

**BEFORE THE
STATE OF NEW YORK PUBLIC SERVICE COMMISSION**

In the Matter of Regulation and Oversight of Distributed Energy Resource Providers and Products	:	
	:	Case No. 15-M-0180
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In the Matter of Eligibility Criteria for Energy Services Companies	:	
	:	Case No. 15-M-0127
	:	
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In the Matter of Retail Access Business Rules.	:	
	:	Case No. 98-M-1343
	:	

**COMMENTS OF THE EXELON COMPANIES
IN RESPONSE TO
STAFF PROPOSALS ON ESCO ELIGIBILITY AND
REGULATION AND OVERSIGHT OF DER PRODUCTS**

In response to the State of New York Public Service Commission (“Commission”) July 28, 2015, *Notice Seeking Comments on Proposed Standards*, as issued in the above-docketed proceeding, Exelon Corp. – including its subsidiaries Constellation NewEnergy, Inc. (“CNE”), Exelon Microgrid, LLC, Constellation Energy Nuclear Group, LLC, Nine Mile Point Nuclear Station, LLC, R.E. Ginna Nuclear Power Plant, LLC, Exelon Generation Company, LLC, Baltimore Gas and Electric Company (“BGE”), Commonwealth Edison Company (“ComEd”) and PECO Energy Company (“PECO”) (collectively, “Exelon”) – hereby submits its Comments on the Staff Proposals related to eligibility criteria for energy services companies (“ESCOs”) and the regulation and oversight of distributed energy resource (“DER”) providers and products.

INTRODUCTION

Exelon appreciates the dedication of the Commission and Staff to reforming the energy vision by investigating potential options for fine tuning the regulation of ESCOs and developing oversight/regulation of DER providers and products to move the industry as a whole towards its REV objectives.

Exelon has a national retail energy platform that offers electric and natural gas commodities, energy efficiency, load management, demand response, behind-the-meter renewable development, and other DER applications. Exelon's competitive retail customers include almost two million residential customers, as well as more than 160,000 commercial, industrial, public sector and institutional customers – located in New York and throughout the U.S. – including two-thirds of the Fortune 100. Moreover, an Exelon subsidiary recently developed one of New York's largest solar projects to date. Specifically, CNE under a 20-year power purchase agreement completed construction of a 2.7 MW on-site solar installation for Owens Corning at its thermal and acoustical insulation plant in Feura Bush, NY. The company is also one of the largest competitive power generators in the U.S., with approximately 35,000 megawatts (“MWs”) of owned capacity, comprising one of the nation's cleanest power generation fleets. As part of that fleet, Exelon operates clean, base load resources in New York State that produce over 2,500 MWs of generation and over 10% of the energy consumed in New York State annually; operate at capacity factors over 90 percent; employ approximately 1,700 people; and are critical to the State and region in realizing its long-term GHG and economic goals. Exelon also currently operates three EDCs in the U.S.: ComEd in Illinois, PECO in Pennsylvania and BGE in Maryland. With this expansive cross-industry perspective, Exelon's perspective can serve as a critical resource with respect to the Commission's reshaping of the energy vision in the State of New York.

Exelon participated in Phase I of the REV proceeding, contributing Guiding Principles in furtherance of the Commission's REV goals. Exelon's Guiding Principles are just as relevant to the review of existing ESCO regulatory requirements and the development of a set of regulations applicable to DER providers that will deliver robust products and services to New York customers. Our larger framework principles center upon ensuring reliability, greenhouse gas emission reductions, cybersecurity for the grid, and cost-effective policy making through benefit cost

analysis. Rules governing ESCOs and DER providers should further promote these concepts. These core principles are not only paramount to the success of the REV vision, but also to its individual components, including establishing rules of the road for ESCOs, DER providers and customer engagement. The following of Exelon’s REV principles are particularly relevant to this inquiry:

Maintain and Protect Competitive Retail Model. In any redesigned REV market, competitive customer choice must be maintained, and the market structure must support the ability to offer competitive services, including DER.

Management Flexibility and Dynamic Efficiency. The final model adopted must: allow EDC management the ability to adjust to changing circumstances; support and encourage innovation; allow timely implementation of technological advances; promote continuous efficiency improvement; and support long-term value for customers.

Protect Competitive Retail Model and ESCO Customer Engagement. The REV must ensure that growth of competition is protected and not hindered by directly or indirectly encouraging the perception that the EDC is the only “electric company,” particularly in the eyes of residential and small C&I customers.

COMMENTS

Staff has set forth thoughtful proposals for both ESCO eligibility and oversight and regulation of DER providers to promote a positive customer engagement. Increasing requirements for participation in New York’s energy marketplace to more closely match those of other jurisdictions will benefit Choice by increasing confidence in the marketplace. The following issues identified below are presented in the order of importance to Exelon. The exclusion below of a specific proposal or issue should not be construed as an endorsement. Exelon supports the Comments filed by the Retail Energy Supply Association and encourages the Commission and Staff to consider these comments as supplemental to those of RESA. Moreover, Exelon has consolidated its comments on the two proposals, however, special care is required with regard to adopting

regulations for DER providers. Specifically, as detailed more fully below, requirements for DER providers, as compared to those for ESCOs, need to be equally or more stringent because the product offerings are long term, capital required and could impact system reliability.

Issue 1: Proposal to Include Marketing Standards for DER Providers in the UBP (Staff Proposal on DER Standards at pp. 12-13) and Uniform Business Practices Redline at pp. 15-16)

The Staff proposed rules applicable to DERS describe marketing standards that DERS and their marketing representatives must follow when marketing products and services which are associated with DER products and services sold to the DSP. However, a review of Section 4 of the UBP-DERS reveals that the standards especially for telemarketing and door sales are much more lenient than the same marketing standards applied to ESCOs. This endpoint is unreasonable as the marketing forums are similar and the product offerings longer term in nature, capital intensive and could impact local system reliability. The provision of DER products is a far more complicated commercial transaction than a straight short-term commodity offering. At minimum, ESCOS and DERS providers should be subject to the same and equivalent marketing standards for market consistency and confidence.

Moreover, Exelon agrees with RESA's comments on the proposed marketing standards for DER Providers. To achieve regulatory parity, the same retail marketing standards (and regulatory oversight) should apply regardless of the retail product offered. If anything, additional scrutiny should apply to the standards applicable to DER providers because DER products require material capital investment. In addition, Exelon agrees with RESA that to the extent ESCOs provide DER products, which could be bundled with traditional ESCO offerings (as Staff envisions), the two tracks of marketing standards will create competitive disadvantages to the extent the more stringent ESCO marketing standards apply to the bundle.

Issue 2: Proposal to Include Standardized Definition of "Fixed Price" and "Green Energy" in the UBP (Staff Proposal on ESCO Eligibility pp. 6-7 and 26 and Uniform Business Practices

Redline at p. 3)

Product innovation and differentiation are fundamental to competition. The focus of REV is in part to increase products and services to consumers and thus proposal should be evaluated in part through a lens of the potential for a proposal to limit customer choice. Certainly, defaulting to standardized energy products contains this potential. As recently outlined in DEFG's 2015 ABACCUS Report, Choice markets in North America are in the process of transitioning away from their initial stage of competition (where Suppliers compete solely on the basis of price) to more mature, developed markets where Suppliers compete on service and through innovation. For these reasons, Exelon generally disagrees that regulatory codes should contain definitions of competitive products.

Included in Staff's proposals, are standardized definitions for "fixed price" and "green energy" to the definitions section of the redlined UPB:

Fixed Price – An all-inclusive price that will remain the same for the term of the contract.

Green Energy – Electricity from technologies identified by the Commission as RPS eligible.

Staff supports these additions by arguing that standard definitions of these terms would make it easier for consumers to compare products and services, thereby facilitating vigorous competition and eliminating customer confusion.

These definitions are unnecessary and instead are likely to interfere with attainment of the REV goals. REV offers the potential for ESCOs and DER providers to offer customers new and innovative products. For the REV to succeed these products must have the potential to be dynamic and evolve over time. Defining these products runs counter to enabling innovation and a full platform of products and services from which customers may choose. Moreover, the proposed definition of "green energy" (which appears to possibly not include environmental attributes),

implicitly creates policy around environmental attributes when such is not the focus of this proceeding. Environmental attributes are an important means to monetize the value of carbon reductions and such a tool is too important to dispense with inadvertently in an attempt to define a consumer product. To the extent Staff proposes disclosure to customers of the specific energy source fuel types prior to the term of service. Such a requirement is not informed by how the renewable market is currently functioning, namely: suppliers do not always (or even often) know in advance the percentage of customers that will choose from various alternative energy supply products.

To the extent the Commission wishes to engage in product definitions despite the serious potential to reduce options for customers, the Commission should open a proceeding dedicated to products and marketing practices.

Issue 3: Proposal to Include Standardized Contracts and Standardized Contract Terms in the UBP (Staff Proposal on ESCO Eligibility pp. 7-8 and Uniform Business Practices Redline at p. 25)

Staff proposes to amend the UPB to require a single standardized contract for residential customers. Staff also proposes specific standardized contract language for energy commodity services on key contract provisions for non-residential customers, including: pricing and early termination fees; consumer protections; and procedures applicable to address disputes. Exelon disagrees that mandating a single form residential energy supply contract for ESCO's is appropriate. Standardized contracts are antithetical to a competitive marketplace and will only serve to diminish competition. The ability to differentiate and customize contracts to the services offered creates competitive advantages for suppliers that benefit customers – suppliers that dedicate the resources and flexibility to successfully develop consumer-friendly contracts will – justifiably – have an advantage over the competition.

Issue 4: Proposal to Add Additional Application Requirements (Staff Proposal on ESCO Eligibility pp. 4 and 25 and UBP Redline at pp. 6-8)

Staff proposes to add additional application requirements for ESCOs that would assist in assessing ESCO applicants. Proposed additional application requirements include: disclosure of decisions or investigations in other states that affect, or may affect, the ESCO's ability to operate; identification of methods by which the Applicant intends to market to customers in New York; and the number of complaints on file with the public utility commissions in other states. Exelon supports increasing the requirements for prospective ESCO. Additionally, Exelon believes that it would be appropriate for the Commission to require assurance of financial integrity in the form of a bond. Bonding or Security requirements are a standard component of the licensure requirements in many other Choice jurisdictions. Given the transformative change envisioned in the REV, New York residents need confidence in the energy marketplace.

Issue 5: Proposal to Add An “Application Fee” (Staff Proposal on ESCO Eligibility at p. 5 and Uniform Business Practices Redline at p. 6)

Staff acknowledges that ESCO's are not required to pay an application or similar fee to operate in New York, unlike in many other states. Staff proposes an “Application Fee” collected by utilities for the purpose of creating a revenue stream associated with market-based services that EDCs may provide under the REV model. The stakeholders vigorously discussed this issue during the ESCO Requirements Collaborative. Nationwide, Application Fees and regulatory fees are generally assessed on electricity providers by the regulatory or taxing authority. Exelon generally supports the practice of Suppliers contributing to the cost of administering the regulation of the market. Administration fees create an opportunity for new ESCO's to demonstrate seriousness of their intent to rollout service. Application fees are not intended to compensate utilities for the services they sell. Revenues for platform services provided by utilities from users of the distribution grid are the subject of the Phase II proceeding and should remain there, where cost allocation and rate design expertise is at the ready. As presented by Staff, the proposal of an Application Fee for ESCOs should be rejected.

Issue 6: Proposal that Industry Develop a Code of Conduct (Staff Proposal on ESCO Eligibility at p. 5, Staff Proposal on DER Providers and Products at 9)

Staff proposes that the industry, with assistance from Staff, develop a Code of Conduct containing specific standards and requirements for ESCOs to participate in retail energy markets to submit to the Commission for approval. Staff similarly proposes to work with the DER industry and other interested stakeholders to develop a DER Code of Conduct. The proposed Codes of Conduct would ultimately supersede the UBP, but that the process would be gradual and would likely move faster or slower based upon specific issues. Exelon welcomes and supports Staff's proposal. The invitation of this level of industry participation in developing the rules of the road is consistent with the transformative nature of the REV. Providing industry stakeholders a meaningful opportunity to shape the rules that will govern their industry encourages market development.

Issue 7: Proposal to Revise ESCO/Utility Dispute Resolution Procedures and to Create DSP/DER Provider Dispute Resolution procedures (Staff Proposal on ESCO Eligibility at p. 5, UBP Redline at pp 47-49, Staff Proposal on DER Providers and Products at 9)

Staff proposes to create a dispute resolution process for DER providers. While currently the dispute resolution process for ESCOs is contained in the UBP, Staff proposes to modify the ESCO dispute resolution process in the UBP to coincide with what is being proposed for DER providers. For instance, Staff proposes creating a standard simple form on the agency's website to be used for all informal complaints, and establishing an expedited process to be used for emergencies that would reduce the steps needed to take action. In general, Exelon is supportive of the suggested changes to the procedures, including the increased focus on the Informal Complaint process. Exelon suggests that because a fast track is available for emergencies, all complaints should be required to start with the informal procedures.

Issue 8: Proposal to Require ESCOs to Identify and Provide Information on Energy Brokers (Staff Proposal on ESCO Eligibility at p. 10, UBP Redline pp 2, 8)

Staff proposes to expand the definition of Broker in the UPB to include non-ESCO entities that sell lists of potential customers to ESCOs. Staff also proposes to require ESCOs to identify and provide contact information for entities, including energy brokers, that market to customers on the ESCO's behalf or sell potential customer lists to the ESCO. Exelon disagrees with these proposed changes. The PSC has authority over Energy Brokers. Any entity engaged as an Energy Broker should be required to register directly and independently with the Commission. Entities that sell lists to ESCOs do not engage in any customer marketing activity on behalf of an ESCO or on their own. They simply provide a listing of customer telephone numbers. Staff's desire to insulate consumers from the actions of Energy Brokers is not cured by its proposal to impose reporting requirements on ESCOs.

Issue 9: Proposal Regarding Consequences Applicable to ESCOs with a Material Pattern of High Complaints (Staff Proposal on ESCO Eligibility at p. 8, UBP Redline pp 10)

Staff proposes to explicitly detail the Commission's authority to impose consequences on ESCOs with a material pattern of consumer complaints. After due process, the Commission could direct such ESCOs to file a customer service improvement plan or could impose other consequences such as suspending the ESCO's ability to enroll new customers. Exelon is supportive of this proposal because it offers the type of strong regulation necessary to ensure confidence in competitive markets.

CONCLUSION

Exelon appreciates this opportunity to submit its Comments in response to the July 28, 2015 Staff Proposals related to eligibility criteria for ESCOs and the regulation and oversight of DER providers and products will assist the State of New York in both promoting the development of the REV for the ultimate benefit of New York's consumers.

Respectfully submitted,

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On Behalf of the Exelon Companies

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