

January 23, 2020

**By Electronic Delivery**

Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Re: Filing of an Executed Development Agreement Among the New York Independent System Operator, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, and New York Transco, LLC; Request for Waiver of the 60-Day Notice Period; Docket No. ER20-\_\_\_\_-000

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act<sup>1</sup> and Section 35.13 of the Commission's regulations,<sup>2</sup> the New York Independent System Operator, Inc. ("NYISO") hereby tenders for filing an executed Public Policy Transmission Planning Process Development Agreement entered into by the NYISO, Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") and New York Transco, LLC ("Transco") (hereinafter the "Development Agreement").<sup>3</sup> As detailed below, the Development Agreement addresses the development of a Public Policy Transmission Project that was jointly submitted by National Grid and Transco, and selected by the NYISO as the more efficient or cost-effective transmission solution, to satisfy a Public Policy Transmission Need identified as part of the NYISO's Public Policy Transmission Planning Process ("Public Policy Process"). The Development Agreement is labeled as Service Agreement No. 2510 under the NYISO's Open Access Transmission Tariff ("OATT").

The NYISO respectfully requests that the Commission accept the Development Agreement for filing. With the limited exception described in Part I.B of this letter, the Development Agreement conforms to the NYISO's pro forma Public Policy Transmission Planning Process Development Agreement ("Pro Forma Development Agreement") that is contained in Attachment Y to the OATT.<sup>4</sup> Further, as described in Part II of this letter, the NYISO respectfully requests a waiver of the Commission's prior notice requirements<sup>5</sup> to make the Development Agreement effective as of January 10, 2020, which is the date of its full execution.

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. § 35.13 (2019).

<sup>3</sup> Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in Attachment Y of the OATT, and if not defined therein, in the NYISO OATT and NYISO Market Administration and Control Area Services Tariff.

<sup>4</sup> See OATT § 31.7 Appendix D.

<sup>5</sup> See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, clarified, 65 FERC ¶ 61,081 (1993).

## I. Discussion

### A. Background

On August 1, 2014, the NYISO commenced its first Public Policy Process planning cycle. The NYISO solicited and submitted to the New York Public Service Commission (“NYPSC”) potential transmission needs. On December 17, 2015, the NYPSC issued an order finding that there is a transmission need driven by Public Policy Requirements to increase the Central East interface in New York (“Segment A”) by at least 350 MW and the UPNY/SENY interface in New York (“Segment B”) by at least 900 MW to provide additional transmission capacity to move power from upstate to downstate New York (collectively the “AC Transmission Needs”).<sup>6</sup> The NYISO issued a solicitation for solutions to the AC Transmission Needs in its Public Policy Process, requirements for which are set forth in Attachment Y to the OATT.

National Grid and Transco jointly submitted the New York Energy Solution Project (“Project”) as a solution to address Segment B of the AC Transmission Needs. The Project will mainly be located in the Hudson Valley in New York. The Project will consist of a new 345 kV/115 kV double-circuit transmission line from a new Knickerbocker switching station to the existing Pleasant Valley substation, as well as rebuilding the existing 115 kV transmission lines within the same corridor. In addition, the NYPSC identified certain other work that all solutions to Segment B of the AC Transmission Needs were required to include—e.g., terminal upgrades at the New York State Electric & Gas Corporation (“NYSEG”) Rock Tavern substation and construction of a double-circuit 138 kV line in place of the Orange and Rockland Utilities, Inc. (“O&R”) double-circuit 69 kV line from the Shoemaker substation to the Sugarloaf substation on existing rights of way.<sup>7</sup> Additional details regarding the Project can be found in Appendix C of the Development Agreement.

On April 8, 2019, the NYISO’s Board of Directors selected the Project as the more efficient or cost-effective solution to Segment B of the AC Transmission Needs. As National Grid and Transco jointly proposed the Project as a part of the Public Policy Process, they are jointly considered the Developer of the selected project and are both subject to the requirements under Attachment Y to the OATT. Specifically, a Developer of a selected project is required, pursuant to Section 31.4.12.2 of the OATT, to execute a development agreement or to request the NYISO to file an unexecuted development agreement within the specified time. Accordingly, the NYISO, Transco, and National Grid fully executed the Development Agreement for the Project on January 10, 2020.

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<sup>6</sup> NYPSC Case No. 12-T-0502, *et al.*, *Order Finding Transmission Needs Driven by Public Policy Requirements*, at PP 68 & Appendix A (December 17, 2015) (“NYPSC 2015 Order”); *see also* NYPSC Case No. 12-T-0502, *et al.*, *Order Addressing Public Policy Transmission Need for AC Transmission Upgrades* (January 24, 2017) (confirming the AC Transmission Needs).

<sup>7</sup> *See* NYPSC 2015 Order, at pp 61-62 & Appendix A. Subsequent to the NYISO Board of Directors selecting the Project, the Developer reached an agreement with O&R whereby the Developer will develop and complete the line from Shoemaker to Sugarloaf. This is reflected in Appendices B and C of the Development Agreement.

**B. The Development Agreement Closely Conforms to the Pro Forma Development Agreement Contained in Attachment Y of the OATT**

The Development Agreement largely conforms to the language in the Pro Forma Development Agreement contained in Attachment Y of the NYISO OATT with the limited exceptions described below. The NYISO submits that the changes from the Pro Forma Development Agreement specified below are just and reasonable because unique factors exist to justify a non-conforming agreement.<sup>8</sup> Therefore, the NYISO respectfully requests that the Commission accept the Development Agreement with the limited non-conforming changes.

Subsequent to the NYISO Board of Director's selection of the Project, National Grid and Transco confirmed that National Grid intends to transfer its interests in the Project to Transco and that Transco will continue the development of the Project as the sole developer.<sup>9</sup> However, Attachment Y does not contain a mechanism that permits the Developer of selected project to modify the project or assign its rights and obligations prior to execution of the Pro Forma Development Agreement (or filing of an unexecuted agreement, if applicable). Once the Pro Forma Development Agreement is executed by the selected Developer, the agreement has specific provisions addressing changes to the project and/or the Developer, such as assignment to another entity to develop the project.<sup>10</sup> These assignment provisions establish that a selected project can only be transferred to another entity after satisfying certain requirements, including a NYISO determination that the assignee satisfies the NYISO's developer qualification requirements and has the technical competence, financial ability, and material, equipment, and plans to comply with the Pro Forma Development Agreement, and to construct and place the selected project in service by the Required In-Service Date consistent with the assignor's cost estimates.<sup>11</sup>

Based on the foregoing, the parties agreed to allow National Grid to fulfill its obligations under Section 31.4.12.2 of the OATT as the Developer of a selected project by executing the Development Agreement for the limited purpose of assigning its rights, duties, and obligations to Transco in order for Transco to continue with the development of the Project as the sole developer. To address the limited purpose of National Grid executing the Development Agreement, the parties detailed National Grid's role in the prefatory paragraph. In addition, the parties made limited revisions to the "Recitals" and the definition of "Party or Parties" in Article 1 (Definitions) to account for more than one party as the Developer.

The Development Agreement also includes a new Article 10.2 that details the process and requirements, including timeframes, by which National Grid is required to assign its rights and obligations to Transco. The existing Pro Forma Development Agreement does not explicitly

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<sup>8</sup> See *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,054 (2016); *Southwest Power Pool, Inc.*, 132 FERC ¶ 61,159, at P 7 (2010); *PJM Interconnection, LLC*, 111 FERC ¶ 61,163 (2005).

<sup>9</sup> The Developer contemplated in its submission in the Public Policy Transmission Planning Process the possibility of National Grid transferring the Project to Transco.

<sup>10</sup> See, e.g., Pro Forma Development Agreement, Art. 10 (general assignment requirements); Pro Forma Development Agreement, Art. 3.5 (modifications to the project).

<sup>11</sup> See Pro Forma Development Agreement, Art. 10.

address the circumstances in which one entity participating as part of a multi-party Developer seeks to assign its rights and obligations to the remaining Developer entity. Specifically, within 30 days after the effective date of the Development Agreement, National Grid is required to submit a notice of assignment and request for the NYISO to consent to the assignment of its rights, duties, and obligations to Transco. In addition, National Grid must satisfy the general assignment requirements currently set forth in Article 10 (now Article 10.1) of the Pro Forma Development Agreement. If the assignment meets the requirements of Article 10.1 and the NYISO consents, the parties will amend the Development Agreement to replace it with a two-party agreement between NYISO and Transco in a subsequent filing with the Commission. Conversely, if National Grid does not satisfy these requirements within a reasonable time period, the parties have agreed that they will amend the Development Agreement to provide that National Grid will be a Developer with all of the related rights, duties, and obligations for purposes of the entire agreement, and will be jointly and severally liable with Transco under the amended agreement.

## **II. Proposed Effective Date and Request for Waiver of the 60-Day Notice Period**

The NYISO requests an effective date of January 10, 2020 for the Development Agreement, which is the date of its full execution. The NYISO respectfully requests that the Commission waive its prior notice requirement to permit the requested effective date. The Commission has permitted similar agreements (e.g., interconnection agreements) to become effective upon the date of execution.<sup>12</sup>

## **III. Communications and Correspondence**

All communications and service in this proceeding should be directed to:

Robert E. Fernandez, Executive Vice President & General Counsel  
Karen Georgenson Gach, Deputy General Counsel  
Raymond Stalter, Director, Regulatory Affairs  
\*Carl F. Patka, Assistant General Counsel  
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\*Designated to receive service.

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<sup>12</sup> See, e.g., *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,054 at P 26; see also, e.g., *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Docket No. ER11-2953-000 (April 7, 2011) (accepting interconnection agreement effective as of date of execution).

**IV. Documents Submitted**

The NYISO submits the following documents with this filing letter:

- A clean version of the Development Agreement (Attachment I);
- A blacklined version of the Development Agreement showing the changes from the Pro Forma Development Agreement (Attachment II); and
- The signature pages for the Development Agreement (Attachment III).

**V. Service**

The NYISO will send an electronic link to this filing to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities. In addition, a complete copy of the documents included with this filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com).

**VI. Conclusion**

Wherefore, the NYISO respectfully requests that the Commission accept the Development Agreement for filing with an effective date of January 10, 2020.

Respectfully submitted,

/s/ Brian R. Hodgdon

Brian R. Hodgdon  
Counsel for the  
New York Independent System Operator, Inc.

cc: Anna Cochrane                      David Morenoff  
James Danly                              Daniel Nowak  
Jignasa Gadani                          Larry Parkinson  
Jette Gebhart                             Douglas Roe  
Kurt Longo                                Frank Swigonski  
John C. Miller                             Gary Will