STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 16, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
James L. Larocca
Gregg C. Sayre

CASE 12-E-0136 - Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements.

ORDER DECIDING RELIABILITY ISSUES AND ADDRESSING COST ALLOCATION AND RECOVERY

(Issued and Effective August 16, 2012)

BY THE COMMISSION:

INTRODUCTION

On March 14, 2012, NRG Energy, Inc. and Dunkirk Power LLC (collectively, NRG) filed a notice, pursuant to the Commission's Order Adopting Notice Requirements for Generation Unit Retirements (Retirement Order), which stated that NRG intended to "mothball" its Dunkirk generating station by September 10, 2012.[1] NRG sought a waiver of the Commission's notice requirement adopted in the Retirement Order so that it

[1] Case 05-E-0889, Policies and Procedures Regarding Generating Unit Retirements, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

could proceed with the mothballing of the Dunkirk generating station prior to September 10, 2012.[2]

In response to NRG's Retirement Notice, Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) conducted an analysis of the reliability impacts associated with the planned mothballing. The analysis identified adverse reliability impacts attending the mothballing. National Grid also identified system reinforcements needed to resolve those reliability impacts. However, because it anticipated that the reinforcements could not be completed by September 10, 2012 (i.e., the proposed mothball date for the Dunkirk generating station), National Grid determined that a portion of the Dunkirk generating station must remain available for an interim period in order to maintain system reliability.

On July 20, 2012, National Grid submitted a proposed "Term Sheet Agreement" whereby NRG would agree to provide "Reliability Support Services" (RSS) in order to maintain reliability. National Grid and NRG requested the Commission's approval of the Term Sheet Agreement before entering into a bilateral contract for RSS from the Dunkirk facility for a period beginning September 1, 2012, and ending May 31, 2013. Under the Term Sheet Agreement, RSS would be procured from two units at NRG's Dunkirk generating station until National Grid completes, as is expected by May 31, 2013, the transmission upgrades sufficient to reduce the reliability need to no more than one Dunkirk unit. In the event there are delays in National Grid's schedule for deployment of the upgrades, the

[2] The term "mothball" is synonymous with a "retirement" for purposes of providing notice under the Retirement Order, given that each action may result in adverse reliability impacts. However, as discussed below, "mothballing," in comparison to "retirement" may have unique implications for establishing appropriate levels of compensation.

Term Sheet Agreement provides that National Grid may obtain a 90-day extension beyond May 31, 2013, until August 31, 2013. Before agreeing that NRG should continue to operate any portion of the Dunkirk generating station beyond May 31, 2013, or, if the initial period is extended, beyond August 31, 2013, National Grid intends to evaluate potential alternative reliability solutions. National Grid indicates that its identified permanent solution to the reliability need could be implemented by June 2015.

On July 20, 2012, National Grid also proposed amendments to its tariffs that would create a mechanism for allocating and recovering the costs it will incur in procuring RSS from NRG (Tariff Amendments). The Tariff Amendments provide for the deferral of the recovery of the costs of procuring RSS from NRG from the inception of National Grid's payment obligation to NRG until lower base rates, proposed in its pending rate proceeding, Case 12-E-0201, are approved and go into effect on April 1, 2013. These costs would be recovered from all retail delivery customers in the same manner as other transmission capital and operating costs.

In this Order, we confirm that National Grid is taking the steps necessary to ensure reliability in the short-term by procuring necessary generation services from NRG, and by soliciting alternatives to meet reliability needs from market participants in the longer term. As discussed more fully below, the proposed Term Sheet Agreement is approved as necessary to ensure that adequate generation facilities have been procured to meet local reliability needs, subject to the filing of an executed contract. However, we reject the proposed Tariff Amendments and refer issues pertaining to the recovery of RSS costs from National Grid's retail customers to the utility's pending rate case, Case 12-E-0201. These actions will ensure the provision of safe and adequate service at just and reasonable rates, and are therefore in the public interest.

BACKGROUND

The Retirement Order, in adopting requirements for providing notice of generator retirements, was intended to address the potential that a retirement of electric generating units could cause the level of generation supply to decline to a point that would threaten the reliability of electric service.[3] These notification requirements were needed so that generation unit retirements that might undermine electric system reliability and render service unsafe or inadequate could be evaluated, and, if necessary, adverse impacts to reliability could be avoided. However, no specific remedies that would be used to address adverse reliability impacts attending a retirement were identified, and the process that would be used to consider such remedies was left open. Instead, the remedies would be considered on a "case-by-case basis, given the potential variety of circumstances that could be encountered." Designing a remedy would "depend upon the exact nature of those circumstances, which cannot be adequately forecast."[4]

On March 14, 2012, NRG filed a notice in Case 05-E-0089, pursuant to the Retirement Order, that stated it intended to "mothball" its Dunkirk generating station and cease operations for an undefined period, by no later than September 10, 2012 (NRG Retirement Notice). The Dunkirk generating station consists of four units with a combined nameplate rating of over 635 MW. Dunkirk units 1 and 2 are each rated at 100 MW and interconnect to the transmission system at 115 kV, while

[3] Retirement Order, p. 13. For units 80 MW or larger, a 180-day notice requirement was adopted.

[4] Retirement Order, p. 20.

Dunkirk units 3 and 4 are each rated 217.6 MW and interconnect to the transmission system at 230 kV. NRG also sought a waiver of the retirement notification requirement so that its units could be mothballed prior to September 10, 2012.

The NRG Retirement Notice explained that the proposed mothballing was due to the disparity between current and forecasted wholesale electric prices in Western New York and the underlying cost of operation of the Dunkirk facility, leading to a net loss for NRG if operations continued. Thus, NRG indicated that the facility would be mothballed "until such time as market conditions improve."[5]

In conformance with the State Administrative Procedure Act (SAPA) §202(1), notice of the NRG Retirement Notice was published in the State Register on April 11, 2012. The SAPA §202(1)(a) period for submitting comments in response to the notice expired on May 29, 2012. No comments were received by that date.

Subsequent to the filing of the NRG Retirement Notice, National Grid conducted analyses to determine the system reliability impacts of permanently removing all four Dunkirk units from the electric system. In a letter dated March 30, 2012, National Grid advised Staff of the New York State Department of Public Service (DPS Staff) that "the proposed mothballing of Dunkirk units 1-4 will result in significant impacts to transmission system reliability in western NY."[6]

National Grid's preliminary analyses suggested that three Dunkirk units (one 230 kV unit and the two 115 kV units) would be required to meet reliability needs, with two of these

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[5] NRG Retirement Notice, p 2.

[6] Letter from Christopher E. Root, National Grid Senior Vice President, Network Strategy, to Thomas Dvorsky, Department of Public Service (dated March 30, 2012).

three units required all year and all three operating in the 2013 summer season. National Grid subsequently revised its need assessment, and on June 29, 2012, indicated to NRG that only two 115 kV units were required from September 2012, until May 31, 2013, when certain transmission system reinforcements would be completed. Further, National Grid thought that a single unit would likely be required from June 1, 2013, until June 1, 2015, when critical substation and line projects would be completed. National Grid noted that it was continuing to examine whether it is possible to avoid the need for the single Dunkirk unit after May 31, 2013.[7]

In a letter dated June 11, 2012, our Counsel advised National Grid and NRG that we could exercise our authority to ensure that adequate generation facilities have been procured to meet local reliability needs, and that the parties should pursue an agreement to ensure adequate generation resources were available during the proposed mothballing period. The letter directed National Grid and NRG to advise the Commission by July 12, 2012 whether such an agreement was negotiated or, alternatively, to submit proposed term sheets individually for our consideration.

On July 12, 2012, National Grid and NRG responded that they were continuing to negotiate, and that they believed additional time could be beneficial in their efforts to reach agreement. The parties asserted that submitting respective proposed terms at that time would be counterproductive. On the same date, NRG filed a proposed, but unexecuted, reliability must-run (RMR) agreement with the Federal Energy Regulatory Commission (FERC). The RMR applied to Dunkirk Units 1 and 2 for the period ending May 31, 2013, and to one of the two units for

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[7] Case 12-E-0201, National Grid Response to Information Request DPS-464 (dated August 2, 2012).

an additional two-year period ending June 1, 2015. Pursuant to the proposed RMR, National Grid would compensate NRG through a monthly fixed-cost charge of $5,607,513 for keeping Units 1 and 2 in service through May 31, 2013, and $4,450,332/month to keep a single unit in service between June 1, 2013, and June 1, 2015. NRG characterized these amounts as based on its "cost-of-service" (COS).

On July 18, 2012, a Notice was issued by the Secretary directing National Grid and NRG to file either an agreement, or proposed terms recommended by each party for consideration by no later than July 20, 2012, so that the filings could be acted upon at our August 16, 2012 session. The Notice solicited comments from interested parties on the National Grid and NRG filings by July 30, 2012.

On July 20, 2012, National Grid submitted a proposed Term Sheet Agreement for which it and NRG sought approval. The Term Sheet Agreement was intended to supersede NRG's RMR filing with FERC. National Grid also proposed Tariff Amendments to provide a mechanism for allocating and recovering the costs it would incur in procuring RSS from NRG (Petition).[8] On July 30, 2012, comments were filed on the Term Sheet Agreement and Tariff Amendments by National Grid, Independent Power Producers of New York (IPPNY), Sierra Club, and Multiple Intervenors (MI). The parties' comments are summarized below.

[8] NRG subsequently filed a motion to hold the FERC proceeding in abeyance pending the possible approval by the Commission of the proposed Term Sheet Agreement. In the event the Term Sheet Agreement is approved, without modification, and becomes final, NRG plans to withdraw its RMR filing at FERC.

THE PETITION

Term Sheet Agreement

The Term Sheet Agreement provides that NRG shall defer mothballing actions on Dunkirk Units 1 and 2, which are interconnected to the 115 kV transmission system, and keep them available to support reliability. The length of the contract would cover the period from September 1, 2012, until May 31, 2013, although it may be extended by National Grid for up to an additional 90 days beyond May 31, 2013, in the event there are delays in the planned in-service dates of the transmission reinforcements. Under the Term Sheet Agreement, National Grid would pay NRG a monthly fixed-price charge of $2,924,324, plus true-ups for "verified expenses" supporting NRG's property tax payments (i.e., payment in-lieu of taxes (PILOT)) and coal delivery charges.[9]

The Term Sheet Agreement provides for the crediting of any Installed Capacity (Capacity) revenues earned in New York Independent System Operator, Inc. (NYISO) markets against the costs of the contract, while NRG would retain any Energy and Ancillary Services market revenues. In the event that the Dunkirk generating station exceeds certain earnings thresholds in the five-year period following the termination of the contract, a portion of such earnings would be credited to National Grid for the benefit of customers. In addition, monies may also be credited to National Grid in the event NRG's generating units fail to meet certain performance standards.

National Grid's preliminary evaluation indicates that there may be a need for RSS beyond May 31, 2013. However, National Grid believes that it is premature, at this time, to

[9] For the nine month period of the contract, taxes/PILOT expenses would be paid up to $6,681,084, and "take or pay" coal contract true-up expenses would be paid up to $4,342,985.

contract for continued RSS from Dunkirk beyond the period(s) that are specified in the Term Sheet Agreement, pending an evaluation of other potential reliability solutions that may become available in the future.

Tariff Amendments

National Grid proposes that the costs of procuring the RSS be deferred from the start of the payment obligation until lower base rates, which are proposed in Case 12-E-0201, go into effect on April 1, 2013. National Grid believes the deferred amounts should accrue carrying charges at the customer deposit rate (currently 1.65%). These costs would be recovered from retail delivery customers in the same manner as other transmission capital and operating costs.

Beginning with the effective date of new base rates, it proposes to commence recovery from retail customers of the current RSS costs as well as deferred RSS amounts inclusive of accumulated carrying charges. National Grid maintains that because the rate proposal in Case 12-E-0201 is expected to result in a rate decrease, deferring cost recovery until that time helps promote "rate stability."

National Grid proposes to recover RSS costs through service class specific surcharges over a period to be identified.[10] As proposed, the costs of the RSS would be recovered from all delivery customers regardless of supplier, except for Empire Zone qualifying load, Excelsior Jobs Program

[10] National Grid stated that "[t]he Company did not propose a specific period over which to recover the RSS costs; however, the Company's filing modeled recovery of the forecast RSS amounts over 12 months beginning April 1, 2013;" and "[a]lthough the 12-month period modeled in the filing appears reasonable given the nine-month term of the contract, the Company anticipates proposing an appropriate surcharge recovery period in the future when additional cost information will be available." Case 12-E-0136, National Grid Response to Information Request MI-4 (dated July 27, 2012).

qualifying load, and certain S.C. 12 customers with individually negotiated contracts that disallow surcharges.

National Grid proposes to allocate the costs of the RSS charges in the same manner as other transmission capital and operating costs. The allocation is based on the respective contribution of each service class to the coincident peak demand, and the proposed methodology will recover costs from each service class on either a demand or kilowatt-hour basis.

COMMENTS

National Grid

In its Statement in Support of the Term Sheet Agreement, National Grid reiterates that Dunkirk Units 1 and 2 must remain in operation through at least May 2013 in order to maintain reliability. National Grid asserts that the Term Sheet Agreement addresses the reliability need at far less cost, and under more favorable terms, than those NRG proposed to FERC.

In its filing with FERC on July 12, 2012, NRG requested recovery of a monthly fixed-cost charge of $5,607,513 (or $50,467,617 for nine months), based on "cost-of-service" rates, for keeping Dunkirk Units 1 and 2 available. National Grid points out that this amount is significantly more than the fixed-price charges and tax-related payments of $33,000,000, plus actual coal contract costs of up to $4,342,985, over the nine months under the Term Sheet Agreement. Neither the coal contract adjustment clause, the provision for refunds to ratepayers if the Dunkirk plant exceeds a certain earnings threshold within five years, or the unit performance standards were included in NRG's filing with FERC.

National Grid asserts that the deferral of the RSS surcharges would help promote rate stability for customers. Even with the implementation of the surcharge, National Grid estimates that most typical customers' delivery bills will be lower beginning April 1, 2013 than they are currently.

In sum, National Grid maintains that the Term Sheet Agreement is reasonable, fair to customers, consistent with public policy, and is in the public interest. National Grid contends that the Term Sheet Agreement is the product of agreement among normally adversarial parties, and reflects a reasonable compromise position that is within the range of results that may have arisen from litigation.

Sierra Club

Sierra Club argues that the reasonable term of the agreement should coincide with the period for which a reliability need has been demonstrated, which it maintains is only September 10, 2012, to May 31, 2013. Limiting the term of the agreement would also minimize the potential for effects that would distort the market. Sierra Club cites FERC orders stating that "RMR contracts suppress market-clearing prices, increase uplift payments, and make it difficult for new generators to profitably enter the market."[11]

According to Sierra Club, a process is needed for selecting competitive bids to provide any needed reliability services beyond June 1, 2013, and prior to June 1, 2015. Such a solicitation, Sierra Club maintains, may identify a less expensive alternative to operating the Dunkirk facility and will ensure that National Grid customers are not forced to make unjust and unreasonable payments to NRG.

Sierra Club takes issue with the provision in the Term Sheet Agreement that provides a refund to National Grid for a portion of the $4.2 million debt-related allowance in the event NRG's profits exceed certain thresholds. Rather, Sierra Club

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[11] Sierra Club comments, p. 4 (citing Devon Power, LLC, 103 FERC ¶61,082 at 9, ¶ 29) (issued April 25, 2003).

suggests that refunds should be triggered by any profits NRG obtains beyond the termination of the agreement.

Finally, Sierra Club notes the various examples where upstate New York coal plants are facing challenges to remaining in operation because of aging plant and adverse financial circumstances. To forestall future out-of-market reliability payments, Sierra Club requests that an analysis of the need for transmission upgrades be undertaken to protect ratepayers from unjust and unreasonable increases in their rates.

Multiple Intervenors (MI)

Although MI generally supports the procurement of RSS from NRG to the extent needed to ensure reliability, it opposes several aspects of National Grid's filing. In particular, MI objects to the Tariff Amendment for recovering the RSS costs, which it argues are exorbitant and unnecessary. MI notes that National Grid has identified, in its current Case 12-E-0201 rate proceeding, approximately $128.349 million in deferrals owed to customers, and MI requests that a portion of that deferral be used to pay for RSS costs incurred to support RSS operations of two Dunkirk units. Such an approach would obviate any need to institute an RSS surcharge. Alternatively, MI proposes that the Commission refer issues pertaining to the recovery of RSS costs from National Grid's retail customers to the utility's pending rate case, Case 12-E-0201. MI states that if the RSS surcharge is allowed to go into effect as National Grid proposes, S.C. 3 and S.C. 3-A customers would experience a demand rate increase of between 4.37% and 12.74%, not including the delivery rate increase being sought by the utility in Case 12-E-0201.

If the imposition of an RSS surcharge is authorized, MI suggests that the RSS costs should be recovered over a time period consistent with transmission system investments (i.e., by extending the recovery period over multiple decades), rather than the proposed 12-month period for recovering deferred costs. Treating the RSS costs in a manner comparable to transmission system investments for amortization and recovery purposes, if a surcharge is allowed, would reduce the amount of the surcharge, and its impact on customers. Further, MI contends that, in addition to the proposed recovery from retail customers, RSS costs should also be recovered on an equitable basis from wholesale customers, other investor-owned utilities, and municipal utilities that would similarly benefit from the RSS. However, MI supports National Grid's proposed allocation of any such surcharge to service classes based on their contribution to coincident peak demand, and recovery based on a per kW basis.

MI does not take a position on the amount of financial compensation provided for under the Term Sheet Agreement, and maintains that the process in this proceeding precluded it from meaningful participation. MI notes that it was not notified of any settlement discussions, had no opportunity to participate in the negotiations, and did not have access to the facts and data relied upon in negotiating the Term Sheet Agreement. MI requests that under this process, no precedential value should be attached to this proceeding.

Notwithstanding the constraints on its ability to participate, MI contends that the compensation provided to NRG for the RSS should not begin prior to the expiration of the 180-day notice period, which is September 10, 2012. In its view, NRG should not be entitled to any compensation prior to that date because NRG is precluded, by operation of the Retirement Order, from mothballing the Dunkirk generating station prior to that date. MI is further concerned that the amount of the monthly fixed-price charge refunded to National Grid, if one or both Dunkirk units are unavailable due to a forced outage, is unreasonably low.

Independent Power Producers of New York (IPPNY)

IPPNY takes no position on the provisions of the Term Sheet Agreement or Tariff Amendments, but requests that the waivers of the Retirement Order notice requirements be granted with respect to Dunkirk Units 3 and 4. IPPNY argues that these units have not been identified as needed for reliability.

IPPNY points out that the Retirement Order found that remedies should be considered on a case-by-case basis, given the varied circumstances that could be encountered, and requests that the Term Sheet Agreement should not be considered precedential to the resolution of any other reliability situations that may arise. IPPNY seeks to ensure that approval of the Term Sheet Agreement will not be interpreted as a waiver of what it deems a generation owner's rights under the Federal Power Act to file with FERC proposed rates, terms, and conditions for the provision of service needed to ensure reliability within New York.[12]

DISCUSSION

As discussed in prior orders, the movement to competitive electricity markets requires that new approaches be taken to maintaining the adequate generation resources needed to ensure reliability.[13] If independent owners of lightly regulated generation units can discontinue or abandon a service needed for reliability without sufficient regulatory oversight, it is possible that the reliability of electric service would be threatened. Accordingly, policies and procedures were developed

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[12] In a comment filed late on August 9, 2012, the "Indicated Transmission Owners" discuss issues raised by other parties; as a result, its comment need not be considered further.

[13] Case 05-E-0889, supra, Order Instituting Proceeding and Notice Soliciting Comments (issued July 27, 2005)(Retirement Notice Order), p. 1.

in the Retirement Order to ensure regulatory review of generation retirements in order to prevent or mitigate any adverse impacts a retirement may have on system reliability.

It is in this context that NRG filed its notice of generation retirement and National Grid identified a potential adverse reliability impact associated with the retirement. The Term Sheet Agreement between NRG and National Grid for the provision of RSS on an interim basis is proposed for the purpose of ensuring the maintenance of adequate generation resources necessary for safe, adequate, and reliable service. While various notices of other planned generation retirements have been received, this is the first instance where a generation unit slated to close operations must instead remain available beyond the end of the notice period prescribed in the Retirement Order.

RSS Jurisdiction

Article 4 of the Public Service Law (PSL) establishes the scope of our jurisdiction over electric generation facilities. That jurisdiction extends to the abandonment of service by wholesale electric generation companies, which may pose the potential for a significant adverse impact to system reliability, thereby threatening the provision of "safe and adequate" service. Moreover, the retirement of a generating unit subject to a lightened regulatory regime under the PSL, or operated as an Exempt Wholesale Generator (EWG) under federal law, could raise public interest considerations analogous to a franchised utility's abandonment of service to an identifiable group of customers. Since the RSS is a remedy for NRG's proposal to abandon service by mothballing the Dunkirk generating station, the RSS falls within the ambit of jurisdiction over abandonments.

The issue of regulating a large-scale independent generator first arose in the 1994 Wallkill Order, where a regulatory regime was established for such a generation facility.[14] That generator was exempted from provisions of the PSL where feasible, such as those provisions explicitly applicable only to retail service. It was also decided that some provisions of Article 4 would be flexibly applied to the generator, by reducing filing requirements and the level of scrutiny applied upon review of those filings. Flexible application of Article 4, however, did not carry with it a general exemption from all of the substantive provisions of that Article, leaving the generator subject to certain PSL Article 4 regulation of its activities.

In the AES and Carr Street Orders, the Wallkill regulatory regime was updated and applied to EWGs generally,[15] including those, like NRG Dunkirk, formed out of the divestiture of generation by formerly integrated electric utilities. While those Orders continue to provide for lightened Article 4 regulation, they explicitly provide that EWGs remain subject to PSL jurisdiction with respect to matters like safety, reliability and system improvement.[16] All EWGs requesting lightened regulation have been held to similar requirements.

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[14] See Case 91-E-0350, Wallkill Generating Company, L.P., Order Establishing Regulatory Regime (issued April 11, 1994) (Wallkill Order) and Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company and Notice Soliciting Comments (issued August 21, 1991).

[15] Case 99-E-0148, AES Eastern Energy, L.P., Declaratory Ruling on Lightened Regulation (issued March 23, 1999) and Order Providing For Lightened Regulation (issued April 23, 1999) (AES Order); Case 98-E-1670, Carr Street Generating Station, L.P., Order Providing For Lightened Regulation (issued April 23, 1999) (Carr Street Order).

[16] AES Order, p. 9; Carr Street Order, p. 10.

Recent orders similarly provide that EWGs remain subject to the PSL "with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4," to the extent not specifically exempted from those Articles elsewhere in the orders.[17] This jurisdiction extends to EWG abandonment of service.

Moreover, our role in establishing the compensation due generation owners whose facilities are needed for reliability is explicitly recognized in the FERC-approved NYISO tariff. In particular, Attachment Y of the NYISO's Open Access Transmission Tariff provides that the "[c]osts related to regulated non-transmission reliability projects will be recovered by Responsible Transmission Owners, Transmission Owners and Other Developers in accordance with the provisions of New York Public Service Law, New York Public Authorities Law, or other applicable state law."[18] Although this provision of the NYISO tariff is not implicated under these circumstances, given that the reliability need arose due to local, and not bulk system, reliability issues, it is instructive on the jurisdictional responsibilities we assume in situations similar to those present here.

Reliability Needs

In response to NRG's notice of intent to mothball its Dunkirk generating station, National Grid performed reliability

[17] See, e.g., Case 11-E-0351, Stony Creek Energy LLC, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Ratemaking Regulation and Approving Financing (issued December 15, 2011).

[18] OATT, Attachment Y, §31.4.1.6. Policies and procedures for addressing the need for a reliability backstop solution were implemented in Case 07-E-1507, Long-Range Electric Resource Plan and Infrastructure Planning Process, Policy Statement on Backstop Project Approval Process (issued February 18, 2009).

studies that showed the mothballing, after September 10, 2012, of Dunkirk Units 3 and 4, which are interconnected to the 230 kV transmission system, would not result in reliability criteria violations. However, these studies also indicated that mothballing Dunkirk Units 1 and 2, interconnected at 115 kV, would result in reliability criteria violations on the local 115 kV transmission system in the Southwestern New York Area, absent transmission reinforcements. The NYISO found no reliability issues on the Bulk Power System caused by the mothballing of Dunkirk, but concurred with National Grid with respect to reliability violations on the local transmission system.[19]

National Grid plans several system reinforcements to reduce the dependence upon the NRG Dunkirk generating station. The reinforcements to address the identified reliability needs are scheduled to be in service by May 31, 2013. It is extremely important that these facilities be completed in a timely manner in order to minimize the extent of the reliability need and to avoid imposing on ratepayers costs beyond those necessary to support NRG Dunkirk operations for the shortest possible period of time. National Grid shall proceed expeditiously with its planned reinforcements, and shall alert DPS Staff to any developments that may jeopardize their timely completion.

Until the anticipated completion of the planned system reinforcements by May 31, 2013, National Grid has determined that Dunkirk Units 1 and 2 must be available to avoid violating post-contingency reliability criteria and to help ensure the reliability of the local transmission system. Once the appropriate system reinforcements are in place, National Grid expects that one of the Dunkirk 115 kV units may continue to be

[19] Letter from Wesley Yeomans, NYISO Vice President of Operations, to Thomas Dvorsky, Department of Public Service (dated July 30, 2012).

needed until longer-term system reinforcements can be installed. National Grid's approach is designed to minimize the amount and duration of the RSS that must be procured from NRG.

NRG requests a waiver of the Retirement Order notice requirement so that the Dunkirk generating station could be mothballed prior to the expiration of the notice period. A waiver of the notice period may be granted only where it is demonstrated that there is no reliability need prior to the end of the notice period. Regarding Dunkirk Units 1 and 2, National Grid in its analyses examined the reliability impacts of mothballing the Dunkirk generating station as of September 10, 2012. There is no reason to believe, however, that the Dunkirk capacity would be any less needed before that date than it is afterwards. The Term Sheet Agreement recognizes that such a need does exist by procuring RSS prior to September 10, 2012. Similarly, the absence of a reliability need for Dunkirk Units 3 and 4, prior to September 10, 2012, has not been demonstrated. Moreover, granting the waiver could allow the mothballing to occur during the summer Capability Period, when the Dunkirk facility is most needed to ensure that high peak loads can be met. Therefore, there is no basis for granting NRG's request for waiver of the Retirement Order notice requirement and its request is denied.

Sierra Club and MI take issue with the September 1, 2012 commencement date for the bilateral RSS contract between National Grid and NRG, given that NRG cannot mothball its units any sooner than September 10, 2012, due to the 180-day notice requirement under our Retirement Order. Under the provisions of the Term Sheet Agreement, the date for commencement of the RSS is just one part of an overall agreement that resolves a multitude of matters by balancing the interests of the parties. Moreover, we note that the proposed start date is only nine days prior to the date suggested by Sierra Club and MI. Under these circumstances, the proposed commencement date of September 1, 2012, which the parties arrived at in balancing their interests, is a reasonable term that addresses the procurement of adequate generation facilities for reliability needs while providing a sufficient level of compensation to the owner of the needed facilities.

We do, however, agree with Sierra Club that a process is needed to determine whether alternatives can solve reliability needs beyond the expiration of the Term Sheet Agreement (i.e., May 31, 2013 or August 31, 2013, depending on the optional extension tied to National Grid's completion of system reinforcements). This is an important step to ensure that ratepayers are contributing no more than necessary to keep the Dunkirk generating station available, and to evaluate whether reliability needs can be met more cost-effectively and efficiently than through continued reliance on NRG's Dunkirk facility. Moreover, a solicitation of alternatives is comparable to the NYISO tariff means for addressing reliability backstop solutions. Therefore, we direct National Grid to consult with DPS Staff and to file a proposed schedule and process for soliciting alternative solutions to any remaining reliability needs that may exist after completing the planned reinforcements.

Term Sheet Agreement

In reviewing whether the costs incurred under the Term Sheet Agreement are just and reasonable, it is appropriate to begin with an inquiry into the economic impacts of a temporary shut-down of a generating facility (i.e., mothballing) as an efficient market response to currently unfavorable economic conditions. In such circumstances, it is arguable that an appropriate level of compensation would meet the costs that a generation owner could avoid by mothballing a generation unit. There are several costs that an owner may "avoid" or minimize by mothballing a generating unit, including: 1) labor and other operating and maintenance (O&M) costs; 2) capital expenditures; 3) taxes or PILOT; 4) operating risks (e.g., risks of equipment failures during operation); and, 5) corporate overhead costs.

These "avoidable" costs do not include "sunk" costs, such as past investments in environmental controls. Similarly, debt and equity costs are considered sunk costs. While depreciation costs begin as sunk costs, they reflect expected service life of the plant. By mothballing a unit, the owner can avoid operating risks and thereby extend the remaining service life of that unit once more favorable economic conditions exist (e.g., higher natural gas prices relative to coal) and the plant can return to profitability. Thus, depreciation costs could be regarded as a proxy for the operating risks avoidable through mothballing.

In the case of a "take-or-pay" coal transportation contract where payments are required for shipment, even if no fuel is actually delivered, the costs may be considered sunk and unavoidable. However, it is possible that these costs may be avoided through bankruptcy, or renegotiation of the contract with the coal transporter, although those outcomes are speculative. Taking all these factors into account, we estimate that avoidable costs for procuring NRG's Dunkirk Units 1 and 2 over nine months would be between approximately $24 million and $40 million, depending on the treatment of Administrative &

General (A&G) corporate expenses, the take-or-pay coal contract, and depreciation.[20]

NRG's filing at FERC, which was characterized as a "Cost of Service" (COS) rate, provides another means for measuring the reasonableness of the costs incurred under the RSS Term Sheet Agreement. In the COS filing at FERC, NRG claimed the compensation for continuing two Dunkirk units in service for nine months should be set at a rate of $50.5 million. This rate includes recovery of sunk costs on the same basis as if NRG were a regulated supplier.

However, a COS rate yields poor operating incentives because, under that approach, NRG would lack the incentive to operate its units efficiently. Moreover, a COS approach is problematic from our perspective of promoting competitive markets, as it allows a generation owner such as NRG to earn market-based returns (potentially in excess of a COS rate) when market conditions are favorable, and to obtain a regulated COS rate, including profits, when market conditions are not favorable. If market conditions improve, as NRG hopes they will by mothballing instead of retiring its Dunkirk facility, then the generation unit could return to a more lucrative market-based rate. By taking this approach, some merchant generation owners could thereby avoid market risks and shift the risks of higher costs to ratepayers.

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[20] Based on the costs identified by NRG in its RMR filing with FERC, the upper bound of the avoidable costs for nine months ($40.1 million) could be estimated by reducing the fully embedded COS amount ($50.5 million) by cost of capital ($7.5 million) and related income taxes ($2.8 million). The lower bound of the avoidable costs ($24.2 million) could be estimated by further reducing from the upper bound by potentially sunk costs associated with depreciation ($7.0 million), A&G ($4.6 million), and the coal take-or-pay contract ($4.2 million).

The proposed condition in the Term Sheet Agreement, whereby NRG would be required to refund a portion of its profits above a certain threshold amount, reduces this concern to some degree. While, as Sierra Club suggests, a provision requiring NRG to refund any profits to National Grid may be preferable from a ratepayer perspective, the proposed condition balances the interests of ratepayers and generation owners, and is reasonable under the circumstances.

The Term Sheet Agreement covers a term of nine months, at a cost of $33 million, plus coal delivery costs. The costs are less than what NRG sought in its COS filing at FERC, and are within the range of estimates of avoidable costs.

Allowing NRG to retain energy revenues is reasonable since it creates an incentive for operating efficiently. Under the proposed Term Sheet Agreement, capacity revenues are credited to ratepayers. This is reasonable, as the capacity revenues will help to reduce the burden on ratepayers of the contract payments. However, because NRG will not retain the capacity revenues, this provision could vitiate NRG's incentive to offer Dunkirk Units 1 and 2 competitively into the capacity market. Indeed, NRG might profit from offering them at a price so high they would fail to clear the capacity market, effectively withholding that capacity in order to increase the market price of capacity received by its other generating units remaining in the market. The Term Sheet Agreement addresses this concern by committing NRG to offer its units into the capacity market at a price no higher than their going-forward costs. However, the Term Sheet Agreement does not define the term "going-forward costs".

We note that the Term Sheet Agreement provides sufficient revenues to keep Dunkirk Units 1 and 2 in operation for local reliability, and requires the units be bid into the

NYISO's day-ahead energy market, except for outages. Therefore, the incremental costs (i.e., the costs above those set in the RSS Term Sheet Agreement, which establishes the costs NRG will incur in providing the local reliability service itself) of Dunkirk Units 1 and 2 supplying capacity (i.e., bidding into the capacity market) appear de minimus. Thus, the parties should have expected and we would expect that the capacity associated with Dunkirk Units 1 and 2 will be bid into the capacity market at a correspondingly de minimus price. The Term Sheet Agreement appears to be reasonable based on these expectations. When the final executed copy of the contract implementing the Term Sheet Agreement is filed as discussed below, National Grid and NRG shall describe how the bid prices reflecting these expectations will be set.

Tariff Amendments/Cost Allocation and Recovery

Upon consideration, we agree with MI's recommendation that we refer issues pertaining to the recovery of RSS costs from National Grid's retail customers to the utility's pending rate case, Case 12-E-0201. Determining the appropriate cost recovery mechanism in the context of the ongoing rate case will allow us to fully understand the rate implications of the various cost recovery approaches advanced by the parties. Therefore, the proposed RSS surcharge tariffs are rejected. National Grid is directed to defer the RSS costs and accrue carrying charges at the other customer provided capital rate, which is appropriately applied in circumstances such as these when it is expected that the duration of the deferral will be short. If, however, the recovery period for the RSS costs determined in Case 12-E-0201 extends beyond the rate year in that proceeding, accrual of interest on the RSS costs will be increased to the allowed pre-tax rate of return starting on April 1, 2013.

With regard to MI's concerns about the allocation of the RSS costs, we concur with MI that it would be inequitable for retail customers to be solely responsible for paying the RSS costs. National Grid acknowledges that wholesale transmission customers, as well as customers of New York State Electric & Gas (NYSEG), will benefit from the RSS agreement. We estimate that approximately 7.5% of the RSS costs could be recovered from National Grid's wholesale transmission customers. However, we do not expect National Grid to seek recovery from NYSEG. It is National Grid's customers that will realize the vast majority of the RSS benefits; in comparison, NYSEG's customers will experience only comparatively de minimus benefits.

National Grid is expected to include in its transmission revenue requirement filing, due to FERC next June, the costs associated with the executed RSS agreement, as allocated between retail and wholesale customers. The wholesale customers' share of the costs, expected to be recovered through the FERC Transmission Service Charge, would be credited to retail customers through National Grid's Transmission Revenue Adjustment mechanism.

MI and National Grid misapprehend our settlement guidelines and their relevance to this proceeding. Entry into the RSS term sheet was not a settlement of issues in this proceeding pursuant to the settlement guidelines. Instead, it was a decision made by National Grid in furtherance of its responsibilities as a fully-regulated electric retail utility. In so doing, National Grid proceeded in accordance with the usual PSL regulatory process, where decisions a regulated utility makes are subject to subsequent review. Therefore, the settlement guidelines are not applicable in this situation, and arguments to the contrary are rejected.

Several parties question the precedential value of the decisions reached here. We note that the facts involved in the review of each notice submitted in compliance with the Retirement Notice Order are unique, and may warrant different treatment on a case-by-case basis.

CONCLUSION

It is essential that the mothballing or retirement of generation units that are subject to a lightened regulatory regime do not jeopardize the reliability of the electric system. We have taken the necessary steps herein to ensure that National Grid procures sufficient generation facilities necessary for its provision of safe and adequate service, as required under the PSL. The Term Sheet Agreement governing National Grid's procurement of RSS from NRG represents a reasonable balance of the interests of electric consumers and the generation owner, and is in the public interest.

The Commission orders:

1. The request of NRG Energy, Inc. and Dunkirk Power LLC for waiver of generator retirement notification requirements is denied.

2. National Grid shall procure Reliability Support Services from Dunkirk Power LLC, and Dunkirk Power LLC shall provide Reliability Support Services to National Grid, in accordance with the Term Sheet Agreement, which is approved, as discussed in the body of this Order.

3. National Grid and NRG Power Marketing LLC shall file a final executed copy of the contract implementing the Term Sheet Agreement at least five days prior to the commencement of Reliability Support Services.

4. National Grid shall consult with Department of Public Service Staff and file, within 30 days of the date of

this Order, a schedule and process for soliciting alternative solutions to any remaining reliability needs that may exist after completing the facility improvements scheduled for completion by May 31, 2013.

5. The Tariff Amendments filed by National Grid are rejected.

6. National Grid shall file a supplement, on not less than one day's notice, to become effective August 31, 2012, canceling the tariff amendments listed in the Appendix.

7. The requirement of Section 66(12)(b) of the Public Service Law regarding newspaper publication of the cancellation supplement in Clause No. 5 is waived.

8. National Grid shall defer the costs of procuring Reliability Support Services from Dunkirk Power LLC and accrue carrying charges at the other customer provided capital rate. If the recovery period for the Reliability Support Service costs decided in Case 12-E-0201 extends beyond the rate year in that proceeding, accrual of interest on the Reliability Support Service costs will be increased to the allowed pre tax rate of return starting on April 1, 2013.

9. Issues pertaining to the recovery of costs associated with procuring Reliability Support Services from Dunkirk Power LLC from National Grid's retail customers are referred to the utility's pending rate case, Case 12-E-0201.

10. The deadlines provided for in this Order may be extended by the Secretary in her discretion.

11. This proceeding is continued.

By the Commission,

Jaclyn A. Brilling
Digitally Signed by Secretary
New York Public Service Commission

(SIGNED) JACLYN A. BRILLING
Secretary

SUBJECT: Filing by NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID

Amendments to Schedule P.S.C. No. 6 - Electricity

Original Leaf No. 235.0.1
Sixth Revised Leaf No. 235
Ninth Revised Leaf No. 3

Issued: July 20, 2012 Effective: September 1, 2012

NEWSPAPER PUBLICATION: Waived.

nationalgrid

Carlos A. Gavilondo
Senior Counsel II

March 5, 2013

Via Electronic Filing

Hon. Jeffrey Cohen, Acting Secretary
State of New York Public Service Commission
Office of the Secretary
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 12-E-0136 – Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements

Request for Approval of Reliability Support Services Agreement

CONFIDENTIAL MATERIALS INCLUDED—DO NOT DISCLOSE

Dear Acting Secretary Cohen:

In accordance with the New York State Public Service Commission ("Commission") Order dated August 16, 2012,[1] Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid" or the "Company") submits the attached Reliability Support Services Agreement ("2013 Agreement") dated March 4, 2013 for Commission consideration and approval.[2] The 2013 Agreement sets forth the terms under which National Grid would procure reliability support services from NRG Energy, Inc.'s ("NRG") Dunkirk Power LLC ("Dunkirk") generating station to maintain transmission system reliability in western New York for an interim period. If approved, the costs associated with this agreement will be recovered consistent with the terms of the Joint Proposal in Case 12-E-0201.[3]

BACKGROUND

On March 14, 2012, NRG filed notice with the Commission of its intent to mothball all four units at the Dunkirk generating station no later than September 10, 2012. Based on studies

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[1] Case 12-E-0136, *Petition of Dunkirk Power LLC and NRG Energy Inc. for Waiver of Generator Retirement Requirements*, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery, issued and effective August 16, 2012 ("August 16 Order").

[2] The 2013 Agreement, provided as Attachment 1, contains confidential information. A request for protective treatment will be filed separately with the Records Access Officer.

[3] Case 12-E-0201, *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*, Joint Proposal filed December 7, 2012 for Commission approval.

available at the time of the notice, National Grid advised Department of Public Service Staff ("Staff") that the proposed mothballing would have significant impacts to transmission system reliability in western New York.[4] The Company committed to complete additional studies to identify specific system impacts and to propose options to address short-term and long-term reliability concerns. The additional system studies concluded that two of the Dunkirk units were needed for an interim period until certain system reinforcement projects could be completed in May 2013. National Grid anticipated that at least one unit might continue to be required beyond May 2013 until permanent solutions could be implemented in June 2015.

On July 18, 2012, the Commission issued a notice directing National Grid and NRG to file an agreement or proposed terms for an agreement that would ensure adequate generation support services were being procured to meet reliability needs. On July 20, 2012, the Company and NRG submitted a proposed Term Sheet Agreement, which provided for reliability support services from September 1, 2012 through May 31, 2013. Pursuant to the Term Sheet Agreement, NRG committed to defer mothballing actions on two 115 kV generating units and to keep them available during the nine month term of the agreement in exchange for a monthly fixed-price charge, tax related payments and other provisions. In the August 16 Order, the Commission approved the Term Sheet Agreement, directed National Grid and NRG to file a final executed contract implementing the Term Sheet Agreement, and provided that cost recovery would be addressed in the Company's rate proceeding in Case 12-E-0201.[5] In the August 16 Order, the Commission also directed the Company to work with Staff to develop a schedule and process for soliciting alternative solutions to any remaining reliability needs that may exist after May 31, 2013. On September 17, 2012, the Company filed a proposed process and schedule for soliciting alternative reliability support services to address remaining reliability needs beyond May 31, 2013 until system reinforcement projects can be completed in June 2015.

Consistent with the process and schedule, the Company issued a request for proposal ("RFP") on October 24, 2012 for solutions to address the continuing reliability needs beyond May 31, 2013. The RFP sought proposals from various sectors, including merchant and portable generation, energy storage, demand response and energy efficiency. The Company held a pre-bid conference November 14, which was attended by participants from each sector. Three responses to the RFP were received on December 14. One bid did not meet the technical criteria and therefore was not considered in detail. Following extensive review and negotiations, the Company determined that NRG's proposal provided the preferred solution.

[4] Letter from C.E. Root, National Grid Sr. V.P., Network Strategy to T.G. Dvorsky, DPS Director, Office of Electric, Gas and Water dated March 30, 2012.

[5] The Company filed the executed "Reliability Support Services Agreement between Dunkirk Power LLC and Niagara Mohawk Power Corporation (d/b/a National Grid)" on August 27, 2012 ("2012 Agreement"). The Company was directed to defer reliability support services costs incurred pursuant to the 2012 Agreement and accrue carrying charges at the other customer provided capital rate. If the recovery period for the reliability support services costs, as determined in Case 12-E-0201, extends beyond March 31, 2014, the Company is directed to accrue carrying charges on those costs at the pre tax rate of return beginning April 1, 2013. (*See* August 16 Order at 27.)

<u>2013 AGREEMENT</u>

The 2013 Agreement provides for NRG to defer mothballing actions on one of its 115 kV-connected 80 MW generating units and to operate and maintain that unit during the term of the contract from June 1, 2013 through May 31, 2015. The total cost of the contract for the two-year term is approximately $72.741 million, which includes monthly fixed-price charges totaling $50.957 million, property taxes of $13.065 million, and take or pay coal transportation costs of $8.719 million, with the property tax and coal take or pay costs subject to downward adjustment if actual costs are lower. The contract also includes provision for capacity revenue credits. The contract addresses planned and forced outages, additional expenditures that may be incurred to continue providing safe and reliable service, force majeure events and the Company's right to audit NRG's accounts and records relating to the contract.

<u>SELECTION OF NRG RELIABILITY SUPPORT SERVICES</u>

The Company published the RFP on October 24, 2012 to over 40 potential bidders using its ARIBA electronic bid system. The potential bidders were sourced from various industry sectors, including demand response, energy efficiency, merchant and portable generation, and energy storage. On November 14, the Company conducted a pre-bid conference at its Syracuse Office complex. The pre-bid conference was attended by companies representing each sector, as well as by the Pace Energy Center and Staff. The pre-bid conference provided bidders an opportunity to discuss the technical requirements of the work scope, including questions on air permitting, site ownership, interconnection and cost structures. On December 14, the Company received three bids to provide RSS. A preliminary evaluation of the bids determined that one of the bids would not address the reliability needs and the Company therefore focused on the other two bids. The remaining two bids evaluated by the Company were vastly different; however, the Company determined that NRG's proposal presented to the preferred solution compared to the other bid.

First, NRG is able to implement reliability support services on June 1, 2013. Absent implementation of a solution on June 1, 2013, an extension of the 2012 Agreement would be required, thereby increasing costs. Under the 2012 Agreement, the maximum extension possible would be to September 1, 2013.

The other bid ("Second Option"), on the other hand, presented implementation risks expected to have delayed the availability of reliability support services beyond June 1, 2013, and which may have delayed support services from being available until September 1, 2013 or later. Because the maximum extension under the 2012 Agreement would be to September 1, 2013, the risk of not having support services available on September 1, 2013 from potential delays in implementing the Second Option influenced the Company's selection of NRG.

Second, NRG's proposal provided a lower overall cost compared to the Second Option as bid. In addition, the Second Option proposal included certain variable expenses and exposure to delay-related costs. Such factors had the potential to raise the costs of the Second Option, thus increasing the cost differential between NRG's proposal and the Second Option.

Ultimately, obtaining reliability support services from NRG was determined to be a lower cost and lower risk solution than the Second Option. NRG is currently providing reliability support services and would continue to do so without interruption or local community disruption. A confidential summary comparing NRG's proposal and the Second Option is provided in Attachment 2. The Company will request protective treatment of the confidential information in a filing with the Records Access Officer.

COST RECOVERY

On April 27, 2012, the Company filed to reset electric and gas rates effective April 1, 2013. After months of negotiation, the parties in those proceedings reached a settlement, which was memorialized in a Joint Proposal dated and filed for Commission approval on December 7, 2012. In accordance with the Commission's August 16 Order, and recognizing that additional reliability support services costs were likely to be incurred during the rate plan period, the Joint Proposal addresses recovery of these costs. Specifically, Section 12.1.1 of the Joint Proposal provides in part:

> Up to $57.000 million of electric deferred credits will be used to offset Reliability Support Services ("RSS") costs associated with RSS agreements relating to the Dunkirk plant or other RSS agreements with other generators.

Section 12.1.2 provides:

> Any RSS costs to be recovered through retail delivery rates must be approved by the Commission. Any RSS costs (above $57.000 million) relating to the Dunkirk plant or any other RSS agreements with other generators will be recovered through a generic RSS surcharge that will be implemented on April 1, 2013. Unless and until the Company incurs $57.000 million of RSS costs, the generic RSS surcharge will be set at $0. To qualify for recovery through this surcharge, the RSS agreements must be approved or authorized by the authority having jurisdiction over the agreement, including but not limited to the Commission or other regulatory entity.

Accordingly, if the Joint Proposal is approved without modification, the 2012 Agreement costs and a portion of the costs associated with the 2013 Agreement would be offset by deferral credits up to $57.0 million. Amounts incurred in excess of $57.0 million under the 2013 Agreement would be recovered through the generic RSS surcharge.

In the event the Joint Proposal is modified or not approved by the Commission, the Company requests an opportunity to submit a proposal for cost recovery of the RSS costs incurred under the 2012 Agreement as well as the costs to be incurred under the 2013

Agreement. The Company would submit the proposal within 60 days of the Commission's Order in Case 12-E-0201.

CONCLUSION

The Company has carefully evaluated alternatives to identify the most cost effective and reliable support services available beginning June 1, 2013 until planned system reinforcement projects can be implemented. Based on that evaluation, the Company determined that the NRG proposal provides the best alternative. Acquiring these services is needed to maintain reliability of the transmission system and is in the public interest. Accordingly, the Company respectfully requests that the Commission approve the 2013 Agreement as expeditiously as possible so that it may be effectuated and NRG may begin work on the generating unit in preparation for the summer requirements.

Please contact me if you have any questions. Thank you for your attention to this matter.

Respectfully submitted,

/s/ Carlos A. Gavilondo

Carlos A. Gavilondo

cc: Case 12-E-0136 Active Parties List (via DMM)
Denise Gerbsch
Tammy Mitchell
Patrick Piscitelli

ATTACHMENT 1

RELIABILITY SUPPORT SERVICES AGREEMENT

(MARCH 4, 2013)

CONTAINS CONFIDENTIAL INFORMATION

DO NOT DISCLOSE

Reliability Support Services Agreement

between

Dunkirk Power LLC

and

Niagara Mohawk Power Corporation

(d/b/a National Grid)

March 4, 2013

Pursuant to the rates, terms and conditions of this Reliability Support Services Agreement ("Agreement"), Dunkirk Power LLC ("Dunkirk") will provide Reliability Support Service ("RSS") to Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") from Dunkirk Unit No. 2 ("RSS Unit") located at its Dunkirk Generating Station and connected to National Grid in the New York Independent System Operator, Inc.'s ("NYISO") Zone A.

RECITALS

Whereas, Dunkirk owns and operates a coal-fired generating station in Dunkirk, New York, made up of a nameplate capacity 100 MW Unit 1, a 100 MW Unit 2, a 217.6 MW Unit 3, and a 217.6 MW Unit 4, and is a generation-owning entity that sells its energy, capacity and ancillary services in the NYISO-administered wholesale power market; and

Whereas, National Grid is the transmission owner to which the Dunkirk station is interconnected; and

Whereas, on March 14, 2012, Dunkirk submitted a notification to the New York Public Service Commission ("NYPSC") in accordance with its established notice requirements for generation unit retirements to mothball all units at the Dunkirk station and cease providing service effective September 10, 2012; and

Whereas, National Grid conducted reliability studies on the planned deactivation of Dunkirk Units 1, 2, 3, and 4, and concluded that Dunkirk Unit 1and Unit 2 were needed to maintain the reliability of the transmission system beyond the planned mothball date and until May 31, 2013; and

Whereas, on August 27, 2012, Dunkirk and National Grid entered into a Reliability Support Service Agreement pursuant to which Dunkirk Units 1 and 2 provide reliability support services to National Grid through May 31, 2013; and

Whereas, pursuant to an Order dated August 16, 2012, the NYPSC directed National Grid to conduct a procurement process for alternative sources of reliability support services other than Dunkirk Units 1 and/or 2 for reliability needs anticipated for the period after May 31, 2013 (such procurement process, the "RFP Process"); and

Whereas, National Grid has determined that contracting with Dunkirk for reliability support services commencing June 1, 2013 is the preferred alternative of those presented in the RFP Process; and

Whereas, both Parties have an interest in ensuring the RSS Unit remains available to support system reliability in New York until certain transmission upgrades are completed, which completion is currently expected to take place by May 31, 2015;

NOW THEREFORE, in consideration of the agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound by this Agreement as of the Effective Date, the Parties covenant and agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions

1.1.1 **"Additional Expenditure"** shall mean the full cost of any individual project undertaken by Dunkirk necessary to enable the RSS Unit to continue to provide safe and reliable service in accordance with this Agreement during the Term of the Agreement, in compliance with all applicable laws, other than those projects specifically identified in Schedule 4, that exceeds $50,000. Additional Expenditures shall not apply to normal maintenance activities anticipated during the term of this Agreement which include but are not limited to the normal maintenance activities set forth in Schedule 4.

1.1.2 **"Agreed Upon Capacity Bid Price"** shall have the meaning described in Schedule3 hereto.

1.1.3 **"Change in Law"** shall mean a change in federal or state environmental or other law, policy, regulation or rule, or a change in the interpretation of the same, that has a material adverse effect on the operations of Dunkirk, as determined by Dunkirk in a commercially reasonable manner, or that shall require additional expenditures that are not reimbursed as Additional Expenditures.

1.1.4 **"Commission"** shall mean the Federal Energy Regulatory Commission.

1.1.5 **"DPS"** shall mean New York State Department of Public Service Staff.

1.1.6 "**FERC**" shall mean the Federal Energy Regulatory Commission

1.1.7 **"Force Majeure Event"** shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, any order, regulation or restriction imposed by a Governmental Authority, breakage or accident of machinery or equipment not directly caused by a lack of proper care or maintenance, or any other cause beyond a Party's control.

1.1.8 **"Forced Outage"** shall have same definition in this Agreement as it has in the NYISO's Installed Capacity Manual – Attachment J.

1.1.9 **"FPA"** shall mean the Federal Power Act.

1.1.10 **"Good Utility Practice"** shall be as defined in Section 1.7 of the NYISO OATT.

1.1.11 **"Governmental Authority"** shall mean the government of any nation, state or other political subdivision thereof, including any entity lawfully exercising executive, military, legislative, judicial, regulatory, or administrative functions of or pertaining to a government.

1.1.12 **"Minimum Term"** shall have the meaning set forth in Section 2.1.

1.1.13 **"Monthly Fixed-Cost Charge"** shall have the meaning set forth in Section 4.1.

1.1.14 **"Necessary Extension"** shall have the meaning set forth in Section 2.3.

1.1.15 **"NERC"** shall mean the North American Electric Reliability Corporation.

1.1.16 **"NPCC"** shall mean the Northeast Power Coordinating Council, Inc.

1.1.17 **"NYISO"** shall mean the New York Independent System Operator, Inc., or successor organization charged with operating the transmission system and markets in the State of New York.

1.1.18 **"NYISO Day-Ahead Energy Market"** shall mean the NYISO-administered day-ahead energy market.

1.1.19 **"NYISO ICAP Market"** shall mean the monthly spot NYISO-administered Installed Capacity Market.

1.1.20 **"NYISO OATT"** shall mean the NYISO Open Access Transmission Tariff, as it may be amended by the NYISO.

1.1.21 **"NYISO Tariff"** shall refer to any published tariff of NYISO, as such tariff may be amended by the NYISO.

1.1.22 **"NYPSC"** shall mean the New York Public Service Commission.

1.1.23 **"NYSRC"** shall mean New York State Reliability Council, L.L.C.

1.1.24 **"Party"** shall mean either Dunkirk or National Grid. "Parties" means both Dunkirk and National Grid.

1.1.25 "**Planned Outage"** shall mean a planned interruption, in whole or in part, in the electrical output of a generating unit to permit Dunkirk to perform maintenance and repair of the unit, pursuant to the process for Installed Capacity providers set forth in the NYISO Tariff and Outage Scheduling Manual.

1.1.26 "**Optional Extension**" shall have the meaning set forth in Section 2.4.

1.1.27 **"RSS"** shall mean Reliability Support Service.

1.1.28 **"RSS Unit"** shall mean Dunkirk Unit No. 2.

1.1.29 **"Take or Pay Costs"** shall mean the costs incurred by NRG Power Marketing, LLC on behalf of Dunkirk for failure to meet the minimum volume requirement for coal shipments under contract UP-C-54152 with Union Pacific Railroad Company.

1.1.30 **"Term"** shall mean the Minimum Term and the Necessary Extension or Optional Extension, if applicable.

ARTICLE II

TERM

2.1 Effective Date and Term

This Agreement shall become effective at the start of the hour ending 0100 Eastern Prevailing Time ("EPT") on June 1, 2013 and remain in effect through the end of the hour ending 2400 EPT on May 31, 2015 (the "Minimum Term").

2.2 Termination

(a) No provision of this Agreement shall terminate earlier than midnight on May 31, 2015, except pursuant to the provisions relating to Section 2.2(b) immediately below, Additional Expenditures (Section 5.3), Force Majeure Events (Section 7.1), or if not approved by the NYPSC (Section 10.10).

(b) Upon at least 90 days written notice, a Party may terminate this Agreement prior to May 31, 2015 if any of the following events or circumstances materially and adversely affects the economic or reliability benefits of this Agreement for that Party: (1) a Change in Law; (2) a change to the NYISO Tariff or other NYISO policy or rule; or (3) an order of any Governmental Authority, other than as a result of an action or proceeding commenced by such Party. Any such termination shall be effective only on the last day of a calendar month.

(c) Nothing in this agreement shall prevent Dunkirk from ceasing operation and deactivating the RSS Unit immediately upon the effective date of any termination of this Agreement by National Grid.

2.3 Necessary Extension

(a) National Grid agrees to notify Dunkirk in writing of any finding of a reliability need past May 31, 2015 caused by a delay of planned transmission upgrades by National Grid ("Necessary Extension") or any finding of no reliability need, as soon as practicable, but no later than January 1, 2015.

(b) Upon receiving notice of a Necessary Extension, the Parties will engage in good faith negotiations as promptly as possible to establish the terms and conditions of such Necessary Extension, including, without limitation, the determination of a reasonable level of compensation to be paid by National Grid to Dunkirk based on the length of the additional period of operation required by National Grid, in addition to the reasonably projected incremental cost to Dunkirk of providing service during the period of the Necessary Extension. If no agreement can be reached as to the reasonable level of compensation, Dunkirk shall not be obligated to enter into any Necessary Extension. The Parties contemplate that any Necessary Extension agreement will be presented to the NYPSC for approval.

(c) Commencing in June 2014 and for the remainder of the Term of this Agreement, National Grid shall provide Dunkirk an update by the first business day of each calendar month on the status of National Grid's need for any units at Dunkirk expected to be necessary for providing reliability service beyond May 31, 2015, consistent with applicable laws and regulations. National Grid will indicate the units it expects to need, if any, and the period for which it expects to need them.

2.4 Optional Extension

If during the Term of this Agreement, but no later than six months prior to its expiration, National Grid desires to contract with Dunkirk beyond the Initial Term in order to continue RSS service until such time replacement generation capacity is to be constructed at Dunkirk, the Parties will engage in good faith negotiations to establish the terms and conditions of such extension (such extension, the "Optional Extension"), including, without limitation, the determination of a reasonable level of compensation to be paid by National Grid to Dunkirk based on the length of the additional period of operation desired by National Grid, in addition to the reasonably projected incremental cost to Dunkirk of providing service during the period until such time the new capacity can be commissioned. The Parties contemplate that any Optional Extension agreement will be presented to the NYPSC for approval.

2.5 Survival of Obligations

Notwithstanding the termination of this Agreement, the Parties shall continue to be bound by the provisions of this Agreement that by their nature are intended to, and shall, survive such termination.

ARTICLE III

OBLIGATIONS AND OPERATIONS

3.1 General

During the Term, Dunkirk shall operate and maintain the RSS Unit within standards of accepted Good Utility Practice, and in accordance with the NYISO Tariff.

3.2 Operating Characteristics and Environmental Compliance

Dunkirk shall have no obligation to cause the RSS Unit to be operated in a manner inconsistent with the Dunkirk unit characteristics set forth in Schedule 1 to this Agreement, or in a manner that would be inconsistent with or in violation of the NYISO Tariff, NERC, NPCC, or NYSRC rules or would cause Dunkirk to violate the terms of any environmental regulations, restrictions, orders or decrees or any operating permit, which determination shall be made by Dunkirk in its reasonable discretion.

3.3 Dispatch Flexibility

The Parties acknowledge that during the Term of this Agreement and as a consequence of the provision of services under this Agreement, Dunkirk will need to run the RSS Unit for testing and diagnostic purposes for reasons including, but not limited to, the performance of Dependable Maximum Net Capability ("DMNC"), VAR testing, and Relative Accuracy Test Audit ("RATA") testing, or as otherwise required by plant management for health, safety, environmental or operational reasons. If warranted by system conditions, the Parties will coordinate the scheduling of the RSS Units for these purposes so that National Grid will either designate the related RSS Unit as the Day-Ahead Reliability Unit ("DARU") or commit that Unit pursuant to the NYISO's Supplemental Resource Evaluation ("SRE"). Such designation will be coordinated between the Parties so that the most appropriate designation is selected.

3.4 Reactive Power

Except when the RSS Unit is unavailable, the RSS Unit will provide reactive power consistent with the capability of the RSS Unit and the procedures specified under the NYISO's Voltage Support Service.

3.5 Extended Shutdown Notice

If National Grid expects that the RSS Unit will not be called to provide system support for greater than two weeks, National Grid will use commercially reasonable efforts to provide Dunkirk with 24 hours notice prior to such period. Notwithstanding the foregoing, Dunkirk shall operate the RSS Unit such that it meets the characteristics in Schedule 1.

ARTICLE IV

PRICING

4.1 Monthly Fixed-Cost Charge

Each month, National Grid shall pay a Monthly Fixed-Cost Charge in accordance with Schedule 2.

4.2 True-Up Payments

(a) Capacity Revenue True-Up – Within 30 days of June 1, 2014 and within 30 days of the date on which this Agreement terminates, Dunkirk will make a payment to National Grid in an amount equal to all capacity revenues earned by the RSS Unit from the period June 1, 2013 through May 31, 2014 and the period June 1, 2014 through the date of termination of this Agreement (unless this Agreement is terminated before June 1, 2014), respectively.

(b) Property Tax True-Up – At any time between the effective date of this Agreement and February 28, 2016, Dunkirk may provide documentary evidence to National Grid showing the amount of property tax payments (or payments in lieu of taxes) that Dunkirk has made to local taxing jurisdictions and the Chautauqua County Industrial Development Authority for property taxes incurred as a result of providing services during the Minimum Term of the Agreement. Such documentary evidence will be in the form of verifiable banking records, a receipt or other verification received from the taxing authority and must show that the tax obligation satisfied relates to the Term of this Agreement. Within 30 days of the date Dunkirk submits such evidence to National Grid, National Grid will reimburse Dunkirk for any such documented payments, up to a maximum amount for all property tax payments of $13,064,877.

(c) Take or Pay Coal Contract True-Up – National Grid shall pay Dunkirk for Dunkirk's Take or Pay Costs as calculated based on the pre-determined minimum volume allocation to the Dunkirk plant, up to a maximum cost of $8,718,523 for the for 24 month Minimum Term of this Agreement. By January 15, 2014, Dunkirk will determine its prorated Take or Pay Costs allocable to Dunkirk during the period from June 1, 2013 to December 31, 2013 and shall provide National Grid with an accounting of such Take or Pay Costs. The determination of the first payment to be made under this provision will be based on actual coal deliveries to the Dunkirk plant during June 1, 2013 to December 31, 2013. By January 15, 2015, Dunkirk will determine its prorated Take or Pay Costs allocable to Dunkirk during the period from January 1, 2014 to December 31, 2014 and shall provide National Grid with an accounting of such Take or Pay Costs. The determination of the second payment to be made under this provision will be based on actual coal deliveries to the Dunkirk plant during January 1, 2014 to December 31, 2014. Within 30 days of receiving such accounting, National Grid will make payment to Dunkirk of the prorated Take or Pay Costs. Within 30 days of the date on which this Agreement terminates, Dunkirk will determine its prorated Take or Pay Costs allocable to Dunkirk during the remainder of the Minimum Term and shall provide National Grid with an accounting of such Take or Pay Costs. Within 30 days of receiving such accounting, National Grid will make payment to Dunkirk of the prorated Take or Pay Costs. The determination of the final payment to be made under this provision will be based on actual coal deliveries to the Dunkirk plant during the remainder of the Minimum Term of this Agreement.

4.3 [Reserved]

4.4 Invoices

Dunkirk will invoice National Grid monthly. Each such invoice shall include the Monthly Fixed-Cost Charge and any true-up payment pursuant to Section 4.2, if applicable. Dunkirk will issue the invoice no later than 30 calendar days following the month in which service is provided. National Grid's payment shall be due no later than the 30^{th} day after the day on which the invoice is received.

ARTICLE V

OUTAGES AND MAINTENANCE

5.1 Planned Outages

Dunkirk shall be permitted to take the RSS Unit out of operation, or reduce the capability of the RSS Unit, during Planned Outages as permitted by the NYISO Tariff or policies. National

Grid agrees, as the related Transmission Owner, that it will not unreasonably withhold Dunkirk's Planned Outage requests.

5.2 Forced Outages

(a) In the event Dunkirk needs to take the RSS Unit out of operation or reduce the capability of the RSS Unit upon the occurrence of a Forced Outage, Dunkirk shall notify National Grid, pursuant to established practice under the NYISO Outage Scheduling Manual, of the nature and expected duration of a Forced Outage as soon as practicable.

(b) Dunkirk shall continue to receive the Monthly Fixed-Cost Charge during a Forced Outage, subject to Section 5.3(a).

(c) Credits relating to Forced Outage performance shall be determined as follows:

(i) Year 1 (June 1, 2013 – May 31, 2014).

(1) Summer and Fall periods. If the RSS Unit or its Automatic Voltage Regulator is not available for service for 15 percent or more of the cumulative total hours in the months of June, July, August, September, October and November in Year 1 due to one or more Forced Outages, Dunkirk shall provide National Grid a credit payment calculated as follows: the Unit's hourly rate, calculated by dividing the total Monthly Fixed-Cost Charges for the respective six months by the number of hours in such months, multiplied by the total number of hours the Unit was forced out in excess of 15 percent of all hours in the six months. For example, if the Unit were forced out 17% of the hours in the six month period, the credit payment would be calculated by multiplying the Unit's hourly rate by 2% of the total amount of hours in the six month period. If the Unit were forced out less than or equal to 15% of the hours in the six months, no credit payment would be due to National Grid.

(2) Winter and Spring periods. If the RSS Unit or its Automatic Voltage Regulator is not available for service for 15 percent or more of the cumulative total hours in the months of December, January, February, March, April and May in Year 1 due to one or more Forced Outages, Dunkirk shall provide National Grid a credit payment calculated as follows: the Unit's hourly rate, calculated by dividing the total Monthly Fixed-Cost Charges for the respective six months by the number of hours in such months, multiplied by the total number of hours the Unit was forced out in excess of 15 percent of all hours in the six months.

(3) Within 15 days following Year 1, Dunkirk shall calculate whether any credit is due and shall provide notice of the credit amount to National Grid. Any Year 1 credit shall be applied against the amount of Monthly Fixed-Cost Charge invoices issued following Year 1 until the credit is satisfied.

(ii) Year 2 (June 1, 2014 – May 31, 2015).

(1) Summer and Fall periods. If the RSS Unit or its Automatic Voltage Regulator is not available for service for 12.5 percent or more of the cumulative total hours in the months of June, July, August, September, October and November in Year 2 due to

one or more Forced Outages, Dunkirk shall provide National Grid a credit payment calculated as follows: the Unit's hourly rate, calculated by dividing the total Monthly Fixed-Cost Charges for the respective six months by the number of hours in such months, multiplied by the total number of hours the Unit's Forced Outage(s) exceeded 12.5 percent of all hours in the six months.

(2) Winter and Spring periods. If the RSS Unit or its Automatic Voltage Regulator is not available for service for 12.5 percent or more of the cumulative total hours in the months of December, January, February, March, April and May in Year 2 due to one or more Forced Outages, Dunkirk shall provide National Grid a credit payment calculated as follows: the Unit's hourly rate, calculated by dividing the total Monthly Fixed-Cost Charges for the respective six months by the number of hours in such months, multiplied by the total number of hours the Unit's Forced Outage(s) exceeded 12.5 percent of all hours in the six months.

(3) Within 15 days following Year 2, Dunkirk shall calculate whether any credit is due and shall provide notice of the credit amount to National Grid. If a credit payment is due, Dunkirk shall provide National Grid such credit payment within 45 days following Year 2.

(iii) If this Agreement is terminated prior to the end of the Minimum Term, the RSS Unit's performance will be measured by dividing the forced outage hours that occurred in the six months prior to the Termination Date by the total hours over that six month period or a minimum of six months should the early termination occur in months 1-5. If this percentage exceeds the average monthly target percentage over the last six months, Dunkirk shall provide National Grid a credit payment calculated as the hourly rate for the pro-rated period by the hours in the pro-rated period exceeding the average target forced outage hours. For example, if the pro-rated period was three months long and occurred at the end of Month 15, the average monthly target availability percentage would be 13.8% (average of three months of 15% and three months of 12.5%). If the sum of the forced outage hours from month 10 through month 15 divided by six months of total hours is 15%, Dunkirk would refund to National Grid an amount equal to 1.2% of the hours in the three month pro-rated period multiplied by the three month hourly rate.

5.3 Additional Expenditures

(a) Any period of time in which National Grid is considering whether to authorize Additional Expenditures with respect to the RSS Unit shall not count towards any availability calculation for such unit for purposes of determining the Monthly Fixed-Cost Charge reduction set forth in Section 5.2. This includes a situation in which Grid is disputing the amount of Additional Expenditures, but does not include a situation in which Grid has already authorized the Additional Expenditures that Dunkirk expects to incur for a project and Grid is disputing the amount of actual Additional Expenditures for such project.

(b) Dunkirk shall not be obligated to incur any Additional Expenditures, except as permitted by this Section 5.3.

(c) If Dunkirk is required to incur any Additional Expenditure above the amount that can be recovered from National Grid pursuant to Section 5.3(d), Dunkirk will provide written notice to National Grid as soon as possible (but in no event greater than 10 days after Dunkirk becomes aware of the need for Additional Expenditures) whether expenses not recovered in the Monthly Fixed-Cost Charge are required to return the RSS Unit to service or maintain such service. This notice will indicate the amount of Additional Expenditures expected to be required to return the RSS Unit to service or to maintain service.

(i) If within 30 days of receipt of such notice, National Grid provides Dunkirk with written notification that it will pay for the Additional Expenditures, Dunkirk will incur such Additional Expenditures and, with reasonable promptness, restore the RSS Unit to service.

(ii) Payment of Additional Expenditures, to the extent they are agreed to by National Grid, shall be included in the Monthly Fixed-Cost Charge pro-rated over the remaining Minimum Term (i.e., the total amount of such Additional Expenditures divided by the number of Monthly Fixed-Cost Charge payments remaining in the Minimum Term). If such Additional Expenditures are incurred during a Necessary Extension, the payment of such Additional Expenditures shall be pro-rated over such Necessary Extension period.

(iii) National Grid shall have the right to dispute the amount of Additional Expenditures identified as necessary by Dunkirk(including disputing whether such expenditures qualify as Additional Expenditures), in which case National Grid will provide notice to Dunkirk thereof stating a good faith basis for disputing Dunkirk's calculation. Thereafter, the Parties will engage in good faith negotiations to attempt to reach a resolution of the appropriate level of Additional Expenditures required.

(iv) Dunkirk is obligated to use commercially reasonable efforts to minimize Additional Expenditures and agrees that any Additional Expenditures shall be offset by any documented proceeds received by Dunkirk as a result of a claim against any third party for the recovery of such Additional Expenditures. Dunkirk shall refund to National Grid any payments by National Grid for Additional Expenditures that exceed the amount actually expended by Dunkirk with respect to any Additional Expenditures, after offsets.

(v) In the event that National Grid does not provide written notification of its commitment to fund the Additional Expenditures and Dunkirk does not make the voluntary election described in clause (vi) below, Dunkirk shall no longer have any obligation to provide RSS from the RSS Unit. If Additional Expenditures are necessary to restore the RSS Unit from Forced Outage and National Grid has not provided such notice, then this Agreement will be considered terminated as of the expiration of National Grid's notice period.

(vi) Nothing in this Section 5.3 shall prevent Dunkirk from voluntarily electing to make any repair necessary to allow the RSS Unit to return to service, without additional compensation, after being informed by National Grid that it does not intend to fund the Additional Expenditures.

(vii) In each 12 month period, from June 1, 2013 through May 31, 2014 and June 1, 2014 through May 31, 2015 of this Agreement, Dunkirk will not be entitled to recover any Additional Expenditures from National Grid pursuant to this Section 5.3 until Dunkirk has incurred $500,000 in Additional Expenditures in the applicable 12 month period. In the event of an Early Termination, the remaining Additional Expenditure amount above the applicable threshold will be invoiced immediately for those amounts not already collected thru the Monthly Fixed Charge Payments. Dunkirk will provide email notifications to one of the National Grid representatives designated for notice in Section 10.2 on the 15th of every month indicating the reasonable estimate of the amount of Additional Expenditures incurred through the end of the prior month.

(d) The Parties contemplate that National Grid will request NYPSC approval for any Additional Expenditure authorization more than $1 million above the $500,000 annual threshold established in Section 5.3(c)(vii).

ARTICLE VI

SCHEDULING

6.1 Dunkirk will interface and comply with NYISO scheduling deadlines and requirements for maintaining the RSS Unit as an eligible energy and capacity provider, as well as National Grid's dispatch instructions.

6.2 Dunkirk shall bid the energy and ancillary services from the RSS Unit in compliance with existing NYISO market rules and Dunkirk shall retain the revenues resulting there from.

6.3 Dunkirk shall offer the RSS Unit into the NYISO's ICAP Market auction at the Agreed Upon Capacity Bid Price, as set forth in Schedule 3. Any capacity revenues shall be credited to National Grid by Dunkirk and paid in accordance with Section 4.2(b).

6.4 Dunkirk shall offer the RSS Unit into the NYISO Day-Ahead Energy Market, regardless of whether Dunkirk's capacity bid is accepted in the NYISO capacity market, whenever those units are not out of service. Subject to the provisions of Section 3.5, Dunkirk shall comply with any dispatch instruction issued by National Grid or NYISO under established NYISO protocols, consistent with the operating parameters of the RSS Unit and in accordance with the NYISO Tariff.

6.5 National Grid shall not be responsible for any penalties or fines that relate to the bidding, scheduling, and operation of the RSS Unit during the Term of this Agreement.

6.6 National Grid shall pay Dunkirk an amount equal to the amount of bad debt losses assessed to NRG Power Marketing, LLC by NYISO and attributable to the RSS Unit with respect to the Term of this Agreement on a pro rata basis of the RSS Unit's share of gross accounts receivable that contribute to the NYISO's calculation of the loss to be paid by each Transmission Customer under the NYISO OATT Section 27, Attachment U.

ARTICLE VII

FORCE MAJEURE EVENTS

7.1 Force Majeure Event

(a) If the availability of the RSS Unit is reduced by reason of a Force Majeure Event (other than a Force Majeure Event with respect to the transmission or distribution system of National Grid or by equipment or materials owned by National Grid), such Force Majeure Event shall be deemed to create a Forced Outage, and shall be resolved pursuant to the provisions herein relating to Forced Outages and Additional Expenditures.

(b) The Party unable to perform by reason of a Force Majeure Event shall use commercially reasonable efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event as soon as reasonably practicable; provided that (i) no Party shall be required to settle any strike, walkout, lockout, or other labor dispute on terms which, in the Party's sole discretion, are contrary to its interests, and (ii) the Party unable to perform shall, as soon as practicable, advise the other Party of the reason for its inability to perform, the nature of any corrective action needed to resolve performance, and its efforts to remedy its inability to perform and to mitigate the consequences of its inability to perform and shall advise the other Party of when it estimates it will be able to resume performance of its obligations under this Agreement.

ARTICLE VIII

LIMITATIONS OF LIABILITY

8.1 Limitation of Liability

(a) National Grid, its affiliates, successors and assigns shall not be liable to Dunkirk, its affiliates, successors and assigns, for actions or omissions by National Grid or National Grid's affiliates, officers, employees or agents in performing its obligations under this Agreement, provided it has not willfully breached this Agreement or engaged in willful misconduct. To the extent Dunkirk has claims against National Grid, Dunkirk may only look to the assets of National Grid for the enforcement of such claims and may not seek to enforce any claims against the directors, members, officers, employees or agents of National Grid who, Dunkirk acknowledges and agrees, have no personal liability for obligations of National Grid by reason of their status as directors, members, officers, employees or agents of National Grid.

(b) Dunkirk, its affiliates, successor and assigns, shall not be liable to National Grid, its affiliates, successors and assigns, for actions or omissions by Dunkirk, or Dunkirk's affiliates, officers, employees or agents in performing its obligations under this Agreement, provided that Dunkirk has not willfully breached this Agreement or engaged in willful misconduct. To the extent National Grid has claims against Dunkirk, National Grid may only look to the assets of Dunkirk for the enforcement of such claims and may not seek to enforce any claims against the directors, members, officers, employees or agents of Dunkirk who, National Grid acknowledges and agrees, have no personal liability for obligations of Dunkirk by reason of their status as directors, members, officers, employees or agents of Dunkirk.

(c) In no event shall Dunkirk be liable to National Grid or National Grid be liable to Dunkirk for any incidental, consequential, multiple or punitive damages, loss of revenues or profits, attorneys fees or costs arising out of, or connected in any way with the performance or nonperformance of this Agreement; provided, however, that none of the payments to be made by National Grid hereunder shall be considered to fall within any of the foregoing categories.

ARTICLE IX

REMEDIES

9.1 Termination for Default

If any Party shall fail to perform any material obligation imposed on it by this Agreement, and that obligation has not been suspended pursuant to this Agreement, the other Party, at its option, may terminate this Agreement by giving the Party in default written notice setting out specifically the circumstances constituting the default and declaring its intention to terminate this Agreement. If the Party receiving the notice does not within ten (10) days after receiving the notice, remedy the default, the Party not in default shall be entitled by a further written notice to terminate this Agreement; provided that, if the default is reasonably expected to take more than ten (10) days to remedy, the defaulting Party shall notify the non-defaulting Party of its plan for remedying the default and must take actions to begin remedying the default within ten (10) days. The Party not in default shall have a duty to mitigate damages. Termination of this Agreement pursuant to this Section 9.1 shall be without prejudice to the right of any Party to collect any amounts due to it prior to the time of termination.

9.2 Waiver

The failure to exercise any remedy or to enforce any right provided in this Agreement or applicable law shall not constitute a waiver of such remedy or right or of any other remedy or right. A Party shall be considered to have waived any remedies or rights only if the waiver is in writing and signed by the Party against whom such waiver is to be enforced.

9.3 Beneficiaries

Except as is specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, confers any rights or remedies under, or by reason of, this Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third party, nor give any third person any rights of subrogation or action against any Party.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Assignment

None of the Parties shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such assignment or delegation made without such written consent shall be null and void. Upon any assignment made in compliance with this section, this Agreement shall inure to and be binding upon the successors and assigns for the assigning Parties.

10.2 Notices and Correspondence

Except as otherwise expressly provided in this Agreements, permitted by NYISO rules or required by law, all invoices, notices, consents, requests, demands, approvals, authorizations and other communications provided for in this Agreements shall be in writing and shall be sent by email, followed by personal delivery, certified mail, return receipt requested, facsimile transmission, or by recognized overnight courier service, to the intended Party at such Party's address set forth below. All such notices shall be deemed to have been duly given and to have become effective: (a) upon receipt if delivered in person, facsimile, or email; (b) two days after having been delivered to a courier for overnight delivery; or (c) seven days after having been deposited in the United States mail as certified or registered mail, return receipt requested, all fees pre-paid, addressed to the applicable addresses set forth below. Each Party's address for notices shall be as follows (subject to change by notice in accordance with the provisions of this section):

TO DUNKIRK:

Elizabeth Quirk-Hendry
General Counsel – East Region
NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
Tel: (609) 524-5161
Fax: (609) 524-5160
E-mail:elizabeth.quirk-hendry
@nrgenergy.com

and

Judith Lagano
Vice President, Asset Management
NRG Energy, Inc.
Manresa Island Avenue
South Norwalk, CT06854
Tel: (203) 854-3625
Fax: (203) 854-3658
E-mail: judith.lagano@nrgenergy.com

TO NATIONAL GRID:

Carlos A. Gavilondo
Senior Counsel II
National Grid
300 Erie Boulevard West
Syracuse, NY13202
Tel: (315) 428-5862
Fax: (315) 428-5355
E-mail:
Carlos.Gavilondo@nationalgrid.com

and

Bill Malee
Director, Transmission Commercial
Services
National Grid
40 Sylvan Road
Waltham, MA 02451
Tel: (781) 907-2422
Fax: (781) 907-5707
E-mail: Bill.Malee@nationalgrid.com

10.3 Parties' Representatives

All Parties to this Agreement shall ensure that throughout the Term of this Agreement, duly appointed representatives are available for communications between the Parties. The representatives shall have full authority to deal with all day-to-day matters arising under this Agreement. Acts and omissions of representatives shall be deemed to be acts and omissions of the Party. Dunkirk and National Grid shall be entitled to assume that the representatives of the other Party are at all times acting within the limits of the authority given by the representatives' Party.

10.4 Effect of Invalidation, Modification, or Condition

Each covenant, condition, restriction, and other Term of this Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction, and other term. If any covenant, condition, restriction, or other Term of this Agreement is held to be invalid or otherwise modified or conditioned by any Governmental Authority, the invalidity, modification, or condition of such covenant, condition, restriction, or other term shall not affect the validity of the remaining covenants, conditions, restrictions, or other terms hereof. If an invalidity, modification, or condition has a material impact on the rights and obligations of the Parties, the Parties shall make a good faith effort to renegotiate and restore the benefits and burdens of this Agreement as they existed prior to the determination of the invalidity, modification, or condition. If the Parties fail to reach agreement, then the Party whose rights and obligations have been adversely affected may, in its sole discretion, terminate this Agreement in accordance with the terms hereof.

10.5 Amendments

Any amendments or modifications of this Agreement shall be made only in writing and duly executed by all Parties to this Agreement. The Parties agree to negotiate in good faith any amendments to this Agreement that are needed to reflect the intent of the Parties as expressed herein and to reflect any changes to the design of the New York markets that are approved by the Commission from time to time.

10.6 Dispute Resolution

Except where otherwise provided for in the Agreement, disputes under this Agreement shall be submitted to representatives of each Party for resolution. If the dispute remains unresolved, after 45 days, either Party may pursue any legal remedies available to it by law.

10.7 Late Payments

If any payment owed to any Party hereunder is not made within 30 days after an invoice for such payment is received, a late payment charge at the rate of one and one-half percent per month or the interest rate permitted by National Grid's then-current electric service tariff, whichever is greater, will be assessed on the entire unpaid amount.

10.8 Entire Agreement

This Agreement consists of the terms and conditions set forth herein, as well as the attachments hereto, which are incorporated by reference herein and made a part hereof. This Agreement contains the entire agreement between the Parties with respect to the matters set forth herein and supersedes all prior negotiations, undertakings, agreements and business term sheets.

10.9 Confidentiality

Information provided by any Party to the other pursuant to this Agreement may, at the Party's discretion, be provided subject to the terms of the Confidentiality Agreement between NRG Energy, Inc. and National Grid, dated as of November 10, 2011 and the Supplemental Confidentiality Agreement between NRG Energy, Inc. and National Grid dated as of December 10, 2012. All information provided to either Party in connection with the negotiations regarding this agreement shall remain subject to the provisions of such Confidentiality Agreement.

10.10 Binding Nature

It is the Parties' expectation that this Agreement will be binding from the date of execution of both Parties. National Grid shall file this Agreement with the NYPSC for approval within five (5) business days of execution. If the NYPSC does not approve this Agreement in its entirety, either Party may terminate this Agreement upon written notice to the other Party. Such notice shall be provided within five (5) business days of the NYPSC disapproval and shall not become effective less than sixty (60) days from the date of the NYPSC disapproval unless the Parties mutually agree to a shorter period. Termination of this Agreement pursuant to this

Section 10.10 shall not relieve either Party of its obligation to pay amounts due under the Agreement prior to the termination.

National Grid agrees that Dunkirk will request a Planned Outage on the RSS Unit prior to the effective date of this Agreement in reliance on the effectiveness of this Agreement. Additionally, Dunkirk may undertake financial obligations with respect to a Planned Outage that will occur during Fall 2013. Notwithstanding anything to the contrary contained in this Agreement, if this Agreement is terminated so that the effective date of such termination occurs on or before May 31, 2013, National Grid shall reimburse Dunkirk for all documented expenses not previously paid by National Grid, inclusive of Dunkirk's carrying costs, incurred between the date hereof and the date such termination notice is delivered to Dunkirk if such expenses are related to the aforementioned maintenance outages on the RSS Unit.

Section 10.11 Audit Rights

(a) Subject to the confidentiality requirements under Section 10.9 of this Agreement and Dunkirk's confidentiality obligations to third parties, National Grid shall have the right, during normal business hours, and upon prior written notice to Dunkirk during the term of this Agreement, to audit, at National Grid's expense, Dunkirk's accounts and records to the extent necessary to audit and verify the accuracy of all reports, statements, invoices, charges, or computations pursuant to this Agreement. Such written notice must include a reasonable, good faith basis for the need for such audit. Such audit rights shall be limited to information relating to performance of this Agreement as set forth in Section 10.11(b). Any audit performed pursuant to this Section 10.11 shall be performed at the office where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to Dunkirk's performance and satisfaction of obligations under this Agreement. Records may be reviewed during such audit, but such records may not be removed or copied.

(b) Accounts and records related to the following sections under this Agreement shall be subject to reasonable audit: (i) dispatch flexibility (Section 3.3 and Schedule 1); (ii) capacity revenues (Section 4.2 and Schedule 3); (iii) property tax expense; (iv) Take or Pay Costs;(v) communications with the NYISO regarding planned or forced outages and unit scheduling (Sections 5.1 and 5.2 and Article VI); (vi) Force Majeure events (Section 7.1); (vii) Additional Expenditures (Section 5.3); and (viii) if the Public Service Commission does not approve this Agreement and National Grid terminates this Agreement pursuant to Section 10.10, costs incurred in connection with the outages referenced in Section 10.10 between the date hereof and the date of any such termination if Dunkirk seeks reimbursement of such costs from National Grid with respect to the term of this Agreement.

ARTICLE XI

STANDARD OF REVIEW

The standard of review for changes in the rates, terms or conditions of this Agreement whether proposed by a Party or a non-party must meet the "public interest" application of the statutory "just and reasonable" standard of review as set forth in *United Gas Pipe Line Co. v. Mobile Gas*

Service Corp., 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); as clarified by *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 130 S. Ct. 693, Case No. 08-674 (2010); *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

DUNKIRK POWER LLC

By: William Lee Davis

Name: William Lee Davis

Title: President

NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID

By: Will J Malee

Name: William L Malee

Title: Director, Transmission Commercial

SCHEDULE 1

	Unit 2
Low Operating Limit:	35 MW
High Operating Limit (normal):	75 MW
High Operating Limit (emergency):	75 MW
Ramp Rate (normal):	0.5 MW/minute
Ramp Rate (emergency):	0.5 MW/minute
Minimum Run Time (hours):	24 hours
Minimum Shutdown Time:	48 hours
Start Up Notification Time:	24 hours
Cold Start[1] (Down Time)	36 hours
Warm Start[2] (Down Time)	12 hours
Hot Start[3] (Down Time)	1 hour

[1] For purposes of this Agreement, a "Cold Start" is considered to be when the RSS Unit has been shutdown for more than 36 hours.

[2] For purposes of this Agreement, a "Warm Start" is considered to be when the RSS Unit has been shutdown for more than 12 hours but less than 36 hours.

[3] For purposes of this Agreement, a "Hot Start" is any start other than a Cold Start or a Warm Start.

SCHEDULE 2

Monthly Fixed-Cost Charge

National Grid's payment of the Monthly Fixed-Cost Charge as detailed in Table 1 shall be made within 30 calendar days of receipt of Dunkirk's monthly invoice to National Grid.

Year	Month	Monthly Fixed-Cost Charge
2013	Jun-13	$2,076,076
2013	Jul-13	$2,076,076
2013	Aug-13	$2,076,076
2013	Sep-13	$2,076,076
2013	Oct-13	$2,076,076
2013	Nov-13	$2,076,076
2013	Dec-13	$2,076,076
2014	Jan-14	$2,185,567
2014	Feb-14	$2,185,567
2014	Mar-14	$2,185,567
2014	Apr-14	$2,185,567
2014	May-14	$2,185,567
2014	Jun-14	$2,185,567
2014	Jul-14	$2,185,567
2014	Aug-14	$2,185,567
2014	Sep-14	$2,185,567
2014	Oct-14	$2,185,567
2014	Nov-14	$2,185,567
2014	Dec-14	$2,185,567
2015	Jan-15	$2,039,566
2015	Feb-15	$2,039,566
2015	Mar-15	$2,039,566
2015	Apr-15	$2,039,566
2015	May-15	$2,039,566

SCHEDULE 3

[redacted]

[redacted]

SCHEDULE 4

Major Maintenance

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

<u>Capital Expenditures</u>

[redacted]

[redacted]

[redacted]

[redacted]

Normal Maintenance (Materials & Supplies)

The following are examples of normal, routine maintenance activities that will be performed during the term of the reliability agreement organized by major equipment components.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted], [redacted]

The classification of an activity as normal maintenance will be determined based on the facts and circumstances of each activity.

ATTACHMENT 2

RFP BID COMPARISON SUMMARY

CONTAINS CONFIDENTIAL INFORMATION

DO NOT DISCLOSE

National Grid
Dunkirk Alternatives RFP-Proposal Comparison Summary

Executive Summary

The following provides a summary comparison of bids received from Dunkirk Power LLC ("Dunkirk") [redacted] Dunkirk Alternatives Request for Proposal ("RFP") directed by the NYPSC in case 12-E-0136. The RFP was performed to obtain reliability support services in Western NY to maintain the reliability of the transmission system and determine if the market could supply an alternative at a reduced cost to the existing Dunkirk Reliability Support Service (RSS) Agreement. The RFP was issued on October 24, 2012 and RFP responses were received on December 14, 2012. The evaluation of bids took place from December 14 to January 18 followed by negotiations with the bidders from January 22 to February 8. After negotiating with [redacted]

Quick Comparison- Results of Negotiations

Dunkirk - $70.8M	[redacted]
o Proposal can be achieved by 6/1/13 o Lowest cost option o Low implementation risk o No National Grid resources are required for implementation o Minimal change in Contract terms from existing contract o The proposal would continue to provide a positive impact on the local economy in Dunkirk, NY o [redacted]	o [redacted]

Proposal Details

[redacted]

[redacted]

Timeline

[redacted]

Risks

[redacted]

[redacted]

Costs

[redacted]

[redacted]

[redacted]

Dunkirk

- Dunkirk submitted [redacted]

Timeline

- Dunkirk is prepared to start providing service on June 1, 2013.

Risks

- Low risk solution. Continuation of current situation. [redacted]
- Single unit agreement. An extended outage could affect Dunkirk's ability to provide service from Unit 2. [redacted] Payment structure designed to incentivize Dunkirk to maintain unit reliability.

Costs

- The overall cost to the Company to obtain services from Dunkirk for the two year period is $70.8M dollars [redacted]
- Property taxes will be reconciled through a true up mechanism by Dunkirk providing documentary evidence to National Grid showing the amount of property tax payments (or payments in lieu of taxes) that Dunkirk has made to local taxing jurisdictions up to a maximum amount for all property tax payments of $13,064,877.
- The Take or Pay coal transportation contract will be reconciled through a true up mechanism calculated based on the pre-determined minimum volume allocation to the Dunkirk plant, up to a maximum cost of $8,718,523. The payments to be made under this provision will be based on actual coal deliveries to the Dunkirk plant.

Dunkirk	Fix Costs	Property Tax	Take or Pay	Price Schedule
Jun-2013	$2,076,076	-	-	$2,076,076
Jul-2013	$2,076,076	-	-	$2,076,076
Aug-2013	$2,076,076	-	-	$2,076,076
Sep-2013	$2,076,076	-	-	$2,076,076
Oct-2013	$2,076,076	-	-	$2,076,076
Nov-2013	$2,076,076	-	-	$2,076,076
Dec-2013	$2,076,076	-	-	$2,076,076
Jan-2014	$2,185,567	Property Tax True up	-	$2,185,567
Feb-2014	$2,185,567	Property Tax True up	Take or Pay True up	$2,185,567 + True Up

Mar-2014	$2,185,567	-	-	$2,185,567
Apr-2014	$2,185,567	-	-	$2,185,567
May-2014	$2,185,567	-	-	$2,185,567
Jun-2014	$2,185,567	-	-	$2,185,567
Jul-2014	$2,185,567	-	-	$2,185,567
Aug-2014	$2,185,567	-	-	$2,185,567
Sep-2014	$2,185,567	-	-	$2,185,567
Oct-2014	$2,185,567	-	-	$2,185,567
Nov-2014	$2,185,567	-	-	$2,185,567
Dec-2014	$2,185,567	-	-	$2,185,567
Jan-2015	$2,039,566	Property Tax True up	-	$2,039,566 + True Up
Feb-2015	$2,039,566	Property Tax True up	Take or Pay True up	$2,039,566 + True Up
Mar-2015	$2,039,566	-	-	$2,039,566
Apr-2015	$2,039,566	-	-	$2,039,566
May-2015	$2,039,566	-	Take or Pay True up	$2,039,566 + True Up
Total	**$ 50,957,166**	**$ 13,064,877**	**$ 8,718,523**	**$72,740,561**

Note: [redacted]

(2) The property tax true up will continue until February 28, 2016 when taxes for 2015 are due.

Conclusion

Balancing the overall costs and risks of the two proposals, the Company determined Dunkirk to provide the preferred solution.