



**Exhibit A**

**Financial Condition of  
Niagara Mohawk Power Corporation  
December 31, 1998**

TRANSFERS FROM SURPLUS OR OTHER ACCOUNTS TO NON-PAR STOCK ACCOUNTS:

NONE

BONDS, ETC. AUTHORIZED BY THE COMMISSION AND ISSUED/OUTSTANDING BY THE COMPANY:

(A) First Mortgage Bonds issued by Niagara Mohawk Power Corporation and secured by mortgage referred to under 7(a) below:

<u>Case Number</u>	<u>Date of Order</u>	<u>Face Value of Bonds Authorized and Issued</u>	<u>Amount Outstanding</u>	<u>Date of Issue</u>	<u>Interest Rate %</u>	<u>Date of Maturity</u>
14626	01/17/50	\$40,000,000	(1)	01/01/50	2.75	01/01/80
15062	11/09/50	40,000,000	(1)	10/01/50	2.875	10/01/80
15593	12/19/51	15,000,000	(1)	12/01/51	3.375	12/01/81
16083	02/10/53	25,000,000	(1)	02/01/53	3.50	02/01/83
16459	10/16/53	40,000,000	(1)	10/01/53	3.25	10/01/83
16888	08/16/54	25,000,000	(1)	08/01/54	3.125	08/01/84
17797	04/24/56	30,000,000	(1)	05/01/56	3.625	05/01/86
18507	08/27/57	50,000,000	(1)	09/01/57	4.875	09/01/87
18984	05/26/58	50,000,000	(1)	06/01/58	3.875	06/01/88
21118	03/22/60	50,000,000	(1)	04/01/60	4.75	04/01/90
21886	10/10/61	40,000,000	(1)	11/01/61	4.50	11/01/91
23405	10/10/64	40,000,000	(1)	12/01/64	4.625	12/01/94
24135	10/11/66	45,000,000	(1)	11/01/66	5.875	11/01/96
24455	08/02/67	40,000,000	(1)	08/01/67	6.25	08/01/97
24790	07/16/68	60,000,000	(1)	08/01/68	6.50	08/01/98
25354	11/12/69	75,000,000	(4)	12/01/69	9.125	12/01/99
25977	01/26/71	65,000,000	(4)	02/01/71	7.375	02/01/01
26204	01/18/72	80,000,000	(4)	02/01/72	7.625	02/01/02
26290	08/01/72	80,000,000	(4)	08/01/72	7.75	08/01/02
26511	11/20/73	80,000,000	(4)	12/01/73	8.25	12/01/03
26726	09/24/74	125,000,000	(1)	10/01/74	12.60	10/01/81
26770	12/10/74	50,000,000	(4)	03/01/75	10.20	03/01/05
26864	08/07/75	50,000,000	(1)	09/01/75	10.625	09/01/85
27185	08/04/77	75,000,000	(4)	08/01/77	8.35	08/01/07
27267	12/20/77	50,000,000	(4)	12/01/77	8.625	12/01/07
27442	12/14/78	50,000,000	(4)	12/01/78	9.50	12/01/03
27569	08/22/79	100,000,000	(4)	09/01/79	9.95	09/01/04
27771	09/24/80	66,350,000	(4)	10/01/80	12.95	10/01/00
27772	02/11/81	13,650,000	(4)	03/01/81	15.00	03/01/91
27773	09/24/80	25,000,000	(4)	03/03/81	12.95	10/01/00
27925	08/07/81	25,000,000	(4)	08/11/81	14.875	08/11/88
27925	08/07/81	25,000,000	(4)	09/11/81	14.875	08/11/88
27926	10/01/81	50,000,000	(4)	03/12/82	15.50	03/01/92
27927	03/09/82	30,000,000	(4)	04/01/82	13.50	04/01/12
27928	06/09/82	75,000,000	(4)	06/17/82	15.75	06/01/92
27930						
27929	08/11/82	75,000,000	(4)	08/23/82	16.00	08/01/12
27931						
28255	10/26/82	100,000,000	(4)	11/30/82	12.875	11/01/12
28256						
28353	02/09/83	100,000,000	(4)	03/02/83	12.875	03/01/13
28354						
28456	04/06/83	50,000,000	(4)	05/09/83	11.00	05/01/93
28457	06/15/83	50,000,000	(4)	06/24/83	12.50	06/15/13
28463		20,000,000	(1)	04/09/84	12.00	03/01/89
28464	04/06/83	13,000,000	(4)	04/09/84	12.50	03/01/94
		17,000,000	(4)	04/09/84	12.625	03/01/99
28458						
28468	02/27/84	100,000,000	(4)	05/02/84	14.75	05/01/91
28648						
28788						
28789	06/13/84	100,000,000	(4)	08/08/84	11.25	07/01/14
28790						
28830	09/05/84	56,250,000	(4)	10/30/84	11.375	10/01/14
28831	09/05/84	13,000,000	(1)	10/30/84	9.125	10/01/89
28905	11/20/84	30,000,000	(1)	01/31/85	13.06	02/01/92
		20,000,000	(1)	02/28/85	13.06	02/01/92
28906	12/19/84	20,000,000	(1)	01/31/85	12.73	02/01/92
		10,000,000	(1)	02/20/85	12.73	02/20/92
		20,000,000	(1)	02/28/85	12.68	02/28/92
28646						
28833						
28907	10/30/85	75,000,000	(4)	11/20/85	8.875	11/01/25
29043						
29042						
29044						
29269	03/18/86	150,000,000	(4)	06/16/86	10.00	06/01/16
29270						

<u>Case Number</u>	<u>Date of Order</u>	<u>Face Value of Bonds Authorized and Issued</u>	<u>Amount Outstanding</u>	<u>Date of Issue</u>	<u>Interest Rate %</u>	<u>Date of Maturity</u>
29271	(05/28/86	150,000,000	(1)	08/5/86	8.875	08/01/94
29272						
29308						
29309						
29310	07/23/86	100,000,000	(4)	10/07/86	9.125	10/01/96
29354						
29350						
29476						
29477	(04/08/87	100,000,000	(4)	07/15/87	9.625	07/01/97
29553	(04/27/88	200,000,000	(4)	05/12/88	9.875	05/01/98
29557						
88-M-182						
88-M-183						
88-M-184	11/16/88	100,000,000	(4)	02/21/89	10.25	02/01/99
88-M-254						
88-M-255						
88-M-072						
88-M-073	03/13/89	100,000,000	(4)	04/12/89	10.375	04/01/99
89-M-074						
89-M-075						
89-M-1107						
89-M-1108	05/10/90	150,000,000	150,000,000	06/21/90	9.50	06/01/00
89-M-1109						
89-M-1110						
90-M-688						
90-M-689	12/14/90	150,000,000	150,000,000	03/07/91	9.50	03/01/21
90-M-690						
90-M-691						
90-M-692						
90-M-693	12/11/91	150,000,000	150,000,000	04/14/92	8.75	04/01/22
91-M-0614						
91-M-0640						
92-M-0152						
92-M-0152	09/26/91	45,600,000	45,600,000	10/29/91	6.625	10/01/13
92-M-0152						
92-M-0152						
92-M-0152						
93-M-0110	08/20/92	115,705,000	115,705,000	07/07/94	7.20	07/01/29
93-M-0110						
93-M-0110						
93-M-0110						
93-M-0110	05/14/92	300,000,000	300,000,000	06/10/92	8.00	06/01/04
93-M-0110						
93-M-0110						
93-M-0110						
93-M-0110	165,000,000	165,000,000	165,000,000	07/23/92	8.50	07/01/23
93-M-0110						
93-M-0110						
93-M-0110						
93-M-0110	220,000,000	220,000,000	220,000,000	08/26/92	7.375	08/01/03
93-M-0110						
93-M-0110						
93-M-0110						
93-M-0110	03/31/93	85,000,000	85,000,000	04/07/93	6.875	04/01/03
93-M-0110						
93-M-0110						
93-M-0110						
93-M-0110	210,000,000	210,000,000	210,000,000	04/07/93	7.875	04/01/24
93-M-0110						
93-M-0110						
93-M-0110						
93-M-0110	03/31/93	110,000,000	110,000,000	07/07/93	6.625	07/01/05
93-M-0110						
93-M-0110						
93-M-0110						
93-M-0246	08/05/93	230,000,000	230,000,000	09/15/93	5.875	09/01/02
93-M-0246						
93-M-0246						
93-M-0246						
93-M-0246	210,000,000	210,000,000	210,000,000	03/04/94	6.875	03/01/01
93-M-0246						
93-M-0246						
93-M-0246						
93-M-0981	05/16/94	275,000,000	275,000,000	05/23/95	7.75	05/15/06
93-M-0981						
93-M-0981						
93-M-0981						
97-M-1962	11/01/98	75,000,000	75,000,000	11/01/98	5.15	11/01/25
(B) First Mortgage Bonds issued by Central New York Power Corporation:						
11642	11/15/44	48,000,000	(1)	10/01/44	3.0	10/01/74
(C) First Mortgage Bonds issued by Buffalo Niagara Electric Corporation:						
11748	12/11/45	56,929,000	(1)	11/01/45	2.75	11/01/75
(D) First Mortgage Bonds issued by New York Power and Light Corporation:						
11618	04/10/45	50,000,000	(1)	03/01/45	2.75	03/01/75
(E) First Mortgage Bonds issued by Paul Smith's Electric Light and Power and Railroad Company:						
14515	03/20/50	1,100,000	(1)			

**Financial Condition of  
Niagara Mohawk Power Corporation  
December 31, 1998**

**BONDS, ETC. AUTHORIZED BY THE COMMISSION AND ISSUED/OUTSTANDING BY THE COMPANY (Cont'd)**

<u>Case Number</u>	<u>Date of Order</u>	<u>Face Value of Bonds Authorized and Issued</u>	<u>Amount Outstanding</u>	<u>Date of Issue</u>	<u>Interest Rate %</u>	<u>Date of Maturity</u>
28907 29043 29357 29352 29353 29415 29474 29475 29478 88M-256 88M-257	{ )09/10/86 (12/17/86 { )04/08/87 { )05/03/89	50,000,000 100,000,000 100,000,000	50,000,000 (1) (1) 20,000,000	12/18/86 Various Various Various	Various Various Various Various	12/01/26 Various Various Various
(H) New York State Energy Research And Development Authority (NYSERDA) Unsecured Promissory Note:						
28015	10/14/81	9,600,000	(1)	Various	Various	07/14/82
(I) NYSERDA Tax Exempt Revenue Notes:						
28465 28466 28467 29416 29417 29512 29513 88-M-078 88-M-079	{ )06/29/83 (12/17/86 { )04/08/87 { )09/28/88	56,000,000 25,760,000 93,200,000 69,800,000	(1) 25,760,000 93,200,000 69,800,000	Various 03/26/87 07/16/87 12/28/88	Various Various Various Various	Various 03/01/27 07/01/27 12/01/23
(J) Revolving Credit and Term Loan Agreement: (commercial paper notes)						
27753	07/09/80	50,000,000	(1)	Various	Various	Various
(K) Revolving Credit Agreement - Oswego Facilities Trust:						
27493	09/21/83	100,000,000	(4)	Various	Various	Various
(L) Liability for Nuclear Fuel Disposal Costs:						
28525	03/20/84	120,245,254	120,245,254	03/20/84	Various	1998
(M) Unsecured Promissory Notes:						
28465 28465	05/30/84 05/30/84	20,000,000 30,000,000	(1) (1)	07/31/84 08/27/84	15.02% 15.02%	07/31/90 08/27/90
(N) Swiss Franc Bonds issued by Niagara Mohawk Power Corporation:						
28980	08/14/85	50,000,000	(1)	11/14/85	5.50%	12/15/95
(O) Obligation Under Capital Leases - Noncurrent:						
-	-	-	22,901,394	Various	Various	Various
(P) Revolving Credit and Loan Agreement:						
28875 93-M-0981	09/19/84 05/16/96	25,000,000 200,000,000	(1) (1)	12/31/86 Various	Various Various	Various Various
(Q) NUG Contract Termination Liability						
-	-	-	27,950,000	Various	Various	Various
(R) Senior Debt Facility:						
12733	12/13/95	105,000,000	105,000,000	Various	Various	06/01/00

**Financial Condition of  
Niagara Mohawk Power Corporation  
December 31, 1998**

**BONDS, ETC. AUTHORIZED BY THE COMMISSION AND ISSUED/OUTSTANDING BY THE COMPANY (Cont'd)**

	<u>Case Number</u>	<u>Date of Order</u>	<u>Face Value of Bonds Authorized and Issued</u>	<u>Amount Outstanding</u>	<u>Date of Issue</u>	<u>Interest Rate %</u>	<u>Date of Maturity</u>
(S)	Senior Notes & Discount Notes:						
07/01/1999	97-M-1962	05/20/98	300,000,000	300,000,000	06/30/98	6.50%	
10/01/2000	97-M-1962	05/20/98	450,000,000	450,000,000	06/30/98	7.00%	
10/01/2002	97-M-1962	05/20/98	400,000,000	400,000,000	06/30/98	7.125%	07/01/2001
	97-M-1962	05/20/98	400,000,000	400,000,000	06/30/98	7.25%	
	97-M-1962	05/20/98	400,000,000	400,000,000	06/30/98	7.375%	07/01/2003
	97-M-1962	05/20/98	400,000,000	400,000,000	06/30/98	7.625%	10/01/2005
	97-M-1962	05/20/98	600,000,000	600,000,000	06/30/98	7.75%	
10/01/2008							
07/01/2010	97-M-1962	05/20/98	500,000,000	343,783,820	06/30/98	8.50%	

- (1) Repaid on date of maturity
- (2) Converted into 1,414,368 shares of common stock at \$31.75 per share (cash paid in lieu of 5,056.94 Fractional shares) \$45,066,400.  
Redeemed for cash on 10/01/59 616,100 shares  
Redeemed for cash on 09/19/60 541,700 shares  
Conversion privilege - 02/01/57 - 09/19/60
- (3) Partially redeemed through sinking fund requirements and/or other options under the mortgage Agreements.
- (4) Partial or full repayment prior to maturity



**Exhibit B**





**Niagara Mohawk Power Corporation**

**DESCRIPTION OF MORTGAGES:**

(A) The original Mortgage Trust Indenture of Central New York Power Corporation (name changed to Niagara Mohawk Power Corporation) dated October 1, 1937, and supplemental indentures dated as of the following dates: December 1, 1938, April 15, 1939, July 1, 1940, January 1, 1942, October 1, 1944, June 1, 1945, August 17, 1948, December 31, 1949, January 1, 1950, October 1, 1950, October 19, 1950, December 1, 1951, February 1, 1953, February 20, 1953, October 1, 1953, August 1, 1954, April 25, 1956, May 1, 1956, September 1, 1957, June 1, 1958, March 15, 1960, April 1, 1960, November 1, 1961, December 1, 1964, October 1, 1966, July 15, 1967, August 1, 1967, August 1, 1968, December 1, 1969, February 1, 1971, February 1, 1972, August 1, 1972, December 1, 1973, October 1, 1974, March 1, 1975, August 1, 1975, March 15, 1977, August 1, 1977, December 1, 1977, March 1, 1978, December 1, 1978, September 1, 1979, October 1, 1979, June 15, 1980, September 1, 1980, March 1, 1981, August 1, 1981, March 1, 1982, April 1, 1982, June 1, 1982, August 1, 1982, November 1, 1982, March 1, 1983, May 1, 1983, June 15, 1983, March 1, 1984, May 1, 1984, July 1, 1984, October 1, 1984, January 31, 1985, February 1, 1985, February 15, 1985, November 1, 1985, June 1, 1986, August 1, 1986, October 1, 1986, November 1, 1986, July 1, 1987, May 1, 1988, February 1, 1989, April 1, 1989, October 1, 1989, June 1, 1990, November 1, 1990, March 1, 1991 and October 1, 1991, April 1, 1992, June 1, 1992, July 1, 1992, August 1, 1992, April 1, 1993, July 1, 1993, September 1, 1993, March 1, 1994, July 1, 1994, May 1, 1995 and March 20, 1996 were given by Niagara Mohawk Power Corporation (Central New York Power Corporation prior to January 5, 1950) to the Marine Midland Trust Company of New York (Now Marine Midland Bank) as Trustee. Marine Midland Bank was replaced as Trustee by Bankers Trust Company as of March 19, 1996. The amount of the indebtedness authorized to be secured thereby is unlimited. The amount of indebtedness actually incurred by Niagara Mohawk Power Corporation was \$6,340,555,000 (for Niagara Mohawk Power Corporation and its prior companies, the amount of indebtedness actually incurred was \$6,497,484,000) and the amount presently outstanding is \$2,741,305,000. This mortgage covers all major properties of Niagara Mohawk Power Corporation.

## **AFFIDAVIT OF THOMAS W. WIDENER**

**I, Thomas W. Widener, being duly sworn, depose and state:**

1. I am a Managing Director in the Investment Banking Group at Merrill Lynch & Co. My business address is World Financial Center - North Tower, New York, New York. I have been with Merrill Lynch for 14 years, during which time I have worked primarily with power companies on strategic and financing assignments. I have substantial experience in strategic assignments involving generating assets and the financing of power assets. Since 1992, I have been primarily responsible for Merrill Lynch's worldwide activities involving generating companies and generation assets and have, during that time, advised clients (both buyers and sellers) on assignments involving the acquisition or sale of generating assets in the U.S., Europe, Latin America and Australia. In the U.S., I led the Merrill Lynch teams that advised Commonwealth Edison on its sale of its Kincaid and State Line generating stations (aggregating 1,600 MW), New England Electric System on its \$1.6 billion sale of its non-nuclear generation portfolio (5,100 MW) in the first full scale generation divestiture by a U.S. utility and KeySpan Energy in its acquisition of the Ravenswood generating asset bundle from Consolidated Edison. I am currently advising Enron subsidiary Portland General on its planned sale of its power supply portfolio, including its agreed sale to PP&L of its interest in Colstrip Units 3&4, Commonwealth Edison on its pending sale of its 9,700 MW fossil generation business to Edison Mission, and certain bidders in other U.S. generating asset sale processes.

2. I am providing this affidavit in support of the Joint Petition of Niagara Mohawk Power Corporation ("Niagara Mohawk" or the "Company") and Northbrook Energy, LLC ("Northbrook") for approval of the sale of Niagara Mohawk's real estate associated with the Glen Park Hydroelectric Project ("Glen Park") and the transfer to Northbrook of Niagara Mohawk's rights to acquire the Glen Park project pursuant to an Amended and Restated Asset Purchase, Sale

and Termination Agreement dated March 1, 1999 between Niagara Mohawk and Glen Park Associates Limited Partnership. The purpose of this affidavit is to describe the sale process used by Niagara Mohawk to effect the foregoing transaction and to provide my assessment of the sale price Niagara Mohawk obtained for this asset.

## **I. THE SALE PROCESS**

### **A. Overview of the Glen Park Sale Process**

3. Merrill Lynch, financial advisor to Niagara Mohawk in the sale of its non-nuclear generating assets, was asked by Niagara Mohawk in December, 1998 to advise on the potential sale of Glen Park. Niagara Mohawk's goals in the sale of Glen Park were to: (i) divest itself of completely of its interests and rights related to Glen Park; (ii) maximize the net value for its customers and shareholders; (iii) sell Glen Park in a transaction which would close simultaneously with Niagara Mohawk's purchase of Glen Park from Mercer Companies, Inc.; (iv) sell Glen Park in a transaction whose terms would mirror, as closely as possible, the terms under which Niagara Mohawk would buy the plant from Mercer Companies, Inc.

4. Merrill Lynch and Niagara Mohawk took a targeted approach to selling Glen Park, focused on a select group of likely buyers. The buyer list was designed to include parties who were small enough to be focused on the sale of a single, small (32.65MW) asset, while at the same time have the financial wherewithal and transaction expertise to get a deal closed in a timely manner. We approached three potential buyers (including Northbrook) during the first week in January 1999, each of whom were experienced owners and operators of small hydroelectric facilities in the United States, and in our view, the most likely candidates to successfully bid for and close the Glen Park transaction.

5. Of the three parties initially contacted, all elected to receive confidential information for Glen Park including historical operating and financial data, engineering reports

and other relevant materials. In addition, as news of the Glen Park sale became known in the market, we also fielded inquiries from other interested parties and brought another bidder into the process.

6. After receiving all of the aforementioned information, prospective buyers who remained interested in bidding for the asset were asked to submit non-binding proposals on January 28, 1999. Bidders were asked to supply (i) a proposed purchase price; (ii) a list of additional due diligence or other information needed to submit a definitive proposal; and (iii) a list of any other issues anticipated in moving toward a definitive agreement. Of the four potential bidders who received the confidential information, the original three contacted submitted non-binding proposals on January 28. While Niagara Mohawk had indicated a preference to sell Glen Park without a Transition Power Contract ("TPC") back to Niagara Mohawk, all the indications of interest, in addition to providing a purchase price for the purchase of Glen Park without a TPC as requested, also included a price which assumed a short-term TPC for all of Glen Park's output. Based on this feedback, Niagara Mohawk offered the bidders a choice of purchasing Glen Park with or without a pre-defined TPC through 2003 in the second, binding, round of bidding. Two of the three non-binding bids were virtually identical in purchase price, terms and estimated time required to close the transaction, while the third bid was materially lower in value.

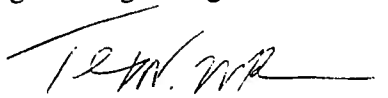
7. In the second round of bidding, we solicited binding proposals from the three parties who had submitted non-binding bids on January 28. In addition, we also admitted one other potential buyer who had joined the process subsequent to the non-binding bid round but indicated verbally that their price was competitive with the two high preliminary round bidders. In the binding bid round, we requested information including: (i) a description of the bidding group; (ii) a price for Glen Park with and without the TPC; (iii) any transition services required from Niagara Mohawk; (iv) source of funds used to complete the transaction; (v) exceptions to

the transaction documents; and, (vi) any due diligence or approvals that would be required as a condition to closing. All four bidders submitted binding bids. Based upon the prices and terms offered by bidders in this round, Northbrook was identified as the bidder which would provide the most value to Niagara Mohawk's customers and shareholders, given that it submitted the highest price with terms comparable to the others bidding. Niagara Mohawk entered into negotiations with Northbrook and arrived at a definitive agreement on June 7, 1999.

8. Northbrook submitted the best bid considering both price and terms for Glen Park in a process that attracted likely purchasers and successfully encouraged their participation. As such, Niagara Mohawk achieved its objective of maximizing the value it received from the sale of this asset.

**B. Conclusion**

9. The auction of Glen Park was conducted via a competitive process consistent with the process approved by the Commission for the sale of Niagara Mohawk's other non-nuclear generating facilities. The result was that Niagara Mohawk reached a definitive agreement with Northbrook who agreed to pay a price that fairly represented the market value for this generating asset given the facts, circumstances and timing of the sale process.



Thomas W. Widener

Sworn to before me this  
9<sup>th</sup> day of July, 1999.



Notary

My Commission expires October 16, 1999

**WILLIAM C. VENS**  
**NOTARY PUBLIC, State of New York**  
No. 31-5050780  
Qualified in New York County  
Certificate Filed in New York County  
Commission Expires October 16, 1999







**NIAGARA MOHAWK POWER CORPORATION**  
**BALANCE SHEET**

Exhibit C

<u>Assets and Other Debits</u>		March 31, 1999	December 31, 1998
101	Electric Plant in Service.....	8,733,757,785	8,689,086,388
101	Gas Plant in Service.....	1,156,448,334	1,140,007,669
104	Electric Plant Leased to Others.....	3,829,650	3,821,103
105	Electric Plant Held for Future Use.....	15,263,349	15,263,349
106	Completed Construction Not Classified - Electric.....	133,349,959	79,147,293
106	Completed Construction Not Classified - Gas.....	60,961,059	36,067,408
107	Construction Work in Progress.....	396,531,689	514,774,724
108	Accumulated Provision for Depreciation of Electric Plant in Service.....	(3,638,135,545)	(3,573,078,486)
108	Accumulated Provision for Depreciation of Gas Plant in Service.....	(354,138,985)	(347,609,203)
109	Accumulated Provision for Depreciation of Electric Plant Leased to Others.....	(1,003,887)	(997,344)
111	Accumulated Provision for Amortization and Depletion Electric Plant in Service.....	(18,363,862)	(17,283,861)
111	Accumulated Provision for Amortization and Depletion of Gas Plant in Service.....	(255,596)	(83,677)
112	Accumulated Provision for Amortization of Electric Plant Leased to Others.....	(104,607)	(104,525)
118.1	Common Utility Plant.....	357,930,110	349,065,968
119.1	Accumulated Provision for Depreciation and Amortization of Common Utility Plant.....	(83,633,207)	(77,430,526)
120	Nuclear Fuel Assemblies.....	627,737,095	604,213,586
120.5	Accumulated Provision for Amortization of Nuclear Fuel Assemblies.....	(546,083,498)	(536,900,781)
<b>Net Utility Plant.....</b>		<b>6,844,089,843</b>	<b>6,877,959,085</b>
121	Non-Utility Property (net of reserve).....	4,675,794	4,443,968
122	Accumulated Provision for Depreciation and Amortization of Non-Utility Property.....	(816,748)	(785,534)
123.1	Investment in Companies.....	311,937,294	468,203,805
124	Other Investments.....	123,676	123,675
128	Other Special Funds.....	318,314,043	302,709,935
<b>Total Other Property and Investments.....</b>		<b>634,234,059</b>	<b>774,695,849</b>
131	Cash.....	12,766,934	35,367,290
133	Dividend Special Deposits.....	100	100
134	Other Special Deposits.....	7,602,510	7,853,952
135	Working Funds.....	2,342,190	8,850,751
136	Temporary Cash Investments.....	312,352,444	111,805,794
141	Notes Receivable.....	223,716	234,615
142	Customer Accounts Receivable.....	(67,250)	3,724,801
143	Other Accounts Receivable.....	31,747,746	168,263,798
144	Accumulated Provision for Uncollectible Accounts - Credit.....	-	-
145	Notes Receivable from Associated Companies.....	199,300,000	100,000,000
146	Accounts Receivable from Associated Companies.....	62,530,014	(43,056,592)
150	Materials and Supplies.....	147,087,403	161,440,523
164.1	Gas Stored Underground.....	9,951,113	37,770,332
165	Prepayments.....	62,830,512	23,618,182
171	Interest and Dividends Receivable.....	806,634	615,653
172	Rents Receivable.....	3,521,732	3,634,576
173	Accrued Utility Revenue.....	-	-
174	Miscellaneous Current and Accrued Assets.....	8,336,236	8,526,536
<b>Total Current and Accrued Assets.....</b>		<b>861,332,034</b>	<b>628,650,311</b>
181	Unamortized Debt Expense.....	150,891,346	159,359,870
182	Extraordinary Property Losses.....	12,153,205	12,443,805
183	Preliminary Survey and Investigation Charges.....	876,185	857,861
184	Clearing Accounts.....	(404,099)	33,570
185	Temporary Facilities.....	(13,447)	(31,144)
186	Miscellaneous Deferred Debits.....	5,424,887,081	5,542,891,713
187	Deferred Losses from Disposal of Utility Plant.....	0	19
188	Investment in Research and Development.....	(595,892)	(851,274)
190	Accumulated Deferred Income Taxes.....	614,985,176	543,505,176
<b>Total Deferred Debits.....</b>		<b>6,202,779,555</b>	<b>6,258,209,596</b>
<b>Total Assets and Other Debits.....</b>		<b>\$14,542,435,491</b>	<b>\$14,539,514,841</b>

NIAGARA MOHAWK POWER CORPORATION  
STATEMENT OF INCOME

Exhibit C

	12 Months Ended March 31, 1999	12 Months Ended December 31, 1998
<u>Utility Operating Income:</u>		
400 Operating Revenues	\$ 3,825,028,122	\$ 3,826,852,423
401 Operating Expenses	2,496,585,895	2,568,409,308
402 Maintenance Expenses	218,640,220	275,182,975
403 Depreciation Expense	356,098,031	351,487,743
404 Amortization of Limited-Term Electric Plant	241,042	249,684
405 Amortization of Other Utility Plant	4,623,015	2,478,502
406 Amortization of Utility Plant Acquisition Adjustments	37,511	39,488
407 Amortization of Property Losses	1,372,785	1,499,013
408.1 Taxes Other Than Income	454,492,058	459,471,841
409.1 Federal Income Taxes	(143,271,814)	(165,724,814)
410.1 Provision for Deferred Income Taxes	543,119,000	330,467,000
411.1 Provision for Deferred Income Taxes - Credit	(468,484,000)	(215,170,000)
411.4 Investment Tax Credit Adjustment	-	-
Total Operating Expenses	3,463,453,743	3,608,390,740
Net Operating Revenues	361,574,379	218,461,683
412 Revenues from Utility Plant Leased to Others	233,558	394,666
413 Expenses of Utility Plant Leased to Others	14,867	16,058
Total Utility Operating Income	361,793,070	218,840,291
<u>Other Income:</u>		
418 Non-Operating Rental Income	(42,629)	(267,650)
418.1 Equity in Earnings of Subsidiary Companies	(16,008,210)	(10,503,031)
419 Interest and Dividend Income	19,546,540	20,145,874
419.1 Allowance for Funds Used During Construction	17,580,008	18,854,136
421 Miscellaneous Non-Operating Income	1,351,969	2,051,775
421.1 Gain on Disposition of Property	96,026	-
Total Other Income	22,523,704	30,281,104
<u>Other Income Deductions:</u>		
421.2 Loss on Disposition of Property	83,051	17,539
425 Miscellaneous Amortization	373,435	459,942
426 Miscellaneous Income Deductions	(21,234,301)	(29,483,787)
Total Other Income Deductions	(20,777,815)	(29,006,306)
<u>Taxes-Other Income and Deductions:</u>		
408.2 Taxes Other Than Income Taxes	2,030,999	2,038,546
409.2 Miscellaneous Income Tax Adjustments	10,807,218	14,814,218
410.2 Provisions for Deferred Income Taxes	-	-
411.2 Provisions for Deferred Income Taxes - Credit	(1,574,000)	(5,493,000)
420 Investment Tax Credit	(338,000)	(7,454,000)
Total Taxes - Other Income and Deductions	10,926,217	3,905,764
Net Other Income and Deductions	32,375,302	55,381,646
<u>Interest Charges:</u>		
427 Interest on Long-Term Debt	429,273,223	370,763,460
428 Amortization of Debt Discount and Expense	33,849,317	29,493,419
429 Amortization of Premium on Debt - Credit	(167,213)	(175,963)
431 Other Interest Expenses	9,043,038	8,389,175
Total Interest Charges	471,998,365	408,470,091
<u>Extraordinary Items:</u>		
435 Extraordinary Deductions	-	-
409.3 Income Taxes, Extraordinary Items	-	-
Total Extraordinary Items	-	-
Net Income	\$ (77,829,993)	\$ (134,248,154)



M. Margaret Fabic  
Attorney at Law

Phone: (315) 428-6593  
FAX: (315) 428-6407

December 16, 1999

*FILES  
C 98-E-1028*

Honorable Debra Renner  
Acting Secretary  
NYS Department of Public Service  
Three Empire State Plaza  
Albany, NY 12223

**Re: Cases 98-E-1028, 94-E-0098 and 94-E-0099  
Divestiture of Glen Park Hydroelectric Facility**

Dear Secretary Renner:

In its September 29, 1999 Order Approving Transfer of Interests in the Glen Park Hydroelectric Site, the Commission required Niagara Mohawk to file its final costs and proceeds associated with the sale, as well as a rationale for its rate making approaches within 60 days after the closing of the divestiture of the facility. Enclosed for filing with the Commission are an original and twenty-five copies of Niagara Mohawk Power Corporation's (Niagara Mohawk, Company) response to that provision of the Order.

Niagara Mohawk notes that the sale of this facility closed on September 30, 1999, making this filing due on November 29, 1999. Thus, this filing is made beyond that period. However, the Company has shared this data with Staff prior to the filing and required the additional time due to the crush of other business currently pending. No party will be prejudiced by this delay. The Company therefore, requests that the Commission accept this filing out of time.

In response to concerns expressed by Staff in reviewing the attachment, the Company has fixed the amortization period and the returns of and on the net regulatory asset associated with this transaction, which are reflected in columns M and U on the attachment. In addition, the Company has agreed to forego any future reconciliation of New York State revenue taxes.

The Company previously attempted to submit this compliance filing by letter dated December 1, 1999. However, the Company withdrew that filing by letter dated December 6, 1999 because it inadvertently included information that requires trade secret protection and did not include one component of the costs incurred in the sale. This filing corrects those errors.

Also enclosed is a request addressed to Records Access Officer Steven R. Blow for confidential, trade secret treatment of this filing. That request includes one complete copy showing the redacted confidential information. The attached copies of this filing have been redacted.

As there appears to be no Active Parties List compiled in this proceeding, the Company is serving this compliance filing on Mr. Golden, who is the only party to have requested a copy of the Company's Section 70 Petition that underlies the Commission's September 29 Order.

Kindly acknowledge receipt and filing of the enclosures by date-stamping the enclosed copy of this letter and returning it in the postage paid envelope provided.

Yours truly,

*M. Margaret Jaffe*

cc w/ enc.: Steven R. Blow, Esq.  
Kevin Lang, Esq.  
Robert Visalli  
Doris Stout  
Richard Golden, Esq.

BY OVERNIGHT COURIER

FINAL - Glen Park



M. CURTIS WHITTAKER  
Attorney at Law

*petition*

# RATH, YOUNG AND PIGNATELLI

Professional Association

ONE CAPITAL PLAZA · P.O. BOX 1500 · CONCORD, NEW HAMPSHIRE 03302-1500  
TELEPHONE (603) 226-2600 · FACSIMILE (603) 226-2700

July 28, 1999

ORIG FILED  
C98-E-1028  
COPIES:  
MS. D. STOUT  
MR. J. D'ALONIA  
MS. J. ASSAF

Honorable Debra Renner  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

Re: Docket No. 98-E-1028; Joint Petition of Niagara Mohawk Power Corporation and Northbrook New York, LLC for Authority Under Public Service Law Section 70 to Transfer Real Estate and Certain Rights to Acquire Generation Assets

Dear Secretary Renner:

The purpose of this letter is to confirm that Northbrook New York, LLC ("Northbrook"), upon acquisition of the Glen Park Hydroelectric Project ("Project"), will own and operate the Project as a "small hydro facility" as defined under PSL §2(2-c), and will not own or operate any other electric generation facilities. Therefore, Northbrook will be excluded from the definition of an "electric corporation" under PSL §2(13), which definition excludes entities that generate electricity "solely from one or more cogeneration, small hydro or alternate energy production facilities...".

Because Northbrook will not constitute an electric corporation under PSL §2(13), it does not anticipate requesting an order from the Commission providing for lightened regulation of the type described in Case 98-E-1670, Carr Street Generating Station, L.P., *Order Providing For Lightened Regulation*, April 23, 1999. In that case, it was determined that a generation facility no longer qualified as a cogeneration facility under PSL §2(2-a), and therefore its owner constituted an electric corporation under PSL §2(13). Northbrook will rely on the exemptions from Public Service Law regulation afforded owners of small hydro facilities in New York.

Sincerely,

M. Curtis Whittaker  
Counsel for Northbrook New York, LLC

Cc: Stephen C. Palmer

COUNSELLORS AT LAW



M. CURTIS WHITTAKER  
Attorney at Law

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July 30, 1999

Hon. David P. Boergers  
Acting Secretary  
Federal Energy Regulatory Commission  
Room 1-A  
888 First St., N.E.  
Washington, D.C. 20426

Re: Northbrook New York, LLC

Dear Mr. Boergers,

Enclosed for filing are an original and six (6) copies of the Petition for Order Accepting Rate Schedule, Waivers and Blanket Approvals, made by Northbrook New York, LLC ("Northbrook"). The Petition requests acceptance of Northbrook Rate Schedule No. 2, under which Northbrook will engage in wholesale electric power and energy transactions as a marketer; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. Attached to the Petition is a form of notice of this filing suitable for publication in the Federal Register, and a copy of the notice of a 3.5" diskette.

Northbrook is not currently subject to any state regulatory commission nor is it selling power to any person pursuant to the proposed rate schedule. Nevertheless, copies have been served on Niagara Mohawk Power Corp. and the New York Public Service Commission. Please file stamp and return to me the extra copy of the petition, using the enclosed pre-paid self addressed envelope.

Sincerely,

M. Curtis Whittaker  
Rath Young and Pignatelli  
Professional Association  
One Capital Plaza  
P.O. Box 1500  
Concord, New Hampshire 03302-1500  
Attorneys for Northbrook New York, LLC

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Northbrook New York, LLC )

Docket No. ER99-

**PETITION OF NORTHBROOK NEW YORK, LLC**  
**FOR ORDER ACCEPTING RATE SCHEDULE, WAIVERS AND BLANKET**  
**APPROVALS**

Northbrook New York, LLC, a Delaware limited liability company  
("Northbrook" or "Seller"), pursuant to Rule 205 of the Federal Energy Regulatory  
Commission (Commission) Rules of Practice and Procedure, 18 C.F.R. §385.205, and 18  
C.F.R. Part 35 (1996), hereby petitions the Commission for: (1) acceptance of Seller's  
rate schedule FERC No. 2, attached hereto as Exhibit A; (2) the granting of certain  
blanket approvals; and (3) waiver of certain Commission regulations under the Federal  
Power Act ("FPA").

I. COMMUNICATIONS

All service and correspondence concerning this Petition should be sent to:

Michael Young  
Senior Attorney  
C/o NRG Energy, Inc.  
1221 Nicollet Mall, Suite 700  
Minneapolis, Minnesota 55403-2445  
612-373-5300  
Fax: 612-373-5399

And

M. Curtis Whittaker, Esquire  
Rath, Young and Pignatelli  
Professional Association  
One Capital Plaza, P.O. Box 1500  
Concord, NH 03302-1500  
603-226-2600  
Fax: 603-226-2700



And

Stephen J. Sinclair  
Northbrook Energy, LLC.  
225 West Wacker Drive  
Chicago, Illinois 60606  
312-553-2136  
Fax: 312-553-2132

## II. INTRODUCTION

Seller is a limited liability company organized under the laws of the State of Delaware with its principal place of business in Jefferson County, New York.

Northbrook is exclusively engaged in the pending acquisition, ownership and operation of the approximately 33 MW (net) Glen Park Hydroelectric Project, FERC Project No. 4796 (the "Facility") located in the Village of Glen Park, Jefferson County, New York.

This filing is necessary for the consummation of transactions described in separate joint filings under Sections 203 and 205 of the Federal Power Act, as well as a joint hydropower license transfer application, made by Glen Park Associates Limited Partnership, Niagara Mohawk Power Corporation, and Northbrook.<sup>1</sup> These transactions will result in the termination of an existing power purchase agreement between Glen Park Associates and Niagara Mohawk Power Corporation ("NIMO" or "Niagara"), and the transfer of the Facility by Glen Park Associates Limited Partnership to Northbrook. These transactions serve the public interest for the reasons set forth in those related filings.

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<sup>1</sup> See, (i) "Glen Park Associates Limited Partnership, Niagara Mohawk Power Corporation, and Northbrook New York, LLC, Project No. 4796; Joint Application for Approval of Transfer of License," filed with the Commission on July 6, 1999; and (ii) "Joint Application of Glen Park Associates Limited Partnership, Niagara Mohawk Power Corporation, and Northbrook New York, LLC Under Sections 203 and 205 of the Federal Power Act for Authorization for the Transfer of Jurisdictional Facilities, and for an Order Accepting for Filing and Approving, Without Suspension or Hearing, Amendments to an Energy

Northbrook New York, LLC is a wholly owned subsidiary of Northbrook Energy, LLC, Chicago, Illinois. Northbrook Energy's sole members are Omega Energy LLC, Chicago, Illinois, and NEO Corporation, Minneapolis, Minnesota. Omega is owned by several individuals, none of which constitutes an electric utility or electric utility holding company. NEO Corporation is a wholly owned subsidiary of NRG Energy, Inc. ("NRG"), which is in turn a wholly owned subsidiary of Northern States Power Company, an electric utility headquartered in Minneapolis, Minnesota. NRG is a developer, owner, and operator of electric generating facilities, each of which is a qualifying facility ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA"), an eligible facility ("EWG") under section 32 of the Public Utility Holding Company Act of 1935 ("PUHCA"), or a facility of a foreign utility company under section 33 of PUHCA. NRG is affiliated with several power marketers with market-based rates that have been accepted by the Commission.<sup>2</sup>

Under a "Transition Power Purchase Agreement" (the "PPA" or "FERC Rate Schedule No. 1") between Northbrook and Niagara Mohawk Power Corporation ("Niagara"), filed with the Commission on July 16, 1999 as part of the 203-205

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*Sales Agreement, an Agreement to Terminate, and a Power Purchase Agreement,"* filed with the Commission on July 16, 1999 (the "203-205 Application").

<sup>2</sup> Front Range Assoc., LLC et al., letter order dated July 15, 1999, Docket No. ER99-2968-000; Rocky Road Power, LLC, et al., 87 FERC ¶61,163 (1999); Somerset Power LLC, letter order dated March 31, 1999, Docket No. ER99-1712-000; Cabrillo Power I LLC, Cabrillo Power II LLC, 86 FERC ¶61,180 (1999); Cadillac Renewable Energy LLC, letter order dated November 4, 1998, Docket No. ER98-4515; Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin), 83 FERC ¶61,293 (1998); Long Beach Generation LLC, 82 FERC ¶61,295 (1998); El Segundo Power, LLC, 82 FERC ¶61,126 (1998); NRG Power Marketing, Inc., 81 FERC ¶61,185 (1997); O'Brien (Parlin) Cogeneration, Inc., 75 FERC ¶61,326 (1996); and Cenergy, Inc., 69 FERC ¶61,316 (1994). See also, Oswego Harbor Power LLC, Docket No. ER99-\_\_\_\_, filed with the Commission on July 19, 1999.

Application, Niagara will purchase available capacity and levels of associated energy from the Facility, constituting all or substantially all of the Facility's electrical output, from the date of Facility acquisition by Northbrook until December 31, 2003.

Electrical output of the Facility sold before December 31, 2003 under arrangements other than the PPA (with the permission of Niagara), and all Facility electrical output after December 31, 2003, will be sold by Northbrook to other wholesale purchasers under Rate Schedule FERC No. 2.

### III. REQUEST FOR ACCEPTANCE OF MARKET-BASED RATES

#### A. Description of Rate Schedules

Northbrook requests acceptance of the attached Rate Schedule FERC No. 2. Rate Schedule FERC No. 2 is a tariff pursuant to which Northbrook may elect to sell power to wholesale purchasers at prices freely negotiated in the future. Purchasers under this tariff may include affiliates of Northbrook, but not affiliates that are traditional utilities with captive retail customers. Rate Schedule FERC No. 2 is for the sale of energy and capacity from the Facility only. Seller does not intend to engage in the business of purchasing power for resale. The rate schedule also includes the reassignment of transmission capacity, in accordance with the conditions set forth by the Commission in Enron Power Marketing, 81 FERC ¶61,277 (1997). Seller also seeks authorization to sell ancillary services under Rate Schedule FERC No. 2 at market-based rates, including operating and spinning reserves, regulation and frequency response services, and energy imbalance services.

#### B. Commission Standards

The Commission allows sales at market-based rates, provided that: (1) the seller and each of its affiliates does not have (or has adequately mitigated) market power in generation and transmission and cannot erect other barriers to entry in the pertinent geographic market; and (2) there is no evidence of affiliate abuse or reciprocal dealing.<sup>3</sup> The Commission will also consider whether there is the potential for affiliate abuse or reciprocal dealing.<sup>4</sup>

As demonstrated below, neither Seller nor any affiliate of Seller has market power (or has adequately mitigated such market power) in generation or transmission in the geographic market that Seller serves; nor can Seller or any affiliate of Seller erect any other barriers to entry into that market. Furthermore, there is no opportunity for affiliate abuse or reciprocal dealing, or for any undue preference in connection with Northbrook's rates from an electric utility that has captive retail customers and that is an affiliate of Northbrook.

The Commission requires a separate study of the ancillary service markets to support a market-based rate filing for ancillary services. Seller relies on the application filed by six of the New York Power Pool (NYPP) members in Docket Nos. ER97-1523-000, ER97-4234-000, and OA97-470-000. The Commission permitted those utility applicants and additional sellers, including affiliates of Seller<sup>5</sup>, to offer ancillary services at market-based rates, based on the study presented with that application. For any ancillary services to purchasers in NEPOOL, Seller relies on the Commission's order in

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<sup>3</sup> See Commonwealth Atlantic Limited Partnership, 51 FERC ¶ 61,368 (1990); Louisville Gas & Electric Company, 62 FERC ¶ 61,016 (1993); Heartland Energy Services, Inc., 68 FERC ¶ 61,223 (1994).

<sup>4</sup> Heartland Energy Services, Inc., 68 FERC ¶ 61,223 (1994).

<sup>5</sup> Rocky Road Power LLC, et al., 87 FERC ¶ 61, 163; Front Range Assoc., LLC et al., Docket No. ER99-2968-000.

New England Power Pool, 85 FERC ¶61,379 (1998), and for sales of ancillary services into the PJM PX, Seller relies on the order in Atlantic City Electric Company, 86 FERC ¶61,248 (1999).

C. Generation Market Power Analysis

The Commission has determined that a market share in generation of less than 20 percent indicates that a market participant does not have market power.<sup>6</sup> As demonstrated below, Seller and its affiliates do not, and will not, have market power in generation in the geographic market in which Seller proposes to participate.

1. Identification of Product Markets in Which Seller Intends to Compete

a. Long-run firm and non-firm power

Seller's Rate Schedule FERC No. 2 permits Seller to sell long-run firm and non-firm power. As a result of its determination in Kansas City Power & Light Co., 67 FERC ¶61,183 (1994), that no wholesale seller has market power in generation from new capacity, the Commission no longer requires market rate applicants to submit a market power analysis for the long-run bulk power markets.<sup>7</sup>

b. Short-run firm and non-firm power

Proposed Rate Schedule FERC No. 2 also permits Seller to sell short-run firm and non-firm power. Accordingly, as analysis is presented below of installed capacity and uncommitted capacity.

2. Identification of Geographic Market in Which Seller Intends to

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<sup>6</sup> See LG&E, 62 FERC at p. 61,146 and cases cited therein. The Commission does not apply a "bright line" test in evaluating market power. Southern Company Services, Inc., 72 FERC ¶61,324 (1995).

<sup>7</sup> Heartland Energy Serv., Inc., 68 FERC ¶61,223 at p. 61,223 n. 9 (1994).

### Compete

The “hub” of the geographic market for sales of power from Seller’s Facility is NIMO, the only electric utility with which Seller is directly interconnected.<sup>8</sup> The “spokes” are all those suppliers that are directly interconnected with NIMO. Because NIMO is interconnected with members of the Pennsylvania-New Jersey-Maryland Interconnection (PJM)<sup>9</sup> and NEPOOL.<sup>10</sup> All the members of those pools are included among NIMO’s potential “first-tier” suppliers.

#### 3. Hub-and-Spoke Analysis

##### a. Seller’s Capacity

Seller’s only generating facilities will be the Facility, which constitutes an approximately 33 MW hydroelectric generating unit. The entire capacity of the Facility is treated as uncommitted for purposes of Seller’s hub-and-spoke analysis. However, Seller will, in fact, be obligated to sell capacity to NIMO under the PPA referred to in Section II above.

##### b. Capacity of Seller’s Affiliates

Facilities directly interconnected with NIMO that are owned by Seller’s affiliates are as follows:

---

<sup>8</sup> In light of the Commission’s decision in Central Hudson accepting the NY ISO’s Tariff and proposed market rules, it might be appropriate to treat the NYPP as the hub. However, because the NY ISO is not yet in operation, a more conservative approach is used.

<sup>9</sup> See, e.g., EME Homer City Generation, L.P., 86 FERC ¶ 61,016 (1999) (permitting the treatment of PJM as a single market in a hub-and-spoke analysis, “[b]ecause an ISO operates the PJM control area under a single system tariff”).

<sup>10</sup> See, e.g., Select Energy, Inc., 85 FERC ¶ 61,290 (1998) (permitting treatment of NEPOOL as a single market in a hub-and-spoke analysis). See, also, New England Power Pool, 85 FERC ¶ 61,379 (1998) (approving market-based rates for ISO-administered markets in energy and six ancillary services in NEPOOL).

<b>Name of Project</b>	<b>Location</b>	<b>Utility to which the facilities are directly interconnected</b>	<b>Installed capacity (MW)</b>
Huntley Station	Buffalo, NY	NIMO	760
Dunkirk Station	Buffalo, NY	NIMO	600
Curtis-Palmer Hydroelectric	Corinth, NY	NIMO	58.3
Albany	Albany, NY	NIMO	1.9
Oswego (pending)	Oswego, NY	NIMO	1700
<b>TOTAL</b>			3120.2

The following additional facilities are owned by affiliates of Seller that are directly interconnected with first-tier utilities in NIMO's market (including all utilities in PJM and NEPOOL):

<b>Name of Project</b>	<b>Location</b>	<b>Utility to which the facilities are directly interconnected</b>	<b>Installed capacity (MW)</b>
Arthur Kill Station	Staten Island, NY	Con Ed of NY	842
Astoria Gas Turbines	Queens, NY	Con Ed of NY	614
Somerset	Somerset, MA	Montaup	299
Newark Cogeneration	Newark, NJ	GPU (JCP&L)	54
Parlin Cogeneration	Parlin, NJ	GPU (JCP&L)	122
Grays Ferry	Gray Ferry, PA	PECO Energy	150
SKB Landfill & SKB Standby	Swedeland, PA	PECO Energy	9
Philadelphia Cogeneration	Philadelphia, PA	Philadelphia Municipal Authority	22
Mazzaro	Imperial, PA	Duquesne Light Co.	0.4

Nashua (Four Hills)	Nashua, NH	PSNH/New England Power	3
Lowell	Lowell, MA	Mass. Elec. Co.	1.6
Taunton	Taunton, MA	Taunton Mun. Light	1.9
Edgeboro	Edgeboro, NJ	PSE&G	10.8
Penobscot	Orrington, ME	Bangor Hydro	22
Maine Energy	Biddleford, ME	Central Maine Power	22
<b>TOTAL</b>			<b>2,103.7</b>

It is not required that this second group of facilities be included in a first-tier market power analysis for NIMO, because each is a wheel away from NIMO. Nevertheless, Seller has included them in its analyses, using 5223.9 MW as the total installed capacity of Seller's affiliates in NIMO's market.

c. Calculation of Market Share

The installed capacity of NIMO as reported in the 1998 Edition of Electrical World Directory of Electric Power Producers was 4,681.9 MW. The divestiture of its Huntley and Dunkirk Stations to affiliates of Seller reduced NIMO's installed capacity to approximately 3,321.9 MW (not considering other possible divestitures), and the divestiture of the additional 1,700 MW of the Oswego Station to Seller will reduce it to 1,621.9 MW. As shown in detail in Attachment B, Table 1, as filed by Northbrook affiliate Oswego Harbor Power LLC on July 19, 1999, the combined installed capacity in NIMO's market is approximately 164,529 MW, including (i) 1,621.9 MW for NIMO, (ii) the capacity of all franchised utilities directly interconnected with NIMO (prior to recent mergers and divestitures), (iii) Seller's capacity, and (iv) the capacity of all affiliates of



Seller owning or acquiring the facilities identified in either of the two tables above (including those one wheel from NIMO). When the Facility's capacity is added to these tables, the combined installed capacity of Seller and its affiliates will be only about 3.3 percent of the total capacity in this geographic market.<sup>11</sup>

D. Market Shares in Relevant Transmission Market

Northbrook neither owns nor operates any transmission assets. Neither Omega Energy nor any affiliate thereof owns or operates any transmission assets. Those NRG affiliates which own or operate transmission assets have filed with the Commission an open access pro forma compliance transmission tariff in Docket No. OA97-606-000.

E. Other Barriers to Entry

Neither Northbrook nor any of its affiliates owns or controls unique land sites or other inputs to electric power generation that could be used to prevent other competitors from entering the pertinent geographic market. Neither Northbrook nor any of its affiliates owns any construction/engineering firms which could engage in the construction of generation or transmission facilities. NRG affiliates own or control certain interstate natural gas fuel supply and transportation facilities, as disclosed in prior filings with the Commission. For the same reasons set forth in previous market-based rate filings by NRG affiliates, and particularly because such assets do not serve the same geographic market, the Commission should find that such assets should not be assumed to create barriers to entry, absent a complaint by a competitor.

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<sup>11</sup> Attachment B, Table 1, also estimates the uncommitted capacity in the market serving NIMO. However, as the Commission has recognized, the installed capacity figures provide more relevant information in markets undergoing divestiture and a transition to retail competition. EME Homer City Generation, L.P., 86 FERC ¶ 61,016 (1999). In calculating the collective market share of Seller and its affiliates, their entire capacity was treated as uncommitted and available, to present the most conservative analysis.

F. Affiliate Abuse

NRG affiliates are the only affiliates of Northbrook that have captive ratepayers. Codes of Conduct between the relevant NRG entities and their affiliates have been reviewed and approved by the Commission in the orders referenced above.

Northbrook provides in Rate Schedule FERC No. 2 that Northbrook may not sell power to, or purchase power from, any affiliates that are traditional utilities with captive retail customers. If Northbrook desires to make such a purchase or sale at a future date, Northbrook will file the proposed transaction with the Commission in a separate rate filing. A Code of Conduct for Northbrook that conforms to the Commission's requirements is attached hereto as Exhibit C. In light of the pending merger between NSP and New Century Enterprises (NCE), "affiliate" is defined for purposes of Seller's rate schedule and its Code of Conduct to include NCE and every subsidiary of NCE, unless and until Seller informs the Commission that the merger between NSP and NCE will not be consummated, as required of Seller's affiliates in Rocky Road, LLC et al., 87 FERC ¶ 61,163.

Seller also agrees to the conditions required of other power generators to protect against the exercise of market power, affiliate abuse, and reciprocal dealing. In particular, Seller agrees to file its umbrella service agreements for short-term (one year or less) power transactions within 30 days of the date of commencement of short-term service, to be followed by quarterly transaction summaries of specific sales. For long-term transactions (longer than one year), Seller agrees to submit the actual individual service agreement for each transaction within 30 days of the date of commencement of service.

Seller also will promptly notify the Commission if: (i) Seller or any of its affiliates acquires ownership or control over additional electric generation or transmission facilities, unique project sites, or other inputs to electric power production that could be used to prevent competitors from entering Niagara's geographic market, or (ii) Seller becomes affiliated with any additional franchised electric utility. In the alternative to notifying the Commission of each acquisition and affiliation promptly after it occurs, Seller may elect to file an amended market analysis every three years. Seller will advise the Commission of any such election.

G. Reporting Requirements

Northbrook agrees to the conditions required of other generators permitted to sell at market-based rates, including the filing requirements set forth in Southern Company Services, Inc., 75 FERC ¶ 61,130 (1996). Northbrook agrees to submit such reports even to state that no transactions occurred during the particular calendar quarter. Northbrook agrees to promptly inform the Commission, through its quarterly transaction reports, of any departure from the facts relied upon by the Commission in its market analysis.

IV. REQUEST FOR PREAPPROVAL AND WAIVERS

Seller seeks the same preapprovals and waivers of Commission rules and filing requirements previously granted to other independent power producers selling at market-based rates. This relief consists of:

- Waiver of Parts 41, 101, and 141 of the Commission's accounting and periodic reporting regulations;
- Waiver of Subparts B and C of Part 35 of the Commission's regulations, except as to sections 35.12(a), 35.13(b), 35.15, and 35.16;

- Waiver of Part 45 of the Commission's regulations, provided that Northbrook files an abbreviated statement with respect to Parts 45 and 46; and
- Blanket approval under Part 34 for all future issuances of securities and assumptions of liability, if there are no objections within 30 days of the Commission's order.

V. REQUESTED EFFECTIVE DATE

Northbrook also requests that Rate Schedule FERC No. 2 be effective upon acquisition by Northbrook of the Facility. In order for the transactions regarding the Facility described in Section I above to be completed on schedule, Northbrook needs the pre-approvals and waivers requested above no later than September 29, 1999.

VI. CONCLUSION

A draft notice of this filing, suitable for publication in the Federal Register, is attached hereto, along with an electronic version of the notice.

WHEREFORE, for the reasons stated above, Northbrook requests that its proposed rate schedule be approved and that its requests for waivers and blanket approvals be granted.

Respectfully submitted,



M. Curtis Whittaker  
Rath Young and Pignatelli  
Professional Association  
One Capital Plaza  
P.O. Box 1500  
Concord, New Hampshire 03302-1500  
Attorneys for Northbrook New York, LLC

Dated: July 30, 1999

## EXHIBIT A

### NORTHBROOK NEW YORK, LLC

#### FERC RATE SCHEDULE NO. 2

1. Availability: Northbrook New York, LLC ("Northbrook") makes electric energy and capacity available under this Rate Schedule to purchasers who have voluntarily negotiated a contract with Northbrook, other than purchasers identified in (5) below. Seller also makes available, to any purchaser except as provided by (5) below, operating reserves, regulation and frequency response, automatic generation control, energy imbalance service, and any other ancillary services that may be specified from time to time by the Federal Energy Regulatory Commission, regional system operators, or other authorized entities.
2. Applicability: This schedule is applicable to sales of energy and/or capacity and ancillary services by Northbrook from generation facilities located in Glen Park, New York, and not otherwise subject to a specific rate schedule of Northbrook.
3. Rates: All sales shall be made at rates established between the purchaser and Northbrook.
4. Other Terms and Conditions. All other terms and conditions shall be established by agreement between the purchaser and Northbrook.
5. Affiliate Sales Prohibited. This schedule is not available for sales of energy or capacity or any ancillary service to any affiliate of Northbrook having a regulated retail service territory and captive retail customers. For purposes of this prohibition, "affiliate" includes, but is not limited to, (a) any company or entity that controls, is controlled by, or is under common control with Seller; and (b) New Century Enterprises (NCE) and any company that is controlled by NCE, unless and until Seller informs the Commission that the pending merger between Northern States Power Company and NCE will not be consummated.
6. Reassignment of Transmission: Seller may reassign transmission capacity that it has reserved for its own use at a price not to exceed the highest of: (1) the original transmission rate paid by Seller; (2) the applicable transmission provider's maximum stated firm transmission rate on file at the time of the transmission reassignment; or (3) Seller's cost of expansion at the time of the sale to the eligible customer. Seller will not recover opportunity costs in connection with reassignments without making a separate filing under section 205 of the Federal Power Act. Except for the price, the terms and conditions under which the reassignment is made shall be the terms and conditions governing the original grant by the transmission provider. Transmission capacity may only be reassigned to a customer eligible to take service under the transmission

provider's open access transmission tariff or other transmission rate schedules. Seller will report the name of the assignee in its quarterly reports.

7. Effective Date: This schedule is effective on and after the effective date of Seller's acquisition of the Glen Park Hydroelectric Station.

EXHIBIT B

NIAGARA MOHAWK GEOGRAPHIC MARKET

**TABLE 1****NIAGARA MOHAWK GEOGRAPHIC MARKET <sup>1/</sup>**

COMPANY	INSTALLED CAPACITY (MW)	SUMMER PEAK LOAD (MW)	UNCOMMITTED CAPACITY (MW)
Niagara Mohawk	1,621.9 <sup>2/</sup>	6,312.0	(4,690.1)
Canadian Niagara	100.0	46.0	54.0
Central Hudson	1,171.2	851.0	320.2
Con Edison	7,224.0 <sup>3/</sup>	8,174.0	(950.0)
Hydro Quebec	31,412.0	17,741.0	13,671.0
NEPOOL <sup>4/</sup> (N.E. Power Serv.) (Northeast Utilities) (Vermont Elec. Pwr)	24,868.0 <sup>5/</sup>	23,491.0	1,377.0

<sup>1/</sup> Unless otherwise noted, data is derived from Electrical World Directory of Electric Power Producers, 1998 (106th Ed.).

<sup>2/</sup> This figure does not include the Dunkirk Station or the Huntley Station that affiliates of Oswego Harbor Power LLC (OHP) have acquired from Niagara Mohawk. This capacity is reflected in the above table in the installed capacity figure for Affiliates of OHP. The figure for Niagara Mohawk also does not include the Oswego Station being acquired by OHP.

<sup>3/</sup> This figure does not include the Arthur Kill Station or the Astoria Gas Turbines that affiliates of OHP have acquired from Consolidated Edison. That capacity is reflected in the above table in the installed capacity figure for Affiliates of OHP.

<sup>4/</sup> See Table 2. This data for NEPOOL is from the Capability Responsibility Adjustment Charges Table, provided in the ISO New England Monthly Preliminary Responsibility Report for January 1998. The Commission relied on this data, in part, in its order conditionally accepting Montaup's filing of its marked-based power sales rates. Montaup Electric Company, 85 FERC ¶ 61,313 (1998).

<sup>5/</sup> This figure does not include 229 MW of installed capacity that an affiliate of OHP, Somerset Power LLC, has acquired from Montaup. That capacity is reflected in the table in the installed capacity figure for Affiliates of OHP.



COMPANY	INSTALLED CAPACITY (MW)	SUMMER PEAK LOAD (MW)	UNCOMMITTED CAPACITY (MW)
NY Power Authority	7,235.0	2,807.0	4,428.0
NYSEG	2,632.9	2,276.0	356.9
Ontario Hydro	28,617.0	21,674.0	6,943.0
PJM <sup>5/</sup> (GPU/Penelec)	53,092.5	40,890.0	12,202.5
Rochester G&E	1,330.6	1,305.0	25.6
<b>TOTAL: 1st Tier Utilities</b>	<b>159,305.1</b>	<b>125,567.0</b>	<b>33,738.1</b>
Oswego Harbor Power (OHP)	1,700.0		1,700.0
Affiliates of OHP	3,523.9		3,523.9
<b>TOTAL: 1st Tier Utilities + OHP and Affiliates</b>	<b>164,529.0</b>		<b>37,262.0</b>
Affiliates of NRG NEPM as a % of 1st Tier Utilities + Affiliates of NRG NEPM	3.2%		14.0%

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<sup>5/</sup> See Table 3.

# TABLE 2

## Market Share Based On Installed Capacity and Load Requirements Applicable to Entities in NEPOOL 1998

UTILITIES	Installed Capacity	% Share	Load & Reserve Requirements	% Share	Uncommitted Capacity	% Share
Ashburnham	6	0.02%	6	0.02%	0.65	0.04%
Bangor Hydro	350	1.40%	335	1.43%	15.23	0.95%
Boston Edison	3,394	13.52%	3,094	13.17%	299.59	18.66%
Boylston	6	0.02%	5	0.02%	0.83	0.05%
Braintree	0	0.00%	0	0.00%	0.00	0.00%
CMP	1,819	7.25%	1,713	7.29%	105.88	6.59%
Chicopee	0	0.00%	0	0.00%	0.00	0.00%
CMEEC	683	2.72%	654	2.78%	29.92	1.86%
Danvers	68	0.27%	58	0.25%	9.38	0.58%
<u>EUA/Montauk</u>	<u>1,037</u>	<u>4.13%</u>	<u>1,009</u>	<u>4.30%</u>	<u>28.23</u>	<u>1.76%</u>
Fitchburg	97	0.39%	96	0.41%	1.77	0.11%
Georgetown	9	0.04%	8	0.04%	0.77	0.05%
Groton	12	0.05%	11	0.05%	0.42	0.03%
Hingham	32	0.13%	28	0.12%	4.33	0.27%
Holden	20	0.08%	19	0.08%	0.96	0.06%
Holyoke	64	0.26%	57	0.24%	6.85	0.43%
Hudson	68	0.27%	61	0.26%	7.07	0.44%
Hull	9	0.04%	9	0.04%	0.80	0.05%
Ipswich	21	0.08%	19	0.08%	1.49	0.09%
Littleton	37	0.15%	38	0.15%	1.29	0.08%
MMWEC	0	0.00%	0	0.00%	0.00	0.00%
Mansfield	45	0.18%	38	0.18%	6.97	0.43%
Marblehead	24	0.10%	21	0.09%	3.09	0.19%
Middleborough	37	0.15%	35	0.15%	1.80	0.11%
Middleton	21	0.08%	19	0.08%	1.94	0.12%
New England Power	5,143	20.49%	5,005	21.30%	137.91	8.59%
Commonwealth	1,186	4.73%	1,061	4.52%	124.84	7.78%
N. Attleboro	47	0.19%	44	0.19%	3.78	0.23%
Northeast Utilities	7,716	30.75%	7,238	30.81%	478.42	29.79%
Enron	0	0.00%	12	0.05%	(11.86)	-0.74%
Pascoag	6	0.03%	7	0.03%	(0.73)	-0.05%
Paxton	5	0.02%	4	0.02%	1.32	0.08%
Peabody	112	0.45%	78	0.33%	33.59	2.09%
Princeton	0	0.00%	0	0.00%	0.00	0.00%
Rowley	7	0.03%	7	0.03%	0.62	0.04%
Reading	0	0.00%	0	0.00%	0.00	0.00%
Shrewsbury	59	0.24%	57	0.24%	2.58	0.16%
S Hadley	26	0.10%	26	0.11%	(0.07)	-0.00%
Sterling	9	0.04%	8	0.04%	0.91	0.06%
Taunton	0	0.00%	0	0.00%	0.00	0.00%
Templeton	13	0.05%	12	0.05%	1.72	0.11%
UI	1,287	5.13%	1,124	4.79%	163.00	10.15%
VELCO	1,251	4.98%	1,160	4.94%	91.15	5.68%
Wakefield	33	0.13%	31	0.13%	2.29	0.14%
Unitil	231	0.92%	220	0.94%	10.44	0.65%
W Boylston	15	0.06%	12	0.05%	2.54	0.16%
Westfield	63	0.25%	58	0.24%	7.44	0.46%
Indeck	27	0.11%	0	0.00%	26.53	1.65%
<b>TOTAL</b>	<b>25,097</b>	<b>100.00%</b>	<b>23,491</b>	<b>100.00%</b>	<b>1,605.76</b>	<b>100.00%</b>

### NOTES:

1. The data above is from the Capability Responsibility Adjustment Charges table, provided in the ISO New England Monthly Preliminary Capability Responsibility Report for January 1998 dated April 16, 1998.
2. Load & Reserve Requirement is equal to each entity's Capability Responsibility as calculated by ISO New England.
3. Installed capacity is the minimum capacity for each entity during the month of January 1998. This amount includes all capacity purchases and sales.

**TABLE 3**

**PJM CAPACITY<sup>1/</sup>**

<b>COMPANY</b>	<b>Installed Capacity (MW)</b>	<b>Summer Peak Load</b>	<b>Uncommitted Capacity</b>
Atlantic City Electric Company	1,817.8	1,774	43.8
Baltimore Gas & Electric	6,367.1	5,487	880.1
Delmarva Power & Light	2,955.7	2,562	393.7
PP&L	8,846	5,486	3,360
PEPCO	2,169.3	2,136	33.3
PSE&G	10,786.7	8,439	2,347.7
GPU	10,216	8,497	1,719
PECO Energy	9,933.9	6,509	3,424.9
<b>TOTAL</b>	<b>53,092.5</b>	<b>40,890</b>	<b>12,202.5</b>

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<sup>1/</sup> Data compiled from Directory of Electric Power Producers, Electrical World 1998 (106th Ed.)

## EXHIBIT C

### CODE OF CONDUCT

1. Northbrook New York, LLC ("Northbrook") will comply with the Standards of Conduct required by the Federal Energy Regulatory Commission, as currently codified at 18 C.F.R. Part 37, as they may be modified from time to time by the Commission.
2. Sales of non-power goods or services by Northbrook to a franchised public utility affiliated with Northbrook will be at a price no higher than the market price for such goods or services.
3. When Northbrook purchases non-power goods or services from a franchised public utility affiliated with Northbrook, Northbrook will pay the higher of cost or the market price.
4. Northbrook will not act as a broker for a public utility affiliated with Northbrook for any goods or services, and will not exchange market information with any public utility affiliated with Northbrook.
5. Northbrook will not sell capacity or energy to, or purchase capacity or energy from, any franchised public utility affiliated with Northbrook, except pursuant to a separate filing with the Commission pursuant to Section 205 of the Federal Power Act.
6. To the maximum extent practicable, Seller's employees will operate separately from the employees of any franchised public utility affiliate.
7. Seller will maintain its books and records separately from those of any franchised public utility affiliate.
8. No employee of Seller will state or imply that favored treatment will be available to customers as a result of its affiliation with a franchised public utility.
9. All market information shared between Seller and any franchised public utility affiliate will be disclosed simultaneously to the public. This includes all market information, including but not limited to any communication concerning power or transmission business, present or future positive or negative, concrete or potential. Shared employees in a support role are not bound by this provision, but they may not serve as an improper conduit of information to non-support personnel.
10. For purposes of this Code, "affiliate" includes, but is not limited to, (a) any company or entity that controls, is controlled by, or is under common control with Seller; and (b) New Century Enterprises (NCE) and any company that is controlled by NCE, unless and until Seller informs the Commission that the pending merger between Northern States Power Company and NCE will not be consummated.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Northbrook New York, LLC )

Docket No. ER99-

**NOTICE OF FILING**

Issued \_\_, 1999

Take notice that on \_\_, 1999, Northbrook New York, LLC, a Delaware limited liability company ("Northbrook"), petitioned the Commission for acceptance of Northbrook New York, LLC Rate Schedule No. FERC No. 2; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Northbrook intends to engage in wholesale electric power and energy transactions as a marketer. Northbrook is exclusively engaged in the acquisition, ownership and operation of an approximately 33 MW (net) hydroelectric facility in Glen Park, New York. Northbrook is owned 50% by Omega Energy, LLC., and 50% by NEO Corporation. NEO Corporation is an indirect subsidiary of Northern States Power Company, a Minnesota electric utility company.

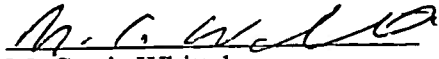
Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). All such petitions for protest should be filed on or before \_\_, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

David P. Boergers  
Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing rate filing of Northbrook New York LLC upon Niagara Mohawk Power Corporation and the New York State Public Service Commission.

Dated at Concord, New Hampshire this 30<sup>th</sup> day of July, 1999.

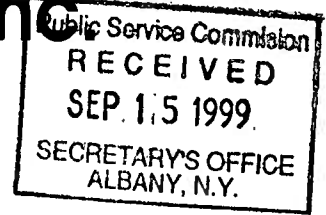


M. Curtis Whittaker  
Rath, Young and Pignatelli  
One Capital Plaza  
Concord, New Hampshire 03302  
603-226-2600



*petition*  
**Mercer Companies, Inc.**

September 15, 1999



The Honorable Debra Renner  
Acting Secretary  
New York Public Service Commission  
Three Empire Plaza  
Albany, New York 12223

*ORIG-FILES*

*C98-E-1028*

*COPIES*

*MS. D. STOUT*

*MR. S. DIALA*

*MS. J. ASSAF*

RE: Case No. 98-E-1028 Section 70 Petition  
Transfer Assets Related to Glen Park Hydroelectric Project

Dear Secretary Renner:

On behalf of Glen Park Associates Limited Partnership ("GPA"), I write in support of Niagara Mohawk Power Corporation's ("Niagara Mohawk") request for expedited Commission consideration for the above-referenced §70 petition.

By Order Approving Termination of Purchased Power Agreement #337 and Associated Lease Between Niagara Mohawk Power Corporation and Glen Park Associates Limited Partnership, in Case 98-E-1028, issued and effective January 26, 1999 (the "January 26 Order"), the Commission approved the Asset Purchase, Sale and Termination Agreement between GPA and Niagara Mohawk (the "Termination Agreement") based on significant anticipated ratepayer savings and consistent with the Commission's goal of achieving a fully competitive generation market as soon as possible.

In its January 26 Order, the Commission noted that the Termination Agreement provides that "Niagara Mohawk will, with GPA's assistance, actively market the plant and then resell it." January 26 Order at 2. The pending §70 petition seeks Commission approval for the culmination of that marketing effort, namely, Niagara Mohawk's sale of the Glen Park Hydroelectric Project assets to Northbrook New York, LLC ("Northbrook").

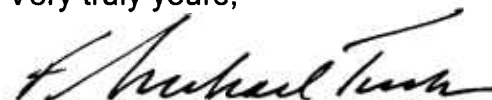
GPA has worked diligently since last October toward simultaneous September 30<sup>th</sup> closings on both the Termination Agreement between GPA and Niagara Mohawk and the Asset Sales Agreement between Niagara Mohawk and Northbrook. Achieving this objective is premised on the Commission's prior approval of the pending §70 petition. Expedited Commission consideration would assure that the transactions could close as scheduled and would assure realization of the associated ratepayer benefits.

It is particularly important to GPA that the transaction close by September 30<sup>th</sup>. This transaction, which included the sale of Niagara's leasehold interest to a third-party, was approved by the Commission last January. We were also required to obtain, and have received, approvals from the Federal Energy Regulatory Commission, GPA's lender and limited partners, as well as the local taxing jurisdictions.

The Asset Purchase Sale and Termination Agreement between GPA and Niagara Mohawk, as well as a number of these third-party approvals, are contingent upon a closing date of September 30<sup>th</sup>. A delay could result in having to renegotiate the terms of certain agreements and thereby further delay completion of this transaction.

Thank you very much for your consideration.

Very truly yours,



F. Michael Tucker

cc: Doris Stout - NYSDPS  
Kevin Lang, Esq. - NYSDPS  
Michael J. Kelleher - Niagara Mohawk

0718mam



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July 12, 1999

## BY FEDERAL EXPRESS

Honorable Debra Renner  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

RE: Joint Petition of Niagara Mohawk Power Corporation and Northbrook  
New York, LLC For Authority Under Public Service Law Section 70  
To Transfer Real Estate and Certain Rights to Acquire Generation Assets

Dear Secretary Renner:

Enclosed for filing are an original and six (6) copies of the above referenced Joint Petition to Transfer Real Estate and Rights to Acquire Certain Generation Assets of Niagara Mohawk Power Corporation and Northbrook New York, LLC ("Joint Petition"). Also enclosed are three additional copies of the Joint Petition and a self addressed envelope. I would appreciate it if you would date-stamp and return the additional copies of the Joint Petition in the envelope provided.

This original is being filed with facsimile copies of the Verifications and the signature pages of certain of the supporting affidavits. The original Verification and signature pages will be forward to you as soon as they are received in this office.

Thank you for your assistance. If you have any questions regarding this filing, please contact me at (202) 424-7576.

Sincerely,

  
Stephen C. Palmer

cc: M. Curtis Whittaker, Esq.

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NEW YORK  
NY 10022-9998

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

-----  
Joint Petition of Niagara Mohawk Power  
Corporation and Northbrook New York, LLC  
For Authority Under Public Service Law  
Section 70 To Transfer Real Estate and Certain  
Rights to Acquire Generation Assets  
-----

Case 98-E-1028

**JOINT PETITION TO TRANSFER REAL ESTATE AND RIGHTS TO ACQUIRE  
CERTAIN GENERATION ASSETS TO NORTHBROOK NEW YORK, LLC**

For Niagara Mohawk Power Corporation:

M. Margaret Fabric, Esq.  
Niagara Mohawk Power Corporation  
300 Erie Boulevard West  
Syracuse, New York 13202

Stephen C. Palmer, Esq.  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5116

For Northbrook New York, LLC:

M. Curtis Whittaker  
Rath Young and Pignatelli  
One Capital Plaza  
P.O. Box 1500  
Concord, NH 03302

Dated: July 12, 1999

**AFFIDAVIT OF STEPHEN J. SINCLAIR**

I, Stephen J. Sinclair, being duly sworn, do hereby state as follows:


1. I am a Managing Member of Omega Energy L.L.C., a Delaware limited liability company and a Managing Member of Northbrook Energy, L.L.C. ("Northbrook Energy"). Northbrook Energy is a Delaware limited liability company with headquarters at 225 West Wacker, Suite 2330, Chicago, Illinois, 2330. Northbrook Energy is the sole member of Northbrook New York, L.L.C., a Delaware limited liability company ("NNY"). Northbrook Energy negotiated and signed the Asset Sales Agreement ("ASA") with Niagara Mohawk Power Corporation for the purchase of the Glen Park Hydroelectric Project, FERC Project No. 4796 (the "Project"). Before closing of the purchase, Northbrook Energy may determine to assign its interests in NNY directly to the current members of Northbrook Energy, or affiliates of such members. These members are Omega Energy, L.L.C., Chicago, Illinois, and NEO Corporation, Minneapolis, Minnesota. Omega Energy is owned by a group of individuals, including myself. NEO Corporation is a wholly owned subsidiary of NRG Energy, Inc. ("NRG"), which in turn is a wholly owned subsidiary of Northern States Power Company ("NSP"). NRG and NSP are headquartered in Minneapolis, Minnesota. I am authorized and do hereby make the following representations on behalf of NNY and Northbrook Energy.
2. Northbrook Energy is not a publicly traded entity. Through direct, wholly owed project subsidiaries, Northbrook Energy owns and operates thirteen (13) hydropower projects licensed or exempted by the Federal Energy Regulatory Commission in the States of Virginia, North Carolina, Michigan, Colorado, and California. Northbrook Energy and its subsidiaries operate and maintain all of the hydropower facilities owed by them. Thus, the owners of NNY have substantial experience in the ownership, operation and maintenance of hydropower facilities.
3. Northbrook Energy and NNY each have all requisite power and authority to carry on the businesses to be conducted by them, and NNY, through Northbrook Energy and its members and affiliates, has access to sufficient funds and financing sources to complete the acquisition of the Project. NNY will have no assets or business interests other than the ownership and operation of the Project.

07/12/99 MON 13:11 FAX 1 312 553 2132

STS HYDROPOWER

003

I have reviewed the foregoing and state, upon my personal knowledge, that it is true and correct.

  
Stephen J. Sinclair  
Date: July 12, 1999

SUBSCRIBED AND SWORN TO BEFORE ME THIS 12<sup>th</sup> DAY OF JULY, 1999:

  
Notary

My Commission Expires:



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### **EXHIBITS**

Exhibit A	-	Information Regarding Bond Issues and Creditors
Exhibit B	-	Information Regarding Mortgages
Exhibit C	-	Income Statements and Balance Sheets
Exhibit D	-	Information Regarding Original Cost, Depreciation, Etc.
Exhibit E	-	Estimated Operating Revenues, Expenses, and Taxes
Exhibit F	-	Balance Sheet of Northbrook New York, LLC
Exhibit G	-	Environmental Assessment Form

### **SUPPORTING AFFIDAVITS**

Affidavit of Michael J. Kelleher	(Tab 1)
Affidavit of Timothy E. McClive	(Tab 2)
Affidavit of Scott D. Leuthauser	(Tab 3)
Affidavit of Thomas W. Widener	(Tab 4)
Affidavit of Stephen J. Sinclair	(Tab 5)

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

-----  
Joint Petition of Niagara Mohawk Power  
Corporation and Northbrook New York, LLC  
For Authority Under Public Service Law  
Section 70 To Transfer Real Estate and Certain  
Rights to Acquire Generation Assets  
-----

Case 98-E-1028

**JOINT PETITION TO TRANSFER REAL ESTATE AND RIGHTS TO ACQUIRE  
CERTAIN GENERATION ASSETS TO NORTHBROOK NEW YORK, LLC**

**I. INTRODUCTION**

Niagara Mohawk Power Corporation ("Niagara Mohawk") and Northbrook New York, LLC ("Northbrook" or "Purchaser")(collectively "Petitioners") hereby submit this joint petition (the "Petition") requesting authorization pursuant to Section 70 of the Public Service Law ("PSL") to: (i) transfer real estate associated with the Glen Park Hydroelectric Project (FERC Project No. 4796) to Purchaser, and (ii) to transfer to Purchaser Niagara Mohawk's rights to acquire the Glen Park project pursuant to an Amended and Restated Asset Purchase, Sale and Termination Agreement dated March 1, 1999 between Niagara Mohawk Power Corporation and Glen Park Associates Limited Partnership (the "GPA Termination Agreement"). The proposed transaction between Petitioners is set forth in the Asset Sales Agreement By And Between Northbrook Energy, LLC and Niagara Mohawk Power Corporation, dated as of June 7, 1999 (the "Sales Agreement"). Purchaser has agreed to pay \$22,500,000 (subject to certain adjustments) for these assets.

Petitioners seek this Commission's consent to the transfer of the real estate owned by Niagara Mohawk associated with the Glen Park project and Niagara Mohawk's contractual right to acquire

that project. Petitioners also seek approval of the Sales Agreement and the Transition Power Agreement to be executed by the Petitioners in connection with the Sales Agreement.

Petitioners respectfully submit, as discussed below, that the proposed transfer of these assets to Purchaser is in the public interest, as are the Sales Agreement and the ancillary agreements to be executed by the Petitioners. Indeed, the proposed transfer effectuates terms of the Termination Agreement between Niagara Mohawk and Glen Park Associates (the "GPA Termination Agreement") which this Commission has approved and found furthers its competition policy objectives. See Niagara Mohawk Power Corporation, Case 98-E-1028, Order Approving Termination of Purchased Power Agreement #337 and Associated Lease Between Niagara Mohawk Power Corporation and Glen Park Associates Limited Partnership (Issued and Effective January 26, 1999).

Petitioners seek to close the proposed transaction by September 30, 1999. Accordingly, Petitioners respectfully request that the Commission act expeditiously, but no later than its September 22, 1999 public session, on this Joint Petition. Approvals from other governmental agencies must also be obtained as a condition to closing, and the parties are moving promptly to obtain those approvals.

This Joint Petition is submitted together with affidavits by the following individuals: Michael J. Kelleher, Scott D. Leuthauser, Timothy E. McClive, Thomas W. Widener and Stephen J. Sinclair. The information required to be provided under Parts 31 and 18 of the Commission's Rules and Regulations, 16 NYCRR Parts 31 and 18, is set forth in Section VII of this Petition. An Environmental Assessment Form is provided as Exhibit G.

## **II. DESCRIPTION OF THE PARTIES**

Niagara Mohawk is engaged principally in the business of production, purchase, transmission, distribution, and sale of electricity, and the purchase, distribution, sale, and transportation of natural gas in New York State.<sup>1</sup> The Company is regulated by the New York Public Service Commission and the Federal New York Regulatory Commission. Niagara Mohawk's electric generation assets currently include hydroelectric, nuclear, and fossil facilities with total generating capacity of approximately 3940 megawatts.<sup>2</sup> The Company's transmission and distribution systems are comprised of 952 substations with a rated transformer capacity of approximately 28,500,000 kilovolt amperes, approximately 8,000 circuit miles of overhead transmission lines, 1,100 cable miles of underground transmission cable, 113,100 miles of overhead distribution lines and 5,800 cable miles of underground distribution cable. The Company provides electric service to the public in an area of New York State having a total population of about 3,500,000, including the cities of Buffalo, Syracuse, Albany, Utica, Schenectady, Niagara Falls, Watertown, and Troy. In addition, approximately 150 independent power producers ("IPPs") representing approximately 2400 megawatts of generating capacity are located within Niagara

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<sup>1</sup> The Commission has authorized Niagara Mohawk's corporate restructuring pursuant to which Niagara Mohawk will become a wholly-owned subsidiary of a new holding company – Niagara Mohawk Holdings, Inc. See Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Electric Service, Case No.94-E-0098, 94-E-0099, Order Concerning Compliance Filing Regarding Holding Company (Sept. 30, 1998) ("Proceeding on Commission Motion").

<sup>2</sup> On February 8, 1999, Niagara Mohawk and Erie Boulevard Hydropower, L.P. filed a Joint Petition with this Commission for authority for Niagara Mohawk to transfer to Erie Boulevard Hydropower 661 MW of hydroelectric generating assets currently owned by Niagara Mohawk. Although this Commission has approved this transfer, certain federal regulatory approvals required for closing remain pending. On June 11, 1999, Niagara Mohawk and NRG closed on Niagara Mohawk's sale of the Huntley and Dunkirk generating stations to NRG, reducing Niagara Mohawk's generating capacity by approximately 1,360 MW.



Mohawk's service territory and are interconnected with Niagara Mohawk's delivery system. The Company distributes or transports natural gas in areas of central, northern and eastern New York having a total population of about 1,700,000, nearly all of it within the Company's electric service area.

Northbrook New York, LLC is a wholly owned subsidiary of Northbrook Energy, LLC, Chicago, Illinois. Northbrook New York, through direct, wholly owned project subsidiaries, owns and operates thirteen (13) hydroelectric projects licensed or exempted by the Federal New York Regulatory Commission in the States of Virginia, North Carolina, Michigan, Colorado, and California. Thus, the owners of Northbrook New York have substantial experience in the ownership, operation and maintenance of hydropower facilities. Northbrook New York's sole members are Omega New York LLC, Chicago, Illinois and NEO Corporation, Minneapolis, Minnesota. NEO Corporation is a wholly owned subsidiary of NRG New York, Inc., which is in turn a wholly owned subsidiary of Northern States Power Company, a large electric utility headquartered in Minneapolis, Minnesota. Northbrook New York may determine to assign its ownership interests in Northbrook New York to its members (or affiliates of its members) at any time, and Northbrook requests that the Commission approve the transactions set forth herein so long as at the time of closing, Northbrook New York is owned by Northbrook New York, or by the current members of Northbrook New York or affiliates of such members.

### **III. DESCRIPTION OF THE SALES TRANSACTION**

Petitioners have reached the following agreements regarding the purchase and sale of the Glen Park Assets.

**A. The Assets to be Transferred**

The assets proposed to be transfer consist of: (i) the real estate owned by Niagara Mohawk that is associated with the 32.65 MW Glen Park Hydroelectric Project located on the Black River in Jefferson; and (ii) Niagara Mohawk's rights to acquire the Glen Park Hydroelectric Project. A detailed description of the assets to be transferred appears in Exhibit MJK-1 to the affidavit of Michael J. Kelleher, which is submitted herewith.

**B. The Asset Sales and Ancillary Agreements**

The terms of sale relating to the real estate associated with and the rights to acquire the Glen Park project are set forth in the Sales Agreement, which is filed herewith as Exhibit MJK-1 to the affidavit of Michael J. Kelleher.

**1. Asset Sales Agreement**

The Sales Agreement sets forth the terms of the sale of the real estate owned by Niagara Mohawk and associated with the Glen Park project and Niagara Mohawk's rights to acquire that project. The Sales Agreement memorializes the sales of these assets for a consideration of \$22.5 million. It contains representations, warranties, and covenants, as well as actions required, including obtaining regulatory approvals, that the parties must complete in order to proceed to closing. The Sales Agreement provides that Petitioners must close the proposed transaction not later than September 30, 1999.<sup>3</sup>

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<sup>3</sup> In fact, because of commitments to lenders associated with the sale of the project, petitioners must close the transaction by September 30, 1999.

## **2. The Interconnection Agreement**

The Interconnection Agreement is substantially in the form of Niagara Mohawk's pro forma interconnection agreements and will be provided to the Commission where completed.

## **3. The Transition Power Agreement**

The Transition Power Agreement ("TPA") allows Niagara Mohawk to purchase electricity at fixed prices from the Glen Park project from the Sales Agreement closing date until September of 2003. This agreement is intended to assist Niagara Mohawk in fulfilling its "provider of last resort" obligation under the *PowerChoice* Settlement by acting as a flexible source of electric power and a hedge against rising power costs. In particular, the TPA provides Niagara Mohawk with a source of installed capacity to help meet its obligations to the New York Power Pool and the New York Independent System Operator. At the same time, the TPA will provide the Purchaser with a stable market price for the output of Glen Park project for an interim period. This Agreement is described in further detail in the Affidavit of Scott D. Leuthauser.

## **C. Application of the Sales Proceeds**

After distribution of the "auction incentive,"<sup>4</sup> Niagara Mohawk intends to apply 100% of the net proceeds of the sale to reducing stranded costs. In this case, however, Niagara Mohawk's

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<sup>4</sup> The Commission has approved an incentive mechanism for Niagara Mohawk and Glen Park Associates in order to maximize the net proceeds for ratepayers from the sale of the Glen Park Project. That mechanism is set at 10% of the first \$2 million (or portion thereof) of the resale price in excess of \$22,400,000 and 20% of any amounts in excess of the first \$2 million. See Niagara Mohawk Power Corporation, Case 98-E-1028, Order Approving Termination of Purchased Power Agreement #337 and Associated Lease Between Niagara Mohawk Power Corporation and Glen Park Associates Limited Partnership (Issued and Effective January 26, 1999). Thus, with a purchase price set at \$24.5 million, the auction incentive is \$10,000.

stranded cost determination will be based on the assumed selling price of the Glen Park project (\$22.4 million), rather than net book cost. From this net remainder, taxes and auction costs will be deducted to determine net proceeds available to write-down stranded costs. Further, NYS revenue taxes will be trued-up to actual State taxes paid.

#### **IV. THE SALES PROCESS**

Pursuant to the Termination Agreement approved by the Commission, Niagara Mohawk agreed actively to seek to resell the Glen Park project. To do so, Niagara Mohawk with the assistance of Merrill Lynch identified a short-list of potential bidders believed to be most likely to be interested in acquiring the Glen Park project based on the knowledge gained during the auction of its hydroelectric generating assets. Niagara Mohawk approached these entities, inquired of their interest in bidding for the Glen Park project and solicited indicative bids (subject only to due diligence). Upon review of the indicative bids, Northbrook was identified with the highest indicative bid. Niagara Mohawk then engaged in negotiations with Northbrook which culminated in a final, definitive Sales Agreement dated June 7, 1999 pursuant to which Northbrook agreed to purchase and Niagara Mohawk agreed to sell the real estate associated with and the right to acquire the Glen Park project for \$24.5 million.

#### **V. THE ASSET SALE IS IN THE PUBLIC INTEREST**

First, the transfer by Niagara Mohawk the real estate associated with the Glen Park project and its right to acquire that project will in no way inhibit or impact the conduct of Niagara Mohawk's transmission and distribution businesses. The Commission will retain jurisdiction over Niagara Mohawk pursuant to the Public Service Law. In addition, the proposed transaction ensures that ratepayers will obtain the savings projected by the Commission in its approval of the Termination

Agreement. See Niagara Mohawk Power Corporation, Case 98-E-1028, Order Approving Termination of Purchased Power Agreement #337 and Associated Lease Between Niagara Mohawk Power Corporation and Glen Park Associates Limited Partnership (Issued and Effective January 26, 1999).

Second, the sale by Niagara Mohawk of its real estate associated with and its right to acquire the Glen Park project furthers Niagara Mohawk's commitment to divest itself of all its electric generation assets as well as this Commission's policy to have electric generation assets in New York State disaggregated from transmission and distribution assets.

Third, the proposed transaction raises no issue of vertical or horizontal market power, and should serve to enhance competition by deconcentrating ownership in New York's electric power generation market. See Affidavit of Timothy E. McClive.

Finally, the Affidavit of Stephen J. Sinclair describes Northbrook's qualifications to own and operate the Glen Park project.

## **VII. REQUIREMENTS UNDER 16 NYCRR PARTS 31 AND 18**

The requirements of a petition pursuant to Public Service Law Section 70 are set forth in Parts 31 and 18 of the Commission's regulations (16 NYCRR §§ 31, 18). In accordance with these provisions, Petitioners provide the following:

Section 31.1(a); Sections 18.1 (f) - (i) and (p). Section 31.1(a) requires that the Section 70 filing contain the information called for in 16 NYCRR § 18.1 (f) - (i) and (p). This information is provided as follows:

Section 18.1(f). Bonds, notes, or other evidences of indebtedness. The information required by this section is set forth in Exhibit A.

Section 18.1(g). Brief description of mortgages on the property transferred. The information required by this section is set forth in Exhibit B.

Section 18.1(h). Information regarding bond issues. The information required by this section is set forth in Exhibit A.

Section 18.1(i). Creditor information for each affiliated interest. The information required by this section is set forth in Exhibit A.

Section 18.1(p). Detailed income statement and balance sheets. The information required by this section is set forth in Exhibit C.

Section 31.1(b). This Section requires a general description of the property to be transferred. Such a general description is provided in Section III. A., above. A complete description of these facilities is provided in Exhibit MJK-1 of the Affidavit of Michael J. Kelleher.

Section 31.1(c). This Section requires a list of the franchises, consents, and rights to be transferred in connection with the transaction. Niagara Mohawk's franchised operations will not be transferred or otherwise affected by the proposed transaction. All written contracts, licenses, agreements, and property interests to be transferred are identified in the Sales Agreement provided as Exhibit MJK-1 of the Affidavit of Michael J. Kelleher.

Section 31.1(d). This Section requires a certified copy of any municipal approvals required to transfer or lease the facilities to be transferred. Upon information and belief, no such consents or approvals of any municipality are required in order to proceed with the transfer to Purchaser.

Section 31.1(e). This Section requires that a copy of the agreement for which Petitioners seek Commission approval be provided. The Asset Sales Agreement By And Between Northbrook New York, LLC and Niagara Mohawk Power Corporation, dated June 7, 1999, together with

attached exhibits, is provided as Exhibit MJK-1 of the affidavit of Michael J. Kelleher.

Sections 31.1(f) and (g). These Sections require an inventory of the property to be transferred, showing its original cost, classified according to the accounts prescribed by the Commission. The information required by these Sections is set forth in Exhibit D.

Section 31.1(h). This Section requires an estimate of the accrued depreciation in the property. The information required by this Section is set forth in Exhibit D.

Section 31.1(i). This Section requires a statement of the cost of the property upon the balance sheet of the transferor. The information required by this Section is set forth in Exhibit D.

Section 31.1(j). This Section requires the depreciation and amortization reserves applicable to said property. The information required by this Section is set forth in Exhibit D.

Section 31.1(k). This Section requires a statement of contributions toward construction of said property. Niagara Mohawk's records reflect no such contributions toward construction of any of the facilities to be transferred.

Section 31.1(l). This Section requires a statement of operating revenues, expenses, and taxes for the previous three calendar years relating to the property to be transferred. It also requires the latest available balance sheets for the transferor and transferee. The required estimate of operating revenues, expenses, and taxes is provided in Exhibit E. The latest available balance sheet of the transferor is provided in Exhibit C. Northbrook New York, LLC currently has no balance sheet as it was only recently formed and, accordingly, seeks waiver of this requirement.

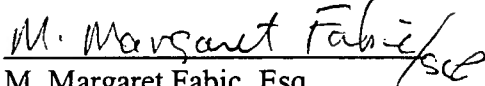
## **VIII. FINDINGS**

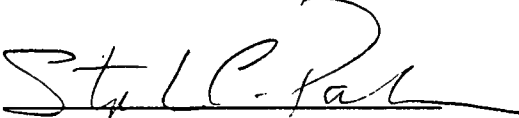
In order to proceed to Closing by September 30, 1999 as is necessary to preserve the ratepayer benefits embodied in the proposed transaction between Niagara Mohawk and Glen Park

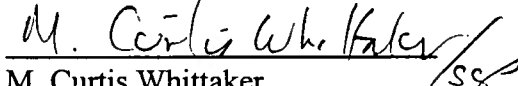
Associates, Petitioners respectfully request that the Commission make the following findings based upon its review of this Joint Petition, the associated affidavits and exhibits, and the exhibit responding to the Commission's rules and regulations relating to a transfer pursuant to Section 70 of the Public Service Law:

- (1) The transfers are approved as in the public interest pursuant to Section 70 of the Public Service Law;
- (2) Purchaser is in compliance with the Commission's vertical and horizontal market power guidelines such that the transfers do not present an issue with respect to vertical or horizontal market power;
- (3) The Asset Sales Agreement and ancillary agreements are approved; and
- (4) Niagara Mohawk is authorized to transfer the subject assets pursuant to the terms of the Asset Sales Agreement.

Respectfully submitted,

  
M. Margaret Fabric, Esq.  
Niagara Mohawk Power Corporation  
300 Erie Boulevard West  
Syracuse, New York  
(315) 428-6187

  
Stephen C. Palmer, Esq.  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
(202) 424-7500

  
M. Curtis Whittaker  
Rath Young and Pignatelli  
One Capital Plaza  
P.O. Box 1500  
Concord, NH 03302  
(603) 226-2600

Dated: July 12, 1999



## VERIFICATION

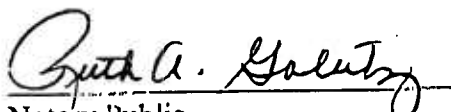
STATE OF NEW YORK     )  
COUNTY OF ONONDAGA ) ss:

Michael J. Kellcher, being duly sworn, deposes and says: that he is the Vice President of Niagara Mohawk Power Corporation, one of the Petitioners named above; that he has read the foregoing Joint Petition and knows the contents thereof; and that the same is true to the best of his knowledge, information and belief.



Michael J. Kellcher  
Vice President, Financial Planning  
Niagara Mohawk Power Corporation

Sworn to before me this 12<sup>th</sup> day  
of July, 1999

  
Notary Public

My Commission expires 9-30-00

RUTH A. GALUTZ  
Notary Public in the State of New York  
Qualified in Onondaga County No. 6451396  
My Commission Expires 9/30/00

07/12/99 MON 13:11 FAX 1 312 553 2132

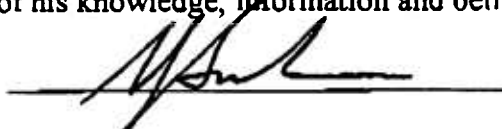
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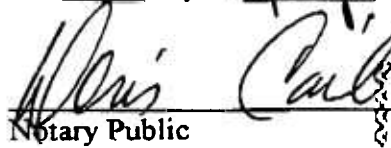
## VERIFICATION

STATE OF )  
COUNTY OF ) ss:

STEPHEN J. SINCLAIR, being duly sworn, deposes and says: that he is the  
~~MANAGER OF NORTH PARK ENERGY LLC~~ <sup>AND</sup> ~~MANAGER OF NORTH PARK ENERGY NEW YORK LLC~~, one of the Petitioners  
named above; that he has read the foregoing Joint Petition and knows the contents  
thereof, and that the same is true to the best of his knowledge, information and belief.



Sworn to before me  
this 12<sup>th</sup> day of July, 1999.

  
Notary Public

~~~~~  
"OFFICIAL SEAL"  
Doris Call  
Notary Public, State of Illinois  
My Commission Expires 6/12/00  
~~~~~

My Commission Expires: \_\_\_\_\_





**ENVIRONMENTAL ASSESSMENT**  
**FORM**

**Niagara Mohawk Power Corporation**

**Glen Park Hydro Facility**

**Section 70 Transfer**

**July 2, 1999**

**Environmental Assessment Form  
(Glen Park Hydro Facility)**

**Part I**

1. **Applicant**

Niagara Mohawk Power Corporation

300 Erie Boulevard West

Syracuse, New York 13202

2. **Name of Action**

Section 70 approval of transfer of Glen Park Hydro Facility

3. **Location**

Glen Park Hydro Facility

Watertown, New York

4. **Description of Action**

In October of 1998, Niagara Mohawk Power Corporation ("NMPC") petitioned under the Public Service Law of the State of New York for approval of the newly amended Energy Sales Agreement and the newly amended Lease Agreement, which have been further revised to result

in termination of both after approval by the Commission. Under the terms of the petition, NMPC would purchase Glen Park's 32.65 megawatt hydro electric facility located in the Black River in Watertown, New York. The parties also agreed to terminate the existing Lease and Energy Sales Agreement, both dated August 15, 1984, on June 30, 1999. NMPC also acknowledged its intent to resell the facility to a third party contemporaneous with the purchase of the plant from Glen Park or as early as reasonably possible following the closing date. As part of such petition, NMPC filed an Environmental Assessment Form covering the environmental impacts dated October 15, 1998 (attached hereto as Exhibit A).

By Asset Purchase Agreement dated June 7, 1999, NMPC has entered into a contractual agreement to transfer the Glen Park Hydro Facility to Northbrook Energy, LLC. This EAF is intended to cover the actual transfer of the Glen Park Hydro Facility.

## Part II - Evaluation of Environmental Impacts (Part 2 of the EAF)

The environmental impacts of the divestiture of the Glen Park Hydro Facility were previously covered in the Environmental Assessment Form filed by Niagara Mohawk Power Corporation on October 15, 1998. Since such filing, no changes have occurred above and beyond what was previously covered. Therefore, no further environmental review under SEQRA is necessary.

### Part III - Significant Environmental Impacts

It is NMPC's recommendation that no further environmental review is necessary with respect to the divestiture of the Glen Park Hydro Facility. No significant environmental impact was identified which would result from the subject transfer.



**EXHIBIT A**



William J. Holzhauer  
Chief Counsel - Environmental Affairs

Phone: (315) 428-6341  
FAX: (315) 428-6407  
E-mail: holzhauerw@nimo.com

October 15, 1998

**VIA OVERNIGHT COURIER**

John C. Crary, Secretary  
New York State Department of  
Public Service  
Three Empire State Plaza  
Albany, New York 12223

FILE COPY

RE: Matter of Approval of a Contract Amendment to Energy Sales Agreement and  
Amended Lease Agreement Between NMPC and Glen Park Associates Limited  
Partnership  
Environmental Assessment Form

Dear Mr. Crary:

In accordance with instructions received from Staff, enclosed please find an original and five (5) copies of Niagara Mohawk Power Corporation's Environmental Assessment Form for the approval of a contract amendment to an Energy Sales Agreement and an Amended Lease Agreement between Niagara Mohawk Power Corporation and Glen Park Associates Limited Partnership.

Please date stamp the attached copy of this letter and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Should you have any questions with respect to the attached or need any additional information, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in dark ink, appearing to read "WJH", written over a horizontal line.

William J. Holzhauer  
Chief Counsel - Environmental Affairs

WJH:vw  
Enclosures  
cc (w/attachment):

Thomas J. O'Neill, Esq.  
F. Michael Tucker (Mercer Companies Inc.)  
J. Smolinsky *via overnight*

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

---

**In the Matter of the Approval of a Contract  
Amendment to an Energy Sales Agreement and  
an Amended Lease Agreement Between Niagara Mohawk  
Power Corporation and Glen Park Associates Limited  
Partnership Pursuant to the Applicable Sections  
of the New York Public Service Law and Governing  
Regulations of the Public Service Commission.**

---

**CASE NO.**

**ENVIRONMENTAL ASSESSMENT FORM**

By: William J. Holzhauer  
Chief Counsel - Environmental Affairs  
Niagara Mohawk Power Corporation  
300 Erie Boulevard West  
Syracuse, New York 13202

DATE: October 15, 1998

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**I. Introduction**

This document provides the substantive information solicited by Appendix A of 6 NYCRR 617.21, part of the regulations promulgated by the New York State Department of Environmental Conservation pursuant to the State Environmental Quality Review Act. New York Environmental Conservation Law, Article 8. An environmental assessment is an evaluation of the known or potential environmental consequences of a proposed action. Such an assessment also determines whether additional relevant information about such impacts is needed. Environmental assessments help involved and interested agencies identify their concerns about the action and provide guidance to the lead agency in making its determination of significance.

An environmental assessment form provides an organized approach to identifying the information needed by the lead agency to make its determination of significance. A properly completed EAF describes a proposed action, its location, its purpose and its potential impacts on the environment. The environmental assessment form is the first step in the environmental impact review process and leads to either a positive declaration (requiring further analysis of the environmental impacts) or a negative declaration (requiring no further action) of potentially significant adverse environmental impact(s).

**II. Environmental Assessment Form Information (Part I of EAF)**

**A. Applicant / Sponsor:**

Niagara Mohawk Power Corporation  
300 Erie Boulevard West  
Syracuse, New York 13202

**B. Name of Action:**

Niagara Mohawk Power Corporation  
Amended Petition for Approval  
of Amended Energy Sales Agreement and  
Amended Lease Agreement

**C. Location of Action:**

Glen Park Hydroelectric Facility  
Watertown, New York

**D. Description of Action:**

NMPC is petitioning under the Public Service Law of the State of New York for approval of the newly Amended Energy Sales Agreement and the newly Amended Lease Agreement which have been further revised to result in termination of both after approval by the Commission. The new revisions are included in an agreement which has been reduced to a Term Sheet, dated October 13, 1998.

Under the Term Sheet, NMPC shall purchase Glen Park's 32.65 MW Hydroelectric Facility located on the Black River in Watertown, New York. The parties also agree to terminate the existing Lease and Energy Sales Agreement both dated August 15, 1984 on June 30, 1999 (the "Closing Date").

NMPC also acknowledges its intent to resell the facility to a third party contemporaneous with its purchase of the Plant from Glen Park or as early as is reasonably possible following the Closing Date.

It is not NMPC's intention to retain ownership of the Glen Park facility. Prior to the closing, NMPC will actively market (auction) the Glen Park facility. It is NMPC's plan to have a buyer before the Closing Date. If NMPC does not have a buyer, NMPC shall take possession and re-sell the facility as early as reasonably possible after the closing of the facility or shall at its option re-sell the facility simultaneously with the buyout closing with Glen Park.

### **III. Evaluation of Environmental Impacts (Part 2 of EAF)**

The key issues to be examined under SEQRA arising from NMPC's petition are the sale of the Plant from Glen Park to NMPC and the divestiture of the Plant from NMPC to a third party.

The specific environmental impacts that might result from the transfer of the Plant are highly uncertain and difficult to predict. Nevertheless, in no case would any aspect of the transfer cause direct environmental impacts since the transfer does not involve physical activities that might have impacts on the environment.

In preparing this environmental assessment, NMPC has set out a preliminary evaluation of conceivable secondary consequences of NMPC's petition. NMPC has done so in order to assist the PSC in its evaluation of this issue. NMPC has relied on qualitative judgments as to the potential changes resulting from the proposed actions and the magnitude and importance of the corresponding potential environmental impacts. However, it must be emphasized that nothing in this document constitutes an admission on the part of NMPC that this environmental assessment is legally required; nor is anything in this document an admission by NMPC that any environmental impact is likely to occur, or, if it occurs, that such impact would be significant.

Overall, approval of the petition by the PSC (approving the sale to NMPC and subsequent divestiture by NMPC) will not cause any short term, long term or incremental adverse environmental impacts because there are no planned material or relevant changes in the way the Plant will be used or operated. Furthermore, the transfer will not have a significant impact on the environment in that any new owner of the Plant will continue to be subject to the application of the existing broad environmental regulatory framework.

The following is a more specific disposition of the potential environmental impacts of the transfer:

A. Impact to Air

There will be no impacts from an air perspective as a result of the transfer. The Plant is a hydroelectric generating facility currently with no air emissions; this will not change as a result of the transfer.

B. Impact to Water

Divestiture of the Plant by NMPC to a third party should not affect the State's water resources. It is not expected that there will be any significant changes in water flow through or around the Plant resulting from the change in ownership. In most cases, hydroelectric operations including impoundment fluctuations, minimum and base flows, etc., are generally and comprehensively regulated by FERC license and NYS 401 Water Quality Certificate conditions, and would not be expected to change with a new owner. (Note: Section 8 of the Federal Power Act indicates that a license transferee "shall be subject to all the conditions of the license under which such rights are held by the licensee and also subject to all the provisions and conditions of this Act to the same extent as though such successor or assignee were the original licensee....") The licenses set forth specific operating requirements that must be complied with, regardless of



ownership. The regulatory requirements, both federal and state, include provisions for dam safety flood control (applicable to some facilities), effect on water quality and quantity, protection and preservation of the aquatic environment, recreation, land use and public safety.

C. Impact to Land

The transfer of the Plant to NMPC, as well as the divestiture of the Plant to a third party, should have no immediate effect on land use. However, to the extent a third party acquirer of the Plant makes physical changes to the Plant, there could be potential impacts. These impacts would be, however, mitigated by the FERC licensing process and local and state zoning codes.

D. Impact on Plants and Animals

NMPC was unable to identify any effects on plants and animals resulting from the transfer. It appears that the transfer will not directly affect any threatened or endangered species.

E. Impact on Agricultural Land Resources

NMPC was unable to identify any impacts to agricultural land resources resulting from the transfer.

F. Impact on Aesthetic Resources

The transfer should not have an impact on aesthetic resources since it will not result in any new construction or expansion.

G. Impact on Historic and Archeological Resources

The transfer should not have an impact on historic and archeological resources.

H. Impact on Open Space and Recreation

The transfer should not have an impact on open space and recreation.

**I. Impact on Transportation**

The transfer should not have an impact on transportation.

**J. Noise and Odor Impact**

No noise or odor impacts should result from the transfer.

**K. Impact on Growth and Character of Community or Neighborhood**

The potential impact of the transfer on growth and character of communities and neighborhoods consists of potential changes in employment levels, property tax revenues and consumer electric rates. The only possible impact here is that once the Plant is divested to a third party by NMPC, this could lead to impacts to employment levels and reduced tax revenues. Nevertheless, as identified in NMPC's petition, there are several positive socioeconomic benefits for NMPC and its customers. Those benefits include:

- elimination of the power purchase rates in the existing Energy Sales Agreement
- providing NMPC the ability to auction its interest in this facility in the near term, thus furthering the goal of enhancing competition in electric generation in New York State
- a reduction in the value of NMPC's total cost

As a result, to the extent minimal adverse effects result from the transfer, they are mitigated by the socioeconomic benefits.

**IV. Significance of Environmental Impacts**

It is NMPC's recommendation that no further environmental review is necessary with respect to NMPC's petition. No significant environmental impact was identified which would result from the subject transfer.





05/20/99 THU

FAX 1 312 553 2132

EXIT 1017 B

STS HYDROPOWER

COFFIELD

002

Form

**8594**

(Rev. July 1998)

Department of the Treasury  
Internal Revenue Service**Asset Acquisition Statement  
Under Section 1060**

OMB No. 1545-1021

Attachment  
Sequence No. 61

▶ Attach to your Federal income tax return.

Name as shown on return

Identification number as shown on return

Check the box that identifies you:

☐ Buyer☐ Seller**Part I General Information** — To be completed by all filers.

1 Name of other party to the transaction

Other party's identification number

Address (number, street, and room or suite no.)

City or town, state, and ZIP code

2 Date of sale

3 Total sales price

**Part II Assets Transferred** — To be completed by all filers of an original statement.

4 Assets	Aggregate Fair Market Value (Actual Amount for Class I)	Allocation of Sales Price
Class I	\$ CASH ITEMS	\$
Class II	\$ CASH EQUIV.	\$
Class III	\$ LAND & B. Property	\$ 22,500,000
Classes IV and V	\$ } intangibles	\$
Total	\$	\$

5 Did the buyer and seller provide for an allocation of the sales price in the sales contract or in another written document signed by both parties? ..... ☐ Yes ☐ No  
 If "Yes," are the aggregate fair market values listed for each of asset Classes I, II, III, IV and V the amounts agreed upon in your sales contract or in a separate written document? ..... ☐ Yes ☐ No

6 In connection with the purchase of the group of assets, did the buyer also purchase a license or a covenant not to compete, or enter into a lease agreement, employment contract, management contract, or similar arrangement with the seller (or managers, directors, owners, or employees of the seller)? ..... ☐ Yes ☐ No  
 If "Yes," specify (a) the type of agreement, and (b) the maximum amount of consideration (not including interest) paid or to be paid under the agreement. See the instructions for line 6.

## EXHIBIT D

TRANSITION POWER PURCHASE AGREEMENT  
(Glen Park)

This Transition Power Purchase Agreement (the "A Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 1999 between Niagara Mohawk Power Corporation ("Niagara Mohawk"), a New York Corporation, and Northbrook New York, LLC, a Delaware limited liability company ("Producer") (each individually a "Party", or collectively the "Parties").

WHEREAS pursuant to an Asset Sale Agreement ("ASA") between the Parties, Niagara Mohawk assigned to Producer's hydro electric generation project located on the Black River in Glen Park, Jefferson County, New York with a nominal installed capacity rating of approximately 32.65 megawatts (the "Facility"); and

WHEREAS on \_\_\_\_\_ the New York State Public Service Commission ("PSC") approved the planned transaction whereby the Facility would be acquired by Producer, and Niagara Mohawk would terminate the existing Power Purchase Agreement (PSC Contract Number 337); and

WHEREAS Producer will acquire the Facility on or about the date hereof; and

WHEREAS Producer, will enter into an Interconnection Agreement with Niagara Mohawk for the interconnection of the Facility under this agreement on or about the date hereof; and

WHEREAS pursuant to the ASA, Niagara Mohawk and Producer agreed to enter into a Transition Power Purchase Agreement pursuant to which, for a certain period of time, Niagara Mohawk is to purchase from Producer all of the Electricity generated by the Facility;

NOW THEREFORE, in consideration of the mutual representations, covenants and agreements set forth herein, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1.  
DEFINITIONS

Whenever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1.

"Agreement" shall mean this Transition Power Purchase Agreement dated as of \_\_\_\_\_, 1999, between Niagara Mohawk Power Corporation and \_\_\_\_\_ and all attached schedules.

"Business Day" shall mean any day other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in New York City are authorized by law or other governmental action to close; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Standard (or Daylight) time.

"Effective Date" shall mean the date and time at which Producer takes title to the Facility.

"Delivery Point" shall mean the point at which the interconnection facility is connected to the transmission system as is indicated on a one-line diagram included as part of Exhibit A of the Interconnection Agreement.

"Electricity" shall mean electric capacity as measured in MW or kW, energy as measured in MWh or kWh and ancillary services.

"Force Majeure" means an event not anticipated as of the Effective Date which is not within the reasonable control of the Party claiming Force Majeure (the "Claiming Party"), and which, by the exercise of due diligence, the Claiming Party, is unable to overcome or avoid or cause to be avoided. Force Majeure includes, but is not restricted to: acts of God; fire; civil disturbance; labor dispute, labor or material shortage; sabotage; action or restraint by court order to public or governmental authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); *provided, however*, that an event of Force Majeure shall not include (i) the loss of Niagara Mohawk's Electricity markets; (ii) Niagara Mohawk's inability to economically use or resell Electricity purchased hereunder, (iii) the loss or failure of Producer's Electricity Supply; (iv) Producer's ability to sell Electricity to a market at a more advantageous price.

"Good Utility Practice" shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by Niagara Mohawk. Good Utility Practices shall include, but not be limited to North American Electric Reliability Council ("NERC") Criteria & Guidelines, Northeast Power Coordinating Council ("NPCC") Criteria & Guidelines, New York State Reliability Council ("NYSRC") if any, and New York Power Pool ("NYPP") and NYISO criteria, rules and standards, as they may be amended from time to time including the rules, guidelines and criteria of any successor

organization to the foregoing entities. If there are any inconsistencies or conflicts among these agencies, the practices of the NYISO shall govern.

"Interconnection Agreement" shall mean a separate Interconnection Agreement between Niagara Mohawk Power Corporation and Producer.

"Interest Rate" means, for any date, the interest equal to the prime rate of Citibank as may from time to time be published in *The Wall Street Journal* under "Money Rates".

"New York Independent System Operator" or "NYISO" shall mean an organization formed in accordance with orders of the Federal Energy Regulatory Commission to administer the operation of the transmission system of New York State, to provide equal access and open to the bulk power-transmission system and to maintain the reliability of the transmission system of New York State.

"Price" means the price to be paid per unit as specified by Niagara Mohawk to Producer for the purchase of Electricity, including the energy price, demand charges, transmission charges and any other charges pursuant to Article 2.

"Quantity" means that quantity of Electricity that Producer agrees to make available or sell and deliver, or cause to be delivered, to Niagara Mohawk, and that Niagara Mohawk agrees to purchase and receive, or cause to be received, from Producer pursuant to Article 3.

"Scheduling" or "Schedule" means the acts of Producer, Niagara Mohawk and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Electricity to be delivered on a given hour, day or days at a specified Delivery Point.

"Transmission Providers" means the entity or entities transmitting or transporting the Electricity on behalf of Producer or Niagara Mohawk from the Delivery Point.

## ARTICLE 2. TRANSACTIONS

2.1. Term of Agreement. Term of Agreement will begin upon the Effective Date and will end on December 31, 2003.

2.2. Compensation. For each month during the term, Niagara Mohawk shall pay Producer an amount equal to the product of (X) the Price (as set forth in Schedule A) and (Y) the quantity of Electricity delivered. The Price shall include, and Seller is liable for and shall pay, or cause to be



paid, or reimburse Buyer if Buyer has paid, all Taxes applicable to a Transaction or the Electricity prior to the Delivery Point. If Buyer is required to remit such Tax, the amount shall be deducted from any sums due to Seller. The Price does not include, and Buyer is liable for and shall pay, cause to be paid, reimburse Seller if Seller has paid, or pay to Seller if Seller is required by Law to pay to a taxing or other governmental authority, or to any other entity, all Taxes applicable to a Transaction or the Electricity at and from the Delivery Point including (i) any Taxes imposed or collected by a taxing authority with jurisdiction over Buyer; and (ii) any Taxes imposed on the sale of Electricity to Buyer, or Buyer's purchase, possession, transportation, consumption use, sale or other disposition of the Electricity, or on any payment by Buyer to Seller.

Niagara Mohawk shall compensate Producer for any reasonable direct costs and/or lost opportunity costs for which Producer incurs to provide ancillary services at the request of Niagara Mohawk that are outside of the specifications in Electric Service Bulletin 756. No additional compensation shall be provided for ancillary services within the specifications the ESB 756.

2.4 Ancillary Service. Niagara Mohawk may request and Producer shall apply Good Utility Practice to commit Facility to be utilized for ancillary services to Niagara Mohawk or to the NYISO. Producer may receive ancillary service payments from the NYISO for such services, or for other ancillary services it provides. Payments due from Niagara Mohawk to Producer in accordance with paragraph 2.2 above shall be reduced by the amount of all payments Producer receives from the NYISO for such services during the applicable month. At the request of Niagara Mohawk, Producer must supply supporting documentation illustrating such payments. Niagara Mohawk shall have the right to audit Producer's payments from the NYISO.

2.5 Sell-All. Producer will sell and Niagara Mohawk will purchase all of the Electricity of the hydro generating Facility operated by Producer. Niagara Mohawk shall have the right to claim all forms of capacity.

2.6 Delivery Point. Producer will make all of the Electricity of the Facility available to Niagara Mohawk at the Delivery Point.

### ARTICLE 3. SCHEDULING

3.1 Scheduling. Producer shall provide schedules as required under ESB-756. Niagara Mohawk may revise these required scheduling notices to comply with any requirements of the NYISO. Niagara Mohawk and Producer shall update the schedule at the request of Niagara Mohawk to accommodate the "Balancing Market Evaluation for the Real Time Market" described in the NYISO tariff filed with Federal Energy Regulatory Commission. In the event a

conflict arises between rules of the NYISO and ESB-756, the requirements, rules and regulations of the NYISO shall supercede the requirements of ESB-756 when and if applicable.

#### ARTICLE 4. PAYMENT

4.1 Payment. Producer shall provide Niagara Mohawk with an invoice by the 5<sup>th</sup> Business Day of each month, setting forth the quantity of Electricity which was delivered to Niagara Mohawk, during the preceding month, the total amount due from Niagara Mohawk, net of ancillary service payments received by Producer from the NYISO, and any applicable supporting documentation. Niagara Mohawk shall remit the amount due by wire transfer, or as otherwise agreed, pursuant to Producer's invoice instructions, on the later of fifteen days from receipt of Producer's invoice or the twenty-fifth (25<sup>th</sup>) day of the calendar month in which the invoice is rendered.

4.2 Overdue Payments. Overdue payments shall accrue interest at the Interest Rate from, and including, the due date to, but excluding, the date of payment.

4.3 Billing Dispute. If Niagara Mohawk, in good faith, disputes an invoice, Niagara Mohawk shall immediately notify Producer of the basis for the dispute and pay the portion of such statement conceded to be correct no later than the due date. If any amount withheld under dispute by Niagara Mohawk is ultimately determined (under the terms herein) to be due to Producer, it shall be paid within one (1) day of such determination along with interest accrued at the Interest Rate from the original due date. Inadvertent overpayments shall be returned by Producer upon request or deducted by Producer from subsequent payments, with interest accrued at the Interest Rate until the date paid or deducted.

## ARTICLE 5. FORCE MAJEURE

5.1 Performance Excused. If either Party is rendered unable by an event of Force Majeure to carry out, in whole or part, its obligations under the Agreement, then, for only the pendency of such Force Majeure, the Party affected by the event (other than the obligation to make payments then due or becoming due with respect to performance which occurred prior to the event) shall be temporarily relieved of its obligations insofar as they are affected by Force Majeure but for no longer period. The Party affected by an event of Force Majeure shall provide the other Party with written notice setting forth the full details thereof within two (2) Business Days after the occurrence of such event and shall take all reasonable measures to mitigate or minimize the effects of such event of Force Majeure; *provided, however*, that this provision shall not require Producer to deliver, or Niagara Mohawk to receive, Electricity at points other than the Delivery Point.

## ARTICLE 6. TITLE TRANSFER; LIABILITY

6.1 Title and Risk of Loss. Title to and risk of loss related to the Quantity shall transfer from Producer to Niagara Mohawk at the Delivery Point. Producer warrants that it will deliver to Niagara Mohawk the Quantity free and clear of all liens, claims and encumbrances arising prior to the Delivery Point.

6.2 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from any Claims arising from any act or incident occurring during the period when control and title to Electricity is vested, as between the Parties as provided in Article 6.1, in the indemnifying Party. A Claims means all claims or actions, threatened or filed and, whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

6.3 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants and that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

## ARTICLE 7. LAW

7.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. Any law suits arising under this AGREEMENT shall be instituted in the Federal or State courts of New York located in the City of Syracuse and each party hereby irrevocably submits to the *in personam* jurisdiction of such courts. Each party herein waives its respective right to a jury trial with respect to any litigation arising under or in connection with this Agreement.

## ARTICLE 8. MISCELLANEOUS

8.1 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party; *provided, however*, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements. Neither party shall unreasonably withhold its consent to a request by the other Party to transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is not materially different than that of such Party, or (ii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; *provided, however*, that in each such case, any such assignee shall agree to in writing be bound by the terms and conditions hereof and creditworthiness is not materially different than that of such Party.

8.2 Notices. Set for the in the:

to Niagara Mohawk:

NOTICES & CORRESPONDENCE  
Niagara Mohawk Power Corporation  
Supply Services - HCB#3  
300 Erie Boulevard West  
Syracuse, New York 13202-4250  
Phone: (315) 460-2341  
Fax: (315) 460-2660

Niagara Mohawk Power Corporation  
Power Scheduling and Billing - HCB#3  
300 Erie Boulevard West  
Syracuse, New York 13202-4250  
Phone: (315) 460-2465 Fax: (315) 460-2494

INVOICES:

SCHEDULING:

(315) 460-2468  
(315) 460-2425  
Fax - (315) 460-2122

DISPATCHERS:

(315) 460-2120  
(315) 460-2130  
Fax - (315) 460-2197

PAYMENTS BY WIRE:

Citibank New York  
Account #: 40662754  
ABA Routing #: 021000089  
Credit To: Niagara Mohawk Power Corp.

to Producer:NOTICES & CORRESPONDENCE:

Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_

INVOICES:

Attn: \_\_\_\_\_  
Fax No.: ( ) \_\_\_\_\_  
Phone No.: ( ) \_\_\_\_\_  
\_\_\_\_\_

CHECK PAYMENTS:

Niagara Mohawk Power Corporation  
Misc. Accounts Receivable C-3  
300 Erie Boulevard West  
Syracuse, New York 13202-4250

PAYMENTS:

ABA Routing #

Confirmation:

Credit & Collections

( ) \_\_\_\_\_

SCHEDULING:

Attn:

Fax No.: ( ) \_\_\_\_\_

Phone No.: ( ) \_\_\_\_\_  
\_\_\_\_\_

8.3 General. This Transition Power Agreement (including the Exhibit hereto), the Interconnection Agreement and the ASA constitutes the entire Agreement between the Parties to the subject matter contemplated by this Agreement. No amendment or modification to this Transition Power Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Transition Power Agreement shall not impact any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The term Aincluding when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for six years.

8.4 Audit. If requested, a Party shall provide to the other Party statements evidencing the quantities of Electricity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of one (1) year from the rendition thereof.

The Parties have executed this Transition Power Agreement in multiple counterparts to be construed as one effective as of the Effective Date.

\_\_\_\_\_  
By:

Name:

Title: Chief Operating Officer

Date:

**Niagara Mohawk Power Corporation**

By:

Name: Clement E. Nadeau

Title: Vice President – Electric Delivery

Date:

**SCHEDULE A**  
**Compensation**

Date	Price (\$/MWh)
Effective Date – December 31, 1999	\$25.00
January 1, 2000 – December 31, 2000	\$25.00
January 1, 2001 – December 31, 2001	\$25.50
January 1, 2002 – December 31, 2002	\$25.50
January 1, 2003 – December 31, 2003	\$25.50



Attention: Stephen J. Sinclair

with a copy to:

Ungaretti & Harris  
3500 Three First National Plaza  
Chicago, Illinois 60602  
Attention: James B. Smith, Esq.

11.5 Assignment; Assignment of Rights under Glen Park Agreement

This Agreement and all of the provisions hereof shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns, but neither this Agreement nor any rights, interests or obligations hereunder shall be assigned by either Party, including by operation of law, without the prior written consent of the other Party, nor is this Agreement intended to confer upon any other Person except the Parties hereto any rights or remedies hereunder; provided, however, Energy shall assign any or all of its rights, interests and obligations hereunder to the Buyer (in which case Energy shall nonetheless remain jointly and severally responsible for the performance of all such obligations to be performed on or before the Closing Date), and that any such assignment to a Party other than Buyer is permitted only so long as any such assignment does not adversely affect the availability or timing of any federal, state or local government consent or approval required for the consummation of the sale of the Assets. At the Closing all of the Seller's rights under the Glen Park Agreement shall be assigned to the Buyer, and, to the extent that Glen Park's obligation to indemnify the Buyer is excused by reason of any act of the Seller, the Seller shall indemnify the Buyer therefor.

11.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of law) as to all matters, including, but not limited to, matters of validity, construction, effect, performance, enforcement and remedies. Any and all disputes arising out of or in connection with this Agreement shall be adjudicated in the Federal or state courts located in the State of New York, to whose jurisdiction the Parties hereby irrevocably submit for such purposes.

### 11.7 Counterparts

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

### 11.8 Interpretation

The Article and Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement. Neither Party shall be deemed to have been the drafter of this Agreement, which is the product of detailed, arm's length negotiations between the Parties and their respective counsel.

### 11.9 Schedules and Exhibits

All Exhibits and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement. Any matters described or referred to in any Schedule shall be deemed included in any other relevant Schedule, irrespective of whether any express incorporation by reference is made therein.

### 11.10 Entire Agreement

This Agreement, including the Exhibits, Schedules, documents, certificates and instruments referred to herein, embodies the entire agreement and understanding of the Parties with respect to the transactions contemplated by this Agreement and supersedes any and all prior oral or written expressions, understandings or agreements between the Parties with respect thereto. There are no restrictions, promises, representations, warranties, covenants or undertakings between the Parties, other than those expressly set forth or referred to herein or therein.

### 11.11 No Punitive or Consequential Damages

Except as set forth in Sections 9.1(a) and 9.1(f), notwithstanding anything to the contrary contained in this Agreement in Article 9 or otherwise, no Party or its Affiliates shall seek or be liable for any punitive or consequential damages, including, but not limited to, loss of revenue or income, or loss of business reputation or opportunity, relating to any breach or alleged breach of this Agreement.

### 11.12 Bulk Sales or Transfer Laws.

The Buyer acknowledges that the Seller will not comply with the provision of any bulk sales or transfer laws (other than Section 1141(c) of the New York State Tax Law) of any jurisdiction in connection with the transactions contemplated by this Agreement. The Buyer hereby waives compliance by this Seller with the provisions of the bulk sales or transfer laws of all applicable jurisdictions.


### 11.13 Closing Escrow.

The Parties agree the sale of the Assets shall be closed pursuant to a New York-style deed and money escrow agreement, in a form mutually agreeable to the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

SELLER:

NIAGARA MOHAWK POWER CORPORATION


By: 

Name: Michael J. Kelleher

Title: Vice President – Financial Planning

ENERGY:

NORTHBROOK ENERGY, LLC

By: 

Name: Stephen Sinclair

Title: Chief Operating Officer

## SCHEDULE 1.5

### Buyer Consents

Consent of FERC

## SCHEDULE 1.6

### NiMo Consents

Release from Buyer's indenture of Real Property.

Regulatory consents set forth in Section 6.3(b) of the Glen Park Agreement (other than under the HSR Act).

## **SCHEDULE 5.5**

### **Environmental Matters**

**Federal Energy Regulatory Commission  
Ongoing License Compliance Issues  
Article 33 Fish Passage Facilities**

Glen Park Associates continues to consult with the New York State Department of Environmental Conservation and the U.S. Fish and Wildlife Service in connection with the downstream fish passage provisions contained in Article 33 of the FERC license. A proposal is currently pending before FERC and GPA has been asked to provide additional information before FERC can review the proposal.

## EXHIBIT A

BARGAIN AND SALE DEED  
WITH LIEN COVENANT

THIS INDENTURE, made \_\_\_\_\_, 1999 between

NIAGARA MOHAWK POWER CORPORATION, a New York corporation with its  
office and place of business at 300 Erie Boulevard, Syracuse, New York 13202

grantor

and

grantee,

WITNESSETH, that the grantor, in consideration of ONE AND 00/100 DOLLAR (\$1.00), lawful money of the United States, and other good and valuable consideration paid by grantee, hereby grants and releases unto the grantee, the heirs, successors and assigns of grantee forever,

ALL THOSE TRACTS OR PARCELS OF LAND described on Exhibit A annexed to this deed (the "premises").

TOGETHER with the flowage rights under and subject to the instruments identified on Exhibit B annexed to this deed.

BEING the same premises or a portion thereof conveyed to the grantor by the deeds identified on Exhibit C annexed to this deed and intending to describe the premises shown on maps of grantor labeled Exhibit D to be filed in the appropriate County Clerk's Office upon the recording of this deed.

TOGETHER with the appurtenances and all the estate and rights of grantor in and to the premises and together with all right, title, and interest of grantor, if any, in and to the highways and all gores and strips of land, easements, rights and rights of way appurtenant to or used in connection with the premises, including all water rights and privileges of record.

TOGETHER with and subject to all riparian rights appurtenant to or affecting the premises.

TOGETHER with an easement over the parcel of land retained by grantor adjacent to the premises for drainage of stormwater from the premises including the right to use those portions of the parcel of land retained by grantor adjacent to the premises, including trench drains, valves, pipelines, leach fields, oil water separator, wastewater treatment facility and other facilities, as applicable, for drainage, discharge, retention, or percolation of stormwater runoff.

RESERVING unto grantor its successors and assigns solely in connection with the use of substation, transmission and distribution facilities and improvements for the transmission and distribution of electricity and natural gas and in connection with the use and operation of related communication facilities and related support equipment:

A permanent easement of ingress and egress to grantor's property within the boundaries of the premises in areas which will not interfere with grantee's use of the premises as a hydroelectric facility after consultation with grantee;

A permanent easement to build, rebuild, relocate, operate, maintain, replace and/or remove and inspect any and all communication facilities and related support equipment as deemed necessary in the reasonable judgment of grantor or its successors or assigns after consultation with grantee upon, over, across and under the premises in areas which will not interfere with grantee's use of the premises as a hydroelectric facility;

A permanent right of way and easement in areas which will not interfere with grantee's use of the premises as a hydroelectric facility after consultation with grantee (i) to build, rebuild, relocate, operate, maintain, replace and/or remove and inspect any and all existing and future electric transmission and distribution lines, substations and supporting equipment as deemed necessary in the reasonable judgment of grantor or its successors and assigns, (ii) to build, rebuild, relocate, operate, maintain and replace and/or remove and inspect any and all existing and future natural gas transmissions and distribution mains, regulating stations and supporting equipment as deemed necessary in the reasonable judgment of grantor or its successors and assigns, including the full right, privilege and authority to cut and remove all trees, structures and other obstructions within ten (10) feet of the center line of all electric distribution facilities and natural gas lines and within twenty five (25) feet of the center line of all electric transmission lines under 50 KV and within fifty (50) feet of the center line of all transmission lines in excess of 50 KV as deemed necessary in the reasonable judgment of grantor or its successors and assigns;

A permanent right-of-way and easement to build, rebuild, relocate, operate, maintain, build, construct, replace and/or remove and inspect electric or gas distribution facilities and supporting equipment within twenty (20) feet of the edge of any highway abutting the premises as deemed necessary in the reasonable judgment of grantor or its successors and assigns after consultation with the grantee with the easement to include the full right, privilege and authority to cut and remove all trees, structures, and obstructions within the easement as deemed



necessary in the reasonable judgment of grantor or its successors and assigns after consultation with grantee;

A perpetual right, privilege and easement to trim, cut, and remove any and all trees and brush, either mechanically or by the use of herbicides approved by all necessary and appropriate governmental entities, which, in the reasonable judgment of grantor or its successors and assigns after consultation with grantee may be a source of danger to the grantor's facilities, all as grantor or its successors and assigns may from time to time deem necessary in the reasonable judgment of grantor or its successors and assigns; and together with the further right of access across the premises for the purposes herein stated in areas which will not interfere with grantee's use of the premises as a hydroelectric facility; and

A perpetual easement for drainage of stormwater, including the right to use those portions of the premises, including trench drains, valves, pipelines, leach fields, oil water separator, wastewater treatment facility and other fixtures, as applicable, for drainage, discharge, retention, or percolation of stormwater runoff.

THIS conveyance is subject to:

Existing rights of way and easements to cross and use parts of the premises lying between the premises and land owned by grantor or any of its subsidiaries or affiliates for the purpose of ingress and egress to the reservoir, river or other body of water and for use of docks and rafts for personal recreational purposes of the owners of contiguous parcels of land, and such other reasonable uses of the waterfront for recreational uses as may be permitted under the rules and regulations of the Federal Energy Regulatory Commission;

Any state of facts an actual and up-to-date survey and inspection of the premises may reveal;

Any and all right, title and interest the public may have in and to the public highways running through or adjacent to the premises;

Any rights granted by easement, lease, license or otherwise to third parties to cross any portion of the premises or to construct, use or maintain any property within or beyond the premises;

The rights of all private industries and municipalities to build, rebuild, relocate, operate, maintain and replace and/or remove all existing facilities located within the premises which meet all legal requirements in the State of New York and do not interfere with grantee's operation of the premises;

Access to any existing standpipes, parking areas and adjacent areas by fire departments, fire districts, and fire protection districts to draw water from standpipes installed for that purpose, together with access to operate, maintain, replace and/or remove the standpipes and supporting equipment;

Any and all easements, covenants and restrictions whether recorded or not.

This sale does not constitute a sale or disposition of all or substantially all of the assets of grantor.

TO HAVE AND TO HOLD the premises herein granted unto the grantee, the heirs, successors and assigns of the grantee forever.

AND grantor, in compliance with Section 13 of the Lien Law, covenants that grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the grantor has duly executed this deed the day and year first above written.

NIAGARA MOHAWK POWER CORPORATION

By: \_\_\_\_\_

STATE OF NEW YORK )  
COUNTY OF ONONDAGA) ss.:

On \_\_\_\_\_, 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

RECORD & RETURN TO:

~~74~~ EXHIBIT A

**BARGAIN AND SALE DEED**  
**WITH LIEN COVENANT**

THIS INDENTURE, made \_\_\_\_\_, 1999 between

NIAGARA MOHAWK POWER CORPORATION, a New York corporation with  
its office and place of business at 300 Erie Boulevard, Syracuse, New York 13202

grantor

and

grantee,

WITNESSETH, that the grantor, in consideration of ONE AND 00/100  
DOLLAR (\$1.00), lawful money of the United States, and other good and valuable  
consideration paid by grantee, hereby grants and releases unto the grantee, the heirs,  
successors and assigns of grantee forever,

ALL THOSE TRACTS OR PARCELS OF LAND described on Exhibit A  
annexed to this deed (the "premises").

TOGETHER with the flowage rights under and subject to the instruments  
identified on Exhibit B annexed to this deed.

BEING the same premises or a portion thereof conveyed to the grantor by  
the deeds identified on Exhibit C annexed to this deed and intending to describe the  
premises shown on maps of grantor labeled Exhibit D to be filed in the appropriate County  
Clerk's Office upon the recording of this deed.

TOGETHER with the appurtenances and all the estate and rights of grantor  
in and to the premises and together with all right, title, and interest of grantor, if any, in  
and to the highways and all gores and strips of land, easements, rights and rights of way  
appurtenant to or used in connection with the premises, including all water rights and  
privileges of record.

TOGETHER with and subject to all riparian rights appurtenant to or  
affecting the premises.

**TOGETHER** with an easement over the parcel of land retained by grantor adjacent to the premises for drainage of stormwater from the premises including the right to use those portions of the parcel of land retained by grantor adjacent to the premises, including trench drains, valves, pipelines, leach fields, oil water separator, wastewater treatment facility and other facilities, as applicable, for drainage, discharge, retention, or percolation of stormwater runoff.

**RESERVING** unto grantor its successors and assigns solely in connection with the use of substation, transmission and distribution facilities and improvements for the transmission and distribution of electricity and natural gas and in connection with the use and operation of related communication facilities and related support equipment:

A permanent easement of ingress and egress to grantor's property within the boundaries of the premises in areas which will not interfere with grantee's use of the premises as a hydroelectric facility after consultation with grantee;

A permanent easement to build, rebuild, relocate, operate, maintain, replace and/or remove and inspect any and all communication facilities and related support equipment as deemed necessary in the reasonable judgment of grantor or its successors or assigns after consultation with grantee upon, over, across and under the premises in areas which will not interfere with grantee's use of the premises as a hydroelectric facility;

A permanent right of way and easement in areas which will not interfere with grantee's use of the premises as a hydroelectric facility after consultation with grantee (i) to build, rebuild, relocate, operate, maintain, replace and/or remove and inspect any and all existing and future electric transmission and distribution lines, substations and supporting equipment as deemed necessary in the reasonable judgment of grantor or its successors and assigns, (ii) to build, rebuild, relocate, operate, maintain and replace and/or remove and inspect any and all existing and future natural gas transmissions and distribution mains, regulating stations and supporting equipment as deemed necessary in the reasonable judgment of grantor or its successors and assigns, including the full right, privilege and authority to cut and remove all trees, structures and other obstructions within ten (10) feet of the center line of all electric distribution facilities and natural gas lines and within twenty five (25) feet of the center line of all electric transmission lines under 50 KV and within fifty (50) feet of the center line of all transmission lines in excess of 50 KV as deemed necessary in the reasonable judgment of grantor or its successors and assigns;

A permanent right-of-way and easement to build, rebuild, relocate, operate, maintain, build, construct, replace and/or remove and inspect electric or gas distribution facilities and supporting equipment within twenty (20) feet of the edge of any highway abutting the premises as deemed necessary in the reasonable judgment of grantor or its successors and assigns after consultation with the grantee with the easement to include the full right, privilege and authority to cut and remove all trees, structures, and obstructions within the easement as deemed necessary in the reasonable judgment of grantor or its successors and assigns after consultation with grantee;

A perpetual right, privilege and easement to trim, cut, and remove any and all trees and brush, either mechanically or by the use of herbicides approved by all

necessary and appropriate governmental entities, which, in the reasonable judgment of grantor or its successors and assigns after consultation with grantee may be a source of danger to the grantor's facilities, all as grantor or its successors and assigns may from time to time deem necessary in the reasonable judgment of grantor or its successors and assigns; and together with the further right of access across the premises for the purposes herein stated in areas which will not interfere with grantee's use of the premises as a hydroelectric facility; and

A perpetual easement for drainage of stormwater, including the right to use those portions of the premises, including trench drains, valves, pipelines, leach fields, oil water separator, wastewater treatment facility and other fixtures, as applicable, for drainage, discharge, retention, or percolation of stormwater runoff.

THIS conveyance is subject to:

Existing rights of way and easements to cross and use parts of the premises lying between the premises and land owned by grantor or any of its subsidiaries or affiliates for the purpose of ingress and egress to the reservoir, river or other body of water and for use of docks and rafts for personal recreational purposes of the owners of contiguous parcels of land, and such other reasonable uses of the waterfront for recreational uses as may be permitted under the rules and regulations of the Federal Energy Regulatory Commission;

Any state of facts an actual and up-to-date survey and inspection of the premises may reveal;

Any and all right, title and interest the public may have in and to the public highways running through or adjacent to the premises;

Any rights granted by easement, lease, license or otherwise to third parties to cross any portion of the premises or to construct, use or maintain any property within or beyond the premises;

The rights of all private industries and municipalities to build, rebuild, relocate, operate, maintain and replace and/or remove all existing facilities located within the premises which meet all legal requirements in the State of New York and do not interfere with grantee's operation of the premises;

Access to any existing standpipes, parking areas and adjacent areas by fire departments, fire districts, and fire protection districts to draw water from standpipes installed for that purpose, together with access to operate, maintain, replace and/or remove the standpipes and supporting equipment;

Any and all easements, covenants and restrictions whether recorded or not.

This sale does not constitute a sale or disposition of all or substantially all of the assets of grantor.

TO HAVE AND TO HOLD the premises herein granted unto the grantee, the heirs, successors and assigns of the grantee forever.

**AND grantor, in compliance with Section 13 of the Lien Law, covenants that grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.**

**IN WITNESS WHEREOF, the grantor has duly executed this deed the day and year first above written.**

**CORPORATION**

**NIAGARA**

**MOHLAWK**

**POWER**

By: \_\_\_\_\_

**STATE OF NEW YORK )  
COUNTY OF ONONDAGA) ss.:**

On \_\_\_\_\_, 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**RECORD & RETURN TO:**



Party pursuant to any regulatory or judicial proceeding, the obligated Party may disclose such Information to such tribunal without liability hereunder, provided, however, that the obligated Party shall give the other Party written notice of Information to be so disclosed as far in advance of its disclosure as is practicable, shall furnish only that portion of the Information which is legally required, and shall use its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portions of the Information required to be disclosed as the affected Party designates.

(d) The term "Information" does not include any information which (i) becomes generally available to and known by the public (other than as a result of a unilateral disclosure directly or indirectly made by the recipient Party or its Representatives), or (ii) becomes available to the recipient Party on a non-confidential basis from a source other than the disclosing Party or its Representatives, provided that such source is not and was not bound by a confidentiality agreement with or other obligation of secrecy to the disclosing Party.

(e) From the date hereof through the Closing Date, the Buyer shall have the right to disclose Information of the Seller with respect to the Assets to (i) regulatory authorities or agencies with jurisdiction over the transactions contemplated hereby, including the FERC and the PSC, and (ii) third parties in connection with planning for financing or operation of the Assets following the Closing Date and (iii) Affiliates of the Buyer or Energy.

(f) If this Agreement is terminated in accordance with its terms, the recipient Party shall return promptly to the disclosing Party all copies, extracts or other reproductions in whole or in part of the disclosing Party's Information in the recipient Party's possession or in the possession of its Representatives, and the recipient Party shall destroy all copies of any memoranda, notes, analyses, compilations, studies or other documents prepared by the recipient Party or for the recipient Party's use based on, containing or reflecting any Information of the disclosing Party. Such destruction shall, if requested, be certified in writing to the disclosing Party by an authorized officer of the recipient Party supervising such destruction.

(g) Each Party shall be entitled to seek and obtain equitable relief, including injunction and specific performance, in the event of any breach of the provisions of this Section 7.10, in addition to all other remedies available to such Party at law or in equity.

#### 7.10 Energy

Energy agrees to cause the Buyer to perform its obligations hereunder.

## ARTICLE 8

CLOSING CONDITIONS8.1 Conditions to Each Party's Obligations to Effect the Transactions

The respective obligations of each Party to effect the purchase and sale of the Assets shall be subject to the fulfillment on or before the Closing Date of the following conditions:

(a) Glen Park agreeing to the Buyer being the Seller's designee under Section 11.5 of the Glen Park Agreement;

(b) Any waiting period under the HSR Act applicable to the consummation of the sale of the Assets contemplated hereby shall have expired or been terminated;

(c) No preliminary or permanent injunction or other order or decree by any federal or state court which prevents the consummation of the sale of the Assets contemplated hereby shall have been issued and remain in effect (each Party agreeing to use its best efforts to have any such injunction, order or decree lifted), and no statute, rule or regulation shall have been enacted by any state or federal government or governmental agency in the United States which prohibits the consummation of the sale of the Assets;

(d) All federal, state and local government consents and approvals (including, but not limited to, legislative and administrative consents and approvals) required for the consummation of the sale of the Assets and the other transactions contemplated hereby, including, without limitation, the NiMo Consents and the Buyer Required Regulatory Approvals, shall have been obtained, unless the failure to obtain such consent or approval would not result in a Material Adverse Effect; and

(e) The NiMo Consents, the Buyer Required Consents and all other consents and approvals for the consummation of the sale of the Assets hereby required under the terms of any note, bond, mortgage, indenture, contract or other agreement to which the Seller or Glen Park or any Affiliate of either, is a party shall have been obtained, other than those which if not obtained, would not, in the aggregate, have a Material Adverse Effect;

(f) The Buyer and the Seller shall have entered into a Transition Power Agreement in substantially the forms attached hereto as Exhibit D and an Interconnection Agreement to be mutually agreed to by the Buyer and the Seller.

## 8.2 Conditions to Obligations of the Buyer

The obligation of the Buyer to effect the purchase of the Assets contemplated by this Agreement shall be subject to the fulfillment on or before the Closing Date of the following additional conditions:

- (a) There shall not have occurred and be continuing a Material Adverse Effect;
- (b) The representations and warranties of the Seller set forth in this Agreement and of Glen Park in the Glen Park Agreement shall be true and correct in all material respects as of the date of this Agreement with respect to the Seller and as of the date thereof with respect to the Glen Park Agreement and as of the Closing Date as though made at and as of the Closing Date, and the Seller and Glen Park shall each have performed and complied with in all material respects its respective covenants and agreements contained in this Agreement or the Glen Park Agreement, as the case may be, that are required to be performed and complied with by the Seller or Glen Park on or prior to the Closing Date;
- (c) The Assets shall be free and clear of all Encumbrances, with the exception of Permitted Encumbrances (other than the Ground Lease);
- (d) The Buyer shall have received certificates from authorized officers of the Seller and Glen Park, dated the Closing Date, to the effect that, to the best of such officers' Knowledge, the conditions set forth in Sections 8.2(a), (b) and (c) hereof and of the Glen Park Agreement have been satisfied;
- (e) The consents and approvals required to be obtained pursuant to Section 8.1(c) or (d) hereof shall not contain or be granted subject to terms or conditions which could reasonably be expected to have a Material Adverse Effect when compared to the terms and conditions presently applicable to the Assets;
- (f) The Buyer shall have received opinions from Seller's counsel, dated the Closing Date, substantially to the effect that:
  - (i) the Seller is a corporation organized, existing and in good standing under the laws of the State of New York and the Seller has the full power and authority to execute and deliver this Agreement and all related agreements and to consummate the transactions contemplated hereby; and the execution and delivery of this Agreement and such other agreements and the consummation of the sale of the Assets contemplated hereby have been duly authorized by all requisite corporate action taken on the part of the Seller;
  - (ii) this Agreement and all related agreements have been duly executed and delivered by the Seller and (assuming that the NiMo Consents, the

Buyer Required Consents and the Buyer Required Regulatory Approvals and the Buyer Required Consents are obtained) are valid and binding obligations of the Seller, enforceable against the Seller in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles and (B) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to certain equitable defenses and to the discretion of the court before which any proceeding therefor may be brought;

(iii) the execution, delivery and performance of this Agreement and all related agreements by the Seller will not constitute a violation of the certificate of incorporation and by-laws of the Seller; and

(iv) no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any governmental authority is necessary for the consummation by the Seller of the Closing, other than (A) the NiMo Consents, and (B) such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, in the aggregate, have a Material Adverse Effect.

As to any matter contained in such opinion which involves the laws of any jurisdiction other than the federal laws of the United States or the laws of the State of New York, such counsel may rely upon opinions of counsel admitted in such other jurisdictions. Any opinions relied upon by such counsel as aforesaid shall be delivered together with the opinion of such counsel. Such opinion may expressly rely as to matters of fact upon certificates furnished by the Seller and appropriate officers and directors of the Seller and by public officials;

(g) The Buyer shall have received the opinion from Glen Park's counsel contemplated by Section 8.2(g) of the Glen Park Agreement; and

(h) All proceedings to be taken by the Seller in connection with the transactions contemplated hereby, and all documents incident thereto, shall be reasonably satisfactory in form and substance to the Buyer and its counsel, and the Buyer and its counsel shall have received all such certified or other copies of such documents as it or they may reasonably request.

(i) The Buyer shall have received an ALTA Owner's Policy (10-17-92) issued by a title insurance company reasonably acceptable to the Buyer which is licensed to do business in the State of New York in the amount of the Purchase Price insuring Buyer, as fee simple owner of the Assets, with the Standard New York Endorsement ALTA Endorsement 9 and a Land Same as Survey Endorsement, with a waiver of arbitration and such reasonable additional endorsements as shall be available to Buyer, it being understood that any endorsements that would increase the cost of the insurance, expose Seller or Glen Park to greater liability following Closing or cause this condition not to be satisfied shall not be reasonable, provided that if additional cost of the insurance is the only issue, the Buyer may elect to pay such costs.

(j) UCC, tax lien and judgment searches obtained by the Buyer shall not reflect that the representations and warranties of the Seller as set forth in this Agreement and of Glen Park as set forth in the Glen Park Agreement are not true and correct in all material respects as of the respective dates of such agreements or as of the Closing Date.

(k) Buyer shall have received an ALTA survey of the Assets which identifies no survey defects which cause a Material Adverse Effect.

(l) Buyer shall be satisfied that no filing under the HSR Act is required, or if required, the expiration or termination of the applicable waiting period shall have occurred and the Seller shall pay the costs of such filing.

### 8.3 Conditions to Obligations of the Seller

The obligation of the Seller to effect the sale of the Purchased Assets contemplated by this Agreement shall be subject to the fulfillment on or before the Closing Date of the following additional conditions:

(a) The Seller shall have received the payment required pursuant to Section 4.2 from the Buyer;

(b) The representations and warranties of the Buyer set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made at and as of the Closing Date, and the Buyer shall have performed and complied in all material respects with its covenants and agreements contained in this Agreement which are required to be performed on or prior to the Closing Date;

(c) The Seller shall have received a certificate from an authorized officer of the Buyer, dated the Closing Date, to the effect that, to the best of such officer's knowledge, the conditions set forth in Sections 8.3(a) and (b) have been satisfied;

(d) The consents and approvals required to be obtained pursuant to Section 8.1(c) hereof shall not contain, or be granted subject to, terms or conditions which, from the Seller's perspective, materially and adversely affect the benefits to the Seller under this Agreement or the transactions contemplated hereby;

(e) All corporate and other proceedings to be taken by the Buyer in connection with the transactions contemplated hereby, and all documents incident thereto, shall be reasonably satisfactory in form and substance to the Seller and its counsel, and the Seller and its counsel shall have received all such certified or other copies of such documents as it or they may reasonably request; and

(f) The Seller shall have received an opinion from counsel for the Buyer reasonably satisfactory to the Seller, dated the Closing Date, to the effect that:

(i) each of Energy and the Buyer is a limited liability company organized, existing and in good standing under the laws of the State of Delaware, and has the corporate power and authority to execute and deliver, as applicable, this Agreement and related agreements and to consummate the transactions contemplated hereby and thereby; and the execution and delivery of this Agreement and such related agreements and the consummation of the sale and purchase of the Assets contemplated hereby have been duly authorized by all requisite corporate action taken on the part of the Buyer and Energy;

(ii) this Agreement and all related agreements have been duly executed and delivered by the Buyer and Energy and (assuming that the NiMo Consents and the Buyer Required Regulatory Approvals are obtained) are valid and binding obligations of each of the Buyer and Energy, enforceable against the Buyer and Energy in accordance with their respective terms, except (A) that such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium, condemnation or eminent domain or other similar laws now or hereafter in effect relating to creditors' rights, and (B) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to certain equitable defenses and to the discretion of the court before which any proceeding therefor may be brought;

(iii) the execution, delivery and performance of this Agreement and all related agreements by each of the Buyer and Energy will not constitute a violation of the operating agreements (or other similar governing documents), as currently in effect, of the Buyer;

(iv) no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any governmental authority is necessary for the consummation by the Buyer of the Closing, other than the Buyer Required Regulatory Approvals, all of such Buyer Required Regulatory Approvals having been obtained and being in full force and effect with such

terms and conditions as shall have been imposed by any applicable governmental authority.

As to any matter contained in such opinion which involves the laws of any jurisdiction other than the Federal laws of the United States and the State of Illinois, such counsel may rely upon opinions of counsel admitted to practice in such other jurisdictions. Any opinions relied upon by such counsel as aforesaid shall be delivered together with the opinion of such counsel. Such opinion may expressly rely as to matters of fact upon certificates furnished by appropriate officers and directors of the Buyer and its Affiliates and by public officials.

## ARTICLE 9

### INDEMNIFICATION

#### 9.1 Indemnification

(a) The Seller shall indemnify, defend and hold harmless the Buyer from and against any and all claims, demands or suits (by any Person), losses, liabilities, damages (including lost revenues but excluding any consequential, special, indirect, punitive or incidental damages, including, without limitation, lost profits), obligations, payments, costs and expenses (including, without limitation, the costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith) to the extent the foregoing are not covered by insurance (each, an "Indemnifiable Loss"), asserted against or suffered by the Buyer relating to, resulting from or arising out of (i) any breach by the Seller of any representation, warranty, covenant or agreement of the Seller contained in this Agreement, (ii) noncompliance by the Seller with any bulk sales or transfer laws as provided in Section 11.12 hereof, (iii) the Excluded Liabilities, (iv) Permitted Encumbrances under (vi) and (vii) of such definition in the Glen Park Agreement, and (v) the second \$100,000 of Indemnifiable Losses under the Glen Park Agreement which are not owed by Glen Park thereunder because of Section 9.1(a)(B) thereof, provided, however, that, in the case of any Indemnifiable Loss arising under clauses (i) or (ii) of this Section 9.1(a), (A) such indemnification shall be effective only with respect to claims (other than with respect to Section 5.1 and 5.2 which shall survive indefinitely) written notice of which is received by the Seller no later than the second anniversary of the Closing Date, (B) no amounts shall be due and payable to the extent that the aggregate amount of such Indemnifiable Losses is equal to \$100,000.00 or less, and (C) in no event shall the aggregate amount of all payments made by the Seller with respect to such Indemnifiable Losses exceed \$5,000,000.00.

(b) The Buyer shall indemnify, defend and hold harmless the Seller from and against any and all Indemnifiable Losses asserted against or suffered by the Seller

relating to, resulting from or arising out of (i) any breach by the Buyer of any representation, warranty, covenant or agreement of the Buyer contained in this Agreement or (ii) the Assumed Liabilities, provided, however, that in the case of any Indemnifiable Loss arising under clause (i) of this Section 9.1(b). (A) such indemnification shall remain in effect only with respect to claims written notice of which is received by the Buyer no later than the second anniversary of the Closing Date, (B) no amounts shall be due and payable to the extent that the aggregate amount of such Indemnifiable Losses is equal to \$100,000.00 or less, and (C) in no event shall the aggregate amount of all payments made by the Buyer with respect to such Indemnifiable Losses exceed \$250,000.00.

(c) The expiration, termination or extinguishment of any covenant or agreement shall not affect the Parties' obligations under this Section 9.1 if the person entitled to indemnification hereunder ("Indemnitee" provided the person required to provide indemnification under this Agreement (the "Indemnifying Party") with proper notice of the claim or event for which indemnification is sought prior to such expiration, termination or extinguishment.

(d) Other than as provided in Section 10.2 hereof and the Glen Park Agreement, the rights and remedies of the Seller and the Buyer under this Article 9 are exclusive and in lieu of any and all other rights and remedies which the Seller and the Buyer may have under this Agreement or otherwise for monetary relief with respect to (i) any breach or failure to perform any representation, warranty, covenant or agreement set forth in this Agreement and (ii) the Assumed Liabilities or the Excluded Liabilities, as the case may be.

(e) The rights and obligations of indemnification under this Section 9.1 shall not be limited or subject to set-off based on any violation or alleged violation of any obligation under this Agreement or otherwise, including, but not limited to, any breach or alleged breach by the Indemnitee of any representation, warranty, covenant or agreement contained in this Agreement.

(f) The Buyer and the Seller each agree that notwithstanding any provisions in this Agreement to the contrary, all parties to this Agreement retain their remedies at law or in equity with respect to willful or intentional breaches of this Agreement.



## 9.2 Defense of Claims

(a) If any Indemnitee receives notice of the assertion of any claim or of the commencement of any action or proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement (a "Third Party Claim"), with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnitee shall give such Indemnifying Party prompt written notice thereof, but in any event not later than ten (10) Business Days after the Indemnitee's receipt of notice of such Third Party Claim. Such notice shall describe the nature of the Third Party Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnifying Party shall have the right to participate in or, by giving written notice to the Indemnitee, to elect to assume the defense of any Third Party Claim at such Indemnifying Party's own expense and by such Indemnifying Party's own counsel, and the Indemnitee shall cooperate in good faith in such defense at such Indemnitee's own expense.

(b) If within ten (10) Business Days after an Indemnitee provides written notice to the Indemnifying Party of any Third Party Claim, the Indemnitee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 9.2(a), the Indemnifying Party shall not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof. Without the prior written consent of the Indemnitee, the Indemnifying Party shall not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder.

(c) Any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim (a "Direct Claim") shall be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable, but in any event not later than twenty (20) Business Days after the Indemnitee becomes aware of such Direct Claim, and the Indemnifying Party shall have a period of thirty (30) Business Days within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such thirty (30) Business Day period, the Indemnifying Party shall be deemed to have accepted such claim. If the Indemnifying Party rejects such claim, the Indemnitee shall be free to seek enforcement of its rights to indemnification under this Agreement.

(d) If the amount of any Indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other entity, the amount of such reduction, less any costs, expenses or premiums incurred in connection therewith, shall

promptly be repaid by the Indemnitee to the Indemnifying Party. Upon making any indemnity payment, the Indemnifying Party shall, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided, however, that (i) the Indemnifying Party shall then be in compliance with its obligations under this Agreement with respect to such Indemnifiable Loss, and (ii) until the Indemnitee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnifying Party against any such third party on account of said indemnity payment is hereby made expressly subordinated and subjected in right of payment to the Indemnitee's rights against such third party. Without limiting the generality or effect of any other provision hereof, each such Indemnitee and Indemnifying Party shall duly execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights. Nothing in this Section 9.2(d) shall be construed to require either Party hereto to obtain or maintain any insurance coverage. The rights contained herein shall not be duplicative of any reductions effected pursuant to Section 9.1(c) hereof.

(e) Subject to clause (A) of the proviso to each of section 9.1(a) and 9.1(b) hereof, a failure to give timely notice as provided in this Section 9.2 shall not affect the rights or obligations of either Party hereunder, except if, and only to the extent that, as a result of such failure, the Party which was entitled to receive such notice was actually prejudiced as a result of such failure.

### 9.3 Tax Indemnification

In addition to any other indemnification granted herein and notwithstanding the survivability or limits, if any, of any representation contained herein or the absence of any representation herein, Seller agrees to indemnify, defend and hold harmless Buyer, its affiliates and their respective officers, directors, employees, and agents from and against all loss, liability including Seller's liability for its own Taxes or its liability, if any (for example, by reason of transferee liability) for Taxes of others, damage or reasonable expense (including but not limited to reasonable attorneys' fees and expenses) (collectively, "Costs"), payable with respect to Taxes claimed or assessed against the Assets for any taxable period ending on or before the Closing Date. Seller also agrees to indemnify, defend and hold harmless the Buyer from and against any and all Costs sustained in a tax period of Buyer ending after the Closing Date, relating to the Assets, and arising out of the settlement or resolution of a proposed tax adjustment which relates to a tax period ending on or before the Closing Date.

### 9.4 Breach by Glen Park

In the event the Seller recovers damages from Glen Park arising out of a breach by Glen Park of the Glen Park Agreement, the Buyer shall be entitled to one-half of all amounts recovered by the Seller after deduction of recovery expenses (including fees of counsel).

## ARTICLE 10

## TERMINATION

10.1 Termination

(a) This Agreement may be terminated at any time prior to the Closing Date by mutual written consent of the Seller and the Buyer.

(b) This Agreement may be terminated by either the Seller or the Buyer within thirty (30) days of the occurrence of any of the following events: (i) any governmental or regulatory body, the consent of which is a condition to the obligations of the Seller and the Buyer to consummate the Closing, shall have determined not to grant its consent, or (ii) one or more courts of competent jurisdiction in the United States or any state shall have issued an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the Closing, and such order, judgment or decree shall have become final and nonappealable, or (iii) any statute, rule or regulation shall have been enacted by any state or Federal government or governmental agency in the United States which prohibits the consummation of the Closing or (iv) the termination of the Glen Park Agreement as a result of the failure of any condition set forth in Article VIII of the Glen Park Agreement to be satisfied or waived.

(c) This Agreement may be terminated by either the Seller or the Buyer if the Closing shall not have occurred by September 30, 1999, provided that no party shall have the right to terminate this Agreement if such delay is the fault of such party.

10.2 Procedure and Effect of Termination

(a) In the event of the termination of this Agreement by either or both of the Parties pursuant to Section 10.1, written notice thereof shall forthwith be given by the terminating Party to the other Party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by either of the Parties hereto. If this Agreement is terminated as provided herein:

(i) neither of the Parties, nor any of their respective partners, directors, officers or Affiliates, as the case may be, shall have any liability or further obligation to the other Party, or to any of its respective partners, directors, officers or Affiliates, as the case may be, pursuant to this Agreement, except in each case as stated in Sections 7.3 and 7.9 hereof and of Sections 7.3 and 7.10 of the Glen Park Agreement; and

(ii) all filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, shall be withdrawn from the agency or other Person to which the same were made.

(b) Except as provided in Section 9.1(f), notwithstanding any other term or provision of this Agreement or the other documents delivered pursuant to this Agreement, each of the Parties hereby agrees that no Party, or the respective Affiliates, officers, directors, employees, agents or attorneys of such Party, shall be liable hereunder for any profit, loss of capital, consequential, special, indirect, punitive or incidental damages that may be incurred by the other Party as a result of any action or inaction by such Party or in connection with this Agreement or any agreement contemplated to be executed in connection with this Agreement, and each Party hereby knowingly, voluntarily and intentionally waives the right to seek any such damages.

## ARTICLE 11

### MISCELLANEOUS PROVISIONS

#### 11.1 Amendment and Modification

Subject to applicable law, this Agreement may be amended, modified or supplemented only by written agreement of the Seller and the Buyer.

#### 11.2 Waiver of Compliance; Consents

Except as otherwise provided in this Agreement, any failure of either of the Parties to comply with any obligation, covenant, agreement or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

### 11.3 No Survival

Subject to the provisions of Section 10.2, each and every representation and warranty in Article 5 shall survive the Closing for two years (other than Sections 5.1 and 5.2 which shall survive indefinitely) and the covenants and obligations contained in Sections 7.3, 7.4, and 7.9 and Articles 9 and 11 shall survive the Closing in accordance with their terms. All other representations, warranties, covenants and obligations shall expire with, and be terminated and extinguished by, the consummation of the sale of the Assets, the termination of the Energy Sales Agreement, the termination of the Ground Lease, and shall not survive the Closing Date; and none of the Seller, the Buyer nor any officer, director, partner or Affiliate of either of them shall be under any liability whatsoever with respect to any such representations, warranties, covenant or obligation.

### 11.4 Notices

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by facsimile transmission, or if telexed or mailed by overnight courier or registered or certified mail (return receipt requested), postage prepaid, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof):

If to the Seller, to:

Niagara Mohawk Power Corporation  
300 Erie Boulevard West  
Syracuse, New York 13202  
Attn: Director – Energy Transactions

with a copy to:

Sullivan & Cromwell  
1701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
Attn: Janet T. Geldzahler

If to the Buyer, to:

Northbrook Energy, LLC  
225 West Wacker Drive  
Suite 2330  
Chicago, Illinois 60606

## **AFFIDAVIT OF MICHAEL J. KELLEHER**

I, Michael J. Kelleher, being duly sworn, depose and state:

### **I. INTRODUCTION**

1. I am Vice President, Financial Planning for Niagara Mohawk Power Corporation ("Niagara Mohawk" or the "Company"). I submit this affidavit in support of the Joint Petition of Niagara Mohawk and Northbrook Energy, LLC ("Northbrook" or the "Purchaser") (collectively "Petitioners") to the New York Public Service Commission ("Commission") for authorization to transfer certain real estate associated with and the contract rights to acquire the Glen Park Hydroelectric Project (the "Glen Park Assets") to the Purchaser and for related approvals.

2. I have been responsible for managing Niagara Mohawk's sale of its non-nuclear generating assets and will continue to manage the transition process through regulatory approvals and closing. The purpose of this affidavit is to (i) identify the transactions for which approval is sought; and (ii) describe how Niagara Mohawk will apply the proceeds of the proposed transaction. The process utilized to sell the Glen Park Assets will be described in the affidavit of Thomas W. Widener.

### **II. PLANNING THE SALE PROCESS**

3. As part of its *PowerChoice* Settlement, approved by the Commission in March 1998, Niagara Mohawk agreed to auction all of its fossil and hydroelectric generation assets to third parties and to provide specific rate reductions for all customer classes as well as introduce customer choice.

4. On January 26, 1999, the Commission approved a contract termination agreement between Niagara Mohawk and Glen Park Associates ("GPA"). See Niagara Mohawk Power Corporation, Case 98-E-1028, Order Approving Termination of Purchased Power Agreement #337 And Associated Lease Between Niagara Mohawk Power Corporation and Glen Park Associates

Limited Partnership (January 26, 1999). That contract termination agreement provided, among other things, for Niagara Mohawk actively to work, with GPA's assistance, to resell the Glen Park Hydroelectric Project. In order to maximize the net proceeds for ratepayers from the sale of the Glen Park Hydroelectric Project, the Commission approved an "auction incentive" to be shared by Niagara Mohawk shareholders and GPA Id. The approved "auction incentive" is set at 10% of the first \$2 million (or portion thereof) of the resale price in excess of \$22.4 million and 20% of any amounts in excess of that first \$2 million. The proposed transaction which is the subject of this petition is the fruit of that effort and effectuates the terms of the contract termination agreement previously approved by the Commission

5. The process used by Niagara Mohawk to sell the Glen Park Assets, including the manner in which Niagara Mohawk solicited and provided information to bidders and the structure of the bidding process, is described in the affidavit provided by Thomas W. Widener, Director in the Investment Banking Group at Merrill Lynch & Co.

### **III. THE TRANSACTIONS FOR WHICH APPROVAL IS SOUGHT**

6. Petitioners seek approval of the transaction documented in the Asset Purchase Agreement dated June 7, 1999 executed by Niagara Mohawk and Northbrook for the purchase and sale of the Glen Park Assets (the "Sales Agreement") (attached as MJK-1 hereto). Purchaser has agreed to pay approximately \$22.5 million for these assets subject to certain adjustments. Pursuant to the Sales Agreement, Petitioners have agreed to execute several ancillary agreements including the Transition Power Agreement which is described in further detail in the affidavit of Scott D. Leuthauser. The parties are currently negotiating an Interconnection Agreement which will be filed with the Commission when it is finalized. Niagara Mohawk and Purchaser specifically request that,

in conjunction with approving the transfer of the Glen Park Assets, the Commission approve these agreements.

#### **IV. APPLICATION OF THE PROCEEDS OF THE SALE**

7. The gross proceeds available to Niagara Mohawk and RG&E as a result of the sale of the Glen Park Assets is approximately \$22.5 million. This amount is subject to certain adjustments as provided in the Sales Agreement.

8. After distribution of the "auction incentive" described above, Niagara Mohawk intends to apply 100% of the net sales proceeds of the sale to retire stranded costs associated with Glen Park Assets. In this case, the calculation of Niagara Mohawk's stranded costs will be based on the assumed selling price of the Glen Park Hydroelectric Project (\$22.4 million), rather than on net book cost. From this net remainder, taxes and sales costs will be deducted to determine net proceeds available to write-down stranded costs. In addition, New York State revenue taxes will be trued-up to actual State taxes.

#### **V. CONCLUSION**

9. Niagara Mohawk's sale of the Glen Park Assets was conducted in a manner consistent with the Commission-approved auction process and achieved the desired result of producing a definitive agreement for the resale of the Glen Park Hydroelectric Project and related assets to a willing buyer who agreed to pay the maximum value for these assets under the facts, circumstances and timing of the sales process.



10. In sum, Niagara Mohawk, with the assistance of GPA, implemented a successful process for the sale of the Glen Park Assets in a manner designed to meet the goals and obligations set forth in the contract termination agreement previously approved by the Commission.


\_\_\_\_\_  
Michael J. Kelleher

Sworn to before me this  
\_\_\_\_\_ day of July, 1999

\_\_\_\_\_  
Notary Public


My Commission Expires: \_\_\_\_\_

10. In sum, Niagara Mohawk, with the assistance of GPA, implemented a successful process for the sale of the Glen Park Asscts in a manner designed to meet the goals and obligations set forth in the contract termination agreement previously approved by the Commission.



Michael J. Kelleher

Sworn to before me this  
12<sup>th</sup> day of July, 1999

  
Notary Public

My Commission Expires: 9/30/00

RUTH A. GALUTZ  
Notary Public in the State of New York  
Qualified in Onondaga County No. 6451396  
My Commission Expires 9/30/00

DCLAN/101679.8

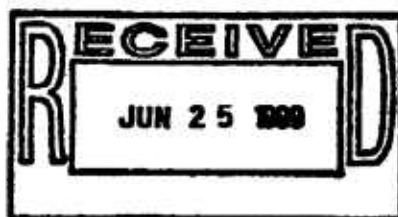
ASSET PURCHASE AGREEMENT

By and Between  
Northbrook Energy, LLC

and

NIAGARA MOHAWK POWER CORPORATION

Dated as of June 7, 1999



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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into on the 7th day of June, 1999 by and between Niagara Mohawk Power Corporation, a New York corporation, Syracuse, New York 13202 (the "Seller"), and Northbrook Energy LLC, a Delaware limited liability company ("Energy"). Energy and the Seller may also be referred to herein individually as a "Party" or collectively as the "Parties").

### RECITALS:

WHEREAS, the Seller has the right to acquire a hydroelectric generation project located on the Black River in Glen Park, Jefferson County, New York with a nominal installed capacity rating of approximately 32.65 megawatts (the "Facility") pursuant to an Amended and Restated Asset Purchase, Sale and Termination Agreement dated March 1, 1999 (the "Glen Park Agreement") between the Seller and Glen Park Associates Limited Partnership, a New York limited partnership ("Glen Park");

WHEREAS, the Seller owns the Real Property, as defined in Section 1.4; and

WHEREAS, the Seller and Energy wish to set forth in this Agreement the terms and conditions upon which the Seller will assign its right to acquire the Facility and will sell the Real Property to an affiliate of Energy to be designated by Energy pursuant to Section 11.5 hereof (such designee is hereinafter referred to as the "Buyer") at which time the Buyer shall execute and deliver this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

### ARTICLE 1

#### DEFINITIONS

##### 1.1 Definitions

As used in this Agreement, capitalized terms not defined herein have the meaning set forth in the Glen Park Agreement and the following terms have the meanings specified in this Article 1:

1.2 "Asset Taxes" means ad valorem, special assessments or personal property taxes applicable to the Assets.



1.3 **"Assets"** means the Purchased Assets (other than the Ground Lease) and the Real Property.

1.4 **"Buyer Representatives"** means the Buyer's and/or Energy's employees, accountants, counsel, environmental consultants, financial advisors and other authorized representatives.

1.5 **"Buyer Required Consents"** means those consents required to be obtained by the Buyer or Energy in order to consummate the transactions contemplated by this Agreement, as listed on Schedule 1.5 hereto.

1.6 **"NiMo Consents"** means those consents and regulatory approvals required to be obtained by the Seller in order to consummate the transactions contemplated by this Agreement, as listed on Schedule 1.6 hereto.

1.7 **"Real Property"** means the real estate described on Schedule 1.7 hereto as associated with the Facility.

## ARTICLE 2

### PURCHASE

#### 2.1 The Purchase

Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing the Seller will cause Glen Park, pursuant to the Glen Park Agreement, to sell, assign, convey, transfer and deliver to the Buyer, and the Buyer shall accept the Purchased Assets from Glen Park, free and clear of all Encumbrances (except for Permitted Encumbrances), all of Glen Park's right, title and interest in, to and under the personal or real property, tangible or intangible, owned by Glen Park and constituting the Purchased Assets and the Seller shall sell, assign, convey, transfer and deliver to the Buyer, and the Buyer shall acquire from the Seller the Real Property, which Assets shall be subject only to Permitted Encumbrances.

#### 2.2 Excluded Assets

Notwithstanding any provisions herein to the contrary, the Purchased Assets shall not include the Excluded Assets.

#### 2.3 Assumed Liabilities

On the Closing Date, the Buyer shall assume the Seller's and Glen Park's obligations which arise following the Closing and which were not to be performed prior to the Closing under (a) the license issued by FERC for the Project (FERC Project

#4796), as amended, and all conditions thereto, (b) the dam permit issued by the New York State Department of Environmental Conservation on September 20, 1985 and (c) the water quality certification issued by the New York State Department of Environmental Conservation under Section 401 of the Clean Waters Act of 1977.

#### 2.4 Excluded Liabilities.

The Buyer shall not assume or be obligated to pay, perform or otherwise discharge the following liabilities or obligations:

(i) any liabilities or obligations of the Seller or Glen Park in respect of any Excluded Assets or other assets of the Seller or Glen Park which are not Assets;

(ii) any liabilities or obligations in respect of Taxes attributable to the Assets for taxable periods ending on or before the Closing Date, except for Taxes for which the Buyer is liable pursuant to Section 3.3;

(iii) any liabilities, obligations, or responsibilities relating to the disposal, storage, transportation, discharge, Release, recycling, or the arrangement for such activities, by the Seller or Glen Park, of Hazardous Substances that were generated at the Assets, at any off-site location, where the disposal, storage, transportation, discharge, Release, recycling or the arrangement for such activities at said off-site location occurred prior to the Closing Date, provided that for purposes of this Section 2.4, "off-site location" does not include any location to which Hazardous Substances disposed of or Released at the Assets have migrated;

(iv) any liabilities or obligations relating to any personal injury set forth in Schedule 5.6 of the Glen Park Agreement;

(v) any payment obligations of the Seller or Glen Park for goods delivered or services rendered prior to the Closing;

(vi) any liabilities or obligations imposed upon, assumed or retained by Glen Park pursuant to the Seller Indenture;

(vii) any liabilities, obligations or responsibilities relating to any employees of Seller or Glen Park or Glen Park's Affiliates who were associated with the Assets; and

(viii) any liabilities related to the operation of the Assets prior to the Closing, other than liabilities, obligations or responsibilities arising under Environmental Laws (except for, in the case of Environmental Laws, liabilities which remain Excluded Liabilities under Section 2.4(iii)).

All such liabilities and obligations not being assumed pursuant to Section 2.4 are herein called the "Excluded Liabilities."

### ARTICLE 3

#### PURCHASE PRICE

##### 3.1 Purchase Price

The purchase price for the Assets shall be an amount equal to Twenty-Two Million Five Hundred Thousand Dollars (\$22,500,000) (the "Purchase Price"), as adjusted pursuant to Section 3.4.

##### 3.2 Allocation of the Purchase Price

Attached hereto as Exhibit B is an allocation of the Purchase Price among the Assets. Each of the Buyer and the Seller agrees to file Internal Revenue Service Form 8594 with its Federal Income Tax Return for the taxable year that includes the Closing Date, and to file all Federal, state and local Tax Returns, each in accordance with such allocation. Each of the Buyer and the Seller shall report the transactions contemplated by this Agreement for Federal Income tax and all other tax purposes in a manner consistent with such agreed-upon allocation. Each of the Buyer and the Seller shall provide the other promptly with any other information and cooperation reasonably required to complete Form 8594. Each of the Buyer and the Seller shall notify and provide the other with reasonable assistance in the event of an examination, audit or other proceeding regarding the agreed-upon allocation of the Purchase Price.

##### 3.3 Proration

(a) All items normally prorated, including those listed below, relating to the business and operation of the Assets, shall be prorated as of the Closing Date, with the Seller liable to the extent such items relate to any time period through the Closing Date, and the Buyer liable to the extent such items relate to periods subsequent to the Closing Date, and with, to the extent practicable, a cash settlement on the Closing Date:

(i) Asset Taxes, assessments and other similar charges, if any, on or with respect to the business and operation of the Assets and with respect to a Taxable Period that begins before but does not end on the Closing Date shall be prorated to the extent such tax is measured by time to the Seller based on the number of days in such taxable period, up to and including the Closing Date, and to the Buyer based on the number of days in such taxable period after the Closing Date;

(ii) any permit, license, registration, compliance assurance fees or other fees with respect to any Transferable Permit associated with the Assets (including, but not limited to the FERC license); and

(iii) sewer rents and charges for water, telephone, electricity and other utilities.

(b) In connection with the prorations referred to in (a) above, in the event that actual figures are not available as of the Closing Date, the proration shall be based upon the actual Asset Taxes or fees for the preceding year (or appropriate period) for which actual Asset Taxes or fees are available, and such Asset Taxes or fees shall be prorated upon request of either Party, made within sixty (60) days of the date that the actual amounts become available. The Seller and the Buyer shall furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 3.3.

(c) To the extent required by any approval of the transfer of the FERC project license for the Facility, the Seller shall pay all annual charges accrued under such license as of the Closing Date.

#### 3.4 Purchase Price Adjustment

In the event on or before the Closing Date there would be a breach of any representation, warranty or covenant herein, or a failure to satisfy any condition, if the definition of Material Adverse Effect was a decrease in value of \$50,000 or more rather than 10% or more, the Purchase Price shall be reduced by the difference between \$50,000 and the amount of such decreases in value of such change(s) or effect(s) in excess of \$50,000.

## ARTICLE 4

### THE CLOSING

#### 4.1 Time and Place of Closing

Upon the terms and subject to the satisfaction of the conditions contained in Article 8 of this Agreement (the "Closing Conditions"), the Closing shall take place at the offices of the Seller on such date as the Parties may agree, which date shall be as soon as practicable, but, no later than ten (10) Business Days following the date on which all of the Closing Conditions have been satisfied or waived, or at such other place or time as the Parties may agree, provided that either the Seller or the Buyer may extend the Closing Date to a date not later than September 30, 1999. The Closing will be deemed for all purposes to have occurred at the commencement of business on the Closing Date.

#### 4.2 Payment

Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, in consideration of the aforesaid sale, assignment, conveyance, transfer and delivery of the Assets, the Buyer shall pay or cause to be paid to the Seller at the Closing an amount in United States dollars equal to the Purchase Price, by wire transfer of immediately available funds or by such other means as are agreed upon by the Seller and the Buyer and the Seller shall be responsible for paying Glen Park the amounts payable under the Glen Park Agreement.

#### 4.3 Deliveries By Seller.

(a) At the Closing, the Seller shall cause to be delivered to the Buyer:

(i) The Bill of Sale, in the form attached to the Glen Park Agreement, appropriately revised and duly executed by Glen Park, stating additionally that Glen Park represents and warrants to the Buyer that Glen Park is the absolute owner of the Purchased Assets, and that said Purchased Assets are free and clear of all liens, charges and encumbrances, for the personal property included in the Purchased Assets;

(ii) All consents, waivers or approvals obtained by Glen Park or Seller with respect to the sale and purchase of the Assets, the transfer of any Transferable Permits related to the Assets or the consummation of the transactions related to the sale of the Assets, to the extent specifically required hereunder or under the Glen Park Agreement or otherwise obtained by Seller; and

(iii) Opinions of counsel and certificates (as contemplated by Article VIII hereof) with respect to the Purchased Assets and an opinion of counsel reasonably satisfactory to the Buyer with respect to the Real Property;

(iv) Evidence of compliance by Glen Park with Section 1141(c) of the New York State Tax Law;

(v) A quit claim deed from Glen Park with respect to the Purchased Assets; and

(vi) The books and records relating to the operation of the Facility shall be delivered to the location designated by the Buyer.

(b) At the Closing, the Seller shall deliver to the Buyer.

(i) The bargain and sale deed attached hereto as Exhibit A with lien covenants conveying the Real Property, subject to the applicable Easements and Exceptions, duly executed and acknowledged by the Seller and in recordable form along with TP-584 Forms and Equalization and Transfer Reports;

(ii) All such other instruments of assignment or conveyance as shall, in the reasonable opinion of the Buyer and its counsel, be necessary or desirable to transfer to the Buyer the Assets in accordance with this Agreement and, where necessary or desirable, in recordable form;

(iii) Such other agreements, documents, instruments and writings as are required to be delivered by the Seller at or prior to the Closing Date pursuant to this Agreement or the Glen Park Agreement or otherwise required in connection herewith or therewith, including, without limitation, as set forth in Section 8.1(f);

(vii) An assignment of the Seller's rights under the Glen Park Agreement, with an acknowledgment thereto by Glen Park;

(viii) Evidence of termination of the Operating and Management Agreement with Mercer Companies, Inc. and the Ground Lease and that the events set forth on Exhibit C have occurred;

(ix) General Assignments of Intangibles from Glen Park with respect to the Purchased Assets and from Seller with respect to the Real Property; and

(x) FIRPTA statements for Glen Park and the Seller.

#### 4.4 Deliveries by Buyer

At the Closing, the Buyer shall deliver the following to the Seller:

- (i) the Purchase Price, by wire transfer of immediately available funds or by such other means as are agreed upon by the Seller and the Buyer.
- (ii) An opinion of counsel, which opinion may be relied upon by Glen Park, and certificate (as contemplated by Section 8.3(c)) with respect to the Assets;
- (iii) All such other instruments of assumption as shall, in the reasonable opinion of the Seller and its counsel, be necessary or desirable for the Buyer to assume the Assumed Liabilities related to the Assets being sold in accordance with this Agreement; and
- (iv) Such other agreements, documents, instruments and writings as are required to be delivered by the Buyer at or prior to the Closing Date pursuant to this Agreement or otherwise required in connection herewith, including, without limitation, as set forth in Section 8.1(f).

### ARTICLE 5

#### REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants to Energy and the Buyer as follows (all such representations and warranties, except those regarding the organization and authority of the Seller, being made to the Knowledge of the Seller) that:

##### 5.1 Organization; Authority

The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted.

##### 5.2 Authority Relative to This Agreement

The Seller has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby, subject to receipt of the NiMo Consents. This Agreement has been duly and validly executed and delivered by the Seller and, subject to the receipt of the NiMo Consents and the Buyer Required Regulatory Approvals, constitutes a valid and binding agreement of the Seller, enforceable against the Seller in accordance with its terms, except that such

enforceability may be limited by applicable bankruptcy, insolvency, moratorium, condemnation, eminent domain or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

### 5.3 Consents and Approvals; No Violation

(a) Other than obtaining the NiMo Consents, the Buyer Required Consents and the Buyer Required Regulatory Approvals, neither the execution and delivery of this Agreement by the Seller nor the sale by the Seller of the Real Property or the designation of the Buyer by the Seller pursuant to Section 11.5 of the Glen Park Agreement will (i) conflict with or result in any breach of any provision of the certificate of incorporation or by-laws of the Seller; (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Seller is a party or by which the Seller or any of the Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which, in the aggregate, would not have a Material Adverse Effect; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Seller, or any of the Assets, which violation would have a Material Adverse Effect.

(b) Except for the NiMo Consents and except for the Seller Required Consents and the Seller Required Regulatory Approvals, no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any governmental or regulatory body or authority is necessary for the execution and delivery of this Agreement or the Glen Park Agreement by the Seller or Glen Park or the consummation by the Seller or Glen Park of the transactions contemplated hereby or thereby, other than such declarations, filings, registrations, notices, authorizations, consents or approvals (A) which become applicable to the Seller, Glen Park or the Assets as a result of the specific regulatory status of the Buyer (or any of its Affiliates) or as a result of any other facts that specifically relate to the business or activities in which the Buyer (or any of its Affiliates) is or proposes to be engaged, or (B) which, if not obtained or made, will not, individually or in the aggregate, have a Material Adverse Effect.

### 5.4 Title and Related Matters

Except for Permitted Encumbrances (other the Ground Lease), at the Closing, following the termination of the Ground Lease as contemplated by the Glen Park Agreement, the Seller will have good and valid title to the Real Property, free and clear of all other Encumbrances and, to the Seller's knowledge, assuming the events set forth on Exhibit C occur, Glen Park at Closng will have good and valid title to the Purchased Assets.



## 5.5 Environmental Matters

(a) Except as otherwise disclosed in Schedule 5.5:

(i) the Seller holds and is in substantial compliance with all material permits, licenses and governmental authorizations (collectively, "Environmental Permits") required for the Seller to own the Real Property under applicable Environmental Laws, the Seller has not received any written notice of any material violation of any Environmental Law that is presently outstanding with respect to the Real Property and to the best of the Seller's actual knowledge, the Seller is not in material violation of any Environmental Law;

(ii) the Seller has not received any written request for information, or been notified that the Seller is a potentially responsible party, under CERCLA or any similar state law with respect to the Real Property;

(iii) the Seller has not entered into or agreed to any consent decree or order, and is not subject to any judgment, decree or judicial order with respect to the Real Property relating to compliance with any Environmental Law or to investigation or cleanup of Hazardous Substances under any Environmental Law; and

(iv) Glen Park has informed the Seller that there are no underground storage tanks located on the Real Property.

(b) The representations and warranties of the Seller made in this Section 5.5 are the Seller's exclusive representations and warranties relating to environmental matters.

## 5.6 Legal Proceedings

Except for matters which are also Excluded Liabilities, there are no claims, actions, proceedings or investigations pending or threatened against or relating to the Seller and pertaining to the Assets before any court, governmental or regulatory authority or body acting in an adjudicative capacity. The Seller is not subject to any outstanding judgment, rule, order, writ, injunction or decree of any court, governmental or regulatory authority pertaining to the Assets.

## 5.7 Permits

(a) "Permits" means all material permits, licenses, franchises and other governmental authorizations, consents and approvals relating to the Seller's ownership or operation of the Real Property, other than those permits required pursuant to Environmental Laws. The Seller has all Permits necessary to own the Real Property as presently owned except where the failure to have any such permit would not have a

**Material Adverse Effect.** The Seller has not received any written notification that it is in violation of any of such Permits, or any law, statute, order, rule, regulation, ordinance or judgment of any governmental or regulatory body or authority applicable to it and pertaining to the Real Property. The Seller is in compliance with all Permits, laws, statutes, orders, rules, regulations, ordinances, and judgments of any governmental or regulatory body or authority applicable to it, except for violations which, in the aggregate, do not have a Material Adverse Effect.

(b) There are no Permits and Environmental Permits, other than Transferable Permits, which, if not held or maintained (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect.

5.8 Employees The Seller has no employees which work at the Facility.

5.9 Certain Contracts and Arrangements

Except for the Glen Park Agreement and contracts, agreements, personal property leases, commitments, understandings or instruments which will expire prior to the Closing Date, the Seller is not a party to any written contract, agreement, personal property lease, commitment, understanding or instrument with respect to the business or operations of the Purchased Assets or the Real Property.

5.10 Violations of Law

The Seller has not received any written notices alleging violations of applicable law with respect to the Assets and to the knowledge of the Seller, no such violations exist, other, in each case, than violating which do not, individually or in the aggregate, have a Material Adverse Effect.

5.11 Facility

The Assets constitute all of the real and personal property necessary to operate the Facility in accordance with the licenses and permits referred to in Section 2.3.

5.12 Glen Park's Representations

To the knowledge of the Seller, Glen Park's representations and warranties in the Glen Park Agreement are true and correct in all material respects.

5.13 No Representations and Warranties

**EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS ARTICLE 5, THE GLEN PARK AGREEMENT AND THE INSTRUMENTS OF CONVEYANCE AT THE CLOSING, THE PURCHASED ASSETS ARE BEING SOLD AND TRANSFERRED "AS IS, WHERE IS", AND THE SELLER IS**

**NOT MAKING ANY OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING THE PURCHASED ASSETS, INCLUDING, IN PARTICULAR, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.**

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES OF THE BUYER AND ENERGY**

Each of Energy and the Buyer represents and warrants to the Seller, as of the date hereof and as of the Closing Date, as follows (all such representations and warranties, except those regarding the Buyer and Energy, being made to the best knowledge of the Buyer and Energy after reasonable inquiry or investigation):

#### **6.1 Organization**

Each of Energy and the Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted.

#### **6.2 Authority Relative to This Agreement**

Each of Energy and the Buyer has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Energy and the Buyer, and, assuming that this Agreement constitutes a valid and binding agreement of the Seller, and subject to receipt of the Buyer Required Regulatory Approvals, the Buyer Required Consents, the Seller Required Consents, the Seller Required Regulatory Approvals and the NiMo Consents, this Agreement constitutes a valid and binding agreement of Energy and the Buyer, enforceable against the Buyer in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

### 6.3 Consents and Approvals; No Violation

(a) Other than obtaining the Buyer Required Consents, the Buyer Required Regulatory Approvals, the NiMo Consents, the Seller Required Consents and the Seller Required Regulatory Approvals, neither the execution and delivery of this Agreement by Energy or the Buyer nor the purchase by the Buyer of the Assets will (i) conflict with or result in any breach of any provision of operating agreements of Energy and the Buyer, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, or (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which the Buyer or any of its subsidiaries or Affiliates is a party or by which any of its assets is bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

(b) Except for (i) approval by the FERC, under Part I of the Federal Power Act, of the transfer of the FERC project license related to, and necessary to operate, the Facility, (ii) any PSC approval necessary for the Seller to transfer the Purchased Assets and/or for the Buyer to purchase the Assets, (iii) the approval, if required, of the United States Securities and Exchange Commission pursuant to the Holding Company Act, and (iv) any filing by the Buyer and the Seller required by the HSR Act (the filings and approvals referred to in clauses (i) through (iv) are collectively referred to as the "Buyer Required Regulatory Approvals"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any governmental or regulatory body or authority is necessary for the consummation by the Buyer of the transactions contemplated hereby.

### 6.4 Litigation

There is no pending or threatened action by any governmental authority, arbitration panel or third Person which is likely to result, or has resulted, in (a) the institution of legal proceedings to prohibit or restrain the performance of this Agreement, or any related agreements, or the consummation of the transactions contemplated hereby or thereby, or (b) a claim for damages as a result of this Agreement, or any related agreements, or the consummation of the transactions contemplated hereby or thereby. There is no pending or threatened litigation or proceeding, private or governmental, which is likely to have a Material Adverse Effect.

### 6.5 Qualified Buyer

To the best of the Buyer's knowledge, the Buyer is qualified to obtain any Permits, Environmental Permits, licenses and approvals necessary for the Buyer to own and operate the Assets as of the Closing.

## 6.6 "AS IS" Sale

The Buyer acknowledges that the representations and warranties set forth in Article 5 hereof and in Article 5 of the Glen Park Agreement and in the conveyance documents at the Closing constitute the sole and exclusive representations and warranties relied upon by the Buyer in connection with the transactions contemplated hereby. The Buyer further acknowledges that there are no representations, warranties, covenants, understandings or agreements between the Parties regarding the Assets or their transfer other than those incorporated in this Agreement and in Article 5 and 9 of the Glen Park Agreement and in the conveyance documents. Except for the representations and warranties set forth in such Articles 5 and in the conveyance documents at the Closing, the Buyer disclaims reliance on any representations, warranties or guarantees, either express or implied, by the Seller, Glen Park or their respective agents and consultants.

## 6.7 Buyer's Affiliate

If the Buyer elects to use an Affiliate to hold title to the Assets, then the Buyer shall be deemed to have made the representations and warranties in this Article 6 on behalf of itself and any such Affiliate as if the Affiliate were a signatory to this Agreement.

# ARTICLE 7

## COVENANTS OF THE PARTIES

### 7.1 Conduct of Business of the Seller; Amendment of the Glen Park Agreement

(a) From the date hereof to the Closing Date, the Seller shall not permit Glen Park to operate the Purchased Assets other than as set forth in the Glen Park Agreement and the Seller shall consult with the Buyer with respect to the matters set forth in Section 7.1(b)(i) and (ii) of the Glen Park Agreement. The Seller shall not amend the Glen Park Agreement without the written consent of the Buyer.

### 7.2 Access to Information

Between the date of this Agreement and the Closing Date, the Seller shall request Glen Park to provide the Buyer, as Seller's Representative, with all information and access provided for under the Glen Park Agreement.

### 7.3 Expenses

Other than the cost of the title insurance referred to in Section 8.2(i) and transfer and sales taxes related to the transfer of the Assets, which shall be borne by the Seller,

except to the extent specifically provided herein, whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the Party incurring such costs and expenses, including, without limitation, any expenses associated with litigation arising out of this Agreement or any of the transactions contemplated hereby. Other than Merrill Lynch & Co., whose fees shall be paid by the Seller, each Party represents and warrants to the other that no broker, finder or other person is entitled to any brokerage fees, commissions or finder's fees in connection with the transactions contemplated hereby by reason of any action taken by the Party making such representation. Each Party shall pay to the other, or otherwise discharge, and shall indemnify and hold harmless the other from and against, any and all claims or liabilities for all brokerage fees, commissions, and finders' fees incurred by reason of any action taken by the indemnifying Party.

#### 7.4 Further Assurances

(a) Each of the Parties shall use its best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the sale of the Assets pursuant to this Agreement. From time to time after the date hereof, without further consideration, the Seller shall, at its own expense, execute and deliver such documents to the Buyer as the Buyer may reasonably request in order to more effectively vest in the Buyer's title to the Assets. From time to time after the date hereof, the Buyer shall, at its own expense, execute and deliver such documents to the Seller as the Seller may reasonably request in order to more effectively consummate the sale of the Assets and the assumption of the Assumed Liabilities.

(b) In the event that any of the Assets shall not have been conveyed to the Buyer at the Closing, the Seller shall use its best efforts to convey or cause to be conveyed such asset to the Buyer as promptly as is practicable after the Closing.

#### 7.5 Public Statements

Between the date of this Agreement and the Closing Date, the Seller and the Buyer shall consult with each other in advance of making any public announcement or press release, or otherwise disclosing any information, relating to the execution of this Agreement or any of the transactions contemplated hereby, or otherwise relating to the Assets and shall negotiate in good faith with respect to the form, content and timing thereof and shall not issue any such release without the prior approval of the other Party; provided, however, that each Party reserves the right to make such statements to regulatory authorities in the ordinary course of business or as are required, in the opinion of its counsel, by applicable law.

#### 7.6 Consents and Approvals

The Seller and the Buyer shall cooperate with each other and (i) promptly prepare and file all necessary documents, (ii) effect all necessary applications, notices, petitions and filings and execute all agreements and documents, (iii) use their respective best efforts to obtain the transfer or reissuance to the Buyer of all necessary Transferable Permits, consents, approvals and authorizations of all governmental bodies, and (iv) use their respective best efforts to obtain all necessary consents, approvals and authorizations of all other parties, in the case of each of the foregoing clauses (i), (ii), (iii) and (iv), necessary or advisable to consummate the transactions contemplated by this Agreement (including, without limitation, the Seller Required Regulatory Approvals, the Seller Required Consents, the NiMo Consents, the Buyer Required Regulatory Approvals and the Buyer Required Consents), or for the Buyer to own, operate and maintain, on and after the Closing Date, the Assets substantially as such assets have been historically owned, operated and maintained by Glen Park and the Seller prior to the date of this Agreement. Each of the Seller and the Buyer shall have the right to timely review in advance all characterizations of the information relating to the transactions contemplated by this Agreement which appear in any filing made in connection with the transactions contemplated hereby. Nothing in this Agreement shall be construed as an attempt or agreement to assign (i) any contract which is nonassignable without the consent of the other party or parties thereto unless such consent shall have been given, or (ii) any contract or claim as to which all of the remedies for the enforcement thereof would not pass to the Buyer as an incident of the assignments provided for in this Agreement.

#### 7.7 Supplements to Schedules

Prior to the Closing Date, the Seller shall supplement or amend the Schedules required by this Agreement with respect to any matter relating to the Assets hereafter arising which, if existing or occurring on the date of this Agreement, would have been required to be set forth or described in such Schedules. No supplement or amendment of any Schedule made pursuant to this Section 7.8 shall be deemed to cure any breach of any representation or warranty made in this Agreement unless the Parties agree thereto in writing.

#### 7.8 Risk of Loss

(a) From the date hereof through the Closing Date, all risk of loss or damage to the property included in the Assets shall be borne by the Seller.

(b) If, before the Closing Date, all or any material portion of the Assets is taken by eminent domain (or is the subject of a pending or to the Knowledge of the Seller contemplated taking which has not been consummated (other than at the volition of Seller or its affiliates)), the Seller shall notify the Buyer promptly in writing of such fact. If such taking would create a Material Adverse Effect, the Buyer and the Seller shall negotiate in good faith to settle the loss resulting from such taking (including, without limitation, by making a fair and equitable adjustment to the Purchase Price)

and, upon such settlement, consummate the transactions contemplated by this Agreement pursuant to the terms of this Agreement. Notwithstanding the foregoing, the Buyer or the Seller may terminate this Agreement if the damage is over \$2.4 million.

(c) If, before the Closing Date, all or any material portion of the Assets is damaged or destroyed by fire or other casualty, the Seller shall notify the Buyer promptly in writing of such fact. If such damage or destruction would create a Material Adverse Effect and the Seller has not notified the Buyer of its intention to cure such damage, destruction or loss within thirty (30) days after its occurrence, the Buyer and the Seller shall negotiate in good faith to settle the loss resulting therefrom (including, without limitation, by making a fair and equitable adjustment to the Purchase Price), and, upon such settlement, consummate the transactions contemplated by this Agreement pursuant to the terms of this Agreement. Notwithstanding the foregoing, the Buyer or the Seller may terminate this Agreement if the damage is over \$2.4 million.

#### 7.9 Confidential Information

(a) All oral and written information (collectively "Information") disclosed by either Party or its representatives, whether before or after the date hereof, in connection with the transactions contemplated by or the discussions and negotiations preceding this Agreement, to the other Party or its directors, officers and employees, or its representatives or advisors (the persons to whom such disclosure is permissible being collectively referred to as "Representatives"), shall (i) be kept confidential by the other Party and its Representatives, and shall not be disclosed by such other Party or its Representatives, except as otherwise provided in this Agreement, (ii) not be used by any such other persons, except as contemplated by this Agreement, and (iii) be treated with the same degree of care used in protecting its own confidential and proprietary information.

(b) Each Party shall inform its Representatives of the confidential nature of the other Party's Information and shall be responsible for any breach of this Section 7.10 by its Representatives.

(c) If either Party is requested or required (by the terms of a subpoena, order, civil investigative demand or other similar process or other written request issued by a court of competent jurisdiction or by a federal, state or local governmental body or agency) to disclose any Information of the other Party (or any of the terms, conditions or other facts with respect to the transactions contemplated by this Agreement), the obligated Party shall (i) provide the other Party with prompt notice of such request(s) and the documents requested so that the other Party may seek an appropriate protective order and/or waive the obligated Party's compliance with the provisions of this Section 7.10, and (ii) take such legally available steps as the other Party may reasonably request to resist or narrow such request. If, in the absence of a protective order or the receipt of a waiver hereunder, the obligated Party is nonetheless, in the reasonable opinion of its legal counsel, compelled to disclose Information of the other







**AFFIDAVIT OF TIMOTHY E. MCCLIVE  
RELATING TO MARKET POWER**

I, TIMOTHY E. MCCLIVE, being duly sworn, deposes and says:

**I. INTRODUCTION AND SUMMARY**

1. My name is Timothy E. McClive and my business address is 300 Erie Boulevard West, Syracuse, New York, 13202. I am a Corporate Planner in the Strategic Planning Department of Niagara Mohawk Power Corporation ("Niagara Mohawk"). My educational training includes degrees in Economics from Trinity College and the State University of New York, and completion of all requirements but the dissertation for a Ph.D. in Resource Economics from Cornell University. These studies have all included concentrations in mathematics and quantitative methods course work. My professional background includes over fifteen years as an energy economist and planner.

2. I am submitting this affidavit in support of the support of the Joint Petition of Niagara Mohawk and Northbrook Energy, LLC ("Northbrook" or the "Purchaser") for authority for Niagara Mohawk to transfer its interest in the Glen Park hydro electric generation project located on the Black River in Jefferson County, New York with a nominal installed capacity rating of approximately 32.65 megawatts (the "Facility"). The purpose of this affidavit is to assess whether the proposed transaction raises any market power concerns.

3. I understand that NRG Energy, Inc. has a 50% interest in Northbrook. I do not know the nature of the corporate or partnership arrangements of this 50% interest, but to be conservative, I am attributing this 32.65 MW facility to NRG's market in New York.

4. Given that the generating capacity of the Glen Park facility is de minimus relative to the overall market into which its output would be sold, it is my conclusion that the proposed transaction raises no market power concerns. Below, I discuss the conceptual approach I use to assess market power and present the concentration analysis upon which I base my conclusion that the size of the proposed transaction between Niagara Mohawk and Northbrook is too small to raise any potential market power concern.

**II. DISCUSSION OF MARKET POWER AND CONCENTRATION INDICES**

5. Market power questions generally are addressed by analyzing the structure of and the competitive conditions in one or more "relevant markets." A commonly accepted approach, and one which has been accepted by the New York Public Service Commission ("NYPSC") and the Federal Regulatory Energy Commission ("FERC"), is to measure the concentration in a market on both a

pre-transaction and post-transaction basis and assess the change in concentration that would likely result from the proposed transaction. The measure of concentration most commonly used in this approach is the Herfindahl-Hirschmann Index or HHI.

6. The HHI is calculated as follows. Given an appropriately defined market, defined both in terms of the product(s) in the market and the geographic scope of the market, the potential suppliers to that market are identified and their respective market shares calculated. The HHI is calculated by summing the squares of the individual market shares of all the market participants. For example, a market consisting of three firms (A, B, and C) with market shares of 20 percent, 30 percent, and 50 percent respectively, has an HHI of 3800  $((20 \times 20) + (30 \times 30) + (50 \times 50) = 3800)$ .

7. In order to determine the change in concentration that will result from a proposed transaction such as a merger or sale of assets, it is necessary to calculate the HHI for the post-transaction market. Using the example above, if Firm A were to sell one fourth of its production capacity (which is equivalent to 5 percent of the market) to Firm B, its market share would be reduced to 15 percent, Firm B's market share would increase to 35 percent and Firm C's share would remain unchanged at 50 percent. The post-transaction market would have an HHI of 3950  $((15 \times 15) + (35 \times 35) + (50 \times 50) = 3950)$ . The change in market concentration would be described as an increase of 150 points in the HHI  $(3950 - 3800 = 150)$ .

8. The increase or change in concentration as measured by the HHI can be calculated independently of calculating the overall pre- and post-transaction HHIs. Using some general algebraic formulae, it can be shown that the change in HHI is equivalent to twice the sum of (1) the market share of the transacted capacity squared and the (2) the market share of the transacted capacity times the difference between the buyer's market share and the seller's market share. The mathematical formulae for this are shown in Attachment 1. Again, using the example given above, this would appear as

$$2 \times [(\text{Firm A's divested share} \times \text{Firm A's divested share}) + \text{Firm A's divested share} \times (\text{Firm B's original share} - \text{Firm A's original share})]$$

Using the market shares set forth above in this example, the calculation is:

$$2 \times [(5 \times 5) + 5 \times (30 - 20)] = 150, \text{ which matches the results shown above in paragraphs 6 and 7.}$$

9. In its Merger Policy Statement (presented in FERC Order No. 592 issued on December 18, 1996), the FERC has stated that in evaluating horizontal mergers it will consider both the post-merger market concentration and the

increase in concentration resulting from the merger. FERC has adopted the following general standards for evaluating such transactions: (1) if the HHI is below 1000, the market is considered unconcentrated, there is unlikely to be any concern regarding possible adverse competitive effects, and ordinarily no further analysis is required; (2) if the HHI is between 1000 - 1800 and the change in HHI resulting from the merger is greater than 100, the market is considered "moderately" concentrated and the merger potentially raises competitive concerns (depending on the analysis of other factors); and (3) if the HHI exceeds 1800 and the change in HHI resulting from the merger is greater than 50, the merger potentially raises significant competitive concerns, and if the HHI increase exceeds 100, it is presumed that the merger is likely to create or enhance market power. It is notable that the concentration screens recommended in the Merger Policy Statement focus on two measurable parameters: the level and the change in the HHI.

### III. APPLICATION OF HHI ANALYSIS TO THE PROPOSED TRANSACTION

10. Mr. Scott Leuthauser describes in his affidavit the Transition Power Agreement ("TPA") that Niagara Mohawk has executed with Northbrook. The TPA requires Northbrook to deliver to Niagara Mohawk, at a set price, all electricity (defined to include energy, capacity and ancillary services) generated at the Facility during the term of the contract (commencing as of the Closing Date of the proposed transaction through December 31, 2003). The practical impact of this TPA is that until the end of the contract, there is no effective change in market shares or market concentration – the output of the Glen Park hydroelectric facility continues to be sold to Niagara Mohawk. Thus, at least for this time period, the proposed transaction raises no market power issue.

11. I assume that after the year 2003, Northbrook will not be bound by a fixed bilateral contract for its output and will, instead, sell its energy and capacity into the wholesale market. I have here focused my analysis on the change in concentration that will result from the proposed transaction.

12. I have determined the inputs to this calculation as follows. First, as I mentioned above, as a result of NRG's 50 percent interest in Northbrook, I am assigning for purposes of this market power analysis the capacity of the Glen Park facility to NRG's market share in New York. Second, during the past year, NRG has entered into agreements to purchase from Niagara Mohawk and Consolidated Edison approximately 4000 to 4500 MW of generating capacity, which amounts to about 15% of the installed capacity in New York. (There is approximately 35000 MW of installed generating capacity located in New York State.) Third, once those proposed transactions, as well as Niagara Mohawk's other sales of generation plants, are closed, Niagara Mohawk will have approximately an 8% share of the generation capacity in New York. Fourth, the Glen Park facility's 32.65 MW generating capacity represents approximately one tenth of a percent of the total generation capacity in New York.

13. Based on these market shares and calculating the increase in concentration independently as I described above, I have determined that the proposed transaction will increase concentration by approximately 1 point, as shown below:

$$2 \times [(0.1 \times 0.1) + 0.1 \times (15-8)] = 1.4.$$

14. Following the guidance of the Merger Policy Statement, I conclude that this de minimis increase in concentration raises no competitive concerns. Therefore, I conclude that the proposed transaction raises no market power issue.

Timothy E McClive

Timothy E. McClive

Sworn to before me on this  
12 th day of July, 1999

Patricia C. Nott  
Notary

My Commission expires on: 9-30-99

PATRICIA C. NOTT  
Notary Public State of NY  
Qual. Onon. Co., No. 4608254  
My Comm. Exp. Sept. 30, 1999

### Attachment 1

The HHI is represented in mathematical terms as:

$$HHI = \sum_{i=1}^N (x_i^2) \quad (1)$$

where the greek letter sigma is used to mean the summation of the elements in parens. In this case, where the  $x_i$  are the percentage market shares of suppliers 1 through N, the HHI is the sum, for suppliers 1 through N, of the suppliers' market shares squared. Now, suppose that the supplier identified as "N-1" sells assets equivalent to "m" percent of the market to the supplier identified as "N". Then the new HHI would be calculated as:

$$HHI_{new} = \sum_{i=1}^{N-2} (x_i^2) + (x_{N-1} - m)^2 + (x_N + m)^2 \quad (2)$$

and the change in the HHI would equal  $HHI_{new} - HHI$ , which, by subtracting equation (1) from equation (2), is equivalent to

$$\text{change} = 2 * [m^2 + m * (x_N - x_{N-1})]$$







**AFFIDAVIT OF SCOTT D. LEUTHAUSER**

**STATE OF NEW YORK**  
**COUNTY OF ONONDAGA ss:**

I, **Scott D. Leuthauser**, being duly sworn, depose and state:

1. My name is Scott D. Leuthauser and my business address is 300 Erie Boulevard West, Syracuse, New York. I am employed by Niagara Mohawk Power Corporation ("Niagara Mohawk"), as the Director of Energy Transaction. I submit this affidavit in support of the Joint Petition of Niagara Mohawk and Northbrook Energy, L.L.C. ("Northbrook" or the "Purchaser")(collectively "Petitioners") for authority for Niagara Mohawk to transfer its interest in the Glen Park hydro electric generation project located on the Black River in Glen Park, Jefferson County, New York with a nominal installed capacity rating of approximately 32.65 megawatts (the "Facility"). On January 26, 1999 the New York State Public Service Commission ("PSC") approved the planned transaction whereby the Facility would be acquired and re-sold by Niagara Mohawk, and Niagara Mohawk would terminate the existing Power Purchase Agreement (PSC Contract Number 337). The purpose of this affidavit is to describe one of the ancillary agreements, the Transition Power Agreement ("TPA") that Niagara Mohawk has executed with Northbrook for delivery of electricity.


2. The purpose of the TPA is to facilitate Niagara Mohawk in fulfilling its rate reduction and price cap commitments and "provider of last resort" and other obligations under the *Power Choice* Settlement, by acting as a hedge against rising power costs.

3. The TPA negotiated between Niagara Mohawk and Erie Boulevard achieves these objectives and meets the Purchasers financial needs. With regard to the latter, the TPA achieves this

by providing a firm cash flow to the Purchaser during the first few years of its operation of the facilities. The former is achieved by the price levels and certainty reflected in the terms of the TPA.

4. The TPA requires Northbrook to deliver to Niagara Mohawk all electricity (defined to include energy, capacity and ancillary services) generated at the Facility during the term of the contract, that is from the closing date to December 31, 2003. Under the TPA, Niagara Mohawk takes title to power generated by the Facility at the delivery point defined in the interconnection agreement. For delivery of electricity to the delivery point, Niagara Mohawk shall pay \$25.00/MWh between the closing and December 31, 2000 and \$25.50/MWh thereafter.

5. The TPA is, however, but one part of a single, integrated transaction negotiated among the parties for the sale of Niagara Mohawk's hydroelectric generating assets.

  
Scott D. Leuthauser

Sworn to before me this  
12<sup>th</sup> day of July, 1999.

  
Notary Public

My Commission expires 3/30/2001.

**VICKI L. WILLIAMS**  
Notary Public in the State of New York  
Qualified in Onondaga County, No. 4848074  
My Commission Expires March 30, 20 01





Consolidated Niagara Mohawk Power Corporation  
Inventory Balances of the Glen Park Generation Assets to be Transferred  
As of March 31, 1999  
(In Thousands of Dollars)

<u>Description</u>	<u>FERC Plant Account</u>	<u>Utility Plant</u>	<u>Accumulated Depreciation Reserve</u>	<u>Total</u>
HYDRAULIC PRODUCTION: Land and Land Rights	330	\$429	\$0	\$429
<b>TOTAL</b>		<u>\$429</u>	<u>\$0</u>	<u>\$429</u>







# NIAGARA MOHAWK POWER CORPORATION

## Operating Revenues, Expenses and Taxes Relating to Property to be Transferred (\$000)

Exhibit E

<u>Glen Park Hydro Station</u>		<u>1996</u>	<u>1997</u>	<u>1998</u>
Revenues	(1)	1,329	1,462	1,608
Operating Expenses	(2)	-	-	-
Property Taxes	(3)	3	3	3

(1) NMPC owns the land only and not the hydro generation facility that is on the land. The generation facility is owned by Glen Park Associates. Therefore, the only source of revenue from this property is the land lease.

(2) The property listed is land; there were no operating expenses.

(3) The property taxes are taxes paid in the calendar year. Other taxes dependent on revenue are not included. Glen Park was making payments directly to the taxing authorities in 1996 and 1997, beginning in 1998 Niagara Mohawk made the payments and was reimbursed by Glen Park.









None