

January 17, 2020

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

**Re: Niagara Mohawk Power Corporation
Docket No. ER20-____-000**

**Filing of Small Generator Interconnection Agreement with
LaChute Hydro Company, LLC**

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 (“Niagara Mohawk”) submits for filing a Small Generator Interconnection Agreement (“Agreement”) between Niagara Mohawk and LaChute Hydro Company, LLC (“LaChute Hydro”), designated as Service Agreement No. 2511 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).³ Niagara Mohawk requests that the Commission accept the Agreement effective as of the date agreed to by the parties and set forth in the Agreement, December 19, 2019.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

³ The Agreement is captioned as a Small Generator Interconnection Agreement (“SGIA”) because its terms and conditions are based upon the terms and conditions of the Commission-approved *pro forma* SGIA that was set forth in Appendix 7 of Attachment Z to the NYISO OATT at the time the Agreement was finalized. Niagara Mohawk uses this “modified SGIA” to document the interconnection of generators when Commission jurisdiction does not attach or the NYISO is not required to be a party to the interconnection agreement. Interconnection pursuant to the Agreement is not subject to the NYISO’s Small Generator Interconnection Procedures (Attachment Z to the NYISO OATT). The Agreement does not involve a new interconnection request, and thus the Agreement does not need to be a three-party agreement that also includes the NYISO as a party and tracks the NYISO *pro forma* SGIA. See *New Eng. Power Co.*, 109 FERC ¶ 61,364, at PP 12-13 (2004). Differences between the NYISO *pro forma* SGIA and the “modified SGIA” include the fact that the former is a three-party agreement including NYISO, while the latter is written to be bilateral between Niagara Mohawk and the generator.

I. Background

Niagara Mohawk is a public utility subject to the Commission's jurisdiction that owns transmission facilities located in New York which have been placed under the operational control of the NYISO. LaChute Hydro, a subsidiary of Enel Green Power North America, Inc., is a limited liability company organized and existing under the laws of the State of Delaware.

LaChute Hydro owns and operates two hydroelectric generating facilities with a combined total capacity of approximately 9 MW that are located in Ticonderoga, New York (the "Plants"). Each Plant began operating in 1988 and is a Qualifying Facility ("QF").⁴

Niagara Mohawk and LaChute Hydro are parties to a power purchase agreement ("PPA") for the full output of the Plants. The PPA was first executed between Niagara Mohawk and International Paper Company in 1986 and was later assigned to LaChute Hydro. The PPA has since been amended, most recently on December 19, 2019. Pursuant to that last amendment, the term of the PPA extends through December 31, 2020 and provides for the PPA to be terminated upon 30 days' notice.

II. Filing Obligation

Section 205 of the FPA authorizes the Commission to require utilities to file all rates and charges that are "for or in connection with," and all agreements that "affect or relate to," jurisdictional transmission or sales of electric energy.⁵ The Commission has provided guidance regarding some of the specific agreements that must be filed under this authority. The Commission has found that "[i]nterconnection agreements between utilities come within section 205 of the FPA."⁶ The Commission has also explained that its jurisdiction over an agreement "is limited to the provisions of the agreement that facilitate the exchange of energy between the parties, *i.e.*, the sale of electric energy at wholesale in interstate commerce."⁷ As the activities covered by the provisions of the Agreement described above all relate to activities needed to facilitate the delivery of the Plants' energy to the grid for sales at wholesale in interstate commerce, Niagara Mohawk believes that these provisions bring the Agreement within the Commission's jurisdiction and make it subject to the Commission's filing requirements.

⁴ See *LaChute Hydro Co., Inc., et al.*, 42 FERC ¶ 62,214 (1988); *LaChute Hydro Co., Inc., et al.*, 42 FERC ¶ 62,215 (1988).

⁵ 16 U.S.C. §§ 824d(a), -(c).

⁶ *Prior Notice and Filing Requirements Under Section II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,991 (1993).

⁷ *PSI Energy, Inc.*, 56 FERC ¶ 61,237, at 61,908 n.4 (1991).

Pursuant to Commission policy, “[w]hen an electric utility . . . purchases the QF’s total output, the state has authority over the interconnection and the allocation of interconnection costs. But when an electric utility interconnecting with a QF does not purchase all of the QF’s output and instead transmits the QF’s power in interstate commerce, the Commission exercises jurisdiction over the rates, terms, and conditions affecting or related to such service, such as interconnections.”⁸ Further, where the interconnected utility is on notice that a QF plans to make wholesale sales of its output to a third party, either by way of contractual provisions or otherwise, the Commission has exclusive jurisdiction over the interconnection between the QF and the interconnected utility from the date the utility receives this notice, even where the QF has not engaged in third-party sales or where the interconnected utility is still purchasing the full output of the QF.⁹

As described above, LaChute Hydro currently sells the full output of the Plants to Niagara Mohawk pursuant to the PPA. As such, any interconnection provisions in the PPA were not subject to Commission filing requirements. LaChute Hydro is in the process of taking the necessary steps with the NYISO to transition to a new power purchase agreement with Green Mountain Power Corporation (“GMP”). The new power purchase agreement will take effect upon the NYISO’s approval for the Plants to sell their output into the wholesale market. At that future time, the PPA between Niagara Mohawk and LaChute Hydro will be terminated.

III. The Charges Authorized Under the Agreement Are Just and Reasonable

The Agreement states that Niagara Mohawk will bill LaChute Hydro for the design, engineering, construction, and procurement costs of interconnection facilities and upgrades contemplated by the Agreement.¹⁰ The Agreement also states that LaChute Hydro is responsible for its share of all reasonable expenses, including overheads, associated with operating, maintaining, repairing, and replacing the Niagara Mohawk interconnection facilities defined in the Agreement.¹¹

⁸ *Standardization of Small Generator Interconnection Agreement and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, at P 516 (citation omitted) (2005) (“Order No. 2006”).

⁹ In Order No. 2006, the Commission explained that:

This Final Rule applies when the owner of the QF seeks interconnection with a facility subject to the OATT to sell any of the output of the QF to a third party. This applies to a new QF that plans to sell any of its output to a third party and to an existing QF interconnected with an electric utility or on-site customer that decides in the future to sell any of its output to a third party.

Id. at P 517. *See also Florida Power & Light Co.*, 133 FERC ¶ 61,121, at P 22 (2010).

¹⁰ Agreement, Article 6.1.1.

¹¹ Agreement, Article 4.1.2.

IV. Effective Date

Niagara Mohawk requests that the Commission accept the Agreement effective as of the date agreed to by the parties and set forth in the Agreement, December 19, 2019. The Commission's regulations require service agreements to be filed not more than 30 days after service under such an agreement has commenced.¹² Niagara Mohawk is filing the Agreement within 30 days of the requested effective date.

V. Attachments

In addition to this transmittal letter, this filing includes the following attachments:

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|--------------|-----------------------------------------------------------------------------------------------------|
| Attachment A | The Agreement between Niagara Mohawk and LaChute Hydro; and |
| Attachment B | A red-lined document showing differences between the Agreement and the NYISO <i>pro forma</i> SGIA. |

With the minor variations as depicted in Attachment B to this filing, the Agreement follows the NYISO *pro forma* SGIA. Therefore, the Commission should accept the Agreement as a two-party agreement.

¹² 18 C.F.R. § 35.3(a)(2).

VI. Communications

Communications and correspondence regarding this filing should be addressed to the following individuals:

Christopher J. Novak
Senior Counsel
National Grid USA
Service Company, Inc.
40 Sylvan Road
Waltham, MA 02451-1120
(781) 907-2112
Chris.Novak@nationalgrid.com

Sean Atkins
Bradley R. Miliauskas
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
(202) 239-3300
sean.atkins@alston.com
bradley.miliauskas@alston.com

Joseph Murphy
Acting Director, Commercial Services
National Grid
40 Sylvan Road
Waltham, MA 02451
(781) 907-2007
Joseph.Murphy3@nationalgrid.com

VII. Service

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

VIII. Conclusion

For the reasons stated herein, National Grid respectfully requests that the Commission accept the Agreement effective as of December 19, 2019.

Respectfully submitted,

/s/ Christopher J. Novak

Christopher J. Novak
Senior Counsel
National Grid USA
Service Company, Inc.
40 Sylvan Road
Waltham, MA 02451

Counsel for Niagara Mohawk Power Corporation