

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 12-E-0577 - Proceeding on Motion of the Commission to
Examine Repowering Alternatives to Utility
Transmission Reinforcements.

NOTICE SOLICITING COMMENTS

(Issued May 20, 2016)

On June 13, 2014, the New York State Public Service Commission (Commission) approved a Term Sheet agreement between National Grid and Dunkirk Power LLC (Dunkirk), a subsidiary of NRG Energy, Inc. (NRG), and authorized National Grid to recover the costs that would be incurred under the Term Sheet. The Term Sheet contemplated the addition of natural gas capability for refueling the coal-fired Dunkirk generating facility, and that commercial operation of NRG's refueled Dunkirk facility would commence on or about September 1, 2015.

PLEASE BE ADVISED that the Commission is requesting comments on whether National Grid should still be authorized to recover costs under the Term Sheet given various intervening events subsequent to the Commission's approval. In particular, NRG/Dunkirk mothballed the Dunkirk facility in January 2016, and has not taken the actions necessary to add natural gas firing capability at the Dunkirk facility by September 1, 2015, or otherwise. Meanwhile, National Grid has completed certain transmission upgrades that it previously could defer and avoid, in contemplation of the refueled Dunkirk facility being available. Moreover, on April 19, 2016, the United States Supreme Court issued a decision with respect to preemption of a State-ordered contract for the sale of electric generation capacity, which may implicate the Dunkirk/National Grid Term Sheet. *Hughes v. Talen Energy Marketing, LLC*, 136 S. Ct. 1288 (2016) (*Hughes*). For instance, would *Hughes* require modification

of the Term Sheet? Similarly, would *Hughes* be considered a "Change of Law" under the provisions of the Term Sheet providing for termination?

Any interested entities are invited to submit comments on the matters raised in this notice by June 3, 2016. Any filings should refer to "Case 12-E-0577" and be submitted to the Secretary by e-filing through the Department of Public Service's Document and Matter Management System (DMM),¹ or by e-mail to the Secretary at secretary@dps.ny.gov. If unable to file electronically, commenters may make submissions by post or hand delivery to the Hon. Kathleen H. Burgess, Secretary, Three Empire Plaza, Albany, New York 12223-1350. Information and instructions related to subscribing to the service list, or otherwise monitoring the status of this proceeding can found on the Department's website at <http://documents.dps.ny.gov/public/MatterManagement/RequestAPStatus.aspx>.

All documents submitted to the Secretary will be posted on the Department's website and become part of the official case record. The comments received pursuant to this Notice may inform the Commission as to notice of future agency action and/or the terms of any proposed action.

(SIGNED)

KATHLEEN H. BURGESS
Secretary

¹ To register with DMM, go to <http://www.dps.ny.gov/e-file/registration.html>.