nationalgrid

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April 23, 2013

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

Re: ***Niagara Mohawk Power Corporation***
Docket No. ER13-_____-000
Original Service Agreement No. 1988
Interconnection Agreement between Niagara Mohawk Power Corporation and WM Renewable Energy, L.L.C.

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d, and Part 35 of the regulations of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. Part 35, National Grid USA ("National Grid"), on behalf of its affiliate Niagara Mohawk Power Corporation d/b/a National Grid ("Niagara Mohawk"), submits for filing a Small Generator Interconnection Agreement entered into on September 8, 2008 (the "Agreement") between Niagara Mohawk and WM Renewable Energy, L.L.C. ("WMRE"), designated as Service Agreement No. 1988 under the New York ISO Inc.'s ("NYISO") Open Access Transmission Tariff ("OATT").[1]. National Grid requests an effective date of June 23, 2013 for the Agreement.

I. Introduction

As explained in more detail below, National Grid has determined that there is a significant likelihood that the Agreement became subject to the Commission's jurisdiction on January 23, 2009, the date WMRE self-certified the plant as a Qualifying Facility ("QF"). Consistent with Commission precedent on late-filed agreements, the instant filing provides supporting information concerning the jurisdictional terms included in the Agreement, including background information and information concerning the classification of the facilities.

As the Commission is aware, Niagara Mohawk previously underwent a Commission audit to evaluate whether it was fully complying with the requirements for filing of rate

[1] The Agreement is titled Small Generator Interconnection Agreement because its terms and conditions are based upon, and are largely identical to, the terms and conditions of the Commission-approved pro forma SGIA that was set forth in NYISO OATT, Att. Z at the time the Agreement was finalized. Niagara Mohawk uses this "modified SGIA" to document the interconnection of generators when FERC jurisdiction does not attach or the NYISO is not required to be a party to the interconnection agreement. Differences between the pro forma SGIA and the "modified SGIA" include the fact that the former is a 3-party agreement including NYISO, while the latter is written to be bilateral between Niagara Mohawk and the generator.

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schedules and tariffs.[2] Over the course of that audit, and with significant input and assistance from Commission Audit Staff, National Grid developed a comprehensive internal review process to confirm that all active Niagara Mohawk contracts subject to Commission jurisdiction had been submitted for Commission review. At the time the WMRE Agreement was executed in September 2008, it was not required to be filed with the Commission under precedent applicable to non-QF generators that are the first to be interconnected to a utility's distribution facilities.

During the relevant time period, National Grid understood that both QF and non-QF generators interconnecting to distribution facilities over which no previous jurisdictional transactions had been conducted were not jurisdictional to the Commission (referred to hereinafter as the "first-in-line rule"). This assumption was based on National Grid's understanding of the jurisdictional rules articulated in the Commission's Order Nos. 2003 and 2006.[3] That is, National Grid understood that Order Nos. 2003 and 2006 stood for the proposition that all generators, including QFs, were subject to the first-in-line rule.[4] The Niagara Mohawk review processes put in place as a result of the 2007 Commission audit worked as intended and flagged the Agreement as requiring a filing analysis, and it was determined that the Agreement did not need to be filed.

At the time the Agreement was executed in 2008, the Madison plant was not a certified QF. Consequently, given the fact that the plant was the first to be interconnected to its distribution facilities, National Grid's review of the Agreement led it to conclude that it did not need to be filed with the Commission under applicable "first-in-line" precedent. WRME's subsequent self-certification of the plant as a QF in January 2009 was never communicated to

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[2] *Niagara Mohawk Power Corp*., 121 FERC ¶ 61,104 at PP 24-25 (2007). On January 21, 2009, the Commission issued a letter order in Docket No. PA08-7 accepting a final report on this audit.

[3] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert denied*, 552 U.S. 1230 (2008); *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, 111 FERC ¶ 61,220 at P 516 ("Order No. 2006"), *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), clarified, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006).

[4] For example, in Order No. 2003, the Commission stated:

> Regarding EEI's comment about the Commission's authority over an interconnection for the purpose of making sales of electric energy for resale using "distribution" facilities when the energy neither crosses state lines nor enters the interstate transmission system, this question is moot because the Commission is not here extending its jurisdiction to any facility that is not already under its jurisdiction, pursuant to a Commission-filed OATT at the time the interconnection request is made. . . . this Final Rule applies only where the Commission already has jurisdiction at the time interconnection is requested . . . .

Order No. 2003, PP 808-09. Elsewhere, the Commission noted that facilities "subject to an OATT" include: "an interconnection with dual use "distribution" facilities that already serve a Commission-jurisdictional transmission function (and are subject to an OATT) for the purpose of facilitating a jurisdictional wholesale sale of electricity is subject to Order No. 2003." Order No. 2003-B, P 14. The cited discussion appeared to make no distinction between QF and non-QF generators. National Grid also reasoned that a generator's status as a QF would make no difference to whether its "energy crosses state lines or enters the interstate transmission system."

National Grid, but rather discovered by National Grid through an independent search of Commission records as part of a supplemental review undertaken by National Grid.

Subsequently, in connection with National Grid's review of New England contracts, National Grid consulted with Commission Staff regarding a proposed clarification of a single case that appeared to reject the first-in-line rule for QFs[5], and National Grid thus became aware of the significant likelihood that the Commission's current policy is to exclude QFs from this rule. Consequently, while prior to its discussions with Staff, National Grid did not believe that the Agreement was jurisdictional or needed to be filed even after the plant was certified as a QF, guidance from Commission Staff on the intended scope of the first-in-line rule has changed this conclusion. National Grid is thus filing this agreement with the Commission today as part of its effort to assure full compliance with all relevant Commission rules and requirements.[6]

National Grid notes that, consistent with the *Prior Notice* line of cases concerning late-filed agreements,[7] Niagara Mohawk must refund the time value of any revenues collected under the jurisdictional terms of the Agreement from the period when the Agreement became subject to the Commission's jurisdiction until the date the Commission authorizes the charges under the Agreement. However, as National Grid has collected no revenues under the Agreement during the period when Commission jurisdiction attached, we respectfully submit that no refunds are due.

II. Background and Discussion of Jurisdictional Issues

Niagara Mohawk, a subsidiary of National Grid USA, is a public utility subject to the Commission's jurisdiction that owns transmission facilities located in New York. Niagara Mohawk's New York transmission facilities have been placed under the operational control of the NYISO.

WMRE owns a generator located in Canastota, NY with a net capacity output of approximately 1.5 MW (the "Madison Landfill Project"). The Madison Landfill Project was certified as a QF on January 23, 2009.[8]

The Agreement, which reflects in nearly all respects the provisions of the pro forma SGIA under the NYISO tariff,[9] provides for the construction and operation of facilities interconnecting WMRE with Niagara Mohawk's 13.2 Kv distribution facilities, as well as terms governing metering, cost responsibility, etc.

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5 *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,087 (2008).

6 The *Prior Notice Order* indicates that agreements should be filed with the Commission if the obligation to file such agreements is uncertain. *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,979 ("*Prior Notice Order*"), *clarified on reh'g*, 65 FERC ¶ 61,081 (1993).

7 *Prior Notice Order* at 61,979-80.

8 *WM Renewable Energy L.L.C.*, Notice of Self-Certification, Docket No. QF09-181-000 (Jan. 23, 2009). As noted above, this self-certification was not sent to National Grid but rather was identified by National Grid through an independent search of Commission records.

9 *See* NYISO OATT, Sec. 32, Att. Z.

Section 205 of the FPA authorizes the Commission to require utilities to file all rates and charges that are "for or in connection with," and all agreements that "affect or relate to," jurisdictional transmission or sales of electric energy.[10] The Commission has provided guidance regarding some of the specific agreements that must be filed under this authority. The Commission has held that "[i]nterconnection agreements between utilities come within section 205 of the FPA." *Prior Notice Order* at 61,991. The Commission explained: "the Commission's jurisdiction over the [interconnection] agreement is limited to the provisions of the agreement that facilitate the exchange of energy between the parties, i.e., the sale of electric energy at wholesale in interstate commerce." *PSI Energy, Inc.*, 56 FERC ¶ 61,237, n.4 (1991). As the activities covered by the provisions of the Agreement described above all relate to activities needed to facilitate the delivery of the WMRE plant's energy to the grid for sales at wholesale in interstate commerce, National Grid believes that these provisions likely bring the Agreement within the Commission's jurisdiction and make it subject to the Commission's filing requirements.

On September 8, 2008, the date the Agreement was executed, WMRE was not a QF but had already expressed its intention to sell electricity to third parties on the basis of statements made by WMRE in its interconnection application papers, submitted to National Grid in December of 2007.[11]

National Grid believes that the Agreement likely became subject to Commission jurisdiction on January 23, 2009, the date on which WMRE self-certified the plant as a QF. Prior to the QF certification (*i.e.,* when the Agreement was initially evaluated by National Grid), there was no requirement to file the Agreement under the Commission's "first-in-line rule." Based on the Commission staff guidance described above, it appears that the "first-in-line rule" no longer applied to the Agreement once the plant was certified as a QF.

Under Commission policy, "[w]hen an electric utility is obligated to interconnect under Section 292.303 of the Commission's Regulations, that is, when it purchases the QF's *total output*, the relevant state authority exercises authority over the interconnection and the allocation of interconnection costs."[12]

The Commission has clarified that where a contract provides a QF with the right to make wholesale sales of its output to a third party, or where the QF otherwise indicates to the interconnected utility that it intends to do so, the Commission exercises exclusive jurisdiction over the interconnection between the QF and the directly interconnected utility from the effective date of the applicable contract or manifestation of intent, even where the QF has not engaged in third party sales and where the interconnected utility is still purchasing the full output of the QF.[13] However,

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[10] 16 U.S.C. §§ 824d(a), -(c).

[11] *See* Attachment C, p.3.

[12] Order No. 2003 at P 813 (emphasis added).

[13] In Order No. 2003, the Commission advised that:

> where a host utility is not given notice that third-party sales of output are occurring or are planned (e.g., through a QF's request for wheeling service or a contract providing the QF an express right to sell output to third parties), we will assume that all sales of a QF's output are being made to the host utility and therefore that Commission jurisdiction will not attach.

Florida Power & Light Company, 133 FERC ¶ 61,121 at P 22 (2010). Accordingly, under applicable Commission precedent, the Agreement's interconnection terms were subject to Commission jurisdiction when the generator was certified as a QF.[14]

III. Description of the Interconnection Facilities

Attachment 2 to the Agreement describes the Interconnection Facilities as two switches, a breaker, metering and associated RTUs, overhead conductoring, a sectionalizing recloser, fuse replacements, and bi-directional voltage regulator controls.[15] A one-line diagram illustrating the configuration of these interconnection facilities is provided in Attachment C. No additional facilities or components have been added to the interconnection facilities identified in the Agreement since they were placed into service, and no portion of them has been removed from service since that time.

IV. Charges Authorized Under the Agreement Are Just and Reasonable

The Agreement assigns to WMRE the cost of the Interconnection Facilities described above, in the amount of $165,000, as well as the Annual Operation and Maintenance Expense of $5,000 per year. Under Agreement Secs. 4.1 and 4.2, which are similar to the corresponding sections of the Commission-approved pro forma SGIA,[16] the full cost of both interconnection facilities and upgrades to distribution facilities are allocable to the interconnection customer. Because WMRE's Madison Landfill generator interconnected to distribution facilities only, all of

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> this Final Rule applies when the owner of the QF seeks interconnection to a Transmission System to sell any of the output of the QF to a third party. This jurisdiction applies to a new QF that plans to sell its output to a third party, and to an existing QF interconnected to a Transmission System that historically sold its total output to an interconnected utility or on-site customer and now plans to sell output to a third party.

Order 2003 at P 814. *See also Niagara Mohawk Power Corporation*, 121 FERC ¶ 61,183 at P 13 (2007), *order on reh'g*, 123 FERC ¶ 61,061 (2008).

[14] As discussed above, there is also uncertainty concerning the extent to which the Commission's "first-in-line" rule announced in Order Nos. 2003 and 2006 would apply in these circumstances.

[15] In addition, please note that the Interconnection Study attached to the Agreement as Attachment 3 is a November 2008 revision, which we have substituted for the May 2008 version appended to the Agreement when it was executed. We have made this substitution both because the November 2008 version is the most current version of the Study, and also because the image quality of the May 2008 version in National Grid's records is poor.

[16] The main difference between the Agreement and the pro-forma Agreement in terms of cost allocation is that the latter provides that "Costs associated with Interconnection Facilities may be shared with other entities that may benefit from such facilities by agreement of the Interconnection Customer, such other entities, the NYISO, and the Connecting Transmission Owner." Pro-forma Agreement, Sec. 4.1.1. However, because no "other entities" benefit from the WMRE Interconnection Facilities, and because no such cost-sharing agreement has been entered into here, this provision is not applicable.

the Interconnection Facilities described above are either interconnection facilities or upgrades to distribution facilities, and thus properly allocable to WMRE. In view of the foregoing, National Grid respectfully submits that the allocation of charges authorized under the Agreement is just and reasonable.

V. No Jurisdictional Charges Have Been Collected Under the Agreement During the Relevant Period

As a remedy for failure of a utility to file with the Commission on a timely basis an agreement containing jurisdictional rates and charges, the *Prior Notice Order* requires the utility to refund to its customer the time value of the revenues collected under such agreement, calculated pursuant to Section 35.19a of the Commission's regulations (18 C.F.R. § 35.19a), for the period that a jurisdictional rate was collected without Commission authorization.[17]

The Agreement does authorize Niagara Mohawk to collect from WMRE the cost of constructing the interconnection facilities, as well as ongoing interconnection costs such as O&M. Agreement, Secs. 4.1 and 4.2. However, no revenues have been collected by Niagara Mohawk nor paid by WMRE during the period when Commission jurisdiction has attached. Thus, while it acknowledges that the filing of the Agreement is out of time, National Grid respectfully submits that no time value refunds are due thereunder.

VI. Attachments

Attachment A	Small Generator Interconnection Agreement between Niagara Mohawk and WMRE, dated December September 8, 2008
Attachment B	One-line diagram illustrating configuration of interconnection facilities[18]
Attachment C	Interconnection Request for Madison County Landfill Project

VII. Commission Regulations

This filing substantially complies with the requirements of Part 35 applicable to filings of this kind. Thus, National Grid requests waiver of any applicable requirement of part 35 for which it has not specifically requested waiver or supplied data so that this filing may become effective as proposed.

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[17] "If a utility files an otherwise just and reasonable cost-based rate after new service has commenced, or if waiver is denied and the proposed rate goes into effect after service has commenced, we will require the utility to refund to its customers the time value of the revenues collected, calculated pursuant to section 35.19a of our regulations (18 C.F.R. 35.19a) for the entire period that the rate was collected without Commission authorization." *Prior Notice Order* at 61,979.

[18] Please note that Attachment B's title, Canastota Renewable Energy Facility, is an alternate name for, and refers to, the WR Madison generating facility discussed in this letter.

VIII. Communications

Please place the names of the following persons on the official service list established by the Secretary in this proceeding:[19]

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

[19] National Grid respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) to allow more than two persons to be added to the service list in this proceeding.

Please feel free to contact the undersigned with any questions concerning the instant filing. Thank you for your assistance in this matter.

Respectfully submitted,

/s/ Daniel Galaburda

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Attachments