

April 29, 2011

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

**Re: *Niagara Mohawk Power Corporation***  
**Docket No. ER11-\_\_\_\_\_-000**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (16 U.S.C. § 824d), Sections 35.7 and 35.9 of the Commission's regulations (18 C.F.R. §§ 35.7, 35.9 (2010)), and Order No. 714 (*Electronic Tariff Filings*, FERC Stats. & Regs. ¶ 31,276 (2008)), Niagara Mohawk Power Corporation ("Niagara Mohawk") d/b/a National Grid ("National Grid"), hereby submits for Commission acceptance the attached electronic version of its Amended and Restated Agreement for The Retail Transmission of Replacement Power Between Niagara Mohawk Power Corporation and the Power Authority Of The State Of New York, previously designated Niagara Mohawk Power Corporation, FERC Electric Tariff Rate Schedule 19, First Revised Volume No. 1 ("RS-19"). Pursuant to Order No. 714, this agreement has been designated Original Service Agreement No. 1742, under the New York Independent System Operator, Inc. ("NYISO") Open Access Transmission Tariff ("OATT"), FERC Electric Tariff, Original Volume No. 1 ("SA 1742").

SA 1742 is an amendment to RS-19, which is a "grandfathered transmission agreement" under NYISO OATT Attachment L. As discussed below, SA 1742 results in limited amendments to RS-19, extending the term of the agreement, as well as the period during which its rates may not be increased. In accordance with Order No. 714, the attached electronic version is the first filing of RS-19 under the eTariff system, and supersedes the previous, paper version of the rate schedule. National Grid also submits herewith the Stipulation and Agreement Regarding Rate Design, Customer and Markets Issues (the "Stipulation"), in which the agreement of the requisite parties to the changes in RS-19's termination date and rate freeze period are memorialized.

National Grid also respectfully requests waiver of the Commission's 60-day notice requirement, to permit SA 1742 to go into effect as of February 1, 2011, the date on which the contractual commitments contained in RS-19 would have expired according to their terms in the absence of the Stipulation.

## **I. Background**

Niagara Mohawk, a subsidiary of National Grid USA, is a public utility subject to the Commission's jurisdiction, which owns facilities located in the State of New York. National Grid's high-voltage New York transmission facilities have been placed under the operational control of NYISO. Niagara Mohawk's local delivery, distribution, and retail sales operations are subject to the jurisdiction of the New York Public Service Commission ("NYPSC").

The Power Authority of the State of New York ("NYPA") is the nation's largest state public power authority, and is an instrumentality of the State of New York. NYPA is not subject to the Commission's jurisdiction.

RS-19 is a bilateral agreement between NYPA and Niagara Mohawk governing the retail transmission portion of delivery service for so-called "Replacement Power." Replacement Power is low-cost hydropower generated by NYPA, and is currently delivered by Niagara Mohawk to designated industrial end-users pursuant to New York state law.<sup>1</sup> RS-19 was amended in 2004 pursuant to a Commission-approved settlement<sup>2</sup> between Niagara Mohawk, NYPA, and certain Niagara Mohawk Replacement Power industrial customers. The settlement did a number of things, including dividing Replacement Power allocated to approved customers into two categories: Existing Allocations and New Allocations. Pursuant to this settlement, retail transmission service to New Allocations (i.e., allocations of Replacement Power made after the effective date of the settlement) is provided under the NYISO OATT. By contrast, retail transmission service for Existing Allocations (i.e., those allocations of Replacement Power that were made before the effective date of the 2004 settlement) remain subject to RS-19, with the added proviso that these delivery rates and associated loss factors are to be frozen for a specified period at the levels in effect on August 31, 2003. The provisions and amendments discussed in this transmittal letter thus apply only to Existing Allocations of Replacement Power.

The 2004 settlement also amended the termination provisions of RS-19 to extend that agreement beyond its originally scheduled termination date of August 31, 2007. As amended by the 2004 settlement, RS-19 currently provides that it "shall remain in effect for the duration of the Rate Plan Period, unless further extended by written agreement of the Authority [i.e., NYPA] and Contractor [i.e., Niagara Mohawk]."<sup>3</sup> The Rate Plan Period refers to the retail rate plan approved by the NYPSC in connection with the merger between National Grid USA and Niagara Mohawk. The Rate Plan Period was set

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<sup>1</sup> See N.Y. Pub. Auth. Law § 1005(13).

<sup>2</sup> See *Niagara Mohawk Power Corp.*, 108 FERC ¶ 61,035 (2004).

<sup>3</sup> See Original Sheet No. 10, Article IX of Substitute First Amended Rate Schedule FERC No. 19, Docket Nos. ER03-989 et. al., (Filed April 21, 2004).

by NYPSC to expire December 31, 2011 unless NYPSC approved new retail rates before that date.<sup>4</sup>

A Niagara Mohawk retail rate case was initiated in 2010, and resulted in NYPSC putting new retail rates for Niagara Mohawk into effect as of February 1, 2011, thus ending the Rate Plan Period referenced in RS-19 eleven months before RS-19 would have expired in the absence of such action. As part of the discussions surrounding the retail rate case, however, Niagara Mohawk, NYPA, and certain other parties agreed that RS-19 and its “frozen” rates should remain in effect until December 31, 2011, as they would have done in the absence of NYPSC’s early termination of the Rate Plan Period.<sup>5</sup> The Stipulation, attached hereto as Attachment A, is the document memorializing this agreement to extend the term and rate freeze period of RS-19 by eleven months (as well as a number of other items not relevant to RS-19).

## II. Discussion

The changes to RS-19 for which approval is requested herein are minor in nature, and have no other effect than to extend the term and rate freeze of RS-19, both of which would otherwise expire earlier than the end date originally set for the expiration of the Rate Plan Period, and thus of RS-19 itself. The amended RS-19, submitted herewith as SA 1742, thus simply preserves the status quo ante. The amendments to RS-19 effecting this result are changes to Articles V and IX, as well as to Exhibit A.

The change to Article V provides simply that no change to transmission and delivery charges or loss allowances under SA 1742 shall be proposed or made by Niagara Mohawk or NYPA to be effective prior to January 1, 2012.<sup>6</sup>

The changes to Article IX and Exhibit A provide that RS-19 will remain in effect through December 31, 2011.<sup>7</sup> Article IX of RS-19 states: “This amended and restated Agreement . . . shall remain in effect for the duration of the Rate Plan Period, unless further extended by written agreement of the Authority [i.e., NYPA] and Contractor [i.e., Niagara Mohawk].” Exhibit A contains similar language.<sup>8</sup> While the Rate Plan Period ended February 1, 2011, in this case the NYPA and Niagara Mohawk *have* agreed to an extension beyond “the duration of the Rate Plan Period.” This agreement to extend RS-19’s term is contained in the Stipulation, appended hereto as Attachment A, which provides in relevant part: “The following rules shall apply to the Company’s service to

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4 See NYPSC Opinion No. 01-6, issued Dec. 3, 2001 in Case No. 01-M-0075.

5 The Staff of the New York Department of Public Service is also a party to this agreement.

6 SA 1742, Art. V.

7 *Id.*, Art. IX.

8 *Id.*, Exh. A, Sec. S.

NYPA customers during calendar year 2011 and thereafter until revised by the regulatory authority with jurisdiction over such matters: (a) There shall be no changes made in delivery rates or billing determinants for “Existing” allocations . . . of . . . [Replacement Power] . . .”<sup>9</sup> Pursuant to this language, NYPA and Niagara Mohawk have agreed to amend Article IX and Exhibit A to provide that SA 1742 will remain in effect through December 31, 2011.

While Articles V and IX are both secured by the Mobile-Sierra clause in Article XI of RS-19, Article XI by its own terms does not apply to changes made after the end of the Rate Plan Period. As explained above, the Rate Plan Period ended on February 1, 2011 when NYPSC placed new Niagara Mohawk retail rates into effect. Thus, NYPA and Niagara Mohawk have followed the Commission-approved provisions of RS-19 in extending its current rates through December 31, 2011.

It should also be noted that the amendments to RS-19 submitted here were requested and agreed to by NYPA and the Staff of the New York Department of Public Service (“DPS Staff”) as part of an effort to extend low delivery rates for New York industrial customers until the end of the original Rate Plan Period; these changes were part of a negotiated settlement between National Grid, NYPA, and DPS Staff, and are part of a package of mutually dependent commitments that allowed these parties to avoid extended litigation regarding Niagara Mohawk’s new retail rates. The fact that the extension of RS-19’s term has been vetted and approved by two independent public service agencies and is part of a more comprehensive settlement relating to retail rates should also weigh in favor of the Commission accepting SA 1742 as submitted.

The only other amendments to RS-19 embodied in the attached SA 1742 are changes to the caption and first paragraph of the agreement in order to reflect Niagara Mohawk’s status as an affiliate of National Grid, and a change in the definition of the term “Agreement” in Article I to reflect the new designation of the amended agreement.

For the foregoing reasons, Niagara Mohawk respectfully requests that the Commission accept Niagara Mohawk’s submission of SA 1742 for filing.

### **III. Effective Date and Request for Waiver**

National Grid respectfully requests waiver, pursuant to Section 35.11 of the Commission’s regulations (18 C.F.R. § 35.11), of the 60-day prior notice requirement set forth in Section 35.3 (18 C.F.R. § 35.3), in order to permit SA 1742 to become effective as of February 1, 2011, the date on which RS-19, including its rate freeze provisions, would have expired in the absence of the Stipulation.

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<sup>9</sup> See Stipulation, Sec. G.1. at 4.

No harm will result to any entity as a result of the requested February 1, 2011 effective date. Indeed, customers will benefit from Niagara Mohawk's agreement to forego requesting increased delivery rates under SA 1742 at least until the beginning of 2012. Further, under long-standing practice, the Commission holds that waiver of the 60-day notice requirement "will generally be appropriate when the filing has no rate impact or reduces the rate."<sup>10</sup> In this case, the filing of SA 1742 has no effect on rates except to prevent them from rising during its term. In addition, the Commission "will also generally grant waiver of the 60-day prior notice requirement . . . when the rate change and the effective date are prescribed by contract . . ."<sup>11</sup> As discussed previously, here the rate schedule prescribes that the termination date may be extended by the agreement of Niagara Mohawk and NYPA, which have agreed to such an extension in this case. The fact that NYPA, which is the transmission customer under RS-19 and SA 1742, has agreed to the change in termination date to become effective on February 1, 2011, provides further justification for the Commission's grant of a waiver.

Furthermore, no practical purpose would be served by declining to approve SA 1742 effective February 1, 2011. Such action would simply result in the creation of a time period during which Niagara Mohawk could theoretically have raised its rates but did not (from February 1, 2011 until the effective date of SA 1742), followed by a time period during which Niagara Mohawk is formally barred from raising its rates (the effective date of the amendments until the expiration of SA 1742 under the amended termination provisions). As the practical effects of granting or not granting a waiver would be identical in their impact, there is no reason not to grant such waiver.

For all these reasons, granting the requested waiver is appropriate, and National Grid respectfully requests that the Commission do so. National Grid does not, however, request that the Commission issue an order accepting SA 1742 on an expedited basis.

#### **IV. Service Agreement Designation of the Amended RS-19**

Pursuant to the Commission's directives in *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008), and consistent with NYISO practice, National Grid has designated the amended RS-19 as SA 1742.

#### **V. Attachments**

In addition to this transmittal letter, the instant filing includes the following attachments:

Attachment A	Stipulation and Agreement Regarding Rate Design, Customer and Markets Issues, dated September 15, 2010.
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<sup>10</sup> *Central Hudson Gas & Electric Corporation*, 60 FERC ¶ 61,106 at 61,337 (1992),

<sup>11</sup> *Id.* at 61,338.

- Attachment B            Blacklined version of Amended and Restated Agreement for The Retail Transmission of Replacement Power Between Niagara Mohawk Power Corporation and the Power Authority Of The State Of New York showing proposed amendments.
- Attachment C            Clean version of Amended and Restated Agreement for The Retail Transmission of Replacement Power Between Niagara Mohawk Power Corporation and the Power Authority Of The State Of New York incorporating amendments and formatted as required under Order No. 714

## **VI.    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 with respect to this docket:

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## **VII.   Commission Regulations**

This filing substantially complies with the requirements of Part 35 applicable to filings of this kind. Niagara Mohawk requests waiver of any applicable requirement of

part 35 for which it has not specifically requested waiver or supplied data so that this filing may become effective as proposed.

Copies of this filing have been served upon Parties to the 2004 settlement, the NYPSC, NYPA and the NYISO.

Respectfully submitted,

/s/ Daniel Galaburda

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