

182 FERC ¶ 61,092  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Middletown Energy Storage LLC

Docket No. ER23-915-000

ORDER DENYING WAIVER

(Issued February 15, 2023)

1. On January 20, 2023, pursuant to Rules 207(a)(5) and 212 of the Commission's Rules of Practice and Procedure,<sup>1</sup> Middletown Energy Storage LLC (Middletown) 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 deny Middletown'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 deposit, required technical data, and a demonstration of site control.<sup>4</sup> Section 30.7.5

---

<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 (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).

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

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> NYISO has announced that February 13, 2023 will be the Class Year Start Date for the 2023 Class Year.<sup>8</sup> 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.

---

System Reliability Impact Study Procedures).

<sup>5</sup> NYISO, NYISO Tariffs, NYISO OATT, § 30 (Attach. X ), § 30.7 (Interconnection System Reliability Impact Study) (9.0.0), § 30.7.5 (Study Report Meeting).

<sup>6</sup> NYISO, NYISO Tariffs, NYISO OATT, § 25 (Attach. 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 (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.").

<sup>8</sup> 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>.

## II. Waiver Request

4. Middletown explains that it is developing a 100 megawatt battery storage facility in Middletown, New York.<sup>9</sup> Middletown explains that its battery storage facility is a critical component of meeting New York's energy storage goals.

5. Middletown states that it submitted its interconnection request to NYISO on March 8, 2022, with the expectation that its SRIS would be completed and approved by the NYISO Operating Committee before the 2023 Class Year Study commences.<sup>10</sup> Middletown argues that delays in NYISO's processing of Middletown's interconnection request jeopardizes its ability to obtain SRIS approval in time to enter the 2023 Class Year and meet its commercial operation date.

6. Middletown states that it provided all required deposits, modeling data, and site control demonstrations by May 2022.<sup>11</sup> Middletown states that it met with NYISO and Orange and Rockland Utilities, Inc. (the Connecting Transmission Owner) at a scoping meeting on June 2, 2022, to discuss the facility's interconnection and Orange and Rockland Utilities, Inc.'s preference for routing of the generation tie line. Middletown states that it asked NYISO for status updates on the SRIS process on August 8, 2022, September 19, 2022, and October 31, 2022. Middletown states that NYISO responded twice that its review of the Middletown's facility was in progress.

7. Middletown contends that its SRIS scope has not been approved even though Middletown timely performed every step required under NYISO's OATT.<sup>12</sup> Middletown asserts that NYISO has not provided Middletown with an expected SRIS completion or approval date or explained why the SRIS is delayed.<sup>13</sup> Middletown states that it is committed to continuing to work with NYISO to expedite its SRIS for approval before the start of the 2023 Class Year.

8. Middletown contends that, if its facility is not included in the upcoming 2023 Class Year Study, it will be impossible for Middletown to meet its commercial operation date of October 2024, as the next Class Year cycle will not begin until 2025.<sup>14</sup>

---

<sup>9</sup> Waiver Request at 1.

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.* at 8.

<sup>12</sup> *Id.* at 14.

<sup>13</sup> *Id.* at 9.

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

Middletown contends that NYISO has no intention of completing its SRIS in the next 90 days leading up to the Annual Transmission Baseline Assessment deadline. Middletown argues that requiring that a facility's SRIS to be approved by NYISO's Operating Committee by the Annual Transmission Baseline Assessment base case completion date would be unreasonable as applied to Middletown's facility. Middletown contends that its facility has not benefitted from the same level of due diligence afforded to other facilities in NYISO's interconnection queue.<sup>15</sup> Middletown states that, on a recent conference call, NYISO staff informed Middletown that NYISO would not likely complete the SRIS by the Annual Transmission Baseline Assessment deadline. Middletown states that NYISO offered no explanation and no SRIS estimated completion date.<sup>16</sup>

9. Middletown asserts that NYISO is required to "process and analyze all Interconnection Requests with independence and impartiality, in cooperation with and with input from the Developer, Connecting Transmission Owners and other Market Participants."<sup>17</sup> Middletown further asserts that NYISO is required to "use the same Reasonable Efforts in processing and analyzing Interconnection Requests from all Developers, whether or not the Large Generating Facilities or Class Year Transmission Projects are owned by a Connecting Transmission Owner, its subsidiaries or Affiliates, or others."<sup>18</sup> Middletown argues that NYISO has not used the same reasonable efforts for Middletown's facility that it has for other facilities in NYISO's interconnection queue.<sup>19</sup>

10. Middletown recognizes that NYISO has limited resources and explains that Middletown offered to pay expediting fees so that NYISO could hire more contractors to complete the SRIS or pay its own consultants to conduct the SRIS and provide the results to NYISO for review and approval.<sup>20</sup> However, Middletown argues, NYISO has been unwilling to accept either solution. Middletown contends that NYISO should focus on solutions that can be used to complete outstanding SRISs and allow these projects to move forward. Middletown asserts that NYISO could, for example, extend the start of its Annual Transmission Baseline Assessment or the start of the 2023 Class Year until the SRISs are complete.<sup>21</sup>

---

<sup>15</sup> *Id.* at 10-11.

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

<sup>17</sup> *Id.* (citing NYISO OATT, Attach. X, § 30.2.2).

<sup>18</sup> *Id.* (citing NYISO OATT, Attach. X, § 30.2.2).

<sup>19</sup> *Id.* at 12.

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

11. Middletown requests a 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 its SRIS is approved by the NYISO Operating Committee to enter the Class Year Study.<sup>22</sup> Middletown asserts that it is similarly situated to Clean Path New York, LLC (Clean Path), to which the Commission granted a waiver of the same requirement.<sup>23</sup> Middletown argues that its waiver request satisfies the Commission's criteria for granting waiver. First, Middletown asserts that it has acted in good faith because it has diligently pursued its interconnection request.<sup>24</sup> Middletown explains that it hired Pterra Consulting to complete an interconnection feasibility study for its facility to reduce the burden on NYISO and advance to the SRIS process quickly. Middletown also states that it has responded promptly to NYISO communications and interconnection revision requests and has proactively communicated with NYISO to ensure the SRIS process was moving forward.

12. Second, Middletown argues that the waiver is limited in scope.<sup>25</sup> Specifically, Middletown states that it seeks a one-time waiver of a single requirement of NYISO's OATT.<sup>26</sup> Middletown adds that the waiver request only applies to Middletown, rather than multiple developers.<sup>27</sup> Middletown also states that it commits to timely meet all other requirements to enter the 2023 Class Year.<sup>28</sup> Middletown argues that it is not requesting waiver of the substantive requirement to obtain an approved SRIS, but rather seeks a temporary waiver of a deadline for a limited time.

13. Third, Middletown contends that the waiver request addresses a concrete problem.<sup>29</sup> Middletown asserts that, without waiver, Middletown will be unable to join the 2023

---

<sup>21</sup> *Id.* at 12-13.

<sup>22</sup> *Id.* at 3, 19.

<sup>23</sup> *Id.* at 14-16 (citing *Clean Path N.Y. LLC*, 181 FERC ¶ 61,236 (2022) (*Clean Path*)). Middletown asserts, however, that the limitation on the Commission's grant of waiver to Clean Path until the completion date of the Annual Transmission Baseline Assessment base cases is not reasonable for Middletown's facility.

<sup>24</sup> *Id.* at 17.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 15, 18-19.

<sup>27</sup> *Id.* at 19.

<sup>28</sup> *Id.* at 19-20.

Class Year Study and its facility will miss its commercial operation date by at least two years.

14. Finally, Middletown argues that granting waiver would not have undesirable consequences or harm third parties because the participants in the 2023 Class Year Study have not been finalized, nor have studies commenced.<sup>30</sup> Thus, Middletown contends, no other customers could have relied on Middletown's inclusion or exclusion from the 2023 Class Year Study. Middletown contends that in *Silver Lake Solar LLC*,<sup>31</sup> the Commission granted a similar waiver request to permit a facility to be included in NYISO's Class Year Study three months after the Class Year Study officially commenced. Middletown states that the Commission agreed with NYISO's position that a three-month delay would not harm or delay other customers because NYISO takes several months for Class Year Project review, base case modeling, and other preparatory activities before the beginning study: therefore, the Commission found that "[t]he other queue positions and any third-party interests will be in the same position as they would have been had [Silver Lake Solar LLC (Silver Lake)] moved forward and not been removed from the queue."<sup>32</sup>

15. Middletown states that it is willing to enter the 2023 Class Year Study without an SRIS and to bear the risk of interconnection-related costs.<sup>33</sup> Middletown acknowledges that, without NYISO's estimate of its facility's required Attachment Facilities, Distribution Upgrades, and System Upgrade Facilities to ensure reliability, Middletown could bear higher network upgrade costs than might be identified through the SRIS process.

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

16. Notice of Middletown's filing was published in the *Federal Register*, 88 Fed. Reg. 6249 (Jan. 31, 2023), with interventions and protests due on or before January 27, 2023. NYISO filed a timely motion to intervene and protest. On February 3, 2023, Middletown filed a motion for leave to answer and answer. On February 8, 2023, NYISO filed a motion to dismiss Middletown's answer and motion for leave to answer and answer to Middletown's answer. On February 14, 2023, Middletown filed a motion for leave to answer and answer to NYISO's answer.

---

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> 169 FERC ¶ 61,106 (2019) (*Silver Lake*).

<sup>32</sup> Waiver Request at 20 (citing *Silver Lake*, 169 FERC ¶ 61,106 at P 18).

<sup>33</sup> *Id.* at 21.

**A. NYISO Protest**

17. NYISO opposes Middletown's waiver request.<sup>34</sup> NYISO argues that Middletown's waiver request modifies a substantive entry requirement for NYISO's Class Year Study process, is not limited in scope, and could lead to delays in the Class Year Study, which would harm other developers. NYISO asserts that Middletown asks to be permitted to enter the 2023 Class Year without an approved SRIS and be provided an unlimited amount of time to obtain NYISO Operating Committee approval of its SRIS in parallel with the Class Year Study. NYISO argues granting the waiver request would essentially eliminate the Class Year entry tariff requirement for Middletown's facility and would open the door for other developers to seek to bypass an important entry requirement for 2023 Class Year and for future Class Years. NYISO states that its support of Clean Path's and other developers' waiver requests, which asked for only a modest amount of additional time, has been explicitly tied to the condition that the projects have only until the completion of the Annual Transmission Baseline Assessment base cases to obtain NYISO Operating Committee approval of their SRISs. NYISO further states that this deadline is necessary to minimize the impact of such waivers on NYISO's Class Year Study process and is crucial for NYISO's timely implementation of its Class Year Study process.<sup>35</sup> 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, require re-starting study work midway through the process, and delay the ultimate completion of the Class Year Study for all members.<sup>36</sup> NYISO notes that its development of the Annual Transmission Baseline Assessment base cases is the initial step in the Class Year Study Process.<sup>37</sup> NYISO states that, if new Class Year Projects are subsequently modified, NYISO may need to re-open the Annual Transmission Reliability Assessment for each occurrence, which would delay the start of NYISO's analysis conducted for the Class Year.<sup>38</sup> NYISO asserts that adding Class Year members late in the process could delay the start of project-specific studies. NYISO asserts that such delays could harm other members of the Class Year that have timely satisfied the entry requirements in the tariff, and thus, the waiver request is not limited in scope and is likely to harm third parties.<sup>39</sup>

---

<sup>34</sup> NYISO Protest at 5.

<sup>35</sup> *Id.* at 5-6.

<sup>36</sup> *Id.* at 6.

<sup>37</sup> *Id.* at n.22.

<sup>38</sup> *Id.* at n.23.

<sup>39</sup> *Id.* at 6-7.

18. NYISO asserts that Middletown's facility is not similarly situated to Clean Path's facility and other facilities where NYISO has supported waiver requests.<sup>40</sup> Specifically, NYISO states that Middletown's facility has not met the same interconnection study process milestones as those other projects because its SRIS scope has not yet been approved by the NYISO Operating Committee and its SRIS has not yet commenced. NYISO contends that Middletown's facility has not yet advanced to these milestones largely due to the date it submitted its interconnection request and the delays in its submission of required data and information.

19. NYISO asserts that it has used and continues to use reasonable efforts to process Middletown's interconnection request.<sup>41</sup> NYISO explains that Middletown's actions have contributed to the status of its facility, namely that Middletown did not initially submit adequate data with its interconnection request and had to provide several rounds of additional data before NYISO could validate its request. NYISO further states that, after the scoping meeting, NYISO was required to issue a withdrawal notice because Middletown failed to confirm the point of interconnection for its facility by the deadline required by NYISO's OATT, which Middletown subsequently cured.<sup>42</sup> NYISO also contends that, contrary to Middletown's assertions that the consultant it hired to conduct the feasibility study should have expedited the study process, a developer is not required to complete an Optional Feasibility Study in NYISO's interconnection process to proceed to an SRIS.<sup>43</sup> NYISO further asserts that Middletown did not make use of the Optional Feasibility Study set forth in NYISO's OATT, but appears to have performed its study outside of NYISO's interconnection process. NYISO states that it is working diligently in close collaboration with Middletown and the Connecting Transmission Owner to complete the scope for the SRIS for Middletown's facility and move forward with the study. NYISO states, however, that the SRIS will not be completed by the Class Year Start Date and is not expected to be approved by the NYISO Operating Committee by the completion of the Annual Transmission Baseline Assessment. NYISO states that it opposes Middletown's waiver request, but that if the Commission were to grant Middletown's waiver request, it should apply the same conditions it adopted in *Clean Path* to ensure that the scope of the waiver is limited and other Class Year participants are not harmed.

---

<sup>40</sup> *Id.* at 7.

<sup>41</sup> *Id.* at 8.

<sup>42</sup> *Id.* at 8-9.

<sup>43</sup> *Id.* at 9.



**B. Middletown February 3 Answer**

**20.** Middletown argues that NYISO's inability to complete and approve the SRIS for Middletown's facility does not justify delaying the facility for another two years.<sup>44</sup> Middletown argues that, with respect to Middletown's facility, NYISO did not meet its tariff requirement to use the same reasonable efforts to complete all SRISs within 90 or 120 days following the receipt of required materials.<sup>45</sup> Middletown further argues that, when NYISO was unable to complete Middletown's SRIS within that timeframe, NYISO failed to provide Middletown with an estimated completion date and explanation as to why NYISO needed more time. Specifically, Middletown contends that NYISO did not use the same reasonable efforts to complete Middletown's SRIS that it did with the facility at issue in *Clean Path*. Middletown argues that the Commission has granted waiver where, like here, a regional transmission organization (RTO) caused a developer to miss a tariff timing requirement based on actions within the RTO's control.<sup>46</sup>

**21.** Middletown reasserts that its waiver request is limited in scope.<sup>47</sup> Middletown argues that the waiver request is not unlimited because it is for a limited time until the NYISO Operating Committee approves the facility's SRIS. Thus, according to Middletown, the waiver request has a definitive end date.<sup>48</sup> Middletown states that it anticipates that the facility's draft SRIS will be available for NYISO's review by mid-March 2023. Middletown contends that, contrary to NYISO's assertions, Middletown has not asked the Commission to eliminate the SRIS requirement. Rather, Middletown argues that it requests the minimum additional time necessary for NYISO to review and approve the facility's SRIS. Middletown also argues that, to extent the Commission is concerned the waiver request is not limited in scope, the Commission may exercise its authority to impose time limitations consistent with the public interest on both Middletown and NYISO.<sup>49</sup>

---

<sup>44</sup> Middletown February 3 Answer at 2.

<sup>45</sup> *Id.* at 3-4.

<sup>46</sup> *Id.* at 6 (citing *SunEnergy1, LLC*, 176 FERC ¶ 61,004 (2021) (*Sun Energy*) (granting waiver of an interconnection deadline where the developer demonstrated that it failed to meet the deadline because the developer believed in good faith that the deadline was not applicable to its projects)).

<sup>47</sup> *Id.* at 7-8.

<sup>48</sup> *Id.* at 8.

<sup>49</sup> *Id.* at n.39 (citing *Verso Corp. v. FERC*, 898 F.3d 1, 10 (D.C. Cir. 2018); *Columbia Gas Transmission Corp. v. FERC*, 750 F.2d 105, 109 (D.C. Cir. 1984) (finding that "[t]he principle fairly drawn from prior cases is that the Commission has broad

22. Middletown also reasserts that its waiver request will not cause harm to other developers.<sup>50</sup> Middletown explains that if the Commission grants its waiver request, Middletown will become eligible to enter the 2023 Class Year Study before NYISO begins the Annual Transmission Baseline Assessment base cases. Therefore, Middletown asserts, NYISO and every developer would know that Middletown's facility is a 2023 Class Year project and NYISO could account for Middletown's inclusion while performing studies.<sup>51</sup> Middletown adds that the 2023 Class Year Study will be in its earliest stages with the facility's SRIS is complete and that any resulting delay would be minimal compared to the delays that routinely arise in a Class Year Study.<sup>52</sup> Middletown argues that 2023 Class Year projects will likely benefit from the facility's inclusion because it is highly unlikely that the facility will require network upgrades.<sup>53</sup> Middletown adds that, as a member of the 2023 Class Year, it will pay a share of the costs incurred to interconnect other projects.<sup>54</sup>

23. Middletown argues that NYISO creates a false deadline by claiming that the Annual Transmission Baseline Assessment completion date is a necessary cutoff.<sup>55</sup> Middletown contends that the Class Year process is "iterative by design," and asserts that NYISO's argument that the Annual Transmission Baseline Assessment base cases cutoff date is crucial to avoid re-studies and delays is a red herring.<sup>56</sup> Middletown states that, as recently as the 2021 Class Year, the dates for closing Class Years are routinely extended as new resources withdraw from the queue because, among other reasons, they are unwilling to accept their upgrade cost allocation.<sup>57</sup> Middletown argues that, based on the length and consistent delays in the Class Year Study process, a reasonable extension to complete the facility's SRIS beyond the Annual Transmission Baseline Assessment base cases cutoff date will have little or no adverse effect on the Class Year or its other developers.

---

authority to fashion remedies so as to do equity consistent with the public interest.")).

<sup>50</sup> *Id.* at 8.

<sup>51</sup> *Id.* at 8-9.

<sup>52</sup> *Id.* at 9.

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

<sup>54</sup> *Id.* at 10.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 10-11.

<sup>57</sup> *Id.* at 11.

**C. NYISO Answer**

**24.** NYISO argues that the Commission should dismiss Middletown's answer because it does not provide additional clarity or otherwise develop the record in this proceeding.<sup>58</sup> NYISO renews its opposition to Middletown's waiver request and contends that there is no merit to Middletown's assertion that NYISO acted in a discriminatory manner with regard to Middletown's facility.<sup>59</sup> NYISO points out that the Clean Path project and the projects with pending waiver requests supported by NYISO all submitted interconnection requests before Middletown's interconnection request.<sup>60</sup>

**25.** NYISO also rebuts Middletown's contention that its facility will benefit other Class Year projects because it will pay a share of the costs incurred to interconnect other projects.<sup>61</sup> NYISO explains that the Class Year Study allocates the costs of any System Upgrade Facility required to reliably interconnect a Class Year Project or Class Year Projects to the specific project that caused the need for that upgrade based on each project's individual contribution to that need.<sup>62</sup> NYISO states that, if a Class Year Project's interconnection does not contribute to the need for a particular System Upgrade Facility, that Class Year Project is not allocated any of the costs of that upgrade. NYISO therefore contends that Middletown's inclusion in Class Year 2023 would not result in the allocation to Middletown of the cost of upgrades that are identified in the Class Year Study solely for other projects.<sup>63</sup>

**D. Middletown February 14 Answer**

**26.** Middletown criticizes NYISO's assertion that the Clean Path project and the projects with pending waiver requests supported by NYISO all submitted interconnection requests before Middletown's interconnection request.<sup>64</sup> Middletown argues that the fact that some projects have been in NYISO's queue longer than others does not justify NYISO's delay with regard to Middletown. Middletown continues that NYISO's OATT provides a period by which an SRIS should be completed and requires notice and

---

<sup>58</sup> NYISO Answer at 1-2.

<sup>59</sup> *Id.* at 2.

<sup>60</sup> *Id.* at 2-3.

<sup>61</sup> *Id.* at 3.

<sup>62</sup> *Id.* (citing NYISO OATT, Attach. S, §§ 25.4.1, 25.6.2.7, app. 1).

<sup>63</sup> *Id.* at 3-4.

<sup>64</sup> Middletown February 14 Answer at 2.

information if the SRIS is not completed or likely to be delayed. Middletown states that it did not receive such notice.

27. Middletown also argues that Commission precedent does not require that a waiver result in benefits to a third party. Rather, Middletown states that the requirement is that a waiver will not result in undesirable consequences, such as harm to third parties. Middletown asserts that it has demonstrated that there will be no harm and that NYISO has not identified any real harm.

28. Finally, Middletown contends that if NYISO had provided a timing and cost estimate for its facility's SRIS earlier than February 8, 2023, Middletown could have worked with NYISO to complete the SRIS before the Class Year Start Date.<sup>65</sup> Middletown adds that it believes that it can complete the SRIS by the Annual Transmission Baseline Assessment base case completion if NYISO works diligently with Middletown.

#### **IV. Discussion**

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

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), NYISO's timely, unopposed motion to intervene serves to make it a party to this proceeding.

30. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2021), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept Middletown's and NYISO's answers because they have provided information that assisted us in our decision-making process.

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

31. As discussed below, we deny Middletown's waiver request. 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.<sup>66</sup> We find that the circumstances of Middletown's waiver request do not satisfy these criteria.

---

<sup>65</sup> *Id.* at 3.

<sup>66</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).

32. Specifically, we find that Middletown’s waiver request is not limited in scope. Middletown seeks 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>67</sup> Middletown’s request is distinguishable from the waiver requested and granted in *Clean Path*,<sup>68</sup> where the applicant, Clean Path, proposed the condition that the waiver extend only through completion of the Annual Transmission Baseline Assessment base cases for the 2023 Class Year Study, a step that NYISO explained is its initial step in the Class Year Study process and takes approximately 60 days to complete from the Class Year Start Date.<sup>69</sup> By contrast, although Middletown argues that the waiver request is not unlimited, the record does not demonstrate that Middletown knows with any certainty when its SRIS would be complete.

33. Contrary to Middletown’s characterization of *Clean Path*, the Commission adopted Clean Path’s proposed limitation in granting waiver.<sup>70</sup> Here, while NYISO emphasizes the importance of imposing the limitation,<sup>71</sup> Middletown expressly objects to limiting its waiver the same way.<sup>72</sup> Indeed, Middletown acknowledges that granting

---

<sup>67</sup> See, e.g., *Gaelectric, LLC v. NorthWestern Corp.*, 148 FERC ¶ 61,107, at P 35 (2014) (denying waiver and finding that the applicant inappropriately requested waiver for an “uncertain period of time.”).

<sup>68</sup> *Clean Path*, 181 FERC ¶ 61,236; see *Thousand Island Solar LLC*, 182 FERC ¶ 61,055 (2023).

<sup>69</sup> NYISO, Comments, Docket No. ER23-253-000, at 8 (filed Nov. 15, 2022). We note that NYISO has stated that Middletown did not meet the same milestones as Clean Path and other projects, largely due to the date Middletown submitted its interconnection request and the delays in its submission of required data and information. NYISO Protest at 7-8; NYISO Answer at 2-3.

<sup>70</sup> *Clean Path*, 181 FERC ¶ 61,236 at P 20 (noting that Clean Path must have its SRIS “by the completion date of the Annual Transmission Baseline Assessment base cases”); *id.* P 23 (“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.”).

<sup>71</sup> NYISO Protest at 5-7.

<sup>72</sup> While Middletown suggests in its answer that the Commission could impose a time limitation on its waiver request, it also states that the Annual Transmission Baseline Assessment base case deadline is unreasonable as applied to Middletown’s facility. Based on the record, we find that extension beyond that deadline would have the potential to adversely affect other developers, and we therefore decline to impose a time

waiver with such a limitation would be pointless because its facility has not progressed as far as the project at issue in *Clean Path*, and thus, all indications are that Middletown would not have its SRIS before completion of the same deadline imposed in *Clean Path*.<sup>73</sup> For this reason, Middletown is also distinguishable from the project at issue in *Silver Lake*, where the project at issue was farther along in the interconnection queue and had otherwise met all relevant requirements such that waiver was limited to only one deadline.<sup>74</sup>

**34.** We also find that Middletown has failed to demonstrate that waiver would not result in undesirable consequences, including harm to third parties. We agree with NYISO that the Annual Transmission Baseline Assessment deadline is critical to NYISO's timely completion of the Class Year Study process and that expansion of Class Year membership in the manner requested by Middletown could disrupt completed study work and delay the ultimate completion of the Class Year Study for participating members. Middletown confirms that, if granted, its waiver request has the potential to adversely affect the Class Year and other developers.<sup>75</sup> We therefore find that Middletown has not demonstrated on the record here that its request for waiver would not harm third parties.

**35.** Because we deny Middletown's waiver request on the basis that it is not limited in scope and Middletown has not demonstrated that the waiver request would not result in undesirable consequences, we need not address the remaining criteria used by the Commission to evaluate waiver requests.

The Commission orders:

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

By the Commission.

---

limitation beyond that date.

<sup>73</sup> Middletown raises various allegations against NYISO pertaining to NYISO's failure to: (1) use the same reasonable efforts to complete all SRISs within 90 or 120 days following the receipt of required materials; (2) notify Middletown that its SRIS is not completed or likely to be delayed; and (3) provide an estimated completion date with an explanation as to why additional time was needed. These allegations exceed the scope of this proceeding.

<sup>74</sup> See *Silver Lake*, 169 FERC ¶ 61,106 at P 18.

<sup>75</sup> Middletown Answer at 9, 11.

( S E A L )

Kimberly D. Bose,  
Secretary.