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nationalgrid

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Senior Counsel II

July 20, 2012

Hon. Jaclyn A. Brilling
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

Re: Case 12-E-0136; Petition of Dunkirk Power LLC and NRG Energy Inc. for Waiver of Generator Retirement Requirements—Proposed Term Sheet Agreement for Procurement of Reliability Support Services ("RSS") and Tariff Amendment for Recovery of RSS Costs

Dear Secretary Brilling:

In accordance with the July 18, 2012 Notice Directing Filings and Soliciting Comments, Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid" or "Company") submits the attached "Binding Term Sheet for Bilateral Agreement for Dunkirk Power Generating Units" ("Term Sheet Agreement") for Commission consideration and approval. The Term Sheet Agreement sets forth the terms under which National Grid would procure reliability support services ("RSS") 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. In addition, National Grid requests approval of proposed tariff leaves to amend its Tariff, PSC No. 220 Electricity, to establish an RSS surcharge for recovery of costs incurred under the Term Sheet Agreement and for authority to defer all amounts paid to NRG for RSS until such time as current recovery of such costs begins.[1]

In support of the requested approvals and authorizations, the Company states as follows:

<u>BACKGROUND</u>

<u>March 14, 2012 Mothball Notice</u>

The Dunkirk generating station consists of four generating units: Dunkirk 1 and 2 each with a nameplate rating of 100 MW and interconnected to the transmission system at 115 kV; and Dunkirk 3 and 4 each with a nameplate rating of 217.6 MW and interconnected to the transmission system at 230 kV. On March 14, 2012, NRG, the owner of Dunkirk, filed notice with the Commission of its intent to mothball the Dunkirk facility no later than September 10, 2012. At the time of NRG's mothball notice, neither National Grid nor the New York Independent System Operator ("NYISO") had performed a study evaluating the impacts of and solutions to the mothballing of all four Dunkirk units while all other generation remained available. However, based on other studies that had been performed prior to the mothball notice,

[1] The revised tariff leaves are also being transmitted electronically to the Commission contemporaneously with this filing in accordance with applicable procedures.

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National Grid represented to Mr. Dvorsky that "the proposed mothballing of Dunkirk units 1-4 will result in significant impacts to transmission system reliability in western NY."[2] In that letter, the Company outlined a timeframe for completing additional studies to identify system impacts of the proposed mothballing, determine the number of units at Dunkirk the continued availability of which would be needed for short-term reliability needs, and identify long-term solutions to the reliability needs presented by mothballing Dunkirk.

Extent of Generation Resources Needed to Maintain Reliability

Because the transmission system investments needed to address the reliability issues created by mothballing of the Dunkirk units cannot all be implemented by the September 10, 2012 effective date of the NRG mothball notice, some portion of the Dunkirk generation resources must remain available to maintain transmission system reliability. Based on system needs and solutions analyses performed to date, National Grid has determined that Dunkirk units 1 and 2 must remain available for an interim period to maintain system reliability until permanent transmission system reliability solutions can be implemented. Specifically, based on its project implementation schedule, National Grid anticipates the need for two 115 kV units (Dunkirk 1 and 2) through May 2013. After May 2013, the Company anticipates the need for continued RSS until it is able to implement certain transmission reinforcements scheduled for completion by June 2015. The Company has determined that this need for continued RSS could be met by one 115 kV unit from June 2013 through approximately May 2015.

June 11, 2012 Letter of Commission's General Counsel

By letter dated June 11, 2012, the General Counsel for the Commission advised NRG and National Grid that Staff intended to recommend to the Commission that within the 180-day mothball notice period the Commission exercise its authority to ensure adequate generation facilities had been procured to meet local reliability needs. The letter also noted the Commission's understanding that the Federal Energy Regulatory Commission ("FERC") has jurisdiction over wholesale sales of energy and that any determination made by the Commission as to the structure and level of compensation in a contract between National Grid and NRG in this case may also be reviewed by the FERC as to matters within FERC's jurisdiction, and the expectation that "any Commission Order setting terms for payment to NRG during the mothball period would provide for prompt cost recovery of such payments by National Grid through a surcharge or similar mechanism." The letter directed National Grid and NRG to inform the Commission no later than July 12, 2012 as to whether an agreement had been reached on the procurement of generation resources needed to maintain reliability, and further directed National Grid and NRG to each propose recommended terms for the Commission's consideration in the event the parties were at an impasse. On July 12, 2012, National Grid and NRG notified the Secretary that the parties continued in negotiations and stated that additional time could be helpful in achieving an agreement. The parties indicated they would provide an update of negotiations the week of July 16.

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

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July 12, 2012 NRG Filing at FERC

On July 12, 2012, NRG filed at FERC pursuant to Section 205 of the Federal Power Act an unexecuted agreement setting forth terms under which NRG proposed to provide National Grid with reliability must-run ("RMR") service from Dunkirk units 1 and 2 for 12 months, and then from one of those units for an additional 24 months. In its filing, NRG proposed a monthly fixed-cost charge of $5,607,513/month for keeping the two 115 kV units in service, or $50,467,617 over nine months. NRG characterized its filing as "cost-of-service." Comments on NRG's FERC filing are due by August 2, 2012.

July 18, 2012 Notice Directing Filings and Soliciting Comments

On July 18, the Secretary issued a notice directing National Grid and NRG to file for Commission consideration either an agreement or proposed terms of agreement recommended by the respective parties no later than July 20, 2012. The attached Term Sheet Agreement reflects the agreement between National Grid and NRG under which National Grid would procure RSS from NRG's Dunkirk plant.

Content of Today's Filing

The instant filing presents the following:

1. The proposed Term Sheet Agreement; and

2. National Grid's proposal for treatment and recovery of costs incurred under the Term Sheet Agreement, including proposed amendments to the Company's Tariff, PSC No. 220 Electricity to implement an RSS surcharge.

PROPOSED TERM SHEET AGREEMENT

The Term Sheet Agreement (included as Attachment 1) provides for NRG to defer mothballing actions on the two 115 kV Dunkirk units and to keep them available during the nine-month term of agreement (September 1, 2012 – May 31, 2013). Under the agreement, National Grid would pay NRG a monthly fixed-price charge of $2,924,324/month, or $26,318,916 for the 9-month period. In addition, the Term Sheet Agreement provides for payment of up to $6,681,084 related to taxes or payments in lieu of taxes associated with the Dunkirk plant. Together, the monthly fixed-price charge and tax-related payments come to $33 million over the over nine month term.

In addition to the monthly fixed-price charge and tax-related payments, the Term Sheet Agreement provides for payment, following the termination of the agreement, of the a pro-rated share of the Dunkirk take or pay coal contract costs adjusted for any reductions based on actual coal deliveries. The Term Sheet Agreement also provides for the crediting of any capacity revenues from units 1 and 2 against the costs of the contract. In addition, in the event that the Dunkirk plant exceeds certain earnings thresholds in the five-year period following the termination of the Term Sheet Agreement, a portion of such excess earnings would be credited to National Grid for the benefit of customers.

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The Term Sheet Agreement includes provisions for potential contract extension. This is necessary to account for deviations in the planned schedule for deployment of transmission upgrades that will remediate the reliability issues caused by the mothballing of the Dunkirk units. Although National Grid has determined that continued RSS will be needed beyond May 2013, it is premature to lock in those services from Dunkirk at this time pending an evaluation of other potential reliability solutions.

The proposed Term Sheet Agreement is subject to Commission approval at or before its August 16, 2012 session. The Parties have agreed to jointly request that FERC defer action on NRG's filing and extend the deadline for filing of comments, protests and motions to intervene until the Commission has an opportunity to consider the Term Sheet Agreement at its August 16, 2012 meeting. If approved, the Parties will request that FERC defer action and suspend applicable deadlines for submitting comments, protests and motions to intervene until the Commission order approving the Term Sheet Agreement becomes final and non-appealable, at which time NRG will withdraw its FERC filing.

Approval of the Term Sheet Agreement would ensure the reliability of the transmission system in western New York for an interim period as National Grid implements system reinforcements and alternative reliability services solutions are considered. The costs under the Term Sheet Agreement are substantially lower than the full cost of service costs reflected in NRG's filing at the FERC. The Term Sheet Agreement represents a reasonable resolution of the issues presented, and is fair, equitable and in the public interest. If the Term Sheet Agreement is approved by the Commission, the Parties will prepare a final contract agreement based on the Term Sheet Agreement and file a copy of that final contract with the Commission as soon as practical.

TREATMENT OF RELIABILITY SUPPORT SERVICES COSTS

Until such time as National Grid implements transmission system solutions to obviate continued reliance on Dunkirk generation, NRG will need to be compensated for keeping those units available for reliability purposes. The Term Sheet Agreement is subject to Commission approval of a cost recovery mechanism reasonably acceptable to the Company. The Company proposes to defer the RSS costs it would incur under the Term Sheet Agreement from the start of the payment obligation until the date new base rates go into effect under Case 12-E-0201 (*i.e.*, April 1, 2013), with carrying charges based on the effective other customer deposit rate. Beginning with the effective date of new base rates, the Company would commence current recovery of the RSS costs from customers as those costs are incurred, as well as recovery of RSS amounts deferred in the interim and accumulated carrying charges. Because the rate proposal in Case 12-E-0201 calls for a substantial rate decrease beginning April 1, 2013, deferring cost recovery until that time would help promote rate stability for customers.

The Company proposes that RSS costs be recovered from all delivery customers in the same manner as other transmission capital and operating costs. Based on the currently effective allocation methodology, the Company proposes to allocate the costs of any RSS charges it incurs from customers based on the respective contribution of each service class to the Company's coincident peak demand and will recover costs from each service class on a volumetric basis (kW

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for demand classes and kWh for non-demand classes). The Company proposes a tariff amendment (Rule 50 - Reliability Support Services ("RSS") Surcharge) that would implement this recovery proposal. The following proposed tariff leaves are included in Attachment 2 to this filing:

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

To P.S.C. No. 220 Electricity

The revised tariff leaves are also being transmitted electronically to the Commission contemporaneously with this filing in accordance with applicable procedures.

Included as Attachment 3 is a schedule showing the cost allocation and surcharge rate by service class based on the base Term Sheet Agreement costs and the allocation methodology and recovery mechanism in proposed Rule 50. The Company requests that the proposed tariff amendment become effective on or before September 1, 2012. To the extent the Company incurs any RSS costs prior to the effective date of Rule 50, the Company will defer such costs for future recovery as described above.

CONCLUSION

For the reasons set forth above, National Grid respectfully requests that the Commission:

(1) Approve the Term Sheet Agreement as proposed;

(2) Authorize National Grid to defer all amounts paid to NRG for RSS until such time as current recovery of such costs begins;

(3) Approve the proposed tariff leaves for Rule 50 – Reliability Support Services ("RSS") Surcharge;

(4) Waive any applicable requirement for newspaper publication of the proposed tariff amendments; and

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(5) Grant such further relief as may be necessary and appropriate.

Respectfully submitted,

/s/

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Attorney for
Niagara Mohawk Power Corporation
d/b/a National Grid

Attachments
Cc: Case 12-E-0136 Activity Parties List