STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of a Technical Conference on	)	
Winter Energy Pricing and Supply	)	**Matter No. 14-00933**

COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM)[1] hereby submits comments on the Commission's May 23, 2014, Notice Seeking Comments in the above-referenced matter. The issues identified for comment stem from the discussions at the Commission's May 15th Technical Conference which was initiated to, "examine how extreme winter weather caused tight energy supply conditions and contributed to gas and electric price spikes during this past winter."[2] The Commission received testimony from a diverse group of stakeholders at the Conference as to the underlying causes of the winter price spikes. The issues raised for comment are aimed at identifying future actions that could be taken to avoid such a result in the future. Many of the issues for comment appropriately focus on what should be done to ameliorate existing electric and gas infrastructure constraints. Of significant concern to NEM, are the questions related to making significant changes to the competitive retail market structure, which would potentially undo a decade of Commission decisions and precedent encouraging the creation and development of competitive retail market structures and competitive ESCO products.

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[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.

[2] Matter No. 14-00933, Notice of Technical Conference on Winter Energy Pricing and Supply, dated May 6, 2014.

We urge the Commission not to make drastic regulatory changes premised on the aberrant market conditions of winter 2014. We also urge the Commission to consider that the proposals on utility fixed price offers and increased utility hedging run counter to the achievement of the goals of the proceeding on Reforming the Energy Vision (REV) – namely achieving increased consumer animation and engagement in energy purchasing decisions – that can only be achieved through the provision of improved market pricing signals, not by blunting price signals even further. Indeed, a principle measure that should be relied upon to mitigate price volatility is active consumer participation in demand response (DR). We support the Commission's goal in the REV docket of creating more opportunities for consumer demand response. A number of market barriers have prevented competitive DR offerings from being offered on a more extensive basis.[3] We encourage the Commission to focus on removing current barriers to the competitive provision of DR and other value-added products as a predominant solution to avoiding future price spikes.

Extreme weather conditions, increased demand for natural gas, and infrastructure constraints combined to increase the wholesale price of electricity this winter.[4] The contributing factors to the price spikes in the wholesale electric market were beyond the control of competitive retail suppliers and the increases were of such magnitude that they were impossible for retailers to foresee or hedge against. Retail electric suppliers in turn had to pay these higher wholesale electricity prices, which price increases were reflected in the retail prices paid by consumers for variable rate products. Utility default service customers were not exempt from the effects of this winter – they have and will ultimately pay these higher prices, just not in as timely or as

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[3] See, e.g. Cases 12-M-0476 et. al., Comments of NEM, on actions to facilitate the development of value-added product and service offerings for mass market energy consumers, filed June 2, 2014.

[4] See NEM Media Brief, Winter 2014: Impact on the Energy Marketplace, available at: http://www.energymarketers.com/Documents/NEM_Winter_of_2014_MEDIA_BRIEF_Final.pdf

transparent a fashion as customers that purchased variable rate products from competitive suppliers.[5] NEM members proactively worked with their customers to mitigate the impacts of winter 2014, through increased consumer communications, price reductions and rebates, and alternative price offerings. Competitive suppliers are exceedingly concerned with ensuring that their customers are satisfied, in order to engender goodwill and earn repeat business.

The performance of the market should not be judged based on the anomalous experience of this winter alone. At times, a variable rate product will offer savings from the default rate. The variable rate product by its nature adjusts with the market conditions. At other times, a fixed rate product will be priced below market conditions, although the predominant value of such products is to offer long term price certainty. NEM is concerned that certain of the proposed rule changes, including requiring utility and/or ESCO fixed price options (FPOs), would have serious negative consequences for consumers inasmuch as it may create the false impression to consumers about the nature of these products, and it may cause consumers to sign up for these products in lieu of variable products that may actually serve them better. As market conditions change, depending on the terms of the fixed rate contract, consumers would potentially be constrained in their ability to avail themselves of variable products that could otherwise offer savings and value. Moreover, utilities should not now be re-entering additional competitive commodity businesses that the Commission previously ordered that they exit.

NEM shares the Commission's commitment to ensuring that consumers receive adequate disclosures about the terms of the products they purchase in the competitive retail energy marketplace. Just as consumers should understand the fixed or variable nature of a competitive product and the price

[5] Utilities have guaranteed cost recovery and the ability to defer and collect costs in subsequent periods whereas competitive suppliers do not, which completely skews the utility default service price from bearing a relation to current market conditions.

at which it is offered, consumers should also understand how often the utility rate is subject to change and whether and what costs are being deferred for later recovery.

It is with these issues in mind that NEM responds to the specific proposed rule changes suggested by the Commission.

1) The electric and natural gas utilities should not increase the amount of residential and small commercial and industrial customer load that is hedged.

The electric and natural gas utilities should not increase the amount of residential and small commercial and industrial customer load that is hedged. It bears noting at the outset that utility practices already reduce the levels of wholesale energy market volatility seen by consumers because mass market consumer bills are based on average prices observed over the utility billing period, not on hourly NYISO prices. As was discussed at the Technical Conference, certain utilities still also have longstanding legacy contracts in place, which also constrains price volatility. Accordingly, there are other mechanisms affecting utility pricing that smooth price volatility without increased reliance on utility hedging.

The Commission has been keenly aware of the negative impacts of utility hedging on competitive retail market development and has sought to limit those impacts. In its Retail Policy Statement in 2004, the Commission recognized that, "While hedging can provide useful protection against market price variation, requiring utilities to enter into ongoing, long-term, full-service contracts for its existing commodity customers may be inconsistent with the movement toward a fully competitive marketplace."[6] At that time, recognizing the level of competition achieved for large C&I customers, the Commission determined that existing hedges for these

[6] Case 00-M-0504, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets, August 25, 2004, at 33.

customers should be permitted to expire. The utilities were permitted to continue to hedge using a balanced portfolio approach for mass market customers given the nascent, developing state of competition for these customers, for the purpose of "mitigating price volatility,"[7] with the expectation that hedging for these customers would eventually be eliminated as well.[8] This was premised on the need for mass market consumers to be afforded greater protection from volatility, through the increased availability over time of "real-time demand response" and other "equivalent hedged services." Notably, the newly-initiated REV proceeding should result in just that outcome.

When a utility hedges against future events, whether physically by putting gas into storage, entering into short and long term physical supply contracts, or financially by purchasing financial instruments on the futures market, financial swaps, puts, calls or any other manner of financial hedge, it is doing so with the regulated assets of the residential consumers, at virtually no risk to the utility or its shareholders. In a rising market, hedges will take on the nature of appearing successful, while in a falling market the same hedging activities may result in higher prices for customers. Regardless, if a utility is actively engaged in the commodity market with no risk of loss for failure to perform and the market itself fails to perform and allocates both risks and resources inefficiently, it distorts what is happening in the market and discourages active ESCO market participation.

Also significant, increased utility hedging distorts the pricing signals seen by consumers thereby deterring demand response behavior. This is particularly important in view of the REV

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[7] See also Case 06-M-1017, Order Requiring Development of Utility-Specific Guidelines for Electric Commodity Supply Portfolios and Instituting a Phase II to Address Longer-Term Issues, issued April 19, 2007.

[8] Utilities were warned against entering into long term contracts for the purpose of retaining market share or otherwise impeding the development of the competitive retail market. Page 34.

proceeding and the commitment to achieving increased consumer engagement in energy usage decisions and increased deployment of DER resources. Increased utility hedging runs contrary to the Commission's REV goals as it disincents consumer engagement in demand response because it prevents the consumer from seeing and responding to timely price information that would otherwise support changes in energy usage behavior.

The Commission additionally asked what criteria should be used to determine the appropriate amount of utility hedging. NEM submits that an index to measure electric price volatility is not needed. NEM is concerned that this question implies that some sort of regulatory intervention could be imposed if utility pricing did not comport with the index. NEM strongly urges the Commission to avoid the threat of regulatory intervention to interfere with market-based pricing signals. The Commission also previously declined to prescribe a strict standard for monitoring the appropriate amount of utility hedging, finding that utilities should be offered latitude in responding to changing circumstances and that mandatory targets could be counterproductive.[9]

2) Utilities should not be required or permitted to offer a fixed price option to residential and/or small non-demand metered commercial and industrial customers.

Utilities should neither be required nor permitted to offer a fixed price option to residential and/or small non-demand metered commercial and industrial customers. When a utility offers a fixed-price product, particularly if it is backed by "no-risk" capital (e.g. ratepayer guarantees), it places all other competitors that rely on fully "at risk" capital at a significant, possibly definitive, competitive disadvantage. Indeed, authorizing a utility to compete against non-rate-based entities in its own exclusive franchise service territory with products and services that are

[9] Order 06-M-1017, Order Establishing Electric Supply Portfolio Standards, Goals, and Reporting Requirements, issued February 26, 2008, at 9.

otherwise competitively available is contrary to the intent of New York Public Service Commission law and public policy that has existed for many years.

In 2005, when ordering the termination of CenHud's gas FPO, the last gas utility to make such an offering, the Commission found, "The FPO therefore distorts the market, acts as a barrier against ESCO entry into the market, and is an obstacle to innovation in the market."[10] Relying upon its determination in the Retail Policy Statement,[11] the Commission found, "a fixed price supply option is a service that could and should be developed and offered by the competitive marketplace."[12] With respect to the electric utilities, the Commission likewise affirmed in the course of its review of NYSEG's FPO, "that customers will ultimately best be served by a competitive market for retail electricity service, in which fixed price offerings are provided exclusively by ESCOs, while the utility provides only a default service."[13] Attendant with the final review and termination of the NYSEG/RGE FPO, the Commission stated, "A utility FPO poses unique issues in our efforts to provide greater benefits to residential consumers from the retail electricity markets. We are concerned that the utility fixed offer may impose, without adequate notice, higher costs on consumers than utility variable price offers for comparable periods."[14]

The utilities should not be re-entering additional competitive commodity merchant function roles that the Commission appropriately required them to exit years ago. Rather, to address the price volatility observed in the winter 2014 and going forward, utilities should focus on their core

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[10] Case 05-G-0311, Order Directing the Future Termination, Subject to Conditions, of a Fixed Price Offer, issued July 22, 2005, at 7.

[11] Case 00-M-0504, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets, issued August 25, 2004, at 40.

[12] CASE 05-G-0311, Order Directing the Future Termination, Subject to Conditions, of a Fixed Price Offer, issued July 22, 2005, at 8.

[13] Case 05-E-1222, Order Adopting Recommended Decision with Modifications, issued August 23, 2006, at 8.

[14] Cases 07-E-0479 and 03-E-0765, Order Establishing Filing Requirements, issued January 20, 2009, at 2.

competency of ensuring the reliability of the electric and natural gas delivery infrastructure. Consistent with the REV goals, utilities should ensure that the delivery system is sufficiently resilient and robust to allow the participation of competitive distributed energy resources, whose integration into the system will allow for the mitigation of price volatility such as was encountered this winter. Utilities should be incented to focus their resources on system maintenance, upgrades and security and to transition out of competitive commodity merchant function roles.

3) ESCOs should not be required to offer a fixed price option to residential and/or small commercial customers as a condition of their certification to provide commodity in New York.

ESCOs should not be required to offer a fixed price option to residential and/or small commercial customers as a condition of their certification as a commodity supplier in New York. As is evident from the Commission's Power to Choose website, there are many ESCOs that are currently offering fixed price options to customers consistent with their business plans and consumer preferences. Consumers are currently able to choose an ESCO FPO, along with a number of other value-added options, without a Commission mandate that a FPO be made available.

A mandate for ESCO FPOs would be a costly burden that should not be imposed on the competitive marketplace. ESCOs incur significant costs and risks to offer hedged pricing products such as FPOs. If these increased costs and risks become a requirement of doing business in the State of New York, it will make it uneconomic for many ESCOs to participate in the market. In turn, when there are fewer market participants competing to serve consumers, it will make the market less competitive, not more so.

Likewise, an ESCO FPO mandate would inappropriately shift the retail market toward offering a product that is focused on price stability, when many consumers value other product attributes including opportunities for savings, green options, etc. In times of rising prices, a FPO may result in savings. However, during periods when prices are declining, a FPO will not reflect those lower prices. A regulatory preference for FPOs would shift consumer behavior to products that may not benefit them in the long run as much as a variable rate product may have. This is the essence of choice - letting the consumer decide the optimal product for their preferences, rather than dictate a decision by regulatory fiat.

In addition, as mentioned previously, if the fundamental goal is to provide consumers with protection from price volatility, then NEM suggests that the Commission focus on measures that can improve ESCOs ability to offer demand response and other value-added product offerings such as is being considered in the Retail Access docket.[15]

4) Consumers would benefit from more information about the variability of utility rates to help them make informed decisions about their supply purchase options.

NEM agrees with the Commission's suggestion that consumers be provided with more information regarding the variability of utility rates to help them in making informed energy purchasing decisions. Consumers would benefit from education about the variable nature of energy market pricing in general. The basic information an educated consumer needs to know includes their usage and their current applicable utility rate broken down by function. The current applicable utility rate should be conveyed in a transparent manner: 1) be fully unbundled on an embedded cost basis, 2) disclose whether and how utility hedging is reflected, 3) disclose how frequently the utility rate is subject to change, 4) disclose that the rate is subject to deferrals

[15] See note 3 supra.

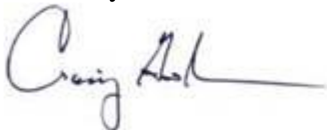
with interest; 5) disclose that the utility rate is subject to adjustment for true-ups, and 6) disclose what current rate adjustments are in effect. These are vital pieces of information to which a consumer must have access to allow informed comparisons with competitive ESCO products. Moreover, this level of consumer understanding and education is a prerequisite for achieving the consumer engagement envisioned in the REV proceeding to facilitate participation in competitive demand response services.

NEM notes that the Pennsylvania PUC issued a number of consumer alerts and created consumer videos for its choice website in response to the winter price spike event. This included basic information about differences in variable and fixed rate products and benefits of shopping for energy supply. This approach may be beneficial for New York energy consumers as well.

Conclusion

NEM appreciates this opportunity to offer comments on the Commission's inquiry into the winter energy price spikes, measures that can appropriately be taken to avoid these conditions in the future, and how to do so consistent with goals enunciated in the REV proceeding.

Sincerely,



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