

**CRITICAL ENERGY/ELECTRIC INFRASTRUCTURE INFORMATION**  
**TREATMENT OF ATTACHMENT REQUESTED**  
**PURSUANT TO 18 C.F.R. §§ 388.112-113**

September 4, 2020

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

**Re: Niagara Mohawk Power Corporation**  
**Docket No. ER20-\_\_\_\_-000**

**Filing of Engineering & Procurement Agreement with**  
**Atlantic Wind, LLC and Request for CEII Treatment**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”),<sup>1</sup> and Part 35 of the Federal Energy Regulatory Commission’s (“Commission”) regulations,<sup>2</sup> Niagara Mohawk Power Corporation (“Niagara Mohawk”) submits an Engineering & Procurement Agreement (“E&P Agreement”) between Niagara Mohawk and Atlantic Wind, LLC (“Atlantic Wind”).<sup>3</sup> The E&P Agreement is designated as Service Agreement No. 2563 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).

The E&P Agreement is an undisputed agreement the facilitate the performance of certain work that Atlantic Wind has requested Niagara Mohawk to do in connection with the interconnection of an Atlantic Wind generation facility. Niagara Mohawk respectfully requests treatment of an exhibit to the E&P Agreement as Critical Energy/Electric Infrastructure Information (“CEII”). Niagara Mohawk also requests that the Commission accept the E&P Agreement effective as of August 10, 2020, the effective date agreed to by the Parties.

---

<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. Part 35.

<sup>3</sup> Together, Niagara Mohawk and Atlantic Wind are referred to in the E&P Agreement and in this transmittal letter as the “Parties.”

## **I. Background**

Niagara Mohawk is a public utility subject to the Commission's jurisdiction that owns transmission facilities located in New York which have been placed under the operational control of the NYISO. Atlantic Wind is a limited liability company with an office and place of business in Oregon.

Atlantic Wind is proposing to interconnect a 79.725 MW wind generation farm ("Generation Facility") to the Niagara Mohawk transmission system. Consistent with the NYISO OATT, the Parties have entered into the E&P Agreement to facilitate Niagara Mohawk's performance of certain engineering and procurement activities for certain long-lead items in connection with the planned interconnection of the Generation Facility.<sup>4</sup> Niagara Mohawk is willing to perform this work subject to: (i) reimbursement by Atlantic Wind of all actual costs and expenses incurred by Niagara Mohawk in connection with the work; (ii) Atlantic Wind's performance of all other duties, responsibilities, and obligations set forth in the E&P Agreement, including, without limitation, specified actions to be taken by Atlantic Wind; and (iii) receipt of any and all required approvals as set forth in the E&P Agreement, in a form acceptable to Niagara Mohawk.<sup>5</sup>

## **II. Description of the E&P Agreement and Filing Requirements**

Pursuant to the E&P Agreement, Atlantic Wind will reimburse Niagara Mohawk for the actual costs and expenses incurred in connection with the work described above. The E&P Agreement sets forth the terms and conditions of this work and certain related commitments by Atlantic Wind. The E&P Agreement includes provisions addressing the performance and schedule of the work, liability and indemnification, insurance, regulatory and governmental approvals, and various other standard provisions included in comparable utility agreements.

Section 205 of the FPA authorizes the Commission to require public utilities to file all rates and charges that are "for or in connection with," and all agreements that "affect or relate to," jurisdictional transmission service or sales of electric energy.<sup>6</sup> The E&P Agreement relates to Niagara Mohawk's recovery of costs for performing procurement and other work in connection with the interconnection of the Generation Facility. Niagara Mohawk recognizes that the Commission may find the E&P

---

<sup>4</sup> Section 30.9 of Attachment X to the NYISO OATT states that prior to executing a Large Generator Interconnection Agreement, a Developer (in this case, Atlantic Wind) may, in order to advance the implementation of its interconnection, request and the Connecting Transmission Owner (in this case, Niagara Mohawk) shall offer the Developer, an engineering and procurement agreement that authorizes the Connecting Transmission Owner to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection.

<sup>5</sup> E&P Agreement, Recitals, Articles 3.0, 7.0, and 18.0, and Exhibits A and B.

<sup>6</sup> 16 U.S.C. §§ 824d(a)-(c).

Agreement to be a jurisdictional agreement that must be filed.<sup>7</sup> For these reasons, Niagara Mohawk is filing the E&P Agreement for Commission acceptance.

The price of the work to be performed pursuant to the E&P Agreement will be just and reasonable because Niagara Mohawk will perform the work at actual cost.<sup>8</sup> The Commission should therefore accept the E&P Agreement for filing.

### III. Request for CEII Treatment

Pursuant to Sections 388.112 and 388.113 of the Commission's regulations,<sup>9</sup> Niagara Mohawk respectfully requests treatment of Exhibit A-1 to the E&P Agreement as CEII. This Exhibit A-1 consists of the Facilities Study Report prepared by the NYISO for the Generation Project. Exhibit A-1 contains sensitive infrastructure information that should not be publicly released, as reflected by the fact that the NYISO included a CEII designation on every page of the Facilities Study Report. Niagara Mohawk further requests that the CEII designation remain in effect for at least five years from the date of this filing.

For these reasons, in the public version of the E&P Agreement, as reflected in the filed tariff record, Exhibit A-1 has been omitted. The non-public version of Exhibit A-1 has been marked "**CUI/CEII – Contains Critical Energy/Electric Infrastructure Information – Do Not Release**". The non-public version of Exhibit A-1 is being filed as a CEII attachment to this filing, designated as Attachment B. Consistent with the Commission's regulations, Attachment C to this filing includes a proposed form of protective agreement.

### IV. Effective Date

Niagara Mohawk requests that the Commission accept the E&P Agreement effective as of August 10, 2020, the effective date agreed to by the Parties.<sup>10</sup> The Commission's regulations require that a service agreement be filed within 30 days of its effective date unless otherwise specified by the Commission.<sup>11</sup> Niagara Mohawk is filing the E&P Agreement within 30 days of its effective date.

---

<sup>7</sup> See *Int'l Transmission Co. and Mich. Elec. Transmission Co., LLC*, 139 FERC ¶ 61,022, at P 14 (2012) (clarifying that "pre-interconnection agreements should be treated as service agreements that may be filed within 30 days of service commencing"); *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,093, at P 7 (2014) (accepting engineering and procurement agreement for filing).

<sup>8</sup> See E&P Agreement, Article 1.0, at definition of "Company Reimbursable Costs".

<sup>9</sup> 18 C.F.R. §§ 385.112-113.

<sup>10</sup> See E&P Agreement, Preamble and Article 1.0, at definition of "Effective Date".

<sup>11</sup> 18 C.F.R. § 35.3(a)(2).

**V. List of Filing Documents**

In addition to this transmittal letter, this filing includes:

1. Attachment A: Public version of the E&P Agreement;
2. Attachment B: Non-public version of Exhibit A-1 to the E&P Agreement, which contains CEII; and
3. Attachment C: Proposed form of protective agreement.

**VI. Communications and Service**

Communications regarding this filing should be addressed to the following individuals, whose names should be entered on the official service list maintained by the Secretary for this proceeding:

Christopher J. Novak  
Senior Counsel  
National Grid USA  
Service Company, Inc.  
40 Sylvan Road  
Waltham, MA 02451  
(781) 907-2112  
[Chris.Novak@nationalgrid.com](mailto:Chris.Novak@nationalgrid.com)

Kevin C. Reardon  
Director, Commercial Services  
National Grid USA  
40 Sylvan Road  
Waltham, MA 02451  
(781) 907-2411  
[Kevin.Reardon@nationalgrid.com](mailto:Kevin.Reardon@nationalgrid.com)

Sean A. Atkins  
Bradley R. Miliauskas  
Davis Wright Tremaine LLP  
1301 K Street, NW  
Suite 500 East  
Washington, DC 20005  
(202) 973-4200  
[seanatkins@dwt.com](mailto:seanatkins@dwt.com)  
[bradleymiliauskas@dwt.com](mailto:bradleymiliauskas@dwt.com)

Copies of this filing have been served on Atlantic Wind, the NYISO, and the New York Public Service Commission.

**VII. Conclusion**

For the reasons stated herein, Niagara Mohawk requests that the Commission accept the E&P Agreement effective as of August 10, 2020.

Respectfully submitted,

/s/ Christopher J. Novak

Christopher J. Novak  
Senior Counsel  
National Grid USA  
Service Company, Inc.  
40 Sylvan Road  
Waltham, MA 02451

*Attorney for Niagara Mohawk Power  
Corporation*