

December 13, 2011

**VIA e-TARIFF FILING**

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

**Re: Niagara Mohawk Power Company  
Docket No. ER12-\_\_\_\_  
Cost Reimbursement Agreement with Athens Generating Company, LLC**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d and Part 35 of the Federal Energy Regulatory Commission’s (“Commission”) regulations, Niagara Mohawk Power Company (“Niagara Mohawk”) d/b/a National Grid submits for Commission acceptance a Cost Reimbursement Agreement (“Reimbursement Agreement”) between Niagara Mohawk and Athens Generating Company, LLC (“Athens”) designated under the New York Independent System Operator, Inc. (“NYISO”) open access transmission tariff (“OATT”), FERC Electric Tariff, Original Volume No. 1 as Service Agreement No. 1823.

Niagara Mohawk respectfully requests waiver of the Commission’s notice requirements to allow the Reimbursement Agreement to become effective on November 18, 2011, the date set forth in the Agreement.

**I. Background**

Niagara Mohawk is a public utility with a transmission system in the State of New York. Athens is a Delaware limited liability company and owner of the New Athens Generating Facility in Athens, New York. Athens is currently interconnected to the Niagara Mohawk system pursuant to the terms of an interconnection agreement that was filed with the Commission in Docket No. ER01-1894-000 on April 30, 2001, and accepted on June 6, 2001 subject to a compliance filing accepted by the Commission on September 18, 2001.

Athens is making certain modifications to the New Athens generating facility that require modifications to the Niagara Mohawk interconnection facilities. The scope of these services is set forth in Schedule A to the Reimbursement Agreement. These services will allow Athens to improve voltage regulation and accuracy to the Athens control room and will provide a back-up communication capability. The services and modifications contemplated by the Reimbursement Agreement will not increase the capacity of the New Athens plant or require amendments to the existing interconnection agreement.

Niagara Mohawk is performing these services at actual costs as set forth in Article I of the Reimbursement Agreement and has not collected any funds pursuant to this agreement prior to the instant filing.<sup>1</sup>

## **II. Jurisdictional Status of the Reimbursement Agreement**

Section 205 of the FPA authorizes the Commission to require 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>2</sup> In the *Prior Notice Order*, the Commission stated that the types of agreements that a utility must file include a “jurisdictional CIAC agreement,” which is defined as an “agreement providing for the customer payment of contributions-in-aid-of-construction” of facilities used to provide jurisdictional service, either in a single lump sum or over a period of time.<sup>3</sup> Commission precedent also indicates that engineering and pre-construction agreements related to jurisdictional facilities can be construed as CIAC agreements which should be filed with the Commission.<sup>4</sup>

The Reimbursement Agreement relates to engineering, procurement, and construction services that are required in connection with modifying the existing interconnection of Athens and relates to jurisdictional facilities, therefore, it is likely to be construed as a CIAC agreement which should be filed for Commission approval under applicable precedent. As noted above, Niagara Mohawk is performing the services provided for in the Reimbursement Agreement at actual costs, and therefore, the Commission should find that the price of these services is just and reasonable.

## **III. Effective Date and Request for Waiver**

Niagara Mohawk respectfully requests waiver of the 60-day notice requirement contained in Section 35.3 of the Commission’s regulations to allow the Reimbursement Agreement to become effective upon the effective date set forth in the Agreement, *i.e.*, November 18, 2011.

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<sup>1</sup> See definition of “Company Reimbursable Costs.” See also Section 11.1, stating “The Company is not in the business of performing design or construction services for profit and is not receiving any fee or profit (as contrasted with cost reimbursement) for its performance of the work hereunder.”

<sup>2</sup> 16 U.S.C. §§ 824d(a), -(c).

<sup>3</sup> *Prior Notice Order* at 61,974, 61,990.

<sup>4</sup> For example, in *Southern California Edison Co.*, 98 FERC ¶ 61,304, at 62,300-01 (2002), the Commission found that seven letter agreements pursuant to which the utility undertook pre-interconnection activities in anticipation of certain generator interconnections “including procurement, engineering, and limited construction” were in essence jurisdictional CIAC agreements that must be filed with the Commission. See also *GenPower Anderson, LLC v. Duke Energy Corp. and Duke Electric Transmission*, 101 FERC ¶ 61,038 (2002) (requiring Duke Energy to file with the Commission an engineering and design letter agreement entered into pending execution of an Interconnection and Operating Agreement).

Good cause exists for the Commission to grant this waiver as no prejudice will result to any party. Niagara Mohawk is working with Athens to proceed on a timeline that would enable the completion of engineering and procurement work in July 2012. Granting the requested waiver will benefit a generator interconnecting to the transmission system and is therefore consistent with the standard set forth by the Commission in *Central Hudson*.<sup>5</sup> For these reasons, the Commission should find that good cause exists to grant an effective date of November 18, 2011.

#### IV. Communications and Service

Communications and correspondence with respect to this matter should be addressed to the following individuals, and the following should be included on the official service list for this proceeding:<sup>6</sup>

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<sup>5</sup> See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

<sup>6</sup> Niagara Mohawk requests waiver of 18 C.F.R. § 385.203(b) to allow three persons to be added to the service list in this proceeding.

**V. Conclusion**

For the reasons stated herein, NEP respectfully requests that the Commission accept the Reimbursement Agreement, effective November 18, 2011.

Copies of this filing have been served on Athens, the New York ISO, and New York regulators.

Sincerely,

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