

192 FERC ¶ 61,020  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Mark C. Christie, Chairman;  
David Rosner, Lindsay S. See,  
and Judy W. Chang.

Dover Plains Energy Properties LLC

Docket No. ER25-2010-000

ORDER DENYING WAIVER REQUEST

(Issued July 2, 2025)

1. On April 18, 2025, pursuant to Rules 207(a)(5) and 212 of the Commission's Rules of Practice and Procedure,<sup>1</sup> Dover Plains Energy Properties LLC (Dover) submitted a request for waiver of sections 40.7.5.3(i) and 40.7.5.3(iii) of Attachment HH of the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (Tariff) to allow Dover to make its election to proceed to Phase 1 of NYISO's Transition Cluster Study (Phase 1 Study) and post its Readiness Deposit 1 after the February 25, 2025 deadline.<sup>2</sup> As discussed below, we deny Dover's waiver request.

**I. Background**

2. NYISO's requirements for participating in Phase 1 of NYISO's Transition Cluster Study are set forth in section 40.7.5 of NYISO's Tariff. As relevant here, section 40.7.5 provides that the Phase 1 Entry Decision Period shall commence on the first business day after the end of the customer engagement window (i.e., February 19, 2025), and the Decision Period shall be five business days (i.e., ending February 25, 2025).<sup>3</sup> Section 40.7.5.3 of Attachment HH to NYISO's Tariff provides, in relevant part, that an interconnection customer may participate in Phase 1 of NYISO's Transition Cluster Study Process only if it completes the following actions prior to the end of the Decision Period: (1) notifies NYISO of its election for its Cluster Study Project to proceed to the Phase 1 Study; and (2) provides NYISO with the Readiness Deposit 1 for its Cluster Study Project in accordance with the

---

<sup>1</sup> 18 C.F.R. §§ 385.207(a)(5), 385.212 (2024).

<sup>2</sup> Waiver Request at 2. Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in NYISO's Tariff.

<sup>3</sup> NYISO, NYISO Tariffs, NYISO OATT, attach. HH, § 40.7 (Customer Engagement Window/Phase 1 Entry Decision Period) (0.0.0), §§ 40.7.5.1, 40.7.5.2.

acceptable methods of payment set forth in section 40.2.4.2.<sup>4</sup> Section 40.7.5.3(iii) of NYISO's Tariff establishes the Readiness Deposit 1 at \$4,000 per megawatt (MW).

3. Under section 40.7.6.1 of NYISO's Tariff, if an interconnection customer does not satisfy the requirements in section 40.7.5.3 for the Cluster Study Project to proceed to the Phase 1 Study, then NYISO shall withdraw the interconnection request for the Cluster Study Project from the queue pursuant to the withdrawal requirements in section 40.6.4.<sup>5</sup>

4. Under section 40.6.4.1 of NYISO's Tariff, NYISO shall provide written notice to the interconnection customer of the withdrawal and an explanation of the reasons for such withdrawal.<sup>6</sup> Upon receipt of written notice, the interconnection customer has a cure period of 15 business days in which to either respond with information or actions that cure the deficiency or to notify NYISO of its intent to pursue dispute resolution, except that for failure to timely make a payment or submit or maintain a deposit required by Attachment HH, the interconnection customer has a cure period of 10 business days.

## **II. Waiver Request**

5. Dover states that it is the developer of a 1,000 MW battery storage facility (Project) to be located in Dutchess County, New York, connecting to Consolidated Edison Company of New York, Inc.'s (Con Edison) transmission system.<sup>7</sup> Dover argues that, although it timely filed to participate in NYISO's Transition Cluster Study Process, NYISO removed Dover's Project from its interconnection queue on February 26, 2025, due to Dover's inability to make a timely election to participate in the Phase 1 Study as required by section 40.7.5.3(i) and due to Dover's inability to timely post the \$4 million Readiness Deposit 1 required by section 40.7.5.3(iii) for participation in that study by February 25, 2025.

6. Dover states that it submitted its initial interconnection request for the Project on October 3, 2024, and the Project subsequently entered NYISO's Transition Cluster Study Process.<sup>8</sup> Dover states that its primary point of contact for this process was consultant Mr. Eric Payne, and Mr. Payne interacted with NYISO representatives on several

---

<sup>4</sup> *Id.* § 40.7.5.3(i), (iii).

<sup>5</sup> *Id.* § 40.7.6.1.

<sup>6</sup> *Id.* § 40.6 (Queue Position/Modification/Withdrawal/Withdrawal Penalties) (0.0.0), § 40.6.4.1.

<sup>7</sup> Waiver Request at 1.

<sup>8</sup> *Id.* at 4.

occasions during the period from October 3, 2024, to February 18, 2025. Dover avers that, during that time period, Mr. Payne addressed a number of deficiency notices from NYISO and received and paid several invoices from NYISO for interconnection study costs.

7. Dover states that, on February 12, 2025, NYISO sent an email to all interconnection customers with instructions to submit the Phase 1 Entry Decision and Readiness Deposit 1 by February 25, 2025 at 5:00 pm, and that, while Mr. Payne has since discovered the message in his email, he has no recollection of receiving it and it was not shown as having been opened.<sup>9</sup> Dover explains that, having missed those instructions, Mr. Payne emailed NYISO on February 19, 2025, stating that he had not received instructions from NYISO concerning the feasibility or cost of the Project and that Dover had not yet had its scoping meeting.<sup>10</sup> Dover asserts that NYISO's representative informed Mr. Payne that NYISO's records showed that emails concerning the scoping meetings had been sent to him on January 14 and January 25, 2025, but Dover asserts that Mr. Payne cannot find any evidence of receipt of those emails.<sup>11</sup> Dover states that, on February 20, 2025, Mr. Payne emailed NYISO noting, along with requests for certain information, that he was concerned about missing critical deadlines due to not receiving emails. Dover states that, on February 20, 2025, NYISO's representative responded that no further scoping meetings would be held and provided Mr. Payne with the deadline for Decision Period 1. Dover states Mr. Payne responded that day that Dover was moving forward with the Project and would submit the Phase 1 Decision shortly.

8. Dover explains that Mr. Payne logged into the interconnection portal on February 20, 2025, but could not enter Dover's election to participate in the Phase 1 Study without also providing detailed information concerning the form of Dover's security for the Readiness Deposit 1, which Dover contends was not due yet and which Dover was not prepared to post.<sup>12</sup> Dover asserts that Mr. Payne consulted NYISO's Phase 1 Entry Decision Period training document, which did not provide a way for Dover to bypass the security posting requirements in order to enter its election to move forward, and instead explained that if all financial details could not be verified, the submission would be declined.<sup>13</sup> Dover states that, on February 24, 2025, Mr. Payne emailed NYISO to request information about how to

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 4-5.

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.* at 6-7.

satisfy the security requirement using a surety bond, and NYISO responded that day directing Mr. Payne to send a draft of the proposed surety bond to NYISO's credit department.<sup>14</sup> Dover asserts that it was unable to obtain approval of its security and was therefore unable to post its Readiness Deposit 1 and consequently unable to make its election in the interconnection portal to proceed with the study. Dover explains that, on February 26, 2025, NYISO informed Dover that the Project had been removed from the queue because it did not meet the election deadline and that Dover had until March 19, 2025 to demonstrate that it had elected to participate by the deadline, and until March 12, 2025 to post its Readiness Deposit 1.

9. Dover asserts that, unless the requested waiver is granted, the Project will be unable to participate in NYISO's Transition Cluster Study Process and will face delays in commercial operation date of at least 24 months because the next Cluster Study will not begin until summer 2026.<sup>15</sup>

10. Dover argues that its waiver request satisfies the Commission's criteria for granting waiver. First, Dover contends that it has acted in good faith and has diligently pursued achievement of the Transition Cluster Study Process, including responding to numerous requests for additional information, signing the interconnection study agreement, paying the application fee and study deposit, and timely paying subsequent invoices.<sup>16</sup> Dover asserts that its inability to submit the election to participate and post its deposit within the time limits were not the result of bad faith, but instead due to confusion and misunderstanding resulting from: (1) Dover's inadvertent administrative oversight in failing to recognize the importance of NYISO's February 12, 2025 email setting out the deadline for those actions; (2) the fact that NYISO did not provide Dover with any other notification of those deadlines, including in training documents or the interconnection portal, until February 18, 2025; (3) the fact that NYISO did not provide Dover with actual notice of the scoping meetings where Dover could have confirmed the dates; (4) the fact that NYISO's interconnection portal and training documents required Dover to post security before making its election to participate, even though this is not required by NYISO's Tariff; and (5) the fact that Dover was unable to satisfy the security requirements in the time after the interconnection portal refused to accept Dover's attempt to elect to join the Phase 1 Study.<sup>17</sup> Dover argues that, had it been able to enter its election prior to posting security for its Readiness Deposit 1, Dover would have been entitled under section 40.6.4.1 of NYISO's Tariff to a cure period of 10 business days to

---

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 7-8.

<sup>16</sup> *Id.* at 8.

<sup>17</sup> *Id.* at 8-9.

post security.<sup>18</sup> Dover contends, however, that because the Tariff does not provide an opportunity for Dover to make its election after February 25, 2025, the fact that NYISO's interconnection portal refused to allow Dover to make its election prior to posting security is a violation of the Tariff that was a substantial contributing factor to Dover's unfair exclusion from the Transition Cluster Study Process.

11. Second, Dover asserts that its waiver request is limited in scope because Dover seeks only a one-time waiver of the time to post its Readiness Deposit 1 and elect to enter Phase 1 of the on-going Transition Cluster Study Process.<sup>19</sup>

12. Third, Dover argues that its waiver request will address a concrete problem by allowing the Project to move forward in the Transition Cluster Study Process and prevent significant delay in development of the Project.<sup>20</sup>

13. Finally, Dover asserts that the requested waiver will not have any undesirable consequences or harm any third parties.<sup>21</sup> Dover states that the Phase 1 Study period began on March 1, 2025, and was originally projected to end on or about August 31, 2025, but has been extended until November 3, 2025. Dover contends that, given this extension and assuming prompt action on the waiver request, NYISO and Con Edison will have ample time to complete their Phase 1 Study of the Project within the time allowed under the Tariff, and therefore granting waiver will not adversely impact other study participants.<sup>22</sup>

### **III. Notice and Responsive Pleadings**

14. Notice of Dover's waiver request was published in the *Federal Register*, 90 Fed. Reg. 17590 (Apr. 28, 2025), with interventions and protests due on or before May 9, 2025. New York Transco LLC (Transco), NYISO, and Niagara Mohawk Power Corporation (Niagara Mohawk) filed timely motions to intervene and protests. On May 14, 2025, Dover filed a motion for leave to answer and answer.

---

<sup>18</sup> *Id.* at 9.

<sup>19</sup> *Id.* at 10.

<sup>20</sup> *Id.* at 11-12.

<sup>21</sup> *Id.* at 12.

<sup>22</sup> *Id.* at 12-13.

**A. NYISO's Protest**

15. NYISO argues that Dover's request for waiver to permit it to satisfy the entry requirements for the Phase 1 Study approximately 70 days following the Tariff-prescribed due date constitutes a retroactive waiver request.<sup>23</sup>

16. NYISO argues that Dover had reasonable notice to satisfy the Tariff requirements to enter the Phase 1 Study and its failure to timely act is inconsistent with its purported good faith.<sup>24</sup> NYISO asserts that it has been providing interconnection customers with information on an ongoing basis through a number of formats regarding important deadlines and requirements, including communications and training sessions prior to the commencement of the Transition Cluster Study. NYISO asserts that Dover's arguments regarding inadvertent oversights and missed communications and its failure to receive actual notice are incorrect and do not to explain how 242 other projects that were subject to the same notices and rules were able to successfully satisfy the requirements in the Phase 1 Entry Decision Period.<sup>25</sup> NYISO argues that Dover did receive actual notice of the applicable deadlines and requirements, noting that Dover acknowledges it received and overlooked the explicit notice from NYISO on February 12, 2025, and received such notice at the same time as all other interconnection customers participating in the Transition Cluster Study.<sup>26</sup>

17. NYISO argues that it provided interconnection customers, including Dover, with additional notice concerning the scoping meeting for the Transition Cluster Study Process and the timeframes for the key process steps, including the Phase 1 Entry Decision Period deadline.<sup>27</sup> NYISO explains that this deadline was included in a notice sent to interconnection customers and publicly posted on October 9, 2024, and that it provided regular updates through stakeholder meetings, with meeting minutes posted to NYISO's website and through its project management software that Mr. Payne has access to through the interconnection portal.<sup>28</sup> NYISO contends that the Tariff clearly specifies the

---

<sup>23</sup> NYISO Protest at 5-6.

<sup>24</sup> *Id.* at 6.

<sup>25</sup> *Id.* at 6-7.

<sup>26</sup> *Id.* at 7.

<sup>27</sup> *Id.* at 7-9.

<sup>28</sup> NYISO also explains that it has identified emails sent to Mr. Payne containing the scoping meeting dates that were not opened, and that information on scoping meetings were provided in its stakeholder meetings. *Id.* at 9.

timeframes for each process step in the Cluster Study Process. NYISO therefore argues that, even if Dover had inadvertently overlooked the February 12, 2025, notice, it had reasonable notice of the upcoming deadlines for the Phase 1 election and to post the Readiness Deposit 1. NYISO states that it has not identified any correspondence from Dover during the Phase 1 Entry Decision Period identifying issues with making an election to enter the Phase 1 Study in NYISO's interconnection portal.<sup>29</sup> NYISO asserts that, while Dover was not required to make use of NYISO's dispute resolution procedures, it did have the opportunity and failed to take such action in response to the withdrawal notice or to raise with NYISO its uncertainty concerning how to make its election to proceed to the Phase 1 Study in the interconnection portal.<sup>30</sup>

18. NYISO argues that, if the Commission were to grant the waiver request, it would open the door for other interconnection customers to seek to bypass deadlines in the Cluster Study Process, nullifying the stringent requirements needed to implement a more efficient and shortened process.<sup>31</sup> NYISO argues that the waiver request will likely have undesirable consequences for NYISO, the impacted transmission owners, and interconnection customers, including delays to the overall Cluster Study Process and additional study work.<sup>32</sup>

19. NYISO states that, while certain transmission owners performing Phase 1 Study work have communicated to stakeholders that some Phase 1 Study reports may be delayed, the potential need for additional time by any transmission owner is not known at this stage.<sup>33</sup> NYISO argues that Con Edison and Transco are still proceeding to complete the study work for Phase 1 Studies in line with the Tariff-prescribed deadlines, and Dover's waiver request could adversely impact the projects subject to these studies as well as Con Edison's and Transco's ability to satisfy their Tariff responsibilities.<sup>34</sup>

## **B. Transco's Protest**

20. Transco asserts that granting waiver and allowing Dover late entry to the Phase 1 Study could potentially jeopardize Transco's ability to meet its Tariff-required deadlines for

---

<sup>29</sup> *Id.* at 8-9.

<sup>30</sup> *Id.* at 9 n.26.

<sup>31</sup> *Id.* at 10.

<sup>32</sup> *Id.* at 10-13.

<sup>33</sup> *Id.* at 13.

<sup>34</sup> *Id.* at 13-14.

Phase 1 Study work and could cause cascading delays in the Phase 2 Study process.<sup>35</sup> Transco argues that such delays could impact other interconnection customers who are being studied by Transco and may further delay the rest of NYISO's Transition Cluster Study Process.

**C. Niagara Mohawk's Protest**

21. Niagara Mohawk argues that the requested waiver is a prohibited retroactive waiver request<sup>36</sup> and that Dover's request is untimely and demonstrates a lack of diligence as it was filed nearly two months after the deadline for the required election and deposit.<sup>37</sup> Niagara Mohawk asserts that there is no dispute that Dover failed to comply with the express requirements of NYISO's Tariff to affirmatively elect to proceed to the Phase 1 Study and post the Readiness Deposit 1, and NYISO's Tariff is clear that this failure results in removal from the queue.<sup>38</sup> Niagara Mohawk contends that granting waiver would constitute undue discrimination against, and unfairly disadvantage, the other projects in the queue that met the entry requirements and undermine confidence in the interconnection process.<sup>39</sup> Niagara Mohawk also contends that allowing Dover to reenter the process at this late stage would disrupt the ongoing Phase 1 and Phase 2 Studies, noting that the Phase 1 Study is already underway and adding an additional 1,000 MW project into the process would require NYISO and transmission owners to revisit analyses.<sup>40</sup>

**D. Dover's Answer**

22. Dover states that the actual date for submission of the Readiness Deposit 1 does not appear in NYISO's Tariff and was not plainly stated in any of the notices posted to NYISO's interconnection website.<sup>41</sup> Dover also states that NYISO's only arguments for notice – that the information was displayed in one notice, that Dover failed to understand

---

<sup>35</sup> Transco Protest at 1.

<sup>36</sup> Niagara Mohawk Protest at 2 (citing *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821 (D.C. Cir. 2021) (*OG&E*); *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223 (D.C. Cir. 2018) (*Old Dominion*)).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 2-3.

<sup>39</sup> *Id.* at 3.

<sup>40</sup> *Id.* at 3-4.

<sup>41</sup> Dover Answer at 2.



the importance of NYISO's February 12, 2025 email, and that Dover could have obtained additional information if it had participated in stakeholder meetings or used NYISO's project management software – hardly constitute “fair notice” required to support the claim that the deadline constituted a filed rate that cannot be waived retroactively.<sup>42</sup>

23. Dover argues that protesters' arguments that the filed rate doctrine bars waiver of the election requirement is an even weaker argument, stating that Dover's representative, Mr. Payne, provided a timely expression of intent to participate in his February 25, 2025, email to NYISO, which NYISO did not accept as satisfying Dover's obligation to elect to enter the Cluster Study Process.<sup>43</sup> Dover states that nothing in the Tariff provides interconnection customers with fair notice that election to participate can only be given through NYISO's interconnection portal or that no election can be made unless the interconnection customer posts its Readiness Deposit 1.<sup>44</sup>

24. Dover disagrees with NYISO's arguments that Dover has not provided a distinguishable basis for waiving the deadlines and that granting waiver would open the door for other interconnection customers to also bypass deadlines, which according to Dover ignore the unique nature of the first-of-its-kind cluster study process and NYISO's failure to provide fair notice of the deadlines and process for election and posting deposits.<sup>45</sup> Dover asserts that NYISO can prevent future waiver requests by simply and clearly providing fair notice of the requirements in the Tariff, notices posted on its website, and training materials.<sup>46</sup>

25. Dover contends that protesters' claims of harms to third parties are speculative because no protester asserts such harm is inevitable or identifies a concrete harm to study participants from delay.<sup>47</sup>

---

<sup>42</sup> *Id.* at 2-3.

<sup>43</sup> *Id.* at 3.

<sup>44</sup> *Id.* at 3-4.

<sup>45</sup> *Id.* at 4.

<sup>46</sup> *Id.* at 4-5.

<sup>47</sup> *Id.* at 5.

#### **IV. Discussion**

##### **A. Procedural Matters**

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2024), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2024), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Dover's answer because it has provided information that assisted us in our decision-making process

##### **B. Substantive Matters**

28. We find that Dover's April 18, 2025, request for waiver of sections 40.7.5.3(i) and 40.7.5.3(iii) of NYISO's Tariff to waive the February 25, 2025, deadline to elect to participate in the Phase 1 Study and post security for the Readiness Deposit 1 is retroactive in nature and is prohibited by the filed rate doctrine.<sup>48</sup> Accordingly, we deny Dover's waiver request.

29. We reject Dover's assertions that it did not have notice of the deadline to elect to participate in the Phase 1 Study and post security for Readiness Deposit 1 and that the deadline is not subject to the filed rate doctrine. NYISO states that the Phase 1 Entry Decision Period commenced on February 19, 2025.<sup>49</sup> Therefore, pursuant to NYISO's Tariff, the deadline for interconnection customers to notify NYISO of their elections and submit the Readiness Deposit 1 was February 25, 2025 (i.e., the end of the five-business-day period).<sup>50</sup> Dover does not point to any indication in the Tariff that this deadline

---

<sup>48</sup> See *OG&E*, 11 F.4th at 824-25 ("Once a tariff is filed, the Commission has no statutory authority to provide equitable exceptions or retroactive modifications to the tariff."); *Old Dominion*, 892 F.3d at 1230 ("The filed rate doctrine and the rule against retroactive ratemaking leave the Commission no discretion to waive the operation of a filed rate or to retroactively change or adjust a rate for good cause or for any other equitable considerations.").

<sup>49</sup> NYISO Protest at 3.

<sup>50</sup> NYISO, NYISO Tariffs, NYISO OATT, attach. HH, § 40.7 (Customer Engagement Window/Phase 1 Entry Decision Period) (0.0.0), § 40.7.5.2.

could be altered after the fact.<sup>51</sup> The Commission has previously found that similar timeframes in tariff provisions are subject to the filed rate doctrine.<sup>52</sup>

30. In addition to receiving adequate notice through NYISO's express Tariff provisions, the record reflects that NYISO provided all interconnection customers, including Dover, with the actual date of the deadline at multiple times through multiple formats, including via emails and through stakeholder meetings, the materials for which were also publicly posted.<sup>53</sup> Dover also acknowledges that it received notice of the deadline in a February 12, 2025, email.<sup>54</sup> Therefore, we are not persuaded by Dover's claims that it did not have sufficient opportunities to understand its obligations under the Tariff.

31. Because we are denying Dover's waiver request on the basis that it is prohibited by the filed rate doctrine, we need not address whether Dover's request would satisfy the criteria used by the Commission to evaluate waiver requests.

The Commission orders:

Dover's waiver request is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Carlos D. Clay,  
Deputy Secretary.

---

<sup>51</sup> We note that Dover could have, but did not, take advantage of the cure period to address its failure to meet the deadline. *See id.* § 40.7.6.1; *see also* NYISO Protest at 9 n.26. Contrary to Dover's argument, these cure periods apply to the Tariff provision at issue here, i.e., section 40.7.5.3.

<sup>52</sup> *See, e.g., Scioto Farms Solar Project, LLC*, 184 FERC ¶ 61,153 (2023), *order on reh'g*, 186 FERC ¶ 61,096 (2024) (denying waiver to accept late deferred security payment and allow applicant to retain its interconnection queue position); *Ridgeview Solar, LLC*, 185 FERC ¶ 61,148 (2023) (denying waiver of requirement to execute and return an interconnection service agreement "within 60 days after receipt of the Facilities Study"); *Hecate Grid Clermont 1 LLC*, 183 FERC ¶ 61,011 (2023) (denying waiver of requirement to complete and deliver the facilities study agreement to NYISO "within 10 calendar days" of receipt of the agreement).

<sup>53</sup> NYISO Protest at 7-9.

<sup>54</sup> Waiver Request at 4.