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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for)
Determination of Need for)
Intrastate Natural Gas)
Pipeline by SunShine)
Pipeline Partners)
_____)

Docket No.: 920807-GP
Filed: May 4, 1993

REQUEST FOR OFFICIAL RECOGNITION BY
INTERVENOR FLORIDA GAS TRANSMISSION COMPANY

Intervenor Florida Gas Transmission Company, by the undersigned attorneys and pursuant to section 120.61, Florida Statutes, hereby requests that the Florida Public Service Commission officially recognize Opinion No. 91-13 of the State of New York Public Service Commission in case number 90-M-0676 Reference: Petition of Rochester Gas and Electric Corporation, relevant excerpts of which are attached hereto and incorporated herein as Exhibit "A".

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DOCUMENT NUMBER-DATE

04838 MAY-4 93

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and fifteen copies of the foregoing have been served by HAND DELIVERY on Steve Tribble, Director, Division of Records and Reporting, Florida Public Service Commission, Fletcher Building, 111 East Gaines Street, Tallahassee, Florida 32399-0850 and that copies have been furnished by *Facsimile/U. S. Mail to the following persons this 4~~th~~ day of May, 1993:

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 91-13

CASE 90-E-0647 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Electric Service.

CASE 90-E-0648 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Electric Street Lighting Service.

CASE 90-G-0649 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Gas Service.

CASE 90-M-0676 - Petition of Rochester Gas and Electric Corporation under Section 107 of the Public Service Law for the approval to use revenues received from the rendition of public service for the purpose of investing in Energyline Corporation, a proposed wholly-owned subsidiary, and for approval of the recovery of costs in connection with such investment in rates.

CASE 91-M-0445 - Proceeding on Motion of the Commission to Investigate the Disruption of Upstate Utility Services Resulting from the March 4, 1991 Ice Storm.

OPINION AND ORDER DETERMINING REVENUE REQUIREMENT
AND RATE DESIGN, APPROVING INVESTMENT IN
ENERGYLINE CORPORATION WITH CONDITIONS, AND
REQUIRING THE FILING OF A NEW STORM PLAN

EXHIBIT "A"

Issued and Effective: June 25, 1991

GAS REVENUE REQUIREMENT ISSUES

Empire State Pipeline

As previously noted, the company requests authority to invest up to \$20 million in Energyline, a wholly-owned subsidiary that would be organized primarily to acquire a 20% interest in the Empire State Pipeline project (Empire). Energyline would have no employees of its own and it would be managed by company employees. In both its rate case filing and its separate petition, the company seeks to recover through its rates the costs of its planned, indirect investment in Empire, as offset by its share of the net revenues generated by Empire.

Energyline's sole asset will be ownership of a 20% interest in Empire. At the time of the company's petition, Empire's total cost was estimated to be \$88.2 million. More recently, Empire submitted a new cost estimate for the project of \$125.5 million.

Twenty million dollars is the maximum that Energyline would advance for the construction of Empire. The existing principals of Empire have proposed a project financing that would eventually result in the equity financing for 25% of the pipeline's construction cost, the balance being financed through a non-recourse loan secured by the Empire property. If this plan is ultimately followed,

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RG&E's final investment in this project would not exceed \$5 million.

RG&E contends Empire will provide an economic interconnection with gas-producing regions and gas storage facilities in both Canada and the United States. Empire would assertedly enhance RG&E's service reliability by reducing the impact of a disruption of its existing supply. Access to storage is asserted to be advantageous for entities that wish to purchase at favorable rates unbundled gas services and purchase gas transportation services during the off-peak season.

The company goes on to suggest its participation in the project would assure that New York's interests are represented in the management of the new pipeline. Moreover, RG&E argues it would benefit from participation in the supply and transportation side of the natural gas industry, which should thrive given the federal deregulation of the natural gas industry and the greater importance of natural gas use to achieve environmental goals.

RG&E also requests in its petition and rate case filing that it be allowed to recover all of Energyline's costs for the Empire investment (such as operation and maintenance expenses, depreciation, return on investment, and taxes) from its retail distribution customers, offset by all of Energyline's share of any net revenues generated by

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Empire. The net effect, under the company's proposal in this case, is an increased revenue requirement of approximately \$223,000.

Staff opposed the company's ratemaking proposal because it saw a conflict between RG&E's role of shipper-customer, on the one hand, and its role as an equity partner in Empire, on the other. At the same time, however, staff was concerned about segregating entirely RG&E's proposed investment from its regulated utility operation, fearing the company might ignore its responsibility to minimize gas purchase costs out of an interest in maximizing Empire's return. To balance these competing interests, staff proposed to reflect in rates only 50% of RG&E's investment in Empire and 50% of Energyline's share of Empire's net operating revenues.

RG&E has provided a number of acceptable reasons for its proposal to invest in Empire through Energyline. Under a worst-case scenario, a loss of the entire proposed \$20 million investment would be only 1.7% (after tax) of RG&E's common equity. Such a loss would not be significant, given the company's size, and would not materially affect RG&E's rates or service quality. For this reason, the request to make the investment is granted subject to the condition that staff will receive unrestricted access to the books and records of Energyline. Unrestricted access means

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the same level of access staff has to RG&E's own utility records, and that staff will not be required to bargain for access to information, or explain the relevance of the information requested. Information that requires confidential treatment will be protected under existing procedures.

From a ratemaking perspective, RG&E's ratepayers might benefit from RG&E's proposed investment for many of the reasons suggested by the company. Nevertheless, there are several important reasons why the planned investment should not be provided for at all in RG&E's traditional gas distribution system rate base; therefore, we need not consider the exceptions covering the manner of recovery for such costs.

To begin, it seems clear the most important benefits of the Empire project will be available to RG&E's ratepayers regardless of whether or not RG&E invests in the project. Empire has already been granted a certificate and has proceeded to date without RG&E as an equity holder. RG&E has already signed an agreement to ship gas through the pipeline without having any ownership interest in it. While RG&E states that its participation increases the probability that the Empire pipeline will be completed, there is no reason to conclude the Empire pipeline will fail to obtain adequate equity participation from others.

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Second, the original Empire principals supported the project primarily because it would offer a competitive alternative to other pipelines. Those principals were willing to compete with other pipelines. RG&E's proposed ratemaking is inconsistent with that approach and seeks to minimize the risks to it of its investment. There is no good reason why all of Empire principals should not bear the same risks and enjoy the same reward opportunities. As in other competitive businesses, recovery of costs and achievement of reasonable returns should depend upon the transportation revenues generated by the Empire pipeline.

Third, staff's proposal would also require a morass of accounting and ratemaking separation procedures and would, therefore, be very cumbersome. And it is not apparent that staff's proposed 50/50 sharing arrangement would increase RG&E's incentive to pursue a least cost gas procurement strategy. For all of these reasons, we reject the company's proposal to include its planned investment in its gas distribution rate base and staff's alternate suggestion.

Finally, RG&E requests that it be permitted to reinvest later without further approval any amount invested by it that has been repaid in whole or in part by Energyline. This request is rejected, and any funds returned to RG&E must again be devoted to utility operations. If additional funds

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rates are not in full compliance with this Opinion and Order. The requirement of PSL §66(12) and 16 NYCRR 136.70 and 270.70, that newspaper publication must be completed before the effective date of the amendments authorized in this paragraph is waived; but the company shall file with the Commission, not later than August 16, 1991, proof that a notice to the public of the changes proposed by the amendments and their effective date has been published once a week for four successive weeks in a newspaper having general circulation in the counties affected by the amendments.

3. The Attorney General's petition is denied but \$4 million of the electric revenues provided for here are approved on a temporary basis only, and subject to refund, until RG&E meets the two conditions described in this Opinion and Order.

4. To the extent it is consistent with this Opinion and Order, the Recommended Decision of Administrative Law Judge Gerald L. Lynch, issued April 2, 1991, is adopted as part of this Opinion and Order. Except as here granted, all exceptions to that Recommended Decision are denied.

5. Rochester Gas and Electric Corporation is authorized to use revenues received from the rendition of utility service in this State in an amount not to exceed \$20 million for the purpose of investing in Energyline Corporation.

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6. Rochester Gas and Electric Corporation's authorized \$20 million investment in Energyline Corporation shall be used only to acquire a 20% interest in Empire State Pipeline.

7. The authority granted by paragraphs five and six of this Opinion and Order is made upon the express condition that prior to any further investment by the company in Energyline Corporation using revenues derived from the rendition of public service beyond the \$20 million authorized by this Opinion and Order, Commission approval will first be sought and received.

8. Rochester Gas and Electric Corporation will employ the necessary and appropriate cost allocation procedures that assure assignment to Energyline Corporation of joint and common costs, and the basis for all such allocations shall be filed for approval with the Director of Accounting and Finance within 90 days of the date of this Opinion and Order. All such allocations shall be subject to audit and adjustment by the Commission. All books and records of such subsidiary shall be made available to the staff of the Department of Public Service upon request; however, any information deemed proprietary by Rochester Gas and Electric Corporation or third parties will be afforded appropriate protection under applicable Commission regulations.

9. Any revenues received or income earned or tax credits generated by Energyline Corporation, shall be used for the purposes set forth in Clause 6 of this Opinion and Order or transferred to Rochester Gas and Electric Corporation.

10. In the event the Commission determines at any time in the future that any amounts of money, personnel, resources, assets, or anything of value that properly should be charged to Energyline Corporation have not been, or if the Commission determines that Rochester Gas and Electric Corporation engaged in a consistent pattern of misallocating money, personnel, resources, assets, or anything of value, the Commission, in addition to any and all powers, rights, and remedies available under law, reserves the right to modify the treatment of revenues, earnings, and/or tax benefits generated by such subsidiary.

11. Rochester Gas and Electric Corporation's request to recover its investment in Energyline Corporation in rates is denied.

12. Rochester Gas and Electric Corporation's request to be able to reinvest any amount repaid by Energyline Corporation at a subsequent time without further approval is denied.

13. Prior to the time Rochester Gas and Electric Corporation invests in Energyline Corporation, it shall file

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with the Commission an unconditional acceptance of paragraphs five through 12 of this Opinion and Order, agreeing to obey all the terms, conditions, and requirements included in such paragraphs. If such acceptance is not so filed within a period of 30 days from the effective date of this Opinion and Order, paragraphs five through 12 of this Opinion and Order may be revoked by the Commission without further notice.

14. Rochester Gas and Electric Corporation is authorized to defer in Account 186, Miscellaneous Deferred Debits, the costs and expenses incurred for the issuance of new common stock during the rate year, excluding any stock issued through dividend reinvestment and other ongoing stock issuance plans.

15. If Rochester Gas and Electric Corporation issues common stock, as described in the previous paragraph, during the rate year, to the extent that the actual monthly average common equity balance exceeds the amount of common equity forecast in these proceedings, the company is authorized to defer in Account 186, Miscellaneous Deferred Debits, the revenue requirement effect of the difference between the rate case weighted cost of capital and the actual average weighted cost of capital, as measured with the equity cost determined in this Opinion and Order.

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May 4, 1993

REPLY TO: Tallahassee

VIA HAND DELIVERY

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RE: Application for Determination of Need for an Intrastate
Natural Gas Pipeline, Docket No. 920807-GP

Dear Mr. Tribble:

Enclosed for filing you will find an original and fifteen copies of Intervenor Florida Gas Transmission Company's Request for Recognition in the above-referenced docket.

At the prehearing conference on Monday, May 3, 1993, I inadvertently identified the attached decision as involving a certificate of need determination. While I had been told that it was such, further examination reveals that it may only concern a more typical rates proceeding. I will attempt to confirm this fact.

Should you have any questions or if I can be of any further assistance, please do not hesitate to give me a call.

Very truly yours,

PEEPLS, EARL & BLANK, P.A.

"To Avoid Delay, This Was
Sent in Mr. Hyde's Absence"

William L. Hyde
For the Firm
Attorneys for Florida Gas
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:nl
Enclosures
cc: All Counsel of Record