

**STATE OF NEW YORK**  
**PUBLIC SERVICE COMMISSION**

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**In the Matter of Retail Access Business  
Rules**

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**Case 98-M-1343**

**RETAIL ENERGY SUPPLY ASSOCIATION'S  
REQUEST FOR AN ADDITIONAL EXTENSION OF THE DEADLINE TO COMPLY  
WITH ORDER ADOPTING REVISED UNIFORM BUSINESS PRACTICES**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> hereby submits this Request for an Additional Extension of the Deadline to Comply with the Order Adopting Revised Uniform Business Practices issued by the Public Service Commission (“Commission”) in the above-referenced proceeding on January 19, 2018.<sup>2</sup> More specifically, for the reasons discussed more fully below, RESA requests an extension of the effective date of the revised Uniform Business Practices (“UBP”) requirements until ninety (90) days after the Commission issues a decision on the pending Petitions for Rehearing, Reconsideration and/or Clarification of the Order.<sup>3</sup>

**BACKGROUND**

On March 8, 2017, the Commission Secretary issued a notice requesting comments on proposed changes to the UBP that: (a) recognized the requirements of a new law preventing an energy services company (“ESCO”) from charging a contract termination or early cancellation fee in the event of a customer’s death; (b) included amendments requested by Green Mountain Energy Company to eliminate the appearance of an ESCO representative’s full name on the identification

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<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

<sup>2</sup> Order Adopting Revised Uniform Business Practices (Issued and Effective January 19, 2018) (“Order”).

<sup>3</sup> See, *infra*, note 8.

badge; and (c) purportedly addressed “other related matters and housekeeping items.”<sup>4</sup> Interested parties were invited to submit comments on the proposed UBP modifications.<sup>5</sup> Eleven parties, including RESA, submitted comments.<sup>6</sup>

On January 19, 2018, the Commission issued the Order.<sup>7</sup> Several parties, including RESA, filed Petitions for Rehearing, Reconsideration and/or Clarification of the Order (“Petitions”).<sup>8</sup> In response, on April 11, 2018, the Commission issued a Notice of Proposed Rulemaking,<sup>9</sup> requesting that comments be submitted by June 11, 2018.<sup>10</sup> On June 11, 2018, RESA submitted comments in response to that notice.<sup>11</sup>

The deadline for compliance with the Order, which was initially set for thirty (30) days after the effective date of the Order, has now been extended six (6) times in order to promote the fair, orderly and efficient conduct of this proceeding. First, on February 18, 2018, the deadline for compliance with the Order was extended to April 6, 2018 “to accommodate the requests for clarification and the requests for additional time to comply with the UBP revisions that are not subject to clarification.”<sup>12</sup> Thereafter, on March 28, 2018, the Commission issued a Notice Concerning Petitions for Rehearing, Reconsideration and/or Clarification in which it explained that a possible grant of rehearing requested by the Petitions may alter a “rule” pursuant to the

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<sup>4</sup> Notice Seeking Comments on Revisions to the Uniform Business Practices (Issued March 8, 2017). On March 22, 2017, Notices of Proposed Rulemaking were published in the State Register.

<sup>5</sup> Notice Seeking Comments on Revisions to the Uniform Business Practices (Issued March 8, 2017), at 2.

<sup>6</sup> *See, e.g.*, Comments of the Retail Energy Supply Association in Response to the Commission Notice Seeking Comments on Revisions to the Uniform Business Practices (May 12, 2017).

<sup>7</sup> *See, generally*, Order.

<sup>8</sup> Petitions have been filed by: Direct Energy Services, LLC; Impacted ESCO Coalition; Infinite Energy; National Energy Marketers Association (“NEM”); and RESA. *See, e.g.*, RESA’s Petition for Rehearing and Request for Clarification (Feb. 20, 2018).

<sup>9</sup> PSC-15-18-00008-P, *Amendments to the Uniform Business Practices*, Notice of Proposed Rulemaking (Apr. 11, 2018).

<sup>10</sup> *Id.* at 20.

<sup>11</sup> *See* Retail Energy Supply Association’s Comments in Response to the Commission’s Notice of Proposed Rulemaking (Jun. 11, 2018).

<sup>12</sup> Notice Extending Deadlines (Issued February 16, 2018), at 4.

State Administrative Procedure Act, and, thus, the Commission was required to provide notice and an opportunity to comment.<sup>13</sup> On that same day, a Notice Further Extending Deadlines was also issued, which extended the deadline for compliance with the Order to July 26, 2018<sup>14</sup> in order to provide interested parties time to comment on the Notice of Proposed Rulemaking and the Commission time to consider the Petitions.<sup>15</sup>

On July 23, 2018, because the Commission had not yet issued a decision on the pending Petitions, both NEM and RESA filed motions for extensions of time for compliance with the Order.<sup>16</sup> That same day, NEM's motion was granted and the deadline for compliance with the Order was once again extended - until September 24, 2018.<sup>17</sup>

On September 11, 2018, because the Commission had still not issued a decision on the pending Petitions, RESA renewed its July 2018 Motion.<sup>18</sup> In response, the deadline for compliance with the Order was further extended - until January 4, 2019.<sup>19</sup>

In December 2018, RESA and NEM each filed a request for a further extension of time to comply with the Order.<sup>20</sup> In response, the Commission once again extended the deadline until April 4, 2019.<sup>21</sup>

Because the Commission had still not issued a decision on the pending Petitions, on March 20, 2019 and April 1, 2019, RESA and NEM, respectively, each requested a further

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<sup>13</sup> Notice Concerning Petitions for Rehearing, Reconsideration and/or Clarification (Issued March 28, 2018).

<sup>14</sup> Notice Further Extending Deadlines (Issued March 28, 2018).

<sup>15</sup> *Id.* at 2.

<sup>16</sup> NEM Request for Additional Extension (Jul. 23, 2018); Retail Energy Supply Association's Request for Extension of Time to Comply with Order Adopting Revised Uniform Business Practices (Jul. 23, 2018) ("July 2018 Motion").

<sup>17</sup> Notice Further Extending Deadlines (Issued July 23, 2018).

<sup>18</sup> RESA Renewed Request for Extension of Time to Comply with the Order Adopting Revised Uniform Business Practices (Sep. 11, 2018).

<sup>19</sup> Notice Further Extending Deadlines (Issued September 14, 2018)

<sup>20</sup> Retail Energy Supply Association's Request for Further Extension of Time to Comply with Order Adopting Revised Uniform Business Practices (Dec. 21, 2018); NEM Request for Additional Extension (Dec. 27, 2018).

<sup>21</sup> Notice Further Extending Deadlines (Issued December 27, 2018).

extension of the deadline to comply with the Order.<sup>22</sup> In response, the Commission once again extended the deadline until July 5, 2019.<sup>23</sup> As of today, the Commission has not yet issued a decision on the pending Petitions. RESA now hereby submits a motion for an additional extension of the deadline for compliance with the Order.

### **MOTION**

For the reasons discussed more fully below, a ninety-day extension of the effective date of the UBP revisions, commencing on the date the Commission issues a decision on the Petitions, is justified for two principal reasons. First, an extension is warranted in light of the potential for a ruling by the Commission on the pending Petitions that could result in further revisions to the UBP and render efforts taken to come into compliance with the Order futile. Second, an extension is warranted because, even after the Commission has issued a decision on rehearing, in order to comply with the Order, ESCOs will need to address numerous operational changes and, thereafter, implement the appropriate solutions.

#### **I. AN EXTENSION IS WARRANTED IN LIGHT OF THE PENDING PETITIONS FOR REHEARING.**

The Petitions challenge and/or seek clarification of many of the revised provisions of the UBP, including, *inter alia*:

- Section 2.G, which pertains to compliance with the Clean Energy Standard;
- Sections 5.A and 5.K.1, which address service provider changes for customers who want to opt out of community choice aggregation;
- Section 5.B.2, which requires a third party verification (“TPV”) for the enrollment of small nonresidential customers resulting from door-to-door sales, telephonic enrollment and scheduled appointments;

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<sup>22</sup> Retail Energy Supply Association’s Request for a Further Extension of the Deadline to Comply with Order Adopting Revised Uniform Business Practices (Mar. 20, 2019); NEM Request for Additional Extension (Apr. 1, 2019).

<sup>23</sup> Notice Further Extending Deadlines (Issued April 3, 2019).

- Section 5.L.2, which pertains to voluntary budget billing and levelized payment plans;
- Section 5, Attachment 1, Section A and Attachment 2, Section A, which address TPV requirements; and
- Sections 10.C.1.b.1 and 10.C.1.d, which change the information displayed on ESCO representatives' badges.

When the Commission rules on the Petitions, it may further revise certain of the above-described provisions. Thus, postponement of the effective compliance date until after the Commission has rendered a decision on the Petitions will eliminate the burden of possibly implementing operational changes twice; thereby, avoiding wasted time and resources. Moreover, in order to avoid the time and expense associated with any further extension requests, an extension of the compliance deadline based on the date on which the Commission issues a decision on the pending Petitions would be appropriate.

## **II. AN EXTENSION IS WARRANTED BECAUSE COMPLYING WITH THE ORDER REQUIRES NUMEROUS OPERATIONAL CHANGES.**

An extension of ninety (90) days after the Commission has rendered a decision on the Petitions is warranted in light of the many operational changes that ESCOs must address to comply with the Order, even if the Commission elects not to further revise any of the contested UBP revisions. In particular, the following revisions require operational changes that all must be implemented simultaneously: (1) definition of “door-to-door sales” (§ 1); (2) definition of “ESCO Agent” (§ 1); (3) definition of “Termination Fee” (§ 1); (4) TPV requirement for the enrollment of small nonresidential customers resulting from door-to-door sales, telephonic enrollment and scheduled appointments (§ 5.B.2); (5) minimum font size requirement for sales agreements (§ 5.B.4); (6) contract assignment requirements (§ 5.J.1); (7) record retention requirements (§ 5.K.3); (8) budget billing requirements (§ 5.L); (9) addition of TPV questions (§ 5, Attachment 1); and (10) identification badge changes (§ 10.C.1).

**A. Definition Of “Door-To-Door Sales” (§ 1)**

The definition of “door-to-door sales” has been revised to require in-person customer signatures on sales agreements.<sup>24</sup> In order to comply with this new requirement, ESCOs will need to revise their training materials and conduct training on the new processes. Thereafter, the new processes will need to be audited in the field. Additionally, this requirement permits door-to-door vendors to access customer data to which they previously may not have had access. Therefore, ESCOs must establish vendor controls for any sensitive customer data and update their Data Security Agreements to reflect the same. The additional ninety (90) days after the Commission has rendered a decision on the Petitions is necessary for ESCOs to fully, and properly, implement such controls and revisions.

**B. Definition Of “ESCO Agent” (§ 1)**

Previously, “ESCO Agent” was not a term defined by the UBP. The revised UBP states that “[a] customer may authorize an ESCO to act as the customer’s agent (ESCO agent) in establishing a new delivery account for distribution utility service...”<sup>25</sup> The addition of this term necessitates that ESCOs revise their contracts to reflect both the updated terminology and the customer rights associated therewith. Additionally, ESCOs will need to alert personnel to this change and train them about what it means. The additional ninety (90) days after the Commission has rendered a decision on the Petitions is necessary for ESCOs to revise their agreements and implement the necessary training.

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<sup>24</sup> Order, Appendix A, § 1.

<sup>25</sup> Order, Appendix A, § 1.

**C. Definition Of “Termination Fee” (§ 1)**

The term “Termination Fee” has been revised to prohibit ESCOs from assessing early termination fees on a customer who is deceased before the end of the contract term.<sup>26</sup> In order to effectuate this revision, ESCOs will need to establish a notification system and train all call center personnel on how to handle such notifications. Additionally, ESCOs will need to establish certain customer verification processes regarding the identity of the caller and the customer’s passing. The additional ninety (90) days after the Commission has rendered a decision on the Petitions is necessary for ESCOs to properly establish such systems and processes and to implement the necessary training.

**D. TPV Requirement For Enrollment Of Small Nonresidential Customers Resulting From Door-To-Door Sales, Telephonic Enrollment And Scheduled Appointments (§ 5.B.2)**

Section 5.B.2 has been revised to require a TPV for any sales to small nonresidential customers resulting from door-to-door sales, telephonic enrollment or scheduled appointments.<sup>27</sup> Because small nonresidential customers were not previously subject to this requirement, for most ESCOs, compliance with this new requirement will involve fundamental process changes. ESCOs will need to revise their training materials and conduct training on the new processes. Thereafter, the new processes will need to be audited in the field. Additionally, this requirement will permit door-to-door vendors to access customer data to which they previously may not have had access. Therefore, ESCOs must establish vendor controls for any sensitive customer data and update their Data Security Agreements to reflect the same. The additional ninety (90) days after the Commission has rendered a decision on the Petitions is necessary for ESCOs to fully, and properly, formulate such controls and revisions.

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<sup>26</sup> Order, Appendix A, § 1.

<sup>27</sup> Order, Appendix A, § 5.B.2.

**E. Minimum Font Size Requirement For Sales Agreements (§ 5.B.4)**

Section 5.B.4 requires standard sales agreements be written in a minimum 10 point font size.<sup>28</sup> The process of revising, reprinting and distributing new contracts, while not as operationally complex as most of the other revisions, will still take time. The additional ninety (90) days after the Commission has rendered a decision on the Petitions is necessary for ESCOs to properly comply with this new requirement.

**F. Contract Assignment Requirements (§ 5.J.1)**

Section 5.J.1 of the UBP previously provided that an assignment may be made if *either* “the assigned sales agreements clearly authorize such assignment *or* the ESCO provides notice to its customers prior to the assignments and an opportunity for each customer to choose another ESCO or return to full utility service.”<sup>29</sup> As revised, however, an assignment may be made provided that *both* “the assigned sales agreements clearly authorize such assignment *and* the ESCO provides notice to its customers prior to the assignments and an opportunity for each customer to choose another ESCO or return to full utility service.”<sup>30</sup> To comply with this revision, ESCOs whose current sales agreements clearly authorize assignment will need to develop notices, and ESCOs who currently provide notice to customers upon assignment will need to update their sales agreements; both of which take time. The additional ninety (90) days after the Commission has rendered a decision on the Petitions is necessary for ESCOs to properly comply with this new requirement.

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<sup>28</sup> Order, Appendix A, § 5.B.4.

<sup>29</sup> UBP, § 5.J.1 (emphasis added).

<sup>30</sup> Order, Appendix A, § 5.J.1 (emphasis added).

### **G. Record Retention Requirements (§ 5.K.3)**

The revisions to Section 5.K.3 alter the time for which ESCOs must retain documentation of a customer's authorization to change providers.<sup>31</sup> Implementing this change requires ESCOs to revise their document retention policies and train personnel on the same. Additionally, many ESCOs will need to make changes to their information technology ("IT") protocols related to data storage. The additional ninety (90) days after the Commission has rendered a decision on the Petitions is necessary for ESCOs to implement the system changes and conduct training.

### **H. Budget Billing Requirements (§ 5.L)**

Section 5.L.2 makes ESCOs responsible for determining the budget bill amount and evaluating each budget billed account on a quarterly basis for conformity with actual billings even if the ESCO charges appear on the utilities' bill.<sup>32</sup> Currently, there are no electronic data interchange ("EDI") transaction sets for rate-ready billing that would support this quarterly requirement. Moreover, the rate-ready based utilities do not currently have systems in place to support ESCO intervention into the budget billing process. In order to comply with this budget billing requirement, parties would need to establish EDI transactions sets. In addition, ESCOs would need to develop whole new processes to comply with this requirement, requiring research, testing, implementation and training on various levels, resulting in an incredibly burdensome and time consuming compliance process. The additional ninety (90) days after the Commission has rendered a decision on the Petitions is necessary for the parties to establish the EDI transactions sets and for ESCOs to develop the necessary systems and processes to comply with this requirement.

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<sup>31</sup> Order, Appendix A, § 5.K.3.

<sup>32</sup> Order, Appendix A, § 5.L.

**I. Addition Of TPV Questions (§ 5, Attachment 1)**

As a result of the revisions to Section 5, Attachment 1, TPV calls will have to be terminated if a customer asks a question regarding the sales agreement.<sup>33</sup> ESCOs will have to work with vendors to identify best practices and policies and define what constitutes a question regarding the sales agreement. Additionally, ESCOs will need to change their TPV review policies/criteria, and, if the TPV is automated, implement IT programming changes. Thereafter, personnel will need to be trained as to what constitutes a question regarding the sales agreement as well as how to review TPV recordings under this new requirement. Similarly, in order to comply with the revisions to TPV Questions 4 and 17, ESCOs will need to update TPV scripts or, if the TPV is automated, implement IT programming changes and train personnel as to the impact of these new questions on the TPV review process. The additional ninety (90) days after the Commission has rendered a decision on the Petitions is necessary for ESCOs to implement these changes.

**J. Identification Badge Changes (§ 10.C.1)**

Section 10.C.1 requires ESCO marketing representatives' badges to include an employee identification number.<sup>34</sup> The process of revising, reprinting and distributing all representative badges, while not as operationally complex as most of the other revisions, will take time. The additional ninety (90) days after the Commission has rendered a decision on the Petitions is necessary for ESCOs to properly comply with this new requirement.

**CONCLUSION**

In sum, addressing and implementing each of the necessary mechanisms to comply with the UBP revisions require operational changes that all must be implemented within the same timeframe. Accordingly, for all the foregoing reasons, RESA respectfully requests that the

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<sup>33</sup> Order, Appendix A, § 5, Attachment 1.

<sup>34</sup> Order, Appendix A, § 10.C.1.

deadline for compliance with the Order be extended until ninety (90) days after the Commission issues a decision on the Petitions.

Respectfully Submitted,  
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Dated: June 17, 2019