

January 15, 2013

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. ER13-____-000
Cost Reimbursement Agreement with Economic Development
Growth Enterprises Corporation and
Request for Waiver of Commission Notice Requirement**

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 Economic Development Growth Enterprises Corporation (“EDGE Corp.”). The Reimbursement Agreement is designated as Service Agreement No. 1949 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”), FERC Electric Tariff, Original Volume No. 1.

The Reimbursement Agreement is an undisputed agreement between National Grid and EDGE Corp. that will facilitate the construction of nanotechnology facility in Marcy, New York and promote economic development in the region. National Grid respectfully requests that the Commission grant waiver of its prior notice requirement to permit the Reimbursement Agreement to go into effect as of October 19, 2012, the effective date set forth in the Reimbursement Agreement.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

I. Background

National Grid is a public utility with a transmission system in the State of New York. EDGE Corp. is facilitating a project to develop a site located in the Town of Marcy, New York at the State University of New York Institute of Technology, upon which a semiconductor manufacturing and/or other nanotechnology oriented facility will be built (“Marcy Nanocenter”). EDGE Corp. believes that the Marcy Nanocenter will benefit the public by, among other things, creating as many as 5,000 new jobs. EDGE Corp. is not currently a National Grid customer.

A portion of National Grid’s existing Porter-Terminal #6 115 kV transmission line runs through the easterly portion of the Marcy Nanocenter site. EDGE Corp. has requested that National Grid relocate this portion of the line. National Grid has conducted a facility study generally describing the work needed to construct a new 115 kV transmission line and removal of the relevant portion of the existing line.

II. Description of the Reimbursement Agreement and Filing Requirements

Pursuant to the Reimbursement Agreement, EDGE Corp. will pay for or reimburse National Grid for the actual costs and expenses incurred in connection with the construction of a new 115 kV transmission line and removal of the portion of the existing Porter-Terminal #6 115 kV transmission line. The Reimbursement Agreement sets for the terms and conditions of this work and certain related commitments by EDGE Corp. The Reimbursement Agreement includes provisions addressing project management, regulatory and governmental approvals, indemnification and liability, insurance, and various standard provisions for 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.³ 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.⁴ Commission precedent also indicates that engineering and pre-

³ 16 U.S.C. §§ 824d(a)-(c).

⁴ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993) (“Prior Notice Order”).

construction agreements related to jurisdictional facilities can be construed as CIAC agreements.⁵

The Reimbursement Agreement relates to the recovery of costs for jurisdictional facilities and engineering, procurement, and construction services necessary to construct a new 115 kV transmission line and remove the relevant portion of the existing line. Therefore, the Commission will likely find it to be a CIAC agreement that must be filed.

National Grid is performing these services at actual cost as set forth in Article 1 to the Reimbursement Agreement.⁶ The Commission should find the price of the services to be performed pursuant to the Reimbursement Agreement to be just and reasonable because National Grid will perform these services at actual cost.

III. Effective Date and Request for Waiver

Pursuant to Section 35.11 of the Commission's regulations,⁷ National Grid respectfully requests waiver of the requirement contained in Section 35.3 of the Commission's regulations to file service agreements not more than 30 days after service has commenced,⁸ in order to allow the Reimbursement Agreement to become effective upon the effective date set forth in the agreement, *i.e.*, October 19, 2012.

Granting waiver will not result in prejudice to any party. National Grid and EDGE Corp. have agreed to project milestones that anticipate completion of work pursuant to the Reimbursement Agreement subsequent to June 2013.⁹ Granting the requested waiver will benefit a facility interconnecting to the transmission system and is

⁵ 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).

⁶ Pursuant to Article 8.0 of the Reimbursement Agreement, National Grid has received a \$50,000 prepayment from EDGE Corp. However, National Grid will not apply the prepayment to any charges until after the Commission has accepted the Reimbursement Agreement for filing.

⁷ 18 C.F.R. § 35.11.

⁸ 18 C.F.R. § 35.3.

⁹ See Exhibit C to the Reimbursement Agreement.

The Honorable Kimberly D. Bose
January 15, 2013
Page 4

therefore consistent with the standard set forth by the Commission in *Central Hudson*.¹⁰ For these reasons, the Commission should find that good cause exists to grant an effective date of October 19, 2012.

I. 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:¹¹

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

Sean A. Atkins
Bradley R. Miliauskas
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Tel: 202-239-3300
Fax: 202-239-3333
Sean.atkins@alston.com
bradley.miliauskas@alston.com

William L. Malee
Director, Transmission Commercial
National Grid USA
40 Sylvan Road
Waltham, MA 02451
(781) 907-2422
Bill.Malee@nationalgrid.com

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

¹⁰ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹¹ National Grid requests waiver of 18 C.F.R. § 385.203(b) to allow four persons to be added to the service list in this proceeding.

The Honorable Kimberly D. Bose
January 15, 2013
Page 5

II. Conclusion

For the reasons stated herein, National Grid respectfully requests that the Commission accept the Reimbursement Agreement effective as of October 19, 2012.

Respectfully submitted,

/s/ Amanda 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*