National Energy Marketers Association

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of Customer Billing Arrangements	)	**Case 99-M-0631**
In the Matter of the Implementation of Chapter 686 of the Laws of 2002	))	**Case 03-M-0117**

REPLY COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION ON IMPLEMENTATION OF THE HOME ENERGY FAIR PRACTICES ACT

The National Energy Marketers Association hereby submits its reply comments on the implementation of Chapter 686 pursuant to the Notice Requesting Comments issued February 24, 2003, in the above-referenced proceeding.

The chief issue that NEM wishes to address in its reply comments is the charge assessed for utility termination of ESCO service. The relevant statutory provision with respect to this issue is found at Section 32(5)(c) of HEFPA which provides that the distribution utility, "shall receive reasonable compensation from the terminating utility, as determined by the commission, for any costs associated with such suspension of distribution services."

As a general matter, NEM submits that if the utilities had unbundled their rates and disclosed the fully embedded costs of providing consumer protection services in the unbundling proceeding this would be a moot point. However, the utilities relied on avoided cost arguments which had the effect of withholding information related to the personnel, technology, administrative and general costs and other costs incurred related to the consumer protection function. As such, these costs have been maintained in the utilities' rate bases. Also, because the information has not been made available, ESCOs cannot adequately factor in the cost of consumer protection services in developing their rates. If the utilities had properly disclosed their fully allocated embedded costs of providing consumer protection services, then the costs of compliance with the HEFPA legislation would have been of no effect or import.

The utilities propose imposing a litany of costs on ESCOs that choose to exercise their statutory right of termination. NEM submits that these costs exceed the

scope of "reasonable compensation" authorized by the statute for service suspension and should not be imposed on a marketer-specific basis. In fact, much of the utilities' costs of implementing HEFPA have already been incurred incidental to the utilities' historical performance of consumer protection and termination services and are therefore already part of the utilities' rate bases. Therefore, no additional compensation from ESCOs to the utilities can be justified. To the extent the utilities incur any additional costs for compliance, these will likely be on a general, system-wide basis and therefore these costs should be recovered in a competitively neutral fashion from all customers.

For example, in its comments, NYSEG asserts that,

> Section 32(5)(c) of the statute specifically requires ESCOs to compensate NYSEG for all costs incurred in connection with suspending distribution service at the request of the ESCOs. It is reasonable to expect that such costs will extend beyond those incurred to physically suspend service, and NYSEG submits that anything less than full compensation and cost recovery is tantamount to subsidizing the ESCOs, and is contrary to the creation of the level playing field intended by the legislation. (Comments of NYSEG at page 3). (See also Comments of RG&E at page 4).

Additionally, Keyspan Energy Delivery asserted in its comments that,

> all incremental costs associated with ESCO-initiated service suspensions should be recovered on a real-time basis by invoicing the ESCO requesting the suspension. In addition, the Companies will incur substantial costs to comply with Chapter 686, including system programming and personnel training costs. KeySpan must incur these costs to comply with the legislation, and, consistent with the letter and intent of Chapter 686, is entitled to recover them. The appropriate mechanism for recovery of these costs may vary from utility to utility. KeySpan believes that its recovery of these costs should be through a surcharge to rates, where compliance costs can be recovered as they are incurred. This surcharge could be appended to customer rates, or, equally appropriate, it could be payable by ESCOs. However it is accomplished, the Commission should render a timely order as to the appropriate mechanisms through which utilities will recover such costs. (Comments of Keyspan Energy Delivery at page 20).

NIMO argues in its comments that,

> costs incurred by the T&D Utility to disconnect a customer in response to an ESCO-requested termination should be borne by the ESCO on a customer-by-customer basis. But there are other possible losses that the T&D Utility may incur as a direct result of an ESCO-initiated termination. Where a disconnected customer is current on T&D charges and is only in arrears for the commodity portion of a consolidated bill, the T&D Utility will suffer a loss of revenues in the event an ESCO initiates termination of service. Niagara Mohawk believes that these lost revenues should be recovered from the terminating ESCO or through existing utility deferral mechanisms.
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> T&D Utilities will also incur costs to implement the revised HEFPA legislation. These implementation costs could be considerable, particularly in connection with EDI transactions that should be mandated in connection with the implementation of the HEFPA revisions, as discussed further hereafter. Niagara Mohawk believes that any and all implementation costs should be recovered through existing utility deferral mechanisms. (Comments of NIMO at pages 3-4).

NEM submits that the majority of compliance and implementation costs enumerated by the utilities have been retained in rate base and have not been part of the unbundled shopping credits. Consequently, an additional charge will be a double recovery. These costs are often incurred on a generalized, system-wide basis, such as system programming, billing and notice modifications, personnel training, and call center activity. As such, the utilities' recovery of any additional costs not already in rate base should be assessed against all customers in a competitively neutral manner inasmuch as the utilities' and marketers' costs of complying with HEFPA benefit all New York consumers.

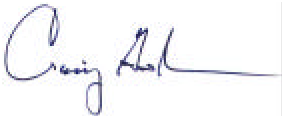
The Commission must not approve an onerous and unjustified marketer-specific charge for distribution utility termination of service. In addition to constituting a double recovery for the utility, such a charge would unfairly deter marketers from exercising their statutorily-derived right to terminate customers. Simply stated, marketers will be compelled to offer the consumer protections required under HEFPA but will not receive the commensurate benefit provided under the statute to protect their interests against non-paying customers. The Commission must avoid such a result. As noted in NEM's initial comments, "reasonable compensation" to the suspending distribution utility should be determined in accordance with the distribution utility's current charges assessed to customers for performing this task. Fees should be levied on a per customer basis. If fees are

levied on a "per ESCO" basis and the fees are set prohibitively high it could act as a bar to ESCOs invoking this right.

NEM also submits that NIMO's argument that it incurs lost revenues as a result of disconnecting choice customers that are current on distribution charges and that such lost revenues should be recovered from ESCOs should be rejected. If, in fact, NIMO incurs lost revenues in this scenario it is because it is complying with a statutory mandate to perform this service. As a result, this compliance cost is more properly assessed to all customers on a competitively neutral basis.

NEM appreciates this opportunity to offer its reply comments on implementation of the HEFPA law and urges the Commission to adopt its recommendations on charges for ESCO service termination set forth herein.

Sincerely,



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cc: Active parties (via email)