

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of the Petition of NOCO Energy Corp.
for Waiver of Tariff for Aggregation of Service

Case 12-E-0494

COMMENTS OF
NIAGARA MOHAWK POWER CORPORATION
d/b/a NATIONAL GRID

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NIAGARA MOHAWK POWER CORPORATION
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Niagara Mohawk Power Corporation d/b/a National Grid (the “Company”) hereby submits comments to the New York State Public Service Commission (the “Commission”) regarding the petition of NOCO Energy Corp. (“NOCO”) for a waiver of Rule 47 of the Company’s Tariff P.S.C. No. 220 – Electricity (“Tariff”), as applied to NOCO’s facilities located in Tonawanda, New York.

Background

NOCO operates a petroleum products terminal in Tonawanda, New York. The terminal is composed of several distinct buildings that, until recently, were separately provided with electric service by the Company. Pursuant to NOCO’s request, the Company has aggregated three of the four facilities at issue in the petition into a single service. The fourth facility, a fuel dock, is separated from the other facilities by a public road. NOCO has requested that the electric service provided to the fuel dock be aggregated with the other three facilities to ensure that its installed back-up generation can serve each of its facilities.

The Company is not opposed to NOCO’s present petition. However, the Company respectfully requests that, if the Commission grants NOCO’s request for a waiver of the Tariff, the waiver be subject to the conditions set forth by the Company

herein. In addition, the Company requests that the waiver of Rule 47 be limited to the particular facts presented in this case.

Discussion

Rule 47 prohibits the aggregation of “Electric Delivery Service through two or more separate Retail Delivery Points to one Retail Delivery Point on the Company’s system by construction of new facilities connecting these previously separate Retail Delivery Points,” subject to limited exceptions. Specifically, pursuant to Rule 47.1.2, a non-residential customer, such as NOCO, may only aggregate two or more separate retail delivery points if each delivery point is located on the same premise. Rule 1.3.2 of the Tariff defines a “premise” as a “unified, undivided parcel of real property under the customer or applicant’s control through ownership or lease *which is not separated by public road*, right of way, or property belonging to another entity” (emphasis added).

In the present case, NOCO seeks to aggregate the electric service between its adjacent facilities and the fuel dock. This would require aggregation across a public road, which the Tariff expressly prohibits. Despite NOCO’s assertion, the fact that certain agencies consider the property to be a single premise is irrelevant for purposes of reviewing the application of the Tariff to the present facts. Therefore, absent a waiver of Rule 47 by the Commission, the Company cannot allow for the aggregation of these services.

The Tariff’s general prohibition against aggregation across a public road exists, in part, because there is a greater possibility that a tract of land divided by a public road may be subdivided and sold in the future than one contiguous parcel. In such circumstances, a situation could arise where an entity that is not an “electric corporation” as defined in

Public Service Law §2(13) would be providing electric service to another entity across the public road. If subdivided, the Company would therefore be required to disaggregate the services and install or re-install facilities, which may be duplicative, to adequately serve the individual parcels. The Commission disfavors the construction of wasteful and duplicative facilities because it represents an uneconomic investment, which increases the risk of stranded costs and assets subsidized by a utility and its customers.¹ Here, however, the risks generally associated with aggregation across a public road are not likely to occur because the property is a single tax parcel owned and operated by NOCO for its business and the nature of the parcel and the facilities contained within suggest that a piecemeal sale of the property is unlikely. Thus, there is a decreased probability of future subdivision and disaggregation and, as a result, the proposed aggregation is likely to have a *de minimus* effect on the Company and its customers.

The Commission has previously granted waivers of Rule 47 where the requested aggregation served a “strong public interest.”² Although those cases involved aggregation at senior living facilities, the Commission’s intent can reasonably be

¹ See generally Case No 09-E-0299, *Petition of the Village of Frankfort for Approval, Pursuant to Section 68 of the Public Service Law, of the Provision of Electric Service to an Area of the Town of Frankfort*, Order Granting Certificate, with Conditions (issued and effective August 20, 2010); Case No. 99-E-0978, *Fitzpatrick & Weller, Inc. – Petition for Declaratory Ruling Regarding Niagara Mohawk Power Corporation’s Obligations Under its Electric Tariffs*, Declaratory Ruling (issued and effective November 5, 1999); Case No. 08-E-003, *New York State Electric & Gas Corporation, Complaint Against Niagara Mohawk Power Corporation Relative to Duplicative Electric Service to Abbott Laboratories in the Town of Cheektowaga*, Order Restraining Service Extension and Requiring Hearings (issued April 14, 1988).

² See Case Nos. 08-E-1355 and 08-E-1356, *Petition of Hertel Park Associates, LP for a Declaratory Ruling and Waiver of Rule 47 for the Master Metering of Electricity at a Senior Living Facility at 1631 Hertel Ave, Buffalo, New York and 101 Bakos Blvd., Buffalo, New York, Located in the Territory of the Niagara Mohawk Power Corporation*, Order Granting Requests for Declaratory Rulings on Exemption from Individual Metering Requirements and Granting Waivers of Rule 47 and Rule 8.6 (issued and effective May 20, 2010) (“Hertel Park Order”); Case No. 10-E-0564, *Petition of Niagara Mohawk Power Corporation d/b/a National Grid for a Waiver of Certain Requirements of the Company’s Tariff with Respect to the Application of Such Requirements to the Fredonia Place Assisted Living Facility*, Order Granting Limited Waivers of Rule 47 and Rule 8.6 (issued and effective February 18, 2011) (“Fredonia Place Order”).

extended to the present petition. In Case 10-E-0564, the Commission permitted service aggregation to allow for the installation of a back-up generator capable of providing power to an entire senior facility. The Commission stated that there was “a strong public interest” in aggregating the services because “it [was] clear that the backup generator . . . [was] necessary to ensure that the elderly residents . . . receive[d] continuous electric service, uninterrupted by weather conditions that could lead to the loss of power at the Facility and the need to evacuate its residents.”³

Here, NOCO is requesting aggregation of the services at its petroleum products terminal to allow for back-up generation capable of serving all of its facilities. NOCO’s petroleum products terminal provides a fuel supply to “first responders, generators, security forces, and the general public during power outages and other widespread emergencies.”⁴ The aggregation of electric service and installation of back-up generation would allow the terminal to operate in emergency situations where the Company’s system may be inoperable or experiencing an outage. Although the Commission has not previously ruled on these specific facts, there is arguably a “strong public interest” in continuous, uninterrupted service to ensure that fuel and supplies are available to aid first responders and the general public in emergency situations. Accordingly, the Company is not opposed to a waiver of 47.1.2 in this limited circumstance.

While the Company acknowledges that the proposed aggregation may serve a “strong public interest,” a waiver of Rule 47 should not be granted without limitations. The Company requests that the waiver, if granted, be conditioned on the following:

³ *Fredonia Place Order*, at 4.

⁴ Case No. 12-E-0494, *Petition of NOCO Energy Corp. for Waiver of Tariff for Aggregation of Service* (dated October 26, 2012), at 2.

1. The continued use and ownership of the facilities by NOCO as a petroleum products terminal. In the event that the facilities are put into different use or the parcels are individually sold, the proposed aggregation should be terminated and the costs of the termination shall be borne by the appropriate parties in accordance with the Tariff rules effective at the time;⁵
2. NOCO must receive permission to cross River Road from the appropriate municipality and provide proof of such permission to the Company;
3. NOCO must comply with all Company interconnection requirements, Service Bulletins, and appropriate Company specifications prior to construction as well as after the aggregation occurs. NOCO shall not commence construction unless and until the Company approves any and all drawings and plans. This restriction applies whether NOCO elects to construct an overhead or underground road crossing; and
4. NOCO bears all costs associated with the proposed aggregation including, but not limited to, permit costs, construction costs, and any potential aggregation fee required by the Tariff. Payment of these costs by NOCO protects all customers who have already borne the costs of the facilities that were installed and will need to be removed to accommodate the aggregation.

⁵ The Commission imposed similar conditions in the Hertel Park and Fredonia Place Orders. *See Hertel Park Order*, at 11 (“[t]his determination is expressly conditioned on continued use of the Facilities as senior living facilities for the provision of low income senior living services. The exemption shall terminate if they are put to different use.”); *Fredonia Place Order*, at 5 (“the waiver of Rules 8.6 and 47 is conditioned on the continued use of the Facility as a senior living facility and shall terminate automatically if Fredonia Place is put to a different use.”).

These limitations will address the public safety and system security concerns that accompany the aggregation of the Company's electric facilities and protect other customers from bearing the costs associated with the proposed aggregation.

Based on the above, the Company submits that, if the Commission were to find that a waiver of Rule 47 is within the public interest, the Company would not be opposed to the aggregation of NOCO's electric service at its Tonawanda facilities. The Company's position with respect to NOCO's petition is based on the specific facts presented in this case.

Conclusion

WHEREFORE, for the above stated reasons, the Company respectfully requests that if the Commission approves NOCO's waiver of Rule 47, such waiver should be conditioned on the limitations provided by the Company herein.

Respectfully submitted,

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