FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

New York Independent System Operator, Inc.
Niagara Mohawk Power Corporation
Docket Nos. ER23-973-000 and
ER23-974-000

Issued: March 28, 2023

On January 30, 2023 in Docket No. ER23-973-000, New York Independent System Operator, Inc. (NYISO) filed, on behalf of Niagara Mohawk Power Corporation (Niagara Mohawk),[1] proposed revisions to Niagara Mohawk's Transmission Service Charge (TSC) under Attachment H of the NYISO Open Access Transmission Tariff (OATT), and a proposed new Rate Schedule 18 for the Smart Path Connect Project (Project)[2] to establish the following: (1) a transmission formula rate for the Project (Project Rate); (2) permission to recover construction work in progress (CWIP) in rate base for the Project (CWIP Incentive); (3) permission to include a regulatory asset in the Project Rate for the cost of removal of existing assets to build the Project; (4) a crediting mechanism for certain Project Rate revenues to be credited to the TSC revenue requirement in Schedule 10 of the TSC; (5) a cost containment mechanism; and (6) an allocation of Project costs in Rate Schedule 18, § 6.18.3 pursuant to a voluntary cost allocation agreement filed concurrently in Docket No. ER23-974-000.[3]

On January 30, 2023, Niagara Mohawk also filed this voluntary cost allocation agreement (Cost Allocation Agreement Filing) with the New York Transmission Owners (NYTOs)[4] in Docket No. ER23-974-000.[5]

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[1] NYISO submitted the filing on behalf of Niagara Mohawk in its role as administrator of the NYISO OATT.

[2] NYISO, NYISO Tariffs, NYISO OATT, 14.2-14.2.1 OATT Att H Attachment 1 to Attachment H (25.0.0) (TSC rate); NYISO OATT, (6.18 OATT Schedule 18 Rate Mechanism for the Recovery (3.0.0) (Rate Schedule 18).

[3] NYISO Filing, Docket No. ER23-973-000 (filed Jan. 30, 2023) (Tariff Filing).

[4] The NYTOs are: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corporation; Long Island Power Authority; and the New York Power Authority (NYPA).

Please be advised that the filings in Docket Nos. ER23-973-000 and ER23-974-000 are deficient and that additional information is required in order to process the filings. Please provide the information requested below.

Docket No. ER23-973

1. **Excess and Deficient Accumulated Deferred Income Taxes (ADIT) Worksheet**

In Order No. 864, the Commission required that public utilities provide in their ADIT Worksheets the accounting for any excess or deficient ADIT amounts in Accounts 182.3 and 254.[6] Niagara Mohawk states that it added Schedules 15c and 15d to ensure the Project revenue requirement reflects the directives of Order No. 864.[7] However, these schedules do not appear to contain the accounting for any excess or deficient amounts in Accounts 182.3 (Other Regulatory Assets) and 254 (Other Regulatory Liabilities) accepted by the Commission in the TSC formula rate in Docket No. ER20-2051-003. Please explain how Schedules 15c and 15d show the accounts in which excess and deficient ADIT are recorded and the accounting for any excess or deficient amounts in Accounts 182.3 and 254.

2. **Regulatory Asset Treatment for Existing Facilities' Cost of Removal**

Niagara Mohawk requests Commission approval to recover costs incurred to remove its existing assets from Project ratepayers rather than through rates specific to Niagara Mohawk's retail customers and TSC ratepayers.[8] Under the current TSC, Niagara Mohawk has been recovering the cost of these assets from TSC ratepayers through depreciation, which includes the cost of existing plant, salvage and cost of removal.[9] Niagara Mohawk estimates a cost of removal of $36 million. Niagara Mohawk states that it will begin amortization of the cost of removal in the Project Rate after the Project goes into service.

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[5] Niagara Mohawk Power Corporation Tariffs, Rate Schedules, Agreements NYTOs CAA - SPC, Cost Allocation Agreement - Smart Path Connect (0.0.0).

[6] Order No. 864, 169 FERC ¶ 61,139 at PP 52, 62.

[7] *Pub. Util. Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 169 FERC ¶ 61,139 (2019), *order on reh'g*, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

[8] Tariff Filing, Attach. H, Ex. NMPC-400 at 18-19.

[9] *See* Tariff Filing, Attach. H, Ex. NMPC-400 at 18-19.

Commission regulations require utilities to support a change in depreciation (inclusive of changes to cost of removal and salvage) and cost allocation.[10]

a. Niagara Mohawk states that there are several existing transmission facilities that will be removed to accommodate the Project and gives a few examples, such as the removal of the existing 230 kV Edic to Porter Line 17 and equipment at the Porter and Chase Lakes Substations.[11] Niagara Mohawk states that some other existing facilities will be expanded (rather than removed), such as the extension of the existing 230 kV Rector Road to Chases Lake Line 10. Niagara Mohawk states that it began construction on the Project in December 2022.[12]

(i) Please identify all of the existing facilities that will be or have been removed or replaced to accommodate the Project.

(ii) For each facility identified in response to Question 2a(i), indicate how much each facility will contribute to the Project-Related Depreciation and Amortization Reserves in Schedule 15a, line 3, and the date when they will be included.[13] Please also identify the existing facilities, associated land, and rights of way that will not be removed. Indicate which of these facilities will be transferred to the Project Gross Plant In-Service in Schedule 15a, line 1, and the date when they will be included.

(iii) Identify the total amount of cost of removal that has been collected from TSC ratepayers up to the requested effective date of April 1, 2023, and the amount that will be charged to TSC and retail customers from April 1, 2023, until the Project in-service date.

(iv) For each facility identified in response to Question 2a(i), identify

[10] 18 C.F.R. §§ 35.13(h)(5) (Statement AE- Accumulated depreciation and amortization), 35.13 (h)(10) (Statement AJ- Depreciation and amortization expenses) (describing cost of removal as part of this component in cost of service rates), 35.13(h)(36) (Statement BK-Electric utility department cost of service, total and as allocated) (2022).

[11] Tariff Filing, Transmittal at 7.

[12] *Id.*, Attach. E, Ex. NMPC-100 at 16-17.

[13] 18 C.F.R. § 35.13(h)(5) (Statement AE- Accumulated depreciation and amortization); § 35.13 (h)(10) (Statement AJ- Depreciation and amortization expenses).

whether the facility is fully depreciated. If the facility is not fully depreciated, identify the remaining life and amounts to be depreciated for each facility, the cost of removal, and the salvage values as required by 18 C.F.R. § 35.13(h)(10). Please identify the remaining depreciable amount, cost of removal and salvage value for each facility and show how the sum equates to $36 million.

(v) Provide copies of the depreciation studies and analyses used to determine the depreciation rates for the facilities identified in response to Questions 2a(i) and (ii) above as required by 18 C.F.R. § 35.13(h)(10).

(vi) Provide the most recent dismantling studies used to determine terminal removal costs, demolition costs, and salvage specific to each facility identified in response to Question 2a(i).

(vii) For each facility identified in response to Question 2a(i), explain the status of removal (e.g., whether and on what date removal is complete, commenced, or not yet started).

b. As noted, Niagara Mohawk states that the cost of removing existing facilities is, and has been, in the existing TSC as part of depreciation.[14] However, Niagara Mohawk states that Project ratepayers, rather than TSC and retail customers, should pay for the cost of removal because the Project is the "but for" cause of the facilities' removal.[15]

(i) Please explain how Project ratepayers are the "but for" cause of the facilities' removal and identify any precedent supporting of the use of "but for" causation for the shifting of costs of removal, as well as identifying any other basis and related precedent for the justness and reasonableness of shifting the costs of removal from TSC ratepayers to Project ratepayers.

(ii) Does the $36 million cost of removal represent the additional cost of removal for the facilities that have not been funded by the

[14] Tariff Filing, Attach. H, Ex. NMPC-400 at 18.

[15] *Id.*, Transmittal at 18-19. Niagara Mohawk states it plans to file a retail rate case transferring the related cost of removal from retail rates to the Project rate through the use of a regulatory liability representing the credit due to retail customers. Niagara Mohawk states that the proposed cost cap already includes a cost of removal amount. Attach. H, Ex. NMPC-400 at 22.

TSC customers to date? If the answer is no, please explain.

c. Niagara Mohawk states that it began construction on the Project in December 2022[16] and requests an April 1, 2023 effective date for the proposals in this filing.[17] Niagara Mohawk requests authorization to establish a regulatory asset in FERC Account 182.3 (Other Regulatory Assets) to include the cost of removal of the existing facilities in the Project Rate in Schedule 15a, line 5 and expense that cost over 10 years in line 13, effective from the date the Project goes into service.[18]

(i) The Commission has typically allowed utilities to use regulatory assets to recover already-incurred costs in two types of cases: (1) to defer recovery of future project costs until future project rates go into effect when the applicant neither provides service at the time of cost-incurrence nor has an effective rate for that service;[19] and (2) to defer recovery of non-routine costs to a different period than the existing rates provide when the applicant already has existing formula rate authority to make cost adjustments.[20] Please explain whether Niagara Mohawk proposes to use a regulatory asset to recover costs in the Project Rate that were already incurred and charged in the TSC rate before the proposed Project Rate takes effect, and if so, how that is consistent with the Commission's precedent on regulatory asset treatment and the rule against retroactive ratemaking,[21] citing to such

[16] Tariff Filing, Attach. E, Ex. NMPC-100 at 16-17.

[17] *Id.*, Transmittal at 4.

[18] *Id.*, Attach. H, Ex. NMPC-400 at 18-19.

[19] *Va. Elec. & Power Co.* 125 FERC ¶ 61,391 (2008) (request to establish a regulatory asset to defer Regional Transmission Organization (RTO) start-up costs); *Idaho Power Co.*, 123 FERC ¶ 61,104 (2008) (proposal to recover RTO formation costs booked to a regulatory asset); *Pioneer Transmission, LLC*, 168 FERC ¶ 61,055 (2019). *Cf. Cross Sound Cable Co., LLC*, 176 FERC ¶ 61,073 (2021), *order on reh'g*, 178 FERC ¶ 61,134 (2022), *order rejecting reh'g*, 179 FERC ¶ 61,064 (2022).

[20] *AMP Transmission LLC*, 181 FERC ¶ 61,279 (2022).

[21] *See, e.g., Cross Sound Cable Co., LLC*, 176 FERC ¶ 61,073 at PP 31-35 (rejecting proposal to use a regulatory asset to recover costs incurred prior to the effective date of any relevant, individual FPA section 205 filing for violating the rule against retroactive ratemaking).

precedent.

(ii) Generally, Commission ratemaking regulations[22] require that cost of removal be recovered over time as part of the cost of service for existing facilities unless there is an agreement with a contributor to pay these amounts as part of a contribution in aid of construction. Please explain why it is just and reasonable to treat the cost of removal differently than other costs incurred in the construction of the Project by creating a regulatory asset to amortize the $36 million cost of removal of existing facilities over ten years instead of over the life of the Project.

3. **Functional Allocations**

Niagara Mohawk proposes a new Schedule 15a- Project Specific Revenue Requirement in the TSC rate to calculate the revenue requirement for the Project. Within Schedule 15a, Niagara Mohawk proposes to allocate the cost of general and intangible plant (General Plant) and administrative and general (A&G) costs to the Project Rate using a plant allocator. At the same time, Niagara Mohawk's existing TSC rate allocates these components of the rate using a wages and salaries allocator or a labor allocator. Commission policy generally requires these costs to be functionalized using a wages and salaries allocation method on the basis that the drivers of these costs are labor.[23]

a. Please provide all studies and analyses performed to support your proposed allocations for A&G expenses and General Plant in Schedule 15a.

b. Identify the amount of costs produced by the two methods (allocation using a labor allocator, as compared to a plant allocator) for the Project Rate test periods.

c. Please explain how it is just and reasonable to use a labor allocator for the TSC rate, but a plant allocator for the Project Rate, which will be credited to offset the TSC rate.

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[22] 18 C.F.R. § 35.13 (h)(10) (Statement AJ- Depreciation and amortization expenses) (describing cost of removal as part of this component in cost of service rates).

[23] *See Minn. Power & Light Co.*, Opinion No. 20, 4 FERC ¶ 61,116, at 61,268 (1978), *aff'd*, Opinion No. 20-A, 5 FERC ¶ 61,091, at 61,150 (1978). The general rule announced in Opinion No. 20 applied to allocation of General Plant costs but applies equally to A&G costs. *See Idaho Power Co.*, Opinion No. 13, 3 FERC ¶ 61,108, at 61,295 (1978); *see also Midwest Indep. Trans. Sys. Operator, Inc.*, 101 FERC ¶ 61,221, at P 64 (2002).

4. **Tariff Sheets**

Niagara Mohawk proposes a new Schedule 15a, Project Specific Revenue Requirement, in the TSC rate to calculate the revenue requirement for the Project. Niagara Mohawk states that for components where the source column includes, "Workpaper__," Niagara Mohawk will provide a workpaper during the Annual Update process supporting the amount. The data inputs to Schedule 15a will be sourced from Niagara Mohawk's general ledger records and will show reconciliations to filed Form No. 1 amounts/pages.[24]

The Commission's policy requires that all of the formula calculations be incorporated into rate schedules so that public utilities cannot unilaterally revise the calculations at their discretion.[25] Further, formula rates must be stated with sufficient specificity, clarity, and transparency so as to be understandable and reviewable by those affected by them and by the Commission.[26] Line 21 of Schedule 15a states Cost Containment Adjustment and is defined as: "Authorized by FERC Order ______________. Cost containment impacts, if any, will be computed on a workpaper and provided as supporting documentation for each applicable Annual Update."

a. Niagara Mohawk's filing does not contain tariff provisions to implement the proposed cost containment mechanism. Please submit the necessary tariff records to implement the proposed cost containment mechanism or explain why the cost containment mechanism tariff provisions are not included in the Project Rate.

5. **Rate Schedule 18**

a. Niagara Mohawk's Rate Schedule 18, § 6.18.3.8 states that "[t]he SPC-FC revenue requirement for the first year will be calculated retroactively to include any construction work in progress ('CWIP') amounts

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[24] Tariff Filing, Attach, H, Ex. NMPC-400 at 8-9.

[25] *ISO-New England, Inc. Participating Transmission Owners Admin. Comm.*, 153 FERC ¶ 61,343, at P 9 (2015) (citing *Am. Elec. Power Serv. Corp.,* 120 FERC ¶ 61,205 (2007); *Duquesne Light Co.,* 118 FERC ¶ 61,087 (2007).

[26] *Id.* at P 9 (citing *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011, at 61,037 (1996) ("a formula, stated with such clarity that a third party can easily calculate the rate charged"); *Me. Yankee Atomic Power Co.*, 43 FERC ¶ 61,453, at 61,923 (1988) (requiring specificity in the calculation of formula rate, as it appears in the form of a rate schedule); *Duquesne Light Co.*, 118 FERC ¶ 61,087 at P 78 ("Commission policy requires that a formula rate clearly state the formula used to achieve the rate").

authorized by the Commission for recovery in rate base." Please provide an illustrative example of this calculation for the first year, with a narrative explaining the retroactive calculation.

b. Niagara Mohawk's Rate Schedule 18, § 6.18.3.8 provides that "[e]ach Responsible LSE shall be an 'Interested Party' with respect to any portion of the Annual Update related to the [Project Rate]." Please explain how this is consistent with Commission policy regarding who can participate in the formula rate review process.[27]

c. Rate Schedule 18, § 6.18.3.3 states: "[t]he [Project Rate] associated with the implementation of the NMPC Smart Path Connect Facilities shall not . . . be dependent upon a reopening or review of . . . NMPC's revenue requirements for charges set forth in its TSC set forth in Attachment H of the ISO OATT." Please explain whether Niagara Mohawk believes this provision affects Commission review of the items set forth in this deficiency letter. For example, please explain whether the Commission or parties will be able to review or reconcile the amounts for the cost of removal between the TSC and the Project Rate mechanisms or the functional allocations between the two rates described above if this provision is accepted. Please also explain whether this provision limits the information TSC ratepayers may seek to review to ensure the appropriate amounts of revenues from the Project Rate are credited to TSC ratepayers.

d. Rate Schedule 18, § 6.18.3.1 states: "The SPC-FC will be allocated on a load ratio share basis, calculated volumetrically based on Actual Energy Withdrawals by LSEs, excluding Withdrawal Billing Units for Exports and Wheels Through." However, Rate Schedule 18 does not specify if the points of withdrawal are measured from the Project or from the New York transmission system across the state. Please describe the points at which the withdrawals will be determined, i.e., whether the withdrawals are from the Project's substations or from points on the NYISO transmission system and provide the estimated allocations and rate design information consistent with regulations.[28]

[27] *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013), *order on reh'g*, 146 FERC ¶ 61,209, *order on compliance*, 146 FERC ¶ 61,212 (2014), *order on reh'g*, 150 FERC ¶ 61,024, *order on compliance*, 150 FERC ¶ 61,025 (2015).

[28] 18 C.F.R. § 35.13 (h)(36) (Statement BK- Electric Utility department cost of service, total and as allocated). 18 C.F.R. § 35.13 (h)(37) (Statement BL- Rate design information).

Docket No. ER23-974

6. Please explain whether Niagara Mohawk's proposal to recover the cost of removal of existing assets in the Project Rate through the use of a regulatory asset is part of the Cost Allocation Agreement, or if there are other contractual agreements with Project ratepayers addressing the cost of removal of existing facilities.

This letter is issued pursuant to 18 C.F.R. § 375.307 and is interlocutory. This letter is not subject to rehearing under 18 C.F.R. § 385.713. A response to this letter must be filed with the Secretary of the Commission within 30 days of the date of this letter by making a deficiency filing in accordance with the Commission's electronic tariff requirements. For your response, use Type of Filing Code 170 if your company is registered under program code "M" (Electric Market Based Rate Public Utilities) or Type of Filing Code 180 if your company is registered under program code "E" (Electric Traditional Cost of Service and Market Based Rates Public Utilities).[29] In addition, submit an electronic version of your response to Rachel Spiker at Rachel.Spiker@ferc.gov and Nathan Lobel at Nathan.Lobel@ferc.gov. The information requested in this letter order will constitute amendments to your filings and a new filing date will be established.[30] Notices will be issued upon receipt of your filing.

Pending receipt of the above information, a filing date will not be assigned to your filings. Failure to respond to this letter order within the time period specified may result in a further order rejecting your filings.

Issued by: Kurt M. Longo, Director, Division of Electric Power Regulation – East

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[29] The filing must include at least one tariff record in each docket to restart the statutory timeframe for Commission action even though a tariff revision might not otherwise be needed. *See generally Elec. Tariff Filings*, 130 FERC ¶ 61,047, at PP 3-8 (2010) (explaining that the Commission uses the data elements resulting from the tariff filing process to establish statutory filing and other procedural dates).

[30] *See Duke Power Co.*, 57 FERC ¶ 61,215, at 61,713 (1991) ("the Commission will consider any amendment or supplemental filing filed after a utility's initial filing . . . to establish a new filing date for the filing in question").