

LAW OFFICE

USHER FOGEL
ATTORNEY AT LAW

557 CENTRAL AVENUE, SUITE 4A CEDARHURST, NY 11516

TEL: 516.374.8400 X 108

FAX: 516.374.2600

CELL: 516.967.3242

E-MAIL: ufogel@aol.com

December 21, 2012

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

**Re: Case 12-E-0201 -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 Service**

**Case 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 Gas Service**

Statement in Support of the Retail Energy Supply Association

Dear Secretary Brillling:

On December 7, 2012, a Joint Proposal (“JP”) in the above-captioned proceedings was filed with the Secretary to the Public Service Commission. The signatory parties included Niagara Mohawk Power Corporation (“Company” or National Grid”), Department of Public Service Staff (“Staff”), and other parties representing a wide spectrum of interests, including consumer advocates, ESCOs and customer representatives. The Retail Energy Supply Association (“RESA”)¹ was an active participant in the negotiations leading to the development

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

of the JP, and was a signatory to the final JP filed with the Secretary. RESA respectfully submits that the JP constitutes a reasonable settlement of the issues raised in the proceeding and should be approved by the Commission.

I. THE JP SHOULD BE ADOPTED BY THE COMMISSION

1. Standards

In assessing the reasonableness of a proposed settlement, the Commission generally considers the following standards.

- A desirable settlement should strive for a balance among (a) protection of the customers, (b) fairness to investors, and (c) the long term viability of the utility; should be consistent with sound environmental, social and economic policies of the Agency and the State; and should produce results that were within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding.
- In judging a settlement, the Commission shall give weight to the fact that a settlement reflects agreement by normally adversarial parties.²

In connection with issues related to retail access and the fostering of competitive energy markets, it is clear that the JP, if implemented, will help maintain the continuing development of competitive retail market, enhance the transparency and economic framework in which ESCOs must compete against the incumbent utility, and is consistent with the established policy of the Commission favoring the growth and development of retail energy markets.

The JP incorporates a series of initiatives and programs that directly affect in a positive manner the growth and development of the utility's retail access program. These include setting of the Merchant Function Charge, maintenance of purchase of receivables, enhancing pricing transparency and others. In concert these efforts will help maintain the economic viability of commodity retail market.

² Case 90-M-0255, et al, - Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements, filed in Case 11175, - Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1991), Appendix B at 8.

2. Section 11.5 of the JP

Section 11.5 of the JP which is entitled “ESCO Bill Calculator”, states as follows:

11.5 ESCO Bill Calculator

The Company will develop a web-based historical utility bill calculator that provides information to residential consolidated bill ESCO customers regarding the amount these customers would have been billed had they purchased commodity from the Company.

The Company will convene a collaborative as soon as practicable but no later than 60 days following the Commission’s Order adopting the Joint Proposal to develop the materials (including the bill calculator and other materials that may be discussed in the collaborative) to be provided to residential ESCO customers concerning the amount the customer would have been billed if they had purchased commodity from the Company. The collaborative will also discuss what bill comparison tools could be provided to residential non-ESCO customers.

The incremental costs that the Company will incur to develop and provide the , information, including the materials recommended by the collaborative, will not exceed \$0.298 million and will be recovered by offsetting the costs against the electric and gas deferral credits 83 percent and 17 percent, respectively.

RESA’s agreement to execute and support the JP are premised upon the following interpretation and understanding of Section 11.5 which is in full accordance with the plain language of this section of the JP.

Pursuant to this section, the parties have agreed that National Grid should develop a web-based historical bill calculator that will enable residential consolidated bill ESCO customers to calculate the amount the customers would have been billed had they retained utility commodity service. The elements, information and details associated with the ESCO Bill Calculator will be developed in the Collaborative to be commenced as soon as practicable but no later than 60 days following the issuance of the final Order in these proceedings.

The Collaborative will consider other information or materials, beyond those directly related to the ESCO Price Calculator that may be provided to residential ESCO customers concerning the amount the customers would have been billed if they had purchased commodity from the Company. However, no party by executing the JP has agreed at this time whether any such additional materials, including, but not limited to a monthly bill comparison, are necessary or what the contents thereof will be. All parties participating in the Collaborative reserve their rights to challenge or disagree with the implementation of any additional pricing information besides the ESCO Price Calculator, and retain the right to challenge or disagree with the materials that will be used in connection with the ESCO Price Calculator.

3. The JP Warrants Adoption

The Proposal complies with the standards of settlement elucidated by the Commission.

First, it properly balances the interests of all interested parties. By fostering competitive choice through the provisions incorporated in the JP, ratepayers will reap the benefits of having the ability to choose a supplier that best suits their economic needs without impairing the financial health of National Grid and by aiding retail access development, the Company will help ensure the development of fully competitive retail markets. In this regard, the Commission's long-standing policy declares that "the best way to ensure just and reasonable rates for commodity and customer services is to establish conditions for fully competitive commodity and customer services markets."³

Second, the JP comports with the Commission's policy favoring the growth and development of robust competitive energy markets.⁴ In the Statement of Policy the Commission observed that one of the most efficient and powerful tools the Commission could use to meet its public charge to ensure the provision of safe and reliable energy at just and reasonable rates was the development of competitive markets.⁵

Third, as the JP is supported by a highly diverse group of parties, it is obvious that the provisions dealing with retail access reflect agreement among "normally adversarial parties". In addition to Staff and the Company, the JP is supported by parties representing various interests. The number and disparate interests represented by the Signatory Parties demonstrates that the JP positively bridges the gap between parties of diverse views and concerns, thereby producing a settlement which truly forges agreement among normally adversarial parties.

II. CONCLUSION

In view of the foregoing considerations, RESA supports the JP and recommends its adoption by the Commission.

³ Case 04-E-0572 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Order Adopting Three-Year Rate Plan (issued March 24, 2005), p. 49.

⁴ See, Case 00-M-0504 – Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Roles of Utilities in Competitive Energy Markets, and Fostering the Development of Retail Competitive Opportunities, *Statement of Policy on Further Steps Toward Competition in Retail Energy Markets* (issued August 25, 2005) ("Statement of Policy").

⁵ *Id.*, p. 2.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel, Counsel*
Usher Fogel, Counsel

Cc: Hon. Rudy Stegemoeller (by electronic mail)
Hon. Paul Agresta (by electronic mail)