

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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*Secretary*

October 26, 2006

Jaclyn A. Brillling  
Secretary  
New York State Public Service Commission  
3 Empire State Plaza  
Albany, NY 12223-1350

Re: Case 05-E-1222 - New York State Electric & Gas Corporation - Rates

Dear Secretary Brillling:

Pursuant to the Commission's Order Adopting Recommended Decision with Modifications issued in the above-referenced proceeding on August 23, 2006, please find enclosed an original and five copies of the executed joint proposal (JP) to the Commission regarding the allocation and distribution of the \$77.1 million in Asset Sale Gain Account (ASGA) funds to customers. It is our understanding that no party intends to oppose the JP.

Please note that Multiple Intervenors has indicated that it will also sign the JP, but its signature page will be provided under separate cover.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Steven J. Kramer'.

Steven J. Kramer  
Staff Counsel

Enclosures

cc: Hon. William Bouteiller  
Hon. Elizabeth Liebschutz  
Active Parties

PENDING PETITION MEMO

Date: 9/30/2005 10/26/2006

TO : OGC  
OHADR  
OE&E  
A&F  
EXEC

FROM: CENTRAL OPERATIONS

UTILITY: NEW YORK STATE ELECTRIC & GAS CORPORATION

SUBJECT: 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

JOINT PROPOSAL REGARDING THE ALLOCATION AND DISTRIBUTION OF THE \$77.1  
MILLION IN ASSET SALE GAIN ACCOUNT FUNDS TO CUSTOMERS.

NEW YORK STATE PUBLIC SERVICE COMMISSION

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

**JOINT PROPOSAL  
ON  
ASSET SALE GAIN ACCOUNT REFUND**

October 26, 2006

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Case 05-E-1222  
NEW YORK STATE ELECTRIC & GAS CORPORATION

JOINT PROPOSAL  
ON  
ASSET SALE GAIN ACCOUNT REFUND

**I. Signatory Parties**

The parties to this Joint Proposal are New York State Electric & Gas Corporation ("NYSEG" or the "Company"), Staff of the New York State Department of Public Service ("Staff"), New York State Consumer Protection Board ("CPB"), Multiple Intervenors ("MI"), Public Utility Law Project ("PULP"), Nucor Steel Auburn, Inc. ("Nucor") and such other parties to this proceeding whose authorized representatives have signed the execution pages ("Signatory Parties"). The Signatory Parties agree to the terms of this Joint Proposal to be presented to the New York State Public Service Commission (the "Commission").

**II. Procedural History and Overview**

1. In its Order Adopting Recommended Decision with Modifications (the "Order"), issued on August 23, 2006 in this proceeding, the Commission addressed, in relevant part, the allocation and distribution to customers of \$77.1 million of funds in the Asset Sale Gain Account ("ASGA"). More specifically, the Commission decided to "allow \$77.1 million in refunds to customers, which represents 70% of the estimated account balance provided on the record grossed up for taxes" (Order, mimeo p. 70). The Commission also decided to "permit the parties to meet within the next 30 days [following the issuance of the Order] to see if they can arrive at a consensus position and a group proposal for the distribution of refunds" (Order, mimeo p. 70). If the parties are unable to reach a consensus or if the parties are able to reach a consensus but the Commission determines that such consensus proposal "lacks merit," the Order directs Staff to prepare a report and authorizes the parties to file comments on that report (Order, mimeo pp. 70-71 and p. 71, fn. 29). Upon receipt of the Staff report and the parties' comments on that report, the Commission will then set forth in an order the terms for the distribution of \$77.1 million of ASGA refunds (Order, mimeo p. 71).

2. Settlement discussions concerning the ASGA refund were held, with appropriate advance notice to all active parties, on September 14 and 18 and October 11, 2006.

Representatives from NYSEG, Staff, CPB, MI, PULP, Nucor and Energetix, Inc. participated in these discussions, which were conducted in accordance with 16 NYCRR Section 3.9 and the Commission's Settlement Guidelines, set forth in Opinion No. 92-2.<sup>1</sup>

3. This Joint Proposal is the consensus position and proposal of the Signatory Parties for the distribution of \$77.1 million of ASGA refunds. The Signatory Parties are aware of no active party to this proceeding that opposes this Joint Proposal.

### **III. ASGA Refund**

1. **Customers Qualifying for ASGA Refund** - Only customers who are electric delivery customers of NYSEG as of January 31, 2007 will qualify to receive an ASGA refund. Such qualifying customers include, but are not limited to, customers taking service pursuant to flex rate contracts, customers participating in Economic Development Programs and customers taking commodity service from energy services companies ("ESCOs"). Only the Company's own consumption will be excluded from the ASGA refund.

2. **ASGA Refund Calculation**

a. The methodology used to allocate and distribute the \$77.1 million ASGA refund among service classes has been developed to be fair to all customers, easy to explain to customers, and facilitates customers' ability to use their billing history to reproduce the calculation.

b. The allocation among service classes set forth in Section III.2.c of this Joint Proposal is based upon the premise that the \$77.1 million ASGA refund is attributable equally to the sale of NYSEG's generation assets (i.e., \$38.55 million) and the customer share of earnings sharing from NYSEG's commodity sales (i.e., \$38.55 million).

- (i) NYSEG will return \$19.275 million, equal to one-half of the \$38.55 million attributable to the sale of NYSEG's generation assets, to service classes on the basis of delivered kWh. NYSEG has used calendar year 2005 billing information to determine kWh consumption. NYSEG will return \$19.275 million, equal to the other one-half of the \$38.55 million attributable to the sale of NYSEG's generation assets, to service classes on the basis of class

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<sup>1</sup> Cases 90-M-0255 et al., Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements, filed in C11175, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1992).

contribution to system peak demand (i.e., class coincident peak demand in kW divided by system peak kW). NYSEG has used its embedded cost of service study filed in this proceeding to determine the coincident peak allocation factor.

- (ii) NYSEG will return the \$38.55 million attributable to the customer share of earnings sharing from NYSEG's commodity sales to service classes on the basis of the class share of total kWh sales under the NYSEG Fixed Price Option ("FPO") and ESCO Option with Supply Adjustment ("EOSA"). In order to determine the class share of FPO and EOSA commodity sales, NYSEG has divided the sum of the class deliveries, in kWh, under the FPO and EOSA by the sum of the total deliveries, in kWh, under the FPO and EOSA. NYSEG has used calendar year 2005 billing information to determine kWh consumption.

c. NYSEG will allocate the \$77.1 million ASGA refund among service classes as follows:

<u>Residential</u>	<u>% of Total</u>	<u>Value</u>
SC 1	34.22%	\$26,387,061
SC 8	14.32%	\$11,041,699
SC 12	1.84%	\$1,415,687
<b><u>Non Residential (Non-demand Billed)</u></b>		
Street lights	0.53%	\$406,770
SC 5	0.16%	\$120,318
SC 6	1.99%	\$1,537,269
SC 9	0.15%	\$115,319
<b><u>Non Residential (Demand Billed)</u></b>		
SC 2	18.49%	\$14,254,563
SC 3	0.59%	\$453,930
SC 7, 13, 14	26.12%	\$20,135,990
SC 11	1.06%	\$819,720
Expansion Contracts	0.53%	\$411,674
<b>Total ASGA Refund</b>	<b>100.00%</b>	<b>\$77,100,000</b>

d. The dollar value allocations set forth in Section III.2.c of this Joint Proposal will be fixed and used by NYSEG in calculating the ASGA refund for individual qualifying customers within each service class.

e. NYSEG will calculate the ASGA refund rate for each service class by dividing the pre-determined total service class refund dollar value specified in Section III.2.c of

this Joint Proposal by the total qualifying kWh consumption of that service class during the 12-month February 2007 billing cycle period that, depending upon the qualifying customer, will end between February 1, 2007 and March 1, 2007.

f. NYSEG will calculate the ASGA refund for each qualifying customer on a billing cycle basis, using the customer's consumption for the 12-month February 2007 billing cycle period ending between February 1, 2007 and March 1, 2007. Qualifying customers who are active on January 31, 2007, but who do not have consumption for the entire 12-month billing cycle period, will be eligible to receive an ASGA refund based upon the customer's consumption for those portions of that 12-month period during which the customer took electric service.

g. Each qualifying customer will receive an ASGA refund equal to the product of the ASGA refund rate per kWh and the customer's consumption, as determined under Sections III.2.e and III.2.f of this Joint Proposal, respectively.

**3. ASGA Refund Bill Credits**

a. NYSEG will provide the ASGA refund to each qualifying customer through a one-time credit to the customer's bill for a single billing cycle between March 1, 2007 and April 15, 2007.

b. If the one-time credit exceeds the qualifying customer's bill, NYSEG will provide the excess amount of the credit to the customer through a credit to the customer's bill for the immediately following billing cycle or billing cycles, until the entire amount of the credit has been provided to the qualifying customer. If the qualifying customer receives a final bill, the final bill will reflect any remaining amount of the credit to the customer.

c. The one-time credit will appear on the qualifying customer's bill as a separate line item.

d. As a result of the ASGA refund bill credits, NYSEG may experience some short-term benefits related to a short-term reduction in arrears, such as reduced or delayed uncollectible write-offs, avoided or delayed collection costs, and avoided or delayed shut-off expense. These short-term benefits may be offset by reduced late payment revenues to NYSEG as well as incremental costs incurred by NYSEG to implement the processing of the bill credits. In final and complete resolution of any and all net benefits or costs that NYSEG may experience

as a result of the ASGA refund bill credits, NYSEG will increase the balance in the ASGA by \$260,000.

**4. ASGA Refund Dispute Resolution**

a. NYSEG will develop a process to ensure the prompt, fair and appropriate resolution of ASGA refund discrepancy situations. NYSEG will consult Staff when the Company develops the refund dispute resolution process and resulting guidelines.

b. NYSEG will calculate any ASGA refund that it returns to qualifying customers based on the process described in Section III.4.a of this Joint Proposal using the same ASGA refund rate for the customer described in Section III.2.e of this Joint Proposal. NYSEG will draw any such refund from the ASGA balance exceeding \$77.1 million.

**5. Outreach and Education of ASGA Refund**

a. NYSEG will create a “frequently asked questions and answers” (“FAQ”) document for the ASGA refund and will inform qualifying customers about how to pursue answers to any questions and solutions to any concerns.

b. NYSEG will incorporate the FAQ document into its external website ([www.nyseg.com](http://www.nyseg.com)). NYSEG will prerecord a message containing information in the FAQ document on a toll-free telephone number hotline.

c. NYSEG will issue an ASGA refund press release that will identify individuals responsible for responding to media inquiries. NYSEG will pursue targeted outreach with community and government organizations, as necessary.

d. A message appearing on each qualifying customer's bill will notify the customer about the ASGA refund and will refer the customer to the NYSEG external website and toll-free telephone number hotline described in Section III.5.b of this Joint Proposal.

e. NYSEG will provide a draft of the FAQ document, press release and bill message to Staff for its review prior to their issuance.

6. **Training of NYSEG Personnel Regarding ASGA Refund** - NYSEG will provide training to customer service personnel and other customer contact personnel on the ASGA refund.

7. **Reporting Requirement Regarding ASGA Refund** - NYSEG will provide a report to the Commission no later than September 30, 2007, which report shall provide the following information:

- (a) The total amount of the ASGA refunded to qualifying customers as of September 30, 2007;
- (b) The total amount of the ASGA refunded to qualifying customers, by service classification, as of September 30, 2007; and
- (c) The amount of the ASGA returned to qualifying customers pursuant to the dispute resolution process set forth in Section III.4 of this Joint Proposal.

#### **IV. Additional Provisions**

##### **1. Binding Effect of this Joint Proposal**

a. This Joint Proposal is intended to resolve the allocation and distribution to qualifying customers of \$77.1 million of ASGA funds. Except as set forth herein, none of the Signatory Parties is deemed to have approved, agreed to, or consented to any principle, methodology or interpretation of law underlying or supposed to underlie any provision hereof.

b. Each Signatory Party to this Joint Proposal has expressly conditioned its support upon the approval and adoption of this Joint Proposal in its entirety by the Commission. If this Joint Proposal, or Commission order approving same, is materially modified by a court order which has become final and non-appealable, then each of the Signatory Parties reserves the right to withdraw its acceptance of this Joint Proposal by serving written notice on the Commission and the active parties to Case 05-E-1222 and to renegotiate and, if necessary, to litigate without prejudice, any or all issues as to which such Signatory Party agreed in this Joint Proposal. If the Commission determines that this Joint Proposal "lacks merit" (Order, mimeo p. 71), then, pursuant to the Order, Staff will prepare a report to the Commission and parties will have the opportunity to file comments on that report (Order, mimeo pp. 70-71 and p. 71, fn. 29). Upon receipt of the Staff report and the parties' comments on that report, the Commission will then set forth in an order the terms for the distribution of \$77.1 million of ASGA refunds (Order, mimeo p. 71).

c. It is the intent of the Signatory Parties that the provisions of this Joint Proposal will apply to and be binding only with respect to the matters that are the subject of this Joint Proposal, and except as set forth below, no provision of this Joint Proposal, nor any methodology or principle utilized herein, nor any of the positions taken herein by any Signatory Party may be referred to, or cited or relied upon as precedent in any other proceeding before the Commission, or any other regulatory agency or before any court of law for any purpose other than the furtherance of the purposes, results and disposition of matters expressly governed by this Joint Proposal.

2. Effect of Commission Approval

a. The Signatory Parties agree and request that the Commission find upon approving this Joint Proposal that it is in the public interest.

b. No provision of this Joint Proposal or the Commission's approval of this Joint Proposal will in any way abrogate or limit the Commission's statutory authority under the Public Service Law. The Signatory Parties recognize that any Commission approval of this Joint Proposal does not waive the Commission's ongoing rights and responsibilities to enforce its orders and effectuate the goals expressed therein, nor the rights and responsibilities of Staff to conduct investigations or take other actions in furtherance of its duties and responsibilities.

3. Captions - All titles, subject headings, section titles and similar items herein are provided for the purpose of reference and convenience only and are not intended to affect the meaning, the content or the scope of this Joint Proposal.

4. Execution - This Joint Proposal may be executed in counterpart originals and will be binding upon each Signatory Party when its executed counterpart is filed with the Secretary to the Commission.

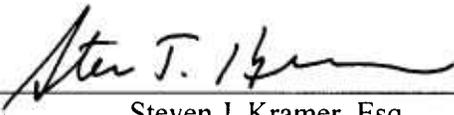
Executed as of the 25<sup>th</sup> day of October 2006.

**New York State Electric & Gas Corporation**

By: James A. Lahtinen  
James A. Lahtinen  
Vice President - Rates and Regulatory Economics

Executed as of the 25<sup>th</sup> day of October 2006.

**Staff of the  
New York State Department of Public Service**

By:   
Steven J. Kramer, Esq.  
Assistant Counsel

Executed as of the 25<sup>th</sup> day of October 2006.

**New York State Consumer Protection Board**

By: \_\_\_\_\_

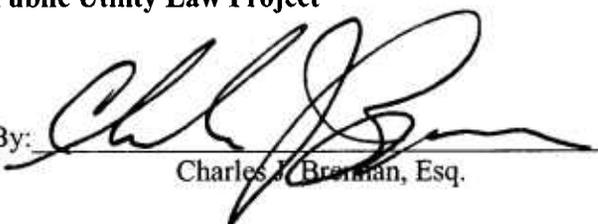
A handwritten signature in black ink, appearing to read "D. Prestemon", written over a horizontal line.

David Prestemon, Esq.

Executed as of the 25<sup>th</sup> day of October 2006.

**Public Utility Law Project**

By:

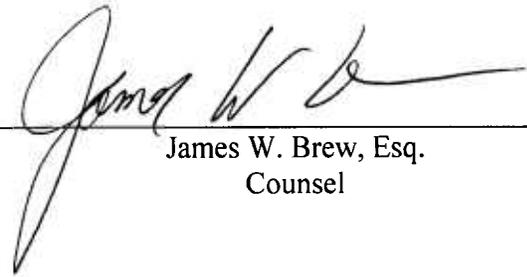
A handwritten signature in black ink, appearing to read "Charles J. Brennan", written over a horizontal line.

Charles J. Brennan, Esq.

Executed as of the 25<sup>th</sup> day of October 2006.

**Nucor Steel Auburn, Inc.**

By: \_\_\_\_\_

A handwritten signature in cursive script, appearing to read "James W. Brew", written over a horizontal line.

James W. Brew, Esq.  
Counsel