

petition

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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September 17, 2001

Hon. Janet Hand Deixler
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

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STATE OF NEW YORK
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Re: Case 01-E-0011 - Joint Petition of Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Central Hudson Gas & Electric Corporation, Constellation Nuclear, LLC and Nine Mile Point Nuclear Station, LLC for Authority Under Public Service Law Section 70 to Transfer Certain Generating and Related Assets and for Related Approvals.

Dear Secretary Deixler:

Enclosed please find an original and twenty-five copies of Department of Public Service Staff's Statement in Support of the Joint Proposal (Rochester Gas and Electric Corporation) in the above referenced case. Copies of this Statement are being concurrently served on all active parties to this proceeding.

Sincerely,

Kevin M. Lang
Kevin M. Lang
Assistant Counsel

Enclosure

cc: Hon. William Bouteiller
Active Parties to Case 01-E-0011

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 01-E-0011 - Joint Petition of Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Central Hudson Gas & Electric Corporation, Constellation Nuclear, LLC and Nine Mile Point Nuclear Station, LLC for Authority Under Public Service Law Section 70 to Transfer Certain Generating and Related Assets and for Related Approvals.

DEPARTMENT OF PUBLIC SERVICE STAFF'S
STATEMENT IN SUPPORT OF
JOINT PROPOSAL
(ROCHESTER GAS AND ELECTRIC CORPORATION)

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September 14, 2001
Albany, New York

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 01-E-0011 - Joint Petition of Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Central Hudson Gas & Electric Corporation, Constellation Nuclear, LLC and Nine Mile Point Nuclear Station, LLC for Authority Under Public Service Law Section 70 to Transfer Certain Generating and Related Assets and for Related Approvals.

DEPARTMENT OF PUBLIC SERVICE STAFF'S
STATEMENT IN SUPPORT OF JOINT PROPOSAL
(ROCHESTER GAS AND ELECTRIC CORPORATION)

BACKGROUND

On December 11, 2001, Niagara Mohawk Power Corporation (Niagara Mohawk), Central Hudson Gas & Electric Corporation (Central Hudson), New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E) (collectively, the Co-tenants) executed two Asset Purchase Agreements (APAs) with Constellation Energy Group, Inc. and Constellation Nuclear, LLC (Constellation) for the sale of Niagara Mohawk's interest in the Nine Mile Point Unit 1 Nuclear Generating Facility (NMP1) and the Co-tenants' respective interests in the Nine Mile Point Unit 2 Nuclear Generating Facility (NMP2; collectively, Nine Mile Point). On January 31, 2001, the Co-tenants and Constellation filed a joint petition pursuant to Public Service Law § 70 for approval of this transaction.

According to the joint petition and its accompanying affidavits and pre-filed testimony, the Co-tenants also seek, to varying degrees, certain accounting and ratemaking treatments associated with the sale of their interests in Nine Mile Point. Moreover, the APAs specifically provide that the receipt of "reasonably satisfactory" regulatory approvals by the Co-tenants is a condition precedent to their obligation to Close the transaction. See APAs §§ 4.3(b), 7.2(c), 9.1(d).

In an attempt to amicably work with the Co-tenants to define what would constitute "reasonably satisfactory" regulatory approvals from the Public Service Commission (Commission) and to resolve issues of concern raised by Department of Public Service Staff's (Staff) review of the transaction documents, joint petition and accompanying materials, Staff agreed to participate with the Co-tenants in settlement negotiations.

Settlement negotiations were commenced with a Notice of Settlement Conference issued on March 9, 2001 by RG&E on behalf of the Co-tenants and Constellation and sent to all active parties to Case 01-E-0011. The first day of negotiations occurred on March 16, 2001, with additional negotiations occurring periodically in March and April.

As a result of these negotiations, Staff was able to resolve its open issues with RG&E, and, by Joint Proposal executed and filed August 9, 2001, memorialized the terms and conditions of their agreement. That document was prepared, and the negotiations were conducted, in conformance with the Commission's settlement regulations and guidelines.¹

PRINCIPAL FEATURES AND BENEFITS
OF THE JOINT PROPOSAL

I. Resolution of Stranded Cost Issues

The Joint Proposal provides that RG&E's shareholders will absorb \$20 million of the company's unrecovered investment in

¹ 16 NYCRR § 3.9. Case 90-M-0255, et al., Settlement Procedures, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1992).

NMP2. The remainder of the unrecovered investment² will be converted into a NMP2 Regulatory Asset and will be amortized over a period of approximately nine years.

Additionally, from the date of closing to the date that rates are reset (currently anticipated to occur on or before June 30, 2002), the unrecovered investment will be reduced by an annualized amortization amount of \$30 million.³ This amount represents the difference in the NMP2 allowance currently in rates and the lower costs that will be incurred post-Closing.

RG&E will be permitted to earn a return on the NMP2 Regulatory Asset at a level equal to that of its overall electric utility business. However, parties in future rate cases will be free to argue that the company's overall rate of return should be higher or lower.

Collectively, these provisions of the Joint Proposal provide a fair and reasonable balancing of RG&E's ratepayer and shareholder interests. The ratepayers benefit through the \$20 million reduction in and the \$30 million annualized amortization adjustment to the NMP2 Regulatory Asset, while the ability of shareholders to recover their investment is consistent

² The Joint Proposal resolves all matters relating to the recovery by RG&E of costs associated with NMP2 known at this time, with the exception of the transaction costs associated with the sale. The company's ability to recover those costs is subject to audit by Staff for reasonableness and nexus to the transaction.

³ This amount may be adjusted, based upon the resolution of the pending dispute regarding an Exit Agreement between Niagara Mohawk and RG&E.

with the Commission's prior Orders addressing this issue.⁴

II. Purchase Price Treatment

Under the NMP2 APA, Constellation will pay the purchase price, 50% at closing and 50% in installments over five years, with interest. Under the Joint Proposal, RG&E will offset the book value of the plant by 100% of the purchase price as of the date of closing. In consideration of this treatment, shareholders will be permitted to retain any interest paid by Constellation on the installments. RG&E's ratepayers should be indifferent to this treatment. The after-tax return on the interest payments approximates RG&E's after-tax cost of capital on investments of similar risk.

III. Power Purchase and Revenue Sharing Benefits

The price level set in the NMP2 Power Purchase Agreement (PPA) between the Co-tenants and Constellation is considered to be close to or below market price forecasts for the next ten years. As a result, the NMP2 PPA provides a reasonable hedge against market price fluctuations as the competitive generation market continues to develop. For this reason, the parties have agreed that ratepayers will receive 100% of the benefits of the PPA and that RG&E will be assured recovery of the costs it incurs under the PPA.

While it cannot be ascertained whether the Revenue Sharing Agreement (RSA) between RG&E and Constellation will result in any payments to RG&E, the Joint Proposal provides that all benefits received under the RSA will flow to ratepayers. This agreement,

⁴ Case 96-E-0898, In the Matter of Rochester Gas and Electric Corporation's Plans for Electric Rate/Restructuring Pursuant to Opinion No. 96-12, Opinion and Order adopting Terms of Settlement Subject to Conditions and Changes, Opinion No. 98-1 (issued January 14, 1998).

similar to the PPA, provides a reasonable and virtually cost-less hedge to ratepayers against significant increases in market prices.

IV. Miscellaneous Additional Benefits

The Joint Proposal also provides that all future distributions received by RG&E from Nuclear Electric Insurance Limited will flow to ratepayers, net of costs incurred by the company to maintain eligibility to receive such distributions. To the extent that RG&E is successful in any litigation retained in the NMP2 APA related to the company's spent nuclear fuel obligations, the proceeds (net of reasonable litigations costs) will flow to ratepayers. Other incremental benefits or revenues received as a result of the sale will also flow to ratepayers. Collectively, these benefits, if and when received, will be credited against the NMP2 Regulatory Asset.

These are all benefits ratepayers would expect to receive if RG&E still owned its interest in NMP2. The Joint Proposal properly accords similar treatment to such assets post-sale.

RATIONALE FOR APPROVING JOINT PROPOSAL

As discussed above, the Joint Proposal contains numerous features that benefit ratepayers and fairly resolves the long-simmering, contentious issue of the company's nuclear stranded cost recovery. By providing a vehicle that satisfies RG&E's contractual conditions precedent to Closing, the Joint Proposal furthers the Commission's competitive agenda as initially developed in its Competitive Opportunities Opinion⁵ and as later developed in Opinion No. 98-1.

⁵ Case 94-E-0952, et al., In the Matter of Competitive Opportunities Regarding Electric Service, Opinion and Order Regarding Competitive Opportunities for Electric Service, Opinion No. 96-12 (issued May 20, 1996).

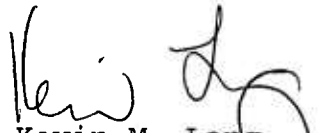
Case 01-E-0011

Had this case been litigated as to RG&E's issues, it is possible that Staff could have achieved similar or possibly superior results. It is equally possible that Staff could have achieved less favorable results. Clearly, though, the terms and conditions of the Joint Proposal are within the range of the potential litigation results. Moreover, the parties' agreement was reached in compliance with the Commission's settlement regulations and guidelines, and although not endorsed by other parties, nevertheless represents a fair and equitable compromise of the issues as between RG&E's ratepayers and shareholders.

CONCLUSION

For the foregoing reasons, the Commission should accept and approve the Joint Proposal as being in the public interest.

Respectfully submitted,


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Dated: September 14, 2001
Albany, New York

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September 18, 2001

Hon. Janet H. Deixler
Secretary
New York State Department of Public Service
Three Empire State Plaza
Albany, New York 12207

Re: **Case No. 01-E-0011 – Sale of Nine Mile Point 2**
Case No. 01-E-0359 – NYSEG's Electric Price Protection Plan
Case No. 01-M-0404 – Energy East Corporation's Acquisition of
RGS Energy Group, Inc.

Dear Secretary Deixler:

I am enclosing for filing with the Commission an original and twenty-five copies of New York State Electric & Gas Corporation's Interlocutory Appeal Requesting Mediation and Consolidated Hearings.

This appeal asks that the Commission set aside Administrative Law Judge Bouteiller's ruling denying NYSEG's request for mediation and consolidated hearings in the above cases and ruling that NYSEG's part of the Nine Mile Point 2 Section 70 proceeding be tried at hearings to be held on September 25 and September 28. The appeal requests that the Commission consolidate NYSEG's part of the Nine Mile Point 2 Section 70 proceeding with NYSEG's Price Protection Plan Proceeding and the proceeding on the Energy East – RGS Energy Group acquisition for purposes of both mediation and hearing because it is expeditious and in the public interest to do so.

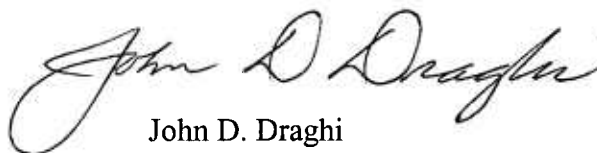
In the appeal, NYSEG maintains that there are only ten major issues approximately in the aggregate separating the parties in the three proceedings, most of which are related to at least two of the proceedings, and that through the services of the chief administrative law judge as an active mediator, these issues can be successfully resolved, thereby bringing to customers the

Hon. Janet H. Deixler
September 18, 2001
Page 2

benefits of the sale of NYSEG's interest in Nine Mile Point Unit 2, the Price Protection Plan and the Energy East – RGS Energy Group acquisition. The appeal also explains that because there are issues common to the Price Protection Plan in both the Nine Mile Point 2 proceeding and the merger proceeding, it would be most efficient to consolidate the hearings in those proceedings, and that nothing would be lost by such a consolidation. Prior to the issuance of Judge Bouteiller's ruling, NYSEG advised both Judge Bouteiller and the parties that it did not oppose allowing the selling cotenants that achieved settlements of their parts of the Nine Mile Point Section 70 proceeding to proceed to closing separate from NYSEG, and Constellation and the selling cotenants agree to a staged closing.

The request NYSEG has presented as an alternative to Judge Bouteiller's ruling represents a constructive method of achieving a resolution of these interrelated cases. The Commission should grant NYSEG's appeal.

Very truly yours,



John D. Draghi

JDD:jd
Enclosures

cc: All Commissioners
ALJ Bouteiller
All Parties in each proceeding

NEW YORK STATE PUBLIC SERVICE COMMISSION

-----X
: Joint Petition Of NIAGARA MOHAWK POWER :
CORPORATION, NEW YORK STATE :
ELECTRIC & GAS CORPORATION, : CASE NO. 01-E-0011
ROCHESTER GAS AND ELECTRIC :
CORPORATION, CENTRAL HUDSON GAS & :
ELECTRIC CORPORATION, :
CONSTELLATION NUCLEAR, LLC AND :
NINE MILE POINT NUCLEAR STATION, LLC, :
For Authority Under Public Service Law Section :
70 to Transfer Certain Generating and Related :
Assets and for Related Approvals :
: :
-----X

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: Petition Of NEW YORK STATE ELECTRIC & :
GAS CORPORATION For Approval of its :
Electric Price Protection Plan : CASE NO. 01-E-0359
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: Joint Petition Of ENERGY EAST :
CORPORATION, RGS ENERGY GROUP, INC., :
NEW YORK STATE ELECTRIC & GAS : CASE NO. 01-M-0404
CORPORATION, ROCHESTER GAS AND :
ELECTRIC CORPORATION and EAGLE :
MERGER CORP. For Approval of Merger and :
Stock Acquisition :
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Interlocutory Appeal Requesting Mediation and Consolidated Hearings

Pursuant to Section 4.7 of the Commission's Rules of Procedure (16 NYCRR Section 4.7), New York State Electric & Gas Corporation ("NYSEG") brings this appeal because of extraordinary circumstances that warrant immediate Commission action to prevent procedural

missteps that could have a seriously detrimental effect on three separate proceedings, each of which, if successfully concluded, could have a significant beneficial impact on electric customers in upstate New York. NYSEG requests reversal of an ALJ ruling denying NYSEG's request for mediation by an ALJ and consolidation of the above proceedings.

NYSEG now has pending before the Public Service Commission two separate but directly related matters, a Section 70 Petition which seeks approval for the sale of NYSEG's interest in the Nine Mile Point Unit 2 Nuclear Electric Generating Station ("NMP-2") and NYSEG's Price Protection Plan ("PPP"). The PPP would supersede the last year and two months of the five-year Price Cap Period under NYSEG's existing Rate and Restructuring Agreement and provide NYSEG's customers with stable rates for a six-year period. These two proceedings are directly related because there will be excess proceeds available from the sale of NMP-2 to be applied in the Price Protection Plan.

A third related matter, the acquisition of RGS (hence RGE) by Energy East Corporation, NYSEG's corporate parent, is also before the Commission. The acquisition is related to the Price Protection Plan because savings associated with the acquisition directly impact decisions to be made in the Price Protection Plan proceeding.

The Ruling Under Appeal

NYSEG and the other NMP-2 petitioners filed their petition on January 31, 2001. Thereafter, Staff of the Department of Public Service, Nucor Steel, Multiple Intervenors and John Mavretich submitted testimony, all or parts of which opposed NYSEG's petition and testimony. On May 11, 2001, NYSEG submitted reply testimony. Over a period of several months, settlement discussions were held with each of the petitioners, including NYSEG. Although three of the selling cotenants achieved Joint Proposals with Staff, NYSEG was unable to conclude negotiations.

On September 14, 2001, Administrative Law Judge William Bouteiller convened a procedural conference. As Judge Bouteiller noted, this conference was the first held in the NMP-2 case since a conference on May 15, 2001. During the conference, those parties that had already achieved settlement, Niagara Mohawk and RG&E, expressed their preference to move quickly to a submission of their Joint Proposals to the Commission. Central Hudson, which had not yet achieved a final Joint Proposal but hoped to do so shortly, wished to move on the same schedule as the other two settling cotenants.

NYSEG stated on the record that it would not oppose a closing on the sale by the settling cotenants prior to a closing by NYSEG provided that Constellation entered into an operating agreement with NYSEG that would provide equitable terms for the operation of the NMP-2 by Constellation as the majority owner should NYSEG remain a cotenant. NYSEG explained that the existing Operating Agreement for NMP-2 was designed for a minority owner-operator, and that the agreement was not workable for a majority owner-operator, which Constellation would be following a closing with settling cotenants. NYSEG is concerned that it may not be in the public interest to allow Constellation to own and operate NMP-2 without a new Operating Agreement should the closing take place without NYSEG's share being sold, even on a staged basis. NYSEG asked that a date be fixed for hearings on NYSEG's of the case separate from the date set for submissions of the Joint Proposals of the settling cotenants. The settling cotenants similarly requested that approval of their Joint Proposals be on a track separate from NYSEG's, so that NYSEG's situation would not delay a closing for the other cotenants.

Because NYSEG has not yet achieved a settlement, each of the parties is left with its original litigation position in this proceeding. The financial impact of these positions is considerable, and the positions need to be tested by careful cross-examination and analyzed in

briefs so that the Commission may decide NYSEG's petition on the basis of a complete record. NYSEG's goal, as it has been since the beginning, is to receive satisfactory regulatory treatment in the sale of NMP-2. Such approval would allow it to proceed to closing on the sale of NMP-2 while meeting its fiduciary obligations.

Towards the conclusion of the Friday, September 14, conference, Judge Bouteiller advised that he would entertain motions from NYSEG and Staff concerning the procedure to be followed in bringing this matter to the Commission.

While drafting NYSEG's motion for mediation and consolidation on the morning of Monday, September 17, counsel for NYSEG received a copy of a letter that Staff had forwarded to Judge Bouteiller requesting an expedited schedule for all purposes, including evidentiary hearings for NYSEG if the ALJ found such hearings necessary to create a full record for the Commission. While Staff argues that protracted hearings are not necessary, its letter asking for expedited proceedings recognizes that the differential between NYSEG's position and Staff's on the one issue Staff mentions is "very significant." Clearly, hearings are warranted, as a review of previous Staff correspondence would confirm. One of the major issues involves the illusory "differential" that Staff proclaims as a reason to rush to judgment now on NYSEG's case.

Upon receipt of Staff's letter, the Administrative Law Judge immediately directed that a conference call be convened among all parties in the proceeding. On that call, despite the Judge's prior advice that he would entertain a motion from NYSEG on the procedure to be followed in this case, and despite NYSEG's proposal for mediation and joint hearings as set forth herein, the Judge directed the selection of dates within the next two weeks during which the Company could present its case and cross-examine the cases of each of the parties that submitted testimony in opposition to NYSEG's testimony. September 25 and 28 were selected, which

gives NYSEG only one week to prepare for hearings. The Judge's ruling was confirmed the next day by formal notice from the Commission, a copy of which is attached to this Appeal as Appendix A.

NYSEG's Proposed Resolution

Because issues in the Nine Mile proceeding, Price Protection Plan and the RGS acquisition are all intertwined, at the 3:00 p.m. conference call on September 17, 2001, NYSEG presented to the Judge and the parties a proposal that testimony concerning NYSEG's part of the Nine Mile proceeding and testimony on the acquisition be consolidated with testimony submitted in the Price Protection Plan proceeding and that cross-examination of this testimony be conducted at the evidentiary hearing scheduled to begin on October 15 in the PPP case. Such a suggestion corresponded well with the Administrative Law Judge's inquiry the previous Friday why matters concerning the rate impact of the sale of NMP-2 should be dealt with separately rather than in connection with the Price Protection Plan hearings. Indeed, at the time the Judge raised the question, Staff appeared to indicate that it also believed that rate issues related to NMP-2 should be decided in the context of NYSEG's Price Protection Plan. RGS Energy's subsidiary, RG&E, supported NYSEG's motion for mediation and consolidation.¹

Because NYSEG believes the issues that have arisen in connection with each of these proceedings can be resolved by mediated agreement, NYSEG also suggested at the Monday, September 17, conference call that the former Chief Administrative Law Judge Gerald Lynch be appointed to serve as a mediator in a mediation to commence as early as September 24, 2001.

¹ NYSEG's PPP case was scheduled long ago for hearings to commence September 17. Unfortunately, despite NYSEG's expressed willingness to proceed to hearings as quickly as possible, those hearings were postponed by the PSC to October 15.

Even one, good faith, conscientious day of serious mediation would reveal whether NYSEG or Staff is being reasonable in regard to protecting and advancing the public interest. NYSEG believes that there are perhaps only ten major issues separating the parties in these three proceedings.

Mediation

To date, NYSEG's attempts to achieve a settlement of the NMP-2, Price Protection Plan and RGS proceedings have been unsuccessful because of the lack of a framework for negotiation. Settlement talks in the NMP-2 and RGS acquisition cases have been somewhat more productive, but issues still remain. Although further attempts at unassisted settlement discussions have been offered in parallel with the litigation of the PPP, that is not happening. NYSEG strongly believes that if the Commission were to appoint Chief Administrative Law Judge Judith Lee or former Chief Administrative Law Judge Gerald Lynch, to serve as a mediator, an effort to resolve the remaining issues in NMP-2, the Price Protection Plan, and the RGS acquisition on an expedited basis would be successful.

There is much to be gained and little to be lost by such an approach. If mediation is successful, the Commission may bring to a close three proceedings each of which will have significant beneficial effects for upstate consumers of electricity. If mediation is not successful, the NMP-2 proceeding can proceed to hearings on October 15, together with Price Protection Plan and the acquisition, with the Administrative Law Judges in those proceedings resolving issues in the manner that best fits their involvement with their respective cases. By forcing NYSEG into premature hearings for which it will not have had an adequate opportunity to prepare, the Commission would increase the chance of arriving at resolution of NMP-2 issues that forces NYSEG to a decision that it cannot proceed with a sale.

Considering that Constellation and the other selling cotenants agreed to staged closings and that they are awaiting the approvals of other commissions for staged closings, and that it is not known when such approvals will be received, it is likely that by sending this proceeding to mediation, the Commission will achieve a solution that would let NYSEG close on the sale of NMP-2 together with the other cotenants.

Issues to be Tried in the NMP-2 Proceeding

In its petition in the Nine Mile proceeding, NYSEG, like each of the other selling cotenants, asked for a Commission finding that NYSEG is entitled to and would receive the rate treatment and related accounting proposed in its testimony. The rate and accounting treatment for NYSEG is contained in the testimony of Ernest S. Walker, filed February 23, 2001. In that testimony, Mr. Walker explains that pursuant to the terms of NYSEG's Commission-approved Restructuring Agreement, in the summer of 1999 NYSEG wrote down its investment in the NMP-2 by an amount equal to the net gain on the sale of its fossil generating facilities. Mr. Walker testifies that the sale of NYSEG's interest in NMP-2 to Constellation (calculated as of July 2001, the original target date for closing) would produce an after-tax regulatory gain of approximately \$71.4 million and that interest on that gain would be accrued at a rate of 6.25%. NYSEG proposes to place the proceeds in an Asset Sale Gain Account ("ASGA") and to use that account to recover any uncontrollable costs incurred during the term of the Restructuring Agreement for which there is no specific surcharge or other recovery mechanism, including the costs set forth in Schedule G to Mr. Walker's testimony. The balance of the ASGA would remain deferred for future treatment, which NYSEG has addressed in the PPP case.

In response to NYSEG's testimony, Nucor Steel submitted testimony that not only opposes NYSEG's proposed accounting treatment but requested a base rate reduction for NYSEG. Multiple Intervenors submitted testimony asking that all costs related to the transfer of

NMP-2 employees be born by shareholders, that costs related to the aborted sale to AmerGen Energy, which provided the basis for documentation and negotiating positions in the sale to Constellation, be born entirely by shareholders, and that shareholders and ratepayers share post-AmerGen sale costs on a 75/25 ratio, respectively. John Mavretich submitted testimony arguing that the NMP-2 sale did not deliver the benefits that had been promised and that NYSEG's sale of its interest should be considered on a pre-write down book value basis, that is, that the Commission should ignore completely the fact that NYSEG had used the proceeds of the sale of its fossil generating stations, as required by the Restructuring Agreement, to write down most of its investment in NMP-2.

Staff of the Department of Public Service submitted extensive testimony in opposition to NYSEG's positions in the NMP-2 proceeding. Staff alleges that NYSEG had \$0.4 billion of stranded costs where NYSEG in fact has none. Staff wants an unlawful "uplift" adjustment that would cost NYSEG \$73 million per year. Staff erroneously argues that the sale would allow NYSEG to achieve "windfall" tax gains. Staff proposes a sharing of its alleged stranded costs which would result in the Commission's taking an additional \$44 million from NYSEG. Staff also submitted adverse testimony concerning pension curtailment gains, the treatment of materials and supplies, inventory, an alleged reduction in the risks to which NYSEG would be exposed, NYSEG's debt and equity ratios following the sale, an "operating practices adjustment" and a limitation on NYSEG's recovery of transaction costs. A ruling by the Commission adopting any one of those opposition issues would result in unsatisfactory regulatory treatment.

Interrelationship Between NYSEG's Price Protection Plan and the Sale of NYSEG's Interest in Nine Mile 2

The Price Protection Plan filed on March 14, 2001 was superseded by a modified Price Protection Plan (the "PPP") described generally in the testimony of NYSEG's President, Mr.

Ralph Tedesco, submitted on August 3, 2001 and detailed in his Exhibit RRT-1. The PPP provides customers with numerous benefits in the form of lower, stable rates for an extended period of time and enhancements to the successful retail access program NYSEG already has in place. A portion of those benefits would be funded through the sale of NYSEG's interest in Nine Mile 2 in accordance with NYSEG's agreement.

The proceeds from NYSEG's sale of its interest in Nine Mile 2, therefore, are an integral part of the PPP. On that basis, the joining of the two cases on common record would provide an efficient means off resolving those proceedings.

Interrelationship Between the Energy East – RGS Proceeding and the Price Protection Plan

According to NYSEG's Restructuring Agreement, pursuant to an acquisition or merger petition filed with the Commission by Energy East and NYSEG, NYSEG shall have the "flexibility to retain, on a cumulative basis, any savings associated with the acquisition or merger with another utility for a period of five years from the date of closing..."² Consistent with that provision, the PPP is premised on NYSEG retaining for the first five years 100% of the synergy savings arising from Energy East's acquisition of RGS, and hence of RG&E, which is currently being examined in Case 01-M-0404. To accomplish that objective, Paragraph 37 of the PPP specifies that synergy savings will be excluded from the calculation of NYSEG's electric earnings through 2006.

The PPP, however, covers a six-year period, with an option to extend for an additional year. For the period beyond the first five years, NYSEG is proposing in the PPP that the electric

² Case 96-E-0891 et al., Order Adopting Terms of Settlement Subject to Modifications and Conditions, issued January 27, 1998, Appendix A, (Agreement Concerning the Competitive Rate and Restructuring Plan of New York State Electric & Gas Corporation, dated October 9, 1997, p. 29.)

synergy savings be shared equally between the stockholder (Energy East) and customers. Moreover, NYSEG proposes to use the amount allocated to customers beyond the first five years as one of the funding sources for the benefits provided by the PPP.

There is also a significant overlap between rate issues in the NMP-2 proceeding and issues in the Price Protection Plan proceeding. In order for NYSEG to determine whether the regulatory treatment it is to receive on the sale of NMP-2 is reasonably satisfactory, it must know not only how the proceeds of the sale are to be calculated, but also how the proceeds are eventually to be utilized. The most efficient way to resolve this situation is by having mediation and consolidating the hearings on NYSEG's sale of its interest in NMP-2 with the hearings that are now scheduled for October 15 in the Price Protection Plan proceeding. Since NYSEG is not objecting to a staged closing for those covenants that have achieved Joint Proposals, there is no reason to move NYSEG's part of the case along with undue haste and increase the possibility that a sale will not be achieved for NYSEG. Because there is no need for hearings on the uncontested aspects of the sale of NMP-2, the NMP-2 issues to be tried together with the PPP issues would apparently only be those with rate implications, and the consolidated hearings would not significantly delay the Price Protection Plan or other proceedings. It is noted that the Commission promised NYSEG (and Energy East) expedited treatment of the petition to acquire RGS and RGE.³ Resolving both cases on a common record would further the efficient use of the resources of the Department of Public Service and all interested parties.

³ Id.

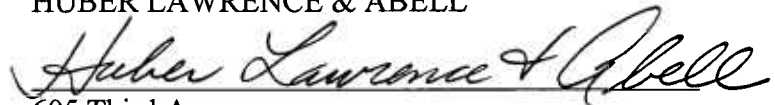
Conclusion

For all of the reasons discussed above, NYSEG respectfully requests that the Commission reverse ALJ Bouteiller and direct parties in Case 01-E-011 the (NMP-2), Case 01-E-0359 (the Price Protection Plan) and Case 01-M-0404 (the Energy East/RGS Acquisition) to enter into a mediation as quickly as Judge Lee or Judge Lynch can schedule such a mediation, and that testimony for all these proceedings be consolidated on the schedule now provided for testimony in Case 01-E-0359.

Dated: September 18, 2001

Respectfully Submitted

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 01-E-0011 - Joint Petition of Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Central Hudson Gas & Electric Corporation, Constellation Nuclear, LLC and Nine Mile Point Nuclear Station, LLC for Authority Under Public Service Law Section 70 to Transfer Certain Generating and Related Assets and for Related Approvals.

NOTICE OF EVIDENTIARY HEARING

(Issued September 18, 2001)

TAKE NOTICE that a two-day, evidentiary hearing will be held before Administrative Law Judge William Bouteiller beginning on September 25, 2001 at 10:00 a.m. at the Commission's Albany offices, Board Room, Three Empire State Plaza and continuing on September 28, 2001.¹

The principal purposes of the conference are: (1) to permit New York State Electric & Gas Corporation to present testimony in support of its petition in this case and to allow adverse parties to cross-examine NYSEG's testimony; (2) to allow adverse parties to cross-examine Department of Public Service Staff on the prefiled testimony it has provided in this case concerning NYSEG; and (3) to allow other active parties to present testimony and engage in cross-examination on matters that are material and relevant to the NYSEG petition.²

JANET HAND DEIXLER
Secretary

¹ No hearings will be conducted on the religious days of observation in between these dates.

² A Notice Inviting Comments is also being issued today requesting the public and interested parties to submit comments concerning the Joint Proposals that have been filed by Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation and the Joint Proposal Central Hudson Gas & Electric Corporation is expected to file on or before Wednesday, September 19, 2001.