

August 27, 2012

Via Electronic Mail

Hon. Jaclyn A. Brillling
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

Re: Case 12-E-0136 – Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements—Reliability Support Services Agreement between Dunkirk Power LLC and Niagara Mohawk Power Corp. d/b/a/ National Grid

Dear Secretary Brillling:

Pursuant to Ordering Clause 3 of the Commission's *Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery* (issued and effective Aug. 16, 2012), attached please find an executed copy of the Reliability Support Services ("RSS") Agreement between Dunkirk Power LLC ("Dunkirk") and Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid" or "Company"). The enclosed version of the RSS Agreement has been redacted to protect information in Schedule 2 and Exhibits 1 and 2 deemed by Dunkirk to be confidential. A version of the RSS Agreement without redactions is being filed by Dunkirk with the Records Access Officer along with a request for confidential treatment.

Thank you for your attention to this matter.

Respectfully submitted,

/s/ Carlos A. Gavilondo
Carlos A. Gavilondo

Enclosure

cc (via electronic mail):
Service List Case 12-E-0136
Raj Addepalli
David Drexler
Tammy Mitchell

Reliability Support Services Agreement

between

Dunkirk Power LLC

and

Niagara Mohawk Power Corporation

(d/b/a National Grid)

August 27, 2012

Pursuant to the rates, terms and conditions of this Reliability Support Services Agreement (“Agreement”), Dunkirk Power LLC (“Dunkirk”) will provide Reliability Support Service (“RSS”) to Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) from Dunkirk Unit Nos. 1 and 2 (“RSS Units”) located at its Dunkirk Generating Station and connected to National Grid in the New York Independent System Operator, Inc.’s (“NYISO”) Zone A.

RECITALS

Whereas, Dunkirk owns and operates a coal-fired generating station in Dunkirk, New York, made up of a nameplate capacity 100 MW Unit 1, a 100 MW Unit 2, a 217.6 MW Unit 3, and a 217.6 MW Unit 4, and is a generation-owning entity that sells its energy, capacity and ancillary services in the NYISO-administered wholesale power market; and

Whereas, National Grid is the transmission owner to which the Dunkirk station is interconnected; and

Whereas, on March 14, 2012, Dunkirk submitted a notification to the New York Public Service Commission (“NYPSC”) in accordance with its established notice requirements for generation unit retirements to mothball all units at the Dunkirk station and cease providing service effective September 10, 2012; and

Whereas, National Grid conducted reliability studies on the planned deactivation of Dunkirk Units 1, 2, 3, and 4, and concluded that the RSS Units were needed to maintain the reliability of the local transmission system beyond the planned mothball date and until at least May 31, 2013; and

Whereas, both Parties have an interest in ensuring the RSS Units remain available to support system reliability in New York until certain transmission upgrades are completed; and

NOW THEREFORE, in consideration of the agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound by this Agreement as of the Effective Date, the Parties covenant and agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions

1.1.1 **“Additional Expenditure”** shall mean the full cost of any individual project undertaken by Dunkirk necessary to enable one or both of the RSS Units to continue to provide safe and reliable service in accordance with this Agreement during the Term of the Agreement, in compliance with all applicable laws, other than those projects specifically identified in Schedule 2, that exceeds \$50,000. Additional Expenditures shall not apply to normal maintenance activities anticipated during the term of this Agreement, as indicated in Attachment 1 of National Grid’s July 30, 2012 Statement of Support filed in NYPSC Case 12-E-0136.

1.1.2 **“Agreed Upon Capacity Bid Price”** shall have the meaning described in Exhibit 2 hereto.

1.1.3 **“Change in Law”** shall mean a change in federal or state environmental or other law, policy, regulation or rule, or a change in the interpretation of the same, that has a material effect on the operations of Dunkirk, as determined by Dunkirk in a commercially reasonable manner, or that shall require additional expenditures that are not reimbursed as Additional Expenditures.

1.1.4 **“Commission”** shall mean the Federal Energy Regulatory Commission.

1.1.5 **“DPS”** shall mean New York State Department of Public Service Staff.

1.1.6 **“Dunkirk Officer’s Certificate”** shall mean a certificate signed by an officer or director of Dunkirk in the form attached as Exhibit 1.

1.1.7 **“EBITDA”** shall mean Earnings Before Interest, Taxes, Depreciation and Amortization, less allocated regional and corporate general and administrative costs as more specifically detailed on Exhibit 1 hereto.

1.1.8 **“EBITDA Determination”** shall mean an attestation by Dunkirk’s outside auditor, acceptable to both parties, in the form attached as Attachment A to Exhibit 1, of Dunkirk’s EBITDA for the related calendar year, which is provided at Dunkirk’s expense.

1.1.9 **“FERC”** shall mean the Federal Energy Regulatory Commission

1.1.10 **“Force Majeure Event”** shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, any order, regulation or restriction imposed by a Governmental Authority, breakage or accident of machinery or equipment not directly caused by a lack of proper care or maintenance, or any other cause beyond a Party’s control.

1.1.11 **“Forced Outage”** shall have same definition in this Agreement as it has in the NYISO’s Installed Capacity Manual – Attachment J.

1.1.12 **“FPA”** shall mean the Federal Power Act.

1.1.13 **“Good Utility Practice”** shall be as defined in Section 1.7 of the NYISO OATT.

1.1.14 **“Governmental Authority”** shall mean the government of any nation, state or other political subdivision thereof, including any entity lawfully exercising executive, military, legislative, judicial, regulatory, or administrative functions of or pertaining to a government.

1.1.15 **“Minimum Term”** shall have the meaning set forth in Section 2.1.

1.1.16 **“Monthly Fixed-Cost Charge”** shall have the meaning set forth in Section 4.1.

1.1.17 **“Necessary Extension”** shall have the meaning set forth in Section 2.3.

1.1.18 **“NERC”** shall mean the North American Electric Reliability Corporation.

1.1.19 **“NPCC”** shall mean the Northeast Power Coordinating Council, Inc.

1.1.20 **“NYISO”** shall mean the New York Independent System Operator, Inc., or successor organization charged with operating the transmission system and markets in the State of New York.

1.1.21 **“NYISO Day-Ahead Energy Market”** shall mean the NYISO-administered day-ahead energy market.

1.1.22 **“NYISO ICAP Market”** shall mean the monthly spot NYISO-administered Installed Capacity Market.

1.1.23 **“NYISO OATT”** shall mean the NYISO Open Access Transmission Tariff, as it may be amended by the NYISO.

1.1.24 **“NYISO Tariff”** shall refer to any published tariff of NYISO, as such tariff may be amended by the NYISO.

1.1.25 **“NYPSC”** shall mean the New York Public Service Commission.

1.1.26 **“NYSRC”** shall mean New York State Reliability Council, L.L.C.

1.1.27 **“Party”** shall mean either Dunkirk or National Grid. “Parties” means both Dunkirk and National Grid.

1.1.28 **“Planned Outage”** shall mean a planned interruption, in whole or in part, in the electrical output of a generating unit to permit Dunkirk to perform maintenance and repair of the unit, pursuant to the process for Installed Capacity providers set forth in the NYISO Tariff and Outage Scheduling Manual.

1.1.29 **“Refund Period”** shall have the meaning set forth in Section 4.3(a).

1.1.30 **“RSS”** shall mean Reliability Support Service.

1.1.31 **“RSS Units”** shall mean Dunkirk Unit Nos. 1 and 2.

1.1.32 **“Take or Pay Costs”** shall mean the costs incurred by NRG Power Marketing, LLC on behalf of Dunkirk for failure to meet the minimum volume requirement for coal shipments under contract UP-C-54152 with Union Pacific Railroad Company.

1.1.33 **“Term”** shall mean the Minimum Term and the Necessary Extension, if applicable.

ARTICLE II

TERM

2.1 Effective Date and Term

This Agreement shall become effective at the start of the hour ending 0100 Eastern Prevailing Time (“EPT”) on September 1, 2012 and remain in effect through the end of the hour ending 2400 EPT on May 31, 2013 (the “Minimum Term”).

2.2 Termination

(a) No provision of this Agreement shall terminate earlier than midnight on May 31, 2013, except pursuant to the provisions relating to Section 2.2(b) immediately below, Additional Expenditures (Section 5.3), Force Majeure Events (Section 7.1), or if the Agreement is not accepted for filing by the NYPSC (Section 10.9), in accordance with the August 16 order issued by the NYPSC in Case 12-E-0136.

(b) Upon 60 days written notice, a Party may terminate this Agreement prior to May 31, 2013 if any of the following events or circumstances materially and adversely affects the economic or reliability benefits of this Agreement: (1) a Change in Law; (2) a change to the NYISO Tariff or other NYISO policy or rule; or (3) an order of any Governmental Authority, other than as a result of an action or proceeding commenced by such Party.

(c) Nothing in this agreement shall prevent Dunkirk from ceasing operation and deactivating either or both of the RSS Units immediately upon the date this Agreement is terminated by National Grid.

2.3 Necessary Extension

(a) National Grid agrees to notify Dunkirk in writing of any finding of a reliability need past May 31, 2013 (“Necessary Extension”) or any finding of no reliability need, as soon as practicable, but no later than January 1, 2013.

(b) Such Necessary Extension will not exceed 90 days in duration. Upon receiving notice of a Necessary Extension, the Parties will engage in good faith negotiations to establish the terms and conditions of such Necessary Extension, including, without limitation, the determination of a reasonable level of compensation to be paid by National Grid to Dunkirk based on the length of the additional period of operation required by National Grid, in addition to the reasonably projected incremental cost to Dunkirk of providing service during the period of the Necessary Extension. If no agreement can be reached as to the reasonable level of compensation, Dunkirk shall not be obligated to enter into any Necessary Extension. Without the prior written consent of Dunkirk, which may be withheld in Dunkirk's sole discretion, no Necessary Extension shall extend beyond August 31, 2013, it being the intent of the Parties that the need for any Dunkirk units beyond August 31, 2013 will be the subject of a new agreement. If only one RSS Unit is needed at any time during a Necessary Extension, the particular RSS Unit will be selected by Dunkirk in its sole discretion, after consulting with National Grid.

(c) If the Parties are unable to agree on the terms and conditions of any Necessary Extension, they agree to seek the assistance of the DPS to help facilitate the resolution of said differences and shall at all times negotiate in good faith; provided, however, that each Party at any time shall be free to pursue any legal remedies available to it by law.

(d) Commencing in October 2012 and for the remainder of the Term of this Agreement, National Grid shall provide Dunkirk an update by the first business day of each calendar month on the status of National Grid's need for any units at Dunkirk expected to be necessary for providing reliability service beyond May 31, 2013, consistent with applicable laws and regulations. To the extent that National Grid knows and is not restricted from revealing such information consistent with the solicitation process ordered by the NYPSC, National Grid will indicate the units it expects to need, if any, and the period for which it expects to need them.

2.4 Survival of Obligations

Notwithstanding the termination of this Agreement, the Parties shall continue to be bound by the provisions of this Agreement that by their nature are intended to, and shall, survive such termination.

ARTICLE III

OBLIGATIONS AND OPERATIONS

3.1 General

During the Term, Dunkirk shall operate and maintain the RSS Units within standards of accepted Good Utility Practice, and in accordance with the NYISO Tariff.

3.2 Operating Characteristics and Environmental Compliance

Dunkirk shall have no obligation to cause the RSS Units to be operated in a manner inconsistent with the Dunkirk unit characteristics set forth in Schedule 1 to this Agreement, or in a manner that would be inconsistent with or in violation of the NYISO Tariff, NERC, NPCC, or NYSRC rules or would cause Dunkirk to violate the terms of any environmental regulations, restrictions, orders or decrees or any operating permit, which determination shall be made by Dunkirk in its reasonable discretion.

3.3 Dispatch Flexibility

The Parties acknowledge that during the Term of this Agreement and as a consequence of the provision of services under this Agreement, Dunkirk will need to run the RSS Units for testing and diagnostic purposes for reasons including, but not limited to, the performance of Dependable Maximum Net Capability ("DMNC") and Relative Accuracy Test Audit ("RATA") testing, or as otherwise required by plant management for health, safety, environmental or operational reasons. If warranted by system conditions, the Parties will coordinate the scheduling of the RSS Units for these purposes so that National Grid will either designate the related RSS Unit as the Day-Ahead Reliability Unit ("DARU") or commit that Unit pursuant to the NYISO's Supplemental Resource Evaluation ("SRE"). Such designation will be coordinated between the Parties so that the most appropriate designation is selected.

3.4 Reactive Power

Except when the RSS Units are unavailable, the RSS Units will provide reactive power consistent with the capability of the RSS Units and the procedures specified under the NYISO's Voltage Support Service.

3.5 Unit Selection

On any day where National Grid requires only a single RSS Unit to operate, unless only one of the RSS Units is available, Dunkirk shall have the right to select between Unit 1 and Unit 2. Additionally, unless only one of the RSS Units is available, Dunkirk has the right in its sole discretion, after consulting with National Grid, to provide the reliability services under this Agreement from either Unit 1 or Unit 2. National Grid shall not object to such election by Dunkirk.

ARTICLE IV

PRICING

4.1 Monthly Fixed-Cost Charge

Each month, National Grid shall pay a Monthly Fixed-Cost Charge of \$2,924,324/month for the period September 1, 2012 through May 31, 2013.

4.2 True-Up Payments

(a) Property Tax True-Up – At any time between the effective date of this Agreement and the date that is 30 days after the end of the Minimum Term, Dunkirk may provide documentary evidence to National Grid showing the amount of property tax payments (or payments in lieu of taxes) that Dunkirk has made to local taxing jurisdictions and the Chautauqua County Industrial Development Authority during the Term of this Agreement. Such documentary evidence will be in the form of a receipt or other verification received from the taxing authority and must show that the tax obligation satisfied relates to the Term of this Agreement. Within 30 days of the date Dunkirk submits such evidence to National Grid, National Grid will reimburse Dunkirk for any such documented payments, up to a maximum amount for all property tax payments of \$6,681,084.

(b) Capacity Revenue True-Up – Within 30 days of the date on which this Agreement terminates, Dunkirk will make a payment to National Grid in an amount equal to all capacity revenues earned by the RSS Units during the Term of this Agreement.

(c) Take or Pay Coal Contract True-Up – National Grid shall pay Dunkirk for Dunkirk's Take or Pay Costs as calculated based on the pre-determined minimum volume allocation to the Dunkirk plant, prorated to nine months, of 868,597 tons at \$5.00/ton (\$4,342,985). By January 15, 2013, Dunkirk will determine its prorated Take or Pay Costs allocable to Dunkirk during the period from September 1, 2012 to December 31, 2012 and shall provide National Grid with an accounting of such Take or Pay Costs. The determination of the first payment to be made under this provision will be based on actual coal deliveries to the Dunkirk plant during September 1, 2012 to December 31, 2012. Within 30 days of receiving such accounting, National Grid will make payment to Dunkirk of the prorated Take or Pay Costs. Within 30 days of the date on which this Agreement terminates, Dunkirk will determine its prorated Take or Pay Costs allocable to Dunkirk during the remainder of the Minimum Term and shall provide National Grid with an accounting of such Take or Pay Costs. Within 30 days of receiving such accounting, National Grid will make payment to Dunkirk of the prorated Take or Pay Costs. The determination of the final payment to be made under this provision will be based on actual coal deliveries to the Dunkirk plant during the remainder of the Minimum Term of this Agreement.

4.3 Refund Based on Future Operations

(a) Dunkirk shall pay National Grid a refund relating to one or more of the first five full calendar years after the Term of the Agreement ("Refund Period") if the Dunkirk plant has positive EBITDA in excess of \$2 million in any such year during the Refund Period. On or before April 30 after any calendar year during the Refund Period when none of the Dunkirk units were the subject of a reliability support service agreement with National Grid, Dunkirk shall provide a Dunkirk Officer's Certificate to National Grid. An annual refund payment will be made to National Grid relating to the Refund Period as set forth in this Section 4.3.

(b) Dunkirk Officer's Certificate

- (i) If the Dunkirk plant had less than \$2 million of EBITDA during any calendar year of the Refund Period, Dunkirk shall provide such Dunkirk Officer's Certificate to National Grid which shall confirm that Dunkirk's EBITDA for the related year was less than \$2 million, but which shall not include an EBITDA Determination.
- (ii) If the Dunkirk plant had EBITDA equal to or greater than \$2 million, but less than \$3,680,000, Dunkirk shall provide such Dunkirk Officer's Certificate together with an EBITDA Determination to National Grid.
- (iii) If the Dunkirk plant had EBITDA greater than \$3,680,000, Dunkirk shall provide such Dunkirk Officer's Certificate to National Grid, but no EBITDA Determination shall be provided.

(c) If the Dunkirk Officer's Certificate with respect to any calendar year of the Refund Period indicates that the Dunkirk plant had EBITDA in excess of \$2 million during such calendar year of the Refund Period, then Dunkirk shall pay National Grid 50 percent of the first \$1,680,000 in excess of \$2 million of EBITDA.

(d) If National Grid disagrees with any Dunkirk Officer's Certificate delivered to National Grid pursuant to Section 4.3(b)(i) or any EBITDA Determination delivered to National Grid pursuant to Section 4.3(b)(ii), then National Grid shall have the right to petition DPS to facilitate resolution of any such disagreement. If the disagreement is pursuant to Section 4.3(b)(i) and DPS requests that Dunkirk provide an EBITDA Determination, Dunkirk will provide such EBITDA statement within 90 days of such request.

(e) If required, any payment will be made within 45 days of the delivery of the related Dunkirk Officer's Certificate.

(f) The maximum refund payable by Dunkirk for any calendar year during the Refund Period is \$840,000. No refund payment will be made for any year after the Refund Period.

4.4 Invoices

Dunkirk will invoice National Grid monthly. Each such invoice shall include the Monthly Fixed-Cost Charge and any true-up payments pursuant to Section 4.2, if applicable. Dunkirk will issue the invoice no later than 30 calendar days following the month in which service is provided. National Grid's payment shall be due no later than the 30th day after the day on which the invoice is issued.

ARTICLE V

OUTAGES AND MAINTENANCE

5.1 Planned Outages

Dunkirk shall be permitted to take either or both RSS Units out of operation, or reduce the capability of either or both of the RSS Units, during Planned Outages as permitted by the NYISO Tariff or policies. National Grid agrees, as the related Transmission Owner, that it will not unreasonably withhold Dunkirk's Planned Outage requests.

5.2 Forced Outages

(a) In the event Dunkirk needs to take either or both RSS Units out of operation or reduce the capability of either or both RSS Units upon the occurrence of a Forced Outage, Dunkirk shall notify National Grid, pursuant to established practice under the NYISO Outage Scheduling Manual, of the nature and expected duration of a Forced Outage as soon as practicable.

(b) Dunkirk shall continue to receive the Monthly Fixed-Cost Charge during a Forced Outage, calculated in accordance with the following (subject to Section 5.3(a)):

(i) if a Unit or its Automatic Voltage Regulator is not available for service for 50 percent or more but less than 75 percent of the hours in any particular month due to a Forced Outage, the Monthly Fixed-Cost Charge for that month shall be reduced by \$100,000 per Unit that meets these criteria;

(ii) if a Unit or its Automatic Voltage Regulator is not available for service for 75 percent or more but less than 90 percent of the hours in any particular month due to a Forced Outage, the Monthly Fixed-Cost Charge for that month shall be reduced by \$250,000 per Unit that meets these criteria;

(iii) if a Unit or its Automatic Voltage Regulator is not available for service for 90 percent or more of the hours in any particular month due to a Forced Outage, the Monthly Fixed-Cost Charge for that month shall be reduced by \$500,000 per Unit that meets these criteria; and

(iv) if both Units and their Automatic Voltage Regulators are not available for service for 90 percent or more of the hours in any particular month due to a Forced Outage or Outages, the Monthly Fixed-Cost Charge for that month shall be reduced by \$1.5 million.

5.3 Additional Expenditures

(a) Any period of time in which National Grid is considering whether to authorize Additional Expenditures with respect to any RSS Unit shall not count towards any availability calculation for such unit for purposes of determining the Monthly Fixed-Cost Charge reduction set forth in Section 5.2. This includes a situation in which Grid is disputing the amount of

Additional Expenditures, but does not include a situation in which Grid has already authorized the Additional Expenditures that Dunkirk expects to incur for a project and Grid is disputing the amount of actual Additional Expenditures for such project.

(b) Dunkirk shall not be obligated to incur any Additional Expenditures, except as permitted by this Section 5.3.

(c) If Dunkirk is required to incur any Additional Expenditure above the amount that can be recovered from National Grid pursuant to Section 5.3(d), Dunkirk will provide written notice to National Grid as soon as possible (but in no event greater than 10 days after Dunkirk becomes aware of the need for Additional Expenditures) whether expenses not recovered in the Monthly Fixed-Cost Charge are required to return the RSS Unit(s) to service or maintain such service. This notice will indicate the amount of Additional Expenditures expected to be required to return the RSS Unit(s) to service or to maintain service.

(i) If within 30 days of receipt of such notice, National Grid provides Dunkirk with written notification that it will pay for the Additional Expenditures, Dunkirk will incur such Additional Expenditures and, with reasonable promptness, restore the RSS Unit(s) to service.

(ii) Payment of Additional Expenditures, to the extent they are agreed to by National Grid, shall be included in the Monthly Fixed-Cost Charge pro-rated over the remaining Minimum Term (i.e., the total amount of such Additional Expenditures divided by the number of Monthly Fixed-Cost Charge payments remaining in the Minimum Term). If such Additional Expenditures are incurred during a Necessary Extension, the payment of such Additional Expenditures shall be pro-rated over such Necessary Extension period.

(iii) National Grid shall have the right to dispute the amount of Additional Expenditures identified as necessary by Dunkirk, in which case National Grid will provide notice to Dunkirk thereof stating a good faith basis for disputing Dunkirk's calculation. Thereafter, the Parties will engage in good faith negotiations to attempt to reach a resolution of the appropriate level of Additional Expenditures required. If the Parties are unable to agree on such compensation, they agree to seek the assistance of the DPS to help facilitate the resolution of said differences and shall at all times negotiate in good faith. Dunkirk shall have no obligation to incur any Additional Expenditure until National Grid has agreed in writing to reimburse Dunkirk for such Additional Expenditure in accordance with the terms of this Agreement.

(iv) Dunkirk is obligated to use commercially reasonable efforts to minimize Additional Expenditures and agrees that any Additional Expenditures shall be offset by any documented proceeds received by Dunkirk as a result of a claim against any third party for the recovery of such Additional Expenditures. Dunkirk shall refund to National Grid any payments by National Grid for Additional Expenditures that exceed the amount actually expended by Dunkirk with respect to any Additional Expenditures, after offsets.

(v) In the event that National Grid does not provide written notification of its commitment to fund the Additional Expenditures and Dunkirk does not make the voluntary election described in clause (vi) below, Dunkirk shall no longer have any obligation to provide

RSS Service from the affected unit or units. If Additional Expenditures are necessary to restore both of the RSS Units from Forced Outage and National Grid has not provided such notice, then this Agreement will be considered terminated as of the expiration of National Grid's notice period. However, if Additional Expenditures are only necessary to restore one of the RSS Units from a Forced Outage, this Agreement shall remain in full force and effect with respect to the remaining Unit. If the Parties are unable to agree on the appropriate compensation for one RSS Unit, they agree to seek the assistance of the DPS to facilitate the resolution of said differences and shall at all times negotiate in good faith; provided, however, that each Party at any time shall be free to pursue any legal remedies available to it by law.

(vi) Nothing in this Section 5.3 shall prevent Dunkirk from voluntarily electing to make any repair necessary to allow the affected unit(s) to return to service, without additional compensation, after being informed by National Grid that it does not intend to fund the Additional Expenditures.

(d) Dunkirk shall not be entitled to recover any Additional Expenditures from National Grid pursuant to this Section 5.3 until Dunkirk has incurred \$450,000 in Additional Expenditures, after which Dunkirk shall be entitled to recover from National Grid only the amount of such Additional Expenditures in excess of the initial \$450,000. Dunkirk will provide email notifications to one of the National Grid representatives designated for notice in Section 10.2 on the 15th of every month indicating the reasonable estimate of the amount of Additional Expenditures incurred through the end of the prior month.

ARTICLE VI

SCHEDULING

6.1 Dunkirk will interface and comply with NYISO scheduling deadlines and requirements for maintaining the RSS Unit as an eligible energy and capacity provider, as well as National Grid's dispatch instructions.

6.2 Dunkirk shall bid the energy and ancillary services from the RSS Units in compliance with existing NYISO market rules and Dunkirk shall retain the revenues resulting therefrom.

6.3 Dunkirk shall offer the RSS Units into the NYISO's ICAP Market auction at the Agreed Upon Capacity Bid Price, as set forth in Schedule 2. Any capacity revenues shall be credited to National Grid by Dunkirk and paid in accordance with Section 4.2(b).

6.4 Dunkirk shall offer the RSS Units into the NYISO Day-Ahead Energy Market, regardless of whether Dunkirk's capacity bid is accepted in the NYISO capacity market, whenever those units are not out of service. Subject to the provisions of Section 3.5, Dunkirk shall comply with any dispatch instruction issued by National Grid or NYISO under established NYISO protocols, consistent with the operating parameters of the RSS Units and in accordance with the NYISO Tariff.

6.5 National Grid shall not be responsible for any penalties or fines that relate to the bidding, scheduling, and operation of the RSS Units during the Term of this Agreement.

6.6 National Grid shall pay Dunkirk an amount equal to the amount of bad debt losses assessed to NRG Power Marketing, LLC by NYISO and attributable to the RSS Units with respect to the Term of this Agreement on a pro rata basis of the RSS Units' share of gross accounts receivable that contribute to the NYISO's calculation of the loss to be paid by each Transmission Customer under the NYISO OATT Section 27, Attachment U.

ARTICLE VII

FORCE MAJEURE EVENTS

7.1 Force Majeure Event

(a) If the availability of any of the RSS Units is reduced by reason of a Force Majeure Event (other than a Force Majeure Event with respect to the transmission or distribution system of National Grid or by equipment or materials owned by National Grid), such Force Majeure Event shall be deemed to create a Forced Outage, and shall be resolved pursuant to the provisions herein relating to Forced Outages and Additional Expenditures.

(b) The Party unable to perform by reason of a Force Majeure Event shall use commercially reasonable efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event as soon as reasonably practicable; provided that (i) no Party shall be required to settle any strike, walkout, lockout, or other labor dispute on terms which, in the Party's sole discretion, are contrary to its interests, and (ii) subject to the Additional Expenditure provision, the Party unable to perform shall, as soon as practicable, advise the other Party of the reason for its inability to perform, the nature of any corrective action needed to resolve performance, and its efforts to remedy its inability to perform and to mitigate the consequences of its inability to perform and shall advise the other Party of when it estimates it will be able to resume performance of its obligations under this Agreement.

ARTICLE VIII

LIMITATIONS OF LIABILITY

8.1 Limitation of Liability

(a) National Grid, its affiliates, successors and assigns shall not be liable to Dunkirk, its affiliates, successors and assigns, for actions or omissions by National Grid or National Grid's affiliates, officers, employees or agents in performing its obligations under this Agreement, provided it has not willfully breached this Agreement or engaged in willful misconduct. To the extent Dunkirk has claims against National Grid, Dunkirk may only look to the assets of National

Grid for the enforcement of such claims and may not seek to enforce any claims against the directors, members, officers, employees or agents of National Grid who, Dunkirk acknowledges and agrees, have no personal liability for obligations of National Grid by reason of their status as directors, members, officers, employees or agents of National Grid.

(b) Dunkirk, its affiliates, successor and assigns, shall not be liable to National Grid, its affiliates, successors and assigns, for actions or omissions by Dunkirk, or Dunkirk's affiliates, officers, employees or agents in performing its obligations under this Agreement, provided that Dunkirk has not willfully breached this Agreement or engaged in willful misconduct. To the extent National Grid has claims against Dunkirk, National Grid may only look to the assets of Dunkirk for the enforcement of such claims and may not seek to enforce any claims against the directors, members, officers, employees or agents of Dunkirk who, National Grid acknowledges and agrees, have no personal liability for obligations of Dunkirk by reason of their status as directors, members, officers, employees or agents of Dunkirk.

(c) In no event shall Dunkirk be liable to National Grid or National Grid be liable to Dunkirk for any incidental, consequential, multiple or punitive damages, loss of revenues or profits, attorneys fees or costs arising out of, or connected in any way with the performance or nonperformance of this Agreement; provided, however, that none of the payments to be made by National Grid hereunder shall be considered to fall within any of the foregoing categories.

ARTICLE IX

REMEDIES

9.1 Termination for Default

If any Party shall fail to perform any material obligation imposed on it by this Agreement, and that obligation has not been suspended pursuant to this Agreement, the other Party, at its option, may terminate this Agreement by giving the Party in default written notice setting out specifically the circumstances constituting the default and declaring its intention to terminate this Agreement. If the Party receiving the notice does not within ten (10) days after receiving the notice, remedy the default, the Party not in default shall be entitled by a further written notice to terminate this Agreement; provided that, if the default is reasonably expected to take more than ten (10) days to remedy, the defaulting Party shall notify the non-defaulting Party of its plan for remedying the default and must take actions to begin remedying the default within ten (10) days. The Party not in default shall have a duty to mitigate damages. Termination of this Agreement pursuant to this Section 9.1 shall be without prejudice to the right of any Party to collect any amounts due to it prior to the time of termination.

9.2 Waiver

The failure to exercise any remedy or to enforce any right provided in this Agreement or applicable law shall not constitute a waiver of such remedy or right or of any other remedy or

right. A Party shall be considered to have waived any remedies or rights only if the waiver is in writing and signed by the Party against whom such waiver is to be enforced.

9.3 Beneficiaries

Except as is specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, confers any rights or remedies under, or by reason of, this Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third party, nor give any third person any rights of subrogation or action against any Party.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Assignment

None of the Parties shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such assignment or delegation made without such written consent shall be null and void. Upon any assignment made in compliance with this section, this Agreement shall inure to and be binding upon the successors and assigns for the assigning Parties.

10.2 Notices and Correspondence

Except as otherwise expressly provided in this Agreements, permitted by NYISO rules or required by law, all invoices, notices, consents, requests, demands, approvals, authorizations and other communications provided for in this Agreements shall be in writing and shall be sent by email, followed by personal delivery, certified mail, return receipt requested, facsimile transmission, or by recognized overnight courier service, to the intended Party at such Party's address set forth below. All such notices shall be deemed to have been duly given and to have become effective: (a) upon receipt if delivered in person, facsimile, or email; (b) two days after having been delivered to a courier for overnight delivery; or (c) seven days after having been deposited in the United States mail as certified or registered mail, return receipt requested, all fees pre-paid, addressed to the applicable addresses set forth below. Each Party's address for notices shall be as follows (subject to change by notice in accordance with the provisions of this section):

TO DUNKIRK:

Elizabeth Quirk-Hendry
General Counsel – Northeast Region
NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
Tel: (609) 524-5161
Fax: (609) 524-5160
E-mail: elizabeth.quirk-hendry@nrgenergy.com

and

Judith Lagano
Vice President, Asset Management
NRG Energy, Inc.
Manresa Island Avenue
South Norwalk, CT 06854
Tel: (203) 854-3625
Fax: (203) 854-3658
E-mail: judith.lagano@nrgenergy.com

TO NATIONAL GRID:

Carlos A. Gavilondo
Senior Counsel II
National Grid
300 Erie Boulevard West
Syracuse, NY 13202
Tel: (315) 428-5862
Fax: (315) 428-5355
E-mail: Carlos.Gavilondo@nationalgrid.com

and

Bill Malee
Director, Transmission Commercial
Services
National Grid
40 Sylvan Road
Waltham, MA 02451
Tel: (781) 907-2422
Fax: (781) 907-5707
E-mail: Bill.Malee@nationalgrid.com

10.3 Parties' Representatives

All Parties to this Agreement shall ensure that throughout the Term of this Agreement, duly appointed representatives are available for communications between the Parties. The representatives shall have full authority to deal with all day-to-day matters arising under this Agreement. Acts and omissions of representatives shall be deemed to be acts and omissions of the Party. Dunkirk and National Grid shall be entitled to assume that the representatives of the other Party are at all times acting within the limits of the authority given by the representatives' Party.

10.4 Effect of Invalidation, Modification, or Condition

Each covenant, condition, restriction, and other Term of this Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction, and other term. If any covenant, condition, restriction, or other Term of this Agreement is held to be invalid or otherwise modified or conditioned by any Governmental Authority, the invalidity, modification, or condition of such covenant, condition, restriction, or other term shall not affect the validity of the remaining covenants, conditions, restrictions, or other terms hereof. If an invalidity, modification, or condition has a material impact on the rights and obligations of the Parties, the Parties shall make a good faith effort to renegotiate and restore the benefits and burdens of this Agreement as they existed prior to the determination of the invalidity, modification, or condition. If the Parties fail to reach agreement, then the Party whose rights and obligations have been adversely affected may, in its sole discretion, terminate this Agreement.

10.5 Amendments

Any amendments or modifications of this Agreement shall be made only in writing and duly executed by all Parties to this Agreement. Such amendments or modifications shall become effective only after the Parties have received any authorizations required from the NYPSC. The Parties agree to negotiate in good faith any amendments to this Agreement that are needed to reflect the intent of the Parties as expressed herein and to reflect any changes to the design of the New York markets that are approved by the Commission from time to time.

10.6 Dispute Resolution

Except where otherwise provided for in the Agreement, disputes under this Agreement shall be submitted to representatives of each Party for resolution. If the dispute remains unresolved, after 45 days, either Party may pursue any legal remedies available to it by law.

10.7 Entire Agreement

This Agreement consists of the terms and conditions set forth herein, as well as the attachments hereto, which are incorporated by reference herein and made a part hereof. This Agreement contains the entire agreement between the Parties with respect to the matters set forth herein and supersedes all prior negotiations, undertakings, agreements and business term sheets.

10.8 Confidentiality

Information provided by any Party to the other pursuant to this Agreement may, at the Party's discretion, be provided subject to the terms of the Confidentiality Agreement between NRG Energy, Inc. and National Grid, dated as of November 10, 2011. All information provided to either Party in connection with the negotiations regarding this agreement shall remain subject to the provisions of such Confidentiality Agreement.

10.9 Binding Nature

It is the Parties' expectation that this Agreement will be filed with the NYPSC no later than August 27, 2012. To comply with the August 16 order of the NYPSC approving the Binding Term Sheet for this reliability Support Services Agreement for Dunkirk Power Generating Units, dated July 20, 2012, in a manner that is reasonably satisfactory to the Parties, this Agreement shall be signed by both Parties and will be binding; provided that if this Agreement is rejected by the NYPSC, it shall be deemed terminated as of the date of such rejection.

10.10 Final Non-Appealable Order

Once an NYPSC order with respect to this Agreement becomes final and nonappealable, Seller will withdraw its filing made with FERC in Docket No. ER12-2237-000. If the NYPSC does not separately act on this Agreement, Seller will withdraw its filing made with FERC in Docket No. ER12-2237-000 once the NYPSC's August 16 order becomes final and nonappealable. For purposes of this Section 10.10, a NYPSC order becomes final and

nonappealable once the appeals period(s) authorizing a challenge to said order under federal and/or state law has (have) expired.

ARTICLE XI

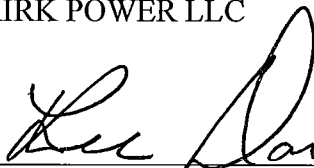
STANDARD OF REVIEW

The standard of review for changes in the rates, terms or conditions of this Agreement whether proposed by a Party or a non-party must meet the “public interest” application of the statutory “just and reasonable” standard of review as set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); as clarified by *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 130 S. Ct. 693, Case No. 08-674 (2010); *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

SIGNATURE PAGES TO FOLLOW

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

DUNKIRK POWER LLC

By: 
Name: Lee Davis
Title: President

NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID

By: _____

Name: _____

Its: _____

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

DUNKIRK POWER LLC

By: _____

Name: _____

Title: _____

NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID

By: Will J Malee

Name: William L Malee

Its: Director, Transmission Commercial

SCHEDULE 1

Dunkirk Unit Characteristics

	<u>Unit 1</u>	<u>Unit 2</u>
Low Operating Limit:	35 MW	35 MW
High Operating Limit (normal):	75 MW	75 MW
High Operating Limit (emergency):	75 MW	75 MW
Ramp Rate (normal):	0.5 MW/minute	0.5 MW/minute
Ramp Rate (emergency):	0.5 MW/minute	0.5 MW/minute
Minimum Run Time (hours):	24 hours	24 hours
Minimum Shutdown Time:	48 hours	48 hours
Start Up Notification Time:	24 hours	24 hours
Cold Start ¹ (Down Time)	36 hours	36 hours
Warm Start ² (Down Time)	12 hours	12 hours
Hot Start ³ (Down Time)	1 hour	1 hour

¹ For purposes of this Agreement, a “Cold Start” is considered to be when an RSS Unit has been shutdown for more than 36 hours.

² For purposes of this Agreement, a “Warm Start” is considered to be when an RSS Unit has been shutdown for more than 12 hours but less than 36 hours.

³ For purposes of this Agreement, a “Hot Start” is any start other than a Cold Start or a Warm Start.

Schedule 2 – Confidential

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Exhibit 1
Dunkirk Officer's Certificate - Confidential

DUNKIRK OFFICER'S CERTIFICATE

I am the _____ of Dunkirk Power LLC, a Delaware limited liability company (the "Company"), and I DO HEREBY CERTIFY on behalf of the Company that the information provided below is accurate with regards to the _____
_____ (EBITDA), as defined in the Reliability Support Services Agreement between the Company and Niagara Mohawk Power Corporation d/b/a National Grid ("the Agreement").

_____ The Company's EBITDA was less than \$2,000,000 for the year ended December 31, 20xx. No EBITDA Determination or payment is required under Section 4.3 of the Agreement.

_____ The Company's EBITDA was greater than \$2,000,000 but less than \$3,680,000 for the year ended December 31, 20xx. See attached EBITDA Determination for the calculation of the payment required under Section 4.3 of the Agreement

_____ The Company's EBITDA was equal to or greater than \$3,680,000 for the year ended December 31, 20xx. No EBITDA Determination is required as Dunkirk intends to pay the annual maximum refund amount of \$840,000.

IN WITNESS WHERE OF, I have set my hand this _____ day of _____, 20__.

Dunkirk Power LLC

By: _____
Name:

Title

Date

Attachment A

EBITDA DETERMINATION - Confidential

If an EBITDA Determination, as defined, is required under Section 4.3 (b)(ii) of the Agreement for any fiscal year during the Refund Period, the related auditor attestation shall include results on the following procedures:

1. Obtain Dunkirk Power LLC's (Dunkirk) profit and loss statement for the calendar year-ended December 31, 20xx and compare amounts to the general ledger, rounded to the nearest dollar.
2. Using the Dunkirk profit and loss statement obtained in step 1 above, calculate [REDACTED]
[REDACTED] (EBITDA, as defined in Exhibit 1 to the Reliability Support Services Agreement).
3. Using the EBITDA amount calculated in Step 2 above, calculate the annual refund payment amount of 50% of the first \$1,680,000 of EBITDA in excess of \$2,000,000.

Exhibit 2
Agreed Upon Capacity Bid Price – Confidential

