

June 15, 2020

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Niagara Mohawk Power Corporation d/b/a National Grid,
Docket No. ER20-____-000**

Order No. 864 Compliance Filing

Dear Secretary Bose:

To comply with the Federal Energy Regulatory Commission's ("FERC" or "Commission") Order No. 864,¹ Niagara Mohawk Power Corporation d/b/a National Grid ("Niagara Mohawk") submits for filing revisions to its Transmission Service Charge ("TSC") formula rate, which sets Niagara Mohawk's Wholesale TSC under Attachment H to the New York Independent System Operator, Inc. ("NYISO") Open Access Transmission Tariff ("NYISO OATT").²

Due to the close interrelationship between the TSC formula rate and Niagara Mohawk's retail rates approved by the New York Public Service Commission ("NYPSC"), Niagara Mohawk respectfully requests leave to submit the proposed amortization period for unprotected excess accumulated deferred income taxes ("ADIT") associated with the Tax Cuts and Jobs Act of 2017 to the FERC in a subsequent compliance filing after the NYPSC approves an amortization period for unprotected excess ADIT in Niagara Mohawk's upcoming retail rate case. Niagara Mohawk also requests leave to propose in that subsequent compliance filing the date on which Niagara Mohawk will commence returning in the TSC formula rate both protected and unprotected ADIT associated with the Tax Cuts and Jobs Act of 2017 to be consistent with the corresponding dates under the retail rates.

With the exception of these issues to be addressed in a subsequent compliance filing, the proposed amendments to the TSC formula rate comply with all requirements of Order No. 864.

¹ *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 84 *Fed. Reg.* 65,281, 169 FERC ¶ 61,139 (2019) ("Order No. 864"), *order on reh'g and clarification*, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

² NYISO submits this filing on behalf of Niagara Mohawk solely in its role as administrator of the NYISO OATT. The burden of demonstrating that the proposed tariff amendments are just and reasonable rests with Niagara Mohawk, the sponsoring party. The NYISO takes no position on any substantive aspect of this filing at this time. Capitalized terms not otherwise defined herein shall have the meaning specified in the NYISO OATT.

I. BACKGROUND

A. Niagara Mohawk

Niagara Mohawk is a public utility subject to the Commission's jurisdiction that owns transmission facilities located in the state of New York. These transmission facilities have been placed under the operational control of the NYISO. Certain municipal electric customers in upstate New York as well as certain customers outside the NYISO pay for the cost of service over these transmission facilities through a Wholesale TSC formula rate under Attachment H to the NYISO OATT. This TSC formula is updated annually consistent with a comprehensive Settlement Agreement and Offer of Settlement approved by the Commission on July 22, 2009, in Docket No. ER08-552. Niagara Mohawk recovers the rest of its costs for these transmission facilities through retail rates approved by the NYPSC.

B. Order No. 864

On November 21, 2019, the Commission issued Order No. 864. Order No. 864 required all public utility transmission providers with transmission formula rates to account for changes caused by the enactment of the Tax Cuts and Jobs Act of 2017.³ The order specifically addressed the effects of the law on ADIT reflected in transmission formula rates.⁴ To comply with Order No. 864, public utilities also must: (1) include a mechanism in their formula rates to deduct excess ADIT from or add any deficient ADIT to their rate bases; (2) include a mechanism in their formula rates that decreases or increases their income tax allowances by any amortized excess or deficient ADIT; and (3) incorporate a new, permanent worksheet into their transmission formula rates that will annually track information related to excess or deficient ADIT.⁵

Public utilities with transmission formula rates are required to submit filings to comply with the final rule by the later of 30 days after Order No. 864's effective date (*i.e.*, February 26, 2020), or the public utility's next annual informational filing.⁶

II. EXPLANATION AND JUSTIFICATION FOR PROPOSED CHANGES

Order No. 864 requires public utilities with transmission formula rates to include a Rate Base Adjustment Mechanism in their formula rates to deduct any excess ADIT or add any

³ *Id.* at P 1.

⁴ *Id.*

⁵ *Id.* at PP 3-5.

⁶ *Id.* at P 6. The NYISO OATT requires Niagara Mohawk to submit its TSC annual update with the Commission by June 14 of each year. NYISO, OATT, Attachment H, § 14.1.9.4.1. June 14, 2020, falls on a Sunday; therefore, the annual update deadline for 2020 falls on Monday, June 15, 2020. *See* 18 C.F.R. § 385.2007.

deficient ADIT to their rate bases.⁷ This Rate Base Adjustment Mechanism must apply not only to the Tax Cuts and Jobs Act of 2017, but also to future federal, state, and local tax rate changes that give rise to excess and deficient ADIT.⁸ As shown in the redlined tariff provisions submitted with this filing, the modifications to Schedule 7 in Section 14.2.1 of Attachment H to the NYISO OATT update an existing tariff provision to provide increased transparency for the transmission regulatory assets and liabilities associated with excess or deficient ADIT as a result of changes in federal, state, or local tax rates or other specified rate changes already included in the current effective NYISO OATT. Lines 8, 9, and 10 have been modified accordingly, including changes to the “FERC Form 1/PSC Report” column and the “Definition” column. Corresponding changes to reflect the “Transmission Regulatory Assets and Liabilities” have been made to line numbers 5, 6, and 21 of Schedule 6 in Section 14.2.1 of Attachment H to the NYISO OATT, Page 1 of 2. These changes satisfy the Rate Base Adjustment Mechanism requirements of Order No. 864.

Niagara Mohawk notes that the existing version of Line 10 of Schedule 7 in Section 14.2.1 of Attachment H to the NYISO OATT (under the heading “Other Regulatory Assets”) referenced FERC Form No. 1 information for Niagara Mohawk that included both electric and natural gas FAS 109 balances. In order to comply with Order No. 864, however, Niagara Mohawk has determined that this line should be updated to refer only to electric transmissionrelated regulatory assets and liabilities. This will ensure that only excess or deficient ADIT balances in FAS 109 associated with electric assets will affect the TSC rates.

Order No. 864 further requires all public utilities with transmission formula rates to include an Income Tax Allowance Adjustment Mechanism to decrease or increase the income tax components of their formula rates by any amortized excess or deficient ADIT.⁹ The Income Tax Allowance Adjustment Mechanism must apply to any future federal, state, and local tax rate changes that give rise to excess and deficient ADIT.¹⁰ Schedule 9 in Section 14.2.1 of Attachment H to the NYISO OATT has been revised to provide for amortization of excess or deficient ADIT as a result of changes in federal, state, or local tax rates. Line 46 now reflects the “Amortization of (Excess)/Deficient ADIT,” and cross-references in the “FERC Form 1/PSC Report” column have been added. Additionally, the definition column notes that “Transmission related Amortization of Regulatory Liabilities shall equal the product of the electric Amortization of Regulatory Assets and Liabilities multiplied by the Gross Transmission Plant Allocation Factor.” Corresponding changes to reflect the Amortization of Transmission Regulatory Assets and Liabilities have been made to Schedule 1 in Section 14.2.1 of Attachment H to the NYISO OATT, lines 5 and 17. The definition of “Amortization of Regulatory Assets and Liabilities” has also been added as Section 14.1.9.1.46 of Attachment H to the NYISO OATT, noting it “shall equal credits and expenses as recorded in FERC account 411 or 410 solely related to FAS 109 balances associated with changes in federal, state or local tax rates and

⁷ Order No. 864 at P 28.

⁸ *Id.* at P 29.

⁹ *Id.* at P 42.

¹⁰ *Id.* at P 43.

other FERC approved amortization of FAS 109 assets or liabilities.”¹¹ These changes satisfy the Income Tax Allowance Adjustment Mechanism requirements of Order No. 864.

Order No. 864 requires public utilities to include in their transmission formula rate an ADIT Worksheet, a new permanent worksheet that will annually track information related to excess and deficient ADIT.¹² Instead of requiring public utilities to adopt a *pro forma* worksheet, the Commission required that a worksheet include the following information:

- (1) how any ADIT accounts were re-measured and the excess or deficient ADIT contained therein;
- (2) the accounting for any excess or deficient amounts in Accounts 182.3 (Other Regulatory Assets) and 254 (Other Regulatory Liabilities);
- (3) whether the excess or deficient ADIT is protected or unprotected;
- (4) the accounts to which the excess or deficient ADIT is amortized; and
- (5) the amortization period of the excess or deficient ADIT being returned or recovered through rates.¹³

In order to satisfy this requirement, Niagara Mohawk has included a permanent ADIT Worksheet in its formula rate template. This permanent worksheet appears in new Schedule 14 in Section 14.2.1 of Attachment H to the NYISO OATT. The ADIT Worksheet used in Niagara Mohawk’s TSC formula rate will annually track information related to excess and deficient ADIT associated with changes in federal, state or local tax rates. In addition, consistent with P 65 of Order No. 864, supporting documentation will be provided as part of the annual update process for any excess or deficient ADIT and associated amortization following a future tax rate change. Notes (c) and (d) in Schedule 14 indicate that Niagara Mohawk may provide notes to explain certain items in the ADIT Worksheet or additional sublines to the ADIT Worksheet to provide increased transparency. Because such notes and additional sublines will not change the TSC formula, they do not modify the template.

In addition to including the new permanent ADIT Worksheet as well as the formula rate template changes mentioned above, Niagara Mohawk has made ministerial numbering changes to reflect the addition of Section 14.1.9.1.46 of Attachment H to the NYISO OATT, along with modifications to reflect alphabetical and numerical cross-references in the Schedules necessitated by the changes above.

Under Order No. 864, consistent with the guidance in the Tax Cuts and Jobs Act of 2017, protected excess ADIT is to be amortized no more rapidly than over the life of the underlying asset using the Average Rate Assumption Method (or an alternative method where a utility’s

¹¹ The addition of this definition results in a change in numbering to certain existing provisions in Section 14.1 of Attachment H.

¹² Order No. 864 at P 62.

¹³ *Id.* at PP 52, 62.

books and records do not contain the necessary vintage account data).¹⁴ Order No. 864 also allows public utilities to propose amortization periods for unprotected excess and deficient ADIT on a case-by-case basis, finding that this approach will allow utilities to propose amortization periods that better suit the specific circumstances of each utility and its customers.¹⁵

Niagara Mohawk respectfully requests leave to defer the amortization of both protected and unprotected excess ADIT resulting from the Tax Cuts and Jobs Act of 2017 until the NYPSC makes a determination on related amortization issues in Niagara Mohawk's next retail rate case. As noted above, much of the costs of Niagara Mohawk's transmission facilities is recovered through retail rates regulated by the NYPSC. As such, it is appropriate that the amortization period to be used in the TSC formula rate for unprotected excess ADIT associated with the Tax Cuts and Jobs Act of 2017 should be the same amortization period for unprotected ADIT in retail rates approved by the NYPSC in Niagara Mohawk's upcoming retail rate case. Niagara Mohawk anticipates that it will file its next retail rate case with the NYPSC no later than mid-2021. Once the NYPSC approves an amortization period for unprotected excess ADIT associated with the Tax Cuts and Jobs Act of 2017 applicable to retail rates, Niagara Mohawk proposes to submit a subsequent compliance filing to the Commission proposing a corresponding amortization period for unprotected excess ADIT to be returned in the TSC formula rate. Niagara Mohawk also requests leave to propose in that subsequent compliance filing the date on which Niagara Mohawk will commence returning in the TSC formula rate both protected and unprotected ADIT associated with the Tax Cuts and Jobs Act of 2017. That date will correspond to the date to commence amortization of excess ADIT associated with the 2017 federal income tax rate change approved by the NYPSC.

The populated ADIT Worksheet submitted with this filing shows that Niagara Mohawk currently calculates a total of \$703.49 million of excess ADIT associated with electric assets resulting from the Tax Cuts and Jobs Act of 2017. The total electric excess ADIT will be allocated to electric transmission through the use of a plant allocator. This will be the basis for excess ADIT resulting from the Tax Cuts and Jobs Act of 2017 to be returned to TSC customers. Niagara Mohawk will update this calculation with a revised populated ADIT Worksheet to be submitted in the subsequent compliance filing described above.¹⁶ As reflected in Note (h) of the ADIT worksheet, the updated ADIT Worksheet may reflect changes to the excess ADIT balance due to the conclusion of Internal Revenue Service ("IRS") audits for periods through calendar year 2018 and other classification changes between the protected and unprotected categories due to deferred amortization to maintain rate base neutrality until amortization periods are approved by both the NYPSC and FERC.¹⁷ The excess ADIT resulting from the Tax Cuts and Jobs Act of

¹⁴ *Id.* at P 44.

¹⁵ *Id.* at P 44.

¹⁶ Niagara Mohawk commits to modifying the populated ADIT Worksheet to include the appropriate amortization periods as part of that subsequent compliance filing.

¹⁷ Note (h) is not limited to excess ADIT resulting from the Tax Cuts and Jobs Act of 2017. It also applies to other changes to excess or deficient ADIT balances due to the conclusion of IRS audits during applicable periods affected by a future change in federal, state or local tax rates.

2017 will be returned to TSC customers following the Commission's order accepting the subsequent compliance filing submitted after the conclusion of the NYPSC rate proceeding.

III. EFFECTIVE DATE

Consistent with the directives of Order No. 864, Niagara Mohawk proposes an effective date of January 27, 2020 for all revisions to Attachment H proposed in this filing.¹⁸ These tariff revisions do not address certain items related to amortization of excess ADIT associated with the Tax Cuts and Jobs Act of 2017. As noted above, Niagara Mohawk respectfully requests that the Commission grant leave to defer the amortization of protected and unprotected excess ADIT associated with the Tax Cuts and Jobs Act of 2017 until a subsequent compliance filing is submitted to the Commission after a NYPSC determination is made on corresponding excess ADIT amortization issues in Niagara Mohawk's next retail rate case.

IV. COMMUNICATIONS

Pursuant to Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, Niagara Mohawk requests that all correspondence, pleadings, and other communications regarding this filing should be directed to following:

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V. SERVICE

Copies of this filing are being served on each of the Interested Parties who receive service of informational filings of annual updates to the TSC formula rate in accordance with the settlement approved by the Commission in Docket No. ER08-552. This list of Interested Parties include representatives of all customers that pay the Niagara Mohawk TSC as well as the NYPSC.

VI. DOCUMENTS INCLUDED IN THIS FILING

In addition to this transmittal letter, the following documents are provided in support of this filing:

Attachment A	Clean version of Sections 14.1 and 14.2.1 to Attachment H to the NYISO OATT
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¹⁸ *Id.* at P 100.

Attachment B	Redlined version of Sections 14.1 and 14.2.1 to Attachment H to the NYISO OATT
Attachment C	Populated ADIT Worksheet showing the ADIT effects of the Tax Cuts and Jobs Act for Niagara Mohawk Power Corporation d/b/a National Grid
Attachment D	List of Interested Parties upon whom this filing was served

VII. CONCLUSION

Niagara Mohawk respectfully requests that the Commission find the amendments to the NYISO OATT contained in this filing comply with Order No. 864, accept the proposed amendments to the NYISO OATT, and grant the request to defer amortization of excess ADIT associated with the Tax Cuts and Jobs Act of 2017 until a subsequent compliance filing is submitted to the Commission at the conclusion of Niagara Mohawk's next NYPSC retail rate case.

Respectfully submitted,

/s/ Patrick J. Tarmey

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