COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 5, 2013

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Niagara Mohawk Power Corporation d/b/a National Grid v. Town of Cheektowaga, Town of Cheektowaga Assessor or Board of Assessors, County of Erie, State of New York*
Document Received:	Verified Petition
Name of Claimant:	Niagara Mohawk d/b/a National Grid
Claimant's attorney:	Mark D. Lansing Hiscock & Barclay LLP 80 State Street Albany, New York 12207

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

MAS:dld

Enclosure

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

In the Matter of the Application of

NIAGARA MOHAWK POWER CORPORATION, d/b/a NATIONAL GRID,

Petitioner,

For a judgment pursuant to Article 78 and 3001 of the Civil Practice Law and Rules, and Real Property Tax Law Article 7 annulling sewer district taxes (2013-14)

-against-

TOWN OF CHEEKTOWAGA, TOWN OF CHEEKTOWAGA ASSESSOR OR BOARD OF ASSESSORS, COUNTY OF ERIE, STATE OF NEW YORK,

Respondents.

NOTICE OF PETITION

Index No. 800937/2013
Date Filed: July 15, 2013

Hon. Timothy J. Walker

HISCOCK & BARCLAY, LLP

PLEASE TAKE NOTICE that upon the annexed duly verified petition of Niagara Mohawk Power Corporation, d/b/a National Grid, application will be made at an All Purpose Term of the Supreme Court of the State of New York, to be held in and for the County of Erie, before the Honorable Timothy J. Walker at 25 Delaware Avenue, Buffalo, New York, Part 22, on the 30th day of September 2013, at 9:30 a.m., or as soon thereafter as counsel can be heard, for review, nullification and/or a declaratory judgment, pursuant to Articles 78 and Section 3001 of the Civil Practice Law and Rules of the State of New York, and Real Property Tax Law Article 7, regarding the levying of taxes by sewer districts of Respondents with respect to real property set forth on the 2013 final assessment rolls, as set forth in the annexed verified petition, together with the costs and disbursements of this proceeding.

PLEASE TAKE FURTHER NOTICE that Respondents are required to serve a verified answer upon Petitioner's attorneys at least five days prior to the return date of this matter.

DATED: July 15, 2013

HISCOCK & BARCLAY, LLP

By: _____
Mark D. Lansing
Attorneys for Petitioner
Niagara Mohawk Power Corporation,
d/b/a National Grid
80 State Street
Albany, New York 12207-2830
Telephone (518) 429-4200

TO: Town Clerk -- Town of Cheektowaga
3301 Broadway, Room 101
Cheektowaga, New York 14227

Superintendent
Cheektowaga Central School District
3600 Union Road
Cheektowaga, New York 14225

Superintendent
Cheektowaga-Sloan Union Free School District
166 Halstead Avenue
Sloan, New York 14212

Superintendent
Cheektowaga-Maryvale UFSD
1050 Maryvale Drive
Cheektowaga, New York 14225

Superintendent
Depew Union Free School District
5201 S. Transit Road
Depew, New York 14043

Superintendent
Lancaster Central School District
177 Central Avenue
Lancaster, New York 14086

HISCOCK & BARCLAY, LLP

Superintendent
West Seneca Central School District
1397 Orchard Park Road
West Seneca, New York 14224

Clerk of the Village of Depew
85 Manitou Street
Depew, New York 14043

Clerk of the Village of Sloan
425 Reiman Street
Sloan, New York 14212-2257

Erie County Comptroller's Office
Edward A. Rath County Office Building
95 Franklin Street, Room 1101
Buffalo, New York 14202

HISCOCK & BARCLAY, LLP

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

In the Matter of the Application of

NIAGARA MOHAWK POWER CORPORATION, d/b/a NATIONAL GRID,

Petitioner,

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PETITION

Index No. 800937/2013
Date Filed: July 15, 2013

Hon. Timothy J. Walker

HISCOCK & BARCLAY, LLP

Petitioner, Niagara Mohawk Power Corporation, d/b/a National Grid, by and through its attorneys, Hiscock Barclay, LLP for its petition, alleges:

PURPOSE OF PETITION

1. The purpose of this petition is to seek judicial review, nullification, determination and/or declaratory judgment that Respondents' actions of levying and collecting sewer district taxes with respect to Petitioner's transmission and distribution real property were arbitrary and capricious, in violation of Petitioner's constitutional (federal and state) rights, and an abuse of discretion. In addition, Respondents acted without authority (statutory or Constitution), and therefore, their actions should be deemed null and void. Also, Petitioner seeks a determination that its electric transmission and distribution real properties

(facilities) located in the existing sewer district(s) cannot be subject to any sewer district tax levies, as said transmission and distribution facilities receive no benefit from any sewer district(s).

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to Civil Practice Law and Rules ("CPLR") Article 78 and Section 3001, and Real Property Tax Law Article 7. Venue is proper pursuant to CPLR § 7804, CPLR §§ 504 and 506.

PARTIES

3. Petitioner is a domestic corporation, which maintains its principal offices at 300 Erie Boulevard West, Syracuse, New York.

4. Respondent Town of Cheektowaga was and is a municipal corporation located in the County of Niagara and an assessing unit in the State of New York.

5. Respondent Town of Cheektowaga, through its Assessor, was and is charged by law with the function and duty of assessing all real property situated in the Town and with preparing the Town's assessment roll, which is the basis of levying special district taxes.

COMMON ALLEGATIONS AND FACTS

6. Petitioner is a property owner and taxpayer in the Town of Cheektowaga and an aggrieved party with respect to its assessment.

7. Petitioner is the owner of real property in the Town of Cheektowaga described on the assessment roll of the Town ("Subject Property"), as follows:

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Tax ID #
103.14-2-20./A
113.08-1-1.1./A
630.089-9999-132.350/100L
630.089-9999-132.350/100O
630.089-9999-132.350/100K
630.089-9999-132.350/101K
630.089-9999-132.350/101L
630.089-9999-132.350/101O
630.089-9999-132.350/102K
630.089-9999-132.350/102L
630.089-9999-132.350/102O
630.089-9999-132.350/103L
630.089-9999-132.350/104K
630.089-9999-132.350/104L
630.089-9999-132.350/104O
630.089-9999-132.350/105L
630.089-9999-132.350/105Z
630.089-9999-132.350/106K
630.089-9999-132.350/107K
630.089-9999-132.350/108L
630.089-9999-132.350/109K
630.089-9999-132.350/110K
630.089-9999-132.350/111K
630.089-9999-132.350/112K
630.089-9999-132.350/113K
630.089-9999-132.350/114K
630.089-9999-132.350/115K
630.089-9999-132.350/116K
630.089-9999-132.350/117K
630.089-9999-132.350/117L
630.089-9999-132.350/118L
630.089-9999-132.350/119L
630.089-9999-132.350/120L
630.089-9999-132.350/120O
630.089-9999-132.350/121O
630.089-9999-132.350/122O
630.089-9999-132.350/122Z
630.089-9999-132.350/123O

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630.089-9999-132.350/123Z
630.089-9999-132.350/188K
630.089-9999-132.350/188L
630.089-9999-132.350/188N
630.089-9999-132.350/188O
630.089-9999-132.350/188S
630.089-9999-132.350/188Z
630.003-9999-132.350/100K
630.003-9999-132.350/100N
630.003-9999-132.350/101N
630.003-9999-132.350/102K
630.003-9999-132.350/106K
630.003-9999-132.350/106N
630.003-9999-132.350/109K
630.003-9999-132.350/112N
630.003-9999-132.350/122Z
630.003-9999-132.350/123Z
630.003-9999-132.350/188N
630.001-9999-132.350/120O
630.001-9999-132.350/121O
630.001-9999-132.350/122O
630.001-9999-132.350/188O

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8. On or before May 28, 2013, Petitioner timely filed with Respondents, a written and verified statement of complaint(s), incorporated herein by reference, in which it objected to and applied for the correction and reduction of said assessment(s) upon the same grounds as those hereinafter stated.

9. The Subject Property challenged in this Article 78 proceeding are electric transmission and distribution facilities only and do not include any other type of property (*e.g.*, service centers).

10. The Subject Property does not use or benefit from the sewer districts taxes levied against Petitioner's real properties in 2013 by the Town of Cheektowaga.

11. The Subject Property is not a benefited property, as defined by Real Property Tax Law ("RPTL") §102(14 and/or 15), relative to the sewer districts.

AS AND FOR A FIRST CAUSE OF ACTION

PETITIONER'S PROPERTY IS NOT BENEFITED, AND THEREBY, CANNOT BE ASSESSED SPECIAL SEWER DISTRICT TAXES

12. Petitioner hereby incorporates the allegations set forth in Paragraphs 1 through 10 above as if the same were fully set forth and realleged herein.

13. The Subject Property is electric transmission and distribution real property that does not benefit from the sewer districts taxes imposed against it.

14. The Subject Property inherently does not generate waste products that would use or that would otherwise have use of the Town's sewer district, and thereby, does not benefit from the taxation levied by said sewer district against Petitioner's real property, as required by Real Property Law §102(14 and/or 15).

15. Respondents are wholly without authority to levy sewer district taxes against the Subject Property. As a result, Petitioner is, and has been, and/or will be injured by Respondents' actions and the resulting unequal, unconstitutional and illegal levy placed on its real property situated in the Town of Cheektowaga.

16. Petitioner is aggrieved and injured by said unjust, unequal, excessive, unconstitutional, and illegal determination of Respondents and the corresponding unjust, unequal, excessive, unconstitutional, illegal levy, and was required to pay a greater amount of tax than Petitioner would be required to pay if the sewer district taxes had not been levied.

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AS AND FOR A SECOND CAUSE OF ACTION

RESPONDENTS VIOLATED PETITIONER'S EQUAL PROTECTION RIGHTS

17. Petitioner hereby incorporates the allegations set forth in Paragraphs 1 through 15 above as if the same were fully set forth and realleged herein.

18. Respondents' actions in imposing said sewer district taxes against the Subject Property were unconstitutional, illegal, and discriminatory in that such actions were inconsistent with the failure to impose said tax against all other similarly situated property owners on the same tax roll for the same assessing unit by the same officers for the same year and, therefore, Respondents' actions are in violation of the laws of the State of New York, § 11 of Article I of the Constitution of the State of New York, and the Fourteenth Amendment to the Constitution of the United States.

19. The intentional and deliberate failure of Respondents to impose said sewer district taxes on all other similarly situated property owners or with respect to all other property of other property owners on the same tax roll for the same assessing unit by the same officers for the same year, constitutes a violation of Petitioner's equal protection rights under the Constitution of the State of New York and the Constitution of the United States.

20. Petitioner is, and has been, and/or will be injured by Respondents' actions and the resulting unconstitutional and illegal levy made against the Subject Property situated in the Town of Cheektowaga. Petitioner is aggrieved and injured by said unjust, unequal, excessive, unconstitutional, and illegal determination of Respondents and the corresponding unjust, unequal, excessive, unconstitutional, and illegal levy, and was required to pay a greater amount of tax than Petitioner would be required to pay had the sewer district taxes not been imposed.

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AS AND FOR A THIRD CAUSE OF ACTION

RESPONDENTS' ACTIONS CONSTITUTE OR WILL CONSTITUTE AN UNCONSTITUTIONAL TAKING

21. Petitioner repeats, reiterates and realleges each and every allegation of those paragraphs of the complaint hereinabove designated 1 through 19 inclusive with the same force and effect as if set forth herein at length.

22. Petitioner further claims that the aforesaid adopted sewer district tax is illegal and void in that it does and will result in confiscation of Petitioner's property, does and will result in denying to Petitioner the equal protection of the laws, does and will deprive Petitioner of its property without due process of law, and does and will result in the taking of Petitioner's property for public use without rendering just compensation and, therefore, is in violation of the laws of the State of New York, and of Sections 6 and 11 of Article I of the Constitution of the State of New York, and of the Fifth and Fourteenth Amendments to the Constitution of the United States.

23. Respondents' determination and implementation of the said sewer district taxes has and will violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, of Section 11 of Article I of the Constitution of the State of New York.

24. Petitioner is aggrieved, is and will be injured by said adoption and implementation of said sewer district taxes, as Petitioner has paid taxes it was legally, statutorily and constitutionally not required to pay.

25. No other application has been made to this or any other Court for the relief requested herein.

WHEREFORE, Petitioner respectfully requests the following relief:

1. That the determination of Respondents to designate Petitioner's parcels as being benefited and to assess or levy sewer districts taxes against Petitioner's electric distribution and transmission

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facilities, the Subject Property herein, be declared null and avoid, as violative of RPTL §102(14), on the basis that the Subject Property is not benefited by said sewer districts taxes;

2. That the Court determine the illegality and unconstitutionality of Respondents' actions and, thereby, the corresponding illegal levying of said sewer special district taxes against the Subject Property;

3. That a declaratory judgment be entered declaring Respondents' action of designating Petitioner's parcels as being benefited and to assess or levy sewer district taxes against the Subject Property was illegal, and/or in violation of the Constitution of the United States, and therefore, null and void;

4. That Respondents be ordered to refund all sewer district taxes levied against the subject real property pursuant to Real Property Tax Law §726; and

5. That Petitioner have such other relief as the Court deems appropriate, including the costs and disbursements of this proceeding, and attorney fees.

DATED: July 15, 2013

HISCOCK & BARCLAY, LLP

By: _____
Mark D. Lansing
Attorneys for Petitioner
Niagara Mohawk Power Corporation,
d/b/a National Grid
80 State Street
Albany, New York 12207-2830
Telephone (518) 429-4200
FAX SERVICE NOT ACCEPTED

HISCOCK & BARCLAY, LLP

VERIFICATION

STATE OF MASSACHUSETTS
SS:
COUNTY OF MIDDLESEX

Paula M. Leaverton, being duly sworn, deposes and says:

1. That as the Manager of Property Tax, I am duly authorized and designated representative of Niagara Mohawk Power Corporation, d/b/a National Grid, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and the Petitioner in the foregoing proceeding;

2. That I have read the foregoing petition and know the contents thereof; and

3. That the same are true to the knowledge of the deponent, except as to the matters therein stated to be alleged upon information and belief, and to those matters I believe them to be true.

Paula M. Leaverton
Manager – Property Tax

Subscribed and sworn to before
me this 11 day of July, 2013.

Notary Public

CHRIS PARELLA
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
November 19, 2015

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