

February 27, 2013

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

**Re: Niagara Mohawk Power Corporation, d/b/a National Grid
Docket No. ER13-____-000
Filing of Large Generator Interconnection Agreement with
Indeck-Olean Limited Partnership 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 Large Generator Interconnection Agreement (“LGIA”) between National Grid and Indeck-Olean Limited Partnership (“Indeck-Olean”). The attached LGIA (the “Indeck-Olean LGIA”) is designated as Service Agreement No. 1954 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).

The Indeck-Olean LGIA is an undisputed agreement between National Grid and Indeck-Olean for the continued provision of interconnection service to the Indeck-Olean Energy Center. National Grid requests that the Commission accept the Indeck-Olean LGIA effective as of the date it was executed, December 26, 2012.

I. Background

National Grid is a public utility with a transmission system in the State of New York. Indeck-Olean owns and operates the Indeck-Olean Energy Center, a natural-gas-fired generating facility with a maximum capacity of 95 MW located in Olean, Cattaraugus County, New York. Indeck-Olean has owned and operated the Indeck-Olean Energy Center since the 1990s.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

National Grid and Indeck-Olean are parties to an interconnection agreement regarding the Indeck-Olean Energy Center that was filed with and accepted by the Commission in 1999, in Docket No. ER99-4238. Pursuant to that existing interconnection agreement, National Grid provides interconnection service to the Indeck-Olean Energy Center using the transmission system owned by National Grid.

II. The Indeck-Olean LGIA

National Grid and Indeck-Olean have entered into the Indeck-Olean LGIA to provide for continued interconnection service to the Indeck-Olean Energy Center using the transmission system owned by National Grid, pursuant to the terms of the Indeck-Olean LGIA. The parties intend the Indeck-Olean LGIA to supersede and replace the interconnection agreement for the Indeck-Olean Energy Center that was accepted in Docket No. ER99-4238, effective as of December 26, 2012.³

With minor variations, the Indeck-Olean LGIA follows the *pro forma* LGIA set forth in Appendix 6 of Attachment X to the NYISO OATT. The main difference between the Indeck-Olean LGIA and the NYISO *pro forma* is that the Indeck-Olean LGIA is a two-party agreement between the transmission owner (National Grid) and the generation facility owner (Indeck-Olean), whereas the *pro forma* NYISO LGIA is a three-party agreement among the transmission owner, the generation facility owner, and the NYISO.⁴

Commission precedent supports acceptance of the Indeck-Olean LGIA as a two-party agreement. In proceedings on two-party LGIAs between National Grid and generation subsidiaries of Alliance Energy that were modeled on the *pro forma* NYISO LGIA (collectively, the “Alliance Energy LGIAs”),⁵ 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

³ National Grid will submit a separate filing to terminate the existing interconnection agreement that was accepted in Docket No. ER99-4238.

⁴ Attachment B to this filing shows the differences between the Indeck-Olean LGIA and the *pro forma* NYISO LGIA in black-line format. For example, the term “NYISO” has been deleted from the Indeck-Olean LGIA because the NYISO is not a party to it, and the Indeck-Olean LGIA refers to National Grid as the “Transmission Owner” rather than as the “Connecting Transmission Owner.”

⁵ The Alliance Energy LGIAs were filed and accepted pursuant to Commission proceedings in Docket Nos. ER07-1019, ER07-1020, and ER07-1021.

Alliance generators to Niagara Mohawk's transmission system. Accordingly, we will not require NYISO to be a signatory to these unexecuted IAs.⁶

Like the Alliance Energy LGIAs, the Indeck-Olean LGIA is not a new generator interconnection agreement of the type envisioned by Order No. 2003. Instead, the Indeck-Olean 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 Indeck-Olean Energy Center to the National Grid transmission system. Therefore, the Commission should accept the Indeck-Olean 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 for the Indeck-Olean Energy Center. In almost all cases, however, National Grid and Indeck-Olean have agreed to retain those provisions in the Indeck-Olean LGIA. This approach is consistent with the approach authorized in *PJM Interconnection, L.L.C.*⁷ 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."⁸ National Grid and Indeck-Olean have added Appendix H to the Indeck-Olean LGIA to list the *pro forma* NYISO LGIA provisions that the parties agree are not applicable to the Indeck-Olean LGIA.

National Grid and Indeck-Olean have also included clarifying provisions in the Indeck-Olean LGIA that differ from provisions in the *pro forma* NYISO LGIA. In Article 2.4.3 of the Indeck-Olean LGIA, which addresses the responsibility for costs associated with the removal, relocation, or other disposition or retirement of Attachment Facilities, the parties have added the phrase "or previous interconnection agreements between Developer and Transmission Owner," in order to ensure that the cost allocation provisions of Article 2.4.3 apply to the facilities constructed under the interconnection agreement between Niagara Mohawk and Indeck-Olean that was filed and accepted in Docket No. ER99-4238. In Article 27.2, the parties have agreed to have a third arbitrator selected by the President of the Bar Association of Cattaraugus County, subject to the agreement of both parties, because this is a two-party agreement. In Article 27.4 of the Indeck-Olean LGIA, the parties have

⁶ *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 Indeck-Olean Energy Center is already interconnected to the transmission system owned by National Grid, and there has been no increase in capacity or material modifications to the operating characteristics of the Indeck-Olean Energy Center. Therefore, the NYISO does not need to be a signatory to the Indeck-Olean LGIA.

⁷ 111 FERC ¶ 61,098 (2005).

⁸ *Id.* at P 14.

changed the allocation of costs for a single arbitrator from one-third per party to one-half per party, because the Indeck-Olean LGIA is a two-party rather than a three-party agreement. In Appendix E to the Indeck-Olean LGIA, the parties have replaced the developer certification statement concerning Trial Operations and commencement of Commercial Operations with a statement that the parties agree that, for purposes of the Indeck-Olean LGIA, the Commercial Operation Date will be June 8, 1994. The purpose of this modification is to specify the date on which the Indeck-Olean Energy Center was interconnected and began Commercial Operations. Each of the Alliance Energy LGIAs accepted by the Commission contained similar clarifying provisions.

Appendix G to the Indeck-Olean LGIA includes provisions regarding operation and maintenance services that replace the provisions in Appendix G to the *pro forma* NYISO LGIA regarding interconnection requirements for a wind generating plant. Appendix G to the *pro forma* NYISO LGIA is not applicable because the Indeck-Olean Energy Center is a natural-gas-fired plant rather than a wind generating plant. The provisions in Appendix G to the Indeck-Olean LGIA are similar to provisions regarding operation and maintenance services that the Commission has accepted in other LGIAs.⁹

The Indeck-Olean LGIA also contains several provisions that are modeled on provisions in the Large Generator Interconnection Procedures (“LGIP”) contained in Attachment X to the NYISO OATT. The definitions of the terms “Network Access Interconnection Service,” “Transmission Owner,” and “Transmission Owner’s Attachment Facilities” contained in Section 1.1 of the Indeck-Olean LGIA are similar to, respectively, the definitions of the terms “Energy Resource Interconnection Service,” “Connecting Transmission Owner,” and “Connecting Transmission Owner’s Attachment Facilities” contained in Section 30.1 of the NYISO LGIP. In addition, Section 9.5.3 of the Indeck-Olean LGIA, which addresses payment for reactive power, is based on Section 9.5.3 of the NYISO LGIP. Each of the Alliance Energy LGIAs accepted by the Commission contained provisions like those described above.

III. Effective Date and Request for Waiver

Pursuant to Section 35.11 of the Commission’s regulations,¹⁰ 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 under the agreements has commenced,¹¹ in order to allow the Indeck-Olean LGIA to become effective as of December 26, 2012.

⁹ For example, see pages A-7 through A-13 of Appendix A to the LGIA filed in Docket No. ER12-1869-000, accepted by Commission letter order on June 29, 2012.

¹⁰ 18 C.F.R. § 35.11.

¹¹ 18 C.F.R. § 35.3.

The parties have agreed that the Indeck-Olean LGIA “shall become effective upon execution by the Parties, subject to acceptance by FERC.”¹² The parties executed the Indeck-Olean LGIA on December 26, 2012. Granting the requested waiver will permit the Indeck-Olean LGIA to become effective as of the date agreed upon by the parties and will not result in prejudice to any party. For these reasons, the Commission should find that good cause exists to grant an effective date of December 26, 2012.

IV. Documents Enclosed

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

- i. The Indeck-Olean LGIA (Service Agreement No. 1954 under the NYISO OATT), provided in clean format (Attachment A)
- ii. Black-lined revisions showing the differences between the Indeck-Olean LGIA and the *pro forma* NYISO LGIA (Attachment B)

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.¹³

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¹² Indeck-Olean LGIA, Article 2.1.

¹³ 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.

Copies of this filing have been served on Indeck-Olean, the NYISO, and the New York State Public Service Commission.

VI. Conclusion

For the reasons stated herein, National Grid respectfully requests that the Commission accept the Indeck-Olean LGIA effective as of December 26, 2012.

Respectfully submitted,

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