

April 5, 2023

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

**Re: Niagara Mohawk Power Corporation
Docket No. ER23-____-000**

**Filing of Engineering & Procurement Agreement with
Horseshoe Solar Energy LLC**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”),¹ and Part 35 of the Federal Energy Regulatory Commission’s (“Commission”) regulations,² Niagara Mohawk Power Corporation (“Niagara Mohawk”) submits an Engineering & Procurement Agreement (“E&P Agreement”) between Niagara Mohawk and Horseshoe Solar Energy LLC (“Horseshoe”).³ The E&P Agreement is designated as Service Agreement No. 2771 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).

The E&P Agreement is an undisputed agreement to facilitate the performance of certain work that Horseshoe has requested Niagara Mohawk to do with respect to long-lead items related to Horseshoe’s proposal to interconnect a solar generating facility to the Niagara Mohawk transmission system. Niagara Mohawk requests that the Commission accept the E&P Agreement effective as of March 7, 2023, the effective date agreed to by the Parties.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

³ Together, Niagara Mohawk and Horseshoe are referred to in the E&P Agreement and in this transmittal letter as the “Parties.”

I. Background

Niagara Mohawk is a public utility subject to the Commission's jurisdiction that owns transmission facilities located in New York which have been placed under the operational control of the NYISO. Horseshoe is a limited liability company organized and existing under the laws of the state of Delaware.

Horseshoe is proposing to interconnect its 2021 Class Year 180 MW Horseshoe Solar Project to Niagara Mohawk's 115 kV Golah Substation in Livingston County, New York (the "Interconnection Project"). Horseshoe and Niagara Mohawk contemplate negotiation of a Large Generator Interconnection Agreement ("Interconnection Agreement") in connection with the proposed Interconnection Project. Consistent with the NYISO OATT, the Parties have entered into the E&P Agreement to facilitate Niagara Mohawk's performance of certain engineering and procurement activities for long-lead items related to the Interconnection Project, prior to the Parties entering into the Interconnection Agreement.⁴ Niagara Mohawk is willing to perform this work subject to: (i) reimbursement by Horseshoe of all actual costs and expenses incurred by Niagara Mohawk in connection with the work; (ii) Horseshoe's performance of all other duties, responsibilities, and obligations set forth in the E&P Agreement, including, without limitation, specified actions to be taken by Horseshoe; and (iii) receipt of any and all required approvals as set forth in the E&P Agreement, in a form acceptable to Niagara Mohawk.⁵

II. Description of the E&P Agreement and Filing Requirements

Pursuant to the E&P Agreement, Horseshoe will reimburse Niagara Mohawk for the actual costs and expenses incurred in connection with the work described above. The E&P Agreement sets forth the terms and conditions of this work and certain related commitments by Horseshoe. The E&P Agreement includes provisions addressing the performance and schedule of the work, liability and indemnification, insurance, regulatory and governmental approvals, and various other standard provisions included in comparable utility agreements.

Section 205 of the FPA authorizes the Commission to require public utilities to file all rates and charges that are "for or in connection with," and all agreements that "affect or relate to," jurisdictional transmission service or sales of electric energy.⁶ The E&P Agreement relates to Niagara Mohawk's recovery of costs for performing procurement and other work in connection with the Interconnection Project. Niagara

⁴ Section 30.9 of Attachment X to the NYISO OATT states that prior to executing a Standard Large Generator Interconnection Agreement, a Developer (in this case, Horseshoe) may, in order to advance the implementation of its interconnection, request and the Connecting Transmission Owner (in this case, Niagara Mohawk) shall offer the Developer, an engineering and procurement agreement that authorizes the Connecting Transmission Owner to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection.

⁵ E&P Agreement, Recitals, Articles 3.0, 7.0, and 18.0, and Exhibits A and B.

⁶ 16 U.S.C. §§ 824d(a)-(c).

Mohawk recognizes that the Commission may find the E&P Agreement to be a jurisdictional agreement that must be filed. For these reasons, Niagara Mohawk is filing the E&P Agreement for Commission acceptance.

The price of the work to be performed pursuant to the E&P Agreement will be just and reasonable because Niagara Mohawk will perform the work at actual cost.⁷ The Commission should therefore accept the E&P Agreement for filing.

III. Effective Date

Niagara Mohawk requests that the Commission accept the E&P Agreement effective as of March 7, 2023, the effective date agreed to by the Parties.⁸ The Commission's regulations require that a service agreement be filed within 30 days of its effective date unless otherwise specified by the Commission.⁹ Niagara Mohawk is filing the E&P Agreement within 30 days of its effective date.

IV. List of Filing Documents

In addition to this transmittal letter, this filing includes the E&P Agreement in Attachment A hereto.

⁷ See E&P Agreement, Article 1.0, at definition of "Company Reimbursable Costs".

⁸ See E&P Agreement, Preamble and Article 1.0, at definition of "Effective Date".

⁹ 18 C.F.R. § 35.3(a)(2).

V. Communications and Service

Communications regarding this filing should be addressed to the following individuals, whose names should be entered on the official service list maintained by the Secretary for this proceeding:

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

VI. Conclusion

For the reasons stated herein, Niagara Mohawk requests that the Commission accept the E&P Agreement effective as of March 7, 2023.

Respectfully submitted,

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