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January 8, 2024

Mark Parsons
Stream Energy New York LLC
910 Louisiana Street
Houston, TX 77002
Mark.parsons@nrg.com

NOTICE OF APPARENT VIOLATION (NOAV)

Dear Mr. Parsons:

The New York State Department of Public Service (Department) hereby notifies Stream Energy New York LLC (Stream Energy) of its apparent non-compliance with regulatory requirements. As summarized below, Stream Energy apparently failed to enroll or renew customers on compliant products following the effective date of the Public Service Commission's (Commission) Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (December 2019 Order) issued December 12, 2019,¹ which requires that only certain energy products be offered to mass market customers that Stream Energy did not offer then, and does not offer now. Department Staff (Staff) requests that Stream Energy acknowledge receipt of this NOAV letter within 5 business days and respond to this NOAV letter within 10 business days.

Ordering Clause 6 of the December 2019 Order instructs, "Energy Services Companies (ESCOs) who are currently operating in New York that intend to continue to renew contracts with customers in New York and/or enroll new customers in New York following the effective date of Ordering Clause No. 1 are directed to file an application in accordance with the body of this Order no later than 30 calendar days following the date the

¹ Case 15-M-0127 et al., Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (December 2019 Order).

revisions to the Uniform Business Practices (UBP) become effective.”² The December 2019 Order, which due to extensions sought by ESCOs and granted by the Commission did not become completely effective until April 16, 2021,³ adopted enhanced eligibility requirements for ESCOs to follow. Following the application process outlined in the UBP, which requires Staff to review ESCO documents, including copies of all contracts intended for product offerings, ESCOs that meet the criteria provided in the December 2019 Order are granted eligibility to service mass market-customers. Pursuant to that Order, ESCOs are limited to offering three products to mass market customers: (1) a variable-rate product with a guaranteed savings, (2) a fixed-rate product with a 5% cap, and (3) a renewable electric product.⁴

Several parties requested rehearing of the December 2019 Order, which the Commission denied in a September 2020 Order that also provided clarification to the December 2019 Order.⁵ Following both the December 2019 Order and the September 2020 Order, several ESCO parties requested extension of the deadlines to comply with the new product restrictions adopted in both orders. Those extensions were granted on January 22, 2020,⁶ April 7, 2020,⁷ July 14, 2020,⁸ and for a last time on February 4, 2021.⁹ The final extension ruling provided that the new product restrictions, specifically, Ordering Clause Nos. 3, 4, and 5 of the September 2020 Order, would go into effect on April 16, 2021.

On November 16, 2021, Stream Energy filed its application to serve customers in New York pursuant to the December 2019 Order. Stream Energy proposed offering a renewable product to residential and small commercial customers. On January 21, 2021, Staff issued a letter to Stream Energy granting eligibility to only serve only a renewable electric product to mass market customer in New York State (Appendix A) and no other products that it may have served to mass market customers in the past.

The December 2019 Order requires ESCOs who market a renewable energy product to comply with the following requirements: (1) the ESCO must provide at least 50% of their contractual load greater than the renewable mix of the Renewable Energy Standard (RES) load-serving entity (LSE) obligation for the year; (2) the ESCO must comply with the RES location and delivery requirements when procuring Renewable Energy Certificates (RECs) or entering bilateral contracts; (3) ESCOs must satisfy transparency and information disclosure criteria.¹⁰ The Commission further required that all ESCOs offering renewable

² December 2019 Order, pp. 109-110.

³ See footnotes 5-9 *infra*.

⁴ December 2019 Order, p. 108.

⁵ Case 15-M-0127 *et al.*, Order on Rehearing, Reconsideration and Providing Clarification, (issued September 18, 2020) (September 2020 Order).

⁶ Case 15-M-0127 *et al.*, Notice Granting Extension Requests (issued January 22, 2020).

⁷ Case 15-M-0127 *et al.*, Notice Granting Extension Requests (issued April 7, 2020).

⁸ Case 15-M-0127 *et al.*, Notice Granting Extension Requests (issued July 14, 2020).

⁹ Case 15-M-0127 *et al.*, Notice Granting Extension Requests (issued February 4, 2021).

¹⁰ December 2019 Order, p. 108.

products must identify the percentage of renewable energy supplied in the contract and then retire RECs to match that corresponding load in the New York Generation Attributes Tracking System (NYGATS) in their Environmental Disclosure Program (EDP) subaccount.¹¹ This process, verified by Staff, ensures that New York State mass-market customers who choose to support renewable energy receive the contractually obligated loads upon which the ESCOs ability to serve them is conditioned.

An annual renewable energy audit was conducted by Staff following the close of the 2022 Clean Energy Standard compliance year on June 30, 2023. Every ESCO who was given eligibility to market a renewable product was required to file a renewable audit response in Document and Matter Management (DMM) 22-00900, by June 15, 2023. The total New York load reported for 2022 was 44,231 MWh. The self-reported renewable load data that was submitted on behalf of Stream Energy reported that 1,893 MWh of load was served on a voluntary compliant renewable product.¹² This prompted further investigation into the number of mass market customers being served on compliant products versus those who continued to be served on non-compliant legacy products that continued on a fixed term or month-to-month variable product following April 16, 2021, the effective date of the December 2019 Order.

Staff reviewed filings that were submitted into Document and Matter Management (DMM) 14-02554 by Stream Energy prior to the revised application requirement and discovered that Stream Energy did not offer any renewable products to customers prior to the December 2019 Order. In fact, the last sample contract reviewed by Staff was part of the Triennial compliance filing that was submitted on June 6, 2018, which was for an electric/gas product only.¹³

Staff corresponded through email with Angela Schorr, who is the regulatory contact for Stream Energy, from June 15, 2023, through November 20, 2023 (Appendix B) in this investigation. Staff requested a copy of an active customer contract on June 15, 2023, which was submitted on June 21, 2023. In a follow up email to Staff's request for customer counts, on November 20, 2023, Ms. Schorr indicated that of the 4,551 customers who began service prior to April 21, 2021, 4,530 continued to be served on a variable month-to-month non-renewable product as of December 31, 2022. By continuing to serve customers on non-compliant variable rate month-to-month non-renewable electric contracts, Stream Energy apparently violated the December 2019 Order.

Additionally, Staff examined Stream Energy's gas migration reports and discovered that Stream Energy has continued to serve gas contracts to over 2,500 mass market

¹¹ Only RECs retired in an ESCO's EDP subaccount are compliant with the December 2019 Order. Any other method(s) of retirement potentially subject an ESCO to an NOAV.

¹² Matter 22-00900 In the Matter of Renewable Energy Audits, filed June 8, 2023.

¹³ Matter 14-02554, In the Matter of Compliance with Annual, Triennial and Third Party Marketer/Vendor Listing submitted June 6, 2018.

customers in Consolidated Edison Company of New York, The Brooklyn Union Gas Company d/b/a National Grid NY, Niagara Power Corporation d/b/a National Grid, New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation utility territories, despite only being eligible to serve a renewable electric product after April 16, 2021. Such gas service presumptively subjects Stream Energy to an NOAV for non-compliant service.

Ordering Clause 2 of the December 2019 Order clearly states, “effective 60 calendar days from the date of this Order, any mass-market customer contract for a fixed rate commodity service that is subject to automatic renewal shall be renewed by the ESCO only as a contract for variable-rate, commodity-only service that includes a guaranteed savings over the utility price, unless the ESCO obtains affirmative customer consent to renewable the contract as a fixed-rate contract that is priced at no more than 5% greater than the trailing 12-month average utility supply rate.”¹⁴ Since Stream Energy was never issued eligibility to market or serve mass market customers a gas product following the December 2019 Order, it appears to be in violation of the Order.

The Commission’s December 2019 Order required that any ESCO customers enrolled on a month-to-month contract, including those enrolled on a fixed-rate plan for electricity that shifted to a month-to-month contract at the expiration of the contract term, were required to be served going forward via a compliant renewable product based on Stream Energy’s revised eligibility following April 16, 2021, the effective date of the December 2019 Order. With respect to customers’ month-to-month contracts, the expiration of the agreement is at the end of the current billing period.¹⁵

Therefore, any Stream Energy customers served on month-to-month contracts were required to be returned to energy service provided by the utility or enrolled in a compliant product the month following the effective date of the new product restrictions, which was April 16, 2021. In apparent violation of the Commissions’ Order however, it appears that Stream Energy continues to serve mass-market customers on legacy agreements following the expiration of their current monthly term instead of transitioning these customers to compliant products after the April 16, 2021, effective date of the December 2019 Order.

In furtherance of the Department’s continuing investigation, Stream Energy New York LLC is directed to submit the following:

- 1) An explanation as to why Stream Energy failed to transfer its existing customers onto compliant products following April 16, 2021.

¹⁴ December 2019 Order, p. 108.

¹⁵ Case 12-M-0476, et al., Order Adopting Prohibition on Service to Low Income Customers by Energy Service Companies (issued December 16, 2016), p. 21; see also Nat’l Energy Marketers Ass’n v. New York State Pub. Serv. Comm’n, 167 A.D.3d 88,98,88 N.Y.S. 3d 259, 267 (3d Dept. 2018) (upholding Commission’s adoption and implementation of the prohibition on ESCO service to low-income customers).

- 2) Documentation including signed/effective customer contracts to support its argument.
- 3) Proof that all mass market gas customers remained on a fixed term contract executed prior to April 16, 2021, by submitting copies of all current customer contracts.

If Staff finds that Stream Energy's reply to this NOAV is insufficient or in any way evidences a failure to comply with the UBP and the December 2019 Order, Staff may seek an Order to Show Cause from the Commission. Such Order to Show Cause may seek penalties and remedies, up to and including the possible revocation of Stream Energy's eligibility to operate as an ESCO in the State of New York. Additionally, the Commission may choose to act on its own motion to begin a proceeding in response to the apparent violations of the UBP.

If Stream Energy has specific questions about the above noted findings, it should contact Kathleen O'Riley at Kathleen.oriley@dps.ny.gov. Staff requests that Stream Energy acknowledge receipt of this NOAV within 5 business days by contacting the Staff listed above. All responses to this NOAV letter should be submitted through the Document and Matter Management, or DMM, system under Matter Number 23-02407 within 10 business days.

Regards,



Richard Berkley, Director
Offices of Consumer Services
NYS Department of Public Service
3 Empire State Plaza
Albany, NY 12233

cc: Kathleen O'Riley DPS
Francis Dwyer DPS
Dennis DiBari DPS