STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

In the Matter of Eligibility Criteria for Energy Service Companies	: :	Case 15-M-0127
Proceeding on the 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

PETITION FOR WAIVER AND/OR
AN EXPEDITED DECLARATORY RULING

Pursuant to Rules 3.3, 3.6 and 8.1 of the Commission's Rules of Procedure,[1] CenStar Energy Corp., Major Energy Services, LLC, and Spark Energy Gas, LLC (collectively, the "Companies") hereby petition the New York Public Service Commission ("Commission") for a waiver and/or declaratory ruling to permit the Companies to offer the green gas products described below as Energy-Related Value Added ("ERVA") products to mass-market customers under the Commission's Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process.[2]

I. BACKGROUND

Because the Commission found insufficient evidence in the record of the above-referenced proceedings to demonstrate that ERVA products or services provide appropriate benefits to customers, the Order prohibited energy service companies ("ESCOs") from providing such products to mass market customers unless and until the Commission lifts that restriction or

[1] 16 N.Y.C.R.R. §§ 3.3, 3.6, 8.1 (2019).

[2] Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (Issued December 12, 2019) ("Order").

issues a waiver to a particular ESCO.[3] The Order also invited ESCOs seeking to offer ERVA products to petition the Commission to do so.[4]

The Commission has twice acknowledged that "[c]ustomers who voluntarily buy clean energy 'are New York's most valuable asset towards achieving the [Clean Energy Standard] goals.'"[5] As demonstrated in this Petition, the Companies are willing and able to provide two "green gas" ERVA products to their customers seeking to decarbonize their energy profile. Because the Companies' green gas products would provide energy-related benefits to customers at a reasonable cost and in a manner that advances the State's decarbonization efforts, the Commission should issue a waiver and/or declaratory ruling to permit the Companies to offer the green gas products described below as ERVA products to mass-market customers under the Commission's Order.

II. ERVA STANDARD

In determining whether a product or service provides "value," the Commission will analyze whether the product or service is "something more than the standard; something that exceeds the expectations associated with provision of what is otherwise an undifferentiated commodity."[6] Because energy-related value-added products and services "have the potential to provide benefits to customers,"[7] and may "help the State advance its clean energy goals,"[8] the Commission recognized that "reasonable rates do not necessarily require an ESCO to meet or beat the utility price when providing bona fide energy-related, value-added products and services

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[3] The Commission made one exception to this prohibition for Agway Energy's EnergyGuard product.

[4] *Cf.* Order, at 54 ("If any other ESCO wishes to offer a product like EnergyGuard during the pendency of Track II, it may submit a petition for waiver to the Commission explaining the benefits its product provides and how they will reasonably relate to its cost.").

[5] ***Id.*** at 76 (***citing*** Clean Energy Standard Order, at 9).

[6] ***Id.*** at 51.

[7] ***Id.*** at 52.

[8] ***Id.*** at 13.

to its customers."[9] The Order also indicated that an ESCO seeking to offer a value-added product or service outside of the price caps established in the Order could "submit a petition for waiver to the Commission explaining the benefits its product provides and how they will reasonably relate to its cost."[10]

To date, the only ERVA product or service the Commission has approved is Agway's "EnergyGuard" service, which is described as a pre-paid maintenance contract bundled with electric and gas supply that acts like a type of insurance by covering costs of certain parts and repairs to a residential customer's home heating system, air conditioning unit, and/or home electrical wiring.[11] In support of the EnergyGuard service, Agway asserted that its value was quantifiable because it could allow customers to save money on repairs.[12] Agway also stated its service provides "valuable and essential peace of mind."[13] In addition to highlighting EnergyGuard as a product that the Commission found to provide demonstrable value, the Order also included the following non-exhaustive list of other desirable ERVA products and services focused on energy technologies that advance the State's energy policy goals: (a) demand-management programs or tools; (b) voluntary dynamic pricing programs or tools; (c) energy-efficiency measures; (d) sophisticated energy-management services and smart-grid technologies; (e) energy storage products; and (f) electric vehicle-related services.[14]

In sum, while the Order does not expressly provide specific factors or criteria by which the Commission will analyze a petition to offer an ERVA product or service, the Order suggests that such an ERVA product or service will be assessed by evaluating the extent to which it offers

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[9] Order, at 55.
[10] *Cf. id.* at 54.
[11] *Id.* at 52.
[12] *Id.*
[13] *Id.*
[14] *Id.* at 52-53.

something more than standard plain-vanilla commodity, its potential benefit to customers, its alignment with State energy policy objectives, and its quantifiable value.

III. COMPANIES' PROPOSED ERVA PRODUCTS

Unlike power, which can be sourced from lower or no carbon sources, it is an inescapable fact that natural gas supplied to consumers is burned when used, with the associated production of carbon dioxide ("CO2"). Despite this, New York natural gas customers can make a positive contribution to New York's environmental goals by linking their consumption to promotion of initiatives that reduce greenhouse gas emissions for and/or deliver more green energy overall to the State. To this end, the Companies are proposing two types of green gas products that qualify as ERVA products under the Order. The proposed products are very similar but not quite identical to those being proposed by Direct Energy Services, LLC, on behalf of itself and its affiliate Gateway Energy Services Corporation (collectively, "Direct Energy").[15]

A. "RGGI Gas" Product

The Companies' first green gas product is known as "RGGI Gas." The Regional Greenhouse Gas Initiative ("RGGI") is a cooperative effort among ten states – Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont (collectively, the "RGGI States") – to reduce greenhouse gas emissions.[16] While constructed initially to help structure a cap-and-trade program for the power generation marketplace, RGGI can be used by other parties to acquire and bank allowances ("CO2

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[15] *See* Petition of Direct Energy Services, LLC for an Expedited Declaratory Ruling and/or Waiver or Rehearing Authorizing Green Gas Programs (Feb. 28, 2020) ("Direct Energy Petition").

[16] NYSERDA, Regional Greenhouse Gas Initiative ("RGGI"), https://www.nyserda.ny.gov/Researchers-and-Policymakers/Regional-Greenhouse-Gas-Initiative (last visited Apr. 14, 2020).

Allowances") to satisfy their environmental goals and policies.[17] The Companies would do just that on behalf of any customer who enrolled in the RGGI Gas product.

Specifically, for each customer who enrolls in the RGGI Gas product, the Companies would calculate a customer-specific CO2 footprint from natural gas usage and then offset more than fifty percent (50%) of that CO2 footprint by acquiring CO2 Allowances. Like Direct Energy, to recognize that greenhouse gases are also produced throughout the natural gas value chain from wellhead, through processing and gathering, to the delivery of the natural gas to the home, the Companies propose to "gross up" the actual natural gas consumed by their customers to include a Production and Transmission Factor of 35.00% and 2.85%, respectively.[18]

On average, New York residential customers use approximately 82.17 dekatherms ("Dth") per year.[19] This natural gas consumption produces CO2 – a significant greenhouse gas. For each Dth of natural gas consumed, 117 pounds of CO2 are produced.[20] Based on this, the average New York household using natural gas produces about 9,614 pounds of CO2 per year.[21] Every customer enrolled in the RGGI Gas product would offset some of those emissions each year.

The RGGI Allowances that the Companies would need to buy for each customer would be determined under the following formula:

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[17] RGGI CO_2 Allowance Auctions Frequently Asked Questions (Released Apr. 9, 2019) (available at: https://www.rggi.org/sites/default/files/Uploads/Auction-Materials/44/FAQs_Apr_09_2019.pdf) (last visited Apr. 28, 2020), at § III.1 ("At this time, all parties are eligible to participate in CO2 allowance auctions including but not limited to corporations, individuals, non-profit corporations, environmental organizations, brokers, and other interested parties.").

[18] Direct Energy Petition, at 6-7 (explaining basis for percentages).

[19] U.S. Energy Information Administration ("EIA"), 2015 Residential Energy Consumption Survey (Release Date: May 2018), Table CE5.4 (available at: https://www.eia.gov/consumption/residential/data/2015/c&e/pdf/ce5.4.pdf) (last visited Apr. 13, 2020).

[20] EIA, Frequently Asked Questions, https://www.eia.gov/tools/faqs/faq.php?id=73&t=11 (last visited Apr. 13, 2020).

[21] (82.17 * 117).

Allowances = Total Usage in Dth * CO2 Conversion Factor * Production Factor * Transmission Factor * Renewable Content Factor * Pounds to Short Tons Conversion.

Where:

"**Total Usage in Dth**" is total gas supplied to that customer in a given period.

"**CO2 Conversion Factor**" is 117 pounds per MMBtu.[22]

"**Transmission Factor**" is 1.0285.[23]

"**Production Factor**" is 1.3500.[24]

"**Renewable Content Factor**" will be at least 50% greater than is required by the Renewable Energy Standard ("RES") load-serving entities' ("LSEs") Tier 1 obligation for the year.[25] For instance, in 2020, since the Tier 1 obligation is 2.84%,[26] the Renewable Content Factor in 2020 would be at least 52.84%.

"**Pounds to Short Tons Conversion**" is 1/2000.

The RGGI Gas product will have several policy and market benefits. First, it will help achieve the Commission's objective of reducing "greenhouse gas emissions from New York's energy sector."[27] As the Commission previously recognized, "[c]limate change poses several different types of challenge to the electric industry. First, and most obvious, is the need to reduce carbon emissions."[28] The RGGI Gas product will help reduce carbon emissions in the electric industry by providing additional auction proceeds that can be used by the New York State

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[22] EIA, Frequently Asked Questions, https://www.eia.gov/tools/faqs/faq.php?id=73&t=11 (last visited Apr. 13, 2020).

[23] Direct Energy Petition, at 6-7.

[24] *Id.*

[25] ***See*** Order, at 75-76 (describing permissible renewably sourced commodity products).

[26] ***See*** NYSERDA, REC and ZEC Purchasers, https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/REC-and-ZEC-Purchasers (last visited Apr. 14, 2020).

[27] Case 14-M-0141, Order Adopting Regulatory Policy Framework And Implementation Plan (Issued February 26, 2015) ("REV Order"), at 82.

[28] *Id.* at 24.

Energy Research and Development Authority ("NYSERDA") for "energy efficiency, renewable energy, and/or innovative carbon abatement programs."[29] In addition, the Commission has found that "the shift toward greater reliance on natural gas, which has been a first-stage carbon reduction measure . . . poses a challenge to meeting long-term carbon goals."[30] The RGGI Gas product would address this issue directly by providing customers an opportunity to reduce the carbon emissions associated with their gas usage.

Second, like the renewably sourced commodity product approved in the Order, "with an on-bill price comparison . . . the premium associated with the [RGGI Gas] product compared to the utility product will be readily apparent to a customer."[31] This will provide two benefits: (1) it "will enable customers to ascertain whether they believe they are receiving a fair value for the price that the ESCO charges for that product";[32] and (b) it will provide a meaningful price signal about the price of CO2 from home natural gas usage that will encourage consumers to think about their environmental footprint and consider alternatives in home natural gas consumption, both in new construction and retrofit applications, as well as maintenance and efficiency in repairs.

As demonstrated above, the RGGI Gas product offers something more than standard plain-vanilla natural gas commodity, offers benefits to customers, aligns with State energy policy objectives, and provides quantifiable value. Thus, the Commission should issue a waiver and/or declaratory to permit the Companies to offer RGGI Gas as an ERVA product to mass-market customers under the Order.

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29 NYSERDA, Regional Greenhouse Gas Initiative, https://www.nyserda.ny.gov/Researchers-and-Policymakers/Regional-Greenhouse-Gas-Initiative (last visited Apr. 14, 2020).

30 REV Order, at 24.

31 Order, at 82.

32 *Id.*

B. "Cleaner Gas" Product

The Companies also propose to offer New York residential customers a second green gas product called "Cleaner Gas." Residential customers use "natural gas to heat buildings and water, to cook, and to dry clothes."[33] As Direct Energy noted, retrofitting New York homes that use natural gas, especially for heating, with other less carbon intensive options can be quite expensive and can take years.[34] Cleaner Gas would enable consumers to "virtually" electrify at least fifty percent (50%) of their home heating natural gas usage immediately. Specifically, for each customer who enrolls in the Cleaner Gas product, the Companies would offset more than fifty percent (50%) of that customer's home heating natural gas usage by purchasing and retiring Renewable Energy Certificates ("RECs") or making an Alternative Compliance Payment ("ACP") to NYSERDA under terms comparable to the renewably sourced commodity product authorized by the Order.

The RECs that the Companies would need to buy for each customer would be determined under the following formula:

RECs = Total Usage in Dth * Home Heating Factor * Electrification Factor * Renewable Content

Where:

"**Total Usage in Dth**" is total gas supplied to that customer in a given period.

[33] EIA, Natural Gas Explained, https://www.eia.gov/energyexplained/natural-gas/use-of-natural-gas.php (last visited Apr. 14, 2020).

[34] Direct Energy Petition, at 9.

"**Home Heating Factor**" is the average percentage used in home heating per the EIA for homes in the Mid-Atlantic area, which includes New York.[35] The Companies could also increase the Home Heating Factor above the EIA average percentage at any time in order to offer customers a product that would offset even more of their natural gas usage.

"**Electrification Factor**" is 0.293, a commonly used energy equivalency in which one dekatherm of natural gas has energy content equal to 0.293 MWh of electricity.[36] This "Electrification Factor" is used to approximate the amount of electricity it would take to produce an amount of energy equal to the energy content of the natural gas consumed for home heating purposes.

"**Renewable Content**" will be at least 50% greater than is required by the RES LSEs' Tier 1 obligation for the year.[37] For instance, in 2020, since the Tier 1 obligation is 2.84%,[38] the Renewable Content in 2020 would be at least 52.84%.

As the Commission acknowledged in the Order, it is "possible that mass-market customers' voluntary renewable purchases in the future will make material contributions toward achieving the Clean Energy goals."[39] In fact, "[c]ustomers who voluntarily buy clean energy are New York's most valuable asset towards achieving the [Clean Energy Standard] goals and

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[35] Based on the most recent data available from the EIA Residential Energy Consumption Survey, this equals 0.693. *See* Table CE5.4 Detailed household natural gas and propane end-use consumption—averages, 2015 (last visited Ap. 28, 2020). This number was derived by dividing space heating consumption by all consumption for the Northeast Mid-Atlantic Region (=B11/SUM(B11:E11)) ("EIA Home Heating Factor"). Each time the EIA releases an updated Residential Energy Consumption Survey, the Companies intend, within a reasonable period of time thereafter, to adjust this number accordingly.

[36] https://www.convertunits.com/from/dekatherm/to/kWh (last visited Apr. 14, 2020).

[37] *See* Order, at 75-76 (describing permissible renewably sourced commodity products).

[38] *See* NYSERDA, REC and ZEC Purchasers, https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/REC-and-ZEC-Purchasers (last visited Apr. 14, 2020).

[39] Order, at 77.

successful stimulation of customer-initiated choices will have a necessary impact on the trajectory of the required acquisitions to achieve [those goals]."[40] Because the Cleaner Gas product will provide a renewable energy mix of more than fifty percent (50%) of the customer's equivalent electricity usage, just like the renewably sourced commodity product approved in the Order, the Cleaner Gas product will further New York's clean energy goals.

In addition, like the renewably sourced commodity product approved in the Order, "with an on-bill price comparison . . . the premium associated with the [Greener Gas] product compared to the utility product will be readily apparent to a customer."[41] This "will enable customers to ascertain whether they believe they are receiving a fair value for the price that the ESCO charges for that product."[42]

As demonstrated above, the Greener Gas product offers something more than standard plain-vanilla natural gas commodity, offers benefits to customers, aligns with State energy policy objectives, and provides quantifiable value. Thus, the Commission should issue a waiver and/or declaratory ruling to permit the Companies to offer Greener Gas as an ERVA product to mass-market customers under the Order.

IV. CONCLUSION

For all the foregoing reasons, the Commission should issue a waiver and/or declaratory ruling to permit the Companies to offer the green gas products described above to mass-market customers as ERVA products under the Order. In addition, the Commission should also allow all ESCOs to offer the RGGI Gas product and or Cleaner Gas product.[43] Similarly, if the Commission approves other products as ERVAs that can be offered to mass market customers

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[40] Order, at 76 (*quoting* Clean Energy Standard Order) (internal quotations omitted).
[41] Order, at 82.
[42] *Id.*
[43] *Cf.* Order, at 23.

under the Order, it should permit all other ESCOs, including the Companies, to offer those products as well. In this way, the Commission can increase competition in the ERVA product and service market and reduce the administrative burden of having to grant waivers and/or declaratory rulings to every single ESCO in the State that wishes to offer ERVA products or services similar to those the Commission has already approved.

Respectfully submitted,
CENSTAR ENERGY CORP., MAJOR ENERGY SERVICES, LLC, AND SPARK ENERGY GAS, LLC

By: Meg E. Baroni

Megan E. Baroni
Robinson & Cole LLP
1055 Washington Boulevard
Stamford, CT 06901
Phone: (203) 462-7528
Fax: (203) 462-7599
E-mail: mbaroni@rc.com

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