**STATE OF NEW YORK**
**PUBLIC SERVICE COMMISSION**

# Case 14-E-0026 - Petition of Niagara Mohawk Power Corporation d/b/a National Grid for Waiver of Tariff Rule 46.3.2

# COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

## I. PRELIMINARY STATEMENT

The Retail Energy Supply Association (RESA)[1] submits these comments in response to the *Order Granting Request for Waiver* issued in this proceeding on January 28, 2014[2], and the Notice of Proposed Rulemaking published in the State Register.[3]

## II. OVERVIEW

Niagara Mohawk Power Corporation d /b/a National Grid (National Grid or the Company) on January 28, 214 petitioned the Commission for a waiver of its tariff, Rule

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[1]RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

[2] Case 14-E-0026 - Petition of Niagara Mohawk Power Corporation, D/B/A National Grid For Waiver Of Tariff Rule 46.3.2, *Order Granting Request For Waiver* issued on January 28, 2014 ("Order")

[3] NYS Register, February 12, 2014, I.D. No. PSC-06-14-00009-EP

46.3.2, to mitigate the financial impacts on customers due to the anticipated increase in electric commodity bills for the month of February 2014. As proposed by the Company, the mitigation effort would cap the commodity charges assessed to mass market customers by adjusting the February Mass Market Adjustment (MMA) to lower the per kWh rates to equal January's per kWh rates through a credit in the commodity portion of the bill.[4] The Company further requested authorization to defer and recover with interest the difference between the actual and adjusted per kWh rate, which is estimated to be $32 million.[5]

In the Order, the Commission, on an emergency SAPA basis, granted approval of the requested tariff waiver and stated as follows:

> Our approval of the waiver freezes the sum of the February per kWh delivery and supply charges at January levels. National Grid is authorized to defer the difference between the adjusted per kWh rate and the otherwise applicable February per kWh rates, which it estimates totals approximately $32 million. Carrying charges will be applied at the applicable other customer deposit rate. The manner and the period of time over which the deferred amounts, including carrying charges, will be collected will be determined after consideration of any public comments received. [6]

[4] Order, pp. 2-3.
[5] Order, p. 4.
[6] Order, pp. 5-6.

## III. COMMENTS OF RESA

The action taken by the Commission understandably reflects its concern over the cost impact of the well- publicized increases in energy costs incurred during this winter. RESA is cognizant of the important role of energy in the daily lives of consumers and the importance of providing energy services and products in an economical and cost-efficient manner. The unilateral capping of the February rate, however, raises a number of concerns that are expressed in the comments below.

### *A. Cost Comparisons*

In 2013, National Grid introduced a web-based Price Calculator that purportedly enables customers to compare their ESCO charges with the Company commodity charges for a comparable historical period. [7] The purpose of this mechanism is to provide an accurate tool by which customers can assess the comparative historical relationship between ESCO and utility historical commodity charges. The recent action by the Commission limiting the utility charges applied in February cast significant doubt on the accuracy of the Price Calculator for the month of February and beyond.

Pursuant to the Order, for the month of February, customers will not be presented with the actual costs incurred by the Company to provide electric service to

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[7] See, Cases 12-E-0201 and 12-G-0202 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid for Electric and Gas Service, *Report of ESCO Pricing Tools and Consumer Communications Collaborative,* dated June 13, 2013.

mass market customers. Instead the positive difference between February's actual cost and the cost incurred in January will be included as a credit on the customer's bill and recovered with interest over a yet to be designated subsequent period.  As a result, it is clear that the utility cost data attributed for February is inaccurate as it will contain a Commission approved, but non market-based credit that artificially lowers the February utility charges. Thus, the accuracy of the February cost data is called into question.

Moreover, the recovery of the credit with interest in later months will skew the Company cost data in those periods.  Thus, for example, if an assumed $32 million is recovered equally over the months of April, May and June, the cost data in those months will be infected with the charges actually attributable to February and the related additional interest costs.   This will cause the data presented in these months to be inaccurate; they fail to reflect the costs in those months as they include significant out-of –period charges associated with February usage.  The problem is further exacerbated by the fact that usage in each month will be different than the previous month as well as actual usage that occurred in February.  Thus recovery of the February charges will need to be applied to differing levels of usage that do not mesh with the February customer usage data.

In view of these unfortunate circumstances, the Commission should consider directing the Company to terminate availability of the Price Calculator commencing with February 2014 and continuing until the recovery of the credit with interest is completed.

### *B. Impact on Price Signals and the Competitive Retail Market*

The Commission recently announced that that it has commenced a process to transform the regulation of electric distribution utilities by establishing and articulating "core policy outcomes intended to better align the role and operations of utilities to enable market and customer-driven change."[8] The emphasis of this new approach is to "give consumers greater freedom to manage their total energy bill".

Further, this policy is distinctly aimed at empowering the customer to have the tools and competitive options to make economically efficient energy choices. As the Commission underscored, a core policy would be:

> **Empowering Customers:** A hallmark of an efficient consumer market is information and knowledge and ensuring the availability of tools to both procure supply and services that consumers' value. By focusing on consumer needs, the Commission can best determine if regulation and the markets are effective at delivering policy objectives.[9]

It is axiomatic that this transformation process is significantly dependent on consumers being presented with accurate cost and pricing signals associated with their various energy options. This is critical information which unless provided and made available on a consistent and comprehensive basis will prevent consumers from being able to make economically efficient choices and to rationally "procure supply and services" that are of real value to consumers. Masking real costs, diffusing the near term

[8] See Case 07-M-0548, Press Release dated December 19, 2013 ("Press Release")
[9] Press Release, p. 1.

impact cost impact of energy choices freely made, protecting utilities from the cost impact of their supply arrangements, are all actions that may engender some level of salutary short term benefit; but in the more important longer term it diffuses the presentation of clear pricing signals and confuses the consumer concerning the costs and benefits of available energy choices.

By way of example, when considering participation in a DG project or installation of load reducing or energy efficiency measures, a customer will need to know how those types of measures will provide value at times of system peak or price spikes. This may be a key factor or determinant in swaying or influencing the customer's decision, as much of the financial benefit of these types of measures occurs at times of peak usage and pricing.  If prices during these critical periods are diffused or camaflouged by regulatory protective measures, consumers may decide to forego the cost and burdens of opting for such newer approaches to energy choices premised upon inaccurate costing data. The negative impact is not corrected by recovering the foregone revenues in a later period, as is contemplated in the Order, as that will occur during a period of lower usage and most probably lower prices thus masking the real benefit these measures would have provided at peak periods.

Further in this regard, customers are encouraged to take measures to participate in programs such as Demand Reduction efforts as a means of lowering peak demand on the utility system and thereby also forestall the need to install additional transmission or distribution capacity. However, for such measures to be of value to the customer it is essential that they achieve the full cost benefits associated with reduction in usage during peak periods. Failure to flow such benefits to customers in full disincentivises consumers from opting for these alternative measures. Moreover, if customers become accustomed to regulatory actions that mute peak cost impacts their inclination to adopt such peak reduction programs will further decline.

In sum, actions that mask the costs of peak usage are inconsistent with regulatory efforts to reduce peak usage and empower consumers to manage their energy choices in an economically efficient manner.

It is also critical to underscore that the actions taken by the Commission in this matter have not occurred in a vacuum. In the Niagara Mohawk service territory there is a vibrant retail energy market served by a plethora of ESCOs providing commodity service in competition with the utility to residential and commercial customers. ESCOs have and will continue to compete in the provision of retail energy products and services. Nonetheless, for competition to continue it is imperative that a level competitive playing field be maintained between the utilities and the ESCOs,[10] and at a minimum that competitive barriers be removed rather than enhanced. Unfortunately the actions taken by the Commission in the Order materially shift the competitive market in favor of the incumbent utility.

As the Commission noted in the Order, customers throughout New York State and in the Company service territory encountered in January "higher-than-normal electric bills due to high electric usage and high gas prices caused by the unusually cold weather…"[11] This pricing pattern also impacted ESCO retail customers and the ESCOs who serve them. ESCOs incurred significant costs including collateral obligations to meet its contractual service obligations. Obviously to remain economically viable ESCOs must recover their costs through customer receipts in a timely and expeditious manner. This necessitates that customer bills accurately reflect the costs of providing service in the relevant billing period, and being obligated to remit payment for such usage in the normal contractual payment period. Therefore, ESCO customers located in the National Grid service territory will as a general matter be charged for January usage in a manner that reflects the actual costs incurred by the ESCO to obtain electric supplies in January.

[10] Case 07-M-0458 -Proceeding on Motion of the Commission to Review Policies and Practices Intended to Foster the Development of Competitive Retail Energy Markets, *Order On Review of Retail Access Policies and Notice Soliciting Comments* (issued April 24, 2007) at p.4.
[11] Order, p. 2.

In marked contrast, for January (as reflected in February billing) National Grid through regulatory protection and fiat will be allowed to defer charging customers for their actual usage in January and be ***guaranteed*** recovery of the deferred supply costs with interest at an above-market rate in a later period, and be protected from the financial impact of deferring recovery of this large amount of revenue. Thus for February usage customer bills will be reduced below market costs and the utility will be fully protected from the economic consequences of such action. This type of financial and cost recovery protection is not available to competitive entities that compete in the competitive market. No ESCO has the ability to defer cost recovery from a high cost period and be ***guaranteed*** recovery with interest together with protection from the financial consequences associated with the deferral of such a substantial level of revenues. Thus, for this period while ESCOs will issue bills that reflect the actual usage and cost for the month of January, National Grid will issue deflated bills that are ***not*** reflective of costs for the same period comforted by the Commission backed guarantee that they will be made whole with interest for any deferred revenues and related financial risks. This obviously creates a barrier to effective retail competition and sways the playing field in favor of the utility.

Further, as part of this transformation of the regulatory process, the Commission has encouraged ESCOs to provide value added services and products to consumers. ESCOs are capable and willing to cooperate with the Commission in this effort. Nonetheless, it cannot be asked to undertake competitive efforts where the Commission erects competitive barriers that bar meaningful competition.

This concern is heightened as the Commission has shown a propensity to protect utilities from the cost impacts associated with their supply practices. From October 1998 until October 2002, the residential gas rates (commodity and transportation) of New York State Electric and Gas Corporation ("NYSEG") were fixed pursuant to a rate agreement between NYSEG and the Commission. Under this rate agreement, the utility charged a fixed gas rate and in return was allowed to retain any profits it accrued in the event actual costs were lower than estimated and obligated to cover any losses in the event actual costs exceeded the level of costs incorporated in the fixed rate.[12]

NYSEG's appetite towards fixed rates evaporated in 2001 with the upsurge in market gas costs. Due to the placement of fixed rates, NYSEG incurred substantial financial losses from below-cost commodity sales to its customers. In response, NYSEG sought to recover from ratepayers losses of $36.9 million for the year ending September

[12] Case 98-G-0845 - Petition of New York State Electric & Gas Corporation for Approval of Multi-Year Agreement Concerning Gas Rates, *Opinion and Order Adopting Settlement Terms Subject to Modification and Conditions,* Opinion No. 98-17 (issued September 29, 1998), and Opinion Modifying Opinion No. 98-17 (issued December 2, 1998).

30, 2002, resulting from the below-cost commodity sales.[13] Furthermore, NYSEG sought to terminate the existing fixed rate and in its place install a Gas Supply Charge that fluctuated monthly in response to the actual market cost of the utility's gas supplies.[14] Thereafter, the Company was authorized to recover $10.5 million of its asserted loss from below-cost residential sales, terminate the fixed residential gas rate, and institute a variable gas rate.[15]

ESCOs have no objection to competing fairly with utilities on an even playing field; nonetheless it is unfair to ask them to compete against utilities that are financially protected by the Commission.

The Commission's action also creates negative public perceptions of ESCO pricing practices. As noted, ESCO customers located in the National Grid service territory will face bills that reflect the actual costs incurred by the ESCO to obtain electric supplies in January. However, utility supply customers will be provided with artificially reduced bills that reflect the Commission's regulatory action. In this process, customers will incorrectly view ESCO service as more expensive not realizing that their bills were artificially reduced and that the deferred revenues will be subsequently recovered from

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[13] Case 01-G-1668 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric and Gas Corporation and Case 01-G-1683 – Petition of New York State Electric and Gas Corporation Pursuant to Section 312.4 of the Uniform System of Accounts to Defer Expenditures Associated with Residential Gas Costs, *Order Establishing Rates* (issued November 20, 2002).
[14] *Id.,* Appendix C, p. 11.
[15] *Id.,* pp. 2-3.

customers with interest. Once again the competitive playing field is pushed in favor of the utility.

The capping of the February charges will also unfairly likely harm the reputation of certain ESCOs providing residential service. The Department of Public Service ("DPS") has instituted a Residential Scorecard that rates ESCOs serving residential customers by the number of complaints lodged against them with DPS during an annual period.[16] The Scorecard process simply aggregates all complaints against each ESCO and does not differentiate between meritorious complaints and those which are without merit. Thus, any action that precipitates an increase in consumer complaints will necessarily create a worse rating for certain ESCOs. The Commission's action in this Order will likely cause an uptick in consumer complaints against ESCOs, as customers will compare the Commission sanctioned capped utility rate against the higher market based rates associated with ESCO variable service. The ESCOs that are subjected to these complaints will have done nothing inappropriate; nevertheless, their rating on the Scorecard will suffer.

### *C. __Credit Recovery Mechanism__*

The Company proposed that the credit deferral (estimated at $32 million) be collected over a six-month period beginning in May 2014 or, in the alternative, it requested that when the Commission does address the recovery mechanism, the

[16] www.askpsc.com/askpsc/page/?PageAction=renderPageById&PageId=b64def33f7a06ba2d519bcda3ffa7050

deferral period be limited to a short (i.e., four months) time period. The short time period is proposed so that the surcharge would not overlap with the high commodity price winter months.[17] The Commission concluded that the "manner and the period of time over which the deferred amounts, including carrying charges, will be collected will be determined after consideration of any public comments."[18]

**1. <u>Period of Recovery</u>**

It is recommended that the recovery period be as short and limited as possible (one to two months) in order to address several important concerns.

First, it is imperative that only the customers who benefitted from the February credit be subject to recovery of the deferred revenues, and that those customers who did not take supply service from National Grid during the applicable period be shielded from any subsequent deferral recovery. Every month outbound and inbound customer migration occurs on the Company system by those customers who migrate to ESCO commodity service or from ESCO commodity service to Company commodity service. The credit applied to the February billings will only be incorporated on the bills issued by the Company to customers taking commodity service from the Company during this period. These are the only customers that will benefit from the commodity credit. Customers who were on ESCO service during this period will not receive any commodity credit. Consequently, from an equitable standpoint, only those customers who received

[17] Order, p. 4.
[18] Order, p. 6.

the benefit of the credit should to the maximum degree possible be subject to the subsequent credit recovery mechanism.

In view of the constant flow of monthly customer migration on the Company system it will be difficult to maintain the equitable link of imposing the credit recovery on those customers that actually received the credit, if the recovery period is extended over any lengthy period. For each additional month there will be another group of customers who either come on or leave the Company for an ESCO further complicating the application of the credit to the proper customer base.

Second, as noted above, the capping of the rate has the effect of distorting price signals to customers, and similarly the imposition of an out-of-period cost recovery will further undercut the presentation of accurate pricing signals to consumers in those subsequent periods. The longer the recovery period is drawn out the greater will be the length of time over which customers will fail to be apprised of the current real costs associated with electric usage.  Therefore, it is logical and reasonable to minimize the recovery period.

Third, in view of the new dynamics operating in the electric markets, where as noted by the Commission the sharp incline of winter electric prices was due to high electric usage and high gas prices caused by the unusually cold weather, [19] it is not clear when a better time will occur to implement the recovery.  As greater levels of electric

[19] Order, p. 2.

generation rely on natural gas whose peak demand and price period occurs in the winter, higher electric costs may become the norm throughout the winter period. Further, as National Grid's commodity rates are subject to a two month lagged reconciliation process additional credits may be imposed in future months to address other under recoveries in previous months. And in a few months, the Company will be entering the summer peak period when electricity may also be subject to upward pricing pressures.

### 2. Manner of Recovery

As proposed by the Company and adopted by the Commission the Company will adjust its "February Mass Market Adjustment (MMA) to lower the February per kWh rates to equal January's per kWh rates through a credit in the commodity portion of the bill"[20], and the credit adjustment "would be reflected on customers' bills in the Electric Supply Reconciliation Mechanism."[21] In other words the credit process will only be directed through the commodity portion of bills issued to the Company's full-service (commodity and delivery) customers. The credit recovery mechanism should thus also be applied and flowed through the commodity portion of customer bills. This will provide the comparable nexus between cost reduction and cost recovery.

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[20]Order, pp. 2-3

[21] Order, p. 4.

There does not appear to be any reasonable basis to effect the cost recovery through the delivery portion of the customer bill. The underlying justification for the bill credit was the marked upturn in supply costs not any aspect of the delivery rates, which are set and regulated by the Commission. Similarly, the anticipated increase in costs was a function of how the supply not the delivery portion of the bill is calculated. Further, as noted, the customer bill credit will only apply to the commodity portion of the bill.

In its Petition, the Company sought and was granted "one-time waiver"[22] of the MMA to allow for a reduction in the commodity cost assigned to customers in February. It is estimated that the attendant cost will be approximately $32 million.[23] The Commission should correspondingly treat this as a singular one-time event and only allow a credit and subsequent recovery of up to $32 million dollars to customer's bills, regardless of any additional costs the Company may subsequently identify either through its reconciliation or NYISO settlement process.

### ***D. Public Notification***

It is of vital importance that customers are apprised that the instant action of the Commission will not provide a permanent reduction in the February charges billed to customers. The Company will only defer a portion of the cost recovery with interest to a later yet to be designated period. In essence, the costs will not decrease (in fact due to accumulated interest it will increase) all that changes is the timing of the recovery of

[22] Order, p. 3
[23] Order, P. 4.

these charges. This explanation is needed to ensure that customers correctly understand the nature of the Commission's action and that any diminution in February billing charges will be recouped in a later period.

Moreover, customers should also be apprised, in addition to the ability to use budget billing, they can obtain fixed price commodity service from ESCOs providing service in their area. In this manner they can avoid the vagaries attendant to rates that change monthly in relation to market conditions.

## III. CONCLUSION

RESA thanks the Commission for the opportunity to submit comments in this proceeding, and respectfully requests that the Commission adopt the recommendations noted herein.

Respectfully submitted,

Retail Energy Supply Association

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