

May 25, 2016

By Electronic Delivery

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

Re: Filing of an Executed Operating Agreement Between the New York Independent System Operator, Inc. and New York Transco, LLC; Request for Waiver of 60-Day Notice Period; Docket No. ER16-____-000

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act¹ and Section 31.1.7 of the NYISO's Open Access Transmission Tariff ("OATT"), the New York Independent System Operator, Inc. ("NYISO") hereby submits for filing an executed Operating Agreement entered into between the New York Transco, LLC ("Transco") and the NYISO ("Transco Operating Agreement").² The agreement is designated as Service Agreement No. 2271 under the NYISO Open Access Transmission Tariff ("OATT").

The NYISO respectfully requests that the Commission accept the Transco Operating Agreement for filing. Transco is the owner of new transmission facilities in New York that will be placed under the operational control of the NYISO on or about June 1, 2016. In accordance with Section 31.1.7 of the OATT, Transco has executed the Transco Operating Agreement with the NYISO. With the limited exceptions described in Part II of this letter, the Transco Operating Agreement conforms to the NYISO's *pro forma* Operating Agreement ("Pro Forma Agreement") that the NYISO has filed for the Commission's acceptance in Docket No. ER13-102-009 on March 22, 2016 and revised in an errata filing on May 23, 2016 ("Compliance Filings").³

¹ 16 U.S.C. § 824d (2015).

² Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in Attachment Y of the NYISO OATT, as modified in the NYISO's March 22, 2016 filing in Docket No. ER13-102-009, and, if not defined therein, in Section 2 of the NYISO OATT and Section 2 of the NYISO Market Administration and Control Area Services Tariff.

³ See *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-009 (March 22, 2016) ("March Compliance Filing"); *New York Independent System Operator, Inc.*, Errata Correcting Compliance Filing, Docket No. ER13-102-010 (May 23, 2016) (correcting two inadvertent errors in the Pro Forma Agreement).

As Transco's transmission facilities will enter into service on or about June 1, 2016,⁴ the NYISO and Transco have entered into this operating agreement prior to the Commission's acceptance of the Pro Forma Agreement. For this reason, the Transco Operating Agreement provides that the NYISO and Transco will amend the agreement to incorporate any modifications to the Pro Forma Agreement directed by the Commission with respect to the Compliance Filings and as may be modified on rehearing or appeal.

Finally, as described in Part III of this letter, the NYISO respectfully requests a waiver of the Commission's prior notice requirements⁵ to make the Transco Operating Agreement effective as of May 23, 2016, which is the date of its execution.

I. Discussion

A. Background

OATT Section 31.1.7 establishes the process by which a new owner of transmission in New York will become a Transmission Owner. The new owner of transmission must execute either the ISO/TO Agreement⁶ or an agreement with the NYISO under terms comparable to the ISO/TO Agreement.⁷ In a December 23, 2015 order in the NYISO's Order No. 1000 regional compliance proceeding in Docket No. ER13-102, the Commission directed the NYISO to file the comparable operating agreement for its review and approval.⁸ In the NYISO's Compliance Filings, it submitted the Pro Forma Agreement as OATT Section 31.11, along with related tariff revisions to OATT Section 31.1.7 establishing the process by which new owners of transmission can enter into the agreement.⁹ The NYISO requested an effective date of April 1, 2016 for the proposed Pro Forma Agreement and related tariff revisions, which remain pending at the

⁴ See *New York Independent System Operator, Inc., et al., Compliance Filing and Request for Expedited Action*, Docket Nos. ER15-572-001, -004 at p 5 (April 12, 2016) ("Transco Compliance Filing").

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 *Agreement Between New York Independent System Operator and Transmission Owners*, available at: http://www.nyiso.com/public/webdocs/markets_operations/documents/Legal_and_Regulatory/Agreements/NYISO/nyiso_to_agreement.pdf.

⁷ In the Compliance Filings, the NYISO is proposing to revise OATT Section 31.1.7 to remove certain other requirements to becoming a Transmission Owner in New York State, such as satisfying the definition of Transmission Owner in the NYISO's Independent System Operator Agreement. See *March Compliance Filing* at pp 46-47.

⁸ See *New York Independent System Operator, Inc., Order Conditionally Accepting Tariff Revisions and Requiring Further Compliance*, 153 FERC ¶ 61,341 at P 20 (2015).

⁹ See *March Compliance Filing* at pp 44-53.

Commission. Transco, among others, has filed comments challenging certain provisions in the Pro Forma Agreement.¹⁰

Transco is a non-incumbent transmission owner (“NTO”) that will own some of the facilities that are included in a portfolio of transmission upgrade projects known as the Transmission Owner Transmission Solution (“TOTS”) projects that are nearing completion.¹¹ These transmission facilities are listed in Appendix A-1 of the Transco Operating Agreement and will be under the operational control of the NYISO.¹² Transco is not currently a party to an operating agreement with the NYISO. Given that the TOTS projects are expected to enter into service on or about June 1, 2016, the NYISO and Transco do not anticipate that the Commission will have addressed the NYISO’s filing of the Pro Forma Agreement beforehand.¹³

B. The Transco Operating Agreement Closely Conforms to the Pro Forma Agreement

The parties agreed to enter into the Transco Operating Agreement consistent with the form of the Pro Forma Agreement currently pending before the Commission and subject to any modifications ordered by the Commission. The Transco Operating Agreement was executed on May 23, 2016, in time for there to be an operating agreement in place between the NYISO and Transco when the TOTS projects enter into service. The Transco Operating Agreement closely follows the language in the Pro Forma Agreement. The limited variations in the Transco Operating Agreement from the Pro Forma Agreement that are described in Part II below are necessary: (i) to take into account any modifications to the Pro Forma Agreement that may be

¹⁰ See *New York Independent System Operator, Inc.*, Motion to Intervene and Comments of New York Transco, LLC, Docket No. ER13-102-009 (April 12, 2016). Transco has authorized the NYISO to state that it has agreed to enter into the Transco Operating Agreement using terms consistent with the NYISO’s filed Pro Forma Agreement because it requires an operating agreement to be in place when its transmission facilities enter into service on June 1, 2016, and further that Transco’s entering into the Transco Operating Agreement should not be viewed as withdrawing its challenges to specific terms of the Pro Forma Agreement in Docket No. ER13-102-009.

¹¹ The full portfolio of TOTS projects are: (i) the Ramapo-to-Rock Tavern Project, which is an addition of a new 345 kV line between the two named 345 kV substations, (ii) the Marcy South Series Marcy South Series Compensation/Fraser-to-Coopers Corners Reconductoring Project, which includes the reductoring of 22 miles of an existing 345 kV line and the addition of 25% series compensation on the Fraser - Coopers Corners 345kV line, and (iii) the Staten Island Unbottling Project, which involves splitting a single 345kV circuit into two separate circuits to remove a contingency limitation.

¹² If, in the future, Transco were to own additional transmission facilities that are subject to the NYISO’s operational control, the Parties will amend Appendix A-1 of the Transco Operating Agreement to incorporate these additional facilities.

¹³ The NYISO will begin recovering the costs for the TOTS projects on June 1, 2016 pursuant to OATT Rate Schedule 13, as revised in the Transco Compliance Filing to implement the settlement approved by the Commission on March 17, 2016. See Transco Compliance Filing; see also *New York Independent System Operator, Inc.*, 154 FERC ¶ 61,196 (March 17, 2016).

directed by the Commission or a reviewing court, and (ii) to clarify terms of the Pro Forma Agreement as discussed herein. The NYISO respectfully requests that the Commission accept the Transco Operating Agreement with these limited changes.¹⁴

II. Limited Variations from the Pro Forma Agreement

A. Variations to Reflect Potential Modifications to Pro Forma Agreement

As discussed above, the Commission is currently reviewing the Pro Forma Agreement in Docket Nos. ER13-102-009 and ER13-102-010. For this reason, there may be modifications to certain provisions of the Pro Forma Agreement ordered by the Commission. As the TOTS projects are entering into service on June 1, 2016, the NYISO and Transco have entered into an operating agreement by using the filed Pro Forma Agreement prior to the Commission's acceptance.

In entering into the Transco Operating Agreement based on the pending Pro Forma Agreement, the NYISO and Transco agreed to amend the Transco Operating Agreement to incorporate any modifications to the Pro Forma Agreement directed by the Commission in a final order. The Transco Operating Agreement contains a new Section 6.15 that provides that the NYISO and Transco will amend the Transco Operating Agreement to incorporate any modifications to the Pro Forma Agreement directed by the Commission. The new provision states that the parties will promptly file an amended agreement after the issuance of a Commission order directing any modifications to the Pro Forma Agreement. In addition, if the Commission on rehearing or a reviewing court orders further changes to the Pro Forma Agreement, the provision states that the parties will promptly file the further conforming changes to the Transco Operating Agreement. The provision further states that any changes filed by the parties in accordance with Section 6.15 will be effective back to the initial effective date of the Transco Operating Agreement. Section 6.15 also provides that the NYISO and Transco may also agree to and propose for the Commission's acceptance non-conforming changes to the any of the modified terms of the Pro Forma Agreement.

In the future, the Parties must make any other modifications to the Transco Operating Agreement not associated with modifications to the Pro Forma Agreement through the general modification requirements located in Section 6.14 of the Transco Operating Agreement.

¹⁴ The NYISO is filing the Transco Operating Agreement with the Commission because it contains non-conforming terms from the Pro Forma Agreement. The process for entering into an operating agreement proposed in the Compliance Filings in OATT Section 31.1.7 and adopted by the NYISO in this filing is consistent with the process that the NYISO has adopted in its OATT, and the Commission has previously accepted, for the filing of non-conforming interconnection agreements and Development Agreements. *See* March Compliance Filing at pp 52-53.

B. Clarifications to the Pro Forma Agreement

In the course of developing the Transco Operating Agreement, the NYISO and Transco identified certain clarifications to the terms of the proposed Pro Forma Agreement. The NYISO and Transco have agreed to the limited, non-conforming revisions described below for inclusion in the Transco Operating Agreement. If the Commission accepts for filing the nonconforming changes to the Transco Operating Agreement, the NYISO will make these revisions to the proposed Pro Forma Agreement in a future compliance filing as directed by the Commission or in a Section 205 filing, as appropriate. In the meantime, the NYISO will tender and apply these revised terms equally to any other NTO by proposing them as non-conforming revisions in future operating agreements.

Sections 2.09 and 3.07 of the Pro Forma Agreement establish the requirements that the NTO and NYISO register with the North American Electric Reliability Corporation (“NERC”) for the appropriate NERC functions with respect to the NTO’s facilities. The NYISO and Transco agreed to revise these provisions to clarify that the NTO and NYISO will negotiate in good faith the allocation of compliance obligations for the particular NERC functions applicable to, and to be performed by, each party with respect to the NTO’s facilities. In addition, the NYISO and Transco agreed to revise Section 3.07 to include “Transmission Planner” among the examples of NERC functions for which the NYISO may be responsible.

The NYISO and Transco further agreed to clarify in Section 2.12 that an NTO has the right to assign the entire agreement pursuant to the Assignment provisions in Article 4, notwithstanding the more limited rights in Section 2.12. Section 2.12 provides that an NTO may arrange for a third party to perform certain of its responsibilities under the agreement, but is ultimately responsible for the obligations under the agreement.

Finally, the NYISO and Transco agreed to revise Section 3.05 to replace the term “ISO Related Agreements” with “NYSRC [Agreement] and ISO/NYSRC Agreement.”¹⁵ Section 3.05 of the proposed Pro Forma Agreement indicates that any proposed material modifications to the NTO’s facilities must satisfy the requirements of applicable provisions of the ISO Related Agreements, which includes: the ISO Agreement, the NYSRC Agreement, the ISO/NYSRC Agreement, and the ISO/TO Agreement. The reference to the “ISO Related Agreements” was removed because the Transco as an NTO is not a party to or subject to the terms of the ISO/TO Agreement, while provisions in the NYSRC Agreement and the ISO/NYSRC Agreement apply to all Transmission Owners in New York.

¹⁵ The NYSRC Agreement establishes the New York State Reliability Council, its composition, and its responsibilities. The ISO/NYSRC Agreement establishes the relationship between the NYISO and NYSRC. These agreements are *available at*:

http://www.nyiso.com/public/webdocs/markets_operations/documents/Legal_and_Regulatory/Agreements/NYISO/nysrc_agreement.pdf; and

http://www.nyiso.com/public/webdocs/markets_operations/documents/Legal_and_Regulatory/Agreements/NYISO/iso_nysrc_agreement.pdf.

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

The NYISO requests an effective date of May 23, 2016 for the Transco Operating Agreement, which is the date of its execution. The NYISO respectfully requests that the Commission waive its prior notice requirement to permit the requested effective date. The Commission has previously permitted agreements to become effective upon the date of execution.¹⁶

IV. Communications and Correspondence¹⁷

Communications regarding this filing should be directed to:

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¹⁶ See, e.g., *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,054 (2016) (accepting designated entity agreement as effective on its date of execution); *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, 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).

¹⁷ The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2014) to permit service on counsel in both Washington, D.C. and Richmond, VA.

V. Document Submitted

The NYISO submits the following documents with this filing letter:

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

VI. Service

The NYISO will send an electronic link to this filing to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities. In addition, a complete copy of the Public documents included with this filing will be posted on the NYISO's website at www.nyiso.com.

VII. Conclusion

Wherefore, the NYISO respectfully requests that the Commission accept the Transco Operating Agreement for filing with an effective date of May 23, 2016.

Respectfully submitted,

/s/ Carl F. Patka

Carl F. Patka

Assistant General Counsel

New York Independent System Operator, Inc.

cc: Michael Bardee
Anna Cochrane
Kurt Longo
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