GREAT EASTERN ENERGY

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Via Electronic Filing

Honorable Kathleen H. Burgess, Secretary
New York State Public Service Commission
Three Empire Plaza
Albany, NY 12233

Re: 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:

GREAT EASTERN ENERGY'S REPLY COMMENTS ON RESETTING RETAIL ENERGY MARKETS FOR MASS MARKET CUSTOMERS Commission issued a *Notice Seeking Comments on three whitepapers that* Staff had submitted for public comment on the following topics:

1) Performance bonds or other security interests for ESCOs;

2) Reference prices for ESCO products; and

3) Express consent from ESCO customers.

Great Eastern Energy (GEE) filed initial comments in response to the Notice on June 6, 2016. GEE respectfully submits these reply comments to address statements made by several parties in their initial comments.

In our reply comments, GEE will address certain parties' comments regarding using utility prices as Reference Prices and receiving Express Consent from customers.

REFERENCE PRICES

In their joint comments, the Utility Intervention Unit (UIU) and the Attorney General of the State of New York (NYAG) argue that "Commission-approved utility rates represent 'just and reasonable rates;' thus, to charge a higher rate without delivering corresponding added value is not just and reasonable." They also argue that "Thus, in the case of a fixed price contract, the only time a value is added for the consumer is when the consumer saves money over what the consumer would have paid as a full service utility customer. There is therefore no reason to provide a consumer with any fixed price contract that does not offer price protection." GEE is not only in complete disagreement with these statements but is stunned that after all the discussion at the collaborative meetings on this topic, even the most basic ratemaking fact that making a comparison between ESCO fixed prices and utility prices is inappropriate, goes unrecognized. We believe this is one of the reasons that PSC staff opted for a benchmark index as outlined in their Reference Price White Paper.

Before we get to these ratemaking details it is worth noting that fixed price contracts are GEE's most popular contract and that 95 % of our gas and 75% of our electric customers choose this option because they value price certainty and budget control. This is why customers view this as a value added service. This option is not offered by New York utilities and does not fit the existing commodity cost pass through model and risk profile. For instance, during the Polar Vortex customers on fixed price contracts saved substantial amounts over what the market price was, while in many cases, ESCOs offering this product were unable to hedge the entire cost of the contract and suffered losses.

As for ratemaking particulars, its apples and oranges to compare a price the ESCO sets today to a set of utility variable rates on an after the fact basis that reflects changed market conditions. ESCO fixed prices reflect a forward commodity curve at a particular point in time plus a fixed adder. Utility monthly rates are not forward looking. Furthermore, they are distorted by prior period adjustments and hidden mark ups on cash out and other services provided to ESCOs that flow to sales customers.

Regarding the application of prior period adjustments, a vivid example is Con Edison's submittal of its revised 2014 Annual Gas Cost Reconciliation. Here, ConEd sought approval for the refund of over collected costs as of August 31, 2014, through the application of credit in the unit amount of 10.28 cents per therm to firm gas customers through the monthly gas cost adjustment for each month of calendar year 2015. This negative adjustment was so large that it in effect made ESCOs non-competitive. To protest this, the Petition of the Small Customer Marketer Coalition To Examine and Revise the Mechanism For The Annual Reconciliation of Gas Expenses and Gas Cost Recoveries was filed and Case 15-G-0101 was established. Although this petition was filed in February 2015, no action has been taken to address this concern.

A second reason why comparing utility monthly rates to ESCO fixed prices is invalid is that it ignores all the work and risks ESCOs must take to establish a fixed price. This information was presented at the collaborative. To establish a fixed price ESCOs must: (1) obtain customer load profiles and normalize data; (2) have the ability to hedge which requires entering into a credit agreement with a counterparty and maintaining strict risk management policies; (3) executing the hedge which is never 100% effective; (4) buying the commodity in the physical market; and (5) managing utility and/or NYISO cash outs as well as dealing with regulatory changes and other risk factors.

In order to take these risks to provide a fixed price product ESCOs must collect a risk premium and a reasonable profit margin. In that regard, as we outlined in our original comments for electric, we feel a $2.75 to 3 cents per kWh adder is appropriate and $2.75 per dth is appropriate for gas. As stated, utilities do not provide a fixed price product since it does not fit their risk profile and their desire to pass through commodity costs.

Thus, for all the reasons above, the notion that the only way to measure the value of a fixed price is to compare it to the utility price must be rejected.

EXPRESS CONSENT

Here, UIU and the NYAG recommend that, "Regarding contract renewals, all changes will be considered material and will require that the ESCO obtain the customer's express consent for renewal." GEE disagrees with this. The Express Consent White Paper outlined by the Staff is adequate to protect consumers in that it includes three notifications. Furthermore, requiring the customers' express consent for renewals would unnecessarily expose ESCOs to unreasonable risks if a customer does not respond in a timely fashion and must be rolled to a variable rate. Under that scenario as proposed by Staff, the ESCO would have to beat the utility price which may not reflect market conditions. It is better for both the ESCO and customers to roll into value added fixed price contracts via the Express Consent process as proposed by Staff. If the Commission decides affirmative consent is necessary, then they would have to revise the Rules which compare ESCO variable rates to monthly utility commodity rates at least to give the ESCO a grace period to re-sign the customer on the fixed rate.

CONCLUSION

All told, in setting benchmarks, comparisons of ESCO forward fixed price contracts to monthly utility commodity costs should be rejected. In addition, express consent through triple notification as opposed to customer affirmation, provides adequate protection to consumers and should be adopted. Otherwise, the variable rate comparison would have to be modified.

Respectfully submitted,

Robyn Frank

Robyn Frank
General Counsel, Great Eastern Energy