

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

STATE OF NEW YORK *ex rel.*
PARK RELATOR LLC,

Plaintiff,

-against-

NATIONAL GRID USA,

Defendant.

Index No. 103893/2012

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (“Agreement”) is entered into among the State of New York (the “State”), National Grid Electric Services LLC, sued in this action as National Grid USA¹ (“Defendant” or “National Grid”), and relator Park Relator LLC (the “Relator”), through their authorized representatives. The above-named parties are hereinafter collectively referred to as “the Parties.”

PREAMBLE

WHEREAS, on or about September 28, 2012, Relator filed a *qui tam* action (the “Action”) captioned *State of New York ex rel. Park Relator LLC v. National Grid USA*, pursuant to the New York False Claims Act, N.Y. State Finance Law §§ 187–194 (“NYFCA”), alleging that Defendant knowingly made, used, or caused to be made or used, false statements and records that were material to Defendant’s obligation to pay or transmit money to the Long Island Power Authority; and

¹ The parties agree that National Grid Electric Services LLC is the correct party in this action.

WHEREAS, the Office of the Attorney General thereafter commenced an investigation in connection with the allegations of the Relator's complaint; and

WHEREAS, as a result of that investigation, the State contends that it has a civil claim against Defendant under the NYFCA; and

WHEREAS, Defendant has agreed to this Agreement in settlement of the violations alleged below and to avoid the time, expense, and distraction of litigation, and the Office of the Attorney General has agreed to accept the terms of the Agreement and discontinue its investigation in connection with the allegations of the Complaint in the Action; and

WHEREAS, this Agreement is made in compromise of disputed claims and is neither an admission of liability by Defendant nor a concession by the State that the alleged NYFCA claim is not well founded; and

WHEREAS, Relator claims entitlement under N.Y. State Finance Law § 190(6) to a share of the proceeds of this Agreement and to Relator's reasonable expenses, attorney's fees and costs.

NOW THEREFORE, in consideration of the mutual promises and obligations of the Agreement, the Parties agree fully and finally to settle this Action pursuant to the Terms and Conditions below:

BACKGROUND

1. National Grid Electrical Services LLC is a limited liability company with its principal place of business in Hicksville, New York.
2. The Long Island Power Authority ("LIPA") is the instrumentality of New York State that owns the electricity transmission and distribution system on Long Island. LIPA provides electricity to 1.1 million customers in Nassau County, Suffolk County, and the Rockaway Peninsula of Queens.

3. During the period from October 2007 to December 31, 2013, National Grid managed and operated LIPA's electricity transmission and distribution system pursuant to a Management Services Agreement (the "MSA").

4. Among other things, at all relevant times the MSA defined a "customer" simply as any "person to whom that party provides products or services." And at all relevant times the MSA required National Grid to "render bills to all ... customers in the name of LIPA for electric service delivered on behalf of LIPA," to use "best efforts to collect on a timely basis ... all amounts due to LIPA for service provided to customers," and to immediately pay all collected amounts into LIPA's account.

5. "Advanced consumption" occurs when a meter reflects that electricity is being used but there is no party of record to bill. For example, advanced consumption can occur when a residential tenant moves out of an apartment building, the meter is not turned off, and a new tenant moves into the apartment and begins using the electricity without establishing a new account. Advanced consumption is a common occurrence in the utility industry.

6. Beginning in April 2008, and continuing through August 2012, National Grid knowingly provided to LIPA monthly reports and other statements, many of which falsely stated the number of advanced consumption accounts and the number of advanced consumption accounts that remained unresolved.

7. For example, National Grid reported to LIPA that at the end of July 2009 there were 436 advanced consumption accounts that had not yet been resolved. But a July 29, 2009 snapshot of National Grid's internal advance consumption database revealed that there were at least 1,347 unresolved advance consumption accounts.

8. Similarly, National Grid reported to LIPA in early 2012 that “All accounts were completed in the month of February. It is anticipated all accounts will also be resolved in March.” But a June 8, 2012 snapshot of National Grid’s internal advanced consumption database revealed that there were at least 3,639 unresolved advance consumption accounts.

9. National Grid employees knew, within the meaning of the NYFCA, that National Grid’s reporting presented an inaccurate picture to LIPA. For example, on June 7, 2012 a National Grid manager who was responsible for generating the reports to LIPA on advance consumption admitted to other National Grid employees that although National Grid was “reporting on a monthly basis that we are completing” certain advance consumption accounts, those accounts were “not complete from LIPA’s perspective, because [they are] still advancing.” The National Grid manager repeatedly conceded that National Grid’s reports to LIPA regarding advance consumption were “not true.”

10. And on August 21, 2012, when National Grid made a presentation to LIPA specifically regarding advanced consumption, National Grid did not fully disclose the number of unresolved advanced consumption accounts. Although National Grid told LIPA that there were 2,000 unresolved advanced consumption accounts (significantly more than National Grid had previously reported to LIPA), National Grid did not disclose that at that time there were more than 1,900 additional unresolved accounts in National Grid’s internal advanced consumption database that National Grid had not yet reviewed.

11. Because National Grid actually knew, recklessly disregarded, or was deliberately ignorant of the fact that many of its reports and statements to LIPA regarding the number of advanced consumption accounts during the period from April 2008 through August 2012 were false, and because those false reports and false statements were material to National Grid’s

obligation under the MSA to pay LIPA the amounts it billed and collected for electric services delivered on behalf of LIPA, National Grid violated the New York False Claims Act, N.Y. State Finance Law §§ 187–194.

12. The conduct described in the foregoing Paragraphs 5 through 11 is hereinafter referred to as the “Covered Conduct.”

TERMS AND CONDITIONS

Settlement Amount

13. Defendant will pay the sum of six million dollars (\$6,000,000) (the “Settlement Amount”) to resolve the Action and the Covered Conduct. This amount represents the damages and penalties being recovered by the State, the Relator’s share, *i.e.*, the share to which the Relator is entitled under New York State Finance Law § 190(6), and the State’s attorney’s fees and costs.

14. The Settlement Amount is divided into two portions: a portion paid to the State (“State’s Share”), and a portion paid to the Relator (“Relator’s Share”). The Relator’s Share is the portion to which the Relator is entitled under New York State Finance Law § 190(6).

15. Within seven (7) calendar days of the Effective Date (defined below) of this Agreement, Defendant agrees to pay the State’s Share in the sum of four million five hundred ninety thousand dollars (\$4,590,000). Such payment will be made by wire transfer pursuant to instructions provided by the Office of the Attorney General. In addition, within seven (7) calendar days of this Agreement, the Defendant agrees to pay the Relator’s Share of the Settlement Amount in the sum of one million four hundred ten thousand dollars (\$1,410,000). Such payment shall be made through electronic transfer to an attorney trust account, pursuant to written instructions provided by Relator’s counsel.

16. Defendant agrees that it will not claim, assert, or apply for a tax deduction or tax credit on any New York State or New York City tax return for any portion of the amounts paid to the State and/or the Relator pursuant to this Agreement.

17. In consideration of the obligations of Defendant as set forth in this Agreement, within twenty (20) days after the full payment by Defendant of the Settlement Amount, Relator and the State, shall file, pursuant to CPLR 3217(a), a Notice of Discontinuance of the Action, subject to the exceptions set forth in this Agreement. Such dismissal shall, however, expressly preserve the Court's jurisdiction over Defendant's obligation to pay reasonable attorney's fees, expenses and costs to Relator pursuant to N.Y. State Finance Law § 190.

Releases

18. Subject to the exceptions in the next Paragraph, in consideration of the obligations of Defendant set forth in this Agreement, conditioned upon the full payment by Defendant of the Settlement Amount and subject to Paragraph 25 herein (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this Agreement or any payment to the State under the Agreement, whichever is later), the State releases Defendant from any civil or administrative monetary claim the State has or may have for the Covered Conduct under the New York False Claims Act, N.Y. State Finance Law §§ 187–194.

19. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- a. any civil, criminal, or administrative liability arising under state or municipal tax laws;
- b. any criminal liability;
- c. any civil liability that Defendant has or may have under any state statute, regulation, or rule not covered by this Agreement;

- d. any liability to the State (or its agencies) for any conduct other than the Covered Conduct;
- e. any liability based upon such obligations as are created by this Agreement;
- f. any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. any liability for personal injury or property damage arising from the Covered Conduct;
- h. any liability for failure to deliver goods or services due; and
- i. any civil or administrative liability of individuals, except as provided for herein.

20. In consideration of the obligations of Defendant in this Agreement, conditioned upon the full payment by Defendant of the Settlement Amount, Relator, for itself, and for its owners, members, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, releases Defendant and its parent, subsidiary and affiliated entities, officers, employees, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns from any civil monetary claim Relator has on behalf of the State or any local governments within the State for the Covered Conduct under the New York False Claims Act, N.Y. State Finance Law §§ 187–194; provided, however, that nothing in this Agreement shall preclude Relator from seeking to recover its expenses or attorney’s fees and costs from Defendant, pursuant to N.Y. State Finance Law § 190.

21. Defendant, for itself and for its parent, subsidiary and affiliated entities, officers, employees, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally releases the State, its agencies, officers, employees, servants, attorneys, and agents from any claims (including claims for attorney’s fees, costs, and expenses of

every kind and however denominated) that Defendant has asserted, could have asserted, or may assert in the future against the State, its agencies, officers, employees, servants, attorneys, agents and assigns, related to the Covered Conduct and the State's investigation and prosecution thereof.

22. Defendant, for itself and for its parent, subsidiary and affiliated entities, officers, employees, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns fully and finally releases Relator, its owners, members, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Defendant has asserted, could have asserted, or may assert in the future against the Relator, its owners, members, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, related to the Covered Conduct and Relator's and the State's investigations and prosecution concerning the Action.

23. The Relator, for itself, and for its owners, members, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally releases the State, its agencies, officers, employees, servants, attorneys, and agents from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Relator has asserted, could have asserted, or may assert in the future against the State, arising out of the filing of the Action or from any other claim for a share of the settlement proceeds. Relator accepts the payment described in Paragraph 15 in full settlement of any claims Relator may have against the State under this Agreement or as a result of the Action. This Agreement does not resolve or in any manner affect any claims the State has or may have against Relator arising under State tax laws, or any claims arising under this Agreement.

24. Relator, and each of its owners, members, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, agrees not to object to this Agreement and agrees and confirms that this Agreement is fair, adequate, and reasonable pursuant to New York State Finance Law § 190(5)(b)(ii).

Bankruptcy and Non-Payment

25. If within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, Defendant or a third party commences any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of its or their debts, or seeking to adjudicate Defendant as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Defendant or for all or any substantial part of its or their assets, Defendant agrees as follows:

- a. Defendant's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Defendant shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) its obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) it was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment of the Settlement Amount; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Defendant.
- b. If Defendant's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its sole option, may rescind the

releases in this Agreement insofar as it affects the State and bring any civil and/or administrative claim, action, or proceeding against Defendant for the claims that would otherwise be covered by the releases provided above, and Defendant agrees that (i) any such claims, actions, or proceedings brought by the State are not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Defendant shall not argue or otherwise contend that the State’s claims, actions, or proceedings are subject to an automatic stay; (ii) they shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the State within 60 calendar days of written notification to Defendant that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of the Agreement; and (iii) the State has a valid claim against Defendant in the amount of treble damages plus penalties under the New York False Claims Act, and may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

- c. Defendant acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

26. In the event of the failure by Defendant to make any or all payments of the Settlement Amount, including the State’s Share and the Relator’s Share, when due according to Paragraph 15, the State will provide written notice of the non-payment to Defendant. Such notice

shall be given to the person and address designated in Paragraph 39 by (i) delivery in person, (ii) a nationally recognized next-day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. Defendant shall have an opportunity to pay the unpaid balance within five (5) calendar days from the effective date of the notice. If Defendant fails to pay the overdue unpaid balance of its payment obligations under this Agreement within five (5) calendar days from the effective date of the notice of non-payment (“Default”), the State, in its sole discretion, may declare or do any or all of the following, or may exercise, without limitation, any remedies available under law, including:

- a. The State may declare the entire Settlement Amount, less any payments already made, immediately due and payable, with unpaid amounts bearing the Default rate of interest at the interest rate set forth in New York Civil Practice Law and Rules § 5004 beginning as of the date of Default until payment of the remaining Settlement Amount is made in full; and/or
- b. Pursue all available remedies to enforce this Agreement and remedy violations of this Agreement. In the event of a Default as described above, Defendant agrees not to contest any action to enforce this Agreement or any other collection action undertaken by the State pursuant to this Paragraph or pursuant to law, and Defendant agrees to pay the State, without limitation, all reasonable costs of collection and enforcement of this Agreement, including attorney’s fees, expenses and court costs; and/or
- c. Rescind its agreement to this Agreement as to Defendant and reinstitute an action or actions against Defendant in this Court. In the event the State

reinststitutes such action, Defendant: (1) expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which (i) are filed by the State after the written notification to Defendant of Default, and (ii) relate to the Covered Conduct, and (2) further waive and will not assert any defenses Defendant may have to any civil or administrative action relating to the Covered Conduct.

27. In the event of the failure by Defendant to make payment of the Relator's Share when due according to Paragraph 15, the Relator will provide written notice of the non-payment to Defendant. Such notice shall be given to the person and address designated in Paragraph 39 by (i) delivery in person, (ii) a nationally recognized next day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. Defendant shall have an opportunity to pay the unpaid balance within five (5) calendar days from the effective date of the notice. If Defendant fails to pay the overdue unpaid balance of its payment obligations for the Relator's Share under this Agreement within five (5) calendar days from the effective date of the notice of non-payment ("Relator's Share Default"), the Relator, in its sole discretion, may declare or do any or all of the following:

- a. The Relator may declare the entire Relator's Share, less any payments already made, immediately due and payable, with unpaid amounts bearing the Default rate of interest at the interest rate set forth in New York Civil Practice Law and Rules § 5004 beginning as of the date of Relator's Share Default until payment of the remaining Relator's Share is made in full; and/or

- b. Institute an action or actions against Defendant in this Court to collect the unpaid amounts of the Relator's Share plus applicable interest. Defendant agrees not to contest any action to enforce this Agreement with respect to the Relator's Share or any other collection action undertaken by the Relator pursuant to this Paragraph, and Defendant agrees to pay the Relator all reasonable costs of collection and enforcement of this Agreement, including attorney's fees and expenses.

Additional Terms

28. Defendant represents and warrants, through the signature below, that the terms and conditions of this Agreement are duly approved, and that execution of this Agreement is duly authorized.

29. The undersigned counsel and any other signatories represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

30. Defendant shall not take any action or make any statement denying, directly or indirectly, the propriety of this Agreement or expressing the view that this Agreement is without factual basis. Nothing in this Paragraph affects Defendant's testimonial obligations or its right to take legal or factual positions in defense of litigation or other legal proceedings to which the State is not a party.

31. Defendant (including its parent, subsidiary and affiliated entities, officers, employees, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns) and its counsel shall keep confidential and shall not disclose the identity of any member or owner of Park Relator LLC.

32. This Agreement is not intended for use by any third party in any other proceeding.

33. This Agreement and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

34. Except as provided in Paragraph 20 above, each Party shall bear its own legal and other costs incurred in connection with this matter.

35. This Agreement constitutes the complete agreement between and among the Parties, and may not be amended except by an instrument in writing signed on behalf of all the Parties to this Agreement. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by Defendant in agreeing to this Agreement. Defendant acknowledges that it has entered this Agreement freely and voluntarily and upon due deliberation with the advice of counsel

36. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their respective successors and assigns, provided that no Party, other than the State, may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Office of the Attorney General.

37. In the event that any one or more of the provisions contained in this Agreement, other than provisions concerning payment and release, shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

38. Any failure by the State to insist upon the strict performance by Defendant and/or Relator of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State, notwithstanding such failure, shall have the right thereafter

to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by the Relator and/or Defendant. Any failure by Relator to insist upon the strict performance by Defendant of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and Relator, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by the Defendant.

39. All communications from any Party concerning the subject matter of this Agreement shall be addressed as follows:

If to the State of New York:

Bryan P. Kessler, Esq.
Senior Counsel
Office of the New York Attorney General
Taxpayer Protection Bureau
28 Liberty Street, 21st Floor
New York, NY 10271
Tel: (212) 416-8736
Bryan.Kessler@ag.ny.gov

If to Relator:

Margaret J. Finerty, Esq.
Getnick & Getnick LLP
521 Fifth Avenue, 33rd Floor
New York, NY 10175
Tel: (212) 376-5666
mfinerty@getnicklaw.com

If to Defendant:

Michael J. Connolly, Esq.
Hinckley, Allen & Snyder LLP
28 State Street
Boston, MA 02109
Tel: (617) 345-9000
mconnolly@hinckleyallen.com

40. Except for written notices of Defendant non-payment issued by the State or Relator, the sending and receipt of which shall be governed by the provisions in Paragraphs 26 and 27 respectively, all communications from any Party to another Party concerning this

Agreement shall be sent by United States mail with return receipt requested or overnight delivery service with signature required to the signatory counsel for each Party, unless such communications are sent by email and a reply is written without objection to the electronic means of communication.

41. In any subsequent investigation, civil action, or proceeding by the State to enforce this Agreement, or for violations of the Agreement, Defendant expressly agrees and acknowledges that any statute of limitations or other time-related defenses are tolled from and after the effective date of this Agreement, and that the State may use statements, documents or other materials produced or provided by the Defendant prior to or after the effective date of this Agreement.

42. If a court of competent jurisdiction determines that Defendant has breached this Agreement, other than by failing to pay amounts owed under the Agreement, the remedy for which is described in Paragraphs 26 and 27, Defendant shall pay to the Office of the Attorney General and/or to Relator the cost, if any, of obtaining such determination and of enforcing this Agreement, including, without limitation, legal fees, expenses, and court costs.

43. Any headings, titles and subtitles contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement.

44. This Agreement shall be governed by the laws of the State of New York without regard to any conflict of laws principles. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the Supreme Court of the State of New York, New York County.

45. This Agreement is effective on the date of signature of the last signatory of the Agreement (the "Effective Date"). Facsimiles and .pdfs of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.


46. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Agreement is executed by the Parties hereto.

THE STATE OF NEW YORK

Dated: June 24, 2021

LETITIA JAMES
New York State Attorney General

BY: 
Bryan P. Kessler, Esq.

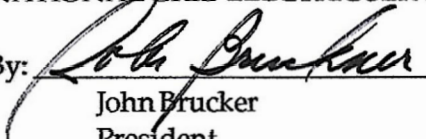
Senior Counsel
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28 Liberty Street, 21st Floor
New York, New York 10271
Tel: (212) 416-8736

Attorney for the State of New York

DEFENDANT

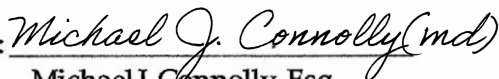
Dated: June 21, 2021

NATIONAL GRID ELECTRIC SERVICES LLC

By: 
John Brucker
President

Dated: June __, 2021

HINCKLEY, ALLEN & SNYDER LLP

By: 
Michael J. Connolly, Esq.

28 State Street
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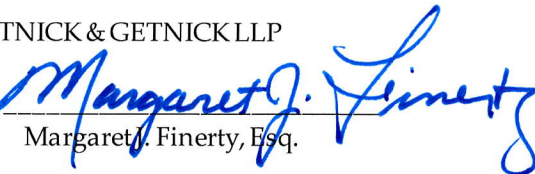
Attorneys for Defendant

RELATOR PARK RELATOR, LLC

Dated: June 16 2021

GETNICK & GETNICK LLP

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