

May 16, 2022

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

Re: Niagara Mohawk Power Corporation
Docket No. ER22-1201-___

Dear Secretary Bose:

The New York Independent System Operator, Inc. (“NYISO”), as administrator of the NYISO Open Access Transmission Tariff (“OATT” or “Tariff”), submits via eTariff on behalf of Niagara Mohawk Power Corporation¹ (“NMPC” or “Niagara Mohawk”) the following response to the letter from Kurt M. Longo, Director, Division of Electric Power Regulation – East, to the undersigned dated April 28, 2022 (“Deficiency Letter”). The Deficiency Letter advises NMPC that its March 4, 2022 filing in this proceeding (“March 4 Filing”) is deficient and that additional information is required in order to process the filing. NMPC’s responses to the questions contained in the Deficiency Letter are set forth below and in attachments to this filing.²

¹ The NYISO submits this filing on behalf of NMPC 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 NMPC, the sponsoring party. The NYISO takes no position on any substantive aspect of this filing at this time. Capitalized terms not otherwise defined herein shall have the meaning specified in the NYISO OATT.

² Footnote 6 of the Deficiency Letter requires this response to “include at least one tariff record to restart the statutory timeframe for Commission action even though a tariff revision might not otherwise be needed.” To satisfy that directive, NMPC is resubmitting in Attachments A-D hereto all of the same tariff records initially submitted in the March 4 Filing (*i.e.*, Attachments A and B provide, respectively, clean and redline versions of the proposed changes to NMPC’s formula rate template, and Attachments C and D provide, respectively, clean and redline versions of NMPC’s proposed new Rate Schedule 18). NMPC does not propose any tariff revisions in this response, so the tariff records in Attachments A-D are identical to those in the March 4 Filing. As noted in Section III below, NMPC maintains its request for a May 4, 2022 effective date for the revisions to the NYISO OATT proposed in this proceeding.

I. RESPONSES TO DEFICIENCY LETTER

Deficiency Letter Request No. 1(a):

- 1. Niagara Mohawk requests that the Commission accept a project specific base return on equity (ROE) of 10.5% for the Project, while maintaining its company-wide base ROE of 10.3% inclusive of the RTO participation adder for all its other transmission assets.**
 - a. Provide additional support for your proposal to adopt a project-specific base ROE rather than apply the existing company-wide base ROE to the Project. Provide a basis for maintaining two different base ROEs, one applicable to the Project, and a second one applicable to all other transmission assets.**

NMPC Response:

NMPC respectfully submits that it did not request a project-specific base return on equity (“ROE”). Instead, NMPC filed a new rate with a project-specific rate incentive for the Smart Path Connect Project (“SPC Project”) that, to comply with Commission requirements for project-specific rate incentives, must include an ROE analysis and base ROE.

As explained in the March 4 Filing, because the SPC Project is being developed as a direct result of New York State legislation and associated policy objectives, NMPC is proposing to allocate the costs of its portion of the SPC Project to all load-serving entities in New York.³ However, NMPC does not currently have a transmission rate through which it could allocate and recover the costs of the SPC Project on a statewide basis. NMPC’s existing wholesale Transmission Service Charge (“TSC”) is limited to only those wholesale transmission customers in NMPC’s footprint. Because the SPC Project will benefit all New York consumers, it would be inappropriate for TSC customers to bear the full costs of NMPC’s portion of the SPC Project. Therefore, NMPC is proposing to allocate and recover the costs of its portion of the SPC Project through a new project-specific rate, the Smart Path Connect Facilities Charge (“SPC-FC”). The SPC-FC is set forth in a new Rate Schedule 18 to the NYISO OATT.

Pursuant to Order No. 679, the Commission will permit rate incentives only if the incentive package as a whole results in a just and reasonable rate, which includes the requirement that any incentive ROE be within the zone of reasonableness.⁴ Therefore,

³ March 4 Filing, Transmittal Letter at 27-32.

⁴ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, at PP 2, 91-93 (2006) (“Order No. 679”) (“Accordingly, the Commission will approve an ROE at the upper end of the zone of reasonableness for new infrastructure investments that meet the requirements of section 219 [of the Federal Power Act] as discussed elsewhere in this Final Rule.”).

NMPC needed to establish a base ROE for the SPC-FC as well as to demonstrate that the total incentive ROE for the SPC Project is within the zone of reasonableness. However, NMPC currently does not have a separately stated company-wide base ROE. The 10.3% ROE that currently applies to NMPC's TSC is a black-box value derived from the uncontested settlement accepted by the Commission in 2015 to resolve complaints filed against NMPC in Docket Nos. EL14-29, *et al.* alleging that NMPC's previous ROE of 11.5% was unjust and unreasonable.⁵ In the 2015 TSC Settlement, the parties agreed to an all-in ROE of 10.3% "inclusive of *any* incentive adders."⁶ The parties did not specify which portion of the 10.3% value represented NMPC's base ROE versus any incentive adder for RTO participation. Because this ROE is a black-box value, there is no definitive means by which to separate the 10.3% value into a specific base ROE or RTO/ISO participation adder components. As such, there is no company-wide base ROE value that would have served as the baseline for NMPC's incentive ROE requests that are specific to the SPC Project and its associated risks and challenges.⁷ Moreover, because the current TSC ROE is a product of a negotiated black-box settlement, there is no zone of reasonableness associated with the 10.3% ROE value.

In order to establish a base ROE, as well as demonstrate that the total incentive ROE requested by NMPC for the SPC Project falls within the zone of reasonableness, NMPC included in the March 4 Filing an independent analysis prepared by Mr. Adrien M. McKenzie to establish a just and reasonable ROE and zone of reasonableness applicable to NMPC's investment in the SPC Project.⁸ Consistent with Commission precedent, Mr. McKenzie's analysis utilizes the credit rating and other financial metrics associated with the company that will own the relevant transmission assets and recover the costs of those assets in rates, *i.e.*, NMPC.⁹ In other words, Mr. McKenzie followed Commission precedent in calculating a company-specific ROE for NMPC and then explained why that ROE should apply to project-specific rates for the SPC Project, including project-specific ROE incentives.

⁵ *Settlement Agreement and Offer of Settlement*, Docket Nos. EL14-29-000, *et al.* (Feb. 24, 2015) ("2015 TSC Settlement"). The Commission accepted this settlement on May 13, 2015. *N.Y. Ass'n of Pub. Power v. Niagara Mohawk Power Corp., et al.*, 151 FERC ¶ 61,121 (2015).

⁶ 2015 TSC Settlement at Section 2.1 ("The Settling Parties agree that the stated ROE in the formula rate for the National Grid TSC set forth in Attachment H, Attachment 1, Schedule 8, to the NYISO OATT shall be 10.3 percent, inclusive of any incentive adders, from November 2, 2012, until the date of a Commission order accepting this Settlement, and prospectively from the date of the Commission order accepting this Settlement.").

⁷ *See Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129, at P 20 (2012) ("When applying for an incentive ROE based on the project's risks and challenges, applicants will first be expected to demonstrate that the proposed project faces risks and challenges that are not either already accounted for in the applicant's base ROE or addressed through risk-reducing incentives. To make this demonstration, the Commission suggests that applicants identify risks and challenges specific to the project for which an incentive ROE is being requested.").

⁸ March 4 Filing, Attachment G, Exhibit Nos. NMPC-300 - 311.

⁹ *See, e.g., RITELine Ill., LLC*, 137 FERC ¶ 61,039, at PP 71-73 (2011); *Green Power Express LP*, 127 FERC ¶ 61,031, at PP 90-92 (2009).

Although NMPC could have proposed to increase the 10.3% settled ROE value for the TSC as part of, or in conjunction with, its March 4 Filing, NMPC exercised its statutory discretion pursuant to Section 205 of the Federal Power Act not to do so. NMPC is unaware of any Commission regulation, policy, or precedent that would require it to seek a rate increase for its TSC customers simply because an updated ROE analysis indicates that it could justify a higher ROE than the settled value contained in the TSC. Likewise, NMPC is not aware of any requirement that it adopt the settled black-box TSC ROE for purposes of establishing the revenue requirement and associated rates for the SPC Project.

For these reasons, NMPC believes that it is appropriate to maintain an ROE for the SPC-FC rate that is different from the ROE adopted in the 2015 TSC Settlement.

Deficiency Letter Request No. 1(b):

- b. Identify any Commission precedent where the Commission has authorized a utility to have a project-specific base ROE that is different than the base ROE approved for the utility's transmission rate base and explain why Niagara Mohawk's request is consistent with that precedent.**

NMPC Response:

NMPC has not identified any precedent where the Commission authorized a utility to have a project-specific base ROE different from an ROE approved for other portions of the utility's transmission rate base. As noted above, however, NMPC is not proposing a project-specific ROE and is instead proposing project-specific rates that include an incentive ROE. Moreover, NMPC has not identified any precedent indicating that the Commission will not authorize a project-specific rate that includes a base ROE and project-specific incentives that is different from the ROE that the utility continues to utilize for purposes of recovering the costs of its other transmission assets, particularly when the costs of those assets are recovered through a separate rate and from a different group of customers.

Also, NMPC has identified a proceeding in which the Commission established a base ROE specific to certain transmission projects where the utility already had a black-box settlement rate on file to recover the costs of its other transmission assets.¹⁰ Although *SoCal Edison* involved a situation in which the settled rate was a stated revenue requirement and did not specify any ROE component, this case is still relevant insofar as the Commission established project-specific ROE values without attempting to discern a

¹⁰ See *S. Cal. Edison Co.*, 122 FERC ¶ 61,187 (2008); *S. Cal. Edison Co.*, 131 FERC ¶ 61,020 (2010) ("*SoCal Edison*") (establishing a base ROE for three specific transmission projects as to which the Commission had already approved ROE incentive adders).

base ROE from the settled revenue requirement, or requiring the utility to update its settled rate based on its subsequent project-specific ROE determination.

Deficiency Letter Request No. 2:

- 2. Provide Niagara Mohawk's formula rate template as proposed in its filing in a workable format (e.g., Excel file).**

NMPC Response:

NMPC provides the SPC-FC formula rate template as proposed in its filing in an Excel spreadsheet format in Attachment E to this filing. This SPC-FC formula rate template shows in red text the changes to the template described in the March 4 Filing, but those changes do not affect in any way the functionality of the Excel spreadsheet.

II. CONTENTS OF FILING

This filing consists of the following documents:

- This response letter
- Attachments A-D – Tariff records identical to the tariff records submitted in March 4 Filing
- Attachment E – Excel version of formula rate template included in March 4 Filing

III. EFFECTIVE DATE AND REQUEST FOR WAIVER

In its March 4 Filing, NMPC requested that the Commission authorize the incentive rate treatment and revisions to the NYISO OATT set forth in the application effective no later than May 4, 2022 (*i.e.*, the first day following the end of the statutory 60-day notice period).¹¹ To the extent necessary, NMPC now respectfully requests waiver of the 60-day notice period to permit the incentive rate treatment and revisions to the NYISO OATT to become effective no later than that May 4 date, even given this response to the Commission's April 28, 2022 letter asking for additional information.¹² Good cause exists to grant the requested waiver. As the Commission has explained, it has "previously allowed applicants that have responded to deficiency letters to retain the

¹¹ March 4 Filing, Transmittal Letter at 4, 60.

¹² Specifically, NMPC requests waiver, pursuant to Section 35.11 of the Commission's regulations (18 C.F.R. § 35.11), of the 60-day notice period described in Section 35.3(a)(1) of the Commission's regulations (18 C.F.R. § 35.3(a)(1)).

original requested effective date.”¹³ In this response, NMPC does not propose any changes to the requested incentive rate treatment or the proposed modifications to the NYISO OATT set forth in the March 4 Filing, but instead only provides the additional information sought in the April 28, 2022 letter. Further, no entity will be adversely impacted by granting NMPC’s originally requested effective date of May 4, 2022. For these reasons, the Commission should grant NMPC’s originally requested effective date.

IV. SERVICE

NMPC has served a copy of this filing on the service list established by the Commission for this proceeding. In addition, NMPC has confirmed with the NYISO that a complete copy of this filing will be posted on the NYISO’s website at www.nyiso.com. The NYISO has also informed NMPC that it will send an electronic link to this filing to the official representative of each of its customers and to each participant on its stakeholder committees. This will ensure that all New York load-serving entities receive notice of this filing.

V. CONCLUSION

NMPC respectfully requests that the Commission consider this response and grant its requests for incentive rate treatments and associated tariff amendments for the Smart Path Connect Project, as set forth in the March 4 Filing.

Respectfully submitted,

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/s/ David Lodemore

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¹³ *Duke Energy Carolinas, LLC*, 160 FERC ¶ 61,122, at P 24 (2017). See also *Niagara Mohawk Power Corp.*, 126 FERC ¶ 61,173, at P 9 (2009) (“Once the filing is complete, i.e., once the deficiency is cured, the Commission typically must act within 60 days of the date of completion. The deficiency and the cure do not, however, change the Commission’s authority to make the proposed changes effective on a date earlier than after 60 days from the date of the completed filing.”).

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 captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, DC, this 16th day of May, 2022.

/s/ Bradley R. Miliauskas

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