190 FERC ¶ 61,190 UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Mark C. Christie, Chairman; Willie L. Phillips, David Rosner, Lindsay S. See, and Judy W. Chang.

Niagara Mohawk Power Corporation New York Independent System Operator, Inc. Docket No. ER25-312-001

ORDER ACCEPTING AND SUSPENDING UNEXECUTED LARGE GENERATOR INTERCONNECTION AGREEMENT, SUBJECT TO REFUND, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 27, 2025)

1. On October 31, 2024, as amended on January 29, 2025, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² New York Independent System Operator, Inc. (NYISO) filed, on behalf of Niagara Mohawk Power Corporation (Niagara Mohawk), an unexecuted amended and restated Large Generator Interconnection Agreement (Amended LGIA) between Niagara Mohawk and Sterling Power Partners, L.P. (Sterling) (together, the Parties).³ As discussed below, we accept the Amended LGIA, suspend it for a nominal period, to become effective November 1, 2024, as requested, subject to refund, and establish hearing and settlement judge procedures.

I. <u>Background</u>

2. Niagara Mohawk owns and operates transmission facilities in New York, all of which are subject to the operational control of NYISO.⁴ Sterling owns a 62 MW combined-cycle natural gas-fired cogeneration electric generating facility located in

¹ 16 U.S.C. § 824d.

² 18 C.F.R. pt. 35 (2024).

³ The Amended LGIA will supersede the LGIA currently on file with the Commission that is designated as the Third Revised Service Agreement No. 1144 (Sterling LGIA) under the NYISO Open Access Transmission Tariff (OATT).

⁴ Transmittal at 2-3.

Sherrill, New York (Sterling Facility), and sells the output from that facility into NYISO's wholesale markets.⁵

3. In an order issued in 2007, the Commission accepted, among other things, an unexecuted interconnection agreement between Niagara Mohawk and Sterling, intended to replace the late-filed, executed 1998 amended interconnection agreement between the Parties (2007 LGIA).⁶ The Commission also determined, among other things, that the single circuit breaker located in the Oneida Substation that connects the Sterling Facility to Niagara Mohawk's transmission system was properly classified as an interconnection facility rather than a network facility, thus allowing Niagara Mohawk to directly recover from Sterling its actual expenses associated with operation and maintenance (O&M) work performed on the interconnection facility.⁷ Subsequently, in 2013, the Commission accepted Niagara Mohawk's filing to extend the term of the interconnection service under the 2007 LGIA and to make other non-substantive updates, in what is now the Sterling LGIA.⁸ In that proceeding, Niagara Mohawk stated that the Sterling LGIA closely follows the NYISO *pro forma* LGIA.

II. <u>Filing Summary</u>

4. In the Amended LGIA filing, Niagara Mohawk states that the amendments to the Sterling LGIA account for the replacement of certain Connecting Transmission Owner's Attachment Facilities required to provide interconnection service to the Sterling Facility.⁹ Niagara Mohawk states that the Connecting Transmission Owner's Attachment Facilities are at the end of their useful life and must be replaced to continue to "ensure reliability of [these] facilities exclusively used by Niagara Mohawk to transmit to the New York Transmission System power produced by the Sterling [Facility]."¹⁰ Niagara Mohawk contends that the Amended LGIA is neither the result of a request for new interconnection service under the NYISO OATT, nor are there proposed increases in capacity of, or changes to, the characteristics of the Sterling Facility.¹¹ Niagara Mohawk

⁵ *Id.* at 3.

⁶ Niagara Mohawk Power Corp., 121 FERC ¶ 61,104 (2007) (October 2007 Order), order on reh'g, 123 FERC ¶ 61,144 (2008).

⁷ October 2007 Order, 121 FERC ¶ 61,104 at PP 13 n.8, 19.

⁸ Niagara Mohawk Power Corp., Docket Nos. ER13-736-000 and ER13-736-001 (Mar. 1, 2013) (delegated order).

⁹ Transmittal at 2, 4.

¹⁰ Id. at 2.

states that a complete replacement of its portion of a 115-kV tie line supporting the Sterling Facility as well as replacement of certain breakers, switches, controls, protection, communication, and power equipment facilities are estimated to cost nearly \$2.5 million.

5. Niagara Mohawk states that Sterling has refused to execute the Amended LGIA because Sterling takes the position that funding the replacement of the relevant Connecting Transmission Owner's Attachment Facilities is not Sterling's responsibility under the Sterling LGIA.¹² Niagara Mohawk argues, however, that Sterling is required, pursuant to Article 11.2 of the Sterling LGIA, to fund Connecting Transmission Owner's Attachment Facilities.¹³ Niagara Mohawk further states that Article 10.5 of the Sterling LGIA provides that the "Developer shall be responsible for all reasonable expenses including overheads associated with: . . (2) . . . repair and replacement of Transmission Owner's Attachment Facilities."¹⁴

6. Niagara Mohawk states that, for current interconnection customers taking service under a *pro forma* LGIA, Niagara Mohawk requires provision of security for construction of replacement Connecting Transmission Owner's Attachment Facilities; however, this security is not required under the Sterling LGIA. According to Niagara Mohawk, Appendix H in the Sterling LGIA renders inapplicable certain provisions of the NYISO *pro forma* LGIA because, at the time of the 2007 LGIA, the Parties agreed to omit certain terms that would not be applicable to a generation facility already in commercial operation.¹⁵ Niagara Mohawk states that the interconnection is governed by a two-party grandfathered interconnection agreement that predates the NYISO OATT.¹⁶ Appendix H

¹¹ Id. at 2.

¹² Id. at 4.

¹³ *Id.* at 4-5. Article 11.2 states "Transmission Owner shall design, procure, construct, install own and/or control the Transmission Owner's Attachment Facilities described in Appendix A hereto, at the sole expense of the Developer." NYISO, NYISO Agreements, Agreement No. 1144 (SG-1144, LGIA between Niagara Mohawk Power Corporation, Alliance Energy, Sterling Power Partners L.P.) (1.0.0), art. 11.2. The Sterling LGIA refers to Sterling as "Developer" and to Niagara Mohawk as "Transmission Owner." Those terms refer to the same parties when used in this order.

¹⁴ Transmittal at 5 (quoting NYISO, NYISO Agreements, Agreement No. 1144 (SG-1144, LGIA between NiMo, Alliance Energy, Sterling Power) (1.0.0), art. 10.5).

¹⁵ *Id.* at 5 (citing October 2007 Order, 121 FERC ¶ 61,104, *order on reh'g*, 123 FERC ¶ 61,144 (2008); *Niagara Mohawk*, Docket No. ER07-1019-005 (Aug. 7, 2008) (delegated order)).

to the Sterling LGIA currently excludes as inapplicable the Article 11.5 security provisions. Niagara Mohawk states that, in the Amended LGIA, it proposes to remove Article 11.5 from Appendix H's list of excluded terms.¹⁷

7. Niagara Mohawk states that Sterling rejected Niagara Mohawk's proposal to require the provision of security in accordance with Article 11.5.¹⁸ Niagara Mohawk states that the provisions of Article 11.5 are required by both the Commission's *pro forma* LGIA and the terms of the NYISO *pro forma* LGIA. Therefore, Niagara Mohawk argues it is just and reasonable to require the provision of security in an amount sufficient to cover the cost for Sterling's share of constructing, procuring, and installing the applicable portion of Connecting Transmission Owner's Attachment Facilities, in part because those facilities relevant to Sterling's interconnection are sole use facilities and are operated and maintained to provide interconnection service to the Sterling Facility.

8. Niagara Mohawk states that although it proposes to update the Sterling LGIA to include all terms required in the currently effective version of the NYISO *pro forma* LGIA, some continue to be rendered inapplicable by Appendix H to the agreement.¹⁹

9. Niagara Mohawk proposes revisions in the Amended LGIA to update its description of the Connecting Transmission Owner's Attachment Facilities contained in

¹⁶ Id. at 4.

¹⁷ Article 11.5 states:

At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of a Connecting Transmission Owner's Attachment Facilities, Developer shall provide Connecting Transmission Owner, at Developer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Connecting Transmission Owner

NYISO, NYISO Agreements, Agreement No. 1144 (SG-1144, LGIA between NiMo, Alliance Energy, Sterling Power) (1.0.0), art. 11.5.

¹⁸ Transmittal at 5.

¹⁹ *Id.* (citing *N.Y. Indep. Sys. Operator*, Compliance Filings for Order Nos. 2003 and 2003-A, Docket No. ER24-1915-000 (filed May 1, 2024)).

Appendix A as well as to describe the circumstances and specifications regarding those Attachment Facilities slated for replacement between June 2025 and May 2027.²⁰

10. Niagara Mohawk proposes to add a description of the methodologies it uses to calculate the O&M expense charge it assesses to interconnection customers, in accordance with Article 10.5 of the Sterling LGIA, and to include information regarding the methodologies in Appendix A to the Amended LGIA in order to provide Sterling greater transparency on how it calculates O&M expenses.²¹ Niagara Mohawk asserts that the proposed revisions also acknowledge Sterling's rights to elect between the two O&M expenses charge methodologies, i.e., quarterly reimbursement of actual O&M expenses incurred or a fixed, ongoing charge based on an allocation factor. Niagara Mohawk states that O&M Attachment 1 defines Niagara Mohawk's O&M expense allocation factor and shows the fixed ongoing charge available to Sterling should it opt not to be billed O&M expense on an actual cost incurred basis.

11. Niagara Mohawk requests waiver of the Commission's 60-day notice requirement²² to permit the Amended LGIA to become effective on November 1, 2024. Niagara Mohawk states that it requests an effective date one day after the date of filing and that good cause exists for waiver of prior notice since Niagara Mohawk has already begun to incur engineering and procurement costs associated with replacement of the Connecting Transmission Owner's Attachment Facilities.²³

III. Notice and Responsive Pleadings

12. Notice of Niagara Mohawk's filing was published in the *Federal Register*, 89 Fed. Reg. 88274 (Nov. 7, 2024), with interventions and protests due on or before November 21, 2024. Sterling filed a timely motion to intervene and a protest (Sterling Protest). On December 6, 2024, Niagara Mohawk filed an answer to the Sterling Protest (Niagara Mohawk Answer). On December 19, 2024, Sterling filed an answer to the Niagara Mohawk Answer (Sterling Answer).

13. On December 20, 2024, Commission staff issued a letter informing Niagara Mohawk that its filing was deficient and requesting additional information (Deficiency Letter). On January 29, 2025, Niagara Mohawk filed a response to the Deficiency Letter in Docket No. ER25-312-001 (Deficiency Response). Notice of Niagara Mohawk's

²⁰ Id.

²¹ Id. at 6.

²² 18 C.F.R. § 35.3(a) (2024).

²³ Transmittal at 6.

Deficiency Response was published in the *Federal Register*, 90 Fed. Reg. 8931 (Feb. 4, 2025), with interventions and protests due on or before February 19, 2025. On February 19, 2025, Sterling filed a protest (Sterling Protest to Deficiency Response).

A. <u>Sterling Protest</u>

14. Sterling argues that the Amended LGIA contains terms and conditions that are not just and reasonable and would impose an improper allocation of costs related to the interconnection of the Sterling Facility with Niagara Mohawk's transmission system.²⁴ Sterling states that the Parties previously agreed and memorialized in the Sterling LGIA Attachment H that "Transmission Owner and Developer are already interconnected, pursuant to a preexisting interconnection agreement. Therefore, certain terms of the [NYISO *pro forma* LGIA] are not applicable to this [the Sterling] LGIA, because they relate solely to new interconnections."²⁵ Sterling states that Appendix H to the Sterling LGIA includes a list of non-applicable *pro forma* provisions, including Article 11.5, and the Amended LGIA seeks to apply Article 11.5 to the Parties because Niagara Mohawk seeks to impose the costs associated with its election to redesign the interconnection facilities on Sterling and collect those costs upfront, including approximately a half million dollars for its overhead.

15. Sterling states that, as designed and constructed, the facilities that interconnect the Sterling Facility include a single circuit breaker position in Niagara Mohawk's 115-kV Oneida Substation and a 2.5-mile tie line to connect the Sterling Facility with the Oneida Substation.²⁶ Sterling argues that, for purposes unrelated to Sterling, Niagara Mohawk has now elected to redesign the facilities that interconnect the Sterling Facility from the single circuit breaker design previously agreed upon to a breaker-and-a-half configuration, at Sterling's expense. Sterling argues that Niagara Mohawk is introducing a new breaker-and-a-half configuration to benefit Niagara Mohawk's other customers and to improve reliability and operational flexibility.²⁷ Sterling states that it has objected to Niagara Mohawk's imposition of a redesign as unnecessary and has pointed out that the existing breaker meets all relevant industry standards and that the existing configuration is, as agreed to by the Parties in the Sterling LGIA, in accordance with Good Utility Practice.

²⁴ Sterling Protest at 1.

²⁵ Id. at 4.

²⁶ Id. at 3.

²⁷ Id. at 5.

16. Sterling states that, under the terms of the NYISO *pro forma* LGIA, the Developer proposes the System Protection Facilities as part of its proposed interconnection design of the Developer's Attachment Facilities.²⁸ Sterling states that the Transmission Owner and NYISO then review those specifications, and the Developer is obligated to make those changes to the specifications "as may reasonably be required by the Transmission Owner or NYISO, in accordance with Good Utility Practice, to ensure that the [Developer's Attachment Facilities] are compatible with the technical specifications, operational, and safety requirements of the Transmission Owner and NYISO."²⁹

17. Sterling argues that the Sterling LGIA, Appendix H provides that provisions pertaining to the design proposal, acceptance, and construction of the System Protection Facilities were no longer applicable because the Sterling LGIA expressly excludes the *pro forma* provisions related "solely to new interconnection," including "5.10 (Developer Attachment Facilities), including all subsections thereof," and "5.11 (Transmission Owner Attachment Facilities), including all subsections thereof."

18. Sterling contends that nothing in the Sterling LGIA provides that the Transmission Owner may, at its sole discretion, obligate the Developer to subsequently reconstruct the System Protection Facilities based on the Transmission Owner simply electing to impose a different design.³⁰ Sterling argues that interconnection costs are a substantial and significant cost of the Developer's investment in its electrical generating facility, and once Sterling paid for the System Protection Facilities along with the other costs of interconnection, it acquired its delivery rights for the facility to the transmission system. Sterling contends that the existing System Protection Facilities operate as designed, the breaker and communications systems are in good operating condition and well-maintained, and Niagara Mohawk has not identified any deficiency in Sterling's system.

²⁸ *Id.* at 6. *See* NYISO, NYISO Tariffs, NYISO OATT, attach. X, § 30.14 (Appendices) (0.0.0), app. 6, art. 5.10.1.

²⁹ Sterling Protest at 6. *See* NYISO, NYISO Tariffs, NYISO OATT, attach. X, § 30.14 (Appendices) (0.0.0), app. 6, art. 5.10.2.

³⁰ Sterling Protest at 7. The Sterling LGIA defines System Protection Facilities as "the equipment, including necessary protection signal communications equipment, required to: (1) protect the New York State Transmission System from faults or other electrical disturbances occurring at the Large Generating Facility; and (2) protect the Large Generating Facility from faults or other electrical system disturbances occurring on the New York State Transmission System or on other delivery systems or other generating systems to which the New York State Transmission System is directly connected." NYISO, NYISO Agreements, Agreement No. 1144 (SG-1144, LGIA between NiMo, Alliance Energy, Sterling Power) (1.0.0), art. 1.

Sterling states that Niagara Mohawk has identified the Oneida Substation to replace certain of its transformers as a part of a system-wide plan; however, the replacement of such transformers does not require a modification of Sterling's System Protection Facilities.³¹

19. Sterling also asserts that Niagara Mohawk's reliance on Sterling LGIA Article 11.2 is misplaced.³² Sterling contends that the operative obligations are to design, procure, construct, install, own, and/or operate—not modify and replace—at the Transmission Owner's subsequent election. With regard to Sterling LGIA Article 10.5, Sterling argues that Niagara Mohawk is not seeking maintenance of the existing System Protection Facilities, nor even their replacement, but a modification due to an entirely different design. Sterling also contends that Article 10.5 addresses maintenance costs and makes it clear that the maintenance costs associated with those modifications required for third-party interconnection do not then accrue to the existing interconnection customer. Thus, Sterling argues that Article 10.5 does not apply, other than to confirm that maintenance costs associated with the proposed modifications should reside with Niagara Mohawk and not Sterling.³³ Sterling contends that Sterling LGIA Article 5 addresses modifications, and the costs under such circumstances are to be borne by Niagara Mohawk.³⁴ Sterling states that its obligation to pay for modifications or replacements

³² Id. at 8.

³³ Id. at 9.

³⁴ Id. Sterling LGIA Article 5.19.3, entitled "Modification Costs," states in full:

Developer shall not be assigned the costs of any additions, modifications, or replacements that Transmission Owner makes to the Transmission Owner's Attachment Facilities or the New York State Transmission System to facilitate the interconnection of a third party to the Transmission Owner's Attachment Facilities or the New York State Transmission System, or to provide Transmission Service to a third party under the NYISO OATT, except in accordance with the cost allocation procedures in Attachment S of the NYISO OATT. Developer shall be responsible for the costs of any additions, modifications, or replacements to the Developer Attachment Facilities that may be necessary to maintain or upgrade such Developer Attachment Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

³¹ Sterling Protest at 7.

extends only to modifications or replacements that are required for Sterling's interconnection or necessary to maintain Developer Attachment Facilities.

20. Sterling argues that under established Commission cost allocation precedent, the costs for Niagara Mohawk's desired modification belong solely with Niagara Mohawk.³⁵ Sterling contends that it is well-established that the cost must be allocated in a manner "commensurate with benefits."³⁶ Sterling asserts that Niagara Mohawk's position that it can simply elect to make such engineering changes and impose costs at its discretion envisions an unworkable interconnection process in which transmission owners can impose potentially unlimited costs on existing resources.³⁷

21. Sterling argues that Niagara Mohawk also seeks to impose the O&M expenses on Sterling once the reconfiguration, which benefits Niagara Mohawk's other customers and its transmission system, is complete. Sterling argues that Niagara Mohawk should bear the costs and O&M expenses incurred by reason of its redesign to a breaker-and-a-half configuration. Sterling contends that the Commission rejected a similar unexecuted LGIA attempting to impose the O&M expense on Sterling's affiliates.³⁸

22. Further, Sterling states that Niagara Mohawk's filing refers to the interconnection being governed by a two-party grandfathered interconnection agreement, but Sterling argues that the Commission has previously rejected the characterization of the Sterling LGIA as a grandfathered agreement.³⁹

23. Sterling requests that the Commission reject Niagara Mohawk's unexecuted Amended LGIA unless the Commission requires modifications to the cost allocation and O&M expense of its elective conversion of the interconnection facilities to a newly

NYISO, NYISO Agreements, Agreement No. 1144 (SG-1144, LGIA between NiMo, Alliance Energy, Sterling Power) (1.0.0), art. 5.19.3.

³⁵ Id. at 10 (citing N.Y. Indep. Sys. Operator, Inc., 124 FERC ¶ 61,238, at P 34 (2008); ISO New England Inc., 127 FERC ¶ 61,112, at P 9 (2011)).

³⁶ Id. (citing Pub. Serv. Elec. & Gas Co. v. FERC, 989 F.3d 10, 14 (D.C. Cir. 2021)).

³⁷ *Id.* at 11.

³⁸ *Id.* at 2 (citing October 2007 Order, 121 FERC ¶ 61,104 at P 19).

³⁹ *Id.* at 3 (citing October 2007 Order, 121 FERC ¶ 61,104 at P 22).

designed breaker-and-a-half configuration, including the costs of any System Protection Facilities changes required by the reconfiguration.⁴⁰

B. <u>Niagara Mohawk Answer</u>

24. Niagara Mohawk argues that the Connecting Transmission Owner's Attachment Facilities that are solely relied upon by the Sterling Facility have reached the end of their useful life.⁴¹ Niagara Mohawk states that the proposed replacements will cover certain facilities that entered service more than 30 years ago. Niagara Mohawk argues that it has observed current power engineering design criteria in selecting the proposed replacements, including swapping a single circuit breaker configuration for a breaker-and-a-half configuration.⁴²

25. Niagara Mohawk explains that the facilities serving the Sterling Facility that are in need of replacement include: (1) a 2.5 mile radial 115-kV generation tie line; and (2) a circuit comprised of two switches and a circuit breaker located within the fence line of the Oneida Substation.⁴³ Niagara Mohawk states that all of these facilities are located on the generator side of the point of interconnection and are therefore dedicated as sole use facilities that benefit the Sterling Facility. Niagara Mohawk explains that it is replacing the entire Oneida Substation, including all electric facilities and components contained within the fence line. Niagara Mohawk states that the Oneida Substation is a 115-kV/13.2-kV air-insulated substation with a straight bus design and has seven 115-kV tie lines that interconnect to it. Niagara Mohawk asserts that the need for the substation replacements is based on asset condition, and, when Niagara Mohawk reviewed several options for rebuilding the Oneida Substation, it determined that the rebuilt substation must adhere to the design criteria published in its TGP28 Transmission Planning Guide.⁴⁴

⁴⁰ Id. at 2.

⁴¹ Niagara Mohawk Answer at 3.

⁴² *Id.* at 5.

⁴³ Id. at 6.

⁴⁴ *Id.* at 6-7. Niagara Mohawk includes in its answer an affidavit from Mr. Michael Falls, the Director of Transmission Planning and Asset Management of its New York division, which in part describes why Good Utility Practice supports construction of a breaker-and-a-half configuration at the Oneida Substation. *See id.* Ex. A (Affidavit of Michael Falls) ¶¶ 10-12 (First Falls Affidavit).

26. Niagara Mohawk asserts that no third-party interconnection is causing the need for a rebuild of the Connecting Transmission Owner's Attachment Facilities.⁴⁵ Niagara Mohawk states that a total rebuild of the Oneida Substation is necessary to ensure operational integrity of the electrical facilities that interconnect to the substation.⁴⁶ To that end, Niagara Mohawk states that the proposed replacement will require installation of new System Protection Facilities.⁴⁷ such as communication-based breaker failure protection, which will help detect the presence of faults or other system anomalies that, if undetected, could jeopardize the integrity of the Sterling Facility or Niagara Mohawk's transmission system.⁴⁸ Niagara Mohawk states that the terms and conditions of System Protection Facilities are set out in Article 9.6.4 of the Sterling LGIA, and they impose an ongoing requirement upon Niagara Mohawk to "install at [Sterling's] expense any System Protection Facilities that may be required on the Connecting Transmission Owner's Attachment Facilities or the New York State Transmission System as a result of the interconnection of the [Sterling Facility]."49 Niagara Mohawk notes that Article 9.6.4.2 states that these System Protection Facilities "shall be designed and coordinated with other systems in accordance with Good Utility Practice and Applicable Reliability Standards."⁵⁰ Niagara Mohawk disputes Sterling's assertion that the Parties agreed that the provisions of the Sterling LGIA governing System Protection Facilities would not be applicable moving forward and notes that, to the contrary, Article 9.6.4 is not among those non-applicable provisions enumerated in Appendix H.⁵¹ Furthermore, Niagara Mohawk disagrees with Sterling's assertion that Sterling's existing System Protection Facilities are consistent with Good Utility Practice; Niagara Mohawk points to Mr. Falls's affidavit claiming that Good Utility Practice now requires a breaker-and-a-half configuration.

27. Niagara Mohawk states that the estimated cost to rebuild the entire Oneida Substation is \$38 million; of that amount, the estimated cost to decommission and replace

⁴⁵ Id. at 7.
⁴⁶ Id.
⁴⁷ Id.

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 16 (quoting NYISO, NYISO Agreements, Agreement No. 1144 (SG-1144, LGIA between NiMo, Alliance Energy, Sterling Power) (1.0.0), art. 9.6.4).

⁵⁰ *Id.* (quoting NYISO, NYISO Agreements, Agreement No. 1144 (SG-1144, LGIA between NiMo, Alliance Energy, Sterling Power) (1.0.0), art. 9.6.4.2).

⁵¹ Id. at 17.

the facilities serving the Sterling Facility is \$2.5 million.⁵² Niagara Mohawk states that the proposed replacements to serve the Sterling Facility will continue to be located on the generator side of the point of interconnection and will therefore remain appropriately classified as Connecting Transmission Owner's Attachment Facilities.⁵³

28. Niagara Mohawk argues that Sterling is mistaken in its argument that Article 11.2 of the Sterling LGIA does not cover any subsequent modification or replacement of Connecting Transmission Owner's Attachment Facilities at Niagara Mohawk's election.⁵⁴ Niagara Mohawk argues that this interpretation is untenable, as it would suggest that once Attachment Facilities are designed, procured, constructed, and installed, Article 11.2 of the Sterling LGIA is no longer in effect.⁵⁵ Niagara Mohawk argues that, to the extent there is merit in Sterling's argument, Article 5.19.2 reaffirms that the cost of the proposed replacements is appropriately assigned to Sterling. Niagara Mohawk explains that Article 5.19.2 states that "[a]ny additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice."⁵⁶ Niagara Mohawk acknowledges that, if it were incurring costs to facilitate the interconnection of a third party, Article 5.19.3 would preclude the assignment of those costs to Sterling; however, Niagara Mohawk asserts once again that this is not the case.

29. Niagara Mohawk argues that assigning the cost of the proposed replacements to Sterling is expressly authorized by Article 10.5 of the Sterling LGIA.⁵⁷ Niagara Mohawk argues that, given that the proposed replacements are not driven by a third-party interconnection, Sterling's protest is inapposite.

30. Niagara Mohawk explains that Sterling has long benefitted by Niagara Mohawk hosting the Sterling Attachment Facilities within the fence line of the Oneida Substation, because the Sterling Attachment Facilities were installed near other Niagara Mohawk electrical facilities at the substation.⁵⁸ Niagara Mohawk states that the Commission has

⁵² *Id.* at 7.

⁵³ Id. at 8.

⁵⁴ Id.

⁵⁵ Id. at 9.

⁵⁶ *Id.* (quoting NYISO, NYISO Agreements, Agreement No. 1144 (SG-1144, LGIA between NiMo, Alliance Energy, Sterling Power) (1.0.0), art. 5.19.2).

⁵⁷ Id. at 10.

previously determined that Good Utility Practice requires replacement of existing facilities when necessary to maintaining a reliable interconnection.⁵⁹ Niagara Mohawk states that Niagara Mohawk's current transmission planning standards, as well as ISO New England Inc.'s Planning Procedure No. 9,⁶⁰ encourage, if not require, the use of a breaker-and-a-half configuration criteria when several transmission elements converge at a single substation.⁶¹ Mr. Falls states in his affidavit that the "only purpose and function [of the breaker-and-a-half configuration] is to protect and isolate [the tie line that interconnects the Sterling Facility] under fault conditions."⁶² He further states that the proposed new circuit breakers will only transmit the power generated by the Sterling Facility.

C. <u>Sterling Answer</u>

31. Sterling contends that the operative definition of Good Utility Practice is the one found in the Sterling LGIA, and Niagara Mohawk's answer does not demonstrate that a "different design is required," nor does the affidavit claim that it is required; instead Niagara Mohawk claims only that, in Mr. Falls's judgment, Good Utility Practice warrants the redesign.⁶³ Sterling asserts that if Niagara Mohawk did not elect to redesign the interconnection to a breaker-and-a-half configuration for its own purposes to benefit other customers, Niagara Mohawk would not be demanding payment from Sterling to alter the interconnection and the associated O&M expense.

⁵⁸ Id. at 11.

⁵⁹ Id. (citing Avangrid Inc. v. NextEra Energy Res., LLC, 182 FERC ¶ 61,044, order addressing arguments raised on reh'g, 183 FERC ¶ 61,196 (2023), aff'd, NextEra Energy Res. LLC v. FERC, 118 F.4th 361 (D.C. Cir. 2024) (finding that existing circuit breaker must be uprated and replaced to support interconnection in accordance with Good Utility Practice)).

⁶⁰ *Id.* First Falls Affidavit ¶ 9 (explaining that in ISO New England, where Niagara Mohawk's affiliate provides interconnection service, Planning Procedure No. 9 requires transmission owners to design certain substation facilities using a breaker-and-a-half configuration).

⁶¹ *Id. See id.* Ex. A-2.

⁶² *Id.* First Falls Affidavit ¶ 13.

 63 Sterling Answer at 3 (citing Niagara Mohawk Answer at 5; *id.* First Falls Affidavit ¶ 9).

32. Sterling argues that the Commission should deny Niagara Mohawk's motion to answer because: (1) it is an improper answer merely denominated as a motion to supplement; (2) Niagara Mohawk does not demonstrate good cause for filing an affidavit and a 2023 generic planning document that predates its initial filing; and (3) the answer does not add useful information.⁶⁴

D. <u>Deficiency Response</u>

33. In its Deficiency Letter, Commission staff sought clarification on several aspects of Niagara Mohawk's proposed Amended LGIA, including the agreement's status under NYISO's OATT, the implications of proposed substation upgrades, and the cost allocation for those upgrades. Commission staff also requested more information regarding whether the infrastructure replacements and reconfiguration at the Oneida Substation would constitute a material modification to the interconnection of the Sterling Facility, why Niagara Mohawk's proposed cost allocation aligns with tariff requirements, and why instating certain provisions of the NYISO *pro forma* LGIA would be appropriate.

34. Niagara Mohawk acknowledges that the Sterling LGIA is not a grandfathered agreement as defined in Attachment X to the NYISO OATT⁶⁵ because, though the Parties formed an interconnection agreement prior to NYISO's Order No. 2003 compliance, Niagara Mohawk did not file that agreement with the Commission until 2007.⁶⁶ Niagara Mohawk argues that the ongoing omission of any term identified in Appendix H to the Sterling LGIA is not consistent with, or superior to, the terms of the NYISO *pro forma* LGIA, but that Niagara Mohawk nonetheless proposes to reinstate Article 11.5.⁶⁷ However, Niagara Mohawk states that it has no objection if the Commission decides that Appendix H should be removed entirely from the Amended LGIA.

35. Niagara Mohawk states that, as early as 2021, it identified notable asset deficiencies due to age and condition of various critical components at the Oneida Substation.⁶⁸ Niagara Mohawk states that it has concluded that five 115-kV oil circuit

⁶⁴ Id. at 3-5.

⁶⁵ See NYISO, NYISO Tariffs, NYISO OATT, attach. X, § 30.5 (Procedures for Interconnection Requests Submitted Prior to Effective Date of Standard Large Facility Interconnection Procedures) (1.0.0), § 30.5.1.1.3.

⁶⁶ Deficiency Response at 2.

⁶⁷ Id. at 3.

⁶⁸ *Id.* attach. C (Affidavit of Michael Falls) ¶ 5 (Second Falls Affidavit).

breakers require replacement, and that its field engineers have monitored those breakers for years and reported a history of leaks and mechanism issues particular to each breaker. Niagara Mohawk further states that the original manufacturers of those breakers no longer have replacement inventory, as the components have a mixed vintage ranging from 1959 to 1962. Niagara Mohawk states that other asset deficiencies at the substation include worn components applicable to 19 manual gang-operated disconnect switches and 90 cap and pin insulators, which are original to the 1961 construction of the facility. Niagara Mohawk states that switches #41 and #43, which are classified as Sterling Attachment Facilities, are among the 19 switches that require replacement.

36. Niagara Mohawk states that the proposed breaker-and-a-half configuration would involve the addition of a new circuit breaker (Breaker R815) to the Oneida Substation that would in part be used to isolate the Sterling Facility during certain O&M work at the substation.⁶⁹ Niagara Mohawk clarifies, however, that Breaker R815 will be on the transmission side of the point of interconnection, and will therefore not be included in the Connecting Transmission Owner's Attachment Facilities. Niagara Mohawk states that it is therefore not proposing to charge Sterling for the investment cost or the O&M expense associated with the addition of Breaker R815. Niagara Mohawk states that Sterling would only be responsible for the costs applicable to the list of Sterling Attachment Facilities identified in the Amended LGIA that remain unmodified from the list provided in the Sterling LGIA.⁷⁰

37. Niagara Mohawk states that a breaker-and-a-half configuration consists of two main buses, and features one circuit breaker between every two circuits, resulting in 1.5 breakers per circuit.⁷¹ Niagara Mohawk asserts that one benefit of this configuration is that it could take several circuits at the substation into an outage state while isolating the Sterling Facility from that interruption, thus permitting the Sterling Facility to dispatch power notwithstanding the outage state of other circuits.⁷² Niagara Mohawk states that another benefit of this horizontal bus design is that it better ensures against safety risks caused by limited workspace due to the close proximity of parallel buses.

38. Niagara Mohawk adds that it is impractical in an engineering sense to redesign six of seven circuits in a breaker-and-a-half configuration and leave Sterling's circuit in a

⁷⁰ Id. at 3-4.

⁷¹ *Id.* Second Falls Affidavit ¶ 8. *See id.* attach. A at A-10.

⁷² *Id.* Second Falls Affidavit ¶ 8.

⁶⁹ Id. at 3.

single breaker design.⁷³ Niagara Mohawk states that it would increase costs for all customers to accommodate such an unconventional hybrid substation design.

39. Niagara Mohawk asserts that neither the replacement nor the reconfiguration of the Oneida Substation is triggered by, nor do they result in, a material modification to the operating characteristics of the Sterling Facility.⁷⁴ Niagara Mohawk states that the voltage criteria during switching and steady state switching at the rebuilt Oneida Substation will not change from the voltage criteria presently observed. Niagara Mohawk states that it is, however, adding a new capacitor bank to the rebuilt Oneida Substation at the expense of its native load customers to mitigate the effect on the system that the eventual retirement of the Sterling Facility is expected to cause. Niagara Mohawk further states that this redundancy is informed by Good Utility Practice and the expense will not be borne by Sterling.

E. <u>Sterling Protest to Deficiency Response</u>

40. Sterling states that Niagara Mohawk's cost breakdown supplied to Sterling shows that approximately 98% of the costs at issue are for Connecting Transmission Owner's Attachment Facilities.⁷⁵ Sterling states that the Sterling Facility is a peaker unit that operates at approximately 1% of its capacity, and that the current design of the facility's interconnection to the Oneida Substation has therefore met its needs.⁷⁶ Sterling asserts that installation of the capacitor bank included in the proposed replacements will reduce the voltage support provided by Sterling, thereby harming Sterling.⁷⁷ Sterling asserts that the proposed replacements also include replacing a relatively new breaker that Sterling paid for.⁷⁸ Sterling also asserts that Niagara Mohawk's reference to equipment vintages between 1959 and 1962 does not include the breaker that services the Sterling Facility.⁷⁹

⁷⁵ Sterling Protest to Deficiency Response at 2 and Ex.

⁷⁶ Id. at 2.

⁷⁸ *Id.* at 2-3 (citing Sterling Protest Ex. A).

⁷⁹ Id. at 3.

⁷³ *Id.* Second Falls Affidavit ¶ 9.

⁷⁴ *Id.* Second Falls Affidavit ¶ 10.

⁷⁷ *Id.* at 2-3 (citing Deficiency Response, Second Falls Affidavit ¶ 10).

Sterling argues that no aspect of the proposed replacements comes about from any changes at the Sterling Facility.⁸⁰

IV. <u>Discussion</u>

A. <u>Procedural Matters</u>

41. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2024), Sterling's timely, unopposed motion to intervene serves to make it a party to this proceeding.

42. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2024), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept Niagara Mohawk's and Sterling's answers because they have provided information that assisted us in our decision-making process.

B. <u>Substantive Matters</u>

43. As discussed below, we accept the proposed Amended LGIA, suspend it for a nominal period, effective November 1, 2024, as requested, subject to refund, and establish hearing and settlement judge procedures.

44. Our preliminary analysis indicates that Niagara Mohawk's Amended LGIA has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Niagara Mohawk's filing raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

45. While we are setting these matters for a trial-type evidentiary hearing,⁸¹ we encourage efforts to reach settlement before hearing procedures commence. To aid settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁸² If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which

⁸¹ Trial Staff is a participant in the hearing and settlement judge procedures. *See* 18 C.F.R. §§ 385.102(b), (c) (2024).

⁸² 18 C.F.R. § 385.603 (2024).

⁸⁰ *Id.* at 3-4 (citing Deficiency Response, Second Falls Affidavit ¶ 10).

determines judges' availability.⁸³ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge on the status of settlement discussions. Based on this report, the Chief Judge shall provide additional time to continue settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Niagara Mohawk's proposed Amended LGIA is hereby accepted for filing, and suspended for a nominal period, effective November 1, 2024, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Niagara Mohawk's proposed Amended LGIA, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within 45 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(D) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide participants with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days

⁸³ If parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (https://www.ferc.gov/available-settlement-judges).

thereafter, informing the Commission and the Chief Judge of participants' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 45 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426, or remotely (by telephone or electronically), as appropriate. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(SEAL)

Carlos D. Clay, Deputy Secretary.