

November 14, 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. ER24-____-000

Filing of Cost Reimbursement Agreement with the New York Power Authority

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”),¹ and Part 35 of the Federal Energy Regulatory Commission’s (“Commission”) regulations,² Niagara Mohawk Power Corporation (“Niagara Mohawk”) submits a Cost Reimbursement Agreement (“Reimbursement Agreement”) between Niagara Mohawk and the New York Power Authority (“NYPA”).³ The Reimbursement Agreement is designated as Service Agreement No. 2815 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).

The Reimbursement Agreement is an undisputed agreement to facilitate the performance of certain work that NYPA has requested Niagara Mohawk to do to install Niagara Mohawk-owned fiber facilities to allow NYPA to connect its optical ground wire (“OPGW”) communication lines at Niagara Mohawk’s Clay and Edic Substations. Niagara Mohawk requests that the Commission accept the Reimbursement Agreement effective as of November 2, 2023, the effective date agreed to by the Parties.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

³ Together, Niagara Mohawk and NYPA are referred to in the Reimbursement Agreement and in this transmittal letter as the “Parties.”

I. Background

Niagara Mohawk is a public utility with a transmission system in New York. NYPA is a corporate instrumentality of New York, with its own transmission system in New York. Both Niagara Mohawk and NYPA have placed transmission facilities under the operational control of the NYISO.

NYPA has requested Niagara Mohawk to install Niagara Mohawk-owned fiber facilities to allow NYPA to connect its OPGW communication lines at Niagara Mohawk's Clay and Edic Substations. Niagara Mohawk is willing to perform this work subject to: (i) reimbursement by NYPA of all actual costs and expenses incurred by Niagara Mohawk in connection with the work; (ii) NYPA's performance of all other duties, responsibilities, and obligations set forth in the Reimbursement Agreement; and (iii) receipt of any and all required approvals as set forth in the Reimbursement Agreement, in a form acceptable to Niagara Mohawk.⁴

II. Description of the Reimbursement Agreement and Filing Requirements

Pursuant to the Reimbursement Agreement, NYPA will reimburse Niagara Mohawk for the actual costs and expenses incurred in connection with the work described above. The Reimbursement Agreement sets forth the terms and conditions of this work and certain related commitments by NYPA. The Reimbursement 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 cost reimbursement 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.⁵ The Reimbursement Agreement relates to Niagara Mohawk's recovery of costs for performing work to allow NYPA to connect its OPGW communication lines at Niagara Mohawk's Clay and Edic Substations. Niagara Mohawk recognizes that the Commission may find the Reimbursement Agreement to be a jurisdictional agreement that must be filed. For these reasons, Niagara Mohawk is submitting the Reimbursement Agreement for Commission acceptance.

The price of the services to be performed pursuant to the Reimbursement Agreement will be just and reasonable because Niagara Mohawk will perform these services at actual cost.⁶ The Commission should therefore accept the Reimbursement Agreement.

III. Effective Date

⁴ Reimbursement Agreement, Recitals, Articles 3.0, 7.0, and 18.0, and Exhibits A and B.

⁵ 16 U.S.C. §§ 824d(a)-(c).

⁶ Reimbursement Agreement, Article 1.0, at definition of "Company Reimbursable Costs."

Niagara Mohawk respectfully requests that the Commission accept the Reimbursement Agreement effective as of November 2, 2023, the effective date agreed to by the Parties.⁷ The Commission's regulations require that a service agreement be filed within 30 days of its effective date or such other date as may be specified by the Commission.⁸ Niagara Mohawk is filing the Reimbursement Agreement within 30 days of the effective date described above.

Good cause exists for the Commission to grant the requested November 2, 2023 effective date. Granting this effective date will effectuate the express intent of the Parties and, because the Reimbursement Agreement is a cost reimbursement service agreement between those Parties, will not prejudice or otherwise have an adverse impact on any other entity. New York customers will benefit from the performance of the work specified in the Reimbursement Agreement as soon as practicable.

Conversely, if the Commission does not grant the requested effective date and instead requires a later effective date, that delay in the effectiveness of the Reimbursement Agreement will also delay Niagara Mohawk's performance of the activities required under the Reimbursement Agreement. In addition, requiring a later effective date may obligate Niagara Mohawk to file a refund report with the Commission regarding any amounts received prior to the granted effective date. Such an obligation would serve no purpose for agreements like the Reimbursement Agreement. Niagara Mohawk recognizes that the Commission has clarified that time-value refunds are subject to a floor based on the utility's variable costs, and that the Commission "will reduce or eliminate time value refunds if the agreements are filed late and if a full time value refund would result in construction of the interconnection and transmission facilities at a loss."⁹ Since Niagara Mohawk is performing all work under the Reimbursement Agreement at actual cost, a directive to provide any actual refunds would compel Niagara Mohawk to perform that work at a loss. Niagara Mohawk therefore respectfully submits that it need not provide time-value refunds in this case even if the Commission were to mandate an effective date later than November 2. An obligation to file a refund report (even if it stated that no refunds were required or made) would be an administrative burden for Niagara Mohawk with no benefit to either the customer or the Commission.

For these reasons, Niagara Mohawk requests that the Commission grant the effective date of November 2, 2023 specified in the Reimbursement Agreement.¹⁰

⁷ See Reimbursement Agreement, Preamble and Article 1.0, at definition of "Effective Date."

⁸ 18 C.F.R. § 35.3(a)(2).

⁹ *Carolina Power & Light Co.*, 87 FERC ¶ 61,083, at 61,357 (1999); *Fla. Power & Light Co.*, 98 FERC ¶ 61,276, at 62,151 n.32, *reh'g denied*, 99 FERC ¶ 61,320 (2002).

¹⁰ To the extent necessary and for the same reasons explained above, Niagara Mohawk also respectfully requests waiver of the Commission's notice requirement. See 18 C.F.R. § 35.11.

IV. Attachment

In addition to this transmittal letter, this filing includes the Reimbursement Agreement that is provided in Attachment A hereto.

V. 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:

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

VI. Conclusion

For the reasons stated herein, Niagara Mohawk respectfully requests that the Commission accept the Reimbursement Agreement effective as of November 2, 2023.

Respectfully submitted,

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