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April 10, 2008

VIA OVERNIGHT MAIL

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

Re: Case 07-M-0548 – Proceeding on Motion of the Commission
Regarding an Energy Efficiency Portfolio Standard

Dear Secretary Brillling:

On March 20, 2008, a *Ruling on Staff Motion for Reconsideration and Revising Schedule* was issued by the Administrative Law Judges in Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard. New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation hereby jointly submit an original and five copies of their Initial Brief in this proceeding addressing the four matters specified (1) Fast Track/Bridging Programs; (2) Utility Program Administration; (3) Program Costs; and (4) Allocation of Targets and Funding.

Respectfully submitted,

James A. Lahtinen

cc: Active Party List in Case 07-M-0548 (via listserv)

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the Commission Regarding an :
Energy Efficiency Portfolio Standard : Case 07-M-0548
: :
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**INITIAL BRIEF OF
NEW YORK STATE ELECTRIC & GAS CORPORATION
AND
ROCHESTER GAS AND ELECTRIC CORPORATION**

Dated: April 10, 2008

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I. INTRODUCTION

New York State Electric & Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RG&E”) (collectively “the Companies”) hereby submit their Initial Brief in the above-captioned proceeding addressing the four matters specified in the March 20, 2008 *Ruling on Staff Motion for Reconsideration and Revising Schedule* (“Ruling on Motion”) issued by the Administrative Law Judges in Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard (“EEPS”).

The Companies support the thrust of the Ruling on Motion in encouraging the prompt implementation of energy efficiency activities that will contribute toward the State’s 15 x 15 target. However, until a decision is reached by the Commission on the pending merger between the Energy East Corporation and IBERDROLA S.A., the Companies are unable to take a position on: (1) the fast track proposals offered by various parties in this proceeding, or (2) the specific role of NYSEG and RG&E in the administration of energy efficiency programs in their service territories.

II. FAST TRACK/BRIDGING PROGRAMS

*The updated Staff Fast Track suite of programs to be filed on March 25, 2008, as well as the Staff presentation at the March 5, 2008 Technical Conference, the NYSERDA Fast Track Proposal, and any other Fast Track proposals that have previously been submitted.*¹

The Companies take no position on the specific fast track proposals made to date in this proceeding.

III. UTILITY PROGRAM ADMINISTRATION

The policy rationale for authorizing utility administration of energy efficiency programs in the broader context of the EEPS proceeding, including the reasons identified in the February 11, 2008 Straw Proposal: “Utilities can bring access to end-use customers, especially mass market customers, an ability to leverage outside funding through on-bill financing, and the potential to integrate energy efficiency with overall energy resource planning.”² Parties may also brief the advisability of the Commission establishing periodic energy efficiency targets for each utility.³

¹ Ruling on Motion, p. 10

² Straw Proposal, p. 2.

³ Ruling on Motion, pp. 10-11.

The Companies take no position on the roles of NYSEG and RG&E as program administrators at this time.

The Companies recommend that targets and funding levels be set by individual program administrators based on their plans and budgets, as described in Section V, *infra.*

IV. PROGRAM COSTS

*Whether the program cost and bill impact figures presented in the Technical Appendix to the Straw Proposal represent a reasonable estimate of the overall cost of those elements of the 15 x 15 initiative to be achieved through utility ratepayer-funded programs and on-bill financing.*⁴

A. Overall EEPS Costs

A significant range of EPS costs have been offered in this proceeding, from \$244/MWh based on an average cost for the Fast Track programs outlined in the December 3, 2007, DPS Staff proposal⁵, \$253/MWh for the bridging programs subsequently recommended by Staff⁶, and \$274/MWh based on National Grid's 2006 Massachusetts programs⁷; through the \$305/MWh suggested by the Straw Proposal (including a 25 percent adder)⁸; to \$418/MWh for National Grid's 2006 Massachusetts programs with residential lighting excluded⁹, and \$427/MWh based on the Straw Proposal with a 75 percent adder, based on the deeper savings targeted compared to prior experience.¹⁰ None of these estimates has been systematically examined and compared to the specific expectations of the EEPS, which themselves remain to be clarified in a number of respects.

A variety of factors challenge the ability of the parties to reliably and accurately forecast overall EEPS costs, such as :

⁴ Ruling on Motion, p. 11.

⁵ March 5, 2008 Technical Conference Transcript Record ("Tr.") 194-195.

⁶ *March 2008 DPS Staff Report on Recommendations for the EEPS Proceeding* (March 2008 Staff Report), March 25, 2008. The cost per MWh was calculated by aggregating the program costs and GWh savings by utility provided in the filing.

⁷ White, Carol, Director, Energy Efficiency Evaluation & Regulatory Affairs, *National Grid's Cost of Saved Energy (MA - 2006)*, March 11, 2008 e-mail to Case 07-M-0548 listserv.

⁸ Tr. 185.

⁹ White, Carol, loc cit.

¹⁰ Tr. 192.

- It is generally agreed that improving codes and standards will be the least costly EEPS segment. Unfortunately, the timing and magnitude of these changes can only be influenced by the EEPS participants. The impact of codes and standards improvements will depend not only on new laws and regulations at the federal, State, and local level, but also on training and enforcement efforts.¹¹
- The appropriate balance between minimizing costs and maximizing savings in program and portfolio design has yet to be determined, and can be expected to emerge and change over time. For example, replacing residential and commercial lighting alone is relatively inexpensive, but has a short lifespan and may be a poor investment of funds if it is overtaken by natural market penetration or changes in standards and codes. In contrast, some energy efficiency improvements are only practical in the context of whole-building programs that maximize cost-effective savings at each customer home or facility. Whole building programs create much the deeper savings than lighting programs while costing materially more. The distinction is one of policy, since both types of programs meet cost-effectiveness criteria.¹²
- When the program approval criteria take into account co-benefits and factors other than the TRC test results, the cost of some externalities will be internalized, impacting the direct cost of the EEPS.
- Energy savings and peak load impacts from the EEPS must be sufficiently accurate and reliable for these resources to be included in the NYISO Reliability Needs Assessment (“RNA”) and Comprehensive Reliability Planning Process (“CRPP”).¹³ More stringent measurement and

¹¹ Tr. 117-122, 128-130, 133-134.

¹² Tr. 200.

¹³ The New York Independent System Operator, *2008 Reliability Needs Assessment, Supporting Documents, and List of Appendices for the 2008 Comprehensive Reliability Planning Process*, Final Report, December 10, 2007 (pp. I-27 through I-28) evaluated a contingency scenario based on the implementation of the 15x15 EEPS program, assuming that the program would achieve a reduction of 300 MW of generating capability on a peak demand basis each year for ten years. On a total New York Control Area basis, this reduced the loss of load expectation (“LOLE”) from 0.12 in 2012 and 0.71 in 2017 for the study or base case, to 0.01 and 0.03, respectively. The adequacy standard is 0.1, equivalent to a loss of load once in every ten years due to insufficient generation or transmission. In effect, the EEPS as modeled would allow New York to absorb a generation capacity decrease of 1,800 MW by 2012 or 3,300 MW by 2017. In addition, The *Final Generic Environmental Impact Statement* (“FGEIS”) attached to the March 24, 2008 *Order Adopting and Approving Final Generic Environmental Impact Statement* also addresses the expected load impact of the EEPS, finding (pp. 6, 10, 11, 49-50):

As illustrated in Staff’s Report and the ALJs’ Technical Appendix, an EEPS has the potential to reduce New York’s 2015 electric energy requirement by about 27,000 GWh per year, which would correspond to a peak load reduction of almost 5,500 MW. By reducing peak load, New York could avoid the need for approximately 6,390 MW of installed capacity. In 1990, the Commission instituted comprehensive

verification (“M&V”) requirements could impact both program selection and the costs of M&V.

- Due to the national groundswell of interest in energy efficiency, the demand for skilled personnel is exceeding available supply.¹⁴ At a minimum, this scarcity will increase EEPS costs; it is possible that this scarcity could delay or eliminate some savings activities. Although an aggressive program to develop an in-State green workforce may ease this deficit, it will take time and add its own costs to the EEPS.¹⁵
- Increasing the scale of programs will offer both economies (due to the more efficient use of resources) and costs (due to the need to recruit less interested or less informed customers). It is unclear how this tension will play out in the long-term cost of the EEPS.
- Alternate sources of funding (e.g., RGGI¹⁶, forward capacity market, tax credits) could reduce both the direct cost of the EEPS and its bill impacts, as could energy efficiency activities funded in other ways.¹⁷

programs for DSM and integrated resource planning that realized considerable savings in electricity usage. Between 1990 and 1996, these programs resulted in estimated savings of 5,744 GWh of energy, reducing concomitant capacity needs by 1,374 MW. NYSERDA reports that SBC programs from 1998 to 2006 have saved an estimated 2,362 GWh, resulting in concomitant capacity savings of 1,091 MW.

¹⁴ The FGEIS points out that 37,000 jobs are expected to be created by 2015 for EEPS program implementation (pp. 3, 24). The FGEIS also says (pp. 5-6):

The EEPS has the potential to increase indirectly the industries and services necessary to supply and install energy efficient equipment and to increase demand for services required to evaluate, retrofit, construct, and monitor the energy efficiency measures encouraged by the EEPS. Quantification of the economic benefits of increased manufacturing and services related to energy efficiency measures cannot be estimated until the details of the programs are developed and a schedule is established for meeting the goals of a particular program... There are also potential indirect employment impacts that could result from new businesses established or expanded to meet EEPS program needs. Any new workforce in a community, whether it involves manufacturing, construction or other services, can affect local retail, supply and secondary service businesses.

The calculation of the 37,000 job figure was explained in the FGEIS as follows (p. 49):

While employment estimates are subject to existing workforce conditions, geographic location, and general economic conditions, an estimate that 37,000 jobs could potentially be created was developed by NYSERDA staff. It is based on previous analyses of net job creation associated with existing programs. Based on those analyses NYSERDA staff estimated 1.5 jobs being created per GWh of electricity saved. NYSERDA applied a 10% loss factor to the 27,400 GWh sendout level reduction reported in the June 1, 2007 Preliminary Staff Report. Applying the 1.5 jobs created/GWh to an assumed 24,660 GWh retail load reduction resulted in a projection of 36,990 jobs being created as a result of the 15 by 15 effort.

This estimate clearly argues that the availability of skilled personnel will be an important factor driving both the cost and the performance of the program.

¹⁵ March 2008 Staff Report, pp. 23-24.

¹⁶ Tr. 106-110.

- The desirable level of EEPS support activities has not been explored in this proceeding, nor have the costs of these activities been estimated. These activities may include, for example, audits, computer system enhancements, consultant services, market research, research and development, emerging technologies, local and statewide administrative activities, green workforce development, and the development and maintenance of central databases.¹⁸

It is clear from the range of cost estimates offered in the proceeding, and the number of unresolved forces driving the EEPS cost, that the overall cost and bill impacts of the EEPS cannot be reliably or accurately determined at this time.

B. On-Bill Financing

Upon careful consideration, NYSEG and RG&E find it premature to require the utilities to implement on-bill financing, otherwise referred to as a Conservation Tariffed Installation Program ("TIP")¹⁹, even under the phased-in approach set forth in the Technical Appendix to the Straw Proposal. Consistent with the February 22, 2008 letter of the Dormitory Authority of the State of New York ("DASNY"), the Companies agree sufficient time is needed to "identify the specific steps necessary to begin implementation of the TIP" and to "identify other sources of capital to finance projects." Numerous legal, financial, computer system, and customer contact issues such as those set forth in Attachment IV-1 should be discussed and resolved collaboratively before the costs and benefits of the TIP can be fairly assessed. (The list of issues the Companies have identified within each category in Attachment IV-1 is provided to facilitate discussion by the collaborative, and is not intended to be exhaustive.)

¹⁷ The Companies believe that gas and/or electric savings supported by other endeavors within New York State should be counted toward the EEPS target if the resources would otherwise be eligible for EEPS funding, and if measurement and calculation of those savings is acceptably accurate and reliable. For example, some utilities are currently funding energy efficiency programs outside the SBC framework; New York City has proposed to implement an \$80M package of efficiency measures (Tr. 159-161); and the FGEIS discusses savings achieved through the energy efficiency and renewable set-aside component of the NOx budget-trading program (p. 30). Just as renewables financed through the voluntary green program count toward the RPS target, so too should savings be financed in other ways than through the SBC.

¹⁸ Straw Proposal, pp. 2, 3, 6, 7-9, 10-11, 14, 20, 24-25.

¹⁹ Straw Proposal, p. 10.

V. ALLOCATION OF TARGETS AND FUNDING

*The advisability of allocating in advance energy efficiency targets and funding among NYSERDA and each utility, as per the Straw Proposal.*²⁰

The Companies do not believe that individual performance targets and funding levels can be reliably or accurately set at this time. Among other issues: (1) the parties have not yet determined the correlation between costs and savings on a Statewide or local level, (2) responsibility, costs, and performance metrics have not been determined for support activities, (3) allocations based solely on sales estimates do not reflect actual market conditions in individual service territories, and (4) fixed but inaccurate long-term targets and funding levels will create a false sense of certainty. If these numbers are not met, the result is likely to be a perception of failure and pursuit of blame, rather than encouragement of learning.

To be clear, the Companies are not arguing against the 15 x 15 objective, or against an eventual gas target. It is quite important to have a savings goal against which overall progress can be measured.

The Companies are opposed to setting individual program administrator performance targets until enough EEPS experience has been gained to make that target-setting sufficiently accurate and reliable.²¹

Instead, each program administrator should be responsible for developing goals that are specifically designed for their individual characteristics and circumstances, and the constituents that each administrator serves. Goals set by program administrators should consider factors such as economic and achievable market potential and other unique attributes by region in the State. In addition, changes in targets could result from factors, including, but not limited to, changing technologies, significant shifts in the State and local economies, and changes in the market and customer base. Program administrator goals should also be adjusted over time to take into account findings from impact evaluations. There was general consensus on this issue in the Working Group 3 Report²², and NYSEG and RG&E believe that it is a reasonable approach.

The Companies support recovery of all incremental costs through an expanded System Benefits Fund charge ("SBC"), as widely advocated in this proceeding. These costs include not just actual program implementation, but also administration, M&V, general outreach and education, and support activities, such as those listed in Section IVA, *supra*. For budgetary and accounting purposes, these EEPS costs should be clearly separated from Renewable Portfolio Standard expenditures and activities supported by the System Benefits

²⁰ Ruling on Motion, p. 11.

²¹ Although NYSERDA has considerable energy efficiency experience, it is not clear that their experience reflects the approval criteria, M&V standards, expanded programs, coordination among program administrators, or other factors necessary to accurately apply this experience for setting long-term EEPS targets, by program administrator, utility service territory, or NYISO zone.

²² Working Group 3 report, pp. 15, 16.

Fund that do not contribute to the State savings target, regardless of how these charges appear on the utility bill.

The SBC should be based on bridging (and subsequently, biennial) program administrator plans and budgets, corrected for actual prior period spending levels. In contrast, a fixed, multi-year SBC will inevitably leave some activities under-funded and some over-funded. The under-funded activities will be weakened, the over-funding will encourage waste, and program participants will be discouraged from properly budgeting and managing costs.²³

VI. CONCLUSION AND SUMMARY OF RECOMMENDATIONS

In summary, the Companies:

- Do not take a position at this time on the specific fast track proposals offered to date in this proceeding, or on the roles of NYSEG and RG&E in the EEPS.
- Find that the costs and bill impacts of the EEPS cannot be accurately or reliably determined at this time.
- Find that it is premature to specify an on-bill financing contribution to the EEPS at this time, and encourage a collaborative effort to determine business practices, specifications, and cost estimates before the role of this option is determined.
- Find that it is also premature to allocate energy efficiency targets and funding levels to individual program administrators at this time; rather, targets and funding should be based on program administrator plans and budgets, with subsequent true-ups for spending variances.

²³ Tr. 180-181.

Attachment IV-1. On-Bill Financing Matters for Collaborative Resolution

1. Financial

- How utilities will collect their costs and what type of “true up” will be available for handling the deltas between estimated and actual costs;
- Whether TIP would increase shareholder risk by subjecting cost recovery of defaulted loans to prudence review;
- Responsibility for checking creditworthiness and development of minimum credit standards;
- Whether utilities that adopt a TIP will be subject to certain banking regulations that are currently not applicable to utilities. (This issue could also be included in the list of legal and policy issues set forth below);
- What mechanism would be in place to compensate utilities for typical loan holder expenses such as materials, postage, collection, remittance and phone calls;
- How payments under TIP would be treated, *e.g.*, as a loan or as a utility bill with respect to interests, principal, early payoff, overpayments, late charges, partial payments, etc;
- How partial payments would be treated between energy and on-bill financing;
- What entity would have control over the loan rates;
- Whether the loan is tied to the meter or to the customer, and in the event of default, the implications for the utility, customer and regulators;
- Whether a utility would be required to provide on-bill financing to customers of all program administrators providing EE services within its service territory.

2. Information Technology

- The parameters to establish the viability of implementing on bill financing in existing utility customer billing systems;
- The level of system changes required, *e.g.*, IVR, Web, Billing System, EDI, etc;
- The lead time required for utilities to develop the infrastructure for each program administrator;
- The level of tracking required at the premise or customer level for M&V, revenue recovery, credit and collections, etc;

- Development of guidelines governing communication between the utilities and other program administrators, *e.g.*, using existing EDI protocols, or whether separate testing will be required;
- Determination of bill display requirements, *e.g.*, monthly loan amount, interest rate, past due loan amount, loan balance, item being financed, remaining principal, etc.;
- The required level of reporting that will be required.

3. Legal, Regulatory, Policy

- The changes that may be required for HEF program administrator and non-res regulations similar to the ESCO HEF program administrator;
- The statutory or other legal basis to require utilities to implement a loan program;
- If the loan follows the meter, will it be a condition of service for a new customer to assume the previous owners loan? Is the new customer legally bound to the old customers loan conditions? What types of appliances/devices qualify for the loan following the meter? Would it be only for fixed appliances/devices such as furnaces/boilers or would non-fixed items, that could be taken with a customer, such as refrigerators, washers, dryers and dehumidifiers also qualify?
- How standard situations such as the following would be addressed:
 - Accounts that are finalized and still have active financing;
 - Termination for Non-Payment with active financing;
 - Name change to different family member who's not the borrower on the loan;
 - Seasonal billing where bills are only issued for part of year;
 - Landlords who take over service between tenants
- How OTDA/DSS payments would be handled. Whether DSS will allow payments made via Guarantee, Direct Voucher, or HEAP program to pay off on-bill financing;
- Whether delinquent on-bill finance balances would be subject to termination of service and late payment charges;
- Determination of the qualification process for lenders to participate in on-bill financing?

4. Customer Contact/Service

- The specific roles and tasks that would be expected of utilities when acting as the "initial point of contact" with a customer;

- Whether utilities will be required to withhold payments to vendors when customers complain about poor quality work or installations;
- Accountability for faulty equipment/installations and impact on the utilities performance under CAIDI/SAIFI metrics and potential for penalties due to increased customer calls and complaints, beyond the control of the utilities;
- The impacts of a TIP on low-income customers (higher likelihood of collection activity and location changes) relative to terminating customers for past due finance charges, in addition to exit fees;
- Customer Service/Marketing integration activities for neighboring utilities to promote each other's programs.