

NIXON PEABODY LLP

Omni Plaza, Suite 900
30 South Pearl Street
Albany, New York 12207-3497
(518) 427-2650
Fax: (866) 947-9486
Direct Dial: (518) 427-2654
E-Mail: sphillips@nixonpeabody.com

RECEIVED
PJPH
EXE
ANY

2007 NOV 28 PM 3:40

Comments
07-G-0299

November 28, 2007

VIA HAND DELIVERY

Hon. Jaelyn A. Brillling, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

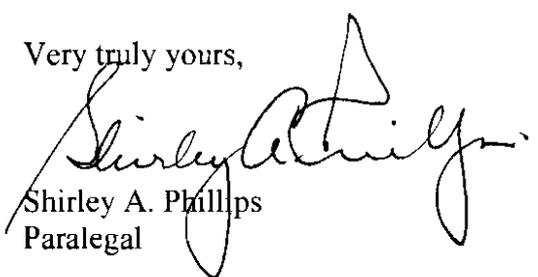
**Re: CASE 07-G-0299 – In the Matter of Issues Associated with the Future of
the Natural Gas Industry and the Role of Local Gas Distribution
Companies – Capacity Planning and Reliability**

Dear Secretary Brillling:

Enclosed for filing with the Public Service Commission are an original and five copies of the Limited Reply Comments of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation to Comments on Compliance Filings in connection with the above-referenced proceeding.

Thank you for your consideration.

Very truly yours,


Shirley A. Phillips
Paralegal

Enclosures

cc: Elizabeth Whittle, Esq.
All Active Parties in Case 07-G-0299

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

ORIGINAL

In the Matter of Issues Associated with the
Future of the Natural Gas Industry and the Role
of Local Gas Distribution Companies - Capacity
Planning and Reliability

Case 07-G-0299

LIMITED REPLY COMMENTS OF
NEW YORK STATE ELECTRIC & GAS CORPORATION AND
ROCHESTER GAS AND ELECTRIC CORPORATION
TO COMMENTS ON COMPLIANCE FILINGS

Elizabeth W. Whittle
Nixon Peabody LLP
*Counsel to New York State Electric
& Gas Corporation and Rochester
Gas and Electric Corporation*
401 Ninth Street, N.W.
Suite 900
Washington, DC 20004
Tel: (202) 585-8338
Fax: (202) 585-8080

Dated: November 28, 2007

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of Issues Associated with the
Future of the Natural Gas Industry and the Role
of Local Gas Distribution Companies - Capacity
Planning and Reliability

Case 07-G-0299

**LIMITED REPLY COMMENTS OF
NEW YORK STATE ELECTRIC & GAS CORPORATION AND
ROCHESTER GAS AND ELECTRIC CORPORATION
TO COMMENTS ON COMPLIANCE FILINGS**

Elizabeth W. Whittle
Nixon Peabody LLP
*Counsel to New York State Electric
& Gas Corporation and Rochester
Gas and Electric Corporation*
401 Ninth Street, N.W.
Suite 900
Washington, DC 20004
Tel: (202) 585-8338
Fax: (202) 585-8080

Dated: November 28, 2007

**BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Case 07-G-0299 - In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies – Capacity Planning and Reliability

**LIMITED REPLY COMMENTS OF
NEW YORK STATE ELECTRIC & GAS CORPORATION AND
ROCHESTER GAS AND ELECTRIC CORPORATION
TO COMMENTS ON COMPLIANCE FILINGS**

New York State Gas & Electric Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RG&E”) (jointly referred to as “the Companies”) hereby file these limited reply comments to the comments filed on October 31, 2007 by Hess Corporation (“Hess”), U.S. Energy Services (“USES”)¹, and Empire Natural Gas (“Empire”) (jointly “the Commenters”) in the above-referenced proceeding. The limited comments address suggestions by the Commenters that NYSEG’s October 1, 2007 filing made to comply with the Commission’s Order on Capacity Release Programs issued on August 30, 2007 in Case 07-G-0299 (“Capacity Release Order”), is inconsistent with the Commission’s Order. Hess and Empire directed their comments to NYSEG’s filing. However, because the matters raised are of a generic nature and could be found to be applicable to both RG&E and NYSEG, these comments are being jointly submitted. As will be shown briefly below, the Commenters’ Comments are not properly submitted in response to the compliance filings. Instead, Commenters raise issues that should have been raised in a petition for rehearing of the Commission’s August 30, 2007 Order. NYSEG’s and RG&E’s compliance filings are consistent with the Commission’s Order and

¹ Comments filed by USES did not directly address NYSEG or RG&E proposals directly but the issues raised by USES could be applicable to the Companies’ proposals, so a response is appropriate.

consistent with the goal of creating an orderly transition to a mandatory capacity release mechanism for retail access services in New York.

In the Capacity Release Order, the Commission implemented a mandatory capacity assignment program based on the findings and recommendations put forth in the Department of Public Service Commission Staff's White Paper. An important feature of the new program is the transition from the current situation where a portion of the aggregation and critical care load can be served with non-utility capacity to a program where Energy Service Companies ("ESCOs") obtain their capacity from the local distribution company ("LDC"). It is with this aspect of the transition plan that the Commenters object.

NYSEG's and RG&E's compliance filings establish an orderly transition to the mandatory capacity release model. Each ESCO was given the opportunity to grandfather the amount of interstate pipeline capacity obtained to serve their load as established by looking at the ESCO's highest load for September, October and November 2007.² The Companies will adjust the level of grandfathered capacity of each ESCO on April 1 of each year by determining the customer load served by that ESCO on that date. Any increases in ESCO load served would be served using LDC-released capacity. This will enable the LDC to develop its winter forecasting plans to ensure that there are sufficient capacity resources available to meet the demand. In addition, an April 1 date will provide capacity holders sufficient time in which to fill storage.

While the Commenters take issue with NYSEG's Compliance filing, they are, in fact, improperly leveling a collateral attack on the Commission's August 30, 2007 Order. Instead, Commenters should have filed a timely petition for rehearing on September 29, 2007.

² In order to constitute capacity capable of grandfathering, the ESCO has to meet the Tariff requirements for showing that the capacity meets the criteria for serving load in each service area.

The Commenters raise three principle objections to NYSEG's proposed transition mechanism. First, Commenters assert that the amount of grandfathered capacity should not be tied to current customer load, but instead, should represent estimated future winter load.³ According to the Commenters, an ESCO that has contractual obligations to serve 100 dth of load for the winter, but hopes to serve 200 dth during the winter and who can show that it has rights to 200 dth of capacity can "grandfather" the full 200 dth despite the fact that it does not have customer load serving obligations for one half of its contracted for capacity.⁴ Second, the Commenters take the position that once capacity is grandfathered, it can never be reduced unless the ESCO voluntarily relinquishes it. Third, Commenters argue that establishing a date certain upon which to make the determination of an ESCO's load is unfair because it ignores the usual fluctuations in load that arise as customers come and go. All of these issues should have been raised by Commenters as a petition for rehearing of the Commission's August 30, 2007 Order. To the extent the Commission decides to consider the Commenters' positions, they should not be accepted because to do so would result in a disorderly transition to the mandatory capacity release model.

1. Grandfathered Capacity Must Correspond to an ESCO's Customer Load

The transition mechanism adopted by the Commission in its Capacity Release Order allows "any marketer using its own capacity *to meet core customer requirements* should be allowed to do so indefinitely at *current volumetric levels*."⁵ The Commission goes on to state that "[a]ny new or incremental *marketer loads* would be served through a release of LDC capacity."⁶

³ See, Hess at 3; USES at 2-3.

⁴ In this simple example, NYSEG would allow the ESCO to grandfather 100 dth of capacity to serve the 100dth of load.

⁵ Capacity Release Order at 8.

⁶ *Id.*

Clearly, the Commission intends the grandfathering to refer to capacity associated with loads being served by the ESCO. Allowing an ESCO to grandfather more than its current capacity obligations necessary to serve customer load creates a number of problems for the retail markets in New York.

First, allowing a marketer to “grandfather” capacity in excess to its load serving obligations is inefficient and results in additional costs for retail customers. The LDC must make plans to serve customer load in its service territory. If an ESCO has shown that it has retail customers and sufficient capacity to serve them, the LDC will not hold additional capacity to serve those retail customers’ needs. That ESCO-held capacity is grandfathered. However, inefficiency results if the ESCO grandfathers more capacity than its existing customer load. In addition to the excess capacity held by the ESCO, the LDC (or another ESCO) will hold sufficient capacity for its customers. Thus, if the ESCO enrolls additional customers later, and the ESCO does not take the capacity obtained by the LDC, that LDC capacity is then stranded.

Second, permitting an ESCO to grandfather capacity in excess of its current needs is akin to encouraging the hoarding of capacity and is plainly inconsistent with the Commission’s goals. ESCOs understood as early as 2005, that this proceeding would likely result in the transition to a mandatory capacity assignment program in New York. The Commission Staff’s White Paper included a grandfathering proposal that resembles that which was adopted by the Commission. Grandfathering interstate pipeline capacity in excess of customer load can affect the ESCO’s position vis a vis other ESCOs who did not do anything other than seek to grandfather capacity associated with their existing customer load obligations. It essentially creates two classes of ESCOs. All ESCOs must be treated equally and on a level playing field.

Finally, allowing an ESCO to grandfather unlimited amounts of capacity without a showing that it has the customer load to match poses significant market stability issues. Pipeline

storage and transportation capacity used to serve the NYSEG and RG&E service areas has become increasingly constrained. In fact, in the winter months, firm capacity is not generally available. It would be bad public policy to promote retention of more capacity than needed to support load. The Commenters argue that, without the ability to grandfather this capacity, they may move capacity out of New York. However, that very situation is more likely if the ESCO retains more capacity than necessary to serve load because they have no way to recover those capacity costs from customers. The ESCO, facing unrecoverable capacity costs will release that capacity through the pipeline capacity release rules.

Both NYSEG and RG&E applied a reasonable approach to establishing the level of grandfathered capacity. The Companies calculated the sum of the winter MDTQ's of the aggregation and critical care customers in the ESCO's pool. To allow for changes in customer migration, the ESCO was granted grandfathered rights for the highest load result from September to November 2007. The grandfathering of capacity in this manner causes no harm to the ESCO. Neither NYSEG's nor RG&E's implementation of the order inhibits ESCO's from utilizing its pipeline capacity. Any ESCO capacity not eligible for grandfathering may be utilized by the ESCO to serve customers in New York State not subject to mandatory capacity assignment. All that has changed is that the ESCO must obtain capacity from the LDC to serve aggregation and critical care customers and, in transition may grandfather capacity currently needed to serve those customers' load.

If the Companies allowed an ESCO to grandfather capacity in excess of its customer load, they would be detracting from the purpose of the order which is to limit, for reliability purposes, the growth in non-utility capacity serving core customers. The Companies' Tariff proposals are consistent with the Commission's Order.

2. The Level of Grandfathered Capacity Must Match the ESCO's Load

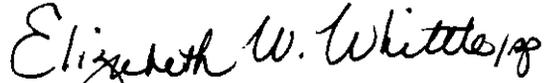
The level of grandfathered capacity must match the ESCO's customer load. Contrary to the Commenter's claims, the ESCO cannot necessarily maintain indefinitely the level of capacity first grandfathered in the transition period if capacity is no longer being utilized to serve customer load. If the Commenters' view is accepted, the same mis-match with respect to the level of capacity and customers served described above will result, causing stranded capacity costs. Such a result would perpetuate the transition to the mandatory capacity release model indefinitely. Both RG&E and NYSEG tariff proposals balance the need to move to the new mandatory capacity release program while at the same time taking into consideration the ESCO's customer load obligations.

3. Grandfathered Capacity Rights Should Be Assessed on April 1 of Each Year

As part of the transition to a mandatory capacity release model, RG&E and NYSEG included in their Tariff leaves a proposal to assess each April 1 each ESCO's level of capacity eligible for grandfathering. The Commenters assert that once the level of grandfathered capacity is established, that amount will remain indefinitely. The purpose of a transition period is to create an orderly process to move from one system to another. This inevitably requires parties to develop procedures for this continuing transition. By accepting existing obligations as of each April 1 is the fairest for all parties, including the ESCOs and the LDC. Such a transition does not restrict the ability of the ESCO to serve customer load, it just requires the ESCO to maintain a level of grandfathered capacity commensurate with the customer load served. Using April 1 as the date on which to determine the appropriate level of capacity eligible to be grandfathered is appropriate because April 1 provides the most flexibility for the ESCO and the LDC to take all actions necessary to serve its customers for the next winter season.

In summary, the Commission should reject the changes proposed by the Commenters and approve NYSEG's and RG&E's proposals as filed.

Respectfully submitted,



Elizabeth W. Whittle
Counsel to
New York State Electric & Gas Corporation and
Rochester Gas and Electric Corporation

Of Counsel:

Nixon Peabody, LLP
401 Ninth Street, N.W.
Suite 900
Washington, DC 20004
202-585-8338
202-585-8080 (fax)
ewhittle@nixonpeabody.com (e-mail)

Dated: November 28, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing comments on each person listed on the active party list maintained by the Commission in this proceeding.

Dated in Washington, DC this 28th day of November, 2007.


Elizabeth W. Whittle

