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Via Electronic Delivery

February 15, 2018

Hon. Kathleen H. Burgess
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, New York 12223-1350

Re: Tariff Filing by the New York Municipal Power Agency to Implement a New Rider A – Rates and Charges for High Density Load Service.

Dear Secretary Burgess:

Pursuant to Sections 65(1), 66(5), and 66(12) of the Public Service Law (“PSL”), the New York Municipal Power Agency (“NYMPA”) hereby submits a new Rider A to NYMPA’s PSC NO: 1 ELECTRICITY Generic Tariff (“NYMPA Tariff”). Rider A will govern the rates and conditions of service supplied to high density load (“HDL”) customers. As discussed herein, Rider A is necessary to hold existing municipal electric utility customers harmless from increased supply costs caused by HDL customers.

In addition, NYMPA requests waiver of the newspaper publication requirements of PSL § 66(12)(b) and 16 NYCRR § 720-8.1. Rider A will be applicable to NYMPA’s 36 members, which are located across the state, making newspaper publication requirements prohibitively

expensive and time-consuming in this instance. In addition, NYMPA will individually notify all existing customers to whom Rider A will be applicable.

Finally, NYMPA requests that the New York State Public Service Commission (“Commission”) adopt Rider A on an emergency basis under State Administrative Procedure Act (“SAPA”) § 202(6) with an effective date of March 19, 2018. Rider A is immediately necessary to preserve the general welfare of the customers of NYMPA’s member systems; therefore, compliance with the notice requirements of SAPA § 202(1) is contrary to the public interest.

Background

NYMPA is a joint action agency of 36 New York municipal utility members. NYMPA was formed in 1996 pursuant to Section 119-o of the General Municipal Law, and commenced supplying supplemental power to its members in May 1998. Through NYMPA, members with supplemental power requirements aggregate their resources and reduce their costs to acquire the lowest-cost power and other services for their customers. Each NYMPA member operates a municipal electric system pursuant to Section 360 of the General Municipal Law. All of these municipal systems are not-for-profit enterprises, which acquire the lowest-cost power available and distribute that power to their customers at no profit. These systems are customer-owned.

When members began supplementing their power requirements through NYMPA, they became subject to Commission jurisdiction. As part of this jurisdictional transition, NYMPA developed, with the assistance of Department of Public Service Staff (“Staff”), the NYMPA Tariff that is used by each of the member municipal electric systems in concert with system-

specific, concurrence tariffs.¹ Currently, neither the NYMPA Tariff nor any of the individual concurrence tariffs contain provisions sufficient to deal with HDL customers.

NYMPA member systems range in size from 1.5 MW in the Village of Silver Springs to 122 MW in the City of Plattsburgh. Most systems fall somewhere in the lower end of that range, and their individual system characteristics and capabilities vary dramatically. What all member systems do have in common is their unwavering commitment of providing low-cost energy to their customers as well as a demonstrated record of successfully fulfilling that commitment.

The single biggest reason NYMPA members can offer low-cost energy to their customers is the same reason that makes them attractive to potential HDL customers, and the same reason that necessitates Rider A. NYMPA members are entitled to allocations of low-cost hydropower from the New York Power Authority (“NYPA”) Niagara project.² Power needs that exceed those hydropower allocations are procured through NYMPA in the markets (i.e., “supplemental power”). As a general rule, the great majority of member power needs are met through NYPA hydropower, minimizing the need for higher cost supplemental power. Most member systems only need supplemental power intermittently, some only seasonally, and some only during peak load conditions. The costs of that supplemental power are then recovered from all customers on a volumetric basis. The addition of HDL customers would drastically increase the amount of supplemental power needed by the systems and significantly increase the costs to all customers through the Purchased Power Adjustment Clause (PPAC). Rider A will reform the PPAC to mitigate that adverse impact on existing customers.

¹ Case 98-E-0490, *N.Y. Mun. Power Agency*, Order Authorizing Tariff Filings to Become Effective (Nov. 25, 1998).

² NYPA has agreed, in principle, to the HDL approach proposed here for those systems that are under its regulatory authority.

For example, if a 5 MW spot load is added to the Village of Akron (as requested), Akron's annual average bulk power supply costs will increase approximately 54% with a direct pass through impact on retail rates.

HDL Customers Are Unique

In recent months, NYMPA members have experienced a dramatic increase in requests for new service for disproportionately large amounts of power. Most such requests come from similar types of potential customers: server farms, generally devoted to data processing for cryptocurrencies. These customers generally seek to move into existing commercial or industrial facilities where they can gain access to the large amounts of power required for their operations. However, as some of these customers came online, it became clear that this type of load was of a different character than loads typically seen by NYMPA members in several ways. These applicants tend to require high quantities of power and have extremely high load density and load factors. In addition, these customers do not bring with them the economic development traditionally associated with similar load sizes. These customers have few to no associated jobs, and little if any capital investment into the local community.

In addition, HDL customers are unusually mobile. As experienced by NYMPA members and others, because many HDL customers undertake minimal infrastructure investment in existing, low-cost commercial spaces, there is no impediment to customers to pull up stakes and simply truck their equipment to another location. Some of these loads have already done just that. The potential for sudden relocations results in unpredictable electrical use fluctuations in the affected areas.

In sum, HDL customers negatively affect existing customers. For that reason, NYMPA proposes to serve qualifying HDL customers under Rider A so as to hold existing customers

harmless, ensure that costs caused by HDL customers are also born by them, and protect the safety and integrity of its member systems.

Discussion

RIDER A APPROPRIATELY IDENTIFIES HDL CUSTOMERS AND ALLOCATES TO THEM APPROPRIATE COSTS OF SERVICE

Rider A consists of four components. First, it defines HDL customers. Second, it provides for certain application requirements for customers seeking HDL service. Third, it delineates conditions for obtaining HDL service. Fourth, Rider A establishes a specific PPAC methodology and otherwise identifies the rates and charges applicable to HDL service. Rider A holds existing customers harmless if an HDL customer comes onto the system.

Applicability.

Rider A is proposed to apply to all new and existing customers which meet certain load density characteristics, yet do not qualify for existing economic development programs. This requirement ensures that Rider A does not serve as a disincentive for genuine economic development in member system territories. For example, under the terms of the existing Municipal and Rural Cooperative Economic Development Program a new customer is required to produce 50 new jobs per MW of hydropower allocated under the program. However, experience has shown that HDL customers seldom create even a single job. Therefore, they should not receive the benefits of hydropower for which they would have otherwise failed to qualify.

The density thresholds proposed are 250 kWh/ft²/year, and a minimum demand of 300kW. These numbers were chosen to ensure that only high-density load would qualify for Rider A. This “energy density” is vastly in excess of that of all other customers, including

factories, packing facilities, shopping centers, etc. A study of this problem in the State of Washington identified that density as appropriate, in that it would not capture other, traditional energy intensive businesses.³ The number was also confirmed by NYMPA member experience. The 300kW minimum demand was selected as the threshold that would be significant for all NYMPA members.

Application Requirements.

Before receiving service under Rider A, an applicant must submit to the utility a completed application describing the equipment applicant seeks to energize. This requirement will allow the affected utility to determine whether the load can be safely accommodated and what, if any, upgrades need to be made. Because NYMPA members are relatively small, and the high-density spot loads are so proportionally outsized, it is imperative that they be able to fully evaluate any new, significant load additions before providing service. For example, one of our members with an all-time peak load of 11 MW has been requested to provide service to a new 5 MW load. That is overwhelming physically as well as financially.

Customer Contributions.

Because of the inherently temporary nature of HDLs, customers requesting such service will be required to provide a reasonable contribution towards the utility's costs of supplying the service. This will ensure that the capital needed to supply the new temporary load is not borne by existing customers.

³ See *Final High Density Load Staff Report*, Chelan Cnty. Pub. Utility District (July 14, 2016), at 1–2, <https://www.chelanpud.org/docs/default-source/commission/final-hdl-staff-report-7-14-2016.pdf> (“Washington Study”).

Rates and Charges.

This section provides that the HDL customer will be served under the rates otherwise applicable the appropriate rate classification. However, a separate HDL Purchased Power Adjustment (“PPA”) would be applied to those rates. This approach ensures that supply costs are allocated to those customers that cause them.

The HDL PPA will isolate only those purchased power costs attributable to the HDL customers, and recover those costs from them. As described above, the interconnection of large HDL customers to a system can significantly affect that system’s cost of purchased power. This is especially true for NYMPA members, where a single HDL customer can account for 10% or even 33% of the total system load. That load drives demand over the members’ hydropower allocation and into more supplemental power. The HDL PPA insulates existing customers from the additional supplemental costs created by HDL customers. Rider A will allow new HDL customers to get the benefits of any hydropower that may be available, but will not allow them to take up a community’s hydropower that might otherwise be available for organic growth and economic development. That is, HDL customers will always be treated as “on the margin” for the purposes of calculating supply costs.

The Commission has previously acted in similar circumstances to protect existing ratepayers from costs incurred to serve other customers. For example, in Case 02-E-0141, the Commission approved a tariff rider filed by Consolidated Edison Company of New York, Inc. for service of high load density customers.⁴ The Commission reasoned that “the company’s

⁴ Case 02-E-0141, *Consol. Edison Co. of N.Y., Inc.*, Order Approving Tariff Filing of Consolidated Edison Company of New York, Inc. to Implement a New Rider Y - Rates and Charges for High Load-Density Service (July 31, 2002).

proposed Rider Y allows customers that place extraordinary costs on the utility's delivery system the opportunity to take service at higher than normal load-density levels without transferring the financial risks associated with providing this service to other customers or the company."⁵ The same reasoning is applicable here. Similarly, in Case 09-E-0299, the Commission conditioned approval of the Village of Frankfurt extending service to a new customer on the Village holding "its existing ratepayers harmless for all capital expenditures, investments, purchased power costs, and operating expenses incurred or to be incurred by the Village to serve the [new customer]."⁶

The same rationale should be applied here. Existing municipal customers should not be forced to bear the risks and costs of new HDL customers seeking to take advantage of the low NYMPA rates.

Emergency Adoption under SAPA

NYMPA respectfully requests that the Commission adopt Rider A on an emergency basis. SAPA § 202(6) allows a state agency to adopt a rule on an emergency basis if "immediate adoption of a rule is necessary for the preservation of the public health, safety or general welfare" and compliance with the SAPA's general 60-day advanced notice requirement would be contrary to the public interest. The Commission has exercised its emergency rulemaking powers to protect customers from many unjust results, such as rate instability and volatility,⁷ unfair subsidization,⁸ and potential overcharges.⁹

⁵ *Id.* at 6.

⁶ Case 09-E-0299, *Village of Frankfurt*, Order Granting Certificate, with Conditions (Aug. 20, 2010), at 26.

⁷ Case 15-E-0050, *Consol. Edison Co. of N.Y., Inc.*, Order Approving Tariff Amendments (Dec. 21, 2016), at 6–7; Case 09-E-0717, *Rochester Gas & Elec. Corp.*, Order Revising Rate Plan Targets (Oct. 14, 2011), at 3–4.

⁸ Case 14-E-0133, *Central Hudson Gas & Elec. Corp.*, Order Approving Tariff Revisions (Apr. 25, 2014), at 3–4.

⁹ Case 13-G-0136, *National Fuel Gas Distribution Corp.*, Order Setting Temporary Rates (June 14, 2013), at 13; Case 06-E-1433, *Orange & Rockland Utilities, Inc.*, Order Making Temporary Rates Subject to Refund (Mar. 1, 2007), at 21–22.

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Immediate adoption of Rider A is necessary to preserve the general welfare of the customers of NYMPA's member systems. As explained above, the recent influx of ephemeral HDLs is causing immediate harm to NYMPA member system customers. These loads deplete the amount of the low-cost hydropower allocations available to the member systems and require NYMPA to procure more supplemental power on their behalf. This, in turn, causes rate instability and raises the per unit supply costs for all member system customers. Without Rider A, existing customer will be (and now are) unfairly subsidizing HDLs. SAPA's general 60-day notice period would unduly delay the customer protections prescribed herein and, therefore, compliance with SAPA § 202(1) would be contrary to the public interest.

Conclusion

Based on the foregoing, NYMPA respectfully requests that the Commission approve Rider A without modification.

Respectfully submitted,

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Power Agency

By: /s/
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