

September 29, 2023

By Electronic Delivery

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

Re: Filing of an Executed Engineering, Procurement, and Construction Agreement for Upgrades in Connection with the Alle Catt II Wind Project Among the New York Independent System Operator, Inc., New York States Electric & Gas Corporation, and Alle-Catt Wind Energy LLC; Request for Waiver of 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 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") in connection with the Alle Catt II Wind project (NYISO Queue Position No. 596). The EPC Agreement has been entered into by the NYISO, NYSEG, as the Affected System Operator, and Alle-Catt Wind Energy LLC ("Alle-Catt"), as the Developer (all parties to the agreement collectively, the "Parties").³ The EPC Agreement is labeled as Service Agreement No. 2794 under the NYISO's Open Access Transmission Tariff ("OATT").

Alle-Catt is developing a 340.2 MW wind powered electricity generating facility located in Cattaraugus County, New York (the "Facility"). The NYISO's Class Year Interconnection Facilities Study ("Class Year Study") for Class Year 2019 determined that certain upgrades on NYSEG's system are required to reliably interconnect the Facility to the New York State Transmission System ("Affected System Upgrade Facilities"). The Parties have developed and executed the EPC Agreement to govern the rates, terms, and conditions regarding the engineering, procurement, and construction of the Affected System Upgrade Facilities on NYSEG'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 and conforms to the Pro Formal LGIA except as 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 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").

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 requirements⁴ to make the EPC Agreement effective as of September 15, 2023, which is the date on which it was fully executed.

I. BACKGROUND

The Facility to be developed by Alle-Catt will interconnect to certain facilities of Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") that are part of the New York State Transmission System. The NYISO, National Grid, and Alle-Catt executed an interconnection agreement on November 23, 2022 for the Facility that conforms to the Pro Forma LGIA.

The NYISO's Class Year Study for Class Year 2019 identified certain Affected System Upgrade Facilities that are required on the Affected System owned by NYSEG – the Affected System Operator – to reliably interconnect the Facility to the New York State Transmission System. Pursuant to Section 30.3.5 of Attachment X of the NYISO OATT, the NYISO, NYSEG, and Alle-Catt have entered into the EPC Agreement to govern the rates, terms, and conditions pursuant to which Alle-Catt will engineer, procure, and construct the Affected System Upgrade Facilities on NYSEG's system ("EPC Services"). National Grid, as the Connecting Transmission Owner, is not a Party to this EPC Agreement, but has signed the EPC Agreement solely for the limited purpose of acknowledging that its representatives have read the EPC Agreement and are apprised of its terms.

II. DESCRIPTION OF THE EPC AGREEMENT

The EPC Agreement was fully executed on September 15, 2023, by the NYISO, NYSEG, Alle-Catt and, for the limited purposes of acknowledging its review of the EPC Agreement, National Grid. Pursuant to Section 30.3.5. of Attachment X of the OATT,⁵ 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 an Affected System Operator 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 Affected System Upgrade Facilities.

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 OATT Section 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. 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. . . .").

As described below, the EPC Agreement conforms to the Pro Forma LGIA, except as modified to address only the engineering, procurement, and construction of the Affected System Upgrade Facilities. Accordingly, the Joint Filing Parties respectfully request that the Commission accept the EPC Agreement for filing.

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 Alle-Catt and owned, operated, and maintained by NYSEG 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.⁶ 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 NYSEG's system and operated and maintained by NYSEG in the same manner as the rest of its system.
- Alle-Catt 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 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 have been modified in the EPC Agreement to describe Alle-Catt's responsibilities with respect to the EPC Services.⁷
- 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.⁸
- 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 Affected System Upgrade Facilities, rather than to a Large Generating Facility and related Attachment Facilities and Upgrades, and to update references to currently applicable IRS notices.
- The EPC Agreement does not include the provisions of the Pro Forma LGIA that govern the NYISO's provision of interconnection service to a Developer, which is addressed under Alle-Catt's interconnection agreement for the Facility.

⁶ See EPC Agreement Article 2.2.

⁷ See EPC Agreement Articles 3-4, 19.

⁸ See EPC Agreement Articles 6-8.

- As the parties have already completed the interconnection studies necessary to determine the impact of the interconnection of the 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 all of the Parties that are consistent with the terms of the EPC Agreement.

These modifications are similar to the modifications for other engineering, procurement, and construction agreements that the NYISO has filed with, and that have been accepted by, the Commission.⁹

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

The Joint Filing Parties request an effective date of September 15, 2023, for the EPC Agreement, which is the date of its full execution. The Joint Filing Parties respectfully requests 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.¹⁰

⁹ See, e.g., *New York Independent System Operator, Inc. and Central Hudson Gas & Electric Corporation*, Letter Order, Docket No. ER23-15-000 (November 15, 2022); see also, e.g., *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER22-1007-000 (April 8, 2022); *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Letter Order, Docket No. ER15-2079-000 (August 5, 2015); *New York Independent System Operator, Inc.*, and *Niagara Mohawk Power Corporation*, Letter Order, Docket No. ER08-230-000 (December 18, 2007).

¹⁰ See e.g., *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER22-2036-000 (August 3, 2022) (accepting engineering, procurement, and construction agreement as of its date of execution); see also, 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) (same); *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); *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 NYISO¹¹

Robert F. Fernandez, Executive Vice
President & General Counsel & Chief
Compliance Officer
Karen Georgenson Gach, Deputy General
Counsel
*Sara B. Keegan, Assistant General Counsel
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.
*Sevren R. Gourley
Hunton Andrews Kurth LLP
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 344-7999
mmessonnier@huntonak.com
sgourley@huntonak.com

For New York State Electric & Gas Corporation

*Timothy Lynch
Director—Electric Transmission Services
New York State Electric & Gas Corporation
18 Link Drive
Binghamton, NY 13904
Tel: 607.206.7542
TJLynch@nyseg.com

Danielle Mechling
FERC Legal Director
Avangrid Networks, Inc.
180 Marsh Hill Road
Orange, CT 06477
Tel: 203.836.7464
Danielle.mechling@avangrid.com

* Designated to receive service.

¹¹ 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.

VII. CONCLUSION

Wherefore, the Joint Filing Parties respectfully requests that the Commission accept the EPC Agreement for filing with an effective date of September 15, 2023.

Respectfully submitted,

/s/ Sara B. Keegan
Sara B. Keegan
*Counsel for the
New York Independent System Operator, Inc.*

/s/ Danielle Mechling
Danielle Mechling
*Counsel for New York State Electric & Gas
Corporation*

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