

**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**

SETTLEMENT AGREEMENT AND OFFER OF SETTLEMENT

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),¹ Niagara Mohawk Power Corporation (“NMPC”) hereby submits this Settlement Agreement (“Settlement”) for approval by the Commission. All of the parties to the above-referenced proceeding (each a “Settling Party” and collectively, the “Settling Parties”)² either support or do not oppose the Settlement.

This Settlement is submitted as an Offer of Settlement to resolve completely, upon the Commission’s acceptance of this Settlement without condition or modification unacceptable to the Settling Parties, all issues set for hearing in this proceeding.

**ARTICLE I
PROCEDURAL BACKGROUND**

On March 8, 2023, in Docket No. ER23-1271-000, pursuant to section 205 of the Federal Power Act (“FPA”),³ NMPC submitted proposed revisions to existing Rate Schedule 17 under the NYISO Open Access Transmission Tariff (“NYISO OATT” or “Tariff”)⁴ and a proposed Rate Schedule 20 under the Tariff,⁵ which established the Niagara Mohawk Segment A Facilities Charge

¹ 18 C.F.R. § 385.602 (2023).

² 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.

³ 16 U.S.C. § 824e.

⁴ 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”).

⁵ 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).⁶ 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.⁷

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. ER23-1271-001.⁸

On August 4, 2023, the Commission issued its “Order Accepting and Suspending Tariff Revisions, Subject to Refund, and Establishing Hearing and Settlement Judge Procedures.”⁹ In the August 4 Order, the Commission accepted NMPC’s proposed tariff revisions, effective August 5, 2023.¹⁰

⁶ The NYISO submitted the March 8 Filing on behalf of NMPC, but took no position on any substantive aspect of the filing.

⁷ NMPC’s TSC is set forth in Section 14.1.9 of Attachment H of the NYISO OATT.

⁸ 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.

⁹ *N. Y. Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,076 (2023) (“August 4 Order”).

¹⁰ *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.¹¹ On October 10, 2023, NMPC filed the Segment A Agreement in accordance with the Commission’s acceptance in the August 4 Order.¹²

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.¹³

On August 10, 2023, the Chief Administrative Law Judge issued an order designating Judge Suzanne Krolikowski as the Settlement Judge.¹⁴ 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 Settlement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and

¹¹ *Id.* at P 29.

¹² 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).

¹³ August 4 Order at P 31.

¹⁴ *N. Y. Indep. Sys. Operator, Inc.*, Order of Chief Judge Designating Settlement Judge, Docket Nos. ER23-1271-001 (issued Aug. 10, 2023).

sufficiency of which are hereby acknowledged, the Settling Parties, intending to be legally bound, agree as follows:

ARTICLE II DEFINITIONS

2.1 Unless otherwise specified herein, capitalized terms used but not defined in this Settlement shall have the meaning set forth in the NYISO Tariff.

2.2 For purposes of this Settlement:

2.2.1 “Annual Update” means NMPC’s Formula Rate Annual Update submitted annually to the Commission through an informational filing on or before June 14, as required pursuant to Section 14.1.9.4 of Attachment H to the NYISO OATT and the comprehensive Settlement Agreement and Offer of Settlement (“2009 Settlement”) establishing NMPC’s wholesale TSC Formula Rate.

2.2.2 “Asset Retirement Obligations” (“AROs”) means the “legal obligations associated with the retirement of a tangible long-lived asset that an entity is required to settle as a result of an existing enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel.”¹⁵

2.2.3 “Segment A Revenue Credits” means revenues associated with the NMPC Segment A Facilities, excluding Incremental Transmission Congestion Contracts, which will be specifically identified and included as a credit in the NMSA-FC Revenue Requirement.

2.2.4 “Transmission Rents” means all transmission-related rental income recorded in NMPC’s FERC Account 454.615.

¹⁵ See *Acct., Fin. Reporting, & Rate Filing Requirements for Asset Ret. Obligations*, Order No. 631, FERC Stats. & Regs. ¶ 31,142, at P 9 (2003).

- 2.2.5** “TSC Formula Rate” means the formula rate for the calculation of NMPC’s wholesale TSC under Section 14.2.1 of Attachment H to the NYISO OATT, as established pursuant to the 2009 Settlement and approved by the Commission on July 22, 2009, in Docket No. ER08-552-000.¹⁶
- 2.2.6** “Updated Workpapers” means revised NMPC Workpapers 7 and 18, pro forma versions of which are incorporated herein as Appendix A to this Settlement.

ARTICLE III SCOPE AND CONDITIONS OF SETTLEMENT

- 3.1 Scope of Settlement.** This Settlement is an indivisible package that resolves all issues set for hearing by the Commission’s August 4 Order and all other matters raised by any party in settlement negotiations in Docket No. ER23-1271 and addressed in this Settlement.
- 3.2 Conditions.** This Settlement is expressly conditioned upon the acceptance of all provisions hereof by the Commission in accordance with Rule 602 and shall be effective on the date that it is approved or accepted by the Commission without material condition or modification, in a Final Order (“Effective Date”). The Settling Parties will not be bound or prejudiced by any provisions in this Settlement unless and until the Settlement is approved in its entirety without any modification or condition unacceptable to the Settling Parties in a Final Order. If the Settlement is not accepted or approved in its entirety without modification or conditions, then the Settlement shall not become effective, and it shall be deemed null and void and of no force and effect upon expiration of the forty-five (45) day period provided in section 3.3 below,

¹⁶ *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), *order on reh’g*, *Niagara Mohawk Power Corp.*, 126 FERC ¶ 61,173 (2009).

unless each of the Settling Parties notifies all of the other Settling Parties and the Commission in writing within fifteen (15) days of such Commission order that it accepts such condition(s) or modification(s) and the order becomes a Final Order. For purposes of this Settlement, an order will be considered a “Final Order” as of the date it is issued by the Commission, if no comments are filed in opposition to this Settlement, or if such comments are filed, the date that rehearing is denied by the Commission or by operation of law, or if rehearing is not sought, as of the date on which the right to seek Commission rehearing expires.

- 3.3 Negotiations in the Event of Condition or Modification.** If the Commission fails to approve the Settlement, or approves the Settlement with material condition or modification, the Settling Parties will promptly undertake negotiations aimed at determining if the material conditions or modifications are acceptable, or, if not, reaching agreement on a modified settlement. The Settling Parties reserve their rights to litigate the issues that are the subject of this Settlement if they are unable to reach agreement on a modified settlement within forty-five (45) days of the date of the Commission order failing to approve this Settlement or approving this Settlement with material condition or modification.

ARTICLE IV TERMS OF THE SETTLEMENT

- 4.1 Removal of AROs from the Segment A Carrying Charge.** As reflected in the Updated Workpapers provided as Appendix A hereto, NMPC will revise Workpaper 18 to incorporate explicit language specifying the exclusion of AROs from Gross Transmission Plant in Service for Segment A Facilities and Accumulated Depreciation Reserve for Segment A Facilities amounts shown on lines 17 and 18 therein. The

Updated Workpapers will be populated and filed with the Commission as part of the Annual Update, but will not be included in NMPC's TSC Formula Rate.

4.1.1 Consistent with the clarifying revisions to Workpaper 18 described in section 4.1 above and reflected in the Updated Workpapers, within thirty (30) days of a Final Order issued pursuant to section 3.2 above, NMPC will make a filing (the "Settlement Implementation Filing") under Section 205 of the FPA proposing the following changes to its TSC Formula Rate, as reflected in the pro forma clean and redline tariff records provided as Appendix B hereto:

- a. Amend TSC Formula Rate Schedule 5, Line 15 to reference: FF1 204-207.104g, less FF1 Page 204-207 15g, 24g, 34g, 44g, 57g, 74g, 83g, 98g
- b. Amend TSC Formula Rate Schedule 6 Page 2 of 2, Line 1 to reference: FF1 204-207.58g, less Page 204-207.57g
- c. Amend TSC Formula Rate Schedule 6 Page 2 of 2, Line 5 to reference: FF1 204-207.99g, less Page 204-207.98g
- d. Add reference to TSC Formula Rate Schedule 6 Page 2 of 2, Line 23 for "Accumulated Depreciation related to ARO (enter debit)"
- e. Amend TSC Formula Rate Schedule 6 Page 2 of 2, Line 29 to reference Total Depreciation (Sum of line 23 - Line 28)

4.1.2 NMPC additionally commits to propose corresponding revisions to Rate Schedule 20 in the Settlement Implementation Filing to reflect the removal of AROs. These proposed revisions to Rate Schedule 20 are shown in the pro forma tariff clean and redline tariff records provided as Appendix C hereto.

4.2 Calculation of Depreciation Reserve for Purposes of the Segment A Carrying Charge. As reflected in the Updated Workpapers provided as Appendix A hereto,

NMPC will revise Workpaper 18 to incorporate clarifying footnotes (c) and (d), reading as follows:

- a. Footnote (c): “Accumulated Depreciation Reserve to be determined using NMPC’s plant accounting system by allocating associated utility plant account reserves to Segment A based on vintage of the assets and associated account's depreciation parameters (i.e., average service life, net salvage factor, and depreciation curve). NMPC shall include all associated workpapers and plant accounting system reports in their annual update filings.”
- b. Footnote (d): “Depreciation expense to be determined by multiplying each Segment A FERC account gross plant in service with corresponding current FERC approved depreciation rates for NMPC transmission facilities. The current NMPC depreciation rates are approved by FERC in Docket No. ER19-132. NMPC shall include all associated workpapers in their annual update filings.”

4.3 Treatment of Other Revenues in Calculating the Segment A Carrying Charge.

As reflected in the Updated Workpapers provided as Appendix A hereto, NMPC will revise Workpapers 7 and 18 to reflect the addition of:

- a. a new line identifying any Segment A related rental revenue included in the TSC Transmission Rent component (“Segment A Facilities - Rent from elec. Prop included in Transmission Rents”) to Workpaper 7; and
- b. a new “Segment A Revenue Credits (enter credit)” line to Workpaper 18.

4.3.1 Additionally, as reflected in the Updated Workpapers provided as Appendix A hereto, NMPC will revise Workpaper 18 to include a new footnote (e) describing the treatment of any Segment A Revenue Credits, which reads as follows: “Any Revenue Credits associated with the Segment A Facilities,

excluding Incremental Transmission Congestion Contracts (TCCs), will be specifically identified and included as a credit in the NMSA-FC Revenue Requirement. In accordance with Section 6.20.3.3 of Rate Schedule 20, any Incremental TCCs associated with the Segment A Facilities and disbursed to NMPC will be credited in the Incremental Transmission Rights Revenue component of the monthly NMSA-FC rate as set forth in section 6.20.3.5. In order to avoid double-crediting, Incremental TCCs are therefore excluded from the NMSA-FC revenue requirement component of the NMSA-FC rate.”

ARTICLE V IMPLEMENTATION OF SETTLEMENT

Not later than thirty (30) days following the Commission’s issuance of Final Order pursuant to section 3.2 above, NMPC will place on file with the Commission through FERC’s eTariff system a Settlement Implementation Filing under Section 205 of the FPA to implement the changes to its TSC Formula Rate and Rate Schedule 20 discussed in sections 4.1.1 and 4.1.2 above and reflected in the pro forma clean and redline tariff records provided as Appendices B and C hereto.

ARTICLE VI STANDARD OF REVIEW

The standard of review for any proposed change to the terms of this Settlement sought 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 set forth in *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). With respect to proposed changes to the terms of this 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 MISCELLANEOUS PROVISIONS

- 7.1 Resolution of All Matters.** This Settlement represents a negotiated compromise resolved in the public interest and is expressly conditioned upon the acceptance of all provisions hereof by the Commission in accordance with Rule 602 of the Commission's Rules of Practice and Procedure, without material condition or modification unacceptable to any Settling Party.
- 7.2 No Prejudice.** The discussions among the Settling Parties have been conducted with the explicit understanding and agreement, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the positions of any party or participant presenting any such offer or participating in any such discussions, and are not to be used in any manner in connection with these proceedings or otherwise, except to the extent of enforcing the terms and conditions of this Settlement.
- 7.3 Integrated Settlement.** This Settlement is an integrated, negotiated package and the various parts hereof are not severable without upsetting the balance of consideration and compromises achieved among the Settling Parties.
- 7.4 No Precedent.** This Settlement is intended solely for the purpose of resolving the matters set for hearing by the Commission in Docket No. ER23-1271 and avoiding the costs and burdens of litigation and is not intended to establish any principle or precedent with respect to any issue in this proceeding. This Settlement and the matters discussed herein are distinct from other cases that are or may be before the Commission. Accordingly, neither this Settlement nor any Settling Party's performance in accordance herewith shall be deemed to constitute an admission or

concession as to (i) the justness and reasonableness of any cost, charge, cost of service component, or ratemaking method, or (ii) any contention or position that was asserted, or that could have been asserted, in this docket. This Settlement shall not be cited or relied upon as precedent for any purpose or as establishing any issue or principle, except to the extent necessary to enforce the terms and conditions of this Settlement itself. Nothing herein shall be deemed to establish a “settled practice” (as that term was interpreted and applied in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980)) or a “long standing practice” (as that term was used in *Columbia Gas Transmission Corp. v. FERC*, 628 F.2d 578 (D.C. Cir. 1979)).

- 7.5 Inconsistency with Explanatory Statement.** In the event of any inconsistency between this Settlement and the Explanatory Statement submitted in support hereof, this Settlement shall control.
- 7.6 Headings and Captions.** Section headings and captions are used in this Settlement solely for convenience of reference and shall not be used to interpret or modify the terms of this Settlement.
- 7.7 Binding Effect of Settlement.** This Settlement shall be binding on and shall inure to the benefit of the successors, assigns, or purchasers for value of the stock or assets of all Settling Parties.
- 7.8 No Third-Party Beneficiaries.** Except as specifically set forth in this Settlement, nothing in this Settlement, whether express or implied, confers any rights or remedies under, or by reason of, this Settlement on any parties or persons other than the Settling Parties.
- 7.9 Authorization.** Each person executing this Settlement Agreement on behalf of a Settling Party represents and warrants that they are duly authorized and empowered to

act on behalf of, and to authorize this Settlement to be executed on behalf of, the Settling Party that they represent.

7.10 Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

7.11 Incorporation of Appendices. Appendices A and B to this Settlement are incorporated by reference as if fully set forth herein.

Michael Kunselman
Shannon E. O'Neil
Davis Wright Tremaine
1301 K Street NW
Suite 500 East
Washington, DC 20005

Respectfully submitted,

/s/ David Lodemore
David Lodemore
Senior Counsel
National Grid USA
170 Data Drive
Waltham, MA 02451

*Counsel for Niagara Mohawk Power
Corporation*