



TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

To: The Honorable Town Board
From: John J. Fenz, Esq.
Town Attorney
Date: February 4, 2016
Re: Settlement Agreement
National Grid

Kindly authorize the Supervisor to execute the necessary documents to enter into the above-referenced Settlement Agreement with National Grid.

Pursuant to the Agreement, National Grid will pay the Town \$6,012.07 to settle the Town's claim for amounts improperly charged for street lighting services between February 1, 2007 and November 15, 2015.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement"), entered into and effective as of the 1st day of October, 2015, by and between Niagara Mohawk Power Corporation d/b/a National Grid ("the Company") and the town of West Seneca, New York ("the Customer" and collectively with the Company, "the Parties").

WHEREAS, the Customer receives street lighting service from the Company under the Company's billing account number 15738-80100.

WHEREAS, Troy & Banks ("Consultant") as an authorized representative of the Customer, issued a complaint on behalf of the Customer ("the Complaint") on 2/1/2013 with the Company challenging the charges for street lighting services collected by the Company during the period from 2/1/2007 to present; and

WHEREAS, the Company issued its response to the Complaint on 9/2/2015 ("the Response"); and

WHEREAS, the Parties wish to resolve all claims relating to the Complaint and to the street lighting services provided by the Company to the Customer at all times prior to and through and including 9/15/2015 (collectively, "the Claims");

NOW THEREFORE, in exchange for the covenants and releases contained herein and intending to be legally bound thereby, the Parties stipulate and agree as follows:

1. The Company agrees to pay the Customer the sum of \$6,012.07, which amount shall be due and payable ten (10) days after the Customer provides to the Company proof in writing that this Agreement has been accepted and approved by the authorized representative(s) of the Customer. Should such evidence of approval by Customer's authorized representative(s) be unreasonably withheld or delayed, the Company may terminate this Agreement on ten (10) days written notice to the Customer.
2. The Customer for itself, its successors and assigns, shall and hereby does release, remise, acquit and forever discharge the Company, its successors and assigns, representatives and agents, of and from any and all manner of claims, demands, damages, debts, dues, sums, accounts, costs, obligations, proceedings, actions, causes of action, or suits, of any nature whatsoever, whether in tariff, law, equity or otherwise, which it, its successors and assigns, now have or hereafter can, shall or may have arising in any way out of, or with respect to, the Claims, or any matter related thereto, including those not yet ascertainable, if any, resulting therefrom at any time prior to and through and including 11/15/2015.

3. The Company for itself, its successors and assigns, shall and hereby does release, remise, acquit and forever discharge the Customer, its successors and assigns, representatives and agents, of and from any and all manner of claims, demands, damages, debts, dues, sums, accounts, costs, obligations, proceedings, actions, causes of action, or suits, of any nature whatsoever, whether in tariff, law, equity or otherwise, which it, its successors and assigns, now have or hereafter can, shall or may have arising in any way out of, or with respect to, the Claims, or any matter related thereto, including those not yet ascertainable, if any, resulting therefrom at any time prior to and through and including 11/15/2015.
4. The Customer further stipulates and agrees:
- (i) that New York Public Service Commission ("PSC") policies and orders require the Company to offset or "net" undercharges and overcharges occurring within a billing account for each billing period to determine whether the customer was overcharged for service during that billing period; and
 - (ii) that such netting is not prohibited by the PSC's regulations concerning backbilling; and
 - (iii) that they shall not object to the use of such netting by the Company within each billing period for individual billing accounts in determining the refunds due to the Customer, if any, in any future claim or proceeding.
5. Solely for the purpose of determining charges for street lighting service provided by the Company to the Customer on and after 11/16/2015, the Customer agrees either to (a) accept the inventory presented in the Company's Response and as reviewed by the Consultant as a true and accurate inventory of the Company's street lighting facilities in the Town of West Seneca on 11/16/2015 and to execute a new Form SL2 Service Agreement incorporating that inventory or (b) to pay the cost of contracting with an independent third party consultant, mutually accepted by all parties, to perform a new survey of all street lighting facilities billable to the Customer in the Town of West Seneca. In the event that Customer elects to hire an independent third party consultant to perform a new survey of the Company's street lighting facilities in the Town of West Seneca, the Company will reimburse Customer for one half of the cost of that survey within ten (10) days of the execution by Customer of a new Form SL2 Service Agreement incorporating that inventory, provided the survey meets the specification requirements established by the Company and the Company, at its sole discretion, finds such cost reasonable. At the Customer's option, the Customer's cost of this survey may be funded from the payment amount provided in paragraph 1 above if applicable.
6. Each of the Parties agrees to support the terms of this Agreement as a negotiated resolution of the Claims, agrees not to take a position in any proceedings before the PSC or any court relating to these matters (the "Proceedings") contrary to the agreements set forth herein, and agrees not to assist another participant in taking such a contrary position.
7. The discussions between and among the Parties that have resulted in this Agreement have been conducted with the explicit understanding, pursuant to the PSC's regulations, that all

written and oral offers, prior proposals of settlement and discussions relating thereto, as well as supporting materials, will remain confidential communications, are without prejudice to the position of any of the Parties, are not admissible into evidence in the Proceedings or any other proceedings, and will not be used in any manner in connection with the Proceedings, other proceedings, or for any other purpose other than enforcement of the provisions hereof. As such, each of the Parties agrees to maintain the confidentiality of all discussions, all offers of settlement and discussions related thereto, as well as all supporting materials.

8. Except as expressly stated herein, the making of this Agreement shall not be construed, interpreted or otherwise deemed in any respect to constitute an admission by any of the Parties regarding any allegation, contention, or issues raised in the Claims or addressed in this Agreement.

9. If a court or other adjudicative or regulatory body rules that any provision of this Agreement is invalid or unenforceable, the remaining provisions shall nevertheless continue in full force.

10. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

11. This Agreement represents the entire agreement of the Parties with respect to the matters resolved herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above by their duly authorized representatives.

Niagara Mohawk Power Corporation d/b/a National Grid

By: _____

Name (Print): Jeffrey Eddy

Title (Print): Manager Regional Account Services

Date _____

Town of West Seneca

By: _____

Name (Print): _____

Title (Print): _____

Date: _____