

December 21, 2012

**VIA ELECTRONIC FILING**

Hon. Jaclyn A. Brillling  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

Re: Cases 12-E-0201 and 12-G-0202 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid for Electric and Gas Service

Dear Secretary Brillling:

Attached for filing in the above-referenced proceeding is Multiple Intervenors' *Statement in Support of the Joint Proposal*.

Very truly yours,

COUCH WHITE, LLP

*Michael B. Mager*

Michael B. Mager

MBM/cgw  
Attachment

cc: ALJ Paul Agresta (via E-Mail; w/att.)  
ALJ Rudy Stegemoeller (via E-Mail; w/att.)  
Active Parties (via E-Mail; w/att.)

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**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Proceeding on Motion of the Commission as to  
the Rates, Charges, Rules and Regulations of  
Niagara Mohawk Power Corporation d/b/a  
National Grid for Electric and Gas Service**

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**Cases 12-E-0201 and  
12-G-0202**

**STATEMENT IN SUPPORT  
OF THE JOINT PROPOSAL  
OF MULTIPLE INTERVENORS**

**Dated: December 21, 2012**

**COUCH WHITE, LLP  
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## TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT .....	1
OVERVIEW OF THE JOINT PROPOSAL.....	1
ARGUMENT.....	3
THE COMMISSION SHOULD ADOPT THE JOINT PROPOSAL WITHOUT MODIFICATION.....	3
A.    Electric and Gas Delivery Revenue Requirements.....	4
B.    The Use of Projected Electric and Gas Deferral Credits as Rate Moderators.....	7
C.    Electric and Gas Revenue Allocation .....	10
1.    Electric Revenue Allocation .....	11
2.    Gas Revenue Allocation .....	12
D.    S.C. 3 and S.C. 3-A Electric Rate Design.....	13
E.    The Allocation and the Recovery of RSS Costs .....	15
F.    The Elimination of Historic Demand.....	18
G.    The Joint Proposal In its Entirety.....	20
CONCLUSION.....	23

## **PRELIMINARY STATEMENT**

Multiple Intervenors, an unincorporated association of over 55 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, including the Niagara Mohawk Power Corporation d/b/a National Grid (“Niagara Mohawk”) service territory, hereby submits its *Statement in Support of the Joint Proposal* that was filed with the New York State Public Service Commission (“Commission”) on December 7, 2012, in Cases 12-E-0201 and 12-G-0202.<sup>1</sup> Multiple Intervenors’ Statement in Support is submitted in accordance with the *Ruling Modifying Schedule* issued by Administrative Law Judges Rudy Stegemoeller and Kimberly Harriman, which directed, *inter alia*, that: (a) the Joint Proposal be filed by December 7, 2012; and (b) statements in support of or in opposition to the Joint Proposal be filed by no later than December 21, 2012.<sup>2</sup>

Multiple Intervenors is a signatory to, and strongly supports, the Joint Proposal that was negotiated and filed herein. For the reasons set forth below, Multiple Intervenors urges the Commission to adopt the Joint Proposal, without modification, in this proceeding.

## **OVERVIEW OF THE JOINT PROPOSAL**

The Joint Proposal was executed, and is supported, by (i) Niagara Mohawk, (ii) New York State Department of Public Service Staff (“Staff”), (iii) the Utility Intervention Unit

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<sup>1</sup> Cases 12-E-0201 and 12-G-0202, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid for Electric and Gas Service*.

<sup>2</sup> Cases 12-E-0201 and 12-G-0202, *supra*, Ruling Modifying Schedule (issued October 22, 2012) at 2. Administrative Law Judge Paul Agresta subsequently replaced Judge Harriman in this proceeding.

of the New York State Department of State's Division of Consumer Protection ("UIU"), (iv) the New York Power Authority ("NYPA"), (v) the United States Department of Defense, (vi) the Retail Energy Supply Association, and (vii) Multiple Intervenors (collectively, the "Signatory Parties").<sup>3</sup> The Joint Proposal is intended to govern Niagara Mohawk's provision of retail electric and gas service for the three-year period encompassing April 1, 2013 through March 31, 2016. (JP at § III.1.)<sup>4</sup>

The Joint Proposal provides for three years of electric delivery revenue and rate increases. Pursuant thereto, and excluding the proposed use of rate moderators (discussed *infra*), electric delivery revenues would increase by (i) \$43.395 million in Rate Year 1, (ii) \$51.361 million in Rate Year 2, and (iii) \$28.342 million in Rate Year 3. (JP at § III.2.1.) On a system-wide percentage basis, excluding rate moderators, electric delivery rates would increase by approximately (i) 3.26% in Rate Year 1, (ii) 3.79% in Rate Year 2, and (iii) 2.06% in Rate Year 3. (JP at App. 2, Sch. 3, pp. 1-3.)

The Joint Proposal also provides for three years of gas delivery revenue and rate changes. Pursuant thereto, and excluding the proposed use of rate moderators (discussed *infra*), gas delivery revenues would (i) decrease by \$3.290 million in Rate Year 1, (ii) increase by \$5.854 million in Rate Year 2, and (iii) increase by \$6.268 million in Rate Year 3. (JP at §

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<sup>3</sup> For citation purposes, parenthetical references herein to (i) provisions of the Joint Proposal are preceded by the notation, "JP," (ii) appendices to the Joint Proposal are preceded by the notation, "App.," (iii) exhibits to the pre-filed direct and rebuttal testimony are preceded by the notation, "Ex.," and (iv) schedules to appendices and exhibits are preceded by the notation, "Sch." The procedural context preceding execution of the Joint Proposal is summarized therein. (*See* JP at § I.) NYPA supports the proposed resolution of electric issues in Case 12-E-0201, but advocates no position with respect to the proposed resolution of gas issues in Case 12-G-0202.

<sup>4</sup> The periods April 1, 2013 through March 31, 2014, April 1, 2014 through March 31, 2015, and April 1, 2015 through March 31, 2016 hereinafter are referred to as "Rate Year 1," "Rate Year 2," and "Rate Year 3," respectively.

III.2.1.) On a system-wide percentage basis, excluding rate moderators, gas delivery rates would change by approximately (i) 0.98% (decrease) in Rate Year 1, (ii) 1.92% (increase) in Rate Year 2, and (iii) 1.82% (increase) in Rate Year 3. (JP at App. 3, Sch. 4.3, p. 1; Sch. 5.3, p. 1; and Sch. 6.3, p. 1.)

The Joint Proposal, including its many appendices, is a voluminous document that represents the Signatory Parties' proposed resolution of all outstanding issues in this proceeding. As such, it reflects numerous, interrelated compromises and concessions between and among those parties. Multiple Intervenors anticipates that Niagara Mohawk and/or Staff will include a detailed summary of the Joint Proposal as part of their statements in support thereof. Accordingly, Multiple Intervenors will focus here on the provisions of the Joint Proposal that are of particular importance to its members.

### **ARGUMENT**

#### **THE COMMISSION SHOULD ADOPT THE JOINT PROPOSAL WITHOUT MODIFICATION**

The Joint Proposal is broadly-supported by many parties with diverse – and often adverse – interests. Upon information and belief, it also is unopposed. Multiple Intervenors asserts that, under the circumstances presented, the Joint Proposal is in the public interest and should be adopted by the Commission, without modification, in this proceeding.

From Multiple Intervenors' perspective, the most important provisions of the Joint Proposal relate to the following issues: (a) electric and gas delivery revenue requirements; (b) the use of projected electric and gas deferral credits as rate moderators; (c) electric and gas revenue allocation; (d) electric rate design for S.C. 3 and S.C. 3-A customers; (e) Niagara Mohawk's allocation and recovery of costs incurred to procure Reliability Support Service

(“RSS”); and (f) the elimination of historic demand for certain NYPA customers. Absent the satisfactory resolution of these issues, Multiple Intervenors would not have executed the Joint Proposal.

**A. Electric and Gas Delivery Revenue Requirements**

Niagara Mohawk proposed in its rate filing that its electric and gas delivery revenues be increased at the start of Rate Year 1 by \$130.7 million and \$39.8 million, respectively.<sup>5</sup> For a three-year rate plan, Niagara Mohawk asserted that its electric and gas revenue requirements were as follows:<sup>6</sup>

<b>Rate Year</b>	<b>Electric</b>	<b>Gas</b>
Rate Year 1	\$142.854 Million	\$43.175 Million
Rate Year 2	\$69.759 Million	\$8.871 Million
Rate Year 3	\$48.571 Million	\$4.767 Million

Thus, for the same three-year period encompassed by the Joint Proposal, Niagara Mohawk initially was seeking \$616.651 million and \$152.034 million in electric and gas rate relief, respectively (totaling \$768.685 million).<sup>7</sup> In contrast, the Joint Proposal provides the utility with

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<sup>5</sup> Pre-Filed Direct Testimony of Niagara Mohawk’s Revenue Requirements Panel at Ex. \_\_ (RRP-1), Sch. 1, p. 2.

<sup>6</sup> See Presentation, Niagara Mohawk, Electric and Gas Rate Case Technical Conference, May 15, 2012 (hereinafter, “Technical Conference Presentation”) at 25.

<sup>7</sup> The amounts calculated reflect the fact that rate relief provided in Rate Year 1 would remain in effect for three years, and rate relief provided in Rate Year 2 would remain in effect for two years. Thus, on the electric side, the value of the utility’s initial three-year rate proposal was calculated as follows: (\$142.854 million x 3) + (\$69.759 million x 2) + \$48.571 million = \$616.651 million. Similarly, the value of the utility’s initial three-year gas rate proposal was calculated as follows: (\$43.175 million x 3) + (\$8.871 million x 2) + \$4.767 million = \$152.034 million.

electric and gas rate relief of \$261.249 million and \$8.106 million, respectively (totaling \$269.355 million).<sup>8</sup>

Although the negotiated electric and gas rate relief is substantially less than Niagara Mohawk's initial proposals in this proceeding, the Joint Proposal still provides for three years of electric delivery rate increases, and two years of gas delivery rate increases, during a very-difficult economic climate. Thus, Multiple Intervenors' decision to execute and support the Joint Proposal was not made lightly. Nevertheless, based on the totality of the circumstances, and in consideration of other provisions of the Joint Proposal (a number of which are addressed herein), Multiple Intervenors decided to support its adoption in this proceeding.

Initially, Multiple Intervenors notes that the Joint Proposal provides Niagara Mohawk with substantial funds for electric and gas capital investments. (*See, e.g.*, JP at § III.8.) Multiple Intervenors recognizes that Niagara Mohawk's electric and gas systems are aging, and that incremental investments are needed to maintain, and presumably improve, reliability. As large energy consumers engaging in manufacturing and other business operations, electric and gas reliability is extremely important to Multiple Intervenors members.

Multiple Intervenors also supports the negotiated resolution of many of the previously-controversial revenue requirement issues. For instance, Multiple Intervenors supports the proposed allowed return on equity ("ROE") of 9.3%, which would remain constant throughout the term of the electric and gas rate plans. (JP at § III.2.1[a].) Such ROE is far more justifiable, and preferable to customers, than the 10.55% ROE proposed initially by Niagara

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<sup>8</sup> These amounts were calculated as follows: (a) (\$43.395 million x 3) + (\$51.361 million x 2) + \$28.342 million = \$261.249 million in electric rate relief; and (b) (-\$3.290 million x 3) + (5.854 million x 2) + \$6.268 million = \$8.106 million in gas rate relief.

Mohawk.<sup>9</sup> Multiple Intervenors contends that a 9.3% ROE for a three-year rate plan is reasonable under current economic conditions, and generally is consistent with the results of the methodology employed regularly by the Commission for calculating a utility's allowed ROE, plus a reasonable stay-out premium.<sup>10</sup>

Multiple Intervenors also supports the Signatory Parties' proposal that a 48.0% equity ratio be applied to Niagara Mohawk's capital structure for ratemaking purposes for the term of the Joint Proposal. (JP at § III.2.1[b].) In its initial rate filing, Niagara Mohawk had proposed to increase its equity ratio to 51.4%.<sup>11</sup> From the customer perspective, a 48.0% equity ratio is less-costly and, upon information and belief, should be more than sufficient to enable Niagara Mohawk to maintain its existing credit ratings.<sup>12</sup>

Finally, the Joint Proposal's provisions relating to "excess" earnings are very favorable to customers and in the public interest. Pursuant to the Signatory Parties' agreement: (a) the "dead band" employed in other rate proceedings within which shareholders retain all earnings in excess of the authorized ROE would be eliminated; (b) earnings greater than 9.3% but less than 10.3% would be shared 50% to customers and 50% to shareholders; (c) earnings

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<sup>9</sup> Pre-Filed Direct Testimony of Robert B. Hervert at 3. The electric and gas revenue requirements proposed initially by Niagara Mohawk for a three-year rate plan reflected a 10.90% ROE, which included a stay-out premium compared to the 10.55% ROE advanced in testimony for Rate Year 1. (See Technical Conference Presentation at 25.)

<sup>10</sup> Multiple Intervenors notes that Niagara Mohawk's current authorized ROE for electric operations is 9.3%, established in 2011 by the Commission for a multi-year period. See Case 10-E-0050, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Electric Service*, Order Establishing Rates for Electric Service (issued January 24, 2011) at 74.

<sup>11</sup> Pre-Filed Direct Testimony of Mustally A. Hussain at 4.

<sup>12</sup> Multiple Intervenors notes that the Commission approved the use of a 48.0% equity ratio for ratemaking purposes in Niagara Mohawk's last electric rate case. See Case 10-E-0050, *supra*, Order Establishing Rates for Electric Service at 71.

greater than 10.3% but less than 11.3% would be shared 75% to customers and 25% to shareholders; and (d) earnings greater than 11.3% would be shared 90% to customers and 10% to shareholders. (JP at § III.5.5.) Thus, reflecting the exchange of consideration on many issues, the Joint Proposal contains an “excess” earnings sharing mechanism that is favorable to customers, while still providing Niagara Mohawk with a financial incentive to operate efficiently and realize earnings in excess of the authorized ROE.

For the foregoing reasons, the electric and gas delivery revenue requirements contained in the Joint Proposal are reasonable and should be adopted.

**B. The Use of Projected Electric and Gas Deferral Credits as Rate Moderators**

Niagara Mohawk currently is imposing the Temporary Deferral Recovery Surcharge (“TDRS”) on customers.<sup>13</sup> Pursuant to the TDRS, the utility is recovering \$240.9 million of deferrals owed by customers over the 15-month period running from January 1, 2012 through March 31, 2013.<sup>14</sup> For those customers subject to the TDRS, its upcoming expiration – which is unrelated to this proceeding – will offset, in large part, the electric rate relief negotiated by the Signatory Parties.

Significantly, although customers currently are paying the TDRS to reimburse Niagara Mohawk for prior deferrals, the utility currently projects that, as of March 31, 2013 (*i.e.*, immediately prior to the start of Rate Year 1), a large deferral credit balance (*i.e.*, monies owed to customers) will exist. For instance, at the time of Niagara Mohawk’s rate filing herein, the utility projected that, as of March 31, 2013, it would owe customers \$128.349 million and

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<sup>13</sup> See Niagara Mohawk Electric Tariff, PSC No. 220, Leaf No. 263.7.

<sup>14</sup> *Id.*

\$40.620 million in electric and gas deferral credits, respectively.<sup>15</sup> As reflected in the Joint Proposal, the Signatory Parties agreed that a material portion – but not all – of the projected deferral credits should be used as rate moderators, and to offset RSS costs, during the term of the electric and gas rate plans.<sup>16</sup>

Specifically, the Joint Proposal provides that \$35.715 million in electric deferral credits and \$32.778 million in gas deferral credits would be refunded to customers during the term of the Joint Proposal. (JP at Section III.2.2.) Additionally, as addressed, *infra*, electric deferral credits would be used to offset the first \$57.0 million in RSS costs incurred by Niagara Mohawk. (JP at § III.12.1.1.) Through the use of such deferral credits, electric and gas rate impacts will be moderated, and an increased level of rate stability will be attained. Moreover, inasmuch as Niagara Mohawk was permitted to recover a greater amount of deferrals owed by customers over a 15-month period through the TDRS, equity warrants that deferral credits owed to customers be refunded as expeditiously as practicable.

Multiple Intervenors also supports the negotiated schedule for utilizing deferral credits as rate moderators. For instance, on the electric side (i) \$16.137 million in deferral credits would be utilized in Rate Year 1, (ii) \$19.578 million in deferral credits would be utilized in Rate Year 2, and (iii) no deferral credits would be utilized in Rate Year 3. (JP at § III.3.4.1.) Similarly, on the gas side (i) \$21.990 million in deferral credits would be utilized in Rate Year 1, (ii) \$10.788 million in deferral credits would be utilized in Rate Year 2, and (iii) no deferral credits would be utilized in Rate Year 3. (JP at § III.4.4.1.) This approach to utilizing deferral

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<sup>15</sup> See Pre-Filed Direct Testimony of the Revenue Requirements Panel at 96-98.

<sup>16</sup> Barring unforeseen circumstances necessitating their use, the unallocated deferral credits would be available for use as rate moderators in a future Niagara Mohawk rate proceeding.

credits generally is intended to “levelize” the electric and gas delivery rate increases from Rate Year 1 to Rate Year 2, and from Rate Year 2 to Rate Year 3. (JP at § III.3.4.1, III.4.4.1.)

In the Joint Proposal, an alternate approach to utilizing deferral credits as rate moderators is presented for the Commission’s consideration. (See JP at § III.3.4.4, III.4.4.3.) Under this approach, “flat” delivery rates could be achieved, without material change from Rate Year 1 to Rate Year 2 to Rate Year 3. (*Id.*) Significantly, however, this is not the preferred approach of the Signatory Parties. In fact, Multiple Intervenors opposes this approach and urges that it not be employed in lieu of the approach preferred by the Signatory Parties.

From Multiple Intervenors’ perspective, the alternate approach is flawed in two material respects. First, the approach would produce unacceptable electric rate impacts in Rate Year 1. For instance, in order to achieve “flat” electric delivery rates over a three-year term, the alternate approach would implement a surcharge – as opposed to a credit – in Rate Year 1 that would increase customer rates by almost \$38.0 million. (JP at § III.3.4.4.)<sup>17</sup> Second, use of the alternate approach would create a “hockey stick” problem pursuant to which expiring credits would have the impact of exposing customers to significant, future rate impacts. For instance, under the alternate approach, a \$54.867 million credit is needed in Rate Year 3 to produce “flat” electric delivery rates. (JP at § III.3.4.4.) Upon the expiration of the electric rate plan, however, customers would be confronted with the elimination of that sizeable credit, and, at the same, the prospect of higher delivery rates (if such future rate relief is justified), thereby exposing them to potentially-significant rate impacts. To avoid this “hockey stick” problem, the Signatory Parties’ preferred approach utilizes deferral credits in Rate Year 1 and Rate Year 2 only. Thus, no credit

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<sup>17</sup> Similarly, although the alternate approach includes a gas credit in Rate Year 1, such credit is substantially less than that proposed by the Signatory Parties. (JP at § III.4.4.3.)

would be expiring at the end of Rate Year 3, when Niagara Mohawk would be eligible for higher delivery rates.

Finally, Multiple Intervenors supports the proposal to allocate electric and gas deferral credits on the basis of class delivery revenues. (JP at § III.3.4.2, III.4.4.2.) Given the multiple sources of such credits and their nature, the proposed interclass allocation methodology is equitable.

### **C. Electric and Gas Revenue Allocation**

Multiple Intervenors supports the resolution of electric and gas revenue allocation issues contained in the Joint Proposal. (JP at § III.3.2; App. 2, Sch. 3, pp. 1-3; § III.4.2, App. 3, Schs. 4.3, 5.3, 6.3.) Multiple Intervenors also notes that, given the numerous disagreements in testimony between certain parties (*i.e.*, Niagara Mohawk, Staff and Multiple Intervenors) on cost-of-service issues, achieving broadly-supported consensus on an electric revenue allocation and a gas revenue allocation represents a significant accomplishment that should not be overlooked. For the reasons set forth below, the electric and gas revenue allocations advanced in the Joint Proposal are equitable and should be adopted.

Initially, the Joint Proposal does not attempt to resolve methodological issues as to how electric or gas cost-of-service studies should be conducted, nor is it intended to establish or perpetuate any precedents with respect to cost-of-service issues. Instead, the Joint Proposal focuses on how the electric delivery rate increases, and gas delivery rate reduction and subsequent rate increases, should be allocated to the various service classifications. In Multiple Intervenors' opinion, this approach is optimal; given conflicting testimony and positions by multiple experts on cost-of-service issues, it made sense for the parties to strive for consensus on electric and gas revenue allocations, as opposed to seeking unanimity on methodological issues

that, in all likelihood, would be impossible or near-impossible to achieve. Importantly, the revenue allocations contained in the Joint Proposal are consistent with the available cost-of-service evidence.

### **1. Electric Revenue Allocation**

Niagara Mohawk, Staff and Multiple Intervenors each sponsored testimony and exhibits on electric cost-of-service and revenue allocation issues in this proceeding.<sup>18</sup> While the parties' cost-of-service studies differed in certain respects, and the testimony highlighted a number of methodological issues in dispute, the three cost studies also shared a number of undisputed findings. For instance, according to all three cost studies: (a) the S.C. 1 class was producing a relative rate of return ("RROR") less than 1.0; and (b) the S.C. 1C, S.C. 2ND, S.C. 2D, S.C. 3 Secondary, S.C. 3 Primary, and S.C. L classes were producing RRORs greater than 1.0.<sup>19</sup> No consensus existed as to the whether the RRORs for the S.C. 3 Transmission/Sub-transmission, S.C. 3-A Secondary/Primary, S.C. 3-A Sub-transmission, and S.C. 3-A Transmission subclasses were producing RRORs greater or less than 1.0.<sup>20</sup>

In accordance with the cost-of-service evidence, the Signatory Parties agreed on an electric revenue allocation for Rate Year 1 whereby: (a) S.C. 1, as the only class producing an RROR less than 1.0 under all three cost studies, initially was allocated a 1.25 times the system-

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<sup>18</sup> See, e.g., Pre-Filed Direct and Rebuttal Testimony of the Niagara Mohawk Electric Rate Design Panel, Pre-Filed Direct Testimony of the Staff Electric Rate Panel, Pre-Filed Direct and Rebuttal Testimony of Jeffry Pollock (on behalf of Multiple Intervenors).

<sup>19</sup> See Niagara Mohawk Electric Rate Design Panel at Ex. \_\_\_(E-RDP-2R), Staff Electric Rate Panel at Ex. \_\_\_(SERP-1 Corrected), Jeffry Pollock at Ex. \_\_\_(JP-R6). An RROR greater than 1.0 indicates that a class is producing a rate of return greater than the system average, while an RROR less than 1.0 indicates that a class is producing a rate of return less than the system average.

<sup>20</sup> *Id.*

average increase; (b) the aforementioned classes producing an RROR greater than 1.0 under all three cost studies initially were allocated a 0.75 times the system-average increase; (c) the aforementioned classes for which no consensus existed as to whether their RRORs were greater or less than 1.0 initially were allocated the system-average increase; and (d) such allocations produced an overage, which then was allocated to most classes as a final step. (*See JP at App. 2, Sch. 3, p. 1.*) Having negotiated a cost-based allocation for Rate Year 1 which, depending on the individual party's position on cost-of-service issues, would move all or most classes closer to cost, the Signatory Parties also agreed that all classes would be allocated system-average increases for Rate Year 2 and Rate Year 3. (*See JP at App. 2, Sch. 3, pp. 2-3.*)

Multiple Intervenors asserts that the negotiated electric revenue allocation is consistent with the cost-of-service evidence that is not in dispute, and also is fair to its members taking delivery service under the various S.C. 3 and S.C. 3-A subclasses, as well as all other customer classes. Accordingly, the proposed electric revenue allocation should be adopted.

## **2. Gas Revenue Allocation**

Niagara Mohawk, Staff and Multiple Intervenors each sponsored testimony and exhibits on gas cost-of-service and revenue allocation issues in this proceeding.<sup>21</sup> While the parties' cost-of-service studies differed in certain respects, and the testimony highlighted a number of methodological issues in dispute, the three cost studies also shared a number of undisputed findings. For instance, according to all three cost studies: (a) the S.C. 1, S.C. 5, S.C.

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<sup>21</sup> *See generally* Pre-Filed Direct and Rebuttal Testimony of the Niagara Mohawk Gas Rate Design Panel, Pre-Filed Direct Testimony of the Staff Gas Rates Panel, and Pre-Filed Direct and Rebuttal Testimony of Jeffrey Pollock.

8, and NYSEG classes were producing RRORs less than 1.0; and (b) the S.C. 2, S.C. 3, S.C. 7, and S.C. 12 & 13 classes were producing RRORs greater than 1.0.<sup>22</sup>

In accordance with the cost-of-service evidence, the Signatory Parties agreed on a Rate Year 1 gas revenue allocation that allocated the entire delivery rate reduction to the firm customer classes producing RRORs greater than 1.0 (*i.e.*, S.C. 2, S.C. 3 and S.C. 7), with no revenue increase or decrease allocated to the other classes. (*See* JP at App. 3, Sch. 4.3, p. 1.) Having agreed on a somewhat unusual revenue allocation to reflect the cost-of-service conclusions shared by all three cost studies, the Signatory Parties negotiated gas revenue allocations for Rate Year 2 and Rate Year 3 that allocate rate increases to all non-market-based classes, with relatively moderate differences between the classes to further reflect the cost study results. (*See* JP at App. 3, Sch. 5.3, p. 1; Sch. 6.3, p. 1.)

Multiple Intervenors asserts that the negotiated gas revenue allocation is consistent with the cost-of-service evidence that is not in dispute, and also is fair to its members taking firm transportation service under S.C. 5 and S.C. 8, as well as all other customer classes, including S.C. 6 interruptible transportation customers whose rates are market-based but capped at the applicable firm transportation rates. Accordingly, the proposed gas revenue allocation should be adopted.

#### **D. S.C. 3 and S.C. 3-A Electric Rate Design**

For the reasons set forth below, Multiple Intervenors supports the S.C. 3 and S.C. 3-A electric rate designs contained in the Joint Proposal.<sup>23</sup>

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<sup>22</sup> *See* Niagara Mohawk Gas Rate Design Panel at Ex. \_\_\_\_ (G-RDP-3, Sch. 2), Staff Gas Rates Panel at Ex. \_\_\_\_ (SGRP-2), Jeffrey Pollock at Ex. \_\_\_\_ (JP-R6).

<sup>23</sup> Multiple Intervenors advocates no position on electric rate design issues with respect to customer classes other than S.C. 3 and S.C. 3-A.

Niagara Mohawk proposed initially to assign the electric delivery rate increase allocable to S.C. 3 and S.C. 3-A customers entirely to the current demand charges, thereby retaining the existing customer charges for all subclasses.<sup>24</sup> In response, and based on its expert witness's interpretation of the cost-of-service evidence, Multiple Intervenors: (a) opposed the utility's proposed S.C. 3-A rate design, advocating that a portion of any electric delivery rate increase should be assigned to the existing customer charges; and (b) supported the utility's proposed S.C. 3 rate design.<sup>25</sup> On rebuttal, Niagara Mohawk contested Multiple Intervenors' interpretation of the cost-of-service evidence and continued to support its proposed S.C. 3-A rate design.<sup>26</sup>

In the Joint Proposal, the Signatory Parties reached agreement on an S.C. 3-A rate design that: (a) increases the S.C. 3-A Secondary/Primary customer charge from \$902.00 per month to \$1,000.00 per month; (b) maintains the existing S.C. 3-A Sub-transmission customer charge at \$1,400.00 per month; (c) increases the S.C. 3-A Transmission customer charge from \$3,172.00 per month to \$3,500.00 per month; and (d) recovers the remaining revenue responsibility through demand charge increases. (JP at § III.3.3[b].)

The negotiated S.C. 3-A customer charge increases should be adopted because they are: (a) very moderate in magnitude (and materially less than what Multiple Intervenors had been advocating); and (b) justified by both Niagara Mohawk and Multiple Intervenors'

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<sup>24</sup> See Pre-Filed Direct Testimony of the Niagara Mohawk Electric Rate Design Panel at 54-58.

<sup>25</sup> See Pre-Filed Direct Testimony of Jeffrey Pollock at 37-38.

<sup>26</sup> See Pre-Filed Rebuttal Testimony of the Niagara Mohawk Electric Rate Design Panel at 22-23.

interpretation of the cost-of-service evidence.<sup>27</sup> Because the negotiated customer charge increases are very moderate in magnitude, and S.C. 3-A customers typically have very large demands (*i.e.*, at least 2 MW) resulting in the customer charge comprising only a modest amount of the overall delivery bill, such increases should not result in any material intraclass reallocations (which, in any event, would be cost-justified pursuant to the cost-of-service evidence). Moreover, implementing increases to S.C. 3-A customer charges have the effect of moderating increases to the demand charges applicable to those subclasses.

For the foregoing reasons, the S.C. 3-A customer charge increases are cost-justified and should be adopted in this proceeding.

#### **E. The Allocation and the Recovery of RSS Costs**

In response to a notice of intent to mothball an electric generating facility owned and operated by Dunkirk Power LLC (“Dunkirk”), Niagara Mohawk determined – and the New York Independent System Operator, Inc. confirmed – that continued operation of certain units of the Dunkirk facility beyond the proposed mothball date would be necessary to avoid material reliability issues on the utility’s electric system. Consequently, Niagara Mohawk and Dunkirk negotiated a term sheet, pursuant to which the utility would procure RSS from Dunkirk in exchange for compensation specified therein, and submitted said term sheet to the Commission for its review and approval. Niagara Mohawk also submitted for Commission review and approval a proposal to recover RSS costs solely from retail customers via a new, volumetric electric surcharge. Multiple Intervenors commented on the term sheet and opposed, *inter alia*,

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<sup>27</sup> See, e.g., Pre-Filed Rebuttal Testimony of the Niagara Mohawk Electric Rate Design Panel at 22 (depicting customer costs above existing customer charges for the aforementioned two S.C. 3-A subclasses and at levels very close to the customer charges advanced in the Joint Proposal); Pre-Filed Direct Testimony of Jeffrey Pollock at 37-38 (proposing S.C. 3-A customer charges that were appreciably-higher than those advanced in the Joint Proposal).

the RSS cost recovery mechanism proposed by Niagara Mohawk because it would be inconsistent with cost-causation principles. Multiple Intervenors also advocated that RSS cost recovery issues should be transferred to, and resolved in, this proceeding.<sup>28</sup>

The Commission subsequently issued an order approving the Niagara Mohawk/Dunkirk term sheet for the provision of RSS.<sup>29</sup> Significantly, however, in the Dunkirk Order, the Commission determined that RSS costs were recoverable from retail and wholesale customers, and agreed with Multiple Intervenors that RSS cost allocation and recovery issues should be transferred to this already-pending proceeding, because “[d]etermining the appropriate cost recovery mechanism in the context of the rate case will allow” a “full” understanding of various cost recovery options.<sup>30</sup>

Consistent with the Dunkirk Order, the Signatory Parties negotiated an RSS cost allocation methodology and recovery mechanism for Niagara Mohawk. As detailed in the Joint Proposal, Niagara Mohawk would be authorized to recover RSS costs via a generic surcharge that would commence on April 1, 2013. (JP at § III.12.1.2.) RSS costs would be allocated to each electric service class based on its coincident peak demand. (JP at § III.12.1.4.)<sup>31</sup> Multiple Intervenors supports the proposed allocation methodology because it is consistent with cost

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<sup>28</sup> See generally Case 12-E-0136, *Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements*, Comments in Partial Opposition of Multiple Intervenors (dated July 30, 2012).

<sup>29</sup> Case 12-E-0136, *supra*, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery (issued August 16, 2012) (hereinafter, “Dunkirk Order”).

<sup>30</sup> Case 12-E-0136, *supra*, Dunkirk Order at 24.

<sup>31</sup> The portion of RSS costs allocable to Niagara Mohawk’s wholesale customers will be credited to retail customers through operation of the Transmission Revenue Adjustment Clause. (See generally JP at § III. 6.1.15.)

causation principles and a far more equitable approach for a reliability-based service than, for instance, one based on volumetric consumption by service class.<sup>32</sup>

The Signatory Parties also agreed that up to \$57.0 million of projected electric deferral credits owed to customers should be utilized to offset RSS costs incurred by Niagara Mohawk. (JP at § III.12.1.1.) Thus, pursuant to the Joint Proposal, the RSS surcharge would be set to zero upon implementation, and would not increase unless and until Niagara Mohawk incurs RSS costs that exceed \$57.0 million. (*Id.*)

Multiple Intervenors strongly supports the RSS cost recovery mechanism set forth in the Joint Proposal. RSS costs are being incurred to maintain reliability on Niagara Mohawk's electric system and would be allocated to customers on a demand-related basis, which is consistent with the cost-based approach adopted often for the recovery of electric system investments. Further, the proposed use of electric deferral credits to offset a substantial amount of RSS costs would: (a) provide an immediate and continuing benefit to customers; (b) moderate the rate impacts associated with procuring RSS pursuant to an above-market contract; and (c) preserve a substantial amount of deferral credits for future rate moderation purposes. These provisions formed an essential basis for Multiple Intervenors' decision to execute the Joint Proposal.

For all the foregoing reasons, Multiple Intervenors urges the Commission to adopt the RSS cost recovery mechanism set forth in the Joint Proposal.

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<sup>32</sup> See Case 12-E-0136, *supra*, Comments in Partial Opposition of Multiple Intervenors at 16-17 (supporting allocation of RSS costs on the basis of coincident peak demand); see also Case 12-E-0400, *Petition of Cayuga Operating Company, LLC to Mothball Generating Units 1 and 2*, Comments in Partial Opposition of Multiple Intervenors (dated November 13, 2012) at 20-22 (opposing the proposed volumetric allocation and recovery of RSS costs by another utility).

## **F. The Elimination of Historic Demand**

The Signatory Parties also agreed to eliminate a longstanding (and outdated) billing practice applicable to some (but not all) NYPA customers that receive allocations of Replacement Power (“RP”) and/or Expansion Power (“EP”).

Historic demand currently is calculated as the customer’s average non-NYPA demand in the 12 months immediately preceding an award of hydropower. As Niagara Mohawk explained in discovery: “Historic demand was imposed initially to ensure that if a customer, after receiving a NYPA allocation and receiving discounted T&D rates, did not attain the forecast incremental load or reduced its load, it would not displace utility load and the Company would recover T&D revenue at the historic usage levels.”<sup>33</sup> Historic demand refers to the amount of load that is deducted from an affected customer’s metered demand to determine the amount of RP and EP power that is received. As Multiple Intervenors witness Pollock explained: “In practice, if the metered demand quantity is less than the sum of the Historic Demand and RP or EP contract demand, the amount of RP or EP deemed to be received by the customer is reduced by that same amount.”<sup>34</sup>

The number of customers impacted currently by the use of Historic Demand is very limited. Based on information provided by Niagara Mohawk, the Historic Demand billing practice currently is applied to 46 customers – representing well less than the total number of

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<sup>33</sup> Niagara Mohawk’s Response to Multiple Intervenors Information Request No. 121(d).

<sup>34</sup> Pre-Filed Direct Testimony of Jeffry Pollock at 29. *See also id.* at 30 and Ex. \_\_\_ (JP-5) (providing an example of the impact on Niagara Mohawk’s revenues if Historic Demand is eliminated).

customers receiving RP and/or EP allocations and only approximately 4% to 6% of projected S.C. 3 and S.C. 3-A billing demands for Rate Year 1.<sup>35</sup>

In the Joint Proposal, the Signatory Parties agreed to eliminate the Historic Demand billing practice effective April 1, 2013 (*i.e.*, the start of Rate Year 1). (JP at § III.3.3[a].) Multiple Intervenors supports the elimination of Historic Demand. As its witness explained in testimony:

It is clear that some customers with Historic Demands are being impacted adversely by this rate design artifice. In effect, the Historic Demand provisions penalize customers whose business operations, for whatever reason, contracted over time. Further, its continued use is discriminatory because, unlike other S.C. 3 and S.C. 3-A customers, a NYPA customer subject to Historic Demand would be subjected to ratcheted demand charges .... Retaining Historic Demand does not seem a sound economic or regulatory policy. Using Historic Demand – as opposed to actual, metered demand like other customers – can have the effect of diluting the benefits of RP and EP that were allocated to affected customers for economic development purposes.<sup>36</sup>

The elimination of Historic Demand also is consistent with the Joint Proposal approved by the Commission in Case 11-E-0535.<sup>37</sup> That Joint Proposal, negotiated and executed by Niagara Mohawk, NYPA and Multiple Intervenors, provides for a gradual transition of NYPA RP and EP customers to full tariff delivery rates. It also provides that current billing practices using Historic Demand for RP and EP customers would be reviewed in the utility's next general rate case (*i.e.*, this proceeding).

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<sup>35</sup> *Id.* at 31, Ex. \_\_\_\_ (JP-6).

<sup>36</sup> Pre-Filed Direct Testimony of Jeffrey Pollock at 31-32.

<sup>37</sup> See Case 11-E-0535, *Petition, with Related Tariff Amendments, of Niagara Mohawk Power Corporation d/b/a National Grid for Approval of an Agreement Regarding the Treatment of Allocations of New York Power Authority Expansion and Replacement Power*, Order (issued December 15, 2011).

Pursuant to the Joint Proposal approved in Case 11-E-0535, Niagara Mohawk's delivery rates for RP and EP allocations have been – and will continue to be – increased gradually to standard delivery rates by January 1, 2016 (later for some smaller customers). RP and EP customers experienced an outside-of-rate-case rate increase on January 1, 2012, and will experience other, similar rate increases on January 1, 2013, 2015 and 2016. These increases are in addition to the delivery rate increases proposed herein. That Joint Proposal includes a number of other changes to how RP and EP deliveries will be handled, many of which become effective in 2013. Given such changes, it also makes sense to eliminate the Historic Demand billing practice at the start of Rate Year 1 – the practice is contrary to economic development goals and dilutes the amount of RP and EP received by affected customers, thereby increasing their energy cost burden.<sup>38</sup>

#### **G. The Joint Proposal In its Entirety**

In evaluating proposed multi-year rate settlements, the Commission typically considers the following factors:

(i) the settlement's consistency with law and with the regulatory, economic, social and environmental policies of the Commission and the State; (ii) whether the result compares favorably with the likely result of full litigation and is within the range of reasonable outcomes; (iii) whether the settlement strikes a fair balance among the interests of ratepayers and investors and the long-term soundness of the utility; (iv) the existence of a rational basis for the decision; (v) the completeness of the record; and (vi) whether the settlement is contested.<sup>39</sup>

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<sup>38</sup> See generally Pre-Filed Direct Testimony of Jeffrey Pollock at 31-36 (detailing why the Historic Demand billing practice should be eliminated).

<sup>39</sup> Cases 90-M-0255, *Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements*, filed in C 11175, and 92-M-0138, *In the Matter of the Rules and Regulations of the Public Service Commission Contained in 16 NYCRR, Chapter I, Rules of Procedure – Proposed Amendments to Subchapter A, General, Part 2, Hearings and Rehearings by the Addition of a New Section 2.6, Settlement Procedures*, filed in C

Multiple Intervenors asserts that all of these factors have been satisfied here, and that the Joint Proposal accordingly should be adopted in its entirety, without modification.

The Joint Proposal appears, in all respects, in accord with the Commission's regulatory and economic policies. It generally adheres to cost-of-service principles, while also mitigating customer delivery rate impacts. The Joint Proposal advances a balanced use of rate moderators, which is wholly appropriate given the projected availability of funds owed to customers and the current economic climate. Moreover, the Joint Proposal continues, in many respects, elements from Niagara Mohawk's current electric rate plan, which the Commission approved in Case 10-E-0050.<sup>40</sup> Multiple Intervenors is not aware of any inconsistency between the Joint Proposal and applicable or relevant social or environmental policies.

The Joint Proposal also compares favorably with the likely results of litigation and, in Multiple Intervenors' opinion, is well within the range of reasonable outcomes had this proceeding not settled and been litigated fully. Niagara Mohawk, and its customers, should benefit from three years of relative electric and gas delivery rate stability, and adoption of the Joint Proposal would eliminate the need for annual rate case litigation, at least in the near-term.<sup>41</sup>

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11175, Opinion No. 92-2, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines (issued March 24, 1992) at 30.

<sup>40</sup> See generally Case 10-E-0050, *supra*, Order Establishing Rates for Electric Service.

<sup>41</sup> Although multi-year rate plans may hold certain advantages over litigated outcomes, including the likely duration of delivery rate stability, such advantages, in and of themselves, are not sufficient justification for the Commission to adopt any settlement. From Multiple Intervenors' perspective, while a broadly-supported settlement, such as the Joint Proposal filed herein, certainly may be preferable in some circumstances, a litigated outcome almost always is preferable to a "bad" or poorly-supported settlement. For this reason, the optimal regulatory environment is one that neither promotes nor discourages the negotiation of multi-year rate plans, and evaluates such plans on their individual merits. In this proceeding, the Joint Proposal warrants adoption, without modification, based on its merits.

Multiple Intervenors further believes that the Joint Proposal strikes a fair balance among the interests of customers and shareholders. In addition to the Joint Proposal's specific terms, evidence for this conclusion can be found in the decisions by, *inter alia*, Niagara Mohawk, Staff, UIU and Multiple Intervenors – parties with diverse, and often adverse, interests – to execute and support the Joint Proposal. Furthermore, upon information and belief, there is no opposition to the Joint Proposal. Had the Joint Proposal failed to strike a reasonable balancing of interests, it is doubtful that all of the Signatory Parties would be supporting its adoption, and that the Joint Proposal would be entirely or largely unopposed.

There also is a rational basis for adopting the Joint Proposal, as well as an adequate record upon which to base such a decision. Indeed, an extensive record was developed in this proceeding. Prior to the submission of the Joint Proposal, the parties: (a) conducted extensive discovery; (b) filed direct and rebuttal testimony and exhibits; and (c) engaged in settlement negotiations that were noticed properly and open to interested parties. The Signatory Parties to the Joint Proposal are expected to file statements in support thereof that advocate for the Joint Proposal to be adopted without modification. Thus, a rational basis does or will exist for a Commission decision to adopt the Joint Proposal without modification.

Finally, upon information and belief, the Joint Proposal is not contested, providing further indicia as to its reasonableness.

## CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges the Commission to adopt the Joint Proposal, without modification, in this proceeding.

Dated: December 21, 2012  
Albany, New York

Respectfully submitted,

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