

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.

New York Independent System Operator, Inc. Docket Nos. ER22-1072-000

Niagara Mohawk Power Corporation ER22-1073-000

ORDER ACCEPTING UNEXECUTED LARGE GENERATOR INTERCONNECTION
AGREEMENTS

(Issued April 18, 2022)

1. On February 17, 2022, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² the New York Independent System Operator, Inc. (NYISO) and Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) (collectively, the Joint Filing Parties) submitted two unexecuted large generator interconnection agreements (LGIA) for: (1) the East Point Solar Project among NYISO, National Grid as the connecting transmission owner, and East Point Energy Center (East Point) as the developer in Docket No. ER22-1072-000; and (2) the High River Solar Project among NYISO, National Grid as the connecting transmission owner, and High River Energy Center, LLC (High River) as the developer in Docket No. ER22-1073-000.³ The unexecuted LGIAs conform to NYISO's *pro forma* LGIA that is contained in Attachment X of NYISO's Open Access Transmission Tariff (OATT). The Joint Filing Parties also request waiver of the Commission's 60-day prior notice requirement to make the LGIAs effective February 18, 2022. In this order, we accept the unexecuted LGIAs, effective February 18, 2022, as requested.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. pt. 35 (2021).

³ East Point and High River are collectively referred to as the NextEra Companies.

I. Background

2. NYISO's *pro forma* LGIA incorporates by reference Attachment S of NYISO's OATT, which establishes: (1) NYISO's class year interconnection study process and (2) rules to allocate responsibility among developers, transmission owners, and load-serving entities for the cost of new interconnection facilities that are required for the reliable interconnection of generating facilities to NYISO's transmission system. NYISO's class year interconnection facilities study (class year study) is the final interconnection study in NYISO's standard large facility interconnection procedures (LFIP).⁴ A developer of a generating facility participating in NYISO's class year interconnection study process that would like to proceed to LGIA negotiation and interconnection is required to accept the cost allocation for the System Upgrade Facilities (SUF)⁵ identified for its project in the class year study and to provide cash or post security for its full project cost allocation amount to the connecting transmission owner.⁶ Article 11.5 of NYISO's *pro forma* LGIA governs a developer's responsibility to provide security for the connecting transmission owner's Attachment Facilities.⁷ Article 11.5.4 of the *pro forma* LGIA states that Attachment S to the OATT governs the security that the developer must provide for SUFs.⁸ Under section 25.8.5 of Attachment S, once a developer has accepted its project cost allocation and posted security for that amount, such security is irrevocable and subject to forfeiture in the event that the developer subsequently terminates or abandons development of its project.

3. Under Article 5.1.1 of the *pro forma* LGIA, the connecting transmission owner is given the default responsibility for the design, procurement, and construction of any SUFs needed to interconnect the developer's generating facility. However, Article 5.1.3 of the *pro forma* LGIA grants the developer the option to build certain types of SUFs:

⁴ NYISO, NYISO Tariffs, NYISO OATT, attach. X, §§ 30.11.1 Standard Large Generator Interconnection Agreement) (6.0.0), 30.11.2.

⁵ SUFs are the modifications or additions to the existing New York State transmission system that are required for the proposed large generating facility to connect reliably to the system. NYISO, NYISO Tariffs, NYISO OATT, attach. X, §30.14 (Appendices) (23.0.0), app. 4, art. 1.

⁶ NYISO, NYISO Tariffs, NYISO OATT, attach. S, § 25.8 (Project Cost Allocation Decisions) (12.0.0), § 25.8.2.

⁷ Attachment Facilities include all facilities and equipment between the large generating facility and the point of interconnection that are necessary to interconnect the large generating facility to the New York State transmission system. Attachment Facilities do not include SUFs. NYISO, OATT, attach. X, § 30.14, app. 4, art. 1.

⁸ NYISO, OATT, attach. X, § 30.14.

after security is posted by the developer (specifically, during negotiation of the LGIA), the developer may assume responsibility for the design, procurement, and construction of the stand alone SUFs necessary to connect its project, provided that, if a stand alone SUF is needed for more than one developer's project, the option to build is contingent on the agreement of all other affected developers.⁹ NYISO's OATT defines stand alone SUFs as those SUFs that a developer may construct without affecting the day-to-day operation of the New York State transmission system.¹⁰ NYISO, the connecting transmission owner, and the developer must agree as to what constitutes a stand alone SUF.

4. Section 25.8.5 of Attachment S establishes the specific security requirement for stand alone SUFs:

Security for [SUFs] constructed by the Developer (i.e., for which the Developer elects the option to build), shall be reduced after discrete portions of the [SUFs] have been completed, such reductions to be based on cost estimates from the Class Year Interconnection Facilities Study (emphasis added)

II. Filings

5. The Joint Filing Parties explain that the East Point LGIA governs the interconnection of the 50 MW East Point Solar Project, which will be located in Schoharie County, New York, to certain facilities of National Grid that are part of the New York State transmission system.¹¹ The Joint Filing Parties also explain that the High River LGIA governs the interconnection of the 90 MW High River Solar Project, which will be located in Montgomery County, New York, to certain facilities of National Grid that are part of the New York State transmission system.¹² The Joint Filing Parties state that the unexecuted LGIAs conform to NYISO's *pro forma* LGIA that is contained in Attachment X of NYISO's OATT.

6. The Joint Filing Parties state that the LGIAs are filed unexecuted because the parties are not in agreement over the application of the security rules for stand alone SUFs under the *pro forma* LGIA.¹³ The Joint Filing Parties state that, pursuant to

⁹ NYISO, OATT, attach. X, § 30.14, app. 4, art. 5.1.3.

¹⁰ *Id.* art. 1.

¹¹ The Joint Filing Parties East Point LGIA Filing, Docket No. ER22-1072-000, Transmittal Letter at 2 (filed Feb. 17, 2022) (East Point LGIA Filing).

¹² The Joint Filing Parties High River LGIA Filing, Docket No. ER22-1073-000, Transmittal Letter at 2 (filed Feb. 17, 2022) (High River LGIA Filing).

Attachment X of NYISO's OATT, the unexecuted LGIAs contain the terms and conditions deemed appropriate by NYISO for the interconnection requests.¹⁴ Further, the Joint Filing Parties assert that the NextEra Companies have neither: (1) put forth unique circumstances or justification for NYISO or National Grid to accept a non-conforming change to the *pro forma* LGIA for the security rules applicable to these projects nor (2) provided any basis to deviate from or waive the clear security requirements in Attachment S of NYISO's OATT.¹⁵

7. The Joint Filing Parties contend that the parties to the LGIAs are in agreement that, pursuant to Attachment S, the developer of a class year project that would like to proceed to interconnect its project is required at the conclusion of the class year study to both accept the project cost allocation for the SUFs identified for its project and provide cash or post security for its project cost allocation amount to the connecting transmission owner.¹⁶ The Joint Filing Parties further contend that the parties to the LGIAs agree that a developer's opportunity to elect the option to build stand alone SUFs is triggered subsequently during the negotiation of the LGIA. The Joint Filing Parties state that the NextEra Companies were participants in NYISO's 2019 class year study process and that they accepted their project cost allocation and posted security for the SUFs needed to connect their projects in accordance with the requirements of Attachment S. The Joint Filing Parties state that, during LGIA negotiation, the parties to the LGIAs determined that the SUFs qualified as stand alone SUFs and the NextEra Companies properly exercised their option to build these stand alone SUFs.

8. The Joint Filing Parties state that the only matter upon which the parties disagree is whether National Grid (the connecting transmission owner) is required to return the security associated with the stand alone SUFs to the NextEra Companies prior to the completion of any of the stand alone SUFs.¹⁷ The Joint Filing Parties contend that NYISO's OATT establishes clear and explicit requirements concerning the application of the security for SUFs posted by the developer in the class year process, including circumstances in which a developer exercises its option to build stand alone SUFs.¹⁸ The

¹³ East Point LGIA Filing at 2; High River LGIA Filing at 2.

¹⁴ East Point LGIA Filing at 1; High River LGIA Filing at 1 (both citing NYISO, OATT, attach. X, § 30.11.3 "an unexecuted LGIA should contain terms and conditions deemed appropriate by the NYISO for the Interconnection Request.").

¹⁵ East Point LGIA Filing at 7; High River LGIA Filing at 7.

¹⁶ East Point LGIA Filing at 3; High River LGIA Filing at 3.

¹⁷ *Id.*

¹⁸ East Point LGIA Filing at 3-4; High River LGIA Filing at 3-4.

Joint Filing Parties assert that the unexecuted LGIAs reflect these unambiguous requirements and argue that the Commission should accept the agreements as filed.

9. The Joint Filing Parties state that the Commission accepted NYISO's unique class year study requirements in Attachment S as an independent entity variation from the requirements of Order No. 2003, along with conforming independent entity variations from the Commission's *pro forma* large generator interconnection procedures and LGIA.¹⁹ The Joint Filing Parties state that NYISO's class year study process carefully balances the interests of developers participating in the class year, the connecting transmission owners, and other impacted parties.²⁰ The Joint Filing Parties explain that, once the developer accepts its cost allocation amount and posts security for the SUFs needed to connect its generating facility, the accepted and secured SUFs for each class year are included in the base cases for the interconnection studies for subsequent projects and may be relied upon by other projects.²¹

10. The Joint Filing Parties explain that, per section 25.8.5 of Attachment S, a developer's security is irrevocable and subject to forfeiture if the developer subsequently terminates or abandons development of its project and NYISO determines that other projects are relying on such upgrades.²² In such a case, the Joint Filing Parties explain that the forfeiture rules contained in section 25.8.5 of Attachment S allow NYISO to use posted security to defray a connecting transmission owner's costs to complete any upgrades that are relied upon by other projects.²³ The Joint Filing Parties contend that the security forfeiture rules apply to security posted for SUFs regardless of whether a developer elects the option to build the SUFs. The Joint Filing Parties further assert that section 25.8.5 of Attachment S clearly requires National Grid to return the security for stand alone SUFs only after discrete portions of the upgrades have been completed.

¹⁹ East Point LGIA Filing at 4; High River LGIA Filing at 4 (both citing *N.Y. Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,159, at P 4 (2004) (NYISO Order No. 2003 Compliance Order) (accepting in part the NYISO's Order No. 2003 compliance filing including independent entity variations specific to the NYISO's process); *N.Y. Indep. Sys. Operator, Inc.*, 142 FERC ¶ 61,113 (2013) (accepting the NYISO's security reduction rules in Attachment S of NYISO's OATT applicable to the NYISO-specific class year process)).

²⁰ *Id.*

²¹ *Id.* (both citing NYISO, OATT, attach. X, § 30.7.3).

²² East Point LGIA Filing at 4-5; High River LGIA Filing at 4-5.

²³ East Point LGIA Filing at 5; High River LGIA Filing at 5.

11. The Joint Filing Parties assert that they are required to act in accordance with NYISO's OATT requirements, including the security rules in section 25.8.5 of Attachment S. The Joint Filing Parties explain that, pursuant to these requirements, they appropriately informed the NextEra Companies that National Grid is not required to return the security for the stand alone SUFs for which the NextEra Companies exercised the option to build prior to the completion of any upgrades.²⁴

12. The Joint Filing Parties request that the Commission waive its 60-day prior notice requirement to permit an effective date of February 18, 2022 for the unexecuted LGIAs.²⁵

III. Notice of Filings and Responsive Pleadings

13. Notice of the Joint Filing Parties' LGIA filings was published in the *Federal Register*, 87 Fed. Reg. 10,359 (Feb. 24, 2022), with interventions and protests due on or before March 10, 2022. The NextEra Companies filed a timely motion to intervene and protest. The Alliance for Clean Energy New York, Inc. (ACENY) and the Indicated New York Transmission Owners filed out-of-time motions to intervene. On March 18, 2022, ACENY filed out-of-time comments in support of the NextEra Companies' protest. On March 25, 2022, the Joint Filing Parties filed an answer to the protests and comments. On April 4, 2022, the NextEra Companies filed an answer to the Joint Filing Parties' answer.

A. Protest and Comments

14. The NextEra Companies agree that the only dispute among the parties to this proceeding is the Joint Filing Parties' proposed implementation of security requirements for projects where developers exercise the option to build.²⁶ The NextEra Companies do not dispute the order of the steps necessary to complete NYISO's interconnection process as set forth in Attachment X of NYISO's OATT. The NextEra Companies affirm that, in January 2021, they accepted their respective cost allocations and posted security in the amount of \$20.9 million for the stand alone SUFs and other SUFs required for each project and subsequently exercised their option to build the stand alone SUFs.²⁷ The NextEra Companies state that the security they posted for the stand alone SUFs for East Point and High River was \$5,775,800 and \$8,264,300, respectively.

²⁴ East Point LGIA Filing at 6; High River LGIA Filing at 6.

²⁵ East Point LGIA Filing at 7; High River LGIA Filing at 7.

²⁶ The NextEra Companies Protest at 2.

²⁷ *Id.* at 2-3, 7. The NextEra Companies specify that the total security posted by East Point and High River is approximately \$9.7 million and \$11.2 million, respectively. *Id.* at 7.

15. The NextEra Companies assert that the key consideration in these proceedings is that the stand alone SUFs identified in the 2019 class year study for the NextEra Companies' projects are needed solely for their respective projects – that is, no other developers in that class year will use the stand alone SUFs to connect their projects.²⁸ The NextEra Companies explain that stand alone SUFs can be identified in a class year as needed solely for one project or for multiple projects, and NYISO's OATT includes provisions to account for instances where multiple developers in a class year require a stand alone SUF to be constructed.²⁹ The NextEra Companies contend that security is unnecessary when stand alone SUFs are required for only one project because no other developer in the class year can be adversely affected if the developer failed to build the stand alone SUFs.³⁰

16. The NextEra Companies argue that NYISO's *pro forma* LGIA and OATT can reasonably be interpreted to require National Grid to return the security posted by the NextEra Companies before the completion of discrete portions of their respective projects.³¹ The NextEra Companies contend that, while NYISO was granted an independent entity variation from Order No. 2003 to incorporate its Attachment S security provisions into its *pro forma* LGIA, NYISO's independent entity variation request addressed only how the associated security requirements to manage a developer's election of the option to build would be applied for stand alone SUFs when multiple developers required the upgrade at issue.³²

17. The NextEra Companies explain that, in Order No. 845, the Commission rejected a request to expand security posting requirements in Article 11.5 of the *pro forma* LGIA to developers that elect the option to build:

Since the purpose of article 11.5 [in the *pro forma* LGIA] is for the interconnection customer to provide funds to the transmission provider for construction costs, there would be no need for the interconnection customer to provide security to the transmission provider for facilities the transmission provider will not construct.³³

²⁸ *Id.* at 3.

²⁹ *Id.* at 7.

³⁰ *Id.* at 20-21.

³¹ *Id.* at 18.

³² *Id.* at 10.

³³ *Id.* at 12, 19 (quoting *Reform of Generator Interconnection Procedures and*

The NextEra Companies state that no party sought rehearing on this issue.³⁴

18. The NextEra Companies state that the Joint Filing Parties appear to suggest that section 25.8.5 of Attachment S requires that the connecting transmission owner retain posted security in case a future developer in a subsequent class year may also require the same stand alone SUF for its project.³⁵ The NextEra Companies argue that this reasoning constitutes pure speculation and that, until a subsequent class year identifies another project that would rely on the subject upgrade, retaining security posted by a developer that elects the option to build contravenes the Commission's ruling in Order No. 845.

19. The NextEra Companies state that the Commission noted in Order No. 845-A that it would continue to permit independent entity variations where adequately justified and confirmed that ISOs/RTOs must demonstrate the reasonableness of previously approved independent entity variations in their compliance filings.³⁶ The NextEra Companies state that, in April 2019, NYISO made a presentation to stakeholders addressing its Order Nos. 845 and 845-A compliance filings in which NYISO concluded that it anticipated filing an independent entity variation related to security for stand alone SUFs.³⁷ However, according to the NextEra Companies, NYISO did not seek an independent entity variation from the Commission's finding in Order No. 845 that security is not required in cases where a developer exercises its option to build.³⁸ The NextEra Companies assert that NYISO's Order No. 845 compliance filing merely requested authorization to continue to apply its independent entity variation related to the option to build in the context of stand alone SUFs and Attachment Facilities that are needed for multiple projects. The NextEra Companies argue that this variation does not apply to the NextEra Companies because the stand alone SUFs identified in both LGIAs are needed solely for their respective projects. Accordingly, the NextEra Companies argue that it is reasonable to conclude that section 25.8.5 of Attachment S does not apply where a developer elects the option to build a stand alone SUF that will only affect its project.³⁹ Therefore, the

Agreements, Order No. 845, 163 FERC ¶ 61,043, at P 109 (2018), *order on reh'g*, Order No. 845-A, 166 FERC ¶ 61,137, *order on reh'g*, Order No. 845-B, 168 FERC ¶ 61,092 (2019)).

³⁴ *Id.* at 12.

³⁵ *Id.* at 22.

³⁶ *Id.* at 12 (citing Order No. 845-A, 166 FERC ¶ 61,137 at P 141).

³⁷ *Id.* at 13.

³⁸ *Id.* at 14.

³⁹ *Id.* at 21.

NextEra Companies ask the Commission to interpret NYISO's OATT to allow for the immediate return of security to a developer that has exercised the option to build stand alone SUFs needed solely for that developer's project.

20. The NextEra Companies assert that, if the Commission does not agree with the NextEra Companies that NYISO's OATT allows for the immediate return of security where a developer exercises the option to build a stand alone SUF constructed for its use alone, the Commission should: (1) make a preliminary finding that Attachment S of NYISO's OATT and the *pro forma* LGIA are unjust and unreasonable and direct NYISO to propose tariff revisions to eliminate security requirements for stand alone SUFs constructed by the affected developer for its use only; and (2) grant waiver from Attachment S, section 25.8.5 of NYISO's OATT for the NextEra Companies' projects and allow for the immediate return of security.⁴⁰ The NextEra Companies state that good cause exists for granting waiver because the request satisfies the Commission's four waiver criteria.⁴¹

21. In its comments in support of the NextEra Companies' protest, ACENY argues that requiring security to be retained where a developer has elected the option to build stand alone SUFs that are required for the developer's project alone is inconsistent with past Commission determinations.⁴² ACENY urges the Commission to issue an order directing the release of a developer's security when the developer elects the option to build a stand alone SUF needed solely for the developer's project.⁴³

22. ACENY states that, in addition to the NextEra Companies, a substantial number of its members have received New York State Energy Research and Development Authority Clean Energy Standard program awards.⁴⁴ ACENY anticipates that, as a result, a sizeable number of renewable energy credit contracts will be executed with developers in the near term and that most of these projects will be required to complete NYISO's interconnection process. ACENY continues that, given the size, technology, and location of many of these projects, it is likely that stand alone SUFs may be identified in the class year for their projects and that developers may elect the option to build. ACENY states that, as developers identify costs that they will incur, they must take these costs into account as they structure their renewable energy credit offers to the New York State Energy Research and Development Authority. ACENY adds that factors that contribute

⁴⁰ *Id.* at 24-25.

⁴¹ *Id.* at 25-27.

⁴² ACENY Comments at 1.

⁴³ *Id.* at 1-2.

⁴⁴ *Id.* at 2.

to higher renewable energy credit offers correspondingly result in higher renewable energy credit payments that must be borne by New York State consumers.

23. ACENY states that, if NYISO's current interpretation of its OATT and *pro forma* LGIA is allowed to stand, it will needlessly require developers to expend a substantial amount of capital to post security for these upgrades.⁴⁵ ACENY emphasizes that the option to build is limited to stand alone SUFs needed only for the developer's project and that, by definition, stand alone SUFs cannot affect the operation of the connecting transmission owner's system. Accordingly, ACENY argues that the potential for harm to any party for not posting security is very limited.⁴⁶ Additionally, ACENY states that there is no basis to require security based on pure speculation that it could be an issue in a subsequent class year. ACENY also argues that, if multiple projects were implicated for the stand alone SUF, the developer that exercised the option to build could arguably be required to post security consistent with NYISO's existing OATT and *pro forma* LGIA structure.

B. Answers

24. The Joint Filing Parties reiterate their position that the Commission should reject the NextEra Companies' protest and accept the unexecuted LGIAs as filed.⁴⁷ The Joint Filing Parties state that the security rules at issue in these proceedings involve reliability-based upgrades identified in NYISO's class year study that are a longstanding, integral component of NYISO's unique class year study process.⁴⁸ The Joint Filing Parties next elaborate on NYISO's interconnection process. First, the Joint Filing Parties clarify that NYISO does not perform re-studies following the completion of the clustered class year study process if a participating class year project is abandoned or terminated.⁴⁹ The Joint Filing Parties continue that, if NYISO determines that the SUF of a terminating or an abandoned class year project is being relied upon by another project in a subsequent class year, the connecting transmission owner would be responsible for constructing any relied upon class year SUFs, and the developer's security for the upgrade is used to defray the connecting transmission owner's costs.⁵⁰ The Joint Filing Parties state that,

⁴⁵ *Id.* at 3.

⁴⁶ *Id.* at 4.

⁴⁷ The Joint Filing Parties Answer at 3.

⁴⁸ *Id.* at 5.

⁴⁹ *Id.* at 5-6 (citing NYISO, OATT, attach X, § 30.8.5; NYISO OATT, attach. S, §§ 25.8.2, 25.8.3).

⁵⁰ *Id.* at 6 (citing NYISO OATT, attach. S, § 25.6.1.4).

once a portion of the SUF work is completed, the security is no longer required to defray the costs associated with that work if the developer were to terminate or abandon the development of its project.⁵¹ Accordingly, the Joint Filing Parties assert that National Grid, pursuant to section 25.8.5 of Attachment S of NYISO's OATT, has appropriately retained the security for class year SUFs for the NextEra Companies' projects and will only be required to reduce such security once discrete portions of the work are performed by the NextEra Companies, or upon the projects' termination, in the event that no other project relies on these class year SUFs.⁵²

25. The Joint Filing Parties argue that NYISO's security requirements apply to stand alone SUFs regardless of whether the SUFs are shared by multiple projects in a single class year.⁵³ The Joint Filing Parties state that the NextEra Companies' arguments erroneously rely on Article 5.1.3 of NYISO's *pro forma* LGIA, which provides that a developer's option to build shall be contingent on the agreement of all other affected developers when an Attachment Facility or stand alone SUF is needed for more than one developer's project.⁵⁴ According to the Joint Filing Parties, this is a coordination requirement that is unrelated to the security rules in NYISO's OATT. The Joint Filing Parties argue that the Commission should reject the NextEra Companies' attempt to revise the security requirements in NYISO's OATT and to collaterally attack the Commission's prior final orders accepting these OATT requirements.⁵⁵

26. The Joint Filing Parties state that the Commission has accepted NYISO's security rules for class year SUFs as just and reasonable and, in accordance with Order No. 2003, has accepted them under the independent entity standard.⁵⁶ The Joint Filing Parties state that NYISO carved the class year SUFs out of the security rules in Article 11.5 of NYISO's *pro forma* LGIA and made it clear that security for class year SUFs are instead governed by different security rules in Attachment S of NYISO's OATT.⁵⁷ The Joint Filing Parties state that, as NYISO's *pro forma* LGIA does not include the

⁵¹ *Id.* at 7. The Joint Filing Parties explain that if the developer terminates or abandons development of its project and the NYISO determines that no other projects are relying on the related upgrades, the security is returned to the developer. *Id.* at 6 n.16.

⁵² *Id.* (citing NYISO, OATT, attach. S, § 25.8.5).

⁵³ *Id.* at 9.

⁵⁴ *Id.* at 10.

⁵⁵ *Id.* at 12.

⁵⁶ *Id.* at 15.

⁵⁷ *Id.* at 18.

security rules implicated by the Commission's guidance in Order No. 845, NYISO did not directly address such guidance in its subsequent compliance filing. Rather, the Joint Filing Parties assert that none of the Commission's proposed modifications in Order No. 845 required NYISO to revisit its longstanding incorporation of the security rules for class year SUFs within its class year study framework in Attachment S of NYISO's OATT.⁵⁸ The Joint Filing Parties contend that NYISO made clear in its Order No. 845 compliance filing that "[a]ll of the NYISO's independent entity variations have been and continue to be necessary in order to make Commission revisions to the *pro forma* LFIP and LGIA consistent with NYISO's existing OATT and current practices."⁵⁹

27. The Joint Filing Parties argue that, if the Commission elects to interpret the security rules in NYISO's OATT based on the NextEra Companies' interpretation of the guidance in Order No. 845, the Commission should still determine that for purposes of the NYISO's class year study process a transmission owner is not required to refund security for stand alone SUFs when a developer exercises its option to build these upgrades until discrete portions of the work are completed.⁶⁰ The Joint Filing Parties state that taking a different approach could result in unexpected cost increases to the remaining class year projects long after completion of the class year study. The Joint Filing Parties also argue that the Commission should reject the NextEra Companies' alternative request to issue a show cause order.⁶¹ The Joint Filing Parties argue that NYISO has complied with Order No. 845 and that the security requirements for class year SUFs are just and reasonable.

28. The Joint Filing Parties also argue that the Commission should reject the NextEra Companies' alternative request for a waiver from NYISO's security requirements for SUFs.⁶² The Joint Filing Parties claim that there are no grounds for waiver as the Joint Filing Parties have correctly applied the security requirements in NYISO's OATT for the East Point and High River projects.

29. The NextEra Companies state that the Joint Filing Parties' answer attempts to conflate the critical distinction between a developer that exercises its option to build for stand alone SUFs needed solely for its project and circumstances where an upgrade is needed by multiple projects.⁶³ The NextEra Companies assert that the Joint Filing

⁵⁸ *Id.* at 18-19.

⁵⁹ *Id.* at 19 (quoting NYISO Order No. 845 Compliance Filing, Docket No. ER19-1949-000, at 7 (filed May 22, 2019)).

⁶⁰ *Id.* at 20.

⁶¹ *Id.* at 23.

⁶² *Id.* at 24.

Parties' arguments related to the security forfeiture rule in section 25.8.5 of Attachment S are inapplicable because the rule provides that posted security will be used to defray the cost of SUFs required for the projects included in the annual transmission reliability assessment, class year deliverability study, or annual system deliverability upgrades study, as applicable.⁶⁴ According to the NextEra Companies, where a stand alone SUF is needed for one project, there cannot be any costs to other projects to defray.

30. The NextEra Companies also argue that NYISO's demonstration of the reasonableness of its previously-approved independent entity variations in NYISO's Order No. 845 compliance filing was too broad to put intervenors or the Commission on notice that NYISO's independent entity variation covered circumstances in which a developer elects the option to build a stand alone SUF needed only for its project.⁶⁵ The NextEra Companies argue that the Joint Filing Parties now improperly ask the Commission to grant an independent entity variation in this proceeding.⁶⁶

IV. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the timely unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

32. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2021), we grant ACENY's and Indicated New York Transmission Owners' late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

33. 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 a decisional authority. We accept the Joint Filing Parties' and the NextEra Companies' answers because they have provided information that has assisted us in our decision-making process.

⁶³ The NextEra Companies Answer at 2.

⁶⁴ *Id.* at 2-3.

⁶⁵ *Id.* at 4.

⁶⁶ *Id.* at 4-5.

B. Substantive Matters

34. We accept the unexecuted LGIAs as filed, effective February 18, 2022, as requested.⁶⁷ We find that the unexecuted LGIAs conform to NYISO's *pro forma* LGIA and the terms of NYISO's OATT and are just and reasonable and not unduly discriminatory or preferential.

35. We disagree with the NextEra Companies that NYISO's *pro forma* LGIA and OATT can be interpreted to require National Grid to return the security that the NextEra Companies posted before the completion of discrete portions of the respective stand alone SUFs for which they have exercised the option to build. The language of the NYISO OATT is unambiguous. Article 11.5.4 of NYISO's *pro forma* LGIA explicitly establishes that Attachment S of NYISO's OATT governs the security that developers provide for all SUFs. Pursuant to section 25.8.5 of Attachment S, a developer's security for its class year upgrades is irrevocable, and the security is subject to forfeiture to defray the SUF costs if the developer subsequently terminates or abandons development of its project and NYISO determines that other projects are relying on such upgrades. Section 25.8.5 of Attachment S further provides that security for stand alone SUFs constructed by the developer shall be reduced after discrete portions of the SUFs have been completed. NYISO's OATT does not draw a distinction between the security required for stand alone SUFs identified for multiple projects in a class year and the security required for stand alone SUFs required for only one project within a class year.

36. We disagree with protesters' argument that NYISO's independent entity variations from the requirements of Order No. 2003 and Order No. 845 can be read to only pertain to how security would be applied for stand alone SUFs when multiple developers require the upgrade at issue. On compliance with Order No. 2003, the Commission granted NYISO an independent entity variation to continue the use of its class year study process and cost allocation rules, including its current security rules for all types of class year SUFs.⁶⁸ On compliance with Order No. 845, the Commission accepted NYISO's proposal to maintain this independent entity variation.⁶⁹ The NextEra Companies are correct that the only substantive discussion about NYISO's option to build in the order on compliance with Order No. 845 involved making that option contingent on the agreement of all other affected developers when an Attachment Facility or stand alone SUF is

⁶⁷ We grant the Joint Filing Parties' request for waiver of the Commission's 60-day prior notice requirements. *See N.Y. Indep. Sys. Operator, Inc.*, 123 FERC ¶ 61,093, at P 47 (2008) (accepting unexecuted interconnection agreement effective as of date of filing as requested by the parties).

⁶⁸ NYISO Order No. 2003 Compliance Order, 108 FERC ¶ 61,159 at PP 57-59.

⁶⁹ *N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,117, at P 19 (2020).

needed for more than one developer's project.⁷⁰ However, that limited discussion regarding SUFs does not invalidate the independent entity variation from the requirements of Order No. 2003 accepting the security provisions of Attachment S or their incorporation by reference into Article 11.5.4 of NYISO's *pro forma* LGIA.

37. We decline the protesters' request that the Commission find Attachment S of NYISO's OATT and NYISO's *pro forma* LGIA unjust and unreasonable. We agree with the Joint Filing Parties that NYISO's unique class year study process has just and reasonable grounds for the retention of security for stand alone SUFs that the developer will build, even if those stand alone SUFs are only needed for a single project in the class year. As described in the Joint Filing Parties' answer, once developers in a class year have accepted cost allocation and posted security for their SUFs, those upgrades are considered part of the New York State transmission system.⁷¹ Specifically, NYISO includes such upgrades in the base cases of subsequent interconnection studies such that developers of subsequent projects assume that such upgrades will be constructed.⁷² Further, if NYISO determines that the SUF planned for a terminated or abandoned class year project is needed for a subsequent project, the connecting transmission owner (here, National Grid) would be responsible for constructing any relied-upon class year SUFs.⁷³ Thus, the developer's security for the upgrade is needed to defray any potential costs to the connecting transmission owner. The NextEra Companies have not demonstrated that the terms of NYISO's OATT governing security for SUFs are unjust and unreasonable or otherwise should not apply to the NextEra Companies' projects in these proceedings.

⁷⁰ *Id.* PP 19-20.

⁷¹ See NYISO, OATT, attach. S, § 25.5.5.1(ii); NYISO, OATT, attach. X, § 30.7.3.

⁷² See NYISO, OATT, attach. X, § 30.7.3; NYISO, OATT, attach. X, § 25.8.5.

⁷³ See NYISO, OATT, attach. S, § 25.6.1.4 ("Developers are responsible for 100% of the cost of the System Upgrade Facilities, *not already identified in the Annual Transmission Baseline Assessment* that are needed as a result of their Projects, and required for their Projects to reliably interconnect to the transmission system in a manner that meets the NYISO Minimum Interconnection Standard") (emphasis added). The Annual Transmission Baseline Assessment is "an assessment conducted by the ISO staff in cooperation with Market Participants, to identify the System Upgrade Facilities that Transmission Owners are expected to need during the time period covered by the Assessment to comply with Applicable Reliability Requirements, and reliably meet the load growth and changes in load pattern projected for the New York Control Area." NYISO, OATT, attach. S, § 25.1.2.

38. We find that the NextEra Companies have also not demonstrated that the terms of NYISO's OATT do not comply with Commission precedent. We acknowledge that the Commission in Order No. 845 rejected requests to expand the security requirements contained in Article 11.5 of the *pro forma* LGIA to an interconnection customer that elects the option to build – there, the Commission found that, because the purpose of Article 11.5 is for the interconnection customer to provide funds to the transmission provider for network upgrade construction costs, there would be no need for the interconnection customer to provide security to the transmission provider for network upgrades that the transmission provider will not construct.⁷⁴ However, the security requirements in Article 11.5 of NYISO's *pro forma* LGIA only apply to transmission owner's Attachment Facilities – NYISO was granted an independent entity variation to carve out class year SUFs from the Commission's *pro forma* security rules.⁷⁵ Security for SUFs in NYISO is instead governed by Article 11.5.4 of its *pro forma* LGIA and Attachment S of its OATT. The Commission's statement in Order No. 845 did not encompass NYISO's unique class year study process contained in these provisions. Under the terms of NYISO's OATT, a transmission owner is required to construct SUFs (including stand alone SUFs needed for a sole project in a class year) if NYISO determines that the SUF of a terminating or an abandoned class year project is relied upon by developers in subsequent class years. As such, in NYISO, there is a need for the developer to provide security to the transmission provider for such facilities.

39. We dismiss the NextEra Companies request for waiver from the security provisions in section 25.8.5 of Attachment S of NYISO's OATT as procedurally improper. Because Article 11.5.4 of NYISO's *pro forma* LGIA explicitly states that Attachment S of NYISO's OATT governs security for SUFs, granting waiver from the provisions of Attachment S would materially alter the terms of the *pro forma* LGIA, which would make the LGIA non-conforming. Therefore, consistent with the Commission's findings in *Renewable World Energies, LLC*,⁷⁶ we find that addressing the NextEra Companies' requested relief through a waiver request would be inappropriate under these circumstances.

⁷⁴ Order No. 845, 163 FERC ¶ 61,043 at P 109.

⁷⁵ See NYISO Order No. 2003 Compliance Filing, Docket No. ER04-449-000 (filed Jan. 20, 2004); *N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,117 at P 19.

⁷⁶ 176 FERC ¶ 61,140, at P 18 (2021) (dismissing waiver request and finding that Order No. 2003 provides the appropriate procedures for processing generator interconnection agreements (GIA) that do not conform to the transmission provider's *pro forma* interconnection agreement and agreements that involve a dispute among an interconnection customer and transmission provider over the terms of the GIA via the submission of an unexecuted GIA).

The Commission orders:

The Joint Filing Parties' unexecuted LGIAs are hereby accepted, effective February 18, 2022, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.