

January 29, 2013

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: Niagara Mohawk Power Corporation, d/b/a National Grid
Docket No. ER13-____-000
Filing of Cost Reimbursement Agreement with
New York Power Authority and
Request for Waiver of Commission Notice Requirement**

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 d/b/a/ National Grid (“National Grid”) submits a Cost Reimbursement Agreement (“Reimbursement Agreement”) between National Grid and the New York Power Authority (“NYPA”). The Reimbursement Agreement is designated as Service Agreement No. 1951 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).

The Reimbursement Agreement is an undisputed agreement between National Grid and NYPA which will facilitate the elimination of potential line clearance issues regarding NYPA transmission facilities that pass above structures owned or operated by National Grid. National Grid respectfully requests that the Commission grant waiver of its prior notice requirement to permit the Reimbursement Agreement to go into effect as of November 9, 2012, the effective date set forth in the Reimbursement Agreement.

I. Background

National Grid is a public utility with a transmission system in the State of New York. NYPA is a corporate municipal instrumentality of the State of New York with its own transmission system in the State of New York. Both National Grid and NYPA have placed their transmission systems under the operational control of the NYISO.

NYPA seeks to address potential discrepancies between the design and actual field conditions of certain of its transmission facilities in accordance with a facilities ratings

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. Part 35 (2012).

alert issued by the North American Electric Reliability Corporation on October 7, 2010 and updated on November 30, 2010. NYPA undertook a review of its transmission facilities and identified a number of field conditions that may have the potential to result in discrepancies in line ratings. Some of the field conditions impacting NYPA's transmission facilities are where NYPA's facilities pass over facilities owned or operated by National Grid. To eliminate line clearance concerns with NYPA facilities, NYPA has requested that National Grid design, engineer, procure, relocate, construct, and test those structures owned or operated by National Grid.³

II. Description of the Reimbursement Agreement and Filing Requirements

Pursuant to the Reimbursement Agreement, NYPA will pay for or reimburse National Grid for the actual costs and expenses incurred in connection with work performed by National Grid to facilitate the elimination of potential line clearance concerns regarding NYPA transmission facilities that pass above facilities owned or operated by National Grid. The Reimbursement Agreement sets forth the terms and conditions of this work and certain related commitments by NYPA. The Reimbursement Agreement includes provisions addressing performance and schedule of the work, indemnification and liability, insurance, and various standard provisions for utility cost reimbursement 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 "affect or relate to," jurisdictional transmission service or sales of electric energy.⁴ In the Prior Notice Order, the Commission stated that the types of agreements that a public utility must file include "a jurisdictional CIAC agreement," which is defined as an "agreement providing for the customer payment of contributions-in-aid-of-construction" of facilities used to provide jurisdictional service, either in a single lump sum or over a period of time.⁵ Commission precedent also indicates that engineering and pre-construction agreements related to jurisdictional facilities can be construed as CIAC agreements.⁶

The Reimbursement Agreement relates to the recovery of costs for facilities which include jurisdictional facilities and for engineering, procurement, and construction services necessary to facilitate the elimination of potential line clearance issues identified by NYPA. Therefore, the Commission will likely find it to be a CIAC agreement that must be filed.

³ Reimbursement Agreement, Recitals, Article 3.0, and Schedule A.

⁴ 16 U.S.C. §§ 824d(a)-(c) (2006).

⁵ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993) ("Prior Notice Order").

⁶ For example, in *Southern California Edison Company*, 98 FERC ¶ 61,304, at 62,300-01 (2002), the Commission required the filing of seven letter agreements related to pre-interconnection activities in anticipation of certain generator interconnections, "including procurement, engineering, and limited construction." See also *GenPower Anderson, LLC v. Duke Energy Corp. and Duke Electric Transmission*, 101 FERC ¶ 61,038 (2002) (requiring Duke Energy to file an engineering and design letter agreement that was entered into pending execution of an interconnection and operating agreement).

National Grid is performing these services at actual cost as set forth in Article 1 to the Reimbursement Agreement and has not collected any funds pursuant to the Reimbursement Agreement prior to the instant filing.⁷ The costs of these services are properly allocated to NYPA because these services have been requested by NYPA to address line clearance concerns on NYPA transmission facilities. The Commission should find the price of the services to be performed pursuant to the Reimbursement Agreement to be just and reasonable because National Grid will perform these services at actual cost.

III. Effective Date and Request for Waiver

Pursuant to Section 35.11 of the Commission's regulations,⁸ National Grid respectfully requests waiver of the requirement contained in Section 35.3 of the Commission's regulations to file service agreements not more than 30 days after service has commenced,⁹ to allow the Reimbursement Agreement to become effective upon the effective date set forth in the agreement, *i.e.*, November 9, 2012.

Granting waiver will not result in prejudice to any party. National Grid and NYPA have agreed to project milestones that anticipate completion of work pursuant to the Reimbursement Agreement by December 31, 2013.¹⁰ Granting the requested waiver will facilitate the elimination of potential line clearance issues with NYPA transmission facilities and is therefore consistent with the standard set forth by the Commission in *Central Hudson*.¹¹ For these reasons, the Commission should find that good cause exists to grant an effective date of November 9, 2012.

IV. 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:¹²

⁷ See Reimbursement Agreement, Section 1.0, definition of "Company Reimbursable Costs." See also *id.* at Section 11.1 (stating that National Grid "is not in the business of performing design or construction services for profit and is not receiving any fee or profit (as contrasted with cost reimbursement) for its performance of the work hereunder").

⁸ 18 C.F.R. § 35.11 (2012).

⁹ 18 C.F.R. § 35.3 (2012).

¹⁰ See Schedule B to the Reimbursement Agreement.

¹¹ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹² National Grid requests waiver of 18 C.F.R. § 385.203(b) to allow four persons to be added to the service list in this proceeding.

Amanda C. Downey
Counsel
National Grid USA
Service Company, Inc.
40 Sylvan Road
Waltham, MA 02451
Tel: 781-907-2136
amanda.downey@nationalgrid.com

Sean A. Atkins
Bradley R. Miliauskas
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Tel: 202-239-3300
Fax: 202-239-3333
sean.atkins@alston.com
bradley.miliauskas@alston.com

William L. Malee
Director, Transmission Commercial
National Grid USA
40 Sylvan Road
Waltham, MA 02451
(781) 907-2422
bill.malee@nationalgrid.com

Copies of this filing have been served on NYPA, the NYISO, and the New York State Public Service Commission.

V. Conclusion

For the reasons stated herein, National Grid respectfully requests that the Commission accept the Reimbursement Agreement effective as of November 9, 2012.

Respectfully submitted,

/s/ Amanda C. Downey

Amanda C. Downey
Counsel
National Grid USA
Service Company, Inc.
40 Sylvan Road
Waltham, MA 02451

*Attorney for Niagara Mohawk Power
Corporation d/b/a National Grid*