

October 21, 2019

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, Construction, Operation, and Maintenance Agreement Among the New York Independent System Operator, Inc., Alcoa Power Generating, Inc., and H.Q. Energy Services (U.S.) Inc.; Request for Waiver of the 60-Day Notice Period; Docket No. ER20-____-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, Construction, Operation, and Maintenance Agreement ("EPC Agreement") entered into by the NYISO, Alcoa Power Generating Inc.'s Long Sault Division ("APGI"), as the Affected System Operator, and H.Q. Energy Services (U.S.) Inc. ("HQUS"), as the Transmission Developer.³ The NYISO, APGI, and HQUS are collectively the "Parties." The EPC Agreement is labeled as Service Agreement No. 2476 under the NYISO's Open Access Transmission Tariff ("OATT").

HQUS is developing a Transmission Project to provide for an 80 MW increase in transmission capacity on the Cedar Rapids Transmission Intertie. The Transmission Project will predominantly upgrade the transmission facilities of Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid" or "Connecting Transmission Owner"). The Facilities Study for the Transmission Project determined that the Transmission Project and the related Network Upgrade Facilities will also have impacts on APGI's transmission system. The EPC Agreement governs the rates, terms, and conditions regarding the engineering, procurement, construction, operation, and maintenance of the portion of the Transmission Project and Network Upgrade Facilities on APGI's system. The EPC Agreement is based on the NYISO's *pro forma* Standard Large Generator Interconnection Agreement ("Pro Forma LGIA") contained in Attachment X to the OATT, as modified to address a Transmission Project and the unique circumstances of this interconnection. The modifications are described in Part II of this letter.

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2017).

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

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 requirements⁴ to make the EPC Agreement effective as of October 4, 2019, which is the date on which it was fully executed.

I. BACKGROUND

HQUS is developing a Transmission Project to provide for an 80 MW increase in transmission capacity on the Cedar Rapids Transmission Intertie located in St. Lawrence County, New York, to increase imports from the Quebec Control Area to New York's Rest of State ("ROS") region. The Transmission Project includes the reconductoring of National Grid's 115 kV Alcoa-Dennison Line 12 ("Line 12"), the installation of a 25 MVar rack mounted capacitor bank at National Grid's Dennison Substation, and related Network Upgrade Facilities required for the Transmission Project to connect reliably to the New York State Transmission System in a manner that meets the NYISO Transmission Interconnection Standard. HQUS is developing and will fund the Transmission Project and related Network Upgrade Facilities to receive Capacity Resource Interconnection Service ("CRIS") commensurate with the 80 MW of incremental transfer capability created by the transmission upgrade.

The NYISO, National Grid, and HQUS entered into a Transmission Project Interconnection Agreement, pursuant to which National Grid will construct, own, operate, and maintain the portions of the Transmission Project and Network Upgrade Facilities that impact its transmission facilities ("Interconnection Agreement"). The NYISO and National Grid jointly filed,⁵ and the Commission accepted the Interconnection Agreement.⁶ Additional details regarding the Transmission Project and related Network Upgrade Facilities can be found in Appendix A of the Interconnection Agreement.

The NYISO's interconnection studies for the Transmission Project also identified impacts of the Transmission Project and related Network Upgrade Facilities on APGI's transmission system.⁷ This includes the replacement of certain towers owned by APGI and related work in connection with the reconductoring of National Grid's Line 12⁸ and upgrades at APGI's Alcoa

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 *New York Independent System Operator, Inc., et al.*, Joint Filing of an Executed Transmission Project Interconnection Agreement Among the New York Independent System Operator, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, and H.Q. Energy Services (U.S.) Inc.; Request for Waiver of the 60 Day-Notice Period; Docket No. ER19-2645-000 (August 20, 2019).

⁶ See *New York Independent System Operator, Inc., et al.*, Letter Order, Docket No. ER19-2645-000 (September 26, 2019).

⁷ In addition, Hydro-Québec TransÉnergie has determined that a special protection scheme is required to accommodate the increase in transfer limit capacity associated with the Transmission Project and the related exports from the Quebec Control Area to New York of 80 MW. The required upgrades will be addressed pursuant to a separate agreement by and among Hydro-Québec TransÉnergie, its subsidiary Cedars Rapids Transmission Co., and National Grid.

⁸ National Grid owns and will reductor all of Line 12. The line is supported by a combination of square base towers, steel flex towers, and wood pole structures, with a portion of the structures (i.e., 7 towers) owned by APGI.

Substation. The portion of the Transmission Project and Network Upgrade Facilities on APGI's transmission system are classified as the "Affected System Upgrade Facilities" and will be constructed, owned, operated, and maintained by APGI pursuant to the EPC Agreement. Additional details concerning the Affected System Upgrade Facilities can be found in Appendix A of the Agreement.

II. DESCRIPTION OF THE EPC AGREEMENT

APGI, as the Affected System Operator, will construct, own, operate, and maintain the Affected System Upgrade Facilities in accordance with the terms of the EPC Agreement. Consistent with NYISO practice, as accepted by the Commission,⁹ the 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 a Transmission Project rather than a Large Generating Facility and Attachment Facilities, (iii) to allocate the parties' responsibilities for the performance of the engineering, procurement, and construction of the Affected System Upgrade Facilities ("EPC Services"), the subsequent operation and maintenance of these facilities, and the payment for the EPC Services, 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 a Transmission Project and related Network Upgrade Facilities that will be constructed, owned, operated, and maintained by an 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, Transmission Developer, Transmission Project, and Network Upgrade Facilities terminology).
- The Transmission Project was evaluated under the NYISO's Transmission Interconnection Procedures in Attachment P of the OATT. For this reason, the EPC Agreement incorporates the defined terms from Attachment P, rather than the defined terms for Large Facilities included in the Standard Large Facility Interconnection Procedures in Attachment X of the OATT.
- The Transmission Project and Network Upgrade Facilities will be constructed and incorporated within APGI's transmission system and will not have Points of Interconnection with HQUS's facilities or related Attachment Facilities. Accordingly, the EPC Agreement has been modified to reflect the actual facilities that will be constructed.
- The EPC Agreement predominantly addresses the performance of the EPC Services and will terminate upon the latter of the completion of the EPC Services and the payment of

⁹ 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).

related invoices and release or refund of any remaining Security. Notwithstanding this termination requirement, the Parties have agreed that certain, limited operating and maintenance (and related) requirements will survive the termination of the EPC Agreement for purposes of ensuring that the new facilities on APGI's system (and the related incremental transmission capacity) being funded by Transmission Developer are reliably operated and maintained.

- APGI will be responsible for all of the work to design, construct, install, place in service, operate, and maintain its portion of the Transmission Project and Network Upgrade Facilities.¹⁰ For this reason, the EPC Agreement does not include the requirements in the Pro Forma LGIA concerning 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.
- Consistent with the requirement for Transmission Projects participating in the Transmission Interconnection Procedures, the EPC Agreement incorporates the standard Security and related cost allocation requirements from Attachment S of the OATT that are applicable to upgrades.¹¹ Specifically, the EPC Agreement incorporates the OATT requirement that the Developer's Security is subject to forfeiture if it terminates or abandons its project and the Security is required to defray the costs of constructing the upgrades relied upon by subsequent projects.¹² In addition, the EPC Agreement incorporates requirements concerning the treatment of costs that differ from the amount determined in the interconnection studies and for which the Transmission Developer has provided Security.¹³ HQUS and APGI have, however, agreed that HQUS will be responsible for the costs that are greater than the secured amount, except in cases where those costs resulted from the modification of other projects. In such case, the costs will be the responsibility of the developers of the modified projects or will be covered by drawing on the cash that has been paid and the Security that has been posted for terminated projects, depending on the factors that caused the additional cost.
- The payments made by HQUS for the Transmission Project are not expected to qualify for the safe harbor provided by IRS Notices 88-129, 2001-82 and 2016-36.¹⁴ Therefore the EPC Agreement was modified to remove provisions related to the safe harbor and to provide for an income tax indemnity and gross-up payment to APGI related to the

¹⁰ For purposes of the EPC Agreement, the term "Transmission Project 1.A" refers to the portion of the Transmission Project work being performed by APGI, which is detailed in Section 1.A of Appendix A of the EPC Agreement. In addition, the term "Network Upgrade Facilities 1.B" refers to the portion of the Network Upgrade Facilities work being performed by APGI, which is detailed in Section 1.B of Appendix A of the EPC Agreement.

¹¹ Section 22.11.1 of Attachment P of the OATT establishes that the Transmission Project Interconnection Agreement "shall provide the mechanism through which a Transmission Developer shall post Security for required Network Upgrade Facilities."

¹² See OATT Attachment S Section 25.8.5.

¹³ See OATT Attachment S Section 25.8.6.

¹⁴ IRS Notice 2016-36, which is not included in the Pro Forma LGIA, modifies and supersedes IRS Notices 2001-82 and 88-129.

payments HQUS will make with respect to the Transmission Project and Network Upgrade Facilities.

- The Parties agreed to include in the EPC Agreement the standard indemnity and insurance requirements from the Pro Forma LGIA with limited changes to clarify the scope and applicability of the language.
- National Grid, as the Connecting Transmission Owner, signed the EPC Agreement solely for the limited purpose of acknowledging that its representatives had read and were fully apprised of the terms of the agreement.
- The EPC Agreement also includes minor clean-ups and revisions, agreed upon among all of the Parties, that are consistent with the terms of the Agreement.

The NYISO provides in Attachment I to this filing letter a matrix that describes in greater detail the differences between the EPC Agreement and the Pro Forma LGIA.¹⁵

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

The NYISO requests an effective date of October 4, 2019, 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 interconnection agreements to become effective upon the date of execution.¹⁶

¹⁵ As described in this filing letter, “Developer” has been replaced by “Transmission Developer,” “Large Generating Facility” has been replaced by “Transmission Project,” and “System Upgrade Facility” has been replaced by “Network Upgrade Facilities” throughout the EPC Agreement. The NYISO has not highlighted these changes, which apply in most provisions of the EPC Agreement, in the matrix in Attachment I.

¹⁶ See, e.g., *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).

IV. COMMUNICATIONS AND CORRESPONDENCE¹⁷

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

Robert E. Fernandez, General Counsel
Karen Georgenson Gach, Deputy General Counsel
*Sara B. Keegan, Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6000
Fax: (518) 356-4702
skeegan@nyiso.com

*Ted J. Murphy
Hunton Andrews Kurth LLP 2200
Pennsylvania Avenue, NW
Washington, D.C. 20037
Tel: (202) 955-1500
Fax: (202) 778-2201
tmurphy@hunton.com

*Michael J. Messonnier Jr.
Sevren R. Gourley
Hunton Andrews Kurth LLP
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 344-7999
mmessonnier@hunton.com

V. DOCUMENTS SUBMITTED

The NYISO submits the following documents with this filing letter:

- A matrix describing the differences between the EPC Agreement and the Pro Forma LGIA (Attachment I);
- A clean version of the EPC Agreement (Attachment II);
- A blacklined version of the EPC Agreement showing the changes from the Pro Forma LGIA (Attachment III); and
- The signature pages for the EPC Agreement (Attachment IV).

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

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.

copy of the 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 EPC Agreement for filing with an effective date of October 4, 2019.

Respectfully submitted,

Sara B. Keegan
Sara B. Keegan
Counsel for the
New York Independent System Operator, Inc.

cc: Anna Cochrane
James Danly
Jignasa Gadani
Jette Gebhart
Kurt Longo
John C. Miller
David Morenoff
Daniel Nowak
Larry Parkinson
Douglas Roe
Frank Swigonski
Gary Will