

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

New York Independent System Operator, Inc.)	Docket Nos.	ER23-973-000
Niagara Mohawk Power Corporation)		ER23-973-001

EXPLANATORY STATEMENT

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 d/b/a National Grid (“NMPC”) submits this Explanatory Statement in support of the attached Settlement Agreement and Offer of Settlement (“Settlement”).² All parties to the above-referenced proceeding (each a “Settling Party” and collectively, the “Settling Parties”)³ either support or do not oppose the Settlement.

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

¹ 18 C.F.R. § 385.602 (2023).

² 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.

³ Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (collectively, the “Indicated New York Transmission Owners”) submitted a joint, timely motion to intervene in this proceeding. The Municipal Electric Utilities Association of New York (“MEUA”), the New York Association of Public Power (“NYAPP”), and the New York State Public Service Commission (“NYSPSC”) also filed timely motions to intervene. Together with NMPC, the Indicated New York Transmission Owners, MEUA, NYAPP, and the NYSPSC constitute the Settling Parties. The views expressed herein are not intended to represent those of any individual member of the NYSPSC. Pursuant to Section 12 of the New York Public Service Law, N.Y. Pub. Serv. L. §12, the NYSPSC Chair is authorized to represent the NYSPSC in this proceeding. The New York Independent System Operator, Inc.’s (“NYISO”) participation in this proceeding is limited solely to its role as administrator of the NYISO Open Access Transmission Tariff (“OATT” or “Tariff”), and the NYISO takes no position with respect to the substantive issues in the Settlement.

I. PROCEDURAL BACKGROUND

On January 30, 2023, in Docket No. ER23-973-000, pursuant to sections 205 and 219 of the Federal Power Act (“FPA”),⁴ NMPC submitted proposed revisions to its Transmission Service Charge (“TSC”) formula rate (“Formula Rate”),⁵ including a proposed new Rate Schedule 18 to the NYISO OATT, to recover the costs of its investment in the Smart Path Connect Project (“SPC Project” or the “Project”) on a state-wide basis (the “January 30 Filing”).⁶ Concurrently, NMPC submitted a Cost Allocation Agreement for NMPC’s portion of the SPC Project in Docket No. ER23-974-000.

On February 21, 2023, the Indicated New York Transmission Owners, MEUA, and the NYSPSC each filed a doc-less motion to intervene in response to the January 30 Filing. The NYSPSC also separately filed comments in support of the January 30 Filing.

On March 28, 2023, Commission staff issued a letter informing NMPC that the January 30 Filings were deficient and requesting additional information (“March 28 Deficiency Letter”). On April 13, 2023, NMPC submitted a request for a 30-day extension of time, until May 29, 2023, to respond to Commission staff’s March 28 Deficiency Letter. On May 30, 2023, NMPC submitted a response to the March 28 Deficiency Letter (“May 30 Deficiency Response”) in Docket Nos. ER23-973-001 and ER23-974-001.⁷ On June 20, 2023, NYAPP filed a doc-less motion to intervene in response to the May 30 Deficiency Response.

⁴ 16 U.S.C. § 824d.

⁵ NMPC’s TSC Formula Rate sets NMPC’s Wholesale TSC under Attachment H to the NYISO OATT. *See* NYISO, NYISO Tariffs, NYISO OATT, §§ 14.2-14.2.1 (Attachment 1 to Attachment H) (26.0.0).

⁶ NYISO submitted the January 30 Filing on behalf of NMPC solely in its role as administrator of the NYISO Tariff, but took no position on any substantive aspect of the filing.

⁷ Due to the Memorial Day holiday on May 29, 2023, NMPC submitted its Deficiency Response on May 30, 2023. *See* 18 C.F.R. § 385.2007(a)(2). As was true for the January 30 Filing, the NYISO submitted the May 30 Deficiency Response on behalf of NMPC in Docket No. ER23-973-001, but took no position on any substantive aspect of the filing. NMPC submitted a separate filing in Docket No. ER23-974-001 on the same day, solely for the purpose of resubmitting the tariff record for the Cost Allocation Agreement.

On July 28, 2023, the Commission issued its “Order on Tariff Filings, and Establishing Hearing and Settlement Judge Procedures.”⁸ In the July 28 Order, the Commission (1) accepted the Cost Allocation Agreement for the Project;⁹ (2) granted NMPC’s request for authorization to recover 100% of prudently incurred Construction Work in Progress (“CWIP”) for the Project;¹⁰ (3) accepted NMPC’s proposed Rate Schedule 18 and accepted in part and rejected in part NMPC’s proposed revisions to its TSC Formula Rate templates set forth in Section 14.2.1 to Attachment H of the NYISO OATT, subject to condition and further compliance;¹¹ (4) directed NMPC to submit a compliance filing within 30 days of the July 28 Order removing certain regulatory asset line items from Schedule 15 of its TSC Formula Rate and revising footnote (a) in proposed Schedule 15c;¹² and (5) accepted NMPC’s proposed allocation of General Plant and A&G expenses in Schedule 15, subject to the outcome of hearing and settlement judge procedures to address issues of material fact that could not be resolved based on the existing record in the proceeding.¹³

On August 3, 2023, the Chief Administrative Law Judge issued an order designating Judge Renee Terry as the Settlement Judge.¹⁴ Thereafter, Judge Terry convened formal settlement conferences on August 17, 2023; November 1, 2023; November 28, 2023; January 9,

⁸ *N.Y. Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,059 (2023) (“July 28 Order”).

⁹ *Id.* at P 47.

¹⁰ *Id.* at P 29.

¹¹ *See id.* at P 2.

¹² *Id.* at PP 63-64. In accordance with the Commission’s acceptance in the July 28 Order, NMPC submitted a compliance filing on August 28, 2023, proposing additional revisions to Schedules 15c and 15d of its TSC Formula Rate, as well as de minimis updates to reflect changes in line numbering as a result of the same and intervening amendments. *See* New York Independent System Operator, Inc. and Niagara Mohawk Power Corp., Compliance Filing in Response to July 28 Order, Docket No. ER23-973-002 (“August 28 Compliance Filing”). The August 28 Compliance Filing is still pending before the Commission. The NYISO submitted the compliance filing on behalf of NMPC, but took no position on any substantive aspect of the filing.

¹³ July 28 Order at PP 65-67.

¹⁴ *N.Y. Indep. Sys. Operator, Inc.*, Order of Chief Judge Designating Settlement Judge, Docket No. ER23-973-001 (issued Aug. 3, 2023).

2024; and February 22, 2024, as well as technical conferences on September 7, 2023; October 11, 2023; and February 12, 2024. 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.

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 July 28 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 new Workpapers SPC1 and SPC2,¹⁵ which will implement the agreed-upon SPC Allocation Methodology,¹⁶ and describes proposed future revisions to NMPC's TSC Formula Rate, incorporated as Appendix B to the Settlement, to correspond with the establishment of new Workpapers SPC1 and SPC2.

¹⁵ Pro forma versions of Workpapers SPC1 and SPC2 are included as Appendix A to the Settlement. Following the SPC Project in-service date, Workpapers SPC1 and SPC2 will be populated and filed with the Commission as part of NMPC's Formula Rate Annual Update. However, Workpapers SPC1 and SPC2 will not be included in NMPC's TSC Formula Rate set forth in Section 14.2.1 of Attachment H of the NYISO OATT.

¹⁶ For purposes of the Settlement, the "SPC Allocation Methodology" refers to the agreed-upon allocation methodology for NMPC's General Plant, Common Plant, Intangible Plant, and A&G expenses for the SPC Project.

Section 4.2 provides that NMPC will undertake a good faith assessment of the feasibility of tracking of labor costs at the SPC Project level (the “Methodology Review”) three years after the in-service date for the SPC Project.¹⁷

Section 4.3 outlines the next steps following completion of the Methodology Review and describes related filings to be made by NMPC in consideration of the results of the same.

ARTICLE V confirms that no refunds are required under the Settlement. Article V also addresses NMPC’s implementation of new Workpapers SPC1 and SPC2—as well as corresponding updates to NMPC’s TSC Formula Rate—and initiation of the Methodology Review and subsequent procedures following the Commission’s issuance of a 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.

¹⁷ For purposes of the Settlement, the Methodology Review refers to the review of the SPC Allocation Methodology to be initiated prior to the first Annual Update process occurring no later than forty-two months after the SPC Project in-service date.

III. INFORMATION TO BE PROVIDED WITH SETTLEMENT AGREEMENTS

Pursuant to the Chief Administrative Law Judge's directive regarding settlement filings,¹⁸ 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.

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,

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¹⁸ 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).