

August 7, 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, and Construction Agreement Among the New York Independent System Operator, Inc., Central Hudson Gas & Electric Corp., Niagara Mohawk Power Corporation d/b/a National Grid, Stony Creek Energy LLC, TBE Montgomery, LLC, and CPV Valley, LLC; and Request for Waiver of the 60-Day Notice Period; Docket No. ER19-____000

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act¹ and Section 35.12 of the Commission's regulations,² the New York Independent System Operator, Inc. ("NYISO"), Central Hudson Gas & Electric Corp. ("Central Hudson"), and Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") (together, the "Joint Filing Parties") hereby tender for filing an executed engineering, procurement, and construction agreement ("EPC Agreement"). The EPC Agreement has been entered into by the NYISO, Central Hudson and National Grid, as the Affected Transmission Owners, and by Stony Creek Energy LLC ("Stony Creek"), TBE Montgomery, LLC ("Taylor"), and CPV Valley, LLC ("CPV Valley"), as the Developers (collectively, the "Parties").³ The EPC Agreement is labeled as Service Agreement No. 2449 under the NYISO's Open Access Transmission Tariff ("OATT").

The NYISO's Class Year Deliverability Studies for Class Years 2009, 2010 and 2011 determined that certain System Deliverability Upgrades ("SDUs") are required on the Affected Transmission Owner's systems ("Affected Systems") for the Developers' facilities to interconnect reliably to the New York State Transmission System in a manner that meets the NYISO Deliverability Interconnection Standard at the Developers' requested level of Capacity Resource Interconnection Service ("CRIS").⁴ Pursuant to Section 30.12.1 of Attachment X and

¹ 16 U.S.C. § 824d (2014).

² 18 C.F.R. § 35.12 (2014).

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

⁴ CRIS is interconnection service that allows a Developer to interconnect its facility to the New York State Transmission System or Distribution System in accordance with the NYISO Deliverability Interconnection standard,

Section 25.7.11.1.4.2.6 of Attachment S of the OATT, the Parties have developed and executed the EPC Agreement to govern the rates, terms, and conditions regarding the engineering, procurement, and construction of the SDUs on the Affected Systems. The EPC Agreement is based on the *pro forma* Large Generator Interconnection Agreement (“Pro Forma LGIA”) contained in Attachment X to the OATT and conforms to the Pro Forma LGIA except as described in Part II of this letter.

The Joint Filing Parties respectfully request that the Commission accept the EPC Agreement for filing. Further, as described in Part III of this letter, the Joint Filing Parties respectfully request a waiver of the Commission’s prior notice requirements⁵ to make the EPC Agreement effective as of June 28, 2019, which is the date on which it was fully executed.

I. BACKGROUND

Each of the Developers participated in the NYISO’s Class Year Process and requested that the NYISO provide it with CRIS as part of the interconnection of its facility to the New York State Transmission System. For Class Year Projects that elect CRIS, Attachment S of the OATT establishes the NYISO’s requirements for evaluating a project’s Deliverability and the identification and cost allocation of SDUs required for a project’s proposed capacity to be fully deliverable. If the portion of the SDU that is required to make one or more projects in a Class Year deliverable is less than 90% of the total size (measured in megawatts) of the SDU, the Developer(s) will be required to pay or commit to pay for a percentage share of the total cost of the SDU equal to the estimated percentage megawatt usage by the project of the total megawatts provided by the SDUs.⁶ Once a threshold of 60% of the most current cost estimate of the SDU has been paid or posted as Security by Developers, the SDU must be constructed by the Transmission Owner that owns the facility to be upgraded.⁷ The NYISO, Affected Transmission Owner(s), and applicable Developers are required to enter into an engineering, procurement, and construction agreement regarding the construction of the SDU.⁸

The Class Year Deliverability Studies for Class Years 2009, 2010 and 2011 determined that certain SDUs are required on the Affected Systems (“Common System Deliverability Upgrades”) for the Developers’ facilities to interconnect reliably to the New York State Transmission System in a manner that meets the NYISO Deliverability Interconnection Standard at the Developers’ requested level of CRIS. Each Developer accepted and provided Security to the Affected Transmission Owners to cover its share of the estimated cost of the Common

which allows participation in the NYISO’s Installed Capacity market to the extent of the facility’s deliverable capacity.

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 NYISO OATT § 25.7.12.2.

⁷ See NYISO OATT § 25.7.12.3.1.

⁸ See NYISO OATT §§ 30.12.1; 25.7.11.1.4.2.6.

System Deliverability Upgrades.⁹ The Class Year Deliverability Study for Class Year 2011 determined that a threshold of 60% or more of the estimated cost for the Common System Deliverability Upgrades had been paid or posted as Security by the Developers. This triggered the requirement that the Affected Transmission Owners construct the Common System Deliverability Upgrades. Accordingly, the NYISO, Affected Transmission Owners, and Developers have entered into an agreement for the engineering, procurement, and construction of the Common System Deliverability Upgrades. Consistent with Commission precedent and NYISO practice, the EPC Agreement was developed using the Pro Forma LGIA as a template.¹⁰ Each of the Developers has separately entered into a Large Generator Interconnection Agreement with the NYISO and the appropriate Connecting Transmission Owner concerning the interconnection of its facility (the “Interconnection Agreements”).¹¹

II. DESCRIPTION OF THE EPC AGREEMENT

Central Hudson and National Grid, as the Affected Transmission Owners, will engineer, procure, and construct the Common System Deliverability Upgrades in accordance with the terms of the EPC Agreement (“EPC Services”). Each Developer has posted Security to the Affected Transmission Owners to cover the costs of constructing these facilities in accordance with the requirements in Attachment S of the OATT. Any differences in cost between the posted Security and the final cost of constructing the facilities will be allocated in accordance with the tariff requirements for addressing such differences in Section 25.8.6 of Attachment S of the OATT.¹² The NYISO’s role in the EPC Agreement will be limited to certain oversight rights and responsibilities.

The EPC Agreement is based on the Pro Forma LGIA, as modified: (i) to reflect the different purpose of the agreement, (ii) to allocate the parties’ responsibilities for the performance of the EPC Services and the payment for such performance, and (iii) to set forth the

⁹ Ball Hill Wind Park, LLC (“Ball Hill”) also posted Security to the Affected Transmission Owners in connection with its project (NYISO Queue No. 222) when it accepted its Project Cost Allocation for the Common System Deliverability Upgrades in Class Year 2009. Ball Hill subsequently terminated its project. Pursuant to Sections 25.8.5 and 25.8.6 of Attachment S of the NYISO OATT, Ball Hill forfeited its Security, which may be drawn upon by the Affected Transmission Owners to the extent necessary to cover the actual costs for the Common System Deliverability Upgrades in excess of the amount for which the Developers are responsible.

¹⁰ There is no *pro forma* EPC Agreement in the NYISO OATT. The EPC Agreement is based on the Pro Forma LGIA, consistent with Commission precedent. *See New York Independent System Operator, Inc., Letter Order*, Docket No. ER15-2083-000 (August 19, 2015); *see also New York Independent System Operator, Inc., and Niagara Mohawk Power Corporation, Letter Order*, Docket No. ER08-230-000 (December 18, 2007); *see also Midwest Independent Transmission System Operator, Inc.*, 113 FERC ¶ 61,048 (2005); *Duke Electric Transmission, a Division of Duke Energy Corp.*, 113 FERC ¶ 61,139 (2005).

¹¹ The Interconnection Agreement for CPV Valley did not fully conform with the Pro Forma LGIA and was filed with, and accepted by, the Commission. *See New York Independent System Operator, Inc., Letter Order*, Docket No. ER15-1895 (July 16, 2015). The Interconnection Agreements for the Taylor and Stony Creek projects conformed to the Pro Forma LGIA and were not filed with the Commission.

¹² The Developers’ total cost responsibility for the Common System Deliverability Upgrades is determined in accordance with the cost allocation requirements in Sections 25.7.12.2 and 25.8.6 of Attachment S of the OATT and reflected in their Invoice Share and their Developer Common SDU Cost Cap in the EPC Agreement.

scope of work, cost estimate, cost responsibility, and milestone schedule for the construction of the Common System Deliverability Upgrades.

The EPC Agreement varies from the Pro Forma LGIA primarily as follows, consistent with the approach the Commission accepted with regard to similar EPC agreements:¹³

- The EPC Agreement governs only the performance of the EPC Services and terminates upon the completion of the Common System Deliverability Upgrades and the payment of related invoices and refund or release of Security. For this reason, the EPC Agreement does not include the provisions of the Pro Forma LGIA that govern the ongoing operation or maintenance of the constructed facilities.¹⁴
- The EPC Agreement is limited to the activities required to construct and place in service the Common System Deliverability Upgrades. For this reason, the EPC Agreement does not include the provisions of the Pro Forma LGIA that govern the activities required to construct and place in-service the Large Generating Facility, the Attachment Facilities, or System Upgrade Facilities. These requirements are addressed under the Developers' respective Interconnection Agreements.
- The EPC Agreement does not include the provisions of the Pro Forma LGIA that govern the NYISO's provision of interconnection service to each Developer, which is addressed under the Developers' respective Interconnection Agreements.
- As Central Hudson and National Grid will perform the EPC Services, the EPC Agreement does not include the provisions of the Pro Forma LGIA that address the Developers' options and responsibilities for performing such work.
- As the parties have already completed the interconnection and deliverability studies necessary to determine the impact of the interconnection, the EPC Agreement does not include the provisions of the Pro Forma LGIA that address such studies.
- The EPC Agreement replaces the use of the term "Connecting Transmission Owner" with "Affected Transmission Owners" (*i.e.*, Central Hudson and National Grid) and includes revisions to account for the participation of two Affected Transmission Owners and multiple Developers in 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 EPC Agreement.

¹³ See *New York Independent System Operator, Inc., and Niagara Mohawk Power Corporation, Letter Order*, Docket No. ER08-230-000 (December 18, 2007); see also *New York Independent System Operator, Inc., Letter Order*, Docket No. ER15-2083-000 (August 19, 2015).

¹⁴ Once completed, Central Hudson and National Grid will own the Common System Deliverability Upgrades and be responsible for their operation and maintenance. The requirements for the ongoing operation and maintenance of the Developers' facilities are set forth in their respective Interconnection Agreements.

The Joint Filing Parties provide in Attachment I of this filing letter a matrix that describes in greater detail the differences between the EPC Agreement and the Pro Forma LGIA.¹⁵

III. EFFECTIVE DATE AND REQUEST FOR WAIVER

The Joint Filing Parties request an effective date of June 28, 2019 for the EPC Agreement, which is the date that it was fully executed. The Joint Filing Parties respectfully request that the Commission waive its prior notice requirement to permit the requested effective date. The Commission has previously permitted similar agreements to become effective upon the date of execution.¹⁶

IV. COMMUNICATIONS AND CORRESPONDENCE¹⁷

Communications regarding this filing should be directed to:

NYISO

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¹⁵ As described in this filing letter, “Connecting Transmission Owner” has been replaced with “Affected Transmission Owner” and Developer and Affected Transmission Owner have been made plural throughout the EPC Agreement with limited exceptions. 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., Letter Order*, Docket No. ER15-2083-000 (August 19, 2015) (accepting EPC Agreement effective as of date of execution); see also *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.

Central Hudson

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V. DOCUMENTS SUBMITTED

The NYISO submits the following documents with this filing letter:

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

VII. CONCLUSION

Wherefore, the Joint Filing Parties respectfully request that the Commission accept the EPC Agreement for filing with an effective date of June 28, 2019.

Respectfully submitted,

/s/ Sara B. Keegan

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