

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of Retail Access Business Rules)	Case 98-M-1343
Petition of New York State Consumer Protection Board and the New York City Department of Consumer Affairs Regarding the Marketing Practices of Energy Service Companies)	Case 07-M-1514
Ordinary Tariff Filing of National Fuel Gas Distribution Corporation to Establish a Set of Commercially Reasonable Standards for Door-to-Door Sales of Natural Gas by ESCOs)	Case 08-G-0078
In the Matter of Electronic Data Interchange)	Case 98-M-0667

COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM) hereby submits comments on the Uniform Business Practices (UBP) Phase 2 Working Group Reports as well as issues raised for comment in May 5, 2010, Notice Soliciting Comments issued in the above-referenced proceeding. The specific reports on which comments were sought pertain to ESCO Referral at Service Initiation, Reverse Slamming, Customer Lists, Provision of Tax Data, and Customer Complaint Rate. Commission Staff convened a technical conference on May 20 and 21, 2010, to review the Working Group Reports, the Power to Choose website, the EDI stakeholder process and additional issues related to the UBP. NEM appreciates the efforts of the Commission and Staff to continue to examine and seek resolution to issues affecting the development of the competitive retail energy markets. Indeed, the Commission's approach to the UBP has not only facilitated competitive entry within New York State but has served as a national model of utility and marketer business process and interaction standards as well.

UBP Phase 2 Working Group Reports

Pursuant to the Commission's October 2008 Order adopting marketing standards within the UBP, the Commission directed the institution of a Phase 2 proceeding to focus on specific areas. Working groups were formed to examine the following issues in-depth: ESCO Referral at Service Initiation, Reverse Slamming (Utility Initiated Drops), Customer Lists, Provision of Tax Data, Customer Complaint Rate, ESCO Consolidated Billing, Price Reporting Requirements, and the 18-a Assessment. The Working Groups met by conference call over a series of months during which time the stakeholders discussed and gained a greater understanding of their respective positions. The specific reports on which comments were sought in the May 5, 2010, Notice pertain to ESCO Referral at Service Initiation, Reverse Slamming (Utility Initiated Drops),¹ Customer Lists, Provision of Tax Data, and Customer Complaint Rate. In summary, the marketers' positions expressed in the reports are as follows:

ESCO Referral at Service Initiation: "The proposal at issue for this working group is to expand the functioning of the ESCO referral programs beyond the current construct that only allows for the enrollment of participating consumers after they have been utility sales service customers to also include consumers at the point of service initiation. In other words, the ESCO referral program option would become available to new service customers, in addition to the customers on utility sales service that currently have the option of participating in the referral program available to them." (ESCO Referral Report at 4). "The working group can report that there is a level of consensus to base point of service initiation referral programs upon features developed for general referral programs." (Id at 2).

Utility Initiated Drops: "The fundamental concern of the ESCOs is that there are occasions when the utilities, because of a change of account number, or other internal operational reason, force a drop of the ESCO service to occur." (Utility Initiated Drops at 4).

¹ NEM notes that this issue was subsequently the subject of a January 26, 2010, Petition by RESA in Case 98-M-1343 and will be discussed further infra.

Customer Lists: “ESCOs strongly believe that the provision of customer lists in markets where they have access to such lists has contributed immensely to the success of retail access. ESCOs contend that New York State’s continued success in expanding energy choice can be greatly enhanced by allowing for the provision of customer lists.” (Customer List Report at 2).

Provision of Tax Data: “The ESCOs note that the utilities have in their possession, tax data applicable to each customer account that ESCOs and utilities jointly serve [taxing jurisdiction, tax rate, tax exempt status, actual sales tax, historic taxes billed, MTA status]. It is their position that such tax information should be shared with the ESCOs.” (Tax Data Report at 4 and 6).

NEM submits that the Working Group reports present a detailed and thorough record of the marketers’ position and the utilities’ responses upon which the Commission can render a decision. Moreover, in the case of the marketers’ requested relief in the ESCO Referral at Service Initiation, Utility Initiated Drops, Customer Lists and Provision of Tax Data Working Groups, NEM believes that the resolutions sought represent logical, next step market reforms that will contribute significantly to the continued evolution of the competitive marketplace. NEM urges the Commission to adopt the marketers’ recommendations in the Working Group reports.

The Commission enumerated the following additional issues for comment. NEM’s responses are set forth below.

- 1. Should the term “verification agent” in Section 1, and the related statement in Section 5, Attachment A, be modified to require that the agent be an independent third party not affiliated with the ESCO and/or that the call with the marketing agent be terminated when the customer is transferred to the verification agent?**

No. Section 5, Attachment A of the UBP currently requires that, “To enter into a telephonic agreement with a customer to initiate service and begin enrollment or to obtain

customer authorization for release of information, an ESCO or its agent, shall audio record the telephone conversation with the potential customer.” Marketers utilize different methods to comply with this requirement. Some engage independent third parties while others accomplish this function in-house. Marketers have made significant investments to comply with the current rules, and it should not be changed absent a showing that the perceived problem cannot be addressed within the existing rules and enforcement procedures. Notwithstanding the methodology the individual marketer may use to comply with the requirement, the tantamount consideration should be the quality of the verification, in compliance with the UBP, that clearly demonstrates the consumer’s consent to the terms of the offering.

2. Should ESCOs be required to solicit affirmative consent from customers for contract renewals where changes in the terms of the original contract occur? If so, what is the appropriate process in terms of the number and timing of notices provided to the customer prior to contract expiration?

At the recent technical conference a straw proposal pertaining to contract renewals was introduced. By the terms of the straw proposal, consumers would receive a renewal notice upon contract renewal. The consumer would not be required to provide affirmative consent to the renewal in the instance where the only change to the contract is the price term. In the case of a material change to any other contract term, the consumer’s affirmative consent would be required. NEM supports the straw proposal on contract renewals. NEM believes that the straw proposal comports with consumer expectations of notice of service terms and changes and likewise provides the consumer with adequate protection. Similarly, by limiting the situations when affirmative consent

is required to material changes in contract terms, it does not unnecessarily impose burdensome and expensive renewal processes on marketers.

3. In the single retailer model, should the single retail provider be required to provide to the distribution utility and/or pending ESCO the same customer credit information that the distribution utility is currently required (Section 4.4) to provide to the pending ESCO?

A unique situation exists at NFG because of its use of the single retailer model. We are aware that when a customer leaves a single retailer for service with another marketer that NFG may not have specific information on a customer's recent gas payment history (although NFG may have access to earlier information or general credit information via credit reporting agencies). In some cases, that may result in the customer having to pay a deposit per the utility tariff. We suggest that the Commission study whether all utility tariffs should be amended to establish appropriate customer deposits based on commercially available credit information. In any case, utilities should consider deferring the assessment of a deposit until the utility has obtained its own credit information about a customer either (1) based on past payment history and/or experience with that customer going forward or (2) via commercially available credit reporting. This is appropriate given the competitive market design adopted in New York. In the alternative, a working group could be formed to give further study to the issue of utility deposit requirements.

4. Should UBP Section 5.H.1 be amended to permit a customer, or the incumbent ESCO on behalf of the customer, to rescind a customer request to return to full utility service should the customer choose to remain with the incumbent ESCO?

In a Petition dated January 26, 2010, in Case 98-M-1343 RESA petitioned the Commission to: "(a) amend the Uniform Business Practices (UBP) to allow ESCOs to

retain a customer that has previously either requested or was scheduled to return to full utility service; and (b) prohibit utilities from returning a customer to full utility service unless such a request to [return to] full utility service has been made by the customer or the ESCO acting on behalf of the customer.” NEM filed comments in support of the recommended changes in the Petition and reiterates its support now.

As it was framed, the Petition was intended to redress two situations: 1) the situation wherein a customer that was scheduled to return to utility service changes its mind and determines it wants to remain with its competitive marketer; and 2) the current practice whereby a customer name change or other data modification that triggers a utility account number change in the utility recordkeeping system results in a drop of the customer from the customer’s competitive supplier. NEM supports the proposed UBP changes to better effectuate the intent of consumers participating in the competitive marketplace, i.e., to receive competitive service consistent with their expectations and desires. In the case of a utility drop from consumer service attendant with a name change or other event that triggers a utility account number change, the impact on consumers is particularly egregious. Not only will the customer have been changed to a different commodity provider (the utility) without its consent, but in some instances the change is made retroactively. In that case, the consumer will be retroactively billed at a utility rate for which they received no notice. Moreover, this practice improperly interferes with the contractual relationship entered into between the consumer and its competitive marketer.

5. Are there additional modifications to the UBP that should be considered?

NEM will discuss a specific proposal it submitted to revise the UBP related to utility consumer service representatives' competitively neutral communication with consumers and also the EDI stakeholder process that was a subject of the recent Technical Conference.

A. NEM Proposal Regarding Competitively Neutral Communication to Consumers

NEM submitted a proposal at the Technical Conference to revise UBP Section 6, Customer Inquiries, to include specific language about the manner and nature of information given by utility customer service representatives (CSRs) to consumers. NEM specifically proposed that Section 6.B. General be revised to include a subparagraph as follows:

“Because of distribution utilities’ position as a source of information for all customers, distribution utility customer service representatives should not offer explicit or implicit opinions about the nature or effect of any ESCO’s offers or marketing or sales efforts and materials and should not discourage customers from choosing service by any ESCO.”

NEM believes that its proposal is appropriately located in Section 6 of the UBP because it, “establishes requirements for responses by an ESCO or distribution utility to retail access customer inquiries.” The purpose of this proposed revision is to affirm the importance of competitively neutral communications from the utility to customers, which is particularly important because of consumers’ perception of the utility’s role in the marketplace. This proposal would come into play, for instance, in the case where a consumer is switching to a competitive supplier and the utility CSR observes that the

marketer price is higher than the utility price. The problem is that the CSR does not know, and has no reason to know, the terms of the marketer offering, whether it be fixed, variable, etc. The CSR simply is not in a position to evaluate the marketer offering or offer an opinion thereon. Moreover, even if the CSR were to limit its statement to noting that the utility price is \$X and the marketer price is \$Y, without an express statement that the utility price is variable and subject to monthly fluctuation, it leads to an inaccurate basis for comparison for the consumer. The best course of action that provides the most accurate information and minimizes consumer confusion, in NEM's opinion, is for the CSR to refer that consumer to the marketer to discuss price and other terms.

B. EDI Stakeholder Process

During the Technical Conference, the conversation on Day One focused on EDI and how to reinstitute or reorganize a process going forward to meet the on-going needs of market participants. One model proposed was to utilize a process similar to that used in Pennsylvania. This model relies upon a consensus-based approach to developing EDI standards. Non-consensus items are given to the Commission for ultimate decision, although the experience in Pennsylvania was that this was a rare occurrence. The process is stakeholder-driven, with representatives from vendors, utilities and marketers participating and the oversight of Commission Staff. The group limits its discussions to technical EDI issues. Policy issues that come up in the course of conversations get referred to appropriate working groups or the Commission. The work gets accomplished through regular conference calls and meetings. NEM is supportive of the use of this model in New York for EDI standard development.

Conclusion

In conclusion, NEM supports the Commission's continued oversight of and efforts to proactively address competitive retail market development issues. We urge the Commission to expeditiously adopt the recommended UBP changes as discussed herein.

Sincerely,

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