STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act	**Case 20-E-0197**

RESPONSE OF MULTIPLE INTERVENORS TO PETITION BY NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID

Dated: February 28, 2022

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PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of over 50 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, including the Niagara Mohawk Power Corporation d/b/a National Grid ("Niagara Mohawk") service territory, hereby submits its Comments in response to the "Petition of Niagara Mohawk Power Corporation d/b/a National Grid for Cost Recovery of Phase 1 Local Transmission Projects" ("Petition"), which was filed with the New York State Public Service Commission ("Commission") on November 8, 2021, in Case 20-E-0197, *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*. Notice of the Petition was filed in the December 29, 2021, edition of the *New York State Register* (I.D. No. PSC-52-21-00009-P). For the reasons set forth below, Multiple Intervenors has several concerns regarding the Petition that warrant careful evaluation by the Commission. In response to Multiple Intervenors' concerns, the Commission should deny the Petition or, alternatively, modify the relief requested therein to eliminate or reduce the resulting near-term and long-term rate impacts to Niagara Mohawk's electric customers.

On January 20, 2022, the Commission issued an order adopting, without modification, the terms of the Joint Proposal negotiated in Niagara Mohawk's most recent electric and gas rate proceedings, which was executed by the utility and numerous other parties, including New York State Department of Public Service Staff ("DPS Staff") and Multiple Intervenors.[1] The

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[1] Cases 20-E-0380 and 20-G-0381, *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*, and Case 19-M-0133, *In the Matter of Niagara Mohawk Power Corporation's Notice of Pension Settlement Loss and Request for Waiver of 60-Day Filing*

adopted Joint Proposal provides Niagara Mohawk with substantial electric delivery rate relief at customer expense; to wit: (a) $49.379 million (2.4%) in the first rate year (July 2021 through June 2022); (b) $95.582 million (4.5%) in the second rate year (July 2022 through June 2023); and (c) $109.816 million (4.9%) in the third rate year (July 2023 through June 2024).[2]

In addition to substantial rate relief, the Joint Proposal provides for large – and increasing – amounts of electric direct capital expenditures: (a) $647.839 million in Fiscal Year ("FY") 2022; (b) $692.936 million in FY 2023; (c) $792.441 million in FY 2024; and (d) $895.340 million in FY 2025.[3] Eventually, the electric plant funded by those capital expenditures will enter service, and customers then will be responsible for paying a return of and on Niagara Mohawk's investments, thereby placing upward pressure on future rates.

Before the Commission had even ruled on the Joint Proposal, Niagara Mohawk filed the Petition seeking authorization to expend even more on electric capital projects, and for approval of cost deferrals and surcharge recoveries from customers. Specifically, the Petition requests that the Commission authorize Niagara Mohawk to: (a) continue development of "Phase 1 transmission solutions" presented in the utility's 2030 Regional Plan; (b) defer carrying charges associated with certain Phase 1 transmission solutions that were not reflected in the recently-concluded rate proceedings but which could be placed into service during the term of the electric

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Requirement, Order Adopting Terms of Joint Proposal, Establishing Rate Plans and Reporting Requirements (issued January 20, 2022) (hereinafter, "2022 Rates Order").

[2] Cases 20-E-0380, 20-G-0381, and 19-M-0133, *supra*, 2022 Rates Order at 19; *see also id.*, Attachment 1, Joint Proposal (dated September 27, 2021) at 8. The impacts of those increases on customers will be moderated somewhat by the application of net regulatory liabilities (*i.e.*, customer credits). *See id.*, Rates Order at 19; Joint Proposal at 9.

[3] *Id.*, Joint Proposal, Appendix 1, Schedule 5, page 1 of 18. These amounts do not include common allocated capital expenditures or removal costs. *Id.*

rate plan adopted therein, and to impose a new surcharge on customers to provide recovery of the deferred amounts; and (c) defer "operating expense associated with investments, return on capital investment (including cost of removal), and depreciation associated with the Phase 1 transmission solutions not recovered through a surcharge or existing rate plan … for future recovery" as part of the utility's next rate filing. (Petition at 3-4.)

Multiple Intervenors does not possess the resources necessary to evaluate critically each and every capital project proposed by Niagara Mohawk in the Petition. For that type of in-depth, technical analysis, Multiple Intervenors – and other customers – rely upon the expertise of DPS Staff. Multiple Intervenors, however, does have two primary concerns related to the Petition.

First, it is not clear that all, or even many or any, of the proposed projects truly are needed at this time. After all, the Petition seeks Commission authorization for capital expenditures on projects that were not selected for inclusion in the Joint Proposal adopted in Niagara Mohawk's recently-concluded electric rate proceeding. Thus, the proposed projects either were not subjected to the typical scrutiny attendant in rate proceedings or, perhaps in certain instances, were subjected to such scrutiny and ultimately excluded from the long list of proposed projects used to justify the utility's negotiated level of capital expenditures.

Second, the proposed projects would expose customers to near-term and long-term rate impacts that are quite concerning. The impacts that would flow from the proposed authorizations should not be evaluated in a vacuum. The Commission recently authorized material electric rate relief that will be borne by customers. As detailed above, the Joint Proposal already provides for over $3 billion in budgeted electric capital expenditures from FY 2022 through FY 2025. Additionally, the Commission previously has authorized tens of billions of dollars in customer collections for various clean energy programs and initiatives, and wholesale energy prices have jumped substantially in 2022. Because customer funds are far from limitless, and rising energy costs have significant, negative impacts on economic activity, the Commission needs to ensure that Niagara Mohawk's electric rates are shielded from capital expenditures that are not truly necessary for safe and reliable electric service.

ARGUMENT

POINT I

THE COMMISSION SHOULD REFRAIN FROM AUTHORIZING EXPENDITURES ON ELECTRIC CAPITAL PROJECTS THAT ARE NOT TRULY NECESSARY AT THIS TIME

The Accelerated Renewable Energy Growth and Community Benefit Act (the "Act") was enacted in 2020. The Act directs the Commission, *inter alia*, to commence a proceeding to establish a distribution and local transmission capital plan for each utility in furtherance of Climate Leadership and Community Protection Act ("CLCPA") targets. Act at § 7(3).

Significantly, however, the Act is not intended to provide the Commission, or the State's electric utilities, with a blank check. Proposed capital projects must be shown to be necessary or appropriate to achieve CLCPA targets. *Id.* Even if a project is determined to be necessary, that does not necessarily require that it be undertaken immediately. A key intent of the Act is to "enable the state to meet CLCPA targets in an orderly and cost-effective manner." *Id.* at § 7(2).

Multiple Intervenors does not possess the requisite resources to evaluate all of the capital projects proposed in Niagara Mohawk's Petition. As indicated above, for such evaluation, Multiple Intervenors – and other customers – rely upon the expertise of DPS Staff. Multiple

Intervenors, however, is very concerned that Niagara Mohawk's most recent electric and gas rate proceedings, which concluded barely one month ago, resulted in the Commission adopting a Joint Proposal that authorizes over $3 billion in budgeted electric capital expenditures from FY 2022 through FY 2025.[4] Before that proceeding even had been acted upon by the Commission, Niagara Mohawk filed the Petition seeking Commission authorization to defer and ultimately recover from customers an additional $718,945,000 in electric capital expenditures. (*See* Petition at 17-18.)

During the recently-concluded rate proceeding, Niagara Mohawk's proposed electric and gas capital expenditures were the subject of extensive written discovery, as well as responsive testimony by DPS Staff. Capital expenditures also were a material focus of lengthy settlement negotiations between interested parties. It is not clear to Multiple Intervenors whether and to what extent the proposed capital expenditures advanced in the Petition have been subjected to similar levels of scrutiny.

Given the enormous electric capital expenditure budgets included in Niagara Mohawk's recently-adopted rate plan, it also is not clear whether and to what extent the projects proposed in the Petition need to be developed at this time. To a material extent, Niagara Mohawk justifies the projects based upon an expectation of a massive amount of new renewable generation being developed in the utility's service territory. (*See*, *e.g.*, Petition at 6-9.) There are no guarantees, however, that all or most of the renewable generation anticipated by Niagara Mohawk will be developed when and where the utility anticipates. Indeed, DPS Staff and the New York State Energy Research and Development Authority ("NYSERDA") recently made a filing to the Commission recommending that Clean Energy Standard Tier 1 requirements for 2023 be reduced

[4] *See* Cases 20-E-0380, 20-G-0381, and 19-M-0133, *supra*, Joint Proposal, Appendix 1, Schedule 5, page 1 of 18.

due to a shortage of Renewable Energy Credits in the marketplace caused by renewable generation development occurring at a slower pace than had been anticipated.[5]

Multiple Intervenors acknowledges that there will be future renewable generation development within Niagara Mohawk's service territory, and that the utility may very well need to implement certain upgrades to its electric system to facilitate and/or accommodate such development. That noted, it is not clear that there is any immediate urgency to start and complete all of the upgrades proposed right now, during a major expansion of Niagara Mohawk's normal electric capital expenditures budget and while large-scale renewable generation development is occurring at a slower pace than previously had been anticipated. Given all of the other programs and initiatives being supported by customers at this time, and the possibility of increased CLCPA compliance costs being imposed in the future, it is critically important that utilities not be given a regulatory green light to overbuild their systems, or make investments in furtherance of renewable generation development that does not materialize in the near-term, or materializes in unanticipated locations. Quite simply, the Commission needs to proceed very cautiously, else future electric rates and prices will become less affordable for customers and even less competitive with other regions, thereby harming state and local economies that still are reeling from the effects of the Covid-19 pandemic.

For all the foregoing reasons, it is imperative that the Commission refrain from authorizing expenditures on electric capital projects that are not truly necessary at this time.

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[5] *See* Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard*, 2021 Divergence Test and Target Setting Filing by DPS Staff and NYSERDA (dated November 29, 2021).

POINT II

THE COMMISSION SHOULD REFRAIN FROM AUTHORIZING DEFERRALS AND SURCHARGES FOR EXPENDITURES THAT ARE NOT TRULY NECESSARY AT THIS TIME

Multiple Intervenors has several concerns regarding the potential cost/rate impacts associated with the relief sought by Niagara Mohawk in the Petition. Those concerns highlight the importance of the need for the Commission to refrain from authorizing deferrals and surcharges that are not truly necessary at this time.

Initially, Niagara Mohawk recently was awarded substantial rate relief by the Commission. As detailed, *supra*, while the Petition was pending, the Commission authorized the following annual increases to Niagara Mohawk's electric revenue requirement: (a) $49.379 million (2.4%) for the rate year ending June 2022; (b) $95.582 million (4.5%) for the rate year ending June 2023; and (c) $109.816 million (4.9%) for the rate year ending June 2024.[6] The deferrals and the surcharge recoveries proposed by Niagara Mohawk in the Petition would be incremental to the substantial rate relief awarded to the utility.

Second, Niagara Mohawk's customers – and New York utility customers in general – already are funding numerous programs and initiatives related to the CLCPA or similar objectives. Examples of existing funding commitments imposed on customers include – but are not limited to – the following:

- Customers are and will be funding out-of-market payments of an indeterminate amount (believed to be in the many billions of dollars) to incentivize the

[6] Cases 20-E-0380, 20-G-0381, and 19-M-0133, *supra*, 2022 Rates Order at 19; *see also id.*, Joint Proposal at 8.

development of new, large-scale renewable generation facilities under Tier 1 of the Clean Energy Standard ("CES").[7]

- Customers are and will be funding out-of-market payments of an indeterminate amount (believed to be in the hundreds of millions of dollars) to incentivize the continued operation of existing renewable generation facilities under Tier 2 of the CES.[8]

- Customers are and will be funding out-of-market payments of an indeterminate amount (believed to be many billions of dollars) to incentivize the continued operation of existing nuclear generation facilities under Tier 3 of the CES.[9]

- Customers will be funding out-of-market payments of an indeterminate amount (believed to be many billions of dollars) to incentivize the penetration of renewable energy in New York City under Tier 4 of the CES.[10]

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[7] *See generally* Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting a Clean Energy Standard (issued August 1, 2016) at 78-115 (establishing a CES Tier 1 program for new renewable generating resources). The most recently-published prices for CES Tier 1 Renewable Energy Credits ("REC") is $22.47 per REC, available at: https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/LSE-Obligations/2021-Compliance-Year. Inasmuch as renewable generation penetration in New York recently has been under 30%, and must climb to 70% by 2030 under the CLCPA, it is anticipated that CES Tier 1 RECs will have a cost well into the billions of dollars during the coming decade.

[8] *See generally* Case 15-E-0302, *supra*, Order Adopting a Clean Energy Standard at 17-18, 115-19 (establishing a CES Tier 2 maintenance program for existing renewable generation facilities demonstrating financial need), and Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020) at 49-77 (establishing an additional, competitive solicitation component to CES Tier 2, irrespective of financial need, at a maximum incremental cost of $200 million through 2026).

[9] *See generally* Case 15-E-0302, *supra*, Order Adopting a Clean Energy Standard at 119-153 (establishing a CES Tier 3 for existing nuclear generating facilities). The first two-year tranche of the 12-year Tier 3 program (encompassing April 1, 2017 through March 31, 2029) relied upon a zero-emission credit ("ZEC") price of $17.48 per ZEC, with ZECs applied to an annual maximum of 27,618,000 MWh (*see id.* at App. E), for a maximum annualized cost of $482,762,640. Thus, the existing, 12-year ZEC program is expected to cost between $5 billion and $7 billion, depending upon the cost of ZECs (which fluctuate) and the output of the State's existing nuclear generation facilities. Moreover, to the extent the CLCPA necessitates the continued operation of those facilities beyond March 31, 2029, the total Tier 3 costs may rise further, possibly significantly.

[10] *See generally* Case 15-E-0302, *supra*, Order Adopting Modifications to the Clean Energy Standard at 77-103 (establishing a CES Tier 4 focused on New York City, but requiring

- Customers will be funding out-of-market payments of an indeterminate amount (believed to be many billions of dollars) to incentivize the development of new, offshore wind generation facilities.[11]

- Customers already are committed to funding a Clean Energy Fund ("CEF") at a cost of over $6 billion.[12]

- DPS Staff and NYSERDA recently filed a petition that currently is pending before the Commission seeking to increase the CEF budget by $1.474 billion to fund additional incentives for distributed solar.[13]

- Customers are and will be funding utility-administered electric energy efficiency programs at a cost of close to $1.9 billion through 2025, and potentially more thereafter.[14]

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the costs to be recovered on a statewide basis); *see also id.*, Petition filed by DPS Staff and NYSERDA dated November 30, 2021 (seeking Commission approval of two contracts for the purchase of Tier 4 RECs, each of which would guarantee over $1 billion in revenues annually to the developers for 25-year periods). The projected potential first-year impacts to Niagara Mohawk electric customers are as high as 9.9%, and double that (~ 20%) for large non-residential customers. *Id.*, Appendix C at 26.

[11] *See generally* Case 18-E-0071, *In the Matter of Offshore Wind Energy*. *See also id.*, Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement (issued July 12, 2018) at 15-64 (establishing an offshore wind generation target of 2.4 GW by 2030 and authorizing an initial procurement process in support thereof). The CLCPA increased the offshore wind generation target from 2.4 GW by 2030 to 9 GW by 2035. N.Y. Env. Cons. Law § 75-0103(13)(E).

[12] *See generally* Case 14-M-0094, *Proceeding on Motion of the Commission to Consider a Clean Energy Fund*. *See also id.*, Order Authorizing the Clean Energy Fund Framework (issued January 21, 2016) at Appendix H (authorizing customer collections of $6,001,000); and Order Approving Clean Energy Fund Modifications (issued September 9, 2021) at Appendix E (authorizing $3,165,800 in collections from customers from 2021-2029).

[13] *See generally* Case 21-E-0629, *In the Matter of the Advancement of Distributed Solar*, Filing by Staff and NYSERDA entitled, "New York's 10 GW Distributed Solar Roadmap: Policy Options for Continued Growth in Distributed Solar" (dated December 17, 2021). According to this filing, the proposal could result in incremental 2024 impacts for Niagara Mohawk commercial and industrial customers of 3.14%. *Id.* at 81.

[14] *See generally* Case 18-M-0084, *In the Matter of a Comprehensive Energy Efficiency Initiative*. *See also id.*, Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios Through 2025 (issued January 16, 2020) (hereinafter, "NE:NY Order") at App. A, Table A3 (authorizing statewide spending on utility-administered electric energy efficiency programs of $1,879,114,825 from 2021-2025).

- Customers are and will be funding utility-administered gas energy efficiency programs at a cost of close to $900 million through 2025, and potentially more thereafter.[15]

- Customers are and will be funding utility-administered electric heat pump programs at a cost of over $450 million through 2025, and potentially more thereafter.[16]

- Customers are and will be funding incentives to promote electric vehicle infrastructure investments at a cost of over $700 million through 2025, and potentially more thereafter.[17]

- Customers are and will be funding an Electric Generation Facility Cessation Mitigation Program, to compensate municipalities that lose tax base when generation facilities retire due to the transition to a cleaner electric system, at a cost of $112.5 million through 2030.[18]

- Customers are and will be funding out-of-market payments and utility cost recovery of an indeterminate amount (believed to be substantial) to incentivize the development of new electric storage facilities.[19]

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[15] *See id.*, NE:NY Order at App. A, Table A4 (authorizing statewide spending on utility-administered gas energy efficiency programs of $878,716,819 from 2021-2025).

[16] *See id.* NE:NY Order at App. C, Table C1 (authorizing statewide spending on utility-administered electric heat pump programs of $454,318,220 from 2020-2025).

[17] *See generally* Case 18-E-0138, *Proceeding on Motion of the Commission Regarding Electric Vehicle Supply Equipment and Infrastructure*. *See also id.*, Order Establishing Electric Vehicle Infrastructure Make-Ready Program and Other Programs (issued July 16, 2020) at 68-76 and Appendix B (authorizing statewide spending on EV infrastructure incentives of $700,994,850 through 2025).

[18] *See* Case 20-E-0473, *In the Matter of Developing a Funding Mechanism for the Electric Generation Facility Cessation Mitigation Program*, Order Authorizing Funding for Electric Generation Facility Cessation Mitigation Program (issued February 11, 2021) (establishing a budget of $12.5 million per year through 2030 to be funded by electric customers statewide).

[19] *See generally* Case 18-E-0130, *In the Matter of Energy Storage Deployment Program. See also id.*, Order Establishing Energy Storage Goal and Deployment Policy (issued December 13, 2018) at 1-5 (establishing a target of 3,000 MW of qualified storage energy systems by 2030, with an interim objective of 1,500 MW of energy storage systems by 2025). The CLCPA incorporates the electric storage target of 3,000 MW by 2030. N.Y. Env. Cons. Law § 75-0103(13)(E).

- Customers are and will be funding multiple, large-scale transmission projects at an indeterminate cost (believed to be many billions of dollars) whose primary purpose is to increase the deliverability of renewable energy to different regions of the State.[20]

- Customers are and will be funding Earnings Adjustment Mechanisms for the benefit of utility shareholders at an indeterminate cost (believed to be in the hundreds of millions of dollars) for the purpose of incentivizing utilities to help achieve certain State clean energy objectives.[21]

- Customers are and will be funding out-of-market payments at an indeterminate cost (believed to be substantial) to incentivize Distributed Energy Resources ("DER") through net energy metering arrangements and "value stack" compensation.[22]

Only some of the above financial obligations currently are reflected in electric delivery rates; the majority of them are and will be funded by customers via higher commodity costs.

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[20] *See, e.g.*, Case 12-T-0502, *Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades,* Order Addressing Public Policy Transmission Need for AC Transmission Upgrades (issued January 24, 2017) at 18-19 (justifying the AC Transmission projects on a need to increase transmission capacity to allow renewable generation facilities to deliver their energy to downstate load centers); Case 14-T-0454, *In the Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration,* Order Addressing Policy Requirements for Transmission Planning Purposes (issued July 20, 2015) at 27 (justifying the Western New York transmission project on a need to increase deliverability in the region to maximize output from the New York Power Authority's Niagara hydroelectric generation facility and additional imports of renewable energy from the Ontario IESO region); and Case 20-E-0497, *In the Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration for 2020,* Order Addressing Public Policy Requirements for Transmission Planning Purposes (issued March 19, 2021) at 1-4 (justifying future transmission projects in and between Long Island and New York City on a need to facilitate deliverability of offshore wind generation).

[21] *See generally* Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016) at 53-93 (discussing and then mandating the use of EAMs).

[22] *See generally* Case 15-E-0751, *In the Matter of the Value of Distributed Energy Resources*. *See also id.*, Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (issued March 9, 2017) (addressing, and providing exemptions to, an eventual transition from net energy metering, and also establishing value stack compensation for certain DERs).

Third, due to wholesale market conditions, customers currently are experiencing a dramatic uptick in energy commodity costs. For instance, wholesale energy costs have been skyrocketing in 2022, as compared to prior, recent levels.[23] Thus, now is not the time to add to customers' already-substantial burdens by implementing new deferrals and surcharges.

For the foregoing reasons, the Commission should refrain from authorizing deferrals and surcharges for expenditures that are not truly necessary at this time. Moreover, upon information and belief, Niagara Mohawk currently has net regulatory liabilities on its books, *i.e.*, amounts owed to customers. Accordingly, if, *arguendo*, the Commission authorizes Niagara Mohawk to (i) undertake capital projects incremental to the $3 billion-plus electric capital expenditure budget contained in the utility's recently-adopted Joint Proposal, and (ii) defer and recover associated costs from customers, Niagara Mohawk should be required to utilize those net regulatory liabilities as offsets prior to imposing any new surcharges on customers. The parties to Niagara Mohawk's rate proceeding agreed upon an amount of net regulatory liabilities to be utilized to moderate the negotiated electric and gas delivery rate increases. If the utility now wishes to impose incremental surcharges on electric customers, it first should be required to exhaust any remaining net regulatory liabilities as offsets before implementing such surcharges.

[23] According to the New York Independent System Operator, Inc., the average statewide cost of energy and ancillary services was $47.59 per MWh in 2021, up from $25.70 per MWh in 2020. NYISO CEO/COO Report (Management Committee, January 26, 2022) at Slide B; available at https://www.nyiso.com/documents/20142/27895094/03a%20NYISO%20CEO-COO%20MC%20Report.pdf/a693ca32-e5c2-ce5f-3e84-6a42a6b5a4f4. In January 2022, the average statewide cost of energy and ancillary services was $137.49 per MWh. NYISO CEO/COO Report (Management Committee, February 23, 2022) at Slide B; available at https://www.nyiso.com/documents/20142/28607306/03%20NYISO%20CEO-COO%20MC%20Report.pdf/cc4cd6f3-4fae-d725-9480-f5472da8bade.

CONCLUSION

For all the foregoing reasons, the Commission should deny Niagara Mohawk's Petition or, alternatively, modify the relief sought therein to eliminate or reduce current and future rate impacts to customers.

Dated: February 28, 2022
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Respectfully submitted,

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