STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to	**)**	
Enable Community Choice Aggregation Programs	**)**	**Case 14-M-0224**

COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM)[1] hereby submits comments on the Staff White Paper on Community Choice Aggregation and associated issues identified for comment pursuant to the Commission's Order Instituting Proceeding and Soliciting Comments issued on December 15, 2014, in the above-referenced proceeding. The Commission initiated this proceeding to supplement the information gathered in the proceeding on Reforming the Energy Vision as well as the Retail Markets Review proceeding on potential measures to improve the participation of residential and small commercial customers in retail energy markets and to facilitate customer engagement with green energy programs and distributed energy resources. The Commission hypothesizes that Community Choice Aggregation may support these goals. The Staff White Paper offers a proposed aggregation program structure under which consumers would participate on an opt-out basis, subsequent to municipalities enacting appropriate ordinances, identification of aggregation program goals, passage of a referendum by affected residents, and development of processes for data sharing and customer notification.

[1] The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting, and power line technologies.

I. Structuring Municipal Aggregation Programs in a Competitively Neutral Manner

Municipal aggregation programs, when properly designed in a competitively neutral manner, may potentially enhance mass market consumer participation in retail energy markets. The potential of an aggregation program to provide benefits to consumers is dependent on a number of factors. A significant point of demarcation between the programs listed as examples in the Staff White Paper and the introduction of an aggregation program in New York is that retail energy shopping, as well as the rules and processes for supplier and consumer participation, have been established for many years in this State. Of the program examples cited by Staff, the majority were introduced at the relative inception of retail energy shopping in a jurisdiction or are operated in jurisdictions that do not by law, or in practice, effectively permit consumer shopping for energy. This is an important distinction because *if New York decides to implement a municipal aggregation program a paramount concern must be to preserve the right and ability of consumers to exercise their choice of competitive supplier, and the rules must be structured so as to facilitate, not impede, consumer shopping under the mechanisms that currently exist today outside of an aggregation program*. Additional issues for consideration in developing a municipal aggregation program for New York include:

- The competitive suppliers currently serving New York consumers have invested private capital and resources in the State to serve their customers. Those private investments should not be undermined by the subsequent introduction of an aggregation program.

- The structure of an aggregation program must not impermissibly interfere with existing ESCO contracts with consumers and should not encourage consumers to

break their contracts with ESCOs, potentially subjecting them to early termination fees.

- Pre-existing ESCO customers must not be included in the aggregation, and their data should not be disclosed to the winning supplier bidder of the aggregation RFP.

- Small ESCOs must continue to be able to effectively compete in the marketplace. Small ESCOs likely will not have the financial wherewithal to compete in and win the RFPs for the municipal aggregation programs. There is an associated danger that large players will then be able to dominate the marketplace, causing it to become less, and not more competitive. Nor should the aggregation program result in the institution of a new monopoly in the municipality from which consumers are required to purchase energy.

- Consumer participation in aggregation programs must not be mandatory. Consumers in an aggregation must continue to have a choice of supplier and have the continued ability to switch suppliers.

- The longstanding and persistent barriers to increased retail energy market development identified in the Retail Energy Markets proceeding must be resolved, including utility billing system limitations, lack of real-time usage data from the utility, delays in the customer enrollment process, and limitations on ESCO products eligible for utility POR programs amongst others.[2] Implementation of an aggregation program, without having addressed these fundamental barriers to ESCOs offering a greater array of value-added services, will mean the programs will likely fail to meet

[2] See, e.g., Case 12-M-0476, NEM Comments, dated June 2, 2014.

their intended goal of increasing consumer participation and increasing consumer engagement with value-added energy services and products.

II. Policies for Sharing Customer Data in a Municipal Aggregation Program

With respect to consumer data, the confidential nature of this information does not change regardless of which entity is handling it, whether it be an ESCO, a utility or a municipality. In practical terms, a municipality should not need or have access to consumer data other than on an aggregated basis. It is only the winning ESCO bidder that should have access to customer-specific data. The winning ESCO bidder should be restricted to using any customer information it receives with respect to the aggregation solely for the purposes of performing the aggregation.

III. Aggregation Programs Should Not Be Subject to Commission-Determined Pricing Constructs

The Commission asked whether aggregation programs should be subject to price benchmarks, as is utilized in New Jersey, or include a fixed price for a defined term. The Commission also asked whether municipalities should be required to allocate a portion of the funds raised in the aggregation to clean energy or public benefit funds. As a general matter, these questions presuppose that the Commission and the municipality can guarantee the results of the aggregation in the form of price savings and/or price certainty and stability. This presumption is contrary to the structure and functioning of a robust retail energy market. Establishing a high degree of Commission control over aggregation program prices is antithetical to competitive markets. Requiring that an aggregation program achieve these results will, in effect, lead to the creation of another highly regulated rate regime for the municipalities, in addition to that in place for the regulated utility monopolies.

From a practical perspective, the proposal to require benchmarking as is used in New Jersey, will not work in New York because of fundamental differences in utility pricing constructs. The New York utilities currently use a monthly commodity rate. By comparison, the New Jersey utilities' commodity rate is relatively stable for longer periods because of the laddered auction approach to default service procurement that is used in that jurisdiction. Benchmarking against the more market-based New York utility commodity rate would be difficult to achieve because the rate is not known with certainty for extended periods. Nor should New York utility commodity rates be made less reflective of current market conditions.

IV. Affirmative Customer Consent to Switching Suppliers and Sharing Data

The Commission has had a longstanding policy underlying the Uniform Business Practices and implementation of retail choice programs that affirmative customer consent is required in order for a customer to change suppliers.[3] This requirement is memorialized in Section 5.K.1. of the Uniform Business Practices.[4] The Commission has also required affirmative consumer consent for the transfer of customer data in the form of customer lists.[5] The White Paper acknowledges the existence of these policies but then opines that affirmative consumer consent may be unnecessary in the context of municipal aggregation when subject to adequate consumer protections. (White Paper at 14-17). NEM suggests that prior to changing the Commission

[3] When the Commission previously considered and rejected the concept of opt-out auctions, it stated, "Our concern is with the consistency of such an approach with our UBPs (Section 5(k)), which generally consider transfers of customers without their affirmative consent to be slamming." Case 00-M-0504, Retail Policy Statement, issued August 25, 2004, at page 28. Previously, when the Commission was evaluating two NYSEG rate options and which option a customer should be defaulted on to in the case when they had not affirmatively chosen, the Commission stated, "No customer should have their supplier switched without the customer's explicit permission." Cases 01-E-0359, et. al., Order Adopting Provisions of Joint Proposal with Modifications, issued February 27, 2002, at page 12.

[4] "A change of a customer to another energy provider without the customer's authorization, commonly known as slamming, is not permitted. The distribution utility shall report slamming allegations to the Department on at least a monthly basis."

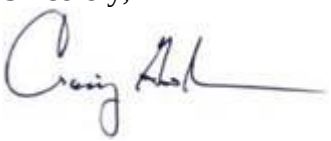
[5] Case 98-M-1343, Order Adopting Revised Uniform Business Practices, issued November 21, 2003, at page 21.

policy on affirmative customer consent to switch and to share data, particularly if applied only to the context of municipal aggregation, that due consideration be given to the potential anti-competitive impacts of certain competitors being provided with access to information and consumers on a different basis than others. Staff appears to largely rely on the interjection of the RFP process as a distinguishing factor in this regard. It is not clear that the addition of an RFP consultant will materially change the balance of consumer protections. If a change in policy of this nature is adopted, the impacts on consumers should be fully considered, suitable to the various means of customer engagement in the marketplace.

Conclusion

NEM appreciates this opportunity to offer comments on the Commission's consideration of the implementation of municipal aggregation programs.

Sincerely,



Craig G. Goodman, Esq.
President
Stacey L. Rantala
Director, Regulatory Services
National Energy Marketers Association
3333 K Street, NW, Suite 110
Washington, DC 20007
Tel: (202) 333-3288
Email: cgoodman@energymarketers.com;
srantala@energymarketers.com
Website-www.energymarketers.com

Dated: February 20, 2015.