

182 FERC ¶ 61,057
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

Microgrid Networks, LLC

Docket No. ER23-785-000

ORDER GRANTING WAIVER

(Issued February 9, 2023)

1. On January 6, 2023, pursuant to Rules 207(a)(5) and 212 of the Commission's Rules of Practice and Procedure,¹ Microgrid Networks, LLC (MGN) submitted a request for waiver of section 25.6.2.3.1 of Attachment S of the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT), which requires an interconnection project to have an Interconnection System Reliability Impact Study (SRIS) approved by the NYISO Operating Committee² before entering a Class Year Study. As discussed below, we grant MGN's waiver request, so that it has until the completion date of the Annual Transmission Baseline Assessment base cases for the 2023 Class Year to have its SRIS approved by the NYISO Operating Committee.

I. Background

2. NYISO's generator interconnection process features three interconnection studies: (1) an interconnection feasibility study; (2) an SRIS; and (3) a combined Class Year Study, in which all projects that have fulfilled the requirements and elected to be included in a given Class Year are studied together.³ Section 30.7.4 of Attachment X of NYISO's OATT provides that NYISO shall use reasonable efforts to complete the SRIS within 120 calendar days following receipt of certain required materials, including a study deposit, required technical data, and a demonstration of site control.⁴ Section 30.7.5 requires that

¹ 18 C.F.R. §§ 385.207(a)(5), 385.212 (2021).

² Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in NYISO's OATT.

³ NYISO, NYISO Tariffs, NYISO OATT, § 30 (Attach. X), § 30.6 (Interconnection Feasibility Study) (4.0.0); *id.* § 30.7 (Interconnection System Reliability Impact Study) (9.0.0); *id.* § 30.8 (Interconnection Facilities Study) (7.0.0).

NYISO provide a draft SRIS report to the developer and transmission owners and allow them 15 business days to review.⁵ Once NYISO issues the final SRIS report, the SRIS is reviewed by the Transmission Planning Advisory Subcommittee of the NYISO Operating Committee within three months, and subsequently by the NYISO Operating Committee.

3. Section 25.6.2.3.1 of NYISO's OATT establishes the main requirements for a Large Facility project to be eligible to be included in a given Class Year Study. No later than the Class Year Start Date, the project must have: (1) a completed SRIS approved by the NYISO Operating Committee; and (2) the applicable regulatory milestone for its project in accordance with Attachment S, or in lieu of satisfying such milestone, a two-part deposit or a qualifying contract.⁶ The date that the Class Year Study commences is the Class Year Start Date, and occurs on the first business day after 30 calendar days following the completion of the prior Class Year. Following the Class Year Start Date, NYISO develops the Annual Transmission Baseline Assessment base cases.⁷ NYISO has announced that February 13, 2023 will be the Class Year Start Date for the 2023 Class Year.⁸ Section 25.6.2.3.1 of NYISO's OATT requires a project to have a completed

⁴ NYISO, NYISO Tariffs, NYISO OATT, § 30 (Attach. X), § 30.7 (Interconnection System Reliability Impact Study) (9.0.0), § 30.7.4 (Interconnection System Reliability Impact Study Procedures).

⁵ NYISO, NYISO Tariffs, NYISO OATT, § 30 (Attach. X), § 30.7 (Interconnection System Reliability Impact Study) (9.0.0), § 30.7.5 (Study Report Meeting).

⁶ NYISO, NYISO Tariffs, NYISO OATT, § 25 (Attach. S), § 25.6 (Cost Allocation Methodology for ERIS) (10.0.0), § 25.6.2.3.1.

⁷ NYISO, NYISO Tariffs, NYISO OATT, § 25 (Attach. S), § 25.6 (Cost Allocation Methodology for ERIS) (10.0.0), § 25.6.1.1.1.1 (Procedure for Annual Transmission Baseline Assessment); NYISO, Transmission Expansion and Interconnection Manual, § 3.3.3.6.3 ("The major steps of the Class Year Study include: 1. Preparation of Base Cases for the [Annual Transmission Baseline Assessment] and [Annual Transmission Reliability Assessment] – NYISO requests updates of information from the TOs, neighboring ISOs/RTOs, and Developers and prepares steady state, dynamic, and short circuit base cases for the [Annual Transmission Baseline Assessment] and [Annual Transmission Reliability Assessment]. In doing so, NYISO prepares data for modeling each of the Class Year Projects to be used in the studies.").

⁸ N.Y. Indep. Sys. Operator, Inc., *Notice of the Class Year 2023 Study Start Date* (Jan. 2023), <https://www.nyiso.com/documents/20142/1396587/Class-Year-2023-Notice-of-Class-Year-Start-Date.pdf/49ff5469-d9d7-6072-3ab1-6870fa9fab3b>.

SRIS approved by the NYISO Operating Committee by February 13, 2023 to be eligible for the 2023 Class Year Study.

II. Waiver Request

4. MGN explains that it was selected by Central Hudson Gas & Electric Corporation (Central Hudson) to develop, construct, and operate a battery energy storage facility with a nameplate capacity of 205 megawatts (MW) in East Fishkill, Dutchess County, New York (East Fishkill Project).⁹ MGN states it was notified of its contract award on July 25, 2022, and is in the final stages of contract negotiations.¹⁰ MGN explains that the contract will include a commercial operation date of June 30, 2025, to meet an in-service date of December 31, 2025, as required by the New York State Public Service Commission (New York Commission). MGN also states that it has received a bulk storage bridge incentive from the New York State Energy Research and Development Authority (NYSERDA) to help finance the facility. MGN asserts that its ability to perform under the regulatory and contractual requirements of Central Hudson and NYSERDA will depend on the East Fishkill Project's ability to participate in the 2023 Class Year Study process. MGN notes that its facility is being developed to respond to New York's clean energy goals.

5. MGN states that it submitted its initial interconnection request to NYISO on December 11, 2020, and timely responded to deficiency notices from NYISO on January 14, 2021, and March 17, 2021.¹¹ MGN states that it timely provided the required deposits, additional data, and site control demonstrations for the SRIS by July 29, 2021.¹² However, MGN claims that due to NYISO's inability to comply with the timeframes described in NYISO's OATT, it is unclear whether MGN's SRIS will be approved in time to enter into the next Class Year Study.¹³

6. Specifically, MGN explains that in July 2021, NYISO estimated that the SRIS would be completed 150 days from the date NYISO finalized the base cases for the study.¹⁴

⁹ Waiver Request at 1-2. The solicitation occurred in response to the New York Commission's direction to investor-owned utilities to procure via competitive processes at least 10 MW each of energy storage. *Id.* at 4. The solicitation is for only 50 MW of capacity, but the project is being studied by NYISO as 205 MW because MGN is exploring other off-takers for the balance of the project. *Id.* at 6.

¹⁰ *Id.* at 4-5.

¹¹ *Id.* at 9.

¹² *Id.* at 12.

¹³ *Id.* at 3.

MGN states that, between the Operating Committee's approval of the SRIS's scope on February 17, 2022 and NYISO's commencement of the study on May 17, 2022, MGN promptly responded to various inquiries about technical details. MGN states that the base cases were made available for MGN's review on August 11, 2022, and after requesting an extension, MGN provided feedback on August 23, 2022. MGN then explains that on September 30, 2022, MGN began discussions with NYISO about proposed modifications to the East Fishkill Project and made a formal modification request to NYISO on October 27, 2022. MGN states that these modifications were deemed non-material on December 13, 2022, and the revised scope was approved by the Operating Committee on December 15, 2022. MGN states that it sent NYISO an informal notice declaring its intent to enter the Class Year 2023 process on December 23, 2022, with a supplemental notice on December 30, 2022. MGN states that it asked NYISO to provide it with an anticipated completion date on December 23, 2022 but has not yet received an answer. MGN states that, in light of these facts, it is unclear if NYISO will be able to complete and approve the SRIS in time for MGN to enter the 2023 Class Year Study process.¹⁵

7. MGN requests waiver of the requirement in section 25.6.2.3.1 of Attachment S of NYISO's OATT to have an approved SRIS prior to the Class Year Start Date as a condition to joining the 2023 Class Year Study, so that it has until the completion date of the Annual Transmission Baseline Assessment base cases for the 2023 Class Year to have its SRIS approved by the NYISO Operating Committee.¹⁶

8. MGN asserts that it is similarly situated to Clean Path New York LLC, to which the Commission granted a waiver of the same requirement.¹⁷ MGN argues that its waiver request satisfies the Commission's criteria for granting waiver. First, MGN argues that it has acted in good faith because it has timely responded to information requests from NYISO, and diligently followed up with NYISO throughout the interconnection process seeking updates.¹⁸ MGN also argues that it has exercised diligence outside the interconnection process to ensure the East Fishkill Project is able to be constructed and interconnected in a timely fashion once NYISO's studies are complete. MGN adds that if the facility is not built, it will hinder the ability of New York to meet its energy storage and other climate goals.¹⁹

¹⁴ *Id.* at 11-14.

¹⁵ *Id.* at 15.

¹⁶ *Id.*

¹⁷ *Id.* at 16-21 (citing *Clean Path N.Y. LLC*, 181 FERC ¶ 61,236 (2022)).

¹⁸ *Id.* at 17-18.

¹⁹ *Id.* at 20.

9. Second, MGN argues that the waiver request is limited in scope.²⁰ Specifically, MGN argues that it seeks waiver of a single requirement of NYISO's OATT. Moreover, MGN explains that, to the extent the SRIS is not approved by the Operating Committee prior to completion of the Annual Transmission Baseline Assessment base cases for the 2023 Class Year Study process, MGN will not be able to participate in the 2023 Class Year Study. MGN explains that it is not seeking to waive any other criteria needed to be eligible for the Class Year Study process.

10. Third, MGN contends that the waiver request addresses a concrete problem.²¹ MGN asserts the request addresses MGN's likely inability to participate in the 2023 Class Year Study process because it currently does not have an SRIS approved by the Operating Committee.

11. Finally, MGN argues that granting the waiver request would not have undesirable consequences or harm third parties because the 2023 Class Year Study process has not begun, and because granting the waiver would not impact the queue positions of any other entities and would not delay the 2023 Class Year Study process.²² MGN also explains that the Annual Transmission Baseline Assessment base case results remain the same regardless of whether MGN is part of the Class Year Study process.

III. Notice and Responsive Pleadings

12. Notice of MGN's filing was published in the *Federal Register*, 88 Fed. Reg. 2352 (Jan. 13, 2023), with interventions and protests due on or before January 13, 2023. The New York Commission filed a notice of intervention. NYSERDA filed a timely motion to intervene. NYISO filed a timely motion to intervene and comments. Alliance for Clean Energy New York (ACE NY) and New York State Agencies²³ filed comments.

13. NYISO states that it supports MGN's waiver request.²⁴ NYISO explains that MGN's SRIS process for its facility has been lengthy due to a number of factors, including multiple revisions to technical data and submission of a Material Modification Request. NYISO asserts that it is working diligently in close collaboration with MGN and Central Hudson (the Connecting Transmission Owner) to complete the SRIS. NYISO avers that it cannot state with certainty whether the East Fishkill Project will have

²⁰ *Id.*

²¹ *Id.* at 21.

²² *Id.* at 22.

²³ New York State Agencies include the New York Commission and NYSERDA.

²⁴ NYISO Comments at 4-5.

the opportunity to obtain Operating Committee approval of its SRIS before the 2023 Class Year Start Date.

14. NYISO states that, to minimize the potential adverse impacts on the Class Year Study process, the waiver cannot be open-ended.²⁵ NYISO argues that the Commission should clarify that MGN has until the completion date of the Annual Transmission Baseline Assessment base cases to have its SRIS report approved by the NYISO Operating Committee in order to satisfy the requirements for entering NYISO's 2023 Class Year. NYISO states that the Annual Transmission Baseline Assessment establishes the pre-existing baseline system before Class Year Projects are included. NYISO explains that the development of the Annual Transmission Baseline Assessment base cases is its initial step in the Class Year Study process and takes approximately 60 days to complete from the Class Year Start Date. NYISO contends that, if it were required to add new members to the Class Year after completion of the Annual Transmission Baseline Assessment base cases, such action would potentially disrupt finished study work and delay the ultimate completion of the Class Year Study for all members.²⁶ NYISO adds that the Commission should require that MGN satisfy the other entry requirements for the Class Year Study in accordance with the existing rules and timing requirements established in Attachments X and S of NYISO's OATT.²⁷

15. New York State Agencies and ACE NY also support MGN's waiver request.²⁸ New York State Agencies and ACE NY explain that MGN's facility and its timely development are key components of meeting New York's clean energy goals.²⁹ ACE NY further adds that absent waiver, if MGN's facility is not able to join the 2023 Class Year Study, there could be a delay in benefits to the health of New York's citizens and reduction in carbon dioxide emissions.³⁰ New York State Agencies support the waiver request under the condition that MGN agrees to be bound by all other requirements of the NYISO OATT governing the interconnection request. New York State Agencies and ACE NY support the waiver request provided that an SRIS for the facility is approved prior to completion of the Annual Transmission Baseline Assessment base cases for the 2023 Class Year.³¹

²⁵ *Id.* at 6.

²⁶ *Id.* at 6-7.

²⁷ *Id.* at 7.

²⁸ New York State Agencies Comments at 1, 3; ACE NY Comments at 1, 2-3.

²⁹ New York State Agencies Comments at 2; ACE NY Comments at 1, 2-3.

³⁰ ACE NY Comments at 2-3.

IV. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

17. We grant MGN a limited waiver of the timing requirement in section 25.6.2.3.1 of Attachment S of NYISO's OATT to have an SRIS approved by the NYISO Operating Committee before entering a Class Year Study. MGN may have until the completion date of the Annual Transmission Baseline Assessment base cases to have its SRIS approved by the NYISO Operating Committee for entry into the 2023 Class Year Study. We note that, as NYISO requests, in order to enter Class Year 2023, MGN is required to satisfy the other requirements for entering a Class Year Study in accordance with NYISO's OATT.

18. The Commission has granted waiver of tariff provisions where: (1) the applicant acted 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.³² As discussed below, we find that MGN's waiver request satisfies these criteria. In reaching our decision here we note that NYISO took into account all actions taken by MGN in this process and supports granting this waiver.

19. First, we find that MGN has acted in good faith. The record demonstrates that MGN has timely and diligently worked with NYISO — and NYISO worked with the applicable Connecting Transmission Owner — to support the completion of its SRIS prior to the February 13, 2023 Class Year Start Date.³³ MGN submitted its interconnection request over two years ago and has since acted in a timely manner to further its processing prior to submitting this waiver request.

20. Second, we find that the waiver is limited in scope because MGN seeks a one-time waiver of a single timing requirement in section 25.6.2.3.1 of Attachment S of NYISO's OATT to have an SRIS approved by the NYISO Operating Committee for the 2023 Class Year Study. As a result, MGN has until the completion date of the Annual Transmission

³¹ *Id.*; New York State Agencies Comments at 3.

³² See, e.g., *Citizens Sunrise Transmission LLC*, 171 FERC ¶ 61,106, at P 10 (2020); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

³³ Waiver Request at 16-21.

Baseline Assessment base cases for the 2023 Class Year Study to have its SRIS approved by the NYISO Operating Committee. The waiver applies only to MGN's project.

21. Third, we find that the waiver addresses a concrete problem. Absent waiver, MGN's facility would likely not be eligible to participate in the 2023 Class Year Study, which could cause significant delays in the development of the East Fishkill Project.³⁴

22. Finally, we find that granting waiver will not have undesirable consequences, such as harming third parties, because the 2023 Class Year Study has not yet begun and granting this waiver will not delay other participants in the 2023 Class Year Study process.³⁵

The Commission orders:

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

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

³⁴ *Id.* at 19, 21.

³⁵ *Id.* at 22.