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September 19, 2006

Hon. Jaclyn A. Brilling
Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, N. Y. 12223

Re: **Case 05-E-1222 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service**

Dear Secretary Brilling:

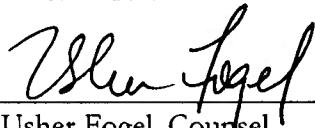
Enclosed for filing upon the Commission in this matter, please find the original and twenty-five (25) copies of the *Petition for Rehearing and Clarification of the Small Customer Marketer Coalition and Retail Energy Supply Association*.

Thank you for your courtesies in this matter.

Respectfully submitted,

Small Customer Marketer Coalition and
Retail Energy Supply Association

By: _____


Usher Fogel, Counsel

Cc: Hon William Bouteiller, Administrative Law Judge
Hon. Elizabeth H. Liebschutz, Administrative Law Judge
Active Party List

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Case 05-E-1222 – Proceeding on Motion of the Commission as to Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service

PETITION FOR REHEARING AND CLARIFICATION OF SMALL CUSTOMER
MARKETER COALITION AND RETAIL ENERGY SUPPLY ASSOCIATION

I. INTRODUCTION

In accordance with Public Service Law § 22 and § 3.7 of the Commission's Rules and Regulations,¹ the Small Customer Marketer Coalition ("SCMC") and Retail Energy Supply Association ("RESA")² hereby jointly submit this petition for rehearing and clarification in response to the "Order Adopting Recommended Decision with Modifications" issued by the Commission on August 23, 2006 in the above-referenced proceeding.³ SCMC/RESA seeks rehearing with respect to the phase-in of the merchant function charge (MFC) and seeks clarification in connection with the applicability of the MFC to the ESCO option with supply adjustment ("EOSA").

¹ 16(A) NYCRR § 3.7.

² RESA member companies include Consolidated Edison Solutions, Inc., Direct Energy Services, LLC, Hess Corporation, Reliant Energy Solutions, Select Energy, Inc., Semptra Energy Solutions, Strategic Energy LLC, SUEZ Energy Resources NA, Inc., and U.S. Energy Savings Corp. The opinions expressed in this document may not represent the views of all members of RESA.

³ Case 05-E-1222 - Order Adopting Recommended Decision with Modifications (issued August 23, 2006) ("Order").

II. PHASE-IN OF THE MERCHANT FUNCTION CHARGE

The Administrative Law Judges in the Recommended Decision⁴ concurred with the position advocated by SCMC/RESA and Multiple Intervenors (MI) that the proposed elimination of the existing back-out credits and their replacement with significantly lower MFCs would constitute a significant rate change for these customers and therefore a phase-in of the new MFCs over a period such as 18 months was deemed to be reasonable.⁵ SCMC/RESA⁶ responded to objections raised by the Company in connection with the RD's adoption of a phase-in for the new MFCs. In the Order, the Commission noted that the "changes effected from moving from the backout credits to the merchant function charges here are sufficient to justify a phase-in approach", and that in determining the level of the change it is "appropriate to compare these two rates in and of themselves, without regard to the overall impact from the other rate elements that are the subject of this order."⁷

Although the Commission concurred with the views presented by SCMC/RESA and MI that the rate changes associated with the movement from back-out credits to the proposed MFCs were of material level and justified a phase-in, the Commission's transition mechanism does not allow for a period of time in the prospective rate year (2007) within which the existing back-out credits would remain fully in effect, but instead directs that the reduction in the back-out credit immediately commence on January 1, 2007 and be progressively reduced to the level of the MFCs within a 12-month period.

⁴ Case 05-E-1222, Recommended Decision by Administrative Law Judges William Bouteiller and Elizabeth H. Liebschutz (issued June 9, 2006 ("RD")).

⁵ RD, p. 137.

⁶ Case 05-E-1222 – Brief on Exceptions of the Small Customer Marketer Coalition and Retail Energy Supply Association, dated July 13, 2006, pp. 8 through 12.

⁷ Order, p. 109

SCMC/RESA urge the Commission to reconsider this proposed phase-in mechanism and instead direct that the existing back-out credits remain in effect throughout calendar year 2007 and thereafter introduce the phase-in schedule of the MFCs now contemplated in the Order. Under this mechanism, there would be an approximate 18-month transition period from the date the Order was issued in this proceeding during which the existing back-out credits would remain in effect without any precipitous change as envisioned through the introduction of the new MFCs. This approach would better serve the needs of consumers, foster greater stability in the retail access market, and be more consistent with the transition mechanisms previously adopted by the Commission for National Grid and Con Edison.

Although the Commission did conclude that a transitional phase-in for the new MFCs was appropriate, it erred by not adopting the approach it previously has applied to utilities that were faced with dramatic changes in the existing rate structure related to retail access customers. The first utility that unbundled its rates in accordance with the Commission's unbundled policy was Con Edison.⁸ The Commission adopted an unbundling process that *maintained* the existing back-out credit levels for large customers and viewed such an outcome as reasonable. The next utility to face application of the unbundling process was National Grid.⁹ Therein, the Commission approved a transition mechanism that retained the existing consumer service backout credits for an 18 month period following the issuance of the final Order in that proceeding.

In these proceedings, the Commission recognized that to foster stability in the retail energy market and enable customers and ESCOs to assimilate the material changes in the retail access rate design, it was most efficacious to structure a transition mechanism that retained the existing backout

⁸ Case 04-E-0572 - Consolidated Edison Company of New York, Inc. – Unbundling Phase, Order Adopting Unbundled Rates and Backout Credits and Specifying Terms for the Recovery of Revenues Lost as a Result of Such Rates and Costs (issued April 15, 2005), p. 6, 10.

⁹ Case 05-M-0333 - In the Matter of Niagara Mohawk Power Corporation's Plan to Foster the Development of Retail Energy Markets, et al., Order Clarifying and Adopting Joint Proposal on Competitive Opportunities (issued April 20, 2006).

credits for at least an 18 month period before implementing actual reductions in the credits caused by introduction of the new lower MFCs. The Commission should follow the same approach with respect to the NYSEG retail access program.

Moreover, the severity of the rate impact associated with the phase-in contemplated by the Commission is considerably more onerous than the standard usually deemed acceptable with respect to sales service customer classes. With introduction of the MFC structure, ESCO customers will experience a decrease in the available credit in excess of 60% during the 2007 rate year.¹⁰ In contrast, the Commission generally limits the rate impact to any particular class to 1.5 times the overall increase or decrease, which usually falls into the single digit range.¹¹ Consequently, application of the phase of the MFCs in 2007 engenders a disparate rate impact that is inequitable and inconsistent with well-settled Commission precedent.

The need for a period of stability unmarked by dramatic change is especially warranted in the instant case. As the Commission is well aware, there has been considerable lingering uncertainty, controversy and doubts concerning the prospective structure of the retail access program in the NYSEG territory, the manner by which retail access will be conducted in the future as well as the Commission's overall perspective with respect to the implementation of retail access for this utility. Further, customers and ESCOs have remained unaware of whether the utility would continue the program under which the FPO was provided and if the fixed price would remain the default service. At this date there is still considerable uncertainty in light of the utility's filing of a Petition for Rehearing and Request for Oral Argument and its public statements indicating that it was contemplating various legal challenges to the Order. Even if all goes as contemplated, under the Commission's Order the utility will now be obligated to offer an FPO as an option for one year but has the discretion not to offer the program in 2008; the FPO will be structurally different than the

¹⁰ SM 1034.

¹¹ Order, p. 96.

current FPO; and the FPO will not be the default option. Thus, the competitive environment in NYSEG for 2007 remains shrouded in a veil of doubt, confusion and uncertainty.

Given this inchoate atmosphere, it behooves the Commission to minimize the number of material changes that will be implemented in the 2007 time frame. It is more reasonable to implement one major change -- the restructured FPO -- in a measured manner before imposing the other radical change emanating from introduction of the significantly reduced the MFCs. The parties should have the opportunity of coping with the new retail access environment without also having to simultaneously handle a significant reduction in the backout credits.

In other words, in 2007, assuming the Company complies with the Commission's directive, the utility would implement the new FPO program discussed in the Order without any rate design change associated with introduction of the new MFCs. During 2007 the parties will thereby be able to re-orient themselves to the new FPO program and also be aware that commencing in 2008, the MFCs will begin to change. In this manner, the Commission would properly address the fulsome changes occasioned by the new FPO structure and allow for introduction of the new MFCs in a manner that create less of an intrusion into the operations of the competitive marketplace.

III. ESCO OPTION WITH SUPPLY ADJUSTMENT

In the Order the Commission directed that NYSEG continue to offer the EOSA as an option that can be selected directly by customer without prior enrollment in the utility FPO.¹² In describing the EOSA option, the Commission provides the following description:

"The rate for the service is based upon the fixed price option, with the spot market price plus 1 mill back out."¹³

¹² Order, P. 24.

¹³ Order, P. 23.

This language engenders some confusion in that it may be interpreted to mean that a customer enrolled in the EOSA would only receive a 1 mill back out but would not qualify to receive the back out of the MFC applicable to that customer class. This interpretation would be in error as the EOSA option looks upon the 1 mill as an addition to what in the prior case was the existing back out credits but in this case relate to the new MFCs. Therefore, SCMC/RESA requests clarification that the 1 mill back out for the EOSA option is in addition to the MFC applicable to the particular retail access customer.

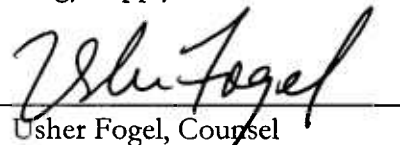
IV. CONCLUSION

For the reasons set forth above SCMC/RESA respectfully request that the Commission grant the relief requested herein in its entirety.

Respectfully submitted,

Small Customer Marketer Coalition and
Retail Energy Supply Association

By: _____


Usher Fogel, Counsel

Dated: Cedarhurst, New York
September 19, 2006