

February 25, 2022

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., Niagara Mohawk Power Corporation d/b/a National Grid, and NextEra Energy Transmission New York, Inc.; Request for Waiver of 60-Day Notice Period; Docket No. ER22-____-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 Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") (together the "Joint Filing Parties") hereby tender for filing an executed Engineering, Procurement, and Construction Agreement entered into by the NYISO, National Grid, 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. 2688 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 Project will also have impacts on National Grid'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 National Grid'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.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. § 35.13 (2022).

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").

The Joint Filing Parties respectfully request that the Commission accept the EPC Agreement for filing. In addition, as described in Part III 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 February 18, 2022, 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.⁵

The Transmission Interconnection Studies for the Transmission Project also identified National Grid and Rochester Gas and Electric Corp. ("RG&E") 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 National Grid's system are classified as "Affected System Upgrade Facilities" in the EPC Agreement. They will be constructed by National Grid pursuant to the EPC Agreement and then owned, operated, and maintained by National Grid. Additional details concerning the Affected System Upgrade Facilities can be found in Appendix A of the EPC Agreement. The NYISO and NextEra have entered into a

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).

⁵ See *New York Independent System Operator, Inc. and New York Power Authority*, Letter Order, Docket No. ER21-1366-000 (May 10, 2021) (accepting Transmission Project Interconnection Agreement for Transmission Project among NYISO, NYPA, and NextEra); *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Letter Order, Docket No. ER21-2534-000 (September 23, 2021) (accepting Transmission Project Interconnection Agreement for Transmission Project among NYISO, NYSEG, and NextEra).

separate engineering, procurement, and construction agreement with RG&E for the Network Upgrade Facilities identified on its system.⁶

II. DESCRIPTION OF THE EPC AGREEMENT

The EPC Agreement was fully executed on February 18, 2022, by the NYISO, National Grid, and NextEra. Consistent with NYISO practice, as accepted by the Commission,⁷ 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 that will be constructed by NextEra, as the Transmission Developer, and the Affected System Upgrade Facilities that will be constructed, owned, operated, and maintained by National Grid, 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 Affected System 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.⁸ 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 National Grid's system and operated and maintained by National Grid in the same manner as the rest of its system.
- National Grid 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

⁶ See *New York Independent System Operator, Inc. and Rochester Gas and Electric Corporation*, Letter Order, Docket No. ER21-2546-000 (September 24, 2021) (accepting EPC Agreement concerning the Transmission Project among the NYISO, RG&E, and NextEra).

⁷ 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).

⁸ See EPC Agreement Article 2.2.

perform work concerning Attachment Facilities or Stand Alone System Upgrade Facilities. Rather, the EPC Agreement describes National Grid's responsibilities with regard to the Affected System Upgrade Facilities.⁹

- The Transmission Project was selected by the NYISO in its Public Policy Process and, as described above, the NYISO and NextEra have entered into 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.¹⁰
- 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.¹¹ 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.¹² 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.¹³
- 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,¹⁴ the EPC Agreement incorporates the standard Security and related cost allocation requirements from Attachment S of the OATT that are applicable to upgrades.¹⁵ The Commission has accepted the incorporation of these requirements in the NYISO's Transmission Project Interconnection Agreements

⁹ See EPC Agreement Article 3.

¹⁰ See Articles 3.11, 3.14.

¹¹ OATT Section 31.4.12.3.

¹² OATT Section 31.4.12.3.1.3; 31.7 Appx. D (Public Policy Transmission Planning Process Development Agreement) Section 8.3.

¹³ See EPC Agreement Article 2.3.2.

¹⁴ 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."

¹⁵ See EPC Agreement Articles 2.4.1, 2.4.2, 6.3, 6.4.

and related EPC Agreements.¹⁶ 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.¹⁷ 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.¹⁸ NextEra and National Grid 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.¹⁹ 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 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 February 18, 2022, 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.²⁰

¹⁶ 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).

¹⁷ 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.

¹⁸ See EPC Agreement Article 6.4; see also OATT Attachment S Section 25.8.6.

¹⁹ See EPC Agreement Articles 6.4.2 and 6.4.3.

²⁰ 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

V. COMMUNICATIONS AND CORRESPONDENCE

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

For the NYISO²¹

Robert F. Fernandez, Executive Vice
President & General Counsel
Karen Georgenson Gach, Deputy General
Counsel
*Sara B. Keegan, Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6000
Fax: (518) 356-4702
skeegan@nyiso.com

*Ted J. Murphy
Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue, NW
Washington, D.C. 20037
Tel: (202) 955-1500
Fax: (202) 778-2201
tmurphy@hunton.com

*Michael J. Messonnier Jr.
Hunton Andrews Kurth LLP
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 344-7999
mmessonnier@hunton.com

For Niagara Mohawk Power Corporation d/b/a National Grid

*Christopher J. Novak
Senior Counsel
National Grid
40 Sylvan Road
Waltham, MA 02451
Tel: 781-907-2112
Fax: 781-296-8091
Chris.Novak@nationalgrid.com

*Designated to receive service.

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).

²¹ The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2022) to permit service on counsel in both Washington, D.C. and Richmond, VA.

VI. 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).

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 February 18, 2022.

Respectfully submitted,

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

/s/ Christopher J. Novak
Christopher J. Novak
Counsel for
Niagara Mohawk Power Corporation d/b/a
National Grid

cc: Janel Burdick
Robert Fares
Jette Gebhart
Jaime Knepper
David Morenoff
Frank Swigonski
Gary Will

Matthew Christiansen
Jignasa Gadani
Leanne Khammal
Kurt Longo
Douglas Roe
Eric Vandenberg