

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Clean Path New York LLC)
) **Docket No. ER23-253-000**
)

**MOTION TO INTERVENE AND COMMENTS OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) moves to intervene and submits comments concerning the request of Clean Path New York LLC (“Clean Path”) for a waiver of certain requirements of the NYISO’s Open Access Transmission Tariff (“OATT”) in the above-captioned proceeding (the “Waiver Request”).² The NYISO respectfully requests that the Commission consider these comments in its decision on the merits of the Waiver Request.

I. Background

Clean Path is the Developer of a proposed 1,300 MW HVDC transmission line project participating as a Large Facility³ in the NYISO’s interconnection queue with Queue Position No. 1288 (“Project”).⁴ On October 28, 2022, Clean Path filed the Waiver Request requesting waiver of one of the entry requirements for the NYISO’s Class Year Interconnection Facilities Study (“Class Year Study”) established in the OATT that the Project may not satisfy in time to be eligible to enter the Class Year Study for the next Class Year – Class Year 2023.

¹ 18 C.F.R. §§ 385.212 and 385.213 (2022).

² *Clean Path New York LLC*, Request of Clean Path New York LLC for Prospective Tariff Waiver and Expedited Action, Docket No. ER23-253-000 (Oct. 28, 2022) (“Waiver Request”).

³ A Large Facility includes Large Generating Facilities and Class Year Transmission Projects. *See* OATT Attach. S § 25.1.2 (definition of “Large Facility”). The Project is a Class Year Transmission Project.

⁴ Capitalized terms that are not otherwise defined in these comments shall have the meaning specified in Attachments S or X to the NYISO OATT, and if not defined therein, in the NYISO OATT and NYISO Market Administration and Control Area Services Tariff.

The Class Year Study is the NYISO’s final interconnection study that is performed on a clustered basis for a “Class Year” of projects. A Large Facility becomes eligible to enter into a Class Year Study when it has satisfied, among other entry requirements, two developmental milestones established in Attachment S to the OATT.⁵ Specifically, a Large Facility must, on or before the Class Year Start Date: (i) have received Operating Committee approval of its Interconnection System Reliability Impact Study (“SRIS”), and (ii) have satisfied the applicable regulatory milestone for its project prescribed in Attachment S or, in lieu of satisfying such milestone, must submit a two-part deposit or demonstrate that it has obtained a qualifying contract.⁶

Clean Path’s Project may not timely satisfy the first of these entry requirements for Class Year 2023 as its SRIS is currently ongoing and the Class Year Start Date for Class Year 2023 is approaching. The Project is a unique cross-state, controllable transmission line that will interconnect at two points on the New York State Transmission System with two Connecting Transmission Owners and will have impacts on the systems of three Affected Transmission Owners and two Affected Systems – PJM Interconnection, L.L.C. and ISO New England Inc. The Project therefore raises novel reliability issues requiring a level and volume of input and analysis far in excess of what a typical SRIS for a Large Facility would require. As noted by Clean Path, due to the complexities of the Project, the “SRIS has been uniquely complex in ways that a typical generator interconnection (that usually involves only one transmission owner

⁵ OATT Attach. S § 25.6.2.3.1.

⁶ *Id.* If a Developer elects to submit a two-part deposit or to demonstrate a qualifying contract to satisfy the regulatory requirement, the Developer must do so within 10 Business Days of the NYISO’s tendering of a Class Year Study Agreement. *See* OATT Attach. X § 30.8.1. In such case, the Developer must still satisfy the regulatory milestone within 6 months of the NYISO’s tendering of the draft Standard Large Generator Interconnection Agreement for the project, or the project will be withdrawn from the NYISO’s interconnection queue. *See* OATT Attach. S §§ 25.6.2.3.2, 25.6.2.3.3.

territory and a single point of interconnection) is not.”⁷ As a result, the SRIS for the Project is still ongoing, despite the parties acting diligently and in good faith in conducting the study and in providing required input.

The NYISO is continuing to work in close collaboration with Clean Path and the applicable New York Transmission Owners to complete the SRIS for the Project. As part of the NYISO’s ongoing efforts to improve its interconnection process, the NYISO recently implemented a change to narrow the scope of SRISs. This change eliminates unnecessary or duplicative analyses from the studies.⁸ The removal of these evaluations will narrow the scope of the SRISs to study only the analyses required to determine the reliability of the proposed interconnection and will expedite the completion of the SRIS for Interconnection Requests going forward. To maximize the benefit of these changes, the NYISO allowed projects that had already begun their SRISs, like Clean Path, to immediately apply this change to their studies to the extent the evaluations had not already been performed. Accordingly, projects such as Clean Path are now more likely to have their studies completed near in time to the deadline for entering Class Year 2023. However, as the Project’s SRIS is still ongoing and the approaching Class Year Start Date for Class Year 2023 has not yet been set, the NYISO cannot state with certainty

⁷ Waiver Request at p 16 (“The Clean Path Transmission Line 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), interconnecting at two different points within the NYISO footprint, and because its interconnection involves multiple transmission owners, the SRIS has been uniquely complex in ways that a typical generator interconnection (that usually involves only one transmission owner territory and a single point of interconnection) is not.”).

⁸ The NYISO has added over time certain evaluations to the SRIS beyond the minimum analysis required by its tariffs to provide additional information related to the Interconnection Request, including extreme contingency analysis, analysis of Operating Reserve requirement impacts, analyses under Northeast Power Coordinating Council Criteria A-10 regarding the classification of Bulk Power System elements, sub-synchronous torsional interaction screening, and voltage deviation analysis. Some of these additional evaluations are only for informal purposes and/or are redundant, as they must be conducted later in the Class Year Interconnection Facilities Studies and/or in the detailed engineering for the project.

whether the Project will have the opportunity to obtain Operating Committee approval of its SRIS prior to the next Class Year Start Date.

The specific Class Year Start Date for Class Year 2023 is tied to the completion of the ongoing Class Year 2021, which is in its final stages. The NYISO's Operating Committee approved the study report for Class Year 2021 on October 24, 2022. This commenced a process of iterative decision periods by which the Developers of the 57 projects participating in Class Year 2021 elect whether to accept, and post Security, for their cost allocation for any upgrades identified for their projects. Once all remaining Developers have accepted and posted Security for their upgrade costs, Class Year 2021 will be completed. The Class Year Study for Class Year 2023 will then commence on the first Business Day after thirty Calendar Days following the completion of Class Year 2021.⁹ The NYISO currently anticipates that this Class Year Start Date will fall between early January and mid-February 2023.

If the Project does not have Operating Committee approval of its SRIS by the Class Year Start Date, the Project will not be eligible to enter Class Year 2023, absent a waiver from the Commission concerning such requirement, regardless of whether the Project has satisfied the other Class Year entry requirements set forth in Attachments S and X.

II. Motion to Intervene

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. Additionally, the NYISO administers the interconnection process pursuant to its Commission-approved tariffs. The NYISO, therefore, has a

⁹ See OATT Attach. S § 25.5.9.1.

unique interest in this proceeding that cannot be adequately represented by any other entity and requests that the Commission permit the NYISO to intervene with all the rights of a party.

III. Comments

The NYISO understands Clean Path to be requesting waiver of the timing requirement in Section 25.6.2.3.1 of Attachment S to the OATT that a Large Facility must have an SRIS approved by the NYISO's Operating Committee on or before the Class Year Start Date to be eligible to enter a Class Year Study. In particular, the NYISO understands that Clean Path is proposing that its Project be permitted to enter into Class Year 2023 if: (i) the Project receives Operating Committee approval of its SRIS after the Class Year Start Date but prior to the NYISO's completion of the Annual Transmission Baseline Assessment ("ATBA") base cases for Class Year 2023 and (ii) the Project satisfies the other requirements for entering a Class Year Study in accordance with the existing rules and timing requirements established in Attachments X and S of the OATT.¹⁰

The NYISO recognizes that the Commission evaluates a waiver request based on the specific facts and circumstances of the request, and upon a number of factors, including (i) whether the requestor is acting in good faith; (ii) whether the request will remedy a concrete problem; (iii) whether the request is of limited scope; and (iv) whether the waiver, if granted, will have undesirable consequences such as harming third parties.¹¹ The Commission's evaluation of a waiver request is highly dependent on the specifics of a particular request, and the Commission has recognized that the granting of a waiver request is not precedent for

¹⁰ See Waiver Request at pp 1, 3, 17-19.

¹¹ See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060 at P 17 (2013); *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P 16 (2013); *Hudson Transmission Partner, LLC*, 131 FERC ¶ 61,157 at P 10 (2010).

granting future waiver requests.¹² The NYISO believes it is important that the Commission continue to reinforce the importance of tariff and manual deadlines that enhance efficiency, certainty, and transparency in the NYISO's administration of its interconnection process.

Due to the unique circumstances here, the NYISO supports the requested waiver, subject to the conditions described below to ensure equal treatment across Developers participating in the NYISO's interconnection queue and to minimize impacts and delays for the Class Year Study process. Clean Path is one of the projects uniquely impacted by the recent process improvements discussed above through which the NYISO has streamlined the scope of SRIS evaluations. While this added efficiency will benefit all SRIS scopes going forward, these projects have had their scopes revised after the SRIS had already commenced, and therefore have not had the full benefit of the improved speed in which their SRISs should be completed. With the likelihood that these changes will expedite the completion of pending studies, these projects are more likely to reach Operating Committee approval of their SRIS reports on the cusp of the Class Year Start Date.

As detailed below, if the Commission decides to grant Clean Path's requested waiver, the NYISO requests that such waiver: (i) apply equally to any similarly situated project, *i.e.*, projects with an SRIS currently in progress, (ii) clarify that Clean Path and any similarly situated project have until the completion date of the ATBA base cases to have its SRIS report approved by the Operating Committee to satisfy the SRIS approval tariff requirement for Class Year 2023, and (iii) make clear that, notwithstanding the waiver, Clean Path and any similarly situated project

¹² See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060 at P 17 (2013) (noting that the granting of the requested waiver "is based on the specific facts and circumstances of the request"); see also *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P 16 (2013) (noting that "our grant of waiver is limited to the facts and circumstances of the case before us").

must satisfy the other tariff requirements for entering Class Year 2023 in accordance with the existing rules and timing requirements established in Attachments X and S of the OATT.

First, if the Commission grants a waiver in this proceeding, the NYISO requests that the waiver apply to all similarly situated projects. Similarly situated projects for any waiver granted by the Commission in this instance would include those projects that have an SRIS currently in progress.¹³ Such projects have all reached the same interconnection study milestone as Clean Path. This approach would provide the same modest amount of additional time for similarly situated projects to potentially have their SRISs completed and approved by the Operating Committee in time to enter Class Year 2023.

While the Commission has recognized that the waiver of tariff requirements should not be construed as impacting the applicability of the same requirements to other projects,¹⁴ the Commission has previously granted waivers that apply to entities similarly situated to the requesting entity.¹⁵ This approach is more efficient than the Commission having to address multiple waiver requests by similarly situated entities. It also minimizes the potential for delays in the NYISO's interconnection process that could result from Developers requesting such waivers later in the Class Year Study process. Finally, such action will provide a level of certainty to the NYISO and Developers regarding the status of their studies and the requirements for entering into Class Year 2023.

¹³ 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.

¹⁴ See *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P 16 (2013) (noting that despite granting the requested waiver, “we do not intend that NYISO’s regulatory milestones be taken lightly”); *Innovative Energy Systems, LLC*, 131 FERC ¶ 61,066 at P 7 (2010) (noting that despite granting the requested waiver, “we emphasize the importance of meeting financial security deadlines and note that in the future, we expect parties to arrange for deposits to be submitted in sufficient time to meet the requirements of their tariffs”).

¹⁵ See *New York Power Authority*, 139 FERC ¶ 61,157 at P 27 (2012) (providing that the waiver granted to the requesting party applies equally to all other similarly situated parties identified by the NYISO in the proceeding).

Second, to minimize potential adverse impacts on the Class Year Study process, any waiver concerning the timing of Operating Committee approval of the SRIS should not be open ended. The Commission should, as requested by Clean Path,¹⁶ require that Clean Path and any similarly situated project has until the completion date of the ATBA base cases to have its SRIS report approved by the Operating Committee to satisfy the SRIS approval tariff requirement to enter Class Year 2023.

The NYISO's development of the ATBA base cases is its initial step in the Class Year Study process and takes approximately 60 days from the Class Year Start Date. The ATBA establishes the pre-existing baseline system before Class Year Projects are included. The NYISO subsequently develops an Annual Transmission Reliability Assessment ("ATRA"), which adds the Class Year Projects to the ATBA baseline to determine any upgrades required as a result of these projects and to allocate the cost of such upgrades among the Class Year Projects. During the initial period in which the NYISO develops the ATBA, the NYISO performs the following actions:

- confirms Class Year entrants have satisfied all applicable entry requirements (*e.g.*, execution of the Class Year Study Agreement and submission of required deposits and technical data);
- reviews project data submitted by Class Year Projects with their Class Year Study Agreements and confirms all required technical data has been provided and there are no deficiencies or inconsistencies in such data;
- builds the new Class Year Study ATBA base cases (*i.e.*, short circuit, steady state, dynamics and deliverability base cases) reflecting the Existing System Representation, including the prior Class Year Projects that accepted their Project Cost Allocations and posted Security, together with their associated System Upgrade Facilities and System Deliverability Upgrades; and
- prepares the auxiliary study files to perform the short circuit, steady state, dynamics and deliverability analyses.

¹⁶ See Waiver Request at pp 1, 3, 16, 18.

Requiring that membership in the Class Year be determined by a date certain will minimize disruption to Class Year activities. If the NYISO were required to add new members to the Class Year after completion of the ATBA base cases, such action would potentially disrupt finished study work and delay the ultimate completion of the Class Year Study for all members. It takes time for the NYISO to review and confirm data with Developers of the Class Year Projects and to address any issues with the models provided by Developers. In addition, after the NYISO completes the ATBA, it begins to add Class Year members to the model to develop the ATRA. If new Class Year Projects are subsequently added, the NYISO may need to re-open the ATRA, which would delay the start of the NYISO's analysis conducted for the Class Year. Moreover, as part of the Class Year process, the NYISO performs individual "Part 1" studies of each project to identify the Attachment Facilities and local System Upgrade Facilities required solely for that project. Adding Class Year members late in the process could delay the start of these project-specific studies. Avoiding delays related to a single project or small number of projects protects the process and benefits all of the projects in the Class Year Study and other projects in the interconnection queue.

Third, any waiver should be limited to addressing the timeframe for a project to have received Operating Committee approval of its SRIS. Clean Path and similarly situated projects must be 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 the OATT.¹⁷ In its Waiver Request, Clean Path acknowledges that it will have to satisfy these other

¹⁷ See OATT Attach. S § 25.5.9, Attach. X § 30.8.

tariff requirements to enter Class Year 2023 notwithstanding any waiver concerning the timing of Operating Committee approval of its SRIS.¹⁸

Among these requirements, a Developer seeking to enter the Class Year must do the following on or before 5 Business Days after the NYISO issues the notice announcing the next Class Year Start Date: provide notice to the NYISO that it elects to enter the Class Year Study and either: (i) demonstrate satisfaction of its applicable regulatory milestone or (ii) indicate the Developer will submit, in lieu of the regulatory milestone, a two-part deposit or qualifying contract.¹⁹ This notice is issued upon completion of the prior Class Year Study, in advance of the Class Year Start Date. Once the NYISO confirms Class Year eligibility for the projects that satisfy the above requirements, the NYISO will then tender the Class Year Study Agreement. Within 10 Business Days of this tender, the Developer must complete the agreement, submit required technical data, indicate which interconnection service it is seeking, update its proposed In-Service Date, Initial Synchronization Date, and Commercial Operation Date, submit required study deposits, and, if it has not demonstrated satisfaction of an applicable regulatory milestone, submit a deposit or qualifying contract in lieu of a regulatory milestone.²⁰ Once the NYISO confirms receipt of these materials and addresses any deficiencies with the Developer within tariff-prescribed timeframes, the NYISO, Connecting Transmission Owner, and Developer will execute the Class Year Study Agreement. If a project satisfies these requirements, it will become a Class Year Project.²¹

¹⁸ See Waiver Request at pp 3, 17.

¹⁹ See OATT Attach. S § 25.5.9.1.

²⁰ See OATT Attach. S § 25.5.9, Attach. X § 30.8.

²¹ See OATT Attach. S § 25.5.9, Attach. X § 30.8.

Finally, the NYISO requests that the Commission issue an order on the Waiver Request no later than December 16, 2022, as requested by Clean Path.²² Commission action by this date is crucial to effectuate the waiver and to provide certainty to the NYISO and Developers concerning the requirements applicable to SRISs prior to the Class Year Start Date, which could begin as early as January 3, 2023. To the extent the Commission's order applies the requested relief to all similarly situated Developers, those Developers need to have sufficient notice to be able to satisfy the other applicable Class Year 2023 entry requirements described above. In addition, this timeframe will enable the NYISO to timely implement any granted waiver with minimal delay to the Class Year Study process.

IV. Communications and Correspondence

All communications and service with regard to this filing should be directed to:

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²² See Waiver Request at pp 3, 19.

V. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission consider these comments in making its decision on the Waiver Request and rule on the Waiver Request no later than December 16, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 15th day of November 2022.

/s/ Mitchell W. Lucas

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