

**THIS FILING LETTER AND ATTACHMENT I DO NOT CONTAIN ANY CEII. ATTACHMENT II INCLUDES AN INTERCONNECTION STUDY THAT INCLUDES CEII FOR WHICH CEII DESIGNATION IS REQUESTED IN PART IV BELOW, AND IS SUBMITTED SEPARATELY.**

April 8, 2021

**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 Agreement Among New York Transco, LLC, Castleton Power, LLC and New York Independent System Operator, Inc; Request for Waiver of the 60-Day Notice Period; Docket No. ER21-\_\_\_\_-000

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act<sup>1</sup> and Section 35.13 of the regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”),<sup>2</sup> New York Transco, LLC (“NY Transco”) hereby tenders for filing an executed Engineering, Procurement & Construction Agreement (“EPC Agreement”), entered into by NY Transco, Castleton Power, LLC (“Castleton”), and the New York Independent System Operator, Inc. (“NYISO”).<sup>3</sup> The attached EPC Agreement is designated as Service Agreement No. 2615 under the NYISO’s Open Access Transmission Tariff (“OATT”).<sup>4</sup>

The EPC Agreement is entered into to facilitate the necessary modifications to the Fort Orange substation in order to accommodate NY Transco’s development of the New York Energy

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. § 35.13 (2019).

<sup>3</sup> NYISO is a signatory to the EPC Agreement solely in its role as the independent system operator of transmission facilities within its service territory and its obligation to oversee and maintain the reliable operation of the New York transmission grid.

<sup>4</sup> The NYISO is submitting this filing in the Commission’s eTariff system on NY Transco’s behalf solely in its role as the Tariff Administrator. However, the burden of demonstrating that the EPC Agreement is just and reasonable rest on NY Transco, the sponsoring party. The NYISO takes no position on any substantive aspect of the filing at this time.

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Solution Project (“Transmission Project”), which was selected by NYISO as the more efficient and cost effective solution to its Public Policy Transmission Need solicitation.<sup>5</sup> The EPC Agreement governs the rates, terms, and conditions regarding the engineering, procurement, and construction for the modifications to the Fort Orange substation.

NY Transco respectfully requests that the Commission accept the EPC Agreement for filing. Further, as described in Part III of this letter, NY Transco respectfully requests a waiver of the Commission’s prior notice requirements<sup>6</sup> to make the EPC Agreement effective as of March 1, 2021, which is the date on which the agreement was fully executed by the parties. Finally, as described in Part IV of this letter, NY Transco requests that the Facilities Study report concerning the Transmission Project’s impact on the Fort Orange Substation that is included in Attachment 1 of the EPC Agreement be protected from disclosure as it contains Critical Energy Infrastructure Information (“CEII”).

## **I. BACKGROUND**

As part of the NYISO’s Public Policy Transmission Planning Process (“Public Policy Process”), the New York Public Service Commission (“NYPSC”) identified as transmission needs driven by Public Policy Requirements the needs to increase Central East transfer capability in New York by at least 350 MW (“Segment A”) and UPNY/SENY transfer capability in New York by at least 900 MW (“Segment B”) to provide additional capability to move power from upstate to downstate New York (together, the “AC Transmission Needs”).<sup>7</sup> On April 8, 2019, the NYISO selected in its Public Policy Process the New York Energy Solution Project proposed by NY Transco<sup>8</sup> as the more efficient or cost effective transmission solution to address Segment B of the AC Transmission Needs and directed NY Transco to proceed with the Transmission Project.<sup>9</sup>

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<sup>5</sup> Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in Attachment Y of the NYISO Open Access Transmission Tariff (“OATT”), and if not defined therein, in Attachments P, X or S of the NYISO OATT, or the NYISO OATT or NYISO Market Administration and Control Area Services Tariff (“Services Tariff”).

<sup>6</sup> See *Prior Notice and Filing Requirements Under Part II of the Federal power Act*, 64 FERC ¶ 61,139, clarified 65 FERC ¶ 61,081 (1993).

<sup>7</sup> See NYPSC Case No. 12-T-0502, *et al.*, Order Finding Transmission Needs Driven by Public Policy Requirements (December 17, 2015).

<sup>8</sup> The New York Energy Solution Project was initially proposed by NY Transco and Niagara Mohawk Power Corporation, d/b/a National Grid (“National Grid”). On January 10, 2020, the NYISO, NY Transco, and National Grid entered into a Public Policy Transmission Planning Process Development Agreement for the Transmission Project (“Development Agreement”). National Grid subsequently assigned its rights, duties, and obligations under the Development Agreement to NY Transco on March 10, 2020, giving NY Transco sole rights to the development of the Transmission Project. The NYISO determined that the assignment satisfied the requirements under Article 10 of the Development Agreement and consented to the assignment in a letter dated March 10, 2020.

<sup>9</sup> See NYISO Board of Directors’ Decision on Approval of AC Transmission Public Policy Transmission Planning Report and Selection of Public Policy Transmission Projects (April 8, 2019); *available at*:

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In parallel with the NYISO's performance of its Public Policy Process to address the AC Transmission Needs, 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. In addition, the Transmission Interconnection Studies for the Transmission Project identified certain other Affected Systems impacted by the Transmission Project and NYISO has determined that the Fort Orange substation will require modifications to reliably accommodate the interconnection of the Transmission Project.

## **II. DESCRIPTION OF THE EPC AGREEMENT**

The need for the EPC Agreement arises because the NYISO Interconnection Studies have identified certain modifications to the Castleton-owned Fort Orange substation that are necessary for the reliable interconnection and integration of the Transmission Project. The EPC Agreement provides NY Transco with the necessary access rights to the Fort Orange substation in order for NY Transco to make these modifications. In accordance with the EPC Agreement, NY Transco will perform all of the necessary engineering, design, procurement and construction needs for the modifications to the Fort Orange substation, at the sole cost and expense of NY Transco.

Because NY Transco is responsible for the costs of the modifications as part of the Transmission Project, the EPC Agreement does not include any rate or any other form of compensation to NY Transco by Castleton.<sup>10</sup> The work to be performed by NY Transco at the Fort Orange substation is specified in Exhibit B to the EPC Agreement.

During and upon completion of the work, Castleton will continue to own the entirety of the Fort Orange substation and will continue to be responsible for the operation and maintenance of the substation. Under the EPC Agreement, Castleton's responsibilities are identified in Exhibit A and are limited to the provision of existing drawings, schematics, specifications, criteria and data related to the Fort Orange substation that will assist NY Transco in the orderly conduct of its work responsibilities included in Exhibit B. Castleton will perform its work under the EPC Agreement at no cost to Castleton, and the cost of the work done by NY Transco shall be paid directly by NY Transco to its contractor. The EPC Agreement will terminate upon the completion of the work thereunder.

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<https://www.nyiso.com/documents/20142/1390750/Board-Decision-AC-Transmission-2019-04-08.pdf/32323d32-f534-a790-1b03-2cb110033320>.

<sup>10</sup> See, EPC Agreement, Section 4.

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The EPC Agreement specifies that upon completion of the work, NY Transco will have no on-going obligation for the operation and maintenance for any modified or upgraded equipment at the Fort Orange Substation, nor will NY Transco be responsible for any future repairs for any modified or upgraded equipment at the Fort Orange substation.

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

NY Transco requests an effective date of March 1, 2021, for the EPC Agreement, which is the date of its full execution. NY Transco respectfully requests that the Commission waive its prior notice requirement to permit the requested effective date. The Commission has previously permitted engineering, procurement, and construction agreements to become effective upon the date of execution.<sup>11</sup> Here, the EPC Agreement is necessary for the development of the Transmission Project which has a very tight development schedule. In addition, the EPC Agreement does not include any rate provisions as NY Transco is performing all of the work necessary for the modifications to the Fort Orange substation at its own expense.

### **IV. REQUEST FOR CEII TREATMENT**

Pursuant to Sections 388.112 and 388.113 of the Commission's regulations,<sup>12</sup> NY Transco request that the Facilities Study report concerning the Transmission Project's impact on the Fort Orange Substation that is included in Attachment 1 of the EPC Agreement be protected from disclosure as CEII.<sup>13</sup>

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<sup>11</sup> 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 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).

<sup>12</sup> 18 C.F.R. §§ 388.112 and 388.113 (2019).

<sup>13</sup> As required by Section 388.113(d)(1)(i) of the Commission's regulations, NY Transco has described in the filing letter how certain information and diagrams in the Facilities Study report 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 Attachment 1 of the EPC Agreement, which includes critical energy infrastructure information, is labelled as including CEII and marked DO NOT RELEASE, and a Public and CEII version of the EPC Agreement are being filed with this letter. The CEII material is redacted in the Public version. Per Section 388.113(d)(1)(iii), included as Attachment 2 to the EPC Agreement is a form non-disclosure agreement. Finally, as required by Section 388.113(d)(1)(i), NY Transco requests that the Commission designate the CEII material submitted on April 8, 2021, with the full five-year CEII designation provided for in

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The attached Facilities Study report includes information and diagrams that, if disclosed, could pose a threat to the security and the reliability of the New York State bulk power system. This information provides more than simply the general location of critical infrastructure. Unlike publicly available maps of power transmission lines and generation and substation facilities, the information and diagrams describe and show the exact nature and specific location of facilities used to maintain the reliability of the New York State bulk power system.

This information, in NY Transco'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 information and diagrams 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 the NY Transco and Fort Orange facilities reveals CEII, which the Commission has determined to be exempt from mandatory disclosure under 5 U.S.C. § 552(b)(7)(F). The NYISO's Facilities Study report is maintained by the NYISO as non-public, is not posted on the NYISO's public website, and is only available to entities that have been approved by the NYISO to access such CEII.

NY Transco is electronically submitting a non-public version of this filing. The Facilities Study report in Attachment 1 of the EPC Agreement is included in the non-public version of the EPC Agreement in the filing. The non-public study is marked "**STUDY CONTAINS CEII – DO NOT RELEASE PURSUANT TO 18 C.F.R. §§ 388.112 and 388.113.**" The non-public study 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.**"<sup>14</sup> A placeholder has been included in place of the Facilities Study report in the public version of the EPC Agreement.

All communications relating to this request for CEII treatment should be addressed to NY Transco's counsel listed below.

## V. COMMUNICATIONS AND CORRESPONDENCE<sup>15</sup>

All communications and service in this proceeding should be directed to<sup>16</sup>:

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Section 388.113(e)(1) as the information provided in the Facilities Study report will continue to satisfy the definition of critical energy infrastructure information for this entire period.

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

<sup>15</sup> 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.

<sup>16</sup> NY Transco respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2019) to permit prompt service on the necessary representatives in both Washington, D.C. and Hartford, CT.

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## **VI. DOCUMENTS SUBMITTED**

NY Transco submits the following documents with this filing letter:

- A clean Public version of the executed EPC Agreement (Attachment I); and
- A clean CEII version of the EPC Agreement (Attachment II).

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## **VII. CONCLUSION**

Wherefore, NY Transco respectfully requests that the Commission accept the EPC Agreement for filing with an effective date of March 1, 2021.

Respectfully submitted,

/s/

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