

July 1, 2021

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Niagara Mohawk Power Corporation d/b/a National Grid,
Docket No. ER20-2051-001**

**Order No. 864 Compliance Filing – Response to Deficiency Letter
and Further Amendments to Compliance Filing**

Dear Secretary Bose:

On June 15, 2020 (“June 15, 2020 Filing”), as amended on July 24, 2020 (“Amended Compliance Filing”) (collectively, the “Order No. 864 Compliance Filing”), Niagara Mohawk Power Corporation d/b/a National Grid (“Niagara Mohawk”) submitted for filing proposed revisions to its Transmission Service Charge (“TSC”) Formula Rate, which sets Niagara Mohawk’s Wholesale TSC under Attachment H to the New York Independent System Operator, Inc. (“NYISO”) Open Access Transmission Tariff (“NYISO OATT”)¹ to comply with the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Order No. 864.² As required by Order No. 864, Niagara Mohawk’s Order No. 864 Compliance Filing also included a worksheet to track information related to excess or deficient Accumulated Deferred Income Tax (“ADIT”) on an annual basis (“ADIT Worksheet”).

On May 4, 2021, Commission staff issued a deficiency letter requesting that Niagara Mohawk provide additional information with respect to its Order No. 864 Compliance Filing. Niagara Mohawk is submitting this letter and attachments in response to the May 4, 2021 deficiency letter.³ On June 3, 2021, the Commission granted an extension of time until July 2, 2021, to respond to the May 4 Commission staff letter.

¹ New York Independent System Operator, Inc., NYISO Tariffs, NYISO OATT, 14.1 OATT Att H TSC, 27.0.0, NYISO OATT, 14.2-14.2.1 OATT Att H Attachment 1 to Attachment H, 19.0.0.

² *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 84 Fed. Reg. 65,281, 169 FERC ¶ 61,139 (2019) (“Order No. 864”), *order on reh’g and clarification*, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

³ NYISO submits this filing on behalf of Niagara Mohawk solely in its role as administrator of the NYISO OATT. The burden of demonstrating that the proposed tariff amendments are just and reasonable rests with Niagara Mohawk, the sponsoring party. The NYISO takes no position on any substantive

I. RESPONSES

1. *As part of its proposed Rate Base Adjustment Mechanism, Niagara Mohawk proposes to revise Schedule 7, line 10, to include transmission regulatory assets and liabilities and to update the reference to the inputs for line 10. Please explain whether Niagara Mohawk's proposed revisions in line 10 contains any Financial Accounting Standards (FAS) 109 items other than excess and deficient ADIT.*

RESPONSE: Niagara Mohawk's proposed revisions to Schedule 7, line 10, were intended to include Financial Accounting Standards ("FAS") 109 items other than excess and deficient ADIT.

Niagara Mohawk is submitting further revisions to Schedule 7 to separately identify FAS 109 items from excess and deficient ADIT related to tax rate changes and provide increased transparency. The FAS 109 items and excess and deficient ADIT amounts will be sourced from Schedule 14, and the references in Schedule 7 have been updated accordingly.

The previously approved version of Attachment H already included a line item for FAS 109 balances. That line item will now cover FAS 109 balances other than excess and deficient ADIT amounts related to tax rate changes.

2. *As part of its proposed Income Tax Allowance Adjustment Mechanism, Niagara Mohawk proposes to add a new definition to Schedule 9 in section 14.2.1 describing the amortization of FAS 109 balances associated with tax rate changes and other Commission-approved FAS 109 assets and liabilities. Niagara Mohawk also proposes to define amortization of excess and deficient ADIT on line 46 of Attachment 1, Schedule 9. However, the input reference for line 46 refers to Schedule 14, line 5, column K, which contains only excess and deficient ADIT from tax rate changes.*

Please explain this discrepancy. In doing so, please explain whether, and if so how, line 46 includes FAS 109 amounts other than excess and deficient ADIT. Further, please explain how Niagara Mohawk's Income Tax Allowance Mechanism shows amortized excess and deficient ADIT separately from other FAS 109 amounts.

RESPONSE: In order to provide greater transparency, Niagara Mohawk is submitting a revised Schedule 14 which more clearly differentiates electric-related FAS 109 balances from transmission-related excess and deficient ADIT due to tax rate changes.

Consequently, the definition of the Amortization of Excess/Deficient ADIT in Schedule 9 has been updated to remove the reference to "Commission-approved FAS 109 assets and liabilities." Amortization of Excess/Deficient ADIT is now defined as "Transmission

Related Amortization of Regulatory Assets and Liabilities shall equal the transmission-specific Amortization of Regulatory Assets and Liabilities.”

The recovery or refund of any FAS 109 amounts other than excess and deficient ADIT is conditioned on Commission approval of a Federal Power Act (“FPA”) 205 filing. In the event Niagara Mohawk makes such a filing, the definition of Amortization of Regulatory Assets and Liabilities—as well as any cross-references to Schedule 14 in Schedule 9—will likely need to be amended to include the amortization of the approved amounts.

Niagara Mohawk is also submitting revisions to Section 14.1 to Attachment H to the NYISO OATT. Specifically, Section 14.1.9.1.46 has been updated to read “Amortization of Regulatory Assets and Liabilities shall equal credits and expenses as recorded in FERC account 411.1 or 410.1 solely related to excess and deficient ADIT associated with changes in federal, state or local tax rates.”

3. *In Order No. 864, the Commission required the ADIT Worksheet to include five categories of information: (1) how any ADIT accounts were re-measured and the excess or deficient ADIT contained therein; (2) the accounting for any excess or deficient amounts in Account 182.3 (Other Regulatory Assets) and 254 (Other Regulatory Liabilities); (3) whether the excess or deficient ADIT is protected or unprotected; (4) the accounts to which the excess or deficient ADIT are amortized; and (5) the amortization period of the excess or deficient ADIT being returned or recovered through the rates. The Commission stated that it expects public utilities to identify each specific source of the excess or deficient ADIT, classify the excess or deficient ADIT as protected or unprotected, and list the proposed amortization period associated with each source in their proposed ADIT Worksheets.*

- a. *For category (1), Schedule 14 of Niagara Mohawk’s proposed ADIT Worksheet describes but does not show how Niagara Mohawk’s ADIT accounts were re-measured. Please provide the methodology Niagara Mohawk used in re-measuring its ADIT accounts, including the pre- and post-Tax Cuts and Jobs Act ADIT balances for each of those accounts.*

RESPONSE: Niagara Mohawk’s remeasurement support is provided in Schedule 14(a), as cross-referenced in Schedule 14. The revised populated ADIT Worksheet provided as Attachment D to this filing includes Niagara Mohawk’s remeasurement support associated with the Tax Cuts and Jobs Act.

- b. *For category (2), explain how Schedule 14 shows the accounts to which excess and deficient ADIT are recorded.*

RESPONSE: Lines 6 and 7 of the revised Schedule 14 reference FERC Form 1, pages 232 and 278, which provide the details of Other Regulatory Assets (Account 182.3) and Other Regulatory Liabilities (Account 254), respectively. Niagara Mohawk has revised the descriptions for Schedule 14, lines 6 and 7, to include references to the corresponding FERC accounts.

- c. *For category (4), note G of Schedule 14 states that “(Excess)/deficient ADIT to be amortized to . . . Account 411 or 410.” Please clarify to which subaccount excess ADIT will be amortized (e.g., Account 411.1) and which subaccount deficient ADIT will be amortized (e.g., Account 410.1).*

RESPONSE: Excess ADIT amounts will be amortized to subaccount 411.1, and deficient ADIT amounts will be amortized to subaccount 410.1. Niagara Mohawk has revised footnote (g) of Schedule 14 to clarify the specific subaccounts to which excess and deficient ADIT amounts will be amortized.

As indicated in response to question 2, Niagara Mohawk has also revised the definition of Amortization of Regulatory Assets and Liabilities in Section 14.1.9.1.46 to Attachment H to the NYISO OATT to reference subaccounts 410.1 and 411.1.

- d. *Please submit a populated version of Schedule 14 in workable format (e.g., Excel file).*

RESPONSE: Niagara Mohawk is providing herewith a populated and workable Excel version of the ADIT Worksheet as Attachment D.

- e. *Note h of Schedule 14 states “other changes” might include classification changes between protected and unprotected categories due to deferred amortization to maintain rate base neutrality until amortization periods are approved by both state and federal regulatory commissions. Please explain how deferred amortization might affect excess and deficient ADIT classification and under what circumstances such deferral might occur.*

RESPONSE: Under the Average Rate Assumption Method (“ARAM”) method, plant related excess or deficient ADIT may have been eligible for amortization in the years immediately following a tax rate change. For example, following the federal income tax rate change in 2017, plant related excess or deficient ADIT could have been amortized in 2018, 2019, and 2020 if approved provisions associated with the rate treatment for such excess or deficient ADIT had been in place. However, since the flow through of amortized excess or deficient ADIT in formula rates and the specific amortization periods for excess or deficient ADIT resulting from the Tax Cuts and Jobs Act are both subject to Commission approval, Niagara Mohawk has not reflected those amounts as amortization, and instead, reclassifies those amounts from the protected category to unprotected excess or deficient ADIT in order to ensure the full amount is either returned to or collected from customers. Niagara Mohawk understands that this timing consideration will no longer be an issue when Order No. 864-compliant formula rate provisions addressing excess or deficient ADIT associated with tax rate changes are in effect.

- f. *In addition, it appears that note h requires that Niagara Mohawk obtain*

Commission approval prior to including excess and deficient ADIT in its Formula Rate. However, in Order No. 864, the Commission stated that it will not require that public utilities make a filing pursuant to section 205 of the Federal Power Act (FPA) to obtain Commission approval prior to including excess of the Federal Power Act and deficient ADIT in their transmission formula transmission rates following future tax rate changes. As such, please explain why Niagara Mohawk will make future filings under FPA section 205 prior to including excess and deficient ADIT in its transmission rates. Additionally, please explain generally how Schedule 14 applies to future tax rate changes.

RESPONSE: The reference in footnote (h) was intended to acknowledge the requirement for Commission approval in this proceeding. As explained in response to question 3(e), had rate mechanisms already been in place, plant related excess ADIT could have been amortized in the years since the passing of the Tax Cuts and Jobs Act. However, Niagara Mohawk understands that it must first receive approval of its Order No. 864 Compliance Filing before including those amounts in its TSC. Accordingly, Niagara Mohawk has updated footnote (h) of Schedule 14 to read “Other changes to (excess)/deficient ADIT due to the conclusion of IRS audits during applicable periods affected by a change in federal, state or local tax rates, the establishment of new (excess)/deficient ADIT due to future tax rate changes and classification changes between protected and unprotected categories due to the passage of time.”

Any future excess or deficient ADIT balances related to tax rate changes will initially be shown in Schedule 14 on new sublines under 1[] and in the “Other Adjustments” columns. The related amortization expenses will be shown in column (J) in following periods, with additional footnotes added as needed. Niagara Mohawk will not require Commission approval to amortize these future excess or deficient ADIT amounts related to tax rate changes in its transmission rates.

4. *In Order No. 864, the Commission required public utilities with transmission formula rates to provide supporting documentation necessary to justify their proposed amortization periods. Niagara Mohawk proposes to use the Average Rate Assumption Method (ARAM) to amortize unprotected plant-based excess or deficient ADIT resulting from the Tax Cuts and Jobs Act. Niagara Mohawk states that the Commission has accepted the use of ARAM to amortize unprotected plant-based ADIT. Please provide justification for Niagara Mohawk’s proposal to use ARAM for unprotected plant-based excess and deficient ADIT.*

RESPONSE: Niagara Mohawk is submitting a revised Schedule 14 which proposes an amortization period of 31 years for unprotected plant-based excess and deficient ADIT. The proposed 31-year life is based on the average remaining book life of transmission plant as of December 31, 2017, the year the Tax Cuts and Jobs Act was enacted. This change will enable the return of excess ADIT to customers more quickly than could be accomplished through use of ARAM.

5. *The Commission's accounting guidance in Docket No. AI93-5-000 states that public utilities should record deficient ADIT in a regulatory asset (Account 182.3) and excess ADIT in a regulatory liability (Account 254). In Order No. 864, the Commission found that the Accounting for Income Taxes Guidance remains applicable and did not propose any changes to that guidance. Further, the Commission required that public utilities provide in their ADIT Worksheets the accounting for any excess or deficient ADIT amounts in Accounts 182.3 and 254.*

Niagara Mohawk appears to record a net value of excess and deficient ADIT resulting from the Tax Cuts and Jobs Act in Account 254, rather than recording excess ADIT to Account 254 and deficient ADIT to Account 182.3. Please explain how Niagara Mohawk's proposed accounting treatment is consistent with the Accounting for Income Taxes Guidance.

RESPONSE: Pursuant to the Commission's Accounting for Income Taxes Guidance in Docket No. AI93-5-000, "if as a result of action by a regulator it is probable that the future increase or decrease in taxes payable due to the change in tax law or rates will be recovered from or returned to customers through future rates, an asset or liability shall be recognized in Account 182.3, Other Regulatory Assets, or Account 254, Other Regulatory Liabilities, as appropriate for that probable future revenue or reduction in future revenue."⁴ Consistent with this guidance, Niagara Mohawk calculates excess or deficient ADIT for each of its assets or groups of assets. The net resulting excess or deficient deferred taxes—determined pursuant to the event (e.g., a change in the federal, state or local tax rate) that precipitated the excess or deficient balance—are recorded as a regulatory asset or regulatory liability in Accounts 182.3 and 254, respectively. As noted in Schedule 14, when the assets associated with the Tax Cuts and Jobs Act are grouped together, the result is a net regulatory liability that is recorded in Account 254.

II. DOCUMENTS INCLUDED IN THIS FILING

In addition to this transmittal letter, the following documents are provided in support of this filing:

Attachment A	Clean version of Sections 14.1 and 14.2.1 to Attachment H to the NYISO OATT
Attachment B	Redlined version of Sections 14.1 and 14.2.1 to Attachment H to the NYISO OATT showing changes from the clean version that was submitted as part of the Amended Compliance Filing

⁴ *Accounting for Income Taxes*, Docket No. AI93-5-000 (Apr. 23, 1993), <https://www.ferc.gov/enforcement-legal/enforcement/accounting-matters/ai93-5-000> ("Accounting for Income Taxes Guidance").

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Attachment C Redlined version of Sections 14.1 and 14.2.1 to Attachment H to the
NYISO OATT showing cumulative changes submitted in compliance with
Order No. 864

Attachment D Populated ADIT Worksheet as a working Excel file

III. CONCLUSION

For the reasons set forth herein, in the June 15, 2020 Filing, and in the Amended Compliance Filing, Niagara Mohawk has fully satisfied the Commission's directives in Order No. 864. Niagara Mohawk respectfully submits that this filing, and the further amendments proposed herein, address all issues raised in the May 4 Commission staff letter. Accordingly, Niagara Mohawk respectfully requests that the Commission accept its Order No. 864 Compliance Filing, as amended herein, without hearing, modification, or condition.

Respectfully submitted,

/s/ Patrick J. Tarmey

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Dated: July 2, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, pursuant to the requirements of rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 1st day of July, 2021.

/s/ Dan Klein

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