LepCorp
Leveraged Energy Purchasing Corporation

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November 14, 2002

HON. J. MICHAEL HARRISON **Via Overnight Mail**
State of New York Public Service Commission
Three Empire Plaza
Albany, New York 12223

Re: Initial Brief for Cases 02-E-0198 & ~~01~~ 02-G-0199

Dear Judge Harrison:

Enclosed please find our original Initial Brief for that we are submitting in connection with the above-referenced matters. By copy of this letter we will be forwarding twenty-five (25) copies of said Brief to the Secretary of the Public Service Commission, also by overnight mail. We will also be forwarding a copy via first class mail to all of the active parties as listed on the Public Service Commission website (and as delineated in the attached Certificate of Service) and will follow with an electronic forwarding of this Brief tomorrow to the parties as included in the Commission's established email list for these proceedings.

We ask that if there are any questions relative hereto please do not hesitate to contact the undersigned and thank you for your attention to this correspondence.

Very truly yours,

David W. Koplas
General Counsel

DWK/mlz
Enc.
Cc: Hon. Janet Hand Deixler, Secretary ✓
Active Parties (as per above)

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BEFORE THE

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

PROCEEDING ON MOTION OF THE COMMISSION AS TO THE RATES, CHARGES, RULES AND REGULATIONS OF ROCHESTER GAS AND ELECTRIC CORPORATION FOR ELECTRIC SERVICE

CASE 02-E-0198

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PROCEEDING ON MOTION OF THE COMMISSION AS TO THE RATES, CHARGES, RULES AND REGULATIONS OF ROCHESTER GAS AND ELECTRIC CORPORATION FOR GAS SERVICE

CASE 02-G-0199

BRIEF

Submitted by:

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November 14, 2002

TABLE OF CONTENTS

PRELIMINARY STATEMENT

Leveraged Energy Purchasing Corporation ("LepCorp") provides energy procurement, consulting and management services to commercial, industrial, municipal, institutional and residential end users throughout Upstate New York. In fact, LepCorp is one of the few market participants, if not the only one, that manages both natural gas and electricity procurement for clients in the National Fuel Gas ("NFG"), Niagara Mohawk ("NMPC"), New York State Electric & Gas ("NYSEG") *and* Rochester Gas & Electric ("RG&E") utility territories. Furthermore, over the past several years LepCorp is arguably the only retail access participant to consistently file positions on behalf of Energy Service Companies ("ESCOs") in connection with Commission proceedings involving RG&E.[1]

Furthermore, LepCorp has pursued independent proceedings at the Commission level in an attempt to facilitate retail access competition in RG&E's utility territory and has expended a significant amount of resources in an attempt to ensure that the prerequisites for a viable program will be established, and thereby attract an array of participants. The value to LepCorp and its clients of having successful retail access programs throughout New York State may yet warrant the increased effort that this particular utility's programs requires, however, the justification for such a disparate commitment of time and resources, when compared to all other programs in which LepCorp is active, may ultimately depend on the Commission's willingness in this proceeding to address what we feel are glaring indications of RG&E's failure to properly support retail access programs in its territory.

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[1] LepCorp was active in Case 96-E-0898 wherein RG&E's Market-Based Back-out Credit was ultimately established, in the merger proceeding under Case 01-M-0404, and was one of the two retail access participants to provide testimony on behalf of ESCOs in the present case before the Commission.

ARGUMENT

POINT I: RG&E MUST TAKE IMMEDIATE STEPS TO ADDRESS THE MYRIAD OF DIFFICULTIES THAT ESCO/MARKETERS FACE IN ITS RETAIL ACCESS PROGRAMS

As pointed out throughout the direct testimony of Michael Mastroianni and Daniel Smith, as well as in the testimony of Department of Public Service witnesses Shirley R. Anderson and Roberta M. Worden, there are significant and long standing issues that have concerned participants in RG&E's retail access programs. In fact, as pointed out in the attachment to witness Mastroianni's testimony, marked as Exhibit 161, Leveraged Energy Purchasing Corporation ("LepCorp") back in December of 2001 formally requested that the Commission conduct a comprehensive review of RG&E's practices in connection with its retail access programs in an attempt to address some of the very issues that have been raised in the context of these proceedings.

Notably, and consistent with the claims of certain of the above witnesses, RG&E has been either been dismissive of or slow to respond to most concerns expressed by the retail access participants in its programs. As an example, LepCorp was forced to pursue a long and time-consuming mediation effort in order to achieve changes to RG&E's billing system that could have much more promptly and efficiently been achieved through a collaborative effort at the time the issues were raised.

RG&E's own witnesses in their direct testimony, specifically Thomas T. Fogg, Steven T. Adams and Louis L. Bellina, provide little more than lip service to the retail access component of the company's case. Furthermore, they tout the virtues to the "innovative" single retailer model that the Company is quickly and completely ready to abandon, as evidenced in the rebuttal testimony of the Retail Access and Policy Panels, approximately seven months later. While RG&E might claim that this is its "responsiveness" to issues and concerns brought to their attention, the reality is that the deficiencies of the single retailer model have been pointed out by ESCO/Marketers since shortly after its inception. In fact, it is undoubtedly a contributing factor to the limited number of participants in RG&E's retail access programs, especially in the electric program[2] – a situation that has existed since long before the current rate filing.

Furthermore, any attempt by RG&E to suggest that its recent reversal of its historical defense of the single retailer model evidences its commitment and responsiveness to the concerns of its program participants is contradicted by the tone and content of the Rebuttal Testimony of its Retail Access Panel. The very suggestion that any transition from the single retailer model to a dual/multi retailer model would require at least a one year transition prior to switching over, coupled with the company's outright refusal to accept any mitigating proposals during the interim period (e.g. purchase of receivables) effectively sentences the ESCO/Marketer to the status quo for the period at issue in a one-year rate case. In addition, the balance of the Retail Access Panel's testimony reads as an outright rejection of any proposal or position taken by Staff[3], LepCorp and AllEnergy.

Absent a well conceived and flexible transition plan to accompany RG&E's blanket statement that the single retailer model must be discontinued and replaced by a dual/multi retailer model, the participation by ESCO/Marketers will most likely continue

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[2] Upon information and belief, the only ESCO/Marketers that are actively serving load in RG&E's electric retail access program are LepCorp's clients (The Energy Cooperative of New York and The County of Monroe – a municipal aggregation group) and the Company's affiliate, Energetix, which serves an overwhelming percentage of the participating load.

[3] Many of the Staff Proposals (e.g. support of aggregation programs, Market Match and Market Expos) that are rejected outright by RG&E are currently in place in other utility territories and contained in the current Orders pertaining to said utilities.

to decline, resulting in an ever-increasing concentration of retail access load in its affiliate, Energetix. Once again, if the Company was truly responsive to the concerns of its retail access participants, it would not summarily reject the proposal by LepCorp witness Mastroianni that a working group of interested parties from all segments be convened to analyze and agree upon improvements to RG&E's programs.[4] One would hope that, at a minimum, one of the synergies resulting from the merger with NYSEG would involve improvements to each utility's, or, more importantly, RG&E's retail access programs - a subject that LepCorp attempted, in vain, to obtain some level of attention toward and definition of at the time of said merger proceedings – through some level of prompt implementation of the best practices currently followed in said programs.

POINT II: THE INCREASED LEVEL OF EFFORT REQUIRED TO PARTICIPATE IN RG&E'S RETAIL ACCESS PROGRAMS AND INHERENT MAKEUP OF THE SINGLE RETAILER MODEL SUPPORT AN INCREASE IN THE FINANCIAL INCENTIVES FOR PARTICIPANTS IN RG&E'S RETAIL ACCESS PROGRAMS

RG&E's single retailer model represents an approach that effectively sheds the Company's financial exposure for the delivery component of retail access participants' bills, as well as the billing function pertaining to said customers. Notwithstanding the claim in the Rebuttal Testimony of its Retail Access Panel[5], one of the greatest complicating factors in the implementation of this model in RG&E's programs is the lack of integrity of data that is provided by the Company. Interestingly, LepCorp serves numerous clients that participate in NFG's single retailer model and has never, for such a

[4] The response by the Retail Access Panel in its Rebuttal Testimony to the question of do they agree with said proposal by Mr. Mastroianni was: "No. There is no basis for the Commission to accept this recommendation."

[5] Said Panel suggests that "RG&E's system includes a series of checks and balances to ensure that data is timely and correctly provided to suppliers."

prolonged period of time, encountered the types or frequency of problems pertaining to inaccurate billing data, billing data that is not supported by the requisite back-up calculations, or the degree of conflict surrounding attempts to bring issues to the utility's attention for discussion and/or correction, as it has with RG&E.

As evidenced by the circumstances outlined in Exhibit 103 to this record, which is by no means an isolated incident when it comes to billing data provided by RG&E, there are significant questions regarding the Company's claims that it adequately commits the proper resources to support its retail access programs. The suggestion in Company witness Adams' direct testimony that the performance level for supplier billing accuracy for 2000 was at a rate of 99.8% is misleading at best. Not only is this data almost two years old, it predates the period following RG&E's modifications to its billing system which, as Company witness Marini admitted on cross-examination, resulted in a period of adjustments and modifications in order to attempt to successfully implement the new system. In fact, as further conceded by Mr. Marini on cross-examination, the issues raised in Exhibit 103 would seem to fly in the face of RG&E's claims regarding the integrity of its billing system. Furthermore, the degree to which the problems evidenced in Exhibit 103 might *not* affect the calculation of the supplier billing accuracy figure leads to the inescapable conclusion that said figure does not reflect all relevant underlying data.

Effectively, the Company's insulation from the fallout pertaining to billing issues[6], and the demands that are placed on ESCO/Marketers by the need to react to an inordinate level of corrections and adjustments (such as those set forth in Exhibit 103)

[6] Since the ESCO/Marketer generates the customer invoices for both the supply and delivery component under the single retailer model, any customer inquiries, cash flow problems and the effort associated with subsequent correction, adjustments and/or rebills are essentially borne by the ESCO/Marketer.

inherent in RG&E's single retailer programs, supports the further claim by witness Mastroianni, which did not appear to be addressed whatsoever in RG&E's Rebuttal Testimony, that the underlying level of exposure and effort in this utility territory suggests increased compensation for those retail access participants that remain going forward. The increased costs to ESCO/Marketers inherent in RG&E's single retailer programs (e.g. in the form of added receivables risk and inflated security requirements when factoring in the delivery component as compared to other utility programs), complicated by the added effort required when attempting to deal with the aforementioned billing challenges and the other deficiencies as set forth in the testimony of the LepCorp and AllEnergy witnesses, support an increase to the current two and four mil adders, as well as an increased billing credit.

POINT III: ABSENT CLEARLY DEFINED REQUIREMENTS FROM THE COMMISSION PERTAINING TO RG&E'S SUPPORT OF RETAIL ACCESS THERE WILL BE FURTHER DETERIORATION IN THE LEVELS OF PARTICIPATION BY ESCO/MARKETERS

One realization during the course of our involvement in RG&E's retail access programs over the past few years, as referenced in Mr. Mastroianni's testimony, is that, historically, the only truly productive exchanges that LepCorp has experienced with the Company have occurred in the context of multi-party or Commission supervised exchanges. The corollary to this is that any and all proposed changes to RG&E's retail access programs, or the manner by which the suggested aggregation, Market Match and Market Expo initiatives might be implemented, must be clearly defined with as welldeveloped a time line as is possible given the inherent uncertainties underlying said matters.

Parallel to the Company's concerns surrounding the undefined costs or levels of support pertaining to some of the aforementioned Department of Public Service proposed initiatives, ESCO/Marketers would find little solace in any determination that RG&E would be required to supplement or replace its single retailer model with a dual/multi retailer model, *absent* a detailed schedule and process for said implementation. The examples in Mr. Mastroianni's testimony of a few of LepCorp's experiences to date in trying to collaborate with RG&E reveal what we feel to be is the Company's underlying philosophy, as referenced in Company witness Keogh's direct testimony, that they are "adequately situated to confront retail competition in its service territory."

Any determination by the Commission that there must be a transition to a dual/multi retailer model should also have the benefit of input from a working group comprised of interested parties, including Department of Public Service Staff, ESCO/Marketers and preferably personnel for other utilities that currently implement said models. It is also of note that the Company's concerns surrounding the effort, costs or other issues underlying any requirement that it support *both* the single and dual/multi retailer models – as suggested by the Staff, LepCorp and AllEnergy – is hardly convincing when considering that virtually any marketer that participates in multiple utility territories faces these obstacles on a daily basis, presumably with a fraction of the resources and with no option for recovery of the associated costs from ratepayers.

LepCorp further believes that only by developing incentives and/or penalties that are tied into both the levels of retail access participation by ESCO/Marketers (with a design toward addressing the overwhelming percentage of concentration of load and customers in RG&E's affiliate, Energetix) and the opinions of ESCO/Marketers regarding the attention paid to their questions or concerns (through the surveys and other mechanisms as proposed by Staff witness Tuczinski) would RG&E be motivated or compelled to commit the level of support to its retail access programs necessary to attract additional ESCO/Marketers, and thereby improve the overall performance of said programs.

CONCLUSION

Based upon the aforementioned arguments, LepCorp respectfully requests that the Commission establish a comprehensive plan for the overhaul of RG&E's retail access programs. Such a plan should include the formation of a working group designed to collect information from interested parties (including Commission, marketer, utility and any other relevant representatives), a timeline for the implementation of the necessary changes, establishing incentives and/or penalties to motivate or reward RG&E for achieving the desired results, and a mechanism for periodic review of the progress at set intervals throughout the execution of the plan.

Furthermore, due to the additional financial burdens on ESCO/Marketers under RG&E's programs when compared to other utility territories, the Commission must raise the level of adder payable to retail access participants and increase the billing credit currently paid by RG&E to the ESCO/Marketer for assuming this function. The laws of competition suggest that remaining ESCO/Marketers may soon abandon RG&E's programs for greener pastures (the increased accounts receivables risk and a credit exposure that is more than double that of most other programs that utilize a dual/multi retailer model strongly argue against continued participation in RG&E's territory) and a greater financial incentive to remain in RG&E's programs may be the sole means to retain the current level of participation (let alone develop increased interest) by ESCO/Marketers.

However, a financial incentive alone may not be enough to appease those ESCO/Marketers that remain active in RG&E's retail access programs. Interim measures to alleviate some of the additional challenges outlined hereinabove that are inherent in said programs would also be required[7]. The purchase of ESCO/Marketer receivables by the Company, a commitment to an immediate improvement in the Company's data management and reporting practices and the establishment of a truly responsive Ombudsman and overall communication process between RG&E and ESCO/Marketers must be established by the Commission in order to insure that there is not a further migration by ESCO/Marketers during the implementation period for the necessary changes, as well as the proposed transition out of the single retailer model.

Respectfully submitted,

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[7] Retail access participants such as the County of Monroe, or certain direct customers, cannot seek out greener pastures or alternative options, and, absent prompt corrections to RG&E's retail access programs, may be forced to terminate their participation therein.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person listed on the attached three (3) pages.

Dated this 14th day of November, 2002

David W. Koplas

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