

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

New York Independent System Operator, Inc.  
Niagara Mohawk Power Corporation  
Docket No. ER23-1271-000

Issued: May 4, 2023

On March 8, 2023, pursuant to section 205 of the Federal Power Act, New York Independent System Operator, Inc. (NYISO) filed, on behalf of Niagara Mohawk Power Corporation (Niagara Mohawk),<sup>1</sup> revisions to existing Rate Schedule 17 under the NYISO Open Access Transmission Tariff (OATT or Tariff) and a proposed Rate Schedule 20 under the Tariff to provide for Niagara Mohawk's recovery of costs associated with what Niagara Mohawk asserts are its capital investments in certain transmission facilities comprising a portion of Segment A of the AC Transmission Public Policy Transmission Project (Segment A Facilities).<sup>2</sup>

Please be advised that your submittal is deficient and that additional information is required in order to process the filing. Please provide the information requested below.

**Revenue Requirement Determination Methodology**

1. In proposed Rate Schedule 20, Niagara Mohawk proposes that the Niagara Mohawk Segment A Facilities Charge (NMSA-FC) revenue requirement be calculated by applying an allocation ratio to the gross transmission plant in service calculated for Niagara Mohawk's portion of Segment A Facilities. This allocation ratio is the annual Historical Transmission Revenue Requirement for Niagara Mohawk's existing Transmission Service Charge (TSC) rate, divided by Niagara Mohawk's total systemwide gross transmission plant in service.<sup>3</sup>

- a. Please explain how the proposed method of determining the NMSA-FC

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<sup>1</sup> NYISO submitted the filing on behalf of Niagara Mohawk in its role as administrator of the NYISO OATT.

<sup>2</sup> New York Independent System Operator, Inc., NYISO Tariffs, [NYISO OATT, 6.17 OATT Schedule 17 Rate Mechanism for Recovery of \(3.0.0\)](#); [NYISO OATT, 6.20 OATT Schedule 20 Rate Mechanism for the Recovery of Nia \(0.0.0\)](#).

<sup>3</sup> Rate Schedule 20, section 6.20.3.2.

- revenue requirement will not result in ratepayers paying a return on and of (through depreciation expense) Niagara Mohawk's share of Segment A Facilities after those facilities are fully depreciated for book purposes.
- b. Certain costs included in the TSC rate and systemwide gross transmission plant in service are not costs associated with the NMSA-FC cost of providing service, such as the cost of underground conduit, underground conductors and devices, and asset retirement costs.<sup>4</sup>
- (i) Please describe how the allocation ratio in the NMSA-FC, which uses the TSC and systemwide gross transmission plant (described above), removes such items that are not related to the cost of providing service over Segment A Facilities.
- (ii) Please describe how the asset retirement costs fulfill the rate filing requirements of Order No. 631, or explain why Order No. 631 does not apply.<sup>5</sup>
- c. Commission regulations require that, for special assignment facilities, utilities must provide a “complete derivation and explanation of all allocation factors and special assignments” and if a utility “considers certain special facilities as being devoted entirely to the service involved, it shall show the cost of service related to such special facilities.”<sup>6</sup>
- (i) Please explain how Niagara Mohawk has complied with these regulations, and why the NMSA-FC revenue requirement formula does not cite to FERC Form No. 1 data specific to Niagara Mohawk’s portion of Segment A Facilities.
- (ii) Please provide the cost of service related to Niagara Mohawk’s portion of Segment A Facilities.

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<sup>4</sup> NYISO OATT, 14.1 OATT Att. H TSC (29.0.0). Section 14.1.9.1.42 states: “Transmission Plant shall equal the gross plant balance as recorded in FERC Account Nos. 350-359,” which includes Account 359.1 (Asset Retirement Costs for transmission plant), Account 358 (Underground Conductors and Devices), and Account 357 (Underground Conduit).

<sup>5</sup> *Acct., Fin. Reporting, & Rate Filing Requirements for Asset Ret. Obligations*, Order No. 631, 103 FERC ¶ 61,021, at PP 60-62, 65 (2003).

<sup>6</sup> 18 C.F.R. §§ 35.13(a)(2), 35.12(b)(5).

- (iii) Please provide a complete derivation and explanation of all allocation factors and special assignments.<sup>7</sup>
  - (iv) Where Niagara Mohawk seeks waiver of specific cost of service requirements, demonstrate how the Rate Schedule 20 formula uses FERC Form No. 1 amounts to derive a cost of service specific to Segment A Facilities, such as project-specific depreciation.<sup>8</sup>
  - (v) Where the gross plant of Niagara Mohawk's portion of Segment A Facilities is included in other rates, explain how the revenues from Rate Schedule 20 will offset the charges in those other rates.
- d. Commission policy generally requires cost of general and intangible plant (General Plant) and administrative and general (A&G) costs to be functionalized using a wages and salaries allocation method on the basis that the drivers of these costs are labor.<sup>9</sup>
- (i) Please explain how Niagara Mohawk's proposal to allocate the cost of General Plant and A&G costs to the NMSA-FC using a plant allocator is consistent with Commission policy.<sup>10</sup>
  - (ii) Please provide all studies and analyses performed to support your

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<sup>7</sup> See *id.*

<sup>8</sup> *Allegheny Power System Operating Cos.*, 111 FERC ¶ 61,308, at P 56 (2005), *order on reh'g*, 115 FERC ¶ 61,156 (2006); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009) (granting waiver of cost support in formula rate cases because the formula rates used FERC Form No. 1 data, and therefore, full Period I and Period II data were not needed to evaluate those proposals.). *Cf. Tampa Elec. Co.*, 133 FERC ¶ 61,023 (2020) (rejecting waiver of cost support as it applies to amounts not supported by FERC Form No. 1 data.).

<sup>9</sup> 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).

<sup>10</sup> We note that LS Power calculates and incorporates depreciation specific to its Segment A facilities, and utilizes a wages and salaries allocator, to calculate its revenue requirement for its portion of Segment A facilities. See Tariff section 6.10.7.2.

proposed allocations for A&G expenses and General Plant in Rate Schedule 20.

- (iii) Regarding the information provided in response to Question 1.d(ii), please explain why it would be unreasonable to use a labor allocator for A&G expenses and General Plant in the NMSA-FC.<sup>11</sup>
- (iv) Please explain how it is just and reasonable to use a plant allocator for A&G expenses and General Plant in the NMSA-FC, which will be credited to offset the TSC rate, when the TSC rate uses a labor allocator for A&G expenses and General Plant.

### **Public Policy Transmission Planning Process**

- 2. Niagara Mohawk proposes to allocate the costs associated with its capital investments for two portions of its Segment A Facilities “[c]onsistent with Section 31.8.2 of Appendix E to Attachment Y of the NYISO OATT.”<sup>12</sup> Niagara Mohawk explains that those two portions of the Segment A Facilities are: (1) all work required within the existing and expanded fence-line of Niagara Mohawk’s Edic Substation; and (2) all work required to remove the existing conductor and install new 345 kV conductor on existing towers owned by Niagara Mohawk (in place of Niagara Mohawk’s existing #30 line) for approximately 12 miles in and between Oneida County, New York and Herkimer County, New York.<sup>13</sup>
  - a. Section 31.8.2 of Appendix E to Attachment Y of the Tariff provides the cost allocation methodology for “allocating costs associated with the Public Policy Transmission Project that [NYISO] has selected pursuant to Section 31.4.8.2 of Attachment Y to the [Tariff]” (AC Transmission Costs) with those costs “determined in accordance with sections 31.4 and 31.5.6.5 of Attachment Y to

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<sup>11</sup> Opinion No. 20-A, 5 FERC at 61,150-51 (explaining “that in every instance in which the question was squarely presented as to whether labor ratios or plant ratios were more appropriate [for the allocation of General Plant], the Commission and the FPC have held for labor ratios . . . Therefore, we will establish the following procedure pursuant to Opinion 20: a utility may use some basis for functionalization other than labor ratios only if it can show that labor ratios are unreasonable in its situation (not merely that its proposed alternative method is reasonable). A utility which does not intend to attempt to make such a showing should file a cost of service employing labor ratios and rates calculated accordingly.”).

<sup>12</sup> Filing at 4.

<sup>13</sup> *Id.*

the [NYISO OATT].”<sup>14</sup> Section 31.4 establishes a detailed process for how NYISO selects Public Policy Transmission Projects and designates Designated Entities to build, own, and recover the costs of Public Policy Transmission Projects.<sup>15</sup> It also establishes certain Designated Entity responsibilities, including executing a Development Agreement with NYISO.<sup>16</sup>

- (i) Has NYISO designated Niagara Mohawk as the Designated Entity to build, own, and recover the costs of the work proposed in the instant filing? If not, please explain how the costs Niagara Mohawk proposes to allocate under the methodology established in section 31.8.2 are “determined in accordance with section[] 31.4 . . . of Attachment Y to the [Tariff]” or can otherwise be allocated per the Tariff.
  - (ii) Has Niagara Mohawk executed a Development Agreement with NYISO associated with the work proposed in the instant filing for the Segment A Facilities? If no such agreement has been signed, please explain how the costs Niagara Mohawk proposes to allocate under the methodology established in section 31.8.2 are “determined in accordance with section[] 31.4 . . . of Attachment Y to the [Tariff]” or can otherwise be allocated per the Tariff.
- b. Niagara Mohawk explains that LS Power Grid New York Corporation I (LS Power), New York Power Authority (NYPA), and Niagara Mohawk agreed that Niagara Mohawk will make the capital investment in, and recover the costs of, the Segment A Facilities described above.<sup>17</sup> In Docket No. ER20-1156-000, however, the Commission accepted a Development Agreement among NYISO, LS Power, and NYPA that provided for LS Power and NYPA

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<sup>14</sup> NYISO, NYISO OATT, attach. Y - New York ISO Comprehensive System Planning Process, § 31.8.2.

<sup>15</sup> *Id.* §§ 31.4.8.3.1, 31.4.8.3.2. *See also id.* § 31.1.1 (defining a Designated Entity to be: “A Developer or Transmission Owner that the ISO designates pursuant to Section 31.4.11 of this Attachment Y as the person or entity to build, own, and recover the costs of a Designated Public Policy Project. For Public Policy Transmission Projects selected by the ISO as the more efficient or cost effective solution to a Public Policy Transmission Need prior to the 2020-2021 cycle of the Public Policy Transmission Planning Process, the Designated Entity shall mean the Developer of the selected Public Policy Transmission Project.”).

<sup>16</sup> *Id.* § 31.4.12.2.

<sup>17</sup> Filing at 3-4.

to be responsible for “[d]ecommissioning of the Porter to Rotterdam #30 and #31 230 kV transmission lines” and “[t]erminal upgrades at the Marcy and Edic 345 kV substations[,]” while assigning responsibility for upgrades and expansions to existing transmission facilities owned by Transmission Owners to those Transmission Owners.”<sup>18</sup> Similarly, in Docket No. ER21-1687-000, the Commission accepted a Transmission Project Interconnection Agreement among NYISO, Niagara Mohawk, and LS Power that, *inter alia*, states that LS Power will “own and decommission . . . [t]he Porter to Rotterdam #30 and #31 230 kV transmission lines.”<sup>19</sup>

Please identify whether Niagara Mohawk, NYISO, LS Power, and/or NYPA have executed any agreements that include a detailed scope of work for which Niagara Mohawk proposes to recover costs for the Segment A Facilities, such as a Development Agreement or amended Interconnection Service Agreement, and provide copies of those agreements. If no such agreements have been executed, please provide a detailed scope of work and explain how Niagara Mohawk will ensure that it does not recover costs for work for which LS Power and/or NYPA will finance and recover costs.

### **Use of “Interested Party”**

3. Niagara Mohawk’s Rate Schedule 20, section 6.20.3.8 states that “[e]ach Responsible LSE shall be an ‘Interested Party’ with respect to any portion of the Annual Update.” Please explain how this is consistent with Commission policy regarding who can participate in the formula rate review process.<sup>20</sup>

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<sup>18</sup> *N. Y. Indep. Sys. Operator, Inc.*, Docket No. ER20-1156-000 (Apr. 16, 2020) (delegated order); *see also* NYISO, NYISO Agreements, Serv. Agreement No. 2514, Dev. Agreement Among the N. Y. Indep. Sys. Operator, Inc. & LS Power Grid N. Y. Corp. I & N. Y. Power Auth., app. A at 2-3, <http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1367&sid=273123>.

<sup>19</sup> *N. Y. Indep. Sys. Operator, Inc.*, Docket No. ER21-1687-000 (June 4, 2021) (delegated order); *see also* NYISO, NYISO Agreements, Serv. Agreement No. 2612, Transmission Project Interconnection Agreement Among the N. Y. Indep. Sys. Operator, Inc. & Niagara Mohawk Power Corp. D/B/A Nat’l Grid & LS Power Grid N. Y. Corp. I, app. C at C-6, <http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1367&sid=291637>.

<sup>20</sup> *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).

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).<sup>21</sup> In addition, submit an electronic version of your response to Benjamin Shell at [Benjamin.Shell@ferc.gov](mailto:Benjamin.Shell@ferc.gov). The information requested in this letter order will constitute an amendment to your filing and a new filing date will be established.<sup>22</sup> A notice will be issued upon receipt of your filing.

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

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

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<sup>21</sup> 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).

<sup>22</sup> *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").