

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Proceeding on Motion of the Commission  
as to the Rates, Charges, Rules and Regulations  
of Niagara Mohawk Power Corporation  
d/b/a National Grid**

**CASE 12-E-0201**

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**CASE 12-G-0202**

**TESTIMONY OF WILLIAM D. YATES, CPA**

**FOR**

**PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.**

**[UNREDACTED VERSION]**

**Dated: August 31, 2012**

1 **Q. PLEASE STATE YOUR NAME, ADDRESS, AND IDENTIFY FOR WHOM YOU**  
2 **ARE PRESENTING TESTIMONY IN THIS PROCEEDING.**

3 **A.** My name is William D. Yates, and my office address is at Public Utility Law Project of  
4 New York, Inc., P.O. Box 10787, Albany, NY 12201. I am presenting testimony in this  
5 proceeding for the Public Utility Law Project of New York, Inc.

6 **Q. PLEASE DESCRIBE THE PUBLIC UTILITY LAW PROJECT OF NEW YORK,**  
7 **INC. AND YOUR RELATIONSHIP TO THE ORGANIZATION.**

8 **A.** The Public Utility Law Project of New York, Inc., (“PULP”) is a New York not for profit  
9 corporation. PULP was formed in 1981 to promote and defend the legal rights of utility  
10 consumers, *inter alia*, by educating the public about rates for utility service, conducting  
11 research on the legal rights of utility consumers, and litigation in the public interest with a  
12 primary emphasis on the rights of low income utility consumers. I have been employed  
13 by PULP in various capacities since July 1990. Currently, I oversee PULP's accounting  
14 and financial systems, and I provide financial analysis and technical assistance in support  
15 of PULP’s advocacy on behalf of residential utility and energy consumers.

16 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND, YOUR PROFESSIONAL**  
17 **QUALIFICATIONS, AND YOUR EMPLOYMENT HISTORY?**

18 **A.** I am a graduate of Colgate University (B.A.) and a graduate of the New York University  
19 Stern School of Business Administration (M.S. in Accounting). I am a Certified Public  
20 Accountant (CPA), licensed to practice in New York State, and I am a member of the  
21 American Institute of Certified Public Accountants (AICPA). I am familiar with software  
22 applications and in the course of my work I write custom computer applications using

1 various languages. After completing my graduate work, I worked for several years in New  
2 York City for a major accounting firm, Deloitte & Touche. After relocating to the  
3 Albany area, in addition to my work for PULP, I have also worked as an independent  
4 consultant to a variety of enterprises.

5 **Q. WHAT IS THE GENERAL PURPOSE FOR YOUR TESTIMONY?**

6 **A.** I am testifying regarding the utility bills of Niagara Mohawk’s customers who enter into  
7 contracts for “commodity” (or “supply”) from energy services companies (“ESCOs”), in  
8 contrast to what they would pay for full service from Niagara Mohawk. The evidence  
9 available indicates that ESCO service is not providing a means for significant numbers of  
10 customers to achieve significant utility bill savings. ESCO service is not making utility  
11 bills more affordable, and is actually increasing utility bills for many of Niagara  
12 Mohawk’s low-income customers. This indicates the need for Niagara Mohawk to  
13 provide more information and better tools to enable its customers to assess the risks and  
14 very limited or possibly nonexistent financial rewards that follow from signing ESCO  
15 contracts. It also indicates a need for Niagara Mohawk to focus on other means to address  
16 the affordability issues and to improve its low-income programs, as proposed by PULP  
17 witness Barbara R. Alexander.

18 **Q. IS RELIABLE INFORMATION COMPARING ESCO COSTS WITH THOSE OF**  
19 **TRADITIONAL UTILITY SERVICE FROM NIAGARA MOHAWK READILY**  
20 **AVAILABLE TO CONSUMERS?**

21 **A.** The New York State Public Service Commission (“PSC” or “Commission”) at its website  
22 advises the public that “[i]n a competitive market, electricity prices should be lower than

1 they would be under government regulation.... You as a consumer, and the state as a  
2 whole, will benefit.... You could save money by shopping for lower cost power from an  
3 ESCO. It is important to compare the prices offered by any supplier who sells electricity  
4 and to know what you are signing up for.” *Energy Choices - The Facts from the PSC*  
5 available at <http://www.dps.ny.gov/energychoices.htm> (Accessed August 31, 2012).

6 There is no reliable public information available of which I am aware to make the price  
7 comparison urged by the Commission. The Commission does require ESCOs to report  
8 their prices once a month, but intra-month changes need not be reported.<sup>1</sup> Comparing bills  
9 which include ESCO charges with what Niagara Mohawk’s charges would be for full  
10 service is not easy. I am not aware of any report or study addressing the factual question  
11 whether Niagara Mohawk’s residential utility customers who switch to ESCOs actually  
12 save money over time on charges for supply service.

13 **Q. PLEASE DESCRIBE THE INFORMATION PULP REQUESTED FROM NIAGARA**  
14 **MOHAWK REGARDING ITS COMPARISON OF BILLS FOR CUSTOMERS WITH**  
15 **ESCO SERVICE WITH BILLS FOR CUSTOMERS RECEIVING TRADITIONAL**  
16 **BUNDLED NIAGARA SERVICE**

17 **A.** Niagara Mohawk initially was asked by PULP, in its Information Request 91 (“PULP IR-  
18 91”), to provide "any internal analysis of whether residential customers receiving  
19 commodity service from ESCOs whose charges are billed by Niagara Mohawk paid more

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<sup>1</sup> "ESCOs may also continue to make offers to consumers at prices other than those reported.... Moreover, because reporting is limited to the price snapshots, ESCOs may promptly revise their offers after the snapshots are submitted...." Case 06-M-0647, et. al, *In the Matter of Energy Service Company Price Reporting Requirements, Order Adopting ESCO Price Reporting Requirement and Enforcement Mechanisms* (issued November 8, 2006).

1 or less than full (bundled) service customers for their electric or gas service for 2008  
2 through 2011 and monthly for 2012 to date." In its IR-92, PULP asked a similar question:  
3 whether Niagara Mohawk had analyzed whether its *low-income* customers who subscribe  
4 to ESCO service paid more or less than they would have paid had they not switched from  
5 Niagara Mohawk to an ESCO for supply service. Niagara Mohawk responded to PULP  
6 IRs-91 and 92 with a report which showed the differences between Niagara Mohawk's  
7 bills to customers who had bought supply from ESCOs and what their charges would have  
8 been had the customer not switched to the ESCO, for two months: July and December  
9 2011. That Responses showed, *inter alia*, for each ESCO, the "delta" (the difference,  
10 positive or negative) by which the ESCO customers owed less or more to Niagara  
11 Mohawk in comparison to what their bills would have been had they received full service  
12 from the utility. More than a two-month sample of bill comparisons was needed, because,  
13 as stated by Niagara Mohawk, "looking at single points in time cannot provide a  
14 complete answer to the question of whether customers are paying more or less from taking  
15 service from an ESCO. For a complete study, the period of time would need to reflect  
16 multiple cycles and consider the terms of individual ESCo contracts with customers."  
17 *Niagara Mohawk Response to PULP IR-91*. PULP then requested the most recent 24-  
18 month history of the same type of data already provided for July and December 2011, in  
19 PULP IR-107. The Retail Energy Supply Association ("RESA") then moved to bar  
20 discovery of the data requested in PULP IR-91 and 107, arguing it is a trade secret and is  
21 not relevant. The Administrative Law Judges ("ALJs") ruled it is relevant, and Niagara  
22 Mohawk produced the two years' historical data in response to PULP IR-107 subject to a

1 confidentiality order, pending a later ruling on the confidentiality issue. The data  
2 contained in the Response of Niagara Mohawk to PULP IR-107 is attached as Exhibit A.<sup>2</sup>

3  
4 **Q. DOES THE INFORMATION PROVIDE DESCRIBE THE UTILITY BILLS OF ALL OF**  
5 **NIAGARA MOHAWK'S RESIDENTIAL ESCO CUSTOMERS?**

6 It appears to be quite comprehensive. In PULP IR-90, PULP asked Niagara Mohawk  
7 what percentage of its ESCO customers received separate bills from ESCOs and what  
8 percentage received bills from Niagara Mohawk. Niagara Mohawk responded that

9 Based on the May 2012 Electric Migration Report, 99% (257,046) of Residential  
10 Customers in NMPC are under the One Bill Purchase of Receivables Program.  
11 Residential customers whose bills are sent separately by the ESCO are less than  
12 1% (1,839) of total Residential Customers in Niagara Mohawk.

13  
14 Based on the August 2012 Gas Migration Report, 99% (130,901) of Residential  
15 Customers in NMPC are under the One Bill POR Program. Residential customers  
16 whose bills are sent separately by the ESCO are less than 1% (1,240) of total  
17 Residential Customers in Niagara Mohawk.

18  
19  
20 **Q. BASED ON THE INFORMATION CAN YOU DRAW A FIRM**  
21 **CONCLUSION THAT ESCO SERVICE HAS NOT PROVIDED BILL**  
22 **REDUCTIONS FOR NIAGARA MOHAWKS ESCO CUSTOMERS?**

23 **A.** To the extent that the data provided, which encompasses 24 consecutive months  
24 (two years) of billing, is typical of any 2-year period of billing for the population  
25 of Niagara Mohawk's ESCO customers, it is my firm conclusion that ESCO  
26 service has not provided bill reductions for ESCO customers. In fact, the opposite

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<sup>2</sup> This testimony and the exhibits to it are being filed confidentially, pending the decision on whether they will be made part of the public record of this proceeding.

1 is true: for both types of customers (low-income and regular), for both types of  
2 service (electricity and gas), each and every total and average cost/savings metric  
3 showed a disproportionately high extra cost associated with choosing ESCO  
4 supply.

5 **Q. MORE SPECIFICALLY, WHAT DOES THE DATA PROVIDED BY**  
6 **NIAGARA MOHAWK IN ITS RESPONSE TO PULP IR-107 REVEAL?**

7 **A.** The data attached to my testimony, received in response to PULP IR-107, shows:

8 For the 24 months August 2010 through July 2012, the data shows that  
9 nearly all bills, 84.3% for electricity and 92.1% for gas, were higher for  
10 those customers who had switched to ESCO service. Only 15.7% of  
11 electricity bills and 7.9% of gas bills were lower.

12  
13 For low-income customers, 91.5% of electricity bills and 93.4% of gas bills  
14 were higher for those customers who had switched to ESCO service. Only  
15 8.5% of electricity bills and 6.6% of gas bills were lower.

16  
17 For regular (i.e., non low-income customers), 83.2% of electricity bills and  
18 91.8% of gas bills were higher for those customers who had switched to  
19 ESCO service. Only 16.8% of electricity bills and 8.2% of gas bills were  
20 lower.

1 The data also shows that the net extra cost incurred by ESCO customers  
2 over what they would be charged by Niagara Mohawk was \$101,775,321  
3 for electricity and \$27,375,032 for gas. An estimated 207,842 customers  
4 (84.3%) paid \$103,711,214 more for ESCO electricity service while an  
5 estimated 107,225 customers (92.1%) paid \$27,931,488 more for ESCO  
6 gas service.<sup>3</sup>

7  
8 Only 38,579 of the total estimated 246,420 ESCO electricity customers  
9 (15.7%) paid less using ESCO service (their total savings was \$1,935,893).  
10 Only 9,249 of the total estimated 116,474 ESCO gas customers (7.9%) paid  
11 less using ESCO service (their total savings was \$556,456).

12  
13 For low-income ESCO customers, the net extra cost incurred over what  
14 they would be charged by Niagara Mohawk was \$13,331,134 for electricity  
15 and \$5,819,450 for gas. 30,195 (91.5%) of a total estimated 33,015 low-  
16 income electricity customers paid \$13,442,926 more for ESCO service,  
17 while 19,473 (93.4%) of a total estimated 20,840 low-income gas  
18 customers paid \$5,905,789 more for ESCO service. Only 2,820 (8.5%) of  
19 ESCO low-income electricity customers paid less using ESCO service  
20 (their total savings was \$111,791). Only 1,367 (6.6%) of ESCO low-

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<sup>3</sup> Estimated customers are defined as follows: Estimated electricity customers = number of electricity bills from August, 2010 – July, 2012 divided by 24; Estimated gas customers = number of gas bills from August, 2010 – July, 2012 divided by 24.

1 income gas customers paid less using ESCO service (their total savings  
2 was \$86,339).

3  
4 For regular ESCO customers, the net extra cost incurred over what they  
5 would be charged by Niagara Mohawk was \$88,444,187 for electricity and  
6 \$21,555,582 for gas. 177,647 (83.2%) of a total estimated 213,406 regular  
7 electricity customers paid \$90,268,288 more for ESCO service, while  
8 87,752 (91.8%) of a total estimated 95,634 regular gas customers paid  
9 \$22,025,699 more for ESCO service.

10  
11 Only 35,759 (16.8%) of ESCO regular electricity customers paid less using  
12 ESCO service (their total savings was \$1,824,101). Only 7,882 (8.2%) of  
13 ESCO regular gas customers paid less using ESCO service (their total  
14 savings was \$470,117).

15  
16 The data also shows that, of the ESCO customers who had higher bills,  
17 over 24 months the cumulative net average cost above what their bills  
18 would have been had they not switched to ESCO service was \$413.02 for  
19 electricity and \$235.03 for gas. Of those who experienced higher bills,  
20 their average extra cost was \$498.99 for electricity and \$260.49 for gas.  
21 Those with lower bills saved an average of \$50.18 for electricity and  
22 \$60.16 for gas.

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For low-income ESCO customers who had higher bills, over 24 months the cumulative net average cost above what their bills would have been had they not switched to ESCO service was \$403.79 for electricity and \$279.25 for gas. Of those who experienced higher bills, their average extra cost was \$445.21 for electricity and \$303.29 for gas. Those with lower bills saved an average of \$39.64 for electricity and \$63.16 for gas.

For regular ESCO customers who had higher bills, over 24 months the cumulative the net average cost above what their bills would have been had they not switched to ESCO service was \$414.44 for electricity and \$225.40 for gas. Of those who experienced higher bills, their average extra cost was \$508.13 for electricity and \$251.00 for gas. Those with lower bills saved an average of \$51.01 for electricity and \$59.64 for gas.

I prepared several charts and a summary table to illustrate the data provided in Niagara Mohawk's Response to PULP IR 107 relating to the experience of low-income customers with ESCO service. The charts and table I prepared are attached to this testimony as Exhibit B.

**Q. WHAT DOES THE INFORMATION INDICATE REGARDING THE EXPERIENCE OF LOW-INCOME NIAGARA MOHAWK WHO SWITCHED TO ESCO SERVICE?**

1 A. Many low-income customers tried ESCO service: there were an estimated<sup>4</sup> 33,015  
2 electricity and 20,840 gas customers from August 2010 – July 2012. Of those,  
3 30,195 (91.5%) electricity and 19,473 (93.4%) gas customers paid more for their  
4 supply, while 2,820 (8.5%) electricity and 1,367 (6.6%) gas customers paid less.  
5 The cumulative average higher amount over 24 months was \$446.21 for electricity  
6 and \$303.29 for gas, while the cumulative average lower amount over 24 months  
7 was \$39.64 for electricity and \$63.16 for gas.

8 Additionally, low-income gas customers of ESCOs incurred higher extra costs  
9 than when regular customers paid more by choosing gas service through an ESCO.  
10 The cumulative average net extra cost of ESCO gas service for low-income  
11 customers was \$279.25 compared to \$225.40 for regular customers.

12 **Q. ARE NIAGARA MOHAWK’S ESCO CUSTOMERS HAVING**  
13 **DIFFICULTIES IN PAYING THEIR BILLS?**

14 A. In the months for which data is available, it is clear that for the vast majority  
15 ESCO service is adding to customer bills, and is not alleviating hardship for low  
16 income customers. PULP’s IRs sought information relating to Niagara Mohawk’s  
17 collection activities, including those with respect to customers who buy unbundled  
18 natural gas or electricity supply service from ESCOs. In its Response to PULP IR-  
19 108, Niagara Mohawk indicated that its customers who bought from ESCOs were

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<sup>4</sup> Estimated customers are defined as follows: Estimated electricity customers = number of electricity bills from August, 2010 – July, 2012 divided by 24; Estimated gas customers = number of gas bills from August, 2010 – July, 2012 divided by 24.

1 sent 377,736 Final Termination Notices arising from non payment of charges in  
2 2011, averaging 31,478 per month.

3 **Q. WHY WOULD SO MANY CUSTOMERS HAVING DIFFICULTY IN**  
4 **MEETING PAYMENT OBLIGATIONS SWITCH TO A MORE COSTLY**  
5 **SERVICE?**

6 **A.** I do not know. I surmise that many customers, at the time they switched to ESCO  
7 service, may have had hopes of saving money. Switching to ESCOs is promoted  
8 by the Commission, as previously mentioned. Under Niagara Mohawk's New  
9 Choices® program, the public is advised that "[y]ou can receive a guaranteed 7%  
10 discount on your gas or electric supply costs for a two-month introductory  
11 period."<sup>5</sup> After two months, the customer is switched to an ESCO price that is not  
12 known when the contract is made, and contracts may have automatic renewal  
13 windows after each year. Valid price and bill comparison information, however, is  
14 difficult to obtain before taking ESCO service, and while taking ESCO service,  
15 particularly at times when the customer has a contract option to switch back to full  
16 utility service. Despite disclaimers that ESCO service does not guarantee savings,  
17 customers faced with low, declining or static incomes, desperate for relief from  
18 high utility bills, and encouraged not only by ESCOs but also by Niagara Mohawk  
19 and the Commission, and lacking comparison information, may be optimistic  
20 when they sign agreements to take ESCO service. According to Niagara  
21 Mohawk's Response to PULP IR-101, a significant number of ESCO customers

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<sup>5</sup> [http://www.nationalgridus.com/niagaramohawk/home/energychoice/4\\_details.asp](http://www.nationalgridus.com/niagaramohawk/home/energychoice/4_details.asp)

1 switch back to Niagara Mohawk full service, currently in the range of 5,000  
2 electric customers per month and 2,000 gas customers per month, or a rate of more  
3 than 84,000 per year. A professionally designed random survey of current and  
4 former ESCO customers, conducted neutrally, might reveal more about why  
5 customers switch to ESCO service in the first instance, and why so many change  
6 their minds later. Further study could also reveal the extent to whether, despite  
7 paying significantly more for ESCO commodity service, ESCO customers, and  
8 particularly low-income ESCO customers are receiving countervailing value from  
9 ESCO contracts that promise other benefits.

10 **Q. WHAT ARE THE IMPLICATIONS IF ESCO SERVICE IS NOT SAVING LOW-**  
11 **INCOME CUSTOMERS MONEY ON THEIR UTILITY BILLS?**

12 **A.** If the Commission wants to alleviate the burdens of high utility prices on low-  
13 income Niagara Mohawk customers, and the consequent impacts, there should be  
14 less emphasis on shopping for competitive ESCO service and more emphasis on  
15 actual bill reductions through reduced rates and energy efficiency measures  
16 targeted to low-income customers, as those proposed by PULP witness Barbara R.  
17 Alexander.

18 **Q. DOES NIAGARA MOHAWK HAVE BILL CALCULATORS AT ITS WEBSITE**  
19 **TO FACILITATE PRICE COMPARISONS WITH ESCOS?**

20 **A.** No.

21 **Q. WHAT WOULD IT COST FOR NIAGARA MOHAWK TO HAVE BILL**  
22 **CALCULATORS AT ITS WEBSITE TO FACILITATE COMPARISON OF WHAT**  
23 **ITS BILLS WOULD BE WITHOUT ESCO SERVICE?**

1 A. I do not know. In response to PULP IR-108, Niagara Mohawk provided a “high  
2 side” estimate that it could cost from \$400,000 to \$800,000 to begin calculating  
3 Niagara Mohawk comparison bills. I agree that is on the high side. However, the  
4 vast majority of Niagara Mohawk’s 264,000 residential electric ESCO customers  
5 and 128,000 residential gas customers, many of whom can ill afford higher bills,  
6 are losing many millions of dollars by shifting to ESCO service. A one-time cost  
7 of developing online calculators to enable comparison of Niagara Mohawk’s bills,  
8 and the cost of maintaining them may be small in contrast to consumer losses.  
9 Also, it may be possible to fund website bill calculation functions using net profits  
10 from Niagara Mohawk’s purchase of receivables program, which generates several  
11 million dollars in added annual revenue to Niagara Mohawk.<sup>6</sup>

12 **Q. WHAT ARE YOUR RECOMMENDATIONS?**

13 A. The Commission and Niagara Mohawk have indicated in their messages to  
14 customers that shopping for ESCO service can lead to savings. The Commission  
15 also urges customers to compare prices. It is difficult to shop, however, when  
16 prices are not available at meaningful times and actual bills cannot be compared.  
17 More needs to be done to enable Niagara Mohawk customers to test whether  
18 ESCO service is providing or will provide value to them. In addition to  
19  
20 recommendations made by PULP witness Barbara R. Alexander to promote better  
21 awareness of ESCO pricing and comparisons, I recommend that Niagara Mohawk

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<sup>6</sup> See Niagara Mohawk’s Annual Report to the PSC for 2011, p. 42, indicating over \$3 million net revenue for ESCO Purchase of Receivables program. The Report does not itemize Niagara Mohawk’s revenues from purchasing gas receivables from ESCOs.

1 put a bill calculator on its website so that its full service bills could be more readily  
2 compared with those given to customers with ESCO service.

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