

January 20, 2023

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. ER23-____-000**

**Filing of Revisions to Transmission Service Charge Formula Rate Under the
NYISO OATT**

Dear Secretary Bose:

Pursuant to section 205 of the Federal Power Act (“FPA”),¹ and Part 35 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) regulations,² Niagara Mohawk Power Corporation d/b/a National Grid (“Niagara Mohawk”) hereby submits revisions to its Transmission Service Charge (“TSC”) formula rate (“Formula Rate”), which sets Niagara Mohawk’s Wholesale TSC under the New York Independent System Operator, Inc. (“NYISO”) Open Access Transmission Tariff (“OATT”).³ The proposed tariff revisions are necessary to maintain compliance with the Internal Revenue Service’s (“IRS”) Accumulated Deferred Income Taxes (“ADIT”) proration methodology, as clarified by a recent IRS private letter ruling. Additionally, Niagara Mohawk proposes minor revisions to its Formula Rate to reflect a recent change to Niagara Mohawk’s FERC Form No. 1 submissions—resulting from the Commission’s adoption of new XBRL software FERC Taxonomy 2.0—that provides greater transparency to customers and interested parties. Niagara Mohawk also proposes minor tariff revisions to correct discrete line reference errors recently identified in the Formula Rate, in addition to various ministerial changes to address minor spelling errors.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35 (2021).

³ 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.

I. BACKGROUND

A. Niagara Mohawk

Niagara Mohawk is a public utility subject to the Commission's jurisdiction that owns transmission facilities located in the state of New York. These transmission facilities have been placed under the operational control of the NYISO. Certain municipal electric customers in upstate New York, as well as certain customers outside the NYISO, pay for the cost of service over these transmission facilities through Niagara Mohawk's TSC. The TSC is calculated using the Formula Rate set forth in Attachment H to the NYISO OATT. Niagara Mohawk recovers the remainder of the costs of its transmission facilities through bundled retail rates approved by the New York Public Service Commission ("NYPSC").

B. The Niagara Mohawk TSC Formula Rate

On February 11, 2008, as supplemented on May 30, 2008, Niagara Mohawk submitted an FPA section 205 filing in Docket No. ER08-552 to replace its stated TSC rates in Attachment H to the NYISO OATT with formula TSC rates. On July 29, 2008, the Commission accepted and suspended the proposed formula rates and established hearing and settlement judge procedures.⁴ On April 6, 2009, Niagara Mohawk filed a comprehensive Settlement Agreement and Offer of Settlement (the "2009 Settlement") for the purpose of resolving all issues set for hearing in the proceeding in Docket No. ER08-552. As approved by the Commission in a letter order issued on June 22, 2009,⁵ the 2009 Settlement sets forth the terms of the Formula Rate for the calculation of Niagara Mohawk's TSC under the NYISO OATT, as well as procedures for the annual adjustment of certain Formula Rate inputs (the "Annual Update").

In accordance with the 2009 Settlement, Niagara Mohawk calculates new values for the Revenue Requirements ("RR"), control center costs ("CCC"), and billing units ("BU") components of the Formula Rate on an annual basis and prepares the Annual Update to reflect all revised Data Inputs, the resulting RR, CCC, and BU components, and certain supporting information.⁶ The transmission revenue requirements calculated annually under the Formula Rate are in effect for a one-year service period (the "Update Year") that begins on July 1 of a given calendar year and ends on June 30 of the subsequent calendar year. There are three components of the revenue requirements for a given Update Year:

1. Niagara Mohawk's transmission revenue requirement for in-service transmission facilities (the "Historical Transmission Revenue Requirement" or "HTRR");

⁴ *Niagara Mohawk Power Corp.*, Order Accepting and Suspending Formula Rate Subject to Refund and Establishing Hearing and Settlement Judge Procedures, 124 FERC ¶ 61,106 (2008).

⁵ *See Niagara Mohawk Power Corp.*, 127 FERC ¶ 61,289 (2009).

⁶ In accordance with Section 14.1.9.4 of Attachment H to the NYISO OATT, Niagara Mohawk submitted the 2022 Annual Update to the Commission on June 13, 2022 in Docket No. ER08-552.

2. the projected revenue requirement for facilities expected to be placed in service in the coming Update Year (the “Forecasted Transmission Revenue Requirement or “FTRR”); and
3. a true-up component (the “Annual True-Up”), representing the difference between rates charged based on the FTRR for the prior Update Year and the actual revenue requirement.

The FTRR incorporates projected depreciation-related ADIT amounts or activities corresponding to projected plant additions. On April 7, 2017, the Commission issued a letter order accepting modifications to the Formula Rate proposed by Niagara Mohawk on January 30, 2017, as amended on February 15, 2017, in order to update the calculation of transmission-related ADIT associated with accelerated depreciation in the FTRR to incorporate the IRS’s ADIT proration methodology.⁷ The proposed revisions went into effect starting April 1, 2017. Accordingly, the currently effective version of the Formula Rate reflects the proration of ADIT balances in the FTRR and by extension, in the rates calculated using the FTRR. However, the Formula Rate currently does not provide for the use of the IRS’s ADIT proration methodology in the calculation of Niagara Mohawk’s actual revenue requirement., *i.e.*, its HTRR.

C. The IRS’s ADIT Proration Requirements and the April 2022 IRS Private Letter Ruling

To be eligible to claim accelerated depreciation, Niagara Mohawk must maintain compliance with the IRS’s normalization requirements under the Internal Revenue Code.⁸ As the Commission has recognized, the normalization rules set forth a specific proration methodology to be used when projected ADIT balances are included in a forward-looking formula rate such as Niagara Mohawk’s.⁹ Specifically, the IRS’s normalization rules require that, if a utility uses a future period to determine depreciation, “the amount of the [ADIT] reserve account for the period is the amount of the reserve at the beginning of the period and a pro rata portion of the amount of any projected increase to be credited or decrease to be charged to the account during such period.”¹⁰

Over the past several years, the IRS has issued private letter rulings clarifying the circumstances under which the application of its ADIT proration methodology is appropriate or

⁷ See *Niagara Mohawk Power Corp.*, Docket No. ER17-884-001 (2017) (delegated letter order).

⁸ 26 U.S.C. § 168(f)(2) (stating that accelerated depreciation does not apply to public utility property if the taxpayer does not use a normalization method of accounting). See also *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,126, at P 4 (2016) (“The IRS requires utilities to follow its regulations in order to take advantage of accelerated depreciation.”).

⁹ See *Public Service Co. of Colorado*, 155 FERC ¶ 61,028, at P 3 (2016) (“The depreciation normalization rules of the Internal Revenue Code . . . mandate the use of a very specific proration procedure in measuring the amount of future test period ADIT that can reduce rate base.”).

¹⁰ 26 C.F.R. § 1.167(l)-1(h)(6)(ii) (2022). The pro rata amount of any increase during the future period is determined by multiplying the increase by a fraction, the numerator of which is the number of days remaining in the period at the time the increase is to accrue, and the denominator of which is the total number of days in the future period. *Id.*

required in a utility's actual revenue requirement calculation.¹¹ Based upon those private letter rulings, a number of public utilities have submitted tariff revisions proposing to apply the ADIT proration methodology in the calculation of their actual revenue requirements, and the Commission has approved those filings, noting that they are consistent with the IRS's guidance.¹²

On April 1, 2022, the IRS posted the April 2022 PLR, which held that to comply with the IRS's depreciation normalization rules, if the IRS's ADIT proration methodology is applied to a utility's forecasted revenue requirement, it must be applied again to the actual revenue requirement calculation.¹³ In reaching its rulings in the April 2022 PLR, the IRS stated that, for the portion of the projected revenue requirement that is based on projected additions of public utility property, the period is a future test period.¹⁴ Additionally, the IRS explained that it is necessary to apply the ADIT proration methodology to prevent the immediate flow-through of benefits of future accelerated depreciation to current ratepayers.¹⁵

In accordance with the IRS's April 2022 PLR, Niagara Mohawk proposes tariff revisions in this filing to modify its Formula Rate under Attachment H to the NYISO OATT to apply the IRS's ADIT proration formula to the calculation of Niagara Mohawk's actual revenue requirement.¹⁶ The tariff revisions proposed herein are intended to maintain compliance with the IRS's depreciation normalization requirements and ensure Niagara Mohawk's continued ability to claim accelerated depreciation.

D. New XBRL Software FERC Taxonomy 2.0

Separately from the ADIT proration considerations discussed above, on March 2, 2022, the Commission began using new XBRL software FERC Taxonomy 2.0 (updated March 2, 2022 on eForms Refresh website) which includes an update to modify page numbers in FERC Form No. 1 to include a range of pages in certain circumstances. Consequently, certain tariff references typically made by public utilities with formula rates no longer align with the new form of FERC Form No. 1. In order to provide greater transparency to customers and the Commission, for purposes of its June 13, 2022 Annual Update filing, Niagara Mohawk added a column to all worksheets where there is lack of alignment with the new FERC Form No. 1 stating the reference to the applicable pages in the newly designed FERC Form No. 1. In the

¹¹ In recent private letter rulings, the IRS has clarified the applicability of the proration methodology for public utilities that use a formula with a projected revenue requirement *and* a true-up. Specifically, the IRS has concluded that public utilities that use projected data to populate a forward-looking formula rate are using a "future period," and must therefore use the proration methodology for projections of ADIT balances included in their rates. *See, e.g.*, I.R.S. Priv. Ltr. Rul. 114037-21 at 9-10 (posted April 1, 2022) (the "April 2022 PLR").

¹² *See, e.g.*, *MidAmerican Energy Co.*, Docket No. ER21-161 (Dec. 17, 2020) (delegated letter order); *Midcontinent Indep. Sys. Operator, Inc.*, 157 FERC ¶ 61,250, at PP 25-26 (2016); *Pub. Serv. Co. of Colo.*, 155 FERC ¶ 61,028, at P 36.

¹³ April 2022 PLR at 9-10.

¹⁴ *Id.* at 9.

¹⁵ *Id.* at 8.

¹⁶ Niagara Mohawk's formula rate template is set forth in Section 14.2.1 of Attachment H to the NYISO OATT.

June 13, 2022 Annual Update filing, Niagara Mohawk also committed to submit a filing to amend Attachment H to the NYISO OATT to reconcile to the new FERC Form No. 1 software. The necessary amendments are reflected in the redlined revisions submitted as Attachment B hereto. In addition to these reconciliation changes, and as described in greater detail below, Niagara Mohawk is proposing minor tariff revisions to correct discrete line reference errors discovered in the course of updating its Formula Rate in compliance with the Commission's Order No. 864.¹⁷ Niagara Mohawk also proposes non-substantive revisions to correct certain typographical errors in its Formula Rate and to add listings to the Table of Contents in Section 14.2.1 of Attachment H to reflect the addition of new Schedule 13(a) proposed herein and Schedule 14(a) that was added as part of Niagara Mohawk's proposed Order No. 864 compliance changes.

II. DESCRIPTION OF THE FILING

As accepted by the Commission in Docket No. ER17-884,¹⁸ Niagara Mohawk's Formula Rate under Attachment H to the NYISO OATT currently applies the IRS's ADIT proration methodology to Niagara Mohawk's FTRR calculation, but not to its actual revenue requirement calculation. In order to conform to the more recent guidance from the IRS in the April 2022 PLR, Niagara Mohawk is proposing to modify its TSC Formula Rate to incorporate the IRS's ADIT proration methodology into the calculation of its actual revenue requirement under Attachment H. The proposed revisions to Niagara Mohawk's Formula Rate are necessary to comply with the IRS's regulations, as interpreted in the April 2022 PLR, and are consistent with tariff revisions approved by the Commission in prior cases.¹⁹

In addition to incorporating the IRS's ADIT proration methodology into the calculation of Niagara Mohawk's actual revenue requirement, the revisions proposed herein will modify the calculation of the ADIT balances in the Annual True-Up process in order to preserve and not inadvertently counteract the effect of the continued application of the IRS's ADIT proration methodology in the FTRR calculation. To facilitate the necessary changes to its Formula Rate, Niagara Mohawk proposes revisions to Attachment H to the NYISO OATT as noted below:

Proposed Revisions to Schedule 2 – Forecasted Transmission Revenue Requirement

Niagara Mohawk is proposing revisions to the Adjustment to Forecasted Transmission Revenue Requirement Factor ("FTRRF") to reference the Transmission Related ADIT balance in Account 282 instead of referencing all ADIT accounts, including those which are not subject to

¹⁷ See *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). The Commission approved Niagara Mohawk's proposed Order No. 864 compliance changes effective January 27, 2020. See *New York Indep. Sys. Operator, Inc.*, Docket No. ER20-2051-003 (Oct. 7, 2022) (delegated letter order).

¹⁸ See *supra* note 7.

¹⁹ See, e.g., *ISO New England Inc.*, Docket No. ER23-197-000 (Dec. 13, 2022) (delegated letter order accepting functionally identical tariff revisions proposed by certain New England Transmission Owners, including Niagara Mohawk's affiliate, New England Power Company d/b/a National Grid).

the IRS ADIT Proration methodology. As a result of this change, Niagara Mohawk is proposing to delete lines previously used to remove Account 255 Accumulated Deferred Investment Tax Credits from the FTRRF calculation.

Proposed Revisions to Schedule 7 - Transmission Investment Base

Niagara Mohawk is proposing revisions to the Transmission Accumulated Deferred Taxes section of Schedule 7 to identify Account 281 separately from Account 282. Niagara Mohawk has updated the reference for each line and proposes to continue referencing the balance of Account 281 from the annual FERC Form No. 1 filing while the amount for Account 282 will be sourced from the proposed new Schedule 13(a) Actual Accumulated Deferred Income Taxes (AADIT).

Proposed Revisions to Schedule 13 - Forecasted Accumulated Deferred Income Taxes (FADIT)

As explained previously in the proposed revisions to Schedule 2, Niagara Mohawk is proposing to reference only Account 282 in the determination of the FTRRF. The revisions to Schedule 13 adjust the beginning ADIT balance used for the forecast to source the Electric balance for Account 282 directly from FF1 and utilize the Transmission Plant Allocator to determine the Transmission Related ADIT Balance at year-end.

Proposed addition of Schedule 13(a) - Actual Accumulated Deferred Income Taxes (AADIT)

Niagara Mohawk is proposing to add Schedule 13(a) Actual Accumulated Deferred Income Taxes to incorporate the IRS's ADIT proration methodology into the calculation of the historical revenue requirement. The prorated ADIT balance calculated on this Schedule will be included on Schedule 7 Transmission Investment Base as a component of Total Transmission Accumulated Deferred Taxes.

Niagara Mohawk's proposal is necessary to maintain compliance with the IRS's ADIT proration requirements and is expected to have a *de minimis* impact on its transmission revenue requirement. The overall effect of incorporating the IRS's ADIT proration methodology into the calculation of Niagara Mohawk's actual revenue requirement will vary based on Niagara Mohawk's projected level of planned investment in a given year. For illustrative purposes, for the Update Year beginning July 1, 2022, the adjustment for the ADIT proration methodology in the actual revenue requirement would have resulted in a TSC rate increase of \$0.02229/MWh—from \$15.42764/MWh to \$15.44993/MWh.

Niagara Mohawk also proposes to amend Attachment H to the NYISO OATT to reconcile to updated Form No. 1 references resulting from the new FERC Form No. 1 software. The proposed ministerial revisions to Schedules 5, 6, 7, 8, 9, 11, and 12 under Section 14.2.1 of Attachment H to the NYISO OATT update certain FERC Form No. 1 page references as a result of the implementation of the XBRL filing process that went into use effective with Niagara

Mohawk's 2021 FERC Form No. 1 filing submitted on April 15, 2022. Niagara Mohawk is also proposing to remove certain fixed FERC Form No. 1 line references and instead change these line references to input cells that will be populated during the Annual Update process. These changes will prevent inadvertent line input errors and accommodate any future formatting changes made to FERC Form No. 1 reports or software while still providing the transparency required for stakeholder review. The redlined revisions submitted as Attachment B hereto also reflect proposed ministerial changes to address minor spelling errors and omitted items listed below:

- Page 1 (Table of Contents): Addition of listing for Schedule 14(a) - (Excess)/Deficient ADIT Remeasurement Support to the Table of Contents
- Spelling correction on Schedule 2, Line 34, Schedule 2, Line 61 and Schedule 6, Page 2 of 2, Line 6
- Schedule 10, Line 1: Workpaper 16 was added as the source

Niagara Mohawk also proposes an additional minor correction to the formula on Line 11 of Schedule 7 to include Line 8 Excess AFUDC in the Total of Transmission Regulatory Assets and Liabilities.

Lastly, Niagara Mohawk is proposing an additional minor revision to its TSC Formula Rate to correct a line reference error discovered in the course of revising its Formula Rate in compliance with the Commission's Order No. 864. This additional revision is proposed to Attachment H to the NYISO OATT to correct the Line No. on Schedule 7, Line 9 which was previously presented as Line 90.

III. ADDITIONAL FILING INFORMATION

A. Proposed Effective Date

The IRS has previously held that where a utility has not complied with the normalization requirements due to a failure to properly apply the IRS's ADIT proration methodology, the utility should not automatically be sanctioned with a denial of accelerated depreciation, particularly where the utility has acted in good faith, attempted to comply with the normalization rules, and made an effort to incorporate the ADIT proration methodology in its next rate change.²⁰ The IRS has also stated that "[w]here nonconforming rates cannot be adjusted or corrected to conform to the requirements of this ruling due to the operation of state or federal regulatory law, then such correction must be made in the next regulatory filing or proceeding in which Taxpayer's rates are considered."²¹

Consistent with the IRS's previous guidance, Niagara Mohawk seeks to have the proposed modifications to the TSC Formula Rate in place for purposes of "the next regulatory filing" in which its rates will be considered. For Niagara Mohawk, that filing is its next Formula

²⁰ I.R.S. Priv. Ltr. Rul. 143241-14 at 10-11 (July 6, 2015).

²¹ *Id.* at 10.

Rate Annual Update scheduled to be submitted on or before June 14, 2023. Niagara Mohawk therefore respectfully requests an effective date of March 22, 2023—61 days after the date of this filing—for the Formula Rate revisions proposed herein and requests waiver of any applicable requirements in 18 C.F.R. § 35.13 or other Commission regulations for which a waiver is not specifically requested, if necessary, in order to permit this filing to become effective as proposed.

Granting the requested effective date will ensure that the proposed modifications to incorporate the IRS's ADIT proration methodology into the calculation of Niagara Mohawk's actual revenue requirement are in place for purposes of the next Annual Update, including the Annual True-Up component of the TSC calculated in that update. Additionally, granting an effective date of March 22, 2023 will guarantee that the proposed amendments to reconcile Attachment H to the NYISO OATT to the new FERC Form No. 1 software take effect prior to Niagara Mohawk's next FERC Form No. 1 filing, due on or before April 18, 2023.

B. Documents Included with This Filing

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

Attachment A:	Clean version of the proposed revisions to Attachment H to the NYISO OATT
Attachment B:	Redlined version of the proposed revisions to Attachment H to the NYISO OATT

IV. COMMUNICATIONS

Pursuant to Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, Niagara Mohawk requests that all correspondence, pleadings, and other communications regarding this filing be addressed to the following individuals:

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V. SERVICE

Niagara Mohawk has served a copy of this filing electronically on the NYPSC and on the NYISO. Niagara Mohawk 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 Niagara Mohawk 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. Copies of this filing are being served by Niagara Mohawk on each of the Interested Parties who receive service of the Formula Rate Annual Update in accordance with the settlement approved by the Commission in Docket No. ER08-552. This list of Interested Parties includes representatives of all customers that pay the Niagara Mohawk TSC.

IV. CONCLUSION

For the reasons stated herein, Niagara Mohawk respectfully requests that the Commission accept the revisions to its Formula Rate under Attachment H to the NYISO OATT contained in this filing to be effective March 22, 2023, without suspension, condition, or modification.

Respectfully submitted,

/s/ Patrick J. Tarmey

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Dated: January 20, 2023