

June 2, 2015

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. ER15-\_\_\_\_-000  
Amended and Restated Large Generator Interconnection  
Agreement with Fortistar North Tonawanda Inc.**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”),<sup>1</sup> and Part 35 of the Federal Energy Regulatory Commission’s (“Commission”) regulations,<sup>2</sup> Niagara Mohawk Power Corporation d/b/a/ National Grid (“National Grid”) submits an Amended and Restated Large Generator Interconnection Agreement (“LGIA”) between National Grid and Fortistar North Tonawanda Inc. (“Fortistar”). The attached LGIA (the “Fortistar LGIA”) is designated as Service Agreement No. 2220 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).

The Fortistar LGIA is an undisputed agreement between National Grid and Fortistar for the continued provision of interconnection service to the generating facility owned by Fortistar and located in Oxbow, New York (the “Plant”), which has been executed by both parties. National Grid requests that the Commission accept the Fortistar LGIA as of the effective date set forth therein, June 1, 2015.

## **I. Background**

National Grid is a public utility with a transmission system in the State of New York. National Grid’s transmission facilities have been placed under the operational control of the NYISO.

Fortistar owns and operates the Plant, a 68.5 MW combined cycle natural gas-fueled power plant.<sup>3</sup> The Commission certified the Plant as a “qualifying cogeneration

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. Part 35.

<sup>3</sup> Fortistar was formerly known as Oxbow Power of North Tonawanda, New York, Inc.

facility” (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”) in Docket No. QF89-111-000 on March 14, 1989. The Commission has since repeatedly recertified the Plant as a QF.<sup>4</sup>

Since May 14, 1987, National Grid has been a party to a Power Purchase Agreement (“PPA”) for all electricity produced at the Plant. National Grid provides interconnection service to the Plant pursuant to an interconnection agreement dated March 2, 1993. National Grid and Fortistar have amended the PPA to eliminate the terms providing for National Grid to purchase all of the excess output of the Plant, creating the potential for Fortistar to sell electricity produced at the plant to third parties in addition to National Grid effective June 1, 2015.

## **II. The Fortistar LGIA**

Pursuant to Commission policy, “[w]hen an electric utility . . . purchases the QF’s total output, the relevant state authority exercises authority over the interconnection and the allocation of interconnection costs. But when an electric utility interconnecting with a QF does not purchase all of the QF’s output and instead transmits the QF power in interstate commerce, the Commission exercises jurisdiction over the rates, terms, and conditions affecting or related to such service, such as interconnections.”<sup>5</sup> In accordance with this policy, during the time when the PPA was in effect and the entire net output of the Plant was sold to National Grid, the state had authority over the rates, terms, and conditions of the interconnection. However, now that National Grid and Fortistar have amended the PPA, the Commission exercises jurisdiction over the Fortistar interconnection because it sets forth the rates, terms, and conditions for the provision of interconnection service to permit the net output of the Plant to be sold to third parties in the NYISO wholesale market.

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

Commission precedent supports acceptance of the Fortistar 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

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<sup>4</sup> Most recently, Fortistar filed a notice of self-recertification with respect to the QF status of the Plant in Docket No. QF89-111 on June 7, 2002.

<sup>5</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 61,146, at P 813 (2004) (citation omitted).

<sup>6</sup> Attachment B to this filing shows the differences between the Fortistar LGIA and the *pro forma* NYISO LGIA in black-line format.

(collectively, the “Alliance Energy LGIAs”),<sup>7</sup> 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 Alliance generators to Niagara Mohawk’s transmission system. Accordingly, we will not require NYISO to be a signatory to these unexecuted IAs.<sup>8</sup>

Like the Alliance Energy LGIAs, the Fortistar LGIA is not a new generator interconnection agreement of the type envisioned by Order No. 2003. Instead, the Fortistar 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 Plant to the National Grid transmission system. Therefore, the Commission should accept the Fortistar 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 Plant. However, National Grid and Fortistar have agreed to retain those provisions in the Fortistar LGIA.<sup>9</sup> This approach is consistent with the approach authorized in *PJM Interconnection, L.L.C.*<sup>10</sup> 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.”<sup>11</sup>

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<sup>7</sup> The Alliance Energy LGIAs were filed and accepted pursuant to Commission proceedings in Docket Nos. ER07-1019, ER07-1020, and ER07-1021.

<sup>8</sup> *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 Plant 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 Plant. Therefore, the NYISO does not need to be a signatory to the Fortistar LGIA.

<sup>9</sup> See Fortistar LGIA at Appendix I.

<sup>10</sup> 111 FERC ¶ 61,098 (2005).

<sup>11</sup> *Id.* at P 14.

National Grid and Fortistar have agreed to a ten-year term for the Fortistar LGIA, which is the standard term under the *pro forma* NYISO LGIA.<sup>12</sup> National Grid and Fortistar have also included clarifying provisions in the Fortistar 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 consensus of both 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 Fortistar LGIA is a two-party rather than a three-party agreement. In Appendix E to the Fortistar LGIA, the parties have replaced the developer certification statement concerning Trial Operation and commencement of Commercial Operation with a statement that Fortistar commenced Commercial Operation of the Plant effective as of September 7, 1993. The purpose of this modification is to specify the date on which the Plant began Commercial Operation. Each of the Alliance Energy LGIAs accepted by the Commission contained similar clarifying provisions. In new Appendix H to the Fortistar LGIA, the parties have clarified that, in accordance with Article 10.5 of the Fortistar LGIA, Fortistar will be responsible for all reasonable operation and maintenance expenses and will pay such expenses to National Grid under one of two procedures set forth in Appendix H.

### **III. Effective Date**

The Commission's regulations require service agreements to be filed not more than 30 days after service has commenced under the agreements.<sup>13</sup> As discussed above, the Fortistar LGIA is intended to go into effect as of June 1, 2015, *i.e.*, fewer than 30 days after the date the Fortistar LGIA is being filed. Therefore, National Grid requests that the Commission accept the Fortistar LGIA effective June 1.

### **IV. Documents Enclosed**

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

- i. The Fortistar LGIA (Service Agreement No. 2220 under the NYISO OATT), provided in clean format (Attachment A)
- ii. Black-lined revisions showing the differences between the Fortistar LGIA and the *pro forma* NYISO LGIA (Attachment B)

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<sup>12</sup> See Fortistar LGIA at Article 2.2.

<sup>13</sup> 18 C.F.R. § 35.3.

**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:

Amanda C. Downey  
National Grid USA  
Service Company, Inc.  
40 Sylvan Road  
Waltham, MA 02451  
(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  
(202) 239-3300  
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 Fortistar, 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 Fortistar LGIA effective as of June 1, 2015.

Respectfully submitted,

/s/ Amanda C. 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*