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VIA ELECTRONIC MAIL

Hon. Michelle L. Phillips
Acting Secretary to the Commission
New York State Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223-1350

Re: 19-E-____: Appeal by North Country Data Center Corp of the Informal Decision Rendered in Favor of the Plattsburgh Municipal Lighting Department (Case Numbers 941259 and 953952)

Dear Acting Secretary Phillips,

Pursuant to 16 NYCRR §§ 12.13 and 13.15 (b), North Country Data Center Corp ("NCDCC") appeals to the New York State Public Service Commission (the "Commission") from the October 18, 2019 Informal Hearing Decision in the above-referenced cases (the "Decision"),[1] which concern two complaints against the Plattsburgh Municipal Lighting Department ("PMLD"). As detailed below, the assigned Informal Hearing Officer made mistakes in the facts of these complaints and in the interpretation of applicable laws and regulations that affected the Decision.[2] In addition, the Informal Hearing Officer did not properly consider evidence presented at and before the hearing, which resulted in the erroneous Decision.[3] These errors require that the Commission change or reject the Decision in accordance with 16 NYCRR § 12.14 (b) and render a decision that precludes PMLD from improperly calculating the amount of and vehicle for a security deposit and routinely overcharging NCDCC for its electric service, both of which violate the New York Public Service Law ("PSL") and the Department of Public Service's (the "Department") rules and regulations.

I. Factual Background

a. The Parties

NCDCC is a wholly-owned subsidiary of Coinmint, LLC, which designs, builds, and manages large-scale, secure, and sustainable digital currency data centers. Since 2017, NCDCC

[1] A copy of the Decision is enclosed as Exhibit 1.
[2] *See* 16 NYCRR § 12.13 (b) (1).
[3] *See* 16 NYCRR § 12.13 (b) (2).

has operated a digital data currency center located at 42 Skyway Plaza, Plattsburgh, New York (the "Facility"), which is in PMLD's service territory.[4]

Consistent with "Rider A" of its tariff,[5] PMLD treats NCDCC as a "high density load" ("HDL") customer.[6] Since becoming a PMLD customer, NCDCC has made electric payments in excess of $4 million to PMLD. In addition, by January 25, 2018, NCDCC had voluntarily provided PMLD with $250,000 in cash security deposits to offset any unfounded concern that NCDCC would leave the Facility without rendering payment in full for its final electric bill.

PMLD is a municipal electric company that serves residential, small and large commercial, and industrial customers in the City of Plattsburgh.[7] PMLD is a department of the City of Plattsburgh, governed by a Board of Directors including the Mayor and City Council.[8] In turn, PMLD is a member of the New York Municipal Power Agency ("NYMPA"), which was founded in 1996 and is a member organization comprised of approximately 35 municipal electric utilities located throughout New York State. NYMPA's municipal members, including PMLD, receive monthly allotments of hydropower from the New York Power Authority ("NYPA"). In the months that the municipal members exceed their hydropower allocation, they must secure supplemental power. In an effort to increase the municipal members' market, or buying, power, NYMPA was created to aggregate its members' supplemental power needs and theoretically lower the costs associated with securing supplemental power.[9] Given this structure, if PMLD exceeds its hydropower allotment from NYPA in a given month, PMLD purchases its supplemental power from NYMPA. In turn, NYPMA charges PMLD for the supplemental power purchased. Finally, PMLD recovers the cost of these supplemental power purchases from its ratepayers via a vehicle known as the "Purchased Power Adjustment Charges" ("PPAC").[10] As a result, if PMLD is required to buy supplemental power from NYMPA, PMLD's PPAC contained on its invoices to customers will increase to offset that purchase.

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[4] At the time the first complaint was filed, NCDCC also operated a smaller test facility located at 32 Power Dam Way, Plattsburgh, New York. NCDCC subsequently vacated this facility.

[5] *See infra* Section I (b).

[6] *See* New York Municipal Power Agency, Generic Tariff, PSC No. 1 – Electricity, Leaves 95-97. HDL customers, generally, include customers whose requested load density in the portion of the premises containing the load consuming equipment exceeds 250 kWh/square foot/year and the maximum demand used or requested by the customer exceeds 300 kW (*see* NYMPA, Generic Tariff, PSC No. 1 – Electricity, Leaf 95).

[7] Case 08-E-1227, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Plattsburgh Municipal Lighting Department for Electric Service*, Order Adopting the Terms of a Joint Proposal (Issued Dec. 16, 2009), at 1.

[8] *Id*.

[9] As a result of these supplemental power purchases, NYMPA and its members are subject to the Commission's jurisdiction. Functionally, NYMPA's members operate under NYMPA's generic electric tariff. In addition, each member has its own, system-specific concurrence tariff. For instance, PMLD has a concurrence electric tariff.

[10] *See e.g.* PMLD, Concurrence Tariff, PSC No. 1 – Electricity, Leaf 15; *see also* NYMPA, Generic Tariff, PSC No. 1 – Electricity, Leaf 52-53 (setting forth the Purchase Power Adjustment).

b. PMLD's Adoption of Rider A into its Electric Tariff

In February 2018, to confine the system-wide costs generated by HDL customers, NYMPA filed a proposed "Rider A" to its electric tariff setting out rates and conditions of service for HDL customers with the Commission.[11] The Commission adopted NYMPA's proposed Rider A tariff on March 19, 2018.[12] The Rider A tariff establishes separate rate treatment for HDL customers in order to prevent supplemental power costs attributable to such customers from being spread system-wide to non-HDL customers.[13] In short, the Rider A tariff requires HDL customers to pay a separate HDL Power Purchase Adjustment ("HDL PPA") charge for any supplemental power that PMLD purchases from NYMPA. In months where an HDL PPA is assessed, HDL customers pay the HDL PPA instead of the otherwise applicable PPAC, which is still charged to all other PMLD customers. In addition, the Rider A Order and resulting Rider A tariff also permit PMLD to require financial security, in the form of a security deposit, from HDL customers to "protect other customers in the event a [HDL] customer does not pay its final bill."[14]

c. PMLD's Demand for a Security Deposit

Following the incorporation of Rider A into its electric tariff, PMLD immediately demanded that PMLD provide "by check or an irrevocable letter of credit" a security deposit in the amount of $1,019,503.00. Although NCDCC recognized that the Commission's Rider A Order allowed PMLD to request a security deposit from HDL customers, NCDCC immediately identified critical flaws with PMLD's calculation of the demanded security deposit and the impermissibly-narrow list of acceptable vehicles for making the deposit. Rather than filing a complaint with Commission, NCDCC first attempted to directly resolve these issues with PMLD. Despite several weeks of discussion with PMLD, NCDCC was forced to commence its first complaint against PMLD concerning the demanded security deposit on February 1, 2019, to avoid threatened service termination.[15]

d. NCDCC's February 2019 Electric Invoice

In early 2019, PMLD issued NCDCC an invoice for the electricity it consumed at the Facility during the February billing cycle (the "February Bill"). The February Bill invoiced NCDCC for $321,128.92—*more than $90,000 higher* than the Facility's prior 12-month average invoice—notwithstanding the fact that NCDCC's usage during this billing cycle was consistent

[11] Case 18-E-0126, *Tariff Filing by the New York Municipal Power Agency to Implement a New Rider A – Rates and Charges for High Density Load Service*, Tariff, Filing Implementing a New Rider A - Rates and Charges for High Density Load Service (Filed Feb. 15, 2018).
[12] Case 18-E-0126, *supra*, Order Approving Tariff Amendments with Modifications (Issued March 19, 2018) (the "Rider A Order"). The Rider A Order was adopted on a permanent basis on June 15, 2018 (Case 18-E-0126, *supra*, Order Adopting Action and Tariff Amendments on a Permanent Basis [Issued June 15, 2018]).
[13] *See generally*, Rider A Order.
[14] *Id.* at 8.
[15] A copy of NCDCC's initial filing commencing this complaint, PMLD's opposition thereto, and NCDCC's reply to PMLD are enclosed as Exhibit 2.

with its historic usage. After further investigation, NCDCC determined that PMLD charged NCDCC $0.053/kWh total for electricity on the February Bill—*more than 1.7 times the market rate for electricity* during that period, determined after reviewing the New York State Independent System Operator, Inc.'s ("NYISO") average market rate for electricity in the relevant load zone (Zone D), inclusive of transmission charges, fees, and taxes during that same billing cycle period.

In light of this glaring discrepancy in the February Bill, NCDCC remitted the undisputed amount of the February Bill ($182,723.59) to PMLD, which represents the cost of purchasing electricity through the NYISO market during that billing cycle, inclusive of fees and charges. Following the partial payment, NCDCC contacted PMLD in an effort to secure the documentation underlying the February Bill to assess the validity of the charges. PMLD, however, refused to cooperate with NCDCC. As a result, NCDCC was forced to commence its second complaint against PMLD concerning this high bill dispute on April 4, 2019, both to avoid threatened service termination and to secure the Department's assistance to resolve this billing dispute.[16]

II. Procedural History

As described above, these cases are based on two separate and independent complaints that NCDCC filed with the Department's Office of Consumer Services ("OCS") against its electric service provider, PMLD. More specifically, Case No. 941259 was commenced on February 1, 2019, after NCDCC filed a complaint regarding the calculation of and deposit alternative for a security deposit that PLMD demanded from NCDCC (the "Security Deposit Complaint"). Case No. 953952 was commenced on April 4, 2019, after NCDCC was forced to file a second, unrelated complaint to dispute the unjust and unreasonable invoice it received from PMLD for its February 2019 electric service (the "High Bill Complaint," together with the Security Deposit Complaint, the "Complaints").

Incredibly, *less than 24 hours* after filing the High Bill Complaint, NCDCC received a letter from an OCS staff member summarily denying the Complaints (the "Initial Determination").[17] Shortly thereafter, NCDCC timely requested an informal hearing on the grounds that, among other reasons, the Initial Determination was erroneous as it disregarded the PSL, the Department's rules and regulations, and undisputed facts relevant to the Complaints.[18] The informal hearing was held on June 5, 2019, and, on October 18, 2019, the Informal Hearing Officer issued a single Decision that addresses the Complaints as two, discrete issues: (1) whether PMLD correctly calculated the security deposit and in what form must PMLD accept NCDCC's security deposit, and (2) whether the PPAC (or HDL PPA) PMLD assessed on NCDCC's February Bill was just and reasonable.[19] Because the Decision erroneously denied the

[16] A copy of NCDCC's initial filing commencing this complaint is enclosed as Exhibit 3.
[17] A copy of the Initial Determination is enclosed as Exhibit 4.
[18] NCDCC's letter brief submitted to the Acting Director of the Department's Office of Consumer Services requesting an Informal Hearing, without exhibits, is enclosed as Exhibit 5.
[19] *See* Exhibit 1, at 4.

Complaints in full, finding that PMLD properly calculated the demanded security deposit and limited the acceptable payment vehicles and that PMLD's February Bill was properly assessed in accordance with Commission-filed rates,[20] NCDCC now timely appeals the Decision to the Commission pursuant to 16 NYCRR §§ 12.13 and 13.15 (b).

III. The Decision Should be Changed or Rejected Because the Informal Hearing Officer Made a Mistake in the Facts Underlying the Complaints and in the Interpretation of Applicable Laws and Regulations

If a customer disagrees with the decision rendered in an informal hearing or review stemming from a complaint filed with OCS, the customer may appeal to the Commission, in writing to the Office of the Secretary to the Commission within 15 days after the informal hearing or review decision is mailed.[21] Such an appeal must be based on one or more of the following grounds: (1) the "hearing officer or reviewer made a mistake in the facts in the case or in the interpretation of laws or regulations which affected his or her decision;" (2) the "hearing officer or reviewer did not consider evidence, presented at the hearing or review, which resulted in an unfavorable decision;" or (3) "[n]ew facts or evidence, not available at the time of the hearing or review, have become available which would have affected the decision on the complaint."[22] Upon filing an appeal, the Commission "will decide the appeal and may uphold, change, or reject or return the decision to the informal hearing officer or reviewer for additional consideration."[23]

As detailed below, the Informal Hearing Officer made a mistake in the facts underlying the Complaints and misinterpreted the PSL and the Department's rules and regulations in rendering the Decision. For these reasons, the Commission should change or reject the Decision.

a. The Security Deposit Complaint

Part 13 of the Department's rules and regulations and PMLD's electric tariff establish a clear and unambiguous process for calculating and obtaining security deposits from existing nonresidential customers. Specifically: (1) 16 NYCRR § 13.7 (b) (2) requires "in the case of an *existing customer* who has *12 months or more of billing history* [like NCDCC]," the amount of a deposit will be "based on service used during the previous 12-month period as evidenced by the billing history,"[24] and (2) 16 NYCRR § 13.7 (d) requires utilities to "accept *deposit alternatives* which provide a level of security equivalent to cash, such as irrevocable bank letters of credit *and surety bonds*."[25]

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[20] *See* Exhibit 1, at 1.
[21] 16 NYCRR § 12.13 (a).
[22] 16 NYCRR § 12.13 (b).
[23] 16 NYCRR § 12.14 (b).
[24] 16 NYCRR § 13.7 (b) (2); *see also* NYMPA, Generic Tariff, PSC No. 1 - Electricity, Leaves 23-29 ("These provisions are intended to reflect the requirements of 16 NYCRR § 13.7").
[25] 16 NYCRR § 13.7 (d) (emphasis added); *see also* NYMPA, Generic Tariff, PSC No. 1 - Electricity, Leaves 23-29 ("These provisions are intended to reflect the requirements of 16 NYCRR § 13.7").

Despite this clear language in the Department's rules and regulations, PMLD demanded NCDCC provide it with a security deposit of $1,195,041 only in the form of cash or an irrevocable letter of credit. PMLD's demand plainly violated section 13.7 in two ways. First, PMLD calculated its demanded deposit amount based on two months of *prospective forecasted* billings rather than NCDCC's actual billing history, which resulted in an artificially-inflated deposit amount that was hundreds of thousands of dollars in excess of the amount permitted under the Department's rules and regulations.[26] Second, PMLD refused to accept the explicit deposit alternative of a surety bond. As a result and under threat of service termination, NCDCC was forced to commence the Security Deposit Complaint challenging both the deposit amount and allowable vehicles for payment and seeking the enforcement of the Department's rules and regulations.

Following a review of the Security Deposit Complaint and underlying Initial Determination, the Informal Hearing Officer upheld PMLD's forward-looking deposit calculation and determined that PMLD did not need to accept a surety bond from NCDCC to satisfy the security deposit. As detailed below, this result could only be reached if the Informal Hearing Officer misunderstood the facts underlying PMLD's calculation of the security deposit and correspondingly misinterpreted the Department's rules and regulations governing security deposits, the result of which is a Decision that impermissibly rewrites the Department's rules and regulations. Thus, the Commission should change or reject the Decision and enforce the Department's rules and regulations against PMLD, thereby requiring it accept a surety bond in an amount based on NCDCC's prior billing history.

i. Actual Billing History Determines the Security Deposit for Existing Customers

The Informal Hearing Officer impermissibly ignored, or misunderstood, 16 NYCRR § 13.7 (b) (2) and affirmed PMLD's calculation of a forward-looking security deposit, seemingly relying on the language in the Rider A Order that permits a security deposit from HDL customers in the amount of "two times the estimated total monthly bill of the Rider A customer."[27] The Informal Hearing Officer explained that "the Rider A tariffs [sic] reference to 'estimated billing' in its rule for calculating the security appears to reflect the fact that the tariff was written to apply prospectively to HDL customers, thus allowing PMLD to calculate the deposit amount using a projected, unknown future HDL PPA amounts."[28] This assumption cannot stand for at least two reasons: (1) the Rider A Order cannot trump Part 13's methodology for calculating a security deposit, and (2) PMLD violated Part 13 when it calculated the demanded security deposit based on projected billings.

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[26] *See* Exhibit 2 for a detailed description of how PMLD calculated its impermissible forecasted security deposit amount.

[27] Case 18-E-0126, *supra*, Order Approving Tariff Amendments with Modifications (Issued March 19, 2018), at 8. Similarly, the Rider A tariff also provides that "[t]he Customer shall provide financial security in an amount equal to two times the customer's estimated total monthly bill" (NYMPA, Generic Tariff, PSC No. 1 – Electricity, Leaf 96).

[28] Exhibit 1, at 6.

As a threshold matter, the Decision must be changed or rejected because it ignores the unambiguous declaration at the beginning of Part 13 of the Department's rules and regulations that states: "Notwithstanding *any other commission rules or orders to the contrary,* this Part governs the rights, duties and obligations of every . . . municipality subject to the jurisdiction of the commission . . . [and] their nonresidential customers."[29] In other words, the Commission would need to engage in what is known as "hard rulemaking" under Section 102 (2) (a) (i) of the State Administrative Procedures Act ("SAPA") in order to codify a new, or amend an existing, Department rule or regulation in Part 13. As a result, if the Commission wanted to amend 16 NYCRR Part 13 to modify the methodology for calculating a security deposit, it would have had to issue a hard rule under SAPA. However, the Rider A Order is *not* a hard rule under SAPA; rather, it is a soft rule.[30] As such, the Rider A Order cannot override 16 NYCRR Part 13's plain and unambiguous requirements concerning the calculation of the security deposit, which must, and can, readily be applied here.

In addition, the Decision upheld a speculative and arbitrary security deposit amount that is not authorized by Part 13 of the Department's rules and regulations. Section 13.7 (b) (2) specifically provides the following methodology for calculating a deposit amount: "In the case of an existing customer who has 12 months or more of billing history, the amount of the deposit shall be based on service used during the previous 12-month period as evidenced by the billing history."[31] At the time PMLD demanded a security deposit, NCDCC was an existing customer with over 12 months of known billing history. Thus, PMLD should have calculated NCDCC's deposit based on PMLD's known billing history, not future estimated billings. As outlined in the Security Deposit Complaint materials, if PMLD had based its demanded security deposit calculation on two times NCDCC's average 12-month billing history, the security deposit demanded would have totaled $508,374.[32] Instead, PMLD's forecasted, future-looking calculations resulted in an inflated security deposit demand more than double the amount allowed by Part 13 ($1,019,503.00).

The large discrepancy between the valid security deposit calculated by following Part 13 and the deposit PMLD demanded is due to the PPAC that PMLD utilized when calculating NCDCC's estimated monthly bill. As discussed above, one aspect of PMLD's electric invoices is the PPAC. This charge varies month-to-month and is highest during the winter season if PMLD exceeds its hydropower allotment and has to purchase supplemental power from NYMPA. As relevant here, instead of calculating the deposit amount using NCDCC's known 12-month

[29] 16 NYCRR § 13.1 (a) (1).
[30] New York State Register, ID No. PSC-14-18-00001-EP (Issued April 4, 2018), at 9-10, enclosed as Exhibit 6.
[31] 16 NYCRR § 13.7 (b) (2).
[32] A review of NCDCC's most recent 12-month billing history at the time the complaint was filed reveals that NCDCC's then-average monthly bill was $254,187, resulting in a valid security deposit amount of $508,374 (*see generally* Exhibit 2). After NCDCC vacated the second, smaller test facility in Plattsburgh and NCDCC received its next electric bill for the Facility, NCDCC updated its deposit calculation to $460,959 to reflect two times its then-12 month average monthly electric bill at only the Facility. Notwithstanding this updated, lesser security deposit amount, PMLD remitted the full $508,374 to NCDCC—the amount of the undisputed security deposit—since NCDCC recognizes that PMLD is entitled to a security deposit provided in accordance with Part 13. The final amount of that deposit and the vehicle for payment remain in dispute (*see also* n 44, *infra*).

historical average, *which would have factored in the average PPAC charged to NCDCC over that time period*, the Informal Hearing Officer arbitrarily authorized PMLD to utilize a *forecasted* PPAC in its estimation that was in no way grounded in past assessments.

More specifically, PMLD used a PPAC of $0.039/kWh when calculating NCDCC's average monthly bill. A review of NCDCC's bills over the 12-month period that should have been reviewed if properly following Part 13 revealed that the PPAC charged to NCDCC over those last 12 billing cycles was, on average, $0.0102/kWh. In other words, PMLD's "estimated" PPAC was almost *four-times* higher than the actual average PPAC charged to NCDCC over the relevant 12-month historic period. PMLD's "estimated" PPAC was nothing more than a random number seemingly utilized to artificially inflate the amount of its demanded security deposit.[33]

Even the Informal Hearing Officer recognized that the PPAC PMLD used to arrive at a security deposit figure was not subject to verification.[34] Perhaps more troublesome than overlooking the inability to confirm the accuracy of PMLD's requested deposit—particularly when such verification would be completely attainable following Part 13's deposit methodology—is the fact that the Informal Hearing Officer upheld PMLD's deposit amount even after expressly acknowledging that Department Staff's calculated security deposit amount was $915,135—or $105,000 *less* than PMLD's calculation.[35] The Informal Hearing Officer's conclusion that PMLD's deposit amount was, nevertheless, "sufficiently close" to be upheld shows a clear misunderstanding of the facts and governing regulations.[36]

For these reasons, the Commission should change or reject the Decision, enforce Part 13 as drafted for existing non-residential customers, and require PMLD to utilize NCDCC's 12-month billing history when calculating its required deposit.[37]

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[33] Notably, since PMLD estimated NCDCC's security deposit, no single monthly PPAC (or HDL PPA, depending on the charge assessed to HDL customers in a given month) has been as high as the "estimated" $0.039/kWh. In fact, as of the date of this appeal, the current 12-month average supplemental power charge assessed to NCDCC—which includes the 2018-2019 winter months and the 3 associated HDL PPAs charged only to HDL customers—is only $0.013/kWh.

[34] Exhibit 1, at 6 (explaining, "[a]s part of its investigation of the complainant's cases, DPS staff prepared its own calculations of the complainant's security deposit . . . While DPS staff's calculation returned a different figure ($915,135) than did the utility's calculation ($1,019,503), staff attributed the difference to, among other things, the utility's use of forecast HDL PPA rates, which staff could not verify.").

[35] *Id*.

[36] Exhibit 1, at 6 (explaining that PMLD's "calculations are sufficiently close to support the utility's position.").

[37] Given the passage of time since the Security Deposit Complaint was filed, if the resolution of this appeal is that PMLD must follow the process outlined in Part 13 to calculate NCDCC's security deposit, NCDCC anticipates that a new deposit amount will be calculated based on NCDCC's then-current 12 month average billing history. Notably, since PMLD estimated NCDCC's security deposit, no monthly PPAC has been as high as the "estimated" $0.039/kWh. In fact, the average effective PPAC (or HDL PPA) from November 2018 to October 2019—which includes the 2018-2019 winter months and three associated HDL PPAs charged only to HDL customers—is only $0.012/kWh, less than three times PMLD's estimated monthly PPAC of $.0.039/kWh.

ii. PMLD Cannot Refuse to Accept a Surety Bond as a Deposit Alternative

The Department's rules and regulations are explicit and unambiguous: "A utility shall accept *deposit alternatives* which provide a level of security equivalent to cash, such as irrevocable bank letters of credit and *surety bonds*."[38] Although the Decision purports to recognize that utilities must accept surety bonds, among other "deposit alternatives which provide a level of security equivalent to cash," the Decision nevertheless impermissibly concludes that PMLD is *not* required to accept a surety bond from NCDCC.[39] Thus, the Decision plainly conflicts with the applicable Department rules and regulations, and therefore, the Commission should change or reject the Decision.

Furthermore, the Informal Hearing Officer's reliance on the Rider A Order to justify precluding NCDCC from providing a security deposit in the form of a surety bond was improper. As an initial matter, the Rider A Order does not require cash as a security deposit, nor does it preclude PMLD from accepting a surety bond as a security deposit.[40] Instead, the Rider A Order states that security must be provided "in the form of a *deposit* or an irrevocable Letter of Credit."[41] The Commission's use of the specific term "deposit" is important because it is a defined term in 16 NYCRR § 13.7, which governs this dispute and explicitly requires that PMLD accept NCDCC's security deposit in the form of a surety bond.[42] Simply stated, the Rider A Order does not preclude the use of a surety bond to pay a security deposit,[43] and surety bonds are an enumerated, accepted vehicle for delivering a security deposit under Part 13. Thus, the Decision should be changed or rejected, and the Commission should order PMLD to return NCDCC's cash deposit and replace the correctly-calculated security deposit with a surety bond.[44]

b. <u>The Unjust and Unreasonable February Bill</u>

The Decision should be changed or rejected with respect to the High Bill Complaint due to the misunderstanding of the underlying facts and applicable laws or regulations and to allow the Commission to properly assess whether PMLD has violated—and continues to violate—PSL § 65.

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[38] 16 NYCRR § 13.7 (d) (1) (emphasis added).
[39] *See* Exhibit 1, at 6.
[40] *Id.* Notably, there is not a single reference to "cash" anywhere in the Rider A Order.
[41] Rider A Order, at 8 (emphasis added).
[42] *See* 16 NYCRR § 13.7 (d).
[43] Even if the Rider A Order purported to supersede section 13.7, it could not do so in light of the fact that Rider A Order was not a "hard" rule under SAPA (*see* Exhibit 6) and the declaration at the beginning of Part 13 of the Department's rules and regulations that states: "Notwithstanding *any other commission rules or orders to the contrary*, this Part governs the rights, duties and obligations of every . . . municipality subject to the jurisdiction of the commission . . . [and] their nonresidential customers" (16 NYCRR § 13.1 [a] [1]).
[44] During the pendency of the High Bill Complaint, NCDCC requested—in accordance with 16 NYCRR § 12.7—that PMLD provide it documentation to establish compliance with 16 NYCRR § 13.3 (e) with respect to NCDCC's existing cash deposit (*see* 16 NYCRR § 13.3 [e] [stating, for example, that cash deposits "shall accrue interest" at a prescribed rate and that interest "shall be paid to the customer" annually in the event the deposit has been held for a period of one year or more."]). This request was not honored, and NCDCC renews the same as part of this appeal.

PSL § 65 mandates that all "charges made or demanded" by a gas corporation, electric corporation, or municipality "for gas, electricity or any service rendered or to be rendered . . . be *just and reasonable* and not more than allowed by law or by order of the commission."[45] On its face, charging a customer more than 1.7 times the market rate for electricity, as PMLD did to NCDCC in February 2019, is unjust and unreasonable in violation of PSL § 65.

Surprisingly, NYMPA's tariff does not explicitly address how NYMPA sets the cost of supplemental power it charges to PMLD, or any of its members for that matter. Additionally, PMLD's tariff does not address whether PMLD is involved in NYMPA's cost-setting process or whether PMLD can purchase supplemental power independently and at a lower cost in the NYISO wholesale market. Finally, to NCDCC's knowledge, the Commission is not involved in reviewing or setting NYMPA's supplemental cost of power, which translates directly into the PPAC charged to all customers and now the HDL PPA assessed to HDL customers certain months out of the year.

Notwithstanding this lack of readily-available information or review process to ensure that PMLD is responsibly purchasing its supplemental power at just and reasonable rates before passing those expenses through to its customers, and through certain limited discovery engaged in during the pendency of the High Bill Complaint, NCDCC was able to compile the following charts that detail the astonishing difference between the cost of power PMLD purchases from NYPA (hydro allocation) versus NYMPA (supplemental power), as well as the then-current market cost of power in Zone D. As a result of the multiples-higher cost of NYMPA supplemental power, PMLD can, during certain months, pay NYMPA *more* for its nominal supplemental power purchases than it pays NYPA for its *full* hydro allocation. Due to the high cost of supplemental power that PMLD elects to purchase through NYMPA instead of buying on the NYISO market (which has comparatively lower pricing), PMLD's rates to its customers, including NCDCC, are plainly unjust and unreasonable in violation of PSL § 65.

Billing Period	NYPA Cost of Power	Market Cost of Power (Zone D)	NYMPA Cost of Power (Supplemental)
12/1/18-12/31/18	$0.00492/kWh	$0.02509/kWh	$0.035/kWh
1/1/19-1/31/19	$0.00492/kWh	$0.02800/kWh	$0.035/kWh
2/1/19-2/28/19	$0.00492/kWh	$0.02152/kWh	$0.035/kWh

Billing Period	NYPA Usage (kWh)	NYPA Cost of Power	NYMPA Usage (kWh)	NYMPA Cost of Power (Supplemental)
12/1/18-12/31/18	55,929,297	$275,172	4,701,923	$164,570
1/1/19-1/31/19	58,910,356	$289,838	11,050,234	$386,750
2/1/19-2/28/19	53,180,844	$289,838	7,712,866	$269,955

[45] PSL § 65 (1) (emphasis added).

This conclusion is bolstered by the following chart, which provides case studies of three separate electric bills PMLD issued to NCDCC that include charges for prior supplemental power purchases and shows that the total per kWh rate charged to NCDCC is far higher than the then-current market cost for power as adjusted to reflect transmission charges, fees, and taxes.[46]

Case Study: February 2018 Billing Period	Case Study: February 2019 Billing Period	Case Study: March 2019 Billing Period
Total Bill: $270,224 Total Usage: 6,921,955 kWh Cost/kWh: $0.03904 Adj. Mkt Cost/kWh:† $0.02938	Total Bill: $321,127 Total Usage: 5,978,731 kWh Cost/kWh: $0.05371 Adj. Mkt Cost/kWh:† $0.03057	Total Bill: $406,599 Total Usage: 6,496,697 kWh Cost/kWh: $0.06286 Adj. Mkt Cost/kWh:† $0.03504

†Figure calculated using the NYISO market price for electricity in Zone D and then adding transmission charges, fees, and taxes. The following assumptions were used: (1) combined transmission charge and installed capacity factor of 0.005, (2) fees equal to 10% of market price, and (3) taxes at 8% of the market price with fees.

Despite these glaring discrepancies, the Decision fails to assess the strikingly-high cost of supplemental power that PMLD is allowed to pass onto all of its ratepayers—from residential to HDL customers. Instead, the Decision glosses over this issue and merely notes that HDL PPA and PPAC statements are filed with the Commission three days before each monthly charge takes effect and, as a result, customers should tailor their usage accordingly.[47] This unrealistic, near-instantaneous modification in usage behavior is not a solution to the larger problem NCDCC raises—PMLD routinely purchases supplemental power through NYMPA at costs that far exceed market value, seemingly without any oversight. Therefore, the Commission should change or reject the Decision and enforce the requirements of PSL § 65 by reviewing the rates PMLD charged to (and will soon continue to charge to) NCDCC and its other customers.[48]

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[46] Notably, around the time that the High Bill Complaint was filed, the Massena Electric Department ("MED")—another municipal electric utility that was a member of NYMPA like PMLD—withdrew from NYMPA after publicly stating that the decision to leave NYMPA would save its customers between *$1.4-$2 million* during the two years following withdrawal (*see New York Municipal Power Agency v Massena Electric Department, et al.*, Index No. 2018-0154434, Decision and Order [Filed Feb. 8, 2019], at 23-24). NCDCC understands that MED's decision to withdraw was rooted, at least in part, on the high cost of NYMPA's supplemental power. NCDCC further understands that NYMPA's initial attempt to prohibit MED from withdrawing from NYMPA was rejected by the New York State Supreme Court, St. Lawrence County (*see id.*). Since NCDCC cannot control whether PMLD similarly follows suit and withdraws from NYMPA to save its ratepayers money, and given the unresolved nature of the High Bill Complaint and the approaching winter season when high HDL PPAs will likely be reinstated, NCDCC recently announced it is migrating its operations at the Facility to its second location in Massena, New York where it can purchase its own power directly through the NYISO market at a lesser cost than it would pay PMLD for the same service. NCDCC will maintain the Facility throughout the winter season and plans to re-start its operations there in March 2020 (*see* Press Republican, *Coinmint Migrates Plattsburgh Infrastructure to Massena for Upcoming Winter Season* [Oct. 24, 2019], available at https://www.prnewswire.com/news-releases/coinmint-migrates-plattsburgh-infrastructure-to-massena-for-upcoming-winter-season-300944568.html; North Country Now, *Cryptocurrency Mining Company will move Plattsburgh Operation to Massena for Winter*, [Oct. 25, 2019], available at https://northcountrynow.com/business/cryptocurrency-mining-company-will-move-plattsburgh-operation-massena-winter-0268560).

[47] Exhibit 1, at 7.

[48] Should the Commission find that PMLD's rates are unjust and unreasonable, NCDCC requests a refund of all payments remitted that are deemed unjust and unreasonable since opening the Facility.

IV. Conclusion

NCDCC respectfully requests that the Commission change or reject the Decision pursuant to 16 NYCRR § 12.14 (b) because it makes mistakes in the undisputed facts and in the interpretation of the PSL and the Department rules and regulations. Specifically, NCDCC requests that the Commission: (1) order PMLD to calculate NCDCC's security deposit based on its 12 month-plus billing history as an existing customer and not on future, speculative estimates that are prohibited under 16 NYCRR § 13.7 (b) (2), (2) order PMLD to accept a surety bond as a deposit alternative as explicitly required under 16 NYCRR § 13.7 (d) (1)—and, in turn, refund NCDCC's existing cash security deposit, and (3) review PMLD's supplemental power purchases and declare them to be unjust and unreasonable under PSL § 65.[49]

Please contact me with any questions about this filing. Thank you for your attention in this matter.

Respectfully submitted,

/s/ *John T. McManus*

John T. McManus

Enclosures

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[49] In the event the Commission is not prepared to reject the Decision based solely on the undisputed facts in the administrative record, NCDCC respectfully requests the Commission schedule a formal evidentiary hearing to further consider the important issues raised in these cases (*see* 16 NYCRR § 12.14 [b]).