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May 17, 2007

Hon. Jaclyn Brilling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, N.Y. 12223

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Re: Case 07-G-0299- In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas <u>Distribution Companies – Capacity Planning and Reliability</u>

Dear Secretary Brilling:

These comments are submitted on behalf of the Small Customer Marketer Coalition ("SCMC") in accordance with the "Notice of Comment Schedule" ("Notice") issued in this proceeding on March 14, 2007, which provided interested parties with the opportunity to comment on the "Straw Proposal" incorporated in the "Staff White Paper on Capacity Planning and Reliability" ("White Paper") prepared by the Department of Public Service Staff ("Staff").

The Straw Proposal codified in the White Paper is viewed by Staff as a mechanism to equitably balance the need to preserve the reliability of the natural gas system in New York while preventing the inefficiencies inherent in the duplicative retention of capacity assets by the each local distribution utility ("LDC") and ESCOs.[1]

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[1] White Paper, p. 15 - 16

Under the Straw Proposal distribution gas utilities would be required to adopt and have in place "mandatory capacity release programs" to serve core customers.[2] Such mandatory programs would be modified to accommodate ESCOs who currently use their own capacity to meet core customer requirements.

SCMC generally find the Straw Proposal an acceptable approach that maintains system reliability while permitting grandfathering for those ESCOs currently relying upon their own capacity to serve core customers.

There are however several areas that require further clarification in order to ensure that the proposal properly balances the goal of system reliability without impairing the competitive retail natural gas market.

A. *Existing Capacity Release Programs*

Currently, several utilities maintain capacity release programs that provide ESCOs with access to primary receipt point capacity that is held by the LDC but is also required by ESCOs in order to operate in New York and properly serve their customers. Although the individual programs are tailored to reflect the nuances of each utility's capacity portfolio and are therefore structured with different components, they all provide ESCOs with same critical end result, namely, access to the requisite primary receipt point capacity. It is our understanding that the various capacity release programs currently in effect comply with the standard codified in the Straw Proposal.

However, neither the White Paper nor the Straw Proposal addresses this critical matter with specificity. It is therefore requested that the Commission clarify that the existing capacity release program conform with the standards incorporated in the Straw Proposal, and that such programs can and will be maintained in the event the Straw Proposal is adopted by the Commission.

B. *Winter Bundled Supply Service*

Several utilities including KeySpan, Con Edison and Orange &Rockland offer to ESCOs a winter bundled supply service (WBSS) under which the utility acquires bundled (capacity plus commodity) in the summer season for delivery in the heating

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[2] Core customers mean those residential and small commercial customers who lack access to alternative fuels and for whom ESCOs must acquire primary delivery point capacity for the five winter months if they do not accept assignment of LDC capacity. White Paper, p. 3, FN 7.

season. The WBSS acts like a storage type service and has been favorably received by the ESCO community. This program appears to be consistent with the Straw Proposal, but is not specifically addressed in the White Paper. Accordingly, the Commission should clarify that the WBSS as currently offered by the utilities is consistent with the Straw Proposal, and can be maintained in the event the Straw Proposal is adopted by the Commission.

C. *Capacity Allocation Methodology*

Under the Straw Proposal the LDC will allocate capacity to the ESCO. It is imperative that this allocation process be conducted in an equitable and competitively neutral manner. This necessitates that the allocation of capacity should to the maximum extent possible mirror the LDC weighted average cost of capacity (WACOC). Under this process, the LDC would be precluded from allocating, for example, only higher cost capacity to the ESCO; instead, the ESCO would effectively receive an equitable slice of the system which will attribute a cost of capacity to the ESCO comparable to the utility's cost for capacity that is charged to sales customers.

In addition, through the allocation process, ESCOs must be provided with an equitable level of access to the specific pipelines and capacity assets used by the LDC. Ideally implementation of the Straw Proposal would ensure that ESCOs obtain actual physical access to the pipelines relied upon the LDC and that are incorporated in the WACOC in the same proportion available to the LDC. In summary, the capacity allocation process should to the maximum extent possible, provide ESCOs with capacity at comparable access and cost available to the LDC.

Question Areas

1. ***If marketer load being served with capacity not released by the LDC is not "grandfathered," how will the retail access program be affected?***

Reponse:

An important element affecting the continued growth of retail access is the maintenance of consistent policies that enable ESCOs to develop their business plans with some level of certainty and reliability. If there are continuous upheavals in the underlying regulatory and operating structures it becomes exceedingly difficult to conduct business in an orderly and effective manner. In the upstate area especially, ESCOs to a meaningful level have relied upon the use of their own capacity to serve their customers. This pattern has been in place since the inception of retail access and has become an embedded feature of the program. Therefore, any material changes to the existing business patterns can have a serious deleterious impact on the retail market. Therefore, any changes to capacity requirements should be implemented in a manner that minimizes conflict or interference with on-going business practices.

Consequently, the proposal to allow for grandfathering of the current level of ESCO capacity is a rational compromise which on a prospective basis preserves an acceptable reliability standard without undermining the existing structure by which ESCOs serve customers.

3. ***What should happen if a marketer that is grandfathered exits the LDC service territory without selling its entire book to a single entity? For example, should a marketer who takes on some of the exiting marketer's book of customers be allowed to bring in its own capacity to serve those customers? Should those customers be considered incremental load and only served by released capacity from the LDC?***

Response:

In the event an existing ESCO does not sell its entire book to one entity the capacity obligation should be tied to manner by which the particular customer was previously served. It is difficult to view this customer as "incremental" as the customer has already migrated to retail access; thus from a system perspective the manner by which the capacity needs of the customer are to be met have already been established. Therefore it is logical that the ESCO which takes on some of the exiting ESCO's book of customers be allowed to adhere to the capacity standard that was used to serve the customer by the exiting ESCO. If the customer was served by ESCO owned capacity that was grandfathered under the Straw Proposal, the same option should be available to the purchasing ESCO, regardless of whether the new ESCO purchased the incumbent ESCO entire book of customers. Similarly, if that customer was previously served with capacity released by the LDC, the same standard would apply once all or a portion of the customer book is sold to another ESCO.

4. ***How is reliability assured in upstate and western parts of the State by grandfathering the marketer's capacity brought to the city gate?***

Response:

The current system which permits ESCOs to use their own capacity has been administered by the LDCs in a manner that has not impaired system reliability. In other words, based upon their knowledge of the overall gas capacity system in each service territory, each LDC has concluded that system reliability has been maintained under the current policy which allows ESCOs within limits to bring in their own capacity. Under the Straw Proposal this acceptable status-quo is maintained as grandfathering only applies to the level of capacity that an ESCO is currently using to meet core customer requirements; any new or incremental load would be served using a release of LDC capacity. In this manner, the current acceptable level of system reliability will be maintained.

5. ***What could be done to improve marketer access/use of storage assets?***

Response:

In a manner consistent with applicable policies and regulations, each LDC should consider allocating an equitable portion of their storage to the ESCOs active in their system. This allocation should be conducted in an equitable and competitively neutral manner. Furthermore, the allocated storage should follow the customer so that if the customer moves to another ESCO the new ESCO would have access to the customer's storage allocation.

SCMC thanks the Commission for the opportunity to submit comments on the important issues raised in this proceeding.

Respectfully submitted,

Small Customer Marketer Coalition

By Usher Fogel

Usher Fogel, Counsel

cc: Service List (by electronic mail)