

181 FERC ¶ 61,236  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Clean Path New York LLC

Docket No. ER23-253-000

ORDER GRANTING WAIVER

(Issued December 16, 2022)

1. On October 28, 2022, pursuant to Rules 207(a)(5) and 212 of the Commission's Rules of Practice and Procedure,<sup>1</sup> Clean Path New York LLC (Clean Path) 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 Committee<sup>2</sup> before entering a Class Year Study. As discussed below, we grant Clean Path's waiver request.

**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.<sup>3</sup> 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

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<sup>1</sup> 18 C.F.R. §§ 385.207(a)(5), 385.212 (2021).

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

<sup>3</sup> NYISO, NYISO Tariffs, NYISO OATT, § 30 (Attachment 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).

deposit, required technical data, and a demonstration of site control.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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<sup>4</sup> NYISO, NYISO Tariffs, NYISO OATT, § 30 (Attachment X), 30.7 (Interconnection System Reliability Impact Study) (9.0.0), § 30.7.4 (Interconnection System Reliability Impact Study Procedures).

<sup>5</sup> NYISO, NYISO Tariffs, NYISO OATT, § 30 (Attachment X), (Interconnection System Reliability Impact Study) (9.0.0), § 30.7.5 (Study Report Meeting).

<sup>6</sup> NYISO, NYISO Tariffs, NYISO OATT, § 25 (Attachment S), § 25.6 (Cost Allocation Methodology For ERIS) (10.0.0), § 25.6.2.3.1.

<sup>7</sup> NYISO, NYISO Tariffs, NYISO OATT, § 25 (Attachment 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.").

## II. Waiver Request

4. Clean Path explains that it is the developer of the Clean Path Transmission Line, a proposed 178-mile, 1,300 MW underground submarine high voltage direct current transmission line to be located within the NYISO footprint.<sup>8</sup> Clean Path states that, in September 2021, its Clean Path Transmission Line proposal was selected by the New York State Energy and Research Development Authority (NYSERDA) after an extensive solicitation process for projects that meet New York State's policy goal of eliminating the use of fossil fuels for electricity generation.<sup>9</sup> Clean Path asserts that it entered into a renewable energy certificate purchase and sale agreement with NYSERDA in November 2021, which was approved by the New York State Public Service Commission (New York Commission) in April 2022.<sup>10</sup> Clean Path explains that its contract with NYSERDA sets an expected commercial operation date of June 30, 2027.<sup>11</sup> Clean Path asserts that, in order to meet the June 2027 commercial operation date, Clean Path must complete the interconnection process by no later than December 2024.

5. Clean Path states that it submitted its interconnection request to join NYISO's interconnection queue on October 21, 2021 with the expectation that its SRIS would be approved with sufficient time to join NYISO's upcoming 2023 Class Year.<sup>12</sup> Clean Path states that it timely provided the required deposits, modeling data, and site control demonstrations for the SRIS by December 28, 2021.<sup>13</sup> However, Clean Path claims that delays in the completion of its SRIS and approval of the SRIS by NYISO's Operating Committee jeopardize Clean Path's ability to obtain SRIS approval in time to join NYISO's 2023 Class Year Study.<sup>14</sup>

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<sup>8</sup> Waiver Request at 1, 4.

<sup>9</sup> *Id.* at 4-5.

<sup>10</sup> *Id.* at 2, 5 (citing New York Commission, Case 15-E-0302, Order Approving Contracts for the Purchase of Tier 4 Renewable Energy Certifications (issued Apr. 14, 2022)).

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

<sup>12</sup> *Id.* at 2. Clean Path states that its contract with NYSERDA contemplates that Clean Path will seek to enter the first Class Year for which it is eligible after the contract's effective date. *Id.* at 5.

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

<sup>14</sup> *Id.* at 9-10.

6. Specifically, Clean Path explains, in December 2021, NYISO estimated that the SRIS would be completed 150 days (rather than 120 days) from the date NYISO finalized the base cases for the study.<sup>15</sup> Clean Path next states that, on March 4, 2022, NYISO reached out to Clean Path with questions about the modeling data submitted in December 2021, and that Clean Path provided responses and updated models by March 15, 2022. Clean Path asserts that, on June 28, 2022, NYISO provided the SRIS base cases to Clean Path and the connecting transmission owners for comment by July 7, 2022.<sup>16</sup> Clean Path states that it provided comments on July 11, 2022, and further discussed the modeling and SRIS in a meeting on July 18, 2022.<sup>17</sup> Clean Path contends that it received multiple rounds of questions from NYISO from July to September 2022 and responded promptly to all inquiries. Clean Path states that, on September 26, 2022, NYISO finalized the base cases and commenced the SRIS process.<sup>18</sup> Clean Path states that NYISO subsequently revised the expected completion date to December 31, 2022. Clean Path argues that, given this series of events, it is uncertain whether NYISO's Operating Committee will approve the SRIS prior to the 2023 Class Year Start Date. Clean Path estimates that it may not receive SRIS approval until early 2023 and potentially miss the opportunity to enter the 2023 Class Year by a matter of days or weeks.

7. Clean Path 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.<sup>19</sup> Clean Path argues that its waiver request satisfies the Commission's criteria for granting waiver. First, Clean Path asserts that it is acting in good faith because it has responded promptly to technical and modeling questions from NYISO and the connecting transmission owner and has proactively communicated with NYISO as to the status of its SRIS.<sup>20</sup> Clean Path also asserts that it acted in good faith in timely submitting its interconnection request, diligently pursuing it, and taking every step it could to advance the process.<sup>21</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 10-11.

<sup>17</sup> *Id.* at 11.

<sup>18</sup> *Id.* at 12.

<sup>19</sup> *Id.* at 13.

<sup>20</sup> *Id.* at 14.

<sup>21</sup> *Id.* at 15.

8. Second, Clean Path argues that the waiver request is limited in scope.<sup>22</sup> Specifically, Clean Path argues that its waiver request is limited to Clean Path's interconnection request and would apply only to the extent that Clean Path's SRIS is approved before NYISO completes the Annual Transmission Baseline Assessment base cases for the 2023 Class Year. Clean Path explains that the interconnection process for its planned transmission line has been uniquely complex, because the transmission line: (1) is the first internal controllable line to proceed through a Class Year process (and the only known internal controllable line seeking entrance into the 2023 Class Year); (2) would interconnect at two different points within NYISO's footprint; and (3) involves multiple transmission owners. Clean Path adds that the waiver request is limited to waiver of a single timing requirement.<sup>23</sup>

9. Third, Clean Path contends that the waiver request addresses a concrete problem.<sup>24</sup> Clean Path argues that, if the SRIS approval is delayed beyond the 2023 Class Year Start Date, and Clean Path is unable to participate in the 2023 Class Year Study, the development of the Clean Path Transmission Line will be delayed by at least 18-24 months. According to Clean Path, this would delay the realization of significant benefits that the project is expected to provide to New York.<sup>25</sup>

10. Finally, Clean Path 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, nor has the study commenced.<sup>26</sup> Clean Path adds that granting waiver will not delay the study process because Clean Path 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. Clean Path commits to withdrawing its waiver request or notifying the Commission that it did not need to rely upon the Commission's grant of waiver if its SRIS is approved before the 2023 Class Year Start Date.<sup>27</sup>

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<sup>22</sup> *Id.* at 16.

<sup>23</sup> *Id.* at 17.

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

<sup>25</sup> *Id.* at 3, 17-18.

<sup>26</sup> *Id.* at 18.

<sup>27</sup> *Id.* at 3 n.8.

11. Clean Path asks the Commission to issue an order granting the requested relief by no later than December 16, 2022, to provide certainty should NYISO begin preparatory activities for the next Class Year while Clean Path awaits completion and approval of its SRIS.<sup>28</sup>

### III. Notice and Responsive Pleadings

12. Notice of Clean Path's filing was published in the *Federal Register*, 87 Fed. Reg. 66,291 (Nov. 3, 2022) with interventions and protests due on or before November 18, 2022. The New York Commission filed a notice of intervention, and NYSERDA and Helix Ravenswood, LLC filed timely motions to intervene. Timely motions to intervene and comments were filed by: NYISO; Thousand Island Solar, LLC (Thousand Island); Clean Energy Advocates;<sup>29</sup> New York Power Authority; and ConnectGen Montgomery County LLC (ConnectGen). New York State Agencies<sup>30</sup> filed comments. On November 23, 2022, New Leaf Energy, Inc. (New Leaf) filed a motion to intervene out of time. Thousand Island submitted corrected comments on December 2, 2022.

13. NYISO supports Clean Path's requested waiver.<sup>31</sup> NYISO explains that Clean Path's SRIS is still ongoing, because the Clean Path Transmission Line is a unique cross-state, controllable transmission line that raises novel reliability issues requiring a level of input and analysis far in excess of what a typical SRIS would require.<sup>32</sup> NYISO requests that, if the Commission grants Clean Path's waiver, the Commission extend the waiver to all similarly situated projects. NYISO explains that the similarly situated projects in this instance would include those projects that have an SRIS currently in progress.<sup>33</sup> NYISO contends that this approach would provide the same amount of additional time for similarly situated projects to have their SRIS completed and approved by the NYISO Operating Committee to enter the 2023 Class Year, which would minimize the potential for delays that could result from developers requesting similar waivers later in the Class

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<sup>28</sup> *Id.* at 19.

<sup>29</sup> Clean Energy Advocates include the Alliance for Clean Energy New York and Natural Resources Defense Council.

<sup>30</sup> New York State Entities include the New York Commission and NYSERDA.

<sup>31</sup> NYISO Comments at 6.

<sup>32</sup> *Id.* at 2-3.

<sup>33</sup> *Id.* at 7 (stating that the SRISs in progress are those SRISs that have had their initial scope approved by the Operating Committee as of the date of the waiver request, i.e., October 28, 2022).

Year Study process. NYISO asserts that the Commission has previously granted waivers that apply to entities similarly situated to the requesting entity.<sup>34</sup>

14. NYISO states that, to minimize the potential adverse impacts on the Class Year Study process, the waiver should not be open-ended.<sup>35</sup> NYISO argues that the Commission should clarify that Clean Path or any similarly situated project has until the completion date of the Annual Transmission Baseline Assessment base cases to have its SRIS report approved by NYISO's 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.<sup>36</sup> NYISO adds that the Commission should clarify that Clean Path and similarly situated projects are required to 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.

15. New York State Agencies, NYPA, and Clean Energy Advocates also support Clean Path's waiver request.<sup>37</sup> New York State Agencies, NYPA, and Clean Energy Advocates explain that Clean Path's project is expected to deliver significant amounts of renewable energy (i.e., from 23 generation resources, including 1,932 MW of wind capacity and 1,430 MW of solar capacity) to New York City. New York State Agencies, NYPA and Clean Energy Advocates assert that the Clean Path Transmission Line and its timely development are key components of meeting New York's clean energy goals.<sup>38</sup> Clean Energy Advocates add that, if the Clean Path Transmission Line is not able to join

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<sup>34</sup> *Id.* (citing *N.Y. Power Auth.*, 139 FERC ¶ 61,157, at P 27 (2012) (*NYPA*) (providing that the waiver granted to the requesting party applies equally to all other similarly situated parties identified by NYISO in the proceeding)).

<sup>35</sup> *Id.* at 8.

<sup>36</sup> *Id.* at 9.

<sup>37</sup> New York State Agencies Comments at 2-3; NYPA Comments at 4-5; Clean Energy Advocates Comments at 5-6.

<sup>38</sup> New York State Agencies Comments at 3; NYPA Comments at 5; Clean Energy Advocates Comments at 6.

NYISO Class Year 2023, there could be a delay in additional benefits, such as reducing congestion and other reliability benefits in New York.<sup>39</sup> New York State Agencies add that Clean Path's waiver request is narrowly limited to avoid potential delays to NYISO's 2023 Class Year process by making the waiver contingent upon the SRIS being approved before NYISO completes the Annual Transmission Baseline Assessment.<sup>40</sup> NYPA also adds that Clean Path's waiver is limited to one interconnection request and seeks a definitive time-bound extension for its SRIS to be approved.<sup>41</sup> New York State Agencies and Clean Energy Advocates further state that they support NYISO's request that the waiver apply to all similarly situated projects that have an SRIS currently in progress.<sup>42</sup>

16. Thousand Island and ConnectGen state that they are developers of large facilities in NYISO's interconnection queue and explain that they have projects that would benefit from the Commission's extension of Clean Path's waiver request.<sup>43</sup> Accordingly, Thousand Island and ConnectGen state that they support Clean Path's waiver request and NYISO's request for extension of the waiver.<sup>44</sup> Thousand Island states that it anticipates receiving an initial draft of its SRIS in December 2022 and explains that it is well-positioned to enter the 2023 Class Year Study if NYISO's request for the extension of Clean Path's waiver to similarly situated entities is granted.<sup>45</sup> ConnectGen explains that its SRIS process commenced on January 8, 2021, and the SRIS base case was finalized on May 10, 2021.<sup>46</sup> ConnectGen explains that the ability of its Mill Point Project to be included in the 2023 Class Year Study is in jeopardy. ConnectGen further contends that its SRIS study has been significantly delayed, and while recent communications with NYISO have suggested the SRIS may be forthcoming shortly, there is no certainty as to the timing of the Mill Point SRIS release or how such release would align with opportunities for and timing of presentation by the Transmission Planning Advisory Subcommittee and the NYISO Operating Committee. Thousand Island and ConnectGen

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<sup>39</sup> Clean Energy Advocates Comments at 6.

<sup>40</sup> NYPA Comments at 4.

<sup>41</sup> *Id.*

<sup>42</sup> New York State Agencies Comments at 3; Clean Energy Advocates Comments at 6-7.

<sup>43</sup> Thousand Island Comments at 3; ConnectGen Comments at 4.

<sup>44</sup> Thousand Island Comments at 3-4; ConnectGen Comments at 4-5.

<sup>45</sup> Thousand Island Comments at 3.

<sup>46</sup> ConnectGen Comments at 4.



argue that each of the Commission's waiver criteria is fully satisfied by Clean Path and NYISO.<sup>47</sup> ConnectGen adds that NYISO's request seeks to ensure a level playing field, in which all other similarly situated projects have the same opportunity.<sup>48</sup>

17. Several parties support Clean Path's request for an order by December 16, 2022, because it would provide certainty concerning the requirements applicable to SRISs prior to NYISO's Class Year Start Date, which could begin as early as January 3, 2023.<sup>49</sup>

#### **IV. Discussion**

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

18. 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.

19. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2021), we grant New Leaf's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

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

20. We grant Clean Path's request for a waiver of the 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. Thus, Clean Path may enter the upcoming 2023 Class Year Study if Clean Path has its SRIS by the completion date of the Annual Transmission Baseline Assessment base cases and satisfies the other requirements for entering a Class Year Study in accordance with NYISO's OATT.

21. 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

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<sup>47</sup> Thousand Island Comments at 3; ConnectGen Comments at 5.

<sup>48</sup> ConnectGen Comments at 5-6.

<sup>49</sup> NYISO Comments at 11; Clean Energy Advocates Comments at 7; Thousand Island Comments at 4.

third parties.<sup>50</sup> As discussed below, we find that Clean Path's waiver request satisfies these criteria.

22. First, we find that Clean Path acted in good faith. The record demonstrates that Clean Path has timely and diligently worked with NYISO and the connecting transmission owners to support the completion of its SRIS.<sup>51</sup>

23. Second, we find that the waiver is limited in scope because Clean Path 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. The waiver would apply only to the extent that Clean Path's SRIS is approved before NYISO completes the Annual Transmission Baseline Assessment base cases for the 2023 Class Year and only to Clean Path's project.

24. Third, we find that the waiver addresses a concrete problem. Absent waiver, Clean Path's project would likely not be eligible to participate in the 2023 Class Year Study, which could cause significant delays in the development of the Clean Path Transmission Line.<sup>52</sup>

25. Finally, we find that the waiver request 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.<sup>53</sup>

26. We decline to extend the grant of waiver to any other developers with an SRIS in progress, as NYISO requests. We find that, unlike in *NYPA*, NYISO did not identify the entities it asserts are similarly situated and further did not sufficiently justify how all projects with an SRIS in progress are similarly situated and satisfy the four waiver criteria.<sup>54</sup>

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<sup>50</sup> 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).

<sup>51</sup> Waiver Request at 14.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 19.

<sup>54</sup> Nothing in this order precludes NYISO from submitting for Commission consideration a request for waiver applicable to similarly situated projects that seeks to make these and any other necessary showings.

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The Commission orders:

Clean Path'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.

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