nationalgrid

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June 5, 2023

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

Re: Niagara Mohawk Power Corporation
Docket No. ER23-1271-000
Response to Deficiency Letter

Dear Secretary Bose:

On March 8, 2023, in Docket No. ER23-1271-000, the New York Independent System Operator, Inc. ("NYISO") submitted for filing on behalf of Niagara Mohawk Power Corporation ("NMPC") proposed revisions to existing Rate Schedule 17 under the NYISO Open Access Transmission Tariff ("NYISO OATT" or "Tariff")[1] and a proposed Rate Schedule 20 under the Tariff, which establishes the Niagara Mohawk Segment A Facilities Charge ("NMSA-FC") to provide for NMPC's recovery of costs associated with its capital investments in two portions of Segment A of the AC Transmission Public Policy Transmission Project ("Segment A Project") (the "March 8 Filing" comprising both proposals).[2]

On May 4, 2023, Commission staff issued a deficiency letter requesting that NMPC provide additional information with respect to the March 8 Filing. NMPC is respectfully submitting this letter and supporting attachments in response to the May 4, 2023 deficiency letter.[3] Additionally, although NMPC is not proposing any revisions to the tariff records for existing Rate Schedule 17 and proposed Rate Schedule 20 submitted as part of the March 8 Filing, NMPC is resubmitting certain tariff records as part of the instant filing as is required to restart the statutory timeframe for Commission action.[4]

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1 NYISO OATT, 6.17 OATT Schedule 17 Rate Mechanism for Recovery of the Western New York Facilities Charge for Non-Bulk Transmission Facilities ("WNY-FC").

2 NYISO OATT, 6.20 OATT Schedule 20 Rate Mechanism for the Recovery of Niagara Mohawk Segment A Facilities.

3 NYISO submits this filing on behalf of NMPC solely in its role as administrator of the NYISO OATT. The burden of demonstrating that the proposed tariff amendments are just and reasonable rests with NMPC, the sponsoring party. NYISO takes no position on any substantive aspect of this filing at this time. Capitalized terms not otherwise defined herein shall have the meaning specified in the NYISO OATT.

4 *See generally Elec. Tariff Filings*, 130 FERC ¶ 61,047, at PP 3-8 (2010) (explaining that the Commission uses the data elements resulting from the tariff filing process to establish statutory filing and other procedural dates). Specifically, NMPC is resubmitting the tariff revisions that were attached to the March 8 Filing. The resubmitted tariff revisions reflect the updated effective date of August 5, 2023 requested herein, but are otherwise unchanged.

I. RESPONSES

Revenue Requirement Determination Methodology

1. a. ***Please explain how the proposed method of determining the NMSA-FC revenue requirement will not result in ratepayers paying a return on and of (through depreciation expense) Niagara Mohawk's share of Segment A Facilities after those facilities are fully depreciated for book purposes.***

RESPONSE: The proposed method of determining the NMSA-FC revenue requirement is based on average cost ratemaking and is designed to ensure a just and reasonable assessment of the costs associated with NMPC's capital investments in two portions of the Segment A Project that NMPC will own (the "NMPC Segment A Facilities"), including rate mechanisms designed to ensure that ratepayers do not pay a return on the NMPC Segment A Facilities after those facilities are fully depreciated for book purposes. Specifically, and as discussed in the March 8 Filing, NMPC proposes to calculate the revenue requirement for the NMPC Segment A Facilities using a carrying charge approach, whereby the revenue requirement will equal the product of NMPC's historical wholesale Transmission Service Charge ("TSC") revenue requirement multiplied by the ratio of the NMPC Segment A Facilities to NMPC's gross transmission plant in service.[5]

A carrying charge approach—which uses annually updated system average costs as a projection of operations and maintenance, administrative and general, and other costs—is both widely used in formula rates approved by the Commission[6] and just and reasonable as applied to the calculation of the NMPC Segment A Facilities revenue requirement. Indeed, proposed Rate Schedule 20 to the NYISO OATT was directly modeled on the Commission-accepted Rate Schedule 17 to the NYISO OATT, which utilizes essentially the same carrying charge methodology for purposes of recovering the costs of certain upgrades to NMPC non-bulk transmission facilities related to public policy transmission projects eligible for recovery under Attachment Y of the Tariff.[7] This method is often used because tracking and calculating actual costs of specific low capital assets may prove to be administratively burdensome, thereby increasing the total administrative costs needing to be recovered from ratepayers. By utilizing a carrying charge approach, an estimate of the average cost of service for each dollar of plant in service is calculated and applied to the gross plant investment of a facility to calculate the respective cost of service charged to the customer. Because the cost inputs that go into the calculation of a carrying charge are indicative of all assets of a company, the imputed

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5 *See* March 8 Filing at 4-5. NMPC's TSC is set forth in Section 14.1.9 of Attachment H of the NYISO OATT. NMPC's TSC formula rate is set forth in Section 14.2.1 of Attachment H of the NYISO OATT.

6 Although there are variations in approach, some form of carrying charge appears in numerous Commission-approved formula rates. *See, e.g.*, Attachments N-1, GG, MM, and XX to the OATT of the Midcontinent Independent System Operator, Inc.; Attachments H-1, H-3, H-8, H-9, H-10, H-13, H-14. H-16, and H-17 to the OATT of PJM Interconnection L.L.C.; and Attachment H to the OATT of the Southwest Power Pool.

7 *See* NYISO OATT, 6.17. Section 6.17.3.5, after which Section 6.20.3.5 of proposed Rate Schedule 20 was modeled, sets forth the cost recovery methodology accepted by the Commission for purposes of calculating the Western New York Facilities Charge.

components of the carrying charge represent all vintages across old and new lives—in other words, the average costs per year of an asset averaged over its useful life. The formula rate application of a carrying charge to calculate the revenue requirement associated with facilities that are charged directly to specific customers is meant to appropriately compensate the utility over the life of the asset. Over the course of a project's life, the expectation is that retirements, replacements, and upgrades will occur, and those activities will extend the life of assets used to provide ongoing service. The proposed methodology and formula therefore results in ratepayers paying a return on and of NMPC's share of the Segment A Project as calculated over the averaged useful life of the same.

The proposed methodology is particularly appropriate in the instant case given the relatively low capital costs associated with the NMPC Segment A Facilities—$38,881,000—as it would be administratively inefficient to separately track the operating and overhead costs of these facilities. Even if such an approach were practical, it would result in increased administrative costs that would ultimately be borne by ratepayers. A carrying charge approach avoids this unnecessary administrative cost, while also reasonably ensuring that ratepayers do not bear costs specific to a return on and of the NMPC Segment A Facilities once these facilities are fully depreciated.

b. ***Certain costs included in the TSC rate and systemwide gross transmission plant in service are not costs associated with the NMSA-FC cost of providing service, such as the cost of underground conduit, underground conductors and devices, and asset retirement costs.***

(i) ***Please describe how the allocation ratio in the NMSA-FC, which uses the TSC and systemwide gross transmission plant (described above), removes such items that are not related to the cost of providing service over Segment A Facilities.***

RESPONSE: The proposed average cost method for determining the NMSA-FC is not intended to be plant utility account specific. This approach, as discussed above in response to Question 1a, ultimately serves to determine the average cost of operating and maintaining a representative unit of transmission plant. It is designed to mitigate the administrative burden and associated cost of tracking individual costs of small, relatively low capital cost projects while providing ratepayers with a just and reasonable rate. More detailed, project- or asset-specific tracking of costs is generally used for significantly larger projects where separately tracking the operating and overhead costs of the subject facilities will not inordinately burden administrative resources to the detriment of ratepayers.

(ii) ***Please describe how the asset retirement costs fulfill the rate filing requirements of Order No. 631, or explain why Order No. 631 does not apply.***

RESPONSE: Order No. 631, which established accounting, financial reporting, and rate filing requirements for asset retirement obligations ("AROs"),[8] required jurisdictional entities to obtain approval from the Commission prior to implementing any necessary changes if billings under formula rate tariffs were affected by the adoption of the order's accounting requirements.[9] The application of Order No. 631 to the NMSA-FC is indirect insofar as the proposed formula for determining the NMSA-FC is based entirely on the components of the Commission-approved TSC formula rate. In reviewing the TSC, NMPC identified changes that would allow this formula rate to specifically exclude AROs from the TSC calculation and, by extension, from the NMSA-FC calculation. NMPC commits to making a separate Section 205 filing prior to its 2024 Annual Update filing to effectuate the necessary changes and facilitate compliant implementation of the NMSA-FC.

c. ***Commission regulations require that, for special assignment facilities, utilities must provide a "complete derivation and explanation of all allocation factors and special assignments" and if a utility "considers certain special facilities as being devoted entirely to the service involved, it shall show the cost of service related to such special facilities."***

(i) ***Please explain how Niagara Mohawk has complied with these regulations, and why the NMSA-FC revenue requirement formula does not cite to FERC Form No. 1 data specific to Niagara Mohawk's portion of Segment A Facilities.***

RESPONSE: The Commission routinely grants waiver of the requirements under Part 35 of its regulations governing the information—such as cost of service statements—required to be submitted in support of formula rates,[10] and NMPC respectfully reiterates its request in the March 8 Filing that the Commission grant waiver of any such applicable requirements as necessary to allow the filing to become effective as proposed.

NMPC submits that the information submitted in the March 8 Filing is sufficient to establish the justness and reasonableness of its proposal. Section 6.20.3.5 of proposed Rate Schedule 20 establishes the formula that will govern the NYISO's calculation of the NMSA-FC

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[8] *See Acct., Fin. Reporting, & Rate Filing Requirements for Asset Ret. Obligations*, Order No. 631, FERC Stats. & Regs. ¶ 31,142 (2003). AROs are "legal obligations associated with the retirement of a tangible long-lived asset that an entity is required to settle as a result of an existing enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel." *Id.* at P 9. *See also* Financial Accounting Standards Statement (FAS) No. 143, Accounting for Asset Retirement Obligations, issued in June 2001, available at http://www.fasb.org/.

[9] Order No. 631 at P 6.

[10] 18 C.F.R. §§ 35.13(a)(2), 35.12(b)(5). *See, e.g.*, *S. Indiana Gas & Elec. Co.*, 125 FERC ¶ 61,124, at PP 58-59 (2008).

for each of the specified New York load-serving entities ("LSEs", and collectively, the "Responsible LSEs"). NMPC will determine the NMSA-FC revenue requirement each year as part of the Annual Update process set forth pursuant to the TSC, and as discussed in response to Question 1a above, the revenue requirement will equal the product of NMPC's historical TSC revenue requirement multiplied by the ratio of the NMPC Segment A Facilities to NMPC's gross transmission plant in service. The NMSA-FC revenue requirement formula is therefore both governed by and directly derived from the Commission-accepted TSC formula rate, which itself is sourced fully from NMPC's FERC Form No. 1 data.

With respect to the gross transmission plant in service for the NMPC Segment A Facilities, this amount cannot be sourced solely based on a FERC Form No. 1 reference because project-specific costs are not included in FERC Form No. 1. However, as explained in the March 8 Filing, NMPC will include supporting documentation as part of its Annual Update filing to support the calculation of the NMSA-FC revenue requirement, including reconciling amounts that are not directly referenced from NMPC TSC data to FERC Form No. 1 references.[11]

(ii) ***Please provide the cost of service related to Niagara Mohawk's portion of Segment A Facilities.***

RESPONSE: Please see the estimated cost of service, prepared using actual 2022 TSC formula rate data, provided as Attachment A, Worksheet 18 hereto. Workpaper 5 of Attachment A was also amended to illustrate the inclusion of the NMSA-FC estimated revenue which will then flow to Schedule 10 of NMPC's TSC formula rate to serve as a revenue credit to the TSC revenue requirement calculation. Note that no other components of the 2022 TSC revenue requirement calculation were changed, and the change in the TSC rate shown on Attachment A does not represent the impact when the Project is placed in service.

(iii) ***Please provide a complete derivation and explanation of all allocation factors and special assignments.***

RESPONSE: The estimated cost of service is fully derived from the NMPC TSC formula rate and is therefore based on all approved allocation factors in the NMPC TSC formula rate. NMPC respectfully submits that this is appropriate to allow for consistent application of allocation factors across NMPC's formula transmission rates.

(iv) ***Where Niagara Mohawk seeks waiver of specific cost of service requirements, demonstrate how the Rate Schedule 20 formula uses FERC Form No. 1 amounts to derive a cost of service specific to Segment A Facilities, such as project-specific depreciation.***

RESPONSE: NMPC submits that the explanations provided in the March 8 Filing and herein, along with the estimated cost of service provided in Attachment A to this response,

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[11] *See* March 8 Filing at 5.

reasonably fulfill the requirements associated with Statements BK and BL. NMPC continues to request waiver of the Commission's specific cost of service requirements based on the formulary nature of the proposed charge, as discussed in response to Question 1c(i), above.

(v) ***Where the gross plant of Niagara Mohawk's portion of Segment A Facilities is included in other rates, explain how the revenues from Rate Schedule 20 will offset the charges in those other rates.***

RESPONSE: In order to avoid double-charging NMPC's TSC customers, payments received by NMPC for the NMSA-FC will be treated as a credit to NMPC's TSC revenue requirement. The revenue credit will be included in Schedule 10 of NMPC's TSC formula rate, "Other - Billing Adjustments, Bad Debt Expense, Revenue Credits, and Transmission Rents." Amounts included on this schedule will flow to the calculation of the annual Historical Transmission Revenue Requirement for NMPC's TSC. This crediting mechanism is set forth in Section 6.20.3.7 of proposed Rate Schedule 20 to the NYISO OATT and is designed to ensure that NMPC does not receive in excess of its total revenue requirement as calculated using the TSC formula rate.

d. ***Commission policy generally requires cost of general and intangible plant (General Plant) and administrative and general (A&G) costs to be functionalized using a wages and salaries allocation method on the basis that the drivers of these costs are labor.***

(i) ***Please explain how Niagara Mohawk's proposal to allocate the cost of General Plant and A&G costs to the NMSA-FC using a plant allocator is consistent with Commission policy.***

RESPONSE: NMPC respectfully submits that Commission policy does not mandate the use of labor allocators in all cases.[12] Rather, in instances where the use of labor allocators proves unreasonable,[13] a utility is only required to show that the alternative allocation method used by that utility *is* reasonable; the fact that a subjectively "more reasonable" method may exist is irrelevant.[14]

The proposed average cost ratemaking design of the NMSA-FC is intended to determine NMPC's cost of operating and maintaining the entirety of the NMPC Segment A Facilities. It would be unreasonable in the instant case to require NMPC to use a labor ratio-based allocator for purposes of allocating a portion of the General Plant and A&G already functionalized to transmission to the NMSA-FC, as NMPC does not track salaries on a project-specific basis. Doing so would require significant modification to NMPC's systems and processes that would

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12 *Idaho Power Co.*, Opinion No. 13, 3 FERC ¶ 61,108, at 61,295 (1978).

13 *See Minn. Power & Light Co.*, Opinion No. 20, 4 FERC ¶ 61,116, at 61,268 (1978), *aff'd*, Opinion No. 20-A, 5 FERC ¶ 61,091, at 61,150-51 (1978) ("[A] utility may use some basis for functionalization other than labor ratios only if it can show that labor ratios are unreasonable in its situation.").

14 *See id.*

likely increase the administrative burden of shared services employees and result in additional costs that would ultimately be borne by ratepayers. The use of a plant allocator in these circumstances, however, is just and reasonable,[15] because the basis for the NMSA-FC is the TSC, which already functionalizes General Plant and A&G costs using a combination of wages and salaries allocators, as well as plant allocators based on the expense.

(ii) ***Please provide all studies and analyses performed to support your proposed allocations for A&G expenses and General Plant in Rate Schedule 20.***

RESPONSE: The proposed allocations for A&G expenses and General Plant in proposed Rate Schedule 20 to the NYISO OATT are based on the existing allocations used in the TSC formula rate under Section 14.2.1 to Attachment H of the NYISO OATT, as detailed further in Schedule 5 thereto. General Plant in the TSC formula rate is functionalized based on a Salaries and Wage allocator. Functionalization of A&G Expense in the TSC formula rate is expense-dependent and based on a combination of the Plant and Salaries and Wage allocators. As the A&G expense and General Plant allocation under proposed Rate Schedule 20 will be a derivative of A&G expense and General Plant under the TSC formula rate, NMPC proposes to allocate those components to the NMSA-FC revenue requirement based on the ratio of the NMPC Segment A Facilities to NMPC's gross transmission plant in service.

(iii) ***Regarding the information provided in response to Question 1.d(ii), please explain why it would be unreasonable to use a labor allocator for A&G expenses and General Plant in the NMSA-FC.***

RESPONSE: As discussed in the response to Question 1d(i) above, NMPC does not track historical A&G labor data at the project or facility level. However, acknowledging that Commission policy favors functionalization on the basis of labor ratios in most cases, NMPC respectfully asserts that it would be unreasonable to require NMPC to use a labor ratio-based allocator in the instant case. Functionalization already occurs with respect to allocations to NMPC's transmission plant in service at the TSC level. Because NMPC does not separately track labor costs specific to certain projects or facilities, it does not possess the historical labor data necessary to develop a Salaries and Wage allocator specific to the NMPC Segment A Facilities. As indicated above, separately tracking the labor costs specific to the NMPC Segment A Facilities would result in additional costs that would ultimately be borne by ratepayers. NMPC submits that subjecting ratepayers to these additional costs would provide no benefit to these ratepayers and would not be reasonable given the relatively low capital costs associated with the NMPC Segment A Facilities.

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[15] *See* Opinion No. 20-A, 5 FERC ¶ 61,091, at 61,150-51.

(iv) ***Please explain how it is just and reasonable to use a plant allocator for A&G expenses and General Plant in the NMSA-FC, which will be credited to offset the TSC rate, when the TSC rate uses a labor allocator for A&G expenses and General Plant.***

RESPONSE: Allocation to total NMPC transmission plant under the TSC formula rate already occurs on a salaries and wage basis. NMPC believes it is therefore reasonable that the sub-allocation of that amount to the NMSA-FC, as accomplished through the use of a plant allocator for A&G expenses and General Plant in the NMSA-FC, would be determined based on the ratio of the NMPC Segment A Facilities relative to NMPC's total transmission plant.

<u>**Public Policy Transmission Planning Process**</u>

2. a. ***Section 31.8.2 of Appendix E to Attachment Y of the Tariff provides the cost allocation methodology for "allocating costs associated with the Public Policy Transmission Project that [NYISO] has selected pursuant to Section 31.4.8.2 of Attachment Y to the [Tariff]" (AC Transmission Costs) with those costs "determined in accordance with sections 31.4 and 31.5.6.5 of Attachment Y to the [NYISO OATT]." Section 31.4 establishes a detailed process for how NYISO selects Public Policy Transmission Projects and designates Designated Entities to build, own, and recover the costs of Public Policy Transmission Projects. It also establishes certain Designated Entity responsibilities, including executing a Development Agreement with NYISO.***

(i) ***Has NYISO designated Niagara Mohawk as the Designated Entity to build, own, and recover the costs of the work proposed in the instant filing? If not, please explain how the costs Niagara Mohawk proposes to allocate under the methodology established in section 31.8.2 are "determined in accordance with section[] 31.4 . . . of Attachment Y to the [Tariff]" or can otherwise be allocated per the Tariff.***

RESPONSE: Certain foundational agreements underlying the formation of the NYISO[16] and Section 31.6.4 of Attachment Y to the NYISO OATT[17] make clear that NMPC and other

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16 *See* NYISO/TO Agreement at Section 3.10(c) (providing that "[e]ach Transmission Owner retains all rights that it otherwise has incident to its ownership of its assets, including, without limitation, its transmission facilities including, without limitation, the right to build, acquire, sell, merge, dispose of, retire, use as security, or otherwise transfer or convey all or any part of its assets"); *See also id.* at Sections 3.10(d), 3.10(e), and 3.11. This reservation of rights was also confirmed in Section 4.02 of the NYISO/TO Reliability Agreement.

17 Section 31.6.4 of Attachment Y to the NYISO OATT provides in relevant part:

> Nothing in this Attachment Y affects the right of a Transmission Owner to: (1) build, own, and recover the costs for upgrades to the facilities it owns, provided that nothing in Attachment Y affects a Transmission Owner's right to recover the costs of upgrades to its facilities except if the

New York transmission owners retain all rights to upgrade their existing transmission facilities, and to own and earn a return on those facilities and upgrades. The Commission confirmed the continued existence of this upgrade right under Order No. 1000 in an order addressing a NYISO petition for declaratory order.[18] In this same order, the Commission found that the NYISO OATT was silent as to how such rights would be exercised. The dispute that resulted in the agreement between NMPC, LS Power Grid Corporation I ("LS Power"), and the New York Power Authority ("NYPA") addressing NMPC's right to own and obtain cost recovery on the NMPC Segment A Facilities (the "Segment A Agreement") preceded the Commission's April 2021 Declaratory Order, and occurred at a time when the rights of incumbent transmission owners were disputed and the NYISO OATT contained no procedures for how these rights might be asserted. Thus, in order to resolve disputes and avoid potential litigation regarding whether certain components of Segment A, including the NMPC Segment A Facilities, constituted "upgrades" as to which NMPC retained the right to build and own, NMPC, LS Power, and NYPA executed the Segment A Agreement, submitted as Attachment B hereto, on November 12, 2020.[19] Section 2.1 of the Segment A Agreement provides that NMPC will recover costs associated with certain transmission facilities comprising the portion of the Segment A Facilities.[20] These are the facilities that are specifically defined as the "NMPC Segment A Facilities" in proposed Rate Schedule 20 to the NYISO OATT and are subject to recovery through the NMSA-FC.

NMPC advised the NYISO of the Segment A Agreement. However, the NYISO did not designate NMPC as a "Designated Entity" under Attachment Y to the NYISO OATT with respect to the NMPC Segment A Facilities because at the time that NMPC, LS Power, and NYPA entered into the Segment A Agreement, there was no mechanism in the NYISO OATT to designate portions of a selected project to entities other than a sponsoring developer. The version of Attachment Y to the NYISO OATT in effect at the time used the term "Developer," but, as the Commission concluded in the April 2021 Declaratory Order, the definition of "Developer" did not include a New York transmission owner exercising its upgrade rights.[21]

> upgrade has been selected in the regional transmission plan for purposes of cost allocation, in which case the regional cost allocation method set forth in Attachment Y of the ISO OATT applies . . . . For purposes of Section 31.6.4, the term "upgrade" shall refer to an improvement to, addition to, or replacement of a part of, an existing transmission facility and shall not refer to an entirely new transmission facility.

18 *New York Indep. Sys. Oper*., 175 FERC ¶ 61,038 (2021) ("April 2021 Declaratory Order").

19 The Segment A Agreement was not previously filed with the Commission because the rates, terms, and conditions of service with respect to the NMPC Segment A Facilities will be set forth in the NYISO OATT, most notably proposed Rate Schedule 20, which provides for the cost allocation and recovery of such facilities. The Segment A Agreement merely documented an agreement among its signatories resolving a dispute as to the application of NYISO OATT provisions accepted by the Commission. However, to the extent that the Commission believes that the Segment A Agreement should be filed for Commission review as an NMPC agreement subject to Federal Power Act Section 205 filing requirements, NMPC commits to do so in a future filing.

20 As discussed below, the Segment A Agreement contains commercially sensitive information and is being submitted as privileged pursuant to the Commission's regulations in 18 C.F.R. § 388.112. A proposed form of protective order based on the Commission's model protective order is included as Attachment C hereto. *See* 18 C.F.R. § 388.112(b)(2)(i).

21 April 2021 Declaratory Order, 175 FERC ¶ 61,038, at P 41.

NYISO subsequently added the definition of "Designated Entity" to encompass both developers selected to build projects selected through competitive solicitations and incumbent transmission owners exercising their upgrade rights.[22]

Proposed Rate Schedule 20 to the NYISO OATT was developed to effectuate the negotiated outcome of the Segment A Agreement. Thus, NMPC is not proposing to allocate the costs of the NMPC Segment A Facilities under Section 31.8.2 of Appendix E to Attachment Y of the NYISO OATT. Rather, proposed Rate Schedule 20 references that Section for purposes of defining the allocation methodology to be utilized for purposes of assessing the NMSA-FC. This allocation is just and reasonable with respect to the NMPC Segment A Facilities. The NMPC Segment A Facilities will function as a portion of the overall Segment A Project, and thus, it is appropriate that the costs thereof be allocated in the same manner as the project-related facilities that will be developed and owned by LS Power and NYPA.

Also, proposed Rate Schedule 20 to the NYISO OATT is modeled upon other NYISO rate schedules previously accepted by the Commission, including rate schedules establishing charges for public policy transmission projects selected under Attachment Y to the NYISO OATT for purposes of regional cost allocation. Consistent with Section 31.8.2 of Appendix E to Attachment Y of the NYISO OATT, NMPC proposes to allocate the costs of the NMPC Segment A Facilities to the Responsible LSEs in accordance with the Commission-approved AC Transmission Public Policy Transmission Need Cost Allocation Methodology, which allocates 75 percent of costs to a designated transmission project's beneficiaries and allocates the remaining 25 percent of costs on the basis of load-ratio share.

(ii) ***Has Niagara Mohawk executed a Development Agreement with NYISO associated with the work proposed in the instant filing for the Segment A Facilities? If no such agreement has been signed, please explain how the costs Niagara Mohawk proposes to allocate under the methodology established in section 31.8.2 are "determined in accordance with section[] 31.4 . . . of Attachment Y to the [Tariff]" or can otherwise be allocated per the Tariff.***

RESPONSE: NMPC has not executed a Development Agreement with NYISO. As the Commission recognized in the April 2021 Declaratory Order, at the time that NMPC, LS Power, and NYPA resolved their dispute regarding the NMPC Segment A Facilities, NMPC did not meet the definition of "Developer" under the NYISO OATT, and there was no mechanism in the NYISO OATT at such time to designate portions of a selected project to entities other than a sponsoring developer. As indicated in the response to Question 2a(i), above, the cost allocation and recovery of the NMPC Segment A Facilities will be accomplished through proposed Rate Schedule 20 to the NYISO OATT. However, if the Commission concludes that NMPC's ownership and cost recovery of the Segment A Facilities should also be memorialized in a Development Agreement with NYISO, NMPC is willing to enter into such an agreement.

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22 *See* New York Indep. Sys. Oper. Section 206 Filing of Tariff Revisions to Implement the New York Transmission Owners' Right of First Refusal Regarding Upgrades to Their Transmission Facilities Identified in the Public Policy Transmission Planning Process, Docket No. EL22-2-000 (filed October 8, 2021).

a. ***Niagara Mohawk explains that LS Power Grid New York Corporation I (LS Power), New York Power Authority (NYPA), and Niagara Mohawk agreed that Niagara Mohawk will make the capital investment in, and recover the costs of, the Segment A Facilities described above. In Docket No. ER20-1156-000, however, the Commission accepted a Development Agreement among NYISO, LS Power, and NYPA that provided for LS Power and NYPA to be responsible for "[d]ecommissioning of the Porter to Rotterdam #30 and #31 230 kV transmission lines" and "[t]erminal upgrades at the Marcy and Edic 345 kV substations[,]" while assigning responsibility for upgrades and expansions to existing transmission facilities owned by Transmission Owners to those Transmission Owners." Similarly, in Docket No. ER21-1687-000, the Commission accepted a Transmission Project Interconnection Agreement among NYISO, Niagara Mohawk, and LS Power that,*** **inter alia,** ***states that LS Power will "own and decommission . . . [t]he Porter to Rotterdam #30 and #31 230 kV transmission lines."***

Please identify whether Niagara Mohawk, NYISO, LS Power, and/or NYPA have executed any agreements that include a detailed scope of work for which Niagara Mohawk proposes to recover costs for the Segment A Facilities, such as a Development Agreement or amended Interconnection Service Agreement, and provide copies of those agreements. If no such agreements have been executed, please provide a detailed scope of work and explain how Niagara Mohawk will ensure that it does not recover costs for work for which LS Power and/or NYPA will finance and recover costs.

RESPONSE: As discussed above in response to Question 2(a)i, the Segment A Agreement addresses the specific project-related facilities whose costs will be recovered by NMPC. Additionally, Section 2.4 of the Segment A Agreement describes the process through which LS Power will perform work on the Porter-Rotterdam #30 line, which NMPC will own. The NMSA-FC established in proposed Rate Schedule 20 to the NYISO OATT is explicitly limited to recovering the costs of only the facilities covered in the Segment A Agreement.

Interested Parties will be able to utilize the information exchange, review, and challenge procedures applicable to proposed Rate Schedule 20 to verify that NMPC does not recover costs for work on facilities that LS Power and/or NYPA will finance and recover costs for through the review and challenge procedures included in NMPC's TSC annual update process. *See* Section 6.20.3.8 of Rate Schedule 20.

Use of "Interested Party"

3. ***Niagara Mohawk's Rate Schedule 20, section 6.20.3.8 states that "[e]ach Responsible LSE shall be an 'Interested Party' with respect to any portion of the Annual Update." Please explain how this is consistent with Commission policy regarding who can participate in the formula rate review process.***

RESPONSE: The inclusion of Responsible LSEs as "Interested Parties" under proposed Rate Schedule 20 to the NYISO OATT for purposes of participation in NMPC's Annual Update process described in Section 14.1.9 of Attachment H to the NYISO OATT is wholly consistent with Commission policy regarding who can participate in the formula rate review process, as the language indicating that Responsible LSEs are "Interested Parties" is specifically intended to expand, rather than restrict, the scope of participation in the Annual Update Process.

In addition to the quoted language, proposed Rate Schedule 20, Section 6.20.3.8, notes that "NMPC shall recalculate the NMSA-FC revenue requirement each year as part of the Annual Update process set forth in Section 14.1.9.4 of Attachment H of the [NYISO] OATT." Section 14.1.9.1.61 of Attachment H of the NYISO OATT defines "Interested Party" to mean a person that is "(i) a party to FERC Docket No. ER08-552, (ii) the New York State Public Service Commission; (iii) a transmission customer under this Tariff that pays charges based on the Formula Rate during the calendar year prior to the submission of the Informational Filing or (iv) a state regulatory authority having jurisdiction over the retail electric rates of such a transmission customer[.]"[23] Proposed Rate Schedule 20 expands this Commission-approved definition further, and consistent with Commission policy, is intended to afford a broad category of interested parties with adequate opportunity for participation and access to information.[24]

II. DOCUMENTS INCLUDED IN THIS FILING

In addition to this transmittal letter, NMPC submits the following in support of this response:

Attachment A	Estimated Cost of Service Calculation
Attachment B	Executed Version of the Segment A Agreement – Submitted as Privileged
Attachment C	Proposed Protective Order

[23] The definition of "Interested Party" was agreed to as part of a negotiated settlement providing for the transition of components of the TSC from stated values to formula rates. *See* Settlement Agreement and Offer of Settlement, Docket No. ER08-552-000, Attachment A (revised tariff sheets), Section 9.1, Paragraph 60 (Apr. 6, 2009) ("2009 TSC Settlement"). The Commission accepted the 2009 TSC Settlement in an order issued June 22, 2009. *See Niagara Mohawk Power Corp.*, 127 FERC ¶ 61,289 (2009).

[24] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127, at P 12 (2012).

III. REQUEST FOR PRIVILEGED TREATMENT

The Segment A Agreement contains commercially sensitive information that requires protection from public disclosure. NMPC is therefore submitting Attachment B to this filing as privileged and is providing a proposed form of protective order as required by 18 C.F.R. § 388.112(b)(2)(i). The proposed protective order, provided as Attachment C hereto, is based on the Commission's model protective order.

IV. REQUESTED WAIVERS

To the extent that waivers of any applicable requirements in 18 C.F.R. § 35.13 are necessary, NMPC continues to respectfully request such waivers. As explained in the March 8 Filing, good cause exists for waiver, and NMPC also continues to request a waiver of any other applicable requirement of Part 35 or other Commission regulations, as necessary, in order to allow the March 8 Filing to become effective as proposed in support of the ongoing development of the Segment A Project.

V. CONCLUSION

For the reasons set forth above, and in the March 8 Filing, NMPC respectfully submits that this filing and the further clarifications provided herein address all issues raised in the May 4, 2023 deficiency letter. Accordingly, NMPC respectfully requests that the Commission approve the tariff amendments proposed in the March 8 Filing effective no later than August 5, 2023 (*i.e.*, the first day following the end of the statutory 60-day notice period).[25]

Respectfully submitted,

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[25] As part of this filing, NMPC is resubmitting the tariff revisions set forth in Attachments A-D of the March 8 Filing. The only change to the tariff records submitted with this filing is to update the proposed effective date to reflect the August 5, 2023 date requested herein.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, pursuant to the requirements of rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 5th day of June, 2023.

/s/ Daniel Klein

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