

**POWER FOR ECONOMIC PROSPERITY'S COMMENTS ON THE
PROPOSED RULEMAKING OF THE POWER AUTHORITY OF THE
STATE OF NEW YORK I.D. NO. PAS-24-12-00013-P**

Preliminary Statement

In accordance with the Notice of Proposed Rulemaking published in the New York State Register on June 12, 2013, the Power for Economic Prosperity (“PEP”) group hereby files its comments requesting modifications to the proposed amendments to the tariff WNY-1. PEP is a coalition of manufacturing companies that purchase Replacement Power (“RP”) and Expansion Power (“EP”) pursuant to certain agreements and WNY-1. As set forth below, PEP urges the Power Authority to revise its proposed amendments to the tariff to: (1) include a reference to the Customer’s agreements with the Authority and the Customer’s agreements with the local electric utility in the provisions relating to “Load Split Methodology;” and (2) remove the reference to “liquidated damages” in the provisions relating to the payment of bills.

Load Split Methodology

The proposed tariff amendments include a definition of the term “Load Split Methodology” or “LSM” which states that the load split methodology applicable to a Customer’s allocation “...is usually provided for in an agreement between the Authority and the Customer’s local electric utility or such utility’s tariff regarding the delivery of WNY Firm Power.” (WNY- 1, Section II J). This definition is incomplete because the LSM is also provided for in agreements between the Customer and the Authority and three way agreements executed by the Customer, the Authority and the local electric utility. For National Grid customers, the LSM is provided for in the “Agreement Regarding Treatment of Allocations of New York Power Authority Expansion Power and Replacement Power Beginning January 1, 2012 and Thereafter” which was executed by the Authority, National Grid, PEP, and Multiple Intervenors. Consequently, in order to ensure that the definition is accurate, PEP proposes that the definition reference agreements

between the Customer and the Authority and the Customer and the local electric utility.

PEP recommends that the definition be revised to state that the LSM “is usually provided for in an agreement between the Authority and the Customer’s local electric utility, an Agreement between the Authority and the Customer, or an Agreement between the Authority, the Customer and the Customer’s local electric utility, or such utility’s tariff...” This clarification should track through to other sections of the proposed tariff in which there is a reference to the agreements as they pertain to the term LSM.

Liquidated Damages

Section IV G pertains to the rendition and payment of bills. Subsection 3 provides that interest charges resulting from the late payment of bills will “be added thereto [to the amount due] as liquidated damages, and thereafter, as further liquidated damages...” The use of the term “liquidated damages” is inappropriate in a tariff and should be deleted. This is a legal term referencing monetary compensation that is awarded by a court judgment or by a contract stipulation. The interest provision in the tariff is a penalty and should not be denominated as liquidated damages. The references to liquidated damages should be deleted from the tariff.

Conclusion

For the reasons stated above, PEP’s proposed amendments to WNY-1 should be incorporated into the final tariff.

Respectfully,

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On behalf of Power for Economic Prosperity

