

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

October 4, 2019

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**  
**Invenergy Wind Development LLC and Requests for**  
**CEII Treatment and Waiver of Notice Requirement**

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 d/b/a National Grid (“Niagara Mohawk”) submits an Engineering & Procurement Agreement (“E&P Agreement”) between Niagara Mohawk and Invenergy Wind Development LLC (“Invenergy”).<sup>3</sup> The E&P Agreement is designated as Service Agreement No. 2477 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).

The E&P Agreement is an undisputed agreement to facilitate the performance of certain work that Invenergy has requested Niagara Mohawk to do to accommodate Invenergy’s proposed interconnection of a generating facility to Niagara Mohawk transmission facilities. 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 waive its notice requirement to

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<sup>1</sup> 16 U.S.C. § 824d.

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

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

accept the E&P Agreement effective as of August 12, 2019, the effective date agreed to by 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.

Invenergy is a Delaware limited liability company having an office and place of business in Chicago, Illinois.

Invenergy is proposing to interconnect its 339.78 MW Alle Catt II Wind Project to Niagara Mohawk's 345 kV Stolle Rd. - Five Mile Line 29 (the Interconnection Project). Invenergy and Niagara Mohawk contemplate negotiation of a Large Generator Interconnection Agreement ("LGIA") in connection with the proposed Interconnection Project.

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 work for certain long-lead items in connection with the Interconnection Project prior to the Parties entering into the LGIA.<sup>4</sup> Niagara Mohawk is willing to perform this work subject to: (i) reimbursement by Invenergy of all actual costs and expenses incurred by Niagara Mohawk in connection with the work; (ii) Invenergy'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 Invenergy; 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, Invenergy 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 Invenergy. 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.

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<sup>4</sup> Section 30.9 of Attachment X to the NYISO OATT states that prior to executing a Standard Large Generator Interconnection Agreement, a Developer (in this case, Invenergy) may, in order to advance the implementation of its interconnection, request and 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, Sections 3.0, 7.0, and 18.0, and Exhibits A and B.

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 Project. Niagara Mohawk recognizes that the Commission may find the E&P Agreement to be a jurisdictional agreement that must be filed. 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>7</sup> The Commission should therefore accept the E&P Agreement.

### III. Request for CEII Treatment

Pursuant to Sections 388.112 and 388.113 of the Commission’s regulations,<sup>8</sup> Niagara Mohawk respectfully requests treatment of Exhibit A-1 to the E&P Agreement as CEII. This Exhibit A-1 consists of a document entitled “Class Year 19 Facilities Study-Part 1 Report for the 339.78 MW Alle Catt II Wind Project”. Exhibit A-1 contains sensitive infrastructure information that should not be publicly released. 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 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 and Request for Waiver

Niagara Mohawk respectfully requests that the Commission accept the E&P Agreement effective as of August 12, 2019, the effective date agreed to by the Parties. Pursuant to Section 35.11 of the Commission’s regulations,<sup>9</sup> Niagara Mohawk requests that the Commission grant waiver of the notice requirement set forth in Section 35.3(a)(2) of its regulations,<sup>10</sup> to permit the requested effective date.

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

<sup>7</sup> See E&P Agreement, Article 1.0, at definition of “Company Reimbursable Costs”.

<sup>8</sup> 18 C.F.R. §§ 385.112-113.

<sup>9</sup> 18 C.F.R. § 35.11.

<sup>10</sup> 18 C.F.R. § 35.3(a)(2).

Good cause exists for the Commission to grant this waiver. Granting the waiver will accord with the intent of the Parties to make the E&P Agreement effective as of August 12, 2019, pursuant to the provisions of the agreement. Therefore, no prejudice will result to any party from granting the waiver. For these reasons, the Commission should find that good cause exists to grant the requested August 12 effective date.

**V. List of Filing Documents**

1. This transmittal letter;
2. Attachment A: Public version of the E&P Agreement
3. Attachment B: Non-public version of Exhibit A-1 to the E&P Agreement, which contains CEII
4. 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:

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

## **VII. Conclusion**

For the reasons stated herein, Niagara Mohawk respectfully requests that the Commission accept the E&P Agreement effective as of August 12, 2019.

Respectfully submitted,

/s/ Christopher J. Novak

Christopher J. Novak

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