

February 9, 2022

By Electronic Delivery

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

Re: Filing of an Executed Engineering, Procurement, and Construction Agreement Among the New York Independent System Operator, Inc., Holcim (US) Inc., Hecate Energy Albany 1 LLC, and Hecate Energy Albany 2 LLC; Request for Waiver of 60-Day Notice Period; Docket No. ER22-\_\_\_\_-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 Engineering, Procurement, and Construction Agreement ("EPC Agreement"). The EPC Agreement has been entered into by the NYISO, Holcim (US) Inc. ("Holcim"), as the Affected System Operator, and Hecate Energy Albany 1 LLC ("Hecate 1") and Hecate Energy Albany 2 LLC ("Hecate 2"), each an Interconnection Customer (all parties to the agreement collectively, the "Parties").<sup>3</sup> The EPC Agreement is labeled as Service Agreement No. 2670 under the NYISO's Open Access Transmission Tariff ("OATT").

Hecate 1 and Hecate 2 are each developing separate 20 MW solar electricity generating facilities located in Albany County, New York (the "Facilities"). The Facilities Studies for the Facilities determined that certain upgrades on Holcim's system are required to reliably interconnect the Facilities to the New York State Transmission System ("Affected System Upgrade Facilities"). The Parties have developed and executed the EPC Agreement to govern the rates, terms, and conditions regarding the engineering, procurement, and construction of the Affected System Upgrade Facilities on Holcim's system. The EPC Agreement is based on the NYISO's *pro forma* Standard Large Generator Interconnection Agreement ("Pro Forma LGIA") contained in Attachment X to the OATT and conforms to the Pro Formal LGIA except as described in Part II of this letter.<sup>4</sup>

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. § 35.13 (2021).

<sup>3</sup> Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in Attachments X or S of the NYISO OATT, and if not defined therein, the NYISO OATT or NYISO Market Administration and Control Area Services Tariff ("Services Tariff").

<sup>4</sup> Section 30.3.5 of the NYISO's Large Facility Interconnection Procedures ("LFIP") in Attachment X of the NYISO OATT establishes the requirements for the NYISO and a Developer to enter into an engineering, procurement, and construction agreement with an Affected System Operator for upgrades on the Affected System required to reliably interconnect a generating facility. In this instance, both Facilities are Small Generating Facilities subject to the Small Generator Interconnection Procedures ("SGIP") in Attachment Z, which lacks specific

The NYISO respectfully request that the Commission accept the EPC Agreement for filing. Further, as described in Part III of this letter, the NYISO respectfully request a waiver of the Commission's prior notice requirements<sup>5</sup> to make the EPC Agreement effective as of January 26, 2022, which is the date on which it was fully executed.

## **I. BACKGROUND**

The Facilities to be developed by Hecate 1 and Hecate 2 will interconnect to certain facilities of Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") that are part of the New York State Transmission System. The NYISO and National Grid previously filed with the Commission, and the Commission accepted, executed interconnection agreements for the Facilities, which filings provide additional details regarding each of the Facilities.<sup>6</sup>

The Facilities Studies for the Facilities identified certain Affected System Upgrade Facilities that are required on the Affected System owned by Holcim – the Affected System Operator – to reliably interconnect the Facilities to the New York State Transmission System. The Facilities Studies determined that the Affected System Upgrade Facilities are required if one or both of the Facilities interconnect. Accordingly, Holcim 1 and Holcim 2 have agreed to be jointly and severally responsible for completing the upgrades. Consistent with NYISO practice, as accepted by the Commission,<sup>7</sup> and Section 30.3.5 of Attachment X of the NYISO OATT, the NYISO, Holcim, Hecate 1 and Hecate 2 have entered into the EPC Agreement to govern the rates, terms, and conditions pursuant to which Hecate 1 and Hecate 2 will engineer, procure, and construct the Affected System Upgrade Facilities on Holcim's system ("EPC Services").

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provisions concerning implementing the upgrades for an Affected System. As directed by the Commission, the NYISO uses the provisions of the LFIP as guidance for interpreting and implementing the SGIP where the SGIP lacks specific provisions. *See* NYISO 162 FERC ¶ 61,061 at P 26 (2018). Consistent with the requirements in Section 30.3.5 of the NYISO OATT and the NYISO's existing practice for engineering, procurement, and construction agreements, as accepted by the Commission, the NYISO used its Pro Forma LGIA as the base for the EPC Agreement.

<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).

<sup>6</sup> *See New York Independent System Operator, Inc. and Niagara Mohawk Power Corporation d/b/a National Grid*, Letter Order, Docket No. ER20-2973-000 (November 13, 2020); *New York Independent System Operator, Inc. and Niagara Mohawk Power Corporation d/b/a National Grid*, Letter Order, Docket No. ER20-2974-000 (November 13, 2020).

<sup>7</sup> *See, e.g., New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Letter Order, Docket No. ER15-2079-000 (August 5, 2015) (accepting an EPC Agreement among the NYISO, an Affected Transmission Owner, and Developer based on the Pro Forma LGIA).

## **II. DESCRIPTION OF THE EPC AGREEMENT**

The EPC Agreement was fully executed on January 26, 2022, by the NYISO, Holcim, Hecate 1, and Hecate 2. Consistent with NYISO practice, as accepted by the Commission,<sup>8</sup> and Section 30.3.5. of Attachment X of the OATT, the EPC Agreement is based on the Pro Forma LGIA as modified: (i) to reflect the different purpose of the EPC Agreement, (ii) to reflect that the Agreement concerns an Affected System Operator and SUFs on its Affected System; (iii) to allocate the parties' responsibilities for the performance of the EPC Services and payment for such performance, and (iv) to set forth the scope of work, cost estimate, and milestone schedule for the construction of the Affected System Upgrade Facilities.

The EPC Agreement varies from the Pro Forma LGIA primarily as follows:

- The EPC Agreement concerns the Affected System Upgrade Facilities that will be constructed by Hecate 1 and Hecate 2 and owned, operated, and maintained by Holcim as the Affected System Operator. For these reasons, the EPC Agreement has been modified from the Pro Forma LGIA to reflect the different purpose of the agreement and the different terminology (*e.g.*, Affected System Operator, Affected System Upgrade Facilities, Interconnection Customers).
- The EPC Agreement addresses the performance of the EPC Services and will terminate upon the later of the completion of the EPC Services and the payment of related invoices and release or refund of any remaining Security.<sup>9</sup> For this reason, the EPC Agreement does not include the operating and maintenance requirements from the Pro Forma LGIA. The Affected System Upgrade Facilities will be incorporated into Holcim's system and operated and maintained by Holcim in the same manner as the rest of its system.
- Hecate 1 and Hecate 2 will be responsible for all of the work to design, construct, install, and place in service the Affected System Upgrade Facilities. For this reason, the EPC Agreement does not include the requirements in the Pro Forma LGIA for a Developer's responsibilities concerning a Large Generating Facility or its options or responsibilities to perform work concerning Attachment Facilities or Stand Alone System Upgrade Facilities. Rather, the EPC Agreement describes Hecate 1 and Hecate 2's responsibilities with respect to the EPC Services.<sup>10</sup>
- Hecate 1 and Hecate 2 will be jointly and severally responsible for all of the costs associated with the EPC Services, and the Parties agreed to modify the cost responsibility, security, and invoice provisions from the Pro Forma LGIA (as located in

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<sup>8</sup> See, *e.g.*, *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Letter Order, Docket No. ER15-2079-000 (August 5, 2015) (accepting an EPC Agreement among the NYISO, an Affected Transmission Owner, and Developer based on the Pro Forma LGIA).

<sup>9</sup> See EPC Agreement Article 2.2.

<sup>10</sup> See EPC Agreement Article 3.

Articles 7.1, 7.2, and 8 of the EPC Agreement) to reflect such joint and several responsibility.

- The Parties agreed to modify the tax provisions from the Pro Forma LGIA (as located in Article 3.11 of the EPC Agreement), so that the provisions apply to Affected System Upgrade Facilities, rather than to a Large Generating Facility and related Attachment Facilities and Upgrades.
- The Parties agreed to modify the insurance rules (as located in Article 13.3 of the EPC Agreement) to only apply to Hecate 1 and Hecate 2, as they will performing all of the work under the EPC Agreement, and to require coverages appropriate to the scope EPC Services.
- The EPC Agreement does not include the provisions of the Pro Forma LGIA that govern the NYISO's provision of interconnection service to a Developer, which is addressed under Hecate 1 and Hecate 2's respective interconnection agreements for the Facilities.
- As the parties have already completed the interconnection studies necessary to determine the impact of the interconnection of the Facilities, the EPC Agreement does not include the provisions of the Pro Forma LGIA that address such studies.
- The EPC Agreement also includes minor clean-ups, updated cross-references, and revisions agreed upon among all of the parties that are consistent with the terms of the EPC Agreement.

### **III. PROPOSED EFFECTIVE DATE AND REQUEST FOR WAIVER OF THE 60-DAY NOTICE PERIOD**

The NYISO requests an effective date of January 26, 2022, for the EPC 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 previously permitted engineering, procurement, and construction agreements to become effective upon the date of execution.<sup>11</sup>

### **IV. COMMUNICATIONS AND CORRESPONDENCE**

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

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<sup>11</sup> See e.g., *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Letter Order, Docket No. ER15-2079-000 (August 5, 2015) (accepting engineering, procurement, and construction agreement as of its date of execution); see also *New York Independent System Operator, Inc., and New York State Electric & Gas Corporation*, Letter Order, Docket No. ER11-2953-000 (April 7, 2011) (accepting interconnection agreement effective as of date of execution); see also *New York Independent System Operator, Inc. and Niagara Mohawk Power Corp.*, Letter Order, Docket No. ER08-985-000 (June 26, 2008) (same); *New York Independent System Operator, Inc. and New York Power Authority*, Letter Order, Docket No. ER08-861-000 (May 27, 2008) (same); *New York Independent System Operator, Inc. and New York Power Authority*, Letter Order, Docket No. ER08-699-000 (May 16, 2008) (same).

**For the NYISO<sup>12</sup>**

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**V. DOCUMENTS SUBMITTED**

The NYISO submits the following documents with this filing letter:

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

**VI. SERVICE**

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

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<sup>12</sup> The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2021) to permit service on counsel in both Washington, D.C. and Richmond, VA.

**VII. CONCLUSION**

Wherefore, the NYISO respectfully requests that the Commission accept the EPC Agreement for filing with an effective date of January 26, 2022.

Respectfully submitted,

/s/ Sara B. Keegan .

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