Carolyn Rooney, Esq.
Senior Counsel

April 5, 2022

VIA ELECTRONIC FILING
Honorable Michelle L. Phillips, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 22-M-0040 – Petition of Belmonte Properties, LLC for an Extension on Letter of Credit

Dear Secretary Phillips:

Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid" or the "Company") submits its comments in response to the letter of Belmonte Properties, LLC ("Belmonte") requesting an extension of letter of credit for the electric and gas deposits provided for the Princeton Heights residential subdivision in Halfmoon, New York. These comments are submitted pursuant to 16 NYCRR § 3.5 and the Notice of Proposed Rulemaking published in the New York State Register on February 9, 2022. The request affects the Company as the distribution utility providing service to Belmonte, as well as its customers. Therefore, the Company respectfully requests that the Public Service Commission ("Commission") consider these comments when evaluating the request. As outlined below, the five-year period is mandated by the Company's tariff and whether the grant of a waiver is appropriate is solely within the Commission's discretion.

Deposits for residential subdivision are governed by 16 NYCRR § 100.3(b) and the Company's electric (P.S.C. No. 220 – Electricity) and/or gas (P.S.C. No. 219 – Gas) tariffs (collectively, the "Tariffs"). Pursuant to P.S.C. No. 220 Rule 16.6 and P.S.C. No. 219 Rule 10.4, residential subdivision developers have the option of providing a cash deposit or letter of credit ("LOC") to guarantee payment of upfront construction costs incurred by the Company in connection with subdivision development.[1] The Commission's regulations and the Tariff provide the developer with five years to complete and energize all of the proposed lots. As new customers take utility service within a subdivision, the amount of the deposit or LOC is proportionally refunded or reduced. If all properties take service within five years, the balance is adjusted to zero. If the developer fails to energize all lots in its subdivision within five years of the date of energization, however, the Tariff requires that any remaining funds associated with the unenergized lots be retained by the Company and credited to its net plant balance, providing that "[a]ny monies unrefunded at the end of the five-year period subsequent to the installation of gas main facilities shall be retained by the Company."[2] The five-year rule "allow[s] development

[1] Under New York Public Service Commission Rule § 100.3 (16 NYCRR § 100.3), utilities are authorized to require from residential developers a deposit equal to the total estimated cost of construction for energy and/or gas service within the residential subdivisions.

[2] Tariff Rule 10.4; *see also* Case 10-E-0486, Petition for Waiver of 16 NYCRR § 100.3 and a Provision of the Tariffs of Niagara Mohawk Power Corporation d/b/a National Grid, *Commission Order Approving Staff's Recommendation* (issued and effective December 16, 2010) (holding that the LOC language in the tariff is clear and the Company and its customers should not ignore it).

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to proceed without requiring developers to pay potentially onerous upfront costs" while ensuring that "should a development stall or fail, it is the developer and not National Grid or its existing customers who must pay for unused facilities that were installed at the developer's request and for the developer's benefit."[3]

The five-year rule applies uniformly to all applicants and customers in the Company's service territory. The Company does not have the discretion to grant waivers of the Tariff or regulations – waivers may only be granted by the Commission.[4] Although the five-year requirement has been reinforced by the Commission in previous determinations involving extension requests,[5] the Commission recently granted an extension of the five-year period to a developer who alleged that, but for the impacts of the COVID-19 pandemic, its development would have been completed and energized prior to the expiration of the five-year period.[6]

The Company was contacted to provide electric and gas service to fifty-one (51) lots for Princeton Heights in or around June 25, 2015. Prior to the Company's placement of electric and gas facilities, Belmonte was required to execute the Company's Form B and D agreements, under which an applicant for service agrees to be bound by the terms and conditions of the Tariff, as well as the Commission's regulations. The Forms B and D were executed by Belmonte on August 8, 2016.[7] Belmonte provided a LOC of $128,724.00 and $111,879.22 to cover the required electric and gas contribution for the subdivision, respectively. Service was first available within the subdivision on November 23, 2016 and the five-year energization period expired on November 23, 2021.[8] As of the Company's most recent annual review on November 8, 2021, 34 of the 51 lots have been energized and there are three (3) pending service requests for

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[3] Case 19-M-0200, Petition of Morning View, LLC for a Limited and Conditional Waiver of Niagara Mohawk Power Corporation's Tariff, *Order Denying Request for Waivers* (issued and effective September 23, 2019) ("Morning View Order"), at 6-7, 9.

[4] *See* Case 11-M-0486, Petition of Oot Bros., Inc. Requesting Niagara Mohawk Power Corporation d/b/a National Grid be Restrained from Seeking Payment or Calling Due the Letters of Credit Posted as Security for the Installation of Underground Gas and Electric Service in Phase 1 of the Harbor Lights Project, *Commission Order Approving Staff's Recommendation* (issued and effective November 30, 2011); and Case 10-E-0486, Petition for Waiver of 16 NYCRR § 100.3 and a Provision of the Tariffs of Niagara Mohawk Power Corporation d/b/a National Grid, *Commission Order Approving Staff's Recommendation* (issued and effective December 16, 2010).

[5] *See* Morning View Order; Case 15-M-0272, In the Matter of the Valley Park Subdivision Request for an Extension to the Five Year Limit on a Letter of Credit to National Grid for the Construction of Underground Distribution, National Grid's Tariff 220, Section 16.6.3 and 16 NYCRR Section 100.3(b), *Order Denying Request for Waivers* (issued and effective December 28, 2015); and Case 15-M-0435, In the Matter of Walking Meadows Development Request for an Extension to the Five Year Limit on a Letter of Credit to National Grid for the Construction of Underground Distribution, National Grid's Tariff 220, Section 16.6.3 and 16 NYCRR Section 100.3(b), *Order Denying Request for Waivers* (issued and effective November 11, 2015).

[6] *See* Case 20-M-0377, Petition of Crimson Ridge Section 5 Development, Located in the Service Territory of Niagara Mohawk Power Corporation d/b/a National Grid, for Waivers of Regulations and Tariff Rules Regarding the Extension of Service to Non-Residing Applicants, *Order Approving Waiver and Extending Development Period* (issued and effective January 22, 2021) ("Crimson Ridge Order"), at 3-4.

[7] *See* Attachment A.

[8] The Company notes that, while the deposits expired in November 2021, the Company has agreed to forbear collecting on the deposits until the Commission issues a decision in this proceeding.

the remaining seventeen (17) unenergized lots. The balances remaining for the electric and gas cash deposits are for $42,908.00 and $37,293.08, respectively.

Belmonte cites the impacts of the COVID-19 pandemic for the lack of development and inability to energize the remaining lots in the subject subdivision. The Company is acutely aware of the impacts that the COVID-19 pandemic has had on customers and businesses across its service territory. The Company is hopeful that the impacts of the pandemic will begin to dissipate in Upstate New York as many of the original restrictions imposed in response to the pandemic have been removed, including those regarding residential construction. The Company takes no position with respect to the petition other than to reference the prior Commission decisions and precedent on this subject.

As noted above, the current combined electric and gas cash deposits held by the Company for the subdivision is $80,201.08. Belmonte's electric deposit accumulates interest during the five-year development period, which is paid to the Developer with each pro rata refund of its deposit.[9] The Company's Electric Tariff does not address the situation herein where interest may be extended beyond the five-year period. However, the Commission recently ordered that if a five-year development period is extended, "[a]ll the terms of the deposit, including the accrual of interest, should remain in effect during the extended Development Period."[10] The Company will continue to hold these deposits in a refundable account pending the Commission's ruling in this case and refund or retain the remaining deposit amount, with applicable interest, in accordance with the Commission's directives.

Please let me know if you have any questions regarding this letter. Thank you for your time and attention to this matter.

Sincerely,

/s/ Carolyn Rooney
Carolyn Rooney
National Grid

Enc.

cc: Active Parties in Case 22-M-0040 (via DMM)
Belmonte Properties, LLC (via electronic mail)

[9] Interest applies to electric cash deposits only. The interest on electric cash deposits is paid to the Developer when National Grid returns each pro rata refund. The interest rate changes annually and is based on the Commission's consumer deposits rate. *See* Electric Tariff Rule 16.6.3.
[10] Crimson Ridge Order, at 5.

ATTACHMENT A

GAS MAIN EXTENSION APPLICATION FORM
APPLICATION FOR GAS MAIN EXTENSION
FORM "B"

THE UNDERSIGNED, hereby severally apply to NIAGARA MOHAWK POWER CORPORATION for an extension of its gas distribution system along Princeton Heights

in the Town of Halfmoon County of Saratoga
from Princeton Road to Wintergreen Way
a distance of about 4,313 feet, to be constructed by Company under the provisions of Rule 10 of **GENERAL INFORMATION** leaves of Company's Rate Schedule. Applicants agree to comply with the provisions of Rule 10 of **GENERAL INFORMATION** and pay the charges and/or surcharge required thereunder. Applicants will provide written consents or easements for rights of way satisfactory to Company.

Company is not obligated to serve nor undersigned to take service until receipt by Company of all the required signed applications.

DATE	APPLICANT	ESTIMATED ANNUAL SURCHARGE OR CONTRIBUTION
	Homeland Properties, LLC	$111,879.22 - Refundable
	Signature: Michele Brown, Treasurer	

ACCEPTED: NIAGARA MOHAWK POWER CORPORATION

By: B Edwards

GENERAL INFORMATION
APPLICATION FOR ELECTRIC UNDERGROUND LINE EXTENSION
FORM "D"

Date: April 25 , 20 16

The UNDERSIGNED (hereinafter called "Applicant") hereby applies to NIAGARA MOHAWK POWER CORPORATION (hereinafter called "Company") for an underground extension of its electric distribution system to and within the plot of land designated on the attached survey map and located within the (Town, Village, City) of Halfmoon , County of Saratoga . This application is limited to the installation of underground facilities necessary to serve the areas designated on the attached map and the connecting supply line, if any, to supply service initially to 51 dwelling units designated thereon. Such installation shall be made pursuant to the rules applicable to extension of underground residential distribution lines set forth in the Company's Schedule for Electric Service P.S.C. No. 220, which is hereby referred to and made a part hereof, and to the rates, rules, regulations, terms and conditions therein set forth, applicable to the particular service to be supplied hereunder, as now in effect and as the same may be from time to time changed, amended and/or supplemented.

Applicant agrees to comply with all provisions of said schedules including the requirements for obtaining and delivery to Company of satisfactory permanent easements or rights-of-way. Company shall not be obligated to commence construction until applicant has complied with all the requirements set forth in said schedule.

Applicant shall make an advance contribution as required under Rule 16.4.3 and Rule 16.5.1 in the amount of $ 17,500.41 .

Applicant shall also provide a Letter of Credit or make a deposit in the amount of $ 128,724.00 to guarantee completion and attachment of service of all the above mentioned dwelling units.

Company will make appropriate refunds thereafter as provided in its said rate schedule. The refund period for this contract is five years.

Subsequent to Company's installation of underground facilities and throughout the duration of property ownership, Company shall be reimbursed for all costs incurred, due to damage sustained or relocation work performed as a consequence of changes in property grading or revision of property lines, by the applicant(s) or owner(s) of record responsible.

Applicant: Homeland ~~Properties~~, LLC

Signature: [signature]

Date:

Accepted: NIAGARA MOHAWK POWER CORPORATION

By: [signature]

Date of Acceptance: 8-8-16

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