

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**New York Independent System Operator, Inc.     )  
Niagara Mohawk Power Corporation             )**

**Docket Nos.   ER23-1271-000  
                  ER23-1271-001**

**EXPLANATORY STATEMENT**

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),<sup>1</sup> Niagara Mohawk Power Corporation (“NMPC”) submits this Explanatory Statement in support of the attached Settlement Agreement and Offer of Settlement (“Settlement”).<sup>2</sup> All of the parties to the above-referenced proceeding (each a “Settling Party” and collectively, the “Settling Parties”)<sup>3</sup> either support or do not oppose the Settlement. The Settlement, upon the Commission’s acceptance without condition or modification unacceptable to the Settling Parties, will resolve completely all issues set for hearing in this proceeding.

**I.     PROCEDURAL BACKGROUND**

On March 8, 2023, in Docket No. ER23-1271-000, pursuant to section 205 of the Federal Power Act (“FPA”),<sup>4</sup> NMPC submitted proposed revisions to existing Rate Schedule 17 under the NYISO Open Access Transmission Tariff (“NYISO OATT” or “Tariff”)<sup>5</sup> and a proposed Rate Schedule 20 under the Tariff,<sup>6</sup> which established the Niagara Mohawk Segment A Facilities Charge

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<sup>1</sup> 18 C.F.R. § 385.602 (2023).

<sup>2</sup> As set forth in Section 7.5 of the Settlement, in the event of any inconsistency between this Explanatory Statement and the Settlement Agreement, the terms of the Settlement Agreement shall control. Terms not otherwise defined in this Explanatory Statement are as set forth in the Settlement.

<sup>3</sup> Consolidated Edison Company of New York, Inc. (“Con Edison”) and Orange and Rockland Utilities, Inc. (“O&R”) submitted a joint, timely motion to intervene in this proceeding and, together with NMPC, constitute the Settling Parties. The New York Independent System Operator, Inc.’s (“NYISO”) participation in this proceeding is limited solely to its role as Tariff Administrator, and the NYISO takes no position with respect to the substantive issues in the Settlement.

<sup>4</sup> 16 U.S.C. § 824e.

<sup>5</sup> See NYISO OATT, 6.17 OATT Schedule 17 Rate Mechanism for Recovery of the Western New York Facilities Charge for Non-Bulk Transmission Facilities (“WNY-FC”).

<sup>6</sup> See NYISO OATT, 6.20 OATT Schedule 20 Rate Mechanism for the Recovery of Niagara Mohawk Segment A Facilities.

(“NMSA-FC”) to provide for NMPC’s recovery of costs associated with its capital investments in two portions of Segment A of the AC Transmission Public Policy Transmission Project (the “Segment A Project,” and the portion for which NMPC will recover costs the “NMPC Segment A Facilities”) (the “March 8 Filing” comprising both proposals).<sup>7</sup> As discussed in the March 8 Filing, NMPC proposed to calculate the revenue requirement for the NMPC Segment A Facilities using a carrying charge approach (the “Segment A Carrying Charge”), whereby the revenue requirement will equal the product of NMPC’s historical wholesale Transmission Service Charge (“TSC”) revenue requirement multiplied by the ratio of the NMPC Segment A Facilities to NMPC’s gross transmission plant in service.<sup>8</sup>

On March 20, 2023, Con Edison and O&R filed a joint, doc-less motion to intervene in response to the March 8 Filing.

On May 4, 2023, Commission staff issued a letter informing NMPC that the March 8 Filing was deficient and requesting additional information (“May 4 Deficiency Letter”). On June 5, 2023, NMPC submitted a response to the May 4 Deficiency Letter (“June 5 Deficiency Response”) in Docket No. ER23-1271-001.<sup>9</sup>

On August 4, 2023, the Commission issued its “Order Accepting and Suspending Tariff Revisions, Subject to Refund, and Establishing Hearing and Settlement Judge Procedures.”<sup>10</sup> In the August 4 Order, the Commission accepted NMPC’s proposed tariff revisions, effective August 5, 2023.<sup>11</sup>

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<sup>7</sup> The NYISO submitted the March 8 Filing on behalf of NMPC, but took no position on any substantive aspect of the filing.

<sup>8</sup> NMPC’s TSC is set forth in Section 14.1.9 of Attachment H of the NYISO OATT.

<sup>9</sup> As was true for the March 8 Filing, the NYISO submitted the June 5 Deficiency Response on behalf of NMPC, but took no position on any substantive aspect of the filing.

<sup>10</sup> *N. Y. Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,076 (2023) (“August 4 Order”).

<sup>11</sup> *Id.* at P 1.

The August 4 Order additionally accepted NMPC’s commitment to file the existing agreement between NMPC, LS Power Grid Corporation I, and the New York Power Authority addressing NMPC’s right to own and obtain cost recovery on the NMPC Segment A Facilities (the “Segment A Agreement”) for Commission review as an NMPC agreement subject to FPA Section 205 filing requirements.<sup>12</sup> On October 10, 2023, NMPC filed the Segment A Agreement in accordance with the Commission’s acceptance in the August 4 Order.<sup>13</sup>

In addition to accepting the commitment subsequently addressed in the Segment A Agreement Filing, the August 4 Order found that NMPC’s March 8 Filing raised issues of material fact that could not be resolved based on the existing record in the proceeding and, as a result, established hearing and settlement judge procedures.<sup>14</sup>

On August 10, 2023, the Chief Administrative Law Judge issued an order designating Judge Suzanne Krolikowski as the Settlement Judge.<sup>15</sup> Thereafter, Judge Krolikowski convened formal settlement conferences on September 19, 2023; November 29, 2023; and January 10, 2024, as well as a technical conference on October 12, 2023. Throughout this process, the Settling Parties and Commission Trial Staff exchanged information regarding NMPC’s filings and the positions adopted by the respective parties. As a result of these efforts, the Settling Parties reached an agreement-in-principle to resolve all issues in this proceeding, which resulted in the attached Settlement.

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<sup>12</sup> *Id.* at P 29.

<sup>13</sup> See Niagara Mohawk Power Corp., Section 205 Segment A Agreement Filing in Response to August 4 Order in Docket No. ER24-67-000 (filed Oct. 10, 2023) (“Segment A Agreement Filing”). The Commission accepted the Segment A Agreement Filing in a subsequently-issued delegated letter order. See *Niagara Mohawk Power Corp.*, Docket No. ER24-67-000 (Nov. 30, 2023) (delegated letter order).

<sup>14</sup> August 4 Order at P 31.

<sup>15</sup> *N. Y. Indep. Sys. Operator, Inc.*, Order of Chief Judge Designating Settlement Judge, Docket Nos. ER23-1271-001 (issued Aug. 10, 2023).

## II. SUMMARY OF SETTLEMENT AGREEMENT

ARTICLE I discusses the procedural background for this proceeding.

ARTICLE II provides definitions of terms used in the Settlement.

ARTICLE III defines the scope and conditions of Settlement, indicating that it resolves all issues set for hearing in the Commission's August 4 Order, and that the Settling Parties will not be bound or prejudiced by any provisions in the Settlement unless and until it is approved by a Final Order of the Commission without modification or condition unacceptable to the Settling Parties. Article III also sets forth the Effective Date of the Settlement.

ARTICLE IV sets forth the terms of the Settlement.

Section 4.1 establishes that the Updated Workpapers<sup>16</sup> and proposed future revisions to NMPC's TSC Formula Rate,<sup>17</sup> incorporated as Appendices A and B to the Settlement, and proposed future revisions to NMPC's Rate Schedule 20, incorporated as Appendix C to the Settlement, reflect changes specifying the exclusion of Asset Retirement Obligations ("AROs") from NMPC's Segment A Carrying Charge.

Section 4.2 provides that the Updated Workpapers, incorporated as Appendix A to the Settlement, reflect the addition of clarifying footnotes to NMPC's Workpaper 18 to explain how NMPC will calculate and track depreciation reserve specific to the Segment A Facilities.

Section 4.3 provides that the Updated Workpapers, incorporated as Appendix A to the Settlement, reflect revisions to NMPC's Workpapers 7 and 18 detailing the identification of revenues NMPC receives from other sources and explaining how any such revenues will be treated in the context of calculating NMPC's Segment A Carrying Charge.

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<sup>16</sup> For purposes of the Settlement, "Updated Workpapers" refers to revised NMPC Workpapers 7 and 18, pro forma versions of which are included as Appendix A to the Settlement. The Updated Workpapers will be populated and filed with the Commission as part of NMPC's Formula Rate Annual Update, but will not be included in NMPC's TSC Formula Rate.

<sup>17</sup> NMPC's TSC formula rate is set forth in Section 14.2.1 of Attachment H of the NYISO OATT.

ARTICLE V addresses implementation of the changes to NMPC's TSC Formula Rate and Rate Schedule 20 agreed to as part of the Settlement and provides that such changes will be proposed via a filing under Section 205 of the FPA to be submitted within thirty (30) days following the Commission's issuance of Final Order approving or accepting the Settlement without material condition or modification.

ARTICLE VI states that the standard of review for any proposed change sought to the terms of the Settlement by fewer than all of the Settling Parties, and opposed by any other Settling Party, shall be the "public interest" application of the just and reasonable standard of review. With respect to proposed changes to the terms of the Settlement agreed to by all of the Settling Parties, or sought by a party other than a Settling Party, or by the Commission acting *sua sponte*, the standard of review shall be the ordinary just and reasonable standard.

ARTICLE VII contains miscellaneous provisions, including that none of the Settlement's provisions are severable, and that the Settlement is solely for the purpose of resolving this proceeding in order to avoid the costs and burdens of litigation and is not intended to establish any principle or precedent with respect to any issue in this proceeding.

### **III. INFORMATION TO BE PROVIDED WITH SETTLEMENT AGREEMENTS**

Pursuant to the Chief Administrative Law Judge's directive regarding settlement filings,<sup>18</sup> the Explanatory Statement addresses the following four questions:

#### **1. Does the settlement affect other pending cases?**

The Settling Parties are not aware of any pending cases that would be affected by the Settlement Agreement.

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<sup>18</sup> Notice to the Public, Amended Notice to the Public on Information to be Provided with Settlement Agreements and Guidance on the Role of Settlement Judges (Dec. 15, 2016).

**2. Does the settlement involve issues of first impression?**

The Settling Parties are not aware of any issues of first impression raised by the Settlement Agreement.

**3. Does the settlement depart from Commission precedent?**

No. The Settlement does not depart from Commission precedent.

**4. Does the settlement seek to impose a standard of review other than the ordinary just and reasonable standard with respect to any changes to the settlement that might be sought by either a third party or the Commission acting *sua sponte*?**

No, the Settlement does not seek to impose a standard of review other than the ordinary just and reasonable standard with respect to any changes to the settlement that might be sought by either a third party or the Commission acting *sua sponte*.

Respectfully submitted,

/s/ David Lodemore

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