

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on November 24, 1998

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman  
John B. Daly  
Thomas J. Dunleavy  
James D. Bennett

CASE 96-E-0891 - In the Matter of New York State Electric & Gas  
Corporation's Plans For Electric Rate/  
Restructuring Pursuant to Opinion No. 96-12.

ORDER CLARIFYING AND MODIFYING  
RATE AND RESTRUCTURING PLAN

(Issued and Effective December 3, 1998)

BY THE COMMISSION:

BACKGROUND

In a companion Order Approving Transfer of Electric Generation Facilities, Approving Contracts Upon a Condition, and Making Other Findings (Transfer Approval Order), issued today in this proceeding, we approve New York State Electric & Gas Corporation's (NYSEG) sale of its coal-fired generation plants to AES NY, LLP (AES) and Mission Westside Energy, Inc. (Mission), the winners in the auction for the plants that NYSEG conducted.<sup>1/</sup> The approval of the sale, however, is contingent upon ensuring that ratepayers benefit from the excess proceeds that were obtained through the auction, above the coal plants' depreciated book value, and the tax and other auction costs.

The conditions necessary to protect ratepayers are best established by clarifying and modifying the Rate and Restructuring Plan (the Plan) adopted for NYSEG in Opinion No.

---

<sup>1/</sup> Case 96-E-0891, New York State Electric & Gas Corporation's Plans For Electric Rates and Restructuring, Order Authorizing Process For Auctioning of Generation Plant (issued April 24, 1998).

96-8.<sup>1/</sup> In a filing made on November 10, 1998, NYSEG proposed clarifications and modifications intended to satisfy the interests of ratepayers, in balance with the interests of shareholders. Parties responded with comments on November 17, 1998. Their positions are summarized below.

POSITIONS OF THE PARTIES

NYSEG's Filing

In its November 10 filing, NYSEG first addressed the earnings cap calculation under the Plan. The utility would increase the income component of the calculation in an amount that reflects application of a 6.25% pre-tax investment interest rate to the excess proceeds from the auction.<sup>2/</sup> It would also assess the maximum \$10 million in employee transition costs it was allowed in the Auction Authorization Order against the excess auction proceeds, instead of recovering that amount as an extraordinary expense under the Plan.<sup>3/</sup> The employee transition cost assessment, the utility says, would be disregarded in the earnings cap calculation, further benefitting customers.

NYSEG also proposes accelerating the phase-in of the retail access backout credit. It would increase the credit to 3.23¢ per kWh following issuance of this Order, to 3.47¢ after April 1, 1999, and to 3.71¢ after August 1, 1999, upon the first available billing cycle in each instance. While NYSEG does not propose to condition these provisions on resolution of other issues, such as restricting customer switching between the

---

<sup>1/</sup> Case 96-E-0891, New York State Electric & Gas Corporation's Plans For Electric Rates and Restructuring, Opinion No. 98-6 (Issued March 5, 1998).

<sup>2/</sup> Under the Plan, earnings in excess of a 12% return on equity cap are returned to ratepayers. Case 96-E-0891, supra, Order Adopting Terms of Settlement Subject to Modifications and Conditions (Issued January 27, 1998) (Short Order), Appendix A, p. 16.

<sup>3/</sup> Case 96-E-0891, supra, Order Authorizing the Process for Auctioning of Generation Plant (issued April 24, 1998).

utility and energy services companies (ESCOs) and the imposition of fees and charges on ESCOs, it requests expeditious consideration of those issues. To facilitate that consideration, it would submit a complete fully-embedded cost-of-service study so that the evidence necessary to decide the issues will be available. The study would identify the costs underlying the provision of its various services, once they are all unbundled into the components listed in the Plan.<sup>1/</sup>

Explaining the benefits of its proposal, NYSEG asserts that, under its 6.25% interest imputation, the real value of the excess proceeds will be reflected in the earnings cap calculation. The acceleration of the back-out credit, the utility relates, moves the availability of the 3.71¢ credit forward by two full years as compared to the phase-in under the Plan, facilitating the emergence of a competitive retail electric market. Assessing the employee transition costs against the auction proceeds, the utility contends, enables ratepayers to avoid a potential extraordinary rate increase under the Plan, without affecting the earnings cap calculation. As a result, NYSEG concludes that its overall proposal is superior to an approach where the earnings cap would be calculated by reflecting a rate base reduction in the amount of the excess auction proceeds, and no changes would be made to the Plan.

CPB

According to the Consumer Protection Board (CPB), a rate base reduction approach to the earnings cap calculation would have lowered rates for all customers, and would have been the preferred option in a purely regulatory environment. CPB perceives, however, that NYSEG's alternative proposal essentially utilizes the excess auction proceeds to accelerate the schedule for phasing in the retail access backout credit. Since, says CPB, the success of retail electric competition is to a large degree dependent on the magnitude of the backout credit, it

---

<sup>1/</sup> See Short Order, Appendix A, p. 20.

supports NYSEG's proposal to increase the size of the credit. CPB also voices its concern that too-low backout credits are already constraining the development of retail access, to the detriment of ratepayers. CPB believes the other aspects of NYSEG's proposal, including application of the 6.25% interest rate and the treatment of employee transition expenses, are in the ratepayers' interest, when joined with the increases to the backout credit.

MI

Arguing that NYSEG fails to provide factual support for its assertion that its alternative proposal is superior to the rate base reduction approach, Multiple Intervenors (MI) requests additional time to evaluate the utility's position. NYSEG, MI continues, should be required to provide more information, including a calculation showing the impact the rate base reduction approach would have on customers' rates.

NEV

New Energy Ventures East, LLC (NEV) supports NYSEG's proposal to increase the retail access backout credit. According to NEV, existing backout rates are inadequate to foster retail competition. NEV discerns that the current practice of using a wholesale commodity price proxy to determine backout rates fails to capture the true cost of serving retail customers, and suggests that the backout credit should be re-examined on a statewide basis.

NESPA

The New York Energy Service Providers Association (NESPA), a consortium of energy marketers, also supports NYSEG's proposal to accelerate the phase-in of the backout credits. It is important, NESPA stresses, to vigilantly monitor NYSEG's retail access program and direct changes as they are warranted. Perceiving that low backout credits are inhibiting the formation of a competitive market in New York, NESPA concludes that

methodologies for devising the credits should be revisited, and that customer service and retailing costs should be considered in arriving at a new methodology.

---

DISCUSSION AND CONCLUSION

NYSEG's proposal fairly apportions between ratepayers and stockholders the benefits arising out of the excess auction proceeds. Accelerating the phase-in of the backout credit should foster swifter development of the emerging retail electric market. As NEV and NESPA point out, the enlarged credit will enable potential competitors to formulate more attractive offers in competition with the utility.<sup>1/</sup> Ratepayers will derive from this enhanced retail competition the benefits that were envisioned in Opinion No. 96-12.<sup>2/</sup> Included in these benefits are promoting economic development and spurring job growth in an economy that would otherwise be hampered by too-high electricity costs.

Assessing the employee transition costs against the auction proceeds, instead of through the extraordinary cost provisions of the Plan, also benefits ratepayers, since it avoids a potential rate increase. Disregarding the transition cost assessment in the earnings cap calculation is an additional benefit for ratepayers.

While other methods of calculating the earnings cap are permissible under the Plan, including recognizing a rate base reduction in the calculation, NYSEG's integrated proposal is more advantageous than the rate base reduction approach, standing alone. Notwithstanding MI's criticisms, under the integrated proposal, ratepayers may still realize a rate offset if the 6.25% interest imputation into the earnings cap calculation yields a

---

<sup>1/</sup> The criticisms NEV and NESPA make of backout credits generally, however, are beyond the scope of NYSEG's proposal.

<sup>2/</sup> Case 94-E-0952, Competitive Opportunities Regarding Electric Service, Opinion No. 96-12 (Issued May 20, 1996).

return in excess of 12%,<sup>1/</sup> while they also enjoy the benefits of enhanced retail competition. Moreover, as discussed in the Transfer Approval Order, this balancing is essential to determining that the sale of the generation facilities will be in the public interest.

Although NYSEG explicitly eschewed attaching any pre-conditions to its November 10 proposal, in a letter filed and served on October 29, 1998, the utility suggested that temporary rules, on customer switching between the utility and ESCOs and the charging of additional fees to ESCOs, might accompany the accelerated phase-in of the backout credit. NYSEG or other interested parties may propose temporary rules pertaining to those issues. After review of these proposals, we may, at our discretion, consider adoption of such temporary rules as are appropriate to accompany the completion of the schedule for phasing in the backout credit.

We will take this action on an emergency basis under State Administrative Procedure Act (SAPA) §202(6). Immediate approval of the modifications to the Plan, including the acceleration of the retail access backout credit phase-in, is necessary to ensure that ratepayers realize the full benefits of the excess auction proceeds. Moreover, accelerating the phase-in of the retail access credit will enhance retail access penetration in NYSEG's service territory, and access to lower-priced electricity will encourage businesses to retain employees or expand employment opportunities. Delay in approval would forestall the full achievement of these benefits and could result in job losses or missed economic development opportunities. Accordingly, compliance with the advance notice and comment requirements of SAPA §202(1) would be contrary to the public interest, and immediate approval is necessary for the preservation of the general welfare under SAPA §202(6).

---

<sup>1/</sup> A sample calculation using hypothetical data is attached as Appendix A, and supporting calculations and account entries using 1997 data, for demonstration purposes only, are attached as Appendix B.

The Commission orders:

1. The clarifications and modifications described in the body of this Order, to the terms and conditions of Opinion No. 98-6, are adopted.

2. New York State Electric & Gas Corporation is directed to file, no later than December 11, 1998, to become effective on December 18, 1998, revised tariff leaves in conformance with the discussion of the retail access backout credit in the body of this Order.

3. The requirement of §66(12)(2) of the Public Service Law and 16 NYCRR §136.70 that newspaper publication of the revisions directed in Clause 2 be made is waived.

4. Following the end, on March 2nd, of each rate year under Opinion No. 98-6, New York State Electric & Gas Corporation shall file, by April 17 of each year, an earnings cap calculation for the preceding year, in conformance with the discussion in the body of this Order.

5. This Order is adopted on an emergency basis under §202(6) of the State Administrative Procedure Act.

6. This proceeding is continued.

By the Commission,

(SIGNED)

DEBRA RENNER  
Acting Secretary