

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 24, 2001

COMMISSIONERS PRESENT:

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

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 -
Retail Access Credit Phase

ORDER ADOPTING A MARKET-BASED
RETAIL ACCESS CREDIT

(Issued and Effective January 26, 2001)

BY THE COMMISSION

INTRODUCTION

In 1998, New York State Electric & Gas Corporation (NYSEG or the company) began to implement a five-year electric rate/restructuring plan. Initially, the company eliminated two previously scheduled rate increases and it adopted annual rate reductions for industrial and commercial customers. Other customers can expect a five percent rate decrease by 2003.¹

The rate/restructuring plan also required NYSEG to establish a competitive electric market in its service area. In November 1997, the company initiated a *Farm and Food Processor Pilot Program* that allowed these customers to choose a service provider other than NYSEG. Beginning in August 1998, customers

¹ Case 96-E-0891, Order Adopting Terms of Settlement Subject To Modifications and Conditions (issued January 27, 1998) and Opinion No. 98-6 (issued March 5, 1998).

in the City of Norwich and the Lockport area could also select a retail service provider. Since August 1999, retail access has been available throughout NYSEG's service area. Currently, about 30,000 customers (using in excess of 100,000 MWh) receive retail service from providers other than NYSEG.²

Customers who subscribe to competitive retail services receive credits from NYSEG to eliminate the company's energy and capacity costs from their electric bills. In December 1998, the backout credit was set at 3.23 cents per kWh; in April 1999 it was increased to 3.47 ¢/kWh; and, in August 1999, it became 3.71 ¢/kWh where it currently stands.³

The Commission is monitoring the transition to a competitive electric marketplace throughout the State. From the start, we have recognized that NYSEG's fixed-level credit could constrain market developments were it lower than prevailing market prices. For this reason, among others, the Commission reserved authority to revisit NYSEG's rate/restructuring plan and to continue to examine the company's backout credit.⁴

In May 2000, various retailers complained that market prices had risen and NYSEG's backout credit was now inadequate. While we denied their requests for immediate relief, we nevertheless instituted this proceeding to consider the prevailing market conditions and two Administrative Law Judges were appointed to conduct the necessary proceedings.⁵

Between June and November 2000, Administrative Law Judge Gerald L. Lynch served as a mediator and explored with the parties their ability to negotiate an acceptable resolution to the contested matters presented here. Subsequently, on November 29 and 30, 2000, Administrative Law Judge William

² Exhibit R-2.

³ The 3.71 ¢/kWh includes gross receipt taxes; excluding them the credit is 3.56 ¢/kWh.

⁴ Case 96-E-0891, January 27, 1998 Order p. 5 and Opinion No. 98-6, pp. 25-26.

⁵ Case 96-E-0891, Order Denying Motion and Instituting Further Proceedings (issued May 26, 2000); Order Denying Rehearing (issued September 22, 2000).

Bouteiller conducted evidentiary hearings on the contested issues which remained outstanding.

On December 13, 2000, nine parties filed briefs. They are NYSEG, Department of Public Service Staff (Staff), State Consumer Protection Board, Multiple Intervenors (MI), Strategic Power Management, Inc., Advantage Energy Inc., Energetix, Inc., National Energy Marketers Association (NEM), and Leveraged Energy Purchasing Corporation (Lepco). On December 22, 2000, NYSEG, Staff, MI, Advantage, NEM, Lepco, and the State Department of Law (DOL) filed reply briefs.

THE CONSENSUS FOR A
MARKET-BASED CREDIT

While the parties have not provided a joint proposal for us to consider, their briefs nonetheless demonstrate a universal consensus that a market-based retail access credit should now be implemented. Subsequent to the November hearings, NYSEG concluded, for itself, that the average annual 3.56 ¢/kWh fixed-rate credit during the most recent twelve month period was lower than market prices and that the fixed-rate credit was also projected to be lower than market prices for the next year.⁶ While the company has substantial concerns about these market price levels, and the New York Independent System Operator's (NYISO's) oversight of the market, it is nevertheless willing to implement a market-based retail access credit along the following lines:

Energy Component - The energy component of the market-based credit for each customer's billing period would reflect a weighted average market value of energy applicable to the customer's region, load shape, and individual usage, as described in the Special Provisions section of the customer's Service Classification. The weighted average market value of energy would be derived from the day ahead NYISO posted Locational Based Marginal Prices of electricity in Zone C for customers west of the Total East ISO Interface and Zone G for customers located East of the Total East ISO Interface.

⁶ NYSEG's *Initial Brief*, p. 1.

Capacity Component - The capacity component of the market-based credit would reflect the pro rata portion of the November 2000 to April 2001 Winter Capability Period NYISO six-month installed capacity auction, stated on a cents per kWh basis.

Transmission Congestion Costs - With the implementation of a market-based credit, NYSEG would no longer reimburse suppliers for transmission congestion costs.

Ancillary Services, Line Losses and Installed Capacity - The treatment of ancillary services, line losses, installed capacity and the installed capacity reserve would not change from the determination made in the unbundling phase of this proceeding.⁷

Incentives - The company would implement the incentive program outlined in Mr. Tedesco's testimony as a further inducement for customers to switch to a supplier.⁸ A \$75 incentive would be paid to a supplier for each non-demand billed customer that enters the *Customer Advantage Program* for the first time, up to a maximum of 35,000 eligible recipients. A \$115 incentive would be paid to a retail access supplier for each demand-billed customer (with demands less than 500 kW) that enters the *Customer Advantage Program*, up to a maximum of 3,000 customers. An additional \$115 incentive would be paid to each such customer in this group. Finally, a \$2,250 incentive would be paid to a supplier for first-time customers with demands equal to or exceeding 500 kW, up to a maximum of 100 customers. A separate incentive in a like amount would be paid to each such customer that switches.⁹

⁷ Case 96-E-0891, Opinion No. 99-7 (issued July 15, 1999).

⁸ Tr. 5,328-31.

⁹ Customers participating in NYSEG's *Farm and Food Processor (F&FP) Pilot Program* would be eligible for an incentive if they select the *Customer Advantage Program* after they conclude their participation in the *F&FP Pilot Program*. All switching rules currently in effect would apply. The incentive program would remain open to customers through the earlier of December 31, 2001 or when the program is fully subscribed.

Minimum Energy Delivery Rate Component of the Bill - If the retail access credit calculated in accordance with the description above exceeds the company's energy delivery rate, the energy delivery rate would be set at zero. This would protect against retail access customers receiving a credit for the energy component of their bills. NYSEG proposes an annual cap of 50,000 MWh on the load that could have received a negative energy delivery bill but for the zero energy bill limitation. If this 50,000 MWh cap is reached, no new retail access customers would be added to the program until the reasons for the negative energy delivery bills are examined and corrective measures are implemented. During the remainder of the rate/restructuring plan, NYSEG could file and request approval of a minimum delivery rate.

Cost Recovery - NYSEG would not recover from customers any of the costs associated with a market-based retail access credit or the implementation costs associated with moving to a market-based retail access credit. In addition, NYSEG would not recover from customers the cost of its incentive program.¹⁰

Duration - NYSEG's market-based credit proposal is intended by it as an interim solution pending resolution of certain NYISO problems. Accordingly, the company would commit to a market-based credit through May 31, 2001. Before then, it would ask the Commission to determine whether the NYISO's problems have been corrected.¹¹ If the problems persist, the market-based credit would remain in effect. If corrective measures eliminate flaws in the NYISO prices, NYSEG would either return to a fixed credit of 3.56 ¢/kWh (if market prices are at or below this level) or continue to use a market-based credit (if market prices exceed 3.56 ¢/kWh) for the remainder of the rate/restructuring plan. The determination of whether market

¹⁰ The cost of a fully subscribed incentive program is \$3.8 million.

¹¹ Such a determination could be made either in this proceeding or in Case 00-E-1380 which concerns the NYISO.

prices exceed 3.56 ¢/kWh should, according to NYSEG, be based on Natsource forward prices and the method used by Mr. Schnitzer.¹²

RESPONSES TO NYSEG'S PROPOSAL

Staff credits NYSEG's proposal as a substantial step forward to resolve the issues. As to the company's minimum delivery rate proposal, Staff would prefer that this matter remain open until NYSEG provides its tariff filing to comply with the requirements of this order. Staff agrees with NYSEG that a limit is needed should the market-based credit exceed the company's delivery rate; however, it wants time to consider and discuss the merits of a 50,000 MWh cap with the parties.

Staff also sees no need for a May 31, 2001 deadline to reevaluate market prices and NYISO operations. Instead, it suggests that NYSEG be permitted to petition the Commission whenever it believes conditions would warrant a return to a fixed-rate credit.

Finally, Staff does not believe NYSEG's incentive program is adequate to foster additional participation in the retail access program. Staff continues to favor a 3.56 ¢/kWh floor price to provide marketers additional income in any month that market prices fall below the floor. Staff observes that NYSEG has already experienced the cost of a 3.56 ¢/kWh fixed price and that a floor set at this level would have no greater financial impacts on the company.

DOL favors neither NYSEG's incentive program nor the other parties' proposals for an adder to the credit. According to DOL, they would only distort the competitive market and provide the retail access suppliers undeserved benefits.¹³ It would prefer that the ESCOs succeed in the marketplace on their own merit by providing less costly service than NYSEG. DOL doubts that any incentive or adder would strengthen ESCO operations or improve market conditions sufficiently such that,

¹² Tr. 5,761.

¹³ Retail access suppliers are also called energy service companies (ESCOs).

once they expire, the ESCOs would be able to compete without a subsidy.¹⁴

The marketers who participated in this proceeding support a market-based retail access credit, but they seek more than NYSEG has offered. NEM insists that a properly designed retail access credit should approximate the utility company's full costs of serving retail load and that amount should be available to customers to purchase alternative supplies. It urges NYSEG to perform a cost study and to disclose its embedded and/or avoided costs of serving retail loads. Until these results are known, NEM urges that a 1 ¢/kWh adder be included in the retail access credit to approximate the supply and commercial costs NYSEG should be able to shed.

Like NEM, Lepco believes that NYSEG can eliminate a material amount of its retail operation costs as customers migrate to alternative suppliers. It states that, without an adder, NYSEG's program remains unattractive to ESCOs. It also sees little merit in Staff's floor price proposal if market prices do not fall below 3.56 ¢/kWh this year. Lepco suggests that NYSEG should abandon its incentive program proposal if that would permit it to implement a 0.4 ¢/kWh adder for commercial and industrial customers and a 0.7 ¢/kWh adder for residential customers either on a permanent or a temporary basis pending the completion of a cost study.

Lepco also opposes a reevaluation of market conditions by May 31, 2001. It considers this to be too soon to expose any recently switched customers to a substantial change. Like Staff, Lepco urges the company to make a longer commitment to a market-based credit and to consider closely any cap on the program at 50,000 MWh if market prices exceed delivery rates.¹⁵

¹⁴ DOL is also opposed to a marketer (Strategic) suggestion that NYSEG implement a market supply change like Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities, Inc. NYSEG has not proposed any such charge in this proceeding.

¹⁵ Lepco states that NYSEG should have strong support for any such action, including an analysis of customer load characteristics by zone and estimates of when the cap would be

Advantage also supports an adder between 0.5 ¢/kWh and 0.7 ¢/kWh for the kinds of costs NEM has identified. Given that market rates currently exceed NYSEG's fixed credit by 1 ¢/kWh, Advantage urges prompt action in this proceeding to sustain marketer operations and to deter customers from returning to NYSEG or switching to NYSEG's unregulated affiliate that serves half of the load participating in the retail access program.¹⁶

MI joins in the parties' acceptance of a market-based retail access credit.¹⁷ Like the marketers, MI urges that an adder be used to reflect costs that NYSEG avoids when customers switch to an ESCO and that it be set between 0.4 ¢/kWh and 0.8 ¢/kWh. Like Lepco, MI considers Staff's floor price proposal to be a poor substitute.

Energetix also supports a backout credit with an adder; however, it has raised another issue concerning the payment of transmission line losses in NYSEG's service territory. Energetix claims its customers pay for these losses twice--once in NYISO transmission usage charges and again in NYSEG's transmission and delivery rates. Energetix maintains that before the NYISO began to operate NYSEG's retail rates included these costs and they should now be excluded from the company's bundled rates. NYSEG disagrees with Energetix but, in any event, claims that the line loss controversy is mooted by its proposal to implement a market-based credit. It states that the new credit would implement Locational Based Market Pricing

reached under various conditions. Further, Lepco believes that any volatile market conditions in the eastern zone should not adversely affect the retail access program in the western zone where prices are apt to remain stable.

¹⁶ Advantage also proposes that no penalties apply to those customers who returned to NYSEG in recent months who may want to go to an ESCO when market-based credits become available. It states that customer switching in these circumstances is not the gaming that the rules are designed to prevent.

¹⁷ MI is an unincorporated association of 65 large commercial and industrial energy consumers with manufacturing and other facilities throughout New York.

and would provide ESCOs explicit payments for the transmission usage charges and the marginal losses they incur.

DISCUSSION AND CONCLUSION

The record in this case amply demonstrates that current market prices for electric energy and capacity exceed NYSEG's average annual 3.56 ¢/kWh credit. For this reason, the fixed credit is no longer adequate for a competitive market to flourish and NYSEG's willingness to implement a market-based credit provides an acceptable basis to change the existing program as needed. Accordingly, we are adopting the company's proposal with the modifications and conditions discussed below.

Given market prices substantially greater than those anticipated when the NYSEG rate/restructuring plan began, and the market price fluctuations that have been experienced, we doubt that it will be possible to return to a fixed-price credit either in May 2001 (as the company appears to anticipate) or subsequently during the current rate/restructuring plan. However, we agree with Staff that NYSEG should be permitted to petition us to return to a fixed-price credit, if it so chooses, but we see no need to schedule a reevaluation of market conditions for May 2001. No harm will enure to the company from retaining a market-based credit pending an adequate showing from NYSEG that a fixed-price credit would be best for any remaining portion of the rate/restructuring plan.

With respect to NYSEG's proposal to close the retail access program to new customers if and when 50,000 MWh of load receives zero/negative energy delivery bills, we would prefer to avoid any such drastic measure as this which would unreasonably disrupt the process being used to attract residential and commercial customers (with relatively small individual loads) to the retail access program. For this reason, we are adopting Staff's proposal for the parties to evaluate this matter further before NYSEG files a related tariff provision.

We have also considered Staff's proposal for a floor price below which the retail access credit would not fall; however, we find that this proposal is inconsistent with the

objective to establish a retail access credit mechanism that tracks market prices both as they rise and as they fall. Moreover, the marketers participating in this case who generally support a market-based approach do not favor Staff's proposal, nor do they endorse the incentive program NYSEG has offered to implement. Without passing on the merits of using incentive payments to encourage marketers and customers to participate in retail access programs, we find in this instance that the amounts the company is willing to incur to foster a competitive market can be put to better use as additional retail access credits for certain types of costs that can now be excluded from NYSEG's bills to retail access customers.

Initially, we note that NYSEG is not, in today's circumstances, in a position to shed entire cost categories the kinds of which NEM has listed. At best, all such categories would have to be examined in detail to determine which portion of these costs the company may be able to avoid. Consequently, we find that NEM's list of avoidable costs is overly broad and the additional 1 ¢/kWh credit it has proposed is excessive.

Moreover, parties participating in the pending competitive energy markets proceeding (Case 00-M-0504) are addressing issues related to unbundling utility rates and we expect them to make substantial progress in the near future. Thus, the range of additional credits that the marketers have generally suggested is overstated, at least for current purposes. Accordingly, we find that only a limited number of cost categories that the parties have identified are currently ripe for consideration and action here. In particular, only certain electricity procurement costs and retail customer care costs that marketers have begun to incur are candidates for additional retail access credits. Therefore, by adopting the approach advanced by the marketers, and by applying it to the limited number of cost categories that are ripe for current action, we find that an additional credit in the amount of 0.4 ¢/kWh for residential and small commercial customers and 0.2 ¢/kWh for large commercial and industrial customers is

proper and should be added to the market-based credit NYSEG shall implement.

Having adopted a market-based credit with an adder, it will be necessary for the company to notify and inform its retail access service subscribers of this change in the program as soon as possible. Accordingly, NYSEG should confer with the Office of Consumer Education and Advocacy concerning the type of notice and the amount of information it should provide, and it shall obtain the Director's approval for the customer education program it will execute.

As to the concerns Energetix has raised about marketer payments for transmission line losses in the NYSEG service area, we find that this controversy pertains only to the fixed-price credit that is now being replaced with a market-based credit. The introduction of locational based market pricing within the NYSEG service area eliminates this controversy on a prospective basis. With respect to any past period for which this matter remains, the parties are encouraged to resume their alternative dispute resolution efforts (either with or without the assistance of a mediator) to find a mutually acceptable resolution for this limited matter.

Finally, Advantage has proposed, and we agree, that the "no switching" and "anti-gaming" tariff provisions should be waived for the benefit of any retail access service customer who returned to NYSEG as a full service customer or may have switched to a company affiliate since May 2000. Such action is warranted due to the results of the investigation conducted pursuant to our May 2000 order and our adoption of a market-based credit which is intended to attract and retain customers in the retail access program.

The Commission orders:

1. New York State Electric & Gas Corporation (NYSEG) is directed to implement a market-based retail access credit consistent with the terms and requirements of this order which is to include a fixed-price additional credit for electricity procurement costs and retail customer care costs.

2. NYSEG is directed to file on short notice, to take effect on a temporary basis on February 1, 2001, such electric tariff amendments necessary to implement the market-based retail access credit adopted by this order. The company shall serve copies of the filing upon all parties to this proceeding. Any comments on the compliance filing must be received at the Commission's offices within ten days of service of the proposed tariff amendments. The amendments shall not become effective on a permanent basis until approved by the Commission.

3. NYSEG is authorized to file on short notice, after consulting with Department of Public Service Staff, tariff amendments to take effect on a temporary basis on March 1, 2001, addressing the possibility of zero/negative energy delivery bills and consistent with the resolution of this matter contained in this order.

4. The requirements of Public Service Law §66(12)(b) that newspaper publication be completed before the effective date of the amendments are waived; however, the company shall file with the Commission, no later than six weeks after the effective date of the amendments, proof that a notice to the public of the charges proposed in such amendments, and their effective date, had been published once a week for four successive weeks in a newspaper having general circulation in each area affected by the respective tariff amendments.

5. This proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER
Secretary