



**Senate Standing Committee on
Energy and Telecommunications**

Testimony of the

New York State Consumer Protection Board

Mindy A. Bockstein
Chairperson and Executive Director

To Investigate National Grid's Accounting and Expense Practices

October 19, 2010
Albany, New York



David A. Paterson
Governor

Mindy A. Bockstein
Chairperson and Executive Director

GOOD MORNING, C CHAIRMAN MAZIARZ AND MEMBERS OF THE SENATE
STANDING COMMITTEE ON ENERGY AND TELECOMMUNICATIONS.

I AM MINDY BOCKSTEIN, CHAIRPERSON AND EXECUTIVE DIRECTOR OF
THE NEW YORK STATE CONSUMER PROTECTION BOARD ("CPB"). JOINING ME
TODAY IS SAUL RIGBERG, AN ATTORNEY IN THE CPB'S UTILITY INTERVENTION
UNIT.

THANK YOU FOR THIS OPPORTUNITY TO SPEAK TO YOU REGARDING THE
DISTURBING AND SHODDY ACCOUNTING AND EXPENSE ACCOUNT PRACTICES
OF NATIONAL GRID AND ITS UPSTATE NEW YORK UTILITY AFFILIATE, NIAGARA
MOHAWK POWER CORPORATION.

FROM THE INVESTIGATIONS CONDUCTED BY THE MASSACHUSETTS
ATTORNEY GENERAL MARTHA COAKLEY AND THE NYS DEPARTMENT OF
PUBLIC SERVICE ("DPS") STAFF, WE HAVE LEARNED ABOUT A FLAWED
CORPORATE CULTURE WITHIN NATIONAL GRID AND SOME OF ITS 62 AFFILIATES
INCLUDING NIAGARA MOHAWK AND THE SERVICE COMPANIES THAT
INSUFFICIENTLY VALUES AND RESPECTS THE PEOPLE WHO PAY THE BILLS. THIS
FLAWED CULTURE SUPPORTS A PATTERN OF CONDUCT THAT ALLOWED A
VARIETY OF QUESTIONABLE EXPENSES TO BE CHARGED, OR THAT NIAGARA
MOHAWK SEEKS TO CHARGE, TO ITS RATEPAYERS. WHAT THESE EXPENSES

HAVE IN COMMON IS THAT MANY HAVE BEEN MISALLOCATED TO NIAGARA MOHAWK RATEPAYERS AS OPPOSED TO RATEPAYERS OF NATIONAL GRID'S OTHER AFFILIATES AND SEVERAL SHOULD NOT HAVE BEEN CHARGED TO ANY RATEPAYERS AT ALL.

20/20 HINDSIGHT SUGGESTS THAT IT MAY HAVE BEEN A MISTAKE TO AGREE WITH NATIONAL GRID'S REQUEST IN 2001 FOR A TEN-YEAR RATE PLAN. TEN YEARS IS MUCH TOO LONG TO GO WITHOUT A RATE CASE QUALITY AUDIT BY DPS STAFF OF A COMPANY'S POLICIES, PRACTICES AND BOOKS. WITHOUT THE REALITY CHECK OFFERED BY PARTIES IN A RATE CASE EVERY ONE TO THREE YEARS, OVER TIME SLOPPY THINKING AND DISHONORABLE HABITS BECOME ESTABLISHED BUSINESS PRACTICES FOLLOWED BY ROTE. FURTHER, THERE IS NO ACCOUNTABILITY AND TRANSPARENCY.

THE CPB CONTINUES TO PARTICIPATE ACTIVELY IN THE NIAGARA MOHAWK RATE CASE. WE HAVE PROPOSED REDUCTIONS TO THE COMPANY'S \$400 MILLION REQUESTED RATE INCREASE TOTALING APPROXIMATELY \$118 MILLION. THESE REDUCTIONS RELATE TO RATE OF RETURN (\$65 MILLION), VARIABLE PAY (\$23 MILLION), AND STORM COSTS (\$30 MILLION).

DPS STAFF STATED IN ITS INITIAL BRIEF, WHICH WAS FILED LAST WEEK, THAT THE COMPANY IS ENTITLED TO A RATE INCREASE OF APPROXIMATELY \$37

MILLION. THIS IS CONSIDERABLY LESS THAN THE COMPANY'S \$400 MILLION REQUEST. DUE TO RESOURCE CONSTRAINTS, THE CPB RELIES HEAVILY ON THE INVESTIGATIONS AND ANALYSES OF DPS STAFF TO IDENTIFY OTHER ISSUES PERTINENT TO THE INTERESTS OF RATEPAYERS. THE CPB SUPPORTS THE ADDITIONAL ADJUSTMENTS MADE BY DPS STAFF. AND BECAUSE OF THE TOUGH ECONOMIC CONDITIONS IN NIAGARA MOHAWK'S SERVICE TERRITORY, THE CPB ALSO SUPPORTS THE PROPOSAL, ORIGINALLY MADE BY THE COMPANY AND ENDORSED BY DPS STAFF, THAT REGARDLESS OF THE INCREASE IN REVENUES ALLOWED BY THE PUBLIC SERVICE COMMISSION ("PSC"), THERE SHOULD BE NO CHANGE TO THE DELIVERY RATES BILLED TO CUSTOMERS.

THIS CAN BE ACCOMPLISHED BECAUSE OF THE EXISTENCE OF NET REGULATORY DEFERRALS AND AN ACCOUNTING MECHANISM ADDRESSING STRANDED COMPETITION TRANSITION COSTS OR CTCs. THE AMORTIZATION SCHEDULE CALLS FOR ELIMINATING ALL CTC STRANDED COSTS BY THE END OF 2011, BUT IT IS POSSIBLE TO AMORTIZE ONLY THE AMOUNT OF CTC STRANDED COSTS THAT ALLOW OVERALL ELECTRIC DELIVERY RATES TO REMAIN FROZEN. THIS WOULD COST CONSUMERS A LITTLE MORE IN THE LONG RUN. BUT WITH THE ECONOMY STILL SO BAD, THE CPB AGREES WITH DPS STAFF AND THE COMPANY THAT REGULATORY DEFERRALS AND THE EXTENSION OF THE CTC

AMORTIZATION PERIOD SHOULD BE USED TO PREVENT AN INCREASE IN DELIVERY RATES IN 2011 EVEN IF THE PSC ULTIMATELY DECIDES THAT AN INCREASE IN REVENUES IS WARRANTED.

TURNING MORE SPECIFICALLY TO THE INAPPROPRIATE SERVICE COMPANY COSTS THAT ARE THE FOCUS OF THIS HEARING, I RELY ON MATERIAL IN DPS STAFF'S INITIAL BRIEF. WHILE CHARGES RELATED TO TRANSPORTING WINE COLLECTIONS AND PRIVATE SCHOOL TUITION ARE GETTING MEDIA ATTENTION AND ARE PROPERLY THE SUBJECT OF PUBLIC OPPROBRIUM, THE PROBLEM IS MORE PERVASIVE THAN THOSE EXAMPLES MAY SUGGEST. INDEED, I AGREE WITH DPS STAFF'S USE OF THE WORD "INSIDIOUS" AS AN APT SHORTHAND DESCRIPTION OF THE EXTENT OF THE PROBLEM.

FOUR DIFFERENT NATIONAL GRID SERVICE COMPANIES PROVIDE A WIDE RANGE OF SERVICES TO ITS 62 REGULATED AND UNREGULATED AFFILIATES. SERVICE COMPANY CHARGES REFLECTED IN NIAGARA MOHAWK'S PROJECTED RATE YEAR 2011 ELECTRIC OPERATIONS AND MAINTENANCE ("O&M") EXPENSE TOTAL \$316.4 MILLION, WHICH REPRESENTS NEARLY 29% OF THE ELECTRIC DEPARTMENT'S O&M BUDGET OF APPROXIMATELY \$1.1 BILLION.

PROBLEMS IDENTIFIED BY DPS STAFF INCLUDE:

- APPARENT CROSS-SUBSIDIZATION OF NATIONAL GRID'S UNREGULATED AFFILIATES BY NATIONAL GRID'S REGULATED AFFILIATES;
- APPARENT OVERCHARGING OF NIAGARA MOHAWK FOR ITS SHARE OF SOME SERVICE COMPANY COSTS;
- INCONSISTENT METHODOLOGIES AMONG SERVICE COMPANIES FOR ALLOCATING SOME OF THE SAME COSTS;
- UNEXPLAINED, AND MUCH LARGER, INCREASES IN HISTORIC TEST YEAR SERVICE COMPANY CHARGES TO NIAGARA MOHAWK OF 32.58%, COMPARED TO ALL OTHER AFFILIATES RECEIVING INCREASES IN HISTORIC TEST YEAR SERVICE COMPANY CHARGES AVERAGING 17.00%;
- SERVICE COMPANIES NOT HAVING THEIR OWN OPERATING BUDGETS SO THERE IS NO DIRECT CONTROL OVER OR SCRUTINY OF THE ACTUAL COSTS INCURRED;
- A 20.28% INCREASE IN OVERALL SERVICE COMPANY CHARGES TO ALL AFFILIATES IN THE HISTORIC TEST YEAR OVER THE PREVIOUS YEAR DESPITE THE COMPANY'S CLAIM THAT IT

REALIZED APPROXIMATELY \$70 MILLION OF SYNERGY SAVINGS RESULTING FROM THE KEYSpan MERGER AND APPROXIMATELY \$20 MILLION OF SYNERGY SAVINGS RESULTING FROM THE NARRAGANSETT MERGER IN THE HISTORIC TEST YEAR;

- NIAGARA MOHAWK APPARENTLY DOES NOT INVESTIGATE WHETHER IT COULD RECEIVE SERVICES CHEAPER FROM OUTSIDE CONTRACTORS THAN FROM THE SERVICE COMPANIES;
- NO ONE FROM NIAGARA MOHAWK IS ASSIGNED TO CHECK IF THE SERVICE COMPANY CHARGES IT RECEIVES ARE ACCURATE OR REASONABLE, OR PROPERLY ALLOCATED COMPARED TO THE CHARGES ALLOCATED TO OTHER AFFILIATES;
- NIAGARA MOHAWK CANNOT ADEQUATELY EXPLAIN WHY THE CHARGES OF ONE OF THE SERVICE COMPANIES INCREASED 75% FROM 2006 TO 2009 WHILE GENERAL INFLATION INCREASED ONLY 6%; AND,
- EMPLOYEES OF THE SERVICE COMPANIES MAY NOT BE ALLOCATING THEIR TIME PROPERLY OR USING THE PROPER BILLING POOLS (FOR INSTANCE, THE CFO OF ONE OF THE SERVICE COMPANIES USED THE WRONG BILLING POOLS FOR THREE YEARS).

THE CONCERN IS THAT SINCE MOST OF NATIONAL GRID'S UNREGULATED SUBSIDIARIES ARE SMALLER THAN THE REGULATED AFFILIATES, THE UNREGULATED AFFILIATES ARE LIKELY BEING CROSS-SUBSIDIZED BY THE REGULATED AFFILIATES. AND, SINCE NIAGARA MOHAWK IS THE LARGEST AFFILIATE, IT IS LIKELY THERE IS CROSS-SUBSIDIZING OF EVERY OTHER AFFILIATE TO SOME DEGREE.

THE PSC PROPERLY AND QUICKLY RESPONDED TO THESE REVELATIONS ON SEPTEMBER 16, 2010 BY INSTITUTING A PROCESS TO EXAMINE THESE PRACTICES AND AUDIT THESE CHARGES IN A MORE THOROUGH MANNER THAN CAN BE ACCOMPLISHED IN A RATE CASE. THE CPB APPLAUDS THE PSC FOR TAKING THIS STEP TO PROTECT CONSUMERS.

IN THE CONTEXT OF THE RATE CASE, DPS STAFF PROPOSED A \$26 MILLION ADJUSTMENT TO COVER THESE APPARENT IMPROPRIETIES. IT DERIVED ITS ADJUSTMENT BY REDUCING THE 32.58% HISTORIC TEST YEAR INCREASE INCURRED BY NIAGARA MOHAWK TO THE 20.38% AVERAGE PERCENTAGE INCREASE INCURRED BY ALL 62 COMPANIES THAT RECEIVED SERVICE COMPANY CHARGES. IN RESPONSE, THE COMPANY HAS AGREED TO REDUCE ITS REQUEST BY APPROXIMATELY \$6 MILLION. HOWEVER, IT ALSO STATED THAT THE \$26 MILLION ADJUSTMENT PROPOSED BY DPS STAFF IS ARBITRARY AND NOT

SUPPORTED BY THE RECORD. INSTEAD, THE COMPANY SUGGESTED THAT, TO ELIMINATE UNCERTAINTY, THE PSC MIGHT ESTABLISH \$10 MILLION OF THE COMPANY'S RATES ON A TEMPORARY BASIS.

THE CPB IS CONCERNED THAT \$26 MILLION, AND CERTAINLY \$10 MILLION OR EVEN \$46 MILLION, MAY BE TOO SMALL AN ADJUSTMENT. WE ARE NOT CONVINCED THAT THE METRIC USED BY DPS STAFF TO DERIVE THE ADJUSTMENT COMPLETELY ADDRESSES THE UNIVERSE OF "INSIDIOUS" PRACTICES. FURTHER, THE AUDIT MAY REVEAL MANY OTHER INAPPROPRIATE CHARGES THAT WOULD DWARF THE PROPOSED \$26 MILLION ADJUSTMENT.

WE DO NOT AGREE, HOWEVER, THAT THE PSC SHOULD SUMMARILY DENY THE RATE REQUEST BASED SOLELY ON THESE SEEMINGLY PERVASIVE DISCREDITED ACCOUNTING PRACTICES AND IN LIEU OF CAREFULLY CONSIDERING ALL OF THE RECORD EVIDENCE. SUCH A STEP MAY BACKFIRE IN THAT A COURT COULD OVERTURN THE PSC'S ADMINISTRATIVE DECISION AS NOT RATIONALLY BASED. IN ADDITION, SUMMARILY REJECTING A RATE INCREASE WITHOUT CAREFULLY CONSIDERING ALL OF THE RECORD EVIDENCE MAY HAVE UNINTENDED CONSEQUENCES SUCH AS IMPAIRING THE UTILITY'S ABILITY TO SAFELY DELIVER RELIABLE SERVICE BY DENYING IT THE REVENUE TO MAINTAIN ITS INFRASTRUCTURE OR INCREASING COSTS TO CONSUMERS BY

MAKING IT MORE DIFFICULT FOR THE UTILITY TO BORROW MONEY AT REASONABLE INTEREST RATES.

WE BELIEVE IT IS A BETTER PRACTICE TO CONSIDER THIS RATE REQUEST ON THE MERITS, DESPITE THE APPARENT WIDESPREAD ACCOUNTING DEFICIENCIES, AS THE PSC'S TOOLBOX CONTAINS TECHNIQUES THAT CAN PROTECT NIAGARA MOHAWK'S CUSTOMERS. IN THIS CASE, THE CPB URGES THE PSC TO USE A MECHANISM THAT WOULD ALLOW THE REFUNDING OF MONEY TO RATEPAYERS BASED ON THE RESULTS OF THE AUDIT. THERE ARE SEVERAL MECHANISMS TO CHOOSE FROM, EACH WITH PROS AND CONS. EXAMPLES ARE SETTING RATES ON A TEMPORARY BASIS AS WAS DONE IN A RECENT ORANGE AND ROCKLAND PROCEEDING, OR ESTABLISHING A SPECIAL RATE ADJUSTMENT CLAUSE, AS THE COMMISSION DID IN THE CASE OF CONSOLIDATED EDISON'S DISPUTED CAPITAL EXPENDITURES. WHATEVER MECHANISM THE PSC ULTIMATELY CHOOSES, THE AMOUNT OF MONEY DESIGNATED MUST BE SUFFICIENTLY LARGE TO PROTECT RATEPAYERS IN THE EVENT THAT THE AUDIT UNCOVERS A MUCH LARGER AMOUNT OF IMPROPER ALLOCATIONS THAN EITHER THE COMPANY OR DPS STAFF PRESENTLY CONTEMPLATES. WE PREFER A FIGURE THAT IS BASED ON A PERCENTAGE, SAY 20%, OF THE PROJECTED \$316.4 MILLION RATE YEAR 2011 O&M CHARGED BY THE SERVICE COMPANIES.

ONCE AGAIN, THE CPB APPRECIATES THE OPPORTUNITY TO PRESENT ITS
VIEWS ON THIS ISSUE AND TO COLLABORATE WITH THE STATE SENATE AND
THE CHAIR AND MEMBERS OF THE STANDING COMMITTEE ON ENERGY AND
TELECOMMUNICATIONS. I WELCOME ANY QUESTIONS YOU MAY HAVE.