

Retailers want rehearing of New York PSC price order

NEM, RESA, individual firms make slew of arguments

Retailers asked the New York PSC last week for rehearing on its order mandating guaranteed savings for mass-market customers (PMT, [Feb-24](#)). The industry took the commission to court and won a temporary restraining order that has kept the rules from going into effect so far.

The requests last week focused on trying to get the regulator to change the order's policies, whereas the earlier litigation was focused on when it went into effect. While much of the focus on the earlier litigation was on the order's cost requirements, it also proposed changes to how the PSC disciplines bad actors in the market. The changes would move cases to the "order to show cause" stage much faster.

Direct Energy asked the PSC to clarify under which circumstances it would use its discretion to disqualify retailers from operating in New York. Previously, energy service companies (ESCOs) could get a written notice of any alleged violation that included a reasonable cure period before sanctions could be imposed, Direct said.

Many rule violations are relatively minor or inadvertent and in such cases, Direct said it would have reached out to staff to seek guidance on how to proceed.

"We have never been concerned that doing so would expose us to potentially crippling sanctions or even the loss of our authority to do business in New York," the firm said. "Rather, we have erred on the side of taking the course of action that will result in the best experience and result for the customer or customers involved.

"We suspect that most if not all successful ESCOs are also working with staff in this manner."

Now retailers have to worry that the tendency to self-report might be punished rather than rewarded, the firm said. That can be fixed if the PSC agrees to not impose the more extreme penalties, such as suspension or a loss of a license, without a chance to fix the issues unless the PSC finds that the conduct is either willful violation or a reckless disregard of the rules.

Direct also asked that the PSC not impose its harshest sanctions for a "material pattern of consumer complaints" unless those complaints involve material violations of the rules and the PSC agrees with them.

The firm also argued against the requirements on cost guarantees, saying the PSC does not have the authority to regulate prices that ESCOs charge. It can only regulate the prices utilities offer, which are governed differently under New York's Public Service Law.

The National Energy Marketers Assn (NEM) asked for rehearing, arguing the PSC moved without notice and without giving parties a chance to be heard in making the major changes it did to the market.

"The order imposed sweeping and draconian changes on the industry that require the industry to totally revamp its operations, financial structure and business models with 10 days' notice," NEM said. "This injury was compounded by the fact that, during the narrow 10 day window, the commission was issuing and then reissuing revised compliance guidelines that ESCOs would have been forced to rely on to conform their business practices, business models and product slate."

The order essentially forced retailers to make retail sales below wholesale prices and imposed major changes in how firms could be fined. No industry can operate, or even reasonably anticipate such sweeping and improper

Retailers want rehearing of New York PSC price order

continued from preceding page

changes to its fundamental business model or economics, NEM said.

The association argued the order was wrong to conclude ESCOs' commodity-only service cannot provide value to consumers. "Some ESCO offerings are indeed designed to be price savings products. However, others offer price certainty," NEM said.

"Some consumers place a premium on using green energy. Others want a commodity product bundled with home heating repair, so they have peace of mind during the winter months. Still others want energy efficiency products. Some customers want loyalty points and gift cards."

Rates not unbundled

The PSC has so far not fully unbundled utility delivery

rates to separate out all of the costs associated with commodity and commodity-related services. Utilities' rates need to reflect the true cost of providing 24/7, no-notice service to consumers or the PSC will not have a basis on which to measure retailers' prices, NEM said.

The Retail Energy Supply Assn (RESA) and IGS Energy sought rehearing and argued the PSC lacks the authority to regulate retailers' prices. The legislature has never granted the PSC the power to regulate prices offered by private competitors of utilities, nor has it given the commission the authority to require 30% renewables.

The two also argued the PSC's changes to its enforcement process, or what they call a "one-strike-you're-out" rule, are unfair and, like the guaranteed savings requirements, were not noticed enough. "The commission has provided no evidence to justify such a harsh rule," RESA and IGS said.

"In fact, the commission's own published statistics reveal that only a small percentage of ESCOs are accused of engaging in deceptive sales or marketing practices."