

September 8, 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 State Electric & Gas Corporation, Cassadaga Wind LLC, Arkwright Summit Wind Farm LLC, and Ball Hill Wind Energy, 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 State Electric & Gas Corporation ("NYSEG") (together the "Joint Filing Parties") hereby tender for filing an executed Engineering, Procurement, and Construction Agreement ("EPC Agreement"). The EPC Agreement has been entered into by the NYISO, NYSEG, as the Affected Transmission Owner, and by Cassadaga Wind LLC ("Cassadaga"), Arkwright Summit Wind Farm LLC ("Arkwright"), and Ball Hill Wind Energy, LLC ("Ball Hill"), each a Developer (all parties to the agreement collectively, the "Parties").<sup>3</sup> The EPC Agreement is labeled as Service Agreement No. 2642 under the NYISO's Open Access Transmission Tariff ("OATT").

The NYISO's Class Year Study for Class Year 2017 determined that certain System Upgrade Facilities ("SUFs") on NYSEG's system are required to mitigate transfer degradation between the NYISO and PJM Interconnection, L.L.C. ("PJM") to enable Cassadaga's, Arkwright's, and Ball Hill's generation projects to interconnect reliably to the New York State Transmission System. Pursuant to Section 30.12.1 of Attachment X of the NYISO OATT, the Parties have developed and executed the EPC Agreement to govern the rates, terms, and conditions regarding the engineering, procurement, and construction of the SUFs on NYSEG's system. The EPC Agreement is based on the NYISO's *pro forma* Standard Large Generator

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. § 35.13 (2021).

<sup>3</sup> Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in Attachments X or S of the NYISO OATT, and if not defined therein, the NYISO OATT or NYISO Market Administration and Control Area Services Tariff ("Services Tariff").

Interconnection Agreement (“Pro Forma LGIA”) contained in Attachment X to the OATT and conforms to the Pro Formal LGIA except as 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 respectfully request a waiver of the Commission’s prior notice requirements<sup>4</sup> to make the EPC Agreement effective as of August 25, 2021, which is the date on which it was fully executed.

## **I. BACKGROUND**

Each of the Developers participated in the NYISO’s Class Year Study process for Class Year 2017. The Class Year Study for Class Year 2017 identified certain SUFs that are required on the Affected System owned by NYSEG – the Affected Transmission Owner – to mitigate transfer degradation between the NYISO and PJM in connection with Developer’s projects (“Common System Upgrade Facilities”). The Class Year Study determined each Developer’s share of responsibility for the estimated costs of the Common System Upgrade Facilities. As part of the Class Year process, each Developer accepted, and provided Security, for the SUFs associated with its respective project, which included accepting its respective cost allocation, and providing Security, to NYSEG to cover the Developer’s portion of the Common System Upgrade Facilities. Each Developer subsequently entered into an interconnection agreement with the NYISO and the Connecting Transmission Owner for its project.<sup>5</sup> Pursuant to Section 30.12.1 of Attachment X of the NYISO OATT, the NYISO, NYSEG, and the Developers have entered into the EPC Agreement to govern the rates, terms, and conditions pursuant to which NYSEG will engineer, procure, and construct the Common System Upgrade Facilities on its system (“EPC Services”).

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

The EPC Agreement was fully executed on August 25, 2021, by the NYISO, NYSEG, and the Developers. Consistent with NYISO practice, as accepted by the Commission,<sup>6</sup> the EPC

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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> Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) is the Connecting Transmission Owner for the interconnection of Cassadaga’s, Arkwright’s, and Ball Hill’s generation projects. The NYISO and National Grid have filed, and the Commission has accepted, non-conforming interconnection agreements for these projects. See *New York Independent System Operator, Inc. and Niagara Mohawk Power Corporation*, Letter Order, Docket No. ER17-2334-000 (October 12, 2017) (accepting executed Large Generator Interconnection Agreement for Arkwright’s wind project); *New York Independent System Operator, Inc. and Niagara Mohawk Power Corporation*, Letter Order, Docket No. ER21-2106-000 (August 5, 2021) (accepting executed Amended and Restated Large Generator Interconnection Agreement for Ball Hill’s wind project); *New York Independent System Operator, Inc. and Niagara Mohawk Power Corporation*, Letter Order, Docket No. ER20-9-000 (November 27, 2019) (accepting executed Large Generator Interconnection Agreement for Cassadaga’s wind project).

<sup>6</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).

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 an Affected Transmission Owner and SUFs on its Affected System; (iii) to allocate the parties' responsibilities for the performance of the EPC Services and payment for such performance, and (iv) to set forth the scope of work, cost estimate, and milestone schedule for the construction of the Common System Upgrade Facilities.

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

- The EPC Agreement concerns the Common System Upgrade Facilities that will be constructed, owned, and operated by NYSEG as the Affected Transmission Owner. 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 Transmission Operator, Common System Upgrade Facilities).
- 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>7</sup> For this reason, the EPC Agreement does not include the operating and maintenance requirements from the Pro Forma LGIA. The Common System Upgrade Facilities will be incorporated into NYSEG's system and operated and maintained by NYSEG in the same manner as the rest of its system.
- NYSEG will be responsible for all of the work to design, construct, install, and place in service the Common 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 Facilities. Rather, the EPC Agreement describes NYSEG's responsibilities with regard to the Common System Upgrade Facilities.<sup>8</sup>
- Each Developer has accepted, and posted Security to the Affected Transmission Owner to cover, its portion of the costs of constructing the Common System Upgrade Facilities in accordance with the Class Year Study requirements in Attachment S of the NYISO OATT. Any difference in cost between the posted Security and the final cost of constructing the facilities will be allocated in accordance with the tariff requirements for addressing such differences in Section 25.8.6 of Attachments S of the OATT. Any costs that Developers are responsible for will be allocated among Developers based on their percentage share of responsibility for the Common System Upgrade Facilities. Accordingly, the EPC Agreement establishes how the agreement will implement the OATT's cost allocation requirements for these upgrades.<sup>9</sup>

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<sup>7</sup> See EPC Agreement Article 2.2.

<sup>8</sup> See EPC Agreement Article 3.

<sup>9</sup> See EPC Agreement Article 6.

- The Parties agreed to modify the tax provisions from the Pro Forma LGIA (as located in Article 3.10 of the EPC Agreement), so that the provisions apply to Common System Upgrade Facilities, rather than to a Large Generating Facility and related Attachment Facilities and Upgrades.
- The parties agreed to modify the insurance rules (as located in Article 12.3 of the EPC Agreement) to only apply to NYSEG as it is performing all of the work under the EPC Agreement.
- The EPC Agreement does not include the provisions of the Pro Forma LGIA that govern the NYISO's provision of interconnection service to each Developer, which is addressed under the Developers' respective interconnection agreements.
- 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 August 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 engineering, procurement, and construction agreements to become effective upon the date of execution.<sup>10</sup>

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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 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).

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

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

##### **For the NYISO<sup>11</sup>**

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<sup>11</sup> The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2021) to permit service on counsel in both Washington, D.C. and Richmond, VA.

**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 August 25, 2021.

Respectfully submitted,

/s/ Michael J. Messonnier, Jr.

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Hunton Andrews Kurth LLP  
*Counsel for the  
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/s/ Amy A. Davis

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