SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

NATIONAL ENERGY MARKETERS ASSOCIATION; BLUEROCK ENERGY, INC.; BOUNCE ENERGY NY, LLC; DIRECT ENERGY BUSINESS MARKETING, LLC; DIRECT ENERGY BUSINESS, LLC; DIRECT ENERGY SERVICES LLC; ENERGETIX, INC.; GATEWAY ENERGY SERVICES CORP.; NORTH AMERICAN POWER & GAS, LLC; NYSEG SOLUTIONS, INC.; RESIDENTS ENERGY, LLC; and VERDE ENERGY USA NEW YORK, LLC,

Petitioners/Plaintiffs,

against

NEW YORK STATE PUBLIC SERVICE COMMISSION,

Respondent/Defendant.

Index No. 868-16 (150)

IAS Part ~~3 - 11~~

Justice O'Connor

~~[PROPOSED]~~
ORDER TO SHOW CAUSE

16 MAR -4 PM 3:55
ALBANY NY

Upon reading the annexed Verified Petition and Complaint of National Energy Marketers Association, BlueRock Energy, Inc., Bounce Energy NY, LLC, Direct Energy Business Marketing, LLC, Direct Energy Business, LLC, Direct Energy Services LLC, Energetix, Inc., Gateway Energy Services Corp., North American Power & Gas, LLC; NYSEG Solutions, Inc., Residents Energy, LLC, and Verde Energy USA New York, LLC (collectively the "Petitioners") verified and filed on March 3, 2016 (the "Verified Petition"), the Affirmation of Jason Cyrulnik, duly sworn to on March 3, 2016 and the exhibits thereto; Petitioners' Memorandum of Law in Support of Their Application By Order to Show Cause For A Temporary Restraining Order, Preliminary Injunction, and Expedited Discovery dated March 3, 2016, it is hereby:

ORDERED that Respondent, New York State Public Service Commission (the "PSC"), show cause before this Court at I.A.S. Part ___ (Room ___), to be held at the Courthouse, 16

Eagle Street, Albany County, New York, to be held on the 14th day of April, at 9:30 a.m./p.m. (the "return date"), or as soon thereafter as counsel can be heard, why an order should not be entered pursuant to Civil Practice Law and Rules ("CPLR") §§ 6301, 6311, 6313 and Article 78:

(1) staying enforcement of Ordering Clauses 1-3 of Respondent's "Order Resetting Retail Energy Markets and Establishing Further Process" issued February 23, 2016 (the "Ordering Clauses") and preliminarily enjoining Respondent and all those acting in concert with it from enforcing the Ordering Clauses; and

(2) granting such other and further relief as the Court may deem just and proper, together with costs and disbursements.

Oral argument shall be required on the return date of this proceeding; and it is further:

ORDERED that Respondent show cause before this Court at the same time and place why a judgment and order, pursuant to CPLR Article 78, should not be entered: (i) declaring that the Ordering Clauses are void as being issued in excess of the PSC's jurisdiction or authority; (ii) declaring that the Ordering Clauses are void as being issued in violation of lawful procedure, affected by errors of law, arbitrary and capricious, and an abuse of the PSC's discretion; (iii) declaring that the Ordering Clauses are void because they violate Petitioners' rights under the Constitutions of the State of New York and the United States; and (iv) granting such other and further relief as this Court deems just and proper; and it is further

ORDERED that, pursuant to CPLR §§ 6301, 6311, 6313 and Article 78, pending a hearing and determination of this application, enforcement of the Ordering Clauses is stayed, and Respondent, its agents, officers, employees, successors, assigns and all persons acting in concert with it or on its behalf who receive notice of this order are hereby temporarily restrained and (i)

ordered to refrain from taking any action in furtherance of the Ordering Clauses; and (ii) ordered to provide notice of this order to all of Respondent's agents, officers, employees, successors, assigns, and all persons acting in concert with it or on its behalf; and it is further

ORDERED that Petitioners shall serve upon Respondent a copy of this Order, and the papers upon which it is based, by hand delivery or FedEx on or before March 4th, 2016; and it is further

ORDERED that Respondent shall serve upon counsel for Petitioners any answering and responsive papers to the Application by Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction by e-mail with hard copy by next day mail 2pm ~~hand delivery or FedEx~~ on or before March 4, 2016; and it is further

ORDERED that Petitioners are hereby granted leave to file reply papers, if any, including a reply memorandum of law, which shall be served upon Respondent, or its attorneys, ~~so as to~~ be ~~received no later than~~ the day before the time set forth herein ~~for the hearing of this Application~~; and it is further

on or before April 8, 2016

ORDERED that Petitioners are hereby granted leave to serve requests for expedited Information ~~discovery~~ on or before March 8, 2016, ~~limited to the issues raised by Petitioners' Application~~ by Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction, with ~~parties to complete all discovery within __ days of the date of this Order.~~

as set forth on the record on March 4, 2016

ENTER:

J.S.C.