

182 FERC ¶ 61,068
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Union Energy Center, LLC

Docket No. ER23-859-000

ORDER GRANTING WAIVER

(Issued February 10, 2023)

1. On January 13, 2023, pursuant to Rules 207(a)(5) and 212 of the Commission's Rules of Practice and Procedure,¹ Union Energy Center, LLC (Union Energy) 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 Union Energy'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

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).

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 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

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 (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.").

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. Union Energy explains that it is the project company for a planned 150 megawatt stand-alone, front-of-the-meter Energy Storage Resource (Storage Facility) located in Putnam County, New York.⁹ Union Energy states that the Storage Facility is scheduled to begin commercial operation in 2026. Union Energy further states that the facility will help New York State meet its policy goal of deploying 6,000 MW of energy storage resources by 2030.

5. Union Energy explains that it submitted its interconnection request to NYISO on May 20, 2021, with the expectation that its SRIS would be completed and approved by the NYISO Operating Committee with sufficient time to enter the 2023 Class Year Study.¹⁰ Union Energy states that on July 26, 2021, NYISO indicated that the SRIS would take 150 days from when it finalized the base case. Union Energy states that it timely provided the required deposits, technical information, and site control demonstration for the SRIS by August 16, 2021. Union Energy states that the SRIS scope was approved by the NYISO Operating Committee on October 14, 2021. Union Energy states that between July 2022 and November 2022, it responded to comments and requests from NYISO and New York State Gas and Electric (NYSEG) (the Connecting Transmission Owner).

6. Union Energy 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.¹¹

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

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 4.

¹⁰ *Id.* at 7-8.

¹¹ *Id.* at 1, 9.

that its waiver request satisfies the Commission's criteria for granting waiver. First, Union Energy asserts that it has acted in good faith because it has diligently pursued its interconnection request and completion of the SRIS.¹³ Union Energy contends it has responded promptly to technical and modeling questions from NYISO and NYSEG and engaged in frequent communication with NYISO regarding the status of the SRIS.

8. Second, Union Energy argues that the waiver request is limited in scope.¹⁴ Specifically, Union Energy argues that it seeks waiver of a single, non-substantive timing requirement of NYISO's OATT. Union Energy contends the waiver request relates only to its interconnection request and would apply only to the extent the SRIS is approved before NYISO completes the Annual Transmission Baseline Assessment base cases for the 2023 Class Year. Union Energy also commits to timely meet all other requirements for entry into the 2023 Class Year.

9. Third, Union Energy contends that the waiver request addresses a concrete problem.¹⁵ Union Energy asserts that, if its SRIS approval is delayed and it is unable to participate in the 2023 Class Year Study, the Storage Facility's development will be delayed by at least 18-24 months.

10. Finally, Union Energy argues that granting the waiver request would not have undesirable consequences or harm third parties because the 2023 Class Year Study has not yet commenced.¹⁶ Union Energy contends that no other customer could have relied on the Storage Facility's inclusion in, or exclusion from, the upcoming study. Union Energy also argues that waiver will not delay the study process because it commits to meeting all other applicable requirements to enter the 2023 Class Year and the waiver will apply only to the extent the SRIS is approved before completion of the Annual Transmission Baseline Assessment base cases.

III. Notice and Responsive Pleadings

11. Notice of Union Energy's filing was published in the *Federal Register*, 88 Fed. Reg. 4821 (Jan. 25, 2023), with interventions and protests due on or before January 23, 2023. The New York State Public Service Commission (New York Commission) filed a notice of intervention. New York State Energy Research and Development Authority

¹² *Id.* at 2, 7 (citing *Clean Path N.Y. LLC*, 181 FERC ¶ 61,266 (2022)).

¹³ *Id.* at 9-10.

¹⁴ *Id.* at 11-12.

¹⁵ *Id.* at 12.

¹⁶ *Id.* at 12-13.

(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 Agencies¹⁷ filed comments.

12. NYISO states that it supports Union Energy's waiver request.¹⁸ NYISO explains that Union Energy's SRIS process for its facility has been lengthy due to a number of factors, including multiple rounds of revisions to the modeling data submitted. NYISO asserts that it is working diligently in close collaboration with Union Energy and the Connecting Transmission Owner to complete the SRIS. NYISO avers that it cannot state with certainty whether the Storage Facility 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 cannot be open-ended.¹⁹ NYISO argues that the Commission should clarify that Union Energy 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.²⁰ NYISO adds that the Commission should require that Union Energy 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.²¹

14. New York State Agencies and ACE NY also support Union Energy's waiver request.²² New York State Agencies and ACE NY explain that Union Energy's facility and its timely development are key components of meeting New York's clean energy

¹⁷ New York State Agencies include the New York Commission and NYSERDA.

¹⁸ NYISO Comments at 4-5.

¹⁹ *Id.* at 5.

²⁰ *Id.* at 5-6.

²¹ *Id.* at 6.

²² New York State Agencies Comments at 1, 3; ACE NY Comments at 1, 2-3.

goals.²³ ACE NY further adds that absent waiver, if Union Energy'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.²⁴ New York State Agencies support the waiver request under the condition that Union Energy 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.²⁵

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 Union Energy 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. Union Energy 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, Union Energy 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.²⁶ As discussed below, we find that Union Energy's waiver request satisfies these criteria. In reaching our decision here we note that NYISO took into account all actions taken by Union Energy in this process and supports granting this waiver.

²³ New York State Agencies Comments at 2; ACE NY Comments at 1, 2-3.

²⁴ ACE NY Comments at 2-3.

²⁵ *Id.*; New York State Agencies Comments at 3.

²⁶ 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).

18. First, we find that Union Energy acted in good faith. The record demonstrates that Union Energy timely and diligently worked with NYISO and the applicable Connecting Transmission Owner to support the completion of its SRIS prior to the February 13, 2023 Class Year Start Date.²⁷ Union Energy submitted its interconnection request in May 2021 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 Union Energy 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, Union Energy 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 Union Energy's project.

20. Third, we find that the waiver addresses a concrete problem. Absent waiver, Union Energy'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 Storage Facility.²⁸

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.²⁹

The Commission orders:

Union Energy'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.

²⁷ Waiver Request at 7-8, 10-11.

²⁸ *Id.* at 9, 12.

²⁹ *Id.* at 12-13.

