

July 24, 2023

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 for the Excelsior Energy Center Project (NYISO Queue Position No. 721) Among the New York Independent System Operator, Inc., Rochester Gas and Electric Corporation, and Excelsior Energy Center, LLC; Request for Waiver of the 60-Day Notice Period; Docket No. ER23-____-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 in connection with the Excelsior Energy Center solar project (NYISO Queue Position No. 721) entered into by the NYISO, RG&E, as the Affected System Operator, and Excelsior Energy Center, LLC ("Excelsior"), as the Developer (the "EPC Agreement").³ The EPC Agreement is labeled as Service Agreement No. 2774 under the NYISO's Open Access Transmission Tariff ("OATT").

Excelsior is constructing a 280 MW solar powered facility (the "Large Generating Facility") to be located in Genesee County, New York that will interconnect with the transmission facilities of the New York Power Authority ("NYPA"). The NYISO's Class Year Interconnection Facilities Study for Class Year 2019 ("Class Year Study") determined that this interconnection will have impacts on RG&E's transmission system ("Affected System") and identified RG&E as an Affected System Operator. The Class Year Study identified certain System Upgrade Facilities that are required on RG&E's system for the Large Generating Facility to interconnect reliably to the New York State Transmission System ("Affected System Upgrade Facilities").

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 Attachments S or X of the NYISO OATT, and if not defined therein, in the NYISO OATT and NYISO Market Administration and Control Area Services Tariff ("Services Tariff").

Pursuant to Section 30.3.5 of Attachment X of the NYISO OATT, the NYISO, RG&E, and Excelsior entered into the EPC Agreement to govern the rates, terms, and conditions regarding the engineering, procurement, and construction of the Affected System Upgrade Facilities. Pursuant to the requirements in the NYISO's OATT,⁴ 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 and conforms to the Pro Forma LGIA, as modified to address only the engineering, procurement, and construction of the Affected System Upgrade Facilities 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 requirements⁵ to make the EPC Agreement effective as of July 10, 2023, which is the date of its full execution.

I. BACKGROUND

The Large Generating Facility participated in the NYISO's Class Year Study for Class Year 2019. The Large Generating Facility will interconnect to certain facilities of NYPA that are part of the New York State Transmission System via NYPA's new 345 kV Byron Substation. The NYISO, NYPA, and Excelsior fully executed a Large Generator Interconnection Agreement on June 29, 2022 ("Interconnection Agreement"). The NYISO and NYPA jointly filed, and the Commission accepted, this Large Generator Interconnection Agreement with OATT Service Agreement No. 2689.⁶

The Class Year Study for Class Year 2019 identified certain Affected System Upgrade Facilities that are required on the Affected System owned by RG&E – the Affected System Operator – to reliably interconnect the Large Generating Facility to the New York State Transmission System. Section 30.3.5 of the NYISO's Large Facility Interconnection Procedures in Attachment X to the NYISO OATT establishes the requirements for the NYISO and Developer to enter into an engineering, procurement, and construction agreement with an Affected System Operator for upgrades on the Affected System required to reliably interconnect a generating facility.⁷ Pursuant to the requirements in Section 30.3.5, the NYISO developed the EPC Agreement using the Pro Forma LGIA, as modified to address only the engineering,

⁴ See OATT Attach. X § 30.3.5.

⁵ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, clarified, 65 FERC ¶ 61,081 (1993).

⁶ See *New York Independent System Operator, Inc., et al.*, Letter Order, Docket No. ER22-2376-000 (Aug. 31, 2022).

⁷ See OATT Attach. X § 30.3.5. ("Upon completion of a Class Year Study in which a Developer accepts its Project Cost Allocation for System Upgrade Facilities and/or System Deliverability Upgrades and funds or commits to fund such upgrades as required by Attachment S, the Developer and Affected System Operator(s) will cooperate with the ISO in development of an Engineering, Procurement and Construction to provide for the engineering, procurement and construction of the System Upgrade Facilities and/or System Deliverability Upgrades on the Affected System.")

procurement, and construction of the Affected System Upgrade Facilities.⁸ The EPC Agreement will govern the rates, terms, and conditions pursuant to which Excelsior will engineer, procure, and construct the Affected System Upgrade Facilities on RG&E's system ("EPC Services").

II. DESCRIPTION OF THE EPC AGREEMENT

The EPC Agreement was fully executed on July 10, 2023, by the NYISO, RG&E, and Excelsior. Pursuant to Section 30.3.5 of Attachment X to the NYISO OATT, the EPC Agreement is based on, and conforms to, the Pro Forma LGIA, except as modified to address only the engineering, procurement, and construction of the Affected System Upgrade Facilities and to address certain unique circumstances. In particular, the Pro Forma LGIA has been modified: (i) to reflect the different purpose of the EPC Agreement, (ii) to reflect that the EPC Agreement concerns an Affected System Operator and System Upgrade Facilities 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 Affected System Upgrade Facilities.

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

- The EPC Agreement concerns the Affected System Upgrade Facilities that will be constructed by Excelsior 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, Affected 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.⁹ 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.¹⁰
- Excelsior 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

⁸ See OATT Attach. X § 30.3.5. ("The Engineering, Procurement and Construction Agreement shall be consistent with the NYISO's Commission-approved Standard Large Generator Interconnection Agreement located in Appendix 2 to Attachment X of the OATT, modified to address only the engineering, procurement and construction of the System Upgrade Facilities and/or System Deliverability Upgrades.")

⁹ See EPC Agreement Article 2.2.

¹⁰ See EPC Agreement Article 3.7.

responsibilities to perform work concerning Attachment Facilities or Stand Alone System Upgrade Facilities. Rather, the EPC Agreement describes Excelsior's responsibilities with respect to the EPC Services.¹¹

- RG&E and Excelsior 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 Affected System Upgrade Facilities, rather than to a Large Generating Facility and related Attachment Facilities and Upgrades.
- The Security and invoicing provisions have been modified to be consistent with the requirements concerning cost responsibility for the Affected System Upgrade Facilities in Attachment S of the NYISO OATT and to clarify the application of the Security.¹²
- The EPC Agreement does not include the provisions of the Pro Forma LGIA that govern the NYISO's provision of interconnection service to Excelsior, which is addressed under the Interconnection Agreement.
- As the parties have already completed the interconnection studies necessary to determine the impact of the interconnection of the Large Generating Facility, 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, updated cross-references, and revisions agreed upon among the NYISO, RG&E, and Excelsior that are consistent with the terms of the EPC Agreement.

III. PROPOSED EFFECTIVE DATE AND REQUEST FOR WAIVER OF THE 60-DAY NOTICE PERIOD

The Joint Filing Parties request an effective date of July 10, 2023, 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 such agreements to become effective upon the date of execution.¹³

¹¹ See EPC Agreement Article 3.

¹² See EPC Agreement Articles 6 and 7.

¹³ 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 the 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

IV. Communications and Correspondence

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

For the NYISO¹⁴

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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).

¹⁴ 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.

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

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 State Public Service Commission and to the New Jersey Board of Public Utilities.

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VII. Conclusion

Wherefore, the Joint Filing Parties respectfully request that the Commission accept the EPC Agreement for filing with an effective date of July 10, 2023.

Respectfully submitted,

s/ Sara B. Keegan

Sara B. Keegan

New York Independent System Operator, Inc.

s/ Michael J. Messonnier Jr.

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/s/ Danielle Mechling

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