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Hon. Janet Hand Deixler
Secretary
Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

September 10, 2002

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re: PSC Case No. 01-E-0359
New York State Electric & Gas Corporation
Electric Rates – Proposed Form of Relief

Dear Secretary Deixler:

Enclosed herewith please find for filing with the Commission pursuant to the "Notice Concerning Response Filings" issued in the above-captioned proceeding on September 5, 2002 the manually-signed original and ten copies of the "Comments of Eliot Spitzer, Attorney General of the State of New York, Regarding Proposed Form of Relief."

Please be advised that I am this day electronically transmitting copies of this letter and the comments to the parties and that I am today also sending paper copies of these documents to the parties via overnight courier service.

Also, please note that the active parties list in this proceeding indicates that documents are to be served on my colleague Mr. Charlie Donaldson and myself at our home mailing and e-mail addresses. The active parties list also contains Mr. Donaldson's home telephone number. Please change the active parties list to show our office addresses and telephone numbers.

Thank you.

Very truly yours,

Richard W. Golden

RICHARD W. GOLDEN
Assistant Attorney General

cc: Hon. Jeffrey E. Stockholm
Active parties

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NEW YORK STATE
PUBLIC SERVICE COMMISSION

----- X
Petition of New York State Electric & Gas
Corporation for Approval of its Electric : Case No. 01-E-0359
Price Protection Plan.
----- X

COMMENTS OF

**ELIOT SPITZER
ATTORNEY GENERAL
OF THE
STATE OF NEW YORK**

REGARDING PROPOSED FORM OF RELIEF

Office of the Attorney General
of the State of New York
Telecommunications and Energy Bureau

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September 10, 2002

INTRODUCTION

The New York State Public Service Commission (“Commission” or “PSC”) is in the process of introducing competition into heretofore monopoly electricity services. A crucial element for an energy service company (“ESCO”) to be able to compete effectively against an incumbent utility for residential and small business customers is the ESCo’s ability to provide such customers the convenience of a single bill consolidating both the charge for electricity used and the charge for delivery of that power. The Commission is addressing bill consolidation in a generic Electronic Data Interchange (“EDI”) proceeding (PSC Case No. 98-M-0667) and in specific utility rate cases such as this proceeding.

This proceeding concerns the electric rates of the New York State Electric & Gas Corporation (“NYSEG” or the “company”). During February 2002, the Commission adopted a Joint Proposal that had been filed during January 2002 pursuant to which a \$205 million reduction in NYSEG’s annual electric revenue requirement became effective during March 2002. This reduction in revenue requirement is to remain in effect through 2006. Under the Commission’s February 2002 Order, the company is also to implement several new rate options for customers on January 1, 2003.¹

There is now a question in this phase of the NYSEG electric rate proceeding as to whether the company can introduce these new rate options in a manner that promotes competition. In addition, it is now questionable whether NYSEG can implement the new rate options on January 1, 2003, so as to provide rates that are just and reasonable as required by the Public Service Law.

¹ See, “Order Adopting Provisions of the Joint Proposal with Modifications” (“Order”) issued in this case on February 27, 2002, adopting a Joint Proposal filed on January 15, 2002.

On August 23, 2002, the Commission issued in this proceeding a "Notice Revising Procedures and Soliciting Comments on a Proposed Form of Relief" ("August Notice"). In the August Notice, the Commission stated that, to implement previously ordered new electric rate options on January 1, 2003, NYSEG must be able to make consolidated billing available for ESCo customers by that date.

The Commission requested comments from parties as to whether it would be appropriate "to postpone the January 1, 2003 implementation date for NYSEG's retail access program, and to delay concomitantly the October 1, 2002 commencement of the enrollment period" during which NYSEG's electricity customers are slated to choose a rate option for service beginning January 1, 2003.

In the August Notice, the Commission noted that NYSEG had joined with other utilities in filing a Petition for Rehearing in the EDI proceeding asserting that consolidated billing would not be available by January 1, 2003. The August Notice invited parties to submit by August 30, 2002 comments concerning the conflict between NYSEG's stated inability to provide consolidated billing and the necessity of the company's providing such billing to implement rate changes on January 1, 2003. The August Notice also invited the parties to suggest how the Commission should resolve this conflict.

This office has received comments filed pursuant to the August Notice from the following parties: NYSEG; the New York State Consumer Protection Board ("CPB"); Energetix; Amerada Hess; Select Energy, Inc; Dynegy Energy Services; NYSEG Solutions, Inc.; the Public Utility Law Project ("PULP"); and the Municipal Electric and Gas Alliance and several Chamber of Commerce group energy buying programs, filing jointly. We have also received both initial

and supplemental comments filed by the Small Customer Marketer Coalition ("SCMC"). In addition, on September 5, 2002, PULP filed a "Motion for Clarification and Modification of Formula for Just and Reasonable Fixed Rates for Residential Default Service" ("PULP Motion").

On September 5, 2002, the Commission issued a "Notice Concerning Responsive Filings" ("September Notice") establishing September 10, 2002 as the date by which parties may file responses to the comments submitted pursuant to the August 23, 2002 Notice and to the PULP Motion. These are the New York State Attorney General's ("Attorney General") comments filed pursuant to the September Notice.

SUMMARY OF POSITION

The Commission should not permit NYSEG to implement new rate options for residential and small business customers, now set to commence on January 1, 2003, until it is satisfied that the company can also provide consolidated billing that is consistent with the requirements of the EDI proceeding. To ensure that the company is in compliance with EDI requirements, the Commission should independently confirm and pre-test NYSEG's capability to provide adequate consolidated billing before authorizing the company to implement new rates.

In addition, significant changes in the energy futures market since the parties filed the January 2002 Joint Proposal and the Commission adopted it in its February 2002 Order require NYSEG to provide additional benchmark information regarding the price of power futures for 2003 and 2004 in order to derive reasonable fixed rates for residential and small business electricity customers choosing that option. The Commission should therefore direct NYSEG to obtain additional information to be used to calculate the commodity price to be charged fixed rate residential and small business customers. Until NYSEG presents adequate information to be

used to establish a benchmark against which a two-year fixed commodity rate can be set, commencement of the enrollment period should be postponed and current electric rates should remain in effect for residential and small business customers.

Finally, the Commission should clarify that New York Power Authority ("NYPA") contract power is not subject to the "risk premium" to be added to bundled rates.

ARGUMENT

I. THE COMMISSION SHOULD DEFER IMPLEMENTATION OF NEW NYSEG RATES UNTIL NYSEG IS ABLE TO PROVIDE CONSOLIDATED BILLING FOR RESIDENTIAL AND SMALL BUSINESS CUSTOMERS AND THE COMMISSION SHOULD INDEPENDENTLY VERIFY THAT NYSEG CAN PROVIDE CONSOLIDATED BILLING.

The Joint Proposal adopted by the Commission in this proceeding provides customers a choice among three rate options for the two years beginning January 1, 2003. These three options are: the Bundled Rate Option ("BRO"), the Variable Rate Option ("VRO"), and the ESCo Rate Offering ("ERO"). Under the BRO, the customer will receive both delivery and commodity service from NYSEG and the price for each service will remain fixed, at a price still to be determined, during 2003 and 2004. Under the VRO, the customer will also receive both delivery and commodity service from NYSEG, but only the price for delivery service will be fixed while the price for commodity service will fluctuate depending on NYSEG's actual cost in purchasing the power it delivers to customers. Under the ERO, NYSEG will provide only the delivery service, at a fixed rate, and the customer will obtain commodity from an ESCO, which will charge a market price for providing that service. All customers would pay the same rate for delivery service, but NYSEG has not yet indicated what it believes that rate should be.

The availability of consolidated billing is crucial for ESCOs to be able to compete with NYSEG to attract residential and small business customers. These customers generally prefer to receive one bill for electricity service, rather than separate bills for delivery and commodity, even though the incumbent utility is providing the delivery service and an ESCo is providing the commodity service. The unavailability of a single electricity bill creates a serious impediment to ESCOs when they market their service to residential and small business customers. The Commission's August Notice correctly expressed reservations about implementing the new NYSEG rate options in the absence of assurance that consolidated billing will be available by January 1, 2003.

In its comments filed in response to the Notice, NYSEG asserts that it will provide "a consolidated utility single bill on an interim basis" effective January 1, 2003. (NYSEG Comments, at 6.) This statement contradicts the statement NYSEG made to the Commission in the EDI proceeding, and the contradiction cannot go unresolved.

The only information NYSEG provides as to how this "interim" arrangement will work is as follows:

ESCOs will be required to transmit a formatted utility bill ready print file to NYSEG. NYSEG will prepare and send a consolidated utility single bill within two days of receipt of the ESCO billing information. (*Id.*)

Creating a smoothly-working interface between the operating and information systems of incumbent utilities and independent service providers is not a trivial undertaking; it involves the coordination of innumerable highly technical specifications and operations.²

² See, e.g., PSC Case No. 97-C-0271, "Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252

NYSEG's representations in its comments fail to provide the specificity needed to determine whether its "interim" consolidated billing plan would allow the company's and the ESCos' systems to interface with the required smoothness and reliability. SCMC pointed out in its supplemental comments numerous lacunae in NYSEG's presentation. For instance, NYSEG does not identify the File Formats to be used in data exchange, provide examples of formats, data elements and bill layouts, or identify the customer payment collection and disbursement process and timetable. In short, NYSEG fails to provide enough information for the Commission to determine whether the proposed "interim" consolidated bill would satisfy the practical parameters being developed in the EDI proceeding.

As the Commission noted in the August Notice, the Joint Proposal provides for the commencement on October 1, 2002 of a three-month enrollment period during which customers may choose the rate plan under which they will receive service beginning January 1, 2003. Given the lack of specificity of NYSEG's comments, it is not now possible for the Commission to determine prior to the start of the enrollment period on October 1, 2002 that NYSEG will be able to provide on January 1, 2003 the consolidated billing for bundled residential and small business customers needed to implement the service offerings contemplated by the Joint Proposal. The Commission should not rely on the company's self-certification that an adequate consolidated bill is available at that date. Instead, the Commission should direct the Department of Public Service ("DPS") Staff to make an independent assessment, which the Commission can then review and approve. The assessment should include a trial "road test" before actual

of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996."

implementation, to ensure that the consolidated billing plan works in practice. Customers should not be guineas pigs for assessing the operational adequacy of this component of a competitive retail market.

II. THE COMMISSION SHOULD DIRECT NYSEG TO RESOLVE THE IMPEDIMENTS TO NYSEG'S IMPLEMENTING JUST AND REASONABLE RATES FOR RESIDENTIAL AND SMALL BUSINESS CUSTOMERS.

Under the Joint Proposal adopted by the Commission, on January 1, 2003 NYSEG's current fixed rate residential and small business customers will be assigned to the BRO unless they choose a different option. The Joint Proposal provides for an enrollment period during which customers may choose among the three rate options. The enrollment period is slated to begin on October 1, 2002 and end on December 31, 2002. During the customer enrollment period, NYSEG is to conduct a public education campaign advising customers of their various rate choices. The parties have been consulting as to the content of this educational effort.

A crucial component of the Joint Proposal's rate plan is the fixed price NYSEG will charge for commodity under the BRO. Since the delivery price is to be the same under all three options, the commodity price will be an important consideration for customers deciding which option to choose. Under the schedule contemplated in the Joint Proposal, the fixed BRO rate must be determined no later than October 1, 2002, so that it will be made known to potential customers at the start of the enrollment period.

The commodity portion of the BRO during 2003 and 2004 is to be based on a forecast of energy prices during those years. To determine this forecast, the Joint Proposal relies upon the prices published in the energy futures market during a sample period for the delivery of energy during 2003 and 2004. The Joint Proposal contains a formula to be used in determining this

forecast. (Joint Proposal, at 32.) The formula relies upon “the average of the previous 20 trading days³ prices for on- and off-peak power available from Natsource and/or Enron On-Line (or a successor) for New York Area ‘A’ for the forward two-year period beginning January of 2003.” Using the data points obtained from the referenced sources, NYSEG is to perform the mathematical computations specified in the Joint Proposal and derive the price to be charged BRO customers for electricity during 2003 and 2004.

At the time the parties negotiated and the Commission adopted the Joint Proposal, Enron On-Line maintained an active trading function that published the prices and quantities of trades in the energy futures market. There were numerous publicly published public trades for energy delivery in New York Area Zone “A” for forward two-year periods. However, Enron On-Line has ceased trading and there is now no published public source of information as to trades for energy delivery in New York Zone “A” for forward two-year periods. UBS Warburg, which acquired some of Enron On-Line’s energy trading facilities, is apparently not permitting its data to be used for the purposes contemplated in the Joint Proposal. Natsource data is not public and, in any event, does not provide sufficient information.

Observing these developments in the energy futures markets, several parties to this proceeding expressed concern as to whether the formula set forth in the Joint Proposal could be applied for the intended purpose without the availability of more information. The parties have met to consider the continued applicability of the Joint Proposal’s formula, but the parties have failed to date to develop a solution.

³ The twenty trading days are those immediately prior to October 1.

During these discussions, NYSEG did provide a sample computation applying the Joint Proposal's formula to the limited information the company had obtained during a recent 20-day period. The company's sample contained only six quotes for on-peak power futures during 2003-2004 and only two quotes for off-peak power futures. Applying the formula set forth in the Joint Proposal using the information NYSEG provided would result in a commodity price based on only eight data points.

Moreover, the information provided by NYSEG indicated only the closing price on each day on which there were futures trades. Reference to trades made during each day, not simply the closing price, would have increased the number of relevant data points. In addition, for both on-peak and off-peak futures quotes, NYSEG provided no information regarding the amount of energy involved. Thus, the price to be paid by all BRO customers might be determined by prices for only a tiny fraction of the power used by such customers. Also, NYSEG provided no information regarding the identities of the parties to the referenced trades. In the absence of information identifying the trading parties, it cannot be ascertained whether NYSEG itself may have determined the prices paid in the futures market for Zone A.

Furthermore, the trading information provided is not public. All of the current sources of trading information make such data available only to their own customers or to paying entities.

NYSEG proposes to apply the Joint Proposal's formula despite the current paucity of crucial information. The Commission, however, should require NYSEG to obtain and provide additional information regarding energy futures contracts when applying the Joint Proposal's formula. This additional information should include: intra-day trades, not just closing trades; the quantity involved in each trade; and the identification of trades to which NYSEG was a party. A

judgment should then be made whether sufficient information exists upon which to base a benchmark for use in the BRO formula.

Even if consolidated billing for residential and small business customers is available on January 1, 2003, it is unlikely that the information necessary for applying the formula for determining the commodity component of the BRO will be available for use during the 20 trading days prior to October 1, 2002, when the enrollment period is scheduled to commence. Under the circumstances, the Commission should postpone the January 1, 2003 implementation date for NYSEG's retail access program and delay concomitantly the October 1, 2002 commencement of the enrollment period. The Commission should also determine that the current bundled rate remain in effect for residential and small business customers until such time as the Commission is satisfied that the commodity price calculated using the Joint Proposal's formula would produce just and reasonable rates.

III. THE COMMISSION SHOULD CLARIFY THAT THE RISK PREMIUM ADDED TO THE RATES PAID BY BUNDLED RATE OPTION CUSTOMERS DOES NOT APPLY TO THE COST OF CONTRACT ENERGY NYSEG PURCHASES FROM THE NEW YORK POWER AUTHORITY.

The PULP Motion refers to a tension between provisions of the Joint Proposal. The Joint Proposal (at 32) provides for a 35% "risk premium" to be incorporated within the fixed commodity price that results from the application of the formula to be used for calculating the BRO commodity price. The provision imposing the risk premium appears to apply it to all of the commodity delivered to customers who take service under the BRO. At the same time, the Joint Proposal states (at 34) that the "benefits of NYPA purchased power will be provided to residential customers, consistent with NYSEG's contract with NYPA."

The benefit to customers of NYPA contract power, which is priced below-market, would be undermined if the risk premium were to be added to the price customers pay for commodity under the BRO. The Commission should eliminate any inconsistency between these provisions of the Joint Proposal by clarifying that the risk premium may not be added to the price charged BRO customers for commodity obtained from NYPA under contract.

CONCLUSION

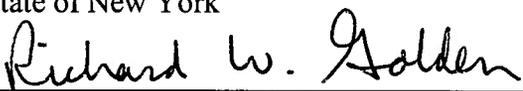
For the reasons set forth herein, the Commission should: (1) independently confirm and pre-test the availability of consolidated billing before authorizing NYSEG to implement new rates for residential and small business customers; (2) direct NYSEG to obtain the additional information referenced herein before deriving the commodity price to be charged BRO residential and small business customers and, in the meantime, to continue current electric rates for such customers and make a judgment concerning the reasonableness of this price; and (3) clarify that the "risk premium" does not apply to NYPA power.

Dated: New York, New York
September 10, 2002

Respectfully submitted,

ELIOT SPITZER
Attorney General of the
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By:


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