

March 13, 2013

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

**Re: Niagara Mohawk Power Corporation, d/b/a National Grid
Docket No. ER13-____-000
Large Generator Interconnection Agreement with
Indeck-Yerkes Limited Partnership 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 Large Generator Interconnection Agreement (“LGIA”) between National Grid and Indeck-Yerkes Limited Partnership (“Indeck-Yerkes”). The attached LGIA (the “Indeck-Yerkes LGIA”) is designated as Service Agreement No. 1970 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).

The Indeck-Yerkes LGIA is an undisputed agreement between National Grid and Indeck-Yerkes for the continued provision of interconnection service to the Indeck-Yerkes Energy Center. National Grid requests that the Commission accept the Indeck-Yerkes LGIA effective as of the date it was executed, December 26, 2012.

I. Background

National Grid is a public utility with a transmission system in the State of New York. Indeck-Yerkes owns and operates the Indeck-Yerkes Energy Center, a combined cycle, natural gas and oil fired generating facility with a capacity of 52.6 MW located in Tonawanda, Erie County, New York. Indeck-Yerkes has owned and operated the Indeck-Yerkes Energy Center since the 1980s.

National Grid and Indeck-Yerkes are parties to a power put option agreement regarding the Indeck-Yerkes Energy Center, including interconnection terms, which was filed in December 2007 and accepted by the Commission in January 2008, in Docket No.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

ER08-295. Pursuant to that existing power put option agreement, National Grid provides interconnection service to the Indeck-Yerkes Energy Center using the transmission system owned by National Grid.

II. The Indeck-Yerkes LGIA

National Grid and Indeck-Yerkes have entered into the Indeck-Yerkes LGIA to provide for continued interconnection service to the Indeck-Yerkes Energy Center using the transmission system owned by National Grid, pursuant to the terms of the Indeck-Yerkes LGIA. The parties intend the Indeck-Yerkes LGIA to supersede and replace the power put option agreement for the Indeck-Yerkes Energy Center that was accepted in Docket No. ER08-295, effective as of December 26, 2012.³

With minor variations, the Indeck-Yerkes LGIA follows the *pro forma* LGIA set forth in Appendix 6 of Attachment X to the NYISO OATT. The main difference between the Indeck-Yerkes LGIA and the NYISO *pro forma* is that the Indeck-Yerkes LGIA is a two-party agreement between the transmission owner (National Grid) and the generation facility owner (Indeck-Yerkes), whereas the *pro forma* NYISO LGIA is a three-party agreement among the transmission owner, the generation facility owner, and the NYISO.⁴

Commission precedent supports acceptance of the Indeck-Yerkes LGIA as a two-party agreement. In proceedings on two-party LGIAs between National Grid and generation subsidiaries of Alliance Energy that were modeled on the *pro forma* NYISO LGIA (collectively, the “Alliance Energy LGIAs”),⁵ the Commission found that the NYISO did not need to be a party to the two-party Alliance Energy LGIAs, for the following reasons:

[T]hey are not the type of new generator interconnection agreements envisioned by Order No. 2003; rather they are more like after-the-fact interconnection operating agreements that govern the terms, conditions, and rates associated with the continued operation and maintenance of previously constructed facilities built to accommodate the interconnection of the Alliance generators to Niagara Mohawk’s transmission system. Accordingly, we will not require NYISO to be a signatory to these unexecuted IAs.⁶

³ National Grid will submit a separate filing to terminate the existing power put option agreement that was accepted in Docket No. ER08-295.

⁴ Attachment B to this filing shows the differences between the Indeck-Yerkes LGIA and the *pro forma* NYISO LGIA in black-line format. For example, the term “NYISO” has been deleted from the Indeck-Yerkes LGIA because the NYISO is not a party to it, and the Indeck-Yerkes LGIA refers to National Grid as the “Transmission Owner” rather than as the “Connecting Transmission Owner.”

⁵ The Alliance Energy LGIAs were filed and accepted pursuant to Commission proceedings in Docket Nos. ER07-1019, ER07-1020, and ER07-1021.

⁶ *Niagara Mohawk Power Corp. d/b/a National Grid*, 121 FERC ¶ 61,104, at P 22 (2007) (citation omitted). The Commission also stated that “any interconnections involving the interconnection of a new generating facility or involving increases in capacity or material modifications to the operating characteristics of existing generating facilities interconnected to Niagara Mohawk’s or any other NYISO member’s transmission system will require the NYISO to be a signatory to that IA.” *Id.* However, the Indeck-Yerkes

Like the Alliance Energy LGIAs, the Indeck-Yerkes LGIA is not a new generator interconnection agreement of the type envisioned by Order No. 2003. Instead, the Indeck-Yerkes LGIA governs the terms, conditions, and rates associated with the continued operation and maintenance of the previously constructed facilities built to accommodate the interconnection of the existing Indeck-Yerkes Energy Center to the National Grid transmission system. Therefore, the Commission should accept the Indeck-Yerkes LGIA as a two-party agreement.

The *pro forma* NYISO LGIA contains a number of provisions that are applicable to new interconnections but are not applicable to existing interconnections, such as the interconnection for the Indeck-Yerkes Energy Center. In almost all cases, however, National Grid and Indeck-Yerkes have agreed to retain those provisions in the Indeck-Yerkes LGIA. This approach is consistent with the approach authorized in *PJM Interconnection, L.L.C.*⁷ In that order, the Commission rejected a proposal to delete inapplicable provisions from an LGIA, stating that “[i]f a provision of a contract is not applicable, it is not applicable,” and concluding that “[u]nless confusion is likely, modifications to a pro forma agreement that ‘clarify’ matters not in doubt are not necessary.”⁸ National Grid and Indeck-Yerkes have added Appendix H to the Indeck-Yerkes LGIA to list the *pro forma* NYISO LGIA provisions that the parties agree are not applicable to the Indeck-Yerkes LGIA.

National Grid and Indeck-Yerkes have also included clarifying provisions in the Indeck-Yerkes LGIA that differ from provisions in the *pro forma* NYISO LGIA. In Article 2.4.3 of the Indeck-Yerkes LGIA, which addresses the responsibility for costs associated with the removal, relocation, or other disposition or retirement of Attachment Facilities, the parties have added the phrase “or previous interconnection agreements between Developer and Transmission Owner,” in order to ensure that the cost allocation provisions of Article 2.4.3 apply to the facilities constructed under the power put option agreement Niagara Mohawk and Indeck-Yerkes that was filed and accepted in Docket No. ER08-295. In Article 27.2, the parties have agreed to have a third arbitrator selected by the President of the Bar Association of Erie County, subject to the agreement of both parties, because this is a two-party agreement. In Article 27.4 of the Indeck-Yerkes LGIA, the parties have changed the allocation of costs for a single arbitrator from one-third per party to one-half per party, because the Indeck-Yerkes LGIA is a two-party rather than a three-party agreement. In Appendix E to the Indeck-Yerkes LGIA, the parties have replaced the developer certification statement concerning Trial Operations and commencement of Commercial Operations with a statement that the parties agree that, for purposes of the Indeck-Yerkes LGIA, the Commercial Operation Date will be December 1989. The purpose of this modification is to specify the date on which the Indeck-Yerkes Energy Center was

Energy Center is already interconnected to the transmission system owned by National Grid, and there has been no increase in capacity or material modifications to the operating characteristics of the Indeck-Yerkes Energy Center. Therefore, the NYISO does not need to be a signatory to the Indeck-Yerkes LGIA.

⁷ 111 FERC ¶ 61,098 (2005).

⁸ *Id.* at P 14.

interconnected and began Commercial Operations. Each of the Alliance Energy LGIAs accepted by the Commission contained similar clarifying provisions.

Appendix G to the Indeck-Yerkes LGIA includes provisions regarding operation and maintenance services that replace the provisions in Appendix G to the *pro forma* NYISO LGIA regarding interconnection requirements for a wind generating plant. Appendix G to the *pro forma* NYISO LGIA is not applicable because the Indeck-Yerkes Energy Center is a combined cycle, natural gas and oil-fired plant rather than a wind generating plant. The provisions in Appendix G to the Indeck-Yerkes LGIA are similar to provisions regarding operation and maintenance services that the Commission has accepted in other LGIAs.⁹

The Indeck-Yerkes LGIA also contains several provisions that are modeled on provisions in the Large Generator Interconnection Procedures (“LGIP”) contained in Attachment X to the NYISO OATT. The definitions of the terms “Network Access Interconnection Service,” “Transmission Owner,” and “Transmission Owner’s Attachment Facilities” contained in Article 1 of the Indeck-Yerkes LGIA are similar to, respectively, the definitions of the terms “Energy Resource Interconnection Service,” “Connecting Transmission Owner,” and “Connecting Transmission Owner’s Attachment Facilities” contained in Section 30.1 of the NYISO LGIP. In addition, Article 9.5.3 of the Indeck-Yerkes LGIA, which addresses payment for reactive power, is based on Section 9.5.3 of the NYISO LGIP. Each of the Alliance Energy LGIAs accepted by the Commission contained provisions like those described above.

III. Effective Date and Request for Waiver

Pursuant to Section 35.11 of the Commission’s regulations,¹⁰ 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 under the agreements has commenced,¹¹ in order to allow the Indeck-Yerkes LGIA to become effective as of December 26, 2012.

The parties have agreed that the Indeck-Yerkes LGIA “shall become effective upon execution by the Parties, subject to acceptance by FERC.”¹² The parties executed the Indeck-Yerkes LGIA on December 26, 2012. Granting the requested waiver will permit the Indeck-Yerkes LGIA to become effective as of the date agreed upon by the parties and will not result in prejudice to any party. For these reasons, the Commission should find that good cause exists to grant an effective date of December 26, 2012.

⁹ For example, see pages A-7 through A-13 of Appendix A to the LGIA filed in Docket No. ER12-1869-000, accepted by Commission letter order on June 29, 2012.

¹⁰ 18 C.F.R. § 35.11.

¹¹ 18 C.F.R. § 35.3.

¹² Indeck-Yerkes LGIA, Article 2.1.

IV. Documents Enclosed

In addition to this filing letter, attached are the following documents:

- i. The Indeck-Yerkes LGIA (Service Agreement No. 1970 under the NYISO OATT), provided in clean format (Attachment A)
- ii. Black-lined revisions showing the differences between the Indeck-Yerkes LGIA and the *pro forma* NYISO LGIA (Attachment B)

V. 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:¹³

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

¹³ 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.

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VI. Conclusion

For the reasons stated herein, National Grid respectfully requests that the Commission accept the Indeck-Yerkes LGIA effective as of December 26, 2012.

Respectfully submitted,

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