

November 23, 2009

VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Honorable Jaclyn A. Brillling, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 09-E-0310 – In the Matter of the American Recovery and Reinvestment Act of 2009 – Utility Filings for New York Economic Stimulus – Reconsideration of Appeal of Trade Secret Determination

Request for Extension by Niagara Mohawk Power Corporation d/b/a National Grid

Dear Secretary Brillling:

Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid” or the “Company”) seeks an extension of continued protection from public disclosure of certain information filed in the Company’s April 17, 2009 filing with the Public Service Commission (“Commission”) in the subject proceeding.

On September 10, 2009, Your Honor issued a reconsideration of appeal determination (the “Reconsideration”)¹ in response to the reconsideration request filed by Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid” or the “Company”). By letter dated August 25, 2009, the Company sought reconsideration of the Secretary’s appeal determination of August 13, 2009 which affirmed the decision of the Department of Public Service (“DPS”) Records Access Officer.² The DPS Records Access Officer determined that certain information relative to National Grid’s April 17, 2009 filing in the subject proceeding, for which National Grid was seeking trade secret protection and

¹ Case 09-E-0310 – *In the Matter of the American Recovery and Reinvestment Act of 2009 – Utility Filings for New York Economic Stimulus – Request for Reconsideration, Reconsideration of Appeal Determination* (issued September 10, 2009) (“Reconsideration”).

² Case 09-E-0310 – *In the Matter of the American Recovery and Reinvestment Act of 2009 – Utility Filings for New York Economic Stimulus – Appeal of Niagara Mohawk Power Corporation d/b/a National Grid of Denial of Protection from Public Disclosure (Trade Secret 09-04) – Determination of Appeal of Trade Secret Determination* (issued August 13, 2009).

confidential treatment under Public Officers Law (“POL”) §87(2)(d), was not so entitled.³ The information for which National Grid was seeking confidential treatment was substantially comprised of detailed cost information for specific project configurations related to both the Smart Grid Spine and the “Green Modules” (a/k/a “Clean Energy Modules”).

In the Reconsideration, Your Honor found that public disclosure of the cost information might cause substantial injury “because the entities in a position to provide needed equipment and services to National Grid would be able to use the information to establish a floor below which they would not bid.”⁴ This finding was conditioned on the fact that “contracting for equipment and services is imminent because further refinements of the costs before the process begins is unnecessary and DOE deadlines for implementation of SGIG proposals compel expeditious action.”⁵ As such, Your Honor found that economic harm to ratepayers would result from the impairment of imminent contract awards within the meaning of POL §87(2)(c). The Reconsideration excepted the information at issue “from public disclosure until the later of 60 days after DOE accepts National Grid’s SGIG proposal...or the date on which DOE completes its review of the National Grid Smart Grid Program proposal.”⁶

National Grid was informed on or about October 27, 2009 that it was not an award recipient in the DOE’s SGIG program. However, such notification does not alleviate the need for continued short-term confidential treatment of the information granted trade secret protection in the Reconsideration. The reasons for this are twofold. First, the Company remains a candidate for a possible award under DOE’s Smart Grid Demonstrations (“SGD”) program as a sub-applicant under a grant application made by Premium Power Corporation relative to the Clean Energy Modules.⁷ The application deadline closed on August 26, 2009 and notices of awards by DOE under the SGD program are anticipated to occur before year-end although DOE has not established a firm date for such awards. Should National Grid be successful as a sub-applicant in the SGD program, the contracting for equipment and services would be imminent because DOE deadlines will compel expeditious action not unlike the expectations in the SGIG program.

Second, despite not being successful in the SGIG program, National Grid is aggressively evaluating a strategy by which it could pursue its proposed New York Smart Program in some shape or fashion (e.g., scaled-down program, phased-in program, etc.) with the desire to establish a proposed revised course of action early in 2010. Moreover, should the Company be successful in the SGD program, there will be added impetus to move forward expeditiously with the Smart Grid Spine as the Clean Energy Modules are designed to take advantage of the Smart Grid services provided by the Spine. As such, there remains a need to preserve the confidentiality of the trade secret information for both the Smart Grid Spine and Green Modules components of the Smart Grid Program for an additional duration given the potential for near-term contract awards for equipment and services.

National Grid respectfully requests an extension of Your Honor’s grant of protection from public disclosure until 60 days after DOE announces that the Company is successful in the SGD proposal. Alternatively, should National Grid not be successful in the SGD program, the Company requests the same extension from public disclosure until 60 days thereafter to: (i) allow the Company a short period of

³ Case 09-E-0310 – *In the Matter of the American Recovery and Reinvestment Act of 2009 – Utility Filings for New York Economic Stimulus* – Request to Review Unredacted Version of Filings Made by Niagara Mohawk Power Corporation d/b/a National Grid (Trade Secret 09-4), Ruling of Records Access Officer (issued May 28, 2009).

⁴ See Reconsideration at 5.

⁵ *Id.*

⁶ *Id.* at 7.

⁷ National Grid had not anticipated it would seek funding under the SGD program at the time of its April 17, 2009 filing with the Commission.

time to make a determination on whether it will nonetheless pursue a modified New York Smart Program (i.e., Spine and Clean Energy Modules); and (ii) seek the requisite approval by the Commission.⁸

Five (5) copies have been included with this original to comply with the Commission's rules and regulations. Please acknowledge receipt of these materials by date-stamping as received the enclosed duplicate copy of this letter and returning it in the enclosed, self-addressed envelope provided for your convenience.

Respectfully submitted,

/s/ Catherine L. Nesser

Catherine L. Nesser

cc: Steven Blow, DPS Records Access Officer (via electronic mail)
Michael Corso, DPS (via electronic mail)
Michael Worden, DPS Staff (via electronic mail)
Patrick Piscitelli, DPS Staff (via electronic mail)
Stanley Blazewicz (via electronic mail)
Cathy Hughto-Delzer (via electronic mail)
Janet Audunson
Active Parties in Case 09-E-0310 (via electronic mail)

⁸ See Case 09-E-0310, *In the Matter of the American Recovery and Reinvestment Act of 2009 – Utility Filings for New York Economic Stimulus*, Order Authorizing Recovery of Costs Associated with Stimulus Projects (issued and effective July 27, 2009) at 62, whereby utilities that received less than a 50% grant or have agreed to a DOE request to substantially revise the scope of the project from the April 17 and July 2 filings shall resubmit their projects for Commission approval.