

183 FERC ¶ 61,165  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

June 2, 2023

In Reply Refer To:  
New York Independent System  
Operator, Inc.  
Docket No. ER23-1573-000

New York Independent System Operator, Inc.  
10 Krey Boulevard  
Rensselaer, NY 12144

Hunton Andrews Kurth LLP  
951 East Byrd Street  
Richmond, VA 23219

New York State Electric & Gas Corporation  
180 South Clinton Avenue  
Rochester, NY 14604

Attention: Sara B. Keegan, Michael J. Messonnier, Jr., and Jeffrey A. Rosenbloom

Dear Sara B. Keegan, Michael J. Messonnier, Jr., and Jeffrey A. Rosenbloom:

1. On April 5, 2023, pursuant to section 205 of the Federal Power Act<sup>1</sup> and Part 35 of the Commission's regulations,<sup>2</sup> the New York Independent System Operator, Inc. (NYISO) and New York State Electric & Gas Corporation (NYSEG) (collectively, Joint Filing Parties) filed an unexecuted Engineering, Procurement, and Construction Agreement (EPC Agreement) among NYISO, NYSEG, as the Affected System Operator, ELP Ticonderoga Solar LLC (Ticonderoga), as the Interconnection Customer, and Niagara Mohawk Power Corporation (National Grid). The EPC Agreement is designated as Service Agreement No. 2764 under the NYISO Open Access Transmission Tariff (OATT).<sup>3</sup> Joint Filing Parties state that the EPC Agreement conforms to NYISO's *pro forma* Standard Large Generator Interconnection

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. § 35.13 (2022).

<sup>3</sup> New York Independent System Operator, Inc., NYISO Agreements, Agreement No. 2764, EPCA among NYISO, NYSEG, Ticonderoga Solar, National Grid (0.0.0).

Agreement (LGIA) that is contained in Attachment X of NYISO's OATT.<sup>4</sup> Joint Filing Parties also request waiver of the Commission's 60-day prior notice requirement to make the EPC Agreement effective April 6, 2023.

2. Joint Filing Parties state that Ticonderoga is developing a 20 MW solar generating facility (Small Generating Facility) in the town of Ticonderoga, New York.<sup>5</sup> Joint Filing Parties state that the Small Generating Facility will interconnect to certain facilities of National Grid that are part of the New York State transmission system.<sup>6</sup> According to Joint Filing Parties, the facilities study for the Small Generating Facility determined that certain upgrades on NYSEG's system are required to reliably interconnect the Small Generating Facility to the New York State transmission system. Joint Filing Parties also state that Ticonderoga has agreed with NYSEG to construct the Affected System Upgrade Facilities on NYSEG's transmission system and is responsible for the costs of the engineering, procurement, and construction of such facilities.<sup>7</sup> Joint Filing Parties explain that the EPC Agreement will govern the rates, terms, and conditions pursuant to which Ticonderoga will engineer, procure, and construct the Affected System Upgrade Facilities on NYSEG's system. Section 3.2 of the EPC Agreement (which mirrors article 5.2.12 of the NYISO *pro forma* LGIA), provides that Ticonderoga is responsible for paying NYSEG an agreed upon dollar amount for NYSEG's oversight of the work being performed by Ticonderoga.<sup>8</sup>

3. Joint Filing Parties explain that the facilities study for the Affected System work for the Small Generating Facility (dated March 2, 2021) determined the cost estimate for the Affected System Operator's total work concerning the Affected System Upgrade Facilities to be \$795,689.<sup>9</sup> Joint Filing Parties state that because NYISO does not perform additional

<sup>4</sup> Transmittal at 1.

<sup>5</sup> *Id.*

<sup>6</sup> NYISO, National Grid, and Ticonderoga executed a Small Generator Interconnection Agreement for the Small Generating Facility on March 15, 2022. *New York Indep. Sys. Operator, Inc.*, Docket No. ER22-1489-000 (May 16, 2022) (delegated order).

<sup>7</sup> Transmittal at 4.

<sup>8</sup> Section 3.2.12 provides "Interconnection Customer shall pay the Affected System Operator the agreed upon amount of [\$961,207] for the Affected System Operator to execute the responsibilities enumerated to Affected System Operator under Article 3.2. Affected System Operator shall invoice Interconnection Customer for this total amount to be divided on a monthly basis pursuant to Article 8."

<sup>9</sup> Transmittal at 5-6.

studies or re-studies to determine the transmission owner's oversight costs amount if the developer will perform some or all of this work, NYISO has inserted, in the placeholder in § 3.2.12, NYSEG's most recent estimate of \$961,207 for its oversight costs based on NYSEG's assessment conducted in September 2022. Joint Filing Parties explain that Ticonderoga has indicated that it does not object to paying NYSEG's oversight costs, but it disagrees with NYSEG concerning the \$961,207 amount for oversight costs that should be included in the placeholder for § 3.2.12 and they have been unable to come to an agreed-upon figure. Joint Filing Parties state that NYISO, NYSEG, Ticonderoga, and National Grid are in agreement with the terms of the EPC Agreement with the limited exception of the oversight costs.<sup>10</sup>

4. Notice of the filing was published in the *Federal Register*, 86 Fed. Reg. 21,668 (Apr. 11, 2023) with interventions and protests due on or before April 26, 2023. Ticonderoga filed a timely motion to intervene and protest, NYSEG and the Alliance for Clean Energy New York, Inc. (ACENY) filed comments. Ticonderoga and NYSEG filed answers.

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), Ticonderoga's timely unopposed motion to intervene serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2022), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers filed by Ticonderoga and NYSEG because they have provided information that assisted us in our decision-making process.

6. NYSEG argues that its requested placeholder amount of \$961,207 is an incremental pass through cost that represents a good faith estimate to oversee Ticonderoga's work to construct the Affected System Upgrades on NYSEG's system.<sup>11</sup> NYSEG clarifies that because these oversight costs are solely attributable to the Ticonderoga project, NYSEG will not recover these costs from its ratepayers, either at the wholesale or retail level.<sup>12</sup> NYSEG explains that the majority of the estimated costs are associated with project management and engineering review, which totals \$539,582 and was derived from NYSEG's estimate of the combined personnel hours per month and the blended hourly rate for such personnel across all project elements.<sup>13</sup> The balance of the estimate includes \$25,000 for commissioning,

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<sup>10</sup> *Id.* at 3.

<sup>11</sup> NYSEG Comments at 6-7.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> NYSEG states that a project that will continue for 11 months will use human resources over the entire period even if the project is small in comparison to certain other transmission projects. NYSEG explains that the estimated personnel time is directly

\$167,421 for contingency, which NYSEG states represents 30% of the project costs, and \$229,203 for overhead.<sup>14</sup> NYSEG argues that there should be no need for a detailed review by the Commission and, pursuant to § 8.2 of the EPC Agreement, Ticonderoga would be refunded the relevant portion of the \$961,207 if NYSEG's actual costs come in below this estimate.<sup>15</sup> NYSEG states that the Commission noted in Order No. 845-A that *pro forma* LGIA provisions "allow transmission providers to recover oversight costs related to the interconnection customer's option to build," and that "the revised option to build provisions apply to all public utility transmission providers, including those that reimburse the interconnection customer for network upgrades."<sup>16</sup>

7. Ticonderoga states that, as of March 2, 2021, the approved and final affected systems facilities study specified the scope and estimated costs for Affected System Upgrade Facilities, including \$795,689, of which \$153,427 was allocated to project management, testing and commissioning, and the balance of \$642,262 to construction, materials, engineering and contingency.<sup>17</sup> Ticonderoga argues that, in July 2022, NYSEG revised the cost estimate for construction, more than a year after NYSEG approved the facilities study, which reflected an increase of more than 400%. According to Ticonderoga, this increase was not the result of any significant change in design or external market conditions, but rather resulted primarily from an increase of over 1,000% in the project management and overhead budget, from \$153,427 to \$1,709,245.<sup>18</sup> Ticonderoga states that, while it understands the results of the study process are not binding and are subject to reasonable margins of uncertainty, it is unreasonable to expect correlated with the size, scope, and complexity of the project, and that any initial misalignment in the project scoping will necessarily impact the estimated personnel time and, by extension, the estimated expenditures. NYSEG Comments at 8.

<sup>14</sup> *Id.* at 8-9.

<sup>15</sup> *Id.* at 6, 9.

<sup>16</sup> *Id.* at 5 (quoting *Cheyenne Light, Fuel and Power Co.*, 169 FERC ¶ 61,143, at P 12 (2019) and citing *Reform of Generator Interconnection Proc. & Agreements*, Order on Rehearing and Clarification, Order No. 845-A, 166 FERC ¶ 61,137, at PP 75, 33 (2019)).

<sup>17</sup> Ticonderoga Protest at 2. The affected systems facilities study was prepared by NYISO's consultant, Burns & McDonnell. Ticonderoga states that while it acknowledges this amount may not necessarily be an exact proxy for the oversight scope of work under the EPC Agreement, it at least represents the estimate of Burns & McDonnell, a qualified independent consultant, as to what a reasonable project management budget may be for the installation of the Affected System Upgrade Facilities. *Id.* at 7.

<sup>18</sup> *Id.* at 3, 10.

it, or any developer, to be able to anticipate or manage changes of this magnitude to NYSEG's internal management and overhead assumptions.<sup>19</sup> Ticonderoga asserts that NYSEG's proposed oversight costs appear excessive when compared to the amount allocated for project management in the affected systems facilities study.<sup>20</sup> Ticonderoga states that it reviewed recent LGIAs with more significant overall scopes of work than that at issue in this matter and the agreed oversight costs in those LGIAs generally represent about 10% or less of the total cost of work subject to oversight.<sup>21</sup> Ticonderoga specifies that NYSEG's most recent proposal for oversight costs, at \$961,207, represents over 120% of the entire all-in build cost of \$795,689 provided in the affected systems facilities study.<sup>22</sup>

8. Ticonderoga states that, on September 16, 2022, it initiated dispute resolution in accordance with § 32.4.2 of the NYISO OATT but was unable to resolve the dispute.<sup>23</sup> Ticonderoga contends that, in Order No. 845-A, the Commission stated that the oversight amount should be negotiated with the interconnection customer and clearly stated in the LGIA.<sup>24</sup> Ticonderoga also states that NYSEG's proposed oversight costs appear disproportionate by any objective measure. Ticonderoga argues that the oversight costs fall outside the boundaries of what should reasonably be expected to comprise a negotiated amount as contemplated by Order No 845-A and are unjust and unreasonable.<sup>25</sup> Ticonderoga requests that the Commission limit the recovery of NYSEG's oversight costs to \$153,427 or to another just and reasonable amount.<sup>26</sup>

9. ACENY states that any approved amount of oversight costs should be proportional to costs identified through the successive rounds of the interconnection study process under the NYISO OATT and urges the Commission to issue an order directing the recovery of a fair and reasonable oversight amount, to facilitate the furtherance of the

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<sup>19</sup> *Id.* at 10.

<sup>20</sup> *Id.* at 7.

<sup>21</sup> *Id.* at 8.

<sup>22</sup> *Id.* at 7.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.* at 6 (quoting Order No. 845-A, 166 FERC ¶ 61,137 at P 75 (“[w]e expect the transmission provider and interconnection customer to negotiate this amount and clearly state it in the LGIA”)).

<sup>25</sup> *Id.* at 8.

<sup>26</sup> *Id.* at 11.

Ticonderoga project and the ongoing development of similarly positioned queued renewable generation in New York.<sup>27</sup> ACENY states that the NYSEG oversight estimate does not represent a fair or reasonable margin relative to the scope of work and true capital costs of the upgrade.<sup>28</sup>

10. In its answer, NYSEG argues that the Burns & McDonnell study referenced by Ticonderoga does not specifically account for any of NYSEG's oversight costs.<sup>29</sup> NYSEG asserts that the study includes an unreasonably low all-in cost estimate for the upgrades, and, therefore, Ticonderoga's concerns that NYSEG's costs to oversee the engineering, planning, and construction of the required Affected System Upgrade Facilities exceed the estimates in that study are unpersuasive.<sup>30</sup> NYSEG contends that the accuracy of an overall cost estimate depends in large part on accurately scoping the project at issue,<sup>31</sup> and NYSEG provided comments to this effect as part of its January 2021 written responsive comments to the December 2020 draft Burns & McDonnell Affected Facilities Study.<sup>32</sup> NYSEG maintains that the \$795,689 estimate does not represent an accurate estimate of the all-in project costs.<sup>33</sup> NYSEG states that it has performed a more detailed project cost estimate of \$3,416,326, which is more accurate than the Burns & McDonnell study cost estimate. NYSEG also states that its oversight costs estimate represents 28% of the project's total cost when compared with its more realistically scoped overall cost estimate.<sup>34</sup>

11. NYSEG states that it has an interest in ensuring that estimates in the EPC agreement are accurate because an inaccurately high estimate can increase the overall costs of a project, which also means that a developer would need a larger security deposit to cover the oversight cost amount. NYSEG also acknowledges that estimates resulting from a facilities study are

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<sup>27</sup> ACENY Comments at 1.

<sup>28</sup> *Id.* at 2.

<sup>29</sup> NYSEG states that overhead costs such as office space, insurance, vehicles, and other expenditures required to enable utility employees to accomplish their assigned tasks are often overlooked in third-party cost estimates, as is the case here. NYSEG Answer at 2, n.6 (citing NYSEG Comments at 9).

<sup>30</sup> *Id.* at 2.

<sup>31</sup> *Id.* at 2 (citing NYSEG Comments at 8).

<sup>32</sup> *Id.* at 2-3.

<sup>33</sup> *Id.* at 3.

<sup>34</sup> *Id.*

used as a data point for developer consideration of whether a project is economic, i.e., whether to move forward with a project at all, and may also be material for financing considerations.<sup>35</sup> NYSEG states that it is working with the NYISO to clarify the requirements and expectations for NYSEG's cost estimates more generally to improve the quality of estimates related to upgrades on its system required by the NYISO interconnection process going forward, and it is optimistic that these efforts will work to limit this type of dispute in the future and will result in a better understanding of the cost estimates.<sup>36</sup> Finally, NYSEG argues that there are no material facts in dispute in this proceeding, it has supported the estimated oversight costs, and it contends that the Commission should not set this matter for settlement and hearing procedures and instead accept the EPC Agreement as filed unexecuted, including the \$961,207 in estimated oversight costs.

12. In its answer, Ticonderoga states that NYSEG's answer contains material inaccuracies.<sup>37</sup> Ticonderoga states that the amount of \$961,207 is a "fixed agreed upon amount" and that § 3.2.12 does not provide for this amount to be decreased or increased based on any subsequent determination of actual costs by NYSEG.<sup>38</sup> Ticonderoga contends that NYSEG fails to state that, prior to the Burns & McDonnell Study, NYSEG provided its own internally prepared estimate of costs for the required upgrades, which was "far lower" than its current estimate.<sup>39</sup> Ticonderoga further states that NYSEG's claim that the facilities study was improperly scoped is without support, that NYSEG did not properly raise such claims during the study process, and that the increase in estimated costs is attributable to changes in NYSEG's internal project management and overhead cost recovery practices, rather than to any defect in the facilities study.<sup>40</sup>

13. In Order No. 845-A, the Commission revised article 5.2 of the *pro forma* LGIA to include a placeholder for transmission providers to recover the costs of executing the responsibilities enumerated for transmission providers in that article and stated that the Commission expects the oversight amount to be negotiated with the interconnection customer and clearly stated in the LGIA.<sup>41</sup> In particular, § 3.2.12 of the EPC Agreement (which mirrors article 5.2.12 of the *pro forma* LGIA), notes that the Interconnection

<sup>35</sup> *Id.* at 3-4.

<sup>36</sup> *Id.* at 4.

<sup>37</sup> Ticonderoga Answer at 2.

<sup>38</sup> *Id.* at 3.

<sup>39</sup> *Id.* at 4.

<sup>40</sup> *Id.* at 5-6.

<sup>41</sup> Order No. 845-A, 166 FERC ¶ 61,137 at P 75.

Customer (Ticonderoga) is responsible for paying NYSEG for NYSEG's oversight of the work being performed to interconnect the facility and includes an estimate of \$961,207. Consistent with Order No. 845-A, the parties attempted to negotiate in good faith the proposed estimate oversight costs, which amount must be provided as security by Ticonderoga pursuant to § 7.2 of the EPC Agreement. As noted above, NYSEG and Ticonderoga disagree concerning the dollar amount of the estimated oversight costs, and they have been unable to reach an agreed-upon amount. Therefore, Joint Filing Parties filed an unexecuted EPC Agreement.

14. Given the facts and circumstances in this record, we accept the filing, effective April 6, 2023, as requested.<sup>42</sup> We agree with NYSEG that the proposed oversight cost is an incremental cost that is distinct from the costs that would be incurred if NYSEG were performing the work itself. As such, NYSEG will only charge Ticonderoga the actual oversight costs, "with no markup or profit" for completing the project.<sup>43</sup> Further, we find that the proposed oversight cost is an estimate, and pursuant to § 8.2 of the EPC Agreement, NYSEG agrees to refund Ticonderoga the relevant portion of the estimated \$961,207 that is greater than NYSEG's actual costs associated with NYSEG's oversight of the Affected System Upgrade Facilities. In particular, § 8.2 of the EPC Agreement provides that "[t]he Affected System Operator shall release or refund to Interconnection Customer any remaining portions of its Security or cash payment provided by Interconnection Customer pursuant to Article 7.2 and any amount Interconnection Customer has overpaid as described in Section 8.4 within 30 days of the later of: (i) the Interconnection Customer's payment of any final invoice to the Affected System Operator, and (ii) Interconnection Customer's completion of the EPC Services."

15. Issues regarding oversight costs may be addressed after the parties have an opportunity to examine the actual oversight costs. Therefore, our acceptance of the unexecuted EPC Agreement is without prejudice to any future filings regarding the actual oversight costs. Finally, while we accept Joint Filing Parties' EPC Agreement, we note NYSEG's interest in ensuring that estimates in the EPC agreement are accurate<sup>44</sup> and encourage NYSEG to continue working with NYISO to improve the transparency and accuracy of NYSEG's cost estimates related to upgrades on its system required by the NYISO interconnection process.

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<sup>42</sup> We grant Joint Filing Parties' request for waiver of the Commission's 60-day prior notice requirement. See *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,047 (2022) (accepting unexecuted interconnection agreement effective the date after filing); *N.Y. Indep. Sys. Operator, Inc.*, 123 FERC ¶ 61,093, at P 47 (2008) (accepting unexecuted interconnection agreement effective as of date of filing).

<sup>43</sup> NYSEG Comments at 6.

<sup>44</sup> NYSEG Answer at 3-4.



16. The Commission hereby accepts Joint Filing Parties EPC Agreement, effective April 6, 2023, as requested.

By direction of the Commission.

Debbie-Anne A. Reese,  
Deputy Secretary.