

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 00-M-0504 - Proceeding on Motion of the Commission
Regarding Provider of Last Resort
Responsibilities, the Roles of Utilities in
Competitive Energy Markets, and Fostering the
Development of Retail Competitive
Opportunities.

NOTICE SEEKING COMMENTS

(Issued January 27, 2004)

INTRODUCTION

The Commission instituted this proceeding several years ago to address and resolve the challenges associated with the further development of competitive retail energy markets.¹ Many of those issues have been or are being explored, especially in the area of establishing the necessary infrastructure for market development (e.g., defining, testing, and implementing electronic data interchange; extending consumer protections to customers of energy service companies (ESCOs)²; designing, calculating, and implementing unbundled pricing and billing). Other issues, however, remain unresolved, such as the appropriate role of regulated utilities during and after the transition to competitive retail electricity and natural gas commodity markets, and the ratemaking, service, and other policies we should implement to assist in the development of robust retail energy markets. Continuing to remove barriers to competition and to provide a "level playing field" for competitors will likely be necessary for all customer classes, but we are especially interested in this notice to explore these issues regarding small commercial and residential customers.

¹ "Retail energy markets" refers to both the electric and gas markets unless otherwise noted.

² In this notice, "ESCO" refers to both electric energy service providers and gas marketers.

In the comprehensive Recommended Decision (RD) in this proceeding,³ which addressed a great number of these issues, a variety of strategies for facilitating customer choice for energy supply were discussed. As a general matter, the Judges found that virtually all of the strategies might be appropriate depending on the stage of market development. The Judges also recommended a portfolio-based hedging approach to obtaining wholesale energy supplies, designed to limit electricity price volatility, similar to our approach for natural gas.⁴ The Judges also noted that the specifics and extent of the hedging should depend on the breadth and nature of products available to each customer class, the number of competitors offering competitive options, and the extent of retail migration.

The competitive retail market today appears to have evolved since this proceeding began, and, before we address the recommendations set forth in the RD, we believe it prudent to seek the parties' comments in light of the passage of time and the continuing evolution of the markets. We first set forth below a draft statement of a broad vision for the development of retail energy markets, on which we would appreciate the parties' views. We then set forth a series of questions dealing with specific initiatives that may be undertaken now, and we ask the parties to give us their thoughts on the suggested approaches. It should be noted, however, that we are not asking the parties to revisit the arguments previously submitted but to focus here on the current status of the markets and on the retail market development since the issuance of the RD.

³ Case 00-M-0504 - Proceeding on the Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of the Utilities in Competitive Energy Markets, and Fostering the Development of Retail Competitive Opportunities, Recommended Decision (issued July 13, 2001).

⁴ Case 97-G-0600 - In the Matter of the Commission's Request for Gas Distribution Companies to Reduce Gas Cost Volatility and Provide for Alternative Gas Purchasing Mechanisms, Statement of Policy Regarding Gas Purchasing Practices (issued April 28, 1998).

VISION STATEMENT

If New Yorkers are to enjoy the benefits of competitive retail energy markets, those markets must be designed in a way that preserves public interest values and the principles that have guided Commission efforts to date. The RD recommended that our energy vision statement parallel the vision statement in telecommunications (Opinion 96-13)⁵ and draw upon our policy statement for natural gas. The RD recognized the Commission's statutory responsibilities and reflected the experience that competitive markets generally develop more quickly for large users than for residential customers.

Set forth below is a draft vision statement that reflects these elements:

The provision of safe, adequate, and reliable gas and electric service at just and reasonable prices is the primary goal. Competitive markets, where feasible, are the preferred means of promoting efficient energy services, and are well suited to deliver just and reasonable prices, while also providing customers with the benefit of greater choice, value and innovation. Regulatory involvement will be tailored to reflect the competitiveness of the market.

Achieving this vision will require the development of robust retail energy markets providing a variety of choices for customers, which in turn requires that the dominant position of the utilities providing competitive retail services be reduced, or, in some cases, eliminated. Reducing the utilities' dominant position will require both the cooperation of the utilities to help reduce barriers to customer choice and the establishment of rate and rate design policies that will allow the competitive markets the freedom and flexibility to develop robust retail competition while ensuring that just and reasonable prices continue to be available to all customer classes, regardless of the state of competition.

⁵ Case 94-C-0095 - Proceeding on the Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market (issued May 22, 1996).

SPECIFIC QUESTIONS

To assist the Commission in this proceeding, we encourage parties to comment upon the specific strategies noted below, in light of the current state of the retail markets and the experience of the past few years.

Retail Markets:

- 1) Based on experience to date and, particularly, developments in the retail markets over the past 3 years, what specific actions should now be taken to increase customer choice? Which actions would be most appropriate for the residential and small commercial customer classes? What are the expected benefits and costs of such actions?
- 2) Are there features at individual utility retail access programs, such as Orange and Rockland Utilities (O&R's) "Switch and Save" Program,⁶ that could have applicability to other service territories? If so, please explain.
- 3) What, if any, barriers exist for customer aggregation programs (e.g., those using affinity groups) and what should the Commission do to remove those barriers? Should additional pilots be established?
- 4) Should the Commission facilitate coordination of the Department's and the utilities' education campaigns with ESCOs' marketing campaigns? How best can this be accomplished?

⁶ The program includes features such as: qualified ESCOs provide pricing discounts for two months to new customers; when customers call, the utility, upon customer consent, switches customers to ESCOs; the utility purchases ESCOs' Accounts Receivable, without recourse; and the utility provides a consolidated bill to include ESCOs' commodity charges.

Utility Commodity Pricing and Portfolio Management:

- 5) Assuming the Commission establishes guidelines for electric utility retail commodity pricing and wholesale supply portfolio management, similar to its guidelines in the gas industry, what should be addressed in those guidelines? To what extent should the guidelines vary for small versus large customers? For example, should hedges be assigned to smaller customers so they face more predictable prices, letting larger customers be more exposed to price volatility?⁷
- 6) Should the Commission require or encourage programs whereby utilities purchase supply for their retail customers through an auction process? Should the auction process be used to select alternative commodity suppliers for blocks of utility sales customers' load?
- 7) Should all utilities' commodity purchases be considered public information as to price, terms and conditions?
- 8) What is the potential impact on retail competition of increased long-term (i.e., > 1 year) wholesale contracts purchased to fulfill the requirements of full-service utility customers?
- 9) How should differences between the wholesale market price of the commodity and the retail price of electricity under a utility's managed portfolio be reflected in end-user rates (*i.e.*, should the difference be an adjustment to the utilities' delivery or commodity rates)?
- 10) If migration creates either a gap or a surplus between the utility load and the load covered by the portfolio contracts, and in selling the excess or purchasing the difference the utility experiences either a gain or loss, how should that gain or loss be treated in rates?
- 11) Is an incentive mechanism needed for the utility to minimize its commodity costs? How would such a mechanism function?

⁷ For example, many SC 3A customers in Niagara Mohawk's service territory are currently charged day-ahead hourly market prices.

- 12) Would some level of long term contracts as a component of electric or gas utility portfolios help to ensure incremental infrastructure gets built when needed to meet expected demand?
- 13) Is there a need for a greater commitment regarding gas pipeline capacity from ESCOs serving gas customers?
 - If the utility is acquiring capacity for ESCO-served loads on its system, should there be a minimum commitment that the marketers must make to take that capacity?
 - If ESCOs are providing their own capacity, should they be required to commit to providing the utility with access to that capacity if they exit the utility's retail program, or turn substantial load back to the utility? If yes, please explain how.

Other:

- 14) Are there any other issues related to the further development of retail markets that have arisen since the RD was issued that may be relevant to this proceeding and are not being addressed in another forum? If so, please identify them.

PROCESS

Parties submitting comments are requested to file by March 22, 2004, ten copies of their comments with Jaclyn A. Brillling, Secretary to the Commission, Three Empire State Plaza, Albany, New York 12223-1350. Reply comments, filed in the same manner and no later than April 5, will also be permitted. Copies of comments and reply comments must also be served on parties listed on the active parties list, revised as of March 1, 2004.

Parties not previously appearing in this proceeding who wish to be placed on the Commission's service list for receipt of comments of other parties must so notify Administrative Law Judge Jeffrey Stockholm in writing by February 28, 2004. Parties may fax their request to 518-473-3263 but are requested to follow up with a mailed copy as well. An updated active parties list will appear on the Commission's Website on or about March 5, 2004 and can be found

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by searching under this case number "Commission Documents" at
<http://www.dps.state.ny.us>.

(SIGNED)

JACLYN A. BRILLING
Secretary