

December 16, 2016

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

**Re: Niagara Mohawk Power Corporation
Docket No. ER17-____-000
Filing of Cost Reimbursement Agreement with
Erie Boulevard Hydropower, L.P.**

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 (“Niagara Mohawk”) submits a Cost Reimbursement Agreement (“Reimbursement Agreement”) between Niagara Mohawk and Erie Boulevard Hydropower, L.P. (“Erie Boulevard”).³ The Reimbursement Agreement is designated as Service Agreement No. 2324 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).

The Reimbursement Agreement is an undisputed agreement to facilitate the performance of certain work that Erie Boulevard has requested Niagara Mohawk to do with respect to a specified electric substation property and right-of-way, as described in the Reimbursement Agreement. Niagara Mohawk requests that the Commission accept the Reimbursement Agreement effective as of November 18, 2016, the effective date agreed to by the Parties. Niagara Mohawk has not collected any funds pursuant to the Reimbursement Agreement.

I. Background

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

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

³ Together, Niagara Mohawk and Erie Boulevard are referred to in the Reimbursement Agreement and in this transmittal letter as the “Parties.”

Erie Boulevard is a Delaware limited partnership that owns and operates generating facilities that are interconnected with the Niagara Mohawk transmission system.

Erie Boulevard has requested that Niagara Mohawk perform certain work with respect to a specified electric substation property and right-of-way known as the Heuvelton Substation Easement. This work includes engineering, procurement, and construction services regarding new (permanent or temporary) facilities to be owned and/or operated by Niagara Mohawk and modifications to existing facilities owned and/or operated by Niagara Mohawk.⁴ Niagara Mohawk is willing to perform the work, subject to: (i) reimbursement by Erie Boulevard of all actual costs and expenses incurred by Niagara Mohawk in connection with the work; (ii) if applicable, Erie Boulevard's acquisition and delivery of certain modified real property interests as contemplated in the Reimbursement Agreement; (iii) Erie Boulevard's performance of all other duties, responsibilities, and obligations set forth in the Reimbursement Agreement, including, without limitation, specified actions to be taken by Erie Boulevard; and (iv) receipt of any and all required approvals as set forth in the Reimbursement Agreement.⁵

II. Description of the Reimbursement Agreement and Filing Requirements

Pursuant to the Reimbursement Agreement, Erie Boulevard will reimburse Niagara Mohawk for the actual costs and expenses incurred in connection with the work described above. The Reimbursement Agreement sets forth the terms and conditions of this work and certain related commitments by Erie Boulevard. The Reimbursement Agreement includes provisions addressing the performance and schedule of the work, liability and indemnification, insurance, regulatory and governmental approvals, and various other standard provisions for comparable 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.⁶ In the Prior Notice Order, 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.⁷ Commission precedent also indicates that engineering and pre-construction agreements related to jurisdictional facilities can be construed as CIAC agreements.⁸

⁴ See Reimbursement Agreement, Article 3.0 and Exhibit A.

⁵ Reimbursement Agreement, Recitals, Articles 3.0, 7.0, and 18.0, and Exhibits A and C.

⁶ 16 U.S.C. §§ 824d(a)-(c).

⁷ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,974, 61,988-91 (1993) ("Prior Notice Order").

⁸ 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

The Reimbursement Agreement relates to the recovery of costs for jurisdictional facilities and engineering, procurement, and construction services necessary to facilitate the performance of work with respect to the Heuvelton Substation Easement as described in the Reimbursement Agreement. Niagara Mohawk recognizes that the Commission may find the Reimbursement Agreement to be a jurisdictional CIAC agreement that must be filed. For these reasons, Niagara Mohawk is filing the Reimbursement Agreement for Commission acceptance.

The price of the services to be performed pursuant to the Reimbursement Agreement will be just and reasonable because Niagara Mohawk will perform these services at actual cost.⁹ The Commission should therefore accept the Reimbursement Agreement.

III. Effective Date

Pursuant to Section 35.3(a)(2) of the Commission's regulations,¹⁰ Niagara Mohawk requests that the Commission accept the Reimbursement Agreement effective as of the effective date set forth in the agreement, *i.e.*, November 18, 2016.¹¹

IV. Attachment

In addition to this transmittal letter, this filing includes the Reimbursement Agreement that is provided in Attachment A hereto.

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).

⁹ *See* Reimbursement Agreement, Article 1.0 at definition of "Company Reimbursable Costs." Section 7.2 of the Reimbursement Agreement provides that, once the Commission has granted approval of the Reimbursement Agreement without condition or modification, Erie Boulevard will provide a prepayment of \$45,000 ("Initial Prepayment") to Niagara Mohawk. In accordance with this Section 7.2, Niagara Mohawk has not collected the Initial Prepayment (or any other funds) pursuant to the Reimbursement Agreement.

¹⁰ 18 C.F.R. § 35.3(a)(2) (authorizing service agreements to be filed within 30 days after service under such agreements commences).

¹¹ Section 2.1 of the Reimbursement Agreement states that the agreement "shall become effective as of the Effective Date," which is defined in Article 1.0 of the Reimbursement Agreement as the date specified in the preamble of the agreement, *i.e.*, November 18, 2016.

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:

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

VI. Conclusion

For the reasons stated herein, Niagara Mohawk respectfully requests that the Commission accept the Reimbursement Agreement effective as of November 18, 2016.

Respectfully submitted,

/s/ Amanda C. Downey
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