

143 FERC ¶ 61,163  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

National Grid Generation LLC

Docket No. ER13-1159-000

ORDER ON TARIFF FILING

(Issued May 23, 2013)

1. On March 25, 2013, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> National Grid Generation LLC (NGG) submitted an Amended and Restated Power Supply Agreement (Agreement) between NGG and LIPA,<sup>2</sup> to be effective May 28, 2013. The Agreement replaces and supersedes an existing power supply agreement that expires on May 27, 2013.<sup>3</sup> NGG also requests waiver of section 35.24 of the Commission's regulations.<sup>4</sup> We accept the Agreement, effective May 28, 2013, as requested and grant waiver of section 35.24 of the Commission's regulations, as discussed below.

**I. Background**

2. Under the existing 1998 power supply agreement (1998 PSA), NGG provides LIPA with electric capacity, energy conversion, and ancillary services from specific

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> The Agreement is between NGG and Long Island Lighting Company, d/b/a LIPA, a New York corporation (LIPA) and a wholly-owned subsidiary of the Long Island Power Authority. NGG is the successor-in-interest to Long Island generating plants that were originally spun off from Long Island Lighting Company prior to its purchase by Long Island Power Authority (LIPA) in a corporate reorganization in 1998. The generating plants were owned by several entities under different names prior to NGG's ownership. *See Long Island Lighting Company*, 82 FERC ¶ 61,129 (1998).

<sup>3</sup> National Grid Generation LLC FERC Electric Rate Schedule No. 1. *See Long Island Lighting Company*, 87 FERC ¶ 63,002 (1999), *see also National Grid Generation LLC*, 130 FERC ¶ 61,006 (2010).

<sup>4</sup> 18 C.F.R. § 35.24 (2012).

NGG-owned generating facilities under a cost of service formula rate for a period of 15 years. The generating facilities specified in the 1998 PSA are devoted entirely to providing service to LIPA, providing capacity and converting LIPA's fuel inputs into energy for LIPA's accounts. Accordingly, NGG does not procure fuel or take title to energy produced.

3. NGG provides 4,000 MW of service from specified generators under rates that consist of an annual capacity charge (billed monthly), a monthly variable charge assessed on a per megawatt-hour basis, monthly ancillary services charges, payment adjustments to the capacity charge for unplanned non-variable expenses, and variable charges. The 1998 PSA also provides performance and efficiency incentives and penalties.

## **II. Proposed Agreement**

4. The Agreement is a bilateral agreement between NGG and LIPA that will permit LIPA to purchase 3,674 MW of capacity, energy conversion, and ancillary services from specific generating facilities<sup>5</sup> under essentially the same arrangement as the 1998 PSA. NGG states that the Agreement is the result of extensive negotiations that will result in a decrease in NGG's annual revenues obtained from services provided to LIPA to \$418,587,043 from \$445,989,218 under the 1998 PSA. The Agreement will commence on May 28, 2013 and expire on April 30, 2028, but LIPA will have the option to terminate the Agreement as early as 2025 with two years notice.

5. According to NGG, the Agreement provides for cost-based formula rates under a similar structure to the 1998 PSA. The rate structure consists of an annual capacity charge that is billed monthly, a monthly variable charge, a monthly capacity payment adjustment charge, and a monthly variable adjustment charge. NGG states that the agreement also provides for NGG to recover the cost of purchasing Regional Greenhouse Gas Initiative (RGGI) allowances for LIPA.<sup>6</sup>

6. NGG states that the fixed capacity charge is designed to recover the fixed costs of the generating facilities including return on investment and depreciation, insurance costs, taxes, administrative costs, and fixed operation and maintenance expenses. The monthly capacity payment adjustment charge, according to NGG, will permit the recovery of non-variable expenses, net of insurance proceeds, associated with extraordinary items.<sup>7</sup> NGG states that the agreed upon rates for at least the first three years are based upon an agreed

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<sup>5</sup> Agreement, Appendix C.

<sup>6</sup> *Id.* Appendix J.

<sup>7</sup> *Id.* section 5.1.1.

return on equity of 9.75 percent, a 50/50 debt to equity ratio, and depreciation rates consistent with NGG's previous base rate case.<sup>8</sup>

7. The negotiated monthly variable charge of \$0.90/MWh is designed to recover variable operation and maintenance costs, environmental fees, and labor costs.<sup>9</sup> According to NGG, the variable charge provides for the recovery of startup cost, base and peak load operation, and fuel swaps, as well as variable environmental compliance activities not recovered through the capacity charge or RGGI charge. The ancillary services charge will recover those expenses not recovered elsewhere. The agreement also provides performance guarantees and penalties if standards are not met.<sup>10</sup>

8. NGG states that the formula rate reflects capital investment cost recovery for certain improvements at a tax-exempt financing rate of return of 4.85 percent. The agreement also reflects the recovery of certain turbine upgrades and new emission controls pursuant to the 2010 Commission-approved settlement as part of the 1998 PSA.<sup>11</sup> In addition, the Agreement adds provisions that permit LIPA to direct NGG to ramp down (i.e., remove from service) and/or repower specified generating facilities.<sup>12</sup>

### **III. Waiver Request**

9. NGG also requests waiver of section 35.24 of the Commission's Rules and Regulations to permit it to continue to determine the amount of cost of removal-related income tax expense reflected in NGG's rates on a flow-through basis.<sup>13</sup> NGG states that granting waiver will permit the continuation of the existing practice in the 1998 PSA and will result in lower overall rates to LIPA.<sup>14</sup>

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<sup>8</sup> NGG transmittal letter at 4 (citing Docket No. ER09-628). In years 4 through 6, either party may file to adjust the ROE based on changes to the 10-year Treasury Bond yield.

<sup>9</sup> Agreement, Article 5.1.2.

<sup>10</sup> *Id.* Appendix F.

<sup>11</sup> *See National Grid Generation LLC*, 132 FERC ¶ 61,260 (2010).

<sup>12</sup> Agreement, Articles 10 and 11.

<sup>13</sup> The level of Federal and state income tax reflects a deduction for cost of removal comprised of removal cost spending net of an amortization add back reflected in depreciation expense.

<sup>14</sup> (Citing *National Grid Generation LLC*, 130 FERC ¶ 61,006, at PP 11-13 (2010)) (Order on Settlement).

#### **IV. Notice of Filing and Responsive Pleadings**

10. Public notice of NGG's filing was published in the *Federal Register*, 78 Fed. Reg. 19,476 (2013), with interventions and comments due on or before April 15, 2013. A motion to intervene and comments were timely filed by LIPA. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>15</sup> notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. LIPA supports the Agreement, stating that it represents the culmination of negotiations between NGG and LIPA and is in the best interest of its ratepayers. LIPA argues that the Agreement will reduce costs to LIPA as compared to an extension of the 1998 PSA and will further provide LIPA with the right to direct NGG to repower eligible generating facilities. LIPA states that the repowering option is important because it provides a process for the cost-effective replacement of generating units with newer, lower emission, more efficient generation. LIPA also supports NGG's request for waiver of section 35.24 to continue, in the Agreement, to determine the amount of cost of removal-related income tax expense on a flow through basis that the Commission approved in the 1998 PSA. LIPA states that this treatment results in overall lower charges to LIPA from NGG.

#### **V. Discussion**

12. We accept the filed power supply Agreement between NGG and LIPA and grant the requested waiver. We find that this agreement not only reduces costs to LIPA as compared to the 1998 PSA, but also provides LIPA with additional flexibility to address changing conditions. This flexibility is the result of the addition of the repowering and ramp down provisions that were not present in the 1998 PSA.

13. The Agreement provides an overall reduction in rates to LIPA. NGG proposes an annual capacity charge of \$415,293,000 for the initial contract year. The capacity charge is based on an agreed upon return on equity of 9.75 percent, which is 100 basis points lower than the 1998 PSA, with the same capital structure as before. The monthly variable charge set forth in the Agreement is \$0.90 per MWh of net generation delivered to LIPA—the same rate as the 1998 PSA. The total 2011 test year revenue requirement under the proposed Agreement would be \$418,587,043<sup>16</sup> a reduction of \$27,402,175 over the 1998 PSA revenue requirement of \$445,989,218.<sup>17</sup>

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<sup>15</sup> 18 C.F.R. § 385.214 (2012).

<sup>16</sup> See NGG March 25, 2013 Filing at Attachment A, Statement BG.

<sup>17</sup> *Id.* Statement BH.

14. The Agreement contains provisions that provide LIPA with the ability to direct NGG to ramp down capacity from designated generating facilities subject to LIPA making a Ramp Down Payment.<sup>18</sup> This provision allows LIPA the option to remove the designated generating facility(ies) from the NGG rate base and the generator would no longer be dedicated to LIPA, effectively removing it from the Agreement. We find that this provision provides LIPA with the flexibility to retire generators while also providing it with the right to acquire the facility and its regulatory rights should NGG decide to decommission the facility.<sup>19</sup> Also, pursuant to Article 11 of the Agreement, LIPA has the right to direct NGG to repower specifically identified capacity blocks of the generating facilities. LIPA has the right to direct NGG to perform a repowering cost assessment to determine the viability of repowering and to exercise its option to direct the repowering of the facility(ies) at LIPA's expense.<sup>20</sup> As discussed, the new Agreement provides an overall rate reduction combined with this additional flexibility to LIPA.

15. NGG requests a waiver of section 35.24 of the Commission's Rules and Regulations to permit it to determine the amount of cost of removal-related income tax expense reflected in NGG's rates on a flow through basis. Granting waiver will permit NGG to continue its current practice which results in reduced costs to LIPA. Consistent with the treatment approved for the 1998 PSA and for the reasons discussed in the Order on Settlement<sup>21</sup> we grant NGG's request for waiver.

The Commission orders:

(A) The Agreement filed in this proceeding is hereby accepted for filing, to become effective on May 28, 2013, as requested.

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<sup>18</sup> Agreement Article 10.

<sup>19</sup> Regulatory rights include environmental, emission reduction credits and allowances, energy injection and Capacity Resource Interconnection Service (CRIS) rights. *See* Agreement, Article 1.

<sup>20</sup> LIPA and NGG will negotiate and enter into a power purchase agreement under which LIPA will purchase the repowered generator's capacity, associated energy and ancillary services from NGG. The Agreement provides that NGG and LIPA will obtain necessary regulatory approvals for the power purchase agreement. *See* Agreement, Article 11.5.

<sup>21</sup> *See supra* n. 14.

(B) Waiver of section 35.24 of the Commission's Rules and Regulations is granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.