



September 14, 2010

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

**Re: National Grid  
Docket No. ER10-\_\_\_-000  
Purchase and Sale Agreement between  
Niagara Mohawk Power Corporation d/b/a National Grid and  
Luther Forest Technology Campus Economic Development  
Corporation**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”)<sup>1</sup> and Part 35 of the Commission’s regulations,<sup>2</sup> Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) submits for Commission acceptance the Purchase and Sale Agreement (“PSA”) between National Grid and the Luther Forest Technology Campus Economic Development Corporation (“Luther Forest EDC”) (together, the “Parties”).<sup>3</sup> The relevant provisions of the PSA concern the sale of four new 115 kV transmission service lines and a 115 kV substation, plus property and rights of way, from the Luther Forest EDC to National Grid. National Grid respectfully requests that the Commission make the PSA effective as of September 9, 2010.<sup>4</sup>

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. Part 35.

<sup>3</sup> The PSA is provided as Attachment A hereto.

<sup>4</sup> As discussed below, the requested September 9, 2010 effective date is prior to the date the transmission facilities to be sold from the Luther Forest EDC to National Grid will be energized and used for Commission-jurisdictional transactions. In these circumstances, Commission precedent provides that the transfer is not subject to Commission approval pursuant to Section 203 of the FPA (16 U.S.C. § 824b). *See, e.g., PacifiCorp*, 132 FERC ¶ 61,018, at P 20 (2010) (“The transfer of ownership in transmission facilities not yet in service are not subject to the Commission jurisdiction under section 203 of the FPA.”); *Entergy Mississippi, Inc.*, 117 FERC ¶ 61,200, at PP 22-23 (2006) (“We agree that the disposition of the facilities takes place before the facilities

## **I. Background**

Niagara Mohawk Power Corporation, a subsidiary of National Grid USA, is a public utility subject to the Commission's jurisdiction that owns transmission facilities located in the State of New York. National Grid's high-voltage New York transmission facilities have been placed under the operational control of the New York Independent System Operator, Inc. ("NYISO").

The Luther Forest EDC is a subsidiary of the Saratoga Economic Development Corporation, which is a private, not-for-profit corporation formed for the specific public purpose of promoting job creation and retention in Saratoga County, New York. The Luther Forest EDC receives funding from the State of New York, including \$37 million dedicated to electric transmission infrastructure improvements at the Luther Forest Technology Campus ("Technology Campus").

The Technology Campus is designed to be an innovative technology center and a significant employment opportunity for central New York. The Technology Campus consists of facilities and land covering over 1,300 acres in Saratoga County. The Technology Campus is intended to satisfy the special needs of facilities used to conduct research regarding nanotechnology and for the manufacturing of nanotechnology products (specifically, semiconductor wafers that are manufactured within a "clean room" environment). The Luther Forest EDC has a commitment from GlobalFoundries to build a computer chip plant at the campus, and that plant is currently under construction. The overall project is a \$4.2 billion capital investment that is designed to create almost 1,500 high-tech jobs and generate \$90 million per year in regional household earnings. The supply chain development is likely to create an additional 5,000 jobs in the region. The project is widely considered one of the most significant economic development projects in New York State history.

The nanotechnology focus of the Luther Forest Technology Campus results in unique electric power needs. Specifically, the Technology Campus is designed to have a redundant electric supply from separate grids to increase reliability. To that end, the Luther Forest EDC constructed four new 115 kV transmission service lines and a 115 kV substation to connect the Technology Campus to National Grid's transmission system. These new 115 kV transmission lines enter the campus in opposite directions to connect the campus to the National Grid transmission system in two different locations. The transmission lines create a high-voltage looped network which connects the eastern and western networks in National Grid's New York transmission system which are not currently connected in the vicinity of the Technology Campus. The Luther Forest EDC also acquired property and rights of way needed to construct these facilities.

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become jurisdictional. Thus, we will grant rehearing and not require that the Lease Agreement be filed under Section 203.").

The Luther Forest EDC employed professional engineering and construction companies to design and construct the new transmission facilities in accordance with standards established by National Grid and with Good Utility Practice. The Luther Forest EDC desired to have National Grid perform design review, permitting services, and construction inspection and acceptance testing services in connection with this project. National Grid agreed to do so pursuant to the terms and conditions of an Engineering, Permitting and Construction Services Agreement (“EPC Services Agreement”) between National Grid and the Luther Forest EDC, which was filed with and accepted by the Commission in 2009.<sup>5</sup>

The EPC Services Agreement accepted by the Commission noted that the Luther Forest EDC intended to transfer the four new 115 kV transmission service lines and the new 115 kV substation to National Grid under a separate transfer agreement upon completion of the project.<sup>6</sup> The PSA is the separate agreement by which these facilities will be transferred from the Luther Forest EDC to National Grid.

## **II. Notable Provisions of the PSA**

The PSA sets forth the terms and conditions for the transfer of land and assets from the Luther Forest EDC to National Grid, including the transfer of four new 115 kV transmission service lines and the new 115 kV substation. The PSA also sets forth the terms and conditions of various easements to be conveyed to National Grid in connection with the transfer. The PSA states that National Grid will pay the Luther Forest EDC a purchase price of one dollar (\$1.00) for the project.<sup>7</sup> Pursuant to Section 1.3 of the PSA, National Grid will also pay the federal and state income taxes assessed on the difference between the purchase price and the fair market value of the transferred assets.

Section 1.8 establishes the terms and conditions for obtaining regulatory approvals related to the PSA and the transactions contemplated therein. This provision establishes that the terms and conditions of the PSA are contingent upon regulatory approvals being granted.

Section 2.1 of the PSA establishes a series of closing dates for property to be transferred under the PSA. These phased closing dates allow the initial transmission facilities to be transferred in September 2010 to permit testing of certain customer plants being constructed at the Technology Campus while the construction of other facilities to be transferred under the PSA is still being completed.

Other provisions of the PSA address representations and warranties, liability and indemnification, and other standard provisions in commercial agreements of this nature.

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<sup>5</sup> See Services Agreement Filing, Docket No. ER09-744-000 (Feb. 20, 2009); Commission Letter Order, Docket No. ER09-744-000 (Mar. 17, 2009).

<sup>6</sup> See the Recitals to the EPA Services Agreement.

<sup>7</sup> PSA, Section 1.3.

### III. Cost-Related Issues

While the construction of transmission projects by a customer that are then transferred to a utility for a nominal fee of \$1 can raise issues under the Commission's transmission pricing policies, both the Commission and interested parties should recognize that this PSA does not involve any facilities constructed by a customer. The Luther Forest EDC is not now – and will not in the future be – a wholesale customer of National Grid or an entity taking transmission service from National Grid.<sup>8</sup> The Luther Forest EDC is a nonprofit economic development entity which is the vehicle through which the State of New York is promoting the addition of new industries in New York and new employment opportunities for the citizens of the State. The construction of the four new 115 kV transmission service lines and the new 115 kV substation was funded by the State of New York through the Luther Forest EDC. The state funding provided to the Luther Forest EDC to construct the infrastructure needed to attract new industries to the State of New York is analogous to the funding of projects provided pursuant to the American Recovery and Reinvestment Act of 2009.<sup>9</sup>

The funding of these transmission facilities by the State of New York will result in benefits to all customers that use National Grid's New York transmission system. The parallel eastern and western networks in National Grid's New York transmission system are not currently connected in the vicinity of the Technology Campus. Customers will receive reliability benefits resulting from the creation of new, looped transmission facilities connecting these eastern and western networks. As such, the funding of these transmission facilities by the State of New York and the transfer of these facilities to National Grid under the PSA will provide customer reliability benefits.

Even if the Commission were to treat the Luther Forest EDC as a customer of National Grid, the terms of the transfer contemplated by the PSA do not contravene the Commission's transmission pricing policies.<sup>10</sup> The Commission has explained that its relevant transmission pricing policies are based on the following three goals: “(1) to hold native load customers harmless, (2) to provide the lowest reasonable cost-based price to third-party firm transmission customers, and (3) to prevent the collection of monopoly rents by transmission owners and promote efficient transmission decisions.”<sup>11</sup> The arrangement described above is consistent with all three goals. First, the arrangement protects native load by ensuring that the rest of National Grid's customers do not pay the

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<sup>8</sup> National Grid's future customers located at the Technology Campus will pay no capital costs for the construction of the transmission facilities. The tenants of the Technology Campus will be industrial retail customers and will pay the same bundled retail rate paid by comparable industrial retail customers.

<sup>9</sup> Pub. L. 111-5.

<sup>10</sup> *See Inquiry Concerning the Commission's Pricing Policy for Transmission Services by Public Utilities under the Federal Power Act; Policy Statement*, FERC Stats. & Regs. ¶ 31,005 (1994).

<sup>11</sup> *Id.* at footnote 7.

capital costs of the Luther Forest EDC transmission facilities. These customers will enjoy the additional benefits of the new looped network facilities without bearing the full cost of such facilities. Second, the arrangement will provide low-cost service to third-party customers. Even though a company that locates to the Technology Campus will be a retail customer rather than a third-party wheeling customer, the goal of providing the lowest reasonable cost-based price will be respected due to the direct assignment of costs of the project to the Luther Forest EDC, which is a willing, state-funded, not-for-profit entity. Third, the arrangement will prevent the collection of monopoly rents because the capital costs of the transmission facilities will be paid by the Luther Forest EDC with the funding it receives from the State of New York.

In addition, the arrangement set forth above does not violate the Commission's policy against "and" pricing.<sup>12</sup> National Grid will not charge customers for the same facilities on both an incremental basis and an embedded basis. To the contrary, these pricing terms are consistent with Commission precedent that permits the direct assignment of costs for higher levels of service.<sup>13</sup>

National Grid believes it is appropriate to provide the Commission and other parties with information on the future rate implications of the transfer contemplated by the PSA. The capital costs of the four new 115 kV transmission service lines and the new 115 kV substation will not be included in National Grid's transmission rates. Instead, the \$1 purchase price will be included in National Grid's wholesale transmission revenue requirement. In the event that National Grid incurs an impact associated with income taxes due to the transfer, National Grid intends to recover such costs in its New York wholesale Transmission Service Charge ("TSC") formula rate, which is set forth in Attachment H to the NYISO OATT, and in its retail rate, which is regulated by the New York Public Service Commission.

Under Attachment H to the NYISO OATT and the settlement agreement concerning National Grid's New York TSC formula rate accepted by the Commission in Docket No. ER08-552 on July 22, 2009, National Grid recalculates the inputs to the TSC formula rate by June 14<sup>th</sup> of each year. This annual update is posted on the NYISO website and served on interested parties. Interested parties then have up to 150 days after the publication date to review the annual update and make any challenges to the annual update. Attachment H also sets forth a detailed process for resolving any challenges to the annual update. To the extent any of National Grid's TSC customers have any questions about the inclusion of any costs related to the Luther Forest EDC transmission

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<sup>12</sup> See *id.* at 31,146.

<sup>13</sup> See *Entergy Services Inc.*, 115 FERC ¶ 61,095, *order on reh'g*, 116 FERC ¶ 61,275, at PP 90, 117 (2006). The pricing terms are also consistent with the NYISO Open Access Transmission Tariff ("OATT") approach to generator interconnection, under which generator interconnection customers are directly assigned network upgrade costs, with no credit against transmission charges. See NYISO OATT, Attachment S, Section 25.1.1.

facilities in National Grid's transmission rates, the Attachment H annual update process will provide those customers with the appropriate forum to raise such questions.

The Commission should find that the arrangements set forth in the PSA are just and reasonable and should accept the PSA as filed.

#### **IV. Effective Date and Request for Waiver of Prior Notice Requirement**

National Grid respectfully requests waiver, pursuant to Section 35.11 of the Commission's regulations (18 C.F.R. § 35.11), of the 60-day prior notice requirement set forth in Section 35.3 of the Commission's regulations (18 C.F.R. § 35.3), in order to permit the PSA to become effective as of September 9, 2010, *i.e.*, the date that the PSA was executed by the Parties. National Grid is authorized to state that the Luther Forest EDC supports the waiver and the requested effective date. This effective date is necessary and appropriate to facilitate the schedule to bring new industries to the Technology Campus notwithstanding the fact that certain terms in the PSA took slightly longer than originally anticipated to finalize. Specifically, the requested September 9 effective date will allow the initial transfer of transmission facilities under the PSA to go into effect prior to the date that those transmission facilities were energized, September 10, 2010. Allowing the transfer of these transmission facilities prior to energization will ensure compliance with New York state law, which prevents other entities from serving retail customers in National Grid's service territory.

No harm will result to any entity from the September 9, 2010 effective date for the PSA. Indeed, customers will benefit from the requested effective date. Once the initial transfer of transmission facilities to National Grid has occurred and the facilities are energized, the industrial retail customers at the Technology Campus will be able to proceed with testing of their own facilities, consistent with a schedule which will allow these customers to commence full commercial operations early in 2012. As noted above, once all of the transferred transmission facilities are energized, all of National Grid's customers in New York will enjoy reliability benefits resulting from the creation of new, looped transmission facilities connecting eastern and western networks in National Grid's New York transmission system which are not currently connected in the vicinity of the Technology Campus.

For all these reasons, granting the requested waiver is appropriate. National Grid does not, however, request that the Commission issue an order accepting the PSA on an expedited basis.

#### **V. Service Agreement Designation of the PSA**

Pursuant to the Commission's directives in *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008), and consistent with NYISO practice, National Grid has designated the PSA as Service Agreement No. 1631 under the NYISO OATT.

## **VI. Attachments**

In addition to this transmittal letter, the instant filing includes the following attachment:

Attachment A            Purchase and Sale Agreement between National Grid and the Luther Forest Technology Campus Economic Development Corporation

## **VII. 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 with respect to this docket:

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Copies of this filing have been served upon the Luther Forest EDC, the New York Public Service Commission, and the NYISO.

Please contact the undersigned with any questions. Thank you for this assistance in this matter.

Respectfully submitted,

*/s/ Dan Galaburda* \_\_\_\_\_

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