

July 21, 2022

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

**Re: New York Independent System Operator, Inc.
Docket No. ER22-1702-____
Deficiency Letter Response**

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 Corporation d/b/a National Grid¹ (“Niagara Mohawk”) the following response to the letter from Kurt M. Longo, Director, Division of Electric Power Regulation – East, to the undersigned dated June 23, 2022 (“Deficiency Letter”). The Deficiency Letter advises Niagara Mohawk that its April 28, 2022 filing of five Small Generator Interconnection Agreements (“SGIAs”) with affiliated interconnection customers (collectively the “Agreements” and each individually an “Agreement”) in this proceeding (“April 28 Filing”) is deficient and that additional information is required in order to process the filing. Niagara Mohawk’s responses to the questions contained in the Deficiency Letter are set forth below.²

¹ The 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 aspect of this filing at this time. Capitalized terms not otherwise defined herein shall have the meaning specified in the NYISO OATT.

² Footnote 4 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 this requirement, Niagara Mohawk is including with this filing a tariff record from the April 28 Filing.

I. RESPONSES TO DEFICIENCY LETTER

Deficiency Letter Request No. 1(a):

- 1. In your filing, you state that Bayside Solar LLC, Beta Solar LLC, Central Solar LLC, Creek Solar LLC, and Helmet Solar LLC (collectively, the Solar Generators and each individually, a Solar Generator) each own a photovoltaic system. You state that the photovoltaic systems connect with Niagara Mohawk facilities located at the State University of New York at Buffalo (SUNY Buffalo). You explain that each SGIA states that the Solar Generator’s interconnection facilities will be used to transmit power from the Solar Generator’s photovoltaic system to the point of interconnection with Niagara Mohawk, to the extent that the power produced by the photovoltaic system is not consumed by load located at SUNY Buffalo. You state that Niagara Mohawk believes that the Solar Generators are qualifying facilities.³**
 - a. Please clarify whether Niagara Mohawk will purchase any of the excess power from the Solar Generators that is not consumed by the load at SUNY Buffalo pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA).**

Niagara Mohawk Response:

Niagara Mohawk currently has no plans to purchase any of the excess power pursuant to PURPA from the Solar Generators that is not consumed by the load at SUNY Buffalo. Niagara Mohawk does not have a purchase contract with any of the Solar Generators.

Niagara Mohawk submitted the April 28 Filing out of an abundance of caution and to satisfy Niagara Mohawk’s obligation to file jurisdictional agreements under which the interconnecting electric utility does not purchase all of the output sold by a qualifying facility (“QF”) but instead transmits that output in interstate commerce.⁴ As explained in the April 28 Filing, Niagara Mohawk believes the Solar Generators are QFs, and each Agreement states that the Solar Generator’s interconnection facilities will be used to transmit power from the Solar Generator’s photovoltaic system to the Point of Interconnection (discussed below), to the extent that the power produced by the photovoltaic system is not consumed by load located at SUNY Buffalo.⁵ Because all of the power may not be consumed on-site or pursuant to a purchase contract, any sale of such excess generation could be viewed as a QF sale to a third party other than the

³ The Commission cites pages 2-3 of the transmittal letter for the April 28 Filing in this portion of the Deficiency Letter.

⁴ Transmittal letter for April 28 Filing at 3 (citing Commission precedent).

⁵ *Id.* at 2-3.

interconnecting utility or as a wholesale sale (*e.g.*, a sale from the Solar Generator to SUNY Buffalo and then from SUNY Buffalo to Niagara Mohawk), thus potentially giving the Commission jurisdiction over the Agreements.

Further, Attachment 1 to each Agreement defines the “Point of Interconnection” as “[t]he point where the Interconnection Facilities connect with the New York State Transmission System or the Distribution System.” Attachment 1 to each Agreement also defines the “New York State Transmission System” in relevant part as “[t]he entire New York State electric transmission system,” and defines the “Distribution System” in relevant part as “[t]he Transmission Owner’s [*i.e.*, Niagara Mohawk’s] facilities and equipment used to distribute electricity that are subject to FERC jurisdiction.” Applying these definitions, the Point of Interconnection specified in each Agreement cannot be on the SUNY Buffalo system because SUNY Buffalo does not have facilities that are part of the New York State Transmission System or the Distribution System. The closest Niagara Mohawk facilities that interconnect to the SUNY Buffalo system are on the Niagara Mohawk transmission system, which means it is those Niagara Mohawk facilities that meet the definition of the Point of Interconnection. Therefore, the applicable tariff for purposes of interconnection appears to be the Commission-jurisdictional NYISO OATT; the state-jurisdictional tariff under which Niagara Mohawk provides interconnection service to its retail distribution facilities is inapplicable here. Although the NYISO OATT appears to be applicable, the NYISO generator interconnection procedures are inapplicable because the Solar Generators propose that their projects will function as behind-the-meter generation.⁶

Niagara Mohawk acknowledges that this fact pattern is somewhat unique, but based on the facts described above, Niagara Mohawk believes the Commission potentially could find the Agreements to be subject to Commission filing requirements. The Commission has stated that, to the extent a public utility is uncertain as to its obligation to file a particular agreement, the utility should “assume the initiative” to file the agreement (or otherwise seek a Commission ruling), and further indicated that the Commission “see[s] no excuse for failing to file all agreements under which jurisdictional service is being provided.”⁷ Niagara Mohawk filed the Agreements in accordance with this Commission guidance.

⁶ NYISO OATT Section 32.1.1.1.

⁷ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,977-78 (1993).

Deficiency Letter Request (1)(b):

- b. Please clarify whether there will be any wholesale sales from the Solar Generators other than those made pursuant to PURPA.**

Niagara Mohawk Response:

The Solar Generators have informed Niagara Mohawk that the load at SUNY Buffalo is substantially greater than the amount of generation that the Solar Generators can provide. The Solar Generators intend to sell power solely to SUNY Buffalo for purposes of load reduction pursuant to a state-jurisdictional net metering tariff, and have no intent to sell any excess generation through wholesale sales. The Solar Generators have also informed Niagara Mohawk that they have no other agreements for sales to parties besides SUNY Buffalo.

II. CONTENTS OF FILING

In addition to this filing, Niagara Mohawk is also providing a tariff record as required by the Deficiency Letter.⁸

III. EFFECTIVE DATE AND REQUEST FOR WAIVER

In its April 28 Filing, Niagara Mohawk requested that the Commission accept each Agreement effective as of the date agreed to by the parties and set forth in the Agreement – April 1, 2022. Niagara Mohawk also explained that it was filing each Agreement within 30 days of the requested effective date.⁹

To the extent necessary, Niagara Mohawk now respectfully requests waiver of the 60-day notice period to permit each Agreement to become effective no later than that April 1 date, even given this response to the Deficiency Letter.¹⁰ 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 original requested effective date.”¹¹ In this response, Niagara Mohawk does not propose any changes to the Agreements contained in the April 28 Filing, but instead only provides the additional

⁸ See *supra* note 2.

⁹ Transmittal letter for April 28 Filing at 4.

¹⁰ Specifically, Niagara Mohawk 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)(2) of the Commission’s regulations (18 C.F.R. § 35.3(a)(2)).

¹¹ *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.”).

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information sought in the Deficiency Letter. Further, no entity will be adversely impacted by granting Niagara Mohawk's originally requested effective date of April 1, 2022. For these reasons, the Commission should grant Niagara Mohawk's originally requested effective date.

IV. SERVICE

Niagara Mohawk has served a copy of this filing on the Solar Generators, the NYISO, the New York Public Service Commission, and the service list established by the Commission for this proceeding.

V. CONCLUSION

Niagara Mohawk respectfully requests that the Commission consider this response and accept the Agreements, as set forth in the April 28 Filing.

Respectfully submitted,

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/s/ Christopher J. Novak

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon all 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 New York, N.Y., this 21st day of July, 2022.

/s/ Seth Slade

Seth Slade

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