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June 14, 2007

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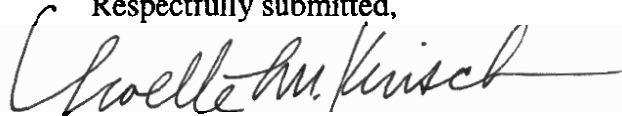
Honorable Jaclyn A. Brilling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Case 07-E-0479 – Tariff Filing of New York State Electric & Gas Corporation
to Offer Customers a Single Fixed Supply Service

Dear Secretary Brilling:

Pursuant to Judge Liebschutz's May 30, 2007 Procedural Ruling in the above-referenced case, enclosed please find an original and five copies of New York State Electric & Gas Corporation's Response.

Respectfully submitted,



Noelle M. Kinsch

Enclosures/97527

cc: Active Party List in Case 07-E-0479 (via e-mail and First Class Mail as requested)

BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION

Tariff Filing of New York State Electric & Gas Corporation to Offer Customers a Single Fixed Supply Service)	Case 07-E-0479
)	
)	

**NEW YORK STATE ELECTRIC & GAS CORPORATION'S
RESPONSE TO THE PROPOSED PROCESS AND SCHEDULE CONTAINED
IN THE MAY 20, 2007 PROCEDURAL RULING**

On May 20, 2007, Administrative Law Judge Liebschutz issued a Procedural Ruling ("Ruling") in the above-referenced case. The Ruling addresses the procedures and schedule for consideration of New York State Electric & Gas Corporation's ("NYSEG" or "the Company") April 5, 2007 supply service filing. In specific, the Ruling raises the following questions, premised on the assumption that NYSEG's filing constitutes a major rate change:

1. Is suspension of NYSEG's tariff permissive or mandatory?
2. Is a hearing on NYSEG's filing mandatory? If yes, must the hearing be an evidentiary-type hearing?
3. Could the New York State Public Service Commission ("Commission") waive its "major change" filing requirements?
4. What schedule should be adopted for this proceeding?

As directed in the Ruling, NYSEG filed its major rate change analysis on June 5, 2007 (the "June 5th Filing"). See Case 07-E-0479, New York State Electric & Gas Corporation's Response to Request for Information Contained in the May 20, 2007 Procedural Ruling (June 5, 2007). NYSEG's analysis demonstrated that its supply service filing does not constitute a major change, as defined in Section 66(12)(c) of the New York Public Service Law. As such, neither suspension of the tariff nor a hearing are required in this proceeding. In addition, NYSEG was not required to meet other regulatory requirements applicable only to major rate change filings.

Despite the fact that NYSEG's filing is not a major change, at Judge Liebschutz' request, NYSEG herein addresses each of the questions outlined above.

I. SUSPENSION OF NYSEG'S TARIFF PAGES IS UNNECESSARY AND UNWARRANTED

Section 66(12)(f) of the New York Public Service Law states: "[p]ending such hearing and decision thereon, the commission, upon filing with such schedule and delivery to the utility, a statement in writing of its reasons thereof, may suspend the operation of such schedule, but not for a longer period than one hundred and twenty days beyond the time when it would otherwise go into effect." N.Y. Pub. Serv. Law § 66(12)(f) (McKinney Supp. 2007) (emphasis added). Pursuant to the same section of the Public Service Law, "the Commission may extend the suspension period for a further period not to exceed six months," if the hearing can not be held within the initial one hundred and twenty day period. The time frames referenced in the statute set an outer limit on the length of the suspension period (i.e., one hundred and twenty days and six months), but do not set a minimum period. The use of the word "may" in the statute and the lack of a minimum period make the statutory suspension periods permissive rather than mandatory. See N.Y. Stat. Law § 177(b) (McKinney 1971) ("Generally speaking, permissive or discretionary words in a statute are to be given a permissive interpretation...."). Given the permissive nature of the statutory language, the Commission is not required to suspend NYSEG's tariff filing.

Despite the permissive nature of the statutory language, suspension of NYSEG's tariff pages is unnecessary and unwarranted. The tariff pages included in NYSEG's supply service filing list an effective date of January 1, 2008. In setting the January 1, 2008 effective date, NYSEG considered the following: 1) the requirement in Case 05-E-1222 for NYSEG to notify the Commission by September 1, 2007 if it intends to continue its fixed price option

("FPO") and, thus, the need for Commission action before that date; 2) the amount of time necessary for Commission review and approval of NYSEG's supply service filing; and 3) the amount of time necessary for the Company's implementation of the program, including but not limited to customer outreach and education, as necessary. The January 1, 2008 effective date provides the Commission adequate time to review and approve the filing, including holding a hearing if one is deemed necessary, and provides the Company time to implement the supply program and associated customer outreach and education. Accordingly, the Commission need not, and should not, suspend NYSEG's tariff pages.

II. NYSEG'S FILING DOES NOT CONSTITUTE A MAJOR RATE CHANGE AND, THUS, A HEARING IS NOT REQUIRED

Pursuant to Section 66(12)(f) of the Public Service Law, the Commission may hold a hearing on a "new rate or charge, or any change in form of contract or agreement or any rule or regulation relating to any rate, charge or service...." If the change is a "major change," as defined in Section 66(12)(c), the statute states that the Commission "shall hold a hearing." The use of the word "shall" in the part of the statute related to a "major change" compared to the use of the word "may" in an earlier passage makes it clear that the hearing for a major change is mandatory rather than permissive. See N.Y. Stat. Law § 177(a) ("[W]ords of command are construed by the courts as peremptory"). Thus, if a rate change fits the definition of a "major change," the Commission must hold a hearing on the proposed change.

Any such hearing in this proceeding, however, need not and should not be a lengthy, multi-day evidentiary hearing. The term "hearing" is not defined in the Public Service Law. One court determined that a similar "hearing" provision in Public Service Law Section 92(2), which governs telephone corporations, meant something more than a "review" by Staff and required a "full public hearing." See New York Tel. Co. v. Pub. Serv. Comm'n, 59 A.D.2d

17 (3d Dep't), appeal denied, 42 N.Y.2d 810 (1977). The court did not elaborate on the definition of a "full public hearing." In this instance, any requirement for a "full public hearing" could be met by an expedited, very brief (i.e., one-day) evidentiary-type hearing limited to pre-determined issues specifically related to the supply service filing.

Notwithstanding the above analysis, no hearing is required for NYSEG's filing because the proposed change in NYSEG's supply service does not constitute a "major change." As NYSEG demonstrated in its June 5th Filing, its proposal would result in an aggregate revenue impact well below the "major change" threshold.

In a May 31, 2007 e-mail, the New York State Consumer Protection Board ("CPB") appears to argue that since NYSEG's filing might increase total revenues by 2.5%, it must be a "major change" for purposes of Section 66(12)(f). CPB bases its rational on Abrams v. Consolidated Edison Co., 87 A.D.2d 708 (3d Dep't 1982), which dealt with a fuel adjustment clause. The Abrams case does not stand for the above-proposition cited by CPB.

In this case, NYSEG has demonstrated that its filing does not constitute a "major change." In light of NYSEG's factual demonstration, its filing should not be considered a "major change" and no hearing should be held on the proposed supply service.

III. THE COMMISSION MAY WAIVE ITS "MAJOR CHANGE" FILING REQUIREMENTS

In the May 20, 2007 Procedural Ruling, Judge Liebschutz stated, "I am inclined to think that, upon a showing that such [major change filing] requirements would not be particularly applicable, helpful, or necessary for consideration of this matter, the Commission could, by order waive these requirements, either in a preliminary order or in its final order on the merits in this proceeding." NYSEG agrees with this statement. In the past, the Commission has waived "major change" filing requirements. See, e.g., Cases 05-G-1635 – Proceeding on Motion

of the Commission as to the Rates, Charges, Rules and Regulations of St. Lawrence Gas Company, Inc. for Gas Service, et al., Order Adopting the Terms of a Joint Proposal (Nov. 9, 2006); Case 99-W-0658 – Petition of United Water New Rochelle for a Waiver of the Requirements of the 150-day Provision of the Commission's Statement of Policy on Test Periods in Major Rate Proceedings, Approved as Recommended and So Ordered by the Commission (June 1, 1999).

Many of the "major change" requirements are inapplicable to NYSEG's supply service filing, particularly since many of the "requirements" are designed for guidance purposes only. For example, the notes to Part 61 of the Commission's regulations expressly state that "[p]roceedings involving the reasonableness of existing or proposed rates vary so greatly in character and scope that it is impossible to prescribe rules of universal application that are suited to all rate proceedings.... Because of these facts, no attempt is here made to specify the data that must be supplied in all rate proceedings...." Instead, Part 61 provides only general rules. Given the limited and very specific nature of this proceeding, many of the "major change" requirements simply do not apply to NYSEG's filing.

IV. THE SCHEDULE SHOULD ALLOW NYSEG'S SUPPLY SERVICE FILING TO BE CONSIDERED AT THE COMMISSION'S AUGUST SESSION

At the outset of this proceeding, NYSEG and Department of Public Service Staff circulated a proposed schedule, which was not opposed by the other parties. The schedule was designed to allow the Commission to consider NYSEG's supply service filing during the August session. From NYSEG's perspective, the proposed schedule was necessary in order to: 1) allow NYSEG to be in a position to notify the Commission on September 1, 2007 of its intentions regarding its existing FPO, per the orders in Case 05-E-1222; 2) provide adequate time for NYSEG to make any necessary system changes prior to the January 1, 2008 effective date; and

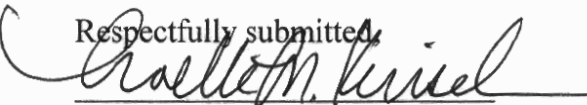
3) provide adequate time for customer outreach and education prior to the January 1, 2008 effective date. Those goals remain critical and, thus, it is important that the schedule ultimately adopted for this proceeding allow for Commission consideration of the supply service filing in August.

The Ruling invited parties to comment on the tentative schedule set forth therein. The tentative schedule was based on a preliminary view of the "major change" issue prior to NYSEG's June 5th Filing on the revenue impact of its supply service filing. Based on the revenue analysis in the June 5th Filing, the Company has demonstrated that its supply service proposal does not meet the definition of a "major change." Since NYSEG's filing is not a "major change," a hearing is unnecessary and unwarranted, as discussed above, and the schedule jointly proposed by NYSEG and Staff affords parties adequate time to be heard on the matter. NYSEG, therefore, respectfully requests that such schedule be adopted for this proceeding.¹

¹ In the alternative, NYSEG requests the parties be allowed to discuss further the schedule at the conclusion of the negotiations. It is anticipated that the parties will know whether an agreement in principle can be reached on or about June 22, 2007.

V. CONCLUSION

Based on NYSEG's June 5th Filing and the above comments, NYSEG respectfully requests that its supply service proposal not be considered a "major change," that no hearing be held, and that the ultimate schedule adopted for this case allow for Commission consideration in August.

Respectfully submitted,


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Dated: June 14, 2007
AL-97516