



May 18, 2018

**VIA E-MAIL**

[Secretary@dps.ny.gov](mailto:Secretary@dps.ny.gov)

Honorable Kathleen Burgess,  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza, 19<sup>th</sup> Floor  
Albany, NY 12223-1350

Re: Case 17-E-0594 – Proceeding on Motion of the Commission to Investigate the March 2017 Windstorm, Related Power Outages, and Rochester Gas and Electric and New York State Electric & Gas Restoration Efforts;

Dear Secretary Burgess:

Enclosed for filing in the above-referenced proceeding, please find the settlement Joint Proposal executed by and among New York State Electric & Gas Corporation; Rochester Gas and Electric Corporation and the New York State Department of Public Service.

Should you have any questions about this filing, please do not hesitate to contact me.

Respectfully Submitted,

Jeffrey A. Rosenbloom  
Deputy General Counsel

BEFORE THE  
NEW YORK STATE  
PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the Commission to Investigate  
the March 2017 Windstorm, Related Power Outages,  
and Rochester Gas and Electric and New York State  
Electric & Gas Restoration Efforts

Case 17-E-0594

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**JOINT PROPOSAL**

This Joint Proposal (“Joint Proposal”), dated as of the 18<sup>th</sup> day of May 2018, is by and among the New York State Department of Public Service (“Department”), Rochester Gas and Electric Corporation (“RG&E”) and New York State Electric & Gas Corporation (“NYSEG” and together with RG&E, the “Companies”). The Companies and the Department may be referred to herein together as the “Parties.”

**BACKGROUND**

On the afternoon of March 8, 2017, a windstorm swept across Western New York State, causing widespread damage and many thousands of electric service interruptions (the “March 2017 Windstorm”). The March 2017 Windstorm affected customers served by RG&E and NYSEG.

The March 2017 Windstorm caused major damage to overhead electric distribution systems. Residential homes and businesses throughout the area were severely affected. More than 250,000 RG&E and NYSEG customers experienced power outages during the storm with Central (RG&E), Sodus (RG&E), Lancaster (NYSEG) and Lockport (NYSEG) being the hardest hit areas. Service was restored on March 11 to all customers in the Lockport (NYSEG) and Sodus (RG&E) areas, on March 13 in Lancaster (NYSEG), and on March 15 in the Central area (RG&E).

At the direction of Governor Cuomo, on March 11, 2017, the Department of Public Service began an investigation of the Companies’ preparation and response to the March 2017 Windstorm. On November 16, 2017, the Department of Public Service issued a report entitled: March 2017 Windstorm A Report on NYSEG and RG&E Electric Restoration and Communication Efforts. Also, on November 16, 2017, in Case 17-E-0594, the Commission

issued an Order Instituting Proceeding and to Show Cause (the “Order”).<sup>1</sup> By the Order, NYSEG and RG&E were directed to show cause why: (i) the Commission should not pursue an administrative penalty, pursuant to Public Service Law (PSL) § 25-a, and (ii) the Companies should not implement the recommendations contained in the Department of Public Service Staff Report (the “Report”) into their Emergency Response Plans (“ERPs”).

The Companies have requested extensions of time to respond to that portion of the Order regarding an administrative penalty pursuant to Public Service Law (PSL) §25-a because the Companies and Staff of the Department of Public Service desired to engage in settlement discussions. The Secretary has granted the requested extensions. In accordance with 16 NYCRR §3.9, a notice of impending settlement negotiations was sent to all parties to both the above-captioned case and each Company’s current rate case, Cases 15-E-0283, 15-G-0284, 15-E-0285 and 15-G-0286, and such parties were invited to the settlement conference that produced this Joint Proposal.

### **TERMS OF THE SETTLEMENT**

The Parties have agreed to settle matters associated with the 12 alleged violations at a cost to the Companies of Three Million Nine Hundred Thousand Dollars, (\$3,900,000) (the “Settlement Amount”). The Settlement Amount will be allocated at \$2.8 million to RG&E electric and \$1.1 million to NYSEG electric. The Companies will use the Settlement Amount to make investments (which will not be reflected in the Companies’ rate base or operating expenses in establishing future delivery rates) designed to increase resiliency and improve emergency response in the areas impacted by the March Windstorm (the “Investments”). The Investments are described in detail in a separate Joint Proposal (the “Investment Joint Proposal”) executed by the Companies, the Department and other parties as indicated in the Investment Joint Proposal. The Companies will record the \$3.9 million in expenditures on the agreed-upon Investments in the following manner: for those investments that would not typically be capitalized, the Companies will record the expenditures in a below-the-line expense account. For those investments that would typically be capitalized, the Companies would record the expenditures in a non-operating asset account, and the ongoing amortization/depreciation expenses associated with these non-operating assets will be recorded below-the-line. As indicated in the Investment Joint Proposal, to the extent that the Companies complete the projects at an amount lower than the Settlement Amount, a regulatory liability equal to the amount of the underspend would be established on either or both Companies’ books with the offsetting charge to income below-the-line as of December 31, 2018.

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<sup>1</sup> Proceeding on Motion of the Commission to Investigate the March 2017 Windstorm, Related Power Outages, and Rochester Gas and Electric and New York State Electric & Gas Restoration Efforts (Case 17-E-0594).

## **GENERAL PROVISIONS**

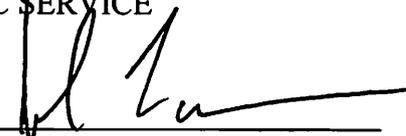
1. This Joint Proposal fully and finally resolves all the issues and concerns raised and/or asserted, or that could properly have been raised and/or asserted, in Case 17-E-0594 including, but not limited to, the issues raised in the Order to Show Cause.
2. Accordingly, in consideration for the Investments to be made by the Companies, the Department will recommend that the Commission does not institute or cause to be instituted against NYSEG and/or RG&E or their respective directors, officers, employees, agents, shareholders or affiliates, a penalty action under the Public Service Law, or under any other statute or regulation or Commission order, with respect to the Companies' actions, inactions or practices, directly or indirectly related to the March Windstorm (the "Recommendation").
3. Upon the ratification or approval of the terms of this Joint Proposal by the Commission, the investigative examinations by the Department and/or Department Staff initiated in Case 17-E-0594 are deemed completed; however, Staff and the Commission will continue to exercise oversight over the implementation of the recommendations contained in the Staff report and accepted by the Companies in the December 18, 2017 filing in Case 17-E-0594, as well as the Investments described in Exhibit A of the Investment Joint Proposal.
4. The execution, delivery and performance of this Joint Proposal by each Party hereto is within its corporate or statutory powers, as appropriate, has been duly authorized by all necessary corporate or statutory action, and does not and will not (i) require any governing or governmental consent or approval except as required in Paragraph 7 below, (ii) contravene its organizational documents or enabling legislation, or (iii) violate applicable law.
5. This Joint Proposal has been entered into voluntarily by the Parties. The Parties have determined the Joint Proposal constitutes a fair and reasonable resolution of all outstanding issues relating to Case 17-E-0594 and avoids litigation. This Joint Proposal is not, and should in no way be construed as a Commission finding or an admission by the Companies of a violation of any law or regulation or order; or a Commission finding or an admission by the Companies' that these events are amenable to suit under Sections 24 and 25 of the Public Service Law, a penalty action under Section 25-a of the Public Service Law, or a disallowance of costs for imprudence. In addition, this Joint Proposal is a settlement of potential penalties stated in the Order to Show Cause in Case 17-E-0594 and should not be construed as an assessment of a fine or penalty.
6. This Joint Proposal may be executed by original, facsimile or electronic signature, each of which shall be equally binding.
7. This Joint Proposal is subject to ratification or approval by the Commission and will have no effect in the absence thereof. Unless the Commission approves this Joint Proposal in its entirety, without modification, and accepts the Recommendation of the Department not to institute or cause to be instituted against NYSEG and/or RG&E or their respective directors, officers, employees, agents, shareholders or affiliates, a penalty action under the Public Service Law, or under any other statute or regulation or Commission order, with respect to the

Companies' actions, inactions or practices, directly or indirectly related to the March Windstorm, the Companies may withdraw their acceptance of this Joint Proposal by serving written notice on the Commission, and shall be free to pursue its position without prejudice. Failure by the Companies to comply with any provision of this Joint Proposal or the Investment Joint Proposal, will result in judicial and administrative action, including, but not limited to, the initiation of a proceeding under PSL§25-a. If the Commission approves this Joint Proposal or modifies it in a manner acceptable to the Companies, the parties intend that this Joint Proposal thereafter be implemented in accordance with its terms. Should the Commission fail to approve this Joint Proposal, the Companies and Department agree that any investments made on those projects detailed in the Investments Joint Proposal would be included in the Companies' rate bases subject to Department Staff review and will be incorporated in their next rate case filings.

**IN WITNESS WHEREOF**, each of the Parties hereto has executed this Joint Proposal as of the day and year first written above.

NEW YORK STATE DEPARTMENT OF  
PUBLIC SERVICE

By: \_\_\_\_\_

  
John Favreau  
Assistant Counsel

ROCHESTER GAS AND  
ELECTRIC CORPORATION

By: \_\_\_\_\_

Carl A. Taylor  
President and Chief Executive Officer

NEW YORK STATE ELECTRIC  
& GAS CORPORATION

By: \_\_\_\_\_

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