STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 97-13

CASE 94-E-0952 - In the Matter of Competitive Opportunities Regarding Electric Service.

OPINION AND ORDER ESTABLISHING REGULATORY POLICIES FOR COMPETITIVE METERING

Issued and Effective: August 1, 1997

TABLE OF CONTENTS

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

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BY THE COMMISSION:

INTRODUCTION AND PROCEDURAL HISTORY

Opinion No. 96-12 sets forth our vision for the future electric industry in New York. That vision includes, among other features, effective retail competition and increased customer choice. In order to realize these aspects of our vision, we encouraged staff, the seven major utilities and other interested parties to develop recommendations to create a competitive retail energy services market, including recommendations concerning metering functions. In accordance with Opinion No. 96-12, an ESCO[1] Working Group (Group) prepared the October 1, 1996 ESCO

[1] The term "ESCO" has been defined previously in this proceeding as "an entity that can perform energy and customer service functions in any competitive environment, including provision of energy and assistance in the efficiency of its use."
Case 94-E-0952, Restructuring New York's Electric Industry: Alternative Models and Approaches - Glossary, September 1995.

Working Group Report (ESCO Report) that, inter alia, concluded that a multitude of metering and billing issues needed to be resolved before recommendations in these areas could be developed. As a result, the Group created the ESCO Metering Subgroup[1] to address metering issues.

During December 1996 and January 1997, the ESCO Metering Subgroup met numerous times to identify, discuss, and prioritize metering issues. While many issues were discussed (including installation of interval meters, third-party leases, and changes to 16 NYCRR Parts 92, 93, and 125), meter ownership and access to data were identified as the threshold issues to be resolved.[2] On March 13, 1997, staff issued for public comment the ESCO Metering Subgroup Staff Draft Report (the Metering Report). Comments were received from the 14 parties listed in Appendix A.

The decisions reflected in this opinion and order are intended as the first step in opening metering services to competition and thus allowing for the realization of additional benefits and services related thereto. We will continue to evaluate key issues raised by the Metering Report and to monitor market developments and the effects on all participants, and to revise our regulatory policies as needed.

OVERVIEW

We view metering as a potentially competitive service that could further promote robust, effective retail competition.

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[1] This group consists of 29 parties, including staff.

[2] During this time, staff circulated a preliminary position paper and received parties' oral and written comments thereon.

The provision of competitive metering would not only expand customer choice, but would also offer customers numerous additional services, including, for example, real-time energy management for appliance load control. However, several technical hurdles limit the viability of competitive metering, including the lack of interchangeability of metering equipment and meters between electric systems, widely varying metering communication infrastructures, and the significant cost of converting to interval meters.[1]

Fortunately, competitive metering is not a necessary precondition for the introduction of retail electric competition. Rather, it is imperative that potential competitors have access to historic and current customer usage data to market and bill their products and services.

TRANSITION TO COMPETITIVE METERING

At present, meters are part of the electric distribution system and are governed by regulations designed to provide a safe, secure, and reliable energy delivery system. The parties believe that the potential benefits associated with competitive metering warrant careful evaluation of these regulations, many of which could hinder a company's entry into

[1] The term "interval meters" is used to describe a meter that measures usage in small-time increments (e.g., 15 minutes or 1 hour). It is generally used synonymously with the terms "hourly meter" or "time-differentiated meter." During the near term, for customer classes (small commercial and residential) that have, on average, predictable usage patterns, the use of load profiles provides an adequate basis to measure usage patterns.

emerging competitive markets. An open architecture[1] for metering communications systems, and meter standards that promote interchangeability are prerequisites for an effective competitive metering environment to exist. Unless this issue is resolved, competitive metering could be thwarted since ESCOs would have to establish their own meter infrastructure in each utility service territory.

Parties' Recommendations

To ensure a smooth transition to a competitive electric industry, staff recommends that metering issues be formally revisited by the Commission within thirty (30) months. Staff states that the thirty (30) month period would allow the competitive electric industry to develop and allow staff to monitor and review the results of the recommendations adopted herein. During this period, staff proposes conducting the following activities:

1. Revising 16 NYCRR Part 93 (Commission approval of new meters).

2. Developing processes necessary to ensure access to data.

3. Monitoring the introduction of competitive metering in other jurisdictions.

4. Reviewing the development and testing of load profile data.

5. Participating in meter approval requests.

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[1] Open architecture refers to a design for a data network that fulfills the objective of allowing any user to communicate with any other user, regardless of the types of computer systems and meter devices in use. Such a system requires standard computing communications and processing protocols throughout the network. Such a system would allow for real-time access to usage data.

6. Developing a process to accommodate the complaint test requirements outlined in 16 NYCRR Part 92.

Staff indicates it would also accept and review proposals that promote competitive metering and address staff's concerns involving non-utility meter ownership and control.

The Energy Association of N.Y. State (EA) joined by Consolidated Edison Company of New York, Inc. (Con Edison) recommends that the earliest date for revisiting the metering issues be set for thirty (30) months from the date on which the last utility opens all or part of its customer base to retail competition. Niagara Mohawk Power Corporation (NMPC) recommends that the thirty (30) month period be "the later of: (a) thirty (30) months from the date of the Commission's order, or (b) the date on which full retail access is in place for all customers in the State." Multiple Intervenors (MI), on the other hand, recommends that metering issues be revisited in 24 months. ITRON, Inc. (ITRON) agrees with staff's approach, describing it as "a prudent approach to what is a relatively complex and controversial issue."

Computer Meter Corporation (CMC), Pace Energy Project/Natural Resources Defense Council (Pace/NRDC), and ENRON Capital & Trade Resources (ENRON) express a concern that the thirty (30) month period would forestall competition and request clarification concerning what staff intends to do during this period. The New York State Consumer Protection Board (CPB) notes that staff's recommendation limits the receipt of proposals to those submitted by ESCOs and utilities. CPB recommends that other parties also be allowed to present proposals for competitive metering.

ENRON disagrees with staff's recommendation, stating that "staff will do nothing more to open-up metering opportunities for the next thirty (30) months except 'monitor'

and possibly 'review' proposals for non-utility meter ownership or control." ENRON proposes that competition for metering be permitted immediately.

Discussion

Competition for metering services holds the potential for creating greater efficiencies, new products, and innovative offerings in the provision of energy services. However, this potential cannot be fully realized until several technical, policy, and regulatory hurdles are adequately addressed. On balance we believe that the thirty (30) month period is unnecessarily long. Instead, we will direct staff to work closely with other interested parties to develop these issues further and to report back to the Commission within eighteen (18) months. If a metering proposal is put forth that meets these goals in a shorter time frame, staff shall report it to the Commission in a timely manner.

To be sure, a smooth transition to a competitive energy market will require careful evaluation of a number of important issues, and parties must have an opportunity to continue to further consider and develop approaches for how best to implement competitive metering. Some of the issues that have been identified as requiring further evaluation (e.g., proposed rule changes for meter approvals and development of load research programs) might well be accomplished in less than eighteen months. As to the overriding issues of developing meter standards and an open architecture, and meter ownership and control, while it may not be possible to implement final solutions within eighteen months, we will be in a position to better articulate our vision and plans for bringing competition to metering services at that time.

With respect to staff's proposal to accept and review proposals from ESCOs and utilities that foster competitive metering, CPB requests that other parties also be allowed to submit proposals. We agree with CPB that other parties could offer a fresh perspective to the issues of competitive metering and, therefore, encourage any party to submit a proposal that would allow for an effective, competitive metering environment.

METER OWNERSHIP AND CONTROL FOR LARGE COMMERCIAL AND INDUSTRIAL CUSTOMERS

Parties' Recommendations

With the exception of electric submetering, utilities currently own and control all meters on their system. As an initial step toward competitive metering, staff recommends that large commercial and industrial customers be allowed to own a meter that meets their functional requirements, provided the meter remains under the control of the utility, is compatible with the utility's system, and has been approved by the Commission. Under staff's proposal, the utility would control the meter by supplying, via a new tariff, all metering services, including meter reading, installation, maintenance, and compliance with 16 NYCRR Part 92 (metering testing and reporting) and Part 125 (reporting of electric contact accidents). Further, staff would allow the customer to have access to real-time usage data for energy management purposes, provided the integrity of the meter is not compromised. Finally, if a large commercial or industrial customer does not want to own its meter, but wants additional meter functionality, it could request the utility to provide an enhanced meter. The customer would pay the utility

for the meter, its installation, and for the associated contribution in aid of construction taxes.[1]

Staff believes that, at present, the utility is the most appropriate entity to control the meter because of its trained personnel, available facilities, and economies of scale. Further, the utility's responsibility for the integrity of the electric distribution system provides an incentive to maintain a dependable, safe, and secure metering infrastructure.

Staff notes that the existing metering infrastructure has proven to be dependable for recording energy consumption. The utility relies on meters not only for accurate registration of usage, but also as an information source for the efficient and effective monitoring of electric load. Utility planning departments are dependent on usage data for purposes of system design and reliability. Having sole control of the meter allows the utility to maintain, test, and ensure the accuracy of the meter as required by utility procedures and Commission regulations. Until a comparable alternative metering infrastructure can be established, staff believes that the utility should maintain sole control of the meter.

EA and Con Edison state that staff's recommended treatment for large commercial and industrial customers is appropriate. However, both suggest that customer eligibility be more clearly defined. Specifically, EA and Con Edison assert that the demand for such customers be set by each utility to

[1] Under the Tax Reform Act of 1986, contributions in aid of construction became taxable after December 31, 1986. The law treats payments to the utility for meters, and meter upgrades, as federal income. The federal tax as applied to utility property would substantially increase the price of a meter by up to 50 percent (to allow for gross up of federal income tax).

correspond to its mandatory large commercial time-of-use service classification. MI proposes that the eligible customer be "non-residential customers that currently take service under a time-of-use rate or have a billing demand of at least 750 kW per month."

EA also notes its concern that ownership of the meter may imply rights that could clash with the utilities' control responsibilities. EA suggests that "well crafted tariffs should clearly delineate the limitation on the rights of meter owners [and that] meter ownership will be subject to restrictions designed to protect the integrity of the overall metering system."

In addition, EA, citing the potential for dramatic expansion in the range of technologies that the host utilities could be required to support as a result of customers selecting a wide diversity of meters, recommends that customers desiring to own their meters be required to coordinate their meter selection with the host utility to avoid additional costs of supporting the new technologies and the corresponding administrative requirements. Con Edison agrees that it would be more efficient if the customer communicated its needs to the utility who could then install the appropriate upgraded meter instead of the customer purchasing a meter on its own.

ITRON and Utility Workers Union of American (UWUA) claim that the utility should own and control the meter. CPB notes that "in the short term, the utility could continue to own the meter, but protections need to be in place to assure that increased metering costs are not assessed to core customers during the transition period." Public Utility Law Project of New York, Inc. (PULP) recommends that the ESCO be responsible for recovering the meter costs from its customers.

ENRON takes exception to staff's position, urging that all aspects of metering be opened immediately to competition in order not to forestall the overall move to a competitive electric market. Joint Supporters/E Cubed (JS/EC) state that "the customer or their designate should have the option of owning the meter as early as possible in the transition." CMC notes that the large commercial and industrial customers should own their meters without utility control.

Discussion

Allowing large commercial and industrial customers, whose meter costs are relatively small compared with their energy bills, to own their meter is an appropriate initial step towards competition. It is premature, however, to open all aspects of metering to competition at this time as ENRON and others suggest. As we indicated previously, there are a number of important issues that need to be evaluated further, and these needs outweigh the need to immediately open metering to competition broadly.

We find CMC's position that large commercial and industrial customers own their meters without utility control unpersuasive. Its proposal fails to mention who would be responsible for compliance with Parts 92 and 125 of the Commission's Rules. Since these requirements continue during the transition, we find that the most appropriate entity to control the meter is the utility. We also do not accept JS/EC's position that a customer's designee (i.e., ESCO) should have the option of owning the meter. We believe additional input should be obtained before such a decision is made.

To reiterate, as a first step towards competitive metering, we will allow eligible large commercial and industrial customers (not third parties) in each utility's service territory

to have the option of owning a Commission-approved meter with the utility company retaining sole control of that meter. At a minimum, eligible customers will include the large commercial and industrial time-of-use customers as defined by each utility. Installation, maintenance, and compliance with Commission regulations (namely 16 NYCRR Parts 92 and 125) will remain the responsibility of the host utility.

METER OWNERSHIP AND CONTROL FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS

Parties' Recommendations

Staff does not recommend changing the ownership and control structure that now exists as it pertains to residential and small commercial customers. Because competitive metering is not an imperative to retail competition, until the financial, safety and other potential issues concerning decentralized meter ownership are evaluated further, staff believes that utilities should continue to own and control these meters.

To promote consumer choice in the near term, however, staff recommends that ESCOs have the ability to request a Commission-approved meter or device from the utility that would meet its customers needs.[1] Under this proposal, if the utility installs a new meter or add-on device, it would bill the customer for the cost of the meter installation and the cost of the meter would be put into rate base and collected from ratepayers in a new customer service subclass. This new service subclass would be composed of customers opting for enhanced meters, thereby

[1] The proposed meter or added devise would have to be approved by the Commission and be compatible with the host utility's system.

making those customers responsible for the cost of the upgrades. The utility would continue to own the meter.

Staff also recommends that an ESCO have the opportunity to request the approval of a new meter directly from the Commission.[1]

EA, Con Edison, NMPC, and UWUA support staff's initial recommendation. However, EA recommends that "costs must be recovered directly from the ESCOs or customers who cause them, or through rate mechanisms external to the otherwise applicable price caps." Con Edison proposes that the costs of the new meter be paid up front, while NMPC states that a new subclass is a promising but complex solution.

MI, Con Edison, PULP, and the Association for Energy Affordability, Inc. (AEA) also oppose the creation of a new service subclass. MI recommends that a leasing arrangement be entered into to recover the upgraded metering costs, claiming that this would "prevent cost shifting among customers and will not give rise to claims of stranded costs." MI also says that the time frame for limiting ownership to the utility should be reduced to 24 months. PULP urges that costs of the new meter be paid for up front.

ENRON reiterates its opposition to utility ownership and control of the meter for any length of time, and joined by CMC, recommends that competitive metering be introduced immediately for all customers. Cellnet recommends that residential and small commercial customers also have the option of meter ownership. JS/EC advocates that the customer or the customer's designee should have the option of owning the meter as

[1] This would require a change in 16 NYCRR Part 93, which is discussed in the regulation changes section of this opinion and order.

early as possible in the transition, and recommends that "read-only access" to meters be provided to give the ESCO access to key data components.

Discussion

Competitive metering for residential and small commercial customers can become a reality when the issues raised by the parties have been satisfactorily addressed. These issues include, among other things, the financial, safety and other consequences of decentralizing meter ownership. Moreover, we believe the requirements adopted herein regarding access to customer data, discussed below, satisfy a key competitive concern without the risks attendant to a premature move to competitive metering. In addition, we shall allow ESCOs to request the utility to install new meters and agree that staff should initiate a Notice of Proposed Rulemaking to modify 16 NYCRR Part 93 to allow ESCOs to request meter approvals without utility sponsorship.[1]

Concerning the issues raised regarding cost recovery, we believe they are best addressed on a utility case-by-case basis and encourage the development of cost-recovery mechanisms in individual utility proceedings. We note, however, that MI's recommendation that a leasing arrangement be employed to recover the upgraded metering costs appears to have merit and should be discussed when the ESCO Metering Subgroup resumes its meetings.

In conclusion, unless we determine that retail competition is being impeded or acceptable alternative metering proposals are submitted, meters for residential and small commercial customers will continue to be owned, installed, and maintained (including compliance with 16 NYCRR Parts 92 and 125)

[1] This is discussed in more detail in the regulation changes section of this Opinion and Order.

by the host utility. We shall direct staff to work with interested partied to continue to evaluate competitive metering and to report back to the Commission within eighteen months.

ACCESS TO CUSTOMER USAGE AND LOAD PROFILE DATA

Parties' Recommendation

The use of interval meters will play an important role in the industry's move to competition. While many large customers either already use interval meters or could obtain one from the utility at a cost that has minimal impact on their overall bill, such is not the case with residential and small commercial customers. Staff notes that for these smaller customers, load profiles, based on statistical analysis of sample data, could be used to simulate usage. The use of load profiles would allow a customer that wants to switch electricity providers to do so without incurring the additional expense associated with an interval meter.

In general, staff believes that, at least in the short term, an interval meter would impose costs that may for smaller customers act as a barrier to switching from the incumbent utility to an alternative electricity provider. In staff's view, if an interval meter is not required for the customer to remain with its incumbent utility, then it generally should not be required as a prerequisite for the customer to receive retail services from a competing electricity provider. Staff notes that it may well be appropriate to introduce interval meters for larger customers in order to provide more effective price signals and more accurate consumption data. To that end, the utilities and the parties will have to decide the size threshold above which customers generally should have interval meters and below which they will have the choice of: (a) using a load profile, or

(b) having the utility install an interval meter, at the customer's expense, to measure actual usage patterns. Determining the appropriate customer usage level that might necessitate interval metering is one of the activities staff recommends be undertaken during the evaluation period.

Staff also believes that the utilities should continue load research programs to develop load profile information. Each utility currently has a load research data collection effort from which it develops load profiles by customer class for use in cost of service studies. For retail access, more intensive load research efforts may be necessary to develop statistically significant load profiles for subclasses of customer types within major service classes. For example, there may be a need to have distinct load profiles for small, medium, and large usage residential customers, as well as for electric heating customers. These load profiles could be used to develop prices for customers that remain with the utility, as well as for the customers that switch to alternate electricity providers.

Staff expects that, over time, numerous customers with favorable actual load shapes can be expected to opt for interval meters that accurately measure their usage patterns, thus enabling them to maximize reductions in their annual bills. An example of a favorable load shape is a customer whose usage is 80 percent off-peak compared to a class average of 40 percent off-peak. A direct result of this transition is that the load profile of the customers that remain on traditional meters may change over time, possibly becoming more peaked. Therefore, utilities will need to have a program in place for periodically adjusting load profiles.

In light of all the foregoing, staff proposes that customer usage and load profile data be developed and maintained by the utility.

Staff also recommends that individual customer usage data and aggregated load profile data be made available to ESCOs, subject to rules developed to protect customers. In order for competition to advance in an orderly and timely fashion, staff argues that the provision of this data should not be burdensome for the utility, the ESCO, or the customer. Finally, staff proposes that a Commission-approved, cost-based charge could be assessed by the utility for extraordinary data requests.[1]

Con Edison and NMPC disagree with staff's proposal that ordinary data requests be available to ESCOs at no charge. Con Edison proposes fees for all data requests; the amount of which would vary depending on factors such as the type and volume of data, frequency of access, and level of processing required. NMPC further states that the charge for supplying the data should not be subject to Commission approval.

With respect to customer privacy, NMPC asserts that it owns the data and customer privacy should not be considered. CMC echoed NMPC's position that customer privacy is not a concern.

MI, on the other hand, states that individual customer usage data, along with other customer specific information, is the property of the customer and not the incumbent utility. MI says such information can be released by the incumbent utility only if the customer authorizes the release in writing. MI further states that "rules that are developed to protect customer privacy and support a successful retail access program must assure that the incumbent utilities are not permitted to utilize this information in an anti-competitive manner." CPB and ITRON concur that customer privacy should be considered.

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[1] Extraordinary data requests would include information requests other than the 24-month usage data that the utility is required to maintain.

JS/EC claims that access to data is critical and that it is important for ESCOs to have "access to instantaneous electric power demand data in real time." JS/EC recommends that utilities provide a physical means for "read-only access" for instantaneous demand. Pace/NRDC note that "all ESCOs must have access to such usage data on precisely the same terms and conditions." AEA requests that the definition of ESCO be broadened to include "any company performing any of the aggregator or value-added services."

Discussion

We agree that customer privacy must be protected. In addition, as we stated previously, access to usage data is a critical component of an effective competitive retail market. We, therefore, direct utilities to provide access to up to 24 months usage and load profile data to a customer or his designee upon the customer's request, subject to appropriate customer privacy rules. These privacy protections must require customer consent before any individual customer data can be released. We expect the specific protections to be developed by staff and the parties.

We agree that up to 24 months of data should be provided at no charge. A maximum of 24 months is reasonable because it coincides with the provisions of both the Public Service Law and Energy Law.[1] Thus, utilities already maintain such data. We believe it is necessary to require that a maximum of 24 months of

[1] The Public Service Law generally limits utilities to a 24 month period for backbilling or adjusting bills (Public Service Law Section 41), while the Energy Law requires retail vendors to maintain records of utility services provided to residential structures for at least two calendar years (Energy Law Section 17-103(2)(a)).

data be provided at no charge in order to facilitate the development of effective and robust competition. This is consistent with the approach adopted in the gas industry. There we found that administrative fees for billing information might stifle competition and directed utilities to revise their gas restructuring tariffs to allow 24 months of billing data to customers at no charge.[1]

Finally, we do not see the relevance of the claim by at least one utility that it owns customer data. The issue we are addressing is that of access not ownership. We find, however, that utilities will not be permitted to deny or restrict access based upon a claim of ownership.

With respect to "extraordinary" data requests, we agree that utilities should be allowed to assess a Commission-approved fee for such requests. The same result should apply to access to real-time data. In our view, real-time data is different from historic usage data, and it seems feasible and reasonable to allow customers and ESCOs real time access to usage data. However, this issue needs some further study to ensure that the integrity of the metering system would not be compromised. We expect this issue to be examined in ongoing discussions. This policy may be revisited should other processes for data storage,

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[1] Case 93-G-0932, Proceeding on Motion of the Commission to Address Issues Associated with the Restructuring of the Emerging Competitive Natural Gas Market, Order Regarding Compliance Filings of the Long Island Lighting Company, National Fuel Gas Distribution Corporation, Niagara Mohawk Power Corporation, and New York State Electric and Gas Corporation (issued September 12, 1996), p. 19; see also Case 93-G-0932, supra, Order Regarding Compliance Filings of Central Hudson Gas and Electric Corporation, Brooklyn Union Gas Company, and Corning Natural Gas Corporation (issued October 8, 1996), p. 14.

retrieval and access be developed to support competitive metering.

Interval metering offers many advantages to utilities and customers, but at this time it does not appear to be essential for the introduction of retail competition. In the short term, load profile data should suffice to estimate the hourly loads for aggregated customer groups in the absence of interval metering. Consistent with the foregoing, we shall direct the utilities to work with staff to develop load profile data necessary for retail access. Within thirty (30) days of this opinion and order, each electric utility shall provide staff with a written summary of its load research program. This summary should include an inventory of load research meters by customer class (stratified within classes, where applicable), frequency of reports on this data, types of analyses performed on the data, and frequency of redeployment of measuring devices. In addition, each electric utility shall provide an assessment of its capabilities to provide load profile data necessary for retail access, and a description of its long-term strategies regarding these programs.

Following submission of the above information, each utility should meet with staff to determine the suitability of its existing load research data and to determine the measures needed to ensure that it can effectively use load profiles for retail access.

INSTALLATION OF ENHANCED METERS AND THIRD PARTY LEASES

Parties' Recommendations

Staff proposes that new utility investment in enhanced metering technology and metering infrastructures should be

evaluated and pursued, if feasible, by the utility. Staff cautions, however, that large scale changes in infrastructure to support enhanced metering technologies should be implemented only to the extent that new utility stranded costs are not created. In addition, the deployment of enhanced metering technologies, which allows two-way communication between the host utility and its meter, should not result in anti-competitive arrangements or inhibit the introduction of new metering technologies. Because large-scale deployment of enhanced metering technologies is currently very capital intensive, some companies providing this technology are now offering utilities lease arrangements for the metering infrastructure in lieu of purchase. Staff recommends that any third-party leasing arrangements by the utility for enhanced metering technologies should be subject to Commission approval.

EA, Con Edison, and Cellnet do not disagree with staff's position regarding the installation of enhanced meters, but take exception to Commission approval of third-party leases. EA states that Commission approval is neither necessary nor justified. Con Edison says "the utility should be free to pursue technologies that help lower its operating costs or provide enhanced service (e.g., outage detection) and should not be encumbered in having to seek approval before undertaking such initiatives."

MI, joined by CMC, opposes the deployment of all advanced metering technology by the utility during the transition, unless the entire financial risk is borne by the utility's shareholders. CPB notes that "protections need to be in place to assure that increased metering costs are not assessed to core customers."

AEA agrees with staff's position that no stranded costs or anti-competitive arrangements result, but argues that enhanced metering should be installed as broadly as possible.

Discussion

Third-party metering leases between a utility and vendor require careful consideration of the attendant costs and benefits, especially if the technological improvements could become obsolete before the termination of a long-term lease. Moreover, there is an additional concern as to how the costs and revenues associated with the value-added services will be handled. Finally, there is concern over costs when customers go from current monthly or bi-monthly readings to hourly readings. Thus, while we agree that the utilities should pursue technologies that lower operating costs, it is equally important that there be some mechanism in place to ensure that these same technologies will not harm customers or the movement to competition. Further, capital leases, at present, are required to be reviewed by staff and approved by the Commission. For this reason, we reject the comments of EA, Con Edison, and Cellnet, and will require the review of third-party leases to ensure that customers are protected from the possibility of increased stranded costs and anti-competitive arrangements.

MI and CMC's recommendation also is rejected at this time. We determined above that enhanced metering technologies should be deployed if they reduce the utility's costs, are not anti-competitive, and will not increase stranded costs.

In conclusion, we reiterate that new utility investment in enhanced metering technology and metering infrastructures should not create new, additional stranded costs nor be anti-competitive in nature. Any utility third-party leasing arrangements for enhanced metering technologies should be

reviewed by staff and approved by this Commission to ensure ratepayer protection and the promotion of retail competition.

REGULATION CHANGES

Parties' Recommendations

Staff reviewed the Commission's regulations to identify any that might conflict with a competitive metering environment, and determined that 16 NYCRR Part 93 (which mandates that meters be approved by the Commission and requires a utility sponsor for such meters) may limit customers' opportunity to have their preferred meter installed. Thus, staff proposes to modify Part 93 to allow an ESCO to request Commission approval of a meter.[1] Staff also recommends that the length of our approval process needs to be adapted to a future in which technological advances in metering occur frequently. Staff estimates that a reasonable time for meter approvals, including the SAPA process, is four to six months.

Staff also found that 16 NYCRR Parts 92 (reporting of electric contact accidents) and 125 (metering testing and reporting) should not hinder competition. But it recommends these rules be reviewed periodically to determine the necessity for continuation.

EA and Con Edison say that utility notification should be required where non-utility applications for approval of new meter types are submitted and that utility input be allowed in the approval process. Con Edison also wanted clarification that, in addition to Commission approval of the meter, the meter must

[1] Under staff's proposal, the utility would have the opportunity to submit comments to the Commission in accordance with the State Administrative Procedure Act (SAPA).

also be compatible with the utilities' metering, meter reading, and electrical infrastructure.

CPB and MI agree with staff's recommendation, but MI suggests that large commercial and industrial customers also be permitted to seek Commission approval of a meter.

Discussion

Changes to 16 NYCRR Part 93, which address the process and requirements for obtaining meter approvals, should be considered in order to allow ESCOs to request meter approvals without the need for utility sponsorship. The meters for which approval would be sought must be compatible with the host utility's metering infrastructure. As to the notification process, when an ESCO or another utility requests Commission approval of a new meter type, notification should be made not only to the Commission, but to all New York utilities and all ESCOs actively engaged in providing metering services. We envision that the meter approval process will fully examine the meter's compatibility with the host utility's metering infrastructure.

As to MI's recommendation, although large commercial and industrial customers will be able to work with the host utility or an ESCO to obtain a meter that will meet their requirements, this proposal may further facilitate customer choice. MI's proposal should be considered in connection with the Notice of Proposed Rulemaking that will be initiated.

SUMMARY AND CONCLUSION

Competitive metering is an important element of our effort to develop a robust competitive retail market in New York State. While there are a number of technical and transitional

issues that need to be resolved, including the implementation of appropriate safeguards for consumers and the security, safety, and reliability of the electric system, the move towards the provision of competitive metering can begin. To that end, we direct staff to convene meetings with interested parties to attempt to resolve the issues of concern in an expeditious manner; and to report its progress to the Commission no later than 18 months from the date of this opinion and order.

As a first step toward competitive metering, eligible large commercial and industrial customers in each utility's service territory will have the option of owning a Commission-approved meter. While the utility will retain control over the meter, this program will provide the Commission with an early indication of customer interest in meter ownership.

Residential and small commercial customers will continue to have meters that are owned, installed and maintained by the utility until further study of competitive metering has been completed and recommendations on next steps are made to this Commission. However, in order not to inhibit competition, ESCOs will have the ability to request a different Commission-approved meter from utilities if it will allow the ESCO to better meet the needs of its customers.

To facilitate a level playing field in a competitive electric industry, the Commission finds that utilities, upon request, shall provide at least 24 months of customer usage data to customers or their designated ESCO. This information will be made available at no cost to customers. In order to protect customers' privacy, an ESCO must have the customer's approval to access this data. Further, utilities shall make usage and load profile data available to ESCOs that shows typical electric usage patterns for all customers in specific service classifications.

The utilities are directed to work with staff to develop load profile data necessary for retail access.

In order to minimize stranded costs and protect ratepayers, we find that any new investment in enhanced metering technology and metering infrastructures should not create new, additional stranded costs nor be anti-competitive in nature and direct that any utility third-party leasing arrangements for metering be approved by the Commission.

Finally, we agree that staff should initiate a Notice of Proposed Rulemaking to modify 16 NYCRR Part 93 to allow ESCOs, and perhaps industrial and large commercial customers, to request meter approvals without utility sponsorship. Meters for which approval is being sought should be compatible with the host utility's metering infrastructure. Future meter approval requests filed with this Commission should be sent to other New York electric utilities as well as ESCOs actively engaged in providing metering services. Staff should also periodically reassess 16 NYCRR Parts 92 and 125 to determine whether these regulations can be streamlined consistent with our goals to promote competitive metering and retail access.

The Commission orders:

1. Meter ownership and control provisions for large commercial and industrial customers and small commercial and residential customers, as discussed herein, are approved.

2. Consistent with the schedule established in its individual rate/restructuring plan, otherwise established by the Commission, each electric utility shall file tariffs, consistent with the discussion herein, that include a clear delineation of the limitations on the rights of meter owners and the restrictions designed to protect the integrity of the overall metering system.

3. Each electric utility is directed to make customer usage and load profile data available to ESCOs upon the consent of the customer consistent with the discussion herein.

4. Within thirty (30) days of the date this opinion and order is issued, each electric utility shall submit to the Secretary of the Commission five (5) copies of a summary of its load research program, as discussed herein. Each electric utility is directed to work with staff, as discussed herein, to develop load profile data necessary for retail access.

5. Each electric utility is directed to file for Commission approval any utility third-party leasing arrangements for metering.

6. Consistent with the discussion contained herein, all comments on the March 13, 1997 ESCO Metering Subgroup Staff Draft Report not specifically approved are hereby denied.

7. This proceeding is continued.

By the Commission,

(SIGNED) JOHN C. CRARY
Secretary

Parties Participating in Discussion of Metering Issues

There have been 26 active participants involved in the discussions of metering issues. The parties actively participating in the process can be organized into the following interest groups:

Industrial and Large Consumers

- Multiple Intervenors (MI)**
- Owners Committee on Electric Rates (OCER)

Residential and Small Commercial Consumers

- Association for Energy Affordability, Inc. (AEA)**
- NYS Consumer Protection Board (CPB)**
- Public Utility Law Project of New York, Inc. (PULP)**

Investor-Owned Utilities

- Energy Association of New York State (EA)**
- Brooklyn Union Gas Company (BU)
- Central Hudson Gas and Electric Corporation (CHG&E)
- Consolidated Edison Company (Con Edison)**
- Long Island Lighting Company (LILCO)
- National Fuel Gas Distribution Corporation (NFGDC)
- New York State Electric & Gas Corporation (NYSEG)
- Niagara Mohawk Power Corporation (NMPC)**
- Orange & Rockland Utilities, Inc. (O&R)
- Rochester Gas & Electric Corporation (RG&E)

Energy Service and Equipment Providers

- Cellnet Data Systems, Inc. (Cellnet)**
- CIC Systems, Inc. (CIC)
- Computer Meter Corporation (CMC)**
- Duquesne Lighting Company (DLQ)
- ENRON Capital & Trade Resources (ENRON)**
- Joint Supporters/E Cubed (JS/EC)**
- ITRON, Inc. (ITRON)**
- SYCOM Enterprises (SYCOM)
- Toll Grade Communications

Environmental Protection / Energy Efficiency

- Pace Energy Project/Natural Resources Defense Council (Pace/NRDC)**

Public Agencies

- NYS Department of Economic Development (DED)
- NYS Department of Public Service (DPS)

Other Parties

- Utility Workers Union of America (UWUA)**

** Indicates parties that submitted comments to Staff's Draft Metering Report.