UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc., et al.	)	Docket No. ER22-1072-000
New York Independent System Operator, Inc., et al.	)	Docket No. ER22-1073-000 (not consolidated)

REQUEST FOR LEAVE TO ANSWER AND ANSWER OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC. AND NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID

Pursuant to Rule 213 of the Commission's[1] Rules of Practice and Procedure,[2] the New York Independent System Operator, Inc. ("NYISO") and Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") (collectively, the "Joint Filing Parties") jointly submit this request for leave to answer and answer ("Answer") in the above-captioned proceedings. The Answer responds to: (i) the protest and, in the alternative, request for waiver (the "Protest") of East Point Energy Center, LLC ("East Point") and High River Energy Center, LLC ("High River") (collectively, the "NextEra Companies")[3] and (ii) the out-of-time comments of the Alliance for Clear Energy New York ("ACE NY").[4]

At the request of the NextEra Companies, the Joint Filing Parties filed at the Commission on February 17, 2022: (i) an unexecuted Large Generator Interconnection Agreement for the East Point Solar project (NYISO Queue No. 619) among the NYISO, National Grid, and East Point,[5]

[1] Capitalized terms not defined in this Answer shall have the meaning set forth in Attachments S or X of the NYISO Open Access Transmission Tariff ("OATT").

[2] 18 C.F.R. § 385.213 (2021).

[3] *N.Y. Indep. Sys. Operator, Inc., et al.*, Motion to Intervene and Protest, and in the Alternative, Request for Waiver of East Point Energy Center, LLC and High River Energy Center, LLC, Docket Nos. ER22-1072-000 and ER22-1073-000 (Mar. 10, 2022) ("Protest").

[4] *N.Y. Indep. Sys. Operator, Inc., et al.*, Comments of the Alliance for Clean Energy New York on NextEra Protest Regarding Large Generator Interconnection Agreements Filed by NYISO and National Grid, Docket Nos. ER22-1072-000 and ER22-1073-000 (Mar. 18, 2022) ("ACE NY Comments").

[5] *N.Y. Indep. Sys. Operator, Inc., et al.*, Filing of an Unexecuted Large Generator Interconnection Agreement for the East Point Solar Project Among the New York Independent System Operator, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, and East Point Energy Center, LLC; Request for Waiver of the 60-Day Notice Period, Docket No. ER22-1072-000 (Feb. 17, 2022).

and (ii) an unexecuted Large Generator Interconnection Agreement for the High River Solar project (NYISO Queue No. 618) among the NYISO, National Grid, and High River (collectively, the Interconnection Agreements").[6] The disagreement leading to the NextEra Companies' request to file the Interconnection Agreements unexecuted is not based on a specific term or provision in the Interconnection Agreements. Rather, the NextEra Companies disagreed with the Joint Filing Parties' application of the Security rules set forth in Attachment S of the NYISO's Open Access Transmission Tariff ("OATT") for certain System Upgrade Facilities ("SUFs") that were identified for their projects in the NYISO's Class Year Interconnection Facilities Study ("Class Year Study") process.

In their Protest, the NextEra Companies request that the Commission direct National Grid to return to them the full amount of Security for the Stand-Alone SUFs for which they have exercised the Option to Build based on their interpretation of the OATT and Order No. 845.[7] In the alternative, the NextEra Companies request that the Commission determine that the Security rules in the NYISO's OATT are unjust and unreasonable and not in compliance with Order No. 845, and direct the NYISO to revise its tariff to require the return of Security for Stand-Alone SUFs when a Developer has elected the Option to Build. Finally, the NextEra Companies also request, in the alternative, that the Commission grant them a waiver of the Security requirements in Attachment S of the OATT to require National Grid to return their Security for the Stand-Alone SUFs.

[6] *N.Y. Indep. Sys. Operator, Inc., et al.*, 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. ER22-1073-000 (Feb. 17, 2022).

[7] *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 at P 109 (2018).[8] The Joint Filing Parties have limited their response to those issues for which they believe that providing additional information will best assist the Commission to reach its decision. The Joint Filing Party's silence with respect to any particular argument or assertion raised by either the Protest or the ACE NY Comments should not be construed as acceptance or agreement.

The Commission should reject the Protest and accept the Interconnection Agreements as filed.[8] The Joint Filing Parties appropriately applied the unambiguous Security requirements for SUFs identified in a Class Year Study, which requirements are contained in the NYISO's *pro forma* Large Generator Interconnection Agreement ("Pro Forma LGIA") and in Attachment S of the OATT. These include explicit Security requirements for circumstances in which a Developer elects the Option to Build its Stand-Alone SUFs. The Commission should reject the NextEra Companies' attempt, through their Protest, to revise these OATT requirements and to relitigate, and collaterally attack, the Commission's prior determinations accepting the justness and reasonableness of these tariff provisions and the NYISO's compliance with Order Nos. 2003 and 845. The Commission should further deny the NextEra Companies' request to issue a show cause order and to direct a compliance filing as they have not shown that the NYISO's existing requirements are unjust and unreasonable or do not comply with prior Commission orders. Finally, the Commission should deny the NextEra Companies' request for a waiver of the Security rules in the NYISO OATT, which request does not satisfy the Commission's criteria for granting a waiver.

I. REQUEST FOR LEAVE TO ANSWER

The Joint Filing Parties may answer pleadings that are styled as comments as a matter of right.[9] The Commission also has discretion to accept, and routinely accepts, answers to protests where, as here, they help to clarify complex issues, provide additional information, are otherwise helpful in the development of the record in a proceeding, or assist in the decision-making

[8] The Joint Filing Parties have limited their response to those issues for which they believe that providing additional information will best assist the Commission to reach its decision. The Joint Filing Party's silence with respect to any particular argument or assertion raised by either the Protest or the ACE NY Comments should not be construed as acceptance or agreement.

[9] *See* 18 C.F.R. § 385.213(a)(3).

process.[10] The Answer satisfies those standards and should be accepted because it addresses inaccurate, incomplete, and misleading statements, and provides additional information that will help the Commission fully evaluate the arguments in this proceeding. The Joint Filing Parties, therefore, respectfully request that the Commission accept this Answer.

II. BACKGROUND

A. Evolution of NYISO's Interconnection Procedures

The NYISO administers its interconnection process set forth in Attachments S, X, and Z of the OATT. The NYISO's interconnection process has evolved based on an ongoing and collaborative effort with its stakeholders to develop and implement interconnection process improvements, which are driven largely by the input of stakeholders based on their experience in the interconnection process in New York. As a result, the NYISO's interconnection process has become carefully tailored to circumstances unique to New York.

As the NYISO's interconnection process has evolved over time, the NYISO has continued to work with its stakeholders to strike a careful balance between the flexibility afforded to developers while still providing certainty and encouraging continuing progress of an ever-increasing number of proposed interconnections. The NYISO will continue to work with its stakeholders to identify further opportunities to improve its interconnection process for the benefit of all developers and ultimately consumers, including giving full consideration to process improvements that may be identified by the Commission in its proceeding considering reforms to

[10] *See, e.g., S. Cal. Edison Co*., 135 FERC ¶ 61,093 at P 16 (2011) (accepting answers to protests "because those answers provided information that assisted [the Commission] in [its] decision-making process"); *N.Y. Indep. Sys. Operator, Inc*., 134 FERC ¶ 61,058 at P 24 (2011) (accepting answers to protests because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *N.Y. Indep. Sys. Operator, Inc*., 140 FERC ¶ 61,160 at P 13 (2012); *PJM Interconnection, LLC*, 132 FERC ¶ 61,217 at P 9 (2010) (accepting answers to answers because they assisted in the Commission's decision-making process).

transmission planning and generator interconnection processes.[11] Toward that end, the NYISO urges interested parties such as the NextEra Companies and ACE NY to raise concerns and proposed process and tariff changes in the stakeholder forum. Changes to these processes can have a significant impact on many developers and other Market Participants; therefore, all parties should have the opportunity to provide input on proposed changes and to collectively assess the impacts of proposed changes on a prospective basis.

B. Security Requirements for the NYISO's Class Year Study Process

The Security rules at issue in these proceedings involve reliability-based upgrades identified in the NYISO's Class Year Study. These rules are a longstanding, integral component of the NYISO's unique Class Year Study process. The rules benefit the Developers of Class Year Projects by enhancing cost certainty for their projects, while protecting other Developers and the Connecting Transmission Owners' customers if the secured upgrades are relied upon by other projects and are not constructed.

The NYISO's Class Year Study is the final interconnection study in its Standard Large Facility Interconnection Procedures and evaluates the cluster of Class Year Projects that have satisfied the Class Year eligibility requirements. The Class Year Study identifies, and assigns cost responsibility for, the SUFs required to reliably interconnect the Class Year Projects to the New York State Transmission System ("Class Year SUFs").

Once a Developer has accepted its Project Cost Allocation and posted Security for the Class Year SUFs identified for its project, these upgrades are considered part of the New York State Transmission System and included in the base cases for subsequent Class Year Studies and

[11] *See Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 176 FERC ¶ 61,024 (2021) ("ANOPR").

subsequent interconnection studies for non-Class Year projects.[12] In addition, the Developer's cost responsibility for the SUFs required for its project is capped at the secured amount with limited exceptions specified in Attachment S.[13] Developers of subsequent projects can rely on these Class Year SUFs that are included in their interconnection studies and are not responsible for the costs of these previously accepted and secured upgrades.[14] The NYISO does not perform re-studies following the completion of the clustered Class Year Study process if a participating Class Year Project is abandoned or terminated.[15]

Article 11.5.4 of the NYISO's Pro Forma LGIA establishes that "Attachment S to the ISO OATT shall govern the Security that Developer provides for System Upgrade Facilities and System Deliverability Upgrades." Pursuant to Section 25.8.5 of Attachment S, a Developer's Security for its Class Year SUFs is irrevocable, and the Security is subject to forfeiture to defray the SUF costs if the Developer subsequently terminates or abandons development of its project and the NYISO determines that other projects are relying on such upgrades.[16] The Security is maintained by the respective Transmission Owner until discrete portions of the upgrades have been completed by the Transmission Owner and paid for by the Developer, on a dollar-for-dollar basis for payments made to the Transmission Owner pursuant to an Engineering and Procurement Agreement or Interconnection Agreement.[17]

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[12] *See* NYISO OATT, Attach. S § 25.5.5.1(ii); Attach. X § 30.7.3.

[13] *See* NYISO OATT, Attach. S §§ 25.8.6.4, 25.9.2.

[14] *See* NYISO OATT, Attach. S § 25.6.1.4 ("Developers are responsible for 100% of the cost of the System Upgrade Facilities, *not already identified in the Annual Transmission Baseline Assessment* that are needed as a result of their Projects, and required for their Projects to reliably interconnect to the transmission system in a manner that meets the NYISO Minimum Interconnection Standard.") (emphasis added).

[15] The NYISO does not perform re-studies of the Class Year Study after the Developers of all of the remaining Class Year Projects in the study have accepted their Project Cost Allocation and posted Security. *See* OATT, Attach X, § 30.8.5; Attach. S, §§ 25.8.2, 25.8.3.

[16] If the Developer terminates or abandons development of its project and the NYISO determines that no other projects are relying on the related upgrades, the Security is returned to the Developer.

[17] *See* NYISO OATT, Attach. S § 25.8.5.

If a Developer has elected the Option to Build the Stand-Alone SUFs, Section 25.8.5 of the OATT 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" subject to certain requirements for reviewing and transferring the discrete work.[18] Once a portion of the SUF work is completed, the Security is no longer required to defray the costs associated with that work if the Developer were to terminate or abandon development of its project.

C. The East Point and High River Interconnection Agreements

The NextEra Companies' East Point and High River projects participated in the NYISO's Class Year Study for Class Year 2019. They accepted their Project Cost Allocation for these projects and posted to National Grid their respective Security for their Class Year SUFs. In negotiating their Interconnection Agreements, the NextEra Companies elected the Option to Build the Stand-Alone SUFs identified for their respective projects. They then requested that National Grid return the Security associated with the Stand-Alone SUFs for which they had exercised the Option to Build. Pursuant to Article 11.5.4 of the Pro Forma LGIA and Section 25.8.5 of the OATT, the Joint Filing Parties informed the NextEra Companies that the Security posted by the NextEra Companies for the Class Year SUFs for the East Point and High River projects is currently irrevocable and that National Grid would reduce the Security as portions of the Stand-Alone SUF work are completed by the NextEra Companies. The NextEra Companies

[18] *See* NYISO OATT, Attach. S § 25.8.5 ("[S]ecurity 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.")

requested that the Joint Filing Parties file the Interconnection Agreements unexecuted based on their disagreement concerning the Joint Filing Parties' application of the Security rules in the NYISO OATT.

III. ANSWER

A. The Commission Should Reject the Protest and Accept the Interconnection Agreements As Filed As the Joint Filing Parties Applied the Security Requirements for the East Point and High River Projects As Required by the Unambiguous Requirements in Attachment S of the NYISO OATT and the Pro Forma LGIA

The NextEra Companies assert that the Security requirements in the NYISO's OATT should be interpreted to require National Grid to return immediately the Security for the Stand-Alone SUFs for their projects due to their election to perform the Stand-Alone SUF work.[19] The Commission should reject the NextEra Companies' attempted re-interpretation of the OATT requirements, which is diametrically opposed to what the plain language of the OATT requires.

i. The Joint Filing Parties Appropriately Applied the Unambiguous Security Requirements for Class Year SUFs Established in the NYISO's Filed Rate

The NYISO OATT establishes unambiguous requirements concerning the application of a Developer's Security for Class Year SUFs. These Security requirements are part of the NYISO's filed rate and are contained in Article 11.5.4 of the Pro Forma LGIA and Section 25.8.5 of Attachment S of the OATT. Pursuant to these provisions, the Security that a Developer provides to a Connecting Transmission Owner for its Class Year SUFs is irrevocable and will be subject to forfeiture if the Developer's project is abandoned or terminated to the extent necessary to defray the costs of any relied-upon upgrades. If a Developer exercises its Option to Build the Stand-Alone SUFs, OATT Section 25.8.5 establishes that the Connecting Transmission Owner is only required to reduce the Security for these upgrades as discrete portions of the upgrades have

[19] Protest at 18-23.

been completed. Notwithstanding these explicit tariff requirements, the NextEra Companies claim that National Grid is required to refund the Security for Stand-Alone SUFs immediately upon their election of the Option to Build, prior to their work having commenced on the Stand-Alone SUFs.

The Joint Filing Parties are required to act in accordance with the NYISO's existing tariff requirements as they are,[20] not as certain parties wish they were or believe they should be.[21] The Joint Filing Parties have applied the Security rules for the NextEra Companies' projects in accordance with the plain language of the OATT requirements. Pursuant to Section 25.8.5 of the OATT, National Grid has appropriately retained the Security for the Class Year SUFs for the NextEra Companies' projects and will only be required to reduce such Security once discrete portions of the work are performed by the NextEra Companies, or upon the projects' termination (in the event no other project relies on these Class Year SUFs).

ii. The Security Requirements Apply to Stand-Alone SUFs Regardless of Whether the SUFs Are Shared by Multiple Projects in a Single Class Year

The NextEra Companies and ACE NY appear to conflate the applicable Security requirements in the Pro Forma LGIA and Attachment S of the OATT with unrelated or nonexistent tariff rules. In particular, the NextEra Companies assert that the Security forfeiture rules do not apply to them in this instance because the Stand-Alone SUFs are unique to their projects, they alone would bear the risk of cancellation of such upgrades, and such rules only apply when the Class Year Study has identified a Stand-Alone SUF shared by multiple projects

[20] *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.").

[21] The NYISO does not weigh in regarding ACE NY's hypothetical alternative approaches to the Security rules for Class Year SUFs in the OATT, except to note that certain of their proposals are based on faulty assumptions concerning the application of these rules for Stand-Alone SUFs that are addressed in this Answer. *See* ACE NY Comments at 4. ACE NY should propose alternative approaches through the NYISO's stakeholder process, where such changes can be vetted by all stakeholders, rather than trying to impose them on NYISO stakeholders via this unexecuted interconnection agreement proceeding.

in a single Class Year.[22] The NYISO OATT does not limit the applicability of the Security rule to only those situations in which it involves Stand-Alone SUFs shared by multiple projects in a Class Year.

The NextEra Companies try to justify ignoring the OATT's language by pointing to a requirement in the Option to Build provision in Article 5.1.3 of the Pro Forma LGIA that: "if an Attachment Facility or Stand Alone System Upgrade Facility is needed for more than one Developer's project, Developer's option to build such facility shall be contingent on the agreement of all other affected Developers."[23] However, this is a coordination requirement that is unrelated to the Security rules in the OATT. This language in Article 5.1.3 simply ensures that a Developer may not move forward with the Option to Build a facility where multiple contemporaneous developers may be impacted by that decision without the agreement of all such developers.

Section 25.8.5 of the OATT establishes that the posted Security for an abandoned or terminated project will be subject to forfeiture to the extent necessary to defray the costs of the Class Year SUFs that are included in the base cases of other projects' interconnection studies and relied upon by such projects.[24] Section 25.8.5 does not exclude Stand-Alone SUFs from this requirement or limit the applicability to only Stand-Alone SUFs identified for multiple

[22] *See* Protest at 4, 7, 16-19; *see also* ACE NY Comments at 4 ("The Option to Build afforded to developers is limited to Attachment Facilities for its project alone and Stand Alone SUFs which, by definition, cannot affect the operation of the Connecting Transmission Owner's system.")

[23] *See* Protest at 8 fn 10. The NextEra Companies also misread the NYISO's description of its Security rules in the filing letters for the Interconnection Agreements. *See* Protest at 21 fn 48. The quotes cited by the NextEra Companies do not limit the upgrades that may be relied upon by other projects to only SUFs shared by multiple projects in a single Class Year.

[24] *See* NYISO OATT, Attach. S § 25.8.5 (".Any cash and Security previously posted on a terminated Project will be subject to forfeiture to the extent necessary to defray the cost of the System Upgrade Facilities and System Deliverability Upgrades required for the Projects included in the Annual Transmission Reliability Assessment, Class Year Deliverability Study, or Additional SDU Study, as applicable, but only as described below.").

developers in the Class Year Study. As with any Class Year SUFs, the Stand-Alone SUFs are included in the base case for future interconnection studies and may be relied upon by future developers. Stand-Alone SUFs are not sole use facilities, such as Attachment Facilities, that are only used by the interconnecting Generator and not incorporated into the transmission grid. Rather, they are "stand-alone" in that they may be constructed without affecting day-to-day operation of the current New York State Transmission System during their construction.[25] However, following construction, they are incorporated into the New York State Transmission System in the same manner as any other SUF, and, once they are included in the base cases for interconnection studies, they may be relied upon by other projects.[26]

B. The Commission Should Reject the NextEra Companies' Use of a Protest to Attempt to Revise the Accepted Security Requirements in the NYISO OATT and to Collaterally Attack the Commission's Prior Final Orders Accepting These OATT Requirements

The Commission has accepted, as part of the NYISO's filed rate, the Security rules for Class Year SUFs contained in Attachment S of the OATT and the Pro Forma LGIA. It has accepted these rules as just and reasonable across several proceedings and has accepted the NYISO's compliance with Order Nos. 2003 and 845. In their Protest, the NextEra Companies

[25] *See* NYISO OATT, Attach. S § 30.1 (definition of "Stand Alone System Upgrade Facility") ("Stand Alone System Upgrade Facilities shall mean System Upgrade Facilities that are not part of an Affected System that a Developer may construct without affecting day-to-day operations of the New York State Transmission System during their construction . . . .").

[26] As an example, the Class Year Study may identify the need for a new point of interconnection substation for the interconnection of a single Class Year Project, which upgrade work may be identified as a Stand-Alone SUF because it can be constructed without impacting the operation of the New York State Transmission System and then later tied into the system before the Class Year Project enters service. Once the Developer has accepted, and provided Security to secure, these Class Year SUFs, the substation is included in the base cases for subsequent Class Year Studies and non-Class Year interconnection studies, and can be relied upon for the reliable interconnection of these subsequent projects. In identifying necessary SUFs, the NYISO is required to identify the least costly configuration to make the required system modifications to reliability interconnect projects. *See* NYISO OATT, Attach. S § 30.1 (definition of "System Upgrade Facilities"). The NYISO may, therefore, identify that the substation identified for the initial Class Year Project should be expanded or an additional breaker must be added to interconnect a subsequent project (rather than requiring that the subsequent project construct a new, separate substation).

request that the Commission "interpret" the Security requirements in Attachment S in a manner that would revise these requirements to require National Grid to refund Security at a different point in time than that explicitly required by the existing tariff language. The NextEra Companies also request that the Commission find that the NYISO's OATT requirements do not comply with Order Nos. 2003 and 845. The Commission should reject the NextEra Companies' use of a protest to revise the Security requirements in the NYISO OATT and to collaterally attack the Commission's prior final orders accepting these OATT requirements.

i. The NextEra Protest Is an Inappropriate Mechanism for Modifying the Security Requirements in the NYISO's OATT

If the NextEra Companies wish to modify the Security rules in Attachment S of the OATT, or to challenge the NYISO's compliance with Order Nos. 2003 and 845, they can either, (i) submit a Complaint to the Commission pursuant to Section 206 of the Federal Power Act ("FPA") and satisfy the burden of demonstrating that the NYISO's existing rules are unjust and unreasonable or not in compliance with the Commission's prior orders or, as discussed above (ii) propose tariff revisions through the NYISO's stakeholder process. The NextEra Companies have done neither of these things in this proceeding. Instead, they offer policy arguments for why the NYISO's OATT should be read contrary to its explicit tariff language.

The Commission has made clear that it is impermissible to bring a complaint as part of a protest as such filing does not provide interested parties sufficient notice of the complaint and allows the filing party to litigate an issue without addressing the appropriate burden of proof.[27]

[27] *See e.g.*, *California Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,199, at P 102 (2019) (holding that a complaint should not be submitted as part of a motion to protest in an ongoing proceeding because such filing does not allow interested parties sufficient notice of the complaint); *Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,040 at P 18 (citing Commission precedent regarding the necessity of filing a complaint separately from a motion to intervene or protest); *Yankee Atomic Elec. Co.*, 60 FERC ¶ 61,316 at 62,096-97 fn 19 (1992) (explaining the importance of filing a complaint separately from a motion for clarification); *Entergy Servs., Inc.*, 52 FERC ¶ 61,317, at 62,270 (1990) (stating that complaints must be filed separately from motions to intervene and protests).

As evidenced by the out-of-time comments of ACE NY, NYISO stakeholders and other interested parties have not been provided sufficient notice by the Protest of the NextEra Companies' proposed modifications to the longstanding Security requirements. Rather than perform an end run around the stakeholder process through this protest,[28] the appropriate forum for proposing tariff changes would be the NYISO's stakeholder process, particularly as NYISO stakeholders previously approved, without an opposing vote, the Section 205 filing that established the application of the Security rules in Attachment S when a Developer elects its Option to Build.[29] Both the NextEra Companies and ACE NY assert that the policy issues they raise have broad effects beyond the individual Interconnection Agreements.[30] This further highlights the need to involve all stakeholders in discussions of these issues and to assess the ramifications of revising the Security rules that serve as a cornerstone of the NYISO's Class Year SUF cost allocation process.

[28] The Commission has repeatedly discouraged attempts to make "end-runs" around ISO/RTO governance processes by proposing tariff changes that have not had the benefit of stakeholder vetting. *See, e.g., ISO New England Inc.*, 130 FERC 61,145, at P 34 (2010) ("[W]e encourage parties to participate in the stakeholder process if they seek to change the market rules . . . ."); *ISO New England Inc.*, 125 FERC 61,154, at P 39 (2008) (directing that unresolved issues be addressed through the stakeholder process); *ISO New England Inc.*, 128 FERC 61,266, at P 55 (2009) (declining to grant a party's specific request for relief because the Commission "will not . . . circumvent that stakeholder process"); *N.Y Ind. Sys. Operator, Inc.*, 126 FERC 61,046, at PP 53-54 (2009) (directing that a proposal be "presented to and discussed among . . . stakeholders and filed as a section 205 proposal, not unilaterally presented to the Commission"); *New England Power Pool*, 107 FERC 61,135, at PP 20, 24 (2004) (declining to accept changes proposed for the first time in a FERC proceeding by an entity that participated in the stakeholder process because the "suggested revisions have not been vetted through the stakeholder process and could impact various participants").

[29] *See New York Independent System Operator, Inc.*, Proposed Tariff Revisions Regarding Interconnection Process Improvements, Docket No. ER13-588-000, at 29 (Dec. 19, 2012) ("NYISO 2012 Interconnection Filing").

[30] *See* ACE NY Comments at 3 ("While these two proceedings involve two LGIAs for two specific projects, ACE NY is weighing in because the ramifications of Commission action here are indisputably more far-reaching affecting all similarly situated projects."); *see also* Protest at 15-16.

ii. The Commission Should Reject the NextEra Companies' Attempt to Re-litigate, and Collaterally Attack, the Commission's Prior Determinations Accepting the Justness and Reasonableness of the Security Requirements and the NYISO's Compliance with Orders Nos. 2003 and 845

The Commission should similarly reject the use of the Protest to collaterally attack its final orders accepting the OATT requirements. The Commission has a well-established policy against unnecessary re-litigation that is based upon,[31] but is ultimately broader than, judicial preclusion doctrines such as collateral estoppel and *res judicata*.[32] The Commission has repeatedly and strongly discouraged attacks on final orders and re-litigation of applicable precedent as they "thwart the finality and repose that are essential to administrative (and judicial) efficiency."[33] "[I]n the absence of new or changed circumstances requiring a different result, it is contrary to sound administrative practice and a waste of resources to relitigate issues in succeeding cases once those issues have been finally determined."[34] Thus, the Commission routinely rejects collateral attacks on prior orders.[35] The Commission should adhere to this well-established policy here.

The NextEra Companies have raised no new or changed circumstances that warrant their belated attack on the Commission's prior determinations concerning the justness and reasonableness of the NYISO's longstanding Security rules for Class Year SUFs or their

[31] *See, e.g., Pac. Gas & Elec. Co*., 121 FERC ¶ 61,065, at P 39 (2007) ("Both the courts and the Commission have previously found that, to the extent that 'new evidence' is not presented or 'changed circumstances' are not demonstrated, preclusion doctrines such as collateral estoppel apply to administrative rate cases."); see also *Entergy Servs., Inc*., 130 FERC ¶ 61,026, at P 38 fn. 48 (2010) ("We agree with Joint Parties that the policy against relitigation of issues (or requiring changed circumstances) applies to section 205 filings as well as section 206 complaints."); *Cent. Vt. Pub. Serv. Corp*., 123 FERC ¶ 61,128, at P 35 (2008) ("At the outset, the filing is a collateral attack. . . . [T]he Filing Parties present no materially changed circumstances that would merit a revisiting of either of these Commission orders [approving the FCM Settlement Agreement]. Collateral attacks on final orders and relitigation of applicable precedent, especially by parties that were active in the earlier case, thwart the finality and repose that are essential to administrative efficiency, and are therefore strongly discouraged.").

[32] *See, e.g., Pac. Gas & Elec. Co*., 121 FERC ¶ 61,065, at P 40 (2007) ("In *Alamito Co.*, the Commission expressly stated that its policy against relitigation of issues is not constrained by the limits of the doctrine of collateral estoppel . . . ."); *Alamito Co.*, 41 FERC ¶ 61,312, at 61,829 (1987), *order denying reconsideration and granting request for clarification*, 43 FERC ¶ 61,274 (1988). In rejecting the argument, the Commission held that its policy against relitigation of issues disposed of the dispute. *Pac. Gas & Elec. Co*., 121 FERC ¶ 61,065 at P 41.

compliance with Order Nos. 2003 and 845.[36] The NextEra Companies acknowledge that their parent company, NextEra Energy Resources, LLC ("NextEra"), was an active participant in the Order No. 845 proceeding.[37] In particular, NextEra intervened in the NYISO's Order No. 845 compliance proceeding.[38] However, neither NextEra nor any other NYISO Market Participant or stakeholder protested or provided comments concerning the Class Year Security rules in the NYISO's Order No. 845 compliance proceeding. The Commission should not permit the NextEra Companies to re-litigate the NYISO's compliance with Order No. 845 several years late via this Protest.

a. The Commission Has Accepted the NYISO's Security Rules for Class Year SUFs as Just and Reasonable and, in Accordance with Order No. 2003, Has Accepted Them Under the Independent Entity Standard

The Commission has accepted the NYISO's Security rules for Class Year SUFs, including the rules for Developers that exercise the Option to Build, as just and reasonable.

[33] *See, e.g., San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 134 FERC ¶ 61,229, at P 15 (2011); *Southern Co. Servs., Inc.*, 129 FERC ¶ 61,253, at P 37 (2009); *Entergy Nuclear Operations, Inc. v. Consolidated Edison Co.*, 112 FERC ¶ 61,117, at P 12 (2005).

[34] *Alamito Co.*, 43 FERC ¶ 61,274, at 61,753; *see also Cent. Kan. Power Co.*, 5 FERC ¶ 61,291, at 61,621 (1978).

[35] *New Eng. Conf. of Pub. Util.*, 135 FERC ¶ 61,140, at P 27 (2011) (generally prohibiting collateral attacks as "[a]n attack on a judgment in a proceeding other than a direct appeal" [citing *Wall v. Kholi*, 2011 U.S. Lexis 1906 at *12 (2011)]).

[36] The NextEra Companies posit that the revisions to the Option to Build requirements established in Order No. 845 that permit a Developer to construct the Stand-Alone SUFs as a right will result in more Developers selecting this option and speculate that this was not the case prior to Order No. 845. *See* Protest at 24. However, for the NYISO's Class Year 2017, the last NYISO Class Year completed before the Order No. 845 related tariff revisions became effective, the substantial majority of Developers were already using the Option to Build to construct their Attachment Facilities and Stand-Alone SUFs. In addition, the NextEra Companies point to the increase in projects participating in the NYISO's Class Year Study process as a change in circumstances. *See* Protest at 24. However, this increase in the number of projects, and the required upgrades to reliably interconnect them, provides further support for the NYISO's existing Security requirements. The greater number of projects increases the likelihood that projects will be relying on the accepted and secured upgrades and the failure to construct relied upon upgrades may harm a greater number of projects.

[37] *See* Protest at 11-12.

[38] *See New York Indep. Sys. Operator, Inc.*, Doc-Less Motion to Intervene of NextEra Energy Resources, LLC, Docket No. ER19-1949-000 (May 31, 2012).

The NYISO established its Class Year Study process requirements in Attachment S of the OATT in 2001, which included most of the current Security forfeiture rules concerning Class Year SUFs.[39] Subsequently, in response to Order No. 2003, the NYISO proposed, and the Commission accepted, as an independent entity variation, the NYISO's continued use of the Class Year Study process rules in Attachment S of the OATT, which process included the existing Security rules for Class Year SUFs.[40]

As the Security for Class Year SUFs is addressed in accordance with the Attachment S rules, the NYISO modified the Security rules in Article 11.5 of its Pro Forma LGIA from the language in the Commission's *pro forma* Large Generator Interconnection Agreement ("FERC Pro Forma LGIA") to carve the Class Year SUFs out of the Commission's *pro forma* Security rules.[41] The NYISO simultaneously inserted a new Article 11.5.4 in its Pro Forma LGIA that

[39] The NYISO initially submitted its Class Year Study tariff requirements to the Commission on August 29, 2021, in the Commission's Docket No. ER01-2967. *See New York Indep. Sys. Operator, Inc.*, 97 FERC ¶ 61,118 at 14-15 (2001). In its December 26, 2001, compliance filing, the NYISO proposed alternative Security forfeiture rules in Section IV.F.11 of Attachment S that are substantially the same as the current approach contained in Section 25.8.5 of the OATT. The Commission accepted the NYISO's compliance filing with the new Security rules with certain unrelated directives. *See New York Indep. Sys. Operator, Inc.*, 98 FERC ¶ 61,201 (2002). Since 2002, the NYISO has made certain minor modifications to these Security rule and, as described below, supplemented these rules in 2012 to permit the reduction of Security when discrete portions of work are performed, including work performed by a Developer under the Option to Build.

[40] *New York Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,159, at 57-59 (2004) (accepting the continuation of the NYISO's Attachment S cost allocation requirements). In its Protest, the NextEra Companies wrongly identify the independent entity variation associated with the Security rules as the unrelated NYISO revisions to Article 5.1.3 of the Pro Forma LGIA to ensure the coordination among multiple Developers that share Stand-Alone SUFs. *See* Protest at 10.

[41] *New York Indep. Sys. Operator, Inc., et al.*, Compliance Filing, Docket No. ER04-449-000 (Jan. 20, 2004) (Excerpt from Attachment IV - "11.5 Provision of Security. At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of a Transmission ~~Provider's Interconnection~~ Owner's Attachment Facilities, ~~Network Upgrades, or Distribution Upgrades, Interconnection Customer~~ Developer shall provide Transmission ~~Provider~~ Owner, at ~~Interconnection Customer~~ Developer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission ~~Provider~~ Owner and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article ~~14.2.1~~ 14.2.1 of this Agreement. Such security for payment shall be in an amount sufficient to cover the ~~costs~~ cost for the Developer's share of constructing, procuring and installing the applicable portion of Transmission ~~Provider~~ Owner's ~~Interconnection~~ Attachment Facilities, ~~Network Upgrades, or Distribution Upgrades~~ and shall be reduced on a dollar-for-dollar basis for payments made to Transmission ~~Provider~~ Owner under this ~~LGIA~~ Agreement during its term.").

made clear that "Attachment S to the NYISO OATT shall govern the Security that Developer provides for System Upgrade Facilities."[42]

In 2012, the NYISO filed certain interconnection procedure reforms, including revisions to the Security rules in Section 25.8.5 of Attachment S of the OATT, which revisions were broadly supported by stakeholders and approved without an opposing vote.[43] The tariff revisions revised the Security rules in Attachment S to require the Connecting Transmission Owner to refund to the Developer discrete portions of Security as the Connecting Transmission Owner or the Developer, acting under the Option to Build, completed portions of the Class Year SUFs.[44] To the extent there was any uncertainty concerning the purpose and application of the Security rules at this point, the NYISO clearly described these rules for the Commission in the filing, stating that:

> The purpose of the Security posting requirement is to secure payment to the Connecting Transmission Owner for the cost of constructing such upgrades. Even if the Class Year Project does not materialize (i.e., does not move forward to complete construction and go In-Service), the Security posting that such Developer provided helps to ensure that funds are available to construct upgrades upon which other projects may rely. Once the upgrade is constructed, however, the purpose for which Security was posted is no longer an issue."[45]

The Commission explicitly accepted the tariff revisions under the independent entity standard.[46]

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[42] *Id*.

[43] *See* NYISO 2012 Interconnection Filing. The interconnection process revisions were approved unanimously by the NYISO's stakeholder Operating Committee and were approved by the stakeholder Management Committee with no opposing votes and three abstentions. *Id.* at 29.

[44] *See* NYISO 2012 Interconnection Filing at 18-19. The tariff revisions replaced the existing requirements that permitted the Connecting Transmission Owner to retain the full Security amount for SUFs until all of the SUF work had been completed. *Id.* The NextEra Companies wrongly state that after the Order No. 2003 proceeding "While the NYISO OATT, Attachment S provisions have been revised over time, the set of provisions at issue in these proceedings effectively remained the same until the Commission issued Order No. 845." Protest at 10.

[45] NYISO 2012 Interconnection Filing at 18.

[46] *New York Indep. Sys. Operator*, 142 FERC ¶ 61,113 at P 37 (2013) ("The Commission concludes that NYISO has shown that its proposed revisions to its interconnection procedures, as modified in its answer and as discussed below, are just and reasonable. Therefore we will accept them under the independent entity standard of Order No. 2003.") (internal citation removed).

b. The Commission Should Reject NextEra's Attempt to Re-litigate the NYISO's Compliance with Order No. 845

In their Protest, the NextEra Companies reference certain guidance provided by the Commission in Order No. 845 concerning its interpretation of the Security rules set forth in Article 11.5 of the FERC Pro Forma LGIA and assert that the NYISO's OATT does not comply with this requirement in Order No. 845 and that the NYISO did not appropriately request an independent entity variation from this guidance. The Commission should reject the NextEra Companies' attempt to re-litigate through the Protest the NYISO's compliance with Order No. 845. Moreover, as described below, the NYISO OATT complies with Order No. 845.

In paragraph 109 of Order No. 845, the Commission stated the following concerning the application of the Security rules in Article 11.5 of the FERC Pro Forma LGIA:

> Additionally, we read the phrase "applicable portion" in article 11.5 to exclude facilities that an interconnection customer would construct pursuant to the option to build. 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).

As described above, in its Order No. 2003 compliance proceeding, the NYISO carved the Class Year SUFs out of the Security rules in Article 11.5 of the NYISO's Pro Forma LGIA and made clear that Security for Class Year SUFs are instead governed by different Security rules in Attachment S of the OATT. As the NYISO's Pro Forma LGIA does not include the Security rules implicated by the Commission's guidance in Order No. 845, the NYISO did not directly address such guidance in its compliance filing.[47] None of the Commission's proposed

[47] In discussing the Order No. 845 compliance requirements with stakeholders prior to its filing, the NYISO indicated that the Security rules for Class Year SUFs, including Stand-Alone SUFs, are covered in the NYISO's Class Year project cost allocation and Security posting requirements, rather than Article 11.5 of the Pro Forma LGIA. The NYISO informed stakeholders it was considering clarifying in its compliance filing that the Developer has to satisfy these rules whether it elects the Option to Build. However, as the Commission guidance in

modifications in Order No. 845 required the NYISO to revisit its longstanding incorporation of the Security rules for Class Year SUFs within its Class Year Study framework in Attachment S of the OATT.

The NYISO made clear in its Order No. 845 compliance filing that "[a]ll of the NYISO's independent entity variations have been and continue to be necessary in order to make Commission revisions to the *pro forma* LFIP and LGIA consistent with NYISO's existing OATT and current practices."[48] In addition, the NYISO detailed in its compliance filing its existing Security requirements for Class Year SUFs while addressing the Order No. 845 requirements concerning contingent facilities.[49] As indicated above, neither NextEra or any other entity protested the NYISO's Security rules for Class Year SUFs in the Order No. 845 proceeding.

For all of the above reasons, the Commission should reject the NextEra Companies' attempted revisions to the NYISO's OATT and their collateral attack on the NYISO's Security requirements.

Paragraph 109 concerns requirements for upgrades in Article 11.5 of the FERC Pro Forma that are not included in the NYISO's Pro Forma LGIA, the NYISO ultimately did not directly address the guidance in its compliance filing, indicating instead that it continued to require its previously requested independent entity variations.

[48] *New York Indep. Sys. Operator, Inc.*, Compliance Filing, Docket No. ER19-1949-000 at 7 (May 22, 2019) ("NYISO Order 845 Compliance Filing").

[49] NYISO Order 845 Compliance Filing at 14 ("The remaining Developers—those that accepted their project cost allocations— must also provide Security in the amount of the respective cost allocation. If such Security is posted for an upgrade that is a Contingent Facility but that project does not go forward, the Security will be used to the extent necessary to defray the cost of upgrades required for projects that remain in a Class Year. For Interconnection Requests entering a future Class Year Study, the base cases used for such studies include only those facilities that are either already interconnected or proposed Large Facilities or Small Generating Facilities that have provided the Security required to cover the costs of necessary upgrades.") (internal citations removed).

C. If the Commission Elects to Interpret the Security Rules in Attachment S of the OATT Pursuant to Its Guidance in Order No. 845 for the FERC Pro Forma LGIA, the Commission Should Determine that a Transmission Owner is Not Required to Refund Security For Stand-Alone SUFs When a Developer Exercises Its Option to Build for Purposes of the NYISO's Class Year Study Process

There is no ambiguity in the Security requirements in Article 11.5.4 of the Pro Forma LGIA and Section 25.8.5 of the OATT. There is thus no basis for the Commission to refer to materials outside of the OATT to interpret the clear language in these provisions.[50] Consequently, the Commission must reject the NextEra Companies' request to interpret the NYISO's unambiguous OATT requirements in accordance with the Commission's guidance in Paragraph 109 of Order No. 845 concerning the different Security rules in the FERC Pro Forma LGIA.

If, however, the Commission were to elect to interpret the Security rules in the NYISO OATT based on the NextEra Companies' interpretation of the guidance in Order No. 845, the Commission should still determine that for purposes of the NYISO's Class Year Study process a Transmission Owner is not required to refund Security for Stand-Alone SUFs when a Developer exercises its Option to Build these upgrades until discrete portions of the work is completed.

Paragraph 109 states that a transmission provider should refund Security to a Developer that has elected the Option to Build because, in those circumstances, "there would be no need for the interconnection customer to provide security to the transmission provider for facilities the transmission provider will not construct." However, unlike in the Commission's *pro forma* interconnection procedures, the NYISO's unique Class Year Study process contains specific

[50] *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 ¶ 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.").

grounds for why a Developer must provide Security for Class Year SUFs even if it has elected to perform the upgrade work.

The NYISO's Class Year Study process is a comprehensive, integrated process in which the Security rules are an integral component that cannot be changed without significantly impacting other Class Year Study rules. As described above, once a Developer has accepted its Project Cost Allocation and posted Security for the Class Year SUFs, those upgrades are considered part of the New York State Transmission System.[51] As Developers have accepted and secured their Class Year SUFs, the NYISO counts on such upgrades being a part of the system. This eliminates the need for the NYISO to perform constant re-studies if Class Year Projects withdraw, which would require ongoing study updates and delays for the other Class Year Projects. Taking a different approach could result in unexpected cost increases to the remaining Class Year Projects long after the completion of the Class Year Study.

Instead, the NYISO includes the upgrades in the base cases of subsequent interconnection studies, and Developers of subsequent projects can rely on them. If the NYISO determines that the SUF of a terminating or an abandoned Class Year Project is being relied upon by another project, the Connecting Transmission Owner would be responsible for constructing any relied upon Class Year SUFs, and the Developer's Security for the upgrade is used to defray the Connecting Transmission Owner's costs. As the NYISO explained to the Commission in its 2012 tariff filing, "[e]ven if the Class Year Project does not materialize (*i.e.*, does not move forward to complete construction and go In-Service), the Security posting that such Developer

[51] The NextEra Companies references to ISO New England's upgrade procedures concerning differences between the ISO New England and NYISO requirements are irrelevant to the NYISO's application of its unique interconnection procedures. The NYISO's requirements for Class Year SUFs are specific to the unique framework of its Class Year Study process. The Commission has frequently held that different regions may have different market rules that reflect regional circumstances. See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,121 at n.39 (2020).

provided helps to ensure that funds are available to construct upgrades upon which other projects may rely."[52] The need for the Security is only eliminated when (1) a project terminates and its Class Year SUFs are not being relied on by other projects or (2) the Class Year SUF or a discrete portion of the Class Year SUF work is completed. In both cases, there is no longer a need to maintain Security to defray costs that would otherwise be borne by other developers or Transmission Owners.

The NYISO's Security requirements for SUFs ultimately benefit the Developers of Class Year Projects by providing greater cost certainty regarding their projects, while protecting other Developers and the Connecting Transmission Owner's customers. First, once a Developer accepts its Project Cost Allocation for its Class Year SUFs and posts Security, its 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 spelled out in the OATT.[53] Second, a Developer, including the Developer of a Class Year Project, may rely on the secured and accepted Class Year SUFs included in the base case for its interconnection studies and will not be responsible for the costs of such upgrades if another Class Year Project, including a participant in a prior Class Year Study, abandons or terminates its project.

The NextEra Companies allege that the NYISO is acting inconsistently as it is implementing the Security rule for a project's Connecting Transmission Owner's Attachment Facilities ("CTOAF") consistent with the Commission's guidance in Paragraph 109 of Order No. 845 in cases in which Developer exercises its Option to Build the CTOAFs. In such cases, a Developer is not required to provide the Connecting Transmission Owner with Security for the CTOAF work that the Developer is performing in accordance with the Option to Build.

[52] NYISO 2012 Interconnection Filing at 18.
[53] NYISO, Attach. S, § 25.8.6.4.

There is, however, no inconsistency in the NYISO's approach. While the NYISO carved the Class Year SUFs out of the Security rules in Article 11.5 of its Pro Forma LGIA, it retained the application of Security rules in the FERC Pro Forma LGIA for a project's CTOAFs, which are sole-use facilities that are not identified or allocated in the Class Year Study. Accordingly, the NYISO has appropriately implemented Article 11.5 of its Pro Forma LGIA as it relates to CTOAFs in concert with the Commission's guidance in Paragraph 109 concerning the interpretation of this provision.

D. The Commission Should Reject the NextEra Companies' Alternative Request to Issue a Show Cause Order

The NextEra Companies request, in the alternative, that the Commission determine that the NYISO's OATT is unjust and unreasonable and not in compliance with Order No. 845 and direct the NYISO to revise its tariff to require the return of Security for Stand-Alone SUFs when a Developer has elected the Option to Build. The Commission should reject this request. As detailed above, the NYISO complied with Order No. 845, and the Security requirements for Class Year SUFs are just and reasonable and are an integral component of the NYISO's Class Year Study process that benefits both the Developers and other impacted parties. If the NextEra Companies seek to challenge the NYISO's Security requirements in the OATT, they should be required to (i) submit a Complaint pursuant to Section 206 of the FPA and satisfy the burden of demonstrating that the NYISO's existing OATT requirement are unjust and unreasonable or not in compliance with prior FERC orders or (ii) submit proposed tariff change in the NYISO's stakeholder process.

E. The Commission Should Reject the NextEra Companies' Alternative Request for a Waiver from the NYISO's Security Requirements for SUFs

The NextEra Companies further request, as an alternative, that the Commission should grant a waiver of Section 25.8.5 of Attachment S for their projects and require that National Grid

return the Security. The Commission should reject this request as the NextEra Companies do not satisfy the Commission's requirements for a tariff waiver.

There are no grounds for a waiver. As described above, the Joint Filing Parties correctly applied the Security requirements in the OATT for the East Point and High River projects, and the NextEra Companies have provided no basis for these projects, along with their affiliated projects in the NYISO Interconnection Queue, to be excluded from the rules applicable to all other Class Year Projects.

The waiver request is based on the NextEra Companies' faulty claim, addressed above, that the Security rules only apply to Stand-Alone SUFs identified for multiple projects. In addition, the waiver request is not limited in scope. If the Commission were to grant such a waiver, it would open the door to all similarly situated participants in the NYISO's Class Year Study process that would likely request such a waiver.[54] Moreover, third parties may be harmed by the waiver. The NYISO determines whether other projects are relying on the upgrade of an abandoned or terminated project at the time the Developer takes such action. Accordingly, the NYISO cannot state at this time whether any of the Stand-Alone SUFs associated with the NextEra Companies' projects will be relied upon by other Developers. Finally, if the Stand-Alone SUFs are relied upon by other Developers and not completed, the Connecting Transmission Owner would be responsible for constructing the upgrade and such costs are likely to fall to the Connecting Transmission Owner and, ultimately, on consumers.

[54] *See* ACE NY Comments at 3 ("While these two proceedings involve two LGIAs for two specific projects, ACE NY is weighing in because the ramifications of Commission action here are indisputably more far-reaching affecting all similarly situated projects.").

IV. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. and Niagara Mohawk Power Corporation d/b/a National Grid respectfully request that the Commission accept this Answer, accept the Interconnection Agreements as filed, and reject the NextEra Companies' Protest, including their alternative request that the Commission issue a show cause order or grant a waiver.

Respectfully submitted,

/s/ Sara B. Keegan
Sara B. Keegan
Counsel for the
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
skeegan@nyiso.com

/s/ Christopher J. Novak
Christopher J. Novak
Counsel for
Niagara Mohawk Power Corporation d/b/a
National Grid

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cc: Janel Burdick
Matthew Christiansen
Robert Fares
Jignasa Gadani
Jette Gebhart
Jaimie Knepper
Leanne Khammal
Kurt Longo
David Morenoff
Douglas Roe
Frank Swigonski
Eric Vandenberg
Gary Will

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 25th day of March 2022.

/s/ Mohsana Akter

Mohsana Akter
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144
(518) 356-7560