



3333 K Street, NW, Suite 110
Washington, D.C. 20007
Tel: 202-333-3288
Fax: 202-333-3266

June 16, 2020

The Honorable Michelle L. Phillips
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350
secretary@dps.ny.gov

RE: Cases 15-M-0127, 12-M-0476 and 98-M-1343 – Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process - NEM Request for Reconsideration and Further Extension in Light of Recent Events

Dear Secretary Phillips:

The National Energy Marketers Association (NEM)¹ hereby respectfully submits this request for a further Extension and Reconsideration of the Commission's December 12, 2019, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Processes issued in the above-referenced proceedings.

A Notice issued on January 22, 2020, granted ESCOs an extension to May 11, 2020, and ESCOs were also granted an extension to June 9, 2020, to comply with the requirements of Ordering Clause 6. *NEM respectfully requests a further extension and a fundamental reconsideration of the basic premise of the December 12, 2019 Order given the most recent events that have happened in the State of New York, as well as Con-ed's response thereto, and the unanticipated impacts of same on competitive suppliers, the New York market as well as the consumers of the State.*

¹ The 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. This Request is not intended to serve as a waiver of any rights, arguments, claims or remedies, all of which NEM expressly reserves.

NEM reiterates its prior objections to the basic scheme of forcing competitive suppliers and vendors to price products and services under the utility prices.² Now, it is particularly germane, because Con Edison has admitted in its recent

² NEM adds a fundamental new reason for reconsideration and incorporates herein and by reference its prior requests for Commission rehearing, reconsideration and/or clarification of the following requirements adopted in the Order for the reasons set forth therein and herein:

- 1) The new regulatory regime adopted in the Order exceeds Commission authority as recently decided by the New York State Court of Appeals;
- 2) The requirement for existing ESCOs to be subject to de novo review of the eligibility to serve consumers imposes significant unnecessary regulatory risk and uncertainty, particularly without a prior showing of good cause;
- 3) Requiring ESCO price unbundling, in the form of an on-bill comparison and itemized ESCO billing, without corresponding utility delivery rate unbundling to enhance price transparency in the retail marketplace is arbitrary and unreasonable;
- 4) An affirmative consent requirement for capped variable rate product renewals is unjustified;
- 5) The utility price benchmark used for the variable rate guaranteed savings product is unjust and unreasonable and must be properly computed;
- 6) ESCO offerings of non-energy related value-added products and services, pursuant to an otherwise compliant offering, should be permitted;
- 7) The prohibition on ESCO offerings of energy-related value-added products and services during the pendency of Track II (except when offered with a price capped or renewable energy compliant product) is arbitrary and unreasonable and establishes a two-tier system of regulation of ESCOs and DERPs that is arbitrary, discriminatory and unreasonable;
- 8) The timing and application process for ESCO offerings of EnergyGuard-like products during the pendency of Track II should be clarified;
- 9) Track II should include an examination of the regulatory and market barriers that have prevented more widespread availability of energy-related value-added products and services;
- 10) The utility price benchmark used for computing fixed rate products is unjust and unreasonable and must be properly computed;
- 11) For fixed rate products, clarification is needed with respect to aligning the “twelve-month average utility supply rate” with ESCO products and contracts of varying durations;
- 12) The requirement to restrict ESCOs to offering renewable energy products that incorporate a renewable percentage mix at least 50% greater than is required by the Renewable Energy Standard LSE obligation for the year is unreasonable, and should be reformulated to reflect availability of resources and RECs so as not to make ESCO compliance cost-prohibitive and renewable products excessively expensive for consumers;
- 13) A supplier consolidated billing option should be required; and
- 14) The definition of small non-residential natural gas customer is overly broad and should incorporate a reasonable usage standard for these customers.

filing that it plans to price products and services under competitive wholesale prices.³

NEM appreciates the hardships that have befallen the State of New York and its residents a result of the COVID-19 pandemic. Indeed, NEM also appreciates the careful and methodical consideration the Commission and Staff have given to its new Competitive Market Structure announced just a month before the pandemic started⁴.

However, the basic tenet of forcing competitive capital to be invested to compete against deliberately or even unintentionally under-market prices is not reasonable or in the best interests of the consumers or the State of New York.

All the arguments made at Stakeholder Meetings and in previous comments herein are underscored by the obvious and injurious circumstances of allowing a monopoly to predatory price at the very moment that all parties want and need lower prices. It is essentially a perfect storm underscored by the hardships faced by millions of New Yorkers.

It is precisely this circumstance that the state of New York and many other states chose to permit competition to thrive and provide true price competition in the face of a single utility monopoly marketplace. It is for this very reason that a competitive marketplace exists and to ensure that true price signals are permitted to signal exactly where new capacity and demand side management investments are needed. Lastly, it is also precisely why it is and will continue to be in New York's best interest to preserve, protect and defend competitive markets and competitive prices for natural gas and electricity.

Given both the extraordinary circumstances that have occurred since the December 12, 2019 Order was conceived and promulgated, NEM respectfully submits that the New York Public Service Commission and its staff should fundamentally reconsider the December 12, 2019 Order and Suspend further filings and implementation until all parties can have a meaningful opportunity to both analyze and comment on the latest anomalies that have become inevitable given the magnitude of the interference with market forces that are at play.

³ See; Consolidated Edison Company of New York, Inc. (Con Edison)'s May 8, 2020 Statement of Market Supply Charge effective May 13, 2020. **“Given the Extraordinary Circumstances of the Covid-19 Pandemic and its economic impacts, the company is deferring for future recovery, a portion of summer capacity costs for New York City Residents.”**

⁴ December 12, 2019.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Craig Goodman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Craig G. Goodman, Esq.
Chairman, Board of Directors
National Energy Marketers Association
Email: cgoodman@energymarketers.com
3333 K Street, NW
Suite 110
Washington, DC 20007
(202) 422-8400
Website www.energymarketers.com
cc: service list