

Consumer Power Advocates

Columbia University Medical Center
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Mount Sinai Health System
New York Presbyterian Hospital
New York University
NYU Langone Medical Center

Filed electronically

October 19, 2015

Honorable Kathleen Burgess
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

RE: Case 15-M-0180, Oversight of Distributed Energy Resource Providers and Products

Dear Secretary Burgess,

These are the comments of Consumer Power Advocates (CPA) in response to the Comments Of The City Of New York On The Staff Proposal and to the Comments of Energywiz, Inc. in the above captioned case.

Comments Of The City Of New York

In its initial comments, the City supports the Staff recommendation to require uniform contracts for DER products. We disagree.

The specific products and services to be provided by DERs are, at this time, largely unknown. It remains to be seen what services will survive in the market, and how those services will be defined. Much of technology required to measure and verify these services has yet to be installed. The data protocols have not yet been specified. Under these circumstances, it is premature to develop a standard service agreement.

Moreover, many of the largest customers, including those of our members who have been among the leaders in the adoption of demand response and distributed generation, operate complex

facilities which unique energy needs. Even in the present soon-to-be obsolete distribution paradigm, our members require individually negotiated contracts tailored to their specific needs. To the extent the Commission determines that uniform contracts are appropriate, that requirement should not include large customers, including all demand metered customers. Moreover, many large customers operate campuses which, in addition to major utility accounts, include numerous small accounts, sometimes including residential accounts. Typically, these accounts are aggregated in a way to provide the most attractive opportunities to suppliers. Any requirement for uniform contracts must allow large organizations the opportunity to negotiate specific terms for all their accounts, regardless of the size or service class of any individual account.

Comments of Energywiz

In its initial comments, Energywiz suggested that the term *energy broker* should be defined. In our experience, the terms *energy broker*, *customer consultant*, and *supply channel partner* are used interchangeably. We prefer the term *ESCO channel partner* (ECP). The mode of compensation cannot be used to differentiate between an ECP and a Consultant. We propose to define an ECP as “one who has a channel partner agreement with supplier(s).” A consultant could have a broker agreement with a supplier to spell out the payment arrangement if the consultant is receiving payment from the supplier. The consultant could also have a contract with the customer specifying that same payment arrangement and the fees to be collected through the supplier. In our experience, customers, for their own internal reasons, sometimes prefer that consultant fees are collected through the mechanism of the supplier invoice, rather than a separate consult invoice. This billing option should not be foreclosed.

Energywiz goes on to propose a Brokering Customer’s Bill of Rights. While we recognize the need for transparency and support appropriate disclosure of business arrangement, we believe this laundry list of requirements in some cases goes too far, and in others conflates the activities of brokers and consultants in ways that do not reflect common business practices. For example, item number 3 suggests the following disclosure:

If receiving any direct payment from a customer for procurement services (i.e., acting as a consultant), any additional brokering compensation he is receiving from a supplier for the arrangement.

This requirement is both too broad and too narrow at the same time. Payments made by suppliers to consultants may involve brokering fees, or they may simply be compensation that the customer prefers to be billed through the broker, as described above. The simple act of receiving

a payment from a supplier should not automatically require that the consultant (or ECP) meet all the duties required of a broker.

Energywiz would also require ECPs, consultants, and brokers to disclose any broker licenses held in other States, and to disclose the loss of any such license. This requirement is unnecessary and will only lead to customer confusion. New York does not require a broker license, nor has it defined the term *broker*. No doubt, each has its own definition and scope of activities that require a broker's license, and those may vary in important ways. Given the fact that New York has yet to find a need to require such a license, it is difficult to understand why the identification of another State's license is relevant.

Thank you for the opportunity to comment on these important issues.

Respectfully Submitted,

John J. Dowling

Director- Regulatory Issues, Consumer Power Advocates