

June 24, 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 New York Transco, LLC; Request for Waiver of 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 Commission's regulations,<sup>2</sup> 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 New York Transco, LLC ("Transco"), as the Transmission Developer (the "EPC Agreement").<sup>3</sup> The EPC Agreement is labeled as Service Agreement No. 2622 under the NYISO's Open Access Transmission Tariff ("OATT").

The NYISO selected the New York Energy Solution Project ("Transmission Project") proposed by Transco and Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") in its Public Policy Transmission Planning Process ("Public Policy Process"). The Facilities Study for the Transmission Project determined that the Transmission Project will have impacts on NYPA's transmission system, which is an Affected System. The EPC Agreement governs the rates, terms, and conditions regarding the engineering, procurement, and construction of the required Network Upgrade Facilities on NYPA's system. The EPC Agreement is based on the NYISO's *pro forma* Standard Large Generator Interconnection Agreement ("Pro Forma LGIA") contained in Attachment X to the OATT, as modified to address the engineering, procurement, and construction of the Network Upgrade Facilities on the Affected System for the Transmission Project. The modifications are 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

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<sup>1</sup> 16 U.S.C. § 824d.

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

<sup>3</sup> 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").

respectfully request a waiver of the Commission's prior notice requirements<sup>4</sup> to make the EPC Agreement effective as of June 11, 2021, which is the date on which it was fully executed.

## **I. BACKGROUND**

As part of the NYISO's 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>5</sup> On April 8, 2019, the NYISO selected in its Public Policy Process the New York Energy Solution Project proposed by Transco and National Grid as the more efficient or cost effective transmission solution to address Segment B of the AC Transmission Needs.<sup>6</sup> On January 10, 2020, the NYISO, Transmission Developer, and National Grid entered into a Public Policy Transmission Planning Process Development Agreement for the Transmission Project ("Development Agreement").<sup>7</sup> National Grid subsequently assigned its rights, duties, and obligations under the Development Agreement to Transmission Developer on March 10, 2020, giving Transco sole rights to the development of the Transmission Project.<sup>8</sup>

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 for the Transmission Project identified NYPA as an Affected System Operator, which system – the Affected System - is impacted by the Transmission Project.<sup>9</sup> The

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<sup>4</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>5</sup> See NYPSC Case No. 12-T-0502, *et al.*, Order Finding Transmission Needs Driven by Public Policy Requirements (December 17, 2015).

<sup>6</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: <https://www.nyiso.com/documents/20142/1390750/Board-Decision-AC-Transmission-2019-04-08.pdf/32323d32-f534-a790-1b03-2cb110033320>. In its report, the NYISO Board also selected the Double Circuit project proposed jointly by North America Transmission ("NAT") and the New York Power Authority ("NYPA") as the more efficient or cost-effective transmission solution to address Segment A of the AC Transmission Needs. This transmission project was also studied in the NYISO's Transmission Interconnection Procedures, and the NYISO will separately enter into interconnection and related agreements with NAT and NYPA in connection with the Segment A project.

<sup>7</sup> See *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER20-865-000 (March 10, 2020) (accepting Development Agreement among NYISO, Transco, and National Grid).

<sup>8</sup> 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> The NYISO identified five Connecting Transmission Owner's in connection with the interconnection of the Transmission Project to the New York State Transmission System. The NYISO has entered into, or is in the process of entering into, Transmission Project Interconnection Agreements among the NYISO, Transco, and each Connecting Transmission Owner. See, e.g., *New York Independent System Operator, Inc. and Niagara Mohawk Power Corporation*, Letter Order, Docket No. ER21-1283-000 (May 3, 2021).

Facilities Studies conducted for the Transmission Project identified certain Network Upgrade Facilities required for NYPA's 345 kV Dolson Ave Substation ("Affected System Upgrade Facilities"). Specifically, Transmission Developer will evaluate the existing relay calculations and settings for the Dolson Ave. Substation and shall prepare all necessary relay calculations and settings for relays that are required to be reset as a result of the Transmission Project. NYPA will perform any required modifications to the relay settings. The work will be performed pursuant to the EPC Agreement. Additional details concerning the Affected System Upgrade Facilities can be found in Appendix A of the EPC Agreement.

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

The EPC Agreement was fully executed on June 11, 2021, by the NYISO, NYPA, and Transco. Consistent with NYISO practice, as accepted by the Commission,<sup>10</sup> the EPC Agreement is based on the Pro Forma LGIA as modified: (i) to reflect the different purpose of the EPC Agreement, (ii) to reflect that the EPC Agreement concerns a Transmission Project and Network Upgrade Facilities, rather than a Large Generating Facility and Attachment Facilities, (iii) to allocate the parties' responsibilities for the performance of the engineering, procurement, and construction of the Affected System Upgrade Facilities ("EPC Services") and the payment for the EPC Services, and (iv) 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 concerns the engineering, procurement, and construction of Network Upgrade Facilities for an Affected System impacted by a Transmission Project. For these reasons, the EPC Agreement has been modified from the Pro Forma LGIA to reflect the different purpose of the agreement and the different terminology (*e.g.*, Affected System Operator, Transmission Developer, Transmission Project, and Network Upgrade Facilities terminology).
- The EPC Agreement addresses the performance of the EPC Services and will terminate upon the later of the completion of the EPC Services and the payment of related invoices and release or refund of any remaining Security.<sup>11</sup> For this reason, the EPC Agreement does not include the operating and maintenance requirements from the Pro Forma LGIA. The Affected System Upgrade Facilities will be incorporated into NYPA's system and operated and maintained by NYPA in the same manner as the rest of its system.
- As described above, Transco will evaluate the existing relay calculations and settings for NYPA's Dolson Ave. Substation and will prepare all necessary relay calculations and settings for relays that are required to be reset as a result of the Transmission Project. NYPA will then perform any required modifications to the relay settings. For this reason,

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<sup>10</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 an EPC Agreement among the NYISO, an Affected Transmission Owner, and Developer based on the Pro Forma LGIA).

<sup>11</sup> See EPC Agreement Article 2.2.

the EPC Agreement does not include the requirements in the Pro Forma LGIA for 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. Rather, the EPC Agreement describes Transco's and NYPA's respective responsibilities with regard to the Affected System Upgrade Facilities.<sup>12</sup>

- The Transmission Project was selected by the NYISO in its Public Policy Process and, as described above, the NYISO and Transco have entered a Development Agreement for the Transmission Project. For this reason, the EPC 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 EPC Agreement have been modified from the Pro Forma LGIA to account for related requirements in the Development Agreement and OATT.<sup>13</sup>
- 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.<sup>14</sup> 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.<sup>15</sup> For this reason, the parties agreed to revise the termination provisions in the EPC 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.<sup>16</sup>
- The parties agreed to delete the tax provisions from the Pro Forma LGIA, which are not applicable to the work being performed under the EPC Agreement.<sup>17</sup>
- Consistent with the requirement for Transmission Projects participating in the Transmission Interconnection Procedures,<sup>18</sup> the EPC Agreement incorporates the standard Security and related cost allocation requirements from Attachment S of the OATT that are applicable to upgrades.<sup>19</sup> The Commission has accepted the incorporation of these requirements in the NYISO's Transmission Project Interconnection Agreements

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<sup>12</sup> See EPC Agreement Article 3.

<sup>13</sup> See EPC Agreement Articles 3.11, 3.14.

<sup>14</sup> OATT Section 31.4.12.3.

<sup>15</sup> OATT Section 31.4.12.3.1.3; 31.7 Appx. D (Public Policy Transmission Planning Process Development Agreement) Section 8.3.

<sup>16</sup> See EPC Agreement Article 2.3.2.

<sup>17</sup> See EPC Agreement Article 3.12.

<sup>18</sup> 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."

<sup>19</sup> See EPC Agreement Articles 2.4.1, 2.4.2, 6.3, 6.4.

and related EPC Agreements.<sup>20</sup> In particular, the EPC 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.<sup>21</sup> In addition, the EPC 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.<sup>22</sup> NYPA and Transco have agreed that Transco will be responsible for the cost that are greater than the estimated amount to the extent such costs are prudently incurred, except in cases where those costs resulted from the modification of other projects.<sup>23</sup> 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 parties agreed for NYPA to draw upon Transco's Security as payment for the costs NYPA incurs under the EPC Agreement and made conforming changes to the Security and invoice requirements of the agreement.<sup>24</sup>
- The Transmission Project was evaluated under the NYISO's Transmission Interconnection Procedures in Attachment P of the OATT. For this reason, the EPC Agreement incorporates the defined terms from Attachment P, rather than the defined terms for Large Facilities included in the Standard Large Facility Interconnection Procedures in Attachment X of the OATT.
- 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.
- 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 Agreement.

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

The Joint Filing Parties request an effective date of June 11, 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.

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<sup>20</sup> See, e.g., *New York Independent System Operator Inc.*, Letter Order, Docket No. ER20-149-000 (December 13, 2019) (accepting incorporation in EPC Agreement concerning a Transmission Project of NYISO's Security forfeiture and cost allocation rules for upgrades).

<sup>21</sup> See EPC Agreement Article 6.3; 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 Affected System Operator to obtain the forfeited Security from Transmission Developer if Transmission Developer's Security provided pursuant to the EPC Agreement is not in a form that can be readily drawn on. See EPC Agreement Article 6.3.

<sup>22</sup> See EPC Agreement Article 6.4; see also OATT Attachment S Section 25.8.6.

<sup>23</sup> See EPC Agreement Articles 6.4.2 and 6.4.3.

<sup>24</sup> See EPC Agreement Articles 6.2, 7.1.

The Commission has previously permitted engineering, procurement, and construction agreements to become effective upon the date of execution.<sup>25</sup>

#### **IV. COMMUNICATIONS AND CORRESPONDENCE**

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

**For the NYISO<sup>26</sup>**

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<sup>25</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>26</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.

**For NYPA**

Justin E. Driscoll  
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\*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](http://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 11, 2021.

Respectfully submitted,

/s/ Michael J. Messonnier, Jr.  
Michael J. Messonnier, Jr.  
Hunton Andrews Kurth LLP  
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*New York Independent System Operator, Inc.*

/s/ Andrew F. Neuman  
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