

PSC NO: 219 GAS
NIAGARA MOHAWK POWER CORPORATION
INITIAL EFFECTIVE DATE: 08/01/03

LEAF: 213
REVISION: 0
SUPERSEDING REVISION:

**SERVICE CLASSIFICATION NO. 11
LOAD AGGREGATION (CONTINUED)**

LIMITATION OF LIABILITY: (continued)

4. Any suspension or termination of a Marketer/Direct Customer shall be without any liability to the Company.
5. The Company's total cumulative liability to a Marketer/Direct Customer or a customer whether arising out of Tariff, contract, tort (including negligence and strict liability) or otherwise, shall be limited to direct damages.
6. In no event shall the Company be liable to a customer or a Marketer/Direct Customer, whether in contract, tort (including negligence and strict liability), or otherwise, for any and all special, indirect, penal, punitive, or consequential damage of any kind, including, but not limited to, loss of use of equipment or facilities, lost profits or revenues, expenses involving cost of capital, cost of repair or cleanup, additional costs involved in construction or operation of facilities, or claims of customers or suppliers. The provisions of the Service Classification shall survive the customer's and the Marketer/Direct Customer's participation in the Supplier Select Program.

INDEMNIFICATION:

1. A Marketer/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 attorney's 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 Marketer/Direct Customer's acts or omissions (including the Marketer/Direct Customer's performance or non-performance of its agreements with customers).

SPECIAL PROVISIONS:

1. The Company reserves all of its rights and remedies in connection with customers who are delinquent in sums owed to the Company for Company charges or who have otherwise failed to comply with their obligations under the Tariff. The Company agrees to provide the Marketer with notice of the Company's disconnection of any customer for non-payment or for other violations of the Tariff on the day after the Company effectuates disconnection. The Company shall have no liability whatsoever to the Marketer, or to any third party who is a supplier or other contracting party with Marketer, for any loss of revenue or any other losses or damages resulting from any other losses or damages resulting from the Company's disconnection of any customer. The Company will continue to comply with all the provisions of HEFPA as applicable for any service termination.

Issued By: William F. Edwards, President, Syracuse, New York