STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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 24-E-0322**
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	)	**Case 24-G-0323**

STATEMENT OF NRG ENERGY, INC. IN PARTIAL OPPOSITION TO JOINT PROPOSAL OF SETTLEMENT

On behalf of itself and its affiliates doing business as Energy Service Companies ("ESCOs") in the service territory of the Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid"), NRG Energy, Inc. ("NRG") respectfully submits this Statement in Partial Opposition to the Joint Proposal of Settlement filed in these proceedings on April 25, 2025 (the "JP").[1]

[1] The NRG Energy, Inc. companies operating as ESCOs in New York include Direct Energy Business, LLC ("DEB"), Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, Gateway Energy Services Company, Green Mountain Energy Company, Reliant Energy Northeast LLC d/b/a NRG Home and d/b/a NRG Business Solutions, Energy Plus Holdings LLC, Energy Plus Natural Gas LLC, Independence Energy Group LLC d/b/a Cirro Energy, XOOM Energy New York, LLC, and Stream Energy New York, LLC.

INTRODUCTION AND SUMMARY OF POSITION

NRG's opposition to the JP is limited to §16.5.1(iv) thereof. That section of the JP authorizes National Grid to purchase and assign primary point pipeline capacity ("PPC") to Marketers and Direct Customers that serve existing non-core commercial and industrial customers under National Grid's daily balancing, firm transportation service ("Daily Balanced Customers") to the extent that such customers currently rely on secondary firm pipeline capacity to deliver their own gas supplies into National Grid's distribution system. Specifically, that section provides that:

> If PPC becomes available at the East Gate or West Gate and the Company's distribution system has the takeaway capacity to utilize the PPC, then the Company will notify Marketers/Direct Customers who lack sufficient PPC of its availability by September 1 of each year. Marketers/Direct Customers may either elect to contract for such PPC to reduce their existing PPC shortfall as of November 1, or if they fail to do so by the last week of October, the Company will contract for the capacity and release it to Marketers/Direct Customers who are deficient on a basis proportionate to their existing PPC shortfall at the affected location -- East Gate or West Gate, as applicable -- as of November 1 of each year. Capacity will be released for a one-year period each year ahead of the winter heating season at the rates paid by the Company. These procedures will be in place by September 2025.[2]

NRG opposes this mandatory allocation of PPC to existing Daily Balanced Customers for the following reasons:

(1) This new requirement directly conflicts with the Commission's established policy for at least the last 30 years permitting large commercial and industrial customers, like the existing Daily Balanced Customers at issue in these proceedings, to choose to continue to have their gas supplies delivered to their gas utilities using firm secondary pipeline capacity if they prefer to do so;

(2) Depriving existing Daily Balanced Customers of the freedom to choose to continue to rely on a mix of the Marketer's own PPC and firm secondary pipeline capacity

[2] JP at 113-114.

will needlessly increase the energy supply costs and undermine the competitive positions of these large commercial and industrial customers;

(3) Other provisions of the JP further reduce the need to deprive existing Daily Balanced Customers of the freedom to choose to use secondary firm pipeline capacity; and

(4) There are no reliability problems on National Grid's system that would justify depriving Daily Balanced Customers of the freedom to choose whether to rely on PPC or firm secondary pipeline capacity.

For all these reasons, the Commission should reject JP § 16.5.1(iv) in its entirety.[3]

ANALYSIS

I. MANDATORY PPC ASSIGNMENT IS INCONSISTENT WITH ESTABLISHED COMMISSION POLICY

While the Commission has required for many years that gas service to captive, core customers be provided using PPC, the Commission has consistently rejected attempts by gas utilities to impose such PPC requirements on existing large commercial and industrial customers. For example, in its Order on Capacity Release Programs issued August 30, 2007, the Commission accepted the recommendations of a DPS Staff White Paper on Capacity Planning and Reliability advocating the mandatory assignment of one hundred percent PPC by gas utilities to core customers.[4] But the Commission expressly rejected proposals to impose that requirement on large commercial and industrial customers, which have historically been served using secondary firm pipeline capacity:

> These customers constitute the pre-aggregation large volume loads which have been supplying their own capacity for up to 20 years, and the [Capacity Planning Initiative] was not intended to include these customers. NYSEG/RG&E and National Grid note in their

[3] NRG Energy neither supports nor opposes any other provisions of the JP.

[4] Case 07-G-0299, *In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies – Capacity Planning and Reliability*, Order On Capacity Release Programs (Issued and Effective August 30, 2007) (the "Capacity Release Order").

> comments that they no longer hold sufficient capacity to serve these larger customers.[5]

Similarly, in its November 20, 2000, Order Denying Petition for Rehearing and Granting Petition for Clarification in Case 97-G-1380, the Commission rejected the contention of the Consolidated Edison Company of New York, Inc. ("Con Edison") that existing large commercial and industrial customers should be required to obtain 100% PPC:

> Large volume customers were never subject to a tariff provision requiring an assignment of the LDC's primary firm upstream capacity and historically, their use of secondary firm capacity has not raised significant reliability concerns. In contrast, interruptible customers have been subject to alternate fuel requirements for many years and last year the lack of alternate fuel did raise reliability concerns. Therefore, rather than imposing additional requirements on these large volume customers now, we will allow them to continue to use secondary firm capacity. If reliability concerns do arise we will reevaluate the situation.[6]

The JP would replace this long-established Commission policy with a new policy effectively prohibiting existing large commercial and industrial customers from continuing to rely on secondary firm pipeline capacity where PPC is or becomes available.

II. DEPRIVING EXISTING DAILY BALANCED CUSTOMERS OF THE FREEDOM TO ELECT TO SERVE THEIR FACILITIES USING FIRM SECONDARY PIPELINE CAPACITY WILL NEEDLESSLY INCREASE THE ENERGY COSTS AND UNDERMINE THE COMPETITIVE POSITIONS OF THOSE CUSTOMERS

Remarkably, neither National Grid nor any other party in these proceedings has suggested that existing Daily Balanced Customers are unable to make a rational choice between the enhanced supply security provided by full PPC and the cost savings provided by reliance on secondary firm

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[5] Capacity Release Order, slip op. at 11.

[6] Case 97-G-1380 *In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies – Petitions for Rehearing and Clarification,* Order Denying Petition For Rehearing And Granting Petition For Clarification, slip op. at 5-6 (Issued and Effective November 20, 2000).

pipeline capacity. In contrast, the Commission itself has expressly recognized that these large and sophisticated customers are uniquely positioned to make their own decisions on such matters. For example, in its Order on Capacity Release Programs, the Commission expressly relied on this fact in exempting Daily Balanced Customers from mandatory capacity allocation:

> The larger customers have chosen their level of service and may employ risk management strategies to cover the possibility of their gas not getting to the LDC's system or may simply be willing to assume the risk of not receiving the gas.[7]

In other cases, the Commission has similarly recognized the unique ability of these large and sophisticated energy users to manage their own energy supplies without active supervision by the Commission.[8]

As NRG Energy's witnesses explained, depriving existing Daily Balanced Customers of freedom to make this choice for themselves would substantially increase the prices that these customers must pay for their natural gas supplies at a time when many are already under substantial financial pressure due to the burdens of operating in New York's economy.[9] And as the Commission has recognized in other circumstances, these large and sophisticated customers can be expected to respond to such cost increases by availing themselves of competitive alternatives not available to core customers, such as moving their businesses to sites in other jurisdictions where operating costs may be lower.[10] The Commission has wisely decided to date to avoid

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[7] Capacity Release Order, slip op. at 11.

[8] *See, e.g.*, Case 12-S-0284, *East River Housing Corporation - Petition for a Declaratory Ruling That Its Power Plant Is Exempt from Public Service Commission Regulation or, In the Alternative, Will Be Subject to Lightened and Incidental Regulation*, Order On Qualifying Facility Jurisdiction, Granting A Certificate Of Public Convenience And Necessity And Providing For Incidental And Lightened Ratemaking Regulation, slip op. at 16 (Issued and Effective February 14, 2013) ("[D]etailed regulatory oversight of the steam rate contracts East River has entered into is unnecessary. Its steam customers are sophisticated commercial entities that may avail themselves of competitive alternatives to taking steam service from East River, which is therefore motivated to offer steam service at as low a price as possible in order to retain them as customers.").

[9] Direct Testimony of the NRG Energy Panel at p. 12.

[10] *See, e.g.,* Case 04-M-0388, *Petition of Eastman Kodak Company to Provide Utility Service in Kodak Park, Located*

interfering with the efforts of New York's existing large industrial and commercial customers to manage their own supplies of natural gas and should continue to do so in this proceeding.

III. OTHER PROVISIONS OF THE JP FURTHER REDUCE THE NEED TO DEPRIVE EXISTING DAILY BALANCED CUSTOMERS OF THE FREEDOM TO USE SECONDARY FIRM PIPELINE CAPACITY

As National Grid's Gas Supply Panel made clear in their Direct Testimony, National Grid is currently taking a number of aggressive steps to ensure that Daily Balanced Customers are aware of their obligations to curtail their gas usage in the event of any disruptions in their own gas supplies. These measures include: (1) requiring that all Daily Balanced Customers commencing service after February 1, 2022 have contracted for their full PPC requirements,[11] (2) requiring each Marketer serving existing Daily Balanced Customers with less than full PPC to provide a curtailment plan on National Grid's secure website for each upcoming winter season,[12] and (3) working with Marketers to update curtailment plans for each Marketer's customer pool.[13]

To further enhance the reliability of its natural gas supply, National Grid's Gas Supply Panel is also proposing an innovative new Daily Balanced Pool Alert in these proceedings. If approved by the Commission, the Daily Balanced Pool Alert would require Marketers to provide proof of the PPC they do hold for their existing Daily Balanced Customers and to cause those customers to curtail their gas usage not covered by PPC during periods when their pipeline suppliers fail to deliver sufficient supplies of natural gas to meet their needs.[14]

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in the City of Rochester and Town of Greece, Monroe County, Order Granting Certificates Of Public Convenience And Necessity And Providing For Lightened And Incidental Regulation (Issued and Effective August 2, 2004).

[11] Direct Testimony of National Grid Gas Supply Panel at p. 38.

[12] *Id*. at p. 39.

[13] *Id*. at p. 39.

[14] *Id*. at p. 43.

As National Grid's Gas Supply Panel explained, this new program will enhance its ability to curtail service to existing Daily Balanced Customers in the event that they consume more gas than they deliver into National Grid's system during a supply emergency:

> When issued, this new alert will serve as a notice that the Company will be closely monitoring the total MPDQs of the respective pool(s) compared to the actual pool nominations. If there is not sufficient gas scheduled, the Company may need to call on customers to interrupt gas usage for those customers identified and ranked per the Marketer's Curtailment Plan.[15]

While this program was severely flawed as initially proposed in the Direct Testimony of National Grid's Gas Supply Panel, those flaws were largely addressed in the settlement process and, as a result, NRG Energy does not oppose the modified Daily Balanced Pool Alert proposed in the JP.

In light of these enhanced safeguards, as well as the sophisticated nature and proven record of existing Daily Balanced Customers in reliably managing their gas supplies for over twenty years, there is simply no justification for depriving existing Daily Balanced Customers of the freedom to rely on secondary firm pipeline capacity at this time.

IV. THERE ARE NO RELIABILITY ISSUES ON NATIONAL GRID'S SYSTEM THAT WOULD JUSTIFY DEPRIVING EXISTING DAILY BALANCED CUSTOMERS OF THE FREEDOM TO CHOOSE TO RELY ON FIRM SECONDARY PIPELINE CAPACITY AT THIS TIME

The record in these proceedings makes clear that existing Daily Balanced Customers have been meeting their requirements for natural gas service using firm secondary pipeline capacity for over 30 years, without giving rise to any of the reliability concerns that would create a need for the Commission to reevaluate this situation. National Grid's Gas Supply Panel itself conceded this fact in its response to an Information Request from NRG Energy:

[15] Direct Testimony of Gas Supply Panel at 41-42.

> [T]he Panel is not aware of any time during the period from January 1, 2002 to present when the Company was required to interrupt or curtail gas deliveries to any customer as a result of a customer or their ESCO failing to provide an amount of PPC sufficient to meet their MPDQ.

Any suggestion that this proven track record may not continue in the future is undermined by two undisputed facts: First, in the event that secondary firm pipeline capacity becomes less reliable in the future than it has proven to be in the past, Marketers serving Daily Balanced Customers will be free to choose to secure additional PPC on their own accord in order to avoid supply curtailments under National Grid's proposed new Daily Balanced Pool Alert. Until that happens, there is no need for National Grid to substitute its judgement concerning the benefits of PPC for the judgements of those large, sophisticated customers that, unlike National Grid, operate in competitive markets where cost control is essential to business success.

Second, the testimony of National Grid's own Gas Load Forecasting Panel suggests that the benefits of PPC to these customers are unlikely to exceed its costs any time soon. According to that panel, weather adjusted retail gas deliveries to all of National Grid's customers actually *declined* over the period from 2019 to 2023 and are expected to decline further over the period from 2024 to 2029. Specifically, National Grid's Gas Load Forecasting Panel testified that:

> On a weather-normalized basis, retail gas deliveries to all customers have declined at a compound annual growth rate of -2.2 percent per annum from 1.762 billion therms in FY 2019 to 1.615 billion therms in FY 2023 (Exhibit ____ (GLF-8)). This decline principally reflects changes in the large-volume markets.[16]

Looking forward, National Grid's Load Forecasting Panel projected that:

> Niagara Mohawk's natural gas deliveries are projected to decrease by 57.4 thousand therms per year or a compound annual growth rate of -0.004 percent per annum. Net meter counts are projected to

[16] Direct Testimony of National Grid's Load Forecasting Panel at p. 7.

> increase by 3,540 customers per year or a compound annual growth rate of 0.5 percent per annum.
>
> The Company's forecast growth is net of projected savings from demand-side management programs in the Company's service areas and the impact of new laws and policies intended to reduce gas usage.[17]

With weather-adjusted demand for natural gas on the Company's system declining due to the loss of large commercial and industrial customers and to the success of state policies adopted to reduce gas usage, there is plainly no need to deprive Daily Balanced Customers of the freedom to choose to rely on secondary firm pipeline capacity to serve their facilities at this time.

CONCLUSION

WHEREFORE, for the foregoing reasons, NRG Energy Inc. respectfully requests that the Commission reject section 16.5.1(iv) of the Joint Proposal in its entirety.

Respectfully submitted,

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[17] *Id*. at p. 6.