BEFORE THE
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 14-M-0101
In the Mater of Retail Access Business Rules.	:	Case 98-M-1343

**COMMENTS OF
CONSTELLATION
ON BENCHMARK WHITEPAPER**

In response to the State of New York Public Service Commission ("Commission") May 4, 2016, *Staff Whitepaper on Benchmark Reference Prices*, as issued in the above-docketed proceedings, Constellation NewEnergy, Inc. ("CNE"), Constellation Energy Gas Choice, LLC, Constellation Energy Power Choice, LLC, Constellation Energy Services-New York, Inc., and Constellation NewEnergy-Gas Division, LLC (collectively, "Constellation") – hereby submits its Comments on the Benchmark Whitepaper.

INTRODUCTION

Constellation, a wholly-owned subsidiary of Exelon Corporation ("Exelon") is part of Exelon's national retail energy platform that offers electric and natural gas commodities, energy efficiency, load management, demand response, behind-the-meter renewable development, and other Distributed Energy Resources applications. These competitive retail customers include almost two million residential customers as well as more than 160,000 commercial, industrial, public sector and institutional customers – including two-thirds of the Fortune 100.

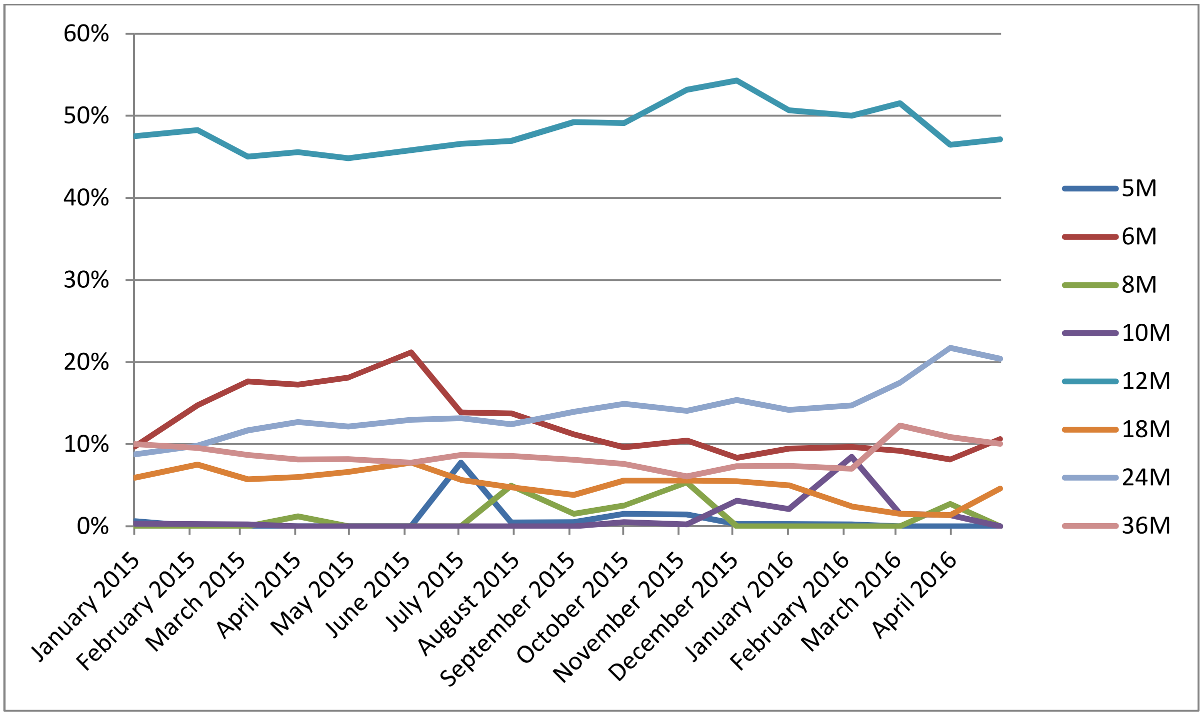
COMMENTS

In the Commission's Order Resetting Retail Energy Market for Mass Market Customers, the Commission stated an interest in "an immediate transition away from a retail market focused on commodity only without price protection to a market in which competitive ESCOs provide services of demonstrated value to consumers." In the Benchmark Whitepaper, Staff recognizes that a fixed price product could provide "value to customers who are looking to lock in a budget and/or insulated themselves from price spikes." In response, Staff proposed a formula for determining an appropriate not to exceed benchmark "reference price" for a 12-month fixed price offering for both electric and gas.

Staff suggests a formula for electric and gas 12-month fixed reference prices that will be used as the watermark to determine just and reasonableness of ESCO offerings – ESCO 12-month fixed price products offered at a price below the reference point would be deemed just and reasonable whereas products with prices above the benchmarks would be subject to Staff review and possible compliance action. This might be feasible as an invisible hand to offer price protection to customers provided the reference prices accurately reflect the market dynamics faced by competing suppliers. Thus, a balance must be struck between the precision in the calculation of the benchmark and the level of scrutiny and enforcement applied by the Commission to ESCOs whose product prices exceed the reference point. While Staff's proposal of benchmark reference prices is workable if accurate assumptions and factors are employed, the value of the benchmark reference price methodology could be increased through improvements to the assumptions and methodology employed. During the course of collaborative discussion, another suggestion raised was an alternative benchmark that is derived from an average of actual ESCO offer prices in market. Constellation believes this may offer a similar guidance because the benchmark would be based on a forward market view and would incorporate the many pricing models and hedging strategies relied on today by actual market participants.

The Staff Benchmark Whitepaper represents an attempt to create benchmark reference prices in a bottom-up approach for mass-market customers. There are many factors to consider that ultimately raise questions and impact decision points. These comments are designed to offer suggestions that could fine-tune, and ultimately improve, the hard work of the Staff by highlighting key concepts that drive ESCO price setting and identifying questions, the answers to which could guide the Commission in adopting the most appropriate benchmark reference price methodology.

Constellation agrees that fixed price products provide value to customers that are looking to lock in a budget and/or insulate themselves from price spikes. However, the length of the term of the contract and the ability of the customer to select the term is in itself a benefit of a fixed price offering. As such, fixed-price offerings for mass-market customers should not be limited to a term of 12 months. The nature of bringing choice in electricity and natural gas to mass markets is the option for customers to have a wide variety of products and services from which to choose based on each individual customer's preferences and requirements. The below chart shows a month-by-month snapshot (taken from the first week of each month) of the breakdown of Fixed Price offers listed on Power to Choose from January 2015 through the present. While it is certainly true that there are consistently more than 12-month offers, they often make up less than 50% of offers posted to the website (in fact, this month 35% of the offers were longer than 12 months in length).



Since the Benchmark Whitepaper only discusses a methodology for determining reference prices for a fixed price offering for a term of twelve months, it is unclear if or how the benchmark references prices might apply to products outside of the term length assumption used in the Benchmark Whitepaper. Among other reasons, due to the fundamental nature of commodity forward curves, it is not appropriate to derive a benchmark reference price for an 18, 24, or 36-month term product from a benchmark reference price accustom built for a product with a 12-month term. If the Commission is going to allow for ESCOs to market Fixed Price products of multiple terms – as it clearly should in order to foster a vibrant market – it will be necessary to either calculate multiple reference prices or to consider Fixed Price ESCO offerings with term lengths other than 12 months exempt from the reference price.

Longer term fixed price offerings provide a better foundation to incorporate value added services. The recent Sustainable Westchester Aggregation Pilot included multi-year terms as part of the RFP. The organic market should retain the ability to offer similar multi-year benefits to New Yorkers.

Under the Staff proposal, an electric reference price would be established for each utility operating in each load zone for each customer type (*i.e.* residential, small non-demand metered C&I). Since there are 20 electric utility/zone combinations, with two customer types for each utility, it appears that at a minimum Staff is proposing to develop every month with a six-week lead time, a total of 40 utility/zone/customer type electric reference prices. In addition, a similar exercise will be required for all of the natural gas utility combinations. Besides the magnitude of the task, there are additional factors that may need to be considered that could increase the number of prices to be calculated, such as multiple stratums (load profiles) for a service class and that, some utilities have multiple residential service classes. If these factors are incorporated, given there are six electric utilities, the Benchmark Whitepaper in practice may involve calculating up to ninety-six electric reference prices every month!

One of Constellation's main concerns with the Benchmark Whitepaper methodology for setting a reference price for a 12-month fixed electric product is that the historical and publically available information that Staff proposes as the basis for determining benchmark reference prices may not be consistent with how an ESCO values the forward market and contracts with a customer. For example, the Benchmark Whitepaper provides that Staff will:

> use *historical* NYISO data to adjust the forward prices for zones A, G & J to calculate prices for all non-liquid NYISO Zones. Basis differentials updated annually.

Constellation has in a number of proceedings cautioned against utilizing backward-looking analyses to inform forward-looking decision making. Given the amount of recent and planned generation migration (Huntley, Dunkirk, Fitzpatrick) as well as transmission constraints (Dysinger East), deviations between historical and future basis markets are likely. Seasonal factors, transmission outages, generation outages or retirements, and other variables can dramatically change a market outcome. Accordingly, it will be necessary to consider some type of updating mechanism to the benchmark or rate *force majeure* to incorporate sudden market events which impact market prices and outcomes.

A second example of how the data relied on in the Benchmark Whitepaper may differ from what ESCOs use to estimate forward prices is the reliance on the Intercontinental Exchange ("ICE") for determining the capacity components of the benchmark reference calculation. The calculation relies heavily on the most recent three *close of business day* price curves from ICE; however, ICE has only recently begun to offer the ability to trade NY Rest of State capacity. Currently, little to no volume of trades take place nor are prices reflective of actual market settlements: ICE's settlements are on average twenty percent lower than actual market settlements.

To aid in the exchange of complete information regarding the proposal to set benchmark reference prices, Constellation assembled a list of clarifying questions that correspond to the various components included in the benchmark reference calculations for electricity and gas:

Electricity Benchmark Reference Calculation Questions

Energy ($E_{L,U,M}$) - Basis

- What month will the annual basis differential be calculated?
- What is the historical time period used in the calculation (12, 18, 24 months) and how far back will it start?
- Will the basis be calculated using the Day-Ahead market or Real-Time market rates?
- Which non-liquid zones will be marked against A & G?
- With market changes causing deviations from historical averages, will Staff consider more frequent updates for Basis?

Energy ($E_{L,U,M}$) - Load Weighting

- Given that many of the utilities have multiple residential load profile shapes where on-peak load weighting can differ over 5% across the profiles, will Staff provide the on & off peak weighting by utility and customer type (residential and small commercial & industrial)?
- Will the latest load profile shapes, that NYSEG & RG&E anticipate becoming effective July 1st, 2016, be used?

Energy Multiplier (F)

- Given that Transco ("TOTS") charges are currently creating upward movement in Ancillary costs, what factors will Staff consider to warrant an update of this assumption?

Capacity ($C_{L,U,M}$)

- Will the service class load factors and the annual volumes, at the service class level, used to derive the capacity load factors be made available to ESCOs?
    - For ConEd there is a need for a load factor for each zone in their territory (H, I & J).
- Will the LHV differential update coincide with the capacity planning year (May 1 – April 30th)?
- Is it possible to provide data required for ESCOs to replicate the "Locational Capacity Obligations"?

Risk Premium (P)

- Will the definition of what taxes are to be included in the Risk Premium be provided ?
- Will Sales and Use taxes be included in the 2 cents/kWh? If so, an adjustment of the risk premium may be necessary.

Gas Benchmark Reference Calculation Questions

D_U – Weighted average Cost of Capacity

- What load factor will be used since each Marketer may have different load factors?

C – Commodity

- What monthly load and what pipe use by month will be assumed to calculate a reference price?

B_U – Basis

- What price source will be used to determine reference basis pricing?
- Since some forward months are not liquidly traded, how will illiquid month reference prices be determined?
- Utilites each have a different make up of multiple transport assets that impact reference basis pricing. How will these be incorporated?
- What load or load factor should be assumed to calculate these prices since the assumed load in each month impacts the selection of basis ineach month of the term?

F_U – LDC Losses

- How will other LDC specific charges to Marketers be handled?

W_U – Weather Risk

- How are variable weather risks and the weather sensitivity of load served included in the calculation?

Y – ESCO Balancing and Storage

- Since storage can often be a credit that is specific to the utility and storage service if released, how is this factor reflected in the calculation?

P – Premium

- Differing business models mean that ESCOs' margin needs vary. How will Staff take this into account?

CONCLUSION

The purpose of the benchmark is twofold; provide a level of consumer price transparency and identification of bad market behavior by a market participant. As evidenced, any benchmark developed from the ground up has a high degree of complexity and will be resource intensive for both the Commission and market stakeholders. Plus, it will be subject to volatility based on many factors that are not controlled by the Commission and/or any other stakeholders (for example high demand conditions, infrastructure limitations, generation or unit outages, weather, etc.). Accordingly, the benchmark should be used as a reference only and be set at a level that properly deals with bad market conduct but which does not create an overly burdensome administrative or compliance requirement for the Commission and market stakeholders. Alternatively, the Commission could consider a benchmark that is a composite of actual product prices offered by ESCOs in New York that already capture the components mentioned in the whitepaper and might be easier to construct and enforce. Thank you for the opportunity to provide comments on this important matter.

Respectfully submitted,

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On Behalf of Constellation

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