

2011 Amendment to 1990 Hydropower Contract

This 2011 Amendment to 1990 Hydropower Contract, dated this ___ day of _____, 2011 is made between Rochester Gas and Electric Corporation (“Company”) and the Power Authority of the State of New York (“Authority”).

WHEREAS, the Company and the Authority are parties to an agreement dated February 22, 1989 under which the Authority sells certain quantities of hydroelectric power and energy from Authority’s Niagara and St. Lawrence Projects to Company for resale to its rural and residential consumers (the “1990 Hydropower Contract”).

WHEREAS, Authority, New York State Electric & Gas Corporation (“NYSEG”) and Company are also parties to a letter agreement dated February 14, 2008 (“February 14, 2008 Letter Agreement”) which modified Article D - Regulation of Rates and Charges as it pertained to the calculation of the monthly savings realized by the customers of Company and NYSEG from the purchase of Authority hydropower.

WHEREAS, Company and Authority have previously modified and extended the 1990 Hydropower Contract, most recently by the “2010 Amendment to 1990 Hydropower Contract” (the “2010 Amendment”).

WHEREAS, by letter dated June 29, 2011, Authority withdrew all 99 MW of Firm Hydroelectric Power and Energy allocated under Service Tariff No. 41 and terminated service under the 1990 Hydropower Contract with respect to all 99 MW of Firm Hydroelectric Power and Energy, effective August 1, 2011, for use in the Recharge New York Power Program created pursuant to Chapter 60 (Part CC) of the Laws of 2011 (the “Firm Power and Energy Withdrawal/Termination”).

WHEREAS, Company and Authority agree to further modify and extend certain terms of 1990 Hydropower Contract as follows:

- 1) As a result of the Authority’s Firm Power and Energy Withdrawal/Termination, the amount of Firm Hydroelectric Power and Energy allocated to Company under Service Tariff No. 41 is zero (0). The Firm Peaking Power allocation of 35 MW under Service Tariff No. 42 will remain unchanged.
- 2) Article E - Rates. The current text is deleted in its entirety and is replaced with the following text.

“The rates charged by the Authority under this Agreement shall be established In accordance with this Article.

The Authority shall charge and Company shall pay the preference power rates adopted by the Authority on November 15, 2011, as such rates may be revised from time to time. Company waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority on November

15, 2011, except as otherwise provided for below.

Company waives any challenges to any of the following methodologies and principles used by the Authority to set future preference power rates, numbers (i) through (vii) as set forth in the “January 2003 Report on Hydroelectric Production Rates” as modified by the April 2003 “Staff Analysis of Public Comments and Recommendations”:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “Auer Settlement”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (i.e., retiree health benefits).
- (vii) Rate Stabilization Reserve (RSR) methodology.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Company shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.”

- 3) Article F - Transmission. The current text is deleted in its entirety and is replaced with the following text.

“In accordance with the terms of the existing transmission service agreement, which by its terms will expire on August 31, 2007, Company will cease taking transmission service from Authority and will instead take transmission service under the New York Independent System Operator's (“NYISO”) Open Access Transmission Tariff. Company agrees to settle any outstanding transmission charges that may apply prior to September 1, 2007 including any subsequent NYISO true up settlements.”

- 4) Article G - Notification. In the contact address for Authority replace “10 Columbus Circle, New York, NY 10019” with 123 Main Street, White Plains, NY 10601”. For Company, delete the current reference in its entirety and replace with the following “Dave Kimiecik, Vice President, Energy Supply, New York State Electric & Gas Corporation, 18 Link Drive, P.O. Box 5224, Binghamton, New York 13902-5224”.
- 5) Article K - Restoration of Withdrawn Power and/or Energy is deleted in its entirety.
- 6) Article L - Term of Service, is revised to read as follows:

“Service under this contract shall commence at 12:01 A.M. on January 1, 1990 and shall continue unless cancelled as provided for In the "Withdrawals of Power and/or Energy" or the "Cancellation or Reduction" provisions until December 31, 2012, subject to earlier termination by the Authority with respect to any or all of the quantities of power and energy provided hereunder on at least thirty (30) days’ prior written notice to Company.”

- 7) Article M - Availability of Energy - Firm and Firm Peaking Hydroelectric Power Service. In the third paragraph, line 1, starting with the words “In the event that...” through “... minimize the impact of such reductions,” on line 10, replace with the following:

“The Authority will have the right to reduce on a pro rata basis the amount of energy provided to Company under Service Tariff No. 42 if such reductions are necessary due to low flow (i.e. hydrologic) conditions at the Authority's Niagara Project hydroelectric generating station. In the event that hydrologic conditions require the Authority to reduce the amount of energy provided to Company, reductions as a percentage of the otherwise required, energy deliveries will be the same for all firm Niagara Project customers. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Company in later billing periods. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Company. The Authority shall provide reasonable notice to Company of any condition or activities that could result, or have resulted, in low flow conditions consistent with the notice provided to other similarly affected customers.”

- 8) This amendment shall be referred to as the “2011 Amendment to the 1990 Hydropower Contract”.
- 9) Continuation of service under this 2011 Amendment to the 1990 Hydropower Contract shall be subject to ultimate approval by the Governor of the State of New York pursuant to Section 1009 of the Public Authorities Law. If the Governor disapproves this 2011 Amendment to the 1990 Hydropower Contract, service will cease on the last day of the month following the month during which the Governor disapproved this 2011 Amendment to the 1990 Hydropower Contract. If the Governor takes no action within the time frame provided for in Section 1009, service will cease on the last day of the

month following the month during which such timeframe expired.

Except as expressly provided in this 2011 Amendment to the 1990 Hydropower Contract, the 1990 Hydropower Contract as modified by the February 14, 2008 Letter Agreement shall remain unchanged and in full force and effect.

This 2011 Amendment to the 1990 Hydropower Contract shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts and to be performed in such state, without regard to conflict of laws principles.

This 2011 Amendment to the 1990 Hydropower Contract may be signed in any number of counterparts, each of which shall be an original, with the same effect as If the signature thereto and hereto were upon the same instrument.

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Public Authorities Law, and upon execution by the Chairman of the Authority, this 2011 Amendment to the 1990 Hydropower Contract shall come into full force and effect, provided however that pending such gubernatorial approval and execution this 2011 Amendment to the 1990 Hydropower Contract shall take effect upon the expiration of the 2010 Amendment and continue on a month to month basis.

AGREED:

Rochester Gas and Electric Corporation

By: _____
Name: Joseph J. Syta
Title: Vice President, Controller and Treasurer

Date: _____

By: _____
Name: Mark S. Lynch
Title: President

Date: _____

Power Authority of the State of New York

By: _____

Title: _____

Date: _____

ACCEPTED:

By: _____

Michael J. Townsend
Chairman

Date: _____