

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 ONE-LINE SCHEMATIC FOR WHICH CEII DESIGNATION IS REQUESTED IN SECTION III BELOW, AND IS SUBMITTED SEPARATELY.

July 29, 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., Rochester Gas and Electric Corporation, 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 Rochester Gas and Electric Corporation ("RG&E") (together the "Joint Filing Parties") hereby tender for filing an executed Engineering, Procurement, and Construction Agreement entered into by the NYISO, RG&E, as the Affected System Operator, and NextEra Energy Transmission New York, Inc. ("NextEra"), as the Transmission Developer (the "EPC Agreement").³ The EPC Agreement is labeled as Service Agreement No. 2635 under the NYISO's Open Access Transmission Tariff ("OATT").

The NYISO selected the Empire State Line Proposal 1 project proposed by NextEra ("Transmission Project") in its Public Policy Transmission Planning Process ("Public Policy Process"). The Transmission Project will interconnect to the transmission facilities of the New York Power Authority ("NYPA") and the New York State Electric & Gas Corporation ("NYSEG"). The Facilities Study for the Transmission Project determined that the Transmission

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").

Project will also have impacts on RG&E's transmission system. The EPC Agreement governs the rates, terms, and conditions regarding the engineering, procurement, and construction of the required Network Upgrade Facilities on RG&E'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 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, RG&E requests that the one-line diagram included in the EPC 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 EPC Agreement effective as of July 15, 2021, which is the date on which it was fully executed.

I. BACKGROUND

On October 17, 2017, the NYISO selected in its Public Policy Process the Transmission Project proposed by NextEra 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"). 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 and NYSEG that are part of the New York State Transmission System. The NYISO and NextEra have entered into Transmission Project Interconnection Agreements with NYPA and NYSEG.

The Transmission Interconnection Studies for the Transmission Project also identified RG&E and Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") as Affected System Operators, which systems are impacted by the Transmission Project. The Facilities Studies conducted for the Transmission Project identified certain Network Upgrade Facilities required for these Affected Systems. The Network Upgrade Facilities on RG&E's system are classified as "Affected System Upgrade Facilities" in the EPC Agreement. They will be constructed by NextEra pursuant to the EPC Agreement and then owned, operated, and maintained by RG&E. Additional details concerning the Affected System Upgrade Facilities can

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).

be found in Appendix A of the EPC Agreement. The NYISO and NextEra will enter into a separate engineering, procurement, and construction agreement with National Grid for the Network Upgrade Facilities identified on its system.

II. DESCRIPTION OF THE EPC AGREEMENT

The EPC Agreement was fully executed on July 15, 2021, by the NYISO, RG&E, and NextEra. Consistent with NYISO practice, as accepted by the Commission,⁵ 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 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 a Transmission Project and related Network Upgrade Facilities that will be constructed by NextEra, as the Transmission Developer, and owned, operated, and maintained by RG&E, as the Affected System Operator. 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.⁶ 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 RG&E's system and operated and maintained by RG&E in the same manner as the rest of its system.
- NextEra will be responsible for all of the work to design, construct, install, and place in service the Affected System Upgrade Facilities. For this reason, 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

⁵ 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).

⁶ See EPC Agreement Article 2.2.

Facilities. Rather, the EPC Agreement describes NextEra's responsibilities with regard to the Affected System Upgrade Facilities.⁷

- The Transmission Project was selected by the NYISO 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 EPC Agreement has been modified 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.⁸
- 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.⁹ 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.¹⁰ 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.¹¹
- The parties agreed to modify the tax provisions from the Pro Forma LGIA (as located in Article 3.12 of the EPC Agreement), so that the provisions apply to the Affected System Upgrade Facilities, rather than to a Large Generating Facility and related Attachment Facilities and Upgrades.
- Consistent with the requirement for Transmission Projects participating in the Transmission Interconnection Procedures,¹² the EPC Agreement incorporates the standard Security and related cost allocation requirements from Attachment S of the OATT that are applicable to upgrades.¹³ The Commission has accepted the incorporation of these requirements in the NYISO's Transmission Project Interconnection Agreements

⁷ See EPC Agreement Article 3.

⁸ See Articles 3.11, 3.14.

⁹ OATT Section 31.4.12.3.

¹⁰ OATT Section 31.4.12.3.1.3; 31.7 Appx. D (Public Policy Transmission Planning Process Development Agreement) Section 8.3.

¹¹ See EPC Agreement Article 2.3.2.

¹² 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."

¹³ See EPC Agreement Articles 2.4.1, 2.4.2, 6.3, 6.4.

and related EPC Agreements.¹⁴ 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.¹⁵ 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.¹⁶ NextEra and RG&E have agreed that NextEra will be responsible for the costs 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.¹⁷ 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 to use the insurance rules and amounts set forth in the Development Agreement for the Transmission Project for purposes of the Transmission Developer's insurance requirements under the EPC Agreement concerning the same Transmission Project.¹⁸
- 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.

¹⁴ 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).

¹⁵ 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.

¹⁶ See EPC Agreement Article 6.4; see also OATT Attachment S Section 25.8.6.

¹⁷ See EPC Agreement Articles 6.4.2 and 6.4.3.

¹⁸ See EPC Agreement Article 12.3.

III. REQUEST FOR CEII TREATMENT

Pursuant to Sections 388.112 and 388.113 of the Commission's regulations,¹⁹ RG&E requests that the one-line diagram included in Appendix A of the EPC Agreement be protected from disclosure as Critical Energy Infrastructure Information ("CEII").²⁰ The diagram contains detailed, one-line schematics of RG&E'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.

The diagram, in RG&E'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 revealed in this schematic reveals CEII, which the Commission has determined to be exempt from mandatory disclosure under 5 U.S.C. § 552(b)(7)(F). The diagrams have been omitted from the Public version of the EPC Agreement included in this filing.

The Joint Filing Parties are electronically submitting a non-public version of this filing. The diagram is included only in the non-public version of the EPC Agreement in the filing. The non-public diagram is marked: **"FIGURE CONTAINS CEII – DO NOT RELEASE PURSUANT TO 18 C.F.R. §§ 388.112 and 388.113."** The non-public diagram 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."**²¹ A placeholder has been included in place of the non-public diagram in the public version of the EPC Agreement.

All communications relating to this request for privileged and confidential treatment should be addressed to RG&E's Counsel listed below.

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

²⁰ As required by Section 388.113(d)(1)(i) of the Commission's regulations, RG&E has described in the filing letter how the one-line diagram in Appendix A satisfies 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 EPC 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 EPC 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), RG&E requests that the Commission designate the CEII material submitted on July 29, 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 will continue to satisfy the definition of critical energy infrastructure information for this entire period.

²¹ 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 July 15, 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 engineering, procurement, and construction agreements to become effective upon the date of execution.²²

V. COMMUNICATIONS AND CORRESPONDENCE

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

For the NYISO²³

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²² 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).

²³ 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.

Honorable Kimberly D. Bose
July 29, 2021
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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 EPC Agreement (Attachment I);
- A blacklined Public version of the EPC Agreement showing the changes from the Pro Forma LGIA (Attachment II);
- A clean CEII version of the EPC Agreement (Attachment III); and
- The signature pages for the EPC 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 EPC Agreement for filing with an effective date of July 15, 2021.

Respectfully submitted,

/s/ Michael J. Messonnier, Jr.
Michael J. Messonnier, Jr.
Hunton Andrews Kurth LLP
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|-----|----------------------|-----------------|
| cc: | Janel Burdick | John C. Miller |
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