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February 9, 2018

The Honorable Kathleen H. Burgess  
Secretary  
New York Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223-1350  
[secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

**RE: Case 98-M-1343 – Order Adopting Revised Uniform Business Practices – Request for Extension**

Dear Secretary Burgess:

The National Energy Marketers Association (NEM)<sup>1</sup> hereby respectfully submits this filing to request a ninety-day extension for ESCO compliance with certain requirements in the Commission's Order Adopting Revised Uniform Business Practices in the above-referenced proceeding issued on January 19, 2018. The Order requires ESCO compliance with the revised UBP requirements thirty days from the effective date of the Order.

NEM submits that a ninety-day extension for ESCO compliance with certain of the new UBP requirements is justified given the significant nature of these changes, the resources that will be required to implement the changes, as well as uncertainty regarding certain terms in the Order that will require Commission clarification in order to ensure ESCO compliance. NEM requests an extension for ESCO compliance with respect to:

- 1) Amendments to UBP Section 5.L.2. regarding voluntary budget billing and levelized payment plans;
- 2) The extension of TPV requirements to the enrollment of small non-residential customers resulting from door-to-door sales, telephonic enrollment and scheduled appointments under the revision to UBP Section 5.B.2.; and
- 3) Changes to the information to be displayed on the badges of ESCO marketing representatives under the revisions to UBP Sections 10.C.1.b.1. and 10.C.1.d.

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<sup>1</sup> The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting, and power line technologies.

## 1) Budget Billing Requirements

Amendments to UBP Section 5.L.2. were adopted regarding voluntary ESCO budget billing and levelized payment plans. The ESCO community has been actively investigating the operational changes that will be required including what protocols will change and how it will affect processes already in place. An extension of time for compliance will aid ESCOs in understanding the scope of changes associated with amended UBP Section 5.L.2.

Specifically, the amended language in UBP Section 5.L.2. requires ESCOs to offer voluntary budget billing under which the ESCO “is responsible for determining the budget bill amount and must evaluate each budget billed account on a quarterly basis for conformity with actual billing.” Currently, there are no EDI transaction sets for Rate Ready billing that would support this quarterly requirement, nor do the Rate Ready-based utilities have the systems in place to support ESCOs intervention into the budget billing process. In other words, ESCOs are not provided with the requisite data from the utilities about the customer’s budget bill amount for the supply portion of the bill to perform the newly-required quarterly evaluation. To date, Rate Ready utilities have handled budget billing on behalf of ESCOs and their customers using their own budget billing protocols.

UBP Section 5.L.2. would also require voluntary ESCO budget billing plans to “provide that bills clearly identify consumption and state the amounts that would be due without levelized or budget billing.” Currently, there are no EDI transactions with the Rate Ready utilities that would support providing that information.

Implementation of the changes required under UBP Section 5.L.2. will require significant stakeholder time and resources to evaluate and accomplish, including development of EDI transactions and billing processes. Additionally, it is unclear whether utilities have the space available on the consolidated bill to include this information. For these reasons, NEM submits that a ninety-day extension for ESCO compliance is reasonable.

## 2) Definition of Small Non-Residential Customer and Associated TPV Requirements

NEM has also identified certain language in the Order that will require Commission clarification in order to ensure ESCO compliance. For instance, the Order and corresponding UBP Section 5.B.2. apply a third-party verification requirement to sales to residential and small non-residential customers resulting from door-to-door solicitations, telephonic marketing or scheduled appointments. However, the definition of “small non-residential customer” included in footnote 4 of the Order references the definition in a 2014 Order.<sup>2</sup> The definition in the 2014 Order was subject to Petitions for Rehearing or Clarification,<sup>3</sup> stayed by the Commission<sup>4</sup> and

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<sup>2</sup> Case 12-M-0476, et.al., Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets, issued February 25, 2014. Footnote 1 of the 2014 Order states that, “For the purposes of this Order, a ‘small non-residential customer’ means an electricity customer in a utility service classification that does not have a demand rate element, and/or a natural gas customer in a service classification that provides firm service.”

<sup>3</sup> Case 12-M-0476, et.al., Petition for Clarification and/or Rehearing of National Energy Marketers Association, dated March 27, 2014, at pages 6-8. NEM incorporates by reference its arguments asserted therein.

<sup>4</sup> Case 12-M-0476, et. al., Order Granting Requests for Rehearing and Issuing a Stay, issued April 25, 2014, at page 6.

then ultimately withdrawn from the UBP in 2015.<sup>5</sup> The 2016 Reset Order<sup>6</sup> then adopted a definition of “small non-residential customer”<sup>7</sup> that differed from the 2014 Order with respect to natural gas customers but the 2016 Order was subsequently vacated and remitted to the Commission for further proceedings.<sup>8</sup> The reference in footnote 4 in the instant Order to the previously withdrawn definition of small non-residential customer was not re-noticed for comment and unexpected.

Moreover, the 2014 Order definition would present a specific problem for ESCO compliance with respect to small non-residential natural gas customers because of its broad reference to “a natural gas customer in a service classification that provides firm service.” In practice, the ESCO is not able to ascertain by EDI transaction whether a customer is firm or non-firm, and therefore subject to the TPV requirement, prior to submitting an enrollment.<sup>9</sup> A clarification of the Order to incorporate a usage amount to define a small non-residential natural gas customer would resolve that problem because the usage information is obtainable by the ESCO via EDI prior to when the TPV would be performed. But in the meantime, compliance with the TPV requirement under the definition of small non-residential natural gas customer referenced in the Order is problematic.

### 3) Badge Requirements

NEM has also found an inconsistency in the language of the Order with that adopted in the UBP Sections 10.C.1.b.1. and 10.C.1.d. regarding the information required to be displayed on the badges of ESCO marketing representatives. The language adopted in UBP Sections 10.C.1.b.1. and 10.C.1.d. accurately reflect the change as originally proposed in a petition to the Commission and subsequently described in the Commission Notice, to remove the representative’s full name from the badge, and include only the representative’s first name and employee identification number. However, the Order at page 16 incorrectly characterizes the original proposal saying it would “*eliminate* the marketing representative’s *first* name” (emphasis added) therefore implying the last name would be displayed and then states that the Commission adopts the recommendation. Clarification of the inconsistency in the language of the Order and that used in UBP Sections 10.C.1.b.1. and 10.C.1.d. is needed to avoid confusion and ensure ESCO compliance.

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<sup>5</sup> Case 12-M-0476, Order Granting and Denying Petitions for Rehearing in Part, issued February 6, 2014, note 3.

<sup>6</sup> Case 15-M-0127, et. al., Order Resetting Retail Energy Markets and Establishing Further Process, issued February 23, 2016, note 2.

<sup>7</sup> Id. “[S]mall non-residential customers are defined as either a non-demand metered electric customer or a non-residential gas customer with annual gas consumption that does not exceed 750 dekatherms per year or the equivalent.”

<sup>8</sup> National Energy Marketers Association et al. v. New York Public Service Commission, Alb. Co. Index No. 868-16, Decision/Order, dated July 22, 2016.

<sup>9</sup> Historical usage reports do contain a field for service class, but that field is not always populated.

## Conclusion

NEM and its members continue to review the Order and associated UBP revisions and the changes that will be necessitated thereunder. However, the issues identified above justify a ninety-day extension of ESCO compliance. NEM also intends to file a Petition for Clarification and/or Rehearing regarding these issues and other issues it may identify. This letter is not intended to serve as a waiver of any rights, arguments, claims or remedies, all of which NEM expressly reserves.

Thank you for your consideration of this request.

Respectfully submitted,

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cc: service list