

June 14, 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  
Service Agreement No. 2006 Under the NYISO OATT  
Small Generator Interconnection Agreement with  
Synergy Biogas LLC**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”),<sup>1</sup> and Part 35 of the regulations of the Federal Energy Regulatory Commission (“Commission”),<sup>2</sup> Niagara Mohawk Power Corporation d/b/a National Grid (“Niagara Mohawk”), submits for filing a Small Generator Interconnection Agreement (the “Agreement”) between Niagara Mohawk and Synergy Biogas LLC (“Synergy”), designated as Service Agreement No. 2006 under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”).<sup>3</sup> Niagara Mohawk requests that the Commission accept the Agreement effective 61 days after the date of this filing, *i.e.*, August 14, 2013.

## **I. Background**

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

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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 Agreement is captioned as a Small Generator Interconnection Agreement (“SGIA”) because its terms and conditions are based upon the terms and conditions of the Commission-approved *pro forma* SGIA that was set forth in Appendix 9 of Attachment Z to the NYISO OATT at the time the Agreement was finalized. Niagara Mohawk uses this “modified SGIA” to document the interconnection of generators when Commission 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 three-party agreement including NYISO, while the latter is written to be bilateral between Niagara Mohawk and the generator.

Synergy owns a farm waste-fueled generating plant located in Wyoming County, New York with a nameplate capacity of approximately 1.4 MW (the “Plant”). On July 2, 2010, Synergy self-certified the Plant as a Qualifying Facility (“QF”).<sup>4</sup> The Plant began commercial operation on December 30, 2011.

The Agreement was entered into on August 30, 2010 and amended on December 15, 2011.<sup>5</sup> The Agreement provides for the construction and operation of facilities interconnecting the Plant with Niagara Mohawk’s 13.2 kV distribution facilities, as well as terms governing metering, cost responsibility, *etc.*

On December 29, 2011, Niagara Mohawk and Synergy entered into a power purchase agreement (“PPA”) pursuant to which Synergy agreed to sell and deliver, and Niagara Mohawk agreed to purchase and accept, all of the excess electric output produced by the Plant that was not used by Synergy.<sup>6</sup> On August 20, 2012, Synergy sent Niagara Mohawk a notice stating that Synergy elected to terminate the PPA effective September 1, 2012.<sup>7</sup> Thereafter, Synergy could begin selling the output of the Plant to entities other than Niagara Mohawk at wholesale in interstate commerce.

## II. Filing Obligation

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.<sup>8</sup> The Commission has provided guidance regarding some of the specific agreements that must be filed under this authority. The Commission has found that “[i]nterconnection agreements between utilities come within section 205 of the FPA.”<sup>9</sup> The Commission has also explained that its jurisdiction over an 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.”<sup>10</sup> As the activities covered by the provisions of the Agreement described above all relate to activities needed to facilitate the delivery of the Plant’s energy to the grid for sales at wholesale in interstate commerce, Niagara Mohawk believes that these provisions likely bring the Agreement within the Commission’s jurisdiction and make it subject to the Commission’s filing requirements.

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<sup>4</sup> Synergy Biogas, LLC, Notice of Self-Certification, Docket No. QF10-590-000 (July 28, 2010).

<sup>5</sup> The Agreement and the amendment thereto are provided in Attachments A and B, respectively, to this filing. A copy of the Agreement incorporating the amendment is provided in Attachment C.

<sup>6</sup> The PPA is provided in Attachment D to this filing.

<sup>7</sup> The notice of termination of the PPA is provided in Attachment E to this filing.

<sup>8</sup> 16 U.S.C. §§ 824d(a), -(c).

<sup>9</sup> *Prior Notice and Filing Requirements Under Section II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,991 (1993).

<sup>10</sup> *PSI Energy, Inc.*, 56 FERC ¶ 61,237, at 61,908 n.4 (1991).

Specifically, Niagara Mohawk believes that the Agreement became Commission-jurisdictional on August 20, 2012, when Niagara Mohawk received notification that Synergy elected to terminate the PPA and thereby be able to begin making sales to a third party buyer. Pursuant to Commission policy, “[w]hen an electric utility . . . purchases the QF’s total output, the state has authority over the interconnection and the allocation of interconnection costs. But when an electric utility interconnecting with a QF does not purchase all of the QF’s output and instead transmits the QF’s power in interstate commerce, the Commission exercises jurisdiction over the rates, terms, and conditions affecting or related to such service, such as interconnections.”<sup>11</sup> Further, where the interconnected utility is on notice that a QF plans to make wholesale sales of its output to a third party, either by way of contractual provisions or otherwise, the Commission has exclusive jurisdiction over the interconnection between the QF and the interconnected utility from the date the utility receives this notice, even where the QF has not engaged in third party sales or where the interconnected utility is still purchasing the full output of the QF.<sup>12</sup> On August 20, 2012, Niagara Mohawk was put on notice that Synergy elected to terminate the PPA effective September 1, 2012, and therefore Niagara Mohawk was also put on notice that Synergy could begin making sales to third party buyers in the future. Therefore, Commission jurisdiction attached to the Agreement as of August 20, 2012.

### **III. The Charges Authorized Under the Agreement Are Just and Reasonable**

The Agreement states that Niagara Mohawk will bill Synergy for the design, engineering, construction, and procurement costs of interconnection facilities and upgrades contemplated by the Agreement.<sup>13</sup> The Agreement also states that Synergy is responsible for its share of all reasonable expenses, including overheads, associated with operating, maintaining, repairing, and replacing the Niagara Mohawk interconnection facilities defined in the Agreement.<sup>14</sup> Since the Agreement became subject to the Commission’s jurisdiction, Niagara Mohawk has collected no charges from Synergy for operating, maintaining, repairing, and replacing Niagara Mohawk interconnection facilities.<sup>15</sup>

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<sup>11</sup> *Standardization of Small Generator Interconnection Agreement and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, at P 516 (citation omitted) (2005) (“Order No. 2006”).

<sup>12</sup> In Order No. 2006, the Commission explained that:

This Final Rule applies when the owner of the QF seeks interconnection with a facility subject to the OATT to sell any of the output of the QF to a third party. This applies to a new QF that plans to sell any of its output to a third party and to an existing QF interconnected with an electric utility or on-site customer that decides in the future to sell any of its output to a third party.

*Id.* at P 517. *See also Florida Power & Light Co.*, 133 FERC ¶ 61,121, at P 22 (2010).

<sup>13</sup> Agreement, Article 6.1.1.

<sup>14</sup> Agreement, Article 4.1.2.

<sup>15</sup> Niagara Mohawk has invoiced Synergy for its actual costs in providing interconnection service to Synergy but has received no payment since the Agreement became subject to the Commission’s jurisdiction on August 20, 2012. Niagara will refund the interest, at the FERC rate (*see* 18 C.F.R. § 35.19a), on any charges which are collected after the date the Agreement became subject to the Commission’s jurisdiction and prior to the Commission’s approval of the Agreement.

#### **IV. Effective Date**

Niagara Mohawk requests that the Commission accept the Agreement effective 61 days after the date of this filing, *i.e.*, August 14, 2013.

#### **V. Attachments**

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

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|--------------|--|
| Attachment A | Agreement between Niagara Mohawk and Synergy dated August 30, 2010             |
| Attachment B | Amendment to the Agreement dated December 15, 2011                             |
| Attachment C | Agreement with the Amendment incorporated therein (Service Agreement No. 2006) |
| Attachment D | PPA between Niagara Mohawk and Synergy dated December 29, 2011                 |
| Attachment E | Synergy notice of termination of PPA dated August 20, 2012                     |

#### **VI. Communications**

Communications and correspondence regarding this filing should be addressed to the following individuals:

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## **VII. Service**

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

## **VIII. Conclusion**

For the foregoing reasons, Niagara Mohawk requests that the Commission accept the enclosed Agreement, effective as of August 14, 2013.

Respectfully submitted,

/s/ Amanda Downey

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