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PUBLIC SERVICE COMMISSION DIRECTS BPU ON DISBURSEMENT OF \$8.1 MILLION

On December 19, 2002, the Board of Public Utilities (BPU) received permission from the New York State Public Service Commission (NYPSC) as to how the utility shall allocate the two New York Power Authority (NYPA) refunds it has recently been awarded. On March 15, 2002, the BPU received a payment of \$7,509,789 as a result of a judgment in a ten-year legal battle over rates against the New York Power Authority. In addition, on April 30, 2002 the BPU received a refund of \$657,748 as a result of an over payment from the renegotiated transmission agreement with Niagara Mohawk. The Federal Energy Regulatory Commission (FERC) approved the transmission agreement in April 2002 with an effective starting date of September 1, 2001, which resulted in a rebate for overpayment from 9/01 to 4/02.

If the awards were to be directly rebated in the customary manner to each individual customer, the typical residential customer would receive a credit of approximately \$1.00 per month for the next 10 years for a total of \$120. On July 3, 2002, the BPU submitted a petition to the NYPSC to use the \$8.1 million refund to: recover the litigation expenses incurred in attaining the judgment; pay a lump sum payment to execute a renegotiated transmission contract; establish a Rate and Fuel Adjustment Clause stabilization funds; establish an Economic Development fund; and pay for various capital projects.

The Commission opinion stated, "While it is often considered better to return these refunds to the ratepayers..., since the proposed uses of the refunds will result in either the replacement or displacement of debt, which will result in reduced costs to the municipalities' ratepayers, or mitigate price volatility or forestall a permanent rate increase, staff (PSC) believes that these requests are acceptable uses of the refunds."

BPU General Manager, Wally Haase stated, "The BPU is pleased that the Public Service Commission has the confidence in this utility to allow it to utilize these refunds to help stabilize the rates of our customers and improve the reliability of the electric service we provide."

He went on to explain the approved uses of the \$8.1 million:

1. The BPU will be reimbursed \$300,000 for the direct litigation expenses the utility paid to outside counsel over the 10 years of the lawsuit.
2. The BPU negotiated an agreement with Niagara Mohawk (NMPC) and NYPA to terminate the remaining six years of the BPU's contract for electric transmission service and switch to the New York State Independent System Operator's (NYISO) Open Access Transmission tariff. As part of the agreement NMPC will be compensated \$2,043,343 for the NYISO costs that will be shifted to it as a result of this agreement, plus a small sharing of the savings. As a result of this contract, the BPU's customers will save \$5,637,840 through their Fuel Adjustment Clause (FAC) over the remaining life of the contract, for a net savings of \$3,594,497. Because the Commission allowed the BPU to use the proceeds from these awards to make a lump sum payment, BPU customers will be able to take immediate advantage of the new agreement's savings and save an additional \$93,000 in interest payments.
3. The BPU received permission to establish a Fuel Adjustment Clause (FAC) stabilization fund. Since the advent of deregulation the BPU, just as other Utilities throughout the State, has seen a lot of volatility in energy prices, NYISO ancillary services, transmission costs and commodity prices, especially during the summer months. These expenses are directly passed on to our customers through the FAC charge on their bill. This fund was established to provide some stabilization for our customers during very volatile periods. This fund will provide a cap on our customers' FAC factor, residential customers at \$0.01078/kWh and all other customers at \$0.01750/kWh. Different caps are necessary to recognize the difference in the base cost of fuel and purchased power between the residential, commercial and industrial rate classes of our customer base. When these caps are reached, each customer class will experience the same cent/kWh bill reduction. Had this procedure been in place in 2000 and 2001, the BPU's customers would have saved \$443,261 and \$234,920 respectively. The stabilization fund should help maintain price stability and protect customers from unanticipated price spikes. If the FAC stabilization fund is ever greater than \$1.5 million the caps will be reduced by 1/2 mil. If after 36 months any funds remain in the FAC fund, the BPU shall reduce the caps by 1/2 mil every six months until the fund is depleted.
4. The BPU shall use a portion of the refund to establish an economic development fund to provide improvements to its infrastructure and for the cost of line extensions in order to attach new loads. The BPU's customer mix is approximately 20% more industrial than the national average and the economy in its territory is dependent on industry for growth. Hopefully, by using these funds, coupled with expansion power from NYPA and other incentives, the BPU will be able to induce new investment in the region. While this point seems to directly benefit commercial and industrial customers only, the PSC believes that additional industry in the region would have a beneficial effect on employment, property taxes, and long term contributions by these new customers to the existing electric infrastructure. If the BPU is

successful in achieving load growth, it will help offset a portion of the fixed costs presently borne by all its existing customers.

5. Because the BPU has not had a rate increase since 1994, the utility requested permission to establish a rate stabilization fund with a portion of the refund to assist it in remaining profitable without increasing base rates. The BPU will use \$3.4 million to develop the stabilization fund that will be amortized over a 36-month period. The annual \$1,200,000 will be used to help the BPU remain profitable and help forestall a rate increase. During the first year of operating the BPU's combined-cycle gas turbine, the equipment and its related infrastructure investments will increase the BPU's cost of service by about \$5 million. Profits from off-system sales should boost income by \$1 million. After adjustments, the utility's rate of return should increase from 2.96% to 4.18%.

Use of part of the refund will help the BPU hold its rates stable. Once the BPU has reached full commercial operation of its new gas turbine, it will have a clearer picture of its financial situation and the need for a possible rate increase. Should the BPU find it necessary to file for a rate increase prior to the exhaustion of the rate stabilization fund, the disbursement of the unspent funds would be decided upon in the rate case.

6. The BPU requested permission to use a portion of the funds to complete two capital projects: a) GIS mapping system and b) construction of a second transmission line.

The GIS system will improve reliability and security and link with the utility's present SCADA (Supervisory Control and Data Acquisition) system by enhancing the usefulness of the SCADA system as well as provide information regarding the location of all property units. It will provide the ability to identify the location of all properties experiencing outages and allow repair personnel to respond more quickly with the correct equipment to reconnect customers to the system. The total GIS system will cost \$4.1 million and the Electric Division share of that is \$1.1 million. The PSC will allow the BPU to spend \$575,000 of the refund for this project.

The PSC will also allow the expenditure of \$250,000 of the refund to offset some of the costs to build a second 34.5kv transmission tie line between the Samuel A. Carlson Generating Station and the Dow Street Substation that will relieve overloading and improve transmission reliability.

Haase concluded by saying, "I am very pleased that the Commission has given the BPU the latitude to use these refunds in multiple ways that will go a long way to help this utility continue to fulfill its mission to provide our customers with low cost, reliable electric service."

He continued, "By allowing the refund to be spent on BPU projects rather than returning it directly to the customers, the purchasing power of the money can go much further to improve utility services for the entire community and postpone the need for a rate increase as long as possible."