

THIS FILING LETTER DOES NOT CONTAIN ANY CEII. ATTACHMENTS I, II, AND IV DO NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT III INCLUDES A DIAGRAM AND LINE PROTECTION DETAILS FOR WHICH CEII DESIGNATION IS REQUESTED IN PART III BELOW, AND IS SUBMITTED SEPARATELY.

March 12, 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 Transmission Project Interconnection Agreement Among the New York Independent System Operator, Inc., New York Power Authority, and NextEra Energy Transmission New York, Inc.; Request for Critical Energy Infrastructure Information Designation; and Request for Waiver of 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 Transmission Project Interconnection Agreement entered into by the NYISO, NYPA, as the Connecting Transmission Owner, and NextEra Energy Transmission New York, Inc. ("NextEra"), as the Transmission Developer (the "Interconnection Agreement").³ The Interconnection Agreement is labeled as Service Agreement No. 2603 under the NYISO's Open Access Transmission Tariff ("OATT").

The Joint Filing Parties respectfully request that the Commission accept the Interconnection Agreement for filing. Pursuant to Section 22.11.1 of Attachment P of the OATT, the Interconnection Agreement is based on and consistent with the *pro forma* Large Generator Interconnection Agreement ("Pro Forma LGIA") contained in Attachment X to the OATT, as modified to address a Transmission Project. The modifications are described in Part II of this letter. Further, as described in Part III of this letter, NYPA requests that Figure A-2 in

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 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").

Appendix A and line protection information in Appendix A of the Interconnection Agreement be protected from disclosure as Critical Energy Infrastructure Information. Finally, as described in Part IV of this letter, the Joint Filing Parties respectfully request a waiver of the Commission's prior notice requirements⁴ to make the Interconnection Agreement effective as of February 26, 2021, which is the date on which it was fully executed.

I. BACKGROUND

On October 17, 2017, the NYISO selected in its Public Policy Transmission Planning Process ("Public Policy Process") the Empire State Line Proposal 1 project proposed by NextEra ("Transmission Project") as the more efficient or cost effective transmission solution to address the need for new transmission in Western New York to realize greater utilization of renewable energy from the Niagara hydroelectric facility and imports from Ontario ("Western NY Need").⁵ Details regarding the Transmission Project are set forth in Appendix C of the Interconnection Agreement. On June 20, 2018, the NYISO and NextEra entered into a Public Policy Transmission Planning Process Development Agreement for the Transmission Project ("Development Agreement").

In parallel with the NYISO's performance of its Public Policy Process to address the Western NY Need, the NYISO evaluated the Transmission Project in its Transmission Interconnection Procedures located in Attachment P of the OATT. The Transmission Interconnection Studies identified 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. The Transmission Project will interconnect to certain facilities of NYPA that are part of the New York State Transmission System at several Points of Interconnection, as described in Appendix C of the Interconnection Agreement. Details regarding the Network Upgrade Facilities for the NYPA facilities are set forth in Appendix A of the Interconnection Agreement.

The Transmission Project will also separately interconnect to the New York State Transmission System at existing transmission facilities owned and operated by the New York State Electric & Gas Corporation ("NYSEG"), which is also a Connecting Transmission Owner for the Transmission Project. The NYISO, NYSEG, and NextEra are entering into a separate Transmission Project Interconnection Agreement concerning the interconnection of the Transmission Project to NYSEG's facilities and the related Network Upgrade Facilities. In addition, the Transmission Interconnection Studies for the Transmission Project identified Rochester Gas and Electric Corporation ("RG&E") and Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") as Affected System Operators, which systems are

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 NYISO Board of Directors' Decision on Approval of Western NY Transmission Planning Report and Selection of Public Policy Transmission Project (October 17, 2017); available at: <https://www.nyiso.com/documents/20142/1396390/Board%20Decision%20Re%20WNY%20Report%2020171017.pdf/de8832ca-0286-21b6-ecbb-bb1c754daefa>.

impacted by the Transmission Project. The Facilities Studies conducted for the Transmission Project identified certain Network Upgrade Facilities required for these Affected Systems. This work will be performed in accordance with the terms of separate engineering, procurement, and construction agreements.

II. DESCRIPTION OF THE INTERCONNECTION AGREEMENT

The Interconnection Agreement was fully executed on February 26, 2021, by the NYISO, NYPA, and NextEra. Section 22.11 of Attachment P of the OATT establishes the requirements in the NYISO's Transmission Interconnection Procedures for Transmission Project Interconnection Agreements. Pursuant to Section 22.11.1, a Transmission Project Interconnection Agreement shall be consistent with the NYISO's Commission-approved Standard Large Generator Interconnection Agreement located in Attachment X of the OATT, as modified to address a Transmission Project. Pursuant to these requirements, the Interconnection Agreement is based on and consistent with the Pro Forma LGIA, as modified to address the fact that the facility is a Transmission Project and the particular circumstances of the interconnection.

The Interconnection Agreement varies from the Pro Forma LGIA primarily as follows:

- The Interconnection Agreement concerns a Transmission Project and the related Network Upgrade Facilities determined pursuant to the NYISO's Transmission Interconnection Procedures located in Attachment P of the OATT, rather than a Large Generating Facility and the related Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades determined pursuant to the NYISO's Large Facility Interconnection Procedures in Attachments X and S of the OATT. For this reason, the Interconnection Agreement has been modified from the Pro Forma LGIA: (i) to reflect the Transmission Developer, Transmission Project, Network Upgrade Facilities, and other Transmission Interconnection Procedures terminology and rules used in Attachment P in place of the terminology concerning generation projects in the Pro Forma LGIA, (ii) to reflect that the Transmission Project is a transmission facility, which has different operating characteristics and requirements than is required for a generation facility under the Pro Forma LGIA, and (iii) to address the use of Network Upgrade Facilities in place of Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades.
- NextEra will be responsible for all of the work to design, construct, install, place in service, operate and maintain the Transmission Project. NextEra and NYPA will each have responsibilities for the design, construction, installation, and placing in service of certain Network Upgrade Facilities, which responsibilities are detailed in Appendix A. NYPA will then own and be responsible for the operation and maintenance of all Network Upgrade Facilities, which will be incorporated into NYPA's system and operated and maintained by NYPA in the same manner as the rest of its transmission facilities. For this reason, the Interconnection Agreement specifies the parties' design, procurement, construction, operation, and maintenance responsibilities concerning the Transmission Project and

Network Upgrade Facilities.⁶ The Interconnection 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.

- The NYISO selected the Transmission Project in its Public Policy Process and, as described above, the NYISO and NextEra have entered a Development Agreement for the Transmission Project. For this reason, the Interconnection Agreement has been amended to align its requirements with requirements in the Public Policy Process in Attachment Y of the OATT and in the Development Agreement. For example, the suspension and modification requirements in the Interconnection Agreement have been modified from the Pro Forma LGIA to account for related requirements in the Development Agreement and OATT.⁷
- The NYISO's OATT and the Development Agreement establish the requirements for addressing the scenario in which the Transmission Developer is unable to complete the Transmission Project.⁸ Under this scenario, the NYISO may elect to solicit bids for other developers to replace the Transmission Developer to complete the project and the Transmission Developer must work cooperatively with the new developer to transfer the project.⁹ For this reason, the parties agreed to revise the termination provisions in the Interconnection Agreement to provide for the parties to suspend, rather than terminate, the agreement if the NYISO undertakes a process to solicit and select a new developer and to provide for the assignment of the agreement to the new developer.¹⁰
- NextEra is required by the NYISO OATT to execute an Operating Agreement with the NYISO concerning its transmission facilities in New York prior to energizing the facilities.¹¹ For this reason, the parties state in the Interconnection Agreement that NextEra will operate, maintain, and control its facilities and satisfy communication requirements in accordance with the Operating Agreement, the NYISO Tariffs, and the NYISO's procedures.¹²
- NextEra will perform the metering related requirements associated with the interconnection. The parties, therefore, clarified the metering requirements to make clear NextEra's responsibilities.¹³

⁶ See Articles 5.1, 5.2, 10.1, 10.2, 11.1, 11.2.

⁷ See Articles 5.11, 5.14.

⁸ OATT Section 31.4.12.3.

⁹ OATT Section 31.4.12.3.1.3; 31.7 Appx. D (Public Policy Transmission Planning Process Development Agreement) Section 8.3.

¹⁰ See Article 2.3.1.

¹¹ OATT Section 31.1.7.3.

¹² See Articles 8.1, 9.3.

¹³ See Article 7.

- The parties agreed to modify the tax provisions from the Pro Forma LGIA (as located in Article 5.12 of the Interconnection Agreement), so that the provisions apply to Network Upgrade Facilities, rather than to a Large Generating Facility and related Attachment Facilities and Upgrades.
- 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.” Accordingly, the Interconnection Agreement has been modified to incorporate the standard Security and related cost allocation tariff requirements set forth in Attachment S of the NYISO OATT that are applicable to upgrades for Developers that are subject to the Pro Forma LGIA.¹⁴ The Commission has accepted the incorporation of these requirements in the NYISO’s Transmission Project Interconnection Agreements.¹⁵ In particular, the Interconnection 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.¹⁶ In addition, the Interconnection Agreement incorporates the OATT requirements that address the allocation of costs that are less than or greater than the cost estimate amount determined in the interconnection studies.¹⁷ NextEra and NYPA have agreed that NextEra will be responsible for the cost that are greater than the estimated amount, except in cases where those costs resulted from the modification of other projects.¹⁸ 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 Transmission Project was evaluated under the NYISO’s Transmission Interconnection Procedures in Attachment P of the OATT. For this reason, the Interconnection Agreement incorporates defined terms from Attachment P, rather than the defined terms for Large Facilities from the Standard Large Facility Interconnection Procedures in Attachment X of the OATT.
- The Transmission Project will interconnect with NYPA’s system at multiple Points of Interconnection. Accordingly, the Interconnection Agreement provides for multiple Points of Interconnection, which are described in Appendix C.

¹⁴ See Articles 2.4.1, 2.4.2, 11.4, 11.5, 11.6.

¹⁵ See *New York Independent System Operator Inc. and Niagara Mohawk Power Corporation*, Letter Order, Docket No. ER19-2645-000 (September 26, 2019) (accepting incorporation in Transmission Project Interconnection Agreement of NYISO’s Security forfeiture and cost allocation rules for upgrades).

¹⁶ See Article 11.5; see also OATT Attachment S Section 25.8.5. The parties agreed to supplement the tariff Security forfeiture rules to provide a process for the Connecting Transmission Owner to obtain the forfeited Security from Developer if Developer’s Security provided pursuant to the Interconnection Agreement is not in a form that can be readily drawn on. See Article 11.5.

¹⁷ See Article 11.6; see also OATT Attachment S Section 25.8.6.

¹⁸ See Articles 11.6.2 and 11.6.3.

- The parties agreed to make certain changes to reflect NYPA's unique legal status. First, the parties included modifications to ensure compliance with New York's labor laws. Section 5.2 of the Pro Forma LGIA lists the general conditions applicable to the Developer's Option to Build. In the Interconnection Agreements, these provision will apply to NextEra's responsibility to construct certain Network Upgrade Facilities. The parties have agreed to amend this list of conditions by adding a requirement that the Transmission Developer must comply with Section 220 of New York's labor law, which requires that for work performed on NYPA's existing facilities, workman, laborers, and mechanics must be paid at least the prevailing wage set forth in that statute. Section 220 also addresses pay supplements, work hours, and payroll findings. The Commission has previously accepted this change to the Pro Forma LGIA.¹⁹
- Second, the parties included modifications to address NYPA's eminent domain authority. NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York, organized under the laws of New York, and operating pursuant to Title 1 of Article 5 of the New York Public Authorities Law ("PAL"). Under Section 1007 of the PAL, NYPA has the right to take real property through eminent domain when the NYPA Trustees, in their discretion, deem an eminent domain taking necessary or convenient to acquire real property for the purposes described in this statute. The parties have agreed to modify Section 5.9 of the Interconnection Agreement (Section 5.13 of the Pro Forma LGIA) to make it clear that NYPA can only use efforts to acquire property by eminent domain if and to the extent consistent with New York law (*i.e.*, PAL Section 1007). NYPA must retain the right to have its Trustees review, on a case-by-case basis, each request for NYPA to exercise its power of eminent domain and to exercise their discretion to approve or deny such request, consistent with the requirements of New York law. The Commission has previously accepted this change to the Pro Forma LGIA.²⁰
- The Interconnection Agreement also includes minor additional clean-ups and revisions agreed upon among all of the parties that are consistent with the terms of the Interconnection Agreement.

III. REQUEST FOR CEII TREATMENT

Pursuant to Sections 388.112 and 388.113 of the Commission's regulations,²¹ NYPA requests that that the one-line diagram included as Figure A-2 in Appendix A and the line protection information provided in Section 1.A.i of Appendix A of the Interconnection

¹⁹ See, *e.g.*, *New York Independent System Operator, Inc. and New York Power Authority*, Letter Order, Docket No. ER15-1895-000 (July 16, 2015) (accepting NYPA-related revisions); *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER11-2654-000 (February 9, 2011); *New York Independent System Operator, Inc. and New York Power Authority*, Letter Order, Docket No. ER08-1507-000 (November 4, 2008).

²⁰ See *id.*

²¹ 18 C.F.R. §§ 388.112 and 388.113 (2019).

Agreement be protected from disclosure as Critical Energy Infrastructure Information (“CEII”).²² The diagram contains detailed, one-line schematics of, and line protection information concerning, NYPA’s facilities that, if disclosed, could pose a threat to the security and the reliability of the New York State bulk power system. The diagram provides more than simply the general location of critical infrastructure. Unlike publicly available maps of power transmission lines and generation and substation facilities, the schematics show the exact nature and specific location of facilities used to maintain the reliability of the New York State bulk power system. In addition, the line protection information provides specific information concerning the protection system of NYPA facilities.

The diagram and line protection information, in NYPA’s assessment, reveals such critical information related to the facilities depicted therein that, if disclosed, could be useful to a person seeking to disable the power grid. Therefore, the disclosure of the CEII diagram would pose a threat to the reliability of the New York State bulk power system and the health and safety of New York residents. Moreover, the information concerning NYPA’s facilities reveals CEII, which the Commission has determined to be exempt from mandatory disclosure under 5 U.S.C. § 552(b)(7)(F). The diagrams and line protection information have been omitted from the Public version of the Interconnection Agreement included in this filing.

The Joint Filing Parties are electronically submitting a non-public version of this filing. The diagram and line protection information are included only in the non-public version of the Interconnection Agreement in the filing. The non-public diagram and information are marked: **“FIGURE CONTAINS CEII – DO NOT RELEASE PURSUANT TO 18 C.F.R. §§ 388.112 and 388.113”** and **“SECTION 1.A.i CONTAINS CEII – DO NOT RELEASE PURSUANT TO 18 C.F.R. §§ 388.112 and 388.113”**. The non-public diagram and information should be treated as CEII reviewable by Commission Staff. In accordance with the Commission’s April 14, 2017 notice on labeling of non-public information, each page of the non-public version of the filing is marked **“CUI//CEII.”**²³ Placeholder have been included in place of the non-public diagram and information in the public version of the Interconnection Agreement.

All communications relating to this request for privileged and confidential treatment should be addressed to NYPA’s Counsel listed below.

²² As required by Section 388.113(d)(1)(i) of the Commission’s regulations, NYPA has described in the filing letter how the Figure A-2 and the line protection information in Section 1.A.i of Appendix A satisfy the definition of critical energy infrastructure information as that term is defined in Section 388.113(c)(1). In addition, as required by Section 388.113(d)(1)(ii) the cover page of the filing letter and the relevant page of the Interconnection Agreement that contains critical energy infrastructure information is labelled as including CEII and marked DO NOT RELEASE, and a Public and CEII version of the Interconnection Agreement are being filed with this letter. The CEII material is redacted in the Public version. Finally, as required by Section 388.113(d)(1)(i), NYPA requests that the Commission designate the CEII material submitted on March 12, 2021, with the full five-year CEII designation provided for in Section 388.113(e)(1) as the information provided in the one-line diagrams and the line protection information will continue to satisfy the definition of critical energy infrastructure information for this entire period.

²³ See Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff (Apr. 14, 2017) (unreported).

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

The Joint Filing Parties request an effective date of February 26, 2021, for the Interconnection 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 interconnection agreements to become effective upon the date of execution.²⁴

V. COMMUNICATIONS AND CORRESPONDENCE

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

For the NYISO²⁵

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²⁴ See, 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 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).

²⁵ 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.

For NYPA

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VI. DOCUMENTS SUBMITTED

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

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

VII. 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.

VIII. CONCLUSION

Wherefore, the Joint Filing Parties respectfully request that the Commission accept the Interconnection Agreement for filing with an effective date of February 26, 2021.

Respectfully submitted,

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

/s/ Andrew F. Neuman
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