

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 24, 2014

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Garry A. Brown
Gregg C. Sayre
Diane X. Burman, dissenting, in part

CASE 12-M-0476 - Proceeding on Motion of the Commission to Assess
Certain Aspects of the Residential and Small
Non-residential Retail Energy Markets in New
York State.

CASE 98-M-1343 - In the Matter of Retail Access Business Rules.

CASE 06-M-0647 - In the Matter of Energy Service Company Price
Reporting Requirements.

CASE 98-M-0667 - In the Matter of Electronic Data Interchange.

ORDER GRANTING REQUESTS FOR REHEARING AND ISSUING A STAY

(Issued and Effective April 25, 2014)

BY THE COMMISSION:

INTRODUCTION

On February 25, 2014, this Commission issued an Order
Taking Actions to Improve the Residential and Small Non-
residential Retail Access Markets in the above captioned
proceedings (February Order). The February Order required
energy service companies (ESCOs) and utilities having tariffed

provisions for retail access¹ to take certain actions. Pursuant to Public Service Law §22 and 16 NYCRR §3.7, three parties filed petitions in response to the February Order on March 27, 2014, and one party submitted a filing on March 31, 2014 (collectively, the Petitions).² The Retail Energy Supply Association (RESA) filed a Petition for Rehearing, Reconsideration and Clarification. Constellation NewEnergy, Inc. (Constellation) filed a Petition for Rehearing, Reconsideration and Clarification. The National Energy Marketers Association (NEMA) filed a Petition for Clarification and/or Rehearing. The NEMA Petition also asked that this Commission extend the effective date for ESCO compliance with the February Order. On March 31, 2014, Great Eastern Energy, an ESCO, filed Comments and Request for Clarification Regarding the Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy markets in New York State.³ In each Petition, the parties raise concerns with the resolution of certain issues in the February

¹ These utilities include: Consolidated Edison Company of New York, Inc.; Orange & Rockland Utilities, Inc.; Central Hudson Gas & Electric Corporation, KeySpan Gas East Corporation d/b/a National Grid, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Rochester Gas and Electric Corporation, and the Brooklyn Union Gas Company d/b/a National Grid NY (collectively, the Utilities).

² As stated in the Notice Concerning Petitions for Rehearing and Reconsideration (Rehearing Notice) issued in the above captioned cases on April 11, 2014, these petitions will be treated as timely petitions for rehearing, as they were filed within the 30-day period prescribed in PSL §22 and 16 NYCRR §3.7(a).

³ Although Great Eastern Energy submitted its filing outside of the 30-day period prescribed for petitions for rehearing, we will consider the issues it raised along with the issues raised in the other parties' petitions.

Order and with the new or modified requirements set in place in the February Order.

In this Order, we grant the procedural requests for rehearing and signal our intention to address the merits of each of the claims brought in the Petitions in subsequent orders. Further, by this Order, we stay certain requirements of the February Order until the merits of the related issue(s) raised in the Petitions are addressed in a subsequent order.

DISCUSSION

In the February Order we took a number of actions to improve the operation of New York State's retail energy markets serving the State's two most numerous groups of customers, residential and small non-residential customers. Many of our actions in the February Order work in concert with each other. In the Petitions, RESA, Constellation, NEMA and GEE raise multiple concerns with a number of actions taken in the February Order. Given the breadth and complexity of the February Order and the number of concerns raised in the Petitions, it is reasonable to grant rehearing pursuant to PSL §22 at this time and, in future orders, address the merits of each of the claims set forth in the Petitions.⁴

Pursuant to 16 NYCRR §3.7(c), any party to the above captioned proceedings may file a response to the petitions for rehearing. Further, parties may submit comments on the issues raised in the petitions in response to Notices of Proposed

⁴ Our review of the issues raised in the Petitions may be informed by developments in Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, which was addressed at the April 24, 2014 Commission session. In that proceeding, we will be reviewing the role of various market participants, including ESCOs, in the provision of energy-related services to consumers.

Rulemaking which will be published in the State Register on April 30, 2014. Multiple Notices of Proposed Rulemaking will be published to allow this Commission flexibility in when to address the numerous issues raised in the Petitions.

Notwithstanding the multiple notices, interested parties need only file one set of comments. Those comments will be considered in the resolution of the issues raised in the Petitions, whether that is in one or multiple orders. Parties will have until June 16, 2014 to submit responses to the Petitions and comments pursuant to the Notices of Proposed Rulemaking.

Once we receive and review the anticipated comments, we will make determinations on the merits of the issues raised in the Petitions. However, we recognize that, when we do address the merits of the issues raised in the Petitions, we may modify the actions we took in the February Order. Requiring ESCOs and Utilities to implement certain actions as directed in the February Order, with the possibility that their efforts may have to be repeated following subsequent orders, is not in the public interest. Furthermore, repeated changes to the orderly workings of the retail energy market may result in customer confusion and harm. Were the process of implementing certain portions of the February Order at present to cause customer confusion and harm, then the purpose of the February Order, the improvement of the retail energy markets, would be defeated.

Accordingly, we stay the provisions of the February Order enumerated below. The stay of each provision will only remain in effect until the issuance of a subsequent order that addresses the issues raised in the Petitions related to that provision. Once this subsequent order is issued, the stay granted here is lifted. At that time, the original provision will be effective, unless that subsequent order directs

otherwise. Any actions not enumerated below remain in effect as stated in the February Order.⁵

1. The requirements pertaining to independent third party verification (pp. 27-30);⁶
2. The requirements pertaining to ESCO service of customers participating in the Home Energy Assistance Program (HEAP) and/or utility administered low income assistance programs (pp. 22-27, Ordering Clause 7);
3. The requirement that the Utilities submit and begin to use revised service termination notices and "charge back" to an ESCO any differential described in PSL §32(5)(d) (pp. 19-20, Ordering Clause 6);
4. The requirement that ESCOs file quarterly historic prices with the Secretary with regard to prices for small non-residential customers (pp. 16-18).
5. The revised requirements regarding ESCO price reporting on the Power-to-Choose website, with regard to small non-residential customers (pp. 18-19).
6. The requirement that Utilities implement ESCO-specific purchase of receivables rates (pp. 36-38);
7. The requirement that ESCOs comply with the revised Uniform Business Practices (UBP)⁷ as of May 26, 2014

⁵ On April 21, 2014, RESA submitted a request that "the effective date" of "all of the individual items that are applicable to the ESCOs" in the February Order be "delayed until, at a minimum, ninety (90) days from the issuance of a final determination from the Commission that clarifies and establishes the exact scope of each of the ESCO requirements adopted in the Order." The stay of the enumerated provisions of the February Order is appropriately responsive to RESA's request and no further action need be taken with respect to that request.

⁶ Page numbers refer to the pages of the February Order on which the stayed provisions were discussed.

⁷ To the extent a stayed provision of the UBP reflects a modification of a pre-existing provision of the UBP, ESCOs shall continue to comply with the provision of the UBP in effect immediately prior to the February Order.

with regard to the following revised provisions (p. 27, Ordering Clause 1):

- a. Section 1, definition of "ESCO marketing representative";
- b. Section 1, definition of "Small non-residential customer";
- c. Section 1, definition of "Verification Agent";
- d. Section 2.D.3, the requirement that ESCOs file quarterly historic prices with the Secretary, as it pertains to prices for small non-residential (commercial) customers;
- e. Section 2.D.4.d., the revised requirements with regard to ESCO price reporting on the Power to Choose website, with regard to small non-residential customers, and the portion of that provision prohibiting the posting of introductory, promotional or teaser rates;
- f. Sections 4.C.2.a.11 and 4.C.2.b.7, the provision by the utility to the ESCO of information regarding whether a customer receives HEAP benefits or is enrolled in a utility administered low income assistance program;
- g. Section 5.B.2, the requirement that any sale originating through or including a door-to-door or telephonic marketing component include an independent third party verification;
- h. Section 5.A.B.4, the requirement that standard Sales Agreements include a statement regarding provisions for HEAP recipients and participants in utility administered low income assistance programs;
- i. Section 5, Attachment 1, revisions to the Telephonic Agreement and Authorization/Third Party Verification Requirements;
- j. Sections 10.C.1.i and 10.C.2.h, reiterating the requirement in Section 5.B.2, described above.

EMERGENCY APPROVAL

Compliance with State Administrative Procedure Act (SAPA) §202(1) is not possible because to do so could, as described above, be detrimental to the general welfare of

consumers in the retail energy market, and emergency approval of the stay of the provisions of the February Order enumerated above is required. Immediate issuance of this Order pursuant to SAPA §202(6) is necessary for the preservation of the general welfare of consumers in the retail energy market. Furthermore, addressing the Petitions for rehearing, as provided for in PSL §22 and 16 NYCRR §3.7, is in the public interest. As explained above, parties will have the opportunity to comment on the Petitions before this Commission addresses the merits of the issues raised in them. The issuance of the stay of the provisions enumerated above will allow the rehearing process to proceed in an orderly fashion. Accordingly, compliance with the advance notice and comment requirements of SAPA §202(1) would be contrary to the public interest.

CONCLUSION

The procedural requests of RESA, NEMA and Constellation for rehearing of certain provisions of the February Order are granted. Parties have the opportunity to comment on the issues raised in the Petitions of RESA, NEMA, Constellation and Great Eastern Energy, pursuant to the Rehearing Notice, and the Notices of Proposed Rulemaking which will be published in the State Register on April 30, 2014. Further, we stay the provisions in the February Order enumerated above, until the issue(s) related to those provisions, which were raised in the Petitions, are addressed on the merits in subsequent orders.

The Commission orders:

1. The requests for rehearing of the Retail Energy Supply Association, the National Energy Marketers Association and Constellation NewEnergy, Inc. are granted; the merits of each of the claims raised in the Petitions will be addressed in future orders.

2. As set forth in the discussion in the body of this Order, certain provisions of the Order Taking Actions to Improve the Residential and Small Non-residential Retail Access Markets, issued and effective in these proceedings on February 25, 2014, is stayed.

a. The stay applies only to those provisions specifically enumerated in the body of this order.

b. The each enumerated provision will remain stayed only until the issue(s) related to that provision are resolved in subsequent orders.

3. This Order is adopted on an emergency basis under §202(6) of the State Administrative Procedure Act.

4. These proceedings are continued.

By the Commission,

KATHLEEN H. BURGESS
Secretary

CASE 12-M-0476 et al.

Commissioner Diane X. Burman, dissenting, in part:

I dissent, in part, with this decision as reflected in my comments made at the public session on April 24, 2014.