

September 29, 2010

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission 888  
First Street, NE, Room 1A  
Washington, D.C. 20426

**RE: Niagara Mohawk Power Corporation  
Beacon Power Corporation  
Engineering Procurement and Construction Services Agreement  
Docket No. ER10-**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Part 35.12 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") regulations, 18 C.F.R. Part 35.12 (2006), Niagara Mohawk Power Corporation, d/b/a National Grid ("Niagara Mohawk"), submits for filing an Engineering, Procurement and Construction Services Agreement ("EPC Agreement") between Niagara Mohawk and Beacon Power Corporation ("Beacon Power" or "Producer") under the New York Independent System Operator, LLC's ("NYISO") open access transmission tariff, FERC Electric Tariff, Original Volume No. 1. Under the EPC Agreement, Niagara Mohawk will provide, at Beacon Power's sole cost and expense, design, engineering, procurement, construction and project management to effectuate certain necessary system upgrades. Niagara Mohawk will only collect from Beacon Power any actual costs for the work performed under this EPC Agreement.

**I. Information Submitted with Filing**

Beacon Power is interconnecting a new 20 MW flywheel generation facility to NYSEG's 115 kV system at Stephentown Station in Rensselaer County, New York via a single breaker tap to the 115 kV bus at the station. National Grid's Greenbush-Stephentown 993 Line ties to the same 115 kV bus thereby making National Grid an Affected System Owner. To ensure the reliable interconnection of Beacon Power's generation facility to NYSEG's 115 kV system, certain equipment, engineering,

procurement, construction, installation, testing and commissioning work is required to build and/or modify Niagara Mohawk's facilities and related System Upgrade Facilities.

Beacon Power's interconnection to NYSEG's 115 kV system at Stephentown Station is a generator interconnection for wholesale sales that is being processed under Attachment Z to the NYISO OATT. In a number of cases, FERC has required interconnection-related Engineering, Procurement and Construction Services Agreements to be filed with the Commission, even over the objections of the parties to those Agreements. In one case, SoCal Edison argued on rehearing that FERC lacked jurisdiction over seven letter agreements with generators pursuant to which SoCal Edison undertook "pre-interconnection activities including procurement, engineering, and limited construction for interconnection" under the terms of its tariffs. FERC found on rehearing that the agreements were in essence Contribution-in-Aid-of-Construction ("CIAC") agreements, which are jurisdictional "because they involve construction of facilities necessary to provide jurisdictional transmission services" and "all charges assessed to recoup the cost of facilities used to provide transmission service at jurisdictional rates." *Southern California Edison Co.*, 98 FERC para. 61,304 at 62,300-01 (2002).

In another case, Duke Energy argued that FERC lacked jurisdiction over a letter agreement that "allowed[ed] Duke to begin construction of a switchyard required to interconnect GenPower's facility to Duke's transmission system" and "authorized Duke to perform certain engineering and design work, and to order and purchase certain long-lead time items, pending execution of" an interconnection agreement. Duke noted that FERC's then-recent Order No. 2003 NOPR "provides for the execution of engineering and procurement agreements without suggesting that such agreements must be filed." FERC found that Duke must file the agreements for reasons similar to those stated in the SoCal Edison case cited above. *GenPower Anderson, LLC v. Duke Energy Corp.*, 101 FERC para. 61,038 at 61, 149-51 (2002).

It is true that, when a generator is connecting to a utility's system, FERC generally does not require study agreements or typical support services agreements to be filed with FERC where there is no dispute with the connecting generator. The reason for this is not that the terms of the interconnection and related study activities are not FERC-jurisdictional. Instead, FERC's reasoning is that the terms of those study agreements and support services agreements will be ultimately reflected in a generator interconnection agreement that will be filed with FERC (or reported in an EQR filing).

In the instant case, because Niagara Mohawk is not the Connecting Transmission Owner, the same reasoning does not apply. The only agreement covering Niagara Mohawk's engineering, procurement and construction services to Beacon Power is the EPC Agreement. Accordingly, this EPC Agreement is being filed with the Commission for review and approval.

## **II. 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 the docket established with respect to this filing:

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A copy of this filing has been served on Beacon Power, the New York Independent System Operator and the New York State Department of Public Service.

## **III. Proposed Effective Date**

In accordance with section 35.3 of the Commission's Regulations, Niagara Mohawk respectfully requests that the Commission accept this EPC Agreement for filing, effective as of November 29, 2010.

## **IV. Order No. 614 Designations**

Pursuant to the Commission's orders in *Designation of Electric Rate Schedule Sheets*, Order No. 614, 90 FERC ¶ 61,352 (2000) and *Southwest Power Pool, Inc.*, 92 FERC ¶ 61,109 (2000), Niagara Mohawk is required to designate the EPC Agreement as a service agreement under the NYISO OATT. As a result, Niagara Mohawk has designated the EPC Agreement as:

New York Independent System Operator, Inc.

FERC Electric Tariff, Original Volume No. 1

Original Service Agreement No. 1630

Issued by: Mary Ellen Paravalos

Vice President of Transmission Regulation & Commercial Services

National Grid USA for Niagara Mohawk Power Corporation

Issued on: September 29, 2010

Effective: November 29, 2010

**V. Documents Enclosed**

- i. This filing letter;
- ii. Original Service Agreement Number 1630.

Copies of this filing have been served on Beacon Power, the NYISO and the New York Public Service Commission.

Respectfully submitted,

/s/ Daniel Galaburda

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