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VIA E-FILING

Hon. Kathleen Burgess
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Cases 14-E-0151 and 14-E-0422 – **Comments of Cornell University on
Transition Plan Tariff Filings**

Dear Secretary Burgess:

Cornell University (“Cornell”) hereby submits comments in response to the Compliance Filings submitted by New York State Electric & Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RG&E”) on June 26, 2015 in the above-captioned proceedings. The compliance filings were submitted pursuant to Ordering Clause No. 2 in the New York State Public Service Commission’s (“Commission”) Order Granting Rehearing in Part, Establishing Transition Plan, and Making Other Findings (“Transition Plan Order”) issued on April 17, 2015 in these proceedings.¹

As explained below, NYSEG’s and RG&E’s proposed tariff language includes material deviations from what the Commission authorized in the Transition Plan Order. It is critically important for utility tariffs to avoid conflicts with the legal authority that provides the basis for the relevant tariff provision. Customers have encountered significant frustration and expended considerable resources due to such conflicts, particularly in the net metering arena.² In order to

¹ See Transition Plan Order at 15-16 (Directing the Joint Utilities to file, “in conformance with the discussion in the body of [the Transition Plan Order], tariff leaves providing for crediting of remote net metered customers that are also non-demand customers on a volumetric instead of a monetary basis, for those prospective customers not grandfathered into monetary crediting under the Transition Plan described in the body of [the Transition Plan Order].”).

² See, e.g., Case 15-E-0267, Proceeding on Motion of the Commission as to Multiple Generation Facilities at Host and Satellite Locations under Remote Net Metering Tariffs, Notice Instituting Proceeding and Soliciting Comments (issued May 11, 2015); Case 12-E-0105, Hudson Valley Clean Energy, Inc. – Petition for an Order Requiring New York State Electric & Gas

avoid future conflicts over NYSEG's and RG&E's proposed, inconsistent tariff language, Cornell therefore respectfully requests that the Commission direct NYSEG and RG&E to correct their respective tariff filings in accordance with these comments.

I. NYSEG's and RG&E's Proposed Tariffs Muddle the Eligibility Criteria for Grandfathered Treatment

The Transition Plan Order provided clear direction to determine whether a customer's net metered project can be grandfathered into monetary crediting. Eligible projects are those that, as of June 1, 2015: (1) have been interconnected; or (2) have submitted a completed preliminary interconnection application to the relevant utility; or (3) have completed applications for grants through Program Opportunity Notices (PONs) 2112, 2439, 2589, 2860, and 2956 conducted by the New York State Energy and Research Development Authority ("NYSERDA") or the Request for Proposals ("RFP") process conducted by New York City for development of renewable facilities at the Freshkills Landfill; or (4) have completed applications for grants in NYSEDA's NY-Sun MW Block Program for projects sized at more than 200 kW; or (5) a State, municipal, district, or local governmental entity has solicited through a Request for Proposals or a Request for Information issued in conformance with applicable law.³

NYSEG and RG&E would provide monetary crediting to the following customers: "(i) a non-demand billed customer that qualified for Remote Net Metering as a Host Account on or before June 1, 2015...; or (ii) a non-demand billed customer that has applied for [sic] NYSEDA Program Opportunity Notice (PON) or some other Government solicitation on or before June 1, 2015 and can provide proof of [sic] application date..."⁴ NYSEG's and RG&E's tariffs would thus condense the specific list from the Transition Plan Order into two generic categories. By doing so, NYSEG and RG&E create the potential for conflict between the tariffs and the Transition Plan Order. For example, the utility and the customer may have different interpretations about whether a customer "qualified for Remote Net Metering as a Host Account on or before June 1, 2015." In contrast, under the Transition Plan Order, it is clear that the customer must, in order to obtain monetary crediting, be interconnected or have submitted a completed preliminary interconnection application to the utility, on or before June 1, 2015.

Rather than risk unnecessary confusion in the future, NYSEG and RG&E should simply list the grandfathering criteria from the Transition Plan Order within their respective tariffs. Other utilities, such as National Grid, utilized this approach.⁵ Cornell respectfully requests that the Commission direct NYSEG and RG&E to follow National Grid's approach.

Corporation to Modify its Tariffs for the Net Metering of Residential Solar Generation Facilities, Order Granting Petition and Directing Tariff Filings (issued June 18, 2012).

³ Transition Plan Order at Att. I.

⁴ See NYSEG Compliance Filing, Leaf Nos. 117.0; 117.2.4; 117.33.1; 117.39.0; 117.42.1.

⁵ Case 14-E-0151, Petition of Hudson Valley Clean Energy, Inc. for an Increase to the Net Metering Minimum Limitation at Central Hudson Gas & Electric Corporation, Compliance Filing

II. NYSEG's and RG&E's Proposed Tariffs Misstate the Interconnection Deadline For Retaining Monetary Crediting

The Transition Plan Order states: “[t]o retain monetary crediting, a project must enter service by the date specified in a NYSERDA PON or in its NY-Sun MW Block Program for projects sized at more than 200 kW, or the New York City Freshkills Landfill RFP, or another governmental entity process, as that date may be extended by the relevant governmental entity, or by December 31, 2017 if no date is specified by a governmental entity.”⁶

NYSEG's and RG&E's proposed tariffs require the customer to be “interconnected by the application date or by 12/31/2017 if no such date is specified.”⁷ This language suffers from two critical flaws: (1) it relies on the “application date” for the interconnection deadline, when the relevant deadline is instead the date specified by NYSERDA or other governmental entity; and (2) it fails to acknowledge that the in-service deadline can be extended by NYSERDA or other governmental entity and that such extension will not impact customer eligibility for monetary crediting. These flaws cannot be allowed to persist in the tariffs.

Again, National Grid used the relevant language from the Transition Plan Order and incorporated it into its proposed tariff.⁸ This is the simplest, most effective way to prevent future conflicts over eligibility for grandfathered treatment. Cornell therefore requests that the Commission direct NYSEG and RG&E to correct their proposed tariffs so as to eliminate the conflicts with the in-service deadline as set forth in the Transition Plan Order.

III. NYSEG's and RG&E's Proposed Tariffs Fail to Acknowledge That the Term for Monetary Crediting Can Extend Beyond 25 Years

The Transition Plan Order states: “[t]he monetary credit will remain in effect for a term of 25 years from the later of the date of this Order here [April 17, 2015] or the project in-service date. An extension of the period may be obtained upon a showing that the contractual arrangement for financing a particular project cannot be accomplished within a 25-year period, and a longer period is necessary.”⁹

of Niagara Mohawk Power Corporation d/b/a National Grid (June 29, 2015) at Leaf No. 199.4 (“National Grid Compliance Filing”).

⁶ Transition Plan Order at Att. I.

⁷ See NYSEG Compliance Filing, Leaf Nos. 117.0; 117.2.4; 117.33.1; 117.39.0; 117.42.1.

⁸ National Grid Compliance Filing at Leaf No. 199.4.

⁹ Transition Plan Order at Att. I.

NYSEG's and RG&E's proposed tariffs state: "[m]onetary credits shall remain in effect for a term of 25 years from the later of: April 17, 2015 or the project in-service date."¹⁰ There is no recognition by NYSEG and RG&E that monetary credits can remain in effect for longer than 25 years upon the proper showing made in accordance with the Transition Plan Order. Other utilities incorporated the extension; there is no reason for NYSEG and RG&E to exclude it.¹¹ Because the absence of an extension option could create conflict over a customer's right to retain monetary crediting beyond 25 years, the Commission should direct NYSEG and RG&E to modify their compliance filings to incorporate the extension option provided for in the Transition Plan Order.

IV. NYSEG's and RG&E's Proposed Tariffs Include An Unwarranted Restriction On Transferability

NYSEG and RG&E included the following restriction with respect to the grandfathering criteria: "[t]hese exceptions shall not transfer to a new owner, and shall terminate upon account closure."¹² This restriction, which would materially limit customer choice with respect to renewable energy generation, was not authorized by the Transition Plan Order and should be eliminated from the tariffs.

If NYSEG and RG&E wanted to restrict monetary crediting in this manner, they could have proposed this limitation as part of their comments on the Transition Plan or sought rehearing of the Transition Plan Order. They did neither; adding it via the Compliance Filings is thus an attempt by NYSEG and RG&E to unilaterally re-write the Transition Plan Order. This unilateral action is inappropriate and, notably, this restriction is not included in any other utility compliance filing in these proceedings.

Once a grandfathered project is interconnected and operational, the utility should be ambivalent regarding future project ownership. Indeed, the Standardized Contract for Interconnection recognizes that project ownership can change and specifically authorizes the customer to assign the Contract to another corporate entity.¹³ Moreover, existing remote net

¹⁰ See NYSEG Compliance Filing, Leaf Nos. 117.0; 117.2.4; 117.33.1; 117.39.0; 117.42.1.

¹¹ See National Grid Compliance Filing at Leaf No. 199.4; see also Case 14-E-0151, *supra*, Compliance Filing of Consolidated Edison Company of New York, Inc. (June 29, 2015) at Leaf No. 251.4 and Compliance Filing of Central Hudson Gas & Electric Corporation (June 29, 2015) at Leaf No. 163.5.7.

¹² See NYSEG Compliance Filing, Leaf Nos. 117.0; 117.2.4; 117.33.1; 117.39.0; 117.42.1.

¹³ See New York State Standardized Contract for Interconnection of New Distributed Generation Units with Capacity of 2 MW or Less Connected in Parallel with Utility Distribution Systems at § 8.8 ("At any time during the term, the Customer may assign this Agreement to a corporation or other entity with limited liability, provided that the Customer obtains the consent of the Utility. Such consent will not be withheld unless the Utility can demonstrate that the corporate entity is not reasonably capable of performing the obligations of the assigning Customer

metering rules allow changes in satellite accounts on an annual basis.¹⁴ Taken together, these two provisions clearly recognize that remote net metered customers can change during a project's lifetime (for example, due to a merger or acquisition), and this change in ownership will not impact the project's continued eligibility for remote net metering. NYSEG's and RG&E's proposed limitation on transferability would upset the existing remote net metering landscape and, in doing so, materially limit a customer's flexibility with respect to its renewable energy generation portfolio. Such a limitation was not authorized within the Transition Plan Order and should therefore be stricken from NYSEG's and RG&E's proposed tariffs.

For all of the foregoing reasons, Cornell respectfully requests that the Commission direct NYSEG and RG&E to re-submit proposed tariffs implementing the Transition Plan Order in accordance with these comments.

Respectfully submitted,

CORNELL UNIVERSITY

Sarah Zemanick

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cc: Party List (via email)
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under this Agreement.”) and at § 8.9 (“At any time during the term, the Customer may assign this Agreement to another person, other than a corporation or other entity with limited liability, provided that the assignee is the owner, lessee, or is otherwise responsible for the Unit.”).

¹⁴ See PSC No: 120 – Electricity, New York State Electric and Gas Corporation, Schedule for Electric Service at Leaf No. 117.33.1 (“Remote Net Metering customers may submit a change request form annually during the change period to designate additional Satellite Accounts or delete existing active Satellite Accounts. The customer may also change the portion (percentage) of excess to remain at the Host Account once per year.”).