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MEMORANDUM

TO: **Mary McGarvey**

Cc: **Jim Alcombright**
Sheri Prevratil

FROM: **Usher Fogel, Counsel, Gateway Energy Services Corporation**

SUBJECT: **NYISO Proposal to Consider Weekly Invoicing of LSEs**

DATE: **January 9, 2009**

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These comments are submitted on behalf of Gateway Energy Services Corporation ("Gateway") in response to the proposal of the NYISO to consider weekly rather than monthly invoicing of LSEs for energy, ancillary services and congestion rent shortfalls.[1]

The proposal to move to weekly invoicing raises serious and significant concerns in the ESCO community. The financial stress associated with imposing weekly billing will threaten unnecessarily the financial viability of the ESCOs serving retail customers throughout the State, as well as the hard won effort to develop and maintain a robust competitive retail market.

[1] Gateway has reviewed the comments dated October 27, 2008 submitted by the New York Transmission Owners, LIPA and NYPA ("TO Comments") and concurs with the concerns raised therein.

The Proposal Creates an Undue Financial Burden

The introduction of weekly billing would compel ESCOs to find available cash reserves or incur costly financing expenses to fund the weekly payment of the NYISO charges. This would place ESCOs in a precarious position as most, if not all, retail customers remit payment on a monthly cycle and the availability of financing on reasonable terms is most doubtful in today's economic climate and costly even under more advantageous conditions.

Moreover, most LSEs serving residential and small commercial customers participate in Purchase of Receivable programs (POR) under which the local utility bills and purchases the entire receivable balance of the ESCO. The payment by the utility generally follows a forward monthly schedule. Thus, for example, in Con Edison the utility issues a single payment on the 20th of each month for all bills issued the previous month; thereby creating a cash flow environment in which the LSE will receive payment in the month after the electricity is acquired from the NYISO and delivered to the customer. Consequently, the LSE in Con Edison's service territory would have to finance either through internal cash or through debt the first NYISO weekly invoice for 43 days; the second weekly invoice for 36 days, and the third weekly invoice for 21 days.[2] Under such a structure, the LSE will obviously not have the cash flow from its current receivables available to pay NYISO bills on a weekly basis as the POR payment is not

[2] In some cases, the period of cash flow financing could be much longer, where, for instance, the customer's billing cycle ends on the first of the month. In such a case, under the Con Edison program, the POR payment would not be made until the 20th of the next month. Thus, if the customer's cycle goes from January 2 – February 1, the ESCO would have to pay the NYISO by around January 9, but payment from Con Edison would not be made until March 20th.

received until a later period. Consequently, weekly billing will create a serious cash flow crunch that will either force the LSE to curtail retail sales or undertake costly working capital financing. Either outcome will seriously impair the financial and competitive integrity of the LSE.

The Proposal Conflicts With State Policy

The egregious financial impact of the proposal will compel financially viable LSEs to either restrict or even potentially terminate their retail electric sales operations in New York. In addition, imposition of such a high financial cost would raise a significant barrier to entry by new ESCOs into the NYISO markets. These outcomes would directly undermine and conflict with the well established policy in New York strongly favoring the provision of meaningful competitive retail choice to consumers.[3] In other words, this policy shift is strongly anti-competitive in design and impact, conflicts with established State policy and will harm consumers, especially residential and small commercial customers.

The Proposal is Inequitable and Unnecessary

The proposal unreasonably and illogically discriminates against those LSEs that are fully credit worthy and have satisfied all NYISO credit standards, but do not have the

[3] Case 07-E-150, Long-Range Electric Resource Plan and Infrastructure Planning Process, *Order Initiating Electricity Reliability and Infrastructure Planning* (issued December 24, 2007), p. 7; Case 07-M-0458, Proceeding to Review Policies and Practices Intended to Forster the Development of Competitive Retail Energy Markets, *Order on Review of Retail Access Policies and Notice Soliciting Comments* (issued April 24, 2007), pp. 4-5.

available cash reserves to satisfy a newly imposed NYISO weekly billing schedule. The NYISO should take all actions in its power to buttress the financial capabilities of such LSEs; instead the NYISO now illogically seeks to weaken such entities. Further, most of the ESCOs as noted above participate in utility sponsored POR programs under the auspices of the Public Service Commission. This has the practical effect of ensuring payment on all receivables from the perspective of the participating ESCO, and essentially transforms the ESCO receivables, which will ultimately be the source of payment for all ESCO charges, into a highly secure revenue source. Once again, it makes little sense to place undue financial stress upon such an LSE.

The purported basis for this change --- to mitigate the credit exposure of the NYISO --- is unpersuasive. Under existing credit standards, an ESCO that is not rated must post a credit instrument such as a Letter of Credit with the NYISO that is approximately equivalent to the 45 days of the LSE's peak day requirements. Unless this credit standard is met, the LSE will not be able to receive service from and through the NYISO system. Therefore, for unrated or small to mid-tiered ESCOs the NYISO is already fully protected from any material credit exposure. This standard has been most effective as to our knowledge in this decade the NYISO has not experienced any material loss from service provided to an unrated ESCO. Accordingly, the reasonable credit concerns of the NYISO are adequately protected under the current standard.

It is also important to note that while the proposal does not focus sufficient attention to the needs of the retail consumer. The imposition of the new billing

standard will, as noted above, exacerbate the financial burden of all LSEs and ESCOs.[4] This will materially raise the cost of doing business for such retailers and ultimately raise the cost of the products they supply to consumers. It will also force ESCOs to restrict or terminate electric retail sales, and will hinder the entry of new ESCOs into the State. These results --- increased energy costs and reduce competitive choice --- are inimical to the interests of consumers.

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[4] The TOs further point out that weekly invoicing would impose significant administrative and software costs on LSEs, including: additional staff time to accommodate reporting and review of meter data, staff time to support weekly invoice downloads and verification of data, and other charges ("TO Comments, p. 3). This will further increase the retail cost of electricity.