

February 5, 2021

By Electronic Delivery

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

Re: Joint Filing of an Executed Engineering, Procurement, and Construction Agreement Among the New York Independent System Operator, Inc., New York Power Authority, and PPM Roaring Brook, LLC; Request for Waiver of the 60-Day Notice Period; Docket No. ER21-____-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") and New York Power Authority ("NYPA") (together, the "Joint Filing Parties") hereby tender for filing an executed engineering, procurement, and construction agreement entered into by the NYISO, NYPA, as the Affected System Operator, and PPM Roaring Brook LLC ("Roaring Brook"), as the Developer (the "EPC Agreement").³ The EPC Agreement is labeled as Service Agreement No. 2592 under the NYISO's Open Access Transmission Tariff ("OATT").

Roaring Brook is constructing a 79.725 MW wind generation farm ("Facility") that will interconnect with the transmission facilities of Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid"). The NYISO's Class Year Interconnection Facilities Study for Class Year 2019 ("Facilities Study") determined that this interconnection will have impacts on NYPA's transmission system ("Affected System") and identified NYPA as an Affected System Operator. The Facilities Study identified certain System Upgrade Facilities that are required on NYPA's system for the Facility to interconnect reliably to the New York State Transmission System ("Affected System Upgrade Facilities").

Pursuant to Section 30.3.5 of Attachment X of the NYISO OATT, the NYISO, NYPA, and Roaring Brook entered into the EPC Agreement to govern the rates, terms, and conditions regarding the engineering, procurement, and construction of the Affected System Upgrade Facilities. Per Section 30.3.5 and as described below, the EPC Agreement is consistent with the NYISO's *pro forma* Standard Large Generator Interconnection Agreement located in Attachment

¹ 16 U.S.C. § 824d.

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 Attachments S or X of the NYISO OATT, and if not defined therein, in the NYISO OATT and NYISO Market Administration and Control Area Services Tariff.

X of the OATT (“Pro Forma LGIA”), as modified to address only the engineering, procurement, and construction of the Affected System Upgrade Facilities. The Joint Filing Parties respectfully request that the Commission accept the EPC Agreement for filing. Further, as described in Part II of this letter, the Joint Filing Parties respectfully request a waiver of the Commission’s prior notice requirements⁴ to make the EPC Agreement effective as of January 25, 2021, which is the date of its full execution.

I. Background

Roaring Brook is constructing a 79.725 MW wind generation farm located in Lewis County, New York. The Facility will interconnect to certain facilities of National Grid that are part of the New York State Transmission System via Flat Rock Wind Power, LLC’s (“Flat Rock’s”) existing, adjacent Rector Road Substation. Roaring Brook’s Facility was included in and studied as part of the Facilities Study for Class Year 2019. The Facilities Study determined that the interconnection of the Facility will have certain impacts on the transmission system of NYPA – the Affected System – and identified NYPA as an Affected System Operator.⁵ The Facilities Study identified that certain Affected System Upgrade Facilities were required at NYPA’s Adirondack Substation for the reliable interconnection of the Facility to the New York State Transmission System - in particular, certain revisions to the relay settings. The Affected System Upgrade Facilities are described in Appendix A of the EPC Agreement.

The NYISO and National Grid (as the Connecting Transmission Owner) are separately jointly filing at the Commission an executed Large Generator Interconnection Agreement among the NYISO, National Grid, and Roaring Brook for the interconnection of the Facility to the transmission facilities of National Grid (“Roaring Brook Interconnection Agreement”). In the Roaring Brook Interconnection Agreement, the parties indicated that, pursuant to Section 30.3.5 of Attachment X of the OATT, the Affected System Upgrade Facilities on NYPA’s system would be addressed in accordance with a separate Engineering, Procurement, and Construction Agreement among the NYISO, NYPA, and the Developer.

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 The Facilities Study also identified that the interconnection of the Facility will have certain impacts on Flat Rock’s Rector Road Substation and identified Flat Rock as an Affected System Operator as well. The NYISO will separately file at a later date an Engineering, Procurement, and Construction Agreement among the NYISO, Flat Rock, Roaring Brook, and National Grid for the engineering, procurement, and construction of the System Upgrade Facilities that are required at the Rector Road Substation for the Facility to interconnect reliably to the New York State Transmission System.

II. DESCRIPTION OF THE EPC AGREEMENT

The EPC Agreement was fully executed on January 25, 2021, by the NYISO, NYPA, and Roaring Brook. Pursuant to Section 30.3.5. of Attachment X of the NYISO OATT, the parties entered into the EPC Agreement to govern the rates, terms, and conditions regarding the engineering, procurement, and construction of the Affected System Upgrade Facilities (“EPC Services”). Per Section 30.3.5, the EPC Agreement shall be consistent with the Pro Forma LGIA located in Attachment X of the NYISO OATT, as modified to address only the engineering, procurement and construction of the Affected System Upgrade Facilities.⁶ As described below, the EPC Agreement conforms to the Pro Forma LGIA, except as modified to address only the engineering, procurement, and construction of the Affected System Upgrade Facilities. Accordingly, the Joint Filing Parties respectfully request that the Commission accept the EPC Agreement for filing.

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 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 governs only the performance of the EPC Services and terminates upon the completion of the Affected System Upgrade Facilities and the payment of related invoices and refund of any remaining 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 Affected System Upgrade Facilities.⁷
- The EPC Agreement is limited to the activities required to construct and place in service the Affected System Upgrade Facilities. 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, other System Upgrade Facilities, or System Deliverability

⁶ See OATT Section 30.3.5 (“ . . . Upon completion of a Class Year Study in which a Developer accepts its Project Cost Allocation for System Upgrade Facilities and/or System Deliverability Upgrades and funds or commits to fund such upgrades as required by Attachment S, the Developer and Affected System Operator(s) will cooperate with the ISO in development of an Engineering, Procurement and Construction to provide for the engineering, procurement and construction of the System Upgrade Facilities and/or System Deliverability Upgrades on the Affected System. The Engineering, Procurement and Construction Agreement shall be consistent with the NYISO’s Commission-approved Standard Large Generator Interconnection Agreement located in Appendix 2 to Attachment X of the OATT, modified to address only the engineering, procurement and construction of the System Upgrade Facilities and/or System Deliverability Upgrades. . . .”)

⁷ Once completed, NYPA will own the Affected System Upgrade Facilities and be responsible for their operation and maintenance. The requirements for the ongoing operation and maintenance of the Facility are set forth in the Roaring Brook Interconnection Agreement among the NYISO, National Grid, and Roaring Brook.

Upgrades. These requirements are addressed under the Roaring Brook Interconnection Agreement. In addition, the defined terms concerning the Large Generating Facility, Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades has been replaced, as applicable, with terminology concerning the Affected System Upgrade Facilities. Further, the EPC Agreement replaces the use of the term “Connecting Transmission Owner” (*i.e.*, National Grid) with “Affected System Operator” (*i.e.*, NYPA), except where the language is referring to the interconnection of the Facility with National Grid’s transmission facilities.

- NYPA will perform the EPC Services for the Affected System Upgrade Facilities. For this reason, the EPC Agreement does not include the provisions of the Pro Forma LGIA that address the developer’s options concerning construction and responsibilities for performing such work.
- The EPC Agreement does not include the provisions of the Pro Forma LGIA that govern the NYISO’s provision of interconnection service to Roaring Brook, which is addressed under the Roaring Brook Interconnection Agreement.
- As the parties have already completed the interconnection 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.
- As NYPA will be performing the EPC Services on its own facilities at *de minimis* cost to Roaring Brook, the EPC Agreement does not include the provisions of the Pro Forma LGIA governing taxes.
- The insurance requirements have been modified to apply solely to NYPA, as the party performing the EPC Services on its own facilities.
- The Security and invoicing provisions have been modified to be consistent with the requirements concerning cost responsibility for the Affected System Upgrade Facilities in Attachment S of the NYISO OATT and to clarify the application of the Security.
- Finally, the EPC Agreement also includes minor clean-ups and revisions agreed upon among the NYISO, NYPA, and Roaring Brook as consistent with the terms of the EPC Agreement.

These modifications are similar to the modifications for other engineering, procurement, and construction agreements that the NYISO has filed with, and that have been accepted by, the Commission.⁸

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

The Joint Filing Parties request an effective date of January 25, 2021, for the EPC Agreement, which is the date of its full execution. 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 such agreements to become effective upon the date of execution.⁹

IV. Communications and Correspondence

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

For the NYISO¹⁰

Robert E. Fernandez, Executive Vice
President & 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@huntonak.com

*Michael J. Messonnier Jr.
Hunton Andrews Kurth LLP
951 East Byrd Street
Richmond, VA 23219

⁸ See *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Letter Order, Docket No. ER15-2079-000 (August 5, 2015); see also *New York Independent System Operator, Inc., and Niagara Mohawk Power Corporation*, Letter Order, Docket No. ER08-230-000 (December 18, 2007).

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 the engineering, procurement, and construction agreement as of its date of execution); see also *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Letter Order, 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).

¹⁰ The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2019) to permit service on counsel in both Washington, D.C. and Richmond, VA.

Tel: (804) 788-8200

Fax: (804) 344-7999

mmessonnier@huntonak.com

For NYPA

Justin E. Driscoll, Executive Vice President
& General Counsel
*Andrew F. Neuman, Assistant General Counsel
New York Power Authority
123 Main Street
White Plains, NY 10601
Tel: (914) 390-8028
andrew.neuman@nypa.gov

*Designated to receive service.

V. Documents Submitted

The Joint Filing Parties submit the following documents with this filing letter:

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

VI. Service

On behalf of the Joint Filing Parties, 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 January 25, 2021.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan

Counsel for the

New York Independent System Operator, Inc.

/s/ Andrew F. Neuman

Andrew F. Neuman

Counsel for

New York Power Authority

cc: Jignasa Gadani
Jette Gebhart
Leanne Khammal
Kurt Longo
John C. Miller
David Morenoff
Larry Parkinson
Douglas Roe
Frank Swigonski
Eric Vandenberg
Gary Will