

182 FERC ¶ 61,062
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gravel Road Solar, LLC

Docket No. ER23-830-000

ORDER GRANTING WAIVER

(Issued February 9, 2023)

1. On January 12, 2023, pursuant to Rules 207(a)(5) and 212 of the Commission's Rules of Practice and Procedure,¹ Gravel Road Solar, LLC (Gravel Road) 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 Gravel Road'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

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).

requires that 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

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->

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

II. Waiver Request

4. Gravel Road states that it is developing a 125 megawatt solar facility in the Town of Trye, Seneca County, New York.⁹ Gravel Road further explains that it submitted a response to the New York State Energy Research and Development Authority's (NYSERDA) 2022 Tier 1 Renewable Energy Certificate solicitation in November 2022, and if selected will be contractually obligated to achieve commercial operation of this facility by May 31, 2025. Gravel Road notes that its facility is being developed to respond to New York's clean energy goals.

5. Gravel Road states that it submitted its initial interconnection request to NYISO on April 9, 2021.¹⁰ Gravel Road further states that it was informed of deficiencies in the interconnection request by NYISO on April 22, 2021, which were later cured on May 6, 2021. Gravel Road explains that, despite its diligent and good faith efforts, delays and miscommunications resulted in Gravel Road filing a new interconnection request at NYISO's direction on August 23, 2021, to advance the facility with a feasible point of interconnection configuration that could be studied under an SRIS.¹¹ Gravel Road also asserts that it later learned that the decision to cancel its initial request and restart the interconnection process with a new request was unnecessary. Gravel Road states that it provided additional technical information to NYISO, which was forwarded to Niagara Mohawk Power Corporation (the Connecting Transmission Owner), in September 2021.¹²

6. Gravel Road states that on November 11, 2021, NYISO provided the cost and timeframe estimates for the SRIS and stated the SRIS would be completed 150 days from the date the SRIS base cases were finalized.¹³ Gravel Road states that it provided the required deposit, technical data, and demonstration of site control on December 22, 2021. Gravel Road states that the SRIS scope was approved by the NYISO Operating Committee on May 20, 2022, and the bases cases were completed on October 22, 2022.

of-Class-Year-Start-Date.pdf/49ff5469-d9d7-6072-3ab1-6870fa9fab3b.

⁹ Waiver Request at 1-2.

¹⁰ *Id.* at 2, 8-9.

¹¹ *Id.* at 2, 9-10.

¹² *Id.* at 11.

¹³ *Id.* at 10-12.

Gravel Road states that between December 2021 and June 2022, it responded to requests from NYISO for clarification, information, and comment. Gravel Road explains that on December 20, 2022, NYISO responded that the first draft of the SRIS was estimated to be available by February 10, 2023.

7. Gravel Road 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.¹⁴

8. Gravel Road asserts that it is similarly situated to Clean Path New York LLC, to which the Commission granted a waiver of the same requirement.¹⁵ Gravel Road argues that its waiver request satisfies the Commission's criteria for granting waiver. First, Gravel Road argues that it has acted in good faith because, despite its efforts to advance the interconnection process, including requesting that a third party perform its SRIS in an effort to expedite the process, NYISO was frequently delayed in responding to Gravel Road and acting on its interconnection request.¹⁶ Gravel Road states that, on several occasions, it reached out to NYISO for direction on the appropriate path forward regarding its interconnection request. Gravel Road argues that, due to lack of direction from NYISO and a good faith misunderstanding of NYISO's OATT requirements, it started the interconnection process over even though there are mechanisms available under the OATT that may have allowed it to retain its original queue position.¹⁷ Gravel Road also contends that significant backlogs at NYISO have prevented the SRIS from being completed in a timely manner. Gravel Road adds that delays to building the facility will negatively impact the ability of New York to meet its climate goals.¹⁸

9. Second, Gravel Road argues that the waiver is limited in scope.¹⁹ Specifically, Gravel Road seeks waiver of a single requirement of NYISO's OATT. Moreover, Gravel Road contends that the requested waiver would apply only to the extent that its SRIS is approved before NYISO completes the Annual Transmission Baseline Assessment base cases for the 2023 Class Year Study, and only to Gravel Road's facility.

¹⁴ *Id.* at 1, 13.

¹⁵ *Id.* at 18-20 (citing *Clean Path N.Y. LLC*, 181 FERC ¶ 61,236 (2022)).

¹⁶ *Id.* at 13-17.

¹⁷ *Id.* at 16 (citing *Silver Lake Solar, LLC*, 169 FERC ¶ 61,106, at P 18 (2019)).

¹⁸ *Id.* at 17.

¹⁹ *Id.* at 18.

Gravel Road asserts that it is not seeking a waiver with respect to any other criteria needed to be eligible for the Class Year Study process.

10. Third, Gravel Road contends that the waiver request addresses a concrete problem.²⁰ Gravel Road argues that, to the extent the 2023 Class Year Study process commences as predicted in February 2023, Gravel Road will be unable to meet the eligibility requirements to participate, barring an extension of the timeframe in which the SRIS must be approved by the NYISO Operating Committee to enter the Class Year Study process.

11. Finally, Gravel Road argues that granting the waiver request will not result in any undesirable consequences, such as harming third parties because the 2023 Class Year Study process has not commenced and granting waiver will not delay other participants in the 2023 Class Year Study process.²¹

III. Notice and Responsive Pleadings

12. Notice of Gravel Road's filing was published in the *Federal Register*, 88 Fed. Reg. 3733 (Jan. 20, 2023), with interventions and protests due on or before January 19, 2023. The New York State Public Service Commission (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 Agencies²² filed comments.

13. NYISO states that it supports Gravel Road's waiver request.²³ NYISO explains, however, that Gravel Road contributed significantly to the expected duration, as Gravel Road requested several revisions to the point of interconnection, which required vetting technical data in an iterative process. NYISO also disagrees with Gravel Road's assertion that NYISO was non-responsive throughout the SRIS process, and states that it explained the interconnection process and options that Gravel Road has under NYISO's OATT multiple times. NYISO asserts that it is working diligently in close collaboration with Gravel Road and Niagara Mohawk Power Corporation (the Connecting Transmission Owner) to complete the SRIS. NYISO adds that it cannot state with certainty whether Gravel Road's facility will have the opportunity to obtain Operating Committee approval of its SRIS before the Class Year Start Date for 2023 Class Year.

²⁰ *Id.* at 19-20.

²¹ *Id.* at 20-21.

²² New York State Agencies include the New York Commission and NYSERDA.

²³ NYISO Comments at 4-5.

14. NYISO states that, to minimize the potential adverse impacts on the Class Year Study process, the waiver should not be open-ended.²⁴ NYISO argues that the Commission should clarify that Gravel Road 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.²⁵ NYISO adds that the Commission should require that Gravel Road 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.²⁶

15. New York State Agencies and ACE NY also support Gravel Road's waiver request.²⁷ New York State Agencies and ACE NY explain that Gravel Road's facility and its timely development are key components of meeting New York's clean energy goals.²⁸ ACE NY further adds that, absent waiver, if Gravel Road'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.²⁹ New York State Agencies support the waiver request under the condition that Gravel Road agree 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.³⁰

²⁴ *Id.* at 6.

²⁵ *Id.* at 6-7.

²⁶ *Id.* at 7.

²⁷ New York State Agencies Comments at 1, 3; ACE NY Comments at 1, 2-3.

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

²⁹ ACE NY Comments at 2-3.

³⁰ *Id.*; New York State Agencies Comments at 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 Gravel Road 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. Gravel Road 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, Gravel Road 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.³¹ As discussed below, we find that Gravel Road's waiver request satisfies these criteria. In reaching our decision here we note that NYISO took into account all actions taken by Gravel Road in this process and supports granting this waiver.

19. First, we find that Gravel Road acted in good faith. The record demonstrates that Gravel Road 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.³² Gravel Road submitted its initial interconnection request in April 2021 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 Gravel Road 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, Gravel Road has until the completion date of the Annual Transmission Baseline Assessment base cases for the 2023 Class Year to have its

³¹ 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).

³² Waiver Request at 8-12, 13-17.

SRIS approved by the NYISO Operating Committee. The waiver applies only to Gravel Road's project.

21. Third, we find that the waiver addresses a concrete problem. Absent waiver, Gravel Road'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 Gravel Road facility.³³

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.³⁴

The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³³ *Id.* at 4-5, 19-20

³⁴ *Id.* at 20-21.