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By Electronic Mail

Hon. Jaclyn Brilling
Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Case 10-E-0050 – 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 Service

Dear Secretary Brilling:

In accordance with the schedule adopted in this proceeding, enclosed for filing with the Commission please find the *Initial Brief of the Retail Energy Supply Association.*

Copies have been served electronically upon all parties on the active service list.

Thank you for your assistance in this matter.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel, Counsel*
Usher Fogel, Counsel

Cc: Hon William Bouteiller (by electronic mail)
Hon. Rudy Stegmoeller (by electronic mail)
Service List (by electronic mail)

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

Case 10-E-0050 – 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 Service

INITIAL BRIEF OF THE RETAIL ENERGY SUPPLY ASSOCIATION

I. PRELIMINARY STATEMENT

In accordance with the schedule adopted in this proceeding, this Initial Brief is submitted on behalf of the Retail Energy Supply Association ("RESA")[1].

RESA is a not-for-profit trade association representing ESCOs to promote vibrant, robust and sustainable competitive retail energy markets for residential, commercial and industrial consumers. RESA members offer retail electric service to customers throughout New York State and in particular within the service territory of National Grid ("National Grid" or "Company"). RESA has been an active participant in many New York Public Service Commission ("Commission") proceedings involving retail market design and utility rates, including previous National Grid proceedings.

[1] RESA's members include ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; NextEra Energy Services; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; PPL EnergyPlus; Reliant Energy Northeast LLC; Sempra Energy Solutions LLC. 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.

II. EXECUTIVE SUMMARY

A. Procedural Overview

On January 29, 2010, National Grid filed with the Commission amendments to its tariff schedules designed *inter alia* to increase delivery rates by approximately $392 million through a three year rate plan for the period January 1, 2011 through December 31, 2013, implement a new Merchant Function Charge ("MFC") and modify its existing ESCO Purchase of Receivables program.[2] Thereafter, evidentiary hearings were held in Albany, New York from September 1, 2010 through September 16, 2010, before the Hon. William Bouteiller and Rudy Stegemoeller, at which the pre-filed direct and rebuttal testimony and related exhibits submitted by the parties were incorporated into the record and the sponsoring witnesses were subjected to cross-examination. Initial briefs of the parties are scheduled to be filed by October 8, 2010 and reply briefs no later than October 28, 2010.[3] The Company's electric delivery rates were last increased in 2002, as part of a 10-year Merger Rate Plan in Case 01-M-0075.

B. Summary of RESA Recommendations

Based upon the entire record developed in this proceeding, it is respectfully requested that the Commission adopt the following recommendations:

1. Under the POR Program the ESCO should have the ability to use Dual Billing or Utility Consolidated Billing for customers served within each service classification.

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[2] See, filing cover letter dated January 28, 2010.

[3] In this brief, references to the transcript are cited as "SM ______" and to Exhibits as "Exh.____".

2. The Discount Rate applicable to the POR Program should not be trued up in Subsequent Periods.
3. The Uncollectible rate should reflect more recent current data as proposed by Staff.
4. The record supports adoption of the proposal by Staff that National Grid lower the threshold for Mandatory Hourly Pricing ("MHP")to all customers whose maximum demand is greater than 250 kW in six months of the previous twelve-month period and offer voluntary MHP to medium and large commercial and industrial customers (SC-2D and SC-3) that are not subject to MHP.

III. PURCHASE OF ESCO RECEIVABLES

As part of its retail access infrastructure, National Grid has instituted a Purchase of Receivables ("POR") program under which it purchases the accounts receivables of the ESCOs operating on its system who use consolidated billing in connection with the provision of competitive commodity supply service. Originally National Grid's program was designated as a "with recourse" program under which the ESCO would remain liability if a customer failed to make payment on the receivable that had originally been purchased by the Company (Exhibit 364; SM 2370). Subsequently, and as is currently the practice, the National Grid POR program has been designated as a "without recourse" program under which the ESCO is not liable if the customer fails to make payment for receivables purchased by the Company (Exhibit 364;SM 2370).

In return for acquiring the receivable on a without recourse basis, the Company is authorized to assess a discount rate to the receivables purchased under the program which has reflected the utilities uncollectable rate for a designated period. As currently constituted, under the POR program the discount rate is fixed for the designated prospective period and there are no subsequent adjustments or true ups to that discount rate in any subsequent period.[4] When an ESCO agrees to use the utility consolidated billing model,[5] under when the utility bills both for the utility delivery charge as well as the ESCO commodity charges, the ESCO must also agree to participate in the POR program.[6] Further, within each service classification served by the ESCO, except for limited instances, the ESCO must choose either consolidated billing or dual billing for all of the customers served by the ESCO in that service classification (SM 2377; SM 2378; Exhibit 362, Page 4 Question 9(i)).[7]

A. Under the POR Program the ESCO Should Have the Ability to Use Dual Billing or Utility Consolidated Billing for Customers Served Within Each Service Classification

Under the current utility practice, ESCOs, except in limited instances, must choose either consolidated billing or dual billing for all of its customers in a particular service classification and within each service classification the ESCO cannot use consolidated billing for some customers and dual billing for others (Exhibit 362, Page 4, Question 9(i); SM 2378). This requirement is unduly restrictive and should be modified to allow ESCOs to apply either dual or consolidated billing to individual customers served by the ESCO within each particular utility

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[4] Case 05-M-0333 - In the Matter of Niagara Mohawk Power Corporation's Plan to Foster the Development of Retail Energy Markets, Case 99-G-0336 - Niagara Mohawk Power Corporation – Petition for Approval of a Gas Multi-Year Rate and Restructuring Proposal, Case 98-M-1343 - In the Matter of Retail Access Business Rules. *Order Clarifying And Adopting Joint Proposal On Competitive Opportunities* (issued April 20, 2006), Joint Proposal, p. 12.

[5] Case 98-M-1343 – In the Matter of Retail Access Business Rules, Case 07-M-1514 – Petition of New York State Consumer Protection Board and the New York City Department of Consumer Affairs Regarding the Marketing Practices of Energy Service Companies, Case 08-G-0078 – Ordinary Tariff Filing of National Fuel Gas Distribution Corporation to establish a set of commercially reasonable standards for door-to-door sales of natural gas by ESCOs, *Order Adopting Amendments to the Uniform Business Practices, Granting in Part Petition on Behalf of Customers and Rejecting National Fuel Gas Distribution Corporation's Tariff Filing* (issued October 27, 2008), Appendix B – Uniform Business Practices ("UBP"), UBP, Section 1, p.1.

[6] See Record Request No. RR-38, annexed hereto as Attachment A.

[7] Dual billing is the process by which the ESCO issues its own bill for commodity service and the utility bills separately for delivery service (SM 2377; UBP Section 1, p. 2).

service classification. The record amply demonstrates that the Company has not provided a rational or sufficient basis for imposition of this restriction on the use of customer billing.

According to the Company the sole justification for limiting the ESCO's discretion to use dual or consolidated billing rests upon the alleged need to prevent ESCO's from placing only those customers that are bad credit risks into the POR program (SM 2379; Exhibit 362, Page 4, Question 9 (ii)). The Company in response to interrogatories and on the record, however, acknowledged that this concern over the purported movement of bad credit customers into the POR program was "essentially a subjective assessment" that was not supported by any formal analysis or studies (SM 2380; Exhibit 362, Page 4, Question 9 (iii)). The Company further acknowledged that it had not prepared any study analysis or accumulated data demonstrating that allowing ESCO to choose dual or consolidated billing would result in ESCOs placing a disproportionate number of customers with bad credit risks into the POR program, or where ESCOs have the ability to chose dual or consolidated billing, ESCOs have in fact placed a disproportionate number of customers with bad credit risks into the POR program. Moreover, the Company has not prepared or provided any analysis that identifies the financial impact upon the Company and ratepayers resulting from allowing ESCO to choose dual or consolidated billing within each service classification (SM 2382; Exhibit 362, RESA – 3, Question 15).

National Grid's restrictive approach is also inconsistent with the POR programs of other utilities. In the POR program instituted by Consolidated Edison Company of New York, Inc. (Con Edison), ESCOs have discretion to apply either dual or consolidated billing to particular customers within each service classification (SM 2379). And the Company acknowledges that except for National Grid, it could not identify or was not aware of any other utility which imposed such a restriction upon the use of consolidated billing (SM 2378).

The Company's rationale for imposition of this restriction is also illogical and unpersuasive. In setting the POR discount rate the Company does not reflect the uncollectible experience of an individual ESCO or the experience of all the ESCOs. Instead, National Grid will incorporate the uncollectible rate that is derived from National Grid's uncollectible expense used in setting rates for all customers (full service and retail access), and reflects the uncollectible experience of the entire customer base.[8] Under this structure, the uncollectible rate is the same across the Company and is not linked to the performance of an individual ESCO's customer pool. Consequently, enabling an ESCO to choose dual or consolidated billing for particular customers would not appreciably affect the actual uncollectible rate applied by the Company in setting delivery rates or the discount rate for the POR program reflects the Company's entire experience (SM 2380-81).

For these reasons, it is unreasonable for the Company to restrict ESCOs to choose either dual or consolidated billing for all customers served by an ESCO within a particular service classification. As is the practice followed in other utility POR programs, ESCOs should have the discretion to apply dual or consolidated billing for particular customers within each service classification.

B. <u>The Discount Rate Applicable to the POR Program Should not be Trued Up in Subsequent Periods</u>

Under the current practice, the utility sets a POR discount rate which reflects the utility uncollectible rate for a designated period which is applied to all receivables purchased by National Grid from the ESCO during the applicable period. This discount rate is not modified or in any way trued up to reflect the actual uncollectible experience during this period. In a break

[8] Exhibit 362, Page 3, Question 1; SM 2256; SM 2370.

from this practice, the Company now proposes that the POR discount rate will mirror the uncollectible rate incorporated in the Merchant Function Charge and the Company will apply an after-the-fact true-up mechanism to the uncollectible rate that will be implemented in a subsequent annual period (SM 2368).

As proposed, the Company will incorporate a true- up of forecast to actual uncollectible expense and apply concomitant adjustment in the discount rate set for a subsequent period. Thus, for example, assume that for 2011 the Company sets the POR discount rate with an uncollectible rate of 2%. After the conclusion of 2011, the Company will compare the actual uncollectibles for 2010 with the 2% rate assumed for 2011 and used for setting the uncollectible rate. If this comparison shows, for example, the actual uncollectible rate was 3% rather than 2% as forecasted, the Company in setting the discount rate for 2012 would increase the applicable discount rate in that year by 1% to recover the short fall in 2011 (SM 2372, 2451-52). This true up mechanism for the POR discount rate is inappropriate, unreasonable and should be rejected.[9]

The Company acknowledges that the POR program applicable in its service territory is designated as a "without recourse" program.[10] As defined in the UBP, under such a program, the receivables are purchased without recourse by the distribution utility and the ESCO is not liable if the customers fail to make payments.[11] In essence, in consideration for paying the applicable discount rate, ESCOs are insulated from any impact associated with the non-payment of POR customers. However, under the Company's true up mechanism the POR program is, in large measure, transformed from a "without recourse" to a "with recourse" program, because the Company's is able to make up any short fall in its actual uncollectible experience in a subsequent period (SM 2372). Instead of accepting a set discount rate for a period, the ESCO is now subject

[9] This is apparently consistent with the position of Staff (SM 2591-92, 3615).
[10] SM 2369.
[11] UBP, Section 1, p.4; Exhibit 364; SM 2371.

to an after- the- fact adjustment in a subsequent period to reflect the actual uncollectible experience by the Company.

The Company tries to justify this transformation from a "without recourse" to a "with recourse" program by arguing that it does not reflect the ESCO's individual customer base but rather the utility's entire experience (SM 2370). However, as acknowledged on cross-examination by the representatives of National Grid, the true-up mechanism will reflect the experience of all customers and can therefore incorporate the experience of an individual ESCO's customer base as well (SM 2373-2375). Furthermore, the ESCO has been charged a discount rate for the Company's agreement to purchase the receivables during the designated period. As that is the price agreed to by the parties, it is inappropriate for National Grid be able to subsequently modify that price on an after-the-fact basis.

It is also particularly inappropriate to apply such a true-up mechanism to ESCOs operating in a competitive rather than a regulated retail environment. In setting its commodity charges for a particular period to its customer base, the ESCO will reflect its costs of doing business including the discount rate the utility charges in the POR program. Thus, for example, for 2011, the ESCO in setting its charges will reflect the designated POR discount rate for that period, and will be reflected in the price charged to the ESCOs customer base in that period in 2011. In the competitive market, customers are not subject to true-up mechanisms by which the ESCO can then go back to the customer to recover any out of period charges that may be imposed in 2012 or any subsequent period. In fact, the ESCO's customer base may be different in 2012 than it was in 2011.

This is materially different than the cost recovery mechanisms applicable to utility regulated rates where true up mechanisms are not uncommon and reflect the fact that the customers are served through tariff rates in a captive regulated monopoly structure. In the case of a competitive retail market, subsequent true up mechanisms simply are out of place.

It is also equally clear that through this true up mechanism, National Grid would essentially compel an individual ESCO to bear the impact of the collection experience associated with another individual ESCO (SM 2374). This again is inconsistent with the operations of a competitive retail market.

In the context of a "without recourse" POR program, it is imperative that ESCOs be provided with definitive and certain charges which are associated with the provision of service in a designated period and are not subsequently modified for out of period assessments or true ups which are unrelated to the period for which service was originally provided.

For this reasons, the Company's proposal to true up the uncollectible portion of the POR discount rate in a subsequent period should be rejected.

C. Uncollectible Rate

Staff proposes that the methodology for calculating the rate year uncollectible rate that would be applied to the POR Discount Rate and the MFC should be adjusted for more recent updated data (SM 2821). At the time of the filing of its testimony, the use of more recent data would reduce the company-wide historic test year uncollectible rate of 1.687%, as proposed by National Grid to 1.3232% (SM 2822). As rates are being set on a prospective rather than a historic basis, this adjustment is reasonable and should be adopted.

IV. MANDATORY HOURLY PRICING

Staff Witness Graves proposed that the Company lower the threshold for Mandatory Hourly Pricing ("MHP") to all customers whose maximum demand is greater than 250 kW in six months of the previous twelve-month period (SM 3661-62) and offer voluntary MHP to medium and large commercial and industrial customers (SC-2D and SC-3) that are not subject to MHP (SM 3680). These proposals are consistent with established policy and should be adopted.[12]

The rapid implementation of advanced metering is critical to the development of a more rationally based retail energy pricing structure, a vibrant energy efficiency marketplace in New York and, in turn, to the attainment of the State's energy efficiency goals.

An important factor affecting both the ability and incentive for customers to adjust their usage of electricity is the degree to which customers are provided with timely and accurate signals concerning the market cost of electricity.[13] Absent access to accurate price information, it is difficult for customers to assess the real benefits and costs associated with their specific energy consumption patterns as well as the efficacy of the energy efficiency devices that will be implemented as part of the energy efficiency program.

The pricing data made available by the introduction of real time meters empowers consumers with the information necessary to make more informed choices about their energy consumption and the benefits of modifying or reducing their patterns of energy use. In addition, ESCOs need access to this data in order to develop products that meet the energy consumption needs of customers, including enhancing the ability of ESCOs to offer energy efficiency

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[12] Case 03-E-0641 – Proceeding on Motion of the Commission Regarding Expedited Implementation Of Mandatory Hourly Pricing For Commodity Service, *Order Instituting Further Proceedings and Requiring the Filing of Draft Tariffs* (issued September 23, 2005) ("MHP Order"). See, also, Case 08-E-0539 - Proceeding on Motion of the Commission s to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, *Order Establishing Rates for Electric Service* (issued May 25, 2007).
[13] MHP Order, p. 6

products.[14] Indeed, the actual benefits of many energy efficiency measures (especially those involving an element of peak shaving or demand response) cannot be delivered to customers in the absence of advanced metering.

The case for expansion of advanced metering was cogently noted by Staff Witness Graves, who correctly explained the importance of expanding MHP.

> I am recommending the expansion of MHP.... to achieve the benefits that the Commission sought in the MHO Order, including potential reductions to peak period prices, enhanced peak period reliability, ... and more equitable pricing of customer bills than provided by the existing , less exact, average energy rate.[15]

In light of these considerations, adoption of Staff's MHP proposals is in the public interest and warrants full adoption by the Commission.

IV. CONCLUSION

For the reasons set forth herein, RESA respectfully urges the Commission to issue a final opinion consistent with the recommendations presented by RESA in this proceeding.

Respectfully submitted

Retail Energy Supply Association

By: *Usher Fogel, Counsel*
Usher Fogel, Counsel

Dated, Cedarhurst, New York
October 8, 2010

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[14] MHP Order, p. 1, 3.
[15] SM 3662.