



Niagara Mohawk. Niagara Mohawk provides transmission service to NYPA for deliveries to the Villages under an agreement in Niagara Mohawk's Rate Schedule FERC No. 204 (RS 204), entered into prior to the formation of NYISO in 1999. RS 204 is a grandfathered agreement under NYISO's Open Access Transmission Tariff (OATT) and it applies to deliveries to the Villages as well as to five remaining Municipal Customers of NYPA as listed on the proposed Second Revised Sheet No. 16 to RS 204.<sup>2</sup>

4. Existing RS 204 applies to deliveries up to a maximum of 24 MW for Tupper Lake MW and 40 MW to Lake Placid. All deliveries of in excess of this amount must be provided under the NYISO OATT.<sup>3</sup> While Niagara Mohawk's existing facilities are adequate to reliably deliver 24 MW to Tupper Lake and 40 MW to Lake Placid, customer loads in these locations exceeded those limits during the winter of 2003-2004 and are expected to continue to grow.

5. The Parties entered into negotiations to develop and construct transmission network upgrades to accommodate the growing load in the Tri-Lakes Region and to determine how the costs associated with the transmission upgrades should be recovered. These negotiations involved not only the Parties, but also the office of New York Governor George E. Pataki, the New York State Public Service Commission (NYPSC), and New York State Senator Elizabeth Little. The Tri-Lakes Agreement and the Conversion Agreement filed for Commission approval in this proceeding are the product of these negotiations.

### **Niagara Mohawk's Filing**

6. Niagara Mohawk states that, although the negotiations were conducted outside of the Commission's traditional litigation and settlement processes, the Parties participated in these negotiations with the understanding that the compromises required to achieve consensus would not be regarded as establishing precedent in any other dispute. Niagara Mohawk, therefore, requests the Commission to accept the agreements as an uncontested settlement on the same non-precedential basis that the Commission accords to settlements filed under Rule 602 of the Commission's Rules of Practice and Procedure.<sup>4</sup>

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<sup>2</sup> The remaining Municipal Customers are Fairport, Mayville, Sherrill, Solvay and Westfield.

<sup>3</sup> See *Niagara Mohawk Power Corp.*, 99 FERC ¶ 61,150 at P 12 (2002).

<sup>4</sup> 18 C.F.R. § 385.602 (2004).

### **Tri-Lakes Agreement**

7. Niagara Mohawk states that, under the Tri-Lakes Agreement, for the short term, NYPA and the Villages will be responsible for meeting excess demand with additional generation, demand reductions, or some combination of the two.<sup>5</sup> NYPA agrees to perform energy audits of the Villages, examine potential sites for placement of fuel cells, and install 3 MWs of temporary distributed generation. Further, the Parties have agreed to meet regularly and adopt a service reliability plan for the upcoming winter period.

8. For the long term, the Tri-Lakes Agreement provides that two Static Var Compensators and a new 46 kV line (collectively “Project Upgrades”) will be built by Niagara Mohawk and owned by NYPA until the transfer date, at which time title to the line will be transferred to Niagara Mohawk.<sup>6</sup> Financing for the Project Upgrades will be shared among the Parties, with the Villages contributing a significant percentage of the costs. According to Niagara Mohawk, while the actual costs of the new 46 kV line will depend on the ultimate siting requirements, the Tri-Lakes Agreement provides a reasonable approach to apportioning the costs.

### **The Conversion Agreement**

9. Niagara Mohawk notes that the Parties to the Tri-Lakes Agreement are also parties to the Conversion Agreement. That agreement provides that all transmission service to the Villages under RS 204 shall terminate at midnight on the last day of the month in which the Commission accepts the Conversion Agreement for filing (the Conversion Effective Date).

10. In the Conversion Agreement, NYPA consents to the termination of transmission services to the Villages under RS 204 and to Niagara Mohawk filing the Second Revised Sheet No. 16 to RS 204 to implement that termination. In addition, NYPA also consents to the termination of its non-jurisdictional transmission agreements with the Villages, which are also grandfathered under the NYISO OATT. Attached to the Conversion Agreement as Schedule A is a proposed Second Revised Sheet No. 16 to Niagara Mohawk’s RS 204. The only change to this Second Revised Sheet No. 16 is the removal of Tupper Lake and Lake Placid as customers of NYPA served under that rate schedule.

11. The Conversion Agreement also provides that NYPA will cease charging the Villages for services under RS 204 and under the grandfathered NYPA agreements on the

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<sup>5</sup> Tri-Lakes Agreement at 1 and 2.

<sup>6</sup> *Id.* at 3.

Conversion Effective Date.<sup>7</sup> As a result, according to Niagara Mohawk, the Villages will no longer be subject to pancaked transmission rates under the grandfathered agreements, and instead will receive all of their transmission service under NYISO's OATT.

12. Niagara Mohawk points out that the Commission accepted similar conversion agreements involving early termination of grandfathered service to two other NYPA customers formerly served under RS 204: the City of Jamestown, New York,<sup>8</sup> and the Village of Bergen, New York.<sup>9</sup>

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

13. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 9,636 (2005), with interventions and protests due on or before March 7, 2005. Tupper Lake, NYPS&C and the NYPA filed motions to intervene and comments supporting the adoption of the agreements. In addition, Tupper Lake requests the Commission to require that Niagara Mohawk file the executed versions of the two agreements via a compliance filing because the instant filing contains unexecuted versions of the two agreements. Lake Placid filed a motion to intervene out-of-time with comments in support of the adoption of the agreements. Niagara Mohawk filed an answer in support of the interventions.

### **Discussion**

#### **Procedural Matters**

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Niagara Mohawk's answer and will, therefore, reject it.

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<sup>7</sup> Niagara Mohawk's RS 204 will continue to apply to those grandfathered agreements listed on the proposed Second Revised Sheet No.16.

<sup>8</sup> *Niagara Mohawk Power Corp.*, 99 FERC ¶ 61,115 (2002).

<sup>9</sup> *Niagara Mohawk Power Corp.*, Docket No. ER04-669-000, unpublished letter order (May 18, 2004).

### **Commission Determination**

16. We will accept the Tri-Lakes Agreement, the Conversion Agreement, and Second Revised Sheet No. 16 for filing, to be effective May 1, 2005,, subject to the condition discussed below. The upgrades in the Tri-Lakes Agreement which are to be paid by the Villages will enhance transmission facilities operated by NYISO. The Conversion Agreement reflects that the Villages seek to take transmission service directly from the NYISO, and to cause NYPA to terminate grandfathered transmission service under RS 204 for deliveries to the Villages, while continuing to purchase their full requirements for electric service from NYPA. As a result of these changes, the Villages will no longer be subject to pancaked transmission rates under grandfathered agreements and instead will receive all of their transmission service under the NYISO OATT. We find that the agreements appear to be just and reasonable and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful.

17. As requested by the Villages and as discussed above, we direct Niagara Mohawk to file, within 60 days of the issuance of this order, executed versions of both the Tri-Lakes and Conversion Agreements. The Conversion Agreement permits the Villages to convert to transmission service under NYISO's OATT and is background material which by Commission regulation must be filed with the Commission in support of a "rate schedule".<sup>10</sup> The Conversion Agreement, therefore, should be filed in this docket, but need not be filed as part of a tariff. In contrast, the Tri-Lakes Agreement contains terms and conditions relating to service and must be designated as part of a tariff, as discussed below. In addition, Second Revised Sheet No. 16 to Niagara Mohawk's RS 204 is accepted for filing, effective May 1, 2005, the effective date in the Conversion Agreement. Niagara Mohawk must file the Tri-Lakes Agreement and RS 204 along with Second Revised Sheet No. 16 as directed below.

18. In orders involving PJM Interconnection, LLC (PJM) and Midwest Independent Transmission System Operator, Inc. (MISO), in Docket No. EL05-70-000,<sup>11</sup> we instituted proceedings under section 206 of the FPA related to the designation of agreements, such as the ones at issue here, within the OATTs of the respective RTOs. As we have pointed out in Docket No. EL05-70-000, we believe that in order to make the Tri-Lakes Agreement and RS 204 readily accessible to interested parties, they should properly be designated as related to the OATT of the transmission operator. Doing so will promote

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<sup>10</sup> *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,096; *Boston Edison Company*, 98 FERC ¶ 61,292 (2002).

<sup>11</sup> *American Electric Power Service Corp.*, 110 FERC ¶ 61,276 at P 9-10 (2005); *Delmarva Power & Light Co.*, 110 FERC ¶ 61,186 at P 16-17 (2005).

“one-stop shopping” for customers in the NYISO footprint, and will enhance the transparency of the NYISO’s Transmission Owners’ operations as well as make it easier to locate these agreements for anyone that wishes to do so. As the Commission moves toward electronic filing,<sup>12</sup> moreover, it is important that all agreements relating to an ISO/RTO’s operations be designated as related to that ISO/RTO’s OATT. Designation of the Tri-Lakes Agreement and RS 204 as related to the OATT of the transmission operator is purely procedural, and is not meant to imply that the transmission operator has any additional responsibility for its negotiation, administration and enforcement, or that it has any additional liability in any manner with regard to the Tri-Lakes Agreement and RS 204. Nor will such designation change the terms and conditions of service with respect to the remaining Municipal Customers under RS 204, Fairport, Mayville, Sherrill, Solvay and Westfield.

19. We believe the same conditions should apply with respect to the NYISO as PJM and MISO, and are therefore instituting a section 206 proceeding in EL05-84-000 to determine whether the NYISO should also provide for filing of related service agreements, like the ones involved in this case, in its tariff. We will direct, pursuant to sections 205(c) and 206 of the FPA, that NYISO, within 30 days of the date of this order, either designate the Tri-Lakes Agreements and RS 204 as related to its OATT and provide these designations, or show cause why such agreement and rate schedule should not be so designated. Should NYISO designate the Tri-Lakes Agreement and RS 204 as related to its OATT and provide these designations, Niagara Mohawk is directed to refile the Tri-Lakes Agreement and RS 204 with the appropriate designations.

20. Pursuant to section 206 of the FPA, the Commission must establish a refund effective date in a section 206 proceeding that is no earlier than sixty days after the date of publication in the *Federal Register* of notice of the Commission’s initiating the proceeding, and no later than five months subsequent to the expiration of the 60-day period. The Commission will establish a refund effective date of 60 days from the date of publication in the *Federal Register* of notice of the Commission’s initiating this proceeding.<sup>13</sup> However, the Commission does not see a need for refunds in these circumstances, because any change to the designations would not affect any rates or charges under the agreements. The Commission is also required by section 206 to indicate when it expects to issue a final order; the Commission expects to issue a final order in this proceeding within 180 days of the date of the issuance of this order.

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<sup>12</sup> See *Electronic Tariff Filings*, Notice of Proposed Rulemaking, 108 FERC ¶ 61,021 (2004) (Docket No. RM01-5-000).

<sup>13</sup> See, e.g., *Canal Electric Co.*, 46 FERC ¶ 61,153, *reh’g denied*, 47 FERC ¶ 61,275 (1989).

The Commission orders:

(A) The Tri-Lakes Agreement, the Conversion Agreement, and Second Revised Sheet No 16 to Niagara Mohawk's Rate Schedule FERC No. 204 are accepted for filing, effective May 1, 2005, as discussed in the body of this order.

(B) Niagara Mohawk is directed to file executed agreements with the Commission within 60 days of the date of issuance of this order, as discussed in the body of this order.

(C) NYISO and Niagara Mohawk are directed to make the appropriate filings, as discussed in the body of this order.

(D) The refund effective date in Docket No. EL05-84-000, established pursuant to section 206 of the Federal Power Act, will be 60 days from the date of publication in the *Federal Register* of notice of the initiation of this proceeding.(E) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding in Docket No. EL05-84-000.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.