

March 4, 2020

By Electronic Delivery

Honorable Kimberly D. Bose, 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., LS Power Grid New York Corporation I, and the New York Power Authority; 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 Public Policy Transmission Planning Process Development Agreement among the NYISO, LS Power Grid New York Corporation I ("LS Power"), and the New York Power Authority ("NYPA") (hereinafter the "Development Agreement").³ As detailed below, the Development Agreement addresses the development and construction of a Public Policy Transmission Project that was jointly submitted by LS Power and NYPA, and 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. 2514 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 Developer 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.⁴ Further, as described in Part II of this letter, the

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. § 35.13 (2019).

³ 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 NYISO OATT and NYISO Market Administration and Control Area Services Tariff.

⁴ See OATT § 31.7 Appendix D.

NYISO respectfully requests a waiver of the Commission's prior notice requirements⁵ to make the Development Agreement effective as of February 3, 2020, which is the date of its full execution.

I. Discussion

A. Background

On August 1, 2014, the NYISO commenced its first Public Policy Process planning cycle. The NYISO solicited, and submitted to the New York Public Service Commission ("NYPSC"), potential transmission needs. On December 17, 2015, the NYPSC issued an order finding that there is a transmission need driven by Public Policy Requirements to increase the Central East interface in New York ("Segment A") by at least 350 MW and the UPNY/SENY interface in New York ("Segment B") by at least 900 MW to provide additional transmission capacity to move power from upstate to downstate New York (collectively the "AC Transmission Needs").⁶ The NYISO issued a solicitation for solutions to the AC Transmission Needs in its Public Policy Process, which requirements are set forth in Attachment Y to the OATT.

LS Power and NYPA jointly submitted the Segment A Double-Circuit Proposal ("Project") as a solution to address Segment A of the AC Transmission Needs. The Project will be located in the Mohawk Valley and Capital regions of New York. The Project will largely consist of a new double-circuit 345 kV transmission line between the Edic 345 kV substation and the New Scotland 345 kV substation, as well as a new Princetown 345 kV substation and new Rotterdam 345/230/115 kV substation. Additional details regarding the Project can be found in Appendix C of the Development Agreement.

On April 8, 2019, the NYISO's Board of Directors selected the Project as the more efficient or cost-effective solution to Segment A of the AC Transmission Needs. Because LS Power and NYPA jointly proposed and are developing the Project as a part of the Public Policy Process, they together comprise the Developer of the selected project and are both subject to the requirements under Attachment Y to the OATT. Accordingly, the NYISO, LS Power, and NYPA fully executed the Development Agreement for the Project on February 3, 2020.

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

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 NYPSC Case No. 12-T-0502, *et al.*, *Order Finding Transmission Needs Driven by Public Policy Requirements*, at PP 68 & Appendix A (December 17, 2015) ("NYPSC 2015 Order"); see also NYPSC Case No. 12-T-0502, *et al.*, *Order Addressing Public Policy Transmission Need for AC Transmission Upgrades* (January 24, 2017) (confirming the AC Transmission Needs).

Agreement specified below are just and reasonable because unique factors exist to justify a nonconforming agreement.⁷ Therefore, the NYISO respectfully requests that the Commission accept the Development Agreement with the limited non-conforming changes.

1. Modifications to Address a Joint Developer

LS Power and NYPA are jointly developing the 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 Project by LS Power and NYPA and their joint and several liability for the obligations under the Development Agreement as follows:

- Modifications to the introductory paragraph, as well as the definition of “Party or Parties,” to account for LS Power and NYPA jointly developing the Project, whereby references to “Developer” generally refer to LS Power and NYPA with limited exceptions where specific references to LS Power and NYPA are necessary to account for the individual entities;⁸
- 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 LS Power’s or NYPA’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 LS Power and NYPA for all of the obligations under the Development Agreement, and modifications to Article 15.14 to clarify that no partnership provision is intended to apply between the NYISO and the two-party Developer;
- Modifications to Article 6 of the Development Agreement related to the insurance requirements by individually referencing LS Power and NYPA, 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 LS Power or NYPA to the other entity must satisfy the assignment requirements under Article 10(ii); and
- 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

⁷ 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).

⁸ Such changes include, but not limited to, adding specific references to LS Power or NYPA in Article 7.1, as appropriate, in place of the term “Developer” for situations that would relate to the individual entity, and specifying that the term “Developer” means either LS Power or NYPA individually, rather than collectively, for the general representations, warranties, and covenants of the Development Agreement under Article 12.

the two-party Developer, and that disputes between LS Power and NYPA are to be resolved outside of the Agreement.

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 two-party developer. To ensure efficiency and avoid potential future disputes, the parties agreed to have single points of contact for the Developer to receive notices. Article 15.1 of the Development Agreement is modified to include a single designated project manager for the Developer 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 LS Power and NYPA.⁹ 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 Project. Specifically, there will be a single point of contact for the Developer to receive invoices from the NYISO, and the NYISO is not required to allocate any of the charges between LS Power and NYPA. LS Power and NYPA will be responsible for allocating the charges among themselves, as necessary.

2. Modifications to Address Specifics of LS Power and NYPA

The parties have agreed to other changes to address unique circumstances related to NYPA and LS Power. First, NYPA is a Transmission Owner under the NYISO OATT and a signatory to the ISO/TO Agreement, while LS Power is a non-incumbent transmission developer and will have to execute an operating agreement in the form contained in Appendix H of Section 31.11 of Attachment Y.¹⁰ 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 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.

3. Ministerial Modifications

The parties have agreed to make modifications in the Development Agreement to correct two cross-references in Article 6.12.

⁹ LS Power and NYPA elected to have an officer of LS Power 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.

¹⁰ 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 February 3, 2020 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.*, interconnection agreements) to become effective upon the date of execution.¹¹

III. Communications and Correspondence

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

Robert E. Fernandez, Executive Vice President & General Counsel
Karen Georgenson Gach, Deputy General Counsel
Raymond Stalter, Director, Regulatory Affairs
*Carl F. Patka, Assistant General Counsel
*Brian R. Hodgdon, Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6000
Fax: (518) 356-4702
cpatka@nyiso.com
bhodgdon@nyiso.com

*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).

V. Service

The NYISO will send an electronic link to this filing to the official representative of each

¹¹ See, *e.g.*, *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,054 at P 26; see also, *e.g.*, *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Letter Order, Docket No. ER11-2953-000 (April 7, 2011) (accepting an interconnection agreement effective as of date of execution).

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 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 Development Agreement for filing with an effective date of February 3, 2020.

Respectfully submitted,

/s/ Brian R. Hodgdon

Brian R. Hodgdon
*Counsel for the
New York Independent System Operator, Inc.*

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