

182 FERC ¶ 61,060
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Boralex Inc.

Docket No. ER23-798-000

ORDER GRANTING WAIVER

(Issued February 9, 2023)

1. On January 9, 2023, pursuant to Rules 207(a)(5) and 212 of the Commission's Rules of Practice and Procedure,¹ Boralex Inc. (Boralex) 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 Boralex'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 SRISs 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

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).

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 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.").

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

II. Waiver Request

4. Boralex states that it currently has five facilities totaling 680 megawatts (MW) of solar generation located in various towns and counties across New York (collectively, the Boralex Projects), each of which are awaiting the completion of an SRIS.⁹ Boralex states that three of the Boralex Projects have received awards as part of the New York Energy Research and Development Authority's (NYSERDA) 2021 Renewable Energy Standard solicitation.¹⁰ Boralex explains that, pursuant to its agreements with NYSERDA, the commercial operation milestone date is currently set at November 30, 2026.

5. Boralex states that the Diamond Solar Project (NY48) is a 60 MW solar generating facility to be located in the Town of Schuyler in Herkimer County, New York.¹¹ Boralex states that it submitted its interconnection request to NYISO on May 17, 2021, and timely provided the required deposits on July 26, 2021 and all required information by September 10, 2021. Boralex asserts that the NYISO Operating Committee approved the SRIS scope on April 20, 2022.

6. Boralex further states that the Newport Solar Project (NY115) is a 130 MW solar generating facility to be located in the Town of Newport in Herkimer County and Oneida County, New York.¹² Boralex states that it submitted its interconnection request to NYISO on May 19, 2021, and timely provided the required deposits on August 11, 2021 and all required information by September 10, 2021. Boralex states that the NYISO Operating Committee approved the SRIS scope on May 20, 2022.

7. Boralex continues that the Foothills Solar Project (NY128) is a 40 MW solar generating facility to be located in the Town of Mayfield in Fulton County, New York.¹³ Boralex states that it submitted its interconnection request to NYISO on May 20, 2021,

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>.

⁹ Waiver Request at 7.

¹⁰ *Id.* at 2-3.

¹¹ *Id.*

¹² *Id.* at 8.

¹³ *Id.* at 8-9.

and timely provided the required deposits on July 26, 2021 and all required information by September 10, 2021. Boralex states that the NYISO Operating Committee approved the SRIS scope on July 14, 2022.

8. Boralex states that the Fort Covington Solar Project (NY125A) is a 250 MW solar generating facility to be located in the Town of Fort Covington in Franklin County, New York.¹⁴ Boralex states that it submitted its interconnection request to NYISO on May 20, 2021, and timely provided the required deposits on August 11, 2021 and all required information by September 16, 2021. Boralex states that the NYISO Operating Committee approved the SRIS scope on August 18, 2022.

9. Boralex states that the Two Rivers Solar Project (NY125B) is a 200 MW solar generating facility to be located in the Towns of Massena and Brasher in St. Lawrence County, New York.¹⁵ Boralex states that it submitted its interconnection request to NYISO on May 20, 2021, and timely provided the required deposits on August 11, 2021 and all required information by September 16, 2021. Boralex states that the NYISO Operating Committee approved the SRIS scope on October 13, 2022.

10. Boralex states that NYISO recently issued a notice stating that the 2021 Class Year was undergoing a third decision period and, as a result, the 2023 Class Year will not start before, but is anticipated to commence on or about, February 13, 2023.¹⁶ Boralex states that it is concerned that, given the timeframe for review and approval of final SRISs and the fact that the Boralex Projects have yet to receive draft SRISs, it is possible that the Boralex Projects will not have NYISO Operating Committee-approved SRISs until sometime in late February or early March, after the anticipated commencement of the 2023 Class Year, and therefore, absent waivers, will not be able to participate in the upcoming 2023 Class Year Study.

11. Boralex 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 SRISs approved by the NYISO Operating Committee.¹⁷

12. Boralex asserts that it is similarly situated to Clean Path New York LLC, to which the Commission granted a waiver of the same requirement.¹⁸ Boralex argues that its

¹⁴ *Id.* at 9.

¹⁵ *Id.* at 9-10.

¹⁶ *Id.* at 16.

¹⁷ *Id.* at 3, 17.

waiver request satisfies the Commission's criteria for granting waiver. First, Boralex states that it has acted in good faith because it submitted its interconnection requests and completed the developer requirements for the commencement of the SRISs well in advance of the anticipated timeframe to receive completed SRISs such that the Boralex Projects could be included in the 2023 Class Year Study.¹⁹ Boralex also asserts that it timely provided NYISO with all required information to commence the SRIS processes and took all available steps to advance the processes. Boralex also states that, absent waiver, the Boralex Projects could be precluded from participating in the 2023 Class Year Study, which would threaten the Boralex Projects' developmental milestones, Boralex's ability to fulfill its contractual obligations with NYSERDA, and New York's energy policy goals.

13. Second, Boralex argues that the waiver request is limited in scope.²⁰ Specifically, Boralex argues that it seeks a waiver of a single requirement of NYISO's OATT. Boralex argues that the waiver request will apply to only the Boralex Projects and will be conditioned upon completion and approval of the SRISs prior to the Annual Transmission Baseline Assessment base cases for the 2023 Class Year. Boralex commits to timely meeting all other requirements to enter the 2023 Class Year and obtaining completed and NYISO Operating Committee-approved SRISs prior to NYISO's completion of the Annual Transmission Baseline Assessment base cases. Boralex adds that the waiver request is limited to waiver of a single timing requirement.

14. Third, Boralex contends that the waiver request addresses a concrete problem.²¹ Boralex argues that, if the SRIS approvals are delayed beyond the 2023 Class Year Start Date, and Boralex is unable to participate in the 2023 Class Year Study, the development of the Boralex Projects will be delayed by at least 18-24 months. According to Boralex, this would make it impossible for the Boralex Projects to meet the commercial operation dates established in its agreements with NYSERDA and thereby create negative consequences for New York in its planned progress to meet certain renewable energy goals.

15. Finally, Boralex argues that granting the waiver request would not have undesirable consequences or harm third parties because the window for the upcoming 2023 Class Year Study has not been set and the study has not commenced.²² Boralex

¹⁸ *Id.* at 4-5, 17 (citing *Clean Path N.Y. LLC*, 181 FERC ¶ 61,236 (2022)).

¹⁹ *Id.* at 17-20.

²⁰ *Id.* at 20-21.

²¹ *Id.* at 21.

²² *Id.* at 21-22.

argues that since it has made its request conditional on receipt of a completed SRIS prior to NYISO's completion of the Annual Transmission Baseline Assessment base cases, approval of the waiver will not delay the 2023 Class Year Study process or impact any other parties' decisions to participate. Boralex further argues that since the study has not yet started, no other customer could have possibly relied on the Boralex Projects' participation in the 2023 Class Year Study.

III. Notice and Responsive Pleadings

16. Notice of Boralex's filing was published in the *Federal Register*, 88 Fed. Reg. 2352 (Jan. 13, 2023), with interventions and protests due on or before January 17, 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 Agencies²³ filed comments.

17. NYISO states that it supports Boralex's waiver request.²⁴ NYISO explains that Boralex's SRIS processes for its facilities have been lengthy due to, for example, multiple revisions to technical data for each facility and revisions to the point of interconnection, both of which impacted finalization of the modeling data. NYISO asserts that it is working diligently in close collaboration with Boralex and, as applicable, Niagara Mohawk Power Corporation (the Connecting Transmission Owner) to complete the SRISs. NYISO avers that it cannot state with certainty whether Boralex's facilities will have the opportunity to obtain Operating Committee approval of their SRISs before the 2023 Class Year Start Date.

18. 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 Boralex has until the completion date of the Annual Transmission Baseline Assessment base cases to have its SRIS reports 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

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

²⁴ NYISO Comments at 5.

²⁵ *Id.* at 6.

delay the ultimate completion of the Class Year Study for all members.²⁶ NYISO adds that the Commission should require that Boralex 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

19. New York State Agencies and ACE NY also support Boralex's waiver request.²⁸ New York State Agencies and ACE NY explain that Boralex's facilities and their timely development are key components of meeting New York's clean energy goals.²⁹ ACE NY further adds that absent waiver, if Boralex's facilities are 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 Boralex 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 the respective SRIS for each facility is approved prior to completion of the Annual Transmission Baseline Assessment base cases for the 2023 Class Year.³¹

IV. Discussion

A. Procedural Matters

20. 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

21. We grant Boralex 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. Each Boralex facility may have until the completion date of the Annual Transmission Baseline Assessment base cases to have its respective SRIS approved by the NYISO Operating Committee for entry into the 2023

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.

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

Class Year Study. We note that, as NYISO requests, in order to enter Class Year 2023, Boralex is required to satisfy the other requirements for entering a Class Year Study in accordance with NYISO's OATT.

22. 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 Boralex's waiver request satisfies these criteria. In reaching our decision here we note that NYISO took into account all actions taken by Boralex in this process and supports granting this waiver.

23. First, we find that Boralex acted in good faith. The record demonstrates that Boralex has timely and diligently worked with NYISO — and NYISO worked with and the applicable Connecting Transmission Owner — to support the completion of its SRISs prior to the February 13, 2023 Class Year Start Date.³³ Boralex submitted its interconnection requests in May 2021 and has since acted in a timely manner to further their processing prior to submitting this waiver request.

24. Second, we find that the waiver is limited in scope because Boralex 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, Boralex has until the completion date of the Annual Transmission Baseline Assessment base cases for the 2023 Class Year to have its SRISs approved by the NYISO Operating Committee. The waiver applies only to Boralex's projects described herein.

25. Third, we find that the waiver addresses a concrete problem. Absent waiver, the Boralex Projects would likely not be eligible to participate in the 2023 Class Year Study, which could cause significant delays in the development of the Boralex Projects.³⁴

26. 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

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 17-20.

³⁴ *Id.* at 21.

³⁵ *Id.* at 22.

The Commission orders:

Boralex'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.