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NATIONAL GRID USA SERVICE COMPANY, INC.
25 RESEARCH DRIVE
WESTBOROUGH, MA 01582

November 16, 2007

VIA MESSENGER

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

Re: New York Independent System Operator, Inc. and National Grid
Engineering, Procurement and Construction Agreement
Docket No. ER08-____-000

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (2000), and 18 C.F.R. Part 35 (2007), the New York Independent System Operator Corporation ("NYISO") and Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") (together, the "Filing Parties") hereby submit for filing six copies of an executed Engineering, Procurement and Construction Agreement ("EPC Agreement" or the "Agreement") among four parties: the NYISO, National Grid, the Village of Arcade ("Arcade"), and Noble Bliss Windpark, LLC ("Noble Bliss") (together, the "Parties"). As described in further detail below, the EPC Agreement governs the rates, terms, and conditions regarding the engineering, procurement, design, and construction of transmission upgrades on National Grid's transmission system which the NYISO has identified as necessary to achieve the interconnection of the proposed Noble Bliss wind generation facility (the "Noble Bliss Facility"). The Noble Bliss Facility will interconnect with the municipal electric system of Arcade but will also have impacts on the transmission system of National Grid, part of the New York State Transmission System. National Grid is an Affected System Owner under the NYISO Large Facility Interconnection Procedures, which are contained in Attachment X of the NYISO Open Access Transmission Tariff ("NYISO OATT"). The EPC Agreement largely is based on the *pro forma* Large Generator Interconnection Agreement ("LGIA") in Attachment X to the NYISO OATT.

I. CONTENTS OF FILING

This filing consists of the following parts:

- This transmittal letter;
- Attachment A, the EPC Agreement;
- Attachment B, a redline comparing the EPC Agreement with the *pro forma* LGIA;

II. BACKGROUND AND OVERVIEW OF THE EPC AGREEMENT

The NYISO is a not-for-profit independent body that is responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State.

Niagara Mohawk Power Corporation is a public utility subsidiary of National Grid USA serving approximately 1.5 million electric customers in upstate New York. Niagara Mohawk is both an owner of transmission facilities subject to the operational control of the NYISO and a purchaser of transmission services from the NYISO.

Noble Bliss is a Delaware limited liability company with its principal place of business in Essex, Connecticut. Noble Bliss is a wholly-owned subsidiary of Noble Environmental Power 2006 Hold Co, LLC, whose subsidiaries are in the process of developing a number of wind-powered generating facilities in the United States, including in upstate New York.

The Village of Arcade is a municipal entity in the State of New York that owns and operates certain transmission facilities that interconnect to the New York State Transmission System.

The activity covered by the attached EPC Agreement relates to the construction of the Noble Bliss Facility, to be interconnected to transmission facilities that are owned by the municipal Village of Arcade, Wyoming County, New York. Arcade, in turn, is connected to National Grid's transmission system. The output of the wind facilities may be sold to one or more parties under bilateral power purchase agreements, or into the NYISO markets.

Through the NYISO interconnection process, the NYISO and National Grid determined that the proposed interconnection of Noble Bliss' generating facilities to the Arcade electric system would in turn affect National Grid's transmission operation. Interconnection Studies conducted in accordance with NYISO's Large Facility Interconnection Procedures determined that certain upgrades (the "Affected System Upgrade Facilities") must be constructed on National Grid's transmission system to allow for the reliable interconnection of the Noble Bliss Facility.

The Parties determined that sharing responsibility for construction of the Affected System Upgrade Facilities would be the most efficient means of achieving Noble Bliss' preferred commercial operations date for the Noble Bliss Facility. As detailed in Appendix A to the EPC Agreement, the Affected System Upgrade Facilities have been broken down into three categories: ASO Constructed Facilities which will be constructed by National Grid, Developer Constructed Facilities which will be constructed by Noble Bliss, and Arcade Constructed Facilities. Pursuant to the EPC Agreement, all upgrades will be built to National Grid's specification and oversight, and all will be owned by National Grid upon completion (*see* section 3.7 of the EPC Agreement). Although the NYISO has certain oversight rights and responsibilities under the EPC Agreement, the NYISO is not responsible for the construction of the Affected System Upgrade Facilities.

III. DESCRIPTION OF THE EPC AGREEMENT

The Parties have devoted substantial time to the negotiation of the EPC Agreement, which is based on the NYISO Large Generator Interconnection Agreement as modified to reflect the scope of the EPC Agreement, and to reflect the allocation of responsibility for construction of the Affected System Upgrade Facilities and the specific construction schedule and milestones set forth in Appendix A to the Agreement.¹ Although the EPC Agreement addresses many issues comparable to an LGIA, the EPC Agreement governs only the construction of the Affected System Upgrade Facilities and not the ongoing operation of the Noble Bliss Facility. Inapplicable provisions of the *pro forma* LGIA related to ongoing operations do not appear in the EPC Agreement. The Large Generator Interconnection Agreement among Noble Bliss, Arcade and the NYISO will address the terms and conditions applicable to the ongoing operation of the Noble Bliss Facility.² Where the EPC Agreement varies from the *pro forma* LGIA, it does so primarily due to these differences or due to the specific design and construction schedule for the Affected System Upgrade Facilities. Those provisions of the *pro forma* LGIA that relate to ongoing facility maintenance have been deleted from the EPC Agreement, as the EPC Agreement terminates upon completion of construction of the facilities and payment of all related invoices. In addition, because the parties already have completed the studies necessary to determine the impact of interconnection and the facilities needed to interconnect, references to the need for such studies have been deleted. Finally, the names of the parties and various terms have been modified as appropriate to reflect the four-party nature of the contract.

Article 1: Definitions

Certain definitions from the *pro forma* LGIA have been removed from the EPC Agreement because they are unnecessary for the abovementioned reasons. They are: Generating Facility and Generating Facility Capacity; Initial Synchronization Date; In Service Date; Interconnection Facilities Study, Interconnection Facilities Study Agreement, Interconnection Feasibility Study, Interconnection Feasibility Study Agreement, Interconnection Request, Interconnection Study, Interconnection System Reliability Impact Study, and Interconnection

¹ There is no *pro forma* EPC Agreement in the NYISO OATT. The Parties have based the EPC Agreement on the NYISO *pro forma* LGIA, consistent with Commission precedent concerning Affected System Owners. See, e.g., *Duke Electric Transmission, a Division of Duke Energy Corp.*, 113 FERC ¶ 61,139 (2005).

² The Large Generator Interconnection Agreement among Noble, Arcade, and the NYISO is still under discussion. Due to the potential for this interconnection agreement to have an impact on the EPC Agreement or upon National Grid as an Affected System Owner, National Grid has requested the opportunity to review this interconnection agreement when it is finalized, and the parties to that agreement have agreed to provide a copy of the final agreement to National Grid. National Grid reserves the right, consistent with Section 22.13 of the EPC Agreement, to propose revisions to the EPC Agreement to reflect any impacts of this interconnection agreement on the terms and conditions of the EPC Agreement or the assumptions concerning the Noble Bliss project which form the basis of the EPC Agreement.

System Reliability Impact Study Agreement; Material Modification; Metering Equipment; Optional Interconnection Study and Optional Interconnection Study Agreement; Point of Change of Ownership and Point of Interconnection; Scoping meeting; Site Control; Stand Alone System Upgrade Facilities; System Protection Facilities and System Upgrade Facilities; Transmission Owner and Transmission Owner's Attachment Facilities.

Three categories of definitions have been added:

- Definitions required by the three-party allocation of responsibility for facility construction, the Affected System Owner (National Grid), the Developer (Noble Bliss), and Arcade. These definitions are: Arcade, Arcade Constructed Facilities, and Arcade EPC Services; ASO Constructed Facilities, ASO Estimated Total Cost and ASO EPC Services; Breaker Ring Estimated Total Cost; Developer, Developer Constructed Facilities, and Developer EPC Services; EPC Services; Non-Breaker Ring Estimated Total Cost;
- Definitions that define and describe specific milestones unique to the three-party system for facilities construction. These definitions are: Bus Commercial Operation and Milestones.
- Definitions dealing with payment and credit provisions. These definitions are: Escrow Account and Escrow Agent.

Article 2: Effective Date, Term, and Termination

Article 2 of the EPC Agreement generally has been modified from the *pro forma* LGIA in recognition that the EPC Agreement terminates upon completion of construction.

For convenience, Section 2.1 has been modified to incorporate the relevant provisions of Section 3.1 of the LGIA, the provision regarding cooperation in the filing of the EPC Agreement with the Commission. Section 2.2 establishes that the termination date of the EPC Agreement is the later of the date of completion of the Affected System Upgrade Facilities and related EPC Services and the payment of all outstanding invoices. Given the proposed construction milestones, Section 2.3 shortens the time needed for written notice of termination and adds a provision allowing termination should the Developer stop its efforts in building the generating facility for more than a year. Section 2.4, dealing with termination costs, has been revised to reflect the respective rights of National Grid and Arcade in the event of an early termination by Developer. The Parties have agreed that this is a reasonable variation from the LGIA in light of the unique circumstances of this project. Section 2.5 of the LGIA, governing Disconnection, has not been included in the EPC Agreement as these terms are not relevant to the EPC Agreement and will be included in the Noble-Arcade-NYISO Interconnection Agreement.

The relevant provisions of Article 3 of the *pro forma* LGIA (comprised solely of Section 3.1) have been incorporated into Section 2.1 of the EPC Agreement. Article 4 of the *pro forma* LGIA governing the Scope of Interconnection Service has not been included in the EPC

Agreement as Noble Bliss will not be receiving interconnection service under this agreement and these terms will be included in the Noble-Arcade-NYISO Interconnection Agreement.

Article 3: EPC Services

The relevant provisions of Article 5 of the *pro forma* LGIA have been incorporated into Article 3 of the attached Agreement. Article 3 of the EPC Agreement generally tracks Article 5 of the *pro forma* LGIA. The option provisions in Article 5 of the LGIA have been eliminated because Noble Bliss has already elected an option whereby Arcade and the Developer will build certain Affected System Upgrade Facilities in accordance with the design specifications provided by National Grid. National Grid will construct the remaining Affected System Upgrade Facilities. Section 3.2 of the EPC Agreement is based on Section 5.2 of the LGIA, regarding the Option to Build, as modified to reflect the fact that both Arcade and Developer will have certain construction obligations under the EPC Agreement. Section 5.4 of the *pro forma* LGIA governing Power System Stabilizers has not been included in the EPC Agreement as these terms are not relevant to the EPC Agreement and will be included in the Noble-Arcade-NYISO Interconnection Agreement.

Section 3.3 is based on Section 5.5 of the *pro forma* LGIA as modified to reflect the fact that certain interconnection studies have already been completed. Sections 3.4 through 3.6 of the EPC Agreement correspond to Sections 5.6 through 5.8 of the *pro forma* LGIA. Section 5.9 of the *pro forma* LGIA governing Limited Operation of the generating facility has not been included in the EPC Agreement as this agreement does not govern NYISO authorization for generator operations and these terms will be included in the Noble-Arcade-NYISO Interconnection Agreement. Sections 5.10 and 5.11 of the *pro forma* LGIA governing Attachment Facilities has not been included in the EPC Agreement because Section 5.2 and Appendix A govern the construction of all Affected System Upgrade Facilities contemplated under the EPC Agreement.

Section 3.7 of the EPC Agreement provides generally that the Affected System Upgrade Facilities shall be designed, procured and constructed in accordance with Good Utility Practice and that the Affected System Owner shall own the Affected System Upgrade Facilities. This is consistent with the LGIA because the Affected System Upgrade Facilities are upgrades to the National Grid transmission system.

Sections 3.8 through 3.10 of the EPC Agreement correspond to Sections 5.12 through 5.14 of the *pro forma* LGIA. Section 5.15 of the *pro forma* LGIA governing the Early Construction of Base Case Facilities has not been included in the EPC Agreement as the EPC Agreement already includes milestones and related provisions designed to allow the expedited construction of Affected System Upgrade Facilities. Sections 3.11, 3.13, 3.14, and 3.15 of the EPC Agreement correspond to Sections 5.16 and 5.17, 5.18 and 5.19 of the *pro forma* LGIA respectively. Due to a numbering oversight, Section 3.12 of the EPC Agreement is reserved.

Pursuant to the Parties' negotiations, Affected System Upgrades are being constructed prior to the Commercial Operation of the Project. However, National Grid is willing to permit the Developer one year after Commercial Operation to construct and commission the 3-breaker

ring, which is a required and agreed-upon Affected System Upgrade identified as needed through the NYISO interconnection study process. Granting this extension of time will enable the Developer to operate the Noble Bliss Facility while the 3-breaker ring is being constructed. The Parties to the EPC Agreement agree that this is an interim arrangement, and that the 3-breaker ring affords all Parties the greatest operational flexibility. Absent this interim arrangement, the commercial operation of this project would not occur until all needed System Upgrades Facilities are completed. Section 3.16 of the EPC Agreement provides National Grid with certain negotiated remedies if the 3-breaker ring is not constructed within one year, as well as certain cure rights Noble Bliss can exercise in these circumstances. The Parties believe this provision is reasonable in light of the unique circumstances of this project and the Developer's desire for an earlier Commercial Operations Date.

Article 4: Testing and Inspection

Article 4 of the EPC Agreement corresponds to Article 6 of the *pro forma* LGIA, except that Section 6.2 of the *pro forma* LGIA has not been included in the EPC Agreement because it relates to ongoing operations.

Article 7 of the *pro forma* LGIA governing Metering has not been included in the EPC Agreement as these terms relate to metering requirements that remain in effect after termination of the EPC Agreement. Metering terms will be included in the Noble-Arcade-NYISO Interconnection Agreement.

Article 5: Communications

Certain communications provisions in Article 8 of the *pro forma* LGIA are relevant to the construction of the Affected System Upgrade Facilities. Article 5 of the EPC Agreement has been modified to reflect the specific communications requirements that technical representatives of the Parties have agreed are relevant to the EPC Agreement.

Articles 9 and 10 of the *pro forma* LGIA governing Operations and Maintenance respectively have not been included in the EPC Agreement as these terms relate to ongoing operations and maintenance requirements that become effective after termination of the EPC Agreement. Operations and maintenance terms will be included in the Noble-Arcade-NYISO Interconnection Agreement.

Article 6: Performance Obligation

Section 6.1 of the EPC Agreement corresponds to Section 11.1 through 11.3 of the *pro forma* LGIA. The Parties agreed that the establishment of an Escrow Account was an appropriate security mechanism to support the EPC Services provided by National Grid pursuant to the Agreement. Section 6.2 governs the establishment and ultimate disposition of this Escrow Account. Section 6.4 provides that all security arrangements with respect to the Arcade EPC Services shall be made pursuant to other mutually-agreeable arrangements between Noble and Arcade and that the EPC Agreement does not address these security arrangements. Section 6.3 provides that Noble shall only be responsible for those operation and maintenance costs

associated with the Affected System Upgrade Facilities, to the extent permitted under the NYISO OATT, including the *pro forma* LGIA.

Article 7: Invoice; Payment

The payment provisions in Article 7 of the EPC Agreement track the comparable provisions in Article 12 of the *pro forma* LGIA, as modified to reflect the Escrow Account arrangement discussed above. Section 7.5 provides that all invoicing and payment with respect to the Arcade EPC Services shall be made pursuant to other mutually-agreeable arrangements between Noble and Arcade and that the EPC Agreement does not address these payment arrangements. Section 7.6 provides that Developer is not entitled to payment from any other Party for the Developer EPC Services because these services are being performed for the benefit of the Developer.

Article 13 of the *pro forma* LGIA governing Emergencies has not been included in the EPC Agreement as these terms relate to ongoing operations issues that become effective after termination of the EPC Agreement. Emergency terms will be included in the Noble-Arcade-NYISO Interconnection Agreement.

Article 8: Regulatory Requirements and Governing Law

Article 8 of the EPC Agreement corresponds to Article 14 of the *pro forma* LGIA.

Article 9: Notices

Article 9 of the EPC Agreement corresponds to Article 15 of the *pro forma* LGIA, except that Section 15.4 of the *pro forma* LGIA related to operations and maintenance notice has not been included in the EPC Agreement because the EPC Agreement will not remain in effect once the Noble Bliss Facility commences Commercial Operations.

Article 10: Force Majeure

Article 10 of the EPC Agreement corresponds to Article 16 of the *pro forma* LGIA.

Article 11: Default

Article 11 of the EPC Agreement corresponds to Article 17 of the *pro forma* LGIA, except that the Parties have agreed that certain modifications and waivers are appropriate in light of the four-party nature of the Agreement.

Article 12: Indemnity, Consequential Damages, and Insurance

Article 12 of the EPC Agreement corresponds to Article 18 of the *pro forma* LGIA.

Article 13: Assignment

Article 13 of the EPC Agreement corresponds to Article 19 of the *pro forma* LGIA.

Article 14: Severability

Article 14 of the EPC Agreement corresponds to Article 20 of the *pro forma* LGIA, except that certain provisions related to the construction options in the LGIA have been eliminated because the Parties have already determined who will be responsible for construction and related services under the EPC Agreement.

Article 21 of the *pro forma* LGIA governing Comparability has not been included in the EPC Agreement as these terms relate to compliance obligations that continue after termination of the EPC Agreement. Terms requiring compliance with comparability and code of conduct provisions will be included in the Noble-Arcade-NYISO Interconnection Agreement.

Article 15: Confidentiality

Article 15 of the EPC Agreement corresponds to Article 22 of the *pro forma* LGIA, with the addition of a provision reflecting the fact that Arcade, as a New York municipality, is subject to the New York Freedom of Information Law.

Article 16: Environmental Releases

Article 16 of the EPC Agreement corresponds to Article 23 of the *pro forma* LGIA.

Article 17: Information Requirement

Article 17 of the EPC Agreement corresponds to Article 24 of the *pro forma* LGIA, except that certain provisions related to post-Commercial Operations information requirements have not been included in the EPC Agreement because the EPC Agreement will not remain in effect once the Noble Bliss Facility commences Commercial Operations.

Article 18: Information Access and Audit Rights

Article 18 of the EPC Agreement corresponds to Article 25 of the *pro forma* LGIA, except that the Parties have agreed to provide Noble specific certain audit rights comparable to the audit rights under the LGIA but designed to allow Noble to audit the respective activities of both National Grid and Arcade under the unique sharing of construction responsibilities established by the EPC Agreement.

Article 19: Subcontractors

Article 19 of the EPC Agreement corresponds to Article 26 of the *pro forma* LGIA.

Article 20: Disputes

Article 20 of the EPC Agreement corresponds to Article 27 of the *pro forma* LGIA.

Article 21: Representations, Warranties, and Covenants

Article 21 of the EPC Agreement corresponds to Article 28 of the *pro forma* LGIA.

Article 22: Miscellaneous

Article 22 of the EPC Agreement corresponds to Article 29 of the *pro forma* LGIA, with the addition of a cross-reference to Sections 6.4 and 7.4 in Section 22.6 of the Agreement.

IV. EFFECTIVE DATE, REQUEST FOR WAIVERS AND ORDER NO. 614 COMPLIANCE

The Filing Parties respectfully request that the Commission grant an Effective Date of October 17, 2007 for the EPC Agreement. In its *Prior Notice* order,³ the Commission made clear that it will grant waiver of the 60-day prior notice requirement for service agreements implementing tariff service if the service agreements are filed within 30 days after service begins. The instant request satisfies this standard, as the EPC Agreement is being filed within 30 days of the date on which service began under these agreements. Moreover, no parties will be prejudiced by granting waiver of the Commission's notice requirements to permit an October 17, 2007 effective date, as all Parties to the EPC Agreement support this effective date. For these reasons, the Commission should grant waiver of its requirements in Section 35.3 of its regulations and permit the EPC Agreement to become effective as of October 17, 2007.

To the extent the Commission believes that this filing does not satisfy the requirements for service agreements filed within 30 days after service begins, the Filing Parties request waiver of the Commission's 60-day notice requirement of the effective date of the EPC Agreement. Each of the four Parties already has executed the agreement and has begun the detailed planning and construction required for Noble Bliss to interconnect with Arcade. A delayed effective date will not benefit the relevant parties, as all parties directly impacted by this Agreement have already signed and are merely awaiting the Commission's approval. As a result, no party will be prejudiced by the delay.

The information submitted with this filing substantially complies with the requirements of Part 35 of the Commission's rules and regulations applicable to filings of this type. The EPC Agreement relates to the construction of transmission upgrades to facilitate the interconnection and operation of a new generating facility. The assignment of costs specific to that new facility does not result in a rate increase to a customer under any existing rate schedule. Accordingly, the Filing Parties have fulfilled the requirements of C.F.R. sections 35.13(b) and 35.13(c), because the EPC Agreement constitutes a rate schedule change other than a rate increase under section 35.13(a)(2)(iii). The Filing Parties respectfully request waiver of any applicable requirement of Part 35 for which waiver is not specifically requested, if necessary, in order to permit this filing to become effective as proposed.

³ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *order on reh'g*, 65 FERC ¶ 61,081 (1993)

V. CORRESPONDENCE AND SERVICE

Please place the names of the following persons on the official service list established by the Secretary in this proceeding:

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⁴ The Filing Parties respectfully requests waiver of 18 C.F.R. § 385.203(b)(3)(2007) to permit service on counsel for the NYISO in Albany, New York, Washington, DC and Richmond, Virginia, and to permit service on counsel for National Grid in Westborough, Massachusetts and Washington, DC.

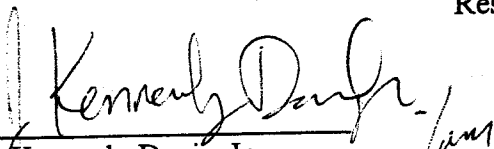
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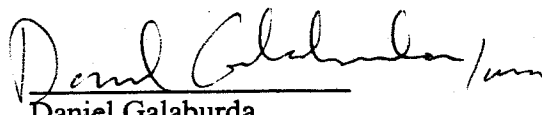
The NYISO has provided a paper copy of this filing to Noble Bliss Windpark, LLC and the Village of Arcade. The NYISO will electronically send a link to this filing to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the electric utility regulatory agencies of New Jersey and Pennsylvania. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com. The NYISO will also make a paper copy available to any interested party that requests one. To the extent necessary, the NYISO requests waiver of the requirements of Section 35.2(d) of the Commission's Regulations (18 C.F.R. § 35.2(d)(2007)) to permit it to provide service in this manner.

Please feel free to contact the undersigned with any questions concerning the instant filing. Thank you for your assistance in this matter.

Respectfully submitted,


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Attachments