STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of Eligibility Criteria for Energy Service Companies	**))**	**Case 15-M-0127**
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 12-M-0476**
In the Matter of Retail Access Business Rules	**))**	**Case 98-M-1343**

Subject: COMMENTS OF MIRABITO NATURAL GAS, LLC REGARDING REFERENCE PRICE WHITEPAPER and PERFORMANCE BOND WHITEPAPER

Mirabito Natural Gas, LLC (Mirabito) is a natural gas Energy Services Company and is a wholly owned subsidiary of Mirabito Holdings, Inc. (MHI). MHI has an 88 year operating history in New York State and includes a diverse group of energy related operations including heating oil, propane, natural gas, motor transportation fuels, and electricity. We are an enthusiastic supporter of competitive energy markets and we appreciate the opportunity to respond to the Staff inquiry regarding conduct in the retail natural gas and electric markets.

Natural Gas Benchmark Reference Price

1. Comments on the Collaborative Process and Adequacy of Review Opportunities

   The natural gas reference price proposal as issued in the Staff whitepaper of May 4, 2016 lacked sufficient detail to elicit final comments. Staff discussions during the May 31, 2016 collaborative session indicate the proposal was drafted as such in order to obtain ideas. We appreciate the opportunity to provide ideas but note that Staff must allow further opportunity to comment before a final proposal is submitted to the Commission for adoption. At this juncture there has been too little definition in the draft and too little consideration of ideas to establish what could be considered a collaborative solution.

2. Comments on General Approach to Reference Price

   Mirabito does not favor use of a reference price to monitor fixed prices due to shortcomings noted herein. We do however enthusiastically support Staff efforts to resolve proven concerns in the mass market sector through the following means:

   - Consider fixed prices "value-added" products as previously discussed in collaborative meetings. Fixed prices are easily vetted in the competitive market and readily comparable to other offers. The problems described in the market tend to occur when customers leave competitively obtained fixed prices and enter into "evergreen" or variable renewals. For these circumstances the PSC could continue to apply the proposed benchmark for variable prices.
   - The PSC should more rigorously enforce compliance by employing existing and newly strengthened enforcement requirements.
   - The PSC should improve the effectiveness of response and remediation to customer complaints.

In the event that Staff does decide to recommend a reference price applicable to mass market fixed prices, we submit the following. Staff's whitepaper proposed issuing a single monthly reference price for a 12 month fixed price term. This approach falls short because it does not address:

a. ***Varying term lengths commonly employed in the market***. Flexible term lengths are a fundamental energy management option. A single 12 month term price concocted at a single point in time will fail to provide a meaningful metric for all other terms.

b. ***Deferred or distant contract start dates.*** A significant benefit of fixed pricing often involves contracting for start dates that are many months in the future. The proposal fails to provide a meaningful metric for such circumstances.

c. ***Pricing of more complicated products that are employed in the market***. Option based products such as caps and collars and a number of other energy management products are not adequately addressed by the proposal.

d. ***The wide variance in individual customer load factors that result in significant pricing differences between customers.*** Particularly because this proposal will affect small commercial customers, it does not address the unique profiles and load factors of each individual customer. Residential customers may be aggregated more readily as a homogenous group (although each residential does in fact have a unique profile), but commercial customers cannot be well represented by a single default profile.

A simple, single price will undoubtedly be inadequate in providing meaningful market monitoring for the various products that have evolved in the market. It should not result in limits to options available to customers which would be counterproductive to the Commission's often stated intent of providing innovative options to customers.

If in fact the Commission does not want such flexibility or innovation for a particular market segment then the rules being proposed should be applied to only the smallest of customers such as residential (or residential sized and shaped) customers.

3. Comments on Proposed Natural Gas Reference Price Formula

Mirabito prefaces the comments provided in this section with the statements made above, specifically that we do not support implementation of a reference price for fixed prices.

a. Capacity (DU)

   The proposal indicates that the cost of released capacity can be found in each LDC's tariffs/statements or pipeline tariffs. While it is true that some tariffs and supporting statements do include data regarding weighted average cost of capacity, those costs must be converted to a unit cost (say $/Therm). If Staff continues to pursue the reference price approach, a conservative default unit cost should be used such as residential or other low load factor profile. Prior to submitting a recommendation to the Commission, the profile to be used should be established and published for comment.

b. NYMEX (C) + Basis.

   NYMEX is a valid standard for commodity price. However weighting the NYMEX and Basis "to reflect higher consumption and higher costs in the winter" does not provide enough clarity on the weighting to be applied. As described above for capacity costing, a conservative default profile should be established and published for comment. Additionally, the CME group lacks basis points for many locations in New York State where reference prices would be required. Accordingly, some basis points will require calculations to approximate cost. This can be accomplished but will require further collaborative efforts.

c. Losses (FU)

   No Comments

d. Weather Risk (WU)

   The risk premium for weather appears arbitrary. It would be difficult to provide a rational basis upon which the factor could be generated far in advance of known weather. This factor could be reconsidered as a "volumetric risk factor" that would apply to the risk any

ESCO would face in forecasting future customer usage. All ESCOs encounter volumetric risk including weather, process variation, and efficiency improvements. Such a factor should be a percentage of a unit cost price, however the actual percentage applied should be published and issued for comment.

e. Premium (P)

Premium includes supplier margin and MFC related costs, including purchase of receivables and billing. MFC and POR costs are consistently defined and can easily be applied within the formula. However, a single reference price will not distinguish between POR and non-POR billing or between the unique MFCs applied to residential and commercial classes. For conservatism we would recommend applying the residential POR cost and the residential MFC.

For billing, a wide range of costs (although typically small) could apply. For simplicity, the published per bill rate using POR billing should be applied to an agreed upon residential volume (for example, 900 annual therms) to determine the unit cost.

For supplier margin, the calculation was not defined. It may be best to combine "margin" and "cushion" (see comment below) to limit the number of arbitrary factors used in the formula.

f. Cushion (M)

This item was not defined. We assume based on Staff comments at the May 31, 2016 collaborative meeting that it is similar to the "Retail Cost Adder" described in the electric reference price formula. If so, a similar ratio should be applied to gas.

g. LDC Balancing (Y)

Similar to capacity, such costs vary widely based on load factor. Accordingly, a conservative value should be applied.

Performance Bond Posting

In general, this proposal contemplates a requirement to post security in the event of future misconduct by an ESCO. Mirabito is opposed to the concept of deploying real collateral or capital as protection from misconduct as we view it a poor use of resources. We would instead favor rigorous qualification requirements for ESCOs, PSC monitoring of compliance, and exercise of existing and recently enhanced Commission authority to enforce and penalize misconduct.

However, we recognize the Commission is attempting to protect consumers and we support that effort to the extent it is reasonable. Accordingly, we submit the following comments:

1. The amount of security required should be based on the volume associated with the 'mass-market" customers for the particular ESCO.
2. Acceptable securitization instruments should include (but not limited to) parental guaranty or letter of credit.
3. We find the requirement to post collateral for potential misconduct and a requirement to provide a CEO compliance affidavit as unusual. It seems redundant to require a corporate officer to swear to compliance and at the same time require securitization for noncompliance.
4. The proposal lacks clarity on precisely what types of default or misconduct the Commission is trying to securitize. It was initially discussed during previous collaborative meetings that the security would be for noncompliance with guaranteed savings requirements for variable products. The proposal states:

   > "…*the security requirements that are the subject of this proposal are intended to serve a distinct purpose, and are necessary to ensure an ESCO's ability to, at a minimum, ensure the price savings guarantee and other elements of the Reset Order.*"

   It is unclear what the "other elements" are. However, during the collaborative held on May 31, 2016, Staff issued some additional verbal information indicating the security could be applied for noncompliance with any other resulting requirement from the "Reset" Order including an

ESCO defaulting on fixed price contracts. We find this lack of clarity on what the security is intended for to be untenable.

We strongly suggest the commission return to defining the purpose as only for a potential deviation between the benchmark price and the actual price billed for variable price contracts (i.e., guaranteed savings). Efforts to calculate and hold appropriate amounts of security for default or undefined other malfeasances seems clearly ill-advised. UBP Section 3 already establishes creditworthiness requirements to ensure adequate general financial status, delivery service (default) risk, and natural gas imbalance risk. ESCOs also post security with pipelines and commodity suppliers. Attempting to secure other items of default risk would require extensive and dynamic mark-to-market calculations and certainly seem beyond the scope discussed during the collaborative process.

5. It would seem that a key component of any security amount calculation would be how long the Commission expects that a noncompliance could go undetected or uncorrected. We have difficulty making a recommendation for this issue but suggest that such a time frame should be 3 billing cycles (3 months).

Comments Regarding Reset Order and Definition of Mass Market Customers

Mirabito strongly disagrees with the recently developed definition of mass market gas customer (or small non-residential gas customer). The chart below demonstrates the comparable size (in mmbtus) of mass market electric customers as defined by the Order based on criteria from 3 separate utility service territories for non-demand electric customers.

Utility	Criteria for Demand Status	Max Metered Demand - kW	Load Factor	kWhs / Month	kWhs / Year	Annual btus	Annual mmbtus (DTs)
NYSEG	>5 kW Demand	5	100%	3,650	43,800	149,445,600	**149**
		5	60%	2,190	26,280	89,667,360	**90**
RGE	>12 kW Demand OR >3,000 kWh/Month in 4 Consecutive Months	12	100%	8,760	105,120	358,669,440	**359**
		12	60%	5,256	63,072	215,201,664	**215**
		N/A	100%	3,000	36,000	122,832,000	**123**
		N/A	60%	3,000	21,600	73,699,200	**74**
NGRID (NMPC)	>2,000 kWhs/Month in 4 Consecutive Months	N/A	100%	2,000	24,000	81,888,000	**82**
		N/A	60%	2,000	14,400	49,132,800	**49**

Based on the above table, a comparable natural gas customer would be no more than 3,500 therms (or 350 DTs or mmbtus) annually.

We feel the Commission has too broadly defined mass market gas customer and as such is unnecessarily damaging both the choice process and doing financial harm to a number of respectable ESCOs. For example, numerous small businesses consume less than 7,500 therms of natural gas annually. Such businesses may benefit significantly through the option to obtain competing price quotes and the stability of price certainty. Additionally, those that operate at a high load factor (such as restaurants, bakeries and other process loads) have a significant advantage based on more efficient use of fixed cost capacity and should not be subjected to a utility “one-size-fits-all” price. We also request clarification and make the following comments regarding the definition of mass market electric customer. In previous related Orders, the Commission uses the definition below for “residential customer” from 16NYCRR Part 11.2(a)(2).

"The term residential customer or current residential customer includes any person who, pursuant to an application for service or an agreement for the provision of commodity supply made by such person or a third party on his or her behalf, is supplied directly with all or any part of the gas, electric or steam service at a premises used in whole or in part as his or her residence where:

(i) the distribution utility's effective tariff specifies a residential rate for such service; provided, however, that no person who is supplied service to an entire multiple dwelling or for the common areas of a multiple dwelling as defined in the Multiple Dwelling Law or the Multiple Residence Law, shall be considered a residential customer solely because the distribution utility's effective tariff specifies a residential rate;

(ii) such service is primarily used for his or her residential purposes and the customer has so notified the utility;

(iii) the utility knows or reasonably should have known that any of such service is provided through a single meter to both units of a two-family dwelling, as defined in section 11.8 of this Part

(iv) such person was a residential customer, as defined in the preceding subparagraphs of the same distribution utility within 60 days of making the request, was not terminated, disconnected or suspended for nonpayment, meter-tampering or theft of services, and has moved to a different dwelling within the distribution utility's service territory so long as such person remains a residential customer as defined in the preceding subparagraphs."

The above definition should remain valid and accordingly, the Order should be modified to clarify the exceptions. This includes large customers such as churches, multi-family dwellings, and large lighting operations.