

January 25, 2012

**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 MM Albany Energy LLC**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”),<sup>1</sup> Part 35 of the Federal Energy Regulatory Commission’s (“Commission”) regulations,<sup>2</sup> and the guidance provided in the Commission’s *Prior Notice Order*,<sup>3</sup> Niagara Mohawk Power Company (“Niagara Mohawk”) d/b/a National Grid submits a Cost Reimbursement Agreement (“Reimbursement Agreement”) between Niagara Mohawk and MM Albany Energy LLC (“MM Albany Energy”). The Reimbursement Agreement is 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. 1168.

Niagara Mohawk respectfully requests waiver of the Commission’s notice requirements to allow the Reimbursement Agreement to become effective on January 9, 2012, 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. MM Albany Energy owns the 2.85 MW capacity Albany Landfill Gas Recovery Generation Facility (the “Facility”) located in Albany, New York. MM Albany Energy is currently interconnected to the Niagara Mohawk system pursuant to the terms of an interconnection

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<sup>1</sup> 16 U.S.C. § 824d.

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

<sup>3</sup> *Prior Notice and Filing Requirements Under Part II of the Federal Power Act (Prior Notice Order)*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).

agreement that was filed with the Commission in Docket No. ER08-427-000 on January 7, 2008, and accepted by the Commission on February 28, 2008.<sup>4</sup>

MM Albany Energy is making certain modifications to the 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. The services and modifications contemplated by the Reimbursement Agreement will increase the Facility's capacity to 9.2 MW. Niagara Mohawk and MM Albany Energy will make appropriate amendments to their interconnection agreement reflecting this change.

## **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>5</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>6</sup> Commission precedent also indicates that engineering and pre-construction agreements related to jurisdictional facilities can be construed as CIAC agreements.<sup>7</sup>

The Reimbursement Agreement relates to both jurisdictional facilities and engineering, procurement, and construction services necessary to modify the existing interconnection of the Facility. Therefore, the Commission will likely find it a CIAC agreement and require filing.

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. The Commission should find the price of Niagara Mohawk's Reimbursement Agreement services to be just and reasonable because Niagara Mohawk will perform these services at actual costs.

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<sup>4</sup> *New York Independent System Operator, Inc. and Niagara Mohawk Power Corporation*, Docket No. ER08-427-000 (Feb. 28, 2008)(unpublished letter order).

<sup>5</sup> 16 U.S.C. §§ 824d(a)-(c).

<sup>6</sup> *Prior Notice Order* at 61,974, 61,988- 61,991.

<sup>7</sup> For example, in *Southern California Edison Co.*, 98 FERC ¶ 61,304, at 62,300-01 (2002), the Commission required filing of seven letter agreements related to pre-interconnection activities in anticipation of certain generator interconnections "including procurement, engineering, and limited construction." See also *GenPower Anderson, LLC v. Duke Energy Corp. and Duke Electric Transmission*, 101 FERC ¶ 61,038 (2002) (requiring Duke Energy to file an engineering and design letter agreement entered into pending execution of an Interconnection and Operating Agreement).

### 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.*, January 9, 2012.

Granting waiver will not result in prejudice to any party. Niagara Mohawk and MM Albany Energy are working to complete engineering and procurement in March 2012.<sup>8</sup> Granting the requested waiver will benefit a customer seeking to modify its facilities interconnected to the transmission system and is therefore consistent with the standard set forth by the Commission in *Central Hudson*.<sup>9</sup> For these reasons, the Commission should find that good cause exists to grant an effective date of January 9, 2012.

### IV. Communications and Service

Communications and correspondence with respect to this matter should be addressed to the following individuals, who should be included on the official service list for this proceeding:<sup>10</sup>

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<sup>8</sup> See Schedule B of the Reimbursement Agreement.

<sup>9</sup> See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

<sup>10</sup> Niagara Mohawk requests waiver of 18 C.F.R. § 385.203(b) to allow four persons onto the service list in this proceeding.

**V. Conclusion**

For the reasons stated herein, Niagara Mohawk respectfully requests that the Commission accept the Reimbursement Agreement, effective January 9, 2012.

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

Sincerely,

/s/ Amanda Downey

Amanda Downey

Counsel

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