

186 FERC ¶ 61,065
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER24-342-000

ORDER GRANTING WAIVER REQUEST

(Issued January 25, 2024)

1. On November 3, 2023, New York Independent System Operator, Inc. (NYISO) submitted proposed revisions to the NYISO Open Access Transmission Tariff (OATT) to partially comply with Order No. 2023,¹ or alternatively, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,² a request for waiver of the requirements in Articles 30.3, 30.6, 30.7, and 30.10 of the OATT that require the Developer³ to elect within a prescribed period of time, and NYISO to perform, feasibility and system impact studies or to withdraw the Developer's project from the interconnection queue. As discussed below, we grant NYISO's waiver request.

I. Background

2. NYISO's current Large Facility Interconnection Procedures (LFIP) establish three successive interconnection studies:⁴ (1) an optional feasibility study that evaluates a project's configuration and local system impacts;⁵ (2) a system impact study that evaluates a project's impact on transfer capability and system reliability;⁶ and (3) a Class Year facilities study that evaluates the cumulative impact of a group of projects.⁷

¹ *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023, 88 FR 61014 (Sept. 6, 2023), 184 FERC ¶ 61,054 (2023).

² 18 C.F.R. § 385.207(a)(5) (2022).

³ Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the NYISO OATT.

⁴ NYISO, NYISO Tariffs, NYISO OATT, § 30 (Attachment X), § 30.3 (Interconnection Requests) (16.0.0).

⁵ *Id.* § 30.6. (3.0.0).

⁶ *Id.* §§ 30.7 (9.0.0), 30.10 (2.0.0).

II. Filing

A. Partial Compliance Filing

3. NYISO states that it is currently developing a comprehensive Order No. 2023 compliance filing that will eliminate stand-alone feasibility and system impact studies, incorporate a consolidated cluster study that includes elements of its current feasibility, system impact, and facilities studies, and provide detailed rules for transitioning Developers in its interconnection queue upon the effectiveness of the new rules.⁸ However, NYISO contends that, in the meantime, its current OATT requires NYISO to perform and Developers to pay for feasibility and system impact studies for their projects, which will be rendered unnecessary by the new Order No. 2023 process. As a result, NYISO proposes in the instant filing a partial compliance filing to relieve both NYISO and Developers of requirements related to these studies.

4. Specifically, NYISO proposes, as an independent entity variation from the requirements of Order No. 2023, interim rules to provide Developers with the option to elect, based on a project's progress in the LFIP: (1) to commence or complete an ongoing feasibility or system impact study for which it completed the OATT-prescribed scoping requirements prior to December 1, 2023; (2) to opt for the performance of a limited feasibility study for interconnection customers that do not meet the OATT-prescribed scoping requirements by December 1, 2023 or those that enter the NYISO queue between now and when NYISO's Order No. 2023-compliant rules are in effect; (3) to withdraw from an ongoing study without financial penalty; or (4) to not commence a feasibility and/or system impact study.⁹ NYISO contends that these proposed rules will minimize the expense, time, and resources that NYISO, the New York Transmission Owners (NYTOs), and Developers must commit for study work that will not be required for a project to advance under the new process and that could create delays in transitioning to the new process.

B. Waiver Request

5. NYISO states that, if the Commission is unable to act on NYISO's proposed OATT revisions in its partial compliance filing to Order No. 2023 prior to November 30, 2023, it requests that the Commission grant, on a prospective basis, NYISO's request for a limited waiver of the requirements in the LFIP concerning the performance of feasibility and system impact studies for the period prior to the issuance of its order on the partial compliance filing.¹⁰ In particular, NYISO requests a waiver of the requirements in Articles 30.3, 30.6,

⁷ *Id.* § 30.8 (7.0.0).

⁸ Filing, Transmittal Letter at 2, 7.

⁹ *Id.* at 2.

30.7, and 30.10 of the NYISO OATT that require the Developer to meet the requirements to elect to proceed with, and NYISO to perform, feasibility and system impact studies or to withdraw the Developer's project. NYISO argues that the requested waiver satisfies the Commission's criteria for granting waiver.¹¹

6. First, NYISO contends that it is acting in good faith to commence the transition to new interconnection procedures that are compliant with Order No. 2023 as soon as reasonably possible to address the influx of substantial generation projects in its interconnection queue.¹² Second, NYISO argues that the requested waiver is of limited scope as it solely concerns the interim transition period until NYISO has filed for the Commission's acceptance of a more detailed transition procedure with the new interconnection procedures required under Order No. 2023. Third, NYISO explains that the requested waiver addresses a concrete problem of NYISO having to perform unnecessary interconnection studies and thereby impose unnecessary costs on Developers. NYISO adds that the requested waiver would allow NYISO to expedite the transition to new Order No. 2023-compliant procedures. Finally, NYISO asserts that the requested waiver will not have undesirable consequences, such as harming third parties. NYISO explains that the waiver ensures that Developers are not required to incur unneeded costs and that NYISO is not required to perform studies that would not provide them with value during the conversion to the new interconnection process.

III. Notice and Responsive Pleadings

7. Notice of NYISO's filing was published in the *Federal Register*, 88 Fed. Reg. 77,574 (Nov. 13, 2023), with interventions and protests due on or before November 24, 2023. Calpine Corporation and Solar Energy Industries Association filed timely motions to intervene. The NYTOs¹³ filed a timely motion to intervene and comments.

8. The NYTOs state that, as NYISO works to develop its full Order No. 2023 compliance filing, the existing interconnection study process continues at a rapid pace.¹⁴

¹⁰ *Id.* at 12.

¹¹ *Id.* (citing *Citizens Sycamore-Penasquitos Transmission LLC*, 169 FERC ¶ 61,263, at P 14 (2019)).

¹² *Id.* at 13.

¹³ The NYTOs include: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Niagara Mohawk Power Corporation d/b/a National Grid, New York Power Authority; New York State Electric & Gas Corporation; Orange and Rockland Utilities, Inc.; Long Island Power Authority; and Rochester Gas and Electric Corporation.

¹⁴ NYTOs Comments at 2.

The NYTOs state that NYISO's post-Order No. 2023 transition cluster may be exponentially larger than historic Class Years. The NYTOs argue that it would be inefficient and confusing to continue processing individual feasibility and system impact studies in the interim and would lead to an unnecessary outlay of time and resources by NYISO, the NYTOs, and Developers.

9. The NYTOs state that the proposed OATT revisions set forth a process that will empower Developers to determine how to proceed during this interim period with studies that should no longer be required under a post-Order No. 2023 reformed process.¹⁵ The NYTOs state that, absent the acceptance of NYISO's proposed interim rules, the diversion of resources that would be required would be wasteful, especially when NYISO and the NYTOs are focusing their resources on developing and implementing the cluster study approach for the transition group of projects. The NYTOs add that waiver of the existing OATT provisions, if needed, would also facilitate an orderly, transparent, and timely transition to the new rules.¹⁶

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

11. We grant NYISO's waiver request.¹⁷ Specifically, we grant NYISO's request for waiver of the requirements in Articles 30.3, 30.6, 30.7, and 30.10 of the NYISO OATT that require the Developer to elect within a prescribed period of time, and NYISO to perform, feasibility and system impact studies or to withdraw the Developer's project from the interconnection queue. We grant this waiver for the period between November 30, 2023, and the date of a further Commission order on NYISO's above-noted partial compliance filing to Order No. 2023. 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,

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ We make no findings as to the merits of NYISO's partial compliance filing at this time.

such as harming third parties.¹⁸ We find that the circumstances of NYISO's waiver request satisfy these criteria.

12. First, we find that NYISO is acting in good faith by requesting waiver to avoid requiring Developers and NYISO to commit resources to interconnection studies that ultimately will not result in accurate information. Second, we find that the requested waiver is limited in scope because it solely concerns an interim period from November 30, 2023, until a further Commission order on NYISO's above-noted partial compliance filing to Order No. 2023. Third, we find that granting waiver will remedy a concrete problem of NYISO performing interconnection studies that will impose unnecessary costs on Developers and potentially delay the transition to NYISO's new interconnection process. Finally, we find that granting the waiver will not have undesirable consequences, such as harming third parties, since Developers will not be harmed by NYISO not completing study work that is not required for a project to advance under the new process.

The Commission orders:

NYISO'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,
Acting Secretary.

¹⁸ 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).