

146 FERC ¶ 61,065
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

New York Independent System Operator, Inc.
Niagara Mohawk Power Corporation

Docket No. ER14-543-000

ORDER ACCEPTING AND SUSPENDING TARIFF REVISIONS
SUBJECT TO REFUND AND FURTHER ORDER

(Issued February 4, 2014)

1. On December 6, 2013, pursuant to section 205 of the Federal Power Act (FPA), Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) filed proposed tariff revisions to certain National Grid-specific components of the Wholesale Transmission Service Charge (Wholesale TSC) formula under Attachment H of the New York Independent System Operator, Inc.'s (NYISO) Open Access Transmission Tariff (OATT) (December 6 Filing). Specifically, National Grid proposes to amend its formula rate to incorporate the costs it incurs for Reliability Support Services (RSS) pursuant to two RSS Agreements (RSSAs) with NRG Energy (NRG). National Grid requests an effective date of July 1, 2013, for its proposed revisions. Alternatively, if the Commission rejects this request, National Grid requests an effective date for the instant revisions of no later than February 5, 2014. National Grid also requests waiver of any requirements of the Commission's rules and regulations to permit the revisions to be accepted and made effective as proposed. For the reasons discussed below, we will grant waiver of the 60-day prior notice requirement and accept and suspend National Grid's proposed modifications to its Wholesale TSC formula and permit them to become effective July 1, 2013, as requested, subject to refund and further order of the Commission.

I. Background

2. National Grid's filing is similar to a filing it made on March 29, 2013 in Docket No. ER13-1182-000 (March 29, 2013 Filing) in which it initially sought to revise its Wholesale TSC formula to recover RSSA costs. On August 30, 2013, the Commission issued an order rejecting National Grid's proposed tariff revisions without prejudice to National Grid making a new FPA section 205 filing providing additional support for the recovery of RSSA costs including, at a minimum, the filing of National Grid's RSS

agreements with NRG.¹ Pursuant to the Commission's directive in the August 30, 2013 Order, National Grid submitted the instant filing, and included the two RSS agreements.

3. National Grid began incurring RSSA costs during calendar year 2012 under the first of two RSSAs with NRG, the 2012 Dunkirk RSSA, pursuant to which NRG deferred mothballing and continued to operate generating units 1 and 2 at its Dunkirk generating station through May 2013. After May 2013, National Grid anticipated that the need for continued RSS from Dunkirk would be reduced to one of the Dunkirk units due to the implementation of a portion of the transmission upgrades necessary to reinforce National Grid's transmission system. National Grid anticipates that the need for continued RSS will continue until at least June 2015, at which point the transmission reinforcements necessary to negate the need for Dunkirk's continued operation are currently planned to be in service. Accordingly, National Grid and NRG have entered into the 2013 Dunkirk RSSA, under which Dunkirk will defer mothballing and keep one unit in service from June 1, 2013 to May 31, 2015.

II. Summary of National Grid's December 6, 2013 Filing

A. The Filing

4. National Grid's Wholesale TSC formula is the result of a settlement agreement (April 2009 Settlement) setting forth the terms of a formula rate for the calculation of the charge for National Grid's transmission service under the NYISO OATT, as well as procedures for the annual adjustment of certain inputs to that formula rate, and was approved by the Commission in an order issued June 22, 2009.² In order to incorporate the RSSA costs into its Wholesale TSC formula rate, National Grid proposes to add a new item, entitled Transmission Support Payments, 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. National Grid proposes to define these payments in section 14.1.9.1 of Attachment H as "expenses accepted by FERC for inclusion in the Historical [TRR] 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," and to include them in its Transmission Operation and Maintenance Expense, which, pursuant to section 14.1.9.1.41 of Attachment H,

¹ *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,172 (2013) (August 30, 2013 Order).

² *Niagara Mohawk Power Corp., et al.*, 127 FERC ¶ 61,289 (2009).

equals the sum of FERC Account Nos. 560 and 562 through 574.³ National Grid asserts that this formulation complies with the August 30, 2013 Order because it ensures that National Grid will only be permitted to reflect RSSA costs in its Wholesale TSC incurred pursuant to RSSAs that are filed for Commission review.

5. National Grid further proposes to modify the description of the Wholesale TSC formula to include only actual Transmission Support Payments, due to the uncertainty associated with forecasting the RSS cost-crediting mechanisms in the Dunkirk RSSAs.

6. National Grid asserts that the inclusion of RSSA costs in the Historical TRR component of its Wholesale TSC is appropriate because these costs directly relate to the functioning of National Grid's transmission system in upstate New York. National Grid further clarifies that the RSSAs allow it to continue to reliably operate its transmission system pending, or in lieu of, implementing upgrades to the transmission system. Therefore, National Grid concludes, RSSA costs should be treated just as those directly incurred for reinforcements or other upgrades to the transmission system.

7. National Grid requests the Commission to permit an effective date of July 1, 2013 for its filing, asserting that its transmission customers were on notice that it planned to include RSSA costs in its Wholesale TSC formula by virtue of its previous filing in Docket No. ER13-1182-000 to recover these costs. Alternatively, if the Commission rejects this request, National Grid requests an effective date for the instant revisions of no later than February 5, 2014. National Grid also requests waiver of any requirements of the Commission's rules and regulations to permit the revisions to be accepted and made effective as proposed.

B. The 2012 Dunkirk RSSA

8. On March 10, 2012, NRG filed a notice with the New York Public Service Commission (New York Commission) stating its intention to mothball the Dunkirk generating station as of September 10, 2012. After receiving the mothball notice, National Grid conducted an analysis of the reliability impacts of the planned mothballing and identified adverse reliability impacts to National Grid's transmission system. Accordingly, National Grid and NRG entered into negotiations.

³ FERC Uniform System of Account Nos. 560 and 562 to 574 relate to costs associated with the operation, maintenance and planning of the transmission system, including labor costs, station expenses, line expenses, rents, communication equipment, computer software and the costs associated with maintaining those assets.

9. On July 12, 2012, while negotiations were ongoing, NRG filed an unexecuted reliability service agreement with the Commission in Docket No. ER12-2237-000. On August 1, 2012, however, NRG filed a motion requesting that the Commission hold its filing in abeyance. On August 21, 2012, NRG filed a motion requesting that the Commission hold its filing in abeyance indefinitely. No answers in opposition were received.

10. On August 16, 2012, the New York Commission approved the parties' proposed term sheet setting forth the provisions under which National Grid would procure RSS from Dunkirk from September 1, 2012 to May 31, 2013 (2012 Dunkirk RSSA).⁴ The 2012 Dunkirk RSSA provided that NRG would defer mothballing the two 115 kV Dunkirk units and 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. Additionally, the 2012 Dunkirk RSSA provided for three adjustments to the fixed-price charge: (1) payment of up to \$6,681,084 by National Grid related to taxes or payments in lieu of taxes associated with Dunkirk's continued operation; (2) payment, following 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; and (3) 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. The 2012 Dunkirk RSSA provided that Dunkirk would offer into the NYISO capacity market at no more than the value calculated under the NYISO Attachment H definition of "Going Forward Costs," reduced by the amount of the fixed monthly payments. According to National Grid, the total cost of the 2012 Dunkirk RSSA was approximately \$33.3 million.

C. The 2013 Dunkirk RSSA

11. The 2012 RSSA order also directed National Grid to develop a process for soliciting alternative solutions to any remaining reliability needs beyond Dunkirk's subsequent mothballing in May 2013. On October 24, 2012, National Grid issued a request for proposals (RFP) to address its continuing reliability need beyond May 31, 2013, when the 2012 Dunkirk RSSA terminated. National Grid received three responses,

⁴ *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corp. d/b/a National Grid for Electric Service, Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements, Case 12-E-0136 (New York Public Service Commission, August 16, 2012) (2012 RSSA Order).* In that order, the New York Commission estimated that approximately 7.5 percent of the RSSA costs could be recovered from National Grid's wholesale transmission customers. 2012 RSSA Order at 25.

including one from NRG, for the continued provision of RSS from Dunkirk. National Grid states that after extensive review, it determined that NRG's proposal provided the preferred solution both from reliability and cost perspectives.

12. On March 4, 2013, National Grid and NRG entered into the 2013 Dunkirk RSSA. On May 20, 2013, the New York Commission approved the 2013 Dunkirk RSSA.⁵ The monthly fixed-price charge under the agreement is \$2,076,076/month. As with the first agreement, the 2013 Dunkirk RSSA provides for three adjustments to the fixed-price charge: (1) property taxes, or payments in lieu of taxes, up to a maximum amount of \$13,064,877; (2) costs associated with Dunkirk's take-or-pay coal contract, up to \$8,718,523; and (3) the crediting of any capacity revenues made from the unit to National Grid. The 2013 Dunkirk RSSA also provides that Dunkirk will offer into the NYISO capacity market at a price no higher than the value of "Going Forward Costs," reduced by the amount of the fixed monthly payments. National Grid estimates the final cost of the 2013 Dunkirk RSSA will be approximately \$70.8 million.

III. Notice of Filings and Responsive Pleadings

13. Notice of National Grid's December 6, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 76,141 (2013), with protests and interventions due on or before December 27, 2013.

14. On December 11, 2013, the New York Association of Public Power (NYAPP) filed a motion to intervene. On December 19, 2013, Allegheny Electric Cooperative, Inc. (Allegheny) filed a motion to intervene. On December 20, 2013, Municipal Electric Utilities Association of New York (MEUA) filed a motion to intervene.

15. On December 27, 2013, MEUA, NYAPP and Allegheny each filed a protest. Although Allegheny filed a separate protest, it did not include additional comments, but instead joined NYAPP's protest.

16. On January 10, 2014, National Grid filed an answer to the protests. On January 22, 2014, MEUA filed an answer to National Grid's answer. On January 27, 2014 NYAPP filed an answer to National Grid's answer. On January 31, 2014, National Grid filed an answer to NYAPP's answer.

⁵ *Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements – Order Deciding Reliability Need Issues and Addressing Cost Allocation and Recovery*, Case 12-E-0136 (New York Public Service Commission, May 20, 2013).

A. Protests

17. MEUA asserts that National Grid's proposed amendments to the Wholesale TSC represent a substantial increase – as much as 15.2 percent in some months – in cost to wholesale transmission customers of National Grid, including MEUA's members, for precisely the same service they currently receive.⁶ Moreover, MEUA argues, there will be no increase in benefits to wholesale customers commensurate with the substantial increase in costs, so the Commission must find that National Grid has not met its burden of demonstrating that its proposed rates are just and reasonable and not unduly discriminatory or preferential.⁷

18. MEUA also asserts that it is inappropriate for National Grid to rely on a New York Commission determination as to the appropriate wholesale recovery of RSSA costs, because such reliance is contrary to the Commission's exclusive jurisdiction over wholesale cost recovery.

19. MEUA and NYAPP argue that the 2012 and 2013 Dunkirk RSSAs must be filed for Commission review pursuant to section 205.⁸ MEUA states that there is no other means for the Commission to review the service, since there are no RSS provisions in NRG's Market Based Rate Tariff. NYAPP adds that without Commission review and approval of the RSSAs, wholesale ratepayers would be subject to rates that would not be subject to either the discipline of the market or regulatory oversight.⁹

20. MEUA argues that National Grid has not shown that RSSA costs were prudently incurred, because the company did not show that it was reasonable to wait for Dunkirk's mothball notice to address the local reliability issues.¹⁰ Accordingly, MEUA argues that National Grid failed to provide enough evidence for the Commission to determine whether RSSA costs are more fairly borne by wholesale customers or National Grid's shareholders. MEUA further contends that National Grid merely states that the RSSAs resulted from arms-length negotiations, supervised by the New York Commission, and

⁶ MEUA Protest at 1-2, 7-8.

⁷ *Id.*

⁸ MEUA Protest at 8-9; NYAPP Protest at 8-9.

⁹ NYAPP Protest at 9 (citing *Braintree Elec. Light Dep't.*, 120 FERC ¶ 61,097 at P 11 (2007)).

¹⁰ MEUA Protest at 14-15.

that the estimated costs are less than the cost-of-service rate NRG proposed in Docket No. ER12-2237-000.¹¹ NYAPP argues, because the NRG cost-of-service rate was never approved by the Commission, it cannot serve as a benchmark to determine the justness and reasonableness of the RSSA costs before the Commission here.¹²

21. NYAPP further argues that National Grid failed to provide cost support for the RSSA costs as directed by the August 30, 2013 Order. NYAPP contends National Grid's proposed Transmission Support Payments to recover RSSA costs will not be entered in either the Uniform System of Accounts (USofA) or the FERC Form 1 and are therefore not transparent or verifiable.¹³ Alternatively, NYAPP contends, if National Grid's proposal is to be accepted, it should also be set for hearing.¹⁴

22. MEUA and NYAPP both argue that accepting National Grid's proposal for a July 1, 2013 effective date would violate the section 205 prohibition on retroactive ratemaking.¹⁵ MEUA and NYAPP add that National Grid's contention that its wholesale customers were on notice of its intent to seek recovery of RSSA costs through its formula rate by virtue of its filing in Docket No. ER13-1182-000 is not supported by the cases National Grid cites.¹⁶ NYAPP contends that National Grid's reliance on *Consolidated Edison Company v. FERC*¹⁷ is misplaced.¹⁸ NYAPP contends that National Grid advances that case for the proposition that 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 the parties have agreed to make a rate effective retroactively.¹⁹ NYAPP argues that neither of those circumstances exists in the present

¹¹ MEUA Protest at 14.

¹² NYAPP Protest at 8.

¹³ *Id.* at 7.

¹⁴ *Id.* at 9, 12.

¹⁵ MEUA Protest at 18; NYAPP Protest at 10.

¹⁶ NYAPP Protest at 10; MEUA Protest at 18-19.

¹⁷ 347 F.3d 964 (D.C. Cir. 2003) (*Con Ed*).

¹⁸ NYAPP Protest at 11.

¹⁹ *Id.* at 11 (citing National Grid Transmittal Letter at 15; *Con Ed*, 347 F.3d at 969 (D.C. Cir. 2003)).

case, because the Commission did not approve the rate National Grid filed in Docket No. ER13-1182-000 subject to further revision, and transmission customers have never agreed to retroactive rate treatment of RSSA costs.²⁰ Additionally, MEUA argues, applying National Grid's logic to this case would create a rule by which utilities could easily circumvent the Commission's retroactive ratemaking prohibitions simply by giving notice to their customers that they intend to make a section 205 filing at some point in the future, in which they will seek retroactive rate corrections back to a certain date.²¹ Accordingly, MEUA argues, if the Commission approves National Grid's proposal, it should make the approved rates effective February 5, 2014.²²

23. MEUA further contends that RSSA costs should be allocated to other users of the transmission system in western New York, such as the New York State Electric and Gas Corporation (NYSEG), which, according to the New York Commission, will benefit but pay nothing.²³

24. NYAPP argues that National Grid fails to acknowledge that Attachment Y of the NYISO OATT provides for the retail rate recovery of costs related to Regulated Non-Transmission Solutions to Reliability Needs.²⁴ NYAPP contends that the regulatory regime approved by the Commission as part of NYISO's Comprehensive System Planning Process (CSPP) in Attachment Y covers the non-transmission solutions embodied by the RSSA costs here.²⁵ Moreover, NYAPP argues, the Commission has recognized that NYISO and its stakeholders continue to address cost recovery of mothballed or retiring generating units needed for reliability, and urges the Commission to allow the stakeholder process to work.²⁶

²⁰ NYAPP Protest at 11.

²¹ MEUA Protest at 19-20.

²² *Id.* at 20; NYAPP Protest at 11.

²³ MEUA Protest at 17 (citing 2012 RSSA Order, *supra* note 4).

²⁴ NYAPP Protest at 2-3.

²⁵ *Id.* at 3-4.

²⁶ *Id.* at 4 (citing *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,030 (2010) (October 12, 2010 Order, Docket No. ER10-2220) (“[W]e believe the better course is to await the outcome of the stakeholder process”)).

25. NYAPP also requests that the Commission order a technical conference to consider National Grid's proposed ministerial changes to its Wholesale TSC if the Commission does not reject the December 6 filing.²⁷ NYAPP asserts that many proposed changes are either substantive in nature, resulting in unintended or incorrect calculations, or are confusing. Moreover, NYAPP argues, National Grid did not provide revised versions of the work papers to the formula, which are essential to understanding the source of many inputs in the Wholesale TSC formula.²⁸ NYAPP states that it incorporates its comments on the ministerial changes from its April 19, 2013 Protest to National Grid's filing in Docket No. ER13-1182-000.²⁹

B. Answers

1. National Grid

26. National Grid argues that, although it has no obligation to file the RSSAs pursuant to section 205, because it is not the service provider, it filed everything the Commission needs to assess the appropriateness of including RSSA costs in its transmission formula rate.³⁰ National Grid further argues that the instant filing seeking Commission approval of its proposal is evidence that it recognizes the Commission's jurisdiction over, and authority to review, wholesale transmission rates and their components.³¹ National Grid also notes its statement in its December 6 Filing that, if the Commission determines that National Grid has a separate 205 filing obligation, then National Grid submits the RSSAs for Commission review pursuant to section 205, and will include the RSSAs as rate schedule attachments to Attachment H in a compliance filing. Therefore, even if the Commission finds a 205 filing obligation, there is no basis for rejecting National Grid's filing as a result.

27. National Grid next contends that it provided sufficient cost support to justify the inclusion of RSSA costs in its Wholesale TSC. National Grid contends that, contrary to NYAPP's assertion, it plans to file the RSSA costs in FERC Account 566, which reflects

²⁷ NYAPP Protest at 11-12.

²⁸ *Id.* at 11.

²⁹ *Id.* at 12.

³⁰ National Grid Answer at 5-7.

³¹ National Grid Answer at 16.

miscellaneous expenses related to transmission operation.³² Moreover, National Grid argues, its proposed section 14.1.9.1.41 of Attachment H requires that only RSSA costs related to agreements accepted by the Commission will be included in the TSC rate.

28. National Grid further contends that its proposal included the specific, actual costs associated with the Dunkirk RSSAs, including those incurred by National Grid to date, through the end of the 2013 Dunkirk RSSA.³³

29. National Grid also asserts that it was appropriate not to allocate any of the RSSA costs to NYSEG, because neither NYSEG, nor NYSEG's customers, are transmission customers of National Grid. Moreover, National Grid argues, the New York Commission specifically declined to require the allocation of RSSA costs to NYSEG on the grounds that any benefits to NYSEG by virtue of the RSSAs were comparatively de minimis.³⁴ National Grid further asserts that its proposal is consistent with the treatment of RMR-type costs by other transmission providers, in limiting their assignment only to National Grid customers.³⁵

30. National Grid next contends that it took measures before NRG's mothball notice to evaluate the risks of generator retirements to the reliability of its transmission system. National Grid specifically notes a 2011 study it conducted that examined scenarios related to the retirement of coal-fired generation in the region, and began to implement transmission upgrades to address reliability concerns prior to NRG's mothball notice.³⁶

³² FERC Uniform System of Accounts 566 Miscellaneous transmission expenses:

This account shall include the cost of labor, materials used and expenses incurred in transmission map and record work, transmission office expenses, and other transmission expenses not accounted for elsewhere.

³³ National Grid Answer at 10.

³⁴ National Grid Answer at 11 (citing 2012 RSSA Order at 25).

³⁵ National Grid Answer at 11 (citing California Independent System Operator, Fifth Replacement FERC Electric Tariff, Section 41.7 ("Except at otherwise provided in Section 41.8, the costs incurred by the CAISO under each Reliability Must-Run Contract shall be payable to the CAISO by the Responsible Utility in whose PTO Service Territory the Reliability Must-Run Units covered by such Reliability Must-Run Contract are located.")).

³⁶ National Grid Answer at 12 (citing December 6 Filing, Exh. NMP-4 (Altenburger) at 5).

Therefore, National Grid contends, it did not wait until NRG's mothball notice to address reliability issues.³⁷ National Grid argues that, contrary to MEUA's assertions, National Grid had no duty to make arrangements with NRG to prevent Dunkirk's mothballing at the time National Grid sold the Dunkirk facility to NRG in 1998. National Grid contends that such a condition would be manifestly unreasonable, since expecting National Grid to anticipate the mothballing of the Dunkirk facility over fifteen years into the future defies any notion of fairness.³⁸ Moreover, National Grid points out that the only support MEUA provides for its argument is a reference to NYSEG's sale of certain of its generating assets that included an agreement between the parties that one of the generators would continue to remain online to provide voltage support if not dispatched through the NYISO markets. National Grid asserts that agreement did not involve a potential mothballing scenario, as is present here.³⁹

31. National Grid next contends that, even assuming that the loss of Dunkirk created a reliability need as contemplated under Attachment Y of the NYISO OATT, nothing in section 31.5.1.6 of Attachment Y prohibits transmission owners from seeking cost recovery from wholesale transmission customers with the Commission.⁴⁰ To the contrary, National Grid states, section 31.5.1.6 states that "[n]othing in this section shall affect [FERC's] jurisdiction over the sale and transmission of electric energy" subject to its jurisdiction. Moreover, National Grid notes, section 35.1 states that the cost allocation principles and methodologies in Attachment Y cover only regulated transmission solutions to reliability needs and regulated transmission responses to congestion, whether proposed by a transmission owner or other developer.⁴¹ Therefore, National Grid contends, Attachment Y does not prohibit the recovery of costs from wholesale customers.

32. National Grid next argues that the ongoing NYISO stakeholder process regarding the cost treatment of generators that plan to mothball or retire but are needed for transmission reliability should not preclude the Commission from deciding cost recovery issues with respect to agreements entered into in the interim. Moreover, National Grid

³⁷ *Id.* at 12.

³⁸ MEUA Protest at 15-16.

³⁹ National Grid Answer at 13.

⁴⁰ *Id.* at 13-14.

⁴¹ National Grid Answer at 14 (citing NYISO Tariff, Attachment Y at section 31.5.1.1).

argues, nothing in its proposal prejudices the ability of NYISO and its stakeholders to continue those discussions.⁴²

33. National Grid next contends that NYAPP and MEUA's arguments that the March 29, 2013 filing could not constitute sufficient notice because there was no way of knowing whether National Grid might refile or whether the Commission would approve the proposal are erroneous.⁴³ National Grid argues that certainty as to the outcome of a rate proposal is not a necessary condition to finding that customers have sufficient notice, and accepting such a restrictive formulation would essentially eviscerate the notice exception, as no customer can know with certainty the outcome of a rate proposal. Therefore, National Grid asserts, the Commission should grant a retroactive effective date for the proposed amendments to the Wholesale TSC as of 60 days following the date of the March 29 filing, i.e., July 1, 2013.

34. National Grid lastly contends that NYAPP fails to provide any explanation as to which of the proposed ministerial changes it believes are substantive and/or confusing. National Grid argues that most of the proposed modifications in the December 6 Filing were included in the March 29 filing, but that NYAPP fails to address National Grid's response to NYAPP's comments in that proceeding. Moreover, National Grid contends, NYAPP's argument that National Grid failed to provide revised versions of the work papers to the Wholesale TSC is misplaced, because the December 6 filing did not modify the work papers. Therefore, there is no justification for a technical conference.⁴⁴

2. MEUA

35. MEUA contends that National Grid failed to submit any evidence demonstrating it has good cause for providing less than 60 days' prior notice of its proposed rate change, as required by section 205 and Commission regulations and precedent.⁴⁵ MEUA further contends that National Grid provides no reason why its filing, made after the date on

⁴² National Grid Answer at 15-16.

⁴³ *Id.* at 17 (citing MEUA Protest at 19-20; NYAPP Protest at 10-11).

⁴⁴ National Grid Answer at 18.

⁴⁵ MEUA January 22, 2014 Answer at 3-4 (citing 16 USC § 824d (2012); 18 C.F.R. § 35.3(a) (2013); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993); *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*)).

which RSS service commenced, meets the Commission's standard of "extraordinary circumstances" to grant waiver of the prior notice requirement.⁴⁶ MEUA next argues that National Grid's reliance on *Con Edison v. NYISO*⁴⁷ is misplaced. MEUA contends that *Con Edison v. NYISO* involved ongoing proceedings before the Commission concerning the justness and reasonableness of the relevant rate, such that customers were on notice that a future adjustment to that rate may be made as a result of that proceeding, which is not the case here, where the prior proceeding, in Docket No. ER13-1182-000, was terminated by Commission order.⁴⁸ Moreover, MEUA argues, National Grid's response to the Commission's June 26, 2013 deficiency notice in that docket,⁴⁹ merely stated that National Grid wanted to amend its formula rate so that it could recover RSSA costs when and if National Grid incurs them.⁵⁰ MEUA contends that such a speculative statement regarding RSSA costs cannot constitute notice to MEUA of the proposed formula rate.

36. MEUA next argues that, since the costs associated with the 2012 and 2013 Dunkirk RSSAs will be passed through to National Grid's transmission customers, and further because the Commission acknowledged that the pass-through of the RSSA costs in the Wholesale TSC significantly affects National Grid's customers' rates,⁵¹ the Commission must ensure the Dunkirk RSSAs are filed as separate rate schedules pursuant to section 205. MEUA further contends that National Grid's proposal to incorporate a cost allocation component designed by the New York Commission into a FERC-jurisdictional formula rate undermines the Commission's exclusive authority over wholesale transmission rates should be rejected.⁵²

⁴⁶ MEUA Answer at 4 (citing *Central Hudson*, 60 FERC at 61,338-39).

⁴⁷ *Consol. Edison Co. of N.Y., Inc. v. New York Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,059 (2004).

⁴⁸ MEUA Answer at 5-6.

⁴⁹ Letter Informing National Grid that their March 29, 2013 Filing is Deficient, Docket No. ER13-1182-000 (June 26, 2013).

⁵⁰ MEUA Answer at 7 (citing Proposed Amendments to the Wholesale Transmission Service Charge Under the NYISO Open Access Transmission Tariff of Niagara Mohawk Power Corporation, Docket No. ER13-1182-000 at 3 (July 1, 2013)).

⁵¹ MEUA Answer at 9 (citing August 30, 2013 Order, 144 FERC ¶ 61,172 at P 39).

⁵² MEUA Answer at 10.

37. MEUA next clarifies that its prudence argument from its December 27, 2013 Protest did not suggest that National Grid should have predicted any specific outcome for the Dunkirk plant.⁵³ Rather, MEUA contends, National Grid knew or should have known that the Dunkirk facility would be needed for local system reliability and should have taken this into consideration when determining whether RSSA costs are more fairly borne by wholesale transmission customers or shareholders.⁵⁴

3. NYAPP

38. NYAPP contends that National Grid admitted that the RSSAs are a regulated non-transmission solution to a reliability need, the costs for which, NYAPP argues, Attachment Y to the NYISO OATT mandates be recovered from retail customers through a surcharge separate from National Grid's Wholesale TSC.⁵⁵ Moreover, NYAPP argues, whether and how the costs associated with mothballed generators needed for reliability is at issue in Docket No. ER10-2220, in which the Commission stated that it would await the outcome of the stakeholder process before ruling on the fixed-cost recovery issues raised in that proceeding.⁵⁶

39. NYAPP argues that wholesale transmission customers are already charged for the costs of out-of-market generation needed to avoid violating Local Reliability Rules through NYISO Rate Schedule 1. Rate Schedule 1, NYAPP contends, directs that NYISO pay generators resolving those issues through the funds collected from Rate Schedule 1, and that National Grid's transmission formula rate is not the appropriate place for such funds to be collected.⁵⁷

4. National Grid

40. In its answer to NYAPP, National Grid asserts that the Commission's order in Docket No. ER10-2220 does not preclude consideration of National Grid's amendment to

⁵³ MEUA Answer at 10 (citing MEUA Protest at 13-16).

⁵⁴ MEUA Answer at 11.

⁵⁵ NYAPP January 27, 2014 Answer at 3 (citing NYISO OATT, Attachment Y, section 31.5.1.6).

⁵⁶ NYAPP January 27, 2014 Answer at 3-4 (citing October 12, 2010 Order, Docket No. ER10-2220, 133 FERC ¶ 61,030 at P 54).

⁵⁷ NYAPP January 27, 2014 Answer at 6.

its Wholesale TSC in this proceeding. National Grid states that, in its order accepting NYISO's proposal, the Commission declined to consider arguments regarding fixed cost recovery as beyond the scope of the proposal, and noted that NYISO was working with its stakeholders on this issue and solutions to reliability problems. National Grid argues that its filing does not involve a NYISO mechanism for addressing fixed-cost recovery issues or NYISO's process or evaluating solutions to reliability problems, which are currently being developed in the NYISO stakeholder process. National Grid further argues that the only issue presented by its proposal is the appropriateness of recovering a portion of the RSSA costs from its wholesale customers to ensure transmission system reliability, which is not at issue in Docket No. ER10-2220-000. Therefore, National Grid contends, the Commission's consideration of National Grid's proposal in the instant proceeding will not undermine or predetermine the ongoing NYISO stakeholder discussions as suggested by NYAPP.⁵⁸

41. National Grid next argues that its election to include RSSA costs in Account No. 566 should not impact the Commission's determination as to whether those costs are appropriately included in National Grid's Wholesale TSC.⁵⁹

42. National Grid lastly contends that that NYAPP's argument that RSS costs do not belong in National Grid's Wholesale TSC is equally without merit as it ignores the Commission's longstanding treatment of such costs as transmission-related expenses. National Grid states that NYPA's argument that NYISO's transmission planning documents do not list RSS contracts is incorrect in that the RSSAs are listed in NYISO's transmission planning documents, specifically NYISO's 2012 Comprehensive Reliability Plan discussing updates to the Reliability Needs Assessment, contrary to NYAPP's assertion.⁶⁰

IV. Commission Determination

A. Procedural Matters

43. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

⁵⁸ National Grid January 31, 2014 Answer at 2-3.

⁵⁹ *Id.* at 3-4.

⁶⁰ *Id.* at 4.

44. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept National Grid's, MEUA's and NYAPP's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

45. Our preliminary analysis indicates that National Grid's proposed tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Furthermore, we find good cause to grant waiver of the 60-day prior notice requirement. Accordingly, we accept National Grid's proposed tariff revisions, suspend them for a nominal period, to be effective July 1, 2013,⁶¹ subject to refund and to further Commission order. Following our further consideration of the matters at issue and the parties' arguments, we will issue a further order in this proceeding.

The Commission orders:

National Grid's proposed tariff revisions are hereby accepted for filing, and suspended for a nominal period, to become effective July 1, 2013, subject to refund, and to further order of the Commission, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶¹ We grant waiver of the prior notice requirement to allow the proposed tariff revisions to be effective July 1, 2013, as requested. *See* 16 U.S.C. § 824d(d) (2012); 18 C.F.R. § 35.11 (2013); *see also Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,170, at PP 84-86 (waiver of prior notice rule in order accepting a System Support and Resource (SSR) agreement and associated rate schedule), *order on reh'g*, 144 FERC ¶ 61,128 (2013). The proposed July 1, 2013 effective date matches the beginning of National Grid's formula rate year: July 1 through June 30 as prescribed by Section 14.1.9.1.66 to NYISO OATT Attachment H.