

August 21, 2024

**By Electronic Delivery**

Honorable Debbie-Anne A. Reese, Acting Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re: Filing of an Executed Development Agreement Among the New York Independent System Operator, Inc. and Long Island Lighting Company d/b/a LIPA; Request for Waiver of the 60-Day Notice Period; Docket No. ER24-\_\_\_\_-000**

Dear Ms. Reese:

Pursuant to Section 205 of the Federal Power Act<sup>1</sup> and Section 35.13 of the Commission's regulations,<sup>2</sup> the New York Independent System Operator, Inc. ("NYISO") hereby tenders for filing an executed Public Policy Transmission Planning Process Development Agreement among the NYISO and Long Island Lighting Company d/b/a LIPA ("LIPA") (hereinafter the "Development Agreement").<sup>3</sup> As detailed below, the Development Agreement addresses the development and construction of a Designated Public Policy Project that contains components designated to LIPA ("Designated Entity") of a proposed solution selected by the NYISO Board of Directors as the more efficient or cost-effective transmission solution to satisfy a Public Policy Transmission Need identified as part of the NYISO's Public Policy Transmission Planning Process ("Public Policy Process"). The Development Agreement is labeled as Service Agreement No. 2855 under the NYISO's Open Access Transmission Tariff ("OATT").

The NYISO respectfully requests that the Commission accept the Development Agreement for filing. With the limited exceptions described in Part I.B of this letter, the Development Agreement conforms to the NYISO's *pro forma* Public Policy Transmission Planning Process Development Agreement ("Pro Forma Development Agreement") that is contained in Attachment Y to the OATT.<sup>4</sup> Further, as described in Part II of this letter, the NYISO respectfully requests a waiver of the Commission's prior notice requirements<sup>5</sup> to make the Development Agreement effective as of July 23, 2024, which is the date of its full execution.

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. § 35.13.

<sup>3</sup> Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in Attachment Y of the OATT, and if not defined therein, in the OATT and NYISO Market Administration and Control Area Services Tariff.

<sup>4</sup> See OATT § 31.7 Appendix D.

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

## **I. Discussion**

### **A. Background**

On August 3, 2020, the NYISO commenced the 2020-2021 cycle of its Public Policy Process. The NYISO solicited, and submitted to the New York Public Service Commission (“NYPSC”),<sup>6</sup> potential transmission needs driven by Public Policy Requirements. On March 19, 2021, the NYPSC issued an order finding that there is a transmission need driven by Public Policy Requirements to increase the export capability from Long Island to the rest of the state to ensure the full output of offshore wind interconnected to Long Island (hereinafter, the “Long Island PPTN”).<sup>7</sup> The NYISO issued a solicitation for solutions to the Long Island PPTN in its Public Policy Process, which requirements are set forth in Attachment Y to the OATT.

The New York Power Authority (“NYPA”) and New York Transco LLC (“Transco”) jointly submitted the Propel Alternate Solution 5 (“Transmission Project”) to the NYISO as a solution to address the Long Island PPTN. The Project will be located in Dunwoodie, New York City, and Long Island in New York State and is principally comprised of three new PAR-controlled 345 kV Long Island ties lines (*i.e.*, two lines between Shore Road and Sprain Brook and one line between East Garden City and Tremont), a Shore Road – Ruland Road – East Garden City 345 kV backbone, and other transmission facilities located in Long Island and New York City. The Transmission Project contains upgrades to existing transmission facilities that are owned by Transmission Owners. Additional details of the Transmission Project can be found in Appendix A of the Development Agreement.

On June 3, 2023, the NYISO’s Board of Directors selected the Transmission Project as the more efficient or cost-effective solution to the Long Island PPTN. Pursuant to the mechanism to effectuate the right of Transmission Owners for upgrades to their existing facilities,<sup>8</sup> the Transmission Project was separated into four Designated Public Policy Projects based on whether a facility was a new facility or a Public Policy Transmission Upgrade. The NYISO then designated those projects to four entities that are responsible for building, owning, and recovering the costs of each project. The NYISO designated a Designated Public Policy Project to LIPA comprised of Public Policy Transmission Upgrades. A detailed description of the transmission facilities that were designated to LIPA can be found in Appendices A and B of the Development Agreement (hereinafter, the “Designated Project”). The remaining three Designated Public Policy Projects were designated to NYPA and Transco, jointly, as the

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<sup>6</sup> Consistent with its tariff, the NYISO also submitted to Long Island Public Authority (“LIPA”) proposed transmission needs driven by Public Policy Requirements that required a physical modification of the Long Island Transmission District. LIPA, thereafter, filed with the NYPSC its determination that a public policy requirement drives the need for a physical modification to transmission facilities in the Long Island Transmission District.

<sup>7</sup> NYPSC Case No. 20-E-0497, *et al.*, *In the Matter of New York Independent System Operator, Inc.’s Proposed Public Policy Transmission Needs for Consideration for 2020*, Order Addressing Public Policy Requirements for Transmission Planning Purposes, at PP 22–25, 27 (Mar. 19, 2021) (“NYPSC Order”).

<sup>8</sup> OATT § 31.4.11; *see generally*, *New York Indep. Sys. Operator, Inc.*, Section 206 Filing of Tariff Revisions to Implement the New York Transmission Owners’ Right of First Refusal Regarding Upgrades to Their Transmission Facilities Identified in the Public Policy Transmission Planning Process, Docket No. EL22-2-000 (Oct. 8, 2021); *New York Indep. Sys. Operator, Inc.*, Errata to Correct Requested Effective Date for Tariff Revisions, Docket No. EL22-2-001 (Oct. 12, 2021).

sponsoring developer and two Transmission Owners.

The NYISO and LIPA fully executed the Development Agreement for the Designated Project on July 23, 2024.

**B. The Development Agreement Closely Conforms to the Pro Forma Development Agreement Contained in Attachment Y of the OATT**

The Development Agreement largely conforms to the language in the Pro Forma Development Agreement contained in Attachment Y of the OATT with the limited exceptions described below. The NYISO submits that the changes from the Pro Forma Development Agreement specified below are just and reasonable because unique factors exist to justify non-conforming provisions within the agreement.<sup>9</sup> The NYISO respectfully requests that the Commission accept the Development Agreement with the limited non-conforming changes.

**1. Modifications Required to Address LIPA's Status as a Non-Jurisdictional Utility**

The Development Agreement includes several changes to recognize LIPA's status as a non-jurisdictional utility pursuant to Section 201(f) of the Federal Power Act.<sup>10</sup> Accordingly, the parties agreed to include the following set of changes:

- Modification to the Recitals to note LIPA's status as a non-jurisdictional utility pursuant to Section 201(f) of the Federal Power Act.
- Modifications in Articles 2.2 to clarify that the filing of the Development Agreement with the Commission by the NYISO shall not be construed as a waiver of LIPA's status as a non-jurisdictional utility pursuant to Section 201(f) of the Federal Power Act.
- Modifications to Article 8.1 to clarify that the filing of a notice of termination or other filing to the Commission pursuant to the agreement shall not be construed as a waiver of LIPA's status as a non-jurisdictional municipal utility pursuant to Section 201(f) of the Federal Power Act.

These modifications do not change the substantive requirements of a Designated Entity to develop, construct, and place into service a Designated Public Policy Project in accordance with the agreed-upon milestone schedule and by the required in-service date. The purpose of these modifications is to properly reflect LIPA's non-jurisdictional utility status. The Commission has previously accepted these types of modifications to other *pro forma* agreements to which LIPA has been a party.<sup>11</sup>

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<sup>9</sup> See *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,054 (2016); *Southwest Power Pool, Inc.*, 132 FERC ¶ 61,159, at P 7 (2010); *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,163 (2005).

<sup>10</sup> See, e.g., *PJM Interconnection, LLC*, 111 FERC ¶ 61,163 at PP 10-11, *reh'g denied*, 112 FERC ¶ 61,282 (2005).

<sup>11</sup> See, e.g., *New York Indep. Sys. Operator, Inc.*, Letter Order, Docket No. ER24-2278 (August 13, 2024) (accepting revisions to reflect LIPA's status as a non-jurisdictional municipal utility); *New York Indep. Sys.*

## 2. Modifications to Address Other Specifics of LIPA

The Development Agreement contains other changes to address specific circumstances related to LIPA that do not change the substantive requirements of the Pro Forma Development Agreement. First, LIPA is a corporate municipal instrumentality and political subdivision of New York State with statutorily established powers from the New York State Public Authorities Law.<sup>12</sup> To account for LIPA's authority under New York State law and regulations, the parties agreed to make the following changes:

- Modification to the definition of "Governmental Authority" to remove the Designated Entity from the list of entities that are excluded from being a Governmental Entity for purposes of the Development Agreement.<sup>13</sup> This change accounts for the potential that LIPA may serve in a governmental capacity on certain actions or matters related to the Designated Project<sup>14</sup> while also serving as the Designated Entity responsible for developing, constructing, and placing the Designated Project in service in accordance with the milestone schedule.
- Modification to Article 8.1 to reflect that under New York State law, the LIPA Board of Trustees has authority to fix rates and charges for the Long Island Transmission District.<sup>15</sup> Specifically, the change provides that in the event of termination of the Development Agreement under Article 8.1(iii) and Article 8.1(iv) for which Attachment Y and Schedule 10 of the OATT do not provide that a Designated Entity may be eligible to recover costs under the OATT,<sup>16</sup> cost recovery may be permitted as determined by the appropriate authority to approve rate recovery mechanisms for LIPA. Such change broadens the language to encompass the requirements under federal and/or state law for LIPA to seek and obtain cost recovery and does not modify the substantive requirements of the Pro Forma Development Agreement.

Second, LIPA is a Transmission Owner under the OATT and a signatory to the Agreement Between New York Independent System Operator and Transmission Owners

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*Operator, Inc.*, Letter Order, Docket No. ER22-1887-000 (July 14, 2022) (same); *New York Indep. Sys. Operator, Inc.*, Letter Order, Docket No. ER17-2151-000 (September 8, 2017) (same).

<sup>12</sup> See New York State Public Authorities Law §§ 1020 *et seq.*; *see also, e.g.*, New York State Public Service Law § 3-b.

<sup>13</sup> Development Agreement Art. 1.

<sup>14</sup> For example, LIPA could have responsibilities as an agency, or lead agency, to review the environmental impacts of a transmission project, among other things, within its region under the State Environmental Review and Quality Act. *See generally*, New York State Environmental Conservation Law, Art. 8; 6 N.Y.C.R.R. Part 617.

<sup>15</sup> See New York State Public Authorities Law §§ 1020-f(u), 1020-s; *see generally* OATT § 6.10.5.2 (providing for the specifics of how LIPA is eligible to recover its costs under the OATT when it undertakes an Eligible Project, including approval of a rate recovery mechanism by the LIPA Board of Trustees and applicable filings with the Commission).

<sup>16</sup> The applicable termination events that relate to the change in the Development Agreement include Article 8.1(iii), which is the inability of the Designated Entity to complete the Designated Project by the Required Designated Project In-Service Date but not due to a delay caused by a Connecting Transmission Owner, Affected System Operator, or other Designated Entity, and Article 8.1(iv), which is where the NYISO declares a default pursuant to Article 7.2 of the Development Agreement.

(“ISO/TO Agreement”). The change to Articles 2.3 of the Pro Forma Development Agreement accounts for the fact that LIPA is already a party of the ISO/TO Agreement.<sup>17</sup>

Third, the parties agreed to make certain revisions to reflect the fact that Long Island Electric Utility Servco LLC (“Servco”) executed the Development Agreement on behalf of LIPA, as LIPA’s agent. In particular, the parties revised the preamble and the signature block to establish Servco’s role in the Development Agreement, including, providing that Servco will not be a party to the Development Agreement and will not have any liability under the Development Agreement and clarifying that LIPA will have full liability for the obligations of the Connecting Transmission Owner under this Agreement.

## **II. Proposed Effective Date and Request for Waiver of the 60-Day Notice Period**

The NYISO requests an effective date of July 23, 2024 for the Development 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 permitted similar agreements (*e.g.*, development agreements, interconnection agreements) to become effective upon the date of execution.<sup>18</sup>

## **III. Communications and Correspondence**

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

Robert E. Fernandez, Executive Vice President, Chief Compliance Officer & General Counsel

Karen Georgenson Gach, Deputy General Counsel

Raymond Stalter, Director, Regulatory Affairs

\*Brian R. Hodgdon, Senior Attorney

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\*Designated to receive service.

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<sup>17</sup> See generally, OATT § 31.1.7.2.

<sup>18</sup> See, *e.g.*, *New York Indep. Sys. Operator, Inc.*, Letter Order, Docket No. ER24-956-000 (Feb. 26, 2024) (accepting an amended and restated Public Policy Transmission Planning Process Development Agreement effective as of date of execution); *New York Indep. Sys. Operator, Inc.*, Letter Order, Docket No. ER20-1156-000 (Apr. 16, 2020) (accepting a Public Policy Transmission Planning Process Development Agreement effective as of date of execution); *New York Indep. Sys. Operator, Inc.*, Letter Order, Docket No. ER20-865-000 (Mar. 10, 2020) (same); *New York Indep. Sys. Operator, Inc. and Niagara Mohawk Power Corporation d/b/a National Grid*, Letter Order, Docket No. ER22-2062-000 (Aug. 5, 2022) (accepting interconnection agreement effective as of date of execution).

**IV. Documents Submitted**

The NYISO submits the following documents with this filing letter:

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

**V. Service**

A complete copy of this filing will be posted on the NYISO's website at [www.nyiso.com](http://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.

**VI. Conclusion**

Wherefore, the NYISO respectfully requests that the Commission accept the Development Agreement for filing with an effective date of July 23, 2024.

Respectfully submitted,

/s/ Brian R. Hodgdon

Brian R. Hodgdon  
*Counsel for the  
New York Independent System Operator, Inc.*

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