

**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

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 d/b/a National Grid (“NMPC”) hereby submits this Settlement Agreement and Offer of Settlement (“Settlement”) for approval by the Commission. All 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.

¹ 18 C.F.R. § 385.602 (2023).

² 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.

ARTICLE 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”),³ NMPC submitted proposed revisions to its Transmission Service Charge (“TSC”) formula rate (“Formula Rate”),⁴ 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”).⁵ 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 ER23-974-001.⁶ On June 20, 2023, NYAPP filed a doc-less motion to intervene in response to the May 30 Deficiency Response.

³ 16 U.S.C. § 824d.

⁴ 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).

⁵ 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.

⁶ 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.”⁷ In the July 28 Order, the Commission (1) accepted the Cost Allocation Agreement for the Project;⁸ (2) granted NMPC’s request for authorization to recover 100% of prudently incurred Construction Work in Progress (“CWIP”) for the Project;⁹ (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;¹⁰ (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;¹¹ 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.¹²

On August 3, 2023, the Chief Administrative Law Judge issued an order designating Judge Renee Terry as the Settlement Judge.¹³ Thereafter, Judge Terry convened formal settlement conferences on August 17, 2023; November 1, 2023; November 28, 2023; January 9,

⁷ *N.Y. Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,059 (2023) (“July 28 Order”).

⁸ *Id.* at P 47.

⁹ *Id.* at P 29.

¹⁰ *See id.* at P 2.

¹¹ *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 August 28 Compliance Filing on behalf of NMPC, but took no position on any substantive aspect of the filing.

¹² July 28 Order at PP 65-67.

¹³ *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 this 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 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 "G Allocator" means the assigned percentages for allocating NMPC's General Plant, Common Plant, Intangible Plant, and A&G expenses to the SPC Project, as calculated using Workpaper SPC2, provided in Appendix A hereto.

- 2.2.3** “Methodology Review” means the review of the SPC Allocation Methodology to be initiated prior to the first Annual Update process that occurs no later than forty-two months (*i.e.*, 3.5 years) after the SPC Project in-service date.
- 2.2.4** “SPC Allocation Methodology” means the allocation methodology for NMPC’s General Plant, Common Plant, Intangible Plant, and A&G expenses for the SPC Project agreed to in this Settlement, as implemented by Workpapers SPC1 and SPC2 provided as Appendix A hereto and reflected in the pro forma tariff clean and redline tariff records provided as Appendix B hereto.¹⁴
- 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. ER08-552-000.¹⁵

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 July 28 Order in Docket No. ER23-973 and addressed in this Settlement.

¹⁴ In accordance with the July 28 Order, the August 28 Compliance Filing proposed to revise Schedule 15a of the TSC Formula Rate to remove placeholder line items for Project-related regulatory assets in lines 5 and 13 of Schedule 15a. The pro forma tariff clean and redline tariff records provided as Appendix B hereto incorporate the changes to Schedule 15a proposed in the August 28 Compliance Filing.

¹⁵ *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).

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, as defined below (“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, 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 one or more material conditions or modifications, the Settling Parties will promptly undertake negotiations aimed at determining if the material conditions or modifications are

acceptable, and, if not, reaching agreement on a mutually agreeable 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 Establishment of New Workpapers SPC1 and SPC2.** NMPC will establish new Workpapers SPC1 and SPC2 to implement the agreed-upon SPC Project allocation methodology for General Plant, Common Plant, Intangible Plant, and A&G expenses (the “SPC Allocation Methodology”). Pro forma versions of Workpapers SPC1 and SPC2 are provided as Appendix A hereto. Workpapers SPC1 and SPC2 also will be populated and filed as part of the Annual Update process on a going forward basis following the SPC Project in-service date, but Workpapers SPC1 and SPC2 will not be included in NMPC’s Transmission Service Charge formula rate.
- 4.1.1** Workpaper SPC1 will reflect total current NMPC General Plant, Common Plant, Intangible Plant, and A&G expenses, and the portions of those expenses allocated to the SPC Project.
- 4.1.2** Workpaper SPC2 will calculate NMPC’s G Allocator to be used in the calculations in Workpaper SPC1. Workpaper SPC2 also will include a definitive list of the National Grid business segments used as inputs to the G Allocator, as well as a detailed narrative explanation of the criteria used

to select each such project input, which criteria will be used to update the selected segments if needed during the Annual Update process.

4.1.3 As described in the detailed narrative explanation of the criteria used to select the project inputs included in Workpaper SPC2, the G Allocator calculation will utilize data from all National Grid regulated gas, electric distribution, and transmission segments, based on data sourced from National Grid's books and records, to update the most recent All Company General ("G") Allocator. Workpaper SPC2 will also include a column identifying the source (*i.e.*, business segment report) of such data.

4.1.4 Within thirty (30) days of a Final Order, NMPC will make a filing (the "Settlement Implementation Filing") under Section 205 of the FPA proposing updates to NMPC's TSC Formula Rate Schedule 15a to correspond with the establishment of new Workpapers SPC1 and SPC2. As reflected in the pro forma clean and redline tariff records provided as Appendix B hereto, in the Settlement Implementation Filing, NMPC will propose updates to Lines 1 and 15 of Schedule 15a to read as follows:

- a. Line 1: "Project Gross Plant In-Service will be the total capital investment for the project included in Transmission Plant In Service plus Electric General and Electric Intangible Plant times the SPC Allocator percentage for Electric to SPC plus NMPC Common Plant times the SPC Allocator percentage for Gas+Electric to SPC."
- b. Line 15: "Project Allocated Administrative and General Expense shall equal the sum of Electric Administrative and General Expenses,

Electric Pension & OPEB Expenses and Electric Payroll Tax Expense times the SPC Allocator percentage for Electric to SPC, plus the ratio of Project Gross Plant In-Service to Gross NMPC Transmission Investment times Transmission Related Property Insurance and Transmission Related Research & Development expenses.”

4.2 Future Assessment of the Feasibility of Tracking Labor Costs at the SPC

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

4.2.1 The Methodology Review will be completed no later than six months after commencement of the review process and will be presented at the annual Customer Meeting for that same year.

4.2.2 The Methodology Review will include an analysis of actual NMPC labor expenses directly related to the SPC Project, and will include a good faith assessment of (i) the ongoing justness and reasonableness of the SPC Allocation Methodology, and (ii) the feasibility of adopting a revised allocation methodology utilizing actual SPC Project labor expenses.

4.2.3 In the event that NMPC is unable to complete the Methodology Review within the established time frame, NMPC shall promptly notify all Settling Parties of such delay. This notification will include a revised timeline for completing the Methodology Review no later than 3 months after the initial due date established above.

4.3 Outcome of the Methodology Review. Following completion of the Methodology Review, or if the Methodology Review is not completed by the date(s) set out above then, absent mutual agreement between NMPC and the Settling Parties that the SPC Allocation Methodology continues to produce a just and reasonable result, NMPC will within 2 months after a Settling Party's notification to the other Parties that the SPC Allocation Methodology does not produce a just and reasonable result, make a filing under Section 205 of the FPA proposing a prospectively applicable SPC Allocation Methodology.

4.3.1 NMPC's FPA Section 205 filing will include a good faith assessment of (i) the ongoing justness and reasonableness of the SPC Allocation Methodology, (ii) the feasibility of adopting a revised allocation methodology utilizing actual SPC Project labor expenses, and (iii) any proposed updates to the SPC Allocation Methodology. The Settling Parties reserve their rights to protest or otherwise oppose NMPC's Section 205 filing if they do not agree that the SPC Allocation Methodology as proposed therein will produce just and reasonable results. Such FPA Section 205 filing will be a limited issue filing that does not open up other components of NMPC's formula rate. However, nothing in this settlement shall limit the rights of any party to request or the Commission to order an expanded scope of any such proceeding under Sections 205 and 206 of the FPA and the Commission's rules and regulations.

4.3.2 Should NMPC and the Settling Parties mutually agree based on the findings of the Methodology Review that the SPC Allocation

Methodology continues to produce a just and reasonable result, the SPC Allocation Methodology will remain in place and NMPC will make an informational filing indicating the same by no later than ninety days after the date such mutual agreement is memorialized in writing, provided that such date may be extended, for a maximum of 6 months with the agreement of the Settling Parties, in the event that NMPC is unable to complete the Methodology Review within the established time frame. Such informational filing will indicate that based on the findings of the Methodology Review, the use of labor ratios for functionalizing NMPC's General Plant and A&G expenses is not essential to produce a reasonable allocation in this context, and the SPC Allocation Methodology continues to provide a just and reasonable means of allocating the General Plant and A&G expenses in NMPC's Schedule 15a.

ARTICLE V IMPLEMENTATION OF SETTLEMENT

- 5.1 No Refund Obligation.** As of the filing date of this Settlement, no charges have been calculated or assessed under new Rate Schedule 18 to the NYISO OATT. The charges at issues in this proceeding will not be calculated or assessed until the SPC Project is placed into service.¹⁶ Accordingly, no refunds are required under this Settlement.
- 5.2 Submission of Settlement Implementation Filing.** Not later than thirty (30) days following the Commission's issuance of a Final Order, NMPC will place on

¹⁶ The anticipated in-service date for the Project is December 2025.

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 discussed in section 4.1.4 above and reflected in the pro forma clean and redline tariff records provided as Appendix B.

5.3 Implementation of Workpapers and Methodology Review. Following the Commission's issuance of a Final Order, NMPC will populate and file Workpapers SPC1 and SPC2 as part of the Annual Update process on a going forward basis following the SPC Project in-service date, but such workpapers will not be included in NMPC's Transmission Service Charge formula rate. Prior to the first Annual Update process occurring no later than forty-two months after the SPC Project in-service date, NMPC will carry out the Methodology Review and subsequent procedures in accordance with sections 4.2 and 4.3 above.

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. ER23-973 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 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 substantially all the assets, of any individual Settling Party.

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.

Respectfully submitted,

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