

CRITICAL ENERGY/ELECTRIC INFRASTRUCTURE INFORMATION
TREATMENT OF ATTACHMENT REQUESTED
PURSUANT TO 18 C.F.R. §§ 388.112-113

December 9, 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. ER21-____-000

Filing of Engineering & Procurement Agreement with
KCE NY 6 LLC and
Request for CEII Treatment

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 an Engineering & Procurement Agreement (“E&P Agreement”) between Niagara Mohawk and KCE NY 6 LLC (“KCE NY 6”).³ The E&P Agreement is designated as Service Agreement No. 2585 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).

The E&P Agreement is an undisputed agreement to facilitate the performance of certain work that KCE NY 6 has requested Niagara Mohawk to do to accommodate KCE NY 6’s proposed interconnection of a generating facility to Niagara Mohawk transmission facilities. Niagara Mohawk respectfully requests treatment of an exhibit to the E&P Agreement as Critical Energy/Electric Infrastructure Information (“CEII”). Niagara Mohawk also requests that the Commission accept the E&P Agreement effective as of November 24, 2020, 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 KEC NY 6 are referred to in the E&P Agreement and in this transmittal letter as the “Parties.”

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.

KCE NY 6 is a limited liability company having an office and place of business in Albany, New York.

KCE NY 6 is proposing to interconnect its Battery Energy Storage System 20 MW Small Generating Facility Alle Catt II Wind Project to Niagara Mohawk's Gardenville-Bethlehem Steel Winds Line 150 ("Interconnection Project"). KCE NY 6 and Niagara Mohawk contemplate negotiating a Small Generator Interconnection Agreement ("SGIA") in connection with the proposed Interconnection Project.

The Parties have entered into the E&P Agreement to facilitate Niagara Mohawk's performance of certain engineering and procurement work for certain long-lead items in connection with the Interconnection Project prior to the Parties entering into the SGIA. The scope of Niagara Mohawk's work is described in Section 3.0 and Exhibit A of the E&P Agreement. Niagara Mohawk is willing to perform this work subject to: (i) reimbursement by KCE NY 6 of all actual costs and expenses incurred by Niagara Mohawk in connection with the work; (ii) KCE NY 6's performance of all other duties, responsibilities, and obligations set forth in the E&P Agreement, including, without limitation, specified actions to be taken by KCE NY 6; and (iii) receipt of any and all required approvals as set forth in the E&P Agreement, in a form acceptable to Niagara Mohawk.⁴

II. Description of the E&P Agreement and Filing Requirements

Pursuant to the E&P Agreement, KCE NY 6 will reimburse Niagara Mohawk for the actual costs and expenses incurred in connection with the work described above. The E&P Agreement sets forth the terms and conditions of this work and certain related commitments by KCE NY 6. The E&P 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 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 The E&P Agreement relates to Niagara Mohawk's recovery of costs for performing procurement and other work in connection with the Interconnection Project. Niagara Mohawk recognizes that the Commission may find the E&P Agreement to be a

⁴ E&P Agreement, Recitals, Sections 3.0, 7.0, and 18.0, and Exhibits A and B.

⁵ 16 U.S.C. §§ 824d(a)-(c).

jurisdictional agreement that must be filed.⁶ For these reasons, Niagara Mohawk is filing the E&P Agreement for Commission acceptance.

The price of the work to be performed pursuant to the E&P Agreement will be just and reasonable because Niagara Mohawk will perform the work at actual cost.⁷ The Commission should therefore accept the E&P Agreement.

III. Request for CEII Treatment

Pursuant to Sections 388.112 and 388.113 of the Commission's regulations,⁸ Niagara Mohawk respectfully requests treatment of Exhibit A-1 to the E&P Agreement as CEII. This Exhibit A-1 consists of a document entitled "Facilities Study Report for the KCE NY 6 BESS Facility (20 MW)." Exhibit A-1 contains sensitive infrastructure information that should not be publicly released. Niagara Mohawk further requests that the CEII designation remain in effect for at least five years from the date of this filing.

For these reasons, in the public version of the Agreement, as reflected in the filed tariff record, Exhibit A-1 has been omitted. The non-public version of Exhibit A-1 has been marked "CUI/CEII – **Contains Critical Energy/Electric Infrastructure Information – Do Not Release**". The non-public version of Exhibit A-1 is being filed as a CEII attachment to this filing, designated as Attachment B. Consistent with the Commission's regulations, Attachment C to this filing includes a proposed form of protective agreement.

IV. Effective Date

Niagara Mohawk respectfully requests that the Commission accept the E&P Agreement effective as of November 24, 2020, the effective date agreed to by the Parties. The Commission's regulations require that a service agreement be filed within 30 days of its effective date unless otherwise specified by the Commission.⁹ Niagara Mohawk is filing the E&P Agreement within 30 days of its effective date.

V. List of Filing Documents

1. This transmittal letter;
2. Attachment A: Public version of the E&P Agreement
3. Attachment B: Non-public version of Exhibit A-1 to the E&P Agreement, which contains CEII
4. Attachment C: Proposed form of protective agreement

⁶ See *Int'l Transmission Co. and Mich. Elec. Transmission Co., LLC*, 139 FERC ¶ 61,022, at P 14 (2012) (clarifying that "pre-interconnection agreements should be treated as service agreements that may be filed within 30 days of service commencing"); *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,093, at P 7 (2014) (accepting engineering and procurement agreement for filing).

⁷ See E&P Agreement, Article 1.0, at definition of "Company Reimbursable Costs".

⁸ 18 C.F.R. §§ 385.112-113.

⁹ 18 C.F.R. § 35.3(a)(2).

VI. 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 KCE NY 6, the NYISO, and the New York Public Service Commission.

VII. Conclusion

For the reasons stated herein, Niagara Mohawk respectfully requests that the Commission accept the E&P Agreement effective as of November 24, 2020.

Respectfully submitted,

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