

May 5, 2017

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
New Athens Generating Company

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 New Athens Generating Company, LLC (“Athens”).³ The Reimbursement Agreement is designated as Service Agreement No. 2335 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 Athens has requested Niagara Mohawk to do in connection with Athens’s plan to add a distributed control system to its power plant. Niagara Mohawk requests that the Commission grant acceptance of the Reimbursement Agreement effective as of April 5, 2017, the effective date agreed to by the Parties.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

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

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.

Athens is a generating company that owns and operates an electric generating facility with a capacity of approximately 1,080 megawatts located in Athens, New York (the "Athens Plant"). The Athens Plant is interconnected to the transmission system owned by Niagara Mohawk pursuant to an interconnection agreement accepted by the Commission in a letter order issued on September 18, 2001, in Docket No. ER01-1894.

Athens has requested that Niagara Mohawk perform the work specified in the Reimbursement Agreement in connection with Athens's plan to add a Siemens distributed control system to the Athens Plant. Niagara Mohawk is willing to perform this work, subject to: (i) reimbursement by Athens of all actual costs and expenses incurred by Niagara Mohawk in connection with the work; (ii) Athens's performance of all other duties, responsibilities, and obligations as set forth in the Reimbursement Agreement; and (iii) receipt of any and all required approvals as set forth in the Reimbursement Agreement.⁴

II. Description of the Reimbursement Agreement and Filing Requirements

Pursuant to the Reimbursement Agreement, Athens 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 Athens. 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 included in 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.⁵ 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.⁶ Commission precedent also indicates that engineering and pre-

⁴ Reimbursement Agreement, Recitals, Articles 3.0, 7.0, and 18.0, and Exhibits A and C.

⁵ 16 U.S.C. §§ 824d(a)-(c).

⁶ *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").

construction agreements related to jurisdictional facilities can be construed as CIAC agreements.⁷

The Reimbursement Agreement relates to Niagara Mohawk's recovery of costs for providing design, engineering, procurement, construction, testing, and commissioning services as described in the Reimbursement Agreement, in connection with Athens's plan to add a Siemens distributed control system to the Athens Plant. 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.⁸ The Commission should therefore accept the Reimbursement Agreement.

III. Effective Date and Request for Waiver

The Commission's regulations require service agreements to be filed not more than 30 days after service under the agreements has commenced.⁹ As discussed above, the Parties intend the Reimbursement Agreement to go into effect as of April 5, 2017, *i.e.*, 30 days before the date the Reimbursement Agreement is being filed.

IV. Attachment

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

⁷ 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).

⁸ See Reimbursement Agreement, Article 1.0 at definition of "Company Reimbursable Costs." Section 7.2 of the Reimbursement Agreement requires that, after the Commission has granted approval of the Reimbursement Agreement without condition or modification, Athens will provide a prepayment of \$75,000 (the "Initial Prepayment") to Niagara Mohawk. However, Athens has requested that Niagara Mohawk invoice Athens for the Initial Prepayment prior to the Commission's granting such approval, and Niagara Mohawk has done so.

⁹ 18 C.F.R. § 35.3.

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 Athens and the NYISO.

VI. Conclusion

For the reasons stated herein, Niagara Mohawk respectfully requests that the Commission accept the Reimbursement Agreement effective as of April 5, 2017.

Respectfully submitted,

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