

February 22, 2016

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

**Re: Niagara Mohawk Power Corporation d/b/a National Grid
Docket No. ER16-____-000
Filing of Cost Reimbursement Agreement with the
Oneida Indian Nation**

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 d/b/a/ National Grid (“National Grid”) submits a Cost Reimbursement Agreement (“Reimbursement Agreement”) between National Grid and the Oneida Indian Nation (“Nation”).³ The Reimbursement Agreement is designated as Service Agreement No. 2264 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 the Nation has requested National Grid to do with respect to a portion of a specified transmission line to be relocated as described in the Reimbursement Agreement. National Grid requests that the Commission grant waiver of the prior notice requirement and accept the Reimbursement Agreement effective as of December 14, 2015, the effective date agreed to by the Parties. National Grid has not collected any funds pursuant to the Reimbursement Agreement.

I. Background

National Grid is a public utility with a transmission system in the State of New York. National Grid’s transmission facilities have been placed under the operational control of the NYISO.

The Nation is a sovereign Indian nation with an office and place of business in Verona, New York. The Nation is not a transmission customer under the NYISO OATT.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

³ Together, National Grid and the Nation are referred to in the Reimbursement Agreement and in this transmittal letter as the “Parties.”

The Nation has requested that National Grid relocate a portion of an existing 115 kV transmission line from lands owned by National Grid that are adjacent to the Nation's Turning Stone Resort Casino property, to Nation-owned property. National Grid is willing to perform the engineering, design, and construction work required to accomplish the relocation of the portion of the existing transmission line, subject to: (i) reimbursement by the Nation of all actual costs and expenses incurred by National Grid in connection with the work; (ii) the Nation's prior delivery of certain real property interests as contemplated in the Reimbursement Agreement; (iii) the Nation's performance of all other duties, responsibilities, and obligations set forth in the Reimbursement Agreement, including, without limitation, specified work to be performed by the Nation; and (iv) receipt of any and all required approvals as set forth in the Reimbursement Agreement.⁴

II. Description of the Reimbursement Agreement and Filing Requirements

Pursuant to the Reimbursement Agreement, the Nation will reimburse National Grid 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 the Nation. 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 for 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 In the Prior Notice Order, the Commission stated that the types of agreements that a public 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.⁶ Commission precedent also indicates that engineering and pre-construction agreements related to jurisdictional facilities can be construed as CIAC agreements.⁷

The Reimbursement Agreement relates to the recovery of costs for jurisdictional facilities and engineering, procurement, and construction services necessary to facilitate

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

⁵ 16 U.S.C. §§ 824d(a)-(c).

⁶ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,974, 61,988-91 (1993) ("Prior Notice Order").

⁷ For example, in *Southern California Edison Company*, 98 FERC ¶ 61,304, at 62,300-01 (2002), the Commission required the 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 that was entered into pending execution of an interconnection and operating agreement).

the performance of work with respect to a transmission line and related facilities owned by National Grid as described in the Reimbursement Agreement. Although the Nation is not a transmission customer of National Grid, and therefore National Grid believes that the Nation is arguably not a “customer” as contemplated in the discussion of jurisdictional CIAC agreements in the Prior Notice Order, National Grid recognizes that there is a possibility that the Commission could nevertheless find the Reimbursement Agreement to be a jurisdictional CIAC agreement that must be filed. For these reasons, National Grid is filing the Reimbursement Agreement for Commission acceptance out of an abundance of caution.

The price of the services to be performed pursuant to the Reimbursement Agreement will be just and reasonable because National Grid will perform these services at actual cost.⁸ The Commission should therefore accept the Reimbursement Agreement.

III. Effective Date and Request for Waiver

Pursuant to Section 35.11 of the Commission’s regulations,⁹ National Grid respectfully requests waiver of the notice requirement contained in Section 35.3 of the Commission’s regulations¹⁰ to allow the Reimbursement Agreement to become effective upon the effective date set forth in the agreement, *i.e.*, December 14, 2015.¹¹

Good cause exists for the Commission to grant this waiver. Granting the waiver will accord with the intent of National Grid and the Nation to make the Reimbursement Agreement effective as of December 14, 2015, as stated in the Reimbursement 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 an effective date of December 14, 2015.

IV. Attachment

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

⁸ See Reimbursement Agreement, Article 1.0 at definition of “Company Reimbursable Costs.” Section 7.2 of the Reimbursement Agreement provides that, once the Commission has granted approval of the Reimbursement Agreement without condition or modification, the Nation will provide a prepayment of \$65,000 (“Project Plan Prepayment”) to National Grid. In accordance with this Section 7.2, National Grid has not collected the Project Plan Prepayment (or any other funds) pursuant to the Reimbursement Agreement.

⁹ 18 C.F.R. § 35.11.

¹⁰ 18 C.F.R. § 35.3.

¹¹ Section 2.1 of the Reimbursement Agreement states that the agreement “shall become effective as of the Effective Date,” which is defined in Article 1.0 of the Reimbursement Agreement as the date specified in the preamble of the agreement, *i.e.*, December 14, 2015.

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:

Amanda C. Downey
Counsel
National Grid USA
Service Company, Inc.
40 Sylvan Road
Waltham, MA 02451
(781) 907-2136
amanda.downey@nationalgrid.com

Sean Atkins
Bradley R. Miliauskas
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
(202) 239-3300
sean.atkins@alston.com
bradley.miliauskas@alston.com

Kathryn Cox-Arslan
Director, Transmission Commercial
National Grid USA
40 Sylvan Road
Waltham, MA 02451
(781) 907-2406
kathryn.cox@nationalgrid.com

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

VI. Conclusion

For the reasons stated herein, National Grid respectfully requests that the Commission accept the Reimbursement Agreement effective as of December 14, 2015.

Respectfully submitted,

/s/ Amanda C. Downey
Amanda C. Downey
Counsel
National Grid USA
Service Company, Inc.
40 Sylvan Road
Waltham, MA 02451

*Attorney for Niagara Mohawk Power
Corporation d/b/a National Grid*