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Via Electronic Filing

July 23, 2018

Honorable Kathleen H. Burgess, Secretary
New York State Public Service Commission
Office of the Secretary
Three Empire Plaza
Albany, NY 12223

Re: **Case 98-M-1343 - In the Matter of Retail Access Business Rules**

**RESA Request for Extension of Time to Comply with Order Adopting Revised
Uniform Business Practices**

Dear Secretary Burgess:

Please find attached the Retail Energy Supply Association's ("RESA") Request for Extension of Time to Comply with Order Adopting Revised Uniform Business Practices issued by the Public Service Commission ("Commission") in above-referenced proceeding on January 19, 2018. For reasons discussed therein, RESA requests an extension of the effective date of the Uniform Business Practices requirements, until ninety (90) days after the Commission issues a decision on the Petitions for Rehearing, Reconsideration and/or Clarification of the Order.

Please feel free to contact me if you have any questions or require additional information. Thank you.

Sincerely,



Joey Lee Miranda

Copy to: Party List (via electronic mail)

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of Retail Access Business Rules

Case 98-M-1343

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

The Retail Energy Supply Association (“RESA”)¹ hereby submits this Request for Extension of Time to Comply with the Order Adopting Revised Uniform Business Practices (“Request”) issued by the Public Service Commission (“Commission”) in the above-referenced proceeding on January 19, 2018.² More specifically, for 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 Petitions for Rehearing, Reconsideration and/or Clarification of the Order.³

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 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 in a petition filed October 7, 2016

¹ 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 twenty 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.

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

³ *See, infra*, note 8.

to eliminate the appearance of an ESCO representative's full name on the identification badge; and (c) purportedly addressed "other related matters and housekeeping items."⁴ Interested parties were invited to submit comments on the proposed UBP modifications by May 8, 2017.⁵ Eleven parties, including RESA, submitted comments.⁶

On January 19, 2018, the Commission issued the Order.⁷ In response, several parties, including RESA, filed Petitions for Rehearing, Reconsideration and/or Clarification of the Order ("Petitions").⁸

The deadline for compliance with the Order, which was initially set for thirty (30) days after the effective date of the Order, has twice been extended by the Commission in order to promote the fair, orderly and efficient conduct of this proceeding. First, on February 18, 2018, the Commission extended the deadline for compliance with the Order 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."⁹ 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

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

⁵ *Id.* at 2.

⁶ *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.

⁷ *See, generally*, Order.

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

⁹ Notice Extending Deadlines (Feb. 16, 2018), at 4.

may alter a “rule” pursuant to the State Administrative Procedure Act, and, thus, the Commission was required to provide notice and an opportunity to comment.¹⁰ On that same day, the Commission also issued a Notice Further Extending Deadlines extending the deadline for compliance with the Order to July 26, 2018,¹¹ providing interested parties time to comment on the Notice of Proposed Rulemaking and the Commission time to consider the Petitions.¹²

On April 11, 2018, the Commission issued the Notice of Proposed Rulemaking,¹³ requesting that comments be submitted by June 11, 2018.¹⁴ RESA submitted comments in response to the Notice of Proposed Rulemaking.¹⁵ To date, the Commission has not ruled on the Petitions.

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 currently-revised UBP futile. Second, an extension is warranted because even after the Commission has

¹⁰ Notice Concerning Petitions for Rehearing, Reconsideration and/or Clarification (Mar. 28, 2018).

¹¹ Notice Further Extending Deadlines (Mar. 28, 2018).

¹² *Id.* at 2.

¹³ PSC-15-18-00008-P, *Amendments to the Uniform Business Practices*, Notice of Proposed Rulemaking (Apr. 11, 2018).

¹⁴ *Id.* at 20.

¹⁵ See Retail Energy Supply Association’s Comments in Response to the Commission’s Notice of Proposed Rulemaking (June 11, 2018).

issued a decision on rehearing, complying with the Order requires addressing numerous operational changes and thereafter implementing 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.L.2, which pertains to voluntary budget billing and levelized payment plans;
- Section 5.B.2, which requires a third party verification (“TPV”) for the enrollment of small non-residential customers resulting from door-to-door sales, telephonic enrollment and scheduled appointments;
- Section 5.B.4, which requires standard sales agreements to be in 10 point font;
- Section 5, Attachments 1.A and 2.A, which address TPV requirements;
- 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. 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.

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 non-residential 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); (8) budget billing requirements (§ 5.L); (9) addition of TPV questions (§ 5, Attachment 1); and (10) identification badge changes (§ 10.C.1).

1. 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.¹⁶ 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

¹⁶ UBP § 1.

Commission has rendered a decision on the Petitions is necessary for ESCOs to fully, and properly, implement such controls and revisions.

2. 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...”¹⁷ The addition of this term necessitates that ESCOs revise their contracts to reflect both the updated terminology and the customer rights contained therein. Additionally, ESCOs will need to alert personnel to this change and train 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.

3. 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 his contract term.¹⁸ 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 with regards to 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 necessary training.

¹⁷ UBP, § 1.

¹⁸ UBP, § 1.

4. TPV requirement for the enrollment of small non-residential 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 and scheduled appointments.¹⁹ Because small commercial 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 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, formulate such controls and revisions.

5. 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.²⁰ 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.

6. Contract assignment requirements (§ 5.J.1)

¹⁹ UBP, § 5.B.2.

²⁰ UBP, § 5.B.4.

Section 5.J.1 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.”²¹ 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.”²² To comply with this revision, therefore, 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.

7. 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.²³ 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 protocols related to data storage. The additional ninety (90) days after the Commission has rendered a decision on the

²¹ Order, Appendix A, § 5.J.1(emphasis added).

²² *Id.* (emphasis added).

²³ UBP, § 5.K.3.

Petitions is necessary for ESCOs to properly revise their policies and protocols, implement system changes and conduct training.

8. 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.²⁴ 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 ESCOs intervention into the budget billing process. In order to comply with this budget billing requirement, parties would need to establish EDI transactions sets, and 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.

9. Addition of TPV questions (§ 5, Attachment 1)

Under the revisions to Section 5, Attachment 1, TPV calls must be terminated if a customer asks a question regarding the sales agreement.²⁵ ESCOs will have to work with vendors to identify best practices and policies, and define what constitutes a question regarding the sales

²⁴ UBP, § 5.L.

²⁵ UBP, § 5, Attachment 1

agreement. Additionally, ESCOs will need to change their TPV review policies/criteria, and, if automated, implement IT programming changes. Thereafter, personnel will need to be trained as to what constitutes a question regarding the sale agreement as well as how to review TPV recordings under this new requirement. Similarly, in order to comply with the revisions to Questions 4 and 17, ESCOs will need to update scripts or, if 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 properly comply with these new requirements.

10. Identification badge changes (§ 10.C.1)

Section 10.C.1 requires ESCO marketing representatives' badges to include an employee identification number.²⁶ 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 Commission grant an extension of ninety days from the date the Commission issues a decision on the Petitions for compliance with the Order.

²⁶ UBP, § 10.C.1.

Respectfully Submitted,
RETAIL ENERGY SUPPLY ASSOCIATION

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