

August 5, 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., KCE NY 6 LLC, Niagara Wind Power, LLC, Erie Wind, LLC, and Niagara Mohawk Power Corporation d/b/a National Grid; Request for Waiver of 60-Day Notice Period; Docket No. ER22-____-000

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act¹ and Section 35.13 of the Commission's regulations,² the New York Independent System Operator, Inc. ("NYISO") hereby tenders for filing an executed Engineering, Procurement, and Construction Agreement ("EPC Agreement") in connection with the KCE NY6 battery storage project (NYISO Queue No. 759). The EPC Agreement has been entered into by the NYISO, KCE NY 6, LLC ("KCE"), as the Interconnection Customer, Niagara Wind Power, LLC ("Niagara") and Erie Wind, LLC ("Erie") (collectively, as the Affected System Operator), and Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid").³ The EPC Agreement is labeled as Service Agreement No. 2723 under the NYISO's Open Access Transmission Tariff ("OATT").

KCE is constructing a 20MW battery energy storage system located in the town of Hamburg, New York ("Facility") that will interconnect with the transmission facilities of National Grid. The NYISO's Facilities Study for KCE's project ("Facilities Study") determined that this interconnection will have impacts on the Affected System Operator's Bethlehem Substation ("Affected System") and identified Niagara and Erie as the Affected System Operator. The Facilities Study identified certain System Upgrade Facilities that are required at the Bethlehem Substation for the Facility to interconnect reliably 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 ("EPC Services"). The EPC Agreement is based on the NYISO's *pro forma*

¹ 16 U.S.C. § 824d.

² 18 C.F.R. § 35.13 (2021).

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

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.⁴

The NYISO respectfully requests that the Commission accept the EPC Agreement for filing. Further, as described in Part III of this letter, the NYISO respectfully requests a waiver of the Commission’s prior notice requirements⁵ to make the EPC Agreement effective as of July 22, 2022, which is the date on which it was fully executed.

I. BACKGROUND

KCE is constructing a 20MW battery energy storage system located in the town of Hamburg, New York that will interconnect with the transmission facilities of National Grid. The Facility Studies for the Facility identified certain Affected System Upgrade Facilities that are required on the Affected System owned by Niagara and Erie – the Affected System Operator – to reliably interconnect the Facility to the New York State Transmission System. The Affected System Upgrade Facilities are described in Appendix A of the EPC Agreement.

The Facility to be developed by KCE will interconnect to certain facilities of 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, the executed interconnection agreement for the Facility, which filing provides additional details regarding the Facility.⁶

⁴ 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, the Facility is a Small Generating Facility subject to the Small Generator Interconnection Procedures (“SGIP”) in Attachment Z, which lacks specific 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.

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

⁶ See *New York Independent System Operator, Inc. and Niagara Mohawk Power Corporation d/b/a National Grid*, Letter Order, Docket No. ER22-1207-000 (May 5, 2022).

II. DESCRIPTION OF THE EPC AGREEMENT

The EPC Agreement was fully executed on July 22, 2022, by the NYISO, KCE, Niagara, Erie, and National Grid. Consistent with NYISO practice, as accepted by the Commission,⁷ 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 System Upgrade Facilities 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 KCE and owned, operated, and maintained by Niagara and Erie as the Affected System Operator. KCE will perform the EPC Services for the Affected System Upgrade Facilities, subject to review by Niagara, Erie, and National Grid. 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 Customer).
- As Niagara and Erie are jointly serving as the Affected System Operator under the EPC Agreement, the EPC Agreement clarifies that both parties constitute the Affected System Operator for purposes of the EPC Agreement and are jointly and severally liable for the obligations of the Affected System Operator.⁸
- 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.⁹ For this reason, the EPC Agreement does not include the operating and maintenance requirements from the Pro Forma LGIA.
- The Affected System must comply with National Grid's specifications. National Grid, therefore, has executed the EPC Agreement for the limited purpose of reviewing the EPC Services and approving such work as compliant with its applicable specifications.¹⁰
- 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

⁷ 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).

⁸ See EPC Agreement Preamble, Article 10, Article 24.5.

⁹ See EPC Agreement Article 2.2.

¹⁰ See, *e.g.*, EPC Agreement, Preamble.

Upgrade Facilities, rather than to a Large Generating Facility and related Attachment Facilities and Upgrades. The Parties also modified the tax provisions as agreed upon among KCE, Erie, and Niagara to make payments made by KCE relating to the EPC Services non-taxable for income tax purposes and for sales tax purposes.

- The EPC Agreement does not include the provisions of the Pro Forma LGIA that govern the NYISO's provision of interconnection service to KCE, which is addressed under KCE's interconnection agreement for the Facility.
- 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 July 22, 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.¹¹

¹¹ 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).

IV. COMMUNICATIONS AND CORRESPONDENCE

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

For the NYISO¹²

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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. 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.

¹² 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 July 22, 2022.

Respectfully submitted,

/s/ Sara B. Keegan
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