

THIS FILING LETTER DOES NOT CONTAIN ANY CEII. ATTACHMENTS I, II, and IV DO NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT III INCLUDES DIAGRAMS FOR WHICH CEII DESIGNATION IS REQUESTED IN PART IV BELOW, AND IS SUBMITTED SEPARATELY.

July 14, 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 Large Generator Interconnection Agreement for the Excelsior Energy Center Project Among the New York Independent System Operator, Inc., the New York Power Authority, and Excelsior Energy Center, LLC; Request for Critical Energy Infrastructure Information Designation; Request for Waiver of the 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 the New York Power Authority ("NYPA") (together, the "Joint Filing Parties") hereby tender for filing an executed Large Generator Interconnection Agreement for the Excelsior Energy Center Project (NYISO Queue No. 721) among the NYISO, NYPA, as the Connecting Transmission Owner, and Excelsior Energy Center, LLC ("Excelsior"), as the Developer (the "Agreement").³ The Agreement is labeled as Service Agreement No. 2689 under the NYISO's Open Access Transmission Tariff ("OATT").

The Joint Filing Parties respectfully request that the Commission accept the Agreement for filing. With the limited exceptions described in Part II of this letter, the Agreement conforms to the NYISO's *pro forma* Large Generator Interconnection Agreement ("Pro Forma LGIA") that is contained in Attachment X to the OATT. Further, 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 Agreement effective as of June 29, 2022, which is the date of its execution. Finally,

¹ 16 U.S.C. § 824d.

² 18 C.F.R. § 35.13 (2021).

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

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).

as described in Part IV of this letter, NYPA requests that the diagrams included in the Agreement be protected from disclosure as Critical Energy Infrastructure Information.

I. Background

Excelsior is constructing a 280 MW solar powered facility to be located in Genesee County, New York (the “Facility”). Additional details regarding the Facility can be found in Appendix C of the Agreement. The Facility will interconnect to certain facilities of NYPA that are part of the New York State Transmission System. The Point of Interconnection will be at NYPA’s new 345 kV Byron Substation. Appendix A-1 of the Agreement includes a one-line diagram showing the Point of Interconnection.

The NYISO’s Interconnection Facilities Studies for the Facility determined that certain System Upgrade Facilities are required to be constructed at NextEra Energy Transmission New York, Inc.’s (“NEETNY”) Dysinger Substation and Rochester Gas and Electric Corporation’s (“RG&E”) Sta 255 Substation. The Interconnection Facilities Studies identified these substations as Affected Systems impacted by the interconnection of the Facility. Pursuant to Section 30.3.5 of Attachment X of the OATT, the NYISO and Excelsior will enter into engineering, procurement, and construction agreements with NEETNY and RG&E concerning the construction of these System Upgrade Facilities for the Affected Systems. The NYISO will file these agreements at the Commission for its acceptance upon their completion and execution.

II. The Agreement Closely Conforms to the Pro Forma LGIA Contained in Attachment X of the OATT

The Agreement was fully executed on June 29, 2022, by the NYISO, NYPA, and Excelsior. The Agreement closely follows the language in the Pro Forma LGIA contained in Attachment X of the OATT. However, the Agreement does contain limited variations from the Pro Forma LGIA that are described in this Part II. The Joint Filing Parties submit that these changes specified below satisfy the Commission’s standard for variations from the Pro Forma LGIA, because unique circumstances exist that require a non-conforming agreement.⁵ Therefore, the Joint Filing Parties respectfully request that the Commission accept these limited non-conforming changes.

A. Variations to Reflect NYPA’s Unique Legal Status

(1) Modifications to Ensure Compliance with New York’s Labor Laws

Article 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

⁵ See, e.g., *PJM Interconnection, LLC*, 111 FERC ¶ 61,163 at PP 10-11, *reh’g denied*, 112 FERC ¶ 61,282 (2005).

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. The Commission has previously accepted this change to the Pro Forma LGIA.⁶

(2) Modification to Address NYPA's Eminent Domain Authority

NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York, organized under the laws of New York, and operating pursuant to Title 1 of Article 5 of the New York Public Authorities Law ("PAL"). Under Section 1007 of the PAL, 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 this statute. The parties have agreed to modify Article 5.13 of the Agreement to make it clear that NYPA can only use efforts to acquire property by eminent domain if and to the extent consistent with New York law (including PAL Section 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 law. The Commission has previously accepted this change to the Pro Forma LGIA.⁷

B. Modifications to Address NYPA's Capability to Implement Phasor Measurement Unit Requirements

Article 9.10 of the Pro Forma LGIA requires Developers to install, at their expense, a phasor measurement unit ("PMU") on the low side of the step-up transformer, along with related PMU equipment, and to collect and transmit PMU data to the NYISO and to the Connecting Transmission Owner. The NYISO introduced the PMU requirements in the Pro Forma LGIA in 2017 to enhance the NYISO's ability to monitor the transmission grid for the New York Control Area and to determine real-time grid stability margins.⁸ The PMU requirements only apply to certain Large Facilities that have completed a Class Year following Class Year 2017 and are being implemented for the first time for certain Class Year 2019 projects, including for the Facility.

As applied to the Facility, these rules would require that Excelsior install a PMU on the low side of the transformer and then transmit the PMU data via NYPA's system. However, in light of NYPA's existing communications path capabilities and potential cybersecurity and other

⁶ See, e.g., *New York Independent System Operator, Inc. and New York Power Authority*, Letter Order, Docket No. ER15-1895-000 (July 16, 2015) (accepting NYPA-related revisions); *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER11-2654-000 (February 9, 2011); *New York Independent System Operator, Inc. and New York Power Authority*, Letter Order, Docket No. ER08-1507-000 (November 4, 2008).

⁷ See *id.*

⁸ See *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER18-80-000 (December 7, 2017) (accepting NYISO's tariff revisions to improve its interconnection process, including the insertion of PMU requirements in Article 9.10 of the Pro Forma LGIA).

logistical concerns, the parties agreed that NYPA will instead install, at Excelsior's expense, and will own and maintain a PMU at the high side of the step-up transformer, along with related communication equipment at NYPA's facilities. NYPA will be responsible for transmitting the PMU data to the NYISO. Accordingly, the parties have modified Article 9.10 of the Agreement to accommodate NYPA's capability to implement the PMU requirements.

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

The Joint Filing Parties request an effective date of June 29, 2022, for the 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 interconnection agreements to become effective upon the date of execution.⁹

IV. Request for CEII Treatment

Pursuant to Sections 388.112 and 388.113 of the Commission's regulations,¹⁰ NYPA requests that the one-line diagrams included in Appendix A of the Agreement and labelled as Figures A-1, A-2, A-3, and A-4 be protected from disclosure as Critical Energy Infrastructure Information ("CEII").¹¹ The diagrams contain detailed, one-line schematics of NYPA's facilities that, if disclosed, could pose a threat to the security and the reliability of the New York State bulk power system. The diagrams provide 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.

⁹ See, e.g., *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 as requested by the parties); *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).

¹⁰ 18 C.F.R. §§ 388.112 and 388.113 (2021).

¹¹ As required by Section 388.113(d)(1)(i) of the Commission's regulations, NYPA has described in the filing letter how the one-line diagrams in Appendix A satisfy 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 pages of the Agreement that contain critical energy infrastructure information are labelled as including CEII and marked DO NOT RELEASE, and a Public and CEII version of the 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), NYPA requests that the Commission designate the CEII material submitted on July 14, 2022, 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.

The diagrams, in NYPA's assessment, reveal 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 diagrams 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 these schematics reveal 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 Agreement included in this filing.

The Joint Filing Parties are electronically submitting a non-public version of this filing. The diagrams are included only in the non-public version of the Agreement in the filing. The non-public diagrams are marked: **"FIGURE CONTAINS CEII – DO NOT RELEASE PURSUANT TO 18 C.F.R. §§ 388.112 and 388.113."** The non-public diagrams 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."**¹² Placeholders have been included in place of the non-public diagrams in the public version of the Agreement.

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

¹² See Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff (Apr. 14, 2017) (unreported).

V. Communications and Correspondence

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

For the NYISO¹³

Robert E. 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@huntonak.com

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

For New York Power Authority

Lori A. Alesio, Interim Executive Vice President & General Counsel
*Nathan D. Markey, Principal Attorney
New York Power Authority
123 Main Street
White Plains, NY 10601
Tel: (914) 390-8238
Fax: (914) 390-8038
Nathan.Markey@nypa.gov

*Designated to receive service.

¹³ 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.

VI. Documents Submitted

The Joint Filing Parties submit the following documents with this filing letter:

- A clean Public version of the Agreement (Attachment I);
- A blacklined Public version of the Agreement showing the changes from the Pro Forma LGIA (Attachment II);
- A clean CEII version of the Agreement (Attachment III); and
- The signature pages for the Agreement (Attachment IV).

VII. Service

A complete copy of this filing will be posted on the NYISO's website at www.nyiso.com. The NYISO will send an electronic link to this filing to the official representative of each of its customers and to each participant on its stakeholder committees. In addition, the NYISO will send an electronic copy of this filing to the New York Public Service Commission and to the New Jersey Board of Public Utilities.

VII. Conclusion

Wherefore, the Joint Filing Parties respectfully request that the Commission accept the Agreement for filing with an effective date of June 29, 2022.

Respectfully submitted,

s/ Sara B. Keegan

Sara B. Keegan

Counsel for the

New York Independent System Operator, Inc.

s/ Nathan D. Markey

Nathan D. Markey

Counsel for

New York Power Authority

cc:	Janel Burdick	Leanne Khammal
	Douglas Roe	Matthew Christiansen
	Jaime Knepper	Eric Vandenberg
	Robert Fares	Kurt Longo
	Gary Will	Jignasa Gadani
	David Morenoff	Adria Woods
	Jette Gebhart	