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Gavin J. Donohue, *President &
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July 30, 2012

Via Electronic Filing
Hon. Jaclyn A. Brillling
Secretary
New York State Public Service Commission
New York State Board on Electric Generation Siting and The
Environment
Three Empire State Plaza
Albany, NY 12223-1350

RE: Case No. 12-E-0136, Petition of Dunkirk Power LLC and NRG Energy, Inc. For Waiver
of Generator Retirement Requirements.

Dear Secretary Brillling:

On July 20, 2012, Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) filed its proposed “Binding Term Sheet for Bilateral Agreement for Dunkirk Power Generating Units” (“Term Sheet”) with the New York Public Service Commission (“Commission”) for Commission consideration and approval in the above-referenced docket (“July 20 Filing”). In its cover letter to the Term Sheet, National Grid stated that the Term Sheet sets forth the terms under which National Grid would procure reliability support services (“RSS”) from certain identified units at NRG Energy, Inc.’s (“NRG”) Dunkirk Power LLC (“Dunkirk”) generating station to maintain transmission system reliability in western New York for an interim period pending completion of “system reinforcements.”¹

Specifically, National Grid stated that NRG filed a notice with the Commission on March 14, 2012 of its intent to mothball units 1-4 at the Dunkirk Facility no later than September 10, 2012. National Grid determined subsequently that Dunkirk units 1 and 2 must remain available

¹ In its letter, National Grid broadly references the consideration of “alternative reliability services solutions” (Grid July 20 Letter at 4.) No additional details are provided as to the scope, nature or sponsor of such “solutions.”

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for at least a nine month period to maintain system reliability in western New York until National Grid can implement unspecified “permanent transmission system reliability solutions.”²

In its July 20 Filing, National Grid also requested that the Commission accept proposed amendments to National Grid’s Tariff, PSC No. 220 Electricity. This tariff sheet establishes an RSS surcharge for National Grid to recover the costs incurred under the Term Sheet from its customers and authorizes National Grid to defer all amounts paid to NRG for RSS until such time as current recovery of such costs begins (“Tariff Amendment”).

In its July 20 Filing, National Grid references a June 11, 2012 letter from the Commission’s General Counsel (“June Letter”) that advised that the DPS Staff intended to recommend that, within the 180 day notice period, “the Commission exercise its authority to ensure adequate generation facilities had been procured to meet local reliability needs.”³ National Grid further notes that the NYPSC General Counsel’s June Letter indicated the Commission’s understanding that “FERC maintains jurisdiction over wholesale sales of energy” and acknowledged that any determination made by the Commission in this proceeding “may also be reviewed by the FERC as to matters within FERC’s jurisdiction.”⁴

Pursuant to the Commission’s July 18, 2012 “Notice Directing Filings and Soliciting Comments,” Independent Power Producers of New York, Inc. (“IPPNY”) hereby comments on the July 20 Filing. IPPNY is a not-for-profit trade association representing the independent power industry in New York State. Its members include nearly 100 companies involved in the development, operation and ownership of electric generators and the marketing and sale of electric power in New York’s wholesale and retail markets.

To IPPNY’s knowledge, the July 20 Filing is the first time a transmission owner in New York has requested the Commission’s acceptance of the terms of an agreement for the procurement of RSS from a generator owner that has submitted a retirement notice under the Commission’s December 2005 order but is needed for reliability.⁵ In its Retirement Order, the

² In its letter, National Grid specifies, “After May 2013, the Company anticipates the need for continued RSS until it is able to implement certain transmission reinforcements scheduled for completion by June 2015. The Company has determined that this need for continued RSS could be met by one 115 kV unit from June 2013 through approximately May 2015.” (Grid July 20 Letter at 2.) Notwithstanding this fact, while the Term Sheet includes provisions for potential contract extension, National Grid further states, “Although National Grid has determined that continued RSS will be needed beyond May 2013, it is premature to lock in those services from Dunkirk at this time pending an evaluation of other potential reliability solutions.” (Id. at 4.)

³ Id at 2. The June Letter was not appended to the July 20 Filing but was filed as part of the record of this proceeding.

⁴ Id.

⁵ Case 05-E-0889, Proceeding on Motion of the Commission To Establish Policies and Procedures Regarding Generation Unit Retirements, Order Adopting Notice Requirements for Generation Unit Retirements (December 20, 2005) (“Retirement Order”). In its Order, the Commission defined “retirement” to collectively included, *inter alia*, “mothballing, and other circumstances where a generating unit is taken out of service for a substantial period of time, excluding scheduled maintenance and forced outages.” NRG’s March 14, 2012 letter specified its intention to mothball the four units at the Dunkirk site.

Commission stated that remedies for addressing adverse impacts of generator retirements “are better considered on a case-by-case basis, given the potential variety of circumstances that could be encountered.”⁶ The Commission further stated, “[d]esigning a remedy will depend upon the exact nature of those circumstances, which cannot be adequately forecast at this time.”⁷

IPPNY does not wish to comment on specific provisions of the Term Sheet or Tariff Amendment at this time.⁸ However, consistent with its ruling in its Retirement Order that remedies will be addressed on a case-by-case basis, IPPNY requests that the Commission rule that the Term Sheet is not precedential to the resolution of any other reliability situations that may arise on the local system when any other generators file retirement notices with the Commission.⁹ NRG’s and National Grid’s agreement on the RSS terms (including, but not limited to the level of compensation, the term of the agreement and the operational and other requirements) and National Grid’s filing of such terms with the Commission for its acceptance in this limited instance should not be interpreted as a waiver or to otherwise affect generator owners’ rights under Section 205 of the Federal Power Act to file proposed rates, terms and conditions for the provision of service to resolve reliability needs in New York.¹⁰

Respectfully submitted,

_____/s
Gavin J. Donohue

cc: Active Parties

⁶ Retirement Order, slip at p. 20.

⁷ *Id.*

⁸ IPPNY reserves the right to address particular aspects of either the Term Sheet or the Tariff Amendment depending upon the comments that are filed by other parties in this proceeding.

⁹ IPPNY further requests that the Commission grant NRG’s waiver request as to the two other Dunkirk units that are not addressed in the Term Sheet. No reliability need has been identified for these units, and thus, there is no reason that their mothballing should be delayed any longer.

¹⁰ IPPNY reserves the right to raise any jurisdictional challenges concerning reliability services provided by wholesale generators in the future.