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January 15, 2013

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**

Dear Secretary Brillling:

At the hearing held in these proceedings on January 8, 2013, at which testimony regarding the previously submitted Joint Proposal (“JP”) was incorporated in the record and by e-mail dated January 9, 2013, the Administrative Law Judges requested that the Retail Energy Supply Association (“RESA”)¹ and other parties submit comments regarding concerns associated with the use of a price comparison that would be included in the monthly bill and whether bill comparisons should be automatically provided to payment troubled customers. In these comments RESA will explain the material reservations associated with the use of a

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.

monthly bill comparative pricing insert and the reasonable basis for convening a Collaborative to examine this issue as well as the materials to be provided to payment troubled customers.

I. Section 11.5 of the JP

Section 11.5 of the JP, 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.

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. This would include examination of the use of a price comparison placed in each monthly consolidated bill issued by the Company.

II. Monthly Comparative Pricing Bill Insert

The use of a monthly line item bill comparison is highly problematical and, at a minimum warrants further consideration in the Collaborative.

The use of a one month time period erroneously focuses attention on a short limited time horizon rather than a longer 12 month period that provides a more accurate picture.

The monthly utility commodity cost allocation process for residential and small commercial customers is often itself a somewhat complex mixture of partial energy hedges, hourly index allocations, ancillary and capacity cost pass-throughs and previous month cost/credit carry-over spreads based on class averages and other allocation rules. In contrast,

commodity products offered by ESCOs are imbued with materially different characteristics. ESCOs will tailor their products to meet the circumstances and customer preferences at the time of sale. In practice this means the ESCO product is tailored to the individual consumer, reflects more current pricing or pricing preferences of the customer (i.e., variable, fixed, capped, etc.), meets the product preferences of the consumer (i.e., green power, term contracts, other value-added services or benefits), and are generally not subject to mandated cost recovery of out of period losses or gains.

The application of the monthly comparison would only provide ESCO customers with one month of backward looking information for the utility monopoly delivery services provider. Such a short term comparison is not reliably indicative of future results either for the ESCO or the utility, and therefore would not necessarily be helpful to customers in making prospective energy supply decisions.

Furthermore, the introduction of this monthly insert could also be viewed as discriminatory since the distribution utility, whose complex supply service offering often is seen as the main competitor of the ESCO, would not advise customers on a monthly bill of the costs the customer would have incurred if served by an ESCO. Only if the customer has chosen an ESCO would this information be presented. This creates a bias toward utility service rather than allowing the customer to make a decision that is unbiased. It appears that ESCO service would now be subject to disparate and discriminatory treatment.

Further, the mere comparison of the utility commodity rate to the ESCO commodity charges on the monthly would be incomplete. The Merchant Function Charge (“MFC”) represents costs previously included in the delivery charge that the customer will avoid if they migrate to retail access service provided by an ESCO. The MFC is not charged to retail access customers. Similarly, retail access customers are beneficiaries of a reduced sale tax rate on utility delivery service, and receive a billing charge credit. Therefore, merely comparing commodity charges of the ESCO (which do not include either the MFC or the sale tax costs which are included in the supply charges from a utility provider) to that of the utility would be inaccurate and paint an incorrect picture.

The use of a monthly bill comparison could be especially inappropriate where the ESCO is providing fixed, value-added or green/clean power. An ESCO’s fixed price offering, (where the price remains the same and invariant for the entire contract period) reflects the market conditions in effect at the onset of the contract term. Moreover, the fixed priced product reflects the market estimate of future costs whereas the utility rate ostensibly reflects past costs and historical cost allocations. Consequently, this type of ESCO provided commodity product is materially different than a utility’s monthly cost allocation methodology which varies based on the reasons previously discussed and which is difficult to predict on a going forward basis. Therefore, merely comparing the costs associated with these two very different product structures fails to inform the consumer that two entirely dissimilar products are being used in the comparison.

Further, allowing for a monthly comparison between a utility monthly variable product and an ESCO fixed priced product overlooks the underlying purchasing motivations of the consumer. Where a customer has voluntarily chosen a fixed priced product it is usually the case that the consumer is primarily interested in price stability and continuity over the contract term, and the desire to thereby achieve price protection for a defined period of time. This type of stability is especially important to households on fixed incomes and businesses that need to manage cash flows. The customer recognizes that once set the price will not fluctuate monthly and that market prices may vary over time. These values and motivations are not in any fashion incorporated in the pricing analysis. Rather than comparing “apples-to-apples”, the monthly insert will be comparing “apples to oranges”, with the added deficiency that the comparison will suggest an air of relevance and similarity when, in fact, the products being compared are dissimilar.

It is also highly questionable whether the results from the comparison can present meaningful information to the consumer. If the monthly comparison shows the ESCO fixed option was cheaper, this will not address the issues of cost certainty and stability that were the underlying considerations for taking this service. If the comparison shows the fixed price was more costly, the customer is once again presented with information that does not address the reasons why the customer selected this type of service. This may unnecessarily act to mask the value embedded in the fixed price nature of the product in the mind of the consumer and cause consumers to take price risks that are inappropriate to their circumstances or budget.²

On a going forward basis this historical information also has limited if any value because the customer needs to assess on a *prospective*, not on a *historical* basis, whether taking a certain stable priced product makes sense for that consumer in the context of the consumer’s particular circumstances, anticipated future movement in commodity prices and accommodated other futuristic considerations that affect energy usage. And, since the utilities monthly commodity rates are typically partially hedged, this prospective look is not available to the customer.

Unfortunately, the monthly bill insert tool incorrectly reduces the fixed rate product to simple price based offering even though the product was not marketed by the ESCO or accepted by the consumer on that basis, and will create further disincentives for ESCOs to offer such products to the consumer. It is important to recognize that ESCOs incur cost to manage price risk when offering fixed priced products to the consumer. In order to support the fixed price commitment, ESCOs will purchase hedges (both physical and/or financial) covering the term of the contract with the customer. These hedges will represent increased cost and an additional financial commitment by the ESCO to the hedge counterparty. These risks become exacerbated if the customer begins to view the purchase of such fixed products as merely a price comparative proposition.

² In response to the pricing comparison a customer might decide to forsake their fixed rate service even where it may be violative of their contractual obligations and possibly inconsistent with their longer term economic interests.

The use of the monthly pricing comparison for any ESCO value added product or service suffers from similar infirmities. These types of products are designed to provide value in forms other than a direct cost impact (such as appliance repair service) and therefore are not accurately reflected in a limited pricing model.

For example, customers purchasing a green product are seeking to ensure that their energy usage is more environmentally compatible and consistent with the overall state and federal policy goals favoring the use of renewable and green power sources.³ These types of products and power sources are marketed for their positive environmental impact rather than on a cost basis. In fact, it is most likely that these commodity products will be more costly than the traditional commodity sources that are primarily based on fossil fuels.⁴ Nonetheless, the pricing tool will focus only on price overlooking that price is not the motivating factor behind the purchase of this type of product.⁵ The same logic holds true regardless of the service so long as it adds value to the basic energy product.

Moreover, with the introduction of the web based Price Calculator⁶, customers will have better access to longer term comparative price information. With this in place, the justification for also implementing the monthly price insert is mitigated.

In view of these considerations, the use of the monthly price insert clearly presents serious concerns that warrant further review and analysis.

III. Information Provided To Payment Troubled Customers

The parties to the JP including RESA do not take issue with the general approach that information should be provided to payment troubled customers. The Collaborative will examine what form and type of information would be consistent with the needs of the consumer and most useful in assessing any subsequent actions. These particular questions were not fully addressed in the record, and the parties during the course of the Collaborative may examine all forms and “other materials” that might be provided to the customer. Thus, the Collaborative will be useful in determining what is the most relevant and useful information that should be provided to payment troubled customers.

³ See Case 03-E-0188 – Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Regarding Retail Renewable Portfolio Standard (“RPS”) (issued September 24, 2004)

⁴ In fact, to ensure that the State is able to achieve the mandated RPS targets, the Commission authorized the establishment of a program under which NYSERDA will reimburse renewable generators to the extent the cost of such power exceeds the projected electric market costs. (*Id.*)

⁵ The ESCO incurs additional costs and risk when offering renewable/green products due to the need to purchase higher cost power sources to meet their commitment to the consumer. As in the case with fixed products, the prudence of taking on such additional financial risk becomes more tenuous if the customer begins to focus primarily on cost.

⁶ The JP provides and RESA concurs that implementation of a web based Pricing Calculator is reasonable.

IV. CONCLUSION

It is evident that there are material concerns associated with the use of the monthly bill pricing insert that at a minimum require warrant examination and review. Further, the provision of information to payment troubled customers would also benefit from such review. Consequently, including these matters in the Collaborative is eminently reasonable and should be adopted.

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)