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**

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

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

The National Energy Marketers Association (NEM) is a national, non-profit trade association representing wholesale and retail marketers of energy, telecom and financial-related products, services, information and related technologies throughout the United States, Canada and the U.K. NEM's Membership includes wholesale and retail suppliers of electricity and natural gas, independent power producers, suppliers of distributed generation, energy brokers, power traders, and electronic trading exchanges, advanced metering and load management firms, billing and information technology providers, credit, risk management and financial services firms, software developers, clean coal technology firms as well as energy-related telecom, broadband and internet companies.

This regionally diverse, broad-based coalition of energy, financial services and technology firms has come together under NEM's auspices to forge consensus and to help resolve as many issues as possible that would delay competition. NEM members urge lawmakers and regulators to implement:

- Laws and regulations that open markets for natural gas, electricity and related products, services, information and technology in a competitively neutral fashion;
- Rates, tariffs, taxes and operating procedures that unbundle competitive services from monopoly services and encourage true competition on the basis of price, quality of service and provision of value-added services;
- Competitively neutral standards of conduct that protect all market participants;

- Accounting and disclosure standards to promote the proper valuation of energy assets, equity securities and forward energy contracts, including derivatives; and
- Policies that encourage investments in new technologies, including the integration of energy, telecommunications and Internet services to lower the cost of energy and related services.

I. The Impact of the HEFPA Legislation Must Be Reflected in the Utilities Unbundled Rates for Competitive Services

A general issue underlying the implementation of the HEFPA legislation that must be addressed is the impact of the extension of consumer protection requirements to marketers and the results of the unbundling proceeding. When the Commission ordered the institution of the unbundling proceeding it recognized that, "one prerequisite to fostering market development is the conduct of cost studies, the ensuing assignment of costs to the utilities' various functions and services, and the establishment of fully unbundled, cost-based rates for electricity and gas services."[1] Because of the passage of the HEFPA legislation, it is now beyond dispute that marketers will be responsible for the competitive provision of consumer protection services. Accordingly, utilities must be required to fully unbundle their rates to reflect the embedded costs of providing these competitive services.

The utilities' filings in the unbundling case disproportionately allocated large amounts to delivery service. For instance, ConEd's unbundling study allocated 95% of uncollectibles, 79% of customer care costs and 97% of A&G costs to delivery service. (ESCO Coalition, Hornby Testimony, page 6, lines 7-9). Despite the fact that delivery represents "approximately 40% of its total revenue requirements," ConEd "effectively functionalized 95% of its uncollectibles to delivery." (Hornby Testimony at page 9, lines 3-5). Similarly, NYSEG's unbundling study disproportionately allocated 44.52% of uncollectibles, 85.56% of customer care Accounts 907 to 912, 77.90% of customer care accounts 901, 903 and 905 and 87.03% of A&G costs to delivery. (ESCO Coalition, Hornby Exhibit RH-2). NYSEG only allocated 3% of its costs as contestable despite the fact that 43% of its revenue requirements are purportedly generated by delivery services. (Hornby Testimony, page 5, lines 12-16). These misallocations are due in large part to the utilities' continued reliance on an avoided cost methodology for unbundling their rates, despite repeated Commission precedent to the contrary. It is now abundantly clear that such arguments with respect to HEFPA obligations are misplaced.

Inasmuch as the new HEFPA legislation unequivocally determines that consumer protection measures are competitive services, the unbundling proceeding must also require the unbundling of this function from utility rate bases consistent with the Commission's desire to foster market development through the development of rates for competitive electric and gas services.

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[1] Case 00-M-0504, Order Directing Expedited Consideration of Rate Unbundling, March 29, 2001, at page 1.

II. Pro-Ration of Residential and Commercial Customer Payments Should Be Required

The Commission has requested comments on a series of questions related to the pro-ration of residential and commercial customer payments on a consolidated bill. These include: 1) whether the Commission should require a billing party to pro-rate customer payments on consolidated bills; 2) what procedures are necessary to provide notice to the customer and the non-billing party that payments are pro-rated, and what customer response, if any, is necessary to the notice; 3) how payments should be pro-rated, e.g., based upon the proportion of each party's charges to the total bill; and 4) how long would it take to modify billing systems to provide pro-ration.

As an initial matter, it is NEM's national policy position that the payment allocation order should be such that payments are applied first to the consumables portion of the bill, then to the non-consumables portion, and finally based on the age of the receivable. Such a methodology recognizes that the utility pipes and wires are assets that can still be called into use despite a customer's non-payment. By comparison, energy that is consumed by a customer without subsequent payment cannot be recovered and resold to another. Simple fairness would dictate that the consumables portion of a utility's bill receive payment priority.

However, if the Commission does not modify the payment allocation order consistent with NEM's recommendation, then as a second best alternative, NEM would support the pro-ration of customer payments on consolidated bills. Such a measure would be inherently more fair and equitable than payment allocation rules that discriminate in favor of utility charges. NEM notes that the utilities' previous arguments opposing changes in payment allocation chiefly center around an increased risk of service termination. However, these arguments are rendered moot by the HEFPA law and the extension of consumer protection responsibilities to marketers.

NEM notes that the Commission recently issued an Order modifying the payment allocation order but that compliance with the changes is to occur on a voluntary basis. By the terms of the Order,

> A billing party may elect to allocate customer payments in the following order: past due utility charges, past due ESCO charges, utility current charges, and ESCO current charges, after it provides notice to the non-billing party and customers on or before 15 calendar days prior to such payment allocation. Case 99-M-0631, Order Modifying Payment Allocation Method, issued February 19, 2003, Appendix A.

The Commission decided the payment allocation order changes should be implemented on a voluntary basis because, "[r]egulatory changes implementing Chapter 686 and proposals for pro-ration of partial payments of consolidated bills are under consideration in other proceedings," that will, "require software changes and the imposition of associated costs." (Case 99-M-0631, Order Modifying Payment Allocation Method, issued February 19, 2003, page 9.) The Commission decided it would be "inefficient" to require implementation of the change under these circumstances. (Id.)

The Massachusetts Department of Telecommunications and Energy examined the issue of pro rata allocation of payments and ordered the utilities to adopt this approach. The Department required that,

> A customer's payment shall be allocated between the distribution company and the competitive supplier in the following manner. The payment should first be allocated to distribution company and supplier charges in arrears in proportion to the percentage of the combined arrears represented by each charge. Any remaining payment should be allocated to distribution company and supplier current charges in proportion to the percentage of the combined current charges represented by each charge.[2]

The Department found that, "the pro rata method allocates customer payments in a manner that sends a clear signal to customers that if they fail to pay their bill in full, including the generation component, they may be subject to termination of their electric service. Therefore, the Department concludes that implementation of the pro rata method would best ensure that suppliers receive customer payments in a timely manner and, thus, is most consistent with the development of a robust competitive electric market in the Commonwealth."[3] The Department reasoned that,

> It is essential to the development of a robust competitive market that suppliers receive customers payments in a timely manner. In order to ensure that suppliers receive timely payments, the manner in which payments are allocated must send a clear signal to customers that, if they fail to pay their electric bill in full, including the generation component, they may be subject to termination of their electric service - the same signal that was sent to customers prior to industry restructuring. <u>There is no necessary hierarchy of payment that exalts distribution service over generation. What is conducive to and balances the interests of consumer protection and competitive market development, and is beneficial to consumers, should be the regulatory goal</u>.[4] (emphasis added).

NEM submits that the MA DTE's analysis is even more meaningful for the New York market since the legislature has extended consumer protection responsibilities to marketers. The argument that utility service should receive payment preference priority in order to avoid customer service termination simply becomes a non-issue when all market participants are required to adhere to consumer protection procedures prior to customer termination.

NEM also notes that this Commission has previously approved pro-ration of customer payments in the context of Keyspan's restructuring agreement in Cases 99-G-1469 and 99-G-1666. The Commission approved the Keyspan settlement that provided,

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[2] MA DTE 01-28 (Phase II), Order, issued December 14, 2001, page 15.
[3] MA DTE 01-28 (Phase II), Order, issued December 14, 2001, page 12.
[4] MA DTE 01-28 (Phase II), Order, issued December 14, 2001, page 11.

> a Marketer shall have the additional option of receiving pro rata sharing of customer payments in partial payment situations (where payments are less than the current amount due) if the Marketer agrees contractually with the utility to abide by the same due dates, requirements of notice of termination and final notice, the availability of deferred payment agreements (DPAs) for delinquent customers (but not previously disconnected customers), and late charge limits as if the Marketer's charges were utility charges.[5]

In approving this measure the Commission found that, "in this case, retail customers' access to the competitive gas market will be directly facilitated by measures such as the ... marketers' ratable sharing of customer payments as KeySpan receives them."[6] NEM submits that the Commission's findings in the Keyspan case are equally relevant today and justify expansion of the pro-ration method to the other utilities in the state.

NEM also submits that the Commission should consider the practice of requiring utility purchase of supplier receivables. This practice is currently utilized in the O&R service territory. As noted in the comments of Total Gas & Electric in this proceeding, this practice could ease the administrative burden of implementing the HEFPA legislation and aid in the promotion of choice to residential customers.

III. General Questions Pertaining to Implementation of HEFPA Legislation

In addition to the specific issue of pro-ration of customer payments, the Commission issued a series of general questions relating to the implementation of the HEFPA legislation.

1. What is the effect of these provisions [Sections 30 and 53] generally and on the provision of HEFPA protections in a single retailer model?

The general effect of these sections is to extend HEFPA obligations to ESCOs providing commodity service as well as to extend the right of termination to ESCOs providing commodity service.

With respect to the single retailer model, in which the customer buys a bundled product from an ESCO that includes retailing services, ESCO service is not limited to the services associated with provision of commodity. Accordingly, this raises the issue of whether HEFPA obligations attach to ESCO provision of these retailing services as well as whether the ESCO right of termination is afforded with respect to these services. Section 30 states that the HEFPA obligations and rights shall attach with respect, "to the provision of all <u>or any part</u> of the gas, electric or steam service provided by any gas, electric or steam and municipalities corporation or municipality." NEM submits that inclusion of the language "or any part" requires that retailing services provided under the

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[5] Cases 99-G-1469 and 99-G-1666, Interim Gas Restructuring Settlement Agreement, dated October 27, 2000, pages 11-12.

[6] Cases 99-G-1469 and 99-G-1666, Order Establishing Interim Rate Plan, issued December 26, 2000, page 12.

single retailer model be included within the ambit of the ESCOs' HEFPA rights and obligations.

2. What other provisions of law, if any, might require an ESCO to provide commodity service to residential customers, upon request?

Current law does not impose an obligation to serve upon ESCOs. NEM submits that the only circumstance under which an ESCO should be required to provide commodity service to residential customers upon request, would be in the instance that the ESCO is serving in the capacity of Provider of Last Resort. In that case, the ESCO has willingly undertaken to bear the risk of serving customers without notice and on demand and has factored such an obligation into its business plan. Until the Commission determines that ESCOs should be instituted as Providers of Last Resort, and institutes a competitive bidding process to select a POLR, no such obligation to serve can or should be imposed upon a competitive provider. Marketers must be afforded the right to evaluate which customers they serve consistent with their business model so they can properly assess both market and financial risks.

3. What is required for effective notice and documentation, including form, manner and content; what time limits and other procedures are required for transmitting the notice and disconnecting service? Should ESCOs submit sample termination notices for Department review?

With respect to effective notice of termination to a customer, Section 32 (5)(b) provides that,

> All notices provided pursuant to this article in connection with such termination shall include notice of the suspension of services that, pursuant to this subdivision, can occur coincidental with such termination and shall state the amount which much be paid to the utility making the termination in order to obtain the resumption of service from such terminating utility and, if different, the amount which must be paid to the utility making the termination to end such suspension of services.

Additional guidance is set forth in Section 32(2)(d), which provides that,

> Any such notice shall, at a minimum, clearly state the reason for termination of service; how termination may be avoided; that the utility corporation or municipality has available procedures for handling complaints; a summary of the protections available under this article; that any customer eligible for such protections should contact the utility corporation or municipality; and such other provisions as the commission may require.

Accordingly, there appear to be five required items on a customer termination notice - 1) notice that distribution service can be terminated coincident with commodity service; 2) notice of the amount to be paid to resume service; 3) the reason for termination of service; 4) how termination can be avoided; and 5) the availability of complaint

procedures. NEM submits that these five items provide sufficient notice to a customer and urges the Commission not to impose additional costly compliance requirements on the process.

Rather than require ESCOs to submit sample termination notices for Department review, it may be more efficient for the Commission to proscribe a template termination notice setting forth the minimum required terms and content. ESCOs should then be able to customize a notice for their customers that contains those minimum terms as well as any other information the ESCO deems relevant.

4. Should ESCO termination and distribution utility suspension notices be issued jointly?

NEM submits that some efficiencies may be gained and customer confusion may be diminished if a joint suspension notice is issued. However, NEM urges that such a system should be optional on the part of both the ESCO and the utility. The time required to implement systems to accommodate joint notices should not be used as an excuse to delay valid termination requests.

5. How does a utility verify that an ESCO's customer contract permits the ESCO to refuse resumption of commodity service?

NEM submits that the issue underlying this question is the extent of utility authority to deny a marketer termination request. NEM argues that it is inherently unfair for the utility to be granted the oversight, explicitly or impliedly, over marketer decisions to terminate. If a consumer has a complaint related to improper termination by a marketer, the consumer should first contact the relevant marketer and lodge its concern. If the marketer and the consumer are unable to reach a mutually agreeable solution, then the next means of recourse should be to complain directly to the Commission. The utility need not be involved in the process.

6. May the distribution utility refuse to disconnect its service if it is not satisfied with ESCO procedures for HEFPA compliance?

NEM strongly opposes permitting the utility such a large degree of discretion. It is inherently anti-competitive that the utility (a direct competitor) would be permitted to act as an intermediary and override ESCO termination decisions. Interposing the utilities as an arbiter of whether or not ESCO termination of service should be permitted is inappropriate. The Commission should establish procedures for proper termination and retain oversight authority for ESCO and utility compliance. In any event, marketer issuance of a termination notice in accordance with Commission procedure should be prima facie evidence of proper ESCO compliance with HEFPA.

7. Is the suspension of delivery service by a combination gas and electric utility, requested by the terminating ESCO, limited solely to the commodity that the ESCO is terminating?

Assuming that termination of both gas and electric service is not warranted under the circumstances, then suspension of delivery service should be limited to the commodity the ESCO is terminating.

8. Does the law authorize an ESCO to seek suspension of delivery service before one year elapses from the termination of commodity service, but after the customer begins service with a different ESCO or returns to full utility service? What rights would the new ESCO have if the customer elected to return to the terminating ESCO upon payment in full of the arrears?

If less than one year has elapsed since termination of commodity service from the original ESCO and a customer is currently taking service from a different ESCO or full utility service, the original ESCO should still be entitled to seek suspension of delivery service. If not, then customers would be able to simply switch ESCOs to avoid the consequences of non-payment of commodity charges.

The new ESCO would have whatever rights it has reserved for itself under the terms of its contract with the customer if the customer elects to return to the terminating ESCO.

9. Are the requirements of §32, relating to reconnection of service, applicable to an ESCO that terminates commodity service but does not seek suspension of distribution utility service?

From a practical standpoint, it is unclear how reconnection of service can be required if distribution utility service has not been suspended.

10. What is a reasonable amount of time for prompt disconnection, how should the compensation to the suspending distribution utility be determined, e.g., on a per customer basis?

NEM submits that a reasonable amount of time for disconnection is twenty-four hours after the distribution utility's receipt of notice from a terminating ESCO. Since Section 35 requires reconnection of service within twenty-four hours, it would seem equally logical that disconnection should be able to be performed in the same time frame.

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.

11. Who determines, and in what manner, the amount that the customer would have paid for full utility service?

Section 32(5)(d) provides that suspension of service shall end, amongst other reasons,

> upon the receipt of payments by or on behalf of the customer to the terminating utility such that the amount paid by such customer to the terminating utility plus the amount previously paid the terminating utility plus any other charges paid to the utility providing distribution service during the period when such customer's arrears accrued is equal to or greater than the amount such customer would have paid if the entire utility service had been obtained from the utility providing distribution services during such period.

The computation of "full utility service" should be facilitated by the full unbundling of the utilities' rates. Unbundling will allow for separate determination of rates for utility distribution service, commodity service, consumer protection service, customer care functions, billing and metering. These rates can then be applied to determine what the cost of "full utility service" for the customer would have been.

12. What is the effect of the language relating to consistency with an ESCO customer agreement; may an ESCO include a provision in its customer agreement that excludes a Deferred Payment Agreement (DPA)?

Section 35(1) provides that,

> The commission shall by regulation establish reasonable conditions under which an electric or gas corporation or municipality shall be required to take all actions within such corporation or municipality's control and, where applicable, consistent with the provision of the agreement for commodity service, if any, between the corporation and the customer, provided such provisions are consistent with this article to reconnect service to residential customers. Such conditions shall include, but not be limited to, requirements for reconnection of service within twenty-four hours, unless prevented by circumstances beyond the utility's or municipality's control, (a) upon receipt by a corporation or municipality of the full amount of arrears which were the basis for termination of service, (b) upon the signing of a deferred payment plan together with a down payment based on criteria to be established by the commission, provided that no such down payment shall exceed one-half of the amount which was the basis of termination, or the amount of three months billing, whichever is less, (c) upon the direction of the commission, (d) upon the receipt of a commitment of a direct payment or a written guarantee of payment from the social services official of the social services district in which the customer resides or (e) where the utility or municipality has notice that a serious impairment to health or safety is likely to result if service is not reconnected.

NEM argues that the above-quoted Section permits ESCOs to include language in customer contracts that would relieve the ESCO of its obligation to resume service despite the satisfaction of the enumerated conditions in Section 35(1). The operative statutory language, "consistent with the provision of the agreement for commodity service," permits this outcome. Accordingly, if the ESCO chose to include a provision excluding the use of deferred payment agreements, such contract provision would be permissible under Section 35(1).

13. Are ESCOs eligible for receipt of direct payments from social service agencies?

Simple fairness and equity would suggest that ESCOs should be eligible for receipt of direct payments from social service agencies. The failure to permit ESCOs to receive these payments will unnecessarily hinder their ability to serve relevant customers. Furthermore, inclusion of the receipt of social service agency payments as a condition of resumption of service in Section 35(1) indicates the legislature's intent that ESCOs be eligible for such payments.

14. Does the law require ESCOs to return deposits they currently hold; are prepayments a form of prohibited deposit?

Although Section 36(1) prohibits posting of security deposits as a condition of receiving service, Section 36(2) provides an exemption to the prohibition. Section 36(2) provides that,

> the commission, after investigation and hearing, may authorize any utility corporation or municipality to require and hold security deposits from residential customers or applicants for service upon a finding that the collection and maintenance of such deposits is cost effective to the utility as a whole without regard to cash flow and the availability of capital.

NEM submits that the Commission previously determined that, "ESCOs should be allowed to request deposits of their customers. Unless ESCOs are allowed to protect themselves from the risk of non-payment, poor credit customers may not get many offers from competitive providers."[7] ESCOs entered into contractual agreements in reliance on Commission precedent permitting the receipt of deposits. These existing agreements should not be retroactively abrogated as it would send a negative signal to market participants about the stability of New York market rules. Furthermore, since Section 36(2) permits the receipt of customer deposits pursuant to Commission authorization, NEM submits that the Commission's previous findings in Case 00-M-0504 justify ESCOs prior and future collection of deposits.

[7] Case 00-M-0504, Order Concerning ESCO Deposits and Prepayments, issued May 9, 2002, page 5.

15. If the distribution utility and ESCO are owed arrears that led to the suspension of service, are both entities required to offer DPAs, and, if so, are they required to offer a combined DPA?

As noted in response to Question 12, ESCO contracts may exclude the use of DPAs. Therefore, if the distribution utility and ESCO are both owed arrears leading to the suspension of service, the ESCO is only required to offer a DPA if it is consistent with the terms of its contract with the customer.

Section 37 does not require the issuance of a combined distribution utility and ESCO DPA. NEM questions whether the use of a combined DPA may create unnecessary administrative burdens for the distribution utility and ESCO in terms of creating the agreement and agreeing to its terms. NEM suggests that the distribution utility and ESCO be permitted on a voluntary basis to issue a combined DPA, if they determine it is in the best interests of the customer and their businesses.

16. Should the criteria for a customer's eligibility for a DPA from an ESCO be the same as the existing requirements established for the distribution utility?

The requirements for customer eligibility for a DPA from an ESCO should be at least as restrictive as those established for the distribution utility. In fact, it may be appropriate for ESCO DPA agreements to be offered on a more restrictive basis inasmuch as utilities have the ability to recover uncollectibles and bad debt through their rate bases whereas ESCOs do not have that ability. ESCOs therefore run a higher risk of incurring bad debt and uncollectibles from their customers. Therefore, the circumstances under ESCOs are required to offer DPAs should be more narrowly tailored.

17. Does this provision [Section 37(1)(b)] require allocation of customer payments if the distribution utility and the ESCO each have a separate DPA with the customer or if the ESCO is the only entity that has a DPA with the customer?

Section 37(1)(b) provides that, "if the customer receives a utility service by the receipt of portions of such service from each of two or more utility corporations and is billed for such service through a single bill, the payments pursuant to the deferred payment agreement for current charges shall be allocated to each such utility corporation based on the current charges owing to each and the payments for arrears shall be allocated equitably on a pro-rata basis between such utility corporations based on the amount of arrears owing to each."

The prerequisites for pro-rata allocation enumerated in the statute are only that the customer received service from the distribution utility and ESCO and was billed on a single bill. The statute does not include language limiting pro-ration of payments to the instance in which both the distribution utility and ESCO have DPAs. Therefore, such a requirement cannot be imposed.

18. Should the Commission require ESCOs to offer such plans [budget billing and levelized payment plans] to its current customers?

NEM submits that the Commission should not require ESCOs to retroactively alter the terms of pre-existing customer contracts. The pre-existing contracts were bargained-for arrangements, mutually agreed upon by the parties. Those ESCOs that do not offer budget billing or levelized payment plans have not accounted for such agreements in their business plans and should not be forced to do so at this time. The Commission should not retroactively change the contractual terms. NEM submits that Commission action to the contrary would send a chilling message to current and future market participants about the ability to rely on business rules and processes established in the state.

If the ESCO determines that it wants to offer budget billing and/or levelized payment plans to pre-existing customers, consistent with its business plan, it should be entitled to make that offering on a voluntary basis.

19. If, as a result of a customer complaint, the distribution utility adjusts the delivery charges on the bill, is the ESCO required to make a corresponding adjustment in commodity charges?

It is unclear on what basis it is proposed that it would be appropriate to require an ESCO to make an adjustment in its commodity charge because a utility adjusts its delivery charge. Assuming the adjustment is related to customer usage, the utility should notify the ESCO of the error, and the ESCO should make a change if warranted under the terms of its service agreement with the customer. It is unclear what other utility adjustments would necessitate a change in ESCO charges.

20. Should the Commission require (1) the entity responsible for issuing a consolidated bill to issue all notifications, and (2) the distribution utility to issue notifications if the ESCO and distribution utility issue separate bills?

Regardless of which entity issues annual notices of residential customers rights and obligations, NEM submits that it is imperative that ESCOs be afforded the opportunity to actively participate in developing the message in order to ensure that it is conveyed in a competitively neutral fashion. If a consolidated bill is utilized and the ESCO is not the consolidated biller, the ESCO must be afforded the opportunity to include its logo, contact information, and other information deemed relevant in responding to consumer questions or inquiries. If separate bills are utilized, ESCOs may prefer to issue the notice separately as an additional means of establishing customer contact and building its brand recognition. Therefore, the fairest approach may be to permit the distribution utility and ESCO to voluntarily decide whether the notice should be issued jointly.

21. How should the ESCO and distribution utility share responsibility for such requirements [shared meter condition investigations]; should the billing entity determine the refund due for the ESCO and/or distribution utility service?

To the extent the customer is still choosing the distribution utility to perform metering services, the distribution utility should be charged with performing shared meter

condition investigations. Unless the ESCO or another competitive entity is rendering metering services to the customer, the distribution utility stands in the best position to perform this function coincident with its current operation of reading meters.

The determination of a refund due to the ESCO and/or distribution utility because of a shared meter condition should be subject to confirmation of both parties prior to the billing party's issuance of said refund.

NEM appreciates this opportunity to comment on the implementation of the HEFPA legislation and reiterates our commitment to working with the Commission and the other stakeholders to devise fair and effective ways to implement competitive restructuring in New York state.

Sincerely,

Craig G. Goodman, Esq.
President
National Energy Marketers Association
3333 K Street, NW
Suite 110
Washington, DC 20007
Tel: (202) 333-3288
Fax: (202) 333-3266
Email: cgoodman@energymarketers.com
Website-www.energymarketers.com

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cc: Active parties (via email)