

LAW OFFICE

USHER FOGEL
ATTORNEY AT LAW

557 CENTRAL AVENUE, SUITE 4A CEDARHURST, NY 11516

TEL: 516.374.8400 X 108

FAX: 516.374.2600

CELL: 516.967.3242

E-MAIL: ufogel@aol.com

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By Electronic Mail

Hon. Kathryn Burgess
Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Case 15-M-0127 – In the Matter of Eligibility Criteria for Energy Service Companies.

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.

Dear Secretary Burgess:

In accordance with the schedule adopted in this proceeding, enclosed for filing with the Commission please find the *Comments Of The Retail Energy Supply Association On The Staff Whitepapers*.

Thank you for your assistance in this matter.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel, Counsel*

Usher Fogel, Counsel

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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**COMMENTS OF
THE RETAIL ENERGY SUPPLY
ASSOCIATION ON THE STAFF WHITEPAPERS**

I. INTRODUCTION

The Retail Energy Supply Association (RESA)¹ submits these comments in accordance with the *Notice Seeking Comments* issued in these proceedings on May 10, 2016.²

II. PRELIMINARY STATEMENT

On February 23, 2016, the Commission in the Reset Order³ established various revisions and modifications which *inter alia*, imposed new standards governing the provision of products and services by ESCOs, the obtaining of express consent for changes and renewals from mass

¹The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² Cases 15-M-0127, et al., *Notice Seeking Comments* (issued May 10, 2016) (“hereafter “Notice”).

³ Cases 15-M-0127, et al., *In the Matter of Eligibility Criteria for Energy Service Companies, Order Resetting Retail Energy Markets and Establishing Further Process* (issued February 23, 2016) (hereafter “Reset Order”)

market customers, and recommended that ESCOs be obligated to submit a performance bond or other security interest.⁴ Thereafter Staff convened a series of Collaborative Sessions to examine the specific directives enunciated in the Reset Order. On May 4, 2016, Staff issued for comments several Whitepapers entitled as follows:

1. Staff Whitepaper Regarding ESCO Performance Bonds or Other Security Interest (hereafter “PB”).
2. Staff Whitepaper on Express Consent (hereafter “EC”).
3. Staff Whitepaper on Benchmark Reference Prices (hereafter “BRP”).

The legality of the Reset Order is currently the subject of litigation between the Commission and several individual energy service companies (“ESCO”) and groups that represent ESCOs’ interests, including RESA. *See Retail Energy Supply Assn. v Pub. Serv. Commn. of the State of New York*, Sup Ct, Albany County, March 3, 2016, Zwack, J., Index No. 870-16. RESA’s submission of these comments is without prejudice to its claims in that litigation and does not waive or alter RESA’s claims or legal arguments with respect to, among other things, the Commission’s violation of the State Administrative Procedure Act in adopting the Resetting Order or the Commission’s scope of jurisdiction to regulate ESCOs.

The comments presented here are intended to address the various proposals identified in the Whitepapers in a practical fashion without addressing or conceding the Commission’s jurisdiction in these areas.

⁴ Reset Order, p.1, et al.

III. STAFF WHITEPAPER ON EXPRESS CONSENT

Staff attempts to modify the Express Consent requirement that would be applicable where there is a material change in an existing contract or in the case where prior to renewing a customer from a fixed rate or guaranteed savings contract into a contract that provides renewable energy but does not guarantee savings.⁵

Staff proposes that the ESCO issue three separate Notices to the customer in order to fulfill the Express Consent obligation. The first Notice to be sent 45-60 days prior to the material change or contract expiration provides a preview of the change that will come; the second Notice to be sent 45-60 days before the change or expiration contains the formal notification with details about the new changes; and the third Notice to be sent 2-3 days after the second Notice reminds the customer to read the second Notice.

This notice process focuses on the efforts made by ESCOs to provide notification of renewals and material changes rather than through verbal or physical contact with the customer. RESA supports giving customers ample information they can use and act on to manage their energy service account.

RESA recommends that Notice 3 a postcard type mailing would suffice to achieve the objective of reminding customers to carefully read their second Notice which explains their options for making changes to their account if they so desire

RESA requests that Staff clarify the status and proper handling of changes associated with the commonplace use of a contractual “Regulatory Changes” section. As Staff is aware contracts contain a provision that allows modifications to a contract for changes in laws, rules, regulations, order and tariffs. At this point it is unclear what process is to be followed by the

⁵ EC, pp.1-2.

ESCO in this situation. It appears reasonable to use the same process approved as a result of the EC Whitepaper and therefore ensure consistent treatment for all material changes.

RESA requests clarification that unless guaranteed in the contract, a change in fuel supply or mix does not constitute a material change. In this situation, an ESCO simply agrees to provide service with no specification regarding energy sources or other supply limitations. As no representation is made regarding supply sources, a change in supply should not be deemed a material change.

IV. Staff Whitepaper Regarding ESCO Performance Bonds or Other Security Interest

In this Whitepaper, Staff offers several approaches governing the imposition of additional security measures on ESCOs.

In fashioning a security approach it is important to clearly identify the security interest for which protection is being afforded as well as practicality, efficacy and reasonableness.

In its previous filing, RESA presented the following assessment of the contours of the new security requirement.

The Retail Energy Supply Association (RESA) recommends that performance bonds should be made payable to the Commission, rather than to utilities, since the Commission is in the best position to ensure customer protections. Further, the method for posting the bonding requirement should remain flexible to allow ESCOs to select from a range of possibilities that will best meet their business needs. ... Consideration should be given to reducing or waiving the bond for ESCOs that have a history of compliance with the UBP and Commission orders.⁶

In addressing the matter of security it is first necessary to identify the specific interest that is being protected. Staff observes in this regard:

However, 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

⁶ BRP, p. 4. RESA continues to support these views.

ability to, at a minimum, ensure the price savings guarantee and other elements of the Reset Order.⁷

The identified protected interest involves ensuring that the ESCO can meet any price savings guarantee it made to customers or other (unidentified) elements in the Reset Order. The general approaches discussed at pages 5-6 of the PB raise several possibilities that might be effectively implemented and confer the needed protection.

Based upon the various methods discussed in the EC, RESA recommends that the following methodology be applied.

First, the total security would initially reflect an equivalent flat fee or instrument that is required to be posted by each ESCO entering the New York market to be paid to or held by the Commission. Next an additional security component would be applied that would be calculated on the basis of number of customers served by the ESCO. Third, a cap would be applied to the “customers served” adder so that it is not unlimited. This tri-part method creates a base level of security applicable to each ESCO and adds a level reflecting the number of customers that provides additional security.

The following additional factors also need to be recognized and accommodated.

Any information about the ESCO such as customers must remain confidential and shared only between Staff and the ESCO.

The process used to calculate the security must be transparent and administratively workable. It is important for Staff to prepare and publish the values for each formula component. In this manner the ESCO can more easily determine the level of security that will be required.

The Commission should be flexible and allow ESCOs to post various methods of security such as bonds, Letters of Credit, parental guarantees, and other security methods.

⁷ PB, p.5

The security calculation also needs to reflect the number of residential/small commercial customers that are entitled to a price guaranty by the individual ESCO.⁸ A security is not required for those accounts that are not covered by a pricing guarantee such as a 30% renewable product or other factor; the security amount should be limited to the interest being protected.

The security amount would need to be reset at least annually to accommodate the change in the number of customers served by each ESCO.

To preserve the due process rights of ESCOs there is a need for Staff to establish a process governing how the Commission will call on the security due to an ESCO's defalcation. This process, at a minimum, must include a Notice to the ESCO advising that the security will be called on and the related time period in order to provide the ESCO with the ability to challenge the security call.

Staff suggests that the POR structure be used as the source of security by including a surcharge for security that the Utility can deduct and retain from the POR payments. This approach is problematical. ESCOs have experienced serious problems with utility billing practices where the utility attempts to recover billing errors associated with its system from ESCOs on a retroactive basis. This has created many difficulties for ESCOs who do not have the⁹ ability to collect revenues from a customer after-the-fact.¹⁰ It is important that control over the ESCO's security be maintained and handled by the Commission not the utility.

⁸ This assumes that the the security is designed to cover security for those customers subject to a guarantee of savings

⁹ BRP, p. 7

¹⁰ Matter No. 15-01659 - Complaint of the Small Customer Marketer Coalition Regarding the Retroactive Cash Out Invoices issued by the KeySpan Gas East Corporation d/b/a National Grid in July 2015.

V. Staff Whitepaper on Benchmark Reference Prices

The benchmark formulae for electricity and natural gas as presented in the BRP contain factors which do not sufficiently or adequately replicate how retail pricing is accomplished as well as all the inputs that go into developing a retail price. These omissions and deficiencies render the benchmark as arbitrary and capricious without substantial evidence in the record.

A. Electric

In this Whitepaper Staff proposes a formula for determining an appropriate not to exceed benchmark “reference price” for a 12-month fixed price product. The fixed price offering, as presented in the BRP, can include only commodity or include a Value Added Product (“VAP”) with the cost of the VAP disclosed in the customer disclosure statement. Staff does not propose a reference price for month-to-month, variable rate products. For this product, the ESCO must provide a price guaranty with respect to the utility price. If an ESCO seeks to bundle energy related VAP with commodity, Staff asserts that the customer is entitled to a guarantee of savings for the commodity and the ESCO must disclose in the customer disclosure statement the incremental cost of the VAP.¹¹

The electric products covered by the Whitepaper thus include the following 4 products:

- 12-month fixed commodity price (subject to reference price).
- 12-month fixed commodity with VAP (subject to reference price).
- MTM variable rate service (not subject to reference price, but subject to guaranteed savings).
- MTM variable price product coupled VAP (not subject to reference price but subject to guaranteed savings).

¹¹ BRP, pp.1-3

An area that requires further clarification involves the 30% minimum renewable electric product. As part of the product, is it under Staff's view subject to the reference price? If it is, it would need to be one of the formula elements.

In terms of allowable products, at the prior collaboratives, the concept was raised regarding the use of a product where the customer is guaranteed the same total price for each month for supply service creating a fixed monthly total commodity bill product. For example, the customer receives a total bill for \$100 each month rather than a rate per kWh. This is an option that customers seem to like as it provides rate stability and a cushion in the event of price volatility or a surge in pricing. ESCOs should be allowed to offer this product.

1. Fixed Price

The deficiencies in the formula/benchmark are serious and substantial

As posited by Staff, the fixed price will only be for a 12-month period and thus use of the reference price would be limited to a 12-month product. This is an arbitrary decision which limits consumers' ability to realize the long-term benefits of price protection for a period of their choosing and which (in the context of historically low energy prices) represents an actual harm to consumers. For those consumers who desire the peace of mind of long-term price protection, the current environment may be one in which they would be interested in locking-in a rate for 2, 3, 4 (or more) years. By limiting ESCOs' FP offerings to 12M, the Commission would arbitrarily prohibit consumers from so doing...a prohibition that directly contradicts the fundamental value proposition of Fixed Price products, namely: peace of mind.

There are various time periods associated with a fixed price product such as 3, 6, 9 months. In addition, some customers may like a lengthier period such as 18, 24 or 36 months or a seasonal type product. There does not appear to be a persuasive rationale to cut such valuable customers out of the reference price structure merely because they desire service for a period shorter or longer than 12 months. Recently, the NYSPSC approved the Sustainable Westchester Aggregation PILOT which specifically included an RFP with product offerings exceeding 12 months. In addition, the expansion of REV and CES will include longer term horizons. To align with all these programs, we encourage the Commission to allow other term lengths. It is good for the customer and good for public policy implementation.

With respect to the fixed commodity with VAP, Staff proposes that the ESCO separately list on the Customer Disclosure Statement the price of the commodity and VAP components that are incorporated into the total price.¹² This approach warrants reconsideration by Staff. The use of one price for the products has an important impact on the competitive status of ESCOs offering a VAP. By use of a single price the ESCO can determine where various costs may be recovered so as to enhance the efficiency of the sale and help ensure that as sought by Staff the product price does not exceed the reference price. It will also enable the ESCO to adjust pricing more efficiently and manageably in the event of changing markets and regulatory conditions. In addition, the ESCO is also directly interested in maintaining some confidentiality of the cost of the VAP from competitors. This flexibility is an important competitive tool of the ESCO, and should not be taken away.

In the discussion of electric reference price, Staff indicates that it will develop a price that is applicable to “residential and small non-demand metered commercial customers.”¹³ The BRP

¹² BRP p. 2

does not clearly indicate whether separate prices will be developed for residential and small commercial. Whereas for natural gas, Staff indicates that there will be separate and individual pricing for residential and small commercial.¹⁴ At the 5.31.16 Technical Conference Staff indicated that separate prices would be calculated for both residential and small commercial customers. We concur with Staff.

2. Electric Reference Price

The reference price formula set forth in the Whitepaper attempts to address the standards that will be applied to ESCOs offering service in New York.

There are material concerns with respect to the electric reference price

The Staff Whitepaper proposes to create a formula for establishing a retail reference price for electricity based on commodity cost components and risks of supplying customer load. However, the way in which Staff proposes to do so undermines the stated goal of, as Staff quotes, "...the Commission's 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 ...'"¹⁵ The attempt by Staff to bifurcate commodity related costs from energy related value added products and services highlights the misunderstanding of the complex ESCO pricing process and could stymie ESCO product innovation. If this was understood, for instance, Staff would not have proposed to have ESCOs separately disclose the additional cost attributed to the energy related value added product or service. Instead of focusing on new energy related value added products and services as separate from electricity commodity, the Commission should foster a market in which ESCOs compete

¹⁴ BRP p. 5.

¹⁵ BRP pp.1-2

and focus on supplying the electricity commodity, the price and the quantity, better than is done today, not by jockeying around an administratively set benchmark.

ESCOs provide customers with price risk management services. ESCOs are not commercializing new technology and software related to value added products and services. Rather, ESCOs leverage them to better manage price risk exposure for customers, both price and quantity of electricity consumed. New technology and software provide a new tool for ESCOs to achieve that goal. For example, controllable thermostats or customer-sited solar power are on-peak blocks of energy that can be integrated into an ESCO's portfolio wide electricity hedging strategy for its customers that utilize such technology as well as for those that do not. In order for the market to evolve into one like the Commission envisions in which more ESCOs take a total energy management approach for their customers, a lighter regulatory "touch" is required, far from the approach embodied in the Staff whitepaper.

Staff proposes that the price will be established "approximately six weeks prior to the beginning of the 12 month period".¹⁶ The timing associated with the calculation of the reference price needs to be carefully calibrated to ensure comparability of the reference price to conditions when the ESCO actually markets the product. For example, during the six weeks when Staff finalizes its calculation prices are stable, however when the ESCO goes to market they may encounter a period of great pricing volatility which may cause them, not due to any fault on their part, to charge prices above the previously calculated reference price.

There can be serious differences arising due to the different timing periods from when the price is calculated and when the ESCO attempts to market the product in the market. This may be due to, *inter alia*, weather Regulatory Changes, world unrest, government policy or fuel costs—all of which can impact on pricing. Through this mechanism, ESCOs are also compelled

¹⁶ BRP, p. 3.

to hold the reference price for 6 weeks, thus exposing them to market risks and changing market prices

It may be useful to include a protective measure that would indicate that if costs vary by X% from when the product is actually marketed to when the reference price was calculated, the reference price would be adjusted by an appropriate factor. Alternatively, the Staff can set a band of X% around the reference price to allow for such vagaries. An ESCO that did not exceed the reference price plus the band would be viewed as complying with the reference price.

As discussed in the collaboratives, many ESCOs approach the market through a series of campaigns for which they hedge a certain amount of load and utilize various sales channels to market a Fixed Price product at a price that they hold open for more than one month. It is not uncommon for a Direct Mail offer to be available for as much as 6-8 weeks. A monthly reference price is particularly problematic in this context. An ESCO could very easily find themselves in a situation where they hedged at a point in time and for the first month their Fixed Price offer was easily within the band of acceptability as defined by that month's reference price calculation, but then the market had a significant downward movement, resulting in the subsequent month's reference price calculation determining that their in-market offer is no longer reasonable. The reference price implementation must take such scenarios into account and acknowledge that this scenario does not represent one in which the ESCO has engaged in problematic pricing or marketing, but rather reflects the simple realities of marketing a product whose price is dependent upon a constantly changing underlying wholesale market.

There is also a general timing concern with the reference price leading or lagging the market. ESCO's will undoubtedly receive requests for price quotations from customers prior to this reference price being set. They will not be able to make an offer for fear their price comes

in above the reference price, when it is ultimately established. Once established – six weeks prior to the beginning of the first month in the 12-month period – the price will almost immediately be dated; the wholesale market responds to supply and demand assessments that are constantly changing. If the underlying wholesale cost to serve increases, then no offers will be made. If however, the wholesale cost decreases, then competition will keep the price moving downward notwithstanding the outdated reference price.

The reference price formula assumes that the forward market pricing will be a predictor of actual pricing from the NYISO. In reality, there are two different drivers for those two markets. The forward market is based on the distillation of expectations for conditions in those future months, while the cost from the NYISO will be based on specific factors experienced in real time, such as planned and unplanned outages, weather changes, and fuel supply charges and so on. To the extent that the inevitable disconnect between the two arises, there is no mechanism to account for that divergence.

The methodology leaves to the discretion of Staff without guidelines some very key components in a retailer's cost structure, costs that are fluctuating all the time, like operating reserves. These are F and P in the benchmark formula. In the case of F, the use of a flat 10% or 20% may make for a simplistic calculation, but the factors contemplated by this item can vary significantly over time. In any event, given the importance of the factors and their direct and material impact on the formula, further elucidation by Staff should be provided.

According to Staff, the historical NYISO data will be used to adjust forward prices for Zones A, G, and J to calculate prices for all non-liquid NYISO Zones.¹⁷ Several questions arise with this methodology. Which data is Staff employing and for what time frame? Will it be

¹⁷ BRP, p. 4.

comparable to capacity where they are using 12 months of data? How will the data be weighted- simple average or hourly load by respective Zone?

Staff advises that they will “load weight on & off peak annual averages to establish base energy price by zone, utility & service class”.¹⁸ Con Edison further adds a further level (i.e. annual kWh or peak kW). Staff should consider imparting this additional level of refinement.

ESCOs may not be buying the commodity or purchasing a hedge at the time the reference price is set. The reference to wholesale markets is from the forward market perspective, which will be used solely to set the benchmark price. The ESCO may not be buying at those prices at that time, but instead will likely be purchasing from the NYISO (or some other supplier) when the individual months subsequently arrive. Moreover, if a supplier wished to hedge, most retailers cannot access the wholesale markets at ICE prices; there is typically a markup by the wholesale supplier for their credit. This can be as high as \$3-\$4 per MWh. The reference price in zones other than A, G and J will be based on historical basis differentials updated annually. Basis will change, sometimes substantially. During the course of a year, basis changes every single hour of every single day.

The reference price equation inappropriately sets a fixed cost for line losses. Line losses vary based on load served, weather conditions and other factors. Socializing the cost for line losses places an incorrect floor and ceiling on a cost that is in fact a variable component to the cost of supply.

There is also a misapprehension of how the NYISO works and costs its products. To be sure, some of its costs are predicated on wholesale power prices, but some are straight rates per MWh. Yet the Staff formula is a percentage of the energy prices. While simple, it does not reflect the underlying cost realities, and will eventually lead to either too much or too little being

¹⁸ *Id.*

embedded in the reference price. Setting an incorrect benchmark will only increase customer confusion and undermine the Commission's goal of transparency. Moreover, in the case of 10% for load following, there are loads that cost much more to serve than 10% of the energy cost.

It appears that the retail adder of 2 cents too low. The POLR in Texas for example uses 6 cents.¹⁹ The premise behind a higher adder is that there are many loads and costs to serve and there are various retailing costs that need to be recovered. A fixed reference price should accommodate such activities.²⁰

In Factor P there is no mention of the Merchant Function Charge in the electric formula,²¹ even though the MFC is included in factor P of the gas formula.²² This requires clarification.

The Whitepaper uses words such as 'appropriate' and 'based on need' frequently. Although they can have considerable impact on pricing they are undefined.²³ This requires further clarification from Staff as to how their discretion will be exercised and which factors Staff will consider in the exercise of its discretion.

The fixed reference price in the BRP would use a straight monthly average of ICE forward prices and a 10% adder to cover load shape. This overlooks the monthly seasonality of mass market demand. Essentially a fixed reference price would weight on- and off-peak ICE pricing to develop base energy prices, but the Whitepaper does not specify the weighting method. This also needs to be addressed by Staff.

As proposed, the Lower Hudson Valley capacity component of the fixed reference price would be tied to the NYC capacity price, updated annually.²⁴ It is viable and preferable to

¹⁹ www.puc.texas.gov/agency/rulesnlaws/subrules/electric/Electric.aspx)

²⁰ This applies to natural gas as well

²¹ BRP, p. 3.

²² BRP, p.3, 6.

²³ BRP, p. 3

²⁴ BRP, 3-5.

update pricing monthly, since it is during severe market moves that such updates are most needed and would be unnecessarily delayed by this proposal.

The capacity cost component of the fixed reference price would be converted from \$/kW-month to \$/kWh using the NYISO class coincident peak. However, as the reference price will be developed for each zone/utility combination, it should not be an undue burden to use utility- and class-specific load factors. This would more accurately reflect the capacity cost for a given customer. Even within a utility's service class, load factor among customers can vary significantly. To use a NYISO, statewide average would distort this cost component.

The final reference price should also reflect all applicable taxes.

It is apparent from the comments noted above that the electric reference price formula is filled with omissions that undermine the reasonableness of the Staff proposal.

B. Natural Gas

The BRP proposes that a 12 month fixed price product will be subject to the reference price. There are no gas products addressed in the Whitepaper.

There are serious concerns with respect to the gas reference price formula

The weighted average cost of capacity calculation needs to be defined better. Overall capacity demand charges are not necessarily the result of upstream pipelines with published tariff rates. Some LDCs pass through storage costs that are not easily discoverable or predictable (e.g. Central Hudson WBS (storage) (Winter Bundling Storage)). Even when demand costs are accurately captured, spreading variable costs over an annual load requires weighing based on how the gas is pathed from pipeline receipt points to the LDC city gates, into storage, and out of

storage. To accomplish this, a typical normal load shape should be calculated and routing of supply needs to be determined based on the most economical paths, reflecting the current storage position and any tariff limitations.

The weighted basis cost calculation needs further detail. For the same reason that variable pipeline costs are hard to determine, so are basis costs. A model must reflect all paths that supply during the year, including in and out of storage, before basis costs can be calculated. It is not accurate to assume that ESCOs will buy the pipeline MDQ for each applicable receipt point for each month.

The NYMEX cost calculation needs further detail. A straight average is not sufficient enough to be accurate, so the supply for the year must be pathed to determine the NYMEX position taking into account storage injections and withdrawals.

There is also concern over illiquid points. Some LDCs release capacity with receipt points that have illiquid forward basis points. The Whitepaper does not directly explain how the basis component of the reference calculation will be calculated for these illiquid receipt points.

The weather risk premium of 5-10%²⁵ of cost may be suitable in low volatility environments. Should gas prices ever move significantly, this factor will be inadequate. The rapid volatility during the Polar Vortex demonstrated how volatile delivered gas prices can be during severe weather demand.

The fixed gas reference price has a component M 'to limit price gouging'.²⁶ The BRP provides no information concerning how it will be determined or the criteria used to establish a rational value, its size relative to market indicators, or whether it will be used only in a downward manner. Staff should supply more detail.

²⁵ BRP, p. 7

The pool of available electric products identified by Staff allows an ESCO that includes 30% green power to avoid the savings guaranty obligation. There is no similar option available for gas. This should be corrected. An ESCO supplying gas can purchase a “carbon offset” from a provider that is based upon the customer’s usage. By this mechanism, the customer’s usage is “offset” by the lowering of emissions for projects funded by the carbon offset provider. Staff would determine the amount of carbon offset the ESCO would be required to provide. This amount at a minimum would be comparable to the 30% green applied to electric ESCOs.

C. Green/Renewables

In the May 4, 2016 SAPA Notice, Staff suggests defining “green energy” as those technologies identified in the RPS which does not include RECs. With the anticipated adoption of the CES which clearly recognizes RECs, the definition should be, at a minimum, consistent with the CES standard.

In connection with RECs, the ESCO should not be limited to RECs that are sourced only in New York. This approach is too restrictive. In an environment where the Commission is developing a large scale program and implementing CES whose contours, impacts and problems are yet to be fully known, the better approach is to allow for greater flexibility with respect to eligible RECs. To this end, the Commission should accept RECs that are to be retired in adjacent ISOs (PJM and New England) for voluntary retail green power products in NY without a requirement to deliver the power to NYISO. This would provide LSEs and consumers with a wider array of green products based in areas adjacent to the NYISO.

Finally, RESA is unaware of any evidence that New York residents have a bias for in-state green energy. The essence of a competitive market is that it make available to consumers a host of product offerings and allow them to determine what they are willing to pay for any one of

them. It is possible (albeit unlikely) that New York consumers only value in-state RECs, but it is equally possible that they would prefer the option to green their energy with a different – potentially lower-cost – green attribute. It is not for Staff to determine what consumers value and to arbitrarily decide what will be available to them. Restructuring is based upon the notion that consumers are not monolithic in their desires. The Commission should resist taking a “one-size-fits-all” approach to products in the competitive market.

Staff avers that ESCOs offering green products must provide to customers in advance, the specific energy sources of the electricity used to supply the customer that are claimed to be green energy. This rule is impractical as ESCOs modify their sources of power in response to subsequent market conditions. ESCOs may need to constantly change their fuel sources to meet the CES requirements, and customer usage patterns. The specification of energy supplies is incompatible with normal vagaries in the market. Providing a guarantee of at least thirty percent of green energy should be sufficient.

VI. APPLICABLE CUSTOMERS

The types of measures contemplated in the Whitepapers are primarily intended to provide the less sophisticated customers with the ability to more accurately assess the economics associated with their energy purchasing decision, and help ensure protections are in place that will protect such consumers. The same level of concern does not attach to “small” commercial customers who on a daily basis review and analyze offers from vendors (including ESCOs) for the provision of goods and services. In addition, small business owners must assess and manage the costs of all their business inputs and costs, including energy. The application of security,

express consent and price regulation do not have the same resonance with respect to small commercial customers.

Further, it is very difficult given utility rate structure to ascertain whether a customer has status as a small commercial. By way of example we can examine the rate structures of National Fuel and Central Hudson.

As described in the National Fuel tariffs, the utility provides residential service through S.C. 1 which is available to any use of gas for residential purposes where consumption is less than 25 million Ccf per year.²⁷ All remaining firm customers are served through S.C. 3 which is available to all non-residential customers.²⁸ The National Fuel tariff structure does not have a distinct small commercial customer category as all commercial customers from the small candy store to the large commercial complex are served through S.C. 3.

A similar confluence of customers occurs in Central Hudson. With respect to gas service, all residential customers are served under S.C. 1. All other customers are served under S.C. 2 which incorporates all commercial and industrial gas customers.²⁹ The Central Hudson gas tariff structure does not have a separate identifiable small commercial customer category. All *commercial and industrial* customers are lumped together and served through S.C. 3.

On the electric side the same problem exists. Staff envisions that non-demand electric customers would qualify as a small commercial customer. However, there is a material dispersion of customers within this grouping, enveloping a wide variety of customers from a candy store to fairly larger businesses. Thus, accurate definition of these electric customers is highly problematical.

²⁷ P.S.C. No. 8 –Gas, Leaf 149. Low income residential service is provided through SC 2 (P.S.C. No. 8-Gas, Leaf 152 and 156.1).

²⁸ P.S.C. No. 8-Gas, Leaf 157.

²⁹ P.S. C. No. 12-Gas, Leaf 149, 151.

For these reasons, the Reset requirements addressed in the Whitepapers should not be applicable to small commercial customers.

VII. CONCLUSION

RESA appreciates the opportunity to submit these comments and assist the Commission in its efforts to address the needs and concerns of ratepayers.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel, Counsel*

Usher Fogel, counsel

Dated: June 6, 2016