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**NIAGARA MOHAWK POWER CORPORATION**

May 7, 1999

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

Dear Secretary Renner:

The enclosed leaves, issued by Niagara Mohawk, are transmitted for filing in accordance with the requirements of the Public Service Commission, State of New York:

Sixth Revised Leaf No.	134
Second Revised Leaf No.	136
Original Leaf No.	136.1
Third Revised Leaf No.	201
Original Leaf No.	201.1

To PSC No. 218 Gas  
Effective: July 19, 1999

**Introduction**

As the Commission is aware, during the past year the Attorney General of the State of New York directed Niagara Mohawk to investigate its commercial accounts and identify commercial customers with a religious affiliation whose premises may have qualified for residential rates. As required under the Assurance of Discontinuance, dated July 23, 1998, Niagara Mohawk evaluated customer eligibility for residential rates by performing a predominant use calculation. The purpose of this filing is to amend the applicability criteria for entry into residential service classifications under PSC No. 218 Gas and to file new applicability provisions that implement the requirements set forth in the aforementioned Assurance. Also included with this filing is a housekeeping/conforming amendment to the Applicable Use of Service For section of each residential service classification. This housekeeping revision amends the veteran's applicability to include the submission of certification of status under IRC Section 50 (c) (19).

**Background**

Residential rates are applicable to gas service and both single and three-phase secondary electric service utilized by any corporation or association organized and conducted in good faith for religious purposes and used primarily, principally, or predominantly in connection with such religious purposes, including the operation of such corporation or association of a school, notwithstanding that secular subjects are taught at such school. (See Public Service Law '76) The NYS Religious Corporation Law defines a religious body, as an organization "created to enable its members to meet for divine worship or other religious observances." The residential rate is not applicable to facilities used predominantly for non-religious purposes by religious organizations such as facilities used to provide social services.

Pursuant to the Assurance, Niagara Mohawk reviewed the commercial

accounts of religious entities in its service territory to determine whether these accounts should have been classified as residential under Public Service Law '76. After reviewing these accounts, Niagara Mohawk determined that the overwhelming majority of its religious customers were receiving service under correct and appropriate service classifications.

A limited number of religious organizations that qualified for service under residential rates were receiving service under commercial rates in circumstances where it would be more economical to take service under residential rates. Niagara Mohawk believes that, in many instances, erroneous rate classifications had been assigned as a result of the vague and subjective standards set forth in Public Service Law '76. Specifically, the Company concluded that reasonable men and women of good will could disagree as to whether a specific premise was "used predominantly" for religious purposes.

In an effort to improve its business practices and ensure that uniform criteria is applied to the qualifying premises of religious organizations, Niagara Mohawk, in consultation with the Attorney General, adopted objective standards to implement the "predominant use" test for evaluating religious usage. These objective criteria are in compliance with the requirements of the law and have been approved by the Attorney General. The criteria are specifically included in the Assurance as a condition of the settlement.

#### **Objective Criteria Under the "Predominant Use" Test**

Under the objective criteria specified in the Assurance, the fact that a religious entity owns or operates certain premises is not conclusive evidence that the account is eligible for the residential rate. Nor is the fact that religious services are conducted on the premises conclusory in and of itself. The "predominant use" test focuses on whether the predominant use of the premises is religious. In determining what constitutes predominant use, Niagara Mohawk performs an objective review of the premise by measuring square footage of the various spaces constituting the premises and considering hours of use as well. Thus, assuming a premise is 1000 square feet, if only 100 square feet are used for a chapel during brief intervals of the day, and the rest is used for non-religious (i.e. charitable) purposes, such as a soup kitchen open to the public, the facility does not meet the predominant use test. Conversely, if a facility is 1000 square feet, and most of the space is utilized on an infrequent basis for non-religious purposes, while a lesser area is made available all the time for religious purposes, the facility might meet the predominant use test.

Recently, the Public Service Commission endorsed the usage of such objective standards in ruling that a community center affiliated with a religious organization did not meet the requirements of Public Service Law '76. (See PSC Case 95-E-1090) The Commission concluded that the "bulk of the Center's space" did not qualify for the religious rate because services were conducted in a small portion of the total space.

#### **Conclusion**

Niagara Mohawk recognizes that religious organizations are not confined to churches or houses of worship. Rather the test is whether the property receiving service is used primarily or principally for religious purposes. Due to the diverse nature of religious service, Niagara Mohawk cannot identify and catalogue all the types of facilities, institutions, and uses that are entitled to the residential rates. Respectfully, Niagara Mohawk requests that the Commission recognize that the qualifying criterion is difficult to administer because Niagara Mohawk must make a determination on a case by case basis. The objective standards adopted by Niagara Mohawk in implementing the subjective "predominant use test" promotes uniform application of the religious criteria, thus allowing Niagara Mohawk to objectively measure whether the property is used primarily or principally for religious purposes. Niagara Mohawk asserts

that the "predominant use" calculation will ensure that a review of an institution's purposes and operation meet the requirements of Public Service Law '76.

The majority of the customers currently classified as residential under Public Service Law '76 will remain on the residential rate once this filing becomes effective. 2,968 gas accounts with a religious affiliation currently receive residential service. Of these, 77 percent of the total number of religious customers receiving residential service are churches, rectories, covenants, temples, and synagogues, and thus clearly qualify for residential service. The remaining customers identified as religious are schools, academies, camps, and charity organizations. Niagara Mohawk plans to review these customers under the "predominant use" test to determine whether these accounts truly qualify for the residential rate. If Niagara Mohawk determines that the customer should receive service under a non-residential rate, Niagara Mohawk will transfer the account to the appropriate rate but will not retroactively rebill the customer for the difference in cost of service.

The notice required by the State Administrative Procedures Act is enclosed.

Because this filing is being made as a requirement under the Assurance of Discontinuance, the Company is requesting waiver of newspaper publication requirements under 16 NYCRR 136.70 for this filing.

Inquiries regarding this filing should be directed to Ms. Lynnette Christensen, (315) 428-3344.

Please advise the undersigned of any action regarding this filing.

Sincerely,

Marcia G. Collier  
Manager Gas Rates

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