

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 00-M-0504 - Proceeding on Motion of the Commission  
Regarding Provider of Last Resort  
Responsibilities, the Role of Utilities in  
Competitive Energy Markets, and Fostering the  
Development of Retail Competitive  
Opportunities.

FURTHER RULING ON SCOPE  
AND PROCESS FOR PHASE 2

(Issued November 6, 2000)

JEFFREY E. STOCKHOLM AND  
JOEL A. LINSIDER, Administrative Law Judges:

In our Ruling on Scope and Process for Phase 2 (issued October 18, 2000) we listed the most critical issues to be considered in Phase 2 of this proceeding and gave parties ten days to request the inclusion of additional issues. In response, we have received comments from Multiple Intervenors, a co-chair of the Public Benefit Programs Committee and, jointly, from Amerada Hess and TXU Energy Services (Hess/TXU).

Multiple Intervenors

Noting the inclusion in our ruling of a series of questions on possible incentives to customer migration, Multiple Intervenors raises the related issue of how the costs of any such incentives are to be recovered. It suggests, for example, that large commercial and industrial customers should bear none of the cost of promoting the migration of residential customers to transportation service; in its view, the large customers are not responsible for the incurrence of such costs nor do they benefit from them.

While Multiple Intervenors raises an important issue, it is an issue already included within the scope of Phase 2, at least implicitly. The bullets under question 1 on page 4 of our ruling refer to such matters as the temporary use of ratepayer funds to increase the number of market participants, to the possibility that costs and benefits of migration measures may vary by customer class, and to rate design changes that might facilitate market development. Nevertheless, given the issue's significance, we here clarify that the mechanism for recovering the costs of incentives to migration, including the possibility that cost recovery may vary among customer classes, is a matter properly considered in Phase 2 of the proceeding.

Public Benefit Programs Committee

A co-chair of this committee suggested that the following question be included in Phase 2:

- Should EE/Renewables and Clean Energy strategies be used as a market driver to increase competitive commodity offers by ESCOs? If so, how?

While the Commission is interested in exploring various ways to foster the development of retail markets, it has stated as well that specific expenditures in future programs funded by the system benefit charge (SBC) are not to be reviewed in this case.<sup>1</sup> Accordingly, the question is precluded from consideration here to the extent it encompasses the use in the near term of SBC funds to subsidize energy efficiency or renewable resource products in conjunction with ESCO commodity offerings. Meanwhile, if the question does not contemplate the use of SBC or other public funds to subsidize or advertise such

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<sup>1</sup> Case 00-M-0504, Order Instituting Proceeding (issued March 21, 2000), p. 4, n. 1.

offerings, its answer would be simply that ESCOs are free at any time to combine commodity with energy efficiency or renewable products in designing their offerings.<sup>2</sup>

Nevertheless, the significant interest in developing novel programs that will facilitate market development warrants further exploration of such programs and suggests including the question in the issue lists, subject to the foregoing considerations. The question should be considered in Phase 2 by the energy efficiency subcommittee of the Public Benefit Programs Committee.

#### Hess/TXU

Hess/TXU raise issues related to Provider of Last Resort (POLR) responsibilities and to possible changes in the role of the Public Service Commission. The issues are considered in order.

#### 1. POLR Questions

Hess/TXU recognize that POLR questions are implicitly raised at various points in our ruling, and they provide illustrations of the importance of the issue and of how the analysis of POLR functions may vary among customer classes. But they see a need for a full discussion of POLR responsibilities regardless of which end-state model is adopted and therefore urge explicit inclusion of POLR questions in the Phase 2 issues list. They offer, specifically, a series of bullets to be included under "Movement" question 6:

- Is it possible to transfer the Provider of Last Resort roles and responsibilities away from the utility to

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<sup>2</sup> In fact, it appears that some ESCOs are offering energy efficiency products and energy management services combined with commodity.

another entity or entities as movement occurs towards a competitive market?

- What are the necessary steps to accomplish such a transfer?
- What are the obligations of a non-utility POLR?
- What prices will a non-utility POLR charge?
- Is there a role for the Commission in overseeing a non-utility POLR?
- Is it possible for every ESCO to be a Provider of Last Resort?
- Can there be more than one Provider of Last Resort?

While POLR issues pervade our issue list, as Hess/TXU recognize, we agree that the need to consider those important issues should be made more explicit. As we have emphasized throughout the case, however, "POLR" should be understood not as a noun, referring to an entity, but as an adjective, describing a group of functions that might remain bundled and performed by a single entity or might be unbundled and distributed among several players. While the Hess/TXU filing recognizes that reality (as shown, for example, by its distinguishing various categories of customers that might need POLR service and its recognition that multiple entities might perform POLR roles), all of the proposed bullets after the first two are worded in a way that seems to contemplate the bundling of POLR functions. In addition, the level of detail in the bullets may be too great for an issue list such as this.

Accordingly, we adopt the Hess/TXU suggestion in concept, but embody it in the following bullets, to be inserted under question 6:

- Which provider of last resort roles and responsibilities, if any, should be transferred from the utility to other entities as movement occurs toward a competitive market? Are there any POLR roles and responsibilities that should be required of all ESCO's?
- What are the necessary steps to accomplish the foregoing transfer(s)?
- How, if at all, should POLR responsibilities be substantively changed in a competitive market?
- Should POLR issues be resolved differently for different customer classes?

## 2. Role of the Commission

Hess/TXU believe the role of the Commission will change as we move toward competitive markets, and it favors explicit consideration of that prospect. It suggests adding the following question to the list:

7. Does the role and responsibility of the Public Service Commission shift or change in response to developing competitive markets? What additional responsibilities should the Commission be prepared to take on? Are there any responsibilities that will diminish as competitive markets develop?

There can be no doubt that the role of the Commission will change as markets develop; indeed, that process has begun. But how that process unfolds will be a corollary of how markets develop, and it strikes us as premature and potentially wasteful to consider, in advance of the market transformation advice sought in this investigation, how the Commission's role will change in response to it. Accordingly we decline to add Hess/TXU's question 7 to the issues list.

(SIGNED)

JEFFREY E. STOCKHOLM

(SIGNED)

JOEL A. LINSIDER