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By Electronic Mail

Hon. Kimberly Harriman  
Hon. Rudy Stegemoeller  
Administrative Law Judges  
NYS Public Service Commission  
3 Empire State Plaza  
Albany, New York 12223-1350

**Re: Case No. 12-E-0201 and 12-G-0202 - Niagara Mohawk Power Corporation d/b/a  
National Grid - Electric and Gas Rates**

Dear Judge Harriman and Judge Stegemoeller:

In response to the questions propounded by the Judges in the E-mail dated August 21, 2012, the Retail Energy Supply Association (RESA) provides the following additional information.

**Question No. 3:** How does the Company's response to PULP IR Nos. 91 and 107 violate Section 14.7 of the Billing Services Agreement (attached to Motion)?

**RESPONSE:**

Section 14.7 of the Billing Services Agreement (Agreement) provides as follows:

**“No Third Party Beneficiaries.** This Agreement is solely between the parties and is not intended to confer any rights whatsoever on any third parties.”

The Agreement between the ESCO and the Company provides that for consideration, the Company will perform certain billing functions on behalf of the ESCO. As part of that billing function the ESCO provides its specific customer billing information including prices to the Company. The conveyance of this ESCO billing price information solely arises in the context of and within the ambit of the Agreement, which was only entered into by the ESCO and the Company and is only designed and intended to create rights and obligations between the ESCO and the Company. It is not intended nor in any can be read to confer any rights upon any third party.

This is confirmed by Section 14.7 which directly states that the Agreement is not “intended to confer any rights ...on any third parties.” In this case, a third party (*i.e.* PULP) seeks to benefit from and assert rights to the Agreement by seeking to have the Company divulge to PULP the pricing data provided by ESCOs pursuant to the Agreement. In other words, PULP desires to benefit from the Agreement, in contravention of Section 14.7, by obtaining the ESCO pricing data.

Further, the Agreement does not authorize the Company to release publicly or to any other party except the ESCO, any of the pricing data conveyed to the Company as part of its contractual obligation to perform billing services for the ESCO. Essentially, PULP seeks to have the Company undertake an activity that is not in accord with the Agreement and thus inappropriately attempts to gain an advantage or benefit even though it is not a party to the Agreement.

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**Question No. 4:** Why would public release of the Company's response to PULP IR Nos. 91 and 107 potentially result in an unfair economic advantage to competitors of energy services companies? (16 NYCRR 6-1.3(b)(2))

**RESPONSE:**

In these interrogatories, PULP seeks release of long term comparative pricing information delineated by individual ESCO in the Niagara Mohawk service territory. The data included in the utility's compilation includes individual ESCO pricing, revenues, number of customers and number of low income customers. This data can provide a competitor or prospective competitor with detailed information concerning the specific customer base, pricing patterns and behavior by existing ESCOs for a lengthy prior period. This type of information can be extremely useful in determining how to price a product, whether to enter a market and potential margins that can be achieved in this market. Therefore, disclosing this information can

result in an unfair competitive advantage. See, also, to the same effect, Trade Secret 09-1, May 5, 2009; Trade Secret 08-1 (May 19, 2008), p. 5, which require maintenance of confidentiality of individual ESCO data such as number of customers.

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**Question No. 5:** How is the information provided in response to PULP IR Nos. 91 and 107 different from the type of information that is readily available on the Commission's Power To Choose web page, where customers can obtain price offers from multiple ESCOs for electric and/or gas commodity service?

**RESPONSE:**

On the PTC website, the ESCO submits the offerings that it has available for general applicability as of the first of each month. It does not cover offers and products available for the remainder of the month, Further it does not incorporate long term historical pricing analysis comparing the ESCO charges to the utility charges for all customers in a class served by the ESCO. It is thus singularly limited in scope and does not attempt to publicly disclose the ESCOs entire pricing activity for a previous material historical period.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel, Counsel*  
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Cc: Active Party List (by electronic mail)