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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 09-E-0228 - Tariff Filing of Rochester Gas and Electric Corporation to Modify Its Tarff Regarding Fixed Transition Charges.

CASE 09-E-0227 - Tariff Filing of New York State Electric & Gas Corporation to Modify its Tariff Regarding Fixed Transition Charges.

CASE 07-E-0479 - New York State Electric & Gas Corporation –Tariff Filing to Offer Customers a Single Fixed Supply Service.

CASE 03-E-0765 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Electric Service.

COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

A. Preliminary Statement

On or about March 2, 2009, New York State Electric & Gas Corporation ("NYSEG") and Rochester Gas and Electric Corporation ("RGE") (collectively the "Companies") filed a petition with the Commission regarding their existing commodity supply programs.[1] Therein, the Companies indicated that they would not offer the fixed-price offer (FPO) program in 2010 and also proposed to make additional modifications to their existing commodity programs. On June 4, 2005 the Commission issued a *Notice Establishing Phase II Comment Period*,[2] inviting interested parties to submit comments with respect to the Petition addressing the Companies'

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[1] Cases 07-E-0479 – Tariff Filing of New York State Electric & Gas Corporation to Offer Customers a single Fixed Supply Service and 03-E-0765 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Electric Service, *Petition of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation Regarding Commodity Programs,* dated March 2, 2009 ("Petition")

[2] Cases 07-E-0479 and 03-E-0765, *Notice Establishing Phase II Comments* (issued June 4, 20090 ("Notice")

commodity supply options. These comments are submitted on behalf of the Retail Energy Supply Association ("RESA") in accordance with the invitation set forth in the Notice.

B. Fixed Price Option ("FPO")

In the Petition, the Companies provided formal notification to the Commission that "they will not offer the FPO in 2010."[3] Commencing in January 2010, the Companies "would offer a new market-based supply service as the sole offering for 2010."[4] RESA supports the Companies' proposal to eliminate the FPO as of December 31, 2009. This modification to the existing commodity supply structure is consistent with established Commission precedent, is in the best interest of rate payers and will help ensure the maintenance and development of a robust competitive retail market.

As the Commission has previously indicated, the provision of fixed-price commodity programs is better left to the competitive marketplace rather than monopoly utilities --- FPOs should be the province of ESCOs not distribution utilities.[5] Although the Commission previously allowed the Companies to maintain their existing FPO, it did so hesitantly viewing such an effort as merely a transitional mechanism that should be eliminated as early as possible.[6] Therefore, eliminating the FPO is supported by established Commission policy.

The Companies' determination to terminate the FPO after this year, however, does not address whether this position is merely a temporary tactic or will be followed on a longer term

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[3] Petition, p. 1.
[4] *Id.*
[5] Case 05-E-1222 – Proceeding on Motion of Commission as to the Rates, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service, *Order Adopting Recommended Decision with Modifications*, p. 4, 8 (issued August 23, 2006).
[6] Cases 07-E-0479 and 03-E-0765, Order Establishing Filing Requirements, p. 3 (issued January 20, 2009); Case 03-E-0765, Rochester Gas & Electric Corporation, *Order Modifying Fixed-Price Offer* , p. 7 (issued August 28, 2008).

basis in their respective service territories. ESCOs and all rate payers are entitled to a rate design and commodity pricing structure that is just, reasonable and stable. It is imperative that the distribution utilities eschew radical and volatile changes that engender an unworkable competitive operating environment for ESCOs and their customers and the general body of rate payers. It is of little comfort if the Companies do not offer an FPO commodity structure in 2010 but then in a year or so later decide that due to their assessment of the commodity markets they may be able to make additional profits by offering such a commodity product and therefore once again seek to change the existing commodity pricing structure by the intrusion of an FPO product offering by the regulated distribution utility.

This interference with the commodity supply market ultimately creates a very unstable and fragile competitive retail market. It is difficult for ESCOs to dedicate resources on a longer-term basis to a particular market when it is possible that the competitive offering from the utility can change drastically from one year to the next by replacing a market-bred based supply service with an FPO.

In this regard, it is logical to conclude that the Companies' sudden conversion to a market based supply service may be a function of the recent collapse in commodity prices which has created significant financial risks for entities like the Companies' that offered fixed-price products. As the Commission may remember, a similar fate befell NYSEG when it had previously offered a natural gas fixed-price rate. NYSEG continued the program until the commodity markets moved in an untoward direction and it experienced a significant financial loss.[7] Once that occurred, it came scurrying to the Commission for permission to terminate the

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[7] Case 98-G-0845 - Petition of New York State Electric & Gas Corporation for Approval of Multi-Year Agreement Concerning Gas Rates, *Opinion and Order Adopting Settlement Terms Subject to Modification and Conditions,* Opinion No. 98-17 (issued September 29, 1998), and Opinion Modifying Opinion No. 98-17 (issued December 2, 1998).

offering of a fixed gas rate. It does appear that the Companies' willingness to offer and FPO product is based upon its assessment of the potential movement in commodity markets and if in the near future its view changes, it may then seek to implement an FPO once again.

Under these circumstances, it is requested that the Commission advise the Companies that at a minimum they will be prohibited from offering an FPO type product either for electricity or natural gas for a minimum period of five years or until 2016. In the event the Companies choose to implement an FPO after the five-year period, they would be required to provide at least 12 months notice prior to such commencement date of its intention to offer an FPO. RESA recognizes that the Commission may have some reluctance to entirely preclude the offering of any particular rate by a utility, but there is the urgent need to ensure that the underlying commodity markets remains stable and are not subject to volatile and drastic changes as that occasioned by the intrusion of an FPO offering by the utility. A five-year ban on the offering of such products is in our view a reasonable compromise.

C. Market-Based Supply Service

The Companies indicate that they will offer a market-based supply service beginning on January 1, 2010. As part of this program, the Companies further propose to include full reconciliation for over and undercharging of commodity-related costs incurred by the utility. As noted by the Companies, any costs incurred related to supply will be reconciled and recovered or refunded through subsequent monthly supply charges. Such reconciliations will include "forecast versus actual market energy prices and loads", capacity costs, hedging costs and other related factors.[8]

[8] Petition, p. 5.

It is unclear from this exposition whether the market-based supply service will reflect actual or forecast costs or if there is initially a forecast of the costs that is included in rates. How that forecast will be conducted and what will be the basis for developing and applying the forecasted price is of great relevance to all interested parties. It is important that the Companies clarify exactly how the market-based supply calculation will be made and identify specifically how any forecasts will be developed and the method by which the forecasted results will be reconciled to the actual charges. Forecasting methodologies that create material disparities between the utility price and market costs during the same period have the potential to create disequilibrium in the market and impair the ability of the competitive marketplace to provide customers with accurate cost information and cost-related pricing.

D. Ancillaries and NTAC Charges

With respect to the ancillary services and NTAC charges that are currently in the Non By passable Charge (NBC), the Companies indicate such charges will be collected through the supply charge from customers that purchased commodity from the Companies. ESCOs would now be responsible for collecting those charges from customers that purchase commodities from them and therefore the Companies will no longer reimburse ESCOs for ancillary services or NTAC costs.[9]

The current procedure governing ancillary services and NTAC charges has been in place for a considerable period of time and the policy of reimbursing ESCOs for these costs has been the norm during the entire course of the Companies' retail access programs. RESA does not object to the modification of this practice, but would urge the Commission to consider allowing for a transition of this significant rate design change over a longer period in order to ensure that

[9] Id.

those ESCOs who have entered into longer-term contracts based upon the existing rate design methodology are not materially harmed and also provide the opportunity for ESCOs and their customers to acclimate to this change in a more deliberate and incremental fashion.

It has generally been the policy of the Commission to mitigate the impact of significant rate design changes through a phasing mechanism or other approach which mitigates the full impact which can engender rate shock or rate instability. Consequently, RESA would request that the current policy of reimbursing ESCOs for ancillary services or NTAC costs be maintained for another two years through 2012 and thereafter be eliminate from the Companies' tariffs. This approach we believe represents a reasonable compromise which addresses the Companies' desire to minimize the impact of this cost reimbursement while allowing ESCOs and their customers to accommodate to this significant rate design modification.

In view of the proposed elimination of reimbursement by the Companies for these charges, it is important for relevant data concerning these charges be provided to ESCOs. Accordingly, the Companies' should be directed to post their historical monthly ancillary costs in addition to the rates they will commence charging customers in 2010.

E. ***NBC***

The Companies propose to discontinue the existing annual fixed NBC. In place of the annual fixed NBC the Companies will set the NBC on a monthly basis, which would include a reconciliation of prior period costs. The Companies further represent that all customers in a given service class will receive the same NBC, "regardless of supplier."[10] RESA supports the non-discriminatory application of the NBC and requests that the Commission mandate that the

[10] Petition, p. 6.

NBC that is applied in rates for each service class be the same for all customers in that class regardless of whether they receive commodity from the utility or an ESCO.

F. Unaccounted for Energy ("UFE")

The Companies propose modification of the treatment of UFE in the NYSEG service territory.[11] However, when NYSEG commences assessing ESCOs with their specific UFE percentages, it will be difficult for ESCOs to develop reasonable assessments of the anticipated UFE rate level. To address this concern, NYSEG should be directed to post 24-months of historical UFE data that they have used to adjust their monthly hourly metered load to the load reported by the NYISO.

We thank the Commission for the opportunity to submit these comments in this important matter. Thank you for your consideration.

Respectfully submitted,

Retail Energy Supply Association

By: ______________________________

Usher Fogel, Counsel

cc: Service List (by electronic mail)

[11] Id.