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June 2, 2016

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

Re: CASES 15-M-0127, 12-M-0476, 98-M-1343- WHITEPAPER ON THE ORDER RESETTING RETAIL ENERGY MARKETS AND ESTABLISHING FURTHER PROCESS: Reference Prices, Performance Bonds and Express Consent (May 4, 2016)

Dear Secretary Burgess:

Great Eastern Energy (GEE), headquartered in Brooklyn, NY, has been a provider of deregulated natural gas and electricity since 1996. GEE currently serves over 30,000 retail customers in the Northeast, focused mostly on small commercial and industrial end users. In addition, we manage wholesale transactions for other ESCOs. GEE's comments below are in response to the above-captioned matter.

REFERENCE PRICES

The following comments address Staff's proposal regarding the establishment of Electric and Gas Reference Prices. GEE will not challenge the approach taken by Staff but does have several recommendations that would need to be considered in order to establish a workable and practical benchmark. It is our understanding that the primary intent of the reference prices are to provide price protection to consumers while the market transitions to one in which ESCOs provide energy-related value-added services to customers. In our opinion, the challenge is to make the benchmark as reasonable as possible so it balances the need to prevent exorbitant charges for commodity services yet does not inadvertently trigger due to market movement and other factors unrelated to "price gouging." The intent of our comments is to provide solutions and not stumbling blocks.

Need for Illustrative Example for Both Gas and Electric

The White Paper states that the reference prices need to be "transparent, sufficient, visible, timely-provided and easy to administer." We agree. However, despite Staff's best efforts to make the formulae for the reference prices understandable it is difficult to know exactly how these formulae will be applied in practice. Therefore, before they are codified, we request that examples be provided showing their application using actual numbers. For both electric and gas they should be provided for at least one upstate and one downstate utility. Moreover, the utilities selected should be of sufficient complexity so as to give the parties an opportunity to iron out the various assumptions that might have to be made. This would be an important step in making them operational and meeting the transparency goals established by Staff. Separate technical conferences should be held for the electric and gas sectors to give pricing experts a chance to participate and make recommendations. ESCOs should be afforded the opportunity to compare the prices they have charged for the period selected so they comment on the reasonableness of the results.

Indexed Products

The White Paper does not address indexed products. These are defined as a published index for the commodity plus a fixed adder. Such products are set for at least a one year period and are based on a transparent, visible, timely and easy to administer commodity index such as the NYMEX. We believe these should be treated as a fixed price value-added service. The products are popular with customers who want some price protection but are willing to have their price fluctuate with the published commodity index. For gas, the commodity index is on page 6 of the White Paper and is referred to as "C." For electric, it is akin to the Base Energy Price referred to on page 3. In fact, the only difference between a fixed price product and the indexed price is that the ESCO does not have to hedge this price though it still takes the risk on imbalances, load shape, etc. The levelized fixed price adder is identical to all the adders used in the formulae proposed by Staff

The reference price for an indexed product could easily be derived using the same formulae proposed by Staff for fixed prices deleting the published commodity cost. To classify the indexed product as a variable rate, would be inappropriate and make it impossible for ESCOs to offer it to customers if it is compared to the utility rate. This would deprive customers of a popular choice that does not possess the same problems as that have occurred with purely variable rates. Purely variable rates are not transparent and do not necessarily reflect an index. This is true for both utility and ESCO variable rates.

Timing

The Whitepaper proposes that the reference prices be calculated "6 weeks prior to the beginning of each 12 month period." It states the price for an offer that begins in May would be established in mid-March. After considerable discussion at our recent conference with Staff, ESCOs and utilities, most parties agreed there is no optimal time to compute the price. In GEE's case, new customers would get a price based on a weekly rack rate which would be adjusted if futures prices moved radically over a short period. Renewal customers may get a price established as far as 30 days in advance though the ESCO would take the hedging risk on turnover if the customer does not accept the price. On balance, we think the 6 week period may be too far in advance and could be shortened. If this lead time is not shortened, then it should be acknowledged that if there are large movements in prices (e.g. before a winter or summer period) then the reference prices should be revisited before any action could be taken. Notwithstanding the above, as discussed later, we believe the 2 cent Risk Premium ("P") established by the electric Staff to cover "ESCO acquisition, financing, labor, POR costs, taxes" is too low. The large lead time is one reason, among several, that "P" should be adjusted upward. Gas staff did not propose a number for “P”.

The Risk Premium (“P”)

The Risk Premium is the thorniest issue since it establishes the “head room.” If “P” is set too tight the Reference Price will trip too often. By the same token, if it is too large customers may be subject to unreasonable prices. As previously mentioned, Electric Staff proposed a value of 2 cents per kWh as a Retail Cost Adder. We believe this is to recover ESCO overheads such as ESCO acquisition, financing, labor, POR costs and taxes. Gas Staff left “P” open to comment. For electric we think this is too narrow of a band and can be larger since the intent is to prevent “price gouging.”

First, the magnitude of “P” will be a function of the load shape and other assumptions used to compute the index. Some of the inaccuracies introduced by making assumptions in this phase of the formulae need to be compensated for in the risk premium. Second, we pointed out that the risk premium needs to compensate for any timing difference resulting from when the benchmark is set vs. when the customer starts service. Third, it is unclear where weather risk is included in the formula and provisions for lack of perfect hedge, ISO reconciliations, etc. In our opinion, for electric commodity, based on our internal costs, we think that “P” should be set between 2.75 and 3 cents per kWh. GEE is not saying we need to make a gross margin of that magnitude. However, we think our proposal strikes a better tipping point to weed out ESCOs who are overcharging. Below the 2.75 to 3 cents per kWh adder we think competition will work.

It should be noted that ESCOs work on razor thin margins; and on a residential customer who uses 6000 kWh per year, an ESCO that can clear 5 mils to the bottom line due to competition stands to make a mere $30 per year from this customer. For the gas “P” and “M” (cushion to limit price gouging – page 6), using similar logic we think an adder of $2.75 per dth is reasonable to prevent price gouging. Again, this adder should not be confused with actual margins which are lower due to competition. If the parties wish, they may compute actual gross margins for both electric and gas for the many ESCOs who are competitive, by simply subtracting the Staff’s index computation from posted prices on the Commission’s Power to Choose site. Such a computation would help validate the thin margins most ESCOs currently work on. In fact, at GEE our large customers subsidize the smaller ones. In our view, the provision of energy related value-added services will ultimately help make small customers more attractive.

- **Merchant Function Charge Issue**

In the Gas Reference Price formula the MFC is mentioned as part of the Premium or “P.” It states the Premium contains “supplier margin and MFC related costs, including purchase of receivables and billing.” GEE wants to be sure that the utility costs used to make up their MFC are never used as a proxy for the actual costs incurred to operate an ESCO. The utility costs are an allocation of call center and other costs and a represent only a small share of the total costs of these functions. They leverage the large utility base of customers and are not in any way representative of the costs ESCOs incur to build computer systems to enroll customers, track invoices, respond to customer billing inquiries, manage its supply acquisition and customer pools, etc. If the utility left the merchant function perhaps these two cost bases would converge.

Month to Month Variable Rates

The Whitepaper envisions that for month-to-month variable rates, ESCOs would have to offer a price guarantee with respect to the utility commodity rate as articulated in the Reset Order. We believe this only works in conjunction with the" Express Consent'' rules as they are laid out in the Whitepaper. As long as renewals are managed in this way, ESCOs will be more confident that customers can easily roll to a fixed rate. Otherwise, ESCOs may have to contend with customers who enroll late and then may be on a variable rate for a short period. Therefore, if the "Express Consent" is modified to require affirmation on the part of the customer, we propose that any ESCO customer who is on a variable rate for less than two months not be subject to the price guarantee. That would give ESCOs incentive to enroll the customer on a fixed rate or decide to continue to serve the customer on a variable rate with a price guarantee.

As to the comparison to utility rates, we want to repeat a theme we have raised many times before regarding establishing a level playing field with the utility. To that end, certain "nuts and bolts" issues would need to be resolved by the Commission if such comparisons are made. For example, it is essential that utility commodity prices reflect market conditions and are not distorted by prior period adjustments and other factors. In fact, Case No. 15-G-0101: 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 instituted to address this matter on the gas side during 2015, but no action has been taken. No case has been instituted for electric rates though we believe it should be addressed. Also, for many gas utilities, retail access programs governed by mandatory capacity release do not offer a level playing field and leave ESCOs at a competitive disadvantage. Lastly, utilities are not bound by the same performance standards for customers of ESCOs as they are for utility sales customers. In the absence of these measures, in some service territories, ESCOs and their customers have been adversely impacted and receive substandard service compared to utility sales customers. Such enhanced standards could include: supplier services response time to customer billing and other ESCO inquiries via its automated inquiry system, ESCO billing accuracy, and improvements regarding missed enrollments and pool report errors. GEE and Direct Energy have addressed this in National Grid's current rate case.

PERFORMANCE BONDS

GEE is in favor of Staff's performance bond proposal. Based on the recent discussion in the technical conference held in Albany on May 31, 2016, we feel confident that a sound process will be put in place by the Commission to ensure that no action will be taken to draw on these funds without a thorough consideration of all the relevant facts in a particular matter. Having reviewed the various options suggested by staff in the Whitepaper, our only caveat is that we would prefer that the performance bond or security instrument be implemented by means of a mechanism other than the POR program. As has been pointed out by many of the other ESCOs as well, past billing errors and other issues with the utilities, makes us reluctant to add yet another layer to the already complex financial relationship we must navigate with them.

EXPRESS CONSENT

On the subject of express consent, GEE thanks Staff for recognizing the challenges involved in obtaining affirmative consent. More often than not, customers ignore our attempts to notify them of impending changes and/or renewal despite our best efforts. While three notices seem a bit cumbersome, we accept it as a necessary trade off in order to satisfy requirements of the UBP and ensure that customers are appropriately notified of renewals and material changes to their contracts. Please note as referenced above, our position on the variable rate price guarantee is predicated on Staff's proposal that affirmative consent not be required, and therefore, will not impede the renewal process.

Respectfully submitted,

Robyn Frank

Robyn Frank
General Counsel, Great Eastern Energy