

180 FERC ¶ 61,105
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

August 19, 2022

In Reply Refer To:
New York Independent System
Operator, Inc.
New York Power Authority
Docket No. ER22-2151-000

New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Attention: Sara B. Keegan, Esq.

New York Power Authority
30 South Pearl Street
Albany, New York 12207
Attention: Nathan D. Markey, Esq.

Dear Ms. Keegan and Mr. Markey:

1. On June 21, 2022, pursuant to section 205 of the Federal Power Act¹ (FPA) and Part 35 of the Commission's regulations,² the New York Independent System Operator, Inc. (NYISO) and New York Power Authority (NYPA) (together, Joint Filing Parties) filed an executed Merchant Transmission Facility Interconnection Agreement for the Champlain Hudson Power Express project among NYISO, NYPA as the connecting transmission owner, and CHPE LLC (Champlain) as the developer (Interconnection Agreement). The Joint Filing Parties request waiver of the Commission's 60-day prior notice requirement to allow an effective date of June 3, 2022 for the Interconnection Agreement. As discussed below, we accept the Interconnection Agreement, effective June 3, 2022, as requested.

2. The Joint Filing Parties state that the Interconnection Agreement, labeled as Service Agreement No. 2710 under NYISO's Open Access Transmission Tariff (OATT),³

¹ 16 U.S.C. § 824d.

² 18 C.F.R. pt. 35 (2021).

³ New York Independent System Operator, Inc., NYISO Agreements, [Agreement](#)

substantially conforms to the *pro forma* Large Generator Interconnection Agreement (LGIA) contained in Attachment X of the NYISO OATT, with limited exceptions.⁴

3. The Joint Filing Parties state that the Interconnection Agreement governs the interconnection of Champlain’s proposed merchant transmission facility, a 1,250 MW high voltage direct current (AC input – DC conversion – AC output) transmission project that will run from the United States and Canada border to NYPA’s Astoria Annex 345 kV Substation in Astoria, Queens, New York.⁵ The Joint Filing Parties state that, while NYISO’s standard Large Facility Interconnection Procedures (LFIP) apply to certain transmission projects as well as generation projects, the *pro forma* LGIA addresses only the connection of a generation project.⁶ The Joint Filing Parties state that they have modified the *pro forma* LGIA to apply to a transmission project instead of a generation project. The Joint Filing Parties assert that the changes satisfy the Commission’s standard for variation from the *pro forma* LGIA because unique circumstances exist that require a non-conforming agreement.⁷

4. The Joint Filing Parties state that the *pro forma* LGIA is modified throughout to eliminate generator-focused provisions and account for specific characteristics of a transmission facility.⁸ For instance, the Joint Filing Parties state that the terms “Large Generating Facility” and “Standard Large Generator Interconnection Agreement” have been replaced with “Merchant Transmission Facility” and “Merchant Transmission Facility Interconnection Agreement.” In addition, the Joint Filing Parties assert that the terminology has been revised to be in line with a transmission project’s capabilities – for instance, a merchant transmission facility “transmits” power, whereas a generating facility “generates” or “produces” power.⁹

[No. 2710, Joint MTFIA among NYISO, NYPA and Champlain Hudson Power Exp \(0.0.0\).](#)

⁴ Transmittal Letter at 1.

⁵ *Id.* at 2.

⁶ *Id.* at 3. The Joint Filing Parties state that a transmission project is subject to the LFIP if it is a proposed new transmission facility that will interconnect to the New York State transmission system or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State transmission system, for which the developer is eligible to request and does request capacity resource interconnection service. *Id.* n.7 (citing NYISO OATT § 30.1).

⁷ *Id.* at 2 (citing *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,163, at PP 10-11 (*PJM*), *reh’g denied*, 112 FERC ¶ 61,282 (2005)).

⁸ *Id.* at 3.

5. The Joint Filing Parties state that the *pro forma* LGIA is also modified to reflect NYPA's unique legal status.¹⁰ First, the Joint Filing Parties propose changes to ensure compliance with New York's labor laws. Specifically, the conditions under which a developer may choose the option to build have been amended to include a requirement that workers are paid the prevailing wage set forth in Section 220 of New York's labor law for work performed under this agreement on NYPA's existing facilities. Second, the Joint Filing Parties propose changes to address NYPA's eminent domain authority.¹¹ Specifically, the Interconnection Agreement makes clear that NYPA can only use efforts to acquire property by eminent domain to the extent consistent with New York State law. The Joint Filing Parties state that the Commission has previously accepted these changes to the *pro forma* LGIA when NYPA has been a party to a specific LGIA.¹²

6. The Joint Filing Parties next state that the *pro forma* LGIA is modified to address NYPA's capability to implement phasor measurement unit (PMU) requirements.¹³ They assert that the *pro forma* LGIA requires developers to install, at their expense, a PMU and related equipment on the low side of the step-up transformer, and to collect and transmit PMU data to NYISO. However, citing NYPA's existing communications path capabilities and potential cybersecurity and other logistical concerns, the Joint Filing Parties have agreed that NYPA will (1) install a PMU at Champlain's expense, (2) own and maintain the PMU on the high side of the point of interconnection, and (3) be responsible for transmitting PMU data to NYISO.

7. Finally, the Joint Filing Parties state that the *pro forma* LGIA is modified to address execution of the Interconnection Agreement prior to the completion of the Class Year Study, which is the final interconnection study in NYISO's LFIP.¹⁴ As background, the Joint Filing Parties note that the Class Year Study identifies the System Upgrade Facilities required for the reliable interconnection of all facilities participating in the Class Year and determines whether any System Deliverability Upgrades are required for the participating facilities to be fully deliverable at its requested level of Capacity

⁹ For a full list of such changes, *see id.* at 3-4.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 5.

¹² *Id.* (citing *N.Y. Indep. Sys. Operator, Inc. & N.Y. Power Auth.*, Docket No. ER15-1895-000 (July 16, 2015) (delegated order); *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER11-2654-000 (Feb. 9, 2011) (delegated order); *N.Y. Indep. Sys. Operator, Inc. & N.Y. Power Auth.*, Docket No. ER08-1507-000 (Nov. 4, 2008) (delegated order)).

¹³ *Id.*

¹⁴ *Id.* at 6.

Resource Interconnection Service. The Joint Filing Parties further note that section 30.11.4 of Attachment X to the NYISO OATT permits a developer with a project participating in the Class Year Study to enter into an interconnection agreement prior to the completion of the Class Year Study, subject to the developer agreeing to accept the project cost allocation and post security for any System Upgrade Facilities identified and cost allocated in the Class Year Study. The Joint Filing Parties state that Champlain's merchant transmission facility is participating in Class Year 2021, which is not completed, and that Champlain has elected to enter into the Interconnection Agreement prior to the completion of Class Year 2021. Accordingly, the Interconnection Agreement provides that NYISO's provisions of Energy Resources Interconnection Service and Capacity Resource Interconnection Service are subject to the requirements outlined in section 30.11.4 of Attachment X to the NYISO OATT. The Joint Filing Parties also state that, in the event that the connecting transmission owner's Attachment Facilities, Stand Alone System Upgrade Facilities, and Other System Upgrade Facilities differ in any material way from the facilities described in the Interconnection Agreement, the Joint Filing Parties will amend the Interconnection Agreement to incorporate the results of the Class Year Study. The Joint Filing Parties state that the Commission has previously accepted these types of changes to the *pro forma* LGIA where, as here, the parties agreed to incorporate the results of the Class Year Study.¹⁵

8. The Joint Filing Parties request that the Commission waive its prior notice requirement to permit an effective date of June 3, 2022 for the Interconnection Agreement, which is the date of its full execution.¹⁶ They assert that the Commission has previously permitted interconnection agreements to become effective upon the date of execution.¹⁷

9. Notice of the filing was published in the *Federal Register*, 87 Fed. Reg. 38,147 (June 27, 2022), with interventions and protests due on or before July 12, 2022. None was filed.

¹⁵ *Id.* (citing *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER11-2199-000 (Dec. 28, 2010) (delegated order)).

¹⁶ *Id.*

¹⁷ *Id.* at 7 (citing *N.Y. Indep. Sys. Operator, Inc. & N.Y. State Elec. & Gas Corp.*, Docket No. ER11-2953-000 (Apr. 7, 2011) (delegated order); *N.Y. Indep. Sys. Operator, Inc. & Niagara Mohawk Power Corp.*, Docket No. ER08-985-000 (June 26, 2008) (delegated order); *N.Y. Indep. Sys. Operator, Inc. & N.Y. Power Authority*, Docket No. ER08-861-000 (May 27, 2008) (delegated order); *N.Y. Indep. Sys. Operator, Inc. and N.Y. Power Auth.*, Docket No. ER08-699-000 (May 16, 2008) (delegated order)).

10. We accept the Interconnection Agreement for filing and grant the requested waiver of the prior notice requirement to permit an effective date of June 3, 2022.¹⁸ As the Commission has previously stated, the Commission may recognize deviations from *pro forma* interconnection agreements as “may be necessary for a small number of interconnections with specific reliability concerns, novel legal issues, or other unique factors.”¹⁹ The Commission analyzes such non-conforming filings to ensure that operational or other reasons necessitate the non-conforming agreement.²⁰ A transmission provider seeking a case-by-case specific deviation from a *pro forma* interconnection agreement bears a high burden, and it must explain what makes the interconnection unique and what operational concerns or other reasons necessitate the change.²¹ We find that the Joint Filing Parties have described the non-conforming provisions contained in the Interconnection Agreement and justified why unique factors associated with (1) Champlain’s proposed merchant transmission facility and (2) the circumstances of the parties to the agreement necessitate these non-conforming provisions. First, we find that the non-conforming provisions are necessary because the *pro forma* LGIA does not include provisions for the interconnection of merchant transmission facilities such as Champlain’s proposed facility.²² Second, we find that the changes regarding eminent domain and prevailing wages are necessary to reflect state law.²³ Third, we find that the

¹⁸ 18 C.F.R. § 35.3(a)(2) (2021). *See Prior Notice & Filing Requirements Under Part II of the Fed. Power Act*, 64 FERC ¶ 61,139, at 61,983-84, *order on reh’g*, 65 FERC ¶ 61,081 (1993) (the Commission will grant waiver of the 60-day prior notice requirement “if service agreements are filed within 30 days after service commences.”); *see also N.Y. Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,105, at P 4 (2021).

¹⁹ *PJM*, 111 FERC ¶ 61,163 at P 10 (citing *Standardization of Generator Interconnection Agreements & Proc.*, Order No. 2003, 104 FERC ¶ 61,103, at PP 913-915 (2003), *order on reh’g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh’g*, Order No. 2003-B, 109 FERC ¶ 61,287, at P 140 (2004), *order on reh’g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007)).

²⁰ *See* Order No. 2003, 104 FERC ¶ 61,103 at P 915; Order No. 2003-B, 109 FERC ¶ 61,287 at P 140.

²¹ *See PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098, at P 9 (2005).

²² While there are no formal provisions in the current NYISO *pro forma* LGIA, the Commission has previously accepted NYISO’s proposal that controllable transmission lines for which the proposing entity is seeking Capacity Resource Interconnection Service will be evaluated in the interconnection process in Attachments X and S of the NYISO OATT, the same as any other project seeking Capacity Resource Interconnection Service. *See N.Y. Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,107, at PP 23, 35 (2018).

deviations from the *pro forma* LGIA to implement PMU requirements are necessary to reflect the unique aspects of the project. Finally, we accept the proposal to modify the *pro forma* LGIA to address execution of the Interconnection Agreement prior to the completion of the Class Year study.²⁴

By direction of the Commission.

Debbie-Anne A. Reese,
Deputy Secretary.

²³ See *supra* note 12.

²⁴ See *supra* note 15.