

October 31, 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 System Deliverability Upgrades Among the New York Independent System Operator, Inc., Long Island Lighting Company d/b/a LIPA, Shoreham Solar Commons LLC, Riverhead Solar Farm, LLC, East Hampton Energy Storage Center, LLC, and Montauk Energy Storage Center, LLC; Request for Waiver of 60-Day Notice Period; Docket No. ER24-____-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") hereby tenders for filing an executed Engineering, Procurement, and Construction Agreement ("EPC Agreement") for a System Deliverability Upgrade ("SDU") located on the Long Island Lighting Company d/b/a LIPA's ("LIPA") transmission system. The EPC Agreement has been entered into by: (i) the NYISO, (ii) LIPA as the Affected Transmission Owner, and (iii) by Shoreham Solar Commons LLC, Riverhead Solar Farm, LLC, East Hampton Energy Storage Center, LLC, and Montauk Energy Storage Center, LLC, each individually a Developer and collectively Developers (with all parties to the EPC Agreement collectively the "Parties").³ The EPC Agreement is labeled as Service Agreement No. 2776 under the NYISO's Open Access Transmission Tariff ("OATT").

The NYISO's Class Year Deliverability Study for its Class Year 2017 determined that certain SDUs must be constructed on LIPA's system to enable the Developers to interconnect their facilities reliably to the New York State Transmission System in a manner that meets the NYISO Deliverability Interconnection Standard at the Developers' requested level of Capacity Resource Interconnection Service ("CRIS"). Pursuant to Section 30.12.1 of Attachment X and Section 25.7.12.13 of Attachment S to the OATT, the Parties have developed and executed the EPC Agreement to govern the rates, terms, and conditions regarding the engineering, procurement, and construction of the SDUs. The EPC Agreement is based on the *pro forma* Large Generating Interconnection Agreement ("Pro Forma LGIA") contained in Attachment X to the OATT and conforms to the Pro Forma 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 NYISO respectfully requests that the Commission accept the EPC Agreement for filing. Further, as described in Part III of this letter, the NYISO respectfully requests a waiver of the Commission's prior notice requirements⁴ to make the EPC Agreement effective as of October 17, 2023, which is the date on which it was fully executed.

I. BACKGROUND

CRIS is interconnection service that allows a developer to reliably interconnect its facility to the New York State Transmission System or Distribution System in accordance with the NYISO Deliverability Interconnection Standard. This interconnection service allows participation in the NYISO's Installed Capacity market to the extent of the facility's deliverable capacity. A developer may seek to obtain CRIS as part of the NYISO's Class Year Study process.

For Class Year Projects that elect CRIS, Attachment S to the OATT establishes the NYISO's requirements for evaluating a project's deliverability and for identifying and allocating the costs of any SDUs required for a project's proposed capacity to be fully deliverable. For SDUs on transmission facilities categorized as Byways,⁵ once the Project Cost Allocation for the SDU has been paid or posted as security by the applicable Class Year Developers, the NYISO, Affected Transmission Owner(s), and applicable Class Year Developers are required to enter into an engineering, procurement, and construction agreement regarding the construction of the SDU.⁶

Each of the Developers subject to the EPC Agreement participated in the NYISO's Class Year Study process for Class Year 2017 and requested that the NYISO provide it with CRIS as part of the interconnection of its facility to the New York State Transmission System.⁷ The Class Year Deliverability Studies for Class Year 2017 determined that certain SDUs were required on LIPA's system ("Common System Deliverability Upgrades") for the Developers' facilities to interconnect reliably to the New York State Transmission System in a manner that meets the NYISO Deliverability Interconnection Standard at the Developers' requested level of CRIS. Each Developer accepted and provided Security to LIPA to cover its share of the estimated cost of the Common System Deliverability Upgrades. This triggered the requirement that LIPA construct the Common System Deliverability Upgrades.

LIPA subsequently proposed a modification to the Common System Deliverability Upgrades, which, as modified, consist of a new underground 69 kV transmission circuit between its Terryville and Flowerfield substations. The NYISO determined such modification was not a material

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 Byways are defined as "transmission facilities comprising the New York State Transmission System that are neither Highways nor Other Interfaces. All transmission facilities in Zone J and Zone K are Byways." See NYISO OATT § 25.1. The SDUs that are the subject of this EPC Agreement are upgrades to transmission facilities in Zone K (*i.e.*, Long Island), and are therefore categorized as Byway SDUs.

⁶ See NYISO OATT §§ 30.12.1, 25.7.12.13.

⁷ The East Hampton and Montauk battery storage facilities were subject to LIPA's interconnection procedures under LIPA's Tariff for Electric Service for purposes of interconnecting their projects on Long Island and entered into interconnection agreements with LIPA. They entered the NYISO's Class Year Study solely to be assessed for CRIS rights.

modification, and LIPA elected to proceed with the modified Common System Deliverability Upgrades.⁸

As the Common System Deliverability Upgrades have been triggered, the NYISO, LIPA, and Developers have entered into this EPC Agreement for the engineering, procurement, and construction of these upgrades. Section 25.7.12.13 of Attachment S to the OATT establishes the requirements for the NYISO, Affected Transmission Owner, and Developers to enter into an engineering, procurement, and construction agreement for an SDU using the NYISO's Pro Forma LGIA as modified to address only the engineering, procurement, and construction of the SDUs. Each of the Developers has separately entered into an interconnection agreement with, as applicable, the NYISO and/or LIPA (the "Interconnection Agreements").⁹

II. DESCRIPTION OF THE EPC AGREEMENT

The EPC Agreement was fully executed on October 17, 2023, by the NYISO, LIPA, and the Developers. Pursuant to Section 25.7.12.13 of Attachment S, the Parties entered into an EPC Agreement to govern the rates, terms, and conditions regarding the engineering, procurement, and construction of the Common System Deliverability Upgrades ("EPC Services"). Per Section 25.7.12.13, the EPC Agreement shall be consistent with the Pro Forma LGIA located in Attachment X to the NYISO OATT, as modified to address only the engineering, procurement, and construction of the Common 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 Common System Deliverability Upgrades. Accordingly, the NYISO respectfully requests that the Commission accept the EPC Agreement for filing.

The EPC Agreement is based on the Pro Forma LGIA, as modified: (i) to reflect the different purpose of the agreement, (ii) to allocate the parties' responsibilities for the performance of the EPC Services and the payment for such performance, and (iii) to set forth the scope of work, cost estimate, cost responsibility, and milestone schedule for the construction of the Common System Deliverability Upgrades.

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

- The EPC Agreement governs only the performance of the EPC Services and terminates upon the completion of the Common System Deliverability Upgrades and the payment of related invoices and refund or release of Security.¹⁰ For this reason, the EPC Agreement does not include the provisions of the Pro Forma LGIA that govern the ongoing operation or maintenance of the constructed facilities.¹¹

⁸ LIPA's modifications were presented to the NYISO's stakeholder Transmission Planning Advisory Subcommittee on May 3, 2021.

⁹ See note 7 above.

¹⁰ EPC Agreement Article 2.3.

¹¹ LIPA will own the Common System Deliverability Upgrades and be responsible for their operation and maintenance. The requirements for the ongoing operation and maintenance of the Developers' facilities are set forth in their respective Interconnection Agreements.

- The EPC Agreement is limited to the activities required to construct and place in service the Common System Deliverability Upgrades. For this reason, the EPC Agreement does not include the provisions of the Pro Forma LGIA that govern the activities required to construct and place in-service the Large Generating Facility, the Attachment Facilities, or System Upgrade Facilities. These requirements are addressed, as applicable, under the Developers' respective Interconnection Agreements.
- The EPC Agreement clarifies each Developer's respective cost responsibility for the EPC Services.¹² Section 25.8.6.4 of Attachment S of the OATT establishes the requirements for allocating between Developers and the Affected Transmission Owner any costs for the SDUs greater than the amount the Developers accepted, and provided Security for, in the Class Year Study. As LIPA modified the Common System Upgrade Facilities identified in the Class Year Study with more expensive upgrades, it agreed to be responsible for costs greater than the amount for these SDUs identified in the Class Year Study, which agreement is reflected in Article 6.1 of the EPC Agreement.¹³
- The Parties agreed to modify the Security provisions to clarify the application of the Security provided by Developers for the Common System Deliverability Upgrades pursuant to the NYISO tariff requirements as part of the Class Year Study process.¹⁴ The Parties also agreed to make use of a prepayment approach agreed upon by LIPA and the Developers.¹⁵ The Commission has accepted the use of such alternative prepayment approaches.¹⁶
- The EPC Agreement does not include the provisions of the Pro Forma LGIA that govern the NYISO's provision of interconnection service to each Developer, which is addressed as applicable under the Developers' respective Interconnection Agreements.
- As LIPA is responsible for the EPC Services, which are upgrades to its system, the EPC Agreement does not include the provisions of the Pro Forma LGIA that address the Developers' options and responsibilities for performing such work for Attachment Facilities or Stand-Alone System Upgrade Facilities.
- As the parties have already completed the interconnection and deliverability 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.

¹² EPC Agreement Article 6.1.1.

¹³ EPC Agreement Article 6.1.2.

¹⁴ EPC Agreement Article 6.2.

¹⁵ EPC Agreement Article 7.1.

¹⁶ *See, e.g., New York Independent System Operator, Inc.*, Letter Order, Docket No. ER22-1887-000 (July 14, 2022) (accepting non-conforming revisions for alternative billing arrangement).

- The EPC Agreement replaces the use of the term “Connecting Transmission Owner” with “Affected Transmission Owner” (*i.e.*, LIPA) and includes revisions to account for the participation of multiple Developers in the agreement.¹⁷
- The insurance requirements have been modified to apply solely to LIPA, as the party responsible for the EPC Services on its own facilities.¹⁸
- The EPC Agreement includes certain modifications required to address LIPA’s status as a non-jurisdictional utility pursuant to Section 201(f) of the Federal Power Act and its status as a municipal utility not subject to certain federal and state tax laws.¹⁹ The Commission has previously accepted such modifications to the Pro Forma LGIA.²⁰
- In addition, the EPC Agreement includes certain revisions to reflect the fact that Long Island Electric Utility Servco LLC (“Servco”) will be executing the EPC Agreement on behalf of LIPA, as LIPA’s agent.²¹ The Commission has previously accepted such modifications to the Pro Forma LGIA.²²
- 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 EPC Agreement.

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

The NYISO requests an effective date of October 17, 2023, for the EPC Agreement, which is the date of its full execution. The NYISO respectfully requests that the Commission waive its prior notice requirement to permit the requested effective date. The Commission has previously permitted

¹⁷ See, e.g., EPC Agreement Article 21.2 (providing a process for selecting a single arbitrator in place of *pro forma* requirement for each of the standard three parties to choose an arbitrator as there are six parties to the EPC Agreement).

¹⁸ EPC Agreement Article 12.3.

¹⁹ These modifications included: (i) modifying the recitals to note LIPA’s status as a non-jurisdictional municipal utility; (ii) modifying Articles 2.1 and 22.13 to remove LIPA to reflect that the NYISO (in its role as the jurisdictional public utility) is individually making the required filing with the Commission; (iii) modifying Article 22.13 to reflect, consistent with LIPA’s non-jurisdictional status, that any party may make a unilateral filing with the Commission to modify this EPC Agreement pursuant to FPA Section 206, (iv) revising Article 2.1 to clarify that the filing of the EPC Agreement with the Commission by the NYISO shall not be construed as a waiver of LIPA’s status as a non-jurisdictional municipal utility pursuant to FPA Section 201(f), and (v) deleting the *pro forma* tax provisions to reflect LIPA’s tax-exempt status as a municipal utility.

²⁰ See, e.g., *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER22-752-000 (Feb. 25, 2022) (accepting non-conforming revisions concerning LIPA’s status as a non-jurisdictional municipal utility).

²¹ In particular, the preamble and the signature block were revised to establish Servco’s role in the EPC Agreement, including providing that Servco will not be a party to the EPC Agreement and will not have any liability under the EPC Agreement and clarifying that LIPA will have full liability for the obligations of the Affected Transmission Owner under this Agreement. Further, the parties revised the indemnity requirements in Article 12.1 to provide that each party would indemnify the other parties “and their agents” to account for Servco in the indemnity rules.

²² See, e.g., *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER22-752-000 (Feb. 25, 2022) (accepting non-conforming revisions concerning Servco’s role in the LIPA interconnection agreement).

engineering, procurement, and construction agreements to become effective upon the date of execution.²³

IV. COMMUNICATIONS AND CORRESPONDENCE

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

For the NYISO²⁴

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V. DOCUMENTS SUBMITTED

The NYISO submits 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).

²³ See e.g., *New York Independent System Operator, Inc., et al.*, Docket No. ER15-2079-000 (Aug. 5, 2015) (accepting engineering, procurement, and construction agreement as of its date of execution); see also *New York Independent System Operator, Inc., et al.*, 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., et al.*, 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., et al.*, Letter Order, Docket No. ER08-699-000 (May 16, 2008) (same).

²⁴ 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.

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

VII. CONCLUSION

Wherefore, the NYISO respectfully requests that the Commission accept the EPC Agreement for filing with an effective date of October 17, 2023.

Respectfully submitted,

/s/ Michael J. Messonnier, Jr.

Michael J. Messonnier, Jr.

Hunton Andrews Kurth LLP

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New York Independent System Operator, Inc.

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