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March 20, 2020

The Honorable Michelle L. Phillips
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350
secretary@dps.ny.gov

RE: Cases 15-M-0127, 12-M-0476 and 98-M-1343 – Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process - NEM Request for Further Extension

Dear Secretary Phillips:

The National Energy Marketers Association (NEM)¹ hereby respectfully submits this request for a further extension for ESCO compliance with Ordering Clauses 1, 2, 5 and 6 of the Commission's December 12, 2019, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process issued in the above-referenced proceedings. In the Notice Granting Extension Requests issued on January 22, 2020, ESCOs were granted an extension to May 11, 2020, to comply with the requirements of Ordering Clauses 1, 2 and 5 of the December 2019 Order. ESCOs were also granted an extension to June 9, 2020, to comply with the requirements of Ordering Clause 6. *NEM respectfully requests a further extension for ESCO compliance with the requirements established in Ordering Clauses 1, 2, 5 and 6 for a minimum of an additional ninety days.*

NEM supports the requests for further extension of the December 2019 Order requirements made by Family Energy on March 10th and 18th, NRG on March 16th and Direct Energy on March 18th in these proceedings.

NEM filed a Petition for Rehearing, Reconsideration and/or Clarification of the December 2019 Order on January 13, 2020,² as did other stakeholders. In its Petition, NEM requested that the

¹ 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. This Request is not intended to serve as a waiver of any rights, arguments, claims or remedies, all of which NEM expressly reserves.

² NEM requested rehearing, reconsideration and/or clarification related to the following areas: 1) Commission authority to adopt the new regulatory regime; 2) the requirement for existing ESCOs to be subject to de novo review

Commission consider a meaningful transitional period for implementation of the extensive new regulatory regime. NEM participated in the January 22nd technical conference on December 2019 Order compliance issues as well as the February 26th stakeholder meeting on ESCO financial assurance requirements.

Pursuant to the February 12, 2020, New York State Register Notice on the Petitions for Rehearing as well as the March 2, 2020, Notice Concerning Petitions for Rehearing, responses to the Petitions for Rehearing are due April 13, 2020. Staff was directed to file a report on an ESCO financial assurance requirement by April 10, 2020. There are four weeks between the established date for responses to the Petitions and the current deadline for ESCO compliance with Ordering Clauses 1, 2 and 5. Moreover, significant issues of uncertainty have been identified in the Petitions, the technical conference and stakeholder meeting that hinder ESCO compliance efforts.

When the Commission issues an Order on the Petitions for Rehearing, ESCOs will have to assimilate the details of any new or modified requirements, develop compliant products, submit materials to Staff for approval, effectuate the transfer of customers to new products and satisfy financial assurance requirements. Accordingly, NEM reiterates its request that a meaningful transitional period for implementation of the extensive new regulatory regime be adopted.

Adding to the complications of ESCO compliance with the December 2019 Order is the evolving coronavirus emergency. Both the State³ and federal government⁴ have declared a state of emergency. In response, social distancing and teleworking measures are being implemented by businesses to keep employees and consumers safe. The implementation of these safety measures creates an additional challenge to ESCOs in meeting the December 2019 Order compliance obligations. The scope and scale of this emergency continues to expand with rapid speed, and the full extent of the disruptions remains unknown.

of the eligibility to serve consumers without a prior showing of good cause; 3) requiring ESCO price unbundling, in the form of an on-bill comparison and itemized ESCO billing, without corresponding utility delivery rate unbundling; 4) requiring affirmative consent for capped variable rate product renewals; 5) the utility price benchmark used for the variable rate guaranteed savings product; 6) prohibition on ESCO offerings of non-energy related value-added products and services; 7) prohibition on ESCO offerings of energy-related value-added products and services during the pendency of Track II; 8) clarification of the timing and application process for ESCO offerings of EnergyGuard-like products during the pendency of Track II; 9) inclusion of the examination of the regulatory and market barriers that have prevented more widespread availability of energy-related value-added products and services in Track II; 10) the utility price benchmark used for computing fixed rate products; 11) for fixed rate products, clarification is needed with respect to aligning the “twelve-month average utility supply rate” with ESCO products and contracts of varying durations; 12) the requirement to restrict ESCOs to offering renewable energy products that incorporate a renewable percentage mix at least 50% greater than is required by the Renewable Energy Standard LSE obligation for the year; 13) a supplier consolidated billing option should be examined in Track II; and 14) the definition of small non-residential natural gas customer.

³ Executive Order 202, Declaring a Disaster Emergency in the State of New York, issued March 7, 2020.

⁴ U.S. Department of Health and Human Services, Determination that a Public Health Emergency Exists, issued January 31, 2020; Presidential Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, issued March 13, 2020.

The prior Notice Granting Extension Requests was premised “[u]pon consideration of all stakeholders’ interests and in light of the importance of ensuring an orderly transition and implementation of the Order’s requirements.” For the foregoing reasons, NEM submits that a further extension for ESCO compliance with the requirements established in Ordering Clauses 1, 2, 5 and 6 for a minimum of an additional ninety days will promote the orderly transition and implementation of the Order’s requirements.

Respectfully submitted,



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