

July 13, 2018

By Electronic Delivery

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

Re: Filing of an Executed Amended and Restated Operating Agreement Between the
New York Independent System Operator, Inc. and New York Transco, LLC;
Request for Waiver of the 60-Day Notice Period; Docket No. ER18-____-000

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act,¹ the New York Independent System Operator, Inc. (“NYISO”) hereby submits for filing an executed Amended and Restated Operating Agreement (“Amended Agreement”) entered into between the NYISO and the New York Transco, LLC (“Transco”). The Amended Agreement is labeled as Service Agreement No. 2271 under the NYISO’s Open Access Transmission Tariff (“OATT”).

The NYISO respectfully requests that the Commission accept the Amended Agreement for filing. The Amended Agreement conforms to the NYISO’s *pro forma* Operating Agreement for non-incumbent transmission owners (“NTOs”) that is contained in Section 31.11 of Attachment Y of the OATT (“Pro Forma Agreement”), with the exception of the limited non-conforming revisions described in Part I of this letter and the non-conforming revisions that were previously accepted by the Commission for the prior version of this agreement. Further, as described in Part II of this letter, the NYISO respectfully requests a waiver of the Commission’s prior notice requirements² to make the Amended Agreement effective as of May 23, 2016, which is the effective date of the prior version of the agreement.

I. Discussion

A. Background

The Amended Agreement supersedes the operating agreement between the NYISO and Transco that was filed with the Commission in Docket No. ER16-1785 on May 25, 2016 (“Initial Agreement”).³ At the time the Initial Agreement was executed, the Commission had not yet

¹ 16 U.S.C. § 824d (2016).

² See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, clarified, 65 FERC ¶ 61,081 (1993).

³ The NYISO re-filed the Initial Agreement on May 26, 2016, to correct the set of attachments included with the filing letter.

accepted the Pro Forma Agreement that the NYISO submitted on March 22, 2016 in its Order No. 1000 regional compliance proceeding in Docket No. ER13-102.

The NYISO and Transco, an NTO, were required to execute the Initial Agreement prior to the Commission's acceptance of the Pro Forma Agreement to provide for an operating agreement between the parties when a portfolio of the Transco's transmission upgrade projects entered into service. For this reason, the NYISO and Transco inserted a new Article 6.15 in the Initial Agreement stating that the parties would amend the Initial Agreement to incorporate any modifications to the then-pending Pro Forma Agreement directed by the Commission in Docket No. ER13-102. Article 6.15 provided that the parties would promptly file an amended agreement after the issuance of a Commission order directing any modifications to the Pro Forma Agreement. The Commission accepted the Initial Agreement on July 29, 2016, including Article 6.15 and certain other non-conforming modifications to the then-pending Pro Forma Agreement.⁴

B. Amendments to Conform Initial Agreement with Modified Pro Forma Agreement

The NYISO submitted the Pro Forma Agreement for the Commission's acceptance in its March 22, 2016, Order No. 1000 regional compliance filing in Docket No. ER13-102-009.⁵ The NYISO subsequently submitted modifications to the Pro Forma Agreement: (i) in a September 13, 2016, compliance filing in Docket No. ER13-102-011 to set forth the rights and obligations of an NTO as a Responsible Transmission Owner that may be required to submit a regulated backstop solution in the NYISO's reliability planning process in accordance with Attachment Y of the OATT;⁶ and (ii) in a September 20, 2016, compliance filing in Docket No. ER16-120-003 to set forth the rights and obligations of an NTO as a Responsible Transmission Owner that may be required to submit a regulated solution in the NYISO's Generator Deactivation Process in accordance with Attachment FF of the OATT.⁷

On February 15, 2018, the Commission issued an order accepting in large part the Pro Forma Agreement.⁸ The Commission directed the NYISO to make a small number of additional

⁴ See *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER16-1785 (July 19, 2016).

⁵ *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-009 (March 22, 2016). The NYISO subsequently submitted an errata filing that corrected two inadvertent errors in the Pro Forma Agreement. *New York Independent System Operator, Inc.*, Errata Correcting Compliance Filing, Docket No. ER13-102-010 (May 24, 2016).

⁶ *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-011 (September 13, 2016).

⁷ *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER16-120-003 (September 20, 2016). These revisions to the Pro Forma Agreement were accepted in a November 16, 2017, order. See *New York Independent System Operator, Inc.*, Order on Compliance and Rehearing, 161 FERC ¶ 61,189 at P 11 (2017) ("November 2017 Order").

⁸ *New York Independent System Operator, Inc.*, Order Conditionally Accepting Tariff Revisions and Requiring Further Compliance, 162 FERC ¶ 61,107 at PP 122-123 (2018) ("February 2018 Order").

revisions to the Pro Forma Agreement.⁹ The NYISO submitted these revisions in a compliance filing on March 19, 2018,¹⁰ which revisions were accepted by the Commission in a letter order on June 5, 2018.¹¹

Pursuant to Articles 6.14 and 6.15 of the Initial Agreement, the NYISO and Transco have entered into the Amended Agreement, which was fully executed on July 10, 2018. The Amended Agreement aligns the Transco's operating agreement with the current Pro Forma Agreement, with the exception of those limited non-conforming revisions described below and those non-conforming revisions that the parties agreed to, and the Commission accepted, for the Initial Agreement.

i. Revisions to Reflect Modifications to Pro Forma Agreement

As revised, the Amended Agreement includes the modifications to the Pro Forma Agreement that arose after the execution of the Initial Agreement. These include: (i) the NYISO's modifications to the Pro Forma Agreement included in its September 13, 2016, compliance filing in Docket No. ER13-102-011 that were accepted by the Commission in its February 2018 order;¹² (ii) the NYISO's modifications to the Pro Forma Agreement included in its September 20, 2016, compliance filing in Docket No. ER16-120-003 that were accepted by the Commission in a November 16, 2017, order;¹³ and (iii) the NYISO's revisions to the Pro Forma Agreement included in its March 19, 2018, compliance filing in Docket No. ER13-102-012 to address the Commission's directives in its February 2018 order that were accepted in a June 5, 2018, letter order.¹⁴

These revisions are located in the preamble of the Amended Agreement, along with Articles 2.02, 2.07, 2.08, 2.10, 2.13, 3.01, 3.05, 3.08, 4.01, 5.01, 5.02, 6.01, 6.02, 6.03, 6.10, and 6.14. In addition, the parties made modifications to reflect that this is an "Amended and Restated Agreement." The parties also corrected the Service Agreement number in the heading of certain pages of the Amended Agreement to state Service Agreement No. 2271, rather than 2771.

⁹ *Id.* at P 123.

¹⁰ *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-012 (March 19, 2018). The NYISO subsequently submitted an errata filing on May 2, 2018 to correct the inadvertent exclusion from the Pro Forma Agreement of the revisions to the agreement accepted by the Commission in its November 2017 Order in Docket No. ER16-120-003. *New York Independent System Operator, Inc.*, Refiling of Tariff Section to Correct Ministerial Error, Docket No. ER13-102-014 (May 2, 2018).

¹¹ *See New York Independent System Operator, Inc.*, Letter Order, Docket Nos. ER13-102-012, 013, and 014 (June 5, 2018) ("June 2018 Letter Order").

¹² *See* February 2018 Order at P 122.

¹³ *See* November 2017 Order at P 11.

¹⁴ *See* June 2018 Letter Order.

ii. Revisions to Remove Article 6.15

On June 5, 2018, the Commission issued a letter order accepting the NYISO's final compliance filing in its Order No. 1000 regional compliance proceeding in Docket No. ER13-102.¹⁵ As the Commission has issued a final order and no request for rehearing has been timely submitted, the Pro Forma Agreement is not subject to further modification in Docket No. ER13-102. Accordingly, the parties have agreed to remove Articles 6.15. The non-conforming provision is no longer required as there will be no further modifications to the Pro Forma Agreement in Docket No. ER13-102 that must be reflected in the parties' operating agreement.¹⁶

iii. Corrections to Pro Forma Agreement

In the course of developing the Amended Agreement, the NYISO and Transco identified a few minor wording issues in the Pro Forma Agreement. In Section 2.13(c)(1), the NYISO and Transco agreed to insert the missing word "be" in the first sentence. The parties also agreed to replace the word "covered" with "recovered" in the second sentence in Section 3.08(f). Finally, the parties made the word "Obligations" singular in the Table of Contents to mirror the heading for Section 2.12 of the agreement. If the Commission accepts for filing these revisions in the Amended 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 this revised terms equally to any other NTO by proposing them as a non-conforming revisions in future operating agreements. The Commission has previously accepted non-conforming clarifications to the Pro Forma Agreement.¹⁷

iv. Effective Date

As described in Part II below, the NYISO requests an effective date of May 23, 2016 for the Amended Agreement. The parties have revised Article 6.01 of the Amended Agreement to reflect that May 23, 2016 is the effective date of the agreement.

II. 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 Amended Agreement, which is the effective date accepted by the Commission for the Initial Agreement. Article 6.15 of the Initial Agreement provides that any modifications to the operating agreement between the NYISO and Transco to comply with the changes to the Pro Forma Agreement in Docket No. ER13-102 "shall be effective back to the effective date of this Agreement." Consistent with this requirement, the NYISO respectfully requests that the Commission waive its prior notice

¹⁵ See *id.*

¹⁶ The parties also made a related conforming change to revert the non-conforming title of Article 6.14 from "Modification Generally" back to "Modification" as set forth in the Pro Forma Agreement.

¹⁷ See *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER16-1785 (July 19, 2016) (accepting Initial Agreement with certain non-conforming clarifications to the Pro Forma Agreement).

requirements to allow the Amended Agreement to retain the effective date of the Initial Agreement.

III. Communications and Correspondence

All communications and service in this proceeding should be directed to:¹⁸

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IV. Documents Submitted

The NYISO submits the following documents with this filing letter:

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

V. 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

¹⁸ 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.

copy of the documents included with this filing will be posted on the NYISO's website at www.nyiso.com.

VI. Conclusion

Wherefore, the NYISO respectfully requests that the Commission accept the Amended 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: Anna Cochrane
James Danly
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