

June 17, 2016

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

**Re: Niagara Mohawk Power Corporation, d/b/a National Grid
Docket No. ER16-____-000
Filing of Commercial Agreement with
New York State Electric & Gas Corporation and
Request for Waiver of Commission Notice Requirements**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”),¹ and Part 35 of the Federal Energy Regulatory Commission’s (“Commission”) regulations,² Niagara Mohawk Power Corporation d/b/a/ National Grid (“National Grid”) submits a Commercial Agreement between National Grid and New York State Electric & Gas Corporation (“NYSEG”).³ The Commercial Agreement is designated as Service Agreement No. 2283 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).

The Commercial Agreement is an undisputed agreement between National Grid and NYSEG pursuant to which National Grid and NYSEG will design, engineer, procure, construct, test, and place into service new facilities as specified in the Commercial Agreement to accommodate NYSEG’s proposed construction of a new 115 kV transmission line. National Grid respectfully requests that the Commission grant waiver of the prior notice requirement and accept the Commercial Agreement for filing effective as of April 20, 2016, the effective date set forth in the Commercial Agreement.

I. Background

National Grid and NYSEG are both public utilities subject to the Commission’s jurisdiction that own transmission facilities located in New York. Both National Grid and NYSEG have placed their transmission systems under the operational control of the NYISO.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

³ As stated in the Commercial Agreement, National Grid and NYSEG are together referred to as the “Parties” to that agreement.

NYSEG proposes to construct a new 115 kV transmission line from National Grid's Elbridge Substation located in the Town of Elbridge, New York to NYSEG's State Street Substation located in the City of Auburn, New York ("Proposed Line"). To accommodate the Proposed Line, additional work must be performed on certain existing transmission lines separately owned by National Grid and by NYSEG, and modifications and improvements must be made to the Elbridge Substation and the State Street Substation. The construction of the Proposed Line and the additional work, modifications, and improvements needed to accommodate the Proposed Line are collectively referred to in the Commercial Agreement as the Auburn Transmission Project ("ATP").⁴

On April 20, 2016, National Grid and NYSEG entered into the Commercial Agreement to memorialize the terms of their agreement regarding the ATP, including: (a) the ownership of the constructed facilities; (b) the ownership of the rights-of-way whereupon the constructed facilities will be located; (c) the allocation of future maintenance responsibilities between National Grid and NYSEG; and (d) the terms and timing of payments to be made by the Parties for allocations associated with the work to be performed by National Grid to accommodate and implement the ATP and its energization.⁵

II. Description of the Commercial Agreement and Filing Requirements

The relevant provisions of the Commercial Agreement provide that NYSEG will reimburse National Grid for the actual costs and expenses incurred by National Grid and/or its affiliates in connection with performance of the work specified in Section 3.2 and Exhibit A to the Commercial Agreement, or otherwise incurred by National Grid and/or its affiliates in connection with the ATP or the Commercial Agreement, and including, without limitation any such costs that may have been incurred by National Grid and/or its affiliates prior to the April 20, 2016 effective date.⁶

The Commercial Agreement sets forth the terms and conditions of this work and certain related commitments by NYSEG. The Commercial Agreement includes provisions addressing the performance and estimated schedule of the work, liability and indemnification, insurance, and various standard provisions for utility cost reimbursement agreements.

Section 205 of the FPA authorizes the Commission to require public utilities to file all rates and charges that are "for or in connection with," and all agreements that "affect or relate to," jurisdictional transmission service or sales of electric energy.⁷ In the Prior Notice Order,

⁴ Commercial Agreement at page 1. On February 25, 2016, the New York State Public Service Commission ("New York PSC") issued an order granting a Certificate of Environmental Compatibility and Public Need for the ATP. *Id.*

⁵ *Id.* at page 2.

⁶ *Id.* at Section 1 (definitions of "Reimbursable Costs" and "Work").

⁷ 16 U.S.C. §§ 824d(a)-(c) (2012).

the Commission stated that the types of agreements that a public utility must file include “a jurisdictional CIAC agreement,” which is defined as an “agreement providing for the customer payment of contributions-in-aid-of-construction” of facilities used to provide jurisdictional service, either in a single lump sum or over a period of time.⁸ Commission precedent also indicates that engineering and pre-construction agreements related to jurisdictional facilities can be construed as CIAC agreements.⁹

The Commercial Agreement relates to the recovery of costs for engineering, procurement, and construction services covering jurisdictional facilities. Therefore, the Commission will likely find it to be a CIAC agreement that must be filed.

National Grid is performing these services at actual cost as set forth in Section 1.0 to the Commercial Agreement and has not collected any funds pursuant to the Commercial Agreement prior to its submittal of the instant filing.¹⁰ The costs of these services are properly allocated to NYSEG because these services have been requested by NYSEG to facilitate the construction of the Project. The Commission should find the price of the services to be performed pursuant to the Commercial Agreement to be just and reasonable because National Grid will perform these services at actual cost.

III. Effective Date and Request for Waiver

Pursuant to Section 35.11 of the Commission’s regulations,¹¹ National Grid respectfully requests waiver of the notice requirement contained in Section 35.3 of the

⁸ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993) (“Prior Notice Order”).

⁹ For example, in *Southern California Edison Company*, 98 FERC ¶ 61,304, at 62,300-01 (2002), the Commission required the filing of seven letter agreements related to pre-interconnection activities in anticipation of certain generator interconnections, “including procurement, engineering, and limited construction.” *See also GenPower Anderson, LLC v. Duke Energy Corp. and Duke Electric Transmission*, 101 FERC ¶ 61,038 (2002) (requiring Duke Energy to file an engineering and design letter agreement that was entered into pending execution of an interconnection and operating agreement).

¹⁰ *See* Commercial Agreement, Section 1.0, definition of “Reimbursable Costs.” *See also id.* at Section 11.0 (stating that National Grid “is not in the business of performing design, engineering or construction services for profit and is not receiving any fee or profit (as contrasted with cost reimbursement) for its performance of the work hereunder”). The Commercial Agreement notes that, prior to the effective date of the Commercial Agreement, NYSEG made to National Grid a payment for costs previously incurred and estimated by National Grid and/or its affiliates to facilitate the New York PSC certification process required under Article VII of the New York State Public Service Law and other applicable New York state requirements to construct and operate the ATP. *See id.* at Sections 1.0 (definitions of “Article VII Application,” “Article VII Costs,” and “Article VII Process”) and 7.3.1. However, this payment does not concern Commission-jurisdictional service. Sections 7.3.2 through 7.3.4 of the Commercial Agreement set forth a phased schedule for payments for work performed pursuant to the Commercial Agreement. None of the dates under the phased schedule has yet occurred.

¹¹ 18 C.F.R. § 35.11.

Commission's regulations¹² to allow the Commercial Agreement to become effective upon the effective date set forth in the agreement, *i.e.*, April 20, 2016.

Good cause exists for the Commission to grant this waiver. Granting the waiver will accord with the intent of National Grid and NYSEG to make the Commercial Agreement effective as of April 20, as stated in the Commercial Agreement. Although the Parties intend the Commercial Agreement to be effective as of April 20, National Grid did not receive the signature page until May 26, 2016. Therefore, no prejudice will result to any party from granting the waiver. For these reasons, the Commission should find that good cause exists to grant an effective date of April 20.

IV. 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:

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Copies of this filing have been served on NYSEG, the NYISO, and the New York PSC.

¹² 18 C.F.R. § 35.3.

The Honorable Kimberly D. Bose

June 17, 2016

Page 5

V. Conclusion

For the reasons stated herein, National Grid respectfully requests that the Commission accept the Commercial Agreement effective as of April 20, 2016.

Respectfully submitted,

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