

# HRABCHAK, GEBO & LANGONE, P.C.

ATTORNEYS AT LAW

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gebolaw@nnyonline.net

MARK G. GEBO  
EUGENE J. LANGONE, JR.

ROBERT R. HRABCHAK  
(1957-1995)

December 7, 2006

Ms. Jacqueline A. Brilling, Secretary  
Department of Public Safety  
3 Empire State Plaza  
Albany, NY 12223-1350

Re: Village of Theresa

Dear Ms. Brilling:

Enclosed please find an original and five copies of a petition to be filed with the Public Service Commission. Please provide a case number for the same. If you have any questions or comments, please contact the undersigned. Thank you.

Very truly yours,

HRABCHAK, GEBO & LANGONE, P.C.



Mark G. Gebo, Esq.

MGG:dec

**This Correspondence Was  
Signed In The Absence Of  
The Writer. Expedite Delivery.**

RECEIVED  
PUBLIC SERVICE  
COMMISSION  
EXEC-FILES-ALBANY  
2006 DEC 13 PM 2:04

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

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Petition of the Village of Theresa for  
Approval, Pursuant to Section 68 of the  
Public Service Law, for the Exercise of  
an Electric Franchise in the Town of  
Theresa, Jefferson County, New York

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PETITION

The Petition of the Village of Theresa, pursuant to Section 68 of the Public Service Law, respectfully shows:

a. Village of Theresa ("Village") is a municipal corporation duly organized and existing under the laws of the State of New York, having its principal office at 124 Commercial Street, Theresa, New York 13691 and is located entirely within the Town of Theresa, Jefferson County, New York.

b. Petitioner was created by the County of Jefferson in 1871.

c. The Town of Theresa ("Town") is located in Jefferson County. The Town is bounded on the north by the Town of Hammond, St. Lawrence County, on the east by the Town of Philadelphia and Antwerp; on the south by the Town of LeRay; on the west by the Town of Orleans and the Town of Alexandria. Village presently provides electric service in a portion of the Town and all of the Village.

d. The population of the Village is approximately 825

persons (2000 Census).

e. The population of the Town is approximately 2414 persons (2000 Census).

f. Previously, the Town granted a franchise to the Village to provide electrical service to serve a portion of the Town outside the Village, which franchise is dated August 25, 1947, and is attached as Exhibit A.

g. Over the years, the Village extended its services in the Town to areas arguably outside the original franchise.

h. Niagara Mohawk filed claim and suit against the Village for operating outside the Village's franchise area. A copy of the notice of claim dated October 29, 1999, is annexed as Exhibit "B"

i. Niagara Mohawk subsequently commenced Court action which action is still pending. A copy of the Summons and Complain is annexed as Exhibit "C".

j. Niagara Mohawk and the Village have come to a resolution of those issued by Stipulation dated February 16, 2006, a copy of which is annexed as Exhibit "D" which basically allows the Village to keep all customers currently being serviced. Such stipulation was approved by the Village Board on October 11, 2005, copy annexed hereto as Exhibit "E".

k. The Stipulation was subject to:

1) The Village is petitioning the Town for extension of its franchise area.

- 2) The Town approving such extension.
- 3) The Public Service Commission (PSC) approving the same.

l. No one other than the Village has or is now providing electrical service to the area encompassed by the new franchise agreement.

m. The Village would not need to construct any new facilities to serve the new franchise area as facilities already exist in the areas to be served.

n. The rates to be charged would be identical to the current rates being charged. Schedule of rates annexed as Exhibit "F".

o. On or about November 8, 2005, the Village petitioned the Town for extension of its franchise area to conform to its stipulated agreement with Niagara Mohawk, copy annexed as Exhibit "G".

p. On December 14, 2005, the Town held a public hearing and passed an Order granting the Village an extended franchise area, in accordance with the petition of the Village. A certified copy of that Order is annexed as Exhibit "H".

q. Attached hereto as Exhibit "I" is a verified statement of Ronald E. Trickey, Mayor, showing that Village has secured all municipal consents that are required by law.

r. Upon information and belief, no other entity provides electric service in the past of the Town to which the franchise applies.

s. Village seeks the approval of PSC pursuant to Public Service Law §68 to provide electric service to customers in the part of the Town specified in the franchise. All of the customers so covered are already connected to the Village of Theresa's electrical system and have been for some time. The new franchise is intended to resolve boundary issues with Niagara Mohawk, pursuant to the aforementioned Stipulation.

t. Boundary issues have existed for some time between Niagara Mohawk and Theresa. The new franchise represents a consensual resolution of these issues by the two parties.

u. The Village has the ability to adequately serve all properties in the franchise areas and already has and is currently serving all of such properties (except vacant parcels) for some time.

v. Upon information and belief, there is no public opposition to this application as none has been voiced to the Village and none was expressed to the Town at its public hearing on the proposed franchise.

WHEREFORE, Petitioner respectfully requests the Commission to grant Village a certificate of public convenience and necessity pursuant to Section 68 of the Public Service Law authorizing it to exercise the electric franchise issued by the Town and to grant Village such other and further relief as to the Commission is just and proper.

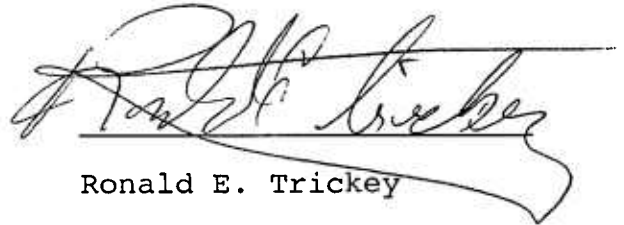
Respectfully submitted,

VILLAGE OF THERESA

By Ronald E. Trickey, Mayor  
Village of Theresa  
124 Commercial Street  
Theresa, New York 13691

STATE OF NEW YORK     )  
                              )     ss.  
JEFFERSON COUNTY     )

Ronald E. Trickey, being duly sworn deposes and says, that he is the Mayor of the Village of Theresa and that said the Village secured all municipal consents required by law for the transmission and distribution of electricity in the Town of Theresa. The electricity franchise granted by the Town of Theresa is annexed to the herein petition.

  
Ronald E. Trickey

Sworn to before me this 15  
day of June, 2006.

  
Notary Public

MARK G. GEBO  
Notary Public, State of New York  
No. 02GE4718101  
Qualified in Jefferson County  
Commission Expires September 30, 2006







and resolved: That the perpetual permission and license of the Town of Theresa, is hereby given and granted to the Village of Theresa, a Municipal Corporation of Jefferson County, having its office and principal place of business in the Village of Theresa, New York, to erect poles, towers and structures for stringing cables and wires thereon, along, over and across the highways in the Town of Theresa, New York, from the corporate limits of the Village of Theresa, as follows:

[ On the highway leading to Kelsey Bridge, known as the Kelsey Bridge road, a distance of 5800 feet; on the highway leading from the Kelsey Bridge road toward Watertown, a distance of 350 feet; on the highway leading from the Kelsey Bridge road to the Municipal Light Plant on Indian River, a distance of 1250 feet; on the Theresa-Oxbow highway, a distance of 1500 feet; on the Theresa-Philadelphia highway, a distance of 980 feet and on the Cheeseman Settlement road, a distance of 2500 feet; for the purpose of transmitting and distributing electricity for light, heat and power in the said Town of Theresa. The above grant and franchise is subject to each and all of the following conditions;

Any and all highways, or any part thereof disturbed or displaced in erecting, maintaining or replacing any such poles, towers or structures, wires and cables by the grantee of this franchise shall be replaced and restored in a proper and sufficient manner without unnecessary delay.

All wires or cables shall be so strung as to be not less than 20 feet above the traveled highway of any highway which is crossed by them.

The grantee hereof shall fully protect, indemnify and save harmless the said Town of Theresa from all claims, actions, damages or costs which may be made, suffered or incurred by



reason or arising from the permission hereby granted, or from any of the work in any of the said highways at any time, which may be due to the negligence on the part of the grantee hereof, its officers, agents or employees.

The said grantee hereof, shall erect such poles, wires and/or structures and string the wires and cables in accordance with the standard practice for such construction and shall maintain the same in proper condition and repair.

All poles, towers or structures erected within the limits of any highway of this franchise shall be located therein where directed by the Town Superintendent of Highways of the said Town of Theresa.

This grant and franchise shall take effect from and after the date hereof.

I hereby certify that I have compared the foregoing resolution with the original resolution filed with me, and that the same is a true and correct copy of such original, and of the whole thereof.

IN WITNESS WHEREOF, I have hereto  
set my hand and the seal of the  
Town of Theresa, New York on this  
25 day of Aug 1977

Charles Bartlett

Town Clerk of the Town of Theresa  
Jefferson County  
State of New York

(Seal)

ORIGINAL

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
New York on September 7, 1948.

COMMISSIONERS PRESENT:

Milo R. Malby, Chairman  
Neal Brewster  
Maurice C. Brewster  
Spencer B. Eddy

CASE 13988 - Petition of Village of Theresa for authority to exercise an electric franchise in a portion of the Town of Theresa, Jefferson County.

A petition dated September 25, 1948, having been filed with this Commission by the Village of Theresa for authority to exercise a franchise in a portion of the Town of Theresa, Jefferson County, and a public hearing after due notice having been held and the Commission having determined that the exercise of rights or privileges under the said franchise as herein authorized is necessary or convenient for the public service, it is

ORDERED:

1. That this Commission hereby permits and approves the exercise by the Village of Theresa in the following portions of the Town of Theresa:


On the highway leading to Kelsey Bridge, known as the Kelsey Bridge road, a distance of 5800 feet; on the highway leading from the Kelsey Bridge road toward Watertown, a distance of 350 feet; on the highway leading from the Kelsey Bridge road to the Municipal Light Plant on Indian River, a distance of 1250 feet; on the Theresa-Oxbow highway, a distance of 1500 feet; on the Theresa-Philadelphia highway, a distance of 950 feet and on the Cheeseman Settlement road, a distance of 2500 feet.



Case 13938

of the rights and privileges under a franchise granted by the Town Board of the Town of Theresa, Jefferson County, under date of August 25, 1947, a certified copy of which franchise is filed with the Commission.

By the Commission

  
MURRAY C. PALMER  
Secretary

WV  
PLM  
FIL:LS





-----  
 In the Matter of the Claim  
 of  
**NIAGARA MOHAWK POWER CORPORATION**  
 against the  
**VILLAGE OF THERESA**  
 -----

**NOTICE OF CLAIM**

PLEASE TAKE NOTICE, that NIAGARA MOHAWK POWER CORPORATION ("Claimant"), a New York corporation, has a claim and hereby makes claim against the VILLAGE OF THERESA for property damage sustained by it, and in support thereof, Claimant states:

1. The post office address of Claimant and its attorney, Steven R. Pincus, is 300 Erie Boulevard West, Syracuse, New York 13202.
2. This claim is for property damage sustained by Claimant through the intentional acts and negligence of the Village of Theresa, its departments, agents, servants, or employees, as hereinafter more particularly set forth.
3. Upon information and belief, the claim arose as a result of the continuing trespass and nuisance by the Village of Theresa upon two poles owned and operated by Claimant on County Route 22 (Oxbow Road) in the Town of Theresa. These poles are identified as Niagara Mohawk Power Corporation pole number 25-1 and number 25-2. Incidental damages will be sustained in the nature of costs incurred by Claimant in remedying the safety violations caused by the Village of Theresa's trespass and nuisance.
4. Upon information and belief, the claim arose as a result of the Village of Theresa's illegal and ongoing electric service outside its municipal boundaries and inside Claimant's electric service franchise area. The locations of such illegal service connects include, but are not limited to, the following:

<u>Route 46</u>	<u>Bartlett Rd.</u>	<u>Route 136</u>	<u>Route 22</u>	<u>Route 193</u>
37339	28549	36983	29755	27960
37170	28486	36959		
37101	28471	36904		
37112	28452	36870		
37073	28396	36812		
37034	28764			
36993				
36850				
36794				
36614				
36611				
37153				



Incidental damages sustained are equal to the lost revenues from the services wrongfully provided to those customers.

5. As a result of the aforesaid negligence and intentional acts of the VILLAGE OF THERESA, Claimant has been damaged.

6. WHEREFORE, Claimant makes claim against the VILLAGE OF THERESA.

Dated: October 29, 1999

NIAGARA MOHAWK POWER CORPORATION

By: 

Leslie E. Lo Baugh

Vice President and General Counsel

STATE OF NEW YORK )

COUNTY OF ONONDAGA ) SS.:

Leslie E. Lo Baugh, being duly sworn, deposes and says:

That he is Vice President and General Counsel of NIAGARA MOHAWK POWER CORPORATION, the plaintiff herein, a domestic corporation; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to his knowledge, except as to matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

  
Leslie E. Lo Baugh

Sworn to before me this 29<sup>th</sup>  
day of October, 1999.  
*October*

  
Notary Public

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



Steven R. Pincus  
Attorney-at-Law

Phone: (315) 428-6478  
FAX: (315) 460-8655  
E-mail: pincuss@NiagaraMohawk.com

November 2, 1999

**VIA FACSIMILE (315) 788-6085 and  
CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

Mark G. Gebo, Esq.  
Hrabhak & Gebo, P.C.  
216 Washington Street  
Suite 300  
Watertown, NY 13601

RE: Village of Theresa's Electric Service to Customers in Niagara Mohawk's  
Franchise Area and UNLAWFUL USE OF NIAGARA MOHAWK'S FACILITIES

Dear Mr. Gebo:

As we previously notified you, the Village of Theresa has made several residential electric service connections outside the Village and within Niagara Mohawk's service franchise in contravention of New York State laws. In order to respond to your request for the identity of customers unlawfully being serviced by the Village, Niagara Mohawk conducted a field survey of the area. As a result of that survey, Niagara Mohawk discovered two poles (#25-1 and #25-2) on County Route 22 (Oxbow Road) in the Town of Theresa on which the Village has illegally attached primary electric facilities. Both of these connections violate Niagara Mohawk's safety standards and must be removed immediately.

In answer to your request, the following is a list of the residences currently served by the Village outside its service boundaries:

Route 46	Bartlett Rd.	Route 136	Route 22	Route 193
37339	28549	36983	29755	27960
37170	28486	36959		
37101	28471	36904		
37112	28452	36870		
37073	28396	36812		
37034	28764			
36993				
36850				
36794				
36614				
36611				
37153				

In addition to the above, there are several connections on Route 46, Route 136, Route 22, Bartlett Road and Red Lake Road that do not have posted addresses.

Please be advised that Niagara Mohawk is prepared to initiate litigation if these matters are not immediately addressed and promptly resolved to our satisfaction. In such an action, Niagara Mohawk would seek (i) an order requiring the Village to remove facilities that are trespassing on Niagara Mohawk's property; (ii) an injunction barring the Village from serving retail customers outside of its municipal boundaries and within Niagara Mohawk's franchise service territory and requiring the Village to disconnect service to any customers presently being served in violation of State law; and (iii) monetary damages for the loss of revenues from the service wrongfully provided to those customers and for any damages and for the costs expended in remediating the safety problems caused by the Village's trespass on Niagara Mohawk's property.

Although an action against the Village would be for equitable relief to enjoin a nuisance and continuing trespass with money damages incidental to the equitable action, I have enclosed a Notice of Claim for the above-referenced matters. Please contact me as soon as possible if the Village wishes to avoid the expense of litigation. The safety problems caused by the Village's trespass on Niagara Mohawk's poles are the immediate concern; however, it is necessary to address the Village's illegal service connections as well.

Very truly yours,



Steven R. Pincus

SRP:vw

Enclosure

xc: G. Williams  
T. Dack  
G. Lindsey  
T. Froyse  
C. Childs  
A. Andre  
Hon. T. S. Minnick, Mayor  
Village of Theresa (via Certified Mail/Return Receipt Requested)





STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF JEFFERSON

NIAGARA MOHAWK POWER CORPORATION,

*Plaintiff,*

- against -

VILLAGE OF THERESA,

*Defendant.*

SUMMONS **01-0193**  
Index No.: \_\_\_\_\_

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to serve upon the Plaintiff's attorneys an Answer to the annexed Complaint of the Plaintiff, which is herewith served upon you within twenty (20) days after the service thereof, exclusive of the day of service, or within thirty (30) days after service has been completed if service is made by any method other than personal delivery to you within the State of New York. In case of your default to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Trial is desired in the County of Jefferson.

The basis of venue designated above is that Defendant's principal offices are in Jefferson County.

Dated: January 30, 2001



Jane D. Catalano

Attorney for Plaintiff

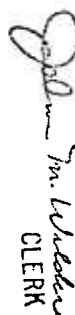
Niagara Mohawk Power Corporation

111 Washington Avenue

Suite 301

Albany, New York 12210

(518) 433-5257

  
CLERK

01 JAN 31 AM 11:21

JEFFERSON COUNTY CLERK  
ENTERED/FILED/  
JAN 31 2001

STATE OF NEW YORK  
SUPREME COURT      COUNTY OF JEFFERSON

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NIAGARA MOHAWK POWER CORPORATION,

*Plaintiff,*

COMPLAINT

*Index No.* 01-0193

- against -

VILLAGE OF THERESA,

*Defendant.*

---

Plaintiff, Niagara Mohawk Power Corporation (hereinafter "Niagara" or "Plaintiff") as and for a complaint herein alleges as follows:

1.      Niagara is a corporation duly organized and existing under the laws of the State of New York, and having its principal place of business at 300 Erie Boulevard West, Syracuse, New York 13202.
2.      Upon information and belief, the Village of Theresa (hereinafter "Defendant Village") is a village duly incorporated pursuant to the laws of the State of New York, with its principal business address at P.O. Box 299, Theresa, New York 13691.
3.      On or about March 31, 1928, the Town of Theresa granted a perpetual franchise to Antwerp Light and Power Company, its successors and assigns, to erect poles, towers and structures, and to string wires and cables thereon in the streets and public places of the Town of Theresa for the purpose of transmitting and distributing electricity for light, heat and power in the said Town of Theresa. A copy of said franchise is annexed hereto as Exhibit A.
4.      Pursuant to § 68 of the Public Service Law, no electric corporation may exercise any right or privilege under any franchise without first having obtained the consent and approval of the Public Service Commission (hereinafter "the Commission"). Further, in order for the



Commission to grant such approval, it must first find that the exercise of a franchise is necessary or convenient for the public service.

5. Pursuant to Public Service Law § 68, the Commission, on July 19, 1928 in case number 4791, approved the exercise of the franchise granted by the Town of Theresa to the Antwerp Power and Light Company, its successors and assigns, as necessary or convenient for the public service in the Town of Theresa.

6. Plaintiff is successor in interest to the franchise rights granted by the Town of Theresa to the Antwerp Light and Power Company which franchise rights were approved by the Commission. Since 1928, the Plaintiff has erected, operates and maintains poles, towers and structures, in the streets and public places of the Town of Theresa for the purpose of transmitting and distributing electricity for light, heat and power to customers in the Town of Theresa.

7. Upon information and belief, the Village of Theresa has erected, operates and maintains a municipal electric system consisting of poles, structures, supports and wires for the purpose of transmitting and distributing electricity for light, heat and power to customers in the Defendant Village adjacent to the Town of Theresa.

8. Upon information and belief, the Defendant Village of Theresa has illegally expanded its municipal electric system beyond its village boundaries and is providing electric service to customers in the franchise area of Niagara in the Town of Theresa.

9. Upon information and belief, the Village of Theresa has no franchise right or other legal right to provide electric service in the Town of Theresa. Before the Town of Theresa may grant such a franchise to the Village of Theresa to extend service outside the village's municipal boundaries and into Niagara Mohawk's franchise area in the Town of Theresa, approval of the Commission will be required pursuant to General Municipal Law § 361 and Public Service Law § 68.

10. Upon information and belief, Defendant Village is providing electric service to customers in the Niagara franchise area of the Town of Theresa in violation of the terms and conditions of the franchise granted to Niagara by the Town. The locations of Defendant's illegal and unauthorized electric service connections include, but are not limited to the following addresses in the Town of Theresa: On Route 46, numbers 36611, 36614, 36794, 36850, 36993, 37034, 37073, 37101, 37112, 37153, 37170 and 37339; On Bartlett Road, numbers 28396, 28452, 28471, 28486, 28549 and 28764; On Route 136, numbers 36812, 36870, 36904, 36959 and 36983; on Route 22, number 29755; and on Route 193, number 27960.

11. The franchise held by Niagara is such that it is authorized to provide electric service to all customers in the Town of Theresa and obtain revenue from the sale of electricity to those customers. Except for the encroachment of the Village of Theresa's municipal electric system into the Town of Theresa, Niagara would be providing electric service to all inhabitants of the Town of Theresa that desire electric service. But for the said encroachment of the Village of Theresa's municipal electric system into the Town of Theresa, Niagara would be providing electric service on a continuous, daily basis to all electric customers in the Town of Theresa and obtaining revenue therefrom. The right of Niagara to provide electric service to certain customers in the Town of Theresa is wholly prevented by the placement of facilities and the illegal provision of electric service to customers in the Town of Theresa by the Village of Theresa municipal electric system.

12. The placing of electric facilities and the provision of electric service to customers in the Town of Theresa by the Village of Theresa municipal electric system, without the consent of the Town of Theresa and the Commission, causes continuous damage to the plaintiff and the franchise rights of the plaintiff are violated many times every day as customers illegally served by the Village of Theresa electric system draw power from that system and it would require a

multiplicity of suits to recover for each customer's usage and as such illegal electric service continues, plaintiff is being irreparably harmed and there is no adequate remedy at law to redress the wrongful electric service provided by the defendant as aforesaid.

13. On or about November 2, 2000, Niagara Mohawk filed a Notice of Claim with the Village of Theresa, which alleged the facts constituting this complaint. A copy of said Notice of Claim is annexed hereto as Exhibit B.

**AS AND FOR A FIRST CAUSE OF ACTION:**

14. Plaintiff Niagara Mohawk repeats and realleges paragraphs "1" through "13" hereof as if fully set forth herein.

15. Defendant Village of Theresa is providing electric service to customers outside of its municipal borders and within Niagara Mohawk's franchise area in the Town of Theresa without the legal authority to provide such service and plaintiff is being irreparably harmed by said illegal service such that there is no adequate remedy at law.

16. Plaintiff Niagara Mohawk bring this action to demand judgment of the court, adjudging and determining that Defendant Village be: (1) enjoined from taking any further action which would violate the terms and conditions of the franchise granted held by Plaintiff in the Town of Theresa; and (2) enjoined from continuing to provide illegal electric service to customers located in the Town of Theresa.

**AS AND FOR A SECOND CAUSE OF ACTION:**

17. Plaintiff Niagara Mohawk repeats and realleges paragraphs "1" through "16" hereof as if fully set forth herein.

18. The Village of Theresa has been unjustly enriched by illegally providing electric service to residents and businesses outside of its municipal borders and within Niagara's electric franchise area in the Town of Theresa, and is collecting revenues therefrom.

19. Plaintiff Niagara has suffered and continues to suffer economic harm by reason of the Village of Theresa illegally providing electric service outside its municipal boundaries and obtaining unjust enrichment therefrom.

20. Plaintiff is entitled to damages which the plaintiff shall have incurred to the day of the judgment, by reason of the wrongful acts of the defendant as adjusted and determined by this court, and plaintiff demands judgment against the defendant for such damages.

**WHEREFORE**, the Plaintiff in this action demands the judgment of this Court, adjudging and determining:

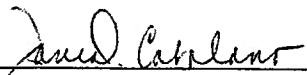
(1) That Defendant Village of Theresa be enjoined from taking any further action which would violate the terms and conditions of the franchise held by Plaintiff in the Town of Theresa;

(2) That Defendant Village of Theresa be enjoined from continuing to provide illegal electric service to customers located in the Town of Theresa;

(3) That the damages which the plaintiff shall have incurred to the day of the judgment, by reason of the wrongful acts of the defendant be adjusted and determined by this court and that the plaintiff have judgment against the defendant for such damages; and

(4) That the plaintiff recover the costs and expenses and charges of this action and such other and further relief as to the court may seem just and equitable.

Dated: January 29, 2001

  
\_\_\_\_\_  
Jane D. Catalano  
Attorney for Plaintiff  
Niagara Mohawk Power Corporation  
111 Washington Avenue  
Suite 301  
Albany, New York 12210  
(518) 433-5257

**Exhibit A**

## Town of Theresa

## Electric

GRANTEE: Antwerp Light and Power Company.

*Date of Grant:* March 31, 1928.

*Term:* Perpetual.

*P. S. C. Case No.:* 4791.

*Date of Approval:* July 19, 1928.

At a special meeting of the Town Board and of the Town Superintendent of Highways of the Town of Theresa, Jefferson County, New York, held on the 31st day of March, 1928, duly and regularly called for that day, and on motion duly made and seconded, it was

RESOLVED, That the permission and consent of the said Town of Theresa is hereby given and granted perpetually to the Antwerp Light and Power Company, a domestic corporation having its office and principal place of business at Potsdam, New York, its successors and assigns, to erect poles, towers and structures and to string cables and wires thereon along, over and across the streets, highways, avenues, alleys, public parks and public places in the Town of Theresa for the purpose of transmitting and distributing electricity for light, heat and power in the said Town of Theresa.

The above grant is subject, however, to each and all of the following conditions:

First: Any and all streets, highways, avenues, alleys, public parks or public places or any portion thereof disturbed or displaced in erecting, maintaining or replacing any such poles, towers, structures, wires or cables, by the grantee of this permit, its successors or assigns, shall be replaced or restored in a proper and sufficient manner without unnecessary delay.

Second: All wires or cables shall be so strung as to be not less than twenty (20) feet above the traveled roadway of any highway which is crossed by them.

Third: The said grantee hereof, its successors or assigns, shall fully protect, indemnify and save harmless the said Town of Theresa from all claims, actions, damages or costs which may be made, suffered or incurred by reason of or arising from the permission hereby granted or from any excavation or excavations or from any of the work in any of the streets, highways, avenues, alleys, public parks or public places aforesaid at any time for any purpose, which may be due to negligence on the part of the grantee hereof, its successors, representatives, officers, agents or servants.

Fourth: The said grantee hereof, its successors or assigns, shall erect such poles, towers or structures and string wires or cables thereon in accordance with the standard practice for such construction, perform all work done under this permission and consent in a workmanlike manner and maintain the said poles, towers, structures, wires and cables in proper condition and repair.

Fifth: All poles, towers or structures erected within the limits of any street, highway, avenue, alley, public park or public place under this permit shall be located where directed by the Town Superintendent of Highways of the said Town of Theresa.

Sixth: This permission and consent shall take effect from and after the date hereof.

Given under our hands and seals at the Town of Theresa, County of Jefferson and State of New York, this 31st day of March, 1928.

**Exhibit B**

-----  
In the Matter of the Claim  
of  
NIAGARA MOHAWK POWER CORPORATION  
against the  
VILLAGE OF THERESA  
-----

**NOTICE OF CLAIM**

PLEASE TAKE NOTICE, that NIAGARA MOHAWK POWER CORPORATION ("Claimant"), a New York corporation, has a claim and hereby makes claim against the VILLAGE OF THERESA for property damage sustained by it, and in support thereof, Claimant states:

1. The post office address of Claimant and its attorney, Steven R. Pincus, is 300 Erie Boulevard West, Syracuse, New York 13202.
2. This claim is for property damage sustained by Claimant through the intentional acts and negligence of the Village of Theresa, its departments, agents, servants, or employees, as hereinafter more particularly set forth.
3. Upon information and belief, the claim arose as a result of the continuing trespass and nuisance by the Village of Theresa upon two poles owned and operated by Claimant on County Route 22 (Oxbow Road) in the Town of Theresa. These poles are identified as Niagara Mohawk Power Corporation pole number 25-1 and number 25-2. Incidental damages will be sustained in the nature of costs incurred by Claimant in remedying the safety violations caused by the Village of Theresa's trespass and nuisance.
4. Upon information and belief, the claim arose as a result of the Village of Theresa's illegal and ongoing electric service outside its municipal boundaries and inside Claimant's electric service franchise area. The locations of such illegal service connects include, but are not limited to, the following:

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36850				
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36611				
37153				



Incidental damages sustained are equal to the lost revenues from the services wrongfully provided to those customers.

5. As a result of the aforesaid negligence and intentional acts of the VILLAGE OF THERESA, Claimant has been damaged.

6. WHEREFORE, Claimant makes claim against the VILLAGE OF THERESA.

Dated: October 29, 1999

NIAGARA MOHAWK POWER CORPORATION

By: 

Leslie E. Lo Baugh

Vice President and General Counsel

STATE OF NEW YORK )

COUNTY OF ONONDAGA ) SS.:

Leslie E. Lo Baugh, being duly sworn, deposes and says:

That he is Vice President and General Counsel of NIAGARA MOHAWK POWER CORPORATION, the plaintiff herein, a domestic corporation; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to his knowledge, except as to matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

  
Leslie E. Lo Baugh

Sworn to before me this 29<sup>th</sup>  
day of ~~October~~, 1999.  
October

  
Notary Public

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

-----  
In the Matter of the Claim

of

NIAGARA MOHAWK POWER CORPORATION

against

VILLAGE OF THERESA  
-----

**AFFIDAVIT OF SERVICE OF NOTICE OF CLAIM**

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


Vicki L. Williams, being duly sworn, deposes and says:

That I am over the age of eighteen years; that on the 2<sup>nd</sup> day of November, 1999, I served the annexed Notice of Claim upon the VILLAGE OF THERESA by delivering a copy thereof, by certified mail to the address listed below:

VILLAGE OF THERESA  
c/o Mark G. Gebo, Esq.  
Hrabhak & Gebo, P.C.  
216 Washington Street  
Suite 300  
Watertown, NY 13601

  
Vicki L. Williams

Sworn to before me this 2<sup>nd</sup>  
day of November, 1999.

  
Notary Public

ANGELA ZIEMBA  
Notary Public in the State of New York  
Qualified in Onondaga Co. No. 4857037  
My Commission Expires 4/28/00





## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") entered into as of the 16<sup>th</sup> day of February, 2001 between Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202 ("Niagara Mohawk") and the Village of Theresa, P.O. Box 299, Theresa, New York 13691 ("Village")

### WITNESSETH:

WHEREAS, Niagara Mohawk and the Village are presently providing electric service to customers in the Town of Theresa pursuant to franchises granted to them by the Town of Theresa and approved by the New York State Public Service Commission, a copy and rendition of the history of each franchise is annexed hereto and made a part hereof as Exhibit A,

WHEREAS, a dispute has arisen regarding the boundaries of the territories that Niagara Mohawk and the Village were respectively approved by the Public Service Commission to serve in the Town of Theresa, and

WHEREAS, on or about January 31, 2001, Niagara Mohawk commenced an action in New York State Supreme Court for the County of Jefferson seeking to prohibit the Village from serving customers in the Town of Theresa, and

WHEREAS, the parties are desirous of settling the lawsuit and defining the boundaries of their respective service territories in the Town of Theresa


NOW, THEREFORE, in consideration of mutual covenants and agreements made herein, the Village of Theresa and Niagara Mohawk agree to settle the aforesaid lawsuit in a manner consistent with the requirements of the federal antitrust laws and the New York Public Service Law upon the following conditions:

1. The Village of Theresa and Niagara Mohawk agree that it in the interest of both parties and the public to delineate the Village's service territory in the Town of Theresa in the manner shown on Exhibit B, a map annexed hereto and made a part hereof.
2. The parties agree that the franchise granted to the Village of Theresa on August 25, 1947 and approved by the Public Service Commission in Case No.13988 may be subject to varying interpretations such that the Village of Theresa shall obtain a new franchise from the Town of Theresa to provide service to customers in the service territory as shown on Exhibit B.
3. Niagara Mohawk will assist the Village and the Village of Theresa shall obtain approval of its franchise from the Public Service Commission for the exercise of its franchise in the Town of Theresa as shown on Exhibit B.


4. The parties will stipulate to a discontinuance of the aforesaid lawsuit upon completion of the above. This settlement agreement will terminate and become null and void one year from the date hereof if the parties are unable to obtain all approvals needed for completion of the transaction contemplated herein. The parties may mutually agree in writing at any time to extend the date for termination of this agreement.

In Witness Whereof, the parties have set their hands and seals, this 16<sup>th</sup> day of February, 2007.

Village of Theresa

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

Niagara Mohawk Power Corporation

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

Kenneth M. Tompkins  
Vice President, Business Services  
Mohawk Valley/Northern Region

## **EXHIBIT A**

The Town of Theresa granted the following franchises that have been approved by the Public Service Commission authorizing Niagara Mohawk and the Village of Theresa to provide electric service in the Town of Theresa:

### **Niagara Mohawk Franchise**

Grantor: Town of Theresa

Grantee: Antwerp Light and Power Company, its successors and assigns

Date of Franchise: March 31, 1928

Date of Public Service Commission approval: July 19, 1928

Public Service Commission case number 4791

Niagara Mohawk is successor in interest to the franchise rights granted by the Town of Theresa to the Antwerp Light and Power Company, its successors and assigns. The Antwerp Light and Power Company was incorporated on January 20, 1910. On July 31, 1937, Antwerp Light and Power Company was consolidated with eleven other northern and central New York electric companies to form Niagara Hudson Public Service Corporation. Later that year, the Niagara Hudson Public Service Corporation was renamed the Central New York Power Corporation. On January 5, 1950, Central New York Power Corporation was consolidated with two other electric companies to form Niagara Mohawk Power Corporation. Niagara Mohawk succeeded to the rights of the Antwerp Light and Power Company to provide service to electric customers in the Town of Theresa. A copy of this franchise is annexed.

### **Village of Theresa Franchise**

Grantor: Town of Theresa

Grantee: Village of Theresa

Date of Franchise: August 25, 1947

Date of Public Service Commission approval: December 7, 1948

Public Service Commission case number 13988

The Public Service Commission approved the exercise of the electric franchise by the Village of Theresa in the portion of the Town of Theresa as described in the franchise and order annexed.

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## Town of Theresa

Electric

GRANTEE: Antwerp Light and Power Company.

Date of Grant: March 31, 1928.

Term: Perpetual.

P. S. C. Case No.: 4791.

Date of Approval: July 19, 1928.

At a special meeting of the Town Board and of the Town Superintendent of Highways of the Town of Theresa, Jefferson County, New York, held on the 31st day of March, 1928, duly and regularly called for that day, and on motion duly made and seconded, it was

RESOLVED, That the permission and consent of the said Town of Theresa is hereby given and granted perpetually to the Antwerp Light and Power Company, a domestic corporation having its office and principal place of business at Potsdam, New York, its successors and assigns, to erect poles, towers and structures and to string cables and wires thereon along, over and across the streets, highways, avenues, alleys, public parks and public places in the Town of Theresa for the purpose of transmitting and distributing electricity for light, heat and power in the said Town of Theresa.

The above grant is subject, however, to each and all of the following conditions:

First: Any and all streets, highways, avenues, alleys, public parks or public places or any portion thereof disturbed or displaced in erecting, maintaining or replacing any such poles, towers, structures, wires or cables, by the grantee of this permit, its successors or assigns, shall be replaced or restored in a proper and sufficient manner without unnecessary delay.

Second: All wires or cables shall be so strung as to be not less than twenty (20) feet above the traveled roadway of any highway which is crossed by them.

Third: The said grantee hereof, its successors or assigns, shall fully protect, indemnify and save harmless the said Town of Theresa from all claims, actions, damages or costs which may be made, suffered or incurred by reason of or arising from the permission hereby granted or from any excavation or excavations or from any of the work in any of the streets, highways, avenues, alleys, public parks or public places aforesaid at any time for any purpose, which may be due to negligence on the part of the grantee hereof, its successors, representatives, officers, agents or servants.

Fourth: The said grantee hereof, its successors or assigns, shall erect such poles, towers or structures and string wires or cables thereon in accordance with the standard practice for such construction, perform all work done under this permission and consent in a workmanlike manner and maintain the said poles, towers, structures, wires and cables in proper condition and repair.

Fifth: All poles, towers or structures erected within the limits of any street, highway, avenue, alley, public park or public place under this permit shall be located where directed by the Town Superintendent of Highways of the said Town of Theresa.

Sixth: This permission and consent shall take effect from and after the date hereof.

Given under our hands and seals at the Town of Theresa, County of Jefferson and State of New York, this 31st day of March, 1928.

## TOWN BOARD,

GEO. D. WALRADT, *Supervisor.*FRED A. SOPER, *Town Clerk.*A. D. HOWLAND, *Justice.*FAY B. TENNEY, *Justice.*GEO. C. EDDY, *Justice.*S. K. RODENHUEST, *Justice.*

(Seal)

STATE OF NEW YORK, }  
COUNTY OF JEFFERSON, } SS:  
TOWN OF THERESA, }

I, Fred A. Soper, Town Clerk of the Town of Theresa, Jefferson County, New York, do hereby certify that I have compared the foregoing copy with the original minutes of the meeting of the Town Board of said Town held on March 31st, 1928, of record in this office, and that it is a correct transcript therefrom and of the whole of said original.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Town this 31st day of March, 1928.

(Seal)

FRED A. SOPER, *Town Clerk.*

RESOLVED: That the perpetual permission and consent of the Town of Theresa, is hereby given and granted to the Village of Theresa, a Municipal Corporation of Jefferson County, having its office and principal place of business in the Village of Theresa, New York, to erect poles, towers and structures and to

RECEIVED  
AUG 27 1947  
TARIFF BUREAU  
ALBANY, N.Y.

string cables and wires thereon, along, over and across the highways in the Town of Theresa, New York, from the corporate limits of the Village of Theresa, as follows:

On the highway leading to Kelsey Bridge, known as the Kelsey Bridge road, a distance of 5800 feet; on the highway leading from the Kelsey Bridge road toward Watertown, a distance of 350 feet; on the highway leading from the Kelsey Bridge road to the Municipal Light Plant on Indian River, a distance of 1250 feet; on the Theresa-Oxbow highway, a distance of 1500 feet; on the Theresa-Philadelphia highway, a distance of 980 feet and on the Cheeseman Settlement road, a distance of 2500 feet; for the purpose of transmitting and distributing electricity for light, heat and power in the said Town of Theresa. The above grant and franchise is subject to each and all of the following conditions:

Any and all highways, or any part thereof disturbed or displaced in erecting, maintaining or replacing any such poles, towers or structures, wires and cables by the grantee of this franchise shall be replaced and restored in a proper and sufficient manner without unnecessary delay.

All wires or cables shall be so strung as to be not less than 20 feet above the traveled highway of any highway which is crossed by them.

The grantee hereof shall fully protect, indemnify and save harmless the said Town of Theresa from all claims, actions, damages or costs which may be made, suffered or incurred by



reason or arising from the permission hereby granted, or from any of the work in any of the said highways at any time, which may be due to the negligence on the part of the grantee hereof, its officers, agents or employees.

The said grantee hereof, shall erect such poles, wires and/or structures and string the wires and cables in accordance with the standard practice for such construction and shall maintain the same in proper condition and repair.

All poles, towers or structures erected within the limits of any highway of this franchise shall be located therein where directed by the Town Superintendent of Highways of the said Town of Theresa.

This grant and franchise shall take effect from and after the date hereof.

I hereby certify that I have compared the foregoing resolution with the original resolution filed with me, and that the same is a true and correct copy of such original, and of the whole thereof.

IN WITNESS WHEREOF, I have hereto  
set my hand and the seal of the  
Town of Theresa, New York on this  
25 day of Aug 1947

Charles Bartlett

Town Clerk of the Town of Theresa  
Jefferson County  
State of New York

(Seal)

ORIGINAL

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
New York on September 7, 1948.

COMMISSIONERS PRESENT:

Milo R. Maltbie, Chairman  
Neal Brewster  
Maurice C. Foxworth  
Spencer B. Eddy

CASE 13988 - Petition of Village of Theresa for authority to exercise an electric franchise in a portion of the Town of Theresa, Jefferson County.

A petition dated September 25, 1948, having been filed with this Commission by the Village of Theresa for authority to exercise a franchise in a portion of the Town of Theresa, Jefferson County, and a public hearing after due notice having been held and the Commission having determined that the exercise of rights or privileges under the said franchise as herein authorized is necessary or convenient for the public service, it is

ORDERED:


1. That this Commission hereby permits and approves the exercise by the Village of Theresa in the following portions of the Town of Theresa:

On the highway leading to Kelsey Bridge, known as the Kelsey Bridge road, a distance of 5300 feet; on the highway leading from the Kelsey Bridge road toward Watertown, a distance of 350 feet; on the highway leading from the Kelsey Bridge road to the Municipal Light Plant on Indian River, a distance of 1250 feet; on the Theresa-Oxbow highway, a distance of 1500 feet; on the Theresa-Philadelphia highway, a distance of 950 feet and on the Cheesman Settlement road, a distance of 8500 feet.

Case 13988

of the rights and privileges under a franchise granted by the Town Board of the Town of Theresa, Jefferson County, under date of August 25, 1947, a certified copy of which franchise is filed with the Commission.

By the Commission

  
MURRAY C.ANNER  
Secretary

WV  
PLM  
FIM:LS







RESOLUTION

At a regular meeting of the Village Board of the Village of Theresa, Jefferson County, New York, held at the Village Offices, in said village, on the 11th day of October 2005 at 7:00 p.m., prevailing time.

The meeting was called to order by Mayor Trickey and upon roll being called, the following were:

## PRESENT:

Mayor Ronald Trickey  
Trustee Noah Prior  
Trustee Richard Ault  
Trustee Shirley Greene  
Trustee Peter Rajner

## ABSENT:

The following resolution was offered by Trustee Prior, who moved its adoption, seconded by Trustee Greene, to wit:

WHEREAS, there has been pending since 2001 a lawsuit in New York State Supreme Court, County of Jefferson, with Niagara Mohawk which lawsuit by Niagara Mohawk sought to prohibit the Village from serving customers in certain portions in the Town of Theresa, and

WHEREAS, considerable questions have been raised about the boundaries of the original franchise area as a result of this litigation, and

WHEREAS, the parties are desirous of settling the lawsuit and redefining the boundaries and

WHEREAS, a settlement agreement has been proposed by Niagara

Mohawk a copy of which is annexed hereto as Exhibit "A", and

WHEREAS, the Village Board has reviewed such settlement agreement and has found it to be acceptable, now, therefore, be it

RESOLVED that the Board of Trustees of the Village of Theresa does hereby approve the settlement agreement annexed hereto as Exhibit "A" between the Village of Theresa and the Niagara Mohawk Power Corporation and does hereby authorize the Mayor of the Village to execute the same, and it is further

RESOLVED, that the Mayor of the Village of Theresa is hereby authorized to apply to the Town of Theresa pursuant to Section 64(7) of the Town Law for approval the expanded franchise area as per the settlement agreement, it is further

RESOLVED, that upon approval by the Town of the expanded franchise area that the Mayor is hereby authorize to apply to the Public Service Commission for approval of the new and expanded franchise area, and it is further

RESOLVED, that the Mayor of the Village is also authorized to execute all documents necessary to discontinue with prejudice the pending lawsuit between the Village of Theresa and Niagara Mohawk.

The question of the adoption of the foregoing resolution was duly put to a vote as follows:

<u>Mayor Trickey</u>	Voting	<u>Aye</u>
<u>Trustee Prior</u>	Voting	<u>Aye</u>
<u>Trustee Ault</u>	Voting	<u>Aye</u>
<u>Trustee Greene</u>	Voting	<u>Aye</u>

Trustee Rajner Voting Aye

The resolution was thereupon declared duly adopted.

DATED: October 11, 2005  
Theresa, New York

By Order of the Board of Trustees  
of the Village of Theresa, New York

Sylvia Bush  
Sylvia Bush, Village Clerk

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2005 between Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202 ("Niagara Mohawk") and the Village of Theresa, P.O. Box 299, Theresa, New York 13691 ("Village")

### WITNESSETH:

WHEREAS, Niagara Mohawk and the Village are presently providing electric service to customers in the Town of Theresa pursuant to franchises granted to them by the Town of Theresa and approved by the New York State Public Service Commission, a copy and rendition of the history of each franchise is annexed hereto and made a part hereof as Exhibit A,

WHEREAS, a dispute has arisen regarding the boundaries of the territories that Niagara Mohawk and the Village were respectively approved by the Public Service Commission to serve in the Town of Theresa, and

WHEREAS, on or about January 31, 2001, Niagara Mohawk commenced an action in New York State Supreme Court for the County of Jefferson seeking to prohibit the Village from serving customers in the Town of Theresa, and

WHEREAS, the parties are desirous of settling the lawsuit and defining the boundaries of their respective service territories in the Town of Theresa

NOW, THEREFORE, in consideration of mutual covenants and agreements made herein, the Village of Theresa and Niagara Mohawk agree to settle the aforesaid lawsuit in a manner consistent with the requirements of the federal antitrust laws and the New York Public Service Law upon the following conditions:

1. The Village of Theresa and Niagara Mohawk agree that it in the interest of both parties and the public to delineate the Village's service territory in the Town of Theresa in the manner shown on Exhibit B, a map annexed hereto and made a part hereof.
2. The parties agree that the franchise granted to the Village of Theresa on August 25, 1947 and approved by the Public Service Commission in Case No.13988 may be subject to varying interpretations such that the Village of Theresa shall obtain a new franchise from the Town of Theresa to provide service to customers in the service territory as shown on Exhibit B.
3. Niagara Mohawk will assist the Village and the Village of Theresa shall obtain approval of its franchise from the Public Service Commission for the exercise of its franchise in the Town of Theresa as shown on Exhibit B.

4. The parties will stipulate to a discontinuance of the aforesaid lawsuit upon completion of the above. This settlement agreement will terminate and become null and void one year from the date hereof if the parties are unable to obtain all approvals needed for completion of the transaction contemplated herein. The parties may mutually agree in writing at any time to extend the date for termination of this agreement.

In Witness Whereof, the parties have set their hands and seals, this \_\_\_\_\_ day  
of \_\_\_\_\_, 2005.

Village of Theresa

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

Its: \_\_\_\_\_

Niagara Mohawk Power Corporation

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

Its: \_\_\_\_\_

## **EXHIBIT A**

The Town of Theresa granted the following franchises that have been approved by the Public Service Commission authorizing Niagara Mohawk and the Village of Theresa to provide electric service in the Town of Theresa:

### **Niagara Mohawk Franchise**

Grantor: Town of Theresa

Grantee: Antwerp Light and Power Company, its successors and assigns

Date of Franchise: March 31, 1928

Date of Public Service Commission approval: July 19, 1928

Public Service Commission case number 4791

Niagara Mohawk is successor in interest to the franchise rights granted by the Town of Theresa to the Antwerp Light and Power Company, its successors and assigns. The Antwerp Light and Power Company was incorporated on January 20, 1910. On July 31, 1937, Antwerp Light and Power Company was consolidated with eleven other northern and central New York electric companies to form Niagara Hudson Public Service Corporation. Later that year, the Niagara Hudson Public Service Corporation was renamed the Central New York Power Corporation. On January 5, 1950, Central New York Power Corporation was consolidated with two other electric companies to form Niagara Mohawk Power Corporation. Niagara Mohawk succeeded to the rights of the Antwerp Light and Power Company to provide service to electric customers in the Town of Theresa. A copy of this franchise is annexed.

### **Village of Theresa Franchise**

Grantor: Town of Theresa

Grantee: Village of Theresa

Date of Franchise: August 25, 1947

Date of Public Service Commission approval: December 7, 1948

Public Service Commission case number 13988

The Public Service Commission approved the exercise of the electric franchise by the Village of Theresa in the portion of the Town of Theresa as described in the franchise and order annexed.

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## Town of Theresa

Electric

GRANTEE: Antwerp Light and Power Company.

Date of Grant: March 31, 1928.

Term: Perpetual.

P. S. C. Case No.: 4791.

Date of Approval: July 19, 1928.

At a special meeting of the Town Board and of the Town Superintendent of Highways of the Town of Theresa, Jefferson County, New York, held on the 31st day of March, 1928, duly and regularly called for that day, and on motion duly made and seconded, it was

RESOLVED, That the permission and consent of the said Town of Theresa is hereby given and granted perpetually to the Antwerp Light and Power Company, a domestic corporation having its office and principal place of business at Potsdam, New York, its successors and assigns, to erect poles, towers and structures and to string cables and wires thereon along, over and across the streets, highways, avenues, alleys, public parks and public places in the Town of Theresa for the purpose of transmitting and distributing electricity for light, heat and power in the said Town of Theresa.

The above grant is subject, however, to each and all of the following conditions:

First: Any and all streets, highways, avenues, alleys, public parks or public places or any portion thereof disturbed or displaced in erecting, maintaining or replacing any such poles, towers, structures, wires or cables, by the grantee of this permit, its successors or assigns, shall be replaced or restored in a proper and sufficient manner without unnecessary delay.

Second: All wires or cables shall be so strung as to be not less than twenty (20) feet above the traveled roadway of any highway which is crossed by them.

Third: The said grantee hereof, its successors or assigns, shall fully protect, indemnify and save harmless the said Town of Theresa from all claims, actions, damages or costs which may be made, suffered or incurred by reason of or arising from the permission hereby granted or from any excavation or excavations or from any of the work in any of the streets, highways, avenues, alleys, public parks or public places aforesaid at any time for any purpose, which may be due to negligence on the part of the grantee hereof, its successors, representatives, officers, agents or servants.

Fourth: The said grantee hereof, its successors or assigns, shall erect such poles, towers or structures and string wires or cables thereon in accordance with the standard practice for such construction, perform all work done under this permission and consent in a workmanlike manner and maintain the said poles, towers, structures, wires and cables in proper condition and repair.

Fifth: All poles, towers or structures erected within the limits of any street, highway, avenue, alley, public park or public place under this permit shall be located where directed by the Town Superintendent of Highways of the said Town of Theresa.

Sixth: This permission and consent shall take effect from and after the date hereof.

Given under our hands and seals at the Town of Theresa, County of Jefferson and State of New York, this 31st day of March, 1928.

## TOWN BOARD,

GEO. D. WALRADT, *Supervisor.*FRED A. SOPER, *Town Clerk.*A. D. HOWLAND, *Justice.*FAY B. TENNEY, *Justice.*GEO. C. EDDY, *Justice.*S. K. RODENHURST, *Justice.*

(Seal)

STATE OF NEW YORK, }  
COUNTY OF JEFFERSON, } SS:  
TOWN OF THERESA, }

I, Fred A. Soper, Town Clerk of the Town of Theresa, Jefferson County, New York, do hereby certify that I have compared the foregoing copy with the original minutes of the meeting of the Town Board of said Town held on March 31st, 1928, of record in this office, and that it is a correct transcript therefrom and of the whole of said original.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Town this 31st day of March, 1928.

(Seal)

FRED A. SOPER, *Town Clerk.*



That the perpetual permission and consent of the Town of Theresa, is hereby given and granted to the Village of Theresa, a Municipal Corporation of Jefferson County, having its office and principal place of business in the Village of Theresa, New York, to erect poles, towers and structures for stringing cables and wires thereon, along, over and across the highways in the Town of Theresa, New York, from the corporate limits of the Village of Theresa, as follows:

On the highway leading to Kelsey Bridge, known as the Kelsey Bridge road, a distance of 5800 feet; on the highway leading from the Kelsey Bridge road toward Watertown, a distance of 250 feet; on the highway leading from the Kelsey Bridge road to the Municipal Light Plant on Indian River, a distance of 1250 feet; on the Theresa-Oxbow highway, a distance of 1500 feet; on the Theresa-Philadelphia highway, a distance of 950 feet and on the Cheeseman Settlement road, a distance of 2500 feet; for the purpose of transmitting and distributing electricity for light, heat and power in the said Town of Theresa. The above grant and franchise is subject to each and all of the following conditions:

Any and all highways, or any part thereof disturbed or displaced in erecting, maintaining or replacing, any such poles, towers or structures, wires and cables by the exercise of this franchise shall be replaced and restored in a proper and sufficient manner without unnecessary delay.

All wires or cables shall be so strung as to be not less than 20 feet above the traveled highway of any highway which is crossed by them.

The grantee hereof shall fully protect, indemnify and save harmless the said Town of Theresa from all claims, actions, damages or costs which may be made, suffered or incurred by

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AUG 27 1947  
TARIFF BUREAU  
ALBANY, N.Y.

PERSON OTHER ARISING FROM THE FRANCHISE HEREBY GRANTED, OR FROM  
any of the work in any of the said highways at any time, which  
may be due to the negligence on the part of the grantee hereof,  
its officers, agents or employees.

The said grantee hereof, shall erect such poles, wires and/or  
structures and string the wires and cables in accordance with the  
standard practice for such construction and shall maintain the  
same in proper condition and repair.

All poles, towers or structures erected within the limits  
of any highway of this franchise shall be located therein where  
directed by the Town Superintendent of Highways of the said Town  
of Theresa.

This grant and franchise shall take effect from and after  
the date hereof.

I hereby certify that I have compared the foregoing resolution  
with the original resolution filed with me, and that the same is a  
true and correct copy of such original, and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto  
set my hand and the seal of the  
Town of Theresa, New York on this  
25 day of Aug 1977

Charles Bartlett

Town Clerk of the Town of Theresa  
Jefferson County  
State of New York

(Seal)



ORIGINAL

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
New York on December 7, 1948.

COMMISSIONERS PRESENT:

Milo R. Maltbie, Chairman  
Neal Brewster  
Maurice C. Everett  
Spencer B. Eddy

CASE 13988 - Petition of Village of Theresa for authority to exercise an electric franchise in a portion of the Town of Theresa, Jefferson County.

A petition dated September 25, 1948, having been filed with this Commission by the Village of Theresa for authority to exercise a franchise in a portion of the Town of Theresa, Jefferson County, and a public hearing after due notice having been held and the Commission having determined that the exercise of rights or privileges under the said franchise as herein authorized is necessary or convenient for the public service, it is

ORDERED:

1. That this Commission hereby permits and approves the exercise by the Village of Theresa in the following portions of the Town of Theresa:

On the highway leading to Kelsey Bridge, known as the Kelsey Bridge road, a distance of 5800 feet; on the highway leading from the Kelsey Bridge road toward Watertown, a distance of 350 feet; on the highway leading from the Kelsey Bridge road to the Municipal Light Plant on Indian River, a distance of 1250 feet; on the Theresa-Oxbow highway, a distance of 1500 feet; on the Theresa-Philadelphia highway, a distance of 930 feet and on the Cheeseman Settlement road, a distance of 2500 feet.

Case 10900

of the rights and privileges under a franchise granted by the Town Board of the Town of Theresa, Jefferson County, under date of August 25, 1947, a certified copy of which franchise is filed with the Commission.

By the Commission

*Murray C. Smith*  
MURRAY C. SMITH  
Secretary

Wm  
P. M.  
P. M. S.





CASE 03-E-0167

Appendix D  
Page 13 of 18

Village of Theresa  
Comparison of Monthly Rates  
Rate Year 3

*Current*

<u>S.C. No. 1 - Residential</u>	<u>Present</u>	<u>Staff Recommended</u>	<u>Increase</u>	
			<u>Amount</u>	<u>Percent</u>
Customer Charge (Minimum)	\$3.90	\$3.95	\$0.05	1.28%
<u>Non-Winter Rate (May - October)</u>				
Energy Charge, Per KWH	\$0.0481	\$0.0488	\$0.0007	1.46%
<u>Winter Rate (November - April)</u>				
Energy Charge, Per KWH				
First 1,000 kWh	\$0.0481	\$0.0488	\$0.0007	1.46%
Over 1,000 kWh	\$0.0749	\$0.0759	\$0.0010	1.34%
<hr/>				
<u>S.C. No. 2 - General - Non-demand</u>	<u>Present</u>	<u>Staff Recommended</u>	<u>Increase</u>	
			<u>Amount</u>	<u>Percent</u>
Customer Charge (Minimum)	\$3.90	\$3.95	\$0.05	1.28%
<u>Non-Winter Rate (May - October)</u>				
Energy Charge, Per KWH	\$0.0258	\$0.0262	\$0.0004	1.55%
<u>Winter Rate (November - April)</u>				
Energy Charge, Per KWH	\$0.0403	\$0.0409	\$0.0006	1.49%
<hr/>				
<u>S.C. No. 4 - General - Demand</u>	<u>Present</u>	<u>Staff Recommended</u>	<u>Increase</u>	
			<u>Amount</u>	<u>Percent</u>
Demand Charge, Per Kw	\$6.09	\$6.18	\$0.09	1.48%
<u>Energy Charge</u>				
Per kWh	\$0.0130	\$0.0132	\$0.0002	1.54%
<hr/>				
<u>S.C. No. 3 - Street Lighting</u>	<u>Present</u>	<u>Staff Recommended</u>	<u>Increase</u>	
			<u>Amount</u>	<u>Percent</u>
<u>Monthly Rate</u>				
Facilities Charge, Per Unit	\$4.10	\$4.16	\$0.06	1.46%
Energy Charge, Per kWh	\$0.0078	\$0.0079		
Above Rates for S.C. Nos. 1, 2, 3 and 4 are increased by				
Purchased Power Adjustment/kWh	\$0.007274	\$0.007274		
<hr/>				
<u>Reconnection Charges</u>	<u>Present</u>	<u>Staff Proposed</u>	<u>Increase</u>	
			<u>Amount</u>	<u>Percent</u>
After Regular Working Hours	\$33.25	\$33.75	\$0.50	1.50%
<hr/>				

*Current rates approved by PSC*







TOWN OF THERESA  
COUNTY OF JEFFERSON AND STATE OF NEW YORK

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In the matter of the approval of amendment  
of franchise for the Village of Theresa  
electrical system pursuant to Section 64(7)  
of the Town Law

PETITION

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TO THE TOWN BOARD  
OF THE TOWN OF THERESA  
COUNTY OF JEFFERSON AND STATE OF NEW YORK

The undersigned Mayor of the Village of Theresa hereby  
petitions the Town Board of the Town of Theresa as follows:

1. Previously the Village of Theresa has been granted a  
franchise to operate an electrical system within certain portions  
of the Town of Theresa which franchise was approved on August 25,  
1947 and was accepted by the Public Service Commission on August 7,  
1948 as Public Service Commission Case Number 13988. A copy of the  
Town's approval is annexed as Exhibit "A"

2. Since the time of the original approval of the franchise  
agreement for the Village of Theresa, electrical service has  
expanded in the Town as new homes have developed.

3. The Village over recent years has had discussions with  
Niagara Mohawk about more clearly defining current franchise  
boundaries and amending the same to reflect the customers currently  
serviced by the Village.

4. Annexed hereto as Exhibit "B" is a map intended to show  
the new proposed franchise boundaries for the Village of Theresa  
within the Town of Theresa.

5. Annexed hereto is Exhibit "C" is a list of all tax map parcel numbers within the Town of Theresa which would be encompassed within the proposed new franchise area for the Village of Theresa.

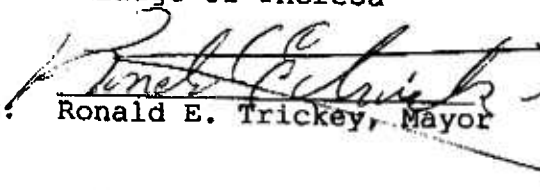
6. Niagara Mohawk has agreed to the proposed new franchise areas.

7. Pursuant to Section 64(7) of the Town Law, it is necessary for the Town to schedule a public hearing on ten (10) days prior notice to consider whether to approve such expanded franchise area.

8. This petition is being made to the Town Board and it is requested that a public hearing be scheduled and that the Town consider approving the expanded area as shown Exhibits "B" and "C".

Dated: Theresa, New York  
November 8, 2005

Village of Theresa

By:   
Ronald E. Trickey, Mayor

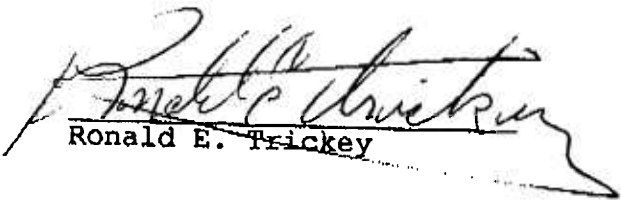
HRABCHAK, GEBO & LANGONE, P.C.  
Attorneys for Respondents  
216 Washington Street  
Suite 300  
Watertown, NY 13601  
Tel: (315) 788-5900


## VERIFICATION

STATE OF NEW YORK     )  
                              ) ss:  
COUNTY OF JEFFERSON   )

Ronald E. Trickey, being duly sworn, deposes and says that he is the Mayor of the Village of Theresa in the above entitled action; that the foregoing Affidavit is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

Sworn to before me this  
8 day of November, 2005.

  
Ronald E. Trickey

  
Notary Public

TARA A. LEESON  
Notary Public  
Jefferson County, New York  
No. 01LE0049105  
Commission Expires October 10, 2006

RESOLVED: That the perpetual permission and consent of the Town of Theresa, is hereby given and granted to the Village of Theresa, a Municipal Corporation of Jefferson County, New York, having its office and principal place of business in the Village of Theresa, New York, to erect poles, towers and structures and to

RECEIVED  
AUG 27 1947  
TOWN OF THERESA  
ALBANY, N.Y.

string cables and wires thereon, along, over and across the highways in the Town of Theresa, New York, from the corporate limits of the Village of Theresa, as follows:

[ On the highway leading to Kelsey Bridge, known as the Kelsey Bridge road, a distance of 5800 feet; on the highway leading from the Kelsey Bridge road toward Watertown, a distance of 350 feet; on the highway leading from the Kelsey Bridge road to the Municipal Light Plant on Indian River, a distance of 1250 feet; on the Theresa-Oxbow highway, a distance of 1500 feet; on the Theresa-Philadelphia highway, a distance of 980 feet and on the Cheeseman Settlement road, a distance of 2500 feet; for the purpose of transmitting and distributing electricity for light, heat and power in the said Town of Theresa. The above grant and franchise is subject to each and all of the following conditions:

Any and all highways, or any part thereof disturbed or displaced in erecting, maintaining or replacing any such poles, towers or structures, wires and cables by the grantee of this franchise shall be replaced and restored in a proper and sufficient manner without unnecessary delay.

All wires or cables shall be so strung as to be not less than 20 feet above the traveled highway of any highway which is crossed by them.

The grantee hereof shall fully protect, indemnify and save harmless the said Town of Theresa from all claims, actions, damages or costs which may be made, suffered or incurred by

reason or arising from the permission hereby granted, or from any of the work in any of the said highways at any time, which may be due to the negligence on the part of the grantee hereof, its officers, agents or employees.

The said grantee hereof, shall erect such poles, wires and/or structures and string the wires and cables in accordance with the standard practice for such construction and shall maintain the same in proper condition and repair.

All poles, towers or structures erected within the limits of any highway of this franchise shall be located therein where directed by the Town Superintendent of Highways of the said Town of Theresa.

This grant and franchise shall take effect from and after the date hereof.

I hereby certify that I have compared the foregoing resolution with the original resolution filed with me, and that the same is a true and correct copy of such original, and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto  
set my hand and the seal of the  
Town of Theresa, New York on this  
25 day of Aug 1947

Charles Beutler

Town Clerk of the Town of Theresa  
Jefferson County  
State of New York

(Seal)



ORIGINAL

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
New York on September 7, 1948.

COMMISSIONERS PRESENT:

Milo R. Maltbie, Chairman  
Neal Brewster  
Maurice C. Foxworth  
Spencer B. Eddy

CASE 13988 - Petition of Village of Theresa for authority to exercise an electric franchise in a portion of the Town of Theresa, Jefferson County.

A petition dated September 25, 1948, having been filed with this Commission by the Village of Theresa for authority to exercise a franchise in a portion of the Town of Theresa, Jefferson County, and a public hearing after due notice having been held and the Commission having determined that the exercise of rights or privileges under the said franchise as herein authorized is necessary or convenient for the public service, it is

ORDERED:

1. That this Commission hereby permits and approves the exercise by the Village of Theresa in the following portions of the Town of Theresa:

On the highway leading to Kelsey Bridge, known as the Kelsey Bridge road, a distance of 5800 feet; on the highway leading from the Kelsey Bridge road toward Watertown, a distance of 350 feet; on the highway leading from the Kelsey Bridge road to the Municipal Light Plant on Indian River, a distance of 1250 feet; on the Theresa-Oxbow highway, a distance of 1500 feet; on the Theresa-Philadelphia highway, a distance of 950 feet and on the Cheeseman Settlement road, a distance of 2500 feet.

Case 13938

of the rights and privileges under a franchise granted by the Town Board of the Town of Theresa, Jefferson County, under date of August 25, 1947, a certified copy of which franchise is filed with the Commission.

By the Commission



MURRAY C. TANNER  
Secretary

WTH  
PLM  
PLM: S







TOWN OF THERESA  
COUNTY OF JEFFERSON AND STATE OF NEW YORK

---

In the matter of the approval of amendment  
of franchise for the Village of Theresa  
electrical system pursuant to Section 64(7)  
of the Town Law

ORDER

---

WHEREAS, the Mayor of the Village of Theresa has petitioned the Town Board of the Town of Theresa for approval of an amendment of the franchise for the Village of Theresa electrical system pursuant to Section 64(7) of the Town Law, and

WHEREAS, the Town Board of the Town of Theresa has duly noticed and held a public hearing on such application, which public hearing was held on December 14, 2005, and

WHEREAS, the Town Board of the Town of Theresa has considered all of the factors involved in such request and has heard all public opinion with respect to the same, and

WHEREAS, the Town Board has found that the amendment of the franchise for the Village of Theresa electrical system as requested by petition will serve the overall public interest of the residents of the Town of Theresa,

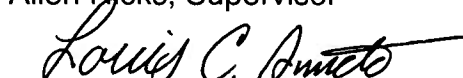
NOW, THEREFORE, it is

ORDERED, that the Town Board of the Town of Theresa does hereby approve the petition of the Village of Theresa pursuant to Section 64(7) of the Town Law for a modification of the franchise area of the Village of Theresa electrical system in the Town of Theresa in accordance with the map annexed as Exhibit A, which includes those tax map parcels as shown on Exhibit B, and it is further

ORDERED, that this approval is subject to further review and approval by the New York State Public Service Commission.

Dated: as of December 14, 2005

  
Allen Hicks, Supervisor

  
Louis Amato

Kathleen Reed

*Nellie Kelsey*  
Nellie Kelsey

Ronald Ault





VERIFIED STATEMENT

VERIFICATION

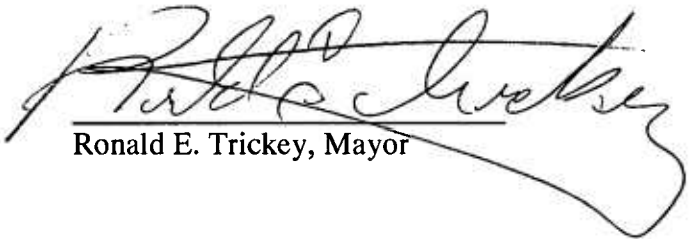
STATE OF NEW YORK )

COUNTY OF JEFFERSON )

SS:

I, Ronald E. Trickey verify that the Village of Theresa has secured consent from the Town of Theresa and is aware of no other municipal consents required by law.

Village of Theresa

  
Ronald E. Trickey, Mayor

Sworn to before me this  
27 day of July , 2006.

  
Notary Public

MARK G. GEBO  
Notary Public, State of New York  
No. 02GE4718101  
Qualified in Jefferson County  
Commission Expires September 30, 2006