STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on August 22, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 06-M-1017 - Proceeding on Motion of the Commission As to the Policies, Practices and Procedures For Utility Commodity Supply Service to Residential and Small Commercial and Industrial Customers. PHASE I.

ORDER DENYING REHEARING

(Issued and Effective August 27, 2007)

BY THE COMMISSION:

BACKGROUND

In the Supply Portfolio Order,[1] it was decided that electric utilities should engage in hedging practices intended to reduce the volatility of the commodity prices they charge customers electing to take supply from them instead of from alternative providers like energy services companies (ESCO). In a Petition for Rehearing and Clarification dated May 17, 2007, the National Energy Marketers Association (NEM) asks that a number of the decisions reached in the Supply Portfolio Order be revised or clarified.

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[1] Case 06-M-1017, supra, Order Requiring Development of Utility-Specific Guidelines For Electric Commodity Supply Portfolios and Instituting a Phase II to Address Longer-Term Issues (issued April 19, 2007).

Notice of the petition was published in the State Register on June 13, 2007, in conformance with State Administrative Procedure Act (SAPA) §202(1). No responses to the Notice were received within the SAPA §202(1)(a) comment period which expired on July 30, 2007.

THE PETITION

NEM questions the decision to compel utilities to hedge the price of commodity they supply to mass market customers. NEM believes that, to effectively dampen price volatility through hedging, capital and other risks must be expertly managed. NEM asserts ESCOs experienced in competitive commodity market operations are better prepared than utilities to manage those risks. NEM also claims that requiring utilities to continue hedging prevents their exit from the commodity supply function, contravening the Retail Access Policy Statement,[2] where it was envisioned that ESCOs would supplant utilities as the providers of commodity services.

Disputing the Supply Portfolio Order's findings that utility hedging does not significantly disadvantage competitors, NEM maintains that hedging enables utilities to retain market share to the distinct disadvantage of competitors. NEM also claims that, when utilities hedge, their ratepayers bear the risk, while, when ESCOs hedge, they bear the risk. This disparity, it argues, tilts the market in the utilities' favor.

Reiterating arguments it made earlier in this proceeding, NEM insists that utility hedges should be limited in

[2] Case 00-M-0504, Fostering Retail Competitive Opportunities, Statement of Policy on Further Steps Towards Competition in Retail Energy Markets (issued August 25, 2004)(Market Policy Statement); see also, Case 07-M-0458, Competitive Retail Energy Markets, Order on Review of Retail Access Policies and Notice Soliciting Comments (issued April 24, 2007).

duration. Otherwise, it fears, the hedged prices might deviate substantially from short-term market prices, which will render inaccurate the commodity price signals utilities send to consumers. NEM also complains that gas utility hedges were limited in duration, while electric utility hedges were not.

Criticizing the decision to require each utility to develop a volatility index, NEM maintains that a regulatory-determined restriction like a volatility index is a poor substitute for competitive market dynamics. It also complains that the purpose of the volatility index requirement was not adequately explained.

NEM argues that the requirements for the reporting of hedging activity imposed on utilities in the Supply Portfolio Order are inadequate and should be expanded. NEM adds that, again, the requirements for gas and electric utilities differed.

DISCUSSION AND CONCLUSION

Under our Rules of Procedure, 16 NYCRR §3.7(b), rehearing may be sought only on the grounds that an error of law or fact was committed or that new circumstances warrant a different determination. NEM has not demonstrated that the Supply Portfolio Order was premised upon an error of law or fact, and has not alleged that circumstances have changed. As a result, the request for rehearing lacks foundation.

NEM contends inadequate consideration was given to the effect that utility practices for hedging commodity supply would have on ESCOs and competitive markets. In the Supply Portfolio Order, however, "the extensive benefits of utility hedging to mass market customers generally" were balanced against "the minimal adverse impacts on competitive markets."[3] In performing

[3] Supply Portfolio Order, p. 13.

that balancing, the arguments NEM raises were fully vetted and considered.[4] No additional consideration is required.[5]

NEM complains that the development and use of utility-specific volatility indices was not adequately explained. The explanation provided in the Supply Portfolio Order, however, is sufficient.[6] To the extent that some uncertainty remains concerning the future use of the volatility indices, policy on that point can be expected to evolve over time.

The other claims NEM makes were properly addressed in the Supply Portfolio Order and need not be considered further here.[7] Therefore, rehearing and clarification are denied.

The Commission orders:

1. The Petition for Rehearing and Clarification filed by the National Energy Marketers Association is denied.

2. This proceeding is continued.

By the Commission,

(SIGNED) JACLYN A. BRILLING
Secretary

[4] Supply Portfolio Order, pp. 9-13; App. A, pp. 18-19.

[5] Contrary to NEM's implication, no timetable for the exit of utilities from the commodity supply function was set in the Retail Access Policy Statement.

[6] Supply Portfolio Order, pp. 20-21.

[7] Distinctions between electric and gas commodity service justify the different treatments of the two that NEM complains of; the Supply Portfolio Order adequately explains the justifications for the determinations that were made.