

182 FERC ¶ 61,061
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Invenergy Solar Project Development, LLC

Docket No. ER23-803-000

ORDER GRANTING WAIVER

(Issued February 9, 2023)

1. On January 10, 2023, pursuant to Rules 207(a)(5) and 212 of the Commission's Rules of Practice and Procedure,¹ Invenergy Solar Project Development, LLC (Invenergy) 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 Invenergy'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

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.").

Year.⁸ Section 25.6.2.3.1 of NYISO's OATT requires a project 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. Invenergy explains that it is developing a 75 megawatt solar generation facility (Twinleaf Project).⁹ Invenergy states that it submitted an interconnection request for the Twinleaf Project to NYISO that was deemed valid and complete on March 26, 2021. Invenergy states that it then timely provided the required study data and deposit in May 2021. Invenergy states that NYISO issued the SRIS scope for comment on April 4, 2022 and that the SRIS scope was presented to NYISO's Transmission Planning Advisory Subcommittee on May 20, 2022 and received approval on June 23, 2022. Invenergy states that the SRIS commenced on June 23, 2022. Invenergy states that NYISO shared the base cases for comment on June 24, 2022 and continues that the base cases were finalized on July 22, 2022.¹⁰ Invenergy states that NYISO issued the SRIS first draft on December 20, 2022 and requested comments by January 6, 2023.

5. Invenergy explains that, after NYISO receives comments from all parties, a review meeting will be held on January 17, 2023 to discuss the comments and, if no issues are identified, NYISO may be able to finalize the SRIS. Invenergy further explains that this approval would enable Invenergy to request that the final SRIS be presented at NYISO's next Transmission Planning Advisory Subcommittee meeting, after which point the SRIS would need to be presented and approved at NYISO's February Operating Committee meeting on February 13, 2023.¹¹ Invenergy points out that this is the same date as the anticipated 2023 Class Year Start Date. According to Invenergy, however, if there are issues or complications with the draft SRIS that require additional time to resolve, Invenergy may be unable to present the final SRIS for NYISO Operating Committee approval before the 2023 Class Year Start Date.

6. Invenergy 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

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 5.

¹⁰ *Id.* at 6.

¹¹ *Id.*

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.¹²

7. Invenergy asserts that it is similarly situated to Clean Path New York LLC, to which the Commission granted a waiver of the same requirement.¹³ Invenergy argues that its waiver request satisfies the Commission's criteria for granting waiver. First, Invenergy asserts that it has acted in good faith because it submitted its interconnection request nearly two years in advance of the 2023 Class Year Start Date and since then has diligently pursued and participated in the interconnection process.¹⁴ Specifically, Invenergy states that it engaged with NYISO in comments on the SRIS scope and SRIS base cases and provided comments on the draft SRIS a week before NYISO's comment deadline. Invenergy adds that it has demonstrated good faith by diligently engaging with NYISO and Niagara Mohawk Power Corporation (the Connecting Transmission Owner) to expedite the process as much as possible.¹⁵

8. Second, Invenergy argues that the waiver request is limited in scope.¹⁶ Specifically, Invenergy seeks waiver of a single requirement of NYISO's OATT. Moreover, Invenergy contends that its waiver would apply only to the extent Invenergy's SRIS is approved before NYISO completes the Annual Transmission Baseline Assessment base cases for the 2023 Class Year. Invenergy adds that it is not requesting waiver of the substantive requirement to obtain an approved SRIS.¹⁷ Rather, Invenergy asserts that the requested waiver is limited to waiver of a timing requirement.

9. Third, Invenergy contends that the waiver request addresses a concrete problem.¹⁸ Invenergy argues that, if the SRIS approval is delayed beyond the 2023 Class Year Start Date, and it is unable to participate in the 2023 Class Year Study, the development of the Twinleaf Project will be delayed by at least 18-24 months. Invenergy asserts that the development of the Twinleaf Project is a component of meeting New York's ambitious clean energy goals.

¹² *Id.* at 1.

¹³ *Id.* at 2, 7-10 (citing *Clean Path N.Y. LLC*, 181 FERC ¶ 61,236 (2022)).

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 8-9.

¹⁶ *Id.*

¹⁷ *Id.* at 9.

¹⁸ *Id.*

10. Finally, Invenergy argues that granting the waiver request would not have undesirable consequences or harm third parties because the 2023 Class Year Study has not commenced, and no other customers could have relied on the Twinleaf Project's inclusion or exclusion from the 2023 Class Year Study.¹⁹ Invenergy adds that granting waiver will not delay the 2023 Class Year Study process because Invenergy commits to meeting all other applicable requirements to enter the 2023 Class Year; thus it will be ready to proceed quickly after approval of the SRIS.

III. Notice and Responsive Pleadings

11. Notice of Invenergy's filing was published in the *Federal Register*, 88 Fed. Reg. 2908 (Jan. 18, 2023), with interventions and protests due on or before January 20, 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 Agencies²⁰ filed comments.

12. NYISO states that it supports Invenergy's waiver request.²¹ NYISO explains that Invenergy's SRIS process for the Twinleaf Project has been lengthy due to a number of factors, including multiple revisions to technical data. NYISO asserts that it is working diligently in close collaboration with Invenergy and the Connecting Transmission Owner to complete the SRIS.²² NYISO avers that it cannot state with certainty whether the Twinleaf Project will have the opportunity to obtain Operating Committee approval of its SRIS before the 2023 Class Year Start Date.

13. NYISO states that, to minimize the potential adverse impacts on the Class Year Study process, the waiver should not be open-ended.²³ NYISO argues that the Commission should clarify that Invenergy 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

¹⁹ *Id.*

²⁰ New York State Agencies include the New York Commission and NYSERDA.

²¹ NYISO Comments at 4.

²² *Id.* at 5.

²³ *Id.*

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.²⁴ NYISO adds that the Commission should require that Invenenergy 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.

14. New York State Agencies and ACE NY also support Invenenergy's waiver request.²⁵ New York State Agencies and ACE NY explain that Invenenergy's facility and its timely development are key components of meeting New York's clean energy goals.²⁶ ACE NY further adds that absent waiver, if Invenenergy'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.²⁷ New York State Agencies support the waiver request under the condition that Invenenergy 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 a SRIS for the facility is approved prior to completion of the Annual Transmission Baseline Assessment base cases for the 2023 Class Year.²⁸

IV. Discussion

A. Procedural Matters

15. 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

16. We grant Invenenergy 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. Invenenergy may have until the completion date of the Annual Transmission Baseline Assessment base cases to have its

²⁴ *Id.* at 6.

²⁵ New York State Agencies Comments at 1, 3; ACE NY Comments at 1, 2-3.

²⁶ New York State Agencies Comments at 2; ACE NY Comments at 1, 2-3.

²⁷ ACE NY Comments at 2, 3.

²⁸ *Id.*; New York State Agencies Comments at 3.

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, Invenergy is required to satisfy the other requirements for entering a Class Year Study in accordance with NYISO's OATT.

17. 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.²⁹ As discussed below, we find that Invenergy's waiver request satisfies these criteria. In reaching our decision here we note that NYISO took into account all actions taken by Invenergy in this process and supports granting this waiver.

18. First, we find that Invenergy acted in good faith. The record demonstrates that Invenergy has timely and diligently worked with NYISO and the Connecting Transmission Owner to support the completion of its SRIS prior to the February 13, 2023 Class Year Start Date.³⁰ Invenergy submitted its interconnection request nearly two years ago and has since acted in a timely manner to further its processing prior to submitting this waiver request.

19. Second, we find that the waiver is limited in scope because Invenergy 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 NYISO's Operating Committee for the 2023 Class Year Study. As a result, Invenergy 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. The waiver applies only to Invenergy's project.

20. Third, we find that the waiver addresses a concrete problem. Absent waiver, Invenergy'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 Twinleaf Project.³¹

21. 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.³²

²⁹ 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).

³⁰ Waiver Request at 7-8.

³¹ *Id.* at 9.

³² *Id.*

The Commission orders:

Invenergy'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.