

PSC NO: 220 ELECTRICITY  
NIAGARA MOHAWK POWER CORPORATION  
INITIAL EFFECTIVE DATE: APRIL 27, 2009

LEAF: 216  
REVISION: 0  
SUPERSEDING REVISION:

#### GENERAL INFORMATION

#### 39. RETAIL ACCESS PROGRAM (Continued)

##### 39.17 INDEMNIFICATION

39.17.1 An ESCo/Direct Customer, to the fullest extent of the law, shall indemnify, defend, and save harmless the Company from and against any loss, damage, liability, cost, suit, charge, expense (including attorneys' fees), claim, investigation, proceeding, or cause of action, which may at any time be imposed on, incurred by, or asserted against the Company and in any way relates to or is claimed to relate to or arise out of any damage or injury to property (including real property, personal property, and environmental damages), persons (including injuries resulting in death), or any economic losses, by or to third parties (including customers), that are directly or indirectly caused by or arise out of or are in any way connected with the ESCo/Direct Customer's acts or omissions (including the ESCo/Direct Customer's performance or non-performance of its agreements with customers).

##### 39.18 SPECIAL PROVISIONS

39.18.1 The ESCo/Direct Customer shall be responsible for all losses determined by the Company based on the actual subzone loads from the NYISO and shall settle directly with the NYISO.

39.18.1.1 Losses reported to the NYISO shall include losses on the Company's underlying delivery systems not included in the NYISO Tariff. The Company losses to be allocated through the NYISO settlement process include the following efficiency factors:

#### LOCAL TRANSMISSION EFFICIENCY FACTORS

- 1.0267 Underlying Transmission, compounded by 1.02562 for delivery at Subtransmission.
- 1.0267 Underlying Transmission, compounded by 1.04162 for delivery at Primary.
- 1.0267 Underlying Transmission, compounded by 1.06336 for delivery at Secondary.

39.18.1.2 In addition to the adjustment under Section 39.18.1.1, the remaining unaccounted for energy will be allocated to all LSEs as follows:

#### AVERAGE UNACCOUNTED FOR ENERGY FACTOR

The Company will calculate an Average Unaccounted for Energy Factor defined as the quantity of unaccounted energy, equal to the sum of remaining unaccounted for energy in all six of the Company's subzones, calculated for the four most recent months reported to the NYISO for NYISO billing and settlement purposes, divided by the sum of all the LSE load requirements for all six of the Company's subzones for the same four month period. An Average Unaccounted for Energy Factor will be updated each month.

The Company will report each ESCo load requirement to the NYISO for NYISO billing and settlement purposes as the ESCo retail load times the Local Transmission Efficiency Factors times one (1) plus the Average Unaccounted for Energy Factor.

Issued by Thomas B. King, President, Syracuse, NY