

July 27, 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
Sithe/Independence Power Partners, L.P.**

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 Sithe/Independence Power Partners, L.P. (“Sithe”).³ The E&P Agreement is designated as Service Agreement No. 2791 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 Sithe has requested Niagara Mohawk to do with respect to long-lead items related to the proposed interconnection of a series reactor to the Niagara Mohawk transmission system. Niagara Mohawk requests that the Commission accept the E&P Agreement effective as of July 12, 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 Sithe 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. Sithe is a limited partnership organized under the laws of the state of Delaware.

Sithe has requested installation of a series reactor on the 345 kV Scriba-Volney Line 20 ("Line 20") to reduce the post-contingency power flow on Line 20 for the loss of the 345kV Scriba-Volney Line 21. The series reactor would be installed on Line 20 at Niagara Mohawk's Volney Substation located in Oswego County, New York (the "Interconnection Project"). The Parties contemplate negotiation of a Transmission Project Interconnection Agreement (the "Interconnection Agreement") with regard to implementation of the proposed Interconnection Project.⁴

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.⁵ Niagara Mohawk is willing to perform this work subject to: (i) reimbursement by Sithe of all actual costs and expenses incurred by Niagara Mohawk in connection with the work; (ii) Sithe'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 Sithe; and (iii) receipt of any and all required approvals as set forth in the E&P Agreement, in a form acceptable to Niagara Mohawk.⁶

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

Pursuant to the E&P Agreement, Sithe 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 Sithe. 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

⁴ E&P Agreement, Recitals.

⁵ Section 22.10 of Attachment P to the NYISO OATT states that prior to executing a Transmission Project Interconnection Agreement, a Transmission Developer (in this case, Sithe) may, in order to advance the implementation of its interconnection, request and the Connecting Transmission Owner (in this case, Niagara Mohawk) shall offer the Transmission 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.

⁶ E&P Agreement, Recitals, Articles 3.0, 7.0, and 18.0, and Exhibits A and B.

“affect or relate to,” jurisdictional transmission service or sales of electric energy.⁷ The E&P Agreement relates to Niagara Mohawk’s recovery of costs for performing procurement and other work related to the Interconnection Project. Niagara 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.⁸ The Commission should therefore accept the E&P Agreement for filing.

III. Effective Date

Niagara Mohawk respectfully requests that the Commission accept the E&P Agreement effective as of July 12, 2023, the effective date agreed to by the Parties.⁹ The Commission’s regulations require that a service agreement be filed within 30 days of its effective date or such other date as may be specified by the Commission.¹⁰ Niagara Mohawk is filing the E&P Agreement within 30 days of the effective date described above.

Good cause exists for the Commission to grant the requested July 12, 2023 effective date. Granting this effective date will effectuate the express intent of the Parties and, because the E&P Agreement is an engineering and procurement service agreement between those Parties, will not prejudice or otherwise have an adverse impact on any other entity.

Conversely, if the Commission does not grant the requested effective date and instead requires a later effective date, that delay in the effectiveness of the E&P Agreement will also delay Niagara Mohawk’s performance of the engineering and procurement activities required under the E&P Agreement, which activities need to be completed before the Parties can enter into the Interconnection Agreement as explained in the E&P Agreement. As stated above, Section 22.10 of Attachment P to the NYISO OATT specifically allows a Transmission Developer, in order to advance the implementation of its interconnection, to request and require the Connecting Transmission Owner to offer the Transmission Developer an engineering and procurement agreement like the E&P Agreement that authorizes the Connecting Transmission Owner to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection. A similar provision is set forth on Section 9 of the Commission’s *pro forma* Large Generator Interconnection Procedures. These engineering and procurement agreement provisions are intended to expedite the interconnection of proposed facilities. In this case, however, requiring an effective date

⁷ 16 U.S.C. §§ 824d(a)-(c).

⁸ See E&P Agreement, Article 1.0, at definition of “Company Reimbursable Costs”.

⁹ See E&P Agreement, Preamble and Article 1.0, at definition of “Effective Date”.

¹⁰ 18 C.F.R. § 35.3(a)(2).

later than July 12 would create a significant risk of delaying the interconnection of the series reactor as contemplated by the Parties.

In addition, requiring a later effective date may obligate Niagara Mohawk to file a refund report with the Commission regarding any amounts received prior to the granted effective date. Such an obligation would serve no purpose for agreements like the E&P Agreement. Niagara Mohawk recognizes that the Commission has clarified that time-value refunds are subject to a floor based on the utility's variable costs, and that the Commission "will reduce or eliminate time value refunds if the agreements are filed late and if a full time value refund would result in construction of the interconnection and transmission facilities at a loss."¹¹ Since Niagara Mohawk is performing all work under the E&P Agreement at actual cost, a directive to provide any actual refunds would compel Niagara Mohawk to perform that work at a loss. Niagara Mohawk therefore respectfully submits that it need not provide time-value refunds in this case even if the Commission were to mandate an effective date later than July 12. An obligation to file a refund report (even if it stated that no refunds were required or made) would be an administrative burden for Niagara Mohawk with no benefit to either the customer or the Commission.

For these reasons, Niagara Mohawk requests that the Commission grant the effective date of July 12, 2023 specified in the E&P Agreement.¹²

IV. List of Filing Documents

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

¹¹ *Carolina Power & Light Co.*, 87 FERC ¶ 61,083, at 61,357 (1999); *Fla. Power & Light Co.*, 98 FERC ¶ 61,276, at 62,151 n.32, *reh'g denied*, 99 FERC ¶ 61,320 (2002).

¹² To the extent necessary and for the same reasons explained above, Niagara Mohawk also respectfully requests waiver of the Commission's notice requirement. *See* 18 C.F.R. § 35.11.

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 Sithe, 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 July 12, 2023.

Respectfully submitted,

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