

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Proceeding on Motion of the Commission)	
To Review Policies and Practices Intended to)	Case 07-M-0458
Foster the Development of Competitive Retail)	
Energy Markets)	

**COMMENTS OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association (NEM)¹ hereby submits its Comments in the above-referenced proceeding pursuant to the July 22, 2009, State Register Notice of the ESCO referral program proposals of Keyspan, Central Hudson, National Fuel Gas, NYSEG/RGE filed in December 2008. NEM submits these comments to urge the Commission to include certain program features to the referral programs proposed by the utilities.

The utilities' filings were made in compliance with the Commission's Order of October 27, 2008, in the instant proceeding wherein the Commission decided that,

While residential and other small commercial customers have been increasingly attracted to the retail market, ample opportunity exists to increase ESCO penetration into that market. The ESCO Referral Program is one tool for encouraging residential and small commercial customers to try the retail market, by reducing the risks they perceive and thereby overcoming the inertia that induces them to remain with the distribution utility. In addition, these customers traditionally rely on the utility to learn about choosing a service provider, and the referral programs perform that function.

¹ 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.

Therefore, utilities are directed to continue existing ESCO Referral Programs. Utilities that have either discontinued a program or have yet to establish one, including NFG, KeySpan, RG&E and NYSEG, shall develop an ESCO Referral Program as discussed below. Continuation or implementation of the ESCO Referral Program, however, is conditioned on ESCO funding for the program, with only those ESCOs that fund the program eligible for participation. Utilities are expected to put forth reasonable and supported costs for implementation and operation of ESCO Referral programs. Cost submittals without support may be viewed as a tactic for avoiding implementation of an ESCO referral program.²

It is with this background in mind that we request the Commission to consider the factors set forth below in implementing referral programs at Keyspan, Central Hudson, NFG, and NYSEG/RGE. We believe that this is an opportunity to seize upon the experience gained thus far in referral programs at different utilities across the State and to identify program features that appear to deliver the best value for consumers while encouraging marketer and utility participation in a least cost manner. This will ensure that whatever costs are incurred to implement referral programs at the remaining utilities are utilized in a manner that leverages lessons learned thus far to put the most effective programs into place.

1- Referral Programs should include new service customers at the time of service initiation

Subsequent to the Order being issued in this proceeding, the Commission received reports from ConEd and O&R on the possible expansion of their pre-existing referral programs to include new service customers. The Commission recently approved this feature on a pilot basis in the ConEd service territory finding that,

² Case 07-M-0458, Order Determining Future of Retail Access Programs, October 27, 2008, at pages 12-13.

Con Edison's proposal to expand its *PowerMove* ESCO referral program to new service customers is another step to further the growth of the competitive retail energy market in the state. By offering ESCO commodity supply to new customers at the time of service initiation, an additional segment of customers are made aware of energy choices while creating an environment for a direct relationship to evolve between the ESCO and the customer.³

Additionally, a Phase II UBP working group was charged with reviewing the concept of expanding referral programs to include new service customers.

The implementation of referral programs in a manner that includes new service customers is a logical progression in the presentment of energy choice options to consumers. As we stated in our comments in support of this concept at ConEd and O&R, we believe that expanding referral programs in this fashion could contribute to a leveling of the playing field between competitive energy marketers and incumbent utilities that have heretofore benefited from their role as the presumptive commodity supplier. We request that the Commission consider incorporating this feature into the utility programs that result from this proceeding.

2- The Contract model for referral programs should be required at all utilities

In the Commission's Order establishing general guidelines for the establishment of referral programs, it approved both the Contract model and Service model for implementation. We suggest that given stakeholder experience with referral programs based on the Contract model that it should be a required element of the utility programs under consideration here. The Contract model accomplishes the goals of ensuring

³ Case 07-E-0523, Order Concerning ESCO Referral Program, June 3, 2009, at page 12.

consumer protection and informed acceptance of the product while also achieving administrative efficiencies and controlling costs for marketers.

3- Program costs should be prudently incurred, reasonable, verifiable and cost-justified

NEM has repeatedly noted that to the extent the availability of choice programs benefit all customers, that choice program costs should be borne by all customers as a nonbypassable charge. Notwithstanding the ultimate cost recovery mechanism adopted by the Commission, the program implementation costs for which the utilities are allowed cost recovery should be prudently incurred, reasonably mitigated, verifiable and cost-justified. The referral program costs should not cross-subsidize other unrelated utility programs or functions. Marketers should be permitted the opportunity to have input into the program implementation details.

4- Programs should be constructed to provide the same value to single commodity and dual commodity marketers participating in the program

The Commission should ensure the single commodity marketers derive a similar value from their participation in the program and dual service marketers. For example, in the recent ConEd Order expanding the referral program to new service customers, the Commission decided that, “The Company should modify its ESCO assignment process so that single commodity service customers are provided access to the dual-service ESCO list and that dual commodity customers are provided access to the electricity-only and natural gas-only ESCO lists as well as the dual-fuel list.”⁴ In other words, is it possible that single commodity marketers will be assigned dual service customers under the

⁴ Case 07-E-0523, Order Concerning ESCO Referral Program, June 3, 2009, at page 9.

referral program constructs that utilities implement as a result of this case. If not, we request that the Commission consider if there is an accommodation to be made in the cost recovery mechanism for single-commodity marketers.

NEM strongly supports this Commission's continued commitment to creating an environment that fosters retail energy competition for the benefit of New York energy consumers. We appreciate this opportunity to submit comments on features that will maximize the value of referral programs for all stakeholders.

Sincerely,

Craig G. Goodman, Esq.
President
Stacey L. Rantala
Director, Regulatory Services
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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