

February 17, 2022

**By Electronic Delivery**

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

Re: Filing of an Unexecuted Large Generator Interconnection Agreement for the High River Solar Project Among the New York Independent System Operator, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, and High River Energy Center, LLC; Request for Waiver of the 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") and Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") (together, the "Joint Filing Parties") hereby tender for filing an unexecuted Large Generator Interconnection Agreement for the High River Solar Project (NYISO Queue No. 618) among the NYISO, National Grid, as the Connecting Transmission Owner, and High River Energy Center, LLC ("High River"), as the Developer (the "Agreement").<sup>3</sup> The Agreement is labeled as Service Agreement No. 2682 under the NYISO's Open Access Transmission Tariff ("OATT").

High River has requested, in accordance with Section 30.11.3 of Attachment X of the NYISO's OATT, that the NYISO and National Grid file the Agreement on an unexecuted basis for the reasons described in Part I.B below.<sup>4</sup> Pursuant to Section 30.11.3, the unexecuted Agreement filed today contains the terms and conditions deemed appropriate by the NYISO for the Interconnection Request. National Grid has provided in this filing its comments on the dispute concerning the unexecuted Agreement. High River has informed the Joint Filing Parties that it intends to separately intervene in this proceeding to provide its position on the dispute concerning the unexecuted Agreement. The Joint Filing Parties have worked together on drafts

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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 S or X of the NYISO OATT, and if not defined therein, in the NYISO OATT and NYISO Market Administration and Control Area Services Tariff.

<sup>4</sup> An affiliate of High River, East Point Energy Center, LLC, is similarly requesting that the NYISO and National Grid file an unexecuted Large Generator Interconnection Agreement for the East Point Solar Project on the basis of the same dispute, which filing the NYISO will make simultaneously with this one under separate cover.

of this letter and, with respect to Part I.B of this letter, have worked with High River to accurately describe the dispute underlying High River's request that the Agreement be filed on an unexecuted basis.

The unexecuted Agreement conforms to the NYISO's *pro forma* Large Generator Interconnection Agreement ("Pro Forma LGIA") that is contained in Attachment X to the OATT. Further, as described in Part II of this letter, the Joint Filing Parties respectfully request a waiver of the Commission's prior notice requirements<sup>5</sup> to make the unexecuted Agreement effective as of February 18, 2022, which is the date one day after the date of this filing. In accordance with Section 30.11.5 of Attachment X of the NYISO OATT, the NYISO, National Grid, and High River shall comply with the terms and conditions of the unexecuted Agreement, subject to modification by the Commission.

## **I. Discussion**

### **A. Background**

High River is constructing a 90 MW solar powered facility to be located in Montgomery County, New York (the "Facility"). Additional details regarding the Facility can be found in Appendix C of the Agreement. The Facility will interconnect to certain facilities of National Grid that are part of the New York State Transmission System. The Point of Interconnection is National Grid's existing 115kV Inghams-Rotterdam Line 9/12 between structures 269 and 269 1/2. Appendix A of the Agreement includes a one-line diagram showing the Point of Interconnection.

The Agreement for the Facility conforms to the NYISO's Pro Forma LGIA. However, as described below, the parties are not in agreement over the application of the Security rules for System Upgrade Facilities ("SUFs") in Attachment S of the NYISO OATT when a Developer elects the Option to Build for Stand-Alone SUFs under the Pro Forma LGIA. Although the parties tried to resolve their differences on this issue, they were ultimately unable to do so. Accordingly, High River requested that the NYISO file the Agreement unexecuted with the Commission on February 3, 2022. As noted above, the filed, unexecuted Agreement reflects the NYISO's and National Grid's position. This approach complies with Section 30.11.3 of Attachment X of the NYISO OATT, which states in part: "an unexecuted LGIA should contain terms and conditions deemed appropriate by the NYISO for the Interconnection Request." Part I.B below describes the disputed issue. The statements in Part I.C of this letter are those of the

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<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).

NYISO and National Grid, not High River, and describe their positions on the disputed issue. High River will provide its position on the disputed issue separately in this proceeding.

**B. Disputed Issue**

The NYISO's Class Year Interconnection Facilities Study ("Class Year Study") is the final interconnection study in the NYISO's Standard Large Facility Interconnection Procedures ("LFIP"). Attachment S of the NYISO OATT establishes the Class Year Study rules, including the requirements for the identification of, and assignment of the cost responsibility for, the SUFs required to reliably interconnect the Class Year Projects to the New York State Transmission System.

The parties agree that, pursuant to Attachment S, the Developer of a Class Year Project that would like to proceed to interconnect its project is required during the decision period(s) 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, as that term is defined in the NYISO OATT, for its Project Cost Allocation amount to the Connecting Transmission Owner. The posted Security is then subject to the requirements set forth in Attachment S of the NYISO OATT. The parties further agree that the Developer's opportunity to elect the "Option to Build" the Stand-Alone SUFs for its project is triggered subsequently during the negotiation of the Standard Large Generator Interconnection Agreement.

High River was a participant in the NYISO's Class Year 2019. High River accepted its Project Cost Allocation and posted the Security for the SUFs determined for its project in the Class Year Study to National Grid in accordance with the requirements in Attachment S of the NYISO OATT. In negotiating the Agreement, High River then exercised its right to elect the Option to Build the Stand-Alone SUFs identified for its project. High River subsequently requested that the NYISO and National Grid support its request that National Grid return the Security associated with the Stand-Alone SUFs for which High River had exercised the Option to Build. The matter upon which the parties disagree is whether the Commission's determinations in Order No. 845<sup>6</sup> and the existing provisions of the NYISO OATT require National Grid to return the Security associated with the Stand-Alone SUFs to High River prior to the completion of any of the Stand-Alone SUF work due to High River's exercise of the Option to Build. The Joint Filing Parties provide below their position concerning the disputed issue. High River will provide its position on the disputed issue in a separate filing in this proceeding, and the Joint Filing Parties will then provide a response.

**C. Summary of the NYISO's and National Grid's Position**

The NYISO OATT establishes clear and explicit requirements concerning the application of the Security for SUFs posted by the Developer in the Class Year process, including in

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<sup>6</sup> *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 at P 109 (2018) ("Order No. 845").

circumstances in which a Developer has exercised its Option to Build to construct the Stand-Alone SUFs. The Agreement reflects these unambiguous tariff requirements. Accordingly, the Commission should accept the Agreement as filed.

Article 11.5 of the Pro Forma LGIA establishes the Developer's Security requirements for the Connecting Transmission Owner's Attachment Facilities, SUFs, and System Deliverability Upgrades addressed in the interconnection agreement. For SUFs, Article 11.5.4 of the Pro Forma LGIA states that: "Attachment S to the ISO OATT shall govern the Security that Developer provides for System Upgrade Facilities and System Deliverability Upgrades."

Attachment S of the NYISO OATT establishes the NYISO's unique Class Year Study process. This process includes comprehensive, interconnected cost allocation and Security rules concerning the identification of, and assignment among participating Class Year Projects of the cost responsibility for, the SUFs required to reliably interconnect the projects to the New York State Transmission System. These rules carefully balance the interests of the Developers participating in the Class Year, the Connecting Transmission Owners, and other impacted parties. The Commission has accepted the NYISO's Class Year Study requirements in Attachment S, along with conforming independent entity variations from the Commission's *pro forma* Large Generator Interconnection Procedures and Large Generator Interconnection Agreement ("FERC Pro Forma LGIA").<sup>7</sup>

The Developer of a project participating in the NYISO's Class Year Study that would like to proceed to interconnect its project is required to submit an Acceptance Notice for the Project Cost Allocation for the SUFs 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.<sup>8</sup> The accepted and secured SUFs are included in the base cases for the interconnection studies for subsequent projects and may be relied upon by other projects.<sup>9</sup> Unique to the NYISO's Class Year Study process, the Project Cost Allocation is binding in that the Developer is only responsible for costs for the SUFs above the accepted and secured amount in limited circumstances that are clearly specified in the OATT.<sup>10</sup>

Section 25.8.5 of Attachment S of the NYISO OATT establishes the NYISO's requirements concerning the application of the Security for SUFs posted by the Developer in the

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<sup>7</sup> See, e.g., *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER04-449-000 (Aug. 6, 2004) at P 4 (accepting in part the NYISO's Order No. 2003 compliance filing including independent entity variations specific to the NYISO's process); *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER04-449-000 (Dec. 5, 2005) (accepting the NYISO's updated Order No. 2003 compliance filing); see also *New York Independent System Operator, Inc.*, Proposed Tariff Revisions Regarding Interconnection Process Improvements, Letter Order, Docket No. ER13-588-000 (Feb. 15, 2013) (accepting the NYISO's Security reduction rules in Attachment S of the NYISO OATT applicable to the NYISO-specific Class Year process).

<sup>8</sup> See NYISO OATT, Attachment S at § 25.8.2.

<sup>9</sup> See, e.g., NYISO OATT, Attachment X at § 30.7.3.

<sup>10</sup> NYISO OATT, Attachment S at § 25.8.6.

Class Year process. Per Section 25.8.5, a Developer's Security is irrevocable and subject to forfeiture if the Developer subsequently terminates or abandons development of its project and the NYISO determines that other projects are relying on such upgrades. In such case, the Security will be used to defray the Connecting Transmission Owner's costs to complete the relied-upon upgrades. The Security forfeiture rules apply to Security posted for SUFs regardless of whether a Developer elects the Option to Build the SUFs.

If a Developer elects the Option to Build the SUFs, Section 25.8.5 establishes explicit rules for when the Connecting Transmission Owner will return portions of the Security for such SUFs, which Security will then no longer be subject to forfeiture as the relied upon upgrade work has been completed. Specifically, Section 25.8.5 states:

Security for System Upgrade Facilities constructed by the Developer (i.e., for which the Developer elects the option to build), shall be reduced after discrete portions of the System Upgrade Facilities have been completed, such reductions to be based on cost estimates from the Class Year Interconnection Facilities Study, subject to review by the Connecting Transmission Owner or Affected Transmission Owner with which Security is posted, and subject to transfer of ownership to the Connecting Transmission Owner or Affected Transmission Owner, as applicable of all subject property, free and clear of any liens, as well as transfer of title and any transferable equipment warranties reasonably acceptable to the Connecting Transmission Owner or Affected Transmission Owner with which Security is posted.

As described above in Part I.B, High River was a participant in the NYISO's Class Year 2019. High River submitted its Acceptance Notice for the Project Cost Allocation for the SUFs identified for its project in the Class Year Study and posted to National Grid the required Security in accordance with Attachment S of the NYISO OATT. Pursuant to Article 11.5.4 of the Agreement, High River's Security for the SUFs addressed in the Agreement is governed by the requirements in Attachment S of the NYISO OATT. As High River has accepted its Project Cost Allocation and posted Security for that full amount, its secured amount for the SUFs is currently subject to forfeiture if the upgrade work is not completed and is being relied upon by other Developers. As High River has exercised the Option to Build the Stand-Alone SUFs on National Grid's system, the Security rules in Section 25.8.5 require National Grid to reduce High River's Security for the Stand-Alone SUFs after discrete portions of such upgrades have been completed.

The NYISO and National Grid are required to act in accordance with the NYISO's tariff requirements,<sup>11</sup> including the Security rules in Section 25.8.5 of Attachment S. As described

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<sup>11</sup> See, e.g., *City of Vernon*, 109 FERC ¶ 61,369 (2004) at P 27 ("The fact is that the CAISO's tariff now provides that load curtailment is based on resource deficiency and the CAISO is required to follow its tariff.").

above, the Pro Forma LGIA and Attachment S of the OATT establish clear and explicit rules for the application of Security for SUFs provided in the Class Year process, including specific rules for the treatment of Security when a Developer exercises its Option to Build. Pursuant to these tariff requirements, National Grid is required to return portions of Security to High River only after High River completes discrete portions of the Stand-Alone SUFs for which it has exercised the Option to Build. Accordingly, the NYISO and National Grid appropriately informed High River that National Grid is not required to return to High River the Security for the Stand-Alone SUFs for which High River has exercised the Option to Build prior to the completion of any upgrades.

High River has not requested changes to the NYISO OATT, the Pro Forma LGIA, or to the Agreement. Instead, notwithstanding the clear language in the OATT, High River is requesting that the NYISO ignore these explicit requirements and “interpret” the OATT to require National Grid to return the Security for Stand-Alone SUFs for which High River has exercised the Option to Build based on the following Commission statement in Order No. 845: “Since the purpose of article 11.5 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 (because the interconnection customer is exercising the option to build).”<sup>12</sup> This statement, however, concerns security requirements for upgrades in the FERC Pro Forma LGIA that do not exist in Article 11.5 of the NYISO’s Pro Forma LGIA for SUFs and are not applicable to the NYISO’s process.

As described above, the Commission has accepted the NYISO’s unique Class Year Study process and related, conforming changes to the Pro Forma LGIA, including the requirement in Article 11.5.4 of the NYISO’s Pro Forma LGIA that the Security rules for SUFs are governed by the requirements in Attachment S of the OATT. Unlike in the FERC Pro Forma LGIA there is a basis within the framework of the NYISO’s carefully balanced interconnection rules for the “interconnection customer to provide security to the transmission provider for facilities the transmission provider will not construct.” Namely, as described above, Attachment S establishes comprehensive, interconnected cost allocation and Security rules for SUFs, including Security forfeiture rules, that enable the NYISO to provide enhanced cost certainty to Developers, if another Developer does not complete upgrades that are being relied upon and must be constructed. These requirements are not included in FERC’s *pro forma* interconnection procedures or agreement and are an integral component of the NYISO’s unique Class Year Study requirements. The Commission’s statement in Order No. 845 cannot be assessed outside of this context.

There is no ambiguity in these tariff requirements or other basis for going outside the OATT to interpret the clear and explicit tariff language in Section 25.8.5 of Attachment S.<sup>13</sup> In

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<sup>12</sup> Order No. 845 at P 109.

<sup>13</sup> See *Light Power & Gas of NY LLC*, 169 FERC ¶ 61,216 at P 9 (2019) (The Commission “looks first to the language of the tariff or contract itself and, only if it cannot discern the meaning of the contract or tariff from the language of the contract or tariff, will it look to extrinsic evidence of intent.”); *Vt. Elec. Power Co., Inc.*, 132 FERC

addition, High River has put forth no unique circumstances or justification for the NYISO or National Grid to accept a non-conforming change to the Pro Forma LGIA for the Security rules applicable to this project or provided any basis to deviate from or waive the clear, FERC-accepted tariff requirements in Attachment S.<sup>14</sup> Accordingly, the Commission should accept the Agreement as filed and should reject High River's request that the NYISO and National Grid take actions that are inconsistent with the NYISO's OATT.

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

The Joint Filing Parties request an effective date of February 18, 2022, for the Agreement, which is the date one day after the date of this filing. The Joint Filing Parties respectfully request that the Commission waive its prior notice requirement to permit the requested effective date. The Commission has previously permitted interconnection agreements to become effective upon execution or, in the case of an unexecuted interconnection agreement, upon the date of filing.<sup>15</sup>

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¶ 61,068, at P 15 (2010); *see also PacifiCorp v. Reliant Energy Services, Inc.*, 103 FERC ¶ 61,355 (2003); *Ohio Power Co. v. FERC*, 744 F.2d 162, 168 (D.C. Cir. 1984) ("Extrinsic evidence regarding the interpretation of a contract is considered when the meaning of the contract cannot be determined from its text and structure or from the application of canons of contract interpretation.").

<sup>14</sup> *See* footnote 7 above.

<sup>15</sup> *See, e.g., New York Independent System Operator, Inc. and Consolidated Edison Company of New York, Inc.*, Letter Order, Docket No. ER08-618-000 (April 29, 2008) (accepting unexecuted interconnection agreement effective as of date of filing as requested by the parties); *see also, e.g., 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 as requested by the parties); *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).

### **III. Communications and Correspondence**

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

#### **For the NYISO<sup>16</sup>**

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<sup>16</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.



**IV. Documents Submitted**

The Joint Filing Parties submit the following documents with this filing letter:

- A clean version of the Agreement (Attachment I); and
- A blacklined version of the Agreement showing the changes from the Pro Forma LGIA (Attachment II).

**V. Service**

On behalf of the Joint Filing Parties, 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).

**VII. Conclusion**

Wherefore, the Joint Filing Parties respectfully request that the Commission accept the Agreement for filing with an effective date of February 18, 2022.

Respectfully submitted,

s/ Sara B. Keegan

Sara B. Keegan

*Counsel for the*

*New York Independent System Operator, Inc.*

s/ Christopher J. Novak

Christopher J. Novak

*Counsel for*

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