

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on March 28, 2001

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman  
Thomas J. Dunleavy  
James D. Bennett  
Leonard A. Weiss  
Neal N. Galvin

- CASE 96-E-0898 - In the Matter of Rochester Gas and Electric Corporation's Plans for Electric Rate/Restructuring Pursuant to Opinion 96-12.
- CASE 01-E-0199 - Ordinary Tariff Filing of Rochester Gas and Electric Corporation to Establish a Market Based Backout Credit.

ORDER APPROVING TERMS OF JOINT PROPOSAL  
AND TARIFF AMENDMENTS

(Issued and Effective March 29, 2001)

BY THE COMMISSION:

BACKGROUND

In Opinion No. 98-1,<sup>1</sup> we approved the terms, subject to certain modifications, of an Amended and Restated Settlement Agreement dated October 23, 1997 (Settlement). The Opinion provided, *inter alia*, for the staged implementation of retail access, including a 2.8 cents per kWh energy and capacity backout credit for customers obtaining electric supply from Load Serving Entities (LSEs) effective July 1, 1998. Also, because Rochester Gas and Electric Corporation's (RG&E or the company) unique single retailer model transferred certain retailing functions to LSEs, the Opinion provided an additional 0.4 cents per kWh credit, bringing the

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<sup>1</sup> Case 96-E-0898 - Rochester Gas and Electric Corporation, Opinion and Order Adopting Terms of Settlement Subject to Conditions and Changes (issued January 14, 1998); and Order Adopting Terms of Settlement Subject to Conditions and Changes (Short Order, issued November 26, 1997).

total credit to 3.2 cents per kWh.<sup>2</sup> The effective date of the energy and capacity stage was subsequently postponed until November 1999, to await the operation of NYISO.<sup>3</sup>

The Opinion further provided that the energy and capacity credit level would be revisited “if...the market price of energy and capacity... exceeds an average of 3.2 cents per kWh on a persistent and sustained basis...” (Settlement, Paragraph 57). RG&E disagreed that a revision of the backout credit was required by this term, but, nevertheless, it agreed to address the concerns of staff and other parties that the existing below-market, fixed backout credit might be an impediment to the effective functioning of the wholesale market generally, and of RG&E’s retail access program in particular. By letters dated February 1, 2001 and March 12, 2001, RG&E submitted proposed modifications (see Appendix I) to its P.S.C. No. 14 - Electricity and P.S.C. No. 15 - Electric Distribution tariffs to implement a market-based backout credit (MBBC) for customers acquiring electric supply from alternative suppliers.

Following discussions with staff and interested parties, RG&E modified its initial proposal, significantly improving the original filing from the perspective of the other parties. Those revisions are reflected in a Joint Proposal (Proposal) (see Appendix II) dated March 12, 2001, which was filed, along with tariff revisions to implement its provisions, on March 13, 2001. Parties participating in the proceeding have either accepted and signed the Proposal or are not opposing its approval by the Commission. We will approve the Proposal because it benefits consumers through encouragement of retail markets and is in the public interest.

#### JOINT PROPOSAL

The Proposal provides that, beginning with the upcoming NYISO summer capability period on May 1, 2001, RG&E will modify its present full requirements energy and capacity program,<sup>4</sup> by introducing an alternative market-based backout credit mechanism (MBBC). The MBBC consists of the difference between the base energy and capacity rate and

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<sup>2</sup> Id.

<sup>3</sup> Case 96-E-0898 - Rochester Gas and Electric Corporation, Order Approving Petition of RG&E to Extend Energy-Only Stage of Retail Access Program (issued May 27, 1999).

<sup>4</sup> RG&E’s full requirements program allows an LSE to acquire energy and capacity from RG&E at a price equal to the energy and capacity backout credit.

the amount this rate would have been if calculated using market prices for its components (energy, capacity, ancillary services, and NYPA Transmission Adjustment Charge).

LSEs that elect to obtain all energy and capacity from the market to serve the electric needs of their customers will receive from RG&E a credit equal to the market price of energy, capacity, and ancillary services. That credit will be applied to current full service rates to derive the net delivery cost that LSEs pay RG&E on behalf of their retail access customers. To address the concerns that markets may yet be too unstable and prices too volatile, RG&E will continue its full requirements option. However, in lieu of the current fixed 2.8 cent per kWh credit for energy and capacity, RG&E will employ a market price credit.

Under the MBBC, LSEs who receive service, on and after May 1, 2001, under RG&E's Distribution Tariff (P.S.C. No. 15 – Electric Distribution) will be charged a distribution rate equal to the difference between the rate applicable to bundled retail service and the sum of: 1) a “base energy and capacity backout rate” and 2) a “retailing backout rate” of \$0.004 per kWh. The base energy and capacity backout rate will be calculated prior to the start of each New York Independent System Operator (NYISO) capability period. On the 15<sup>th</sup> of the month prior to the start of the capability period, an initial monthly base backout credit will be calculated based on a forecast of energy prices derived from the Enron Corporation's (Enron) EnronOnline trading platform. The base backout will be employed to derive the monthly delivery charges reflected on RG&E bills to LSEs for delivery services. In the event the Enron source becomes unavailable or inappropriate for this calculation, the parties may select, by mutual agreement, an alternative source.

An initial MBBC calculation and reconciliation of the initial credit with actual NYISO results will be made 35 days after the end of each calendar month when a calculation will be made of the difference between the base backout credit and a recalculated credit that reflects, to the extent practicable, actual market prices for energy and capacity. A second calculation of the MBBC will be made 90 days after the end of each calendar month to reflect any further NYISO refinements. A final reconciliation will be made when the NYISO certifies that it has provided final data. Interim reconciliations may also be made as deemed appropriate at any time between a second (90 day) and final calculation of the MBBC when the NYISO certifies all data. A cap on the MBBC, equal to the product of the distribution customer's total load for the calendar year and the RG&E's power supply related embedded cost of \$0.015 per

kWh is established. This cap is based upon staff's review of RG&E's embedded power supply cost.

In addition, the company will continue to offer a full requirements option to Distribution Customers during the term of the Proposal. LSEs will still be allowed to acquire capacity and energy from RG&E and RG&E's backout credit price. However, in keeping with the implementation of the MBBC, the backout credit will reflect the forecast price of capacity and energy employed in the initial backout calculation under the MBBC option.

End-use customers returning to RG&E's bundled service under P.S.C. No. 14 – Electricity are required to remain on that service for a minimum period of one year, unless service by the distribution customer was discontinued in whole or in significant part, pursuant to Rule 7.A or 7.B of the distribution tariff. This requirement is intended to prevent customers from gaming the system by frequently changing between LSE and utility provided service in search of the most favorable price and will decrease the administrative burden on the company.<sup>5</sup>

As set forth in the Opinion, certain costs associated with the introduction of the MBBC may be considered "competition implementation costs." Included, for example, would be any incremental costs to administer the new credit. The Proposal recognizes the company's right to petition for recovery of these costs in accordance with the requirements and limitations set forth therein.

Finally, the parties have agreed to meet on or before May 1, 2001 to discuss ways to make the company's current system of collecting and disseminating load data acquired through electric telemetering more widely accessible. Incremental costs, net of savings, related to changes made to the system in response to the discussions are recoverable by the company.

#### DISCUSSION

The Proposal is consistent with our previous observations about the potential need to modify the original backout credit mechanism. For instance, in our Order Denying Petitions for Rehearing and Clarification, we stated that "...we may reexamine the reasonableness of the

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<sup>5</sup> This requirement would not preclude customers from switching between LSEs.

backout credit.”<sup>6</sup> We also noted the requirement providing for a meeting of the parties to discuss the pace of retail access and associated conditions if the market price of energy and capacity exceeded 3.2 cents per kWh on a persistent and sustained basis. Finally, we stressed our authority to adjust the backout rate to “ensure that it does not unduly frustrate the development of retail competition.”<sup>7</sup> The Proposal advances our interests in removing impediments to the development of a robust retail electric market.

The Proposal and implementing tariff leaves sufficiently address the concerns raised by the parties in their written comments. In particular, financial risk has been significantly reduced through the use of a forecast of market prices to establish the initial backout credit and a shortening of the time within which the first MBBC true-up will occur. Provisions for additional true-ups and the application of the cap on the MBBC on an annual basis further address the risk issue. For LSEs that remain concerned about risk, RG&E will also continue a current full requirements program under which LSEs have been operating for some time.

The current lack of relevant load data apparently makes it impossible for RG&E to resolve load shape issues at this time. Other alternatives, however, may be available to address this concern. For example, RG&E’s tariff currently offers the opportunity for customers to install a real-time meter. This meter would provide hourly customer usage data which then would be the basis for any credit calculation. This option, however, may require costs to be incurred that some parties may find prohibitive. In particular, tariff rates for hourly meters include one-time costs of approximately \$1,700 for installation of remote metering equipment and up to \$500 for a compatible meter. A monthly service charge of \$20.75 would also apply.

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<sup>6</sup> Case 96-E-0898, *supra*, Order Denying Petitions for Rehearing and Clarification (issued May 22, 1998), p. 9.

<sup>7</sup> *Id.*

Our metering initiative also offers the prospect of third party meter providers that could provide additional and lower cost methods of metering usage on a real-time basis.<sup>8</sup> However real-time data is collected, RG&E has committed to its use in the calculation of and the issuance of a backout credit. Finally, the parties have agreed to meet prior to May 1, 2001 to explore ways in which the company's current system of collecting and disseminating load data acquired through telemetering may be made more widely accessible. To the extent practical, the parties are committed to refining the data collection process, thereby improving the accuracy and predictability of the MBBC mechanism.

The Proposal makes no change to the current 0.4 cents per kWh retailing credit. RG&E believes that the institution of a market-based backout credit does not introduce any new types of retailing functions or costs not already identified as included in the credit. Further, our opinion, which provided for the implementation of a market-based backout credit, did not suggest that attendant to such implementation was a reopening of the retailing credit. Finally, we have already rejected a call for revisiting the retailing credit in our Order Denying Petitions for Rehearing and Clarification. Accordingly, the level of the retailing credit does not require modification at this time.

#### EMERGENCY APPROVAL

According to the terms of RG&E's full requirements retail access program, the program currently in effect will expire on May 1, 2001. Absent an extension of the current program or inauguration of the proposed MBBC, provisions in the Uniform Business Rules require that LSEs immediately begin the process of notifying their customers that they will be returned to RG&E's service effective May 1, 2001. As a result, action either to extend and/or modify the program, is required to avoid unnecessarily alarming customers of the prospect of losing their retail service option and potentially causing customer confusion and harm, and to ensure that customers in RG&E's service territory continue to have retail choice options available without interruption.

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<sup>8</sup> Case 94-E-0952 - In the Matter of Competitive Opportunities Regarding Electric Service, Order Providing for Competitive Metering (issued June 16, 1999).

Moreover, with respect to the instant proposal, LSEs wishing to participate in the market-based backout credit program have indicated their expectation to participate in the NYISO's upcoming six-month strip auction for generation capacity to be conducted in late March. The new market-based backout credit mechanism will increase the LSEs' opportunities to participate in the wholesale market and should enhance the LSEs' ability to bring the benefits of retail access, such as new service and pricing options, to customers in RG&E's service territory. Further, the six-month strip auction may afford the greatest opportunity for LSEs to obtain capacity at a favorable price. Absent our emergency approval, LSEs could still obtain capacity from the market, but would do so in monthly capacity auctions that are likely to have more volatile prices.

Because the statutory comment period provided for by the State Administrative Procedure Act extends to April 14, 2001, emergency approval of the Joint Proposal is required to avoid the problems described above. Accordingly, compliance with the advance notice and comment requirements of SAPA §202.1 would be contrary to the public interest and immediate approval by the Commission is necessary for the preservation of the general welfare under SAPA §202(6).

The Commission orders:

1. The terms of the Joint Proposal (Appendix II) are approved.
2. The tariff leaves listed in Appendix I are authorized to become effective, and the requirements of Section 66(12)(b) of the Public Service Law as to newspaper publication of the changes proposed by the amendments are waived.
3. This Order is adopted on an emergency basis under §202(6) of the State Administrative Procedure Act.
4. These proceedings are continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER  
Secretary

Filing by: ROCHESTER GAS AND ELECTRIC CORPORATION

Amendments to Schedule P.S.C. No. 14 - Electricity

Third Revised Leaf No. 103  
Sixth Revised Leaf No. 123-A  
Eighteenth Revised Leaf No. 119  
Nineteenth Revised Leaf No. 128  
Twenty-First Revised Leaf No. 97  
Twenty-Second Revised Leaf No. 106  
Twenty-Third Revised Leaf No. 99

Issued: February 1, 2001 Effective: May 1, 2001

Fourth Revised Leaf No. 103  
Seventh Revised Leaf No. 123-A  
Nineteenth Revised Leaf No. 119  
Twentieth Revised Leaf No. 128  
Twenty-Second Revised Leaf No. 97  
Twenty-Third Revised Leaf No. 106  
Twenty-Fourth Revised Leaf No. 99

Issued: March 12, 2001 Effective: May 1, 2001

Amendments to Schedule P.S.C. No. 15 - Electric Distribution

Original Leaf No. 109-A  
First Revised Leaf No. 119-A  
Second Revised Leaf No. 121  
Fifth Revised Leaves Nos. 119 and 120  
Sixth Revised Leaf No. 108  
Seventh Revised Leaves Nos. 109 and 118

Issued: February 1, 2001 Effective: May 1, 2001

Original Leaves Nos. 109-B, 119-B  
First Revised Leaves Nos. 109-A, 122  
Second Revised Leaf No. 119-A  
Third Revised Leaf No. 121  
Sixth Revised Leaves Nos. 119, 120, 133  
Seventh Revised Leaf No. 108  
Eighth Revised Leaves Nos. 109, 118, 131  
Tenth Revised Leaves Nos. 129, 130  
Twelfth Revised Leaf No. 132

Issued: March 12, 2001 Effective: May 1, 2001

NEWSPAPER PUBLICATION: WAIVED

**STATE OF NEW YORK  
BEFORE THE  
PUBLIC SERVICE COMMISSION**

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CASE 96-E-0898 - In the Matter of Rochester Gas and Electric Corporation's Plans for Electric Rate/Restructuring Pursuant to Opinion 96-12.

CASE 01-E-0199 - Ordinary Tariff Filing of Rochester Gas and Electric Corporation to Establish a Market Based Backout Credit.

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**JOINT PROPOSAL**

Parties:

This Joint Proposal ("Proposal") is entered into on the 12<sup>th</sup> day of March, 2001 by and among the Staff of the New York State Department of Public Service ("Staff"), Rochester Gas and Electric Corporation ("RG&E" or "the Company"), The E Cubed Company LLC, Energetix Inc., Joint Supporters and Leveraged Energy Purchasing Corporation, hereinafter collectively referred to as "the Parties", or individually as "the Party."

Background:

On February 1, 2001, RG&E filed with the Commission proposed tariff leaves that defined and set for implementation a market-based backout credit ("MBBC") to replace the backout credit fixed by Commission order in the Company's electric rate and restructuring proceeding.<sup>1</sup> The backout credit set forth in the Amended and Restated Agreement (ARSA), which was to be deducted from bundled retail service rates to establish the distribution access rates paid by load serving entities ("LSEs"), was fixed at

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<sup>1</sup> Case 96-E-0898, In the Matter of Rochester Gas and Electric Corporation's Plans for Electric Rate/Restructuring Pursuant to Opinion No. 96-12, Order Adopting Terms of Settlement Subject to Conditions and Changes (issued November 26, 1997).

2.8 cents per KWh<sup>2</sup>, and accounted for the energy, capacity and ancillary service components of the bundled service rates that LSEs would no longer look to the Company to provide.

As approved by the Commission, the ARSA provided for a review of certain of its provisions upon the occurrence of specified events associated with the implementation of competition.<sup>3</sup> RG&E's February 1 filing was in response to a Staff request that the backout credit provisions of the ARSA be the subject of such review. An informational session was held on February 12, 2001 to discuss the Company's proposal. A Notice of Impending Negotiations was sent to all parties identified on the current service list in 96-E-0898. Interested parties were invited to react to the proposed MBBC in a conference to be held on February 23, 2001 in Albany and in Rochester. Further conferences were held on March 2, March 7, March 9, and March 12, 2001.

As a result of those conferences, the Parties have agreed as set forth below:

Term:

1. This Proposal shall be effective from the date of its approval by the Commission and shall terminate on June 30, 2002. Unless there is a comprehensive proceeding underway in which the subject of this Proposal is at issue, the Parties will meet prior to December 31, 2001 to discuss the effects of this Proposal upon the markets

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<sup>2</sup> An additional 0.4 cents per KWh was deducted from bundled retail rates to account for the retailing services that RG&E would no longer provide. The Commission further clarified that the backout credit included the impact of the gross receipts tax.

<sup>3</sup> See e.g. paragraph 57 of the ARSA. "If during the operation of the Energy and Capacity Stage of the Retail Access Program, the market price of energy and capacity measured at the Company's interconnections with the Statewide transmission system, exceeds an average of 3.2 cents per KWH on a persistent and sustained basis, the Parties will meet to discuss the potential acceleration of the Retail Access implementation schedule [and] the associated conditions and limitations on customer participation . . .".

in which they participate, but the terms hereof are not subject to modification or elimination until the expiration of the Term.

Market-Based Backout Credit:

2. Customers who receive service under RG&E's Distribution Tariff (P.S.C. No. 15 - Electric Distribution) shall be charged a distribution rate equal to the difference between the rate applicable to bundled retail service and the sum of (a) a "base energy and capacity backout rate" and (b) a "retailing backout rate" of \$0.004 per KWh.

3. The base energy and capacity backout rate will be calculated prior to the start of each New York Independent System Operator ("NYISO") capability period. On the 15th of the month prior to the start of the capability period, a peak hours energy price and an off-peak hours energy price will be obtained from the Enron on-line trading platform for each month of the capability period. The price will be the latest bid price available at the time they are obtained for NYISO Zone A. The base energy and capacity backout rate for each month will be calculated by multiplying the RG&E system load in each hour of the corresponding month of the previous year by the peak hours price or the off-peak hours price, as applicable, summing the resulting products and dividing that sum by the total energy usage for the month. The initial base energy and capacity backout rate will be calculated using publicly available data for the upcoming capability period. In the event that the Enron on-line trading platform becomes unavailable or inappropriate for the purpose described herein, the Parties shall select, by mutual consent, another index.

4. The retailing backout rate will remain at \$0.004 per KWh throughout the term of the Proposal.

5. The difference between this base energy and capacity rate and the amount this rate would have been if calculated using market prices for its components (energy,

capacity, ancillary services, NYPA Transmission Adjustment Charge ("NTAC")) shall constitute the MBBC. It shall be credited to or debited from the customer's account on a monthly basis. Distribution customers that elect the full requirements service option will not receive the MBBC. The calculation for each component of the MBBC shall be performed as follows:

- **Energy** - Customer load in each hour multiplied by the hourly day-ahead market location-based marginal price applicable to that hour, and summed over all hours in the month.
- **Capacity** - Customer's initial installed capacity ("ICAP") requirement for the capability period (in kW) multiplied by the six-month strip auction price per kW, adjusted by the difference between the ICAP requirement in the current month and the initial ICAP requirement multiplied by the current month auction price.
- **Ancillary Services** - Customer's load in each hour multiplied by the NYISO ancillary services charge for Schedules 1 (fixed and variable), 2, 3, 5 and 6 and NTAC applicable to that hour, and summed over all hours in the month.

6. The MBBC shall be calculated 35 days after the end of each calendar month. It will be modified to reflect data provided by the NYISO for the period through a subsequent calculation which will take place 90 days after the end of each calendar month, or as soon after that time as the NYISO provides such data. The MBBC shall be further modified following the final calculation, which will be made when the NYISO certifies that it has provided final data. The MBBC may also be modified pursuant to interim calculation(s) made at any time between the second and final calculations at the discretion of the Company and its distribution customers.

7. The MBBC shall be subject to a cap equal to the product of the distribution customer's total load for the calendar year and the Company's power supply related embedded cost of \$0.0615 per KWh. The Company will compare the actual MBBC provided against the cap on a calendar year basis. Any excess amount will be deducted from the MBBC provided during the following calendar year.

Effective Date of MBBC:

8. The MBBC shall first apply to service provided on and after May 1, 2001.

Full Requirements Service Option:

9. The Company will provide full requirements service on an optional basis to Distribution Customers during the term of the Proposal. The price charged for such service will be equal to the base energy and capacity backout rate. Distribution customers electing the full requirements service option will not receive the MBBC.

10. The Company will continue to apply the dynamic load profiling approach approved by the Commission.<sup>4</sup>

New and Returning Customers:

11. A customer who transfers to service under the Company's retail electric tariff (P. S. C. No. 14 - Electricity) from service provided by a distribution customer taking service under RG&E's Distribution Tariff must take service under the retail tariff for a minimum of one year from the date of transfer, unless service by the distribution customer was discontinued in whole or significant part, pursuant to Rule 7.A or 7.B of the distribution tariff.

12. A distribution customer must provide notice 15 days prior to the return of its customers, except that if approval of the Proposal (with a May 1 implementation date) is not issued by March 15, notice must be provided by no later than March 30.

13. The ARSA's provisions (see paragraph 59) concerning rates for new customers and customers returning to bundled retail service are unchanged by this Proposal.

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<sup>4</sup> Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Order Providing For Competitive Metering (issued June 16, 1999).

Implementation Costs:

14. Costs of implementing the MBBC shall be considered Competition Implementation Costs as set forth in the ARSA, and the Company may petition for recovery of these costs in accordance with the requirements and limitations established therein.

Hourly Metering:

15. The Parties will meet prior to May 1, 2001 to discuss ways in which the Company's current system of collecting and disseminating load data acquired through electric telemetering may be made more widely accessible. Any incremental costs, net of savings, related to changes to the system made in response to such discussions shall be fully recoverable by the Company.

Petition for Relief:

16. Any Party hereto shall have the right to petition the Commission for review of the operation of this Joint Proposal and appropriate remedial action in accordance with and upon the occurrence of conditions set forth in the ARSA.

17. Any Party seeking review pursuant to the preceding paragraph shall have the burden of showing to the Commission's satisfaction that continued operation of the Proposal with regard to the specific basis for that Party's petition is unjust or unreasonable.

Dispute Resolution:

18. The parties shall first attempt to resolve informally any disagreement over the interpretation of this Proposal or the implementation of any of the provisions hereof. If these efforts are unsuccessful, such disagreement shall be resolved by petition to the Commission.

Binding Effect of Proposal:

19. This Proposal represents a negotiated Joint Proposal and, except as otherwise expressly stated herein, none of the Parties shall be deemed to have approved, agreed to, or consented to any principle, methodology or interpretation of law underlying or supposed to underlie any provision hereof, and this Proposal shall not be cited or relied upon with respect to any matters other than those specifically addressed herein.

Modification of Proposal:

20. Approval by the Commission of this Proposal shall constitute approval of all of its terms. If the Commission approves this Proposal in its entirety or modifies it in a manner acceptable to the Parties, this Proposal shall be implemented in accordance with its terms. Because this Proposal is an integrated whole, with each provision in consideration for, in support of, and dependent on the others, any attempt to modify its terms may frustrate its purpose. Thus, if the Commission does not approve this Proposal in its entirety, without modification, each of the Parties reserves the right to withdraw its acceptance by serving written notice on the Commission and the other Parties and to renegotiate and, if necessary, to litigate, without prejudice, any or all issues as to which such Party agreed in this Proposal; such Party shall not be bound by the provisions of this Proposal, as executed or as modified, and this Proposal shall not take effect.