STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of Issues Associated	**)**	
with the Future of the Natural Gas	**)**	
Industry and the Role of Local Gas	**)**	**Case 07-G-0299**
Distribution Companies –	**)**	
Capacity Planning and Reliability	**)**	

INITIAL COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM)[1] hereby submits its Initial Comments in the above-referenced proceeding pursuant to the March 14, 2007, Notice of Comment Schedule. The Commission has issued for comment a Staff Straw Proposal on natural gas capacity planning and reliability. NEM submits these comments to offer recommendations to ensure the utilities' capacity release programs are implemented in a manner that promotes the interrelated goals of retail market development, system reliability and competitive neutrality of result.

The Staff Straw Proposal suggests that the utilities implement mandatory capacity release programs for marketers serving core customers. (Staff White Paper at 16). However, marketers that are currently using their own capacity to meet core customer requirements would be grandfathered, i.e., permitted to continue doing so at then current volumetric

[1] NEM is a national, non-profit trade association representing wholesale and retail marketers of natural gas, electricity, as well as energy and financial related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, advanced metering, demand and load management firms, billing, back office, customer service and related information technology providers. NEM members are global leaders in the development of enterprise solution software for energy, advanced metering, information services, finance, risk management and the trading of commodities and financial instruments. NEM members also include inventors, patent holders, systems integrators, and developers of advanced power line surveillance and grid reliability technology with advanced uses in Power Line Communications (PLC) technologies as well as new and innovative electrical encoding, applications or decoding known as Smart Electricity.TM

levels. (Id.). New and/or incremental marketer loads would be served using utility capacity. Additionally, firm utility Primary Delivery Point Capacity used by marketers would be required to be held for twelve months. (Id.). The Straw Proposal recommends that utilities work with pipelines to encourage implementation of Delivery Point Operator/Citygate Swing Customer (DPO/CSC) programs.[2] (Id.).

Staff's Straw Proposal is preceded by the investigation of the Capacity Planning Initiative that was convened in 2005 to examine, "the effects of migration to marketers in the residential and small commercial sectors, while ensuring the reliability of the natural gas supply for all core customers in every franchise area and region of the State." (Staff White Paper at 3). Staff's proposed mandatory approach is intended to address the concern that if, "marketers stop serving customers in New York State and that capacity is no longer available to serve New York ratepayers, reliability could be adversely impacted," and it is meant to avoid the corresponding issue of utilities having to obtain duplicative capacity. (Staff White Paper at 1).

As a general observation, NEM questions whether the reliability issue identified above is a real threat or is in fact a red herring rooted in vertically-integrated utility lore. If a marketer will cease serving customers in New York, it seems logical that the marketer would seek to sell its book of business, and its corresponding capacity, as part of its market exit. Accordingly, the pivotal issue to keeping the capacity in New York would seem to hinge on the efficiency and expediency within which Commission regulation and utility business rules permit such transfers to occur.

[2] Dominion Transmission Inc. (DTI) offers the program in New York whereby marketers are given access to storage assets on DTI for balancing purposes and for price arbitrage.

As the Commission reviews Staff's Straw Proposal, NEM would also urge that the Commission consider other variables that will impact customer migration levels, and concomitantly, capacity release program participation. For instance, the continued commitment on the part of the Commission and the utilities to implement the best practices identified in the Retail Policy Statement and its progeny will bear directly on the continued development of the retail gas market. New York has reached a critical point in retail market development, having achieved significant migration for core customers and large customers and active participation by many ESCOs.[3] A review of capacity release policies and programs is appropriate to ensure that retail choice rules work to positively to reinforce each other. These variables are dynamic and interconnected parts that should be considered in a holistic manner.

NEM urges the Commission to incorporate three recommendations into the capacity release programs that are implemented for New York utilities. These recommendations include:

1. Capacity release programs should permit assets to follow the customer;
2. Utility storage assets can and should be made available to marketers, and utility incentives should be aligned with this goal; and
3. DPO/CSC programs should be expanded throughout the State's utilities and pipelines.

The implementation of these recommendations will ensure the on-going forward development of retail gas choice, in a manner that preserves the reliability of the system. NEM will explain these recommendations in greater detail below.

[3] See Case 07-M-0458, Order on Review of Retail Access Policies and Notice Soliciting Comments, pages 4-5.

1. Capacity Release Programs Should Permit Assets to Follow the Customer

NEM supports capacity release programs that are structured such that assets follow the customer.[4] NEM recommends that as individual customers leave a utility's system supply for that of a competitive supplier, the customer should be assigned capacity, and it should be accomplished under the same terms and conditions as that customer would have received as a utility sales customer. Assets should be made available on an equitable and non-discriminatory basis, both in terms of allocation and utilization rights. In other words, assets should follow the customer. This ensures that customers have equal access to the assets for which they pay. In a retail choice environment, utilities need only retain those assets sufficient to meet their remaining firm commodity customer needs and to assure distribution system integrity on peak day and through the design winter period.

2. Utility Storage Assets Can and Should Be Made Available to Marketers

Utility gas storage capacity, deliverability, and all rights related to utilizing storage (storage assets) can and should be made available to gas marketers. The utility can and should retain the portion of these storage assets necessary to maintain system integrity. However, that portion should be limited to storage assets necessary to support daily and hourly requirement swings when actual demand varies from forecasted demand.

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[4] NEM notes that in this Commission's recent comments in FERC's capacity release inquiry it stated that, "PSCNY's main interest in this proceeding is to ensure that any changes to the Commission's [FERC's] capacity release policies are coupled with a continuation, and perhaps expansion, of the Commission's [FERC's] current policy of allowing the release of pipeline capacity to "follow the load" (i.e. capacity held by a load-serving entity is releasable to another load-serving entity that assumes the service obligation of the releasing entity." FERC Dockets RM06-21 and RM07-4, Comments of the Public Service Commission of the State of New York, page 2.

Staff notes that, "LDCs utilizing multiple storage fields with varied associated costs, storage value, and delivery paths to citygates may find a storage release program difficult to administer." (Staff White Paper at 12). In contrast, gas marketers can and will accept this perceived complexity and manage it effectively to reduce costs for all customers. Staff's further concern that "the delivery capacity from storage to the citygate is not always releasable" (Id.) is valid, but that minority share of storage capacity would generally be within that which the utility would elect to retain for system integrity – thus ameliorating Staff's concern. We have seen a number of examples in the State of successful storage capacity releases and another in Georgia where Atlanta Gas Light implemented a workable system in 1998 that continues to operate effectively today with little modification over the intervening nine year period.

Gas marketers should be able to use the combination of pipeline and storage assets to lower costs and thereby deliver the full benefits of competition to New York gas customers. Utilities need only to maintain sufficient pipeline capacity and storage assets to maintain system integrity. Aside from that, there is no need for utilities to withhold storage assets or provide any variations of virtual storage programs.

Every New York utility customer is served using both pipeline capacity and storage assets. In effect, each customer has a slice of the system available to fully serve its needs. The Commission has gone to great lengths over the years to assure that the blend of these supply assets meets the supply reliability needs of customers and does so in an economical fashion. No utility in an area that experiences cold winter weather would be permitted to operate with pipeline capacity alone, even if they could get enough, because

the cost of underutilized capacity would make it prohibitive. Why then should the Commission deny the gas marketers the ability to obtain and manage storage assets?

A cumulative slice of the system required to serve its customers can and should be provided to every gas marketer. Each marketer is capable of managing this slice with reliability and of obtaining from it the full value of competition for its customers.

A. Utility Performance Based Incentives Should Be Better Aligned with the State Policy of Promoting Competitive Market Development

Because of current rate designs, most New York utilities would be disadvantaged financially by the release of storage assets. However, this can be mitigated by Commission action. A variety of performance based incentives that allow utilities to retain additional earnings for shareholders involve the utilization of storage assets. For example, utilities generally retain a percentage of the profits from off-system sales. Excess storage assets are necessary for this incentive to function and any requirement that they be released to gas marketers will certainly affect earnings.

This situation pits the utilities squarely against the gas marketers on the release of storage assets. The question of what is in the public interest here is answered easily. Competition that creates value for consumers by making storage assets available to gas marketers is in the public interest. Maintaining the fiscal integrity of well-run utilities is also in the public interest. Utility performance-based incentives should be properly aligned with the State and Commission policy of promoting competitive market development, and utility performance based incentives in contravention of this policy and that inhibit competition should be eliminated or replaced by others that do not.

3. DPO/CSC Programs Enhance Marketer Balancing Opportunities and Should Be Expanded

NEM supports the expansion of Delivery Point Operator/Citygate Swing Customer (DPO/CSC) programs for the utilities and pipelines. Under its' DPO/CSC program, marketers have a swing contract with Dominion Transmission Inc. (DTI). Everyday, the utility tells the marketer what to deliver according to forecasted weather. However, under actual weather conditions, the DDQs are often very different. With the CSC, gas will come out of or be injected into the marketer's storage account therefore reducing the need for the utility to hold as many assets and permitting the marketer to do much more of the balancing. It also reduces the need to do as much day-to-day buying for balancing. With the CSC agreement based on the marketer's pool of customers, the marketer has a certain amount of swing rights. If the marketer is a little short for flowing gas on a given day, the CSC can swing out of the marketer's storage without having to buy day gas. If the marketer is a little long, it will swing into the marketer's storage. This is one way the utilities balance every day, and marketers should have the ability to do so as well.

4. Conclusion

For the reasons set forth herein, NEM urges the Commission to incorporate the following recommendations into the capacity release programs of the New York State utilities:

1. Capacity release programs should permit assets to follow the customer;
2. Utility storage assets can and should be made available to marketers, and utility incentives should be aligned with this goal; and
3. DPO/CSC programs should be expanded throughout the State's utilities and pipelines.

NEM and its members appreciate the opportunity to offer these comments and to participate in the process of developing capacity release programs that permit marketers to maximize the value, and minimize the cost, of competitive energy services for New York consumers.

Sincerely,

Craig G. Goodman
President
Stacey L. Rantala
Director, Regulatory Services
National Energy Marketers Association
3333 K Street, NW
Suite 110
Washington, DC 20007
Tel: (202) 333-3288
Fax: (202) 333-3266
Email: cgoodman@energymarketers.com
Website-www.energymarketers.com

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