

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

LEAF: 217  
REVISION: 0  
SUPERSEDING REVISION:

## GENERAL INFORMATION

### 39. RETAIL ACCESS PROGRAM (Continued)

#### 39.18 SPECIAL PROVISIONS (Continued)

39.18.2 ESCos will be prohibited from the aggregation of customer loads participating in the Retail Access Program, inclusive of transmission and distribution, CTC, and customer charges, based on customers' coincident demands.

39.18.2.1 The above Rule 39.18.2 does not apply to or prohibit the aggregation of electricity for customers eligible for the Retail Access Program.

39.18.3 In the event that any portion of the service provided hereunder is subject to the jurisdiction of the FERC, such portion shall be performed in accordance with the NYISO Tariff as the same may be modified or superseded from time to time.

39.18.4 Subject to the jurisdiction of the PSC or the FERC, an ESCo/Direct Customer's participation in the Retail Access Program shall constitute the ESCo/Direct Customer's consent to the personal jurisdiction of courts in the State of New York in any litigation or proceeding concerning any matters related to that ESCo/Direct Customer's participation in the Retail Access Program.

#### 39.19 Special Rule For Delivery of NYPA Power by Mutual Agreement

The Company may deliver NYPA Power for which no other delivery rate is established in this Tariff directly to a customer under the provisions of Rule 39 where the Company, NYPA, and the customer mutually agree, provided that the conditions set forth in Rules 39.19.1 are met.

##### 39.19.1 Conditions for Service

NYPA and the customer execute a written agreement for the purchase and sale of such power and a copy of the agreement is provided to the Company. In the case where the customer is a tenant, the customer's landlord may execute the purchase and sale agreement for supply to the customer-tenant; and

The customer (or customer's landlord) and NYPA execute a written service agreement with the Company for delivery of such power, agreeing that all of the delivery rates and other charges that the customer would otherwise pay if the customer were taking equivalent service from an ESCO pursuant to Rule 39, including without limitation distribution, transmission, loss allowances, CTC and all applicable surcharges, will be applicable to the delivery.

##### 39.19.2 Terms of the Service Agreement

The service agreement provided for in Rule 39.19.1 may provide for the payment of the Company's rates and charges by either the customer, the customer's landlord, or by NYPA. The service agreement also may establish alternate billing and metering arrangements for such deliveries. Except for those non-rate related provisions of Rule 39 that the service agreement specifies will not apply, service shall be provided in accordance with the terms and conditions specified in Rule 39.

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