STATE OF 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

STATEMENT OF THE NEW YORK STATE CONSUMER PROTECTION BOARD IN SUPPORT OF JOINT PROPOSAL

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Dated: July 10, 2007
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The New York State Consumer Protection Board ("CPB") submits this Statement in full support of the Joint Proposal ("Proposal") submitted in this case on July 10, 2007. If approved by the New York State Public Service Commission ("PSC" or "Commission"), the Proposal will provide very substantial benefits for consumers who receive electric service from New York State Electric & Gas Corporation ("NYSEG" or "Company").

Background

In its Order resolving NYSEG's last major electric rate proceeding in August of 2006, the Commission required the Company to continue offering a fixed price electric commodity service to residential and small commercial customers.[1] It found that such a fixed price offer ("FPO") was in high demand by consumers in NYSEG's territory; that consumers had come to expect it from the utility; and that the availability of competitive offers from alternative suppliers

[1] Case 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, "Order Adopting Recommended Decision With Modifications", issued August 23, 2006 ("Rate Order").

could not be assured in the short term.[2] The Commission's mandate applied only to calendar year 2007. For 2008, NYSEG was given the option of continuing the FPO at its discretion. For 2009 and beyond, the Company was required to either discontinue the program or to return to the Commission for reauthorization "based upon duly filed evidence in a case filed sufficiently in advance of the proposed new term of such a program."[3] This proceeding was initiated by such filing by the Company on April 6, 2007.

Subsequent to the filing, NYSEG issued a notice of intent to engage in settlement discussions in accordance with the Commission's rules of procedure. Pursuant to that notice, the parties met on several occasions in May and June 2007. Numerous parties with diverse interests and concerns participated in the settlement discussions with NYSEG, including the CPB, the Department of Public Service ("DPS") Staff, the Public Utility Law Project, Multiple Intervenors, Nucor Steel, and several energy service companies ("ESCOs"). The current Proposal is the broadly-supported result of those efforts.

The CPB's objective in this case has been to ensure that NYSEG's residential and small commercial customers continue to be able to choose electric commodity service from the utility under an FPO, at a just and reasonable rate, under clear procedures that allow for informed consumer choice. The Joint Proposal achieves that objective and, for the reasons we discuss herein, fully satisfies the PSC's Settlement Guidelines.

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[2] Id., pp. 8-9.

[3] Id., p. 14.

I. THE PROPOSAL SATISFIES THE COMMISSION'S SETTLEMENT PROCEDURES AND GUIDELINES.

The Commission has adopted standards to evaluate whether negotiated proposals for the resolution of contested proceedings are in the public interest.[4] Among those Settlement Guidelines are the following:

> 1. A desirable settlement should strive for a balance among (a) protection of the ratepayers, (b) fairness to investors, and (c) the long term viability of the utility; should be consistent with sound environmental, social and economic policies of the agency and the State; and should produce results that were within the range of reasonable results from a Commission proceeding.
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> 2. In judging a settlement, the Commission should give weight to the fact that a settlement reflects agreement by normally adversarial parties.[5]

The Proposal satisfies these standards.

NYSEG's filing called for a number of significant changes to its commodity program as approved in the Rate Order, specifically:

- The elimination of the variable price offer ("VPO") as an option for residential and small commercial customers, leaving those customers with only NYSEG's FPO and any offers available from ESCOs. The FPO would have been the default service offering ("DSO") for customers who did not make an affirmative choice.
- A substantial increase in the "retail conversion factor," that is, the difference between the wholesale price of power and the price charged

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[4] Cases 90-M-0255 and 92-M-0138, Settlement Procedures and Guidelines ("Settlement Guidelines"), Opinion No. 92-2, issued March 19, 1992.

[5] Id., Appendix B, at 8.

by the Company to FPO customers. The factor would have been based on NYSEG's consultants' evaluation of the mark-up implicit in bids made by suppliers to provide commodity service to large blocks of utility customers in New Jersey, Maryland, Pennsylvania and Illinois in early 2007.

- A guaranteed minimum share of net revenue for ratepayers of $20 million in the first year provided through a credit to the non-bypassable charge ("NBC").
- An increase in the Company's share of net revenue beyond the $20 million guaranteed to ratepayers from 20% to 50%.
- The elimination of the annual two-month enrollment period in favor of a year-round open enrollment process permitting unlimited switching of customers between ESCO and Company service.

These changes raised a number of very substantial issues that were addressed at length by the parties in the negotiations leading to the current Joint Proposal. The CPB was concerned that the increase in the retail conversion factor could result in unjust and unreasonable commodity rates for consumers, even with the sharing guarantee for ratepayers. The Company contended in its filing that the increase was necessary to cover the significantly higher risk presented by its offer to hold its fixed price open for a year with customers eligible to switch to and from the FPO service at will.

The methodology proposed for establishing the retail conversion factor also raised questions concerning the reasonableness of utilizing prices derived from bidding processes designed for much different purposes in different electric markets and states other than New York. The inherent validity of certain bids used was clouded by challenges to the competitiveness of the bidding processes, and in any case, adjustments required to make the bids comparable required a variety of assumptions that were difficult to validate.

The proposed elimination of a VPO for small customers, with the designation of the FPO as the DSO for customers who do not make an affirmative choice, was also of concern to the CPB. The VPO has been an available option for consumers ever since NYSEG began its Voice Your Choice program several years ago. Although the FPO was clearly the preference of the majority of small customers, there are those who affirmatively chose the variable rate. There is no reason why those customers should be deprived of that option, particularly given that its offering involves little or no risk for the Company.

Making the FPO the default service, although possibly the “democratic” choice, nevertheless was a matter of concern for the CPB because it would have marked the second change in as many years, potentially confusing and frustrating consumers who were still adjusting to the 2007 rules. The use of the FPO as the default also raised an issue as to whether doing so would be consistent with the Commission’s policy favoring the exposure of customers to some level of market price variability.

ESCOs expressed a number of concerns with continuation of the FPO, in general, and with specific provisions of the Company’s proposal. They sought assurance that existing NYSEG programs supporting retail access would be continued, and that the commodity program would be structured in a way that would give them a fair opportunity to compete.

The Joint Proposal presented today resolves all of these concerns in a fair and balanced manner. Under the Proposal's terms, NYSEG's FPO would be extended for three years, rather than an indefinite duration, and would be subject to reopening if the Company filed a major electric delivery rate case. All residential and small commercial customers would be eligible to elect the FPO. The definition of "small commercial" would initially encompass customers with less than 500 kW of peak demand, but would be reduced in years two and three of the Proposal to 400 kW and 300 kW, respectively. Commercial and industrial customers not meeting the definition of "small" who do not choose an ESCO, would be served under NYSEG's mandatory hourly pricing program, consistent with the Commission's order in Case 03-E-0641.[6]

The retail conversion factor for the FPO would be increased, but by a much smaller amount than originally proposed – from 117.5% plus 4 mills to 116.9% plus 6 mills -- roughly the equivalent of 2%. NYSEG would be permitted to retain the first $10 million in net revenues earned under the program, but its share of revenues thereafter would be reduced to 15% from the current 20%, and the Company would assume full responsibility for any losses incurred. In addition, $5 million in revenue sharing will be credited to customers in advance through a reduction in the NBC, subject to true-up in the following year if net revenues do not support the full $5 million share.

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[6] Proceeding on Motion of the Commission Regarding Expedited Implementation of Mandatory Hourly Pricing for Commodity Service, "Order Denying Petitions for Rehearing and Clarification in Part and Adopting Mandatory Hourly Pricing Requirements," issued April 24, 2006.

Because of the reduction of the retail conversion factor from the level requested by NYSEG, the Company would retain the current two-month enrollment period for election of the FPO rather than assuming the increased risk associated with year-round open enrollment. Customers will, however, be permitted to switch to ESCO service or return to utility commodity service at any time, without penalty or restriction other than the limitation that returning customers will remain on the DSO until the next enrollment period. The current option known as ESCO Offer with Supply Adjustment ("EOSA"), that applies to customers switching from NYSEG's FPO to ESCO service, and tends to limit the savings that ESCO's can offer, will be eliminated.

The DSO will continue to have a variable monthly rate, exposing customers to market price signals. The volatility of this option will be mitigated substantially, however, by NYSEG's agreement in the Proposal to continue to replace expiring hedges pending implementation of the results of the collaborative in Case 06-M-1017,[7] and to comply with the results of that collaborative when it is completed.

In addition to elimination of the EOSA, the Proposal includes numerous provisions that will continue to foster development of the competitive retail market in NYSEG's service territory. First, NYSEG agrees that it will continue its purchase of receivables ("POR") program and will fix the discount rate for the three-year term of the agreement, giving ESCOs a degree of cost certainty that

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[7] Case 06-M-1017, Proceeding on Motion of the Commission as to the Policies, Practices and Procedures For Utility Commodity Supply Service to Residential and Small Commercial and Industrial Customers, "Order Requiring Development of Utility-Specific Guidelines for Electric Commodity Supply Portfolios and Instituting a Phase II to Address Longer-Term Issues," issued April 19, 2007, p.38.

they sought. The Company will also withdraw its filing for an ESCO referral program and instead propose an "ESCO Introduction Program" giving competitive suppliers an opportunity to sign new customers before they become committed to utility commodity service. NYSEG will continue to have a designated Company liaison for ESCOs and will meet with suppliers at least twice a year to discuss retail access concerns.

NYSEG further agrees to implement on its bill a "Price to Compare" presentation, intended to show customers the full amount of utility costs they will avoid by switching to ESCO commodity service. This is a novel proposal with the potential to contribute significantly to the ability of consumers to make informed commodity supply decisions. The design of the Price to Compare and the ESCO Introduction Program will be developed through a collaborative with interested parties and have a January 1, 2008, target date for Commission approval and implementation.

Finally, NYSEG will establish a fixed NBC for all customers, making it possible for ESCOs to present customers with fixed price options that will be readily comparable to those offered by the utility. All true-ups and reconciliations of the NBC, including net revenue sharing from the FPO program, will be made in a competitively neutral manner.

The Proposal also addresses more recent Commission initiatives aimed at achieving greater energy efficiency. NYSEG commits that any revenue decoupling mechanism ("RDM") it is required to file will cover both its delivery service and its fixed price commodity service unless it can demonstrate to the Commission that the FPO should not be included.

In total, this is a well-balanced proposal that would have been difficult to achieve, and would not likely have been improved, through full litigation. It is supported by parties representing diverse interests, who in past proceedings before the PSC, including NYSEG's most recent rate case, have taken adversarial positions. The fact that all these parties find the Proposal, as a whole, to be beneficial, demonstrates that it is in the public interest.

For all these reasons, the Commission should conclude that the Proposal fully satisfies the Settlement Guidelines.

II. THE PROPOSAL IS FULLY CONSISTENT WITH CURRENT COMMISSION POLICIES.

Retail Access

In its Rate Order, the Commission approved the current NYSEG FPO program because it found that the needs and expectations of consumers in the utility's service territory required it. It did so in the face of strong opposition from the DPS Staff and nearly all participating ESCOs despite its prior pronouncements that commodity programs offering a utility the potential for profit should not be proposed.[8] Effectively, it concluded that consumer interests must

[8] Case 00-M-0504 - Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of Utilities in Competitive Energy Markets and Fostering Development of Retail Competitive Opportunities, "Statement of Policy on Further Steps Toward Competition in Retail Energy Markets," issued August 25, 2004 ("Retail Market Policy Statement"), p. 40.

take priority, and that its retail access policies contained sufficient flexibility to achieve that goal.

At the time of the Rate Order, the advancement of retail access was unquestionably one of the dominant themes running through Commission policy. Continuation of the NYSEG FPO was expressly viewed as an interim measure, pending the ability of competitive suppliers to fully meet consumers' commodity supply preferences.[9]

Since that time, there has been a clear shift in Commission policy, as evidenced in its order in Case 07-M-0458.[10] This movement has been toward the view that barriers to ESCO participation in retail energy markets have been lowered substantially, and that future Commission directives, and the utility programs adopted pursuant to them, should support rather than promote retail competition and be less burdensome on consumers. In furtherance of this approach, the Office of Retail Market Development was disbanded, but its oversight functions concerning competitive suppliers were largely continued. Through Case No. 07-M-0458, the Commission also solicited the views of all interested parties as to what other changes in direction, if any, should be pursued.

The circumstances that persuaded the Commission to approve continuation of NYSEG's FPO less than a year ago have not changed. The Company's evidence demonstrated that small customers continue to have a

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9 Rate Order, p. 8-9.

10 Case 07-M-0458 - Proceeding on Motion of the Commission to Review Policies and Practices Intended to Foster the Development of Competitive Retail Energy Markets, "Order on Review of Retail Access Policies and Notice Soliciting Comments," issued April 24, 2007.

strong preference for a utility-provided fixed price option,[11] a finding that comports fully with the CPB's views. What has changed is that unlike a year ago, the current Proposal is supported by DPS Staff and a majority of ESCOs who participated in the negotiations. Given the preferences of consumers and the broad support of the parties, it is inconceivable that the Commission would find this Proposal to be inconsistent with its current policies regarding retail energy markets.

In addition, as detailed in Section I above, the Proposal includes undertakings by NYSEG concerning POR, an ESCO Introduction Program, implementation of a Price-to-Compare on customer bills, and the continuation of regular meetings with ESCOs concerning retail access issues. The parties to the Proposal have agreed that these efforts address issues raised by the Commission in Case 07-M-0458, but that the Company will remain subject to any future orders arising from that proceeding.

<u>Commodity Supply</u>

In its Retail Market Policy Statement,[12] the Commission determined that until retail markets are sufficiently developed to assure that consumers have ready access to competitively priced hedged commodity options, utilities should continue to hedge some portion of their supply portfolios for residential and small commercial customers. Specific guidelines for such hedging practices are to be developed through collaboratives among the parties to Case 06-M-1017.

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[11] Case 07-E-0479, Direct Testimony of NYSEG Panel, April 5, 2007, pp. 10 – 16.

[12] pp. 32-35.

In the Proposal, NYSEG commits to maintaining a hedged portfolio for small customers by replacing expiring hedges until the results of the collaborative are known. At that time, it will fully comply with any new or revised hedging requirements developed through the collaborative process.

Energy Efficiency

In Cases 03-E-0640 and 06-G-0746, the Commission stated that it would:

> require utilities to develop and implement mechanisms that true-up forecast and actual delivery service revenues and, as a result, significantly reduce or eliminate any disincentives caused by the recovery of utility fixed delivery costs via volumetric rates or marginal consumption blocks.[13]

Parties to this proceeding expressed concern that although commodity programs were not specifically addressed in the RDM cases, NYSEG's FPO could generate the same types of disincentives that the Commission found to be inherent in current delivery rates. Accordingly, NYSEG agreed that any RDM it is required to submit for delivery rates, will also cover the FPO. However, the Company reserves the right to attempt to persuade the Commission that the FPO should be excluded from the mechanism

III. THE PROPOSAL PROVIDES SUBSTANTIAL BENEFITS FOR CONSUMERS

First and foremost, this Proposal continues an FPO service that the CPB considers, and NYSEG's evidence shows, highly desired by residential and small

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[13] Case 03-E-0640 – Proceeding on Motion of the Commission to Investigate Potential Electric Delivery Rate Disincentives Against the Promotion of Energy Efficiency, Renewable Technologies and Distributed Generation, and Case 06-G-0746, In the Matter of the Investigation of Potential Gas Delivery Rate Disincentives Against the Promotion of Energy Efficiency, Renewable Technologies and Distributed Generation, "Order Requiring Proposals for Revenue Decoupling Mechanisms," issued April 20, 2007, pp. 2-3.

commercial customers. At a time when consumers have been sensitized to the risk of unanticipated energy price spikes by events such as Hurricane Katrina, the convenient availability of a utility service offering real price protection is invaluable, and this Proposal ensures that availability for at least another three years.

Taken as a whole, the pricing terms established by the Proposal for the FPO are just and reasonable. The retail conversion factor and the initial “deadband” for retention of net revenue by NYSEG will increase. Several factors will offset those charges, including the elimination of ratepayer responsibility for any revenue losses, the increase in customer net revenue sharing beyond the deadband from 80% to 85%, and the advance imputation (subject to reconciliation) of $5 million in revenue sharing as a credit to the NBC.

If NYSEG’s Voice Your Choice program were a completely new proposal for commodity service, the CPB would likely advocate that the FPO be the default option, rather than the variable rate as specified in the Proposal, because of consumer preference. Given the circumstances of this case, however, that consideration is outweighed by the need for stability. During the 2006 enrollment period that ended just seven months ago, the default option was the variable rate. That caused considerable customer confusion because it was a complete reversal from the last enrollment period conducted in 2004. Reversing the terms again at this time would almost certainly create more confusion and frustration. Over the three-year term of the Proposal, customers will have the opportunity to become familiar and comfortable with the rules of the program and will be less likely to find themselves on a default service they did not want. For those who do, the Proposal provides other protections.

First, the Proposal includes NYSEG's commitment to continue hedging its supply for small customers, and by the ability of those consumers to switch to an ESCO-supplied service at any time without penalty in the pricing terms. It is extremely important to the CPB that all residential and small commercial customers have access to a utility-supplied VPO that is hedged to reduce volatility, not only for the protection of those who receive the service by default, but also for those who decide that the FPO is not an attractive option for them.

Further, the Proposal continues to allow customers who find themselves on the VPO to switch to ESCO service at any time. The extensive ESCO support for the Proposal raises the prospect that the many retail access friendly provisions it includes will promote an increase in competitive activity within the NYSEG service territory. If this does, in fact, occur, consumers may well find themselves with an even greater number and variety of supply options from which to choose.

CONCLUSION

For the reasons set forth herein, the CPB recommends that the broadly supported Joint Proposal submitted to the Commission in this proceeding be approved in its entirety.

Respectfully submitted,

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Dated: July 10, 2007
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