

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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Secretary

March 21, 2003

Honorable Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. ER03-575-000 - New York State Electric
& Gas Corporation

Dear Secretary Salas:

For filing, please find the Notice of Intervention and Protest of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-7136.

Very truly yours,

Leonard Van Ryn
Assistant Counsel

Attachment

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York State Electric) Docket No. ER03-575-000
& Gas Corporation

NOTICE OF INTERVENTION AND PROTEST

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the Public Service Commission of the State of New York (NYPSC) hereby submits its Notice of Intervention and Protest in the captioned proceeding.

Copies of all documents and correspondence should be sent to:

Dawn K. Jablonski
General Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, New York 12223-1350

Ronald Liberty, Director
Federal Energy Intervention
Office of Electricity
and the Environment
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

On February 28, 2003, New York State Electric & Gas Corporation (NYSEG) filed amendments to its FERC Rate Schedule No. 110 and Rate Schedule No. 179, for Expansion Power (EP) and Economic Development Power (EDP) deliveries, respectively. Under the amendments, NYSEG would shift to the New York Power Authority (NYPA) the responsibility to pay ancillary services and other certain charges for the retail transmission service

provided the EP and EDP customers under the New York Independent System Operator's (NYISO) Open Access Transmission Tariff (OATT). NYSEG maintains the amendments are appropriate because a Memorandum of Understanding (MOU) between it and NYPA expired on March 2, 2003. Under the MOU, NYSEG states, it had agreed to pay the NYISO charges incurred to serve the EDP and EP customers in exchange for partial reimbursement from NYPA.

NYSEG delivers electric service to the EP and EDP customers under New York bundled retail tariffs. The Commission should continue its policy of deferring to NYPSC's administration of those tariffs, by rejecting NYSEG's proposed changes to Rate Schedule Nos. 110 and 179. In the alternative, the Commission should encourage NYSEG to negotiation an extension to the MOU, and suspend the proposed tariff changes while negotiations proceed.

ARGUMENT

- I. NYSEG is Obligated to Continue Existing Service to Grandfathered EDP Customers Under a Rate Freeze and Should Not be Permitted to Shift Costs to NYPA.

The Commission in the past has recognized NYPSC's "legitimate interest in EDP Program,"¹ and has decided it would

¹ New York State Electric & Gas Corporation, 87 FERC ¶61,049 (1999).

accept NYPSC's determinations as to the rates, terms and conditions of parties' arrangements for the transmission of EDP power. For example, it rejected a NYSEG proposal to adopt a new loss factor for application to EDP power deliveries, because the proposal conflicted with a Rate Plan the NYPSC had adopted for NYSEG.²

On February 27, 2002, NYPSC adopted a new Rate Plan for NYSEG.³ The Rate Plan was premised upon a Joint Proposal that NYSEG had executed in settlement with other parties. Under that Joint Proposal, NYSEG agreed that:

To the extent necessary to maintain current EDP delivery rates given NYPA's obligation pursuant to its long-term contracts, and subject to FERC approval, EDP rates for current customers at current delivery levels (34 MW) will be maintained by NYSEG for the term of the Plan.

For those grandfathered customers, NYSEG has agreed to a rate freeze. It should not be permitted, given its rate freeze obligation, to shift costs to NYPA. If NYPA were able to flow through some or all of those costs to the grandfathered EDP customers, their rates would rise.

² New York State Electric & Gas Corporation, 84 FERC ¶61,185 (1998).

³ NYPSC Docket No. 01-E-0359, New York State Electric & Gas Corporation - Price Protection Plan, Order Adopting Provisions of Joint Proposal With Modifications (issued February 27, 2002).

As it has under similar circumstances in the past, the Commission should reject NYSEG's efforts to modify the terms and conditions of EDP service that are set forth in a NYPSC Rate Plan or tariff. Shifting to NYPA the ancillary services and other certain transmission costs for the grandfathered EDP customers would be inconsistent with NYSEG's existing Rate Plan. Under the Rate Plan, NYSEG assumes responsibility for absorbing all the costs of supplying these customers. Therefore, NYSEG's proposal to shift costs to NYPA should be rejected.

II. NYSEG is Responsible For
Transmission Costs Incurred to
Serve EP and EDP Customers
Under Its State Retail Tariffs

NYSEG furnishes the EP and EDP services to customers under New York retail tariffs. As discussed above, the Commission has granted deference to NYPSC in the administration of those tariffs.⁴ The Commission should continue its policy of deference. Before NYSEG is allowed to change the terms and conditions of EP and EDP service, thereby creating the potential for raising the rates those customers pay, the Commission should require that the utility first make the rate changes in its state-jurisdictional retail tariffs. Since NYSEG has not

⁴ See also, New York State Electric & Gas Corporation, 77 FERC ¶61,044 (1996), reh den 83 FERC 61,203 (1998).

applied to modify the state tariffs, its amendments to its Commission-jurisdictional Rate Schedule Nos. 110 and 179 should be rejected.

III. The Commission Should Encourage
Continuation of the MOU
Between NYSEG and NYPA, Subject
to Appropriate Modifications

Until March 2, 2003, NYSEG provided the transmission services to the EP and EDP customers pursuant to the terms and conditions of the MOU with NYPA. NYSEG has not explained why continuing the terms and conditions of the MOU, subject to any appropriate modifications, would be unreasonable. In the absence of such an explanation, the Commission should encourage NYSEG to negotiate over an extension of the MOU, and suspend the tariff amendments while negotiations are conducted.

CONCLUSION

The Commission should reject NYSEG's request to shift to NYPA the ancillary services and certain other transmission costs of providing retail transmission service to EP and EDP

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customers, or should suspend the tariffs while NYSEG and NYPA are afforded an opportunity to extend their MOU.

Respectfully submitted,

Dawn K. Jablonski
General Counsel

Leonard Van Ryn
Assistant Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, New York 12223-1350

Dated: March 21, 2003
Albany, New York

CERTIFICATE OF SERVICE

I, Janet Burg, do hereby certify that I will serve on March 21, 2003 the foregoing Notice of Intervention and Comments of the Public Service Commission of the State of New York by depositing a copy thereof, first class postage prepaid, in the United States mail, properly addressed to each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: March 21, 2003
Albany, New York

Janet Burg