

144 FERC ¶ 61,172
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Niagara Mohawk Power Corporation
New York Independent System Operator, Inc.

Docket Nos. ER13-1182-000
ER13-1182-001

ORDER REJECTING TARIFF FILING

(Issued August 30, 2013)

1. On March 29, 2013, Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) filed proposed tariff revisions to certain National Grid-specific components of the Wholesale Transmission Service Charge formula under Attachment H of the NYISO Open Access transmission Tariff (OATT). Specifically, National Grid proposes to amend its Scheduling, System Control and Dispatch Costs (System Control Costs) formula to incorporate costs incurred for Reliability Support Services (RSS), which secure the reliability of the company's transmission system.¹ National Grid's filing was amended on July 1, 2013. National Grid requests waiver of the 60-day prior notice requirement of the Federal Power Act (FPA) to permit a July 1, 2013 effective date for the proposed tariff revisions. For the reasons discussed below, we reject National Grid's proposed modifications to its Wholesale Transmission Service Charge formula, without prejudice to National Grid making a new FPA section 205 filing that justifies the recovery of RSS costs.

I. Background and Initial Filing

2. In its March 29, 2013 filing, National Grid states that its Wholesale Transmission Service Charge formula is the result of a settlement agreement (April 2009 Settlement) setting forth the terms of a formula rate for the calculation of the charge for National Grid's transmission service under the NYISO OATT, as well as procedures for the annual adjustment of certain inputs to that formula rate, and was approved by the

¹ National Grid states that, while not sponsoring National Grid's filing, NYISO submitted this filing on National Grid's behalf under the Commission's eTariff requirements in order to facilitate National Grid's exercise of its section 205 rights under the Federal Power Act (FPA), 16 U.S.C. § 824d (2006).

Commission in an order issued June 22, 2009.² National Grid further states that it began incurring RSS related costs during calendar year 2012 under the first of two RSS agreements with NRG Energy, Inc. (NRG) pursuant to which NRG will defer mothballing and continue to operate certain generating units at its Dunkirk generating station in upstate New York pending the completion of upgrades to National Grid's transmission system. To effectuate this change, National Grid proposes to add an RSS Expense to the Wholesale Transmission Service Charge formula that will allow National Grid to recover the costs associated with this service. National Grid requests that these changes be allowed to become effective for transmission services rendered on and after July 1, 2013.

3. Specifically, National Grid proposes to add a new item, "Reliability Support Services Expense," to the System Control Costs component of the Wholesale Transmission Service Charge formula that is set forth in Attachment H of the NYISO OATT. National Grid proposes to define these expenses as "expenses incurred pursuant to agreements entered into with generators or other similar resources for the purpose of supporting transmission reliability" and to include them in FERC Account 561.1.³

4. National Grid asserts that the inclusion of RSS costs in the System Control Costs component of the Wholesale Transmission Service Charge formula is appropriate because these costs directly relate to the functioning of National Grid's transmission system in upstate New York. National Grid further clarifies that RSS agreements are entered into for the purpose of maintaining reliability on the transmission system, and this service allows National Grid to continue to reliably operate the transmission system pending, or in lieu of, implementing upgrades to the transmission system. Therefore, National Grid concludes, these costs should not be treated differently than those directly incurred for reinforcements or other upgrades to the transmission system. Finally, National Grid asserts that Account 561.1 is the most appropriate Account to assign these new charges to, because it best matches the description of RSS-type costs.

5. National Grid also proposes certain ministerial changes to Attachment H of the NYISO OATT to clarify and correct the application and definitions describing the

² *Niagara Mohawk Power Corp., et al.*, 127 FERC ¶ 61,289 (2009).

³ FERC Uniform System of Accounts 561.1 Load Dispatch – Reliability:

This account shall include the cost of labor, materials used and expenses incurred by a regional transmission service provider or other transmission provider to manage the reliability coordination function as specified by the North American Electric Reliability Council (NERC) and individual reliability organizations. These activities shall include performing current and next day reliability analysis. This account shall include the costs incurred to calculate load forecasts, and performing contingency analysis.

Wholesale Transmission Service Charge formula. National Grid states that none of these proposed ministerial changes have any revenue impact on the Wholesale Transmission Service Charge rates.

II. Notice and Responsive Pleadings to March 29, 2013 Filing

6. Notice of National Grid's March 29, 2013 filing was published in the Federal Register, 78 Fed. Reg. 20,907 (2013), with protests and interventions due on or before April 19, 2013.

7. Multiple Intervenors filed a motion to intervene. On April 19, 2013, The New York Association of Public Power (NYAPP) and Allegheny Electric Cooperative (Allegheny) each filed a protest. On April 16, 2013, Municipal Electric Utilities Association of New York (MEUA) filed an unopposed motion for extension of time to comment. On April 26, 2013, MEUA filed a protest.

8. On May 3, 2013, National Grid filed an answer to protests (May 3, 2013 Answer). On May 20, 2013, NYAPP and MEUA each filed an answer to National Grid's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority.⁴ We will accept the answers filed by National Grid, NYAPP, and MEUA because they have provided information that assisted us in our decision-making process.

A. Protests

9. NYAPP asserts that the RSS agreement between National Grid and NRG should be filed with the Commission under section 205 of the FPA so that wholesale transmission customers may have notice of the change and have the opportunity to examine the cost support, cost allocation, and claimed reliability needs underlying the agreement.⁵ NYAPP goes on to add that affected market participants have been given no opportunity to respond meaningfully to the proposal and have been denied the appropriate regulatory oversight.⁶

10. NYAPP⁷ and MEUA⁸ state that National Grid has not provided the necessary cost support and reliability benefits that will result from the reliability must run (RMR)

⁴ 18 C.F.R. § 385.213(a)(2) (2013).

⁵ NYAPP April 19, 2013 Protest at 7-8.

⁶ *Id.* at 8.

⁷ *Id.* at 10-11.

⁸ MEUA April 26, 2013 Protest at 2-3.

agreement with NRG. NYAPP goes on to add that National Grid has stated it will allocate the costs based on load ratio share for wholesale transmission customers, resulting in an increase of \$1.5 million, but will allocate the costs “based on a single coincident peak method” for retail customers. NYAPP asserts that National Grid has provided no support for these allocation methodologies, and potential issues that could arise from the “mismatch” should be explored in a FPA section 205 filing.⁹ Allegheny also argues that the rates proposed by National Grid are excessive and, therefore, unjust and unreasonable and unduly discriminatory for the reasons provided by NYAPP.¹⁰

11. NYAPP¹¹ and MEUA¹² also assert that FERC Account 561.1 is not the appropriate account in which these charges should be recorded. Specifically, NYAPP asserts that Account 561.1 is for the cost of studies performed by the Reliability Coordinator (RC) and not for RMR payments. Moreover, it states that National Grid is not registered as a RC with NERC. NYAPP also cites Order No. 668,¹³ in which the Commission clarified that “Account 561.1... [is] to be used by both RTOs and non-RTO public utilities”¹⁴ as the basis for asserting that Account 561.1 is not to be used by transmission owners in RTOs/ISOs. NYAPP, therefore, asserts that National Grid’s interpretation of Account 561.1 should be filed with the Commission as a petition for a declaratory order.¹⁵ MEUA asserts that Account 561.1 is intended for costs incurred to forecast and plan for system reliability, not for the costs associated with RMR agreements, and that the Commission has affirmed that Account 561.1 charges, which are incurred for load dispatching, are not properly included in a transmission revenue requirement.¹⁶ MEUA further argues that National Grid has undermined the Commission’s goal of accounting uniformity and transparency by unilaterally modifying the FERC-approved accounting definition.¹⁷

⁹ NYAPP April 19, 2013 Protest at 10-11.

¹⁰ Allegheny April 19, 2013 Protest at 4.

¹¹ *Id.* at 5.

¹² MEUA April 26, 2013 Protest at 6.

¹³ *Accounting and Financial Reporting for Public Utilities Including RTOs*, Order No. 668, FERC Stats. & Regs. ¶ 31,199 (2005) (cross-referenced at 113 FERC ¶ 61,276) (emphasis added), *reh’g denied*, Order No. 668-A, FERC Stats. & Regs. ¶ 31,215 (2006).

¹⁴ NYAPP April 19, 2013 Protest at 6.

¹⁵ *Id.* at 4.

¹⁶ MEUA April 26, 2013 Protest at 7.

12. While MEUA does not dispute the NYPSC's approval of the RSS term sheet between National Grid and NRG, MEUA asserts that NYPSC approval does not displace the Commission's exclusive jurisdiction over wholesale rates.¹⁸ MEUA adds that the proposed future recovery of unrelated RSS costs through the formula rate gives the NYPSC inappropriate power over National Grid's wholesale transmission rate and circumvents the Commission's ability to review future payment arrangements for RSS before they are automatically rolled into the Wholesale Transmission Service Charge.¹⁹

13. Citing the NYPSC-approved utilization of the Dunkirk facility to address local reliability issues, MEUA questions whether the costs of the RSS agreement should be allocated to wholesale transmission customers. MEUA argues that if the Commission finds that these costs should, in fact, be allocated to wholesale transmission customers, then the appropriate cost recovery mechanism is Schedule 10 of the NYISO OATT, which accounts for facilities needed for reliability services.²⁰

14. MEUA notes that the NYPSC stated that customers of the New York State Electric & Gas (NYSEG) will benefit from the RSS agreement. However, MEUA states that National Grid is not seeking recovery from NYSEG, so the burden of payments has been inappropriately shifted to National Grid's customers.²¹ In addition, MEUA argues that National Grid shareholders should bear responsibility for the RSS with NRG because recovery from ratepayers is not appropriate where a vertically-integrated utility sold a generator it knew or should have known was needed for system reliability without making any arrangements with the buyer for continued system reliability should the purchaser decide to retire any units.²² It states that National Grid, a vertically-integrated utility, chose to sell the Dunkirk facility to NRG in 1999, but National Grid did not perform a reliability analysis prior to the sale. MEUA argues that, if National Grid knew that Dunkirk was likely to be needed for local system reliability, the current local reliability concerns are problems of National Grid's own making, and the company should not be allowed to recover these costs from its wholesale transmission customers.²³

¹⁷ *Id.* at 7-8.

¹⁸ *Id.* at 9. MEUA notes that it is not disputing NYPSC's approval of the RSS Term Sheet that National Grid and NRG presented to NYPSC on July 20, 2012.

¹⁹ *Id.* at 10.

²⁰ *Id.* at 12-13.

²¹ *Id.* at 15.

²² *Id.* at 16-17.

²³ *Id.* at 17.

15. NYAPP requests a technical conference to discuss the “ministerial changes” proposed by National Grid, as, per NYAPP, many of the changes either are substantive in nature, resulting in unintended and incorrect calculations, or are confusing. NYAPP provides suggested edits to National Grid’s proposed changes to lines 21 and 22 of Schedule 1, the definition of Intangible Plant Depreciation Expense, the definition of Electric Research and Development Expense, and requests a description for “18a charges” under Transmission Related Administrative and General Expense. NYAPP adds that National Grid did not include revised versions of work papers to help understand the source of the values in the Wholesale Transmission Service Charge formula.²⁴

16. Finally, NYAPP states that National Grid’s request for waiver of the 60-day notice requirement in order for the proposed tariff changes to become effective July 1, 2013, is not justified because National Grid failed to show good cause for the request.

B. Summary of Answers

17. National Grid argues that whether reliability costs should be tracked in Account 561.1 is not relevant to whether the Commission should accept or reject the merits of the filing. National Grid argues that the pertinent question is whether the RSS charges should be included in the Wholesale Transmission Service Charge and adds that the question of how these expenses should be treated for purposes of accounting is a different issue entirely.²⁵

18. National Grid disagrees with protesters that Order No. 668 excludes transmission owners in RTOs from cost recovery through Account 561.1. Per National Grid, the intention of Order No. 668 was actually to include all public utilities that are not RTOs or ISOs, distinguishing them from RTOs and ISOs, which are themselves public utilities.²⁶

19. National Grid asserts that there is no merit to NYAPP’s and MEUA’s request that the RSS agreement with NRG be filed with the Commission under FPA section 205, as the specifics of the agreement are beyond the scope of this filing. First, National Grid argues that the proposed annual update process will allow impacted parties to understand and, under certain circumstances, challenge the costs included in the RSS expense through supporting documentation and an open meeting. Per National Grid, if a challenge is not resolved through good faith negotiations, the challenging party may submit the matter to the Commission, and National Grid bears the burden of proving that the data inputs are correct and conform to the terms of the Wholesale Transmission

²⁴ NYAPP April 19, 2013 Protest at 12-16.

²⁵ National Grid May 3, 2013 Answer at 5.

²⁶ *Id.* at 6.

Service Charge formula.²⁷ Additionally, National Grid affirms that NRG views the RSS as having been entered into pursuant to NRG's market-based rate authority, and NRG plans to report the costs incurred through the RSS to the Commission via the Electric Quarterly Reports (EQR) system. National Grid further adds that the obligation to file the terms of jurisdictional service agreements falls to the seller, NRG, and the terms by which NRG chooses to comply do not affect the rights of the purchaser, National Grid, to recover legitimate costs it incurs to maintain the reliability of its transmission system.²⁸

20. National Grid asserts that NYAPP's and MEUA's argument that National Grid has failed to provide proof of the reliability need that justifies the RSS agreement is false and irrelevant to the pertinent question of this filing. National Grid asserts that the RSS agreement was the product of extensive studies conducted between National Grid, NRG, NYISO, and the NYPSC and that these studies were filed with the NYPSC and were part of the record upon which the NYPSC approved the RSS agreement. National Grid included the studies with its May 3, 2013 Answer.²⁹

21. National Grid contends that even though the 115 kV transmission facilities that require the continued operation of the Dunkirk facility for reliability purposes are not considered "New York State Bulk Power Transmission Facilities", they are, in fact, subject to Commission rate jurisdiction as they provide FERC-jurisdictional transmission service to wholesale transmission customers such as NYAPP and MEUA members.³⁰ In response to MEUA's claim, National Grid also argues that Schedule 10 of the NYISO OATT is not an appropriate channel through which to recover the costs of the RSS agreement, as Schedule 10 is limited to costs related to "regulated reliability *transmission* projects" and, under Attachment Y of the NYISO tariff, there is a difference between transmission and non-transmission projects. In light of this distinction, it asserts, it is apparent that an RSS-type arrangement falls into the category of non-transmission reliability projects and there is therefore no merit to MEUA's argument that National Grid must recover these costs through the NYISO reliability services charge.³¹

22. National Grid states that it has entered into the RSS agreements with NRG to maintain a reliable transmission system while it constructs necessary upgrades; hence, it asserts, all of National Grid's transmission customers, wholesale and retail, benefit from the agreements. Therefore, National Grid concludes that it is appropriate for these

²⁷ *Id.* at 7-8.

²⁸ *Id.* at 9.

²⁹ *Id.* at 11-12.

³⁰ *Id.* at 13.

³¹ *Id.* at 14.

wholesale customers to bear their fair share of the expenses associated with the RSS agreements. National Grid adds that the RSS expenses included in the Wholesale Transmission Service Charge will be based on actual expenses incurred during the prior year, will be subject to the review of affected parties, and will be allocated as other expenses in the Wholesale Transmission Service Charge based on each customer's actual usage of the transmission system.³² According to National Grid, there is no Commission precedent to condition the recovery of RSS agreement costs on whether a vertically-integrated utility that sold its generation assets had anticipated the potential reliability impacts of the sale arrangement.

23. Finally, National Grid included in its May 3, 2013 Answer additional explanation for what it characterizes as the proposed ministerial changes in its March 29, 2013 filing to obviate the need for the technical conference requested by NYAPP. However, National Grid agrees to make further ministerial changes to the tariff in response to NYAPP.³³

24. In response to National Grid's May 3, 2013 Answer, MEUA argues that National Grid is attempting to inappropriately shift the burden to the Commission to develop a method to recover RSS charges from wholesale transmission customers.³⁴

25. MEUA also argues that the annual update review process identified by National Grid as an appropriate protection for parties potentially affected by the RSS agreement is not adequate to assess the justness and reasonableness of RMR costs and inappropriately shifts the burden of proof away from the transmission owner and onto the customer.³⁵ MEUA reiterates its assertion that the recovery of these costs from wholesale transmission customers requires a FPA section 205 filing and involvement of Commission Staff.³⁶ MEUA also adds that NRG does not have the authority to provide RMR service at market-based rates.³⁷

26. MEUA seeks confirmation of whether NRG is selling energy for resale or an RMR service, if NRG may sell RMR service at market-based rates, and if it is just and

³² *Id.* at 16.

³³ *Id.* at 19.

³⁴ MEUA May 20, 2013 Answer at 2; NYAPP May 20, 2013 Answer at 3-4.

³⁵ MEUA May 20, 2013 Answer at 8.

³⁶ *Id.* at 9.

³⁷ *Id.* at 2-3.

reasonable for National Grid to pass RMR service costs through to wholesale transmission customers.³⁸

27. MEUA concludes that National Grid's proposal and answer demonstrate a motivation to avoid Commission scrutiny of RSS agreements and expresses concern that approval of the proposal could lead to increased, routine inclusion of non-transmission facility costs in transmission rates without Commission review.³⁹

28. NYAPP asserts that the reliability studies submitted by National Grid to demonstrate the reliability need for the Dunkirk facility are heavily redacted and present unsubstantiated conclusions.⁴⁰ NYAPP argues that, because National Grid has not posted its 2012 Local Transmission Plan on its website, it has denied interested parties an opportunity to comment and has violated the NYISO OATT, which formalizes this requirement. NYAPP adds that the NYISO planning process does not provide an avenue for transmission owners to enter into agreements with generators for reliability support and there is no mechanism in the tariff for cost recovery for reliability support.⁴¹

III. Deficiency Letter and Response

29. On June 26, 2013, the Commission's staff issued a deficiency letter requesting additional information from National Grid regarding its March 29, 2013 filing.

30. National Grid responded to the deficiency letter on July 1, 2013, thus establishing a new filing date in this proceeding. National Grid explains that the Wholesale Transmission Service Charge charges during each rate year (July 1 through June 30) are based primarily on costs incurred during the previous calendar year. National Grid states that the RSS expenses incurred from September 2012 through December 2012 will be recovered in the charges for services rendered July 1, 2013 through June 30, 2014. National Grid continues that RSS expenses incurred from the period January 1, 2013 through December 31, 2013 would be billed July 1, 2014 through June 30, 2015.

31. National Grid states that RSS expenses incurred in the period January 1, 2015 through December 31, 2015 would be billed through transmission billings for July 1, 2016 through June 30, 2017; costs incurred from the period January 1, 2016 through December 31, 2016 would be billed through transmission billings for service from

³⁸ MEUA May 20, 2013 Answer at 11-12.

³⁹ *Id.* at 3.

⁴⁰ NYAPP May 20, 2013 Answer at 8.

⁴¹ NYAPP May 20, 2013 Answer at 7.

July 1, 2017 through June 30, 2018. National Grid also estimates two small property tax adjustments in the beginning of 2016.

32. National Grid affirms that the Wholesale Transmission Service Charge charges during the period from July 1, 2013 through June 30, 2014 are entirely associated with costs under the first RSS agreement. National Grid estimates that \$1,330,705 will be billed as a result of the first agreement with Dunkirk ending May 31, 2013, and this will be expressed in the billings for July 1, 2014 through June 30, 2015. For the second agreement, National Grid estimates billing \$1,451,200 for July 1, 2014 through June 30, 2015.

33. National Grid provides a schedule of estimated RSS costs payable under the Dunkirk agreements and the years the costs would be recovered. National Grid notes that additional RSS costs could be incurred under other agreements, but National Grid does not anticipate any such agreements at this time.

34. National Grid reiterates its request that the tariff changes proposed in the March 29, 2013 filing be allowed to become effective for transmission services rendered on or after July 1, 2013.

A. Notice and Responsive Pleadings to July 1, 2013 Deficiency Response

35. Notice of National Grid's July 1, 2013 response to the deficiency letter was published in the *Federal Register*, 78 Fed. Reg. 41,051 (2013), with protests and interventions due on or before July 22, 2013. On July 19, 2013, MEUA filed a protest. On July 22, 2013, NYAPP filed a protest. On August 1, 2013, National Grid filed an answer to NYAPP's protest. We will accept the answer filed by National Grid because it has provided information that assisted us in our decision-making process.

36. MEUA suggests that Commission approval of National Grid's filing will undermine the NYISO stakeholder process and will encourage other generation owners to negotiate rate recovery before the NYPSC, usurping Commission jurisdiction.⁴²

37. NYAPP reiterates its request that the Commission deny the request of National Grid for waiver of the sixty-day notice requirement and an effective date of July 1, 2013.

38. In its answer, National Grid contends that good cause for the request for waiver exists because: (i) the information requested by Commission staff, and provided by the Company in the July 1, 2013 filing, was not required to be included in the March 29, 2013 filing pursuant to the Commission's regulations; and (ii) deferring the effective date of the revisions proposed in the March 29 filing would unfairly deprive National Grid of the opportunity to recover the legitimate costs of providing transmission service.⁴³

⁴² MEUA July 19, 2013 Protest at 4-5.

National Grid also states that, in accordance with 18 C.F.R. section 35.13(c), it has provided statements showing the rate impact of the proposed changes from July 1, 2013, through June 30, 2014, utilizing RSS costs incurred during 2012. National Grid adds that it is under no obligation to provide cost information for rates to take effect during subsequent years, which will be based on RSS costs incurred in 2013, and beyond.⁴⁴

B. Commission Determination

39. We will reject National Grid's proposed tariff revisions, without prejudice to National Grid making a new section 205 filing as discussed below. In light of the protestors' arguments about the unique rate and reliability implications inherent in National Grid's proposed revisions to the Wholesale Transmission Service Charge formula, we find that we must reject National Grid's current filing, without prejudice to National Grid making a new section 205 filing providing additional support for recovery of RSS costs. National Grid proposes to utilize the existing Annual Update Process, which is set forth in the NYISO OATT,⁴⁵ as the mechanism to inform affected parties of the prior year's RSS expenses that will be included in the revised Wholesale Transmission Service Charges formula. The proposed formula rate revisions essentially establish a placeholder that would allow the future pass-through of RSS costs. For the Commission to approve a pass-through of RSS costs, National Grid would at a minimum need to file the underlying RSS agreements for Commission review, and support the proposed rates. Because we are rejecting the filing, the Commission does not need to address the specific concerns raised by protestors.

The Commission orders:

National Grid's proposed tariff revisions in its March 29, 2013 filing are hereby rejected, without prejudice to National Grid making a new FPA section 205 filing that justifies inclusion of RSS costs in the Wholesale Transmission Service Charge, as discussed in the order.

By the Commission.

(S E A L)

Kimberly D. Bose,

⁴³ National Grid August 1, 2013 Answer at 1-2.

⁴⁴ *Id.* at 2.

⁴⁵ NYISO OATT, Attachment H, § 14.1.9.4.

Secretary.