

July 15, 2011

By Electronic Delivery

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Filing of an Executed Large Generator Interconnection Agreement Among the New York Independent System Operator, Inc., the New York Power Authority and Marble River, LLC and Request for Waiver of the 60-Day Notice Period, Docket No. ER11-____-____

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act,¹ Section 35.12 of the Commission's Regulations,² and Section 11.3 of its Large Facility Interconnection Procedures ("LFIP"), the New York Independent System Operator, Inc. ("NYISO") and the New York Power Authority ("NYPA") (collectively, "Joint Filing Parties") hereby tender for filing an Executed Large Generator Interconnection Agreement ("Interconnection Agreement") as Service Agreement No. 1774 among the NYISO, NYPA as the Transmission Owner, and Marble River, LLC ("Marble River") as the Developer (collectively, "Parties").³

The Interconnection Agreement largely conforms to the NYISO's *pro forma* Large Generator Interconnection Agreement ("LGIA") that is contained in Attachment X of the NYISO's OATT. To the limited extent the Interconnection Agreement does not conform to the *pro forma* LGIA, such exceptions are discussed in Part II of this letter, *infra*.

The Joint Filing Parties request a June 29, 2011, effective date for the Interconnection Agreement and further request waiver of the normal 60-day notice period, as discussed in Part III, below.

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. § 35.12 (2008).

³ Capitalized terms not otherwise defined in this letter have the meaning set forth in Attachments S and X of the NYISO's Open Access Transmission Tariff ("OATT").

I. Background

The Interconnection Agreement governs the interconnection of Marble River's planned 216.3 MW wind generating facility ("the Facility") to the New York State Transmission System for Energy Resource Interconnection Service ("ERIS").⁴ In the NYISO's Interconnection Queue, the project held two (2) separate queue positions: Queue Number 161 for Marble River I and Queue Number 171 for Marble River II. The Interconnection Agreement governs both queue positions.

The Facility will consist of 103 singly-fed induction generators, each 2.1 MW. The Facility will connect to NYPA's 230 kV line WD-1 between the Willis and Duley substations via six (6) 34.5 kV collector circuits from the turbine fields to the Marble River Collection Substation.⁵ Two (2) of the six (6) circuits consist entirely of underground cables. The remaining four (4) circuits consist of a combination of underground and overhead conductors.

Underground circuits are solid dielectric 34.5kV power cable. The overhead circuits run from the northeast sector of the project towards the substation in right-of-way easements. Fiber optics cables provide the communications medium between the wind farm and the Marble River Collection Substation. A more detailed description of the layout and configuration of the Facility, including the Attachment Facilities and System Upgrade Facilities, is set forth in Appendices A and C to the attached Interconnection Agreement. In addition, schematics illustrating the major components of the Facility, the Developer's Attachment Facilities and System Upgrade Facilities are included in Appendix A, Figures 1, 2, 2A, and 2B.

The Interconnection Agreement substantially conforms to the NYISO's *pro forma* Large Generator Interconnection Agreement ("LGIA") contained in Attachment X of its Open Access Transmission Tariff ("OATT"). However, as discussed in the next section, the Interconnection Agreement has been changed from the *pro forma* LGIA to reflect the unique legal status of the Connecting Transmission Owner and circumstances specific to this project that required modifications of the *pro forma* LGIA.

II. Variations From the NYISO's Pro Forma LGIA

The Agreement closely tracks the NYISO's *pro forma* LGIA. However, the parties have agreed to limited and necessary modifications from the *pro forma* agreement. These modifications are described below and are necessary to reflect (A) NYPA's unique legal status as a power authority governed under New York's Power Authority Act;⁶ (B) the unique existence of "common" System Upgrade Facilities shared by Marble River and certain other Class Year

⁴ The Developer has elected only ERIS and not Capacity Resource Interconnection Service ("CRIS").

⁵ The Marble River Collection Substation is an outdoor air insulated, single bus substation being built adjacent to the Point of Interconnection.

⁶ N.Y. Public Authorities Law §§ 1000-1017.

2006 Developers; and (C) necessary ministerial revisions. All of the Parties to the Interconnection Agreement agree to these changes.

The Commission has accepted changes to the *pro forma* LGIA terms where, as here, there are unique circumstances associated with the interconnections, including “reliability concerns, novel legal issues or other unique factors.”⁷ In fact, many of the modifications to the *pro forma* LGIA in this Interconnection Agreement are substantially similar or identical to those previously accepted by the Commission.⁸ The Joint Filing Parties respectfully request that the Commission similarly permit these limited variations from the *pro forma* LGIA in light of the unique factors and novel legal issues explained below. For ease of reference, the Joint Filing Parties have included a blackline of the Interconnection Agreement against the NYISO’s *pro forma* LGIA to highlight these changes.

A. Variations to Reflect NYPA’s Unique Legal Status

NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York (the “State”), organized under the laws of the State, and operating pursuant to Title 1 of Article 5 of the New York Public Authorities Law. As a result, certain limited variations from the *pro forma* LGIA are necessary to reflect NYPA’s unique legal status as a public authority governed under the New York Public Authorities Law.

1. Compliance with New York’s Labor Law

Section 5.2 of the *pro forma* LGIA lists the general conditions applicable to the Developer’s Option to Build. The Parties have agreed to amend this list of conditions by adding a statement that the 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.⁹ The Commission has previously accepted this change to the *pro forma* LGIA.¹⁰

⁷ See *PJM Interconnection, LLC*, 111 FERC ¶ 61,163 at PP 10-11, *reh’g denied*, 112 FERC ¶ 61,282 (2005).

⁸ See, e.g., *New York Independent System Operator, Inc. and the New York Power Authority*, Letter Order, Docket No. ER08-699-000 (May 16, 2008); *New York Independent System Operator, Inc. and the New York Power Authority*, Letter Order, Docket No. ER08-861-000 (May 27, 2008).

⁹ As a result of the Parties’ proposed modification to the list of conditions applicable to the Developer’s Option to Build in Section 5.2 of the Interconnection Agreement, such modification added a new subsection (3) to Section 5.2 and correspondingly required the remaining subsections of Section 5.2 to be renumbered accordingly.

¹⁰ See *New York Independent System Operator, Inc. and New York Power Authority*, Letter Order, Docket No. ER08-1507-000 (November 4, 2008) and *New York Independent System Operator, Inc. and New York Power Authority*, Letter Order, Docket No. ER11-2654-000 (Feb. 9, 2011).

2. *NYPA's Eminent Domain Authority*

Under Section 1007 of the New York Public Authorities Law, 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 such statute. The Parties have proposed to modify Article 5.13 of the Interconnection Agreement to make it clear that NYPA can only use efforts to acquire property by eminent domain if and to the extent consistent with State law (*i.e.*, New York Public Authorities Law § 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 State law. The Commission has also previously accepted this specific variation to the *pro forma* LGIA.¹¹

3. *Security at NYPA Facilities*

The Parties have also proposed to add a provision to Appendix D to reflect the unique security requirements mandated by the State of New York at NYPA's facilities. Specifically, the Parties have added language that requires all personnel working in NYPA's facilities to undergo security background checks prior to entering and working in such facilities. As with the variations discussed in Parts II.B.1 and II.B.2, *supra*, the Commission has also accepted this variation from the *pro forma* LGIA.¹²

B. Variations to Reflect the Unique Existence of Common System Upgrade Facilities

The Facility completed its Interconnection Facilities Study ("Class Year Study") as a member of Class Year 2006.¹³ Many of the System Upgrade Facilities ("SUFs") identified in that study as necessary for the Facility were also required for three (3) other wind projects in Class Year 2006 and are referred to herein in the attached Interconnection Agreement as "Common SUFs." The cost of those Common SUFs has been shared, pursuant to the provisions in Attachment S of the NYISO OATT, among all five of the Class Year 2006 projects requiring the Common SUFs: Marble River I, Marble River II, Noble Altona Windpark, LLC ("Altona"), Noble Ellenburg Windpark, LLC ("Ellenburg"), and Noble Clinton Windpark I, LLC ("Clinton").

¹¹ *See id.*

¹² *See id.* at n.6.

¹³ Under Attachment S, the NYISO performs Interconnection Facilities Study for a group of eligible projects to identify the System Upgrade Facilities required for each project that is included in a given "Class Year" cluster. Each project in a particular Class Year shares in the then currently available electrical capability of the transmission system and each shares in the cost of System Upgrade Facilities based on the *pro rata* impact of its project.

Developers of two of the three (3) projects sharing in those Common SUFs –Ellenburg and Clinton – elected, under the Option to Build, to construct a significant portion of the Common SUFs. The remaining portion of the construction activity was completed by NYPA. A detailed description of the Common SUFs and the division of construction responsibilities between Ellenburg, Clinton and NYPA is described in Appendix A.III. These are the same as the descriptions stated in the Interconnection Agreements for Ellenburg, Clinton, all of which have been accepted by FERC.¹⁴

As a result of the need for the above-referenced Common SUFs, and their construction by one Developer, several modifications to the *pro forma* LGIA are required in order to account for the unique invoicing, construction responsibility, and cost allocation issues that arise where several Developers share Common SUFs.

1. Invoicing for Common SUFs

Article 12 of the standard LGIA establishes the process by which a Connecting Transmission Owner will invoice a Developer for services and equipment provided to the Developer by the Transmission Owner. However, the language in the *pro forma* LGIA does not address a situation as exists here, where System Upgrade Facilities are required for several projects, some of which are sponsored by different Developers, or where some of the Developers are constructing the System Upgrade Facilities required by a larger group of projects. As a result, the Interconnection Agreement establishes a detailed invoicing and payment process that is necessary due to the specific and unique circumstances of this project. These details are set forth in an additional appendix not contemplated by the *pro forma* LGIA – “Appendix H, Invoicing and Payment.” Note that construction of Common SUFs has been completed and all Common SUF costs have been paid in satisfaction to NYPA by Developer for NYPA-related work.

Appendix H in the attached Interconnection Agreement requires NYPA to issue consolidated monthly invoices to all projects that trigger the Common SUFs. The NYPA invoices, as directed by Appendix H, include charges for (1) each project’s respective share of work performed by NYPA for Common SUFs, and (2) each project’s respective share of work performed by Ellenburg and Clinton to construct Common SUFs; and (3) work performed by NYPA for Attachment Facilities and/or non-Common SUFs for each individual project.¹⁵ Each project’s share of the costs related to Common SUFs is based on the cost allocation percentages

¹⁴ See *New York Independent System Operator, Inc. and the New York Power Authority*, Letter Order, Docket No. ER08-699-000 (issued May 16, 2008); *New York Independent System Operator, Inc. and the New York Power Authority*, Letter Order, Docket No. ER08-861-000 (issued May 27, 2008); and *New York Independent System Operator, Inc. and the New York Power Authority*, Letter Order, Docket No. ER08-1361-000 (issued Sept. 24, 2008).

¹⁵ Ellenburg and Clinton are required under Appendix H to provide monthly invoices to NYPA for all work those two parties perform related to Common SUF.

determined by the NYISO in the Class Year 2006 Facilities Study. Attachment H also contains a mechanism whereby Ellenburg and Clinton are reimbursed for the costs they incur related to the Common SUFs that exceed their allocated share.

All of the impacted parties took an active role in the development of Attachment H, and the same invoicing provisions were included in each of the impacted project's Interconnection Agreements, all of which have been accepted by the Commission with these non-conforming provisions.¹⁶ The invoicing process contained in Attachment H is beneficial because it allows all costs related to the construction of Attachment Facilities and System Upgrade Facilities to be invoiced by a single party. This allows costs to be properly allocated among the Developers.

For these reasons, the Joint Filing Parties respectfully request that the Commission also accept Appendix H in this Interconnection Agreement, as well as a reference to Appendix H that the Parties incorporated into the body of the Interconnection Agreement at Section 12.1.

2. Trigger Dates For Common System Upgrade Facilities

As described above, Noble Ellenburg and Clinton were tasked with constructing a portion of the Common SUFs that are required for a total of five (5) projects from Class Year 2006 (two (2) of which were Marble River I and Marble River II). Construction of the Common SUFs was required to be completed before the projects of the non-constructing Developers can become operational. As a result, the Parties identified a series of construction activities to be completed by Ellenburg and Clinton by specified Trigger Dates. Under certain circumstances, if Ellenburg and Clinton were unable to meet a Trigger Date, NYPA and the NYISO had the right to require Ellenburg and Clinton to cease all existing efforts to construct or develop the Common SUFs and had the right to transfer any such rights to the Transmission Owner or Transmission Owner's designee.

The details concerning these provisions are contained in Appendix B.III to the Interconnection Agreement. The Joint Filing Parties request that the Commission accept these provisions, as it did with such provisions in the Altoona, Ellenberg, and Clinton Interconnection Agreements.¹⁷

C. Ministerial Revisions

Finally, the Joint Filing Parties have corrected certain formatting and have made other ministerial revisions, including (i) adding a reference to OATT Attachment X in Article 1 to clarify the specific section of the NYISO OATT in which Section 30.1.0 appears; (ii) replacing the reference in Section 9.6.3 to NPCC criteria A-3 with a reference to the NPCC NPCC Regional Reliability Reference Directory that has replaced NPCC criteria A-3; (iii) deleting the

¹⁶ See *id.* at n. 8.

¹⁷ See *id.* at n.12.

reference in Appendix A to System Deliverability Upgrade Facilities since there are no System Deliverability Upgrade Facilities covered by this Interconnection Agreement; (iv) inserting the word, “Connecting” to clarify the term “Transmission Owners” that appears on page D-1; and (v) use of the singular rather than the plural of “standard” in Section A.ii of Appendix G. These changes have no impact on the substantive provisions of the *pro forma* LGIA, and most have been previously accepted by the Commission.¹⁸

III. Effective Date and Request for Wavier of the 60-Day Notice Period

The Joint Filing Parties respectfully request that the Commission accept this Interconnection Agreement with a June 29, 2011 effective date, which is the date of execution. The Commission has previously permitted interconnection agreements to become effective on the date of execution, even when that date pre-dates the date that an interconnection agreement is filed. Accordingly, the parties request that the Commission grant a waiver of its prior notice requirements to the extent necessary to accommodate this requested effective date.

IV. Communications and Correspondence

Communications regarding this filing should be directed to:

For the NYISO

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¹⁸ See, e.g., *id.* at n.6, n.8.

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V. Documents Submitted

The NYISO submits the following documents:

- this filing letter;
- a clean version of the Interconnection Agreement (Attachment I); and
- a blackline version showing the Interconnection Agreement's changes from the body of the NYISO's *pro forma* LGIA and the addition of Appendix H (Attachment II).

VI. Service

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 Public documents included with this filing will be posted on the NYISO's website at www.nyiso.com.

VII. Conclusion

Wherefore, the NYISO respectfully requests that the Commission accept the attached Interconnection Agreement effective as of June 29, 2011.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan

Counsel for the

New York Independent System Operator, Inc.

/s/Andrew F. Neuman

Andrew F. Neuman

Special Counsel for the New York Power Authority