

October 25, 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 Large Generator Interconnection Agreement with
Black River Hydroelectric, LLC**

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 Large Generator Interconnection Agreement (“LGIA”) between Niagara Mohawk and Black River Hydroelectric, LLC (“Black River”). The attached LGIA (the “Black River LGIA”) is designated as Service Agreement No. 2485 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).

The Black River LGIA is an undisputed agreement between Niagara Mohawk and Black River for the continued provision of interconnection service to the generating facility owned by Black River and located in Jefferson County, New York. Niagara Mohawk requests that the Commission accept the Black River LGIA as of the effective date set forth therein, September 30, 2019.

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.

Black River owns and operates a 32.65 MW hydroelectric facility located in Jefferson County, New York (the Facility).

Niagara Mohawk and Black River are already parties to an interconnection agreement for Niagara Mohawk to provide interconnection service to the Facility using the transmission system owned by Niagara Mohawk (Prior Interconnection Agreement).

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

The Commission accepted the Prior Interconnection Agreement for filing effective as of September 30, 1999.³ Section 10.1 of the Prior Interconnection Agreement states that it will continue in effect for 20 years (*i.e.*, until September 30, 2019), at which time the parties will negotiate a new interconnection agreement.

II. The Black River LGIA

Niagara Mohawk and Black River have entered into the Black River LGIA to provide for continued interconnection service to the Facility using the transmission system owned by Niagara Mohawk, pursuant to the terms of the Black River LGIA. The parties intend the Black River LGIA to supersede the Prior Interconnection Agreement effective as of September 30, 2019, as set forth in the Black River LGIA.⁴

With minor variations, the Black River LGIA follows the *pro forma* NYISO LGIA set forth in Appendix 6 of Attachment X to the NYISO OATT. The main difference between the Black River LGIA and the *pro forma* NYISO LGIA is that the Black River LGIA is a two-party agreement between the transmission owner (Niagara Mohawk) and the generation facility owner (Black River), whereas the *pro forma* NYISO LGIA is a three-party agreement among the transmission owner, the generation facility owner, and the NYISO.⁵

Commission precedent supports acceptance of the Black River LGIA as a two-party agreement. In proceedings on two-party LGIAs between Niagara Mohawk and generation subsidiaries of Alliance Energy that were modeled on the *pro forma* NYISO LGIA (collectively, the “Alliance Energy LGIAs”),⁶ the Commission found that the NYISO did not need to be a party to the two-party Alliance Energy LGIAs, for the following reasons:

[T]hey are not the type of new generator interconnection agreements envisioned by Order No. 2003; rather they are more like after-the-fact interconnection operating agreements that govern the terms, conditions, and rates associated with the continued operation and maintenance of previously constructed facilities built to accommodate the interconnection of the Alliance generators to Niagara Mohawk’s transmission system.

³ *Niagara Mohawk Power Corp.*, Commission Letter Order, Docket No. ER99-4368-000 (Sept. 29, 1999). The original parties to the Prior Interconnection Agreement were Niagara Mohawk and Northbrook New York, LLC (Northbrook). Black River afterwards succeeded to Northbrook’s interest in the Prior Interconnection Agreement.

⁴ See Black River LGIA, Recitals, Article 1 (at definition of “Effective Date”), and Article 29.6. Niagara Mohawk will submit a separate filing to terminate the Prior Interconnection Agreement.

⁵ Attachment B to this filing shows the differences between the Black River LGIA and the *pro forma* NYISO LGIA in black-line format.

⁶ The Alliance Energy LGIAs were filed and accepted pursuant to Commission proceedings in Docket Nos. ER07-1019, ER07-1020, and ER07-1021.

Accordingly, we will not require NYISO to be a signatory to these unexecuted IAs.⁷

Like the Alliance Energy LGIAs, the Black River LGIA is not a new generator interconnection agreement of the type envisioned by Order No. 2003. Instead, the Black River LGIA governs the terms, conditions, and rates associated with the continued operation and maintenance of the previously constructed facilities built to accommodate the interconnection of the existing Facility to the Niagara Mohawk transmission system. Therefore, the Commission should accept the Black River LGIA as a two-party agreement.

The *pro forma* NYISO LGIA contains a number of provisions that are applicable to new interconnections but are not applicable to existing interconnections, such as the interconnection of the Facility. However, Niagara Mohawk and Black River have agreed to retain those provisions in the Black River LGIA.⁸ This approach is consistent with the approach authorized in *PJM Interconnection, L.L.C.*⁹ In that order, the Commission rejected a proposal to delete inapplicable provisions from an LGIA, stating that “[i]f a provision of a contract is not applicable, it is not applicable,” and concluding that “[u]nless confusion is likely, modifications to a pro forma agreement that ‘clarify’ matters not in doubt are not necessary.”¹⁰

Niagara Mohawk and Black River have agreed to a twenty-year term for the Black River LGIA.¹¹ Niagara Mohawk and Black River have also included clarifying provisions in the Black River LGIA that differ from provisions in the *pro forma* NYISO LGIA. In Article 27.2, the parties have agreed to have a third arbitrator selected by the first two arbitrators chosen by the parties, because this is a two-party agreement. In Article 27.4, the parties have changed the allocation of costs for a single arbitrator from one-third per party to one-half per party, because the Black River LGIA is a two-party rather than a three-party agreement. In Appendix E to the Black River LGIA, the parties have replaced the developer certification statement concerning Trial Operation and commencement of Commercial Operation with a statement that Black River commenced Commercial Operation of the Facility in 1986. Each of the Alliance Energy LGIAs accepted by the Commission contained similar clarifying provisions. In new Appendix G to the Black River LGIA, the parties have clarified that, in accordance with Article 10.5

⁷ *Niagara Mohawk Power Corp. d/b/a National Grid*, 121 FERC ¶ 61,104, at P 22 (2007) (citation omitted). The Commission also stated that “any interconnections involving the interconnection of a new generating facility or involving increases in capacity or material modifications to the operating characteristics of existing generating facilities interconnected to Niagara Mohawk’s or any other NYISO member’s transmission system will require the NYISO to be a signatory to that IA.” *Id.* However, the Facility is already interconnected to the transmission system owned by Niagara Mohawk, and there has been no increase in capacity or material modifications to the operating characteristics of the Facility. Therefore, the NYISO does not need to be a signatory to the Black River LGIA.

⁸ See Black River LGIA at Appendix H (listing provisions from the *pro forma* NYISO LGIA that the parties agree are not applicable to their circumstances).

⁹ 111 FERC ¶ 61,098 (2005).

¹⁰ *Id.* at P 14.

¹¹ Black River LGIA, Article 2.2.

of the Black River LGIA, Black River will be responsible for all reasonable operation and maintenance (O&M) expenses and will have the option to pay them either as a fixed, ongoing charge or as annual actual O&M expenses.

III. Effective Date

The Commission's regulations require service agreements to be filed not more than 30 days after service under the agreements has commenced.¹² As discussed above, the Black River LGIA is intended to go into effect as of September 30, 2019, *i.e.*, fewer than 30 days after the date the Black River LGIA is being filed. Therefore, Niagara Mohawk requests that the Commission accept the Black River LGIA effective September 30, 2019.

IV. Documents Enclosed

In addition to this filing letter, attached are the following documents:

- i. The Black River LGIA (Service Agreement No. 2485 under the NYISO OATT), provided in clean format (Attachment A)
- ii. Red-lined revisions showing the differences between the Black River LGIA and the *pro forma* NYISO LGIA (Attachment B)

¹² 18 C.F.R. § 35.3(a)(2).

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 Black River, the NYISO, and the New York Public Service Commission.

VI. Conclusion

For the reasons stated herein, Niagara Mohawk respectfully requests that the Commission accept the Black River LGIA effective as of September 30, 2019.

Respectfully submitted,

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