

STATE OF NEW YORK PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission in)
Regard to Reforming the Energy Vision)

Case 14-M-0101

**COMMENTS OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association (NEM)¹ hereby submits comments on the Staff White Paper on Ratemaking and Utility Business Models filed in the Reforming the Energy Vision (REV) proceeding on July 28, 2015. The White Paper discussed limitations of current ratemaking mechanisms and suggestions for reform to realize the REV vision. Staff explains that, “[t]he conventional rate treatment of utility capital and expenses is in conflict with a reformed energy vision of reliance on third-party cost contribution and a desired shift toward utilities focusing on greater productivity via operating expenses to grow their own earnings.” White Paper at 23. The contemplated reforms fall into three categories: utility business model reforms, ratemaking reforms, and rate design reforms.

The White Paper introduces a number of new ratemaking concepts for consideration and proposed implementation by the utilities. NEM is concerned that notwithstanding the implementation of these “reforms” that the utilities will still lack the necessary incentives to optimally perform as DSPs that host and promote the offering of DER products and services by ESCOs and other

¹ National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting, and power line technologies.

competitive entities. Achieving REV goals may indeed require changes to existing ratemaking mechanisms and models. However, it is unclear whether the proposed model, under which ESCOs and other DERPs provide a new revenue stream to utilities in the form of a new Market-Based Earnings mechanism, is appropriately targeted to achieving those goals. The REV goals of increased system efficiency, reliability and security accrue to the benefit of *all* consumers, whether they actively engage with DER offerings or not. Therefore, levying the costs of REV primarily against DER customers and competitive entities would discourage, even penalize, these entities from participating on the DSP platform.

For ease of reference, the section numbering of the headings below correspond to that used in the White Paper.

I.C.2 and III.B. Utility Market-Based Earnings Mechanism

The White Paper proposes that utilities acting as DSPs be permitted to earn a revenue stream from the offering of platform services in the form of Market-Based Earnings (MBEs). MBEs would be earned as a function of market-based services provided by the utility. The new MBEs are ascribed high importance in the White Paper because of the current disincentive utilities have to reduce capital requirements, with lower associated returns, in favor of permitting competitive capital investments to have access to and participate on the DSP platform. The White Paper hypothesizes that MBEs will *encourage* utilities to provide access to their systems for ESCOs and other DER providers. Thus, the pivotal question is whether the MBEs received by the utilities will, in fact, be enough to overcome their biases against third party capital investments participating on their delivery systems. Utility monopoly culture does not encourage innovation, which would be a prerequisite to identifying the “market-based services” that ESCOs and other competitive entities

would be funding through the MBE mechanism. Indeed, it is difficult to imagine that the utilities will transform to be nimble enough to function as an Amazon.com-like marketplace. Yet, that is exactly what the White Paper presumes. Moreover, the MBE mechanism will not make the utilities indifferent to what they can and cannot rate base.

As a fundamental matter, the concept of the DSP “platform” should be clarified in greater detail so that stakeholders gain a better understanding of the basis upon which MBEs would be earned. For instance, it is entirely unclear what the utilities will actually be doing that differs so dramatically from what they are currently doing as distribution service providers. At this juncture, it is also unclear whether the “platform” is intended for end-use customers to find providers and products. It is also unclear whether and how the platform interacts with the grid. It is unclear whether providers will be required to conduct all of their transactions through the platform. This is important, for example, in the case of selling products to pre-existing customers and whether that process will become unnecessarily complicated in the future DSP paradigm. Clarification should be given as to whether the platform will function to make it easier for ESCOs and other competitive entities to link with prospective customers. Finally, it must be made clear that the platform will not improperly serve as a vehicle for the utility to market its own services. Utilities should not be permitted to compete with ESCOs and other DERPs to offer behind-the-meter services, particularly not while they are simultaneously controlling the platform, in this new REV paradigm.

The White Paper sets forth an illustrative list of possible market-based services the utilities may offer from which they will earn MBEs. The White Paper suggests that,

Examples of likely market-based services in the electric industry could include, but should not be limited to: customer origination via the online portal; data analysis;

co-branding; transaction and/or platform access fees; optimization or scheduling services that add value to DER; and advertising. Examples of customer enhancement and adjacent value-added synergies include energy services financing, engineering services for micro-grids, and enhanced power quality services. A primary vehicle anticipated for utility MBEs will be “platform service revenues” (PSRs). PSRs are revenues that utilities, in their capacity as DSP providers, will earn from market participants. White Paper at 29-30.

NEM submits that most of the services listed are most appropriately viewed as competitive services that should be rendered by competitive entities. The utility should act as the facilitator of these services to be rendered by a third party to consumers. Primary to the utility acting as a facilitator is the timely provision of data to competitive entities.

Regarding the concept of a customer origination fee, the key issue is figuring out how to properly price it so as to encourage economic use of the platform. If the customer origination fee is set too high, it will dissuade ESCOs and other DERPs from using the platform. Competitive entities will use other means to acquire customers.

The suggestion that utilities provide energy services financing is potentially problematic. Utilities should not be providing competitive DER products, nor offering energy services financing related to their provision of competitive DER products. Alternatively, clarification should be provided as to whether energy services financing as referenced in the White Paper is intended to refer to an extension of utility POR programs to include ESCO DER products, which would enhance ESCOs ability to make such offerings available in the marketplace. Currently, utility POR programs are generally limited to ESCO commodity offerings. NEM recommended that the implementation of a utility on-bill repayment mechanism for ESCO energy-related value-added services be implemented in Case 12-M-0476. This would facilitate these offerings inasmuch as many products could entail a sizable cost, and the on-bill repayment mechanism would make payment more

economical by spreading the costs over time. Alternatively, the utility POR programs could be expanded to include ESCO energy-related value-added services in order that consumer credit status will become less of a barrier to offering these types of products to a diverse customer base across New York State.

The concept of a platform access fee was also introduced in the Staff's proposal to update ESCO eligibility requirements. In that case, "Staff proposes that utilities consider development of market-based revenues associated with services they provide to ESCOs for performing services such as EDI testing as well as for value-added services such as displaying ESCO marketing information on the ESCO portion of bills rendered by utilities."² As was suggested in NEM's comments in the ESCO eligibility criteria proceeding with respect to platform access fees, before any such access fee is collected, the services upon which it is based should be unbundled from utility delivery rates. Customers should not be saddled with a double charge for any potential services. NEM recommends that each utility should be required to make a rate filing with the Commission that identifies the costs associated with these services and how they will be removed from rates ESCO customers pay so that they are not paying twice. In addition, the utility "market-based revenues" collected from ESCOs must be removed from the utility's general revenues so that it is not included in the determination of the utility's revenue requirement as incremental revenues. If the Commission is going to pursue a market-based approach for these services, it must ensure that ratepayers are not paying for any liabilities that can arise if claims are made for failure to properly provide these services. It would also be helpful to have a better understanding of what

² Case 15-M-0127, In the Matter of Eligibility Criteria for Energy Services Companies, Staff Proposal of July 28, 2015, at page 5.

services the utility would be providing to the ESCO that would actually and materially constitute a value-added and for which the ESCO isn't already paying right now.

NEM also raised a number of questions related to the development and application of the access fee that require additional detail and clarification, including: 1) what process will be used to establish the costs of the value-added services and the resulting access/application fee? 2) will the services, and the associated fee, be standardized across the utilities; 3) will ESCOs have the ability to influence what new services the utility provides to them that would provide value-added to them?; 4) what recourse will an ESCO have if the value-added service is provided poorly by the utility; and 5) would the access/application fee be collected as a one-time or on-going charge? NEM suggests that the stakeholders would benefit from additional detail and explanation of these issues in order to provide a more meaningful analysis of the concept.

Another concern related to the assessment of these fees is that they not function as a penalty against early DER adopters. The REV goals of increased efficiency, reliability and security will benefit consumers across the system. For that reason, participation by all consumers with DER should be encouraged. Similarly, since all consumers will benefit from the infrastructure improvements, all consumers should share in the responsibility for the costs, not just the subset of customers that choose to interact with the platform. It was suggested in the White Paper that, “[s]ystem costs can be reduced and, to some extent borne, by participants who benefit directly from the market, resulting in fewer costs that must be socialized among all ratepayers.” White Paper at page 10.

Additional detail of the proposal with respect to assessment of the fees envisioned that,

Customers who receive more service and value from the platform should pay a higher portion of the platform costs. Such costs should be offset by the increased value those customers receive, and should not become a barrier to entry. These costs should generally be charged to the DER provider, and will in turn be included

within the transaction value of the DER provider to the end-use customer. In this manner, delivery rates charged by the utility to customers will remain the same, regardless of whether the customer's actions take the form of a traditional consumer, an active consumer, or a prosumer. White Paper at 32.

As explained in the foregoing paragraph, the proposed assessment of the fee against DER customers would seem to undermine the very purpose of REV – to increase consumer engagement with DER with attendant delivery system benefits. Rather than incent consumers to participate on the platform and use DER products, the assessment of fees against these customers would appear to lead to just the opposite result. Indeed, the suggestion that, “costs should be offset by the increased value those customers receive,” appears to be a penalty against these customers for engaging in the very conduct sought to be achieved by REV. Conversely, inactive customers that do not participate in the platform at all will receive all of the system efficiency and reliability benefits for free. Given the importance of encouraging broad consumer participation with DER, it is important that the platform costs be collected in a competitively neutral and non-punitive manner.

I.C.3. and IV. Rate Design and the Value of DER

The White Paper recommends that a method of calculating the value of DER, based on a formula of LMP+D should be adopted. LMP captures the energy value. “D” is the distribution delivery value of DER. The White Paper posits that LMP+D captures, “the full value of a DER on a time and location-specific basis.” White Paper at 91. The White Paper recommended retaining net energy metering (NEM) for DER in mass markets as an appropriate way to reflect the value of DER. In order to derive a proper valuation of DER, it was suggested that rates be communicated in an increasingly granular fashion and that rates be unbundled to reflect value attributes, including energy, capacity, ancillary services and others. White Paper at 83. It was further explained that

setting the rate of DER compensation at the wrong rate would potentially lead to an uneconomic bypass problem. White Paper at 82. We support the proposal to derive a proper valuation of DER that appropriately compensates participating customers for the value they provide to the system. In addition to the mechanisms considered in the White Paper for DER valuation, NEM suggests that there should be a rate concession for DER providers that do not use transmission and distribution assets.

The White Paper proposes a specific program intended to facilitate the transition of rate changes for mass market customers, on an opt-in basis. This proposal is termed a “smart home rate.” As explained in the White Paper,

One option for a more sophisticated mass-market rate is a smart home rate, in which granular price signals are unbundled to reflect costs associated with underlying dimensions of electricity delivery, including commodity energy, delivery costs, and possibly certain ancillary services, and have significantly more temporal granularity. A well-constructed smart home rate would provide a technology agnostic rate mechanism to incentivize greater system efficiency through behind-the-meter management. Through direct management by customers, automated controls by on-site DER, or possibly supported by third-party intermediaries, customer loads could respond to day-ahead or other price signal. On an opt-in basis, a smart home rate would allow interested customers and service providers to develop more advanced in-home energy management systems. White Paper at 102.

With respect to this proposal, and in general, NEM agrees that greater transparency in utility rates is paramount. Unbundling of utility rates is needed now more than ever. With that being said, a “smart home rate” is the type of service offering that should be made by the competitive marketplace. These types of innovative, competitive rates are enabled by utility rate unbundling that allow ESCOs to compete against the full menu of cost components. They are also enabled when utilities provide ESCOs with timely access to customer data. If competitive entities are going to be the source of capital investment in the REV world, mechanisms must be in place for

ESCOs to successfully service mass market customers with DER products, through for example, smart home rates. In no event should these rates be offered by the utility as a gateway to the utility offering behind-the-meter services.

An important consideration to improving the availability of competitive “smart home rates” and the like by ESCOs is that utility meters that are currently in service for mass market consumers do not measure peak usage or time of use. Thus, it is challenging to develop time-of-use pricing products in the current environment and with the data that is being made available by the utility. That being said, NEM continues to encourage the Commission to consider NEM’s previously-filed Retail Demand Response Load Profile³ proposal as a transitional measure to increase mass market customer participation in DR.

Conclusion

NEM appreciates this opportunity to offer its comments on the Staff White Paper on Ratemaking and Utility Business Models. We look forward to continued participation in the REV proceeding.

Sincerely,

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³ Available at: http://www.energymarketers.com/documents/NEMA_Mass_Market,_Retail_DR_Policy.pdf