National Energy Marketers Association

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on the Motion of the	**)**	
Commission Regarding Provider of	**)**	**Case 00-M-0504**
Last Resort Responsibilities, the Role	**)**	
of Utilities in Competitive Energy	**)**	
Markets, and Fostering the Development	**)**	
of Retail Competitive Opportunities -	**)**	
Unbundling Track	**)**	

REPLY COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM) hereby submits reply comments on Issues 2, 3, and 4 pursuant to the December 14, 2002, January 4, 2002, and January 16, 2002, Procedural Rulings issued by Judge Stockholm in the above-referenced proceeding. NEM urges the Commission to reaffirm its commitment to implementing embedded cost-based unbundled rates as soon as practicable. NEM also urges the Commission to implement a competitively neutral, after-the-fact, stranded cost recovery mechanism consistent with the recommendations set forth herein and in NEM's Initial Comments. NEM also urges the Commission to require the utilities to provide unbundled bills setting forth the rates of competitive services on a line-item basis.

I. Unbundled Rates Should Be Based on the Utilities Embedded Costs

a. LRAC Versus Embedded Cost-based Unbundled Rates

The majority of the utilities submitting comments recommended that the Commission adopt a long-run avoided cost methodology for designing unbundled rates or backout credits.[1] As argued in NEM's Initial Comments, the proper basis upon which to unbundled utility rates is based on the utilities' fully allocated embedded costs. NEM notes that Multiple Intervenors (MI) also, "advocates that embedded cost of service studies - and not forward-looking cost studies - be used exclusively by the Commission for purposes of unbundling rates."[2] Many of the reasons set forth in NEM's Initial Comments for implementation of embedded cost-based unbundled rates are echoed in MI's Initial Comments, such as the increased accuracy and reliability of embedded cost studies versus forward-looking studies as well as the fact that since the utilities' revenue requirements and bundled rates are based on embedded costs it logically follows that unbundled rates should also be based on embedded costs.

The Commission itself noted in its recent Order on Rehearing Petitions that, "[a]s to the appropriateness of using ECOS studies as the basis for establishing competitive rates, it should suffice to observe that we have, on a number of occasions, found it appropriate to use embedded costs as the basis for setting competitive rates."[3] In view of the Commission's repeated Orders on this issue, NEM urges the Commission to yet again dismiss the utilities arguments.

b. If Embedded Cost-Based Rates Are Not Implemented, Utility Provision of Competitive Services Will Be Subsidized

One of the chief utility arguments against the use of embedded cost-based unbundled rates, is that rates designed on such a basis will constitute a subsidization of the competitive market. For example, NYSEG argues that, "[u]nbundled rates or backout credits for competitive services developed on the basis of avoided costs would ensure that no group provides an inappropriate level

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[1] See e.g., NYSEG Comments at 9-10, NFG Comments at 4, Keyspan Comments at 3, ConEd Comments at 5. But see, RG&E Comments at 2 (arguing that short-run marginal costs should be utilized to develop unbundled rates).

[2] MI Comments at 3.

[3] Case 00-M-0504, Competitive Opportunities Proceeding - Unbundling Track, Order on Rehearing Petitions and Motions, issued January 24, 2002, at page 6 [hereinafter "Order on Rehearing"].

of support for the development of competitive markets."[4] Central Hudson argues that, "the mandate for ECOS-based pricing for competitive services contained in the ECOS Study Order represents an uneconomic determination and an uneconomic subsidy from utility ratepayers to third party competitors."[5] ConEd states that, "economically inefficient pricing combined with deferred recovery of transition and stranded costs give false market signals to customers interested in retail access and to marketers interested in providing such services. The short-term subsidies that result from this combination of factors encourage inefficient providers to enter the market and to leave as soon as cost responsibility and the obligation to serve are properly realigned."[6]

NEM asserts that the subsidization argument advanced by the utilities misstates who is subsidized and under what circumstances. In fact, arguments advanced in opposition to ECOS can be viewed as labeling current "just and reasonable" bundled rates as "uneconomic subsidies" and "economically inefficient pricing." This is precisely why restructuring and ECOS based unbundled rates should be used as the price to beat and, as such, are clearly in the public interest. The Commission explained in its Order on Rehearing that the utilities, "read too much in our prior orders where we have observed that prices based on LRICs are economically efficient and that such prices may serve as a benchmark for unbundled rates,"[7] and recognized the, "appropriateness of using ECOS studies as the basis for establishing competitive rates."[8]

NEM agrees with the Commission. If consumers are provided anything less than unbundled rates based on the utilities fully-allocated embedded costs, the utilities provision of competitive services will be subsidized because customers that switch

[4] NYSEG Comments at 8.
[5] Central Hudson Comments at 11.
[6] ConEd Comments at 9.
[7] Order on Rehearing at 5.
[8] Order on Rehearing at 6.

will be paying for competitive services once to their competitive provider and once to the utility (that is no longer rendering the service). Consumers should not be burdened with double payments.

c. The Commission Rejected the Need for Concurrent Filing of Embedded Cost and LRAC Studies

The utilities continue to urge the Commission to allow for concurrent filing of embedded cost and LRAC studies. NYSEG recommends that the Commission await completion of both embedded and forward-looking studies before requiring the filing of unbundled rates.[9] Similarly, Central Hudson urges that the Commission develop a streamlined forward looking cost study approach so that the embedded cost and forward-looking studies can be reviewed at the same time.[10] By contrast, Staff recommends that, "[l]ong run incremental cost studies should be performed at some point, but their development should not interfere with establishing prices for competitive services as soon as possible,"[11] and that, "LRIC studies should not be attempted until after competitive rates based on the embedded studies are in effect."[12]

NEM asserts that the Commission Order on Rehearing clearly rejected the utilities' approach. The Commission stated that it is, "unconvinced by the utilities' arguments that all cost studies must be completed before unbundled rates are implemented to avoid customer and ESCO confusion and that ECOS studies cannot be used as the basis to unbundled rates."[13] NEM strongly supports the Commission's Order and urges that it be reaffirmed.

[9] NYSEG Comments at 6.
[10] Central Hudson Comments at 18.
[11] Staff Comments at 5.
[12] Staff Comments at 5.
[13] Order on Rehearing at 5.

II. Stranded Cost Recovery Methodologies

a. The Utilities' Transition Cost Recovery Proposal Should Be Rejected

In the, "Utility Position Paper on Long Run Incremental Costs and Stranded Costs,"[14] the utilities set forth a proposed methodology for recovery of transition costs. By the terms of this proposal, the difference between unbundled rates for contestable functions and the utility's short-run avoided costs would be computed on a per unit basis. The difference on a per unit basis would be multiplied by the number of units not taken to derive recoverable transition costs.

NEM urges the Commission not to adopt the methodology set forth in the utilities Position Paper. As explained in NEM's Initial Comments, only after a reasonable time (e.g. one year or 25% migration) has elapsed during which consumers are able to shop for one or more competitive services with embedded cost-based credits, should a calculation of lost revenues be undertaken. This should entail calculation of the difference between the revenues that the utility would have received using fully embedded cost-based rates and the revenues actually received by the utility due to lost sales of specific services from the menu of competitive products, services, information and technology that each customer actually elects to purchase from the utility versus a competitive supplier.

The Commission should ensure that any costs that are unavoidable because utilities must incur such costs to perform POLR-related services be recovered through adjustments to the rates charged for POLR-related services. By contrast, the Utilities propose to recover revenue shortfalls through a transition surcharge based on a formula that assumes all unavoidable costs are caused by migration rather than by the necessity to provide POLR-related services.

Providing revenue recovery based on estimates of migration and the assumption that migration itself rather than the cost of POLR-related services causes the

[14] Utility Position Paper on Long Run Incremental Costs and Stranded Costs at 4.

revenue shortfall will under-price POLR-related services and unfairly penalize customers who migrate. Any determination of costs that are truly stranded must necessarily address the issue of whether the "unavoidable" costs at issue are, in fact, costs properly attributable to POLR-related services.

b. Stranded Costs Should be Computed and Recovered on an After-the-Fact Basis

The various utilities support before-the-fact, contemporaneous, and after-the-fact recovery of stranded costs. NFG urges that a before-the-fact stranded cost recovery mechanism be used, that would entail tracking anticipated monthly migration, calculation of stranded costs for each upcoming month, and designing a surcharge rate for prospective recovery of stranded costs.[15]

ConEd asserts that,

> a critical element in the transition to competition is the assurance that utilities have an incentive, or at a minimum no disincentive, to encourage customers to take service from ESCOs. By allowing for contemporaneous collection of transition costs, the Commission will provide an environment that is fair to all participants and that encourages, rather than discourages, the expansion of competition. Deferring until some future period a utility's recovery of costs may have superficial appeal, but it discourages utilities from supporting retail access and, at the same time, increases utility risk.[16]

Keyspan recommends that stranded costs, "be briefly deferred and recovered on a current or very brief lag basis.[17] NYSEG proposes that "stranded and incremental costs would be deferred as incurred and recovered, in full, over a period of time in the future."[18]

By contrast, the Attorney General asserts that, "the Commission should not allow utilities to recover net revenue losses attributable to retail migration," but if such

[15] NFG Comments at 6.
[16] ConEd Comments at 3.
[17] Keyspan Comments at 5.
[18] NYSEG Comments at 20.

recovery is allowed it should be on an after-the-fact basis.[19] Staff also recommends that the utilities should, "calculate net lost revenues after they are incurred and defer them for future recovery."[20]

As stated in our Initial Comments, NEM agrees with Staff and the Attorney General that stranded costs should be computed on an after-the-fact basis. Stranded costs or revenues lost due to migration should be calculated after just and reasonable unbundled rates or shopping credits based on fully embedded costs have been implemented and actual migration has occurred. It is only after migration has/has not occurred that stranded costs will be properly quantifiable and not speculative. NEM recommends that a reasonable time frame to allow for customer comparison shopping and switching based on embedded cost unbundled rates prior to attempting to measure stranded costs would be at least one year or achieving a migration rate of 25%.

c. Properly Computed Stranded Costs Should be Recovered on A Competitively Neutral Basis in Distribution Rates

Central Hudson recommends that its System Benefit Fund be used for recovery of lost revenues.[21] Keyspan recommends stranded costs, "should be recovered through a competitive losses surcharge that applies to all customers in a competitively neutral fashion, such as through the Transportation Adjustment Charge."[22] Staff also recommended use of a competitive surcharge for recovery of net lost revenues, at least in the initial phase of customer migration.[23]

As explained in our Initial Comments, NEM recommends that any costs or lost revenues not connected with utilities provision of POLR-related services and fully bundled sales service should be added to distribution rates and recovered in a competitively neutral fashion.

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[19] Attorney General Comments at 6.
[20] Staff Comments at 4.
[21] Central Hudson Comments at 20.
[22] Keyspan Comments at 5.

III. The Commission Must Require the Unbundling of Contestable Services on Utility Bills on a Line-Item Basis

a. Claims of Computer System Constraints Should Not Thwart the Purpose of the Unbundling Proceeding

The utilities argue that one of main impediments to implementing unbundled rates will be computer system constraints. Central Hudson suggests that computer programming to accommodate unbundling will take quite some time. NFG argued that its, "systems are not capable of providing more unbundled rate information on the customer's bill beyond the separation of delivery and supply charges."[24] While recognizing that computer system capabilities are a relevant concern to both the utilities and the Commission, NEM asserts that the utilities have been on notice at least since the Commission's initial Order initiating this proceeding in March 2001 that unbundled rates would be required to be implemented. Certainly, the utilities have long been in a position to assess their computer resources and to begin the process of determining how the implementation of unbundled rates could be accomplished. NEM urges the Commission not to allow claims of computer system constraints to thwart the results of this important undertaking.

b. Bill Messages and After-the-Fact Provision of Unbundled Rate Information is Insufficient

The extent to which utility bills can and should be unbundled are also disputed by the utilities. For instance, ConEd argues that, "display of commodity information, either in a bill message or as a separately stated component of a full-service customer's charges, may be accomplished in theory, depending on billing system flexibility, if the commodity cost is stated as a unit charge for bundled customers," but that, "[b]ecause of the way the rates are currently designed, displaying billing and metering rates as charges on the bills of full-service customers is neither appropriate nor practicable."[25] ConEd therefore argues that, prior to the

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[23] Staff Comments at 4.
[24] NFG Comments at 9.
[25] ConEd Comments at 15.

introduction of, "rate redesign and the introduction of flexibility in the appearance of the bill, [ConEd] proposes to provide its customers a periodic bill message with the relevant information."[26] NEM urges the Commission to reject ConEd's suggestion that a bill message is a sufficient substitute for unbundled rates. NEM asserts that consumers should be provided unbundled rate information for competitive products, services, information and technology on a line item basis so they can form a basis of comparison in shopping for a competitive provider. A bill message simply does not equal unbundled rates.

The utilities also argue that unbundled bill information about competitive services should only be provided after a competitive supplier of that product, service, information or technology has entered the market. RG&E states it will add an "informational line" showing the charge per meter once a competitive metering service provider commences service in its territory.[27] Similarly, NFG claims that, "breaking out contestable rate elements is useful only if customers can shop those contestable elements in a workably competitive market."[28]

NEM urges the Commission to reject the "after-the-fact" approach to unbundling bills urged by the utilities. Providing the unbundled bill information to customers only after new competitive entrants are doing business in a utility service territory will constitute a barrier to entry. If the utilities' embedded cost-based unbundled rate is not provided up front, it will discourage competitive entry and prevent customers from forming a basis of comparison between utility and competitive supplier offerings. As stated by the Commission, "a prerequisite to fostering retail market development is the establishment of unbundled rates for competitive or <u>potentially</u> competitive functions that reflect fully allocated costs (emphasis

[26] ConEd Comments at 17.
[27] RG&E Comments at 16.
[28] NFG Comments at 8.

added)."[29] The Commission further noted in its Order on Rehearing, "[t]he unbundling of rates is being pursued to provide utility price information to customers to allow them to compare utility rates with competitive offers."[30] NEM therefore asserts that consistent with Commission precedent the utilities must provide unbundled rate information on bills for competitive and potentially competitive products, services, information and technologies.

c. Implementing Unbundled Rates Will Educate Consumers

The utilities have also urged that another reason not to unbundle rates on customer bills is potential customer confusion. NFG claims that, "unbundling of services on a customer bill causes confusion among certain customers,"[31] and that, "a more detailed unbundling on the bill provided by the utility will lead to significant dissatisfaction among customers and should be avoided to the greatest extent possible."[32] ConEd also argues that, "[b]illing changes, even minor ones, can result in substantial customer confusion and increase calls and complaints to both the Utilities and the Department of Public Service."[33]

NEM urges the Commission not to be swayed by the utilities' doomsday prophecies that unbundled bills will only serve to confuse and dissatisfy customers. The implementation of embedded cost-based unbundled rates will undoubtedly be a perfect opportunity to increase customer education on the merits of competition. Furthermore, an unbundled bill will be an education to consumers, in and of itself, about the myriad of competitive services they can procure from alternative providers at lower cost.

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[29] Case 00-M-0504, Competitive Opportunities Proceeding - Unbundling Track, Order Directing Filing of Embedded Cost Studies, issued November 9, 2001, at 1.
[30] Order on Rehearing at 6.
[31] NFG Comments at 7.
[32] NFG Comments at 8.
[33] ConEd Comments at 37.

IV. Conclusion

NEM urges the Commission to reaffirm its commitment to implementing embedded cost-based unbundled rates and to insist on the proper presentation of competitive services on utility bills on an unbundled, line-item basis. NEM also urges the Commission to allow for the equitable recovery of stranded costs consistent with NEM's recommendations set forth herein.

Sincerely,

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Cc: Active Parties (via email)
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