



March 27, 2012

VIA ELECTRONIC FILING

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

**RE: Niagara Mohawk Power Corporation
Docket No. ER12-_____
Interconnection Agreement between Niagara Mohawk Power
Corporation and Wheelabrator Hudson Falls L.L.C.**

Request for Waiver of 60-day Prior Notice Period

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”),¹ Part 35 of the Commission’s regulations,² and Order No. 714,³ Niagara Mohawk Power Corporation d/b/a National Grid (“Niagara Mohawk”) submits for Commission acceptance an Interconnection Service Agreement (“ISA” or “Agreement”) between Niagara Mohawk and Wheelabrator Hudson Falls L.L.C. (“WHF”) (collectively, the “Parties”). WHF owns a qualifying facility (“QF”)⁴ that operates in Hudson Falls, New York (the “Facility”). The Agreement provides for interconnection of the Facility to the Niagara Mohawk transmission system, for sales including power sales to third parties. The Agreement is designated under the New York Independent System Operator, Inc. (“NYISO”) open access transmission tariff (“OATT”), FERC Electric Tariff, Original Volume No. 1 as Service Agreement No. 1872.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

³ Electronic Tariff Filings, FERC Stats. & Regs. ¶ 31,276 (2008).

⁴ See Docket No. QF86-778, *et al.*

For the reasons discussed below, Niagara Mohawk requests a waiver of the 60-day prior notice period to permit the Agreement to become effective on October 24, 2011.

I. Background

Niagara Mohawk is a public utility that owns transmission and distribution facilities in New York. WHF is a wholly-owned, indirect subsidiary of Wheelabrator Technologies Inc., whose principal business is the development, ownership, and operation of trash-to-energy and other waste-fueled and gas-fired QFs.

Since August 13, 1986, Niagara Mohawk has been party to a Power Purchase Agreement (“PPA”) for all electricity produced at the Facility. The PPA was assigned to WHF on October 2, 2003. Last year, the Parties reached a mutual agreement that the Facility would sell to third parties in addition to Niagara Mohawk. Consequently, the Parties agreed to terminate the PPA on October 23, 2011, and executed the ISA on October 24, 2011.

Under Commission precedent established in *Western Massachusetts Electric Company*,⁵ when an electric utility is obligated to interconnect under the Commission’s regulations, the relevant state authority exercises jurisdiction over the interconnection and allocation of interconnection costs. The Commission only exercises jurisdiction over rates, terms and conditions of interconnection service to a QF when the electric utility transmits the QF power in interstate commerce.⁶ Thus, the obligation to file the agreement between WHF and Niagara Mohawk was only triggered by the expiration of the PPA.

II. Interconnection Agreement

The ISA is generally in conformance with the *pro forma* Small Generator Interconnection Agreement (“SGIA”) under the Open Access Transmission Tariff (“OATT”) of the New York Independent System Operator, Inc. (“NYISO”), with only minor modifications. The ISA has been modified to remove the NYISO as a signatory, along with references to the NYISO as a party to the Agreement. Niagara Mohawk understands that the NYISO does not wish to be a party to agreements like the ISA because they relate to an existing interconnection rather than a new interconnection and do not involve a proposed increase in capacity or material modifications to facilities.⁷

⁵ *Western Massachusetts Electric Co.*, 61 FERC ¶ 61,182 (1992), *aff’d sub nom. Western Massachusetts Electric Co. v. FERC*, 165 F.3d 922, 926 (D.C. Cir. 1999).

⁶ *Id.* at 61,661-662.

⁷ *See Niagara Mohawk Power Corporation*, 121 FERC ¶ 61,104 (2007).

The ISA also includes a number of other minor modifications to the *pro forma* SGIA as the result of negotiations between WHF and Niagara Mohawk.

The Agreement is for a term of ten years and includes terms and conditions that are standard for comparable interconnection agreements, including provisions addressing the coordinated operation and maintenance of the Niagara Mohawk transmission system and the WHF electric system, metering provisions, provisions addressing emergency operations, insurance and liability provisions, and miscellaneous provisions.

III. Effective Date

Niagara Mohawk requests waiver of the Commission's 60-day notice requirement to permit the Agreement to become effective on October 24, 2011. Good cause exists for such a waiver. No charges have been collected under the Agreement. The failure to file at an earlier date is the result of an administrative oversight. Granting the requested waiver is in the public interest and consistent with other Commission orders accepting inadvertent oversights when no charges were collected.⁸ Waiver is also consistent with the standard set forth by the Commission in *Central Hudson*.⁹

Niagara Mohawk requests a waiver of any Commission requirements not specifically addressed herein necessary to allow the Agreement to become effective as of October 24, 2011.

⁸ E.g. *PJM Interconnection LLC*, Docket ER11-3106-000 (May 4, 2011)(unpublished letter order granting a waiver after the utility neglected to include an upgrade in an earlier filing, when no charges had been collected for the upgrade).

⁹ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

IV. Communications and Service

Communications and correspondence with respect to this matter should be addressed to the following individuals, and the following should be included on the official service list for this proceeding:¹⁰

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V. Documents Submitted in This Filing

1. This transmittal letter
2. Executed SGIA between Niagara Mohawk and WHF

VI. Conclusion

For the reasons stated herein, Niagara Mohawk respectfully requests that the Commission accept the Agreement, effective October 24, 2011.

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

¹⁰ Niagara Mohawk requests waiver of 18 C.F.R. § 385.203(b) to allow four persons to be added to the service list in this proceeding.

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Respectfully submitted,

/s/ Amanda C. Downey

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