

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To
Niagara Mohawk Power Corporation
Docket No. ER20-2051-000

Issued: 5/4/2021

National Grid
40 Sylvan Road
Waltham, MA 02451

Attention: Patrick J. Tarmey, Esq.
Attorney for Niagara Mohawk Power Corporation

Reference: Order No. 864 Compliance Filing Deficiency Letter

Dear Mr. Tarmey:

On June 15, 2020, as amended on July 24, 2020, Niagara Mohawk Power Corporation (Niagara Mohawk) filed its Order No. 864¹ compliance filing that contains proposed revisions to its Transmission Service Charge (TSC) Formula Rate, which sets Niagara Mohawk's Wholesale TSC under Attachment H of the New York Independent System Operator Open Access Transmission Tariff (OATT).² These revisions include, among other things, a proposed accumulated deferred income tax (ADIT) worksheet that is found in the new Schedule 14, in section 14.2.1 of Attachment H (ADIT Worksheet).

In Order No. 864, the Commission required public utility transmission providers with transmission formula rates under an OATT, a transmission owner tariff, or a rate schedule to revise those transmission formula rates to account for changes resulting from the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act).³ The Commission required,

¹ *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 84 Fed. Reg. 65,281, 169 FERC ¶ 61,139 (2019), *order on reh'g and clarification*, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

² New York Independent System Operator, Inc., NYISO Tariffs, [NYISO OATT, 14.1 OATT Att H TSC, 27.0.0](#), [NYISO OATT, 14.2-14.2.1 OATT Att H Attachment 1 to Attachment H, 19.0.0](#).

among other things, that public utilities include (1) a mechanism to deduct any excess ADIT from or add any deficient ADIT to their rate bases (Rate Base Adjustment Mechanism), (2) a mechanism to decrease or increase their income tax allowances by any amortized excess or deficient ADIT, respectively, and (3) a new permanent ADIT Worksheet that will annually track information related to excess or deficient ADIT.⁴

Please be advised that the compliance filing is deficient and that additional information is required in order to process the compliance filing. Please provide the information requested below.

Rate Base Adjustment Mechanism

1. As part of its proposed Rate Base Adjustment Mechanism, Niagara Mohawk proposes to revise Schedule 7, line 10, to include transmission regulatory assets and liabilities and to update the reference to the inputs for line 10. Please explain whether Niagara Mohawk's proposed revisions in line 10 contains any Financial Accounting Standards (FAS) 109 items other than excess and deficient ADIT.

Income Tax Allowance Mechanism

2. As part of its proposed Income Tax Allowance Adjustment Mechanism, Niagara Mohawk proposes to add a new definition to Schedule 9 in section 14.2.1 describing the amortization of FAS 109 balances associated with tax rate changes and other Commission-approved FAS 109 assets and liabilities. Niagara Mohawk also proposes to define amortization of excess and deficient ADIT on line 46 of Attachment 1, Schedule 9. However, the input reference for line 46 refers to Schedule 14, line 5, column K, which contains only excess and deficient ADIT from tax rate changes.

Please explain this discrepancy. In doing so, please explain whether, and if so how, line 46 includes FAS 109 amounts other than excess and deficient ADIT. Further, please explain how Niagara Mohawk's Income Tax Allowance Mechanism shows amortized excess and deficient ADIT separately from other FAS 109 amounts.

ADIT Worksheet

3. In Order No. 864, the Commission required the ADIT Worksheet to include five categories of information: (1) how any ADIT accounts were re-measured and the excess or deficient ADIT contained therein; (2) the accounting for any excess or

³ Order No. 864, 169 FERC ¶ 61,139 at P 1.

⁴ *Id.* PP 3-5.

deficient amounts in Account 182.3 (Other Regulatory Assets) and 254 (Other Regulatory Liabilities); (3) whether the excess or deficient ADIT is protected or unprotected; (4) the accounts to which the excess or deficient ADIT are amortized; and (5) the amortization period of the excess or deficient ADIT being returned or recovered through the rates.⁵ The Commission stated that it expects public utilities to identify each specific source of the excess or deficient ADIT, classify the excess or deficient ADIT as protected or unprotected, and list the proposed amortization period associated with each source in their proposed ADIT Worksheets.⁶

- a. For category (1), Schedule 14 of Niagara Mohawk's proposed ADIT Worksheet describes but does not show how Niagara Mohawk's ADIT accounts were re-measured. Please provide the methodology Niagara Mohawk used in re-measuring its ADIT accounts, including the pre- and post-Tax Cuts and Jobs Act ADIT balances for each of those accounts.
- b. For category (2), explain how Schedule 14 shows the accounts to which excess and deficient ADIT are recorded.
- c. For category (4), note G of Schedule 14 states that "(Excess)/deficient ADIT to be amortized to . . . Account 411 or 410." Please clarify to which subaccount excess ADIT will be amortized (e.g., Account 411.1) and which subaccount deficient ADIT will be amortized (e.g., Account 410.1).
- d. Please submit a populated version of Schedule 14 in workable format (e.g., Excel file).
- e. Note h of Schedule 14 states "other changes" might include classification changes between protected and unprotected categories due to deferred amortization to maintain rate base neutrality until amortization periods are approved by both state and federal regulatory commissions. Please explain how deferred amortization might affect excess and deficient ADIT classification and under what circumstances such deferral might occur.
- f. In addition, it appears that note h requires that Niagara Mohawk obtain Commission approval prior to including excess and deficient ADIT in its Formula Rate. However, in Order No. 864, the Commission stated that it will not require that public utilities make a filing pursuant to section 205 of the Federal Power Act (FPA) to obtain Commission approval prior to including excess of the Federal Power Act⁷ and deficient ADIT in their

⁵ *Id.* PP 52, 62.

⁶ *Id.* P 65.

transmission formula transmission formula rates following future tax rate changes.⁸ As such, please explain why Niagara Mohawk will make future filings under FPA section 205 prior to including excess and deficient ADIT in its transmission rates. Additionally, please explain generally how Schedule 14 applies to future tax rate changes.

4. In Order No. 864, the Commission required public utilities with transmission formula rates to provide supporting documentation necessary to justify their proposed amortization periods.⁹ Niagara Mohawk proposes to use the Average Rate Assumption Method (ARAM) to amortize unprotected plant-based excess or deficient ADIT resulting from the Tax Cuts and Jobs Act. Niagara Mohawk states that the Commission has accepted the use of ARAM to amortize unprotected plant-based ADIT.¹⁰ Please provide justification for Niagara Mohawk's proposal to use ARAM for unprotected plant-based excess and deficient ADIT.
5. The Commission's accounting guidance in Docket No. AI93-5-000 states that public utilities should record deficient ADIT in a regulatory asset (Account 182.3) and excess ADIT in a regulatory liability (Account 254).¹¹ In Order No. 864, the Commission found that the Accounting for Income Taxes Guidance remains applicable and did not propose any changes to that guidance.¹² Further, the Commission required that public utilities provide in their ADIT Worksheets the accounting for any excess or deficient ADIT amounts in Accounts 182.3 and 254.¹³

Niagara Mohawk appears to record a net value of excess and deficient ADIT resulting from the Tax Cuts and Jobs Act in Account 254, rather than recording excess ADIT to Account 254 and deficient ADIT to Account 182.3. Please explain how Niagara Mohawk's proposed accounting treatment is consistent with the Accounting for Income Taxes Guidance.

⁷ 16 U.S.C. § 824d.

⁸ Order No. 864, 169 FERC ¶ 61,139 at PP 48, 65, 69.

⁹ *Id.* PP 65, 104.

¹⁰ Niagara Mohawk July 24, 2020 Amended Filing at 2.

¹¹ *Accounting for Income Taxes*, Docket No. AI93-5-000 (Apr. 23, 1993), <https://www.ferc.gov/enforcement-legal/enforcement/accounting-matters/ai93-5-000> (Accounting for Income Taxes Guidance).

¹² Order No. 864, 169 FERC ¶ 61,139 at P 31.

¹³ *Id.* PP 52, 62.

This letter is issued pursuant to delegated authority, 18 C.F.R. § 375.307 (2020) and is interlocutory. This letter is not subject to rehearing under 18 C.F.R. § 385.713. Niagara Mohawk must respond within 30 days of the date of this letter by making a deficiency letter response filing in accordance with the Commission's electronic tariff requirements using Type of Filing Code 80 – Compliance.

Failure to respond to this letter order within the time period specified may result in a further order rejecting your filing.

Issued by: | Kurt M. Longo, Director, Division of Electric Power Regulation – East