REPRESENTING NEW YORK'S LARGE ENERGY CONSUMERS

January 8, 2020

VIA ELECTRONIC FILING

Hon. Michelle L. Phillips
Acting Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 19-E-0111 – Petition of Niagara Mohawk Power Corporation d/b/a National Grid to Modify the Clifton Park Demand Reduction REV Demonstration Project to Test Innovative Pricing Proposals on an Opt-Out Basis (I.D. No. PSC-46-19-00010-P)

Dear Acting Secretary Phillips:

Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York, including the Niagara Mohawk Power Corporation d/b/a National Grid ("Niagara Mohawk") service territory, hereby submits these comments in partial opposition to that utility's petition, dated October 22, 2019 (the "Petition"), seeking approval of, *inter alia*, tariff leaves to implement innovative pricing proposals on an opt-out basis for the Clifton Park Demand Reduction REV Demonstration Project ("Clifton Park Demonstration"). Notice of the Petition was published in the November 13, 2019 edition of the *New York State Register* (I.D. No. PSC-46-19-00010-P). For the reasons set forth below, Multiple Intervenors urges the New York State Public Service Commission ("Commission") to reject that portion of the Petition wherein Niagara Mohawk seeks authorization to increase the Reforming the Energy Vision ("REV") demonstration project budget cap negotiated and approved in the utility's most recent rate proceeding by $2.5 million.[1] Multiple Intervenors advocates no position on the remainder of the relief sought in the Petition, other than that it would oppose such relief if conditioned upon increased funding by large non-residential customers.

[1] On February 14, 2019, Niagara Mohawk filed a proposal in the above-referenced proceeding that similarly sought approval of certain innovative pricing proposals and requested a larger increase in the REV demonstration project budget cap. Multiple Intervenors submitted comments on May 20, 2019 opposing the increase in the REV demonstration budget cap on largely the same grounds as those now advanced herein. The Petition replaces and supersedes Niagara Mohawk's February 14, 2019 proposal.

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Initially, Multiple Intervenors has no objections, generally, to demonstration projects implemented under the REV proceeding.[2] While it can – and periodically does – take issue with the high cost of some REV demonstration projects and/or the recovery of such costs from all customer classes irrespective of the more-limited focus of certain projects, Multiple Intervenors agrees that testing certain REV-related concepts and expenditures on a limited basis (*i.e.*, via a pilot or demonstration project), and learning lessons therefrom, makes sense prior to possibly implementing much larger projects accompanied by much larger customer expenditures. Thus, in these comments, Multiple Intervenors is not challenging the concept of REV demonstration projects generally. Multiple Intervenors also is not challenging the Clifton Park Demonstration specifically, merely the proposed recovery from customers of projected cost overruns associated therewith.

Confronted with material electric and gas delivery rate increases, the parties to Niagara Mohawk's most recent rate proceeding addressed – and capped – the recoverable costs associated with REV demonstration projects. For instance, in the Joint Proposal negotiated therein, the settling parties specified that the agreed upon electric rates "include costs associated with the Company's Fruit Belt Neighborhood Solar, Potsdam Community Resilience, Distributed System Platform, and *Clifton Park Demand Reduction Reforming the Energy Vision ("REV")* demonstration projects."[3] The settling parties then provided that while Niagara Mohawk could defer costs associated with certain REV demonstration projects other than the Clifton Park Demonstration – such as "the Smart Home Rate and the Schenectady 'Smart City' demonstration projects" – the "*demonstration project budget cap, regardless of cost recovery mechanism, is $43.915 million*, as described in the [REV] Track One Order."[4] Finally, the settling parties addressed the possibility of new REV demonstration projects (*i.e.*, not the known and identified projects) causing Niagara Mohawk to exceed the budget cap: "In the event that *future* demonstration projects would result in the Company exceeding the demonstration project cap, Niagara Mohawk may file a petition with the Commission to increase the budget cap."[5]

In the Petition, Niagara Mohawk advances proposed tariff leaves and seeks authorization to test "innovative pricing proposals on an opt-out basis" as part of the Clifton Park Demonstration. (Petition at 1.) The Clifton Park Demonstration is focused on residential customers (*see id.* at 2), and the vast majority of the Petition is devoted to background on the Clifton Park Demonstration and Niagara Mohawk's description of, and justification for, the subject pricing proposals. (*See id.* at 2-15.) Multiple Intervenors advocates no position on the utility's pricing-specific proposals.

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[2] *See generally* Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*.

[3] Cases 17-E-0238 *et al.*, *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 and Gas Service*, Joint Proposal (dated January 19, 2018) at § 10.1.20 (emphasis added).

[4] *Id.* (emphasis added).

[5] *Id.* (emphasis added).

Significantly, Niagara Mohawk includes a request to exceed the negotiated demonstration project budget cap due to a proposed budget increase. (*Id.* at 16-17.) To "implement and evaluate the effect of the innovative rate pricing proposals," Niagara Mohawk would need to increase the overall Clifton Park Demonstration budget by approximately $4.5 million. (*Id.* at 16.) This increase would exceed the negotiated REV demonstration project budget cap by up to $2.5 million, and Niagara Mohawk correspondingly requests to increase the cap by such an amount. (*Id.* at 16-17.) Multiple Intervenors opposes this request on several grounds.

First, Niagara Mohawk's request conflicts with the express terms of the Joint Proposal that the Commission adopted in its last rate proceeding.[6] The utility references Section 10.1.20 of the Joint Proposal (*id.* at 1), but that provision authorizes neither additional funding in this instance nor waiver of the negotiated REV demonstration project budget cap. Rather, as demonstrated, *supra*, that provision only authorizes requests for deferrals or additional funding in two situations: (a) "additional REV demonstration projects," *i.e.*, projects other than the "Fruit Belt Neighborhood Solar, Potsdam Community Resilience, Distributed System Platform, and Clifton Park Demand Reduction" demonstration projects; or (b) "future" demonstration projects, *i.e.*, projects not identified explicitly in said provision.[7] Neither exception applies here. For REV demonstration projects known at the time the Joint Proposal was executed, and identified explicitly therein, "[t]he demonstration project budget cap, regardless of cost recovery mechanism, is $43.915 million."[8] Niagara Mohawk's request for additional funding by customers of the Clifton Park Demonstration is not supported by the Joint Proposal. That settlement sought to provide a measure of certainty as to customers' exposure for REV demonstration project costs – which have already been quite substantial – and Niagara Mohawk has not provided any compelling reason why that certainty should be disrupted.

In fact, the language utilized in the Joint Proposal is very clear. The known and active REV demonstration projects (*i.e.*, Fruit Belt Neighborhood Solar, Potsdam Community Resilience, Distributed System Platform, and *Clifton Park Demand Reduction* projects), as well as the known but not yet active projects (*i.e.*, Smart Home Rate and Schenectady "Smart City" projects), all were made subject to the same $43.915 million "demonstration project budget cap." The only difference in treatment is that the negotiated electric rates included the costs of the known and active projects, while the costs of the known but not yet active "additional" projects were to be deferred (but subject to the cap). In fairness to Niagara Mohawk, and because none of the settling parties could predict the future, the Joint Proposal recognizes that "future" REV demonstration projects (*i.e.*, those not yet known) could necessitate a possible modification of the project budget cap. Significantly, however, the Joint Proposal neither encourages nor facilitates such modifications; it simply allows them to be sought, subject to the Commission's normal processes: "In the event that *future* demonstration projects would result in the Company exceeding the demonstration project budget, Niagara Mohawk may file a petition with the Commission to increase the budget cap. Future demonstration projects will follow the statewide procedures approved by the Commission

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[6] *See generally*, Cases 17-E-0238 and 17-G-0239, *supra*, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans (issued March 15, 2018).

[7] Cases 17-E-0238 and 17-G-0239, *supra*, Joint Proposal at § 10.1.20.

[8] *Id.*

for demonstration projects."[9] Clearly, the Clifton Park Demonstration is not an additional or future REV demonstration project; it was known and dealt with explicitly in the Joint Proposal.

Second, even if, *arguendo*, the Commission is inclined to consider Niagara Mohawk's deferral request, it should reject same because the explanation or justification proffered is inadequate. Initially, the Petition devotes all of two sentences to explaining the requested budget increase: "These increased costs are associated with continuing to operate and maintain the network (*e.g.*, AMI functionality, associated cellular service, and the enhanced customer portal) beyond the initial project term. It also includes the additional customer education and outreach work necessary to implement and test the innovative pricing proposals." (Petition at 16.) The basis of the claimed cost increase of approximately $4.5 million is not explained in the Petition. For instance, it is not clear what incremental equipment and/or labor comprises that amount, or even when the added expense would be incurred. There does not appear to be any breakdown or further explanation or description of that amount in the Petition or the supporting appendices. Similarly, the Petition never provides a more detailed cost estimate and budget cap increase than "*approximately* $4.5 million" and "*up to* $2.5 million," respectively. (*See id.* at 16-17 [emphasis added].) In sum, the Petition fails to adequately describe, explain, and/or justify Niagara Mohawk's proposed budget increase, and correspondingly fails to adequately describe, explain, and/or justify the requested $2.5 million increase in the REV demonstration project budget cap contained in the Joint Proposal.

Niagara Mohawk files quarterly reports with the Commission that detail, *inter alia*, the budget for the Clifton Park Demonstration. These, however, provide no explanation for how – or even an indication that – the Clifton Park Demonstration budget is somehow inadequate. For example, in the most recent such report (about a week after filing the Petition), Niagara Mohawk indicated that the budget for the Clifton Park Demonstration "remains unchanged from that reported in previous quarterly reports."[10] Although indicating the budget was unchanged, the utility reported further that: "A difference between the Implementation Plan budget ($26,819,336) and the current revised budget ($26,953,233) exists due to an increase in actual meter costs and associated fees. The overall difference is $133,897."[11] At no point does Niagara Mohawk describe the budget as insufficient in any way.

Indeed, there was enough surplus in the budget for Niagara Mohawk to reduce the Clifton Park Demonstration budget by $4,250,823 in the first quarter of 2019.[12] This approximately $4.25 million apparently was applied to other REV demonstration projects.[13] Notably, the amount by which Niagara Mohawk reduced the Clifton Park Demonstration budget is approximately equal to the budget increase described in the Petition – $4.25 million and $4.5 million, respectively.

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[9] *Id.*

[10] Case 14-M-0101, *supra*, Niagara Mohawk Filing, *Demand Reduction REV Demonstration Project in Clifton Park – Q3 2019 Report* at 16 (dated October 31, 2019).

[11] *Id.* (citation omitted).

[12] *Id.*

[13] *Id.*

Niagara Mohawk had the budget for the pricing proposals described in the Petition, but chose to use it for other purposes instead.

The Commission should reject Niagara Mohawk's request to increase the REV demonstration project budget cap by approximately $2.5 million. There only is so much that customers should be expected to fund toward demonstration projects of this nature; hence, the establishment – and the Commission's subsequent approval – of a budget cap. Moreover, in this case, customers already are funding demonstration projects at a substantial level (*i.e.*, almost $44 million). Niagara Mohawk has failed to justify adequately its request to spend a considerable amount (or any amount) in excess of the applicable cap.

Finally, if, *arguendo*, the Commission desires for Niagara Mohawk to exceed the applicable budget cap and concludes that such surplus spending should be recovered from customers instead of shareholders, then, as a matter of equity, such amounts should be recovered from residential customers. There is no issue that the Clifton Park Demonstration is focused solely on residential customers. Niagara Mohawk explains that the Clifton Park Demonstration "is designed to provide residential customers … with price signals, tools, and information … to reduce electric demand during peak times."[14] The Petition states that "The Clifton Park Demonstration proposal is designed to provide residential customers in the Town of Clifton Park … with price signals, tools and information, enabled by AMI investments and distributed energy resources … to reduce electric demand during peak times." (Petition at 2.) To the extent the offering of innovative pricing options are responsible for the projected cost overruns, those, too, would be offered solely to residential customers. Thus, at some point, this becomes a matter of equity. It is highly questionable whether large non-residential customers, for instance, should be forced to fund residential customer rate design pilot programs. Where a budget cap was negotiated and the utility seeks to exceed that cap solely to expand residential customer pricing options, the Commission should ensure that costs are allocated equitably among the classes, including exempting those classes that are not the focus of the demonstration program and will receive no direct benefits therefrom.

[14] *Id.* at 1.

For all the foregoing reasons, the Commission should deny the Petition. Niagara Mohawk's request is inconsistent with the Joint Proposal and the REV demonstration project budget cap negotiated therein, which was adopted by the Commission. The utility also failed to justify its request adequately. Finally, if, *arguendo*, the Commission is inclined to grant Niagara Mohawk's request, then, at a minimum, it should direct that all incremental costs associated with the anticipated cost overrun be recovered from residential customers, who are the primary, if not the exclusive, targets and beneficiaries of this effort.

Respectfully submitted,

MULTIPLE INTERVENORS

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cc: Active Parties (via E-Mail)
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