

May 31, 2024

**By Electronic Delivery**

Honorable Debbie-Anne A. Reese, Acting Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re: Filing of an Executed Development Agreement Among the New York Independent System Operator, Inc. and New York Power Authority and New York Transco LLC; Request for Waiver of the 60-Day Notice Period; Docket No. ER24-\_\_\_\_-000**

Dear Ms. Reese:

Pursuant to Section 205 of the Federal Power Act<sup>1</sup> and Section 35.13 of the Commission's regulations,<sup>2</sup> the New York Independent System Operator, Inc. ("NYISO") hereby tenders for filing an executed Public Policy Transmission Planning Process Development Agreement among the NYISO and the New York Power Authority ("NYPA") and New York Transco LLC ("Transco") (hereinafter the "Development Agreement").<sup>3</sup> As detailed below, the Development Agreement addresses the development and construction of a Designated Public Policy Project that contains components designated to NYPA and Transco (collectively, the "Designated Entity") of a proposed solution selected by the NYISO Board of Directors as the more efficient or cost-effective transmission solution to satisfy a Public Policy Transmission Need identified as part of the NYISO's Public Policy Transmission Planning Process ("Public Policy Process"). The Development Agreement is labeled as Service Agreement No. 2843 under the NYISO's Open Access Transmission Tariff ("OATT").

The NYISO respectfully requests that the Commission accept the Development Agreement for filing. With the limited exceptions described in Part I.B of this letter to account for a Designated Entity comprised of two separate entities and unique factors relating to those entities, the Development Agreement conforms to the NYISO's *pro forma* Public Policy Transmission Planning Process Development Agreement ("Pro Forma Development Agreement") that is contained in Attachment Y to the OATT.<sup>4</sup> Further, as described in Part II of this letter, the NYISO respectfully requests a waiver of the Commission's prior notice

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. § 35.13.

<sup>3</sup> Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in Attachment Y of the OATT, and if not defined therein, in the OATT and NYISO Market Administration and Control Area Services Tariff.

<sup>4</sup> See OATT § 31.7 Appendix D.

requirements<sup>5</sup> to make the Development Agreement effective as of May 3, 2024, which is the date of its full execution.

## **I. Discussion**

### **A. Background**

On August 3, 2020, the NYISO commenced the 2020-2021 cycle of its Public Policy Process. The NYISO solicited, and submitted to the New York Public Service Commission (“NYPSC”),<sup>6</sup> potential transmission needs driven by Public Policy Requirements. On March 19, 2021, the NYPSC issued an order finding that there is a transmission need driven by Public Policy Requirements to increase the export capability from Long Island to the rest of the state to ensure the full output of offshore wind interconnected to Long Island (hereinafter, the “Long Island PPTN”).<sup>7</sup> The NYISO issued a solicitation for solutions to the Long Island PPTN in its Public Policy Process, which requirements are set forth in Attachment Y to the OATT.

NYPA and Transco jointly submitted the Propel Alternate Solution 5 (“Transmission Project”) to the NYISO as a solution to address the Long Island PPTN. The Project will be located in Dunwoodie, New York City, and Long Island in the State of New York and is principally comprised of three new PAR-controlled 345 kV Long Island ties lines (*i.e.*, two lines between Shore Road and Sprain Brook and one line between East Garden City and Tremont), a Shore Road – Ruland Road – East Garden City 345 kV backbone, and other transmission facilities located in Long Island and New York City. Additional details of the Transmission Project can be found in Appendix A of the Development Agreement. Additionally, NYPA and Transco submitted a voluntary Cost Cap for the Included Capital Costs of the Transmission Project pursuant to Section 31.4.5.3 of the OATT.

On June 3, 2023, the NYISO’s Board of Directors selected the Transmission Project as the more efficient or cost-effective solution to the Long Island PPTN. Pursuant to the mechanism to effectuate the right of Transmission Owners for upgrades to their existing facilities,<sup>8</sup> the Transmission Project was separated into four Designated Public Policy Projects based on whether a facility was a new facility or a Public Policy Transmission Upgrade. The NYISO then designated those projects to four entities that would be responsible for building, owning, and recovering the costs of each project. NYPA and Transco were jointly designated a

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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).

<sup>6</sup> Consistent with its tariff, the NYISO also submitted to Long Island Public Authority (“LIPA”) proposed transmission needs driven by Public Policy Requirements that required a physical modification of the Long Island Transmission District. LIPA, thereafter, filed with the NYPSC its determination that a public policy requirement drives the need for a physical modification to transmission facilities in the Long Island Transmission District.

<sup>7</sup> NYPSC Case No. 20-E-0497, *et al.*, *In the Matter of New York Independent System Operator, Inc.’s Proposed Public Policy Transmission Needs for Consideration for 2020*, Order Addressing Public Policy Requirements for Transmission Planning Purposes, at PP 22–25, 27 (Mar. 19, 2021) (“NYPSC Order”).

<sup>8</sup> OATT § 31.4.11; *see generally*, *New York Indep. Sys. Operator, Inc.*, Section 206 Filing of Tariff Revisions to Implement the New York Transmission Owners’ Right of First Refusal Regarding Upgrades to Their Transmission Facilities Identified in the Public Policy Transmission Planning Process, Docket No. EL22-2-000 (Oct. 8, 2021); *New York Indep. Sys. Operator, Inc.*, Errata to Correct Requested Effective Date for Tariff Revisions, Docket No. EL22-2-001 (Oct. 12, 2021).

Designated Public Policy Project comprised of multiple components of the larger Transmission Project and for which the voluntarily submitted Cost Cap would apply. A full detailed description of the transmission facilities can be found in Appendices A and B of the Development Agreement (hereinafter, the “Designated Project”). The remaining three Designated Public Policy Projects were designated to the incumbent Transmission Owners that owned the facilities that would be modified by the components of those projects and will be the subject of separate development agreements.

Because NYPA and Transco jointly proposed the Transmission Project and are developing the Designated Project as a part of the Public Policy Process, they together comprise the Designated Entity for the Designated Project and, therefore, are both subject to the requirements under Attachment Y to the OATT. Accordingly, the NYISO, NYPA, and Transco fully executed the Development Agreement for the Designated Project on May 3, 2024.

## **B. The Development Agreement Closely Conforms to the Pro Forma Development Agreement Contained in Attachment Y of the OATT**

The Development Agreement largely conforms to the language in the Pro Forma Development Agreement contained in Attachment Y of the OATT with the limited exceptions described below. The NYISO submits that the changes from the Pro Forma Development Agreement specified below are just and reasonable because unique factors exist to justify a non-conforming agreement.<sup>9</sup> Therefore, the NYISO respectfully requests that the Commission accept the Development Agreement with the limited non-conforming changes.

### **1. Modifications to Address a Multi-Party Designated Entity**

NYPA and Transco are jointly developing the Designated Project. However, the Pro Forma Development Agreement contained in Attachment Y does not fully account for a project that is being jointly developed by two separate entities. Accordingly, the parties agreed to modify the Pro Forma Development Agreement throughout to address the co-development of the Designated Project by NYPA and Transco and their joint and several liability for the obligations under the Development Agreement<sup>10</sup> as follows:

- Modifications to the introductory paragraph, as well as the definition of “Party or Parties,” to account for NYPA and Transco jointly developing the Designated Project, whereby references to “Designated Entity” generally refer to NYPA and Transco with limited exceptions where specific references to NYPA and Transco are necessary to account for the individual entities;<sup>11</sup>

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<sup>9</sup> See *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,054 (2016); *Southwest Power Pool, Inc.*, 132 FERC ¶ 61,159, at P 7 (2010); *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,163 (2005).

<sup>10</sup> OATT § 31.4.11 (providing that “[i]f more than one Developer jointly proposed the regulated Public Policy Transmission Project, then they will collectively be the Designated Entity and jointly and severally responsible for the completion of the Designated Public Policy Project”).

<sup>11</sup> Such changes include, but not limited to, adding specific references to NYPA or Transco in Article 7.1, as appropriate, in place of the term “Designated Entity” for situations that would relate to the individual entity, and

- Modifications in Articles 3.3.3 and 3.3.5 of the Development Agreement to clarify that discovery of a potential delay in meeting a Critical Path Milestone or Advisory Milestone occurs based upon either NYPA's or Transco's discovery, whichever entity discovers a potential delay first;
- Addition of a new Article 3.13 that expressly provides for the joint and several liability of NYPA and Transco for all of the obligations under the Development Agreement consistent with Section 31.4.11 of Attachment Y to the OATT;
- Modifications to Article 6 of the Development Agreement related to the insurance requirements by individually referencing NYPA and Transco, as each aforementioned entity is individually responsible for obtaining the minimum insurance coverages through the period of the Development Agreement;
- Addition of language in Article 10 to clarify that an assignment by NYPA or Transco to the other entity must satisfy the assignment requirements under Article 10(ii);
- Modifications to Article 13 related to dispute resolution under the Development Agreement to clarify that Article 13 only applies to disputes between the NYISO and the multi-party Designated Entity, and that disputes between NYPA and Transco are to be resolved outside of the Agreement; and
- Modifications to Article 15.14 to clarify that no partnership provision is intended to apply between the NYISO and the multi-party Designated Entity.

In addition, the Development Agreement contains a change from the Pro Forma Development Agreement in Article 7.2 to address the situation where a breach under Article 7.1 is solely due to the action or inaction of only one of the parties between NYPA and Transco that is largely outside the control of the other party. Specifically, if there is a breach as the result of a default under (vi), (vii), or (x) of Article 7.1 of the Development Agreement by only one of the parties between NYPA and Transco and the breaching party is not able to cure said breach in a manner that provides for the Designated Project to be completed by the Required Designated Project In-Service Date, then the added language provides the non-breaching party of the multi-party Designated Entity an opportunity to address the breach. Specifically, the breaching party must assign its rights and obligations under the Development Agreement to the other party of the multi-party Designated Entity in accordance with Article 10 and take steps necessary to otherwise cure such breach. This added language addresses the unique situation that a co-development arrangement may encounter. It provides a reasonable approach to allow the non-breaching party to assume responsibility for the entire Designated Project and continue development without potential delays in addressing the Public Policy Transmission Need or protracted litigation.

The Development Agreement also contains changes from the Pro Forma Development Agreement related to the notice provisions to address the unique situation presented by a multi-party designated entity. To ensure efficiency and avoid potential future disputes, the parties

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specifying that the term "Designated Entity" means either NYPA or Transco individually, rather than collectively, for the general representations, warranties, and covenants of the Development Agreement under Article 12.

agreed to have single points of contact for the Designated Entity to receive notices. Article 15.1 of the Development Agreement is, therefore, modified to include a single designated project manager for the Designated Entity that would receive all notifications that are required to be sent under the Development Agreement and that receipt by the designated project manager shall constitute notice to both NYPA and Transco.<sup>12</sup> Additionally, Article 3.6 contains additional language to address the manner in which billing and payment will be made for any studies or assessments conducted by the NYISO for the Designated Project. Specifically, there will be a single point of contact for the Designated Entity to receive invoices from the NYISO, and the NYISO is not required to allocate any of the charges between NYPA and Transco. NYPA and Transco will be responsible for allocating the charges among themselves, as necessary.

The Development Agreement contains an additional change to the Pro Forma Development Agreement to address the unique circumstance of a multi-party Designated Entity as it relates to cost recovery under Article 15.3. Given the co-development of the Designated Project, there is a potential that NYPA and Transco intend to submit separate transmission rates to the Commission for the recovery of their costs in connection with the Designated Project; however, NYPA and Transco submitted a Cost Cap that applies to the Designated Project. As a result, Article 15.3 of the Development Agreement was modified to address NYPA and Transco filing separate rates with the Commission. In such case, NYPA and Transco must establish their separate rate filings so that they “cannot collectively recover through their separate transmission rate recovery an amount higher than is permitted for the Designated Entity to recover pursuant to . . . Article 15.3.” This change from the Pro Forma Development Agreement is necessary to give full force to the Cost Cap for the Included Capital Costs of the Designated Project for the benefit of ratepayers and to reduce potential disputes and litigation over the recovery of costs.

## **2. Modifications to Address Specifics of NYPA and Transco**

The parties have agreed to other changes to address unique circumstances related to NYPA and Transco. First, NYPA is a Transmission Owner under the OATT and a signatory to the ISO/TO Agreement. While Transco is also a Transmission Owner under the OATT, Transco has executed an operating agreement in the form contained in Appendix H of Section 31.11 of Attachment Y.<sup>13</sup> The agreed-upon changes to Articles 2.3 and 5 of the Pro Forma Development Agreement account for the differences between the two entities that will be developing and owning the Designated Project.

Second, NYPA is a public authority under New York State law and, therefore, is subject to the New York Public Officers Law (commonly referred to as “Freedom of Information Law” or “FOIL”). To account for NYPA’s obligations under state law, Article 11.2.2 contains additional language to address the handling of Confidential Information under the Development Agreement by NYPA if it receives a FOIL request.

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<sup>12</sup> NYPA and Transco elected to have an individual from Transco to serve as the designated project manager. Article 15.1 of the Development Agreement is modified to also contain a courtesy NYPA point of contact for notices, but such courtesy notices will not have legal effect under the Development Agreement.

<sup>13</sup> See generally, OATT §§ 31.1.7.2, 31.1.7.3.

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

The NYISO requests an effective date of May 3, 2024 for the Development 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 permitted similar agreements (*e.g.*, development agreements, interconnection agreements) to become effective upon the date of execution.<sup>14</sup>

## III. Communications and Correspondence

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

Robert E. Fernandez, Executive Vice President, Chief Compliance Officer & General Counsel

Karen Georgenson Gach, Deputy General Counsel

Raymond Stalter, Director, Regulatory Affairs

\*Brian R. Hodgdon, Senior Attorney

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\*Designated to receive service.

## IV. Documents Submitted

The NYISO submits the following documents with this filing letter:

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

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<sup>14</sup> See, *e.g.*, *New York Indep. Sys. Operator, Inc.*, Letter Order, Docket No. ER24-956-000 (Feb. 26, 2024) (accepting an amended and restated Public Policy Transmission Planning Process Development Agreement effective as of date of execution); *New York Indep. Sys. Operator, Inc.*, Letter Order, Docket No. ER20-1156-000 (Apr. 16, 2020) (accepting a Public Policy Transmission Planning Process Development Agreement effective as of date of execution); *New York Indep. Sys. Operator, Inc.*, Letter Order, Docket No. ER20-865-000 (Mar. 10, 2020) (same); *New York Indep. Sys. Operator, Inc. and Niagara Mohawk Power Corporation d/b/a National Grid*, Letter Order, Docket No. ER22-2062-000 (Aug. 5, 2022) (accepting interconnection agreement effective as of date of execution).

**V. Service**

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

**VI. Conclusion**

Wherefore, the NYISO respectfully requests that the Commission accept the Development Agreement for filing with an effective date of May 3, 2024.

Respectfully submitted,

*/s/ Brian R. Hodgdon*

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Brian R. Hodgdon

*Counsel for the*

*New York Independent System Operator, Inc.*

cc: Janel Burdick  
Emily Chen  
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Kurt Longo  
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