

December 23, 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
Covanta Niagara I, 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 Covanta Niagara I, LLC (“Covanta Niagara”). The attached LGIA (the “Covanta Niagara LGIA”) is designated as Service Agreement No. 2500 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).

The Covanta Niagara LGIA is an undisputed agreement between Niagara Mohawk and Covanta Niagara for the continued provision of interconnection service to the generating facility owned by Covanta Niagara. Niagara Mohawk requests that the Commission accept the Covanta Niagara LGIA as of the effective date set forth therein, November 26, 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.

Covanta Niagara owns and operates a generating facility located in the Town of Niagara Falls, County of Niagara, New York that has a nominal installed capacity not to exceed 42,400 kilowatts and associated electric energy (the “Facility”).

Niagara Mohawk and Covanta Niagara are already parties to an interconnection agreement for Niagara Mohawk to provide interconnection service to the Facility using

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

the transmission system owned by Niagara Mohawk (the “Prior Interconnection Agreement”). The Commission accepted the Prior Interconnection Agreement for filing effective as of December 30, 2014.³ Article 11.1 of the Prior Interconnection Agreement states that it will continue in effect for five years (*i.e.*, until December 29, 2019). Article 11.2 of the Prior Interconnection Agreement states that, upon expiration of that agreement, if Covanta Niagara desires to remain interconnected to the transmission system thereafter, then the parties will enter into a new interconnection agreement consistent with the then-current NYISO *pro forma* LGIA.

II. The Covanta Niagara LGIA

Niagara Mohawk and Covanta Niagara have entered into the Covanta Niagara LGIA to provide for continued interconnection service to the Facility using the transmission system owned by Niagara Mohawk, pursuant to the terms of the Covanta Niagara LGIA. The parties intend the Covanta Niagara LGIA to supersede the Prior Interconnection Agreement effective as of November 26, 2019, as set forth in the Covanta Niagara LGIA.⁴

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

³ *N.Y. Indep. Sys. Operator, Inc. & Niagara Mohawk Power Corp.*, Commission Letter Order, Docket No. ER15-1083-000 (Apr. 1, 2015).

⁴ See Covanta Niagara 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 Covanta Niagara 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.

of the Alliance generators to Niagara Mohawk's transmission system. Accordingly, we will not require NYISO to be a signatory to these unexecuted IAs.⁷

Like the Alliance Energy LGIAs, the Covanta Niagara LGIA is not a new generator interconnection agreement of the type envisioned by Order No. 2003. Instead, the Covanta Niagara 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 Covanta Niagara 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 Covanta Niagara have agreed to retain those provisions in the Covanta Niagara 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 Covanta Niagara have agreed to a twenty-year term for the Covanta Niagara LGIA.¹¹ Niagara Mohawk and Covanta Niagara have also included clarifying provisions in the Covanta Niagara 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 Covanta Niagara LGIA is a two-party rather than a three-party agreement. Each of the Alliance Energy LGIAs accepted by the Commission contained similar clarifying provisions. In new Appendix G to the Covanta Niagara LGIA, the parties have clarified that, in accordance with Article 10.5 of the Covanta Niagara LGIA, Covanta Niagara will be responsible for

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 Covanta Niagara LGIA.

⁸ See Covanta Niagara 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 Covanta Niagara LGIA, Article 2.2.

all reasonable operation and maintenance expenses and will pay them as a fixed, ongoing charge.

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 Covanta Niagara LGIA is intended to go into effect as of November 26, 2019, *i.e.*, fewer than 30 days after the date the Covanta Niagara LGIA is being filed. Therefore, Niagara Mohawk requests that the Commission accept the Covanta Niagara LGIA effective November 26, 2019.

IV. Documents Enclosed

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

- i. The Covanta Niagara LGIA (Service Agreement No. 2500 under the NYISO OATT), provided in clean format (Attachment A)
- ii. Black-lined revisions showing the differences between the Covanta Niagara 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 Covanta Niagara, 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 Covanta Niagara LGIA effective as of November 26, 2019.

Respectfully submitted,

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