

180 FERC ¶ 61,168
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

New York Independent System Operator, Inc.

Docket Nos. ER22-1702-000
ER22-1702-001

ORDER DISMISSING FILINGS

(Issued September 19, 2022)

1. On April 28, 2022, as amended on July 21, 2022, the New York Independent System Operator, Inc. (NYISO), on behalf of Niagara Mohawk Power Corporation (Niagara Mohawk) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and part 35 of the Commission's regulations,² five Small Generator Interconnection Agreements (SGIAs) with affiliated interconnection customers under NYISO's Open Access Transmission Tariff (OATT): (1) an SGIA between Niagara Mohawk and Bayside Solar LLC, designated as Service Agreement No. 2704; (2) an SGIA between Niagara Mohawk and Beta Solar LLC, designated as Service Agreement No. 2705; (3) an SGIA between Niagara Mohawk and Central Solar LLC, designated as Service Agreement No. 2706; (4) an SGIA between Niagara Mohawk and Creek Solar LLC, designated as Service Agreement No. 2707; and (5) an SGIA between Niagara Mohawk and Helmet Solar LLC, designated as Service Agreement No. 2708 (collectively, SGIAs). For the reasons discussed below, we dismiss the filings for lack of jurisdiction over the SGIAs.

I. Background

2. Niagara Mohawk explains that Bayside Solar LLC, Beta Solar LLC, Central Solar LLC, Creek Solar LLC, and Helmet Solar LLC each own a photovoltaic system (collectively, Solar Generators) between 66.6 kilowatts (kW) and 500 kW in size that are located on five separate buildings in Amherst, New York.³ Niagara Mohawk further explains that the Solar Generators are connected to Niagara Mohawk's facilities at the

¹ 16 U.S.C. § 824d.

² 18 C.F.R. pt. 35 (2021).

³ Transmittal at 2-3.

State University of New York at Buffalo (SUNY Buffalo).⁴ Niagara Mohawk states that the SGIAs allow the Solar Generators to transmit power from each Solar Generator's photovoltaic system to the point of interconnection with Niagara Mohawk to the extent that the power produced is not consumed by local load at SUNY Buffalo.

3. Niagara Mohawk states that it believes that the Solar Generators are qualifying facilities (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA),⁵ and the Solar Generators have filed Form No. 556 self-certifications with the Commission.⁶ Therefore, consistent with the Commission precedent on third-party sales, Niagara Mohawk states that it is submitting the SGIAs out of an abundance of caution; Niagara Mohawk maintains that the Commission may find the SGIAs to be jurisdictional agreements that must be filed with the Commission.⁷

II. Notice of Filing and Responsive Pleadings

4. Notice of the filing was published in the *Federal Register*, 87 Fed. Reg. 26,349 (May 4, 2022), with interventions and protests due on or before May 19, 2022. No interventions or protests were filed.

5. On June 23, 2022, Commission staff issued a letter informing Niagara Mohawk that its filing was deficient and requesting additional information about its filing (Deficiency Letter). On July 21, 2022, Niagara Mohawk filed its response to the Deficiency Letter in Docket No. ER22-1702-001 (Deficiency Response). Notice of Niagara Mohawk's Deficiency Response was published in the *Federal Register*, 87 Fed. Reg. 45,099 (July 27, 2022), with interventions and protests due on or before August 11, 2022. None was filed.

⁴ As suggested by Niagara Mohawk's deficiency response *infra*, the QFs will physically interconnect with SUNY Buffalo facilities. *See generally* Deficiency Response at 2-3.

⁵ Transmittal at 3.

⁶ *See Bayside Solar LLC*, Form No. 556, Docket No. QF22-617-000 (May 4, 2022); *Beta Solar LLC*, Form No. 556, Docket No. QF22-618-000 (May 4, 2022); *Central Solar LLC*, Form No. 556, Docket No. QF22-620-000 (May 4, 2022); *Creek Solar LLC*, Form No. 556, Docket No. QF22-621-000 (May 4, 2022); *Helmet Solar LLC*, Form No. 556, Docket No. QF22-622-000 (May 4, 2022).

⁷ Transmittal at 3 (citing *Standardization of Small Generator Interconnection Agreements & Proc.*, Order No. 2006, 111 FERC ¶ 61,220, at P 516, *order on reh'g*, Order No. 2006-A, 113 FERC ¶ 61,195 (2005), *order granting clarification*, Order No. 2006-B, 116 FERC ¶ 61,046 (2006)).

A. Deficiency Letter and Deficiency Response

6. The Deficiency Letter requested additional information regarding whether Niagara Mohawk will purchase any of the power from the Solar Generators that is not consumed by the local load at SUNY Buffalo pursuant to PURPA and whether the Solar Generators would make any wholesale sales other than those made pursuant to PURPA.⁸ In response, Niagara Mohawk states that it currently has no plans to purchase from the Solar Generators pursuant to PURPA any of the power that is not consumed by the local load at SUNY Buffalo, and that it does not have a purchase contract with any of the Solar Generators.⁹ Niagara Mohawk states that, because all of the power may not be consumed on-site or pursuant to a purchase contract, any sale of such excess power could be viewed as a QF sale to a third party other than the interconnecting utility or as a wholesale sale, thus potentially giving the Commission jurisdiction over the SGIA.

7. Niagara Mohawk states that Attachment 1 of each SGIA defines the “Point of Interconnection” as “[t]he point where the Interconnection Facilities connect with the New York State Transmission System or the Distribution System.” Niagara Mohawk explains that Attachment 1 of each SGIA defines the “New York State Transmission System” in relevant part as “[t]he entire New York State electric transmission system,” and defines the “Distribution System” in relevant part as “[t]he Transmission Owner’s [i.e., Niagara Mohawk’s] facilities and equipment used to distribute electricity that are subject to FERC jurisdiction.” Niagara Mohawk explains further that, applying these definitions, the point of interconnection specified in each SGIA cannot be on the SUNY Buffalo system because SUNY Buffalo does not have facilities that are part of the New York State Transmission System or Distribution System. Niagara Mohawk states that the Niagara Mohawk facilities that are the point of interconnection for the SGIA are on the Niagara Mohawk transmission system. Niagara Mohawk states that the applicable tariff for purposes of interconnection appears to be the Commission-jurisdictional NYISO OATT, and that the state-jurisdictional tariff under which Niagara Mohawk provides interconnection service to its retail distribution facilities is inapplicable here. Niagara Mohawk also explains that, although the NYISO OATT appears to be applicable, the NYISO generator interconnection procedures are inapplicable because the Solar Generators will function as behind-the-meter generation.

8. Niagara Mohawk further states that the local load at SUNY Buffalo is greater than the amount of generation that the Solar Generators are capable of producing. Niagara Mohawk clarifies that the Solar Generators plan to only sell their power to the local load for purposes of load reduction pursuant to a state-jurisdictional net metering tariff, and the Solar Generators do not intend to sell any power through wholesale sales. Niagara

⁸ Deficiency Letter at 2.

⁹ Deficiency Response at 2.

Mohawk also clarifies that the Solar Generators do not have other agreements for sales to parties besides SUNY Buffalo.¹⁰

III. Discussion

A. Substantive Matters

9. We find that the SGIAs are not jurisdictional agreements that must be filed with the Commission. Therefore, we dismiss these agreements for lack of jurisdiction.

10. A facility that wishes to be considered a QF and that meets the general requirements for QF status¹¹ must file a FERC Form No. 556 with the Commission to obtain QF status.¹² The Solar Generators filed with the Commission Form No. 556 self-certifications that were not protested¹³ and are considered to be QFs.

11. In Order No. 2003, the Commission outlined the boundary of federal jurisdiction over interconnection agreements with QFs.¹⁴ The Commission has explained that “states will continue to exercise authority over QF interconnections when the owner of the QF

¹⁰ *Id.* at 4.

¹¹ 18 C.F.R. § 292.203(a)-(b) (2021); *accord id.* § 292.207 (procedures for obtaining QF status); *cf. id.* §§ 292.204, 292.205 (criteria for QF status for small power production and cogeneration facilities).

¹² *See id.* § 292.207(a)(1), (b)(2). While not applicable here, a facility may be exempt from filing a FERC Form No. 556 if it is under the 1 megawatt (MW) threshold for the Commission’s QF filing requirements. *See* 18 C.F.R. § 292.203(d)(1) (“Any facility with a net power production capacity of 1 MW or less is exempt from the filing requirements.”); *accord id.* § 292.203(a)(3).

¹³ *See Bayside Solar LLC*, Form No. 556, Docket No. QF22-617-000 (May 4, 2022); *Beta Solar LLC*, Form No. 556, Docket No. QF22-618-000 (May 4, 2022); *Central Solar LLC*, Form No. 556, Docket No. QF22-620-000 (May 4, 2022); *Creek Solar LLC*, Form No. 556, Docket No. QF22-621-000 (May 4, 2022); *Helmet Solar LLC*, Form No. 556, Docket No. QF22-622-000 (May 4, 2022).

¹⁴ *See Standardization of Generator Interconnection Agreements and Proc.*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh’g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh’g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004),

order on reh’g, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

sells the output of the QF only to an interconnected utility or to on-site customers.”¹⁵ As Niagara Mohawk explained in its Deficiency Response, the Solar Generators will be making sales only to an on-site customer and will not be making wholesale sales to any electric utility.¹⁶ In fact, Niagara Mohawk clarifies that the load of the on-site customer, SUNY Buffalo, “is substantially greater than the amount of generation that the Solar Generators can provide. The Solar Generators intend to sell power solely to SUNY Buffalo for purposes of load reduction pursuant to a state-jurisdictional net metering tariff, and have no intent to sell any excess generation through wholesale sales.”¹⁷

12. For these reasons and based on the record here as clarified in the Deficiency Response, we find that the Commission lacks jurisdiction over the Solar Generator interconnections at SUNY Buffalo. Accordingly, we dismiss the SGIAs.

The Commission orders:

The filings are hereby dismissed as discussed in the body of this order.

By the Commission. Commissioner Danly is dissenting with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁵ Order No. 2003, 104 FERC ¶ 61,103 at P 814. The Commission reiterated this statement in Order No. 2006. Order No. 2006, 111 FERC ¶ 61,220 at P 517.

¹⁶ Deficiency Response at 4.

¹⁷ *Id.* We base our conclusions here on the representations made in this record, including the representation that no power will be sold here except to SUNY Buffalo. Given the representations here, we therefore need not address a situation in which the Solar Generators’ production were to exceed local load at SUNY Buffalo.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.

Docket Nos. ER22-1702-000
ER22-1702-001

(Issued September 19, 2022)

DANLY, Commissioner, *dissenting*:

I dissent from today's order.¹⁸ Though these agreements may not be subject to our jurisdiction based upon the record in this proceeding, I would find that they are FERC-jurisdictional and that they should have been, and were, properly filed.

For these reasons, I respectfully dissent.

James P. Danly
Commissioner

¹⁸ *N.Y. Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,168 (2022).