

July 20, 2012

Hon. Jaclyn A. Brillling
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

Re: Case 12-E-0136; Petition of Dunkirk Power LLC and NRG Energy Inc. for Waiver of Generator Retirement Requirements—Proposed Term Sheet Agreement for Procurement of Reliability Support Services (“RSS”) and Tariff Amendment for Recovery of RSS Costs

Dear Secretary Brillling:

In accordance with the July 18, 2012 Notice Directing Filings and Soliciting Comments, Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid” or “Company”) submits the attached “Binding Term Sheet for Bilateral Agreement for Dunkirk Power Generating Units” (“Term Sheet Agreement”) for Commission consideration and approval. The Term Sheet Agreement sets forth the terms under which National Grid would procure reliability support services (“RSS”) from NRG Energy, Inc.’s (“NRG”) Dunkirk Power LLC (“Dunkirk”) generating station to maintain transmission system reliability in western New York for an interim period. In addition, National Grid requests approval of proposed tariff leaves to amend its Tariff, PSC No. 220 Electricity, to establish an RSS surcharge for recovery of costs incurred under the Term Sheet Agreement and for authority to defer all amounts paid to NRG for RSS until such time as current recovery of such costs begins.¹

In support of the requested approvals and authorizations, the Company states as follows:

BACKGROUND

March 14, 2012 Mothball Notice

The Dunkirk generating station consists of four generating units: Dunkirk 1 and 2 each with a nameplate rating of 100 MW and interconnected to the transmission system at 115 kV; and Dunkirk 3 and 4 each with a nameplate rating of 217.6 MW and interconnected to the transmission system at 230 kV. On March 14, 2012, NRG, the owner of Dunkirk, filed notice with the Commission of its intent to mothball the Dunkirk facility no later than September 10, 2012. At the time of NRG’s mothball notice, neither National Grid nor the New York Independent System Operator (“NYISO”) had performed a study evaluating the impacts of and solutions to the mothballing of all four Dunkirk units while all other generation remained available. However, based on other studies that had been performed prior to the mothball notice,

¹ The revised tariff leaves are also being transmitted electronically to the Commission contemporaneously with this filing in accordance with applicable procedures.

National Grid represented to Mr. Dvorsky that “the proposed mothballing of Dunkirk units 1-4 will result in significant impacts to transmission system reliability in western NY.”² In that letter, the Company outlined a timeframe for completing additional studies to identify system impacts of the proposed mothballing, determine the number of units at Dunkirk the continued availability of which would be needed for short-term reliability needs, and identify long-term solutions to the reliability needs presented by mothballing Dunkirk.

Extent of Generation Resources Needed to Maintain Reliability

Because the transmission system investments needed to address the reliability issues created by mothballing of the Dunkirk units cannot all be implemented by the September 10, 2012 effective date of the NRG mothball notice, some portion of the Dunkirk generation resources must remain available to maintain transmission system reliability. Based on system needs and solutions analyses performed to date, National Grid has determined that Dunkirk units 1 and 2 must remain available for an interim period to maintain system reliability until permanent transmission system reliability solutions can be implemented. Specifically, based on its project implementation schedule, National Grid anticipates the need for two 115 kV units (Dunkirk 1 and 2) through May 2013. 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.

June 11, 2012 Letter of Commission’s General Counsel

By letter dated June 11, 2012, the General Counsel for the Commission advised NRG and National Grid that Staff intended to recommend to the Commission that within the 180-day mothball notice period the Commission exercise its authority to ensure adequate generation facilities had been procured to meet local reliability needs. The letter also noted the Commission’s understanding that the Federal Energy Regulatory Commission (“FERC”) has jurisdiction over wholesale sales of energy and that any determination made by the Commission as to the structure and level of compensation in a contract between National Grid and NRG in this case may also be reviewed by the FERC as to matters within FERC’s jurisdiction, and the expectation that “any Commission Order setting terms for payment to NRG during the mothball period would provide for prompt cost recovery of such payments by National Grid through a surcharge or similar mechanism.” The letter directed National Grid and NRG to inform the Commission no later than July 12, 2012 as to whether an agreement had been reached on the procurement of generation resources needed to maintain reliability, and further directed National Grid and NRG to each propose recommended terms for the Commission’s consideration in the event the parties were at an impasse. On July 12, 2012, National Grid and NRG notified the Secretary that the parties continued in negotiations and stated that additional time could be helpful in achieving an agreement. The parties indicated they would provide an update of negotiations the week of July 16.

² Letter C.E. Root, National Grid Sr. V.P., Network Strategy, to T.G. Dvorsky, DPS Director, Office of Electric, Gas and Water (March 30, 2012).

July 12, 2012 NRG Filing at FERC

On July 12, 2012, NRG filed at FERC pursuant to Section 205 of the Federal Power Act an unexecuted agreement setting forth terms under which NRG proposed to provide National Grid with reliability must-run (“RMR”) service from Dunkirk units 1 and 2 for 12 months, and then from one of those units for an additional 24 months. In its filing, NRG proposed a monthly fixed-cost charge of \$5,607,513/month for keeping the two 115 kV units in service, or \$50,467,617 over nine months. NRG characterized its filing as “cost-of-service.” Comments on NRG’s FERC filing are due by August 2, 2012.

July 18, 2012 Notice Directing Filings and Soliciting Comments

On July 18, the Secretary issued a notice directing National Grid and NRG to file for Commission consideration either an agreement or proposed terms of agreement recommended by the respective parties no later than July 20, 2012. The attached Term Sheet Agreement reflects the agreement between National Grid and NRG under which National Grid would procure RSS from NRG’s Dunkirk plant.

Content of Today’s Filing

The instant filing presents the following:

1. The proposed Term Sheet Agreement; and
2. National Grid’s proposal for treatment and recovery of costs incurred under the Term Sheet Agreement, including proposed amendments to the Company’s Tariff, PSC No. 220 Electricity to implement an RSS surcharge.

PROPOSED TERM SHEET AGREEMENT

The Term Sheet Agreement (included as Attachment 1) provides for NRG to defer mothballing actions on the two 115 kV Dunkirk units and to keep them available during the nine-month term of agreement (September 1, 2012 – May 31, 2013). Under the agreement, National Grid would pay NRG a monthly fixed-price charge of \$2,924,324/month, or \$26,318,916 for the 9-month period. In addition, the Term Sheet Agreement provides for payment of up to \$6,681,084 related to taxes or payments in lieu of taxes associated with the Dunkirk plant. Together, the monthly fixed-price charge and tax-related payments come to \$33 million over the over nine month term.

In addition to the monthly fixed-price charge and tax-related payments, the Term Sheet Agreement provides for payment, following the termination of the agreement, of the a pro-rated share of the Dunkirk take or pay coal contract costs adjusted for any reductions based on actual coal deliveries. The Term Sheet Agreement also provides for the crediting of any capacity revenues from units 1 and 2 against the costs of the contract. In addition, in the event that the Dunkirk plant exceeds certain earnings thresholds in the five-year period following the termination of the Term Sheet Agreement, a portion of such excess earnings would be credited to National Grid for the benefit of customers.

The Term Sheet Agreement includes provisions for potential contract extension. This is necessary to account for deviations in the planned schedule for deployment of transmission upgrades that will remediate the reliability issues caused by the mothballing of the Dunkirk units. 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.

The proposed Term Sheet Agreement is subject to Commission approval at or before its August 16, 2012 session. The Parties have agreed to jointly request that FERC defer action on NRG's filing and extend the deadline for filing of comments, protests and motions to intervene until the Commission has an opportunity to consider the Term Sheet Agreement at its August 16, 2012 meeting. If approved, the Parties will request that FERC defer action and suspend applicable deadlines for submitting comments, protests and motions to intervene until the Commission order approving the Term Sheet Agreement becomes final and non-appealable, at which time NRG will withdraw its FERC filing.

Approval of the Term Sheet Agreement would ensure the reliability of the transmission system in western New York for an interim period as National Grid implements system reinforcements and alternative reliability services solutions are considered. The costs under the Term Sheet Agreement are substantially lower than the full cost of service costs reflected in NRG's filing at the FERC. The Term Sheet Agreement represents a reasonable resolution of the issues presented, and is fair, equitable and in the public interest. If the Term Sheet Agreement is approved by the Commission, the Parties will prepare a final contract agreement based on the Term Sheet Agreement and file a copy of that final contract with the Commission as soon as practical.

TREATMENT OF RELIABILITY SUPPORT SERVICES COSTS

Until such time as National Grid implements transmission system solutions to obviate continued reliance on Dunkirk generation, NRG will need to be compensated for keeping those units available for reliability purposes. The Term Sheet Agreement is subject to Commission approval of a cost recovery mechanism reasonably acceptable to the Company. The Company proposes to defer the RSS costs it would incur under the Term Sheet Agreement from the start of the payment obligation until the date new base rates go into effect under Case 12-E-0201 (*i.e.*, April 1, 2013), with carrying charges based on the effective other customer deposit rate. Beginning with the effective date of new base rates, the Company would commence current recovery of the RSS costs from customers as those costs are incurred, as well as recovery of RSS amounts deferred in the interim and accumulated carrying charges. Because the rate proposal in Case 12-E-0201 calls for a substantial rate decrease beginning April 1, 2013, deferring cost recovery until that time would help promote rate stability for customers.

The Company proposes that RSS costs be recovered from all delivery customers in the same manner as other transmission capital and operating costs. Based on the currently effective allocation methodology, the Company proposes to allocate the costs of any RSS charges it incurs from customers based on the respective contribution of each service class to the Company's coincident peak demand and will recover costs from each service class on a volumetric basis (kW

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for demand classes and kWh for non-demand classes). The Company proposes a tariff amendment (Rule 50 - Reliability Support Services (“RSS”) Surcharge) that would implement this recovery proposal. The following proposed tariff leaves are included in Attachment 2 to this filing:

Ninth Revised Leaf No. 3
Sixth Revised Leaf No. 235
Original Leaf No. 235.0.1

To P.S.C. No. 220 Electricity

The revised tariff leaves are also being transmitted electronically to the Commission contemporaneously with this filing in accordance with applicable procedures.

Included as Attachment 3 is a schedule showing the cost allocation and surcharge rate by service class based on the base Term Sheet Agreement costs and the allocation methodology and recovery mechanism in proposed Rule 50. The Company requests that the proposed tariff amendment become effective on or before September 1, 2012. To the extent the Company incurs any RSS costs prior to the effective date of Rule 50, the Company will defer such costs for future recovery as described above.

CONCLUSION

For the reasons set forth above, National Grid respectfully requests that the Commission:

- (1) Approve the Term Sheet Agreement as proposed;
- (2) Authorize National Grid to defer all amounts paid to NRG for RSS until such time as current recovery of such costs begins;
- (3) Approve the proposed tariff leaves for Rule 50 – Reliability Support Services (“RSS”) Surcharge;
- (4) Waive any applicable requirement for newspaper publication of the proposed tariff amendments; and

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(5) Grant such further relief as may be necessary and appropriate.

Respectfully submitted,

/s/

Carlos A. Gavilondo
Attorney for
Niagara Mohawk Power Corporation
d/b/a National Grid

Attachments

Cc: Case 12-E-0136 Activity Parties List

ATTACHMENT 1

**Binding Term Sheet Agreement for Reliability Support Services Agreement for Dunkirk Power
Generating Units**

Date: July 20, 2012

Buyer: Niagara Mohawk Power Corporation, d/b/a National Grid

Seller: NRG Power Marketing LLC on behalf of Dunkirk Power LLC (“Dunkirk”)

Product: Reliability Support Services

Facility: Dunkirk Units 1 and 2 (the “RSS Units”) located at 106 Point Drive North, Dunkirk, NY 14048

UNIT NAME	NYISO PTID	ICAP MW
Dunkirk 1	23563	75.0
Dunkirk 2	23564	75.0

Term: From the start of hour ending 0100 Eastern Prevailing Time (“EPT”) on September 1, 2012, through the end of hour ending 2400 EPT on May 31, 2013 (the “Minimum Term”).

Termination: No earlier than midnight on May 31, 2013, except pursuant to the provisions relating to Additional Expenditures, Force Majeure Events, and Necessary Approvals.

Termination by Either Party: Either Party may terminate this Term Sheet Agreement (“Agreement”) if any of the following events or circumstances materially and adversely affect either Party during the term of this Agreement because of: (1) a Change in Law; (2) a change to the NYISO Tariff or other NYISO policy or rule; or (3) an order of any commission or a court on a complaint or other action initiated by a third party.

For the purposes of this clause, “Change in Law” shall mean a change in federal or state environmental or other law, policy, regulation or rule, or a change in the interpretation of the same, that has a material effect on the operations of Dunkirk, as determined by Dunkirk in a commercially reasonable manner, or that shall require additional expenditures that are not reimbursed as Additional Expenditures.

Contract Extension: Buyer agrees to notify Seller in writing of any finding of a reliability need past May 31, 2013 (“Necessary Extension”), or no reliability need, as soon as practicable, but no later than January 1, 2013.

Such Necessary Extension will not exceed 90 days in duration. Upon receiving

notice of a Necessary Extension, Buyer and Seller will engage in good faith negotiations to determine a reasonable level of compensation to be paid by Buyer to Seller based on the length of the additional period of operation required by Buyer, in addition to the reasonably projected incremental cost to Seller of providing service during the period of the Necessary Extension.

If Buyer and Seller are unable to agree on such compensation, they agree to seek the assistance of the New York State Department of Public Service Staff (“DPS”) to help facilitate the resolution of said differences and shall at all times negotiate in good faith; provided, however, that each party at any time shall be free to pursue any legal remedies available to it by law.

Buyer agrees to provide an update on the reliability need, on a monthly basis, for any units at Dunkirk expected to be necessary for providing reliability service beyond May 31, 2013, consistent with applicable laws and regulations.

Planned Outages

Seller shall be permitted to take one or more RSS Units out of operation or reduce the capability of one or more of the RSS Units during planned outages as permitted by the NYISO Tariff.

Forced Outages

In the event Seller needs to take one or more RSS Units out of operation or reduce the capability of one or more of the RSS Units upon the occurrence of a Forced Outage, as defined in the NYISO Tariff, Seller shall notify Buyer in writing of the nature and expected duration of a Forced Outage as soon as practicable.

Seller shall continue to receive the Monthly Fixed-Price Charge during a Forced Outage. However, if a Unit or its Automatic Voltage Regulator is not available for service for 50 percent or more of any particular month due to a Forced Outage, the Monthly Fixed-Price Charge for that month shall be reduced by \$100,000 per Unit that meets these criteria. However, if a Unit or its Automatic Voltage Regulator is not available for service for 75 percent or more of any particular month due to a Forced Outage, the Monthly Fixed-Price Charge for that month shall be reduced by \$250,000 per Unit that meets these criteria. If a Unit or its Automatic Voltage Regulator is not available for service for 90 percent or more of any particular month due to a Forced Outage, the Monthly Fixed-Price Charge for that month shall be reduced by \$500,000 per Unit that meets these criteria. However, if both Units and their Automatic Voltage Regulators are not available for service for 90 percent or more of any particular month due to a Forced Outage or Outages, the Monthly Fixed-Price Charge for that month shall be reduced by \$1.5 million.

Additional Expenditures

Any period of time in which Buyer is considering whether to authorize Additional Expenditures shall not count towards any availability calculation for purposes of determining the Monthly Fixed-Price Charge reduction.

“Additional Expenditures” shall mean incremental costs in excess of \$450,000 over those items to be defined in the final contract based on this Agreement. The costs for any project budgeted for less than \$50,000 shall not be deemed an additional expenditure.

(a) Seller shall not be required or otherwise obligated to incur any Additional Expenditures, except as permitted by this Section.

(b) If Seller is required to incur any Additional Expenditure, Seller will provide written notice to Buyer as soon as possible, but in no event greater than 10 days from the start of the relevant Forced Outage, whether expenses not recovered in the Monthly Fixed-Price Charge are required to return the RSS Unit or Units to service. This notice will indicate the amount of Additional Expenditures expected to be required to return the RSS Unit or Units to service.

(i) If within 30 days of receipt of such notice, Buyer provides Seller with written notification that it will pay for the Additional Expenditures, Seller will incur such Additional Expenditures and, with reasonable promptness, restore the RSS Unit or Units to service.

(ii) Payment of Additional Expenditures, to the extent they are agreed to by Buyer, shall be included in the Monthly Fixed-Price Charge on a pro-rata basis based on the remaining term of this Agreement.

(iii) Buyer shall have the right to dispute the amount of Additional Expenditures identified as necessary by Seller, in which case the Parties will engage in good faith negotiations to attempt to reach a resolution of the appropriate level of Additional Expenditures required. If Buyer and Seller are unable to agree on such compensation, they agree to seek the assistance of the New York State Department of Public Service Staff (“DPS”) to help facilitate the resolution of said differences and shall at all times negotiate in good faith.

(iv) Seller is obligated to use commercially reasonable efforts to minimize Additional Expenditures and agrees that any Additional Expenditures shall be offset by any proceeds from any third-party sources, including insurance proceeds, paid to Seller to return the RSS Unit or Units from the Forced Outage. Seller shall refund to Buyer any payments for Additional Expenditures paid to Seller that exceed the amount actually expended by Seller, after offsets.

(v) In the event that Buyer does not provide written notification of its commitment to fund the Additional Expenditures and Seller does not make the voluntary election described in clause (vi) below, Seller shall no longer have any obligation to provide RSS Service from such unit or units. If Additional Expenditures are necessary to restore both of the RSS Units from Forced Outage, then this Agreement will be considered terminated as of the expiration of Buyer’s notice period. However, if Additional Expenditures are only necessary to restore

one of the RSS Units from a Forced Outage, this Agreement shall remain in full force and effect with respect to the remaining Unit. If Buyer and Seller are unable to agree on the appropriate compensation for one RSS Unit, they agree to seek the assistance of the DPS Staff to facilitate the resolution of said differences and shall at all times negotiate in good faith; provided, however, that each party at any time shall be free to pursue any legal remedies available to it by law.

(vi) Nothing in this Section shall prevent Seller for voluntarily electing to make any repair necessary to allow the affected unit(s) to return to service, without additional compensation, after being informed by Buyer that it does not intend to fund the Additional Expenditures.

Scheduling and Bidding:

- Seller will interface and comply with NYISO scheduling deadlines and requirements for maintaining the unit as an eligible energy and capacity provider, as well as Buyer’s dispatch instructions.
- Energy and Ancillary Services – Units bid in compliance with existing NYISO market rules and Seller retains revenues.
- Capacity – Units will be offered into the NYISO’s ICAP spot market auction at a price no higher than their going-forward costs. Any capacity revenues shall be credited to Buyer by Seller.
- Seller shall offer the RSS Units into the NYISO-administered Day-Ahead Energy market, regardless if the Seller’s capacity bid is accepted in the NYISO capacity market or not, whenever those units are not out of service. Seller shall comply with any dispatch instruction issued by the Buyer or NYISO under established NYISO protocols, consistent with the operating parameters of the RSS Units and in accordance with the NYISO Tariff.
- Buyer shall not be responsible for any penalties or fines that relate to the bidding, scheduling, and operation of the RSS Units during the term of this Agreement.
- Parties agree to negotiate in good faith regarding the recovery of bad debt losses assessed to Seller under the NYISO OATT for purposes of preparing a final contract reflecting this Agreement.

Pricing:

Monthly Fixed Price Charge: Monthly Fixed-Price Charge of \$2,924,324/month for the period September 1, 2012 through May 31, 2013.

Other Pricing Terms:

- Property Tax True-Up – At any time between the effective date of this Agreement and the date that is 30 days after the end of the Minimum Term, Seller may provide documentary evidence to Buyer showing the amount of property tax payments (or payments in lieu of taxes) that Seller has made to local taxing jurisdictions or the Chautauqua County Industrial Development Authority during the term of this Agreement. Such documentary evidence will be in the form of a receipt or other verification received from the taxing authority and must show that the tax obligation satisfied relates to the term of this contract. Within 30 days of the date Seller submits such evidence to Buyer, Buyer will reimburse Seller for any such documented payments, up to a maximum amount for all payments of \$6,681,084.
- Capacity Revenue True-Up – Within 30 days of the date on which this Agreement terminates, Seller will make a payment to Buyer in an amount equal to all capacity revenues earned by the RSS Units during the term of this Agreement.
- Take or Pay Coal Contract True-Up – Buyer will make payments to Seller based on pro-rated costs as calculated based on the pre-determined minimum volume allocation to the Dunkirk plant, prorated to nine months, of 868,597 tons at \$5.00/ton. Within 30 days of the date on which this Agreement terminates, Seller will provide Buyer with an accounting of the pro-rated Take or Pay costs, and within 30 days of receiving such accounting, Buyer will make payment to Seller of that amount. The determination of the final payment to be made by Buyer to Seller under this provision will be based on actual coal deliveries to the Dunkirk plant during the term of this Agreement.

Refund Based on Future Operations

A refund of up to 20% per year of the \$4.2 million debt related allowance included in the calculation of the Monthly Fixed-Price Payment will be triggered in one or more of the first five full calendar years after the term of the Agreement (“Refund Period”) if the Dunkirk plant has a positive EBITDA in excess of \$2 million in any year during the Refund Period. An annual refund payment will be made to

Buyer during the Refund Period as follows.

If the Dunkirk plant has positive EBITDA in excess of \$2 million during any year of the Refund Period, then Seller shall pay Buyer 50 percent of the first \$1,680,000 in revenue earned by Seller in excess of \$2 million. The maximum amount payable in any single year in the Refund Period shall be \$840,000.

For purposes of calculating refunds under this provision:

- A senior officer or director of Seller shall attest to whether Seller has earned more than \$2 million in EBITDA on or before April 30 after the end of any year during the Refund Period.
- If Seller attests that it has earned more than \$2 million in EBITDA, but less than \$3,680,000, then it shall provide a Certified EBITDA Determination describing Seller's EBITDA earnings, as described below.
- If Buyer disagrees with the attestation by Seller's senior officer or director, in its sole discretion, then it shall have the right to present Seller's attestation that EBITDA is less than \$2 million to DPS Staff to facilitate resolution of any disagreement between Buyer and Seller. Should DPS Staff so request, Seller will provide a Certified EBITDA Determination.

A "Certified EBITDA Determination" shall mean: An outside auditor, acceptable to both parties, attests, at Seller's expense that the Dunkirk plant produced positive EBITDA earnings, as defined below, in excess of \$2 million for the related calendar year. The attest will be provided by April 30 of the following calendar year, or thirty days after being directed to provide a Certified EBITDA Determination by DPS Staff. Any payment will be made within 45 days of the delivery of the attest.

EBITDA shall mean: Earnings Before Interest, Taxes, Depreciation and Amortization, less appropriately allocated regional and corporate general and administrative costs, to be specified in the final contract based on this Agreement.

The maximum refund payment per year will be 1/5 of the \$4.2 million debt-related allowance included in the calculation of the Monthly Fixed-Price Charge. No refund payment will be made for any year after the Refund Period following the termination of the original term of the bilateral Agreement.

Operations and Maintenance

Seller to operate and maintain Facility within standards of accepted electric industry practice.

Force Majeure

"Force Majeure Event" means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, any order, regulation or restriction imposed by a Governmental Authority, breakage or accident of machinery or equipment not directly caused by a lack of proper care or maintenance, or any other cause beyond a Party's control.

If the availability of any of the RSS Units is reduced by reason of a Force Majeure Event, such Force Majeure Event shall be deemed to create a Forced Outage, and shall be resolved pursuant to the provisions herein relating to Forced Outages and Additional Expenditures.

The Party unable to perform by reason of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event as soon as reasonably practicable; provided that (i) no Party shall be required to settle any strike, walkout, lockout, or other labor dispute on terms which, in the Party's sole discretion, are contrary to its interests and (ii) subject to the Additional Expenditure provision, the Party unable to perform shall, as soon as practicable, advise the other Party of the reason for its inability to perform, the nature of any corrective action needed to resolve performance, and its efforts to remedy its inability to perform and to mitigate the consequences of its inability to perform and shall advise the other Party of when it estimates it will be able to resume performance of its obligations under this Agreement.

Limitations of Liability:

- (a) Buyer, its affiliates, successors and assigns shall not be liable to Seller, its affiliates, successors and assigns, for actions or omissions by Buyer or Buyer's affiliates, officers, employees or agents in performing its obligations under this Agreement, provided it has not willfully breached this Agreement or engaged in willful misconduct. To the extent Seller has claims against Buyer, Seller may only look to the assets of Buyer for the enforcement of such claims and may not seek to enforce any claims against the directors, members, officers, employees or agents of Buyer who, Seller acknowledges and agrees, have no personal liability for obligations of Buyer by reason of their status as directors, members, officers, employees or agents of Buyer.
- (b) Seller, its affiliates, successor and assigns, shall not be liable to Buyer, its affiliates, successors and assigns, for actions or omissions by Seller, or Seller's affiliates, officers, employees or agents in performing its obligations under this Agreement, provided that Seller has not willfully breached this Agreement or engaged in willful misconduct. To the extent Buyer has claims against Seller, Buyer may only look to the assets of Seller for the enforcement of such claims and may not seek to enforce any claims against the directors, members, officers, employees or agents of Seller who, Buyer acknowledges and agrees, have no personal liability for obligations of Seller by reason of their status as directors, members, officers, employees or agents of Seller.
- (c) In no event shall Seller be liable to Buyer or Buyer be liable to Seller for any incidental, consequential, multiple or punitive damages, loss of revenues or profits, attorneys fees or costs arising out of, or connected in any way with the performance or nonperformance of this Agreement.

**Final Non-Appealable
NYPSC Order
Required; FERC
Effective Date
Maintained**

- (a) The parties shall jointly request that FERC defer action on the filing in Docket No. ER12-2237-000 and extend the deadline for submission of comments, protests and motions to intervene or for other relief until after the NYPSC has an opportunity to consider this Agreement at its August 16, 2012 meeting.
- (b) Should the NYPSC approve this Agreement, as proposed, along with permission for Buyer to recover the costs of this Agreement, pursuant to a mechanism reasonably acceptable to Buyer, at its August 16, 2012 meeting or during a special session of the NYPSC prior to that date, then the parties shall jointly request that FERC defer action on the filing in Docket No. ER12-2237-000 and the deadline for submission of comments, protests and motions to intervene or for other relief until such time as the NYPSC approval becomes final and non-appealable. Once the NYPSC order becomes final and non-appealable, Seller will withdraw its filing in Docket No. ER12-2237-000.
- (c) If the NYPSC order is: (i) stayed, (ii) enjoined, or (iii) appealed and overturned, Buyer agrees to not oppose Seller's request for a September 11, 2012 effective date for any RMR Agreement established by FERC. Seller agrees not to oppose as untimely the submission by Buyer of comments, a protest and/or motion to intervene or for other relief.
- (d) The Parties agree to not file any rehearing request of any NYPSC decision approving this agreement without material modification, nor recommend to the PSC that any rehearing be granted.
- (e) The Parties agree not to file any judicial appeal and further agree to oppose any request for judicial review filed by another party of any NYPSC decision approving this agreement without material modification.
- (f) The Parties agree that this Agreement shall be submitted for approval to NYPSC for consideration and approval no later than the PSC's August 16, 2012 meeting. The Parties agree that any PSC order approving the this Agreement may direct the Parties to submit a final contract to demonstrate compliance with the PSC's August 16 order approving this Agreement . Any disapproval of, or a material change directed, by the NYPSC, to the Final Contract, shall allow either party to avail itself of the rights afforded it under this section as if the NYPSC disapproved, or directed a material change, to the Agreement.
- (g) If the NYPSC does not approve this Agreement without material

modification at its August 16, 2012 meeting, or if the NYPSC does not approve a mechanism reasonably acceptable to Buyer to recover the costs of this Agreement at that meeting, or should any NYPSC order approving this Agreement without material modification not become final and non-appealable, Dunkirk may request that FERC act on Docket No. ER12-2237-000 as soon as possible, and the parties agree not to oppose a Dunkirk request to establish a September 11, 2012 effective date.

Confidentiality: Buyer and the New York Public Service Commission will be permitted to release the price per month to be paid under the agreement, as well as the identified elements that comprise the pricing. Amounts attributable to each pricing element, unless they are included in this Agreement or the final contract based on this Agreement, will not be released.

Binding Nature: It is the Parties' expectation that this Agreement will be filed on July 20, 2012 with, and approved on August 16, 2012 by, the NYPSC. This Agreement shall be signed by both Seller and Buyer and will be binding, unless this Agreement is not approved by the NYPSC.

Necessary Approvals: Parties will engage in good faith negotiations aimed at completing a final contract based on this Agreement as soon as possible and will file that contract with the NYPSC in compliance with the PSC's proposed August 16, 2012 order.

Should the NYPSC not approve this binding Agreement, or a mechanism reasonably acceptable to Buyer to recover the costs of this Agreement, either party may terminate this Agreement and pursue any legal remedy.

DUNKIRK POWER LLC

By: *William Lee Davis*

Name: William Lee Davis

Title: President

NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID

By: _____

Name: _____

Its: _____

DUNKIRK POWER LLC

By: _____

Name: _____

Title: _____

NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID

By: William J Makee

Name: William I Makee

Its: Director, Transmission Commercial

ATTACHMENT 2

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GENERAL INFORMATION

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GENERAL INFORMATION (CONTINUED)

49. RENEWABLE PORTFOLIO SURCHARGE (“RPS”)

49.1 The Renewable Portfolio Surcharge (“RPS”) is a mechanism which permits the Company to recover from customers costs associated with providing financial incentives for the development of renewable resources in New York State per Order issued and effective September 24, 2004 in Case No.03-E-0188 – Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard.

49.2 Service bills rendered to customers taking service under P.S.C. No. 220 and 214 Electricity, are subject to the Renewable Portfolio Surcharge, regardless of supplier, except

- (i) load served by NYPA except as provided in Rules 49.2.1,
- (ii) load served under the Empire Zone Rider,
- (iii) as established by contract under the SC-11 or SC-12 tariff as described in
 - a. SC No. 11 - Adjustments and Surcharges and
 - b. SC No. 12 – Sections 5.4.3 and 6.2.3.

49.2.1 Certain NYPA allocations are subject to the Renewable Portfolio Surcharge. These allocations include Economic Development Power (EDP) above the allocated 46 MW, and all deliveries of High Load Factor Fitzpatrick Power not specifically enumerated on Schedule A to the Agreement Among Niagara Mohawk Power Corporation, the New York Power Authority, and the Department of Public Service Resolving and Settling Certain Disputes dated May 22, 1997 or otherwise authorized by that Settlement Agreement.

49.2.2 Customers who have load served by NYPA are exempt from the RPS on the NYPA portion of their load, except as provided in Rule 49.2.1. Customers will be assessed the RPS on any non-NYPA portion of their load.

49.3 The Renewable Portfolio Surcharge rates will be stated in cents per kWh.

49.4 The RPS rate shall be shown on statements filed with the Public Service Commission apart from this rate schedule not less than three (3) days before its effective date. Such statements will be available to the public by contacting the Company's Customer Service Center where applications for service may be made.

49.5 Customers subject to or who elect to pay Rule 41-System Benefits Charge (SBC) are also subject to Rule No. 49-Renewable Portfolio Surcharge (RPS).

GENERAL INFORMATION

50. RELIABILITY SUPPORT SERVICES (RSS) SURCHARGE

50.1 The RSS surcharge provides for recovery from customers of costs incurred by the Company, and approved by the Commission, for third-party services to ensure that local reliability needs are met.

50.1.1 The RSS surcharge is applicable to all customers taking service under P.S.C. No. 220 and 214 Electricity, regardless of supplier, including Replacement and Expansion Power, Recharge New York Power, High Load Factor Power, Preservation Power, and customers taking service under S.C. No.12 in accordance with the terms of their individual contracts.

50.1.1.1 Empire Zone qualifying load and Excelsior Jobs Program qualifying load are not subject to this surcharge.

50.2 The recovery of RSS costs shall be allocated to service classifications based on the most recent transmission plant allocator.

50.2.1 RSS costs incurred by the Company prior to April 1, 2013 will be deferred and will include carrying charges at the applicable other customer deposit rate. Customers included in Rule No. 50.1.1 will be surcharged for these payments commencing April 1, 2013.

50.2.2 RSS costs incurred by the Company for the period beginning April 1, 2013 and subsequent thereto will be assessed on a forecast basis and recovered from customers on a current basis.

50.2.3 The RSS surcharge will be applied to customers on a sales forecast basis.

50.2.3.1 The RSS surcharge will be collected from customers on a volumetric basis, per kWh for non-demand service classifications and per kW for demand service classifications.

50.2.3.2 The RSS surcharge shall be determined by dividing the amount of RSS costs incurred by the Company for each service classification as determined in Rule 50.2 above by the forecasted sales or demand for that service classification

50.2.3.3 The RSS surcharge collected from customers will be subject to an annual reconciliation for any over or under collections from the previous year. The RSS reconciliation over or under collections will be credited or surcharged to customers, which will include interest at the applicable other customer deposit rate.

50.3 The RSS surcharge shall be shown on statements filed with the Public Service Commission apart from this rate schedule not less than fifteen (15) business days before its effective date.

ATTACHMENT 3

NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID
ALLOCATION OF ESTIMATED RELIABILITY SUPPORT SERVICES COSTS

Design Service Class	12-months ended 3-31-2014 kW Billed (A)	12-months ended 3-31-2014 kWh Sales (B)	Transmission Plant Allocator (C)	Allocation of Estimated RSS Costs and Carrying Charges (D)	Surcharge Rate (E)
1. SC1	-	11,113,208,562	42.67%	\$14,239,926	\$ 0.00128
2. SC1C	-	356,714,611	1.00%	\$333,722	\$ 0.00094
3. SC2ND	-	636,375,987	2.68%	\$894,376	\$ 0.001410
4. SC2D	14,452,879	4,309,119,901	14.55%	\$4,855,658	\$ 0.34
SC3					
5. Secondary	10,751,548	4,128,357,496	13.04%	\$4,351,738	\$ 0.40
6. Primary	4,478,850	1,949,724,410	5.10%	\$1,701,983	\$ 0.38
7. Transmission	1,536,664	574,991,987	1.30%	\$433,839	\$ 0.28
8. Total	<u>16,767,062</u>	<u>6,653,073,893</u>	<u>19.44%</u>	<u>\$6,487,560</u>	
SC3A					
9. Secondary					
10. Primary	2,593,823	1,252,685,372	3.19%	\$1,064,574	\$ 0.41
11. Subtransmission	3,606,856	1,795,814,764	4.06%	\$1,354,912	\$ 0.38
12. Transmission	12,680,335	6,071,933,616	12.39%	\$4,134,818	\$ 0.33
13. Total	<u>18,881,013</u>	<u>9,120,433,753</u>	<u>19.64%</u>	<u>\$6,554,304</u>	
14. Total PSC 220	50,100,954	32,188,926,706		\$33,365,546	
Street and Highway Lighting					
15. SC1	-	23,665,889		\$777	\$ 0.000033
16. SC2/5	-	159,398,607		\$5,236	\$ 0.000033
17. SC3/6	-	9,219,028		\$303	\$ 0.000033
18. SC4	-	10,911,329		\$358	\$ 0.000033
19. Total PSC 214	<u>-</u>	<u>203,194,853</u>	<u>0.02%</u>	<u>\$6,674</u>	
20. Total PSC 220/214	50,100,954	32,392,121,559	100.00%	\$33,372,220	

- A Exhibit ____ (E-RDP-4), Schedule 2, Column 3 less EZR and Excelsior
B Exhibit ____ (E-RDP-4), Schedule 2, Column 2 less EZR and Excelsior
C Exhibit ____ (E-RDP-3), Schedule 3, Page 1 of 8, Line 17
D RSS costs plus carrying charges allocated by Column C from Schedule 2
E Column (D) / Column (A) or Column (B)

NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID
RELIABILITY SUPPORT SERVICES (RSS)
CALCULATION OF ESTIMATED CARRYING CHARGES

	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	
	30	31	30	31	31	28	31	30	31	
					RSS Payments					
1 Beginning Balance	\$0	\$3,669,153	\$7,343,531	\$11,022,643	\$14,707,325	\$18,397,172	\$22,089,445	\$25,789,636	\$25,824,611	
2 Payment	\$3,666,667	\$3,666,667	\$3,666,667	\$3,666,667	\$3,666,667	\$3,666,667	\$3,666,667	\$3,666,667	\$3,666,667	
3 Balance After Payment	\$3,666,667	\$7,335,820	\$11,010,197	\$14,689,309	\$18,373,992	\$22,063,838	\$25,756,112	\$25,789,636	\$25,824,611	
4 Average Monthly Balance	\$1,833,333	\$5,502,486	\$9,176,864	\$12,855,976	\$16,540,659	\$20,230,505	\$23,922,778	\$25,789,636	\$25,824,611	
5 Customer Deposit Rate	1.65%	1.65%	1.65%	1.65%	1.65%	1.65%	1.65%	1.65%	1.65%	
6 Carry	\$2,486	\$7,711	\$12,445	\$18,016	\$23,180	\$25,607	\$33,525	\$34,975	\$36,190	
7 Ending Balance	\$3,669,153	\$7,343,531	\$11,022,643	\$14,707,325	\$18,397,172	\$22,089,445	\$25,789,636	\$25,824,611	\$25,860,801	
8 Levelized monthly payment of May 2013 balance collected over remaining 10 months					\$ 2,603,889					
9 Total of 10 levelized monthly payments					\$ 26,038,887					
10 Additional 2 payments in April and May 2013					\$ 7,333,333					
11 Total amount to be rate designed					<u>\$ 33,372,220</u>					

- 1 Previous month ending balance
- 2 \$33,000,000 divided by 9 months for the 7 months before collection from customers begin
- 3 Line 1 + Line 2
- 4 Line 1 + Line 3 divided by 2
- 5 Applicable other customer deposit rate
- 6 Line 4 x Line 5 / 365 x number of days in month
- 7 Line 3 + Line 6
- 8 Levelized monthly payments from June 2013 through March 2014 to collect May 2013 balance
- 9 Line 8 x 10
- 10 Sum of April and May monthly payments of \$3,666,667. Note: The Term Sheet Agreement with NRG provides for payment of take or pay contract costs (up to \$4.343 million) which are not reflected in this schedule.
- 11 Line 9 + Line 10