

182 FERC ¶ 61,093
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Athens Energy Storage LLC

Docket No. ER23-916-000

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,¹ Athens Energy Storage LLC (Athens) submitted a request for waiver of section 25.6.2.3.1 of Attachment S of the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT), which requires an interconnection project to have an Interconnection System Reliability Impact Study (SRIS) approved by the NYISO Operating Committee² before entering a Class Year Study. As discussed below, we deny Athens' 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.³ 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

¹ 18 C.F.R. §§ 385.207(a)(5), 385.212 (2021).

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

³ NYISO, NYISO Tariffs, NYISO OATT, § 30 (Attach. X), § 30.6 (Interconnection Feasibility Study) (4.0.0); *id.* § 30.7 (Interconnection System Reliability Impact Study) (9.0.0); *id.* § 30.8 (Interconnection Facilities Study) (7.0.0).

deposit, required technical data, and a demonstration of site control.⁴ Section 30.7.5 requires that NYISO provide a draft SRIS report to the developer and transmission owners and allow them 15 business days to review.⁵ Once NYISO issues the final SRIS report, the SRIS is reviewed by the Transmission Planning Advisory Subcommittee of the NYISO Operating Committee within three months, and subsequently by the NYISO Operating Committee.

3. Section 25.6.2.3.1 of NYISO's OATT establishes the main requirements for a Large Facility project to be eligible to be included in a given Class Year Study. No later than the Class Year Start Date, the project must have: (1) a completed SRIS approved by the NYISO Operating Committee; and (2) the applicable regulatory milestone for its project in accordance with Attachment S, or in lieu of satisfying such milestone, a two-part deposit or a qualifying contract.⁶ The date that the Class Year Study commences is the Class Year Start Date, and occurs on the first business day after 30 calendar days following the completion of the prior Class Year. Following the Class Year Start Date, NYISO develops the Annual Transmission Baseline Assessment base cases.⁷ NYISO has announced that February 13, 2023 will be the Class Year Start Date for the

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

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

⁶ NYISO, NYISO Tariffs, NYISO OATT, § 25 (Attach. S), § 25.6 (Cost Allocation Methodology for ERIS) (10.0.0), § 25.6.2.3.1.

⁷ NYISO, NYISO Tariffs, NYISO OATT, § 25 (Attach. S), § 25.6 (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.").

2023 Class Year.⁸ 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.

II. Waiver Request

4. Athens explains that it is developing a 300 megawatt battery storage facility in Athens, New York.⁹ Athens explains that its battery storage facility is a critical component of meeting New York's energy storage goals.¹⁰

5. Athens states that it submitted its interconnection request to NYISO on July 16, 2022, with the expectation that its SRIS would be completed and approved before the 2023 Class Year Study commences.¹¹ Athens argues that delays in NYISO's processing of Athens' interconnection request jeopardize its ability to obtain SRIS approval in time to enter the 2023 Class Year and meet its commercial operation date.

6. Athens states that it promptly responded on August 1, 2022 to address a deficiency notice from NYISO and followed up with NYISO on August 8, 2022 and August 17, 2022 to determine whether the deficiencies in its interconnection request were resolved.¹² Athens explains that NYISO did not contact Athens again until September 9, 2022, when NYISO sent Athens an additional deficiency notice. Athens states that it addressed the deficiencies and notified NYISO on October 14, 2022. Athens explains that NYISO sent an additional deficiency notice on October 18, 2022, to which Athens responded promptly on the same day. Athens explains that NYISO requested additional interconnection information on October 31, 2022, and Athens responded promptly the same day.

⁸ N.Y. Indep. Sys. Operator, Inc., *Notice of the Class Year 2023 Study Start Date* (Jan. 2023), <https://www.nyiso.com/documents/20142/1396587/Class-Year-2023-Notice-of-Class-Year-Start-Date.pdf/49ff5469-d9d7-6072-3ab1-6870fa9fab3b>.

⁹ Waiver Request at 1.

¹⁰ *Id.* at 1-4, 13-14.

¹¹ *Id.* at 7.

¹² *Id.* at 9.

7. Athens states that it provided all required deposits, modeling data and site control demonstrations for the SRIS study by November 4, 2022.¹³ Athens states that, on November 16, 2022, it attempted to advance the SRIS process by requesting a scoping meeting. Athens explains that, in response, NYISO scheduled the meeting for December 19, 2022. Athens further explains that on December 8, 2022, it contacted NYISO to confirm the scoping meeting. Athens contends that NYISO responded by rescheduling the meeting to January 6, 2023, without explanation. Athens argues that, despite interconnection delays, Athens has continued to follow-up with NYISO staff and offer solutions to expedite the SRIS process.

8. Athens contends that it has provided the required information, diligently responded to all NYISO communications, and has continuously requested updates from NYISO regarding its SRIS status.¹⁴ Athens argues that NYISO has not provided it with an expected SRIS completion or approval date or explained why its SRIS process is delayed. Athens 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.

9. Athens asserts that, if its facility is not included in the upcoming 2023 Class Year Study, it will be impossible for Athens to meet its commercial operation date of October 2024, as the next Class Year cycle will not begin until 2025.¹⁵ Athens contends that NYISO has no intention of completing its SRIS in the next ninety 90 days leading up to the Annual Transmission Baseline Assessment deadline.¹⁶ Athens 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 Athens' facility. Athens contends that its facility has not benefitted from the same level of due diligence afforded to other facilities in NYISO's interconnection queue.¹⁷ Athens states that, on a recent conference call, NYISO staff informed Athens that NYISO would not likely complete the SRIS by the Annual Transmission Baseline Assessment deadline. Athens states that NYISO offered no explanation and no SRIS estimated completion date.¹⁸

¹³ *Id.*

¹⁴ *Id.* at 9-10.

¹⁵ *Id.* at 10.

¹⁶ *Id.* at 11.

¹⁷ *Id.*

¹⁸ *Id.* at 11-12.

10. Athens asserts that NYISO is required to “process and analyze all Interconnection Request with independence and impartiality, in cooperation with and with input from the Developers, Connecting Transmission Owners and other Market Participants.”¹⁹ Athens further contends 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.”²⁰ Athens argues that NYISO has not used the same reasonable efforts for the Athens facility that it has for other facilities in NYISO’s interconnection queue.

11. Athens recognizes that NYISO has limited resources and explains that it 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.²¹ However, Athens argues, NYISO has been unwilling to accept either solution. Athens contends that NYISO should be focusing on solutions that can be used now to complete outstanding SRISs and allow these projects to move forward.²² Athens asserts that NYISO could, for example, extend the start of its Annual Transmission Baseline Assessment analysis or the start of the 2023 Class Year until the SRISs are complete.

12. Athens 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.²³ Athens 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.²⁴ Athens argues that its waiver request satisfies the Commission’s criteria for granting waiver. First, Athens asserts that it has acted in good faith because it has diligently pursued its interconnection request.²⁵

¹⁹ *Id.* at 12 (citing NYISO OATT, Attach. X, § 30.2.2).

²⁰ *Id.* (citing NYISO OATT, Attach. X, § 30.2.2).

²¹ *Id.* at 12.

²² *Id.* at 13.

²³ *Id.* at 3, 19.

²⁴ *Id.* at 14-16 (citing *Clean Path N.Y. LLC*, 181 FERC ¶ 61,236 (2022) (*Clean Path*)). Athens 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 Athens’ facility.

Athens states that it submitted its interconnection request on July 16, 2022, which is seven months in advance of the anticipated Class Year Study. Athens 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. Athens also states that it responded promptly to NYISO's communications and interconnection revision requests and has proactively communicated with NYISO to ensure that the SRIS process was moving forward.

13. Second, Athens argues that the waiver is limited in scope.²⁶ Specifically, Athens argues that it seeks a one-time waiver of a single requirement of NYISO's OATT. Athens adds that the waiver request only applies to Athens, rather than multiple developers. Athens also states that it commits to timely meet all other requirements to enter the 2023 Class Year. Athens 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.

14. Third, Athens contends that the waiver request addresses a concrete problem.²⁷ Athens asserts that, without waiver, Athens will be unable to join NYISO's 2023 Class Year Study and its facility will miss its commercial operation date by at least two years.

15. Finally, Athens 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.²⁸ Thus, Athens contends, no other customer could have relied on Athens' inclusion or exclusion from the 2023 Class Year Study. Athens contends that in *Silver Lake Solar LLC*,²⁹ 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. Athens 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."³⁰

²⁵ *Id.* at 17.

²⁶ *Id.* at 19.

²⁷ *Id.*

²⁸ *Id.* at 20-21.

²⁹ 169 FERC ¶ 61,106 (2019) (*Silver Lake*).

16. Athens states that it is willing to enter the 2023 Class Year Study without an SRIS at this point and to bear the risk of interconnection related costs.³¹ Athens acknowledges that, without NYISO's estimate of its facility's required Attachment Facilities, Distribution Upgrades, and System Upgrade Facilities to ensure reliability, Athens could bear higher network upgrade costs than might be identified through the SRIS process.

III. Notice and Responsive Pleadings

17. Notice of Athens' 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, Athens filed motion for leave to answer and answer. On February 8, 2023, NYISO filed a motion to dismiss Athens' answer and motion for leave to answer and answer to Athens' answer. On February 14, 2023, Athens filed a motion to leave to answer and answer to NYISO's answer.

A. NYISO Protest

18. NYISO opposes Athens' waiver request.³² NYISO argues that Athens' 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 Athens 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 that granting the waiver request would essentially eliminate the Class Year entry tariff requirement for Athens' 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.³³ 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

³⁰ Waiver Request at 20-21 (citing *Silver Lake*, 169 FERC ¶ 61,106 at P 18).

³¹ *Id.* at 21.

³² NYISO Protest at 5.

³³ *Id.* at 5-6.

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.³⁴ NYISO notes that its development of the Annual Transmission Baseline Assessment base cases is the initial step in the Class Year Study Process.³⁵ 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 the NYISO's analysis conducted for the Class Year.³⁶ 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.³⁷

19. NYISO asserts that Athens' facility is not similarly situated to Clean Path's facility and other facilities where NYISO has supported waiver requests.³⁸ Specifically, NYISO states that Athens' 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 Athens' 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.

20. NYISO asserts that it has used and continues to use reasonable efforts to process Athens' interconnection request.³⁹ NYISO explains that Athens' actions have contributed to the status of its facility, namely that Athens 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 also contends that contrary to Athens' 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.⁴⁰ NYISO further asserts that Athens did not make use of the Optional Feasibility Study set

³⁴ *Id.* at 6.

³⁵ *Id.* at n.22.

³⁶ *Id.* at n.23.

³⁷ *Id.* at 6-7.

³⁸ *Id.* at 7.

³⁹ *Id.* at 8.

⁴⁰ *Id.* at 9.

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 Athens and the Connecting Transmission Owner to complete the scope for the SRIS for Athens' 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 Athens' waiver request, but that if the Commission were to grant Athens' 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.

B. Athens February 3 Answer

21. Athens argues that NYISO's inability to complete and approve the SRIS for Athens' facility does not justify delaying the facility for another two years.⁴¹ Athens argues that, with respect to Athens' 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.⁴² Athens further argues that, when NYISO was unable to complete Athens' SRIS within that timeframe, NYISO failed to provide Athens with an estimated completion date and explanation as to why NYISO needed more time. Specifically, Athens contends that NYISO did not use the same reasonable efforts to complete Athens' SRIS that it did with the facility at issue in *Clean Path*. Athens 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.⁴³

22. Athens reasserts that its waiver request is limited in scope.⁴⁴ Athens 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 Athens, the waiver request has a definitive end date.⁴⁵ Athens states that it anticipates that the facility's draft SRIS will be available for NYISO's review by mid-March 2023. Athens

⁴¹ Athens February 3 Answer at 2.

⁴² *Id.* at 3-4.

⁴³ *Id.* at 6 (citing *SunEnergy1, LLC*, 176 FERC ¶ 61,004 (2021) (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)).

⁴⁴ *Id.* at 7-8.

⁴⁵ *Id.* at 8.

contends that, contrary to NYISO's assertions, Athens has not asked the Commission to eliminate the SRIS requirement. Rather, Athens argues that it requests the minimum additional time necessary for NYISO to review and approve the facility's SRIS. Athens 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 Athens and NYISO.⁴⁶

23. Athens also reasserts that its waiver request will not cause harm to other developers.⁴⁷ Athens explains that if the Commission grants its waiver request, Athens will become eligible to enter the 2023 Class Year Study before NYISO begins the Annual Transmission Baseline Assessment base cases. Therefore, Athens asserts, NYISO and every developer would know that Athens' facility is a 2023 Class Year project and NYISO could account for Athens' inclusion while performing studies.⁴⁸ Athens adds that the 2023 Class Year Study will be in its earliest stages when 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. Athens 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.⁴⁹ Athens adds that, as a member of the 2023 Class Year, it will pay a share of the costs incurred to interconnect other projects.⁵⁰

24. Athens argues that NYISO creates a false deadline by claiming that the Annual Transmission Baseline Assessment completion date is a necessary cutoff.⁵¹ Athens 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.⁵² Athens states that, as recently as the 2021 Class Year, the dates for closing Class Years are routinely extended as new resources withdrawal from the queue because, among other reasons, they are unwilling

⁴⁶ *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 authority to fashion remedies so as to do equity consistent with the public interest.")).

⁴⁷ *Id.*

⁴⁸ *Id.* at 8-9.

⁴⁹ *Id.* at 9.

⁵⁰ *Id.* at 10.

⁵¹ *Id.*

⁵² *Id.* at 10-11.

to accept their upgrade cost allocation.⁵³ Athens argues that, based on the length and consistent delays in the Class Year Study process, a reasonable extension to complete the project'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.

C. NYISO Answer

25. NYISO argues that the Commission should dismiss Athens' answer because it does not provide additional clarity or otherwise develop the record in this proceeding.⁵⁴ NYISO renews its opposition to Athens' waiver request and contends that there is no merit to Athens' assertion that NYISO acted in a discriminatory manner with regard to Athens' facility.⁵⁵ NYISO points out that the Clean Path project and the projects with pending waiver requests supported by NYISO all submitted interconnection requests before Athens' interconnection request.⁵⁶

26. NYISO also rebuts Athens' contention that its facility will benefit other Class Year Projects because it will pay a share of the costs incurred to interconnect other projects.⁵⁷ 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.⁵⁸ 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 Athens' inclusion in Class Year 2023 would not result in the allocation to Athens of the cost of upgrades that are identified in the Class Year Study solely for other projects.⁵⁹

⁵³ *Id.* at 11.

⁵⁴ NYISO Answer at 1-2.

⁵⁵ *Id.* at 2.

⁵⁶ *Id.* at 2-3.

⁵⁷ *Id.* at 3.

⁵⁸ *Id.* (citing NYISO OATT, Attach. S, §§ 25.4.1, 25.6.2.7, app. 1).

⁵⁹ *Id.* at 3-4.

D. Athens February 14 Answer

27. Athens criticizes NYISO's assertion that the Clean Path project and the projects with pending waiver requests supported by NYISO all submitted interconnection requests before Athens' interconnection request.⁶⁰ Athens 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 Athens. Athens continues that NYISO's OATT provides a period by which an SRIS should be completed and requires notice and information if the SRIS is not completed or likely to be delayed. Athens states that it did not receive such notice.

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

29. Finally, Athens contends that if NYISO had provided a timing and cost estimate for its facility's SRIS earlier than February 8, 2023, Athens could have worked with NYISO to complete the SRIS before the Class Year Start Date.⁶¹ Athens adds that it believes that it can complete the SRIS by the Annual Transmission Baseline Assessment base case completion if NYISO works diligently with Athens.

IV. Discussion**A. Procedural Matters**

30. 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.

31. 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 Athens' and NYISO's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

32. As discussed below, we deny Athens' 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

⁶⁰ Athens February 14 Answer at 2.

⁶¹ *Id.* at 3.

waiver does not have undesirable consequences, such as harming third parties.⁶² We find that the circumstances of Athens' waiver request do not satisfy these criteria.

33. Specifically, we find that Athens' waiver request is not limited in scope. Athens 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.⁶³

34. Athens' request is distinguishable from the waiver requested and granted in *Clean Path*,⁶⁴ 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

⁶² 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).

⁶³ See *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.").

⁶⁴ *Clean Path*, 181 FERC ¶ 61,236; see *Thousand Island Solar LLC*, 182 FERC ¶ 61,055 (2023).

Start Date.⁶⁵ By contrast, although Athens argues that the waiver request is not unlimited, the record does not demonstrate that Athens knows with any certainty when its SRIS would be complete. Contrary to Athens' characterization of *Clean Path*, the Commission adopted Clean Path's proposed limitation in granting waiver.⁶⁶ Here, while NYISO emphasizes the importance of imposing the limitation,⁶⁷ Athens expressly objects to limiting its waiver the same way.⁶⁸ Indeed, Athens acknowledges that granting waiver with such a limitation would be pointless because its facility has not progressed as far as the facility at issue in *Clean Path*, and thus, all indications are that Athens would not have its SRIS before completion of the same deadline imposed in *Clean Path*.⁶⁹ For this reason, Athens 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.⁷⁰

⁶⁵ NYISO, Comments, Docket No. ER23-253-000, at 8 (filed Nov. 15, 2022). We note that NYISO has stated that Athens did not meet the same milestones as Clean Path and other projects, largely due to the date Athens 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.

⁶⁶ *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.").

⁶⁷ NYISO Protest at 5-7.

⁶⁸ While Athens 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 Athens' 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 limitation beyond that date.

⁶⁹ Athens 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 Athens 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.

⁷⁰ See *Silver Lake*, 169 FERC ¶ 61,106 at P 18.

35. We also find that Athens 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 Athens could disrupt completed study work and delay the ultimate completion of the Class Year Study for participating members. Athens confirms that, if granted, its waiver request has the potential to adversely affect the Class Year and other developers.⁷¹ We therefore find that Athens has not demonstrated on the record here that its request for waiver would not harm third parties.

36. Because we deny Athens' waiver request on the basis that it is not limited in scope and Athens 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:

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

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

⁷¹ Athens Answer at 9, 11.