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March 13, 2006

## **BY HAND DELIVERY**

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

Re: Case 06-M-0043 – Proceeding on Motion of the Commission to Examine Issues  
Related to the Deployment of Broadband Over Power Line Technologies

Dear Secretary Brillig:

Enclosed please find an original and fifteen (15) copies of the Joint Comments of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation in the above-referenced matter.

If you have any questions regarding this filing, please contact me.

Respectfully submitted,



William J. Cronin

Enclosure

cc: Service List (via Electronic Mail)  
AL94345

STATE OF NEW YORK PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the Commission to :  
Examine Issues Related to the Deployment of : Case 06-M-0043  
Broadband over Power Line Technologies :  
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**JOINT COMMENTS OF NEW YORK STATE ELECTRIC & GAS CORPORATION  
AND ROCHESTER GAS AND ELECTRIC CORPORATION**

**NEW YORK STATE ELECTRIC & GAS  
CORPORATION ROCHESTER GAS AND  
ELECTRIC CORPORATION**

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Dated: March 13, 2006

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STATE OF NEW YORK PUBLIC SERVICE COMMISSION

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**JOINT COMMENTS OF NEW YORK STATE ELECTRIC & GAS CORPORATION  
AND ROCHESTER GAS AND ELECTRIC CORPORATION**

**I. INTRODUCTION**

New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (hereinafter collectively, the "Companies") hereby submit these comments in response to the *Order Initiating Proceeding and Inviting Comments*, issued January 25, 2006 in the above-captioned proceeding (the "Order"). As explained herein, the Companies believe that:

- 1) BPL services and BPL enabled utility applications can provide benefits to New Yorkers, 2) BPL service providers and the utilities need to work cooperatively to enhance those benefits, and
- 3) various innovative business structures should be explored before prescribing a specific business structure.

With these beliefs in mind, the Companies support the following key principles:

- 1) Utilities and their ratepayers should be protected from financial and operational risk from the deployment of BPL.
- 2) Electric system safety and reliability, as well as the safety of utility workers, BPL service providers, any third party workers and the general public must be paramount at all times. Additionally, any radio and other interference conflicts between BPL and other authorized facilities, utility systems and customer equipment must be avoided.
- 3) Keeping the cost of BPL deployment reasonable, and minimizing regulatory hurdles, will increase the potential for more deployment thus enhancing the potential for greater benefits to New Yorkers.

- 4) The maximum benefit for the utilities is the development of “Smart Grid” technologies, including system outage detection and restoration; power system equipment monitoring; substation security; power quality, as well as, the potential for economic automatic meter reading (electric, gas and water), and remotely disconnecting and connecting meters. This can be best realized by promoting a cooperative framework within which the BPL providers and utilities can work. The Companies however recognize that BPL is not the only technology that could support “Smart Grid” technologies and would consider other technologies as well as BPL deployment. Also, the full benefit of any remote meter reading will only be realized after remote gas meters are commercially available.
- 5) Utilities or their unregulated Affiliates should not be prohibited from participating in BPL services.

The Companies will explain these and other positions below.

## II. RESPONSE TO ISSUES CONTAINED IN THE NOTICE

### 1. **Status and Development of BPL Technology**

The Companies recognize that BPL is a technology that offers the potential of broadband capacity to consumers of internet, voice, data and entertainment content utilizing the electric system. BPL is also seen as a way to address the “digital divide” by providing those who live in rural communities digital broadband (high speed, greater than 200 kbps) internet access.

Additional bandwidth capacity available on a BPL system could be used by an electric, gas or water utility for BPL - enabled utility applications (Smart Grid). These Smart Grid applications could include improved transmission and distribution service quality/reliability, improved power quality, automated meter reading, outage notification, remote connect and disconnect, and better demand side management opportunities as a result of instantaneous access to customers’ metering telemetry.

Full deployment of BPL for Broadband services is not expected to be economical throughout a utilities entire service territory, however, the Companies believe that initially a Zonal Deployment of BPL could have merit and provide operational benefits. Zonal Deployment would center on areas of concentrated population and the availability of fiber-optic

cable for information back haul. In the long term, as BPL deployment evolves, those Zonal areas could expand eventually to the rural areas of the state.

The Companies recognize that there may be benefits for the utility customers that could be enhanced by working with BPL providers and BPL original equipment manufacturers (OEM's) in order to enable a Smart Grid. However, given the uncertain deployment of BPL, the Companies believe that utility implementation of BPL and the location of BPL implementation should be at the utility's sole discretion, and that the utility should not be penalized for deciding to implement or not implement BPL.

Where additional investment in utility equipment (i.e: meters with communication capabilities) will be necessary to enable meter-related utility applications, or for other BPL services used by the utility, the Companies should be permitted to include such costs in rate base without a deferment mechanism. The Companies would support the cooperative pursuit of the economies of scale and standardization with the BPL provider as being in the best interest of the Companies, the BPL providers and the utility customers.

Given the demographic diversity, geographic diversity and the availability of fiber optic cable in proximity to a BPL installation, other cost effective technologies (ie. wireless technologies) may also be required to support the BPL deployment.

## **2. Safety and Reliability of Service**

Safety and reliability of service are issues with far reaching impacts that must be fully explored under this proceeding. The interface between any BPL equipment and the electric system must provide safety for utility workers, qualified BPL workers or third party workers, and the general public, while not negatively impacting the reliability of the electric system or any customer equipment. The BPL providers must be responsible for any impacts that BPL has on the quality of electric signal delivery in terms of voltage level and frequency, and on any

customer equipment. The deployment of BPL technologies has the potential to affect the safety of the existing electric system by creating an unsafe work environment if equipment is not properly installed or maintained. Unlike CATV and telephone, BPL installations may occur within the primary space of the utilities' facilities. Installations must therefore be performed by utility personnel under a reimbursement protocol or by utility certified contractors.

BPL equipment may be energized by the utility's primary circuits and it would be the BPL system operator's responsibility to ensure that such equipment would not be harmful on the secondary side. The National Electric Safety Code (NESC), Underwriters Laboratory (UL) codes and specific utility standards should be utilized for BPL installations or reviewed as the basis of developing BPL specific standards. If there are any differences in the various Standards, the higher standard would apply.

The issues of standards for overhead clearance would be a function of the type of BPL equipment deployed. Some equipment may be installed below the telephone allocation, providing sufficient ground clearance exists. Equipment that would be installed in the utility's pole space, or along primary lines, would require new standards. Standards for any installations of BPL services in the utility's underground facilities would also have to be developed.

Security of data being transferred over the power lines should be compliant with current internet access security protocol standards and should be the responsibility of the BPL providers, whether the data is that of the BPL customer, the utility customer or the utility.

Interference caused by BPL equipment must be minimized and in compliance with Federal Communications Commission (FCC) CFR 47, Part 15 rules. Any interference issues should be the responsibility of the BPL system operator. Customer complaints regarding interference must be directed to the BPL provider for resolution. Unresolved complaints should

be directed to the FCC or the appropriate State Agency. Resolution may require that the BPL system be shut down in the area of the interference. The utilities should not be obligated to verify the occurrences of any interference, nor be responsible for any remedy.

### **3. Business Model: Structural Considerations**

There are two distinct business functions within a BPL Business Model. The first is as BPL Broadband Provider, the second is as BPL-Enabled Utility Applications. Regulated utilities should be able to utilize the BPL network for Smart Grid applications through a mutual agreement with the BPL system operator.

The Order outlines the “Landlord” model as the most appropriate model where BPL providers would pay for attachment and use fees and provide the utility with access for utility applications and the utility would have the least involvement in BPL. The importance of BPL utility applications, however, requires that the Utilities have control over the equipment to be installed, and where and when it is installed. Without that level of control, the utility Smart Grid applications may be more costly and less valuable to the utility’s ratepayers.

The Companies do not support the Commission’s tentative conclusion that utilities and their unregulated affiliates should be prohibited from providing BPL services. This broad assertion by the Commission is in itself unduly discriminatory and an anti-competitive edict. Allowing unregulated utility affiliates and unaffiliated entities to own or operate BPL systems will enhance competition and may ultimately prove to be the fastest way to deploy BPL.

There are benefits in allowing for “Joint Ventures” between BPL providers and either utilities or unregulated utility affiliates since both parties would have a vested interest in BPL deployment. The Public Service Law and existing affiliate rules provide the necessary safeguards to protect utility rate payers. There would be no cross subsidization if an unregulated affiliate acted as a BPL provider either alone or in a joint venture.



Regardless of the business model, or models employed, the Companies believe that the BPL providers should first be pre-qualified by the Commission before being allowed to make application to attach to the utility system. The utility would evaluate, on a nondiscriminatory basis, the BPL application based on objective standards including: compatibility with the utilities system; potential revenues; economies of scale; cost considerations; and appropriateness of using the BPL system for utility applications. Only after receiving a utility agreement to proceed, should the BPL provider be allowed to market BPL services to end use customers.

From the Companies perspective, the level of regulatory oversight over the utilities should be limited to safety and reliability issues and approval of any costing methodology and accounting practices that would be utilized. As mentioned previously, the Companies believe that minimizing the cost on BPL providers to attach to utility facilities enhances deployment and benefits the utilities and their customers. The Companies believe that certain BPL technology attachments could be handled through existing pole attachment tariffs and other attachments will require negotiated service agreements. There should be no regulatory requirement for the utilities to participate in BPL deployment, nor any penalty for not participating. Furthermore, there should be no regulatory prohibition against utilities to participate in BPL deployment.

There should be limits on the jurisdiction that municipalities would have over BPL systems or services. Local governments should not be allowed to impose any additional regulations on BPL systems. Since BPL providers will generally utilize existing utility rights-of-way, additional easement requirements or payments for adding BPL to those existing rights-of-way should be prohibited.

There are some practical issues that need to be resolved with regard to the

**Business Model - Structural Considerations:**

- 1) The Companies believe that accurate locations of any BPL network on the utilities facilities is required to assist in any storm restoration and for accurate accounting for BPL facilities. The Companies would require that BPL network information be provided for their utility mapping and information system.
- 2) The Companies would require the BPL provider to pay for installation, modification, and any repairs to the BPL system. In the event there is a need for electric facilities restoration, the Companies would coordinate with the BPL system operator to restore their facilities and reconnect the BPL facilities to the utility facilities. However, it should be understood that electric service restoration efforts would take priority. It would be the BPL provider's responsibility to be sure that the BPL facilities were operational following restoration.
- 3) The Companies would require a complete inventory for any BPL facilities deployed in their service territory. As mentioned above, this could be provided by the BPL provider and included in the utility mapping and information system. Inventory audits by the BPL providers would be required on a yearly basis or some other agreed to frequency. There should be a semi-annual reconciliation between the BPL provider and the utility for facility and space fee billing.
- 4) Any incremental utility costs caused by BPL deployment must be paid for by the BPL providers. Revenues from BPL would flow to the utilities income statement as miscellaneous revenues and would be included as part of the regulatory earnings calculation.
- 5) Any costs for the utility to use the BPL system for utility applications would be by negotiated agreement.

**4. Business Model: Roles and Relationships**

**Successful development of BPL will take a coordinated effort between the Utilities, the BPL providers, and the Commission, as well as numerous other interested parties. Regulatory involvement should ensure that the utilities or their rate payers are not exposed to operational risks or the financial burden of deploying a BPL system.**

**The Order identified several roles and relationships that it incorrectly concludes would not involve the utilities. The Companies believe that utility involvement is necessary in the installation and maintenance of the BPL system since much of the BPL system will be installed in utility space. At the very least, the utilities will be responsible to certify others to work within the utility space and to inspect work prior to operation to maintain safety and reliability.**

**The BPL providers will be responsible for billing and collection services, as well as for resolving any customer service or collateral service issues or complaints.**

**With regard to the development and installation of any Smart Grid technologies, the BPL providers and the utilities will need to work together to achieve the most appropriate solutions.**

**Other issues that will need to be resolved in regard to the Business Model – Roles and Relationships include:**

**The Companies would take no responsibility for the loss of any data or messages carried on the BPL network. The BPL provider would be responsible for any liability exposure from such losses, whether from the BPL customers, utility customers or the utilities.**

**The Companies propose that any cost of electricity used by the BPL provider to operate BPL equipment would be billed under an appropriate utility rate structure as an un-metered use. Billing would be calculated based on the power rating of the equipment at 100% load factor, adjusted as additional installations are made. It is impractical to attempt to meter each piece of BPL equipment and this methodology avoids that issue.**

**If battery back-up is required for the BPL network, the BPL provider would be responsible for costs, installation and maintenance. Any electric trickle charge, to maintain battery power for back-up, would be estimated and paid for by the BPL provider.**

**If the development or deployment of a new technology requires upgrades to utility systems, the BPL provider would be responsible for the cost of those upgrades.**

## **5. Electric Utility Regulatory Issues**

The Companies propose that where BPL attachments conform to the traditional use of the utilities pole structures, BPL firms should be afforded the same rates and terms as are available to any other firms attaching to utility poles, as these currently exist or as they may be modified by this or other proceeding. However, if a BPL service provider requires a nonstandard or unique attachment to a utility pole, and if the electric utility is willing to make the necessary pole modifications to accommodate such a use, the price and terms for such attachments should be determined through negotiations.

While the level and magnitude of certain costs is unknown and highly dependent on the roles and responsibilities established by the final business model, there are certain general

guidelines that must be considered. The Companies offer this list of costs to consider, acknowledging that it is not exhaustive or complete.

- 1) The costs for installation and maintenance of the BPL system are the responsibility of the BPL service company. As previously noted, only utility employees, fully trained individuals from the BPL internet services provider, or the fully trained and certified third party workers should be permitted to install, maintain or remove any BPL systems equipment installed on utility facilities.
- 2) The BPL service company may hire the electric utility to install and maintain the BPL system at the specific utility's fully loaded costs.
- 3) The BPL service company may hire qualified third party installers to build-out and maintain the BPL system.
- 4) Any costs for additional equipment and/or software required to implement any BPL services will be the responsibility of the BPL provider.
- 5) Any costs for fiber-optic back haul fees paid on a monthly basis will be the responsibility of the BPL provider.
- 6) Any costs for collocation space on a monthly basis will be the responsibility of the BPL provider.
- 7) Any costs for a BPL billing solution will be the responsibility of the BPL provider.
- 8) Any application fees and audit costs will be the responsibility of the BPL provider.

## **6. Other Considerations**

**The Companies have identified certain other considerations that should be considered in this proceeding.**

**BPL deployment will require fiber-optic use for information back haul. Where the utilities have available fiber-optic, the BPL providers may be able to arrange for use of the utility fiber-optic, for a fee. Where the BPL provider requires additional fiber-optics, they would be responsible for acquiring access, any installation and all costs.**

**The Companies recommend that the potential for BPL providers to become insolvent should be considered in this proceeding. If BPL deployment leads the utilities to install and rely on Smart Grid benefits then there should be some provision of risk mitigation should BPL insolvency or default occur. In the event of a default by the BPL provider, utilities should be allowed to maintain the Smart Grid capabilities until a suitable resolution is achieved.**

**The Companies have a concern about the appropriate way to handle BPL networks at the borders between electric utilities. While electric utilities have specific franchise areas, it is not anticipated that BPL providers will be required to comply with any such restriction. Handling these potential areas of overlap should be explored during this proceeding.**

**Should a weather event or some emergency condition occur, it must be understood that the utilities have priority use of any BPL network for power restoration. This priority consideration would support any Homeland Security situation that occurs.**

**If the utility is permitted to disconnect a customer's service for non-payment, the presence of BPL to the customer must not be a consideration in the decision. The customer who's BPL service would be disrupted by a utility disconnect would not have recourse against the utility for that BPL disruption.**

The Companies have no further comments at this time but reserve the right to respond further and to reply to the comments of other parties.

### **III. CONCLUSION**

The Companies believe that the utilities must play an integral role in the development of a BPL system in New York State. This is evident in that BPL providers will require use of the utilities systems to aid in their deployment. The utilities also must play an integral role in deployment of BPL enabled utility applications. Neither the utilities, nor their unregulated affiliates should be prohibited from owning BPL systems or otherwise participating in BPL.

There are issues involving clearance standards, interference issues, safety and reliability concerns, and fee structures that need to be investigated and resolved among the parties before proceeding with BPL. The Companies believe that these issues may be best resolved by the Commission establishing Working Groups for the interested parties to discuss and come to consensus on these issues.

The utilities should have control over BPL deployment and BPL enabled utility applications based on the utilities investigation of costs and benefits. There should be no penalty for not providing BPL.

The utilities ratepayers must not be harmed by the deployment of BPL, but will benefit from properly structured fees and any future utility applications.

The Companies appreciate the opportunity to submit these comments but believe that the nature and complexity of the issues involved with BPL preclude a resolution of such issues based solely on comments.

Respectfully submitted,



**NEW YORK STATE ELECTRIC & GAS  
CORPORATION ROCHESTER GAS AND  
ELECTRIC CORPORATION**

By: LeBOEUF, LAMB, GREENE & MacRAE LLP

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Dated: March 13, 2006

CERTIFICATE OF SERVICE

Pursuant to the New York State Public Service Commission's Rules of Procedure, I hereby certify that I caused an original of the Joint Comments of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation and fifteen (15) copies of the same to be served, by hand delivery, upon the Honorable Jaclyn A. Brillling, Secretary to the New York State Public Service Commission, in Case 06-M-0043. In addition, copies of the Joint Comments of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation were served upon the service list for Case 06-M-0043, via Electronic mail.

Dated this 13<sup>th</sup> day of December, 2006.

  
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