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December 14, 2001

Hon. Janet Hand Deixler
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350
VIA FEDERAL EXPRESS

**RE: Case 00-M-0504 - Competitive Opportunities Proceeding -
Unbundling Track**

Dear Secretary Deixler:

The National Energy Marketers Association (NEM) hereby files this Response to the "Joint Utility Motion for Stay and Petition for Rehearing" dated December 10, 2001, as well as the Petition for Rehearing dated December 10, 2001, filed by Multiple Intervenors (hereinafter MI). The Utilities request in their Motion a stay of Ordering Clause 2 of the Commission's November 9 Order requiring the filing of tariff amendments containing unbundled rates based on streamlined embedded cost of service studies. In the alternative, the Utilities request rehearing of the Order to the extent that the utilities will not be provided with a mechanism to recover transition costs simultaneous with the filing of embedded cost based rates.

MI seeks rehearing of the November 9 Order to the extent that the electric utilities were directed to file streamlined (as opposed to fully allocated, comprehensive) embedded cost of service studies that do not fully classify costs related to the

provision of transmission and distribution service. For the reasons set forth below, NEM urges the Commission to deny the Utilities Motion for Stay and Petition for Rehearing and to grant MI's Petition for the utilities to file and implement fully allocated comprehensive embedded cost based unbundled rates no later than June 2002 with added clarification on the intended use of other cost studies as requested in our original Motion for Clarification.

I. Utilities Motion for Stay and Petition for Rehearing

The Utilities request that the Commission stay their obligation to file and implement embedded cost-based unbundled rates pending the performance of forward looking studies.¹ The utilities argue that the stay is warranted to avoid customer confusion, economic hardship for ESCOs and administrative burdens for the utilities.² NEM strongly urges the Commission not to impose a stay on the filing and implementation of embedded cost based unbundled rates. For the reasons set forth in the NEM's Motion for Clarification dated December 6, 2001, NEM urges the Commission to reiterate its commitment to require the utilities to file embedded cost of service studies and implement embedded cost based unbundled rates in accordance with the schedule set forth in the November 9 Order. Consumers and market participants must be afforded the opportunity to see and respond to accurate embedded cost based price signals. As argued in NEM's Motion, accurate price signals must be derived from the utilities' fully allocated

¹ Joint Utility Motion for Stay and Petition for Rehearing, at page 3 [hereinafter Utility Motion].

² Utility Motion at page 3.

embedded costs inasmuch as these are the costs which consumers historically and are currently required to pay for contestable services in their fully bundled rates.

If a stay is not granted, the Utilities seek rehearing of the November 9 Order arguing that it was an error of fact to allow embedded cost based unbundled rates to go into effect without the Commission approving a transition cost recovery mechanism to take effect simultaneously therewith.³ The utilities suggest that one method for recovery of transition costs would be the use of a transition surcharge on customers' energy delivery bills based on the utility's estimate of prudently incurred costs that are unavoidable as a result of customer migration.⁴ Yet they go on to state that the unavoidable costs are not necessarily attributable to migration per se but the majority of the costs they argue to be unavoidable are costs that they must continue to incur to provide POLR related services. NEM urges the Commission to deny the petition for rehearing.

In the November 9 Order the Commission clarified that they, "intend that utilities be provided a fair opportunity to recover prudently incurred revenue requirements, subject to the utilities' obligation to productively manage and reasonably mitigate their costs." NEM supports the conclusion of the Order that "stranded costs" should be dealt with, if and when, they occur. NEM also urges the Commission to ensure that any costs that are unavoidable because utilities must incur such costs to perform POLR-related services be recovered through adjustments to the rates

³ Utility Motion at 3-4.

⁴ Utility Motion at 5.

charged for POLR-related services. By contrast, the Utilities propose to recover revenue shortfalls through a transition surcharge in delivery rates based on a formula that assumes all unavoidable costs are caused by migration rather than by the necessity to provide POLR related services. Providing revenue recovery based on estimates of migration and the assumption that migration itself rather than the cost of POLR related services causes the revenue shortfall will underprice POLR-related services and unfairly penalize customers who migrate. Any determination of costs that are truly stranded must necessarily address the issue of whether the "unavoidable" costs at issue are, in fact, costs properly attributable to POLR-related services. Accordingly, NEM's Motion for Clarification urges the Commission to implement embedded cost based rates at the earliest possible time and quantify the levels of migration and monitor utility mitigation efforts prior to developing just and reasonable methods to ensure utilities receive the appropriate revenue requirements based on the embedded costs associated with the actual services provided to migrating customers versus full sales customers versus POLR customers. Only then can a fully-informed analysis of stranded cost recovery methods be implemented in a just and reasonable pricing structure. The Commission should clarify that Utilities should provide a sufficient explanation of the costs they claim are "unavoidable" because of service obligations to remaining customers and/or to "unavoidable costs" relating to provider of last resort services. The embedded costs of rendering competitive versus POLR-related services should be separately set forth and identified. This is a proper, just and reasonable

way to avoid customer confusion and to avoid hidden cross-subsidies in delivery rates.

The Utilities suggestion that transition costs be recovered through a transition charge in delivery rates will only further confuse and obfuscate the true costs of providing competitive services versus truly monopoly services. NEM asserts that non-monopoly charges hidden in delivery rates will unfairly penalize customers that switch. In effect, migrating customers will be forced to pay for services they are no longer receiving. Such an arrangement will clearly confuse consumers sending erroneous price signals and undermine the development of price competitive markets for contestable services.

II. MI's Petition for Rehearing

MI seeks rehearing of the November 9 Order to the extent that it only required the utilities to file streamlined embedded cost studies and embedded cost-based unbundled rates and the studies and rates would not fully classify costs associated with electric transmission and distribution services. NEM agrees with MI's concerns and offers the following recommendations.

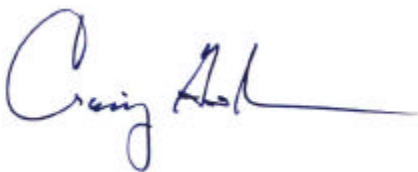
NEM recognizes, as does MI, that the streamlined embedded cost studies will fall short of the goals set forth in the March 29 Order that unbundled rates based on fully allocated embedded costs be implemented based on a comprehensive, bottom-up analysis. NEM also shares MI's concern that contestable services as well as electric distribution and transmission services will not reflect fully

allocated embedded costs associated with each service as part of the streamlined studies. Importantly, if parties and consumers are not afforded the opportunity to examine the fully allocated embedded costs of each product and service currently bundled in utility full service rates there will be an incentive for the studies to improperly characterize products, services, information and technologies as delivery-related. NEM supports the March 2002 deadline for the streamlined embedded cost studies and urges the Commission to order fully allocated embedded cost-based unbundled rates be issued as soon thereafter as possible.

III. Conclusion

For the foregoing reasons, NEM urges the Commission to deny the Joint Utility Motion for Stay and Petition for Rehearing, clarify that any other cost studies will not be used to undermine market entry and price competition to end use customers and to grant MI's Petition for fully allocated embedded cost based unbundled rates for all products, services, information and technologies including distribution and transmission to be published and implemented no later than June 2002.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Craig Goodman", is written over a vertical line.

Craig G. Goodman
President
National Energy Marketers Association

cc: active parties (via e-mail)
Judge Stockholm and Judge Garlin (via email and Federal Express)