

November 30, 2023

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 for the Alle Catt II Wind Project (NYISO Queue No. 596) Among the New York Independent System Operator, Inc., NextEra Energy Transmission New York, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, and Alle-Catt Wind Energy LLC; Request for Waiver of 60-Day Notice Period; Docket No. ER24-_____-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"), NextEra Energy Transmission New York, Inc. ("NEETNY"), and Niagara Mohawk Power Corporation d/b/a National Grid (together, the "Filing Parties") hereby tender for filing an executed Engineering, Procurement, and Construction Agreement ("EPC Agreement") in connection with the Alle Catt II Wind project (NYISO Queue Position No. 596). The EPC Agreement has been entered into by the NYISO, NEETNY, as the Affected System Operator, National Grid, as the Connecting Transmission Owner, and Alle-Catt Wind Energy LLC ("Alle-Catt"), as the Developer (all parties to the agreement collectively, the "Parties").³ The EPC Agreement is labeled as Service Agreement No. 2812 under the NYISO's Open Access Transmission Tariff ("OATT").

Alle-Catt is developing a 340.2 MW wind facility located in Cattaraugus County, New York (the "Facility"). The NYISO's Class Year Interconnection Facilities Study ("Class Year Study") for Class Year 2019 determined that certain upgrades on NEETNY's system are required to reliably interconnect the Facility to the New York State Transmission System ("Affected System Upgrade Facilities"). The Parties have developed and executed the EPC Agreement to govern the rates, terms, and conditions regarding the engineering, procurement, and construction of the Affected System Upgrade Facilities on NEETNY's system. Pursuant to Section 30.3.5 of the NYISO OATT, the EPC Agreement is based on the NYISO's *pro forma*

¹ 16 U.S.C. § 824d.

² 18 C.F.R. § 35.13 (2022).

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

Standard Large Generator Interconnection Agreement (“Pro Forma LGIA”) contained in Attachment X to the OATT and conforms to the Pro Forma LGIA except as described in Part II of this letter.

The Filing Parties respectfully request that the Commission accept the EPC Agreement for filing. Further, as described in Part III of this letter, the Filing Parties respectfully request a waiver of the Commission’s prior notice requirements⁴ to make the EPC Agreement effective as of November 15, 2023, which is the date on which it was fully executed.

I. BACKGROUND

The Facility to be developed by Alle-Catt will interconnect to certain facilities of National Grid that are part of the New York State Transmission System. The NYISO, National Grid, and Alle-Catt executed a conforming Standard Large Generator Interconnection Agreement on November 23, 2022 for the interconnection of the Facility.

The NYISO’s Class Year Study for Class Year 2019 identified certain Affected System Upgrade Facilities that are required on the Affected System owned by NEETNY – the Affected System Operator – to reliably interconnect the Facility to the New York State Transmission System. Pursuant to Section 30.3.5 of Attachment X of the NYISO OATT, the NYISO, NEETNY, National Grid, and Alle-Catt have entered into the EPC Agreement to govern the rates, terms, and conditions pursuant to which NEETNY will engineer, procure, and construct the Affected System Upgrade Facilities on NEETNY’s system (“EPC Services”).

II. DESCRIPTION OF THE EPC AGREEMENT

The EPC Agreement was fully executed on November 15, 2023, by the NYISO, NEETNY, National Grid, and Alle-Catt. Pursuant to Section 30.3.5. of Attachment X of the OATT,⁵ the EPC Agreement is based on the Pro Forma LGIA as modified to address only the engineering, procurement, and construction of the Affected System Upgrade Facilities, as described below. In particular, the Pro Forma LGIA has been modified: (i) to reflect the different purpose of the EPC Agreement, (ii) to reflect that the Agreement concerns an Affected System Operator and SUFs on its Affected System; (iii) to allocate the parties’ responsibilities for the performance of the EPC Services and payment for such performance, and (iv) to set forth

⁴ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, clarified, 65 FERC ¶ 61,081 (1993).

⁵ See OATT Section 30.3.5 (“ . . . Upon completion of a Class Year Study in which a Developer accepts its Project Cost Allocation for System Upgrade Facilities and/or System Deliverability Upgrades and funds or commits to fund such upgrades as required by Attachment S, the Developer and Affected System Operator(s) will cooperate with the ISO in development of an Engineering, Procurement and Construction to provide for the engineering, procurement and construction of the System Upgrade Facilities and/or System Deliverability Upgrades on the Affected System. The Engineering, Procurement and Construction Agreement shall be consistent with the NYISO’s Commission-approved Standard Large Generator Interconnection Agreement located in Appendix 2 to Attachment X of the OATT, modified to address only the engineering, procurement and construction of the System Upgrade Facilities and/or System Deliverability Upgrades. . . .”).

the scope of work, cost estimate, and milestone schedule for the construction of the Affected System Upgrade Facilities. Accordingly, the Filing Parties respectfully request that the Commission accept the EPC Agreement for filing.

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 NEETNY and National Grid, and owned, operated, and maintained by NEETNY as the Affected System Operator. For these reasons, the EPC Agreement has been modified from the Pro Forma LGIA to reflect the different purpose of the agreement and the different terminology (*e.g.*, Affected System Operator, Affected System Upgrade Facilities).
- 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.⁶ For this reason, the EPC Agreement does not include the operating and maintenance requirements from the Pro Forma LGIA. The Affected System Upgrade Facilities will be incorporated into NEETNY's system and operated and maintained by NEETNY in the same manner as the rest of its system.
- NEETNY will be responsible for almost all of the work to design, construct, install, and place in service the Affected System Upgrade Facilities, with limited testing work to be performed by National Grid. For this reason, the requirements in the Pro Forma LGIA for a Developer's responsibilities concerning a Large Generating Facility or its options or responsibilities to perform work concerning Attachment Facilities or Stand Alone System Upgrade Facilities have been modified in the EPC Agreement to describe NEETNY's and National Grid's responsibilities with respect to the EPC Services.⁷
- The Security and invoicing provisions have been modified to be consistent with the requirements concerning cost responsibility for the Affected System Upgrade Facilities in Attachment S of the NYISO OATT and to clarify the application of the Security.⁸
- The Parties agreed to modify the tax provisions from the Pro Forma LGIA (as located in Article 3.12 of the EPC Agreement), so that the provisions apply to Affected System Upgrade Facilities, rather than to a Large Generating Facility and related Attachment Facilities and Upgrades, and to update references to currently applicable IRS notices.
- The EPC Agreement does not include the provisions of the Pro Forma LGIA that govern the NYISO's provision of interconnection service to a Developer, which is addressed under Alle-Catt's interconnection agreement for the Facility.

⁶ See EPC Agreement Article 2.2.

⁷ See EPC Agreement Articles 3-4, 19.

⁸ See EPC Agreement Articles 6-8.

- As the parties have already completed the interconnection studies necessary to determine the impact of the interconnection of the Facility, 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.

These modifications are similar to the modifications for other engineering, procurement, and construction agreements that the NYISO has filed with, and that have been accepted by, the Commission.⁹

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

The Filing Parties request an effective date of November 15, 2023, for the EPC Agreement, which is the date of its full execution. The Filing Parties respectfully request 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.¹⁰

IV. COMMUNICATIONS AND CORRESPONDENCE

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

For the NYISO¹¹

⁹ See, e.g., *New York Independent System Operator, Inc. and Central Hudson Gas & Electric Corporation*, Letter Order, Docket No. ER23-15-000 (November 15, 2022); see also, e.g., *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER22-1007-000 (April 8, 2022); *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Letter Order, Docket No. ER15-2079-000 (August 5, 2015); *New York Independent System Operator, Inc.*, and *Niagara Mohawk Power Corporation*, Letter Order, Docket No. ER08-230-000 (December 18, 2007).

¹⁰ See e.g., *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER22-2036-000 (August 3, 2022) (accepting engineering, procurement, and construction agreement as of its date of execution); see also, 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) (same); *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); *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).

¹¹ The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2022) to permit service on counsel in both Washington, D.C. and Richmond, VA.

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V. DOCUMENTS SUBMITTED

The Filing Parties submit 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.

VII. CONCLUSION

Wherefore, the Filing Parties respectfully requests that the Commission accept the EPC Agreement for filing with an effective date of November 15, 2023.

Respectfully submitted,

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