waiver is of a limited scope; 3) a concrete problem needs to be remedied; and 4) the waiver will not have undesirable consequences, such as harming third parties.¹⁴ Erie Power meets this standard and as discussed below, good cause exists for the Commission to grant its Waiver Request.

A. In Seeking Waiver, Erie Power Has Acted in Good Faith

Erie Power was unaware NECP was deactivated outside of the three-year reactivation window when it first learned of the opportunity to purchase it in late 2013. Upon learning of the opportunity to purchase NECP, Erie Power worked diligently and expeditiously to establish Site Control,¹⁵ and take other requisite steps toward reactivation. Erie Power could not establish Site Control prior to November 2013.¹⁶ Erie Power neither intentionally nor purposefully failed to comply with the NYISO tariff obligations.¹⁷ Thus, Erie Power respectfully submits that it has acted in good faith.

B. Erie Power's Circumstances are Unique & Waiver is of Limited Scope

Erie Power only requests that NECP be reinstated as an existing facility. Granting a waiver to NECP will not create a precedent for other facilities, as other mothballed facilities are unlikely to match NECP's unique set of circumstances. There has been no change to NECP or its interconnection plans from the configuration, or status, since the November 2013 deadline expired. Further, Erie Power intends to bring NECP back on-line *without any material changes* from when the unit was last operational in November 2010:

¹⁴ *New York Independent System Operator, Inc.*, 145 FERC ¶ 61,019, at P 7 (2013), *citing*, *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *New York Independent System Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012); *PJM Interconnection, LLC*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO New England, Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *accord ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

¹⁵ Site Control is defined under NYISO Tariffs, OATT, Attachment X § 30.1 as, "documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Large Generating Facility or Merchant Transmission Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Developer and the entity having the right to sell, lease or grant Developer the right to possess or occupy a site for such purpose."

¹⁶ In *Demand Response Partners*, *supra* note 4, at P 14, FERC granted a waiver due to a good faith misunderstanding on using relatively new software. Similarly in this instance, Erie Power's misunderstanding on the timeframe to reactivate NECP was made in good faith.

¹⁷ FERC has previously granted a waiver in an instance where a good faith error was made in the timing of compliance obligations, *see Air Energy TCI, Inc.*, *supra* note 4.

- There are no changes being made to Erie Power's equipment.¹⁸
- There have been no modifications to date, or planned, that will change NECP's fuel source, nameplate capacity, or the electrical characteristics of NECP.
- There are no anticipated changes that will affect NECP's interconnection to S. Ripley as there has been no change to S. Ripley's electrical interconnection.

C. Granting a Waiver Will Remedy a Concrete Problem

Despite NECP's expectation to become operational by January 1, 2015, absent the waiver, NECP will be unable to serve as an Energy and Capacity Resource in the 2014/2015 Winter Capability Period. The cost to reactivate without the waiver is extraordinarily difficult to determine given the unknown time and cost to participate in, and complete, the interconnection study process.

Since NECP was deactivated in 2010, NECP has remained unchanged, will reactivate without any material change, and will interconnect with a transmission facility that has not received any interconnections. As the timeframes on interconnections are often delayed or open-ended, a waiver would provide Erie Power with the time frame and financial certainty that comes with the assurance that NECP will be reinstated as an existing facility. Thus, granting the waiver will resolve NECP's concrete problem allowing Erie Power to be able to move forward with reactivating NECP during the 2014/2015 Winter Capability Period.

D. Granting a Waiver Will Not Harm Third Parties

Finally, and perhaps most importantly, granting a waiver will not harm third parties. Reinstating NECP as an Energy and Capacity Resource will not delay interconnection by any other parties in the interconnection queue.¹⁹ This waiver will not disrupt generation interconnection or transmission service queues. There are currently five interconnection requests with proposed interconnection dates in 2015 pending in Zone A – and none of those facilities interconnect at S. Ripley. Further, granting the waiver will not cause NYISO any administrative hardship or incur additional costs.²⁰ As stated above, Erie Power submits that this waiver will neither disrupt the market, nor adversely impact any market participant.

¹⁸ The only modification required from its present day condition is replacement of the Facility's transformers and breakers that were previously sold. The new transformers and breakers will be materially similar to the ones that were sold.

¹⁹ *Dunkirk Power LLC*, *supra* note 4, at P 14. In approving Dunkirk's waiver request, the Commission highlighted that "[g]ranting this waiver will not harm third parties, since no generator in the existing interconnection queue is seeking to use the physical points of interconnection at the Dunkirk Units 3 and 4." Similarly, no third parties will be harmed by granting the instant Waiver Request as there are no third parties seeking to interconnect at S. Ripley.

²⁰ See, *Air Energy TCI, Inc.*, *supra* note 4, at P 16. In approving TCI's waiver request to extend its timeline on completing an Environmental Impact Study, FERC noted that NYISO had not yet begun the interconnection study for that year and that in this vein, granting the waiver would not cause any administrative hardship for NYSIO. As stated above, similarly, no third parties will be affected and, in fact, NYISO's administrative burden will be relieved if this waiver is granted.

IV. Request for Shortened Notice Period and Expedited Review

In order for NECP to participate in the 2014/2015 Winter capability Period, NECP will need to obtain certainty with respect to the time frame and cost associated with reactivating as quickly as possible. Such certainty will be achieved if the instant Waiver Request is granted, and NECP is reinstated as an existing facility

Simultaneously, if Erie Power's Waiver Request is not granted, Erie Power will be required to re-apply to the NYISO generator interconnection queue in order to re-power and interconnect NECP. If the Commission denies this Waiver Request, Erie Power desires to begin the interconnection process as soon as possible.

For the reasons discussed above, Erie Power respectfully requests that the Commission issue an order granting its Waiver Request on or before July 15, 2014. Erie Power also respectfully requests a 14-day notice period in order to accommodate the request for expedited review.

V. Conclusion

Erie Power respectfully submits that its circumstances are unique given that no material modifications are required to reactivate NECP, or interconnect at South Ripley, and that there is good cause for the waiver requested herein. Erie Power's underlying error was made in good faith, the waiver is of limited scope and will resolve a concrete problem, and the waiver will not harm third parties, or otherwise cause any undesirable consequences.

Therefore, in consideration of the Commission's granting of similar waivers in the past²¹ and the unique circumstances described above in this Waiver Request, Erie Power respectfully requests a shortened comment period and expedited consideration such that the Commission issue an order granting this Waiver Request by July 15, 2014, allowing for reinstatement of NECP as an existing facility with retention of its CRIS and ERIS rights through the end of the 2014/2015 Winter Capability Period (*i.e.* April 30, 2015).

Respectfully submitted,

/s/ Natara G. Feller

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Date: May 28, 2014

²¹ *Supra* note 4.

ATTACHMENT A



May 9, 2014

VIA Electronic Submission

Steven Corey
Manager, Interconnection Projects
New York Independent System Operator
10 Krey Boulevard Rensselaer, NY 12144
scorey@nyiso.com

Subject: North East Cogeneration Plant - Notice of Change to Facility / Request for Materiality Determination

Dear Mr. Corey:

In accordance with NYISO's Transmission Expansion and Interconnection Manual, Erie Power, LLC ("Erie Power") owns a facility called North East Cogeneration Plant ("NECP"),¹ and hereby provides notification that it intends to replace two transformers and two SF6 breakers that were previously sold. Erie Power anticipates that the replacement equipment will materially match the previously sold transformers and breakers.² Completion is expected on or before January 1, 2015. GP Renewables & Trading, LLC submits this letter on behalf of Erie Power.

NECP is a natural gas cogeneration plant located in Erie, Pennsylvania, last mentioned in the 2010 Gold Book with the following ratings: Nameplate rating – 88.2 MW; CRIS Rights – 82 MW; Summer capability³ – 79.4 MW; and Winter capability – 88 MW.⁴ Erie Power purchased NECP in early 2014 and intends to reactivate it as a baseload power facility without any material modifications to the facility itself or its

¹ NECP was decommissioned in November 2010 and is currently not considered an existing facility. However, Erie Power intends to submit a request to FERC for waiver for NECP from the interconnection process required of facilities that have been deactivated for three (3) years or more, allowing it to be treated as an existing facility with retention of its CRIS and ERIS rights.

² In parallel to this submission, Erie Power is seeking guidance from NYISO staff on whether the replacement of the transformers and breakers may be considered a "like and kind" match, in which case, a materiality determination would not be required.

³ See P 52 of the 2010 Load and Capacity Data: A Report by the New York Independent System Operator, ("2010 Gold Book") where it states "Summer 2010 capability reflects the most recent unadjusted DMNC values. DMNC stands for Dependable Maximum Net Generating Capability."

⁴ 2010 Gold Book at 33.

interconnection at South Ripley PTID 23901 (“S. Ripley”), which is located in Zone A. There have been no known material changes to NECP, or S.Ripley since NECP was last in service in November 2010. Further, there have been no interconnections to the S. Ripley interconnection facility since NECP was decommissioned.

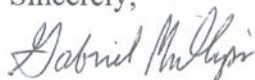
NECP intends to reactivate and interconnect to the transmission system of Niagara Mohawk Power Corporation (d/b/a National Grid) (“National Grid”). As the previous Interconnection Agreement between the NECP’s prior owner and National Grid was terminated in 2011,⁵ Erie Power intends to sign a new Interconnection Agreement with National Grid.

The only change to NECP, from when it was last active in November 2010, will be the replacement of two S6 breakers and two transformers that were previously sold. There are no changes being made to the combustion turbine generators and steam turbine electric generator, electrical interconnection equipment, or the existing point of interconnection. The equipment replacement will not increase capacity or change the operating characteristics of the electric facility in terms of short circuit contribution, voltage effects, thermal loadings, or stability effects as referenced in Attachment S to the NYISO manual. Replacement of the breakers and transformers will not have any material impact on how Erie Power is operated. Thus, Erie Power submits that the aforementioned changes are non-material.

Erie Power submits that the changes will have no adverse impact on the reliability of the NYISO 230 kV Bulk Power System and on the local underlying 115kV systems and requests that NYISO determine that the change is a non-material change to the existing facility.

Please contact me if you should have any questions or require any additional information.

Sincerely,



Gabriel Phillips
President and CEO
GP Renewables & Trading, LLC

⁵ See Letter order accepting Niagara Mohawk Power Corporation's 9/21/11 filing of a notice of termination of Service Agreement No. 121 with Energy Systems North East, LLC under ER11-4594 (11/8/2011).

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