nationalgrid

December 6, 2013

By Electronic Filing

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

Re: Niagara Mohawk Power Corporation d/b/a/ National Grid – Proposed Amendments to the Wholesale Transmission Service Charge Under the NYISO Open Access Transmission Tariff - Docket No. ER14-

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d, and Part 35.13 of the Commission's Regulations, 18 C.F.R. Part 35.13, and the Commission's August 30, 2013 order in Docket Nos. ER13-1182-000, *et al.*,[1] Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid" or "Company") submits for filing revisions to the FERC Open Access Transmission Tariff ("OATT") administered by the New York Independent System Operator, Inc. ("NYISO").[2] The proposed changes are being made to certain National Grid-specific components of the Wholesale Transmission Service Charge ("Wholesale TSC") formula under the NYISO OATT.

The primary purpose of this filing is to amend National Grid's Historical Transmission Revenue Requirement ("TRR") formula under the Wholesale TSC to incorporate costs incurred by the Company for Reliability Support Services ("RSS"), which are services obtained from generators or other resources for the purpose of securing the ongoing reliability of National Grid's transmission grid. Specifically, National Grid is proposing to add a category to its Wholesale TSC to recover RSS costs accepted by the Commission for inclusion in National Grid's Wholesale TSC under contracts that have been submitted for review by the Commission. In accordance with the Commission's August 30 Order in Docket No. ER13-1182, National Grid is submitting with this filing for Commission review two agreements that it has entered into with NRG Energy, Inc. to obtain RSS services from NRG's Dunkirk generating station.

---

[1] 144 FERC ¶ 61,172 (2013) ("August 30 Order")

[2] Capitalized terms used, but not defined in this filing are intended to have the meanings given to such terms in Attachment H of the NYISO OATT including the April 2009 Settlement filed with the Commission on April 6, 2009.

National Grid respectfully submits that its proposal is just and reasonable and should be accepted without suspension or hearing.[3] As explained below, because its transmission customers were on notice that the Company planned to include the costs of the 2012 Dunkirk RSS Agreement in its TSC formula rate by virtue of its filing made earlier this year, the Commission should grant an effective date for this filing of July 1, 2013. In the alternative, the Company requests that the Commission set an effective date for these tariff changes of no later than February 5, 2014

I. Summary of Filing

The primary objective of this filing is to incorporate RSS expenses into the Wholesale TSC formula rate set forth in Attachment H to the NYISO OATT. RSS expenses consist of payments made by the Company to generators for the specific purpose of maintaining reliability on the Company's transmission system. National Grid began incurring RSS-related costs in 2012 pursuant to an agreement entered into with NRG Energy, Inc. in order to procure from the Dunkirk generating facility services necessary to secure the reliability of the Company's transmission system pending the completion of planned upgrades to that system.

In its August 30 Order, the Commission rejected without prejudice National Grid's original proposal, filed earlier this year, to include RSS costs in its Wholesale TSC. Therein, the Commission explained that in order for it to approve the recovery of RSS-related costs in the Wholesale TSC, National Grid would need to file the underlying RSS agreements for Commission review. Pursuant to that ruling, the instant filing proposes changes to the Wholesale TSC in order to recover the costs of RSS agreements that have been submitted and approved for recovery by the Commission. National Grid is also including with this filing two RSS agreements that it has entered into with NRG Energy to obtain transmission support services from its Dunkirk generating facility in upstate New York. The first of these agreements was entered into in August 2012 for RSS services provided by NRG from September 2012 through the end of May 2013.[4] The second

---

[3] The NYISO OATT specifically provides that the Revenue Requirement ("RR") component, the CCC component, and Annual Billing Units ("BU") components of a Transmission Owner's Wholesale TSC rate may be updated "based on Transmission Owner filings to FERC." *See* NYISO OATT, Attachment H, Section 14.1.2.1.2. Under the terms of Attachment H to the NYISO OATT, Transmission Owners, including the Company, have rights to amend the components of their respective Wholesale TSC rates on their own initiative by making the requisite filing for Commission approval under Section 205 of the FPA. *Id*. With respect to National Grid specifically, see also Section 14.1.9.4.3.6. Since it is the NYISO that administers the NYISO OATT, and specifically Attachment H which contains National Grid's Wholesale TSC, National Grid has consulted with the NYISO to determine a mutually acceptable means for National Grid to exercise its FPA Section 205 rights with respect to this amendment of the Wholesale TSC. While not sponsoring National Grid's filing in this proceeding, the NYISO is submitting this filing on National Grid's behalf under the Commission's e-tariff regulations. Thus, the NYISO is facilitating the exercise of National Grid's FPA Section 205 rights with respect to this portion of the NYISO OATT.

[4] This agreement is referred to herein as the "2012 Dunkirk RSS Agreement."

agreement was entered into in March of 2013 for RSS services provided by NRG from June 2013 through the end of May 2015.[5]

As explained below, the Dunkirk RSS Agreements were entered into based on a transmission reliability need specifically studied and identified by National Grid in light of NRG's proposal to mothball the Dunkirk facility. It is well-established that because all of a transmission provider's customers benefit from such reliability agreements, including wholesale customers, it is appropriate for all of them to pay an appropriate share of such costs.[6] Therefore, it is just and reasonable for National Grid to add a component to its Wholesale TSC to recover the costs of RSS agreements. Moreover, the Dunkirk RSS Agreements were reached as a product of arms-length negotiations conducted between National Grid and NRG, and resulted in a significant savings compared to NRG's stated cost-of-service. Therefore, the Dunkirk RSS Agreements represent reasonable and prudent instruments by which National Grid has procured needed reliability services from the Dunkirk facility. For these reasons, National Grid's proposal to recover the costs of these agreements through its Wholesale TSC is just and reasonable, and should be approved.

In addition to these modifications relating to incorporating RSS expenses, the Company is proposing certain minor clarification changes to the Wholesale TSC which have no revenue impact.

II. Background on Need for Revision to Wholesale TSC

A. National Grid

National Grid, a New York corporation, is a combination gas and electric utility. National Grid is primarily engaged in the business of transmission and distribution of electricity, and the distribution and transportation of natural gas in New York State. National Grid serves over 1.6 million retail electric and 568,000 retail gas customers in Buffalo, Syracuse, Albany, and other portions of upstate New York. National Grid owns approximately 6,000 miles of electric transmission lines and 8,500 miles of main and distribution gas pipelines. Pursuant to a transmission operating agreement between the NYISO and Transmission Owners including National Grid, National Grid's transmission facilities are subject to the operational control of the NYISO. Transmission service and generator interconnections associated with National Grid's facilities are provided to customers on a non-discriminatory basis pursuant to the NYISO OATT. Approximately 30 municipal electric utilities in upstate New York currently take service under National Grid's Wholesale TSC. In addition, approximately 80 customers external to the NYISO take service under the Company's Wholesale TSC.

---

5 This agreement is referred to herein as the "2013 Dunkirk RSS Agreement." Collectively, the 2012 and 2013 agreements will be referred to as the "Dunkirk RSS Agreements."

6 *See, e.g., Pacific Gas and Electric Co.*, 100 FERC ¶ 61,160 (2002).

B. The Wholesale TSC

On January 27, 1999, the Commission conditionally accepted the proposal made by National Grid and the other New York Transmission Owners ("NYTOs") to establish the NYISO in Docket ER97-1523-000. In conjunction with that filing, on November 17, 1999, the NYTOs filed a joint settlement agreement among all parties except Sithe/Independence Power Partners, L.P. ("Sithe") resolving all issues set for hearing in Docket No. ER97-1523-000 ("the NYISO Settlement"). The NYISO Settlement established as part of Attachment H to the NYISO OATT a settlement Revenue Requirement and Transmission Service Charge for wholesale transmission services provided using National Grid's facilities that was made applicable to all parties except those who were excepted.[7]

On February 11, 2008, as supplemented on May 30, 2008, National Grid submitted a filing under Section 205 of the Federal Power Act to replace its stated rates for its Transmission Service Charge in Attachment H to the NYISO OATT with formula rates to become effective May 1, 2008. On July 29, 2008, the Commission accepted and suspended the proposed formula rates, to become effective October 1, 2008, subject to refund, and establish hearing and settlement judge procedures.[8] On April 6, 2009, National Grid on behalf of the Settling Parties[9] filed a Settlement ("April 2009 Settlement") intended to resolve all issues set for hearing in that proceeding. Among other things, the Settlement set forth the terms of a formula rate for the calculation of National Grid's transmission service charge under the NYISO OATT (the "Settlement TSC Formula Rate"), as well as procedures for the annual adjustment of certain inputs to the formula rate. In a letter order issued June 22, 2009, the Commission approved the Settlement.[10]

C. The Need for and Development of the Dunkirk RSS Agreements

The Dunkirk generating station consists of four generating units: Dunkirk 1 and 2 each with a nameplate rating of 100 MW and interconnected to the transmission system at 115 kV; and

---

[7] Non-settling parties were made subject to a separate "filed" Revenue Requirement and Transmission Service Charge ("Filed TSC"). The NYISO Settlement also required National Grid to make a compliance filing revising its Filed TSC under the NYISO OATT based on the outcome of the hearing in Docket No. OA96-194-000. The NYISO Settlement was approved by the Commission by letter order dated July 31, 2000. National Grid subsequently filed to revise its Filed TSC rate based on the final outcome of Docket No. OA96-194-000.

[8] Order Accepting and Suspending Formula Rate Subject to Refund and Establishing Hearing and Settlement Judge Procedures, *Niagara Mohawk Power Corp.*, 124 FERC ¶ 61,106 (2008) ("July 29 Order"). Certain Settling Parties requested rehearing of aspects of the July 29 Order. On February 25, 2009, the Commission issued an order that denied rehearing in part and granted rehearing in part. 126 FERC ¶ 61,173 (2009).

[9] The signatories consist of National Grid and the following entities: Allegheny Electric Cooperative, Inc., the City of Cleveland, Ohio, Multiple Intervenors, Municipal Electric Utilities Association, New York Association of Public Power, New York Municipal Power Agency, New York State Electric & Gas Corporation, and Rochester Gas & Electric Corporation ("Settling Parties").

[10] *See Niagara Mohawk Power Corp*., 127 FERC ¶ 61,289 (2009).

Dunkirk 3 and 4 each with a nameplate rating of 217.6 MW and interconnected to the transmission system at 230 kV. On March 14, 2012, NRG, the owner of Dunkirk, filed notice with the New York Public Service Commission ("NYPSC") of its intent to mothball the Dunkirk facility within six months of this date, *i.e.*, no later than September 10, 2012.[11] At the time of NRG's mothball notice, based on studies that had been performed prior to the mothball notice, National Grid indicated to the NYPSC that it expected there would be significant impacts to transmission system reliability in western NY.[12]

After performing more detailed studies, which are discussed below and in the accompanying testimony of Peter Altenburger, National Grid determined that some combination of Dunkirk units 1 and 2 would need to remain available for an interim period to maintain system reliability until National Grid could complete the construction of permanent transmission system reliability upgrades. Specifically, based on its project implementation schedule, National Grid concluded that it would need two 115 kV units (Dunkirk 1 and 2) through May 2013.[13] After May 2013, the Company anticipated that the need for continued RSS services from Dunkirk would be reduced to one of the 115kV units due to the implementation of a portion of the transmission upgrades, and that this need would continue until at least June 2015, at which point transmission reinforcements necessary to avoid the need to continue to operate the Dunkirk facility for reliability reasons are planned to be in place.[14]

Based on these findings, National Grid commenced negotiations with the owner of the Dunkirk facility, NRG Energy, Inc., in an effort to reach agreement on a contract for the continued operation of the Dunkirk units necessary to maintain transmission reliability pending the completion of the permanent transmission reinforcements. Prior to the completion of these negotiations, on July 12, 2012, NRG filed at FERC pursuant to Section 205 of the Federal Power Act an unexecuted agreement setting forth terms under which NRG proposed to provide National Grid with reliability must-run ("RMR") service from Dunkirk units 1 and 2 for 12 months, and then from one of those units for an additional 24 months. In its filing, NRG proposed to recover what it characterized as the full cost-of-service of operating these units during this period.[15] NRG explained that although negotiations were still ongoing with National Grid, NRG made this filing in order to ensure that if negotiations were not successful, a rate for its continued operation would

---

11 Notice of intent to Mothball Dunkirk Units 1,2,3 and 4, NYPSC Case No. 12-E-0136 (March 14, 2012).

12 Exh. NMP-5 (Altenburger) at 5-6.

13 *Id*. at 10-11.

14 *Id*. at 13.

15 Docket No. ER12-2237-000. NRG stated in this filing that it was seeking to recover a fixed-cost charge of $5,607,513/month for keeping the two 115 kV units in service from September 2012 through May 2013, or a total of $50,467,617 over nine months, and $4,450,332/month for keeping one 115kV unit in service from June 2013 through May 2015, or 106,807,968 over twenty-four months.

be in place by September 11, 2012, which was the date on which its mothballing would become effective pursuant to NYPSC regulations.

On July 20, 2012, National Grid and NRG, with assistance from the staff of the NYPSC, reached agreement on a term sheet setting forth the provisions by which National Grid would procure reliability services from Dunkirk for the period September 1, 2012 through May 31, 2013. This term sheet was filed with the NYPSC on July 20, 2012 and subsequently approved by the NYPSC on August 16, 2012.[16] Subsequently, at the direction of the NYPSC, the parties prepared and filed with the NYPSC a final contract reflecting the agreement set forth in the term sheet.[17] The 2012 Dunkirk RSS Agreement provided for NRG to defer mothballing actions on the two 115 kV Dunkirk units and to keep them available during the nine-month term of the agreement. Under the agreement, National Grid agreed to pay NRG a monthly fixed-price charge of $2,924,324/month, or $26,318,916 for the 9-month period. In addition, the agreement provided for payment of up to $6,681,084 related to taxes or payments in lieu of taxes associated with the Dunkirk plant.

In addition to the monthly fixed-price charge and tax-related payments, the 2012 Dunkirk RSS Agreement provides for payment, following the termination of the agreement, of a pro-rated share of certain coal contract costs incurred by Dunkirk adjusted for any reductions based on actual coal deliveries. The contract also provides for the crediting of any revenues earned by NRG for capacity sales made from units 1 and 2 during the term of the agreement against the costs of the contract. As a result of all of the payments made to NRG under this contract, minus the credits due to National Grid, the total cost of the contract to National Grid was approximately $33.3 million, representing a savings over the cost-of-service rate that NRG presented in its filing with the Commission of over $17 million.

Several months later, pursuant to a request for proposals issued by National Grid to procure additional reliability services related to the planned Dunkirk mothballing, National Grid and NRG began negotiations on a second agreement in order to provide for the continued operation of one of the 115kV units at Dunkirk for the period June 1, 2013 through May 31, 2015. As a result, the parties entered into the 2013 Dunkirk RSS Agreement on March 4, 2013.[18] The terms of the 2013 Dunkirk RSS Agreement are nearly identical to the 2012 Dunkirk RSS Agreement, and contain the same types of payment and offset provisions. The monthly fixed-price charge of this contract is $2,076,076/month. As with the first agreement, the 2013 Dunkirk RSS Agreement provides for the payment of property taxes incurred by Dunkirk, in an amount up to $13,064,877, and Dunkirk's take-or-pay coal contract, in an amount up to $8,718,523. Based on these figures, National Grid

---

16 Exh. NMP-14.

17 A copy of this agreement is included with this filing as Exhibit Nos. NMP-10 (public version) and 11 (confidential version).

18 A copy of this agreement is included with this filing as Exhibit Nos. NMP-12 (public version) and 13 (confidential version).

estimates that the final cost of the 2013 Dunkirk RSS Agreement will be approximately $70.8 million.[19]

D. The March 2013 Filing and August 30 Order

On March 29, 2013, in Docket No. ER13-1182, National Grid filed with the Commission pursuant to Section 205 of the FPA an amendment to its Wholesale TSC formula in order to recover RSS expenses incurred under the two Dunkirk Agreements, as well as any future RSS agreements that the Company might enter into. Specifically, the Company proposed to add a new item to the CCC component of the TSC formula rate, as set forth in Attachment H entitled "Reliability Support Services Expense," which would provide that "Expenses incurred pursuant to agreements entered into with generators or other similar resources for the purpose of supporting transmission reliability, shall also be recorded in FERC Account 561.1." The Company proposed to provide information regarding specific RSS costs incurred during a particular year as part of its Annual Update Filing process.

In the March 29 Filing, National Grid explained that including these costs in the CCC component of the Company's Wholesale TSC rate was appropriate because these costs directly relate to the functioning of National Grid's transmission system in upstate New York. Procuring RSS services allows the Company to continue to reliably operate the transmission system pending, or in lieu of, implementing upgrades to the transmission system. National Grid explained that there was no reason for treating these costs any differently than those directly incurred for reinforcements or other upgrades to the transmission system. National Grid also demonstrated that including RSS costs in wholesale transmission rates accords with the Commission's treatment of similar costs incurred by other transmission owners.[20]

On August 30, 2013, the Commission issued an order on the March 29 Filing.[21] Therein, the Commission explained that it was rejecting the March 29 Filing without prejudice to National Grid making a new Section 205 filing "providing additional support for recovery of RSS costs."[22] The Commission noted that National Grid had proposed to utilize the Annual Update Process to inform parties of RSS expenses incurred during the prior year, but concluded that for the Commission to approve a pass-through of RSS costs through the Wholesale TSC, the Company

---

19 *See* Exhs. NMP-3 (Holodak) at 13-14; NMP-17.

20 In response to a deficiency letter from Commission staff, National Grid provided additional information regarding the March 29 filing on July 1, 2013. National Grid refers to both filings herein, collectively, as the "March 29 Filing."

21 *Niagara Mohawk Power Corporation, et al*., Docket Nos. ER13-1182-000, et al. (August 30, 2013).

22 *Id*. at P 39.

would "at a minimum need to file the underlying RSS agreements for Commission review and support the proposed rates."[23]

III. Description of Filing

A. Explanation of the Proposed Revisions to the TSC Formula Rate to Include RSS Expenses

The primary purpose of this filing is to amend the Company's Wholesale TSC formula rate in order to provide for the recovery of expenses incurred by the Company pursuant to RSS agreements through rates charged to the Company's wholesale transmission customers.

In order to allow for the recovery of RSS expenses, National Grid proposes to add a new item to the Historical Transmission Revenue Requirement ("Historical TRR") component of its overall Revenue Requirement, as specified in Section 14.1.9.2(a) of Attachment H, entitled "Transmission Support Payments." "Transmission Support Payments" will be defined in Section 14.1.9.1 of Attachment H as "expenses accepted by FERC for inclusion in the Historical Transmission Revenue Requirement pursuant to agreements entered into with generators or other similar resources for the purpose of supporting transmission reliability that have been submitted to FERC for review." This formulation complies with the Commission's ruling in the August 30 Order because it ensures that National Grid will only be permitted to reflect in its Wholesale TSC the costs of RSS agreements that are "file[d] for Commission review."[24]

In addition, National Grid is proposing to modify the description of the wholesale TSC rate formula so as to include only actual Transmission Support Payments, primarily due to the uncertainty associated with forecasting the various RSS cost crediting mechanisms present in the Dunkirk RSS Agreements. This will be implemented by modifying the Forecasted Transmission Revenue Requirement ("Forecasted TRR") component of the TSC formula rate in Attachment H to exclude RSS-related costs. A new Workpaper 9A has been created as part of Attachment A to the Annual Update to calculate and remove the revenue requirement effect of Transmission Support Payments from the Forecasted TRR. This result also benefits customers because it results in a more gradual roll-in of RSS-related costs into the wholesale TSC.[25]

---

[23] *Id.*

[24] Exh. NMP-3 (Holodak) at 17-18.

[25] *Id*. at 18.

B. The Proposed RSS- Related Revisions to the Wholesale TSC Are Just and Reasonable

1. Costs Incurred by National Grid That Are Directly Related to Maintaining the Reliability of the Transmission Grid, Such as RSS Expenses, Are Appropriately Assigned to All Transmission Customers

The inclusion of RSS expenses through the Historical TRR component of the Company's Wholesale TSC rate is appropriate because these costs directly relate to the functioning of National Grid's transmission system in upstate New York. Specifically, RSS agreements such as the 2012 and 2013 Dunkirk RSS Agreements were entered into for the sole purpose of maintaining reliability on National Grid's transmission system. As a general matter, procuring RSS services allows the Company to continue to reliably operate the transmission system pending, or in lieu of, implementing upgrades to the transmission system. Therefore, National Grid's expenses for RSS services are functionally no different than operation and maintenance expenses or transmission upgrade costs incurred to maintain transmission system reliability within acceptable limits.[26] Because all of National Grid's transmission customers benefit from maintaining the reliability of the transmission system, it is appropriate that all of the Company's transmission customers, including wholesale customers, bear a portion of the expenses incurred to procure RSS services.

It is well established that RSS services provide transmission system reliability. In terms of function, RSS agreements are identical to what are often labeled as "Reliability Must-Run" ("RMR") agreements. The primary purpose of both is to ensure that generators that might otherwise be shut down, through either retirement or mothballing, continue to remain online and available when needed to maintain the reliability of the transmission system.[27] Such agreements are sometimes necessary due to the historical fact that utilities were often designed and planned with the assumption that generation, under certain circumstances, would operate as a means of ensuring transmission reliability in lieu of, or in addition to, physical transmission facilities. This is true of Niagara Mohawk's transmission system.[28] However, in cases such as Niagara Mohawk, where the utility has divested its generation assets, it is simply not practical for the utility to identify and remedy every potential reliability contingency that would result from removing existing generation by performing upgrades to the transmission system prior to a generator's decision to shut down. This is particularly true because a utility such as Niagara Mohawk has no control over an independent generator's decision to remove its facilities from service, or the timing thereof.

---

26 Exh. NMP-3 (Holodak) at 18-19.

27 *See San Diego Gas & Electric Co.*, 98 FERC ¶61,202 at p. 61,705 (2002)(concluding that Reliability Must Run Units provide reliability to the grid when transmission is limited, and for transmission outages); *Entergy Gulf States, Inc.*, 98 FERC 61,014 at p. 61,024 (2002) (stating that RMR provisions provide the parties with a reasonable means to ensure the reliable operation, protection, and integrity of the transmission system.).

28 Exh. NMP-3 (Holodak) at 18-19.

For these reasons, the Commission has held that agreements to procure transmission reliability services from generators are appropriately recovered through transmission rates.[29] Moreover, the Commission has also recognized that *all* of a utility's transmission customers, including its wholesale customers, should be responsible for their fair share of these types of costs.[30] The Company's wholesale transmission customers clearly benefit from the ongoing reliability of the Company's transmission system. Therefore, as a general principle, it is reasonable for National Grid to include in the Wholesale TSC the expenses incurred under agreements which were entered into pursuant to the need to maintain transmission system reliability.

2. It Is Reasonable to Include the Costs Incurred Under the Dunkirk RSS Agreements in National Grid's Wholesale TSC

Because National Grid is proposing to collect RSS costs through the Historical TRR component of the Wholesale TSC, the amended 2013 rates that would go into effect pursuant to this filing would collect actual RSS costs incurred in 2012. RSS costs incurred in 2013 and beyond would be reflected in the next applicable year's TSC Annual Update (e.g. 2013 RSS costs would be reflected in the 2014 Annual Update and recovered in the 12-month period beginning July 1, 2014). In the August 30 Order, the Commission indicated, however, that in order for it to approve recovery through the Wholesale TSC of expenses associated with RSS agreements, National Grid would need to "file the underlying RSS agreements for Commission review." Therefore, in compliance with this directive, National Grid is submitting for Commission review as part of this filing the Dunkirk RSS Agreements.

a. National Grid's Obligation to Submit the Dunkirk RSS Agreements for Commission Review Does Not Constitute a 205 Requirement

National Grid's understands the term "submit for review" in the August 30 Order to mean that National Grid is *not* required to file these agreements with the Commission under Section 205 of the Federal Power Act. This result is logical and appropriate. Although the Commission has consistently exercised jurisdiction over agreements in which generation services have been procured for purposes of supporting transmission system reliability,[31] the obligation to satisfy the Section 205 filing obligations with respect to these agreements, as with any other jurisdictional

---

29 See, e.g., *Pacific Gas and Electric Co*., 100 FERC ¶ 61,160 (2002); *California Independent System Operator Corp*., 90 FERC 61,006 at 61,015 (finding that when out-of-market payments to generators are necessary to resolve transmission reliability issues, "it is appropriate that transmission users paying rates on the basis of the affected system pay this additional reliability cost.").

30 *See, e.g., Pacific Gas and Electric Co*., 100 FERC ¶ 61,160 (2002) at PP 15-16, 21 (finding that reliability services, including the costs of reliability agreements with generators, provide a system-wide benefit and "should be paid for by all users of the grid" including wholesale transmission customers).

31 *See, e.g., GenOn Power Midwest, LP*, 140 FERC ¶ 61,080 (2012); *Berkshire Power Company*, LLC, 114 FERC ¶ 61,099 (2006).

service, resides with the service provider. In the case of RSS/RMR-type agreements, the service provider is the generation owner. The utilities providing transmission service that are the customer under such agreements do not file these contracts to be included in their own rate schedules because they are not providing any jurisdictional service under these agreements.

In the case of the Dunkirk RSS Agreements, the jurisdictional service provider is Dunkirk Power LLC, a subsidiary of NRG. NRG has informed National Grid that it views the Dunkirk RSS Agreements as having been entered into pursuant to its market-based rate authority, and therefore, plans to report these contracts through the Commission's Electronic Quarterly Reports ("EQR") system. Therefore, there is no reason for the Commission to require National Grid to make a separate filing of these agreements in order to satisfy the requirements of Section 205.

National Grid recognizes that Section 205 does require that public utilities file "all contracts which in any manner affect or relate to" jurisdictional rates.[32] However, the Commission, recognizing that there are an "infinitude of practices" affecting jurisdictional rates, interprets this requirement using a "rule of reason" approach under which public utilities are only required to file those contracts that "significantly affect" jurisdictional rates or services.[33] National Grid submits that even if the Commission finds the Dunkirk RSS Agreements to fall within the literal scope of the "all contracts" language in Section 205, the Commission should apply the rule of reason and not require National Grid to make a separate 205 filing of these agreements, given that the service provider, Dunkirk Power LLC, already has 205 obligations with respect to these agreements. National Grid is not aware of any instances in which a transmission provider purchasing RMR/RSS services has filed such an agreement as a rate schedule under its own tariff. As a result, directing National Grid to do so here could have significant administrative and compliance ramifications for numerous transmission providers across the country.

Regardless, if the Commission nevertheless determines that National Grid has a separate 205 filing obligation with respect to the Dunkirk RSS Agreements, National Grid then submits these agreement for review under Section 205, and will include them as rate schedule attachments to Attachment H.

b. Continued Operation of the Dunkirk Facility Was Needed to Ensure Transmission Reliability in Western New York

Accompanying this filing is the testimony of Peter Altenburger.[34] As Mr. Altenburger explains, when NRG issued the notice of its intention to mothball the Dunkirk facility, National Grid made an initial determination based on existing studies that the mothballing of the Dunkirk

---

[32] FPA Section 205.

[33] *See, e.g.*, *Town of Easton*, 24 FERC ¶ 61,251 at 61,531, quoting *Pacific Gas and Elec. Co*., 7 FERC ¶ 61,267, at 61,565 (1979).

[34] Exh. NMP-5 (Altenburger).

units would likely have a significant impact on the reliability of the transmission system in Western New York.[35] At that point, National Grid immediately began conducting studies to determine the specific impacts associated with the removal of the Dunkirk units from service, and the scope of any reliability services that would be needed from the Dunkirk facility.

Included with this filing are two studies completed by National Grid assessing the impacts of and potential solutions to the Dunkirk mothballing.[36] As Mr. Altenburger explains, the first study, completed on July 27, 2012, found that the loss of the Dunkirk units would result in thermal and voltage problems on National Grid's transmission system in Western New York. The June 27 study concluded that in order to ensure continued system reliability as of the date on which NRG planned to mothball the Dunkirk units (September 12, 2012), at least two of these units would need to remain online.[37] The June 27 study indicated that no system upgrades planned at the time the study was issued would entirely remove the need for some level of reliability support from the Dunkirk facility, but did determine that certain short-term transmission upgrade projects would reduce the level of needed support from two units to one once those upgrades were completed.[38] In a follow-up study National Grid determined that more extensive transmission upgrades would be necessary in order to obviate the continued need for reliability support from any of the units at the Dunkirk facility.[39] Based on these findings, National Grid and NRG negotiated and executed the two Dunkirk RSS Agreements. The 2012 Dunkirk RSS Agreement obtains reliability service from the two 115kV units at the Dunkirk facility until June 1, 2013, which was the date by which National Grid placed into service short-term transmission upgrades identified in the July 27 study. The 2013 Dunkirk RSS Agreement obtains reliability service from one of the Dunkirk 115kV units in order to ensure transmission system reliability through May 2015, which is the date on which National Grid estimated that transmission upgrades that would remove the need for any further operation of the Dunkirk facility for reliability purposes could be placed into service.[40]

Pursuant to its mandate to ensure the provision of safe and adequate electricity service in New York, the NYPSC considered and approved both of the Dunkirk RSS Agreements. In doing so, the NYPSC agreed with National Grid's assessment of the ongoing need to operate the Dunkirk

---

35 *Id*. at 5-6.

36 Exh. Nos. NMP-7 and NMP-9. As explained below, National Grid is requesting CEII treatment of these studies because they contain Critical Energy Infrastructure Information. Redacted versions are included with this filing as Exh. Nos. NMP-6 and NMP-8.

37 Exh. NMP-5 (Altenburger) at 8-9.

38 *Id*. at 9-10.

39 *Id*. at 11-13.

40 *Id*. at 13.

facility pending the completion of upgrades on National Grid's transmission system.[41] The studies on which National Grid based its assessment of the need to continue to operate certain of the Dunkirk units pending upgrades to its transmission system were filed with the NYPSC and included in the record of the proceeding in which the NYPSC approved the Dunkirk Agreements.

It is clear, based on these facts, that National Grid's decision to procure reliability services from the Dunkirk facility pursuant to the Dunkirk RSS Agreements was a reasonable and prudent choice, because doing so was necessary to ensure the continued reliability of the transmission system in Western New York, for the benefit of both retail and wholesale transmission customers.

c. The Dunkirk RSS Agreements Are a Reasonable Means of Procuring Needed Reliability Services

Pursuant to the Commission's authorization allowing NRG to enter into wholesale agreements at market-based rates, National Grid entered into arms-length negotiations with NRG to determine the terms and conditions by which NRG would operate and maintain the two 115kV generating units at the Dunkirk facility from September 2012 until the end of May 2013 and one 115kV unit from June 2013 through the end of May 2015. The Dunkirk RSS Agreements were the product of these arms-length negotiations, which were conducted with the participation and assistance of the staff of the New York Public Service Commission.[42]

As described by Mr. Holodak in his accompanying testimony, the rates and terms of the Dunkirk RSS Agreements represent a fair bargain for National Grid's customers for a number of reasons. Most notably, the costs of the Dunkirk RSS Agreements, $33.3 million for the 2012 agreement, and an estimated $70.8 million for the 2013 agreement, are a substantial savings in comparison to the cost-of-service rate that NRG proposed in its July 12, 2012 unexecuted service agreement filing with the Commission of $50.4 million for the first nine months of service and $106.8 million for an additional twenty-four months of service.[43] This savings is even more significant in light of the fact that the Commission has approved many RMR agreements in which the rates are based on the generator's full cost-of-service.[44] In addition, the NYPSC reviewed and approved the rates and terms of the Dunkirk RSS Agreements, and in those orders, also permitted National Grid to recover the costs of that agreement from the Company's retail customers whose service is subject to the NYPSC's jurisdiction.

---

41 *Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery*, Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements, Case 12-E-0136 (August 16, 2012) at 18-19; *Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery*, Case 12-E-0136 (May 20, 2013).

42 *See* Exh. NMP-3 (Holodak) at 9-10, 12-13, 15 .

43 NRG filing of unexecuted cost-of-service agreement, Docket No. ER12-2237 (July 12, 2012).

44 *See, e.g., Berkshire Power Company*, LLC, 114 FERC ¶ 61,099 at P 11 (2006) (noting that the Commission has "historically allowed full cost-of-service recovery for generators under RMR agreements").

In summary, whether analyzed under NRG's market-based rate authority or in comparison to NRG's proposed cost-of-service rates, the payments made by National Grid to NRG under the Dunkirk RSS Agreements are reasonable as included in National Grid's Historical TRR, and collected from wholesale transmission customers. Also, as explained by Mr. Holodak in his accompanying testimony, the overall rate impact to wholesale transmission customers of including these costs in the Wholesale TSC is relatively small – less than 50 cents per MWh for the 2013-2014 rate year.[45]

C. Minor Clarifications to Wholesale TSC

In addition to the revisions discussed herein to incorporate the costs of the 2012 Dunkirk RSS Agreement into the Wholesale TSC, the Company is proposing certain ministerial changes to Attachment H of the NYISO OATT to clarify and correct the application and definitions describing the TSC formula rate. These changes include the minor changes originally proposed by the Company in the March 29 Filing and are described in more detail in Mr. Holodak's testimony.[46] None of these proposed ministerial changes has any revenue impact on the TSC rate.

IV. Contents of Filing and Request for Confidential Treatment

- Attachment A, Service List

- Exhibits NMP-1 through NMP-17, which include:

    - Exhibit NMP-1 - Clean versions of revised sheets to the tariff
    - Exhibit NMP-2 - Black-lined versions of revised sheets to the tariff
    - Exhibit NMP-3 - Direct Testimony of James Holodak
    - Exhibit NMP-4 - Cost of Service Statements AA through BM
    - Exhibit NMP-5 – Direct Testimony of Peter Altenburger
    - Exhibit NMP-6 – July 27, 2012 Review of Dunkirk Mothball Notice, Part 1 – Public Version
    - Exhibit NMP-7 – July 27, 2012 Review of Dunkirk Mothball Notice, Part 1 – CEII Version
    - Exhibit NMP-8 – September 26, 2012 Review of Dunkirk Mothball Notice, Part 2 – Public Version
    - Exhibit NMP-9 – September 26, 2012 Review of Dunkirk Mothball Notice, Part 2 – CEII Version
    - Exhibit NMP-10 – 2012 Dunkirk RSS Agreement – Public Version
    - Exhibit NMP-11 - 2012 Dunkirk RSS Agreement – Privileged Version

---

45 Exh. NMP-3 (Holodak) at 15-16. National Grid is also providing with this filing, for informational purposes, a schedule showing the estimated effect of including the costs of the Dunkirk RSS Agreements on its TRR and the resulting rate impacts for rate years subsequent to 2013-2014. See Exh. NMP-16.

46 Exh NMP-3 (Holodak) at 22-26.

- Exhibit NMP-12 – 2013 Dunkirk RSS Agreement – Public Version
- Exhibit NMP-13 – 2013 Dunkirk RSS Agreement – Privileged Version
- Exhibit NMP-14 - NYPSC August 16, 2012 Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery
- Exhibit NMP-15 – NYPSC May 20, 2013 Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery
- Exhibit NMP 16- Estimated Impact of RSS Transmission Support Payments on Historical Revenue Requirement
- Exhibit NMP-17 – Estimate of Payments to be Made by National Grid Under Dunkirk RSS Agreements

Also, with respect to Exhibits NMP-7, NMP-9, NMP-11, and NMP-13, National Grid is requesting confidential treatment of these four Exhibits pursuant to 18 C.F.R. Section 388.112. Confidential treatment of Exhibits NMP-7 and NMP-9 is warranted because these Exhibits contains Critical Energy Infrastructure Information that includes specific engineering details regarding bulk power facilities. The Company has provided redacted public versions of these documents as Exhibits NMP-6 and NMP-8. Also, the Company requests privileged treatment of the Dunkirk RSS Agreements (Exhibits NMP-11 and NMP-13) because they contain market-sensitive information regarding the Dunkirk facility and NRG Energy. This information was withheld from the public version of National Grid's filing of the 2012 Dunkirk RSS Agreement with the NYPSC. Redacted public versions of these agreements are included as Exhibits NMP-10 and NMP-12.

V. Proposed Effective Date

National Grid respectfully requests the formula rate and associated tariff revisions be accepted for filing effective for transmission bills rendered for service on and after July 1, 2013. National Grid submits that setting these modifications to go into effect retroactive to July 1, 2013 is appropriate because wholesale transmission customers have had sufficient notice, pursuant to National Grid's March 29 filing, of National Grid's intention to include the costs of the Dunkirk RSS Agreements in the Wholesale TSC. The costs specified in the instant filing for recovery in the Wholesale TSC are equivalent to those indicated in the March 29 filing. An early effective date will allow the fair apportionment of all of the costs of the Dunkirk RSS Agreements amongst the Company's transmission customers. Commission and judicial precedent is clear that "notice converts what would be purely retroactive ratemaking into a functionally prospective process by giving the proper audience notice that the rates were provisional and subject to later change."[47] Therefore, a retroactive effective date of July 1, 2013 is warranted.

---

[47] *Consolidated Edison Co*., 108 FERC ¶61,059 at P40 (2004) *citing Consolidated Edison Co. v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003)("Courts have recognized only two circumstances in which a rate adjustment may take effect prior to a section 205 filing: when parties have notice that a rate is tentative and may be later adjusted with retroactive effect, or when they have agreed to make a rate effective retroactively (noting that '[t]he rule against retroactive ratemaking . . . does not extend to cases in which [customers] are on adequate notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service' (*citations omitted*)).

If the Commission rejects this request, then, in the alternative, National Grid requests that the Commission accept the enclosed tariff revisions for filing effective as of February 5, 2014, which is the date sixty days after the date following this filing.

VI. Communications

National Grid requests that all correspondence, pleadings and other communications concerning this filing be served upon the following persons to be designated for service:

Terry L. Schwennesen
Attorney for National Grid
c/o National Grid
40 Sylvan Road
Waltham, Massachusetts 02451
(401) 480-9051
Terry.Schwennesen@nationalgrid.com

James G. Holodak, Jr.
c/o National Grid
14th Floor
One MetroTech Center
Brooklyn, New York 11201
(718) 403-2338
James.HolodakJR@nationalgrid.com

Michael Kunselman
Alston & Bird, LLP
950 F Street, NW
Washington, DC 20004
(202) 239-3395
michael.kunselman@alston.com

VII. Service

Pursuant to Section 32.5(d) of the Commission's Regulations, a copy of this filing is being served electronically on National Grid's customers under the rate affected by this filing, on the New York State Public Service Commission, and on the NYISO. The service list for this filing may be found in Attachment A to this filing letter.

VIII. Request for Waiver

National Grid respectfully requests waiver of any requirements of the Commission's rules and regulations, as well as any authorization as may be necessary or required, to permit the revised rates to be accepted by the Commission and made effective in the manner proposed herein.

IX. Miscellaneous

No agreement is required by contract for the making of this rate filing. There are no costs included in this filing that have been alleged or adjudged in an administrative or judicial proceeding to be illegal, duplicative, or unnecessary costs, nor has any expense or cost been demonstrated to be the product of discriminatory or employment practices, within the meaning of Section 35.13(d)(3).

X. Conclusion

For the foregoing reasons, National Grid respectfully requests that the Commission accept these proposed tariff changes without suspension, condition or modification.

Respectfully submitted,

/s/ Terry L. Schwennesen

Kenneth G. Jaffe, Esq.
Michael Kunselman, Esq.
Alston & Bird, LLP
950 F Street, NW
Washington, DC 20004
(202) 239-3300
Fax: (202) 654-4895
kenneth.jaffe@alston.com
michael.kunselman@alston.com

Terry L. Schwennesen, Esq.
c/o National Grid
40 Sylvan Road
Waltham, MA 02451
(401) 480-9051
Fax: (781) 907-1659
Terry.Schwennesen@nationalgrid.com

Attorneys for
Niagara Mohawk Power Corporation
d/b/a National Grid

Attachments

CERTIFICATE OF SERVICE

I hereby certify that I have served by electronic mail the foregoing document upon all parties on the email service list of Interested Parties provided in Attachment A pursuant to the requirements of the Settlement in the above-referenced proceedings.

Dated at Waltham, MA, this 6th day of December, 2013.

/s/ Terry Schwennesen
c/o National Grid
40 Sylvan Road
Waltham, MA 02451
(401) 480-9051