

147 FERC ¶ 61,188
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

National Grid USA

Docket No. ER14-1687-000

ORDER GRANTING WAIVER IN PART

(Issued June 6, 2014)

1. On April 8, 2014, National Grid USA (National Grid), on behalf of its wholly owned subsidiary, Niagara Mohawk Power Corporation (Niagara Mohawk),¹ filed a motion requesting the Commission to issue an expedited order granting limited waiver of section 14.1.9.4.1.1 of Attachment H to the New York Independent System Operator's (NYISO) Open Access Transmission Tariff (OATT) to allow an additional 6 months (i.e., until December 14, 2014) for Niagara Mohawk to comply with the NYISO OATT's June 14, 2014 deadline for submitting the informational filing that constitutes the 2014 Annual Update of Niagara Mohawk's wholesale Transmission Service Charge (TSC). For the reasons set forth below, the Commission grants waiver of the section 14.1.9.4.1.1 filing deadline, in part, to permit filing of the 2014 Annual Update on or before November 30, 2014.

I. Background

2. Niagara Mohawk's TSC is determined annually using a formula rate, pursuant to Attachment H of the NYISO OATT.² Attachment H, section 14, requires Niagara Mohawk to submit the Annual Update with the Commission by June 14 of each year by detailing the calculation of the TSC formula rate to be collected for transmission service

¹ For purposes of discussing the instant waiver request, we will refer to Niagara Mohawk throughout.

² The Commission approved a settlement resolving all of the issues among the Settling Parties in Docket No. ER08-552-000, *et al.*, regarding Niagara Mohawk's proposed formula rate for its TSC. *Niagara Mohawk Power Corp.*, 127 FERC ¶ 61,289 (2009).

beginning on and after July 1 of each year. The Annual Update relies primarily on data from Niagara Mohawk's FERC Form No. 1 from the prior calendar year.

II. Waiver Request

3. Niagara Mohawk states that its waiver request stems from the unusual circumstance of a delay in the filing of its FERC Form No. 1 for calendar year 2013 (2013 FERC Form No. 1). It notes that in Docket No. AC14-5-000, National Grid, Niagara Mohawk's parent, requested an extension until September 30, 2014 to file Niagara Mohawk's 2013 FERC Form No. 1.³ Niagara Mohawk states that National Grid's request was granted by order issued March 5, 2014.⁴ Niagara Mohawk states that it believes in good faith that its 2013 FERC Form No. 1 will not be available for use in determining the 2014 Annual Update to meet the June 14, 2014 filing date required by Attachment H.

4. Niagara Mohawk asserts that its request satisfies relevant criteria for granting waiver.⁵ Niagara Mohawk argues that it is acting in good faith and that good cause exists for the extension of time as this will assure that its financial statements are accurate and complete and that the 2014 Annual Update will otherwise comply with NYISO's OATT requirements.⁶ Niagara Mohawk says that its waiver request is limited to the specific facts in this proceeding. Niagara Mohawk states that its request applies only to its 2014 Annual Update and that it would be inapplicable to subsequent years. According to Niagara Mohawk, its waiver request is limited in scope because the "single effect" of a waiver would be that Niagara Mohawk would have an additional 6 months, i.e., until December 14, 2014, to comply with the NYISO OATT deadline for filing the Annual Update.⁷

³ The Commission requires major electric utilities to submit the FERC Form No. 1 on April 18 each year. 18 CFR § 141.1(b)(2)(ii)(2013).

⁴ *National Grid USA*, Docket No. AC14-5-000 (March 5, 2014) (delegated letter order).

⁵ Niagara Mohawk April 8, 2014, Motion for Limited Tariff Waiver at 3-4 and cases cited.

⁶ *Id.* at 7.

⁷ *Id.* at 3-4.

5. Noting the extension of time until September 30, 2014 to file the 2013 FERC Form No. 1, Niagara Mohawk states that the waiver would remedy a concrete problem by allowing Niagara Mohawk to file its 2014 Annual Update with inputs based on the 2013 FERC Form No. 1 data and thereby comply with Attachment H of NYISO's OATT.⁸

6. Niagara Mohawk argues that waiver in this proceeding is in the public interest and would have no adverse consequences on third parties, i.e., NYISO, other transmission owners, or transmission customers taking transmission service under the TSC rate. Niagara Mohawk states that "granting the waiver request will ensure that transmission customers are held harmless from the delay by reconciling revenues after the fact, with interest calculated in accordance with Section 35.19a of the Commission's regulations."⁹ Thus, Niagara Mohawk argues that the delay in submission of the 2014 Annual Update informational filing will neither increase nor decrease the TSC rates paid by NYISO OATT customers.

7. Niagara Mohawk also points out that filing its Annual Update as of December 14, 2014 would not alter the rights of interested parties to review and contest the accuracy of the information underlying Niagara Mohawk's Annual Update, since those rights are triggered by the Publication Date which is defined in the NYISO OATT as the date of an informational filing for an update year.¹⁰

8. Niagara Mohawk requests that the Commission issue an order with an effective date of no later than June 8, 2014.

III. Notice of Filing and Responsive Pleadings

9. Notice of Niagara Mohawk's filing was published in the *Federal Register*, 79 Fed. Reg. 21,913 (2014), with protests or interventions due on or before April 29, 2014. On April 21, 2014, the New York Association of Public Power (NYAPP) filed a timely motion to intervene.

10. On April 25, 2014, NYAPP filed a timely protest. In its protest, NYAPP asserts that Niagara Mohawk has a history of filing extension and waiver requests of Commission forms and its Annual Update. NYAPP notes that, in requesting the extension to file the 2013 FERC Form No. 1, National Grid stated that an extension was

⁸ *Id.* at 4-5.

⁹ *Id.* at 2.

¹⁰ *Id.* at 5-6 (referencing NYISO OATT, sections 14.1.9.4.3.6, 14.1.9.1.63, and 14.1.9.4.2.1.).

needed due to ongoing efforts to stabilize its single-platform accounting system to replace two legacy systems that it had been operating since its merger with Keyspan Corporation.¹¹ Citing various Commission orders applying standards for granting limited waiver requests,¹² NYAPP argues that the Commission should reject Niagara Mohawk's request for waiver of section 14.1.9.4.1.1 of Attachment H of the NYISO OATT because it has failed to meet its burden of proof to establish that the waiver request is in good faith and of a limited scope. NYAPP argues that National Grid's purported difficulties in converting its two accounting systems to a single accounting platform is not a new issue and that it has had sufficient time to fix this problem.¹³

11. NYAPP argues that Niagara Mohawk's repeated failure to file its required FERC forms and updates calls into question its due diligence in requesting waiver and in fixing its accounting system. NYAPP argues that Niagara Mohawk's failure to explain why it is requesting 75 days to incorporate the information from the FERC Form No. 1 into its 2014 Annual Update, when it only needed 14 days in the 2013 Annual Update to do the same, demonstrates its lack of good faith in submitting its waiver request.¹⁴

12. NYAPP also argues that in light of Niagara Mohawk's history of seeking extensions and waivers, the current waiver request is not of a limited scope. NYAPP argues that, rather than relating to a new issue unknown by Niagara Mohawk, these accounting problems have been ongoing since September 2012 and that Niagara Mohawk has filed multiple Commission extension and waiver requests for what it claims are issues of a "single effect." Further, NYAPP argues that in view of Niagara Mohawk's requests for waivers and extensions over a period of multiple years for the same issue, its waiver request does not meet the Commission's criteria that it must be of a limited scope.¹⁵

13. In the alternative, NYAPP requests that, if the Commission grants Niagara Mohawk's waiver request, it should only extend the filing deadline of the 2014 Annual Update to October 14, 2014. NYAPP argues that because Niagara Mohawk has failed to explain why it needs 75 days to incorporate the information from the 2013 FERC Form No. 1 into its 2014 Annual Update, the Commission should follow its previous approval of nearly identical waiver and extension requests and limit any approved waiver for a

¹¹ NYAPP's April 25, 2014 Protest at 1-2.

¹² *Id.* at 3 and cases cited.

¹³ *Id.* at 3.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 5.

period of 14 days after the deadline expires for the submittal of the 2013 FERC Form No. 1.¹⁶

IV. Commission Determination

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules and Practice and Procedures, 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.

B. Substantive Matters

15. For the reasons set forth below, the Commission grants in part, waiver of the filing deadline in section 14.1.9.4.1.1 of Attachment H of the NYISO OATT to permit Niagara Mohawk to file its 2014 Annual Update on or before November 30, 2014. The Commission has granted limited waivers of tariff provisions where: (i) the applicant has been unable to comply with the tariff provision at issue in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem will be remedied by granting the requisite waiver; and (iv) the waiver does not have undesirable consequences, such as harming third parties.¹⁷ We find that Niagara Mohawk has shown good cause to grant its request for waiver, in part, as discussed below.

16. We will allow Niagara Mohawk additional time to comply with the deadline for filing the 2014 Annual Update of Niagara Mohawk's wholesale TSC rate, for the reasons provided below. It was granted an extension until September 30, 2014, to file its 2013 FERC Form No. 1.¹⁸ Niagara Mohawk states that, as a result, it believes in good faith that its 2013 FERC Form No. 1 will not be available to be used for determining the 2014 Annual Update by the June 1, 2014 filing date required by Attachment H to the NYISO OATT and NYAPP has not shown otherwise. In light of the fact that the earlier grant of

¹⁶ *Id.* at 6 (citing National Grid, 143 FERC ¶ 61,183, at P 10 (2013)).

¹⁷ See, e.g., *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,110, at P 10 (2014); *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,060, at P 12 (2013); *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,108, at P 14 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010).

¹⁸ *National Grid USA*, Docket No. AC14-5-000 (March 5, 2014) (delegated letter order).

extension of time to file its FERC Form No. 1 is the underlying basis for the instant waiver request, NYAPP's protest is essentially a collateral attack on that order.¹⁹

17. We also find that Niagara Mohawk's request is limited in scope in that the waiver would apply only to the 2014 Annual Update and would be inapplicable to subsequent years. Further, the waiver remedies a concrete problem because, without the waiver, Niagara Mohawk would have to file its Annual Update shortly, by June 14, 2014, without having the required data and information to do so from its 2013 FERC Form No. 1. Finally, the waiver does not have undesirable consequences, such as harming third parties, because any difference between the amounts collected and the updated amounts will be reconciled, with interest, next year in the normal reconciliation process of the formula rate provisions of Attachment H.

18. However, we find that the specific relief Niagara Mohawk seeks in its request for waiver, i.e., to be allowed to file its Annual Update by December 14, 2014, is unsupported. Because the Commission requires utilities to submit their FERC Form No. 1 data on April 18 each year, Niagara Mohawk normally has the FERC Form No. 1 data and information needed to prepare its Annual Update approximately two months before the June 14 filing deadline required by Attachment H of the NYISO OATT. As discussed previously, Niagara Mohawk was granted an extension until September 30, 2014, to submit its 2013 FERC Form No. 1. For that reason, we will apply the same filing timeframe currently permitted under Attachment H of the NYISO OATT and grant Niagara Mohawk a waiver of its filing deadline until November 30, 2014 (i.e., approximately two months from September 30, 2014), to submit its 2014 Annual Update.

The Commission orders:

Niagara Mohawk's request for limited waiver of section 14.1.9.4.1.1 of Attachment H of the NYISO OATT is hereby granted, in part, to allow Niagara Mohawk

¹⁹ In 2013, as noted by NYAPP, the Commission granted Niagara Mohawk 14 days after the 2013 FERC Form No. 1 was filed to file its 2013 Annual Update. We approved that time period because that is what Niagara Mohawk requested in its waiver request. That time period also fell within the two-month period set forth in Attachment H of the NYISO OATT.

until November 30, 2014, to file its 2014 Annual Update as required by that section, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.