

December 10, 2007

VIA HAND DELIVERY

Honorable Jaclyn A. Brillong
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 94-E-0952 – In the Matter of Competitive Opportunities Regarding
Electric Service

Case 00-E-0165 – In the Matter of Competitive Metering

Case 02-M-0514 – Proceeding on Motion of the Commission to Investigate
Competitive Metering For Gas Service

Proposed Rule Making – Standards Relating to Electric and Gas Metering
Equipment – New York State Register I.D. No. PSC-43-07-00023-P

Dear Secretary Brillong:

Multiple Intervenors, an unincorporated association of approximately 50 industrial, large commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby files an original and five (5) copies of its Comments in response to the Notice of Proposed Rulemaking, I.D. No. PSC-43-07-00023-P, which was noticed for comment in the October 24, 2007 edition of the *New York State*

Register and the “Notice Seeking Comment” (“Notice”) issued October 10, 2007 in the above-referenced proceedings.

In the Notice, the Commission seeks comments on whether to approve, modify, or reject standards relating to electric and gas metering equipment used in the provision of utility service in New York State. In particular, the Commission requests that comments address “the features and functions of [advanced metering infrastructure] systems that comments should be considered standard.”¹ (Notice at 2.) As set forth more fully below, and

¹ On August 1, 2006, the Commission issued its Order Relating to Electric and Gas Metering Services (“August Order”) in this proceeding, “endorses[ing] electric and gas utility investment in advance metering infrastructure [“AMI”], where feasible and cost effective, and encourage[ing] pilot programs to test a variety of proposals for development of advanced metering systems.” Cases 02-M-0514 *et al.*, *Proceeding on the Motion of the Commission to Investigate Competitive Metering for Natural Gas Service*, Order Relating to Electric and Gas Metering Services (August 1, 2006) at 2 [hereinafter August Order]. In its August Order, the Commission directed the electric and gas utilities to file, by February 1, 2007, plans for the development and deployment of electric and gas advanced metering systems and provide an analysis of the costs and benefits related thereto (“Plans”). *Id.* at 37.

On August 31, 2006, Multiple Intervenors filed a letter seeking clarification of the August Order. In its letter, Multiple Intervenors urged the Commission to clarify that customers who choose the competitive metering option and/or their meter service provider should bear the corresponding costs of such service, including the installation cost of advanced equipment. However, the Commission has to date not acted on this request.

Thereafter, in comments filed on March 9, 2007 and July 11, 2007, respectively, Multiple Intervenors comments on the filed Plans, establishing that: (i) AMI as proposed does not satisfy the Commission’s criteria for demonstrated cost-effectiveness, the Commission should refrain from requiring the implementation of the electric and/or gas advanced metering upgrades set forth in the Plans; and (ii) if, *arguendo*, the Commission approves the Plans, the costs of implementing advanced metering services should be borne solely by customers seeking the potential benefit of installing such equipment.

in its various comments in these proceedings, which are incorporated herein by reference², while Multiple Intervenors takes no position on specific standards to be adopted, consistent with prior Commission precedent, any adopted standard should allow customers unfettered access to meter data on a real-time basis. However, it is Multiple Intervenors' position that customers who choose the competitive metering option and/or their meter service provider should bear the corresponding costs of such services, including the installation cost of advanced equipment. It would be inequitable to require customers that do not participate in competitive metering and/or have already upgraded their metering equipment to bear any of these costs through system-wide surcharges or subsidies.

As the Commission held in Opinion No. 97-13, "access to usage data is a critical component of an effective competitive retail market." Op. No. 97-13 at 17.³ The Commission established "it is imperative that potential competitors have access to historic and current usage data to market and bill their products and services." *Id.* at 3. In its 2005 Report in these proceedings, the Staff recommends that the Commission further emphasize customer access to and use of metering data. Staff Report at 3, 10. Multiple Intervenors supports the development of standards that increase access.

² Multiple Intervenors has filed comments on, *inter alia*, January 19, 1999; July 16, 1999; January 7, 2000; July 8, 2002; February 3, 2005; October 24, 2005; August 31, 2006; March 9, 2007; and July 11, 2007.

³ Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, "Opinion and Order Establishing Regulatory Policies for Competitive Metering" (issued August 1, 1997) ("Op. No. 97-13").

The ability of large commercial and industrial customers to access real time meter information is critical in facilitating the customer's ability to both respond to price signals and participate actively in a competitive electric marketplace, including participation in the New York Independent System Operator's ("NYISO") various demand response programs. In particular, access to kWh and demand information assists customers in increasing operational efficiency, as well as justifying and scrutinizing various projects and potential process improvements. Moreover, customers utilize power factor information to adjust synchronous fields to ensure continued power factor unity. Various data intervals (15 minute, 5 minute, rolling average, or real time) should be available to customers at their own cost and expense. In recognition of the importance of such data, many members of Multiple Intervenors have installed and maintain energy information platforms at their facilities at their own expense. In addition, several members actively participate in National Grid's Energy Check On-line program.

Although enhanced data should be available, as the Commission has correctly recognized in these proceedings, the cost of procuring metering equipment, data, and/or data services must be recovered solely from the buyers of these services. As the Commission held in its Order Providing for Competitive Metering issued in this proceeding on February 26, 2001 ("February Order"), the costs to provide AMI service should be recovered from those customers which caused the costs, (February Order, *supra*, at 28) and not all customers. Specifically, in the February Order, the Commission stated that, "[i]n general, incremental

operational costs incurred by a utility should be recovered from the party(s) that cause the costs.” (*Id.*)

Moreover, in the Commission’s May 29, 2001 Order in these proceedings (“May Order”), the Commission approved Staff’s cost causation-based recommendations regarding cost responsibilities for AMI. As stated in the May Order, “[i]ncremental operational costs incurred by a utility will be recovered from the party(s) that causes the costs and/or obtains the benefit(s) of the competitive metering market.” (May Order, *supra*, at 30.) In addition, the Commission stated that “incremental infrastructure costs incurred by a utility should be addressed in individual rate proceedings as necessary.” (*Id.*; *see also* February Order, *supra*, at 28.)

This principle of fair, cost-based recovery of AMI costs also was recognized and reiterated by Staff in 2005. In its 2005 Report in these proceedings, Staff stated that the cost of procuring metering equipment, data and/or data services must be “recovered *solely* from the buyers of these services.” (Cases 02-M-0514 *et al.*, *supra*, Competitive Metering Proceedings Staff Report (September 7, 2005) at 12 (emphasis added).) Multiple Intervenors agrees. It is a fundamental principle of utility ratemaking that costs should be allocated as directly as possible to the customers that derive the benefit of the cost.⁴ Thus,

⁴ *See* National Association of Regulatory Utility Commissioners, Electric Utility Cost Allocation Manual (January 1992) at 22 [hereinafter NARUC Manual] (stating that once “the costs have been functionalized, the next step is to allocate them among the customers classes” as demand-related, energy-related and customer-related costs). In particular, meter costs are classified as customer related and should be allocated on a customer basis. *See id.* at 87, 96.

direct assignment or “exclusive use” costs are assigned directly to specific customers (*e.g.*, interconnection costs) or, relevant to this proceeding, to the group of customers that will exclusively use such facilities (*e.g.*, gas procurement costs are not assigned to gas transportation customers).⁵ To do otherwise would require one class of customers to subsidize another, which stands in direct contradiction of the objectives of cost-based regulation.⁶

As established by Multiple Intervenors in its March 2007 Comments, ideally, if, *arguendo*, the utilities AMI Plans are approved, the costs should be imposed directly, on a per-customer basis to those customers imposing additional metering costs. However, to the extent that the Commission decides to allocate these costs more broadly for the smaller customer classes, it should do so in a manner that restricts the collection costs from those classes or individual member of a class that benefit from the meter upgrades.⁷ Any other method would inequitably result in subsidization of some customers by others.

⁵ *See id.* at 38.

⁶ *See id.* at 20 (“For example, a radial distribution line that serves only a particular customer may be assigned directly to that customer.”); *id.* at 22.

⁷ For example, large customers that require meter improvements under the Plans should be allocated these costs directly, on a per customer basis. Large customers who already have paid for their meter upgrades should not be forced to pay for meters for other large customers, some of whom could be competitors.

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For the foregoing reasons, Multiple Intervenors requests that the Commission clarify that any costs associated with competitive metering, including meter installation, testing or system upgrades, or as the result of new AMI standards, will be the sole responsibility of the customers choosing the competitive metering option and/or their meter service provider.

Very truly yours,

COUCH WHITE, LLP

James S. King

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cc: Active Parties (via email and U.S. Mail)

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