February 16, 2024

Hon. Michelle L. Phillips
Secretary
NYS Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

Re: **Rochester Gas and Electric Corporation's Notice of Tax Refund Under 16 NYCRR §89.3**

Dear Secretary Phillips:

Rochester Gas and Electric Corporation ("RG&E" or the "Company"), hereby provides notice to the New York State Public Service Commission ("Commission") under Section 89.3 of the Commission's rules and regulations (16 NYCRR § 89.3), of its receipt of a tax refund from the New York State Department of Taxation and Finance ("NYS DT&F").

RG&E is making this notice filing in an abundance of caution. RG&E had argued in rebuttal testimony in its most recent rate case (22-E-0319, et. al.) that refunds similar to the one at issue here are ordinary operating refunds and not subject to the notice requirement in Section 16 NYCRR § 89.3. However, as there was disagreement among the parties to the rate case over that conclusion, RG&E is making this filing and will address that question on a case-by-case basis as and when future refunds are received.

Under 16 NYCRR § 89.3(b), a utility receiving a tax refund in excess of $1.5 million, or in excess of $1,000 and in excess 0.2% of the utility's operating revenues for the most recent calendar year that ends more than four months before the refund occurs, is required to notify the Commission within sixty (60) days of the refund occurring. A refund is deemed to have occurred on the earlier of the following events: "(1) the refund is authorized by decision of a competent agency or court; or (2) the utility receives it or uses it as an offset to liability."

The tax refund that is the subject of this notice is the result of a sales & use tax audit that NYS DT&F initiated with the Company. The audit period is from June 1, 2015, through February 28, 2022. RG&E received a Statement of Proposed Audit Change for Sales and Use Tax ("Statement") dated July 28, 2023. Pursuant to the Statement, the NYS DT&F authorized a refund of $19,667,223.43 for a portion of the audit period covering June 1, 2015, to August 31, 2018 (this partial audit period referred to as "Phase 1"). The Statement indicates that the NYS DT&F will send its determination to the Comptroller and if the Comptroller approves the determination, they [the Comptroller] will send the Company a check. Based on this guidance from DT&F, the amount of the refund could have changed at any time after the Statement until the date of receipt of the check. On August 17, 2023, the Company acknowledged its agreement with the Statement for Phase 1 portion of the audit period. The Company received a refund check on December 13, 2023, in the amount of $19,667,223.43, arguably confirming the determination of the Comptroller for the refund covering [the partial period for] Phase 1. Subsequently, on January 31, 2024, the Company, through its consultants, received notice from NYS DT&F that the audit for the Phase 1 period June 1, 2015, through August 31, 2018, had been closed and a new case ID was being created for the period September 1, 2018, through February 28, 2022 (the "Closure Letter").

Here, under the test set forth in 16 NYCRR §89.3(a), the sales tax refund for Phase 1 might have been deemed to have occurred at the earliest on December 13, 2023, but as noted, at that time, the audit was still considered to be ongoing for the period post-Phase 1. This changed with the receipt of the Closure Letter on January 31, 2024. Therefore, the Company believes that the obligation to provide notice under 16 NYCRR §89.3(a) for the Phase 1 portion of the audit period was not triggered until receipt of the Closure Letter. Given that neither the Statement nor the Company's acknowledgement appears to have triggered the beginning of the sixty-day notice period, the Company believes a notice filed at this time is timely.

If the Commission disagrees with the conclusion of the Company and finds that the notice obligation was triggered by receipt of the check and not the date of the Closure Letter, then the Company respectfully requests that the Commission waive the deadline for the tax refund notice filing in this instance and accept RG&E's notice of the receipt of a tax refund and proposed utilization of the refund for the benefit of customers.

Pursuant to 16 NYCRR § 89.3(f), any utility that notifies the commission of a refund "shall either propose a method of distributing to its customers the entire amount refunded or show why it should not make such a distribution." As previously discussed with Department of Public Service Staff, for the refund at issue here, which relates to capital expenditures, the Company will apply the full amount, net of cost to achieve, as a credit to rate base.

Respectfully Submitted,

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