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By Electronic Mail

Hon. Kathleen A. Burgess

Secretary

NYS Public Service Commission

Three Empire State Plaza

Albany, New York 12223

Re: CASE 12-M-0476 - Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State.

CASE 98-M-1343 – In the Matter of Retail Access Business Rules.

CASE 06-M-0647 - In the Matter of Energy Service Company Price Reporting Requirements.

CASE 98-M-0667 – In the Matter of Electronic Data Interchange.

Dear Secretary Burgess:

Enclosed please find the Petition and Request for Clarification of the Retail Energy Supply Association (“RESA”) in the above-captioned proceedings.

Thank you for your assistance in this matter.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel, Counsel*

Usher Fogel, Counsel

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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**PETITION AND REQUEST FOR CLARIFICATION OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. INTRODUCTION

In accordance with Public Service Law Section 22 and 16A NYCRR Section 3.7, the Retail Energy Supply Association (RESA)¹ seeks clarification of certain aspects of the

¹The 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 more than 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.

Order Regarding The Provision Of Service To Low-Income Customers By Energy Service Companies issued in these proceedings on July 15, 2016.²

II. PRELIMINARY STATEMENT

On July 15, 2016, the Commission issued the Order in which the Commission directed that a moratorium be placed upon ESCOs from enrolling new customers or renewing existing customers that are participants in utility low-income assistance programs (“APP”). The moratorium would commence 60 days from the issuance of the Order. The provisions of the Order prescribe a new system that will govern APP customers and their subsequent interaction with the utilities and ESCOs. A review and examination of the directives contained in the Order reveal several areas that are vague, inconsistent with the Uniform Business Practices (“UBP”), overlook customer choice, and create ambiguity regarding the appropriate actions and behavior to be followed by ESCOs and utilities with respect to APP customers.³

In view of these considerations, RESA herein seeks and requests clarification on important aspects of the Order and thus allow for the orderly progress of this proceeding. Clarification of these identified matters is necessary to ensure that all

² Case 12-M-0476 et.al, *Order Regarding The Provision Of Service To Low-Income Customers By Energy Service Companies* (issued July 15, 2016) (hereafter “Order”).

³ RESA’s filing of the request for clarification, herein, is without prejudice to any claim, right or legal argument it may have with respect to the legality of the Order or the Commission’s scope of jurisdiction to regulate ESCOs.

interested parties are fully and timely apprised of their obligations under the new system devised by the Commission

III. THE COMMISSION SHOULD CLARIFY THE MATTERS SET FORTH BELOW

A. UBP Compliance

The UBP governs all aspects of the operations of the ESCO including the termination or the drop of service to customers. As prescribed, within 60 days of the Order [September 15, 2016], the utility will put a block on all APP accounts for each ESCO, and notify each ESCO that these accounts are included in the moratorium.⁴ No later than 14 days after the utility contacts the ESCO regarding the accounts the ESCO is no longer allowed to serve, the utility shall send a letter to each APP notifying of the APP status and the fact that service cannot be provided by the ESCO.

However per the UBP (Section 5.H.4.a), an ESCO is obligated to provide to the customer 15 days advance notice of a drop of service back to the utility. Similarly, 5.H.3 requires an ESCO dropping 5,000 or more accounts during a billing cycle must provide the utility with 60 days advance notice.

It thus appears that there is a potential inconsistency between the Order and the UBP governing what notices are to be provided by an ESCO at the initiation of the moratorium process. This problem will also reoccur as customer come on and off APP status over time depending on economic circumstances

⁴ Order, 15,18

The Commission needs to make clear whether the UBP or the Order is to be followed in such areas of contradiction. In addition, it would be useful and equitable for the Commission to hold an ESCO harmless for an action taken to carry out the directives in the Order that may conflict with the UBP.

B. Provision of APP Lists by Utilities to ESCOs

It is our understanding based upon information provided by the utilities at the EDI Work Group meeting held on July 22, 2016 that by September 15, 2016, the utilities will send each individual ESCO a file that includes *all* ESCO customers who had blocks on their accounts. And it would be the ESCO's responsibility to determine which of those customers are low income. The utilities claim they have to do it this way to customer privacy.⁵ This creates a number of problems.

There could be accounts where the customers pro-actively placed blocks on their accounts so that other ESCOs cannot switch them away from their serving ESCO. There is no way for the ESCO to know which customers need to be dropped and, if they are all simply dropped, what happens to the customers who put blocks on to prevent them from switching away from the serving ESCO?

This process could also be very cumbersome. Ordering paragraph 2 directs the utilities to notify ESCOs which accounts are not eligible within 60 days of the Order;

⁵ It is far more logical for the utility to only provide blocks on APP accounts.

while Ordering paragraph 7 directs ESCOs to drop any accounts identified by LDCs as ineligible also within 60 days of the Order.⁶

If the utility does not provide notice about an account until the 60th day, the ESCO is in a difficult position. Upon receiving the account list from the utility an ESCO must parse the month to month and term accounts; for the term accounts the ESCO will need to identify the expiration date. The ESCO will also need to eliminate blocks that were instituted by the Customer. And only after those steps are completed will the ESCO initiate the requisite EDI drop transaction. More time is required for the moratorium requirements. It is respectfully requested that the Commission allow more time for the ESCO to comply after the utilities provide the initial list, especially if the list does not become available until at or close to the 60th day?⁷

The Order directs that for an account with a current term, the ESCO will continue to serve the APP account for the remainder of the contract term or the expiration of the existing agreement.⁸ Thus, for example, if the ESCO provided a fixed rate for a 12 month term, the ESCO would only de-enroll the account at the conclusion of the 12 month term.

However, this requirement conflicts with the initial block placed upon all APP accounts on or about September 15, 2016. As noted the utility will place a block on all

⁶ Order, p. 18, 19

⁷ The Order does not clearly indicate whether the utility or the ESCO completes the drop of the account. This should be addressed and clarified.

⁸ Order, p. 11, 16.

APP accounts of the ESCO, the utility is not aware if any of these accounts are in the midst of an effective contract term. Thus, in the example posited, on September 15 when the blocks are placed in effect, the customer with the fixed rate may have 6 or more months left on the term. However, by placing the block the utility may preclude the ESCO from serving the customer until the expiration of the existing agreement as called for in the Order. As noted by the Commission:

At the same time, the validity of existing contracts must be protected and not abrogated prior to the completion of the contract term.⁹

Further, the utility may erroneously cancel an enrollment because it is not aware that there is an extended term associated with some accounts

The Commission notes that with respect to customers “on a variable rate, month-to-month contracts, the expiration of the agreement is at the end of the current billing period.”¹⁰ This is somewhat vague as it does not leave room for the drop notice to be served by the ESCO.

Further, it is important to clarify that a monthly variable rate contract can also have a set contract term that is not necessarily month-to-month. Thus, such a contract could have a fixed term that exceeds a monthly term. In such a circumstance, the completion or expiration should reflect the actual term of the contract not whether it is

⁹ Order, p. 13.

¹⁰ Order, p. 16

for a variable rate. Thus if the contract has, for example, a 12 month term with a monthly variable rate, the expiration would be after 12 months.¹¹

In this context there are certain products where the term is month-to-month but the customer receives a gift such as two months of free service if the customer remains with the ESCO for a designated period such as 6 or 12 months. In this case, the ESCO should be allowed to retain the customer until the gift term period is concluded. Thus, if the gift term is 12 months, the ESCO would retain the customer until the gift term of 12 months was concluded and the customer receives a refund for 2 months of service.

C. Change in APP Status

In connection with ESCO customers who become APPs after the moratorium is implemented,¹² the utility is to place a block on the account and inform the ESCO that service can no longer be provided. The ESCO then de-enrolls the account at the expiration of the existing agreement.¹³ The Order, however, does not present the procedures that would be activated if the account becomes off APP status after the moratorium is in effect. Will the utility remove the APP block? Will the utility notify the ESCO of the change in status? Is the ESCO still obligated to such customers?

To illustrate the point, at the time the Moratorium becomes effective Customer A was APP and already on a term contract with an ESCO. On the effective date of the Order

¹¹ The Order does not clearly indicate whether the ESCO must send a notice to the customer. The Order indicates that the ESCO must de-enroll the APP customer at the end of the billing period as it exists at that time (Order, p. 16); there is no clear indication, if any, of the notices the ESCO must provide per the Order.

¹² Order, p. 16.

¹³ Once again, the utility does not know if there is an extended term associated with this account.

the utility places a switch block on Customer A's account (obliging the ESCO to drop the customer at the end of the contract term.) However, the customer moves off APP status before the contract expiration date. Will the utility automatically remove the switch block and notify the ESCO? This requires further clarification from Staff.¹⁴

D. Customer Privacy

The Order provides that for existing APPs served by an ESCO, including customers who became APP after the time of enrollment, the utility must inform the ESCO that "a block has been placed on the account, that the ESCO is no longer eligible to serve the account, and that the customer must be de-enrolled at the expiration of the existing agreement" (Order, p.11). These three criteria in concert apply primarily to APPs. Thus, by providing this information the utility may be informing the ESCO of customer's APP status. This raises the question of whether and how such process is compliant with applicable privacy rights.

Previously in the Low Income Collaborative, Staff took the view that some form of affirmative customer consent was required before revealing the APP status to the ESCO.¹⁵ (Case 12-M-0476, et al, *Report of the Collaborative Regarding Protections for Low Income Customers of Energy Service Companies* (issued November 5, 2015) at pp.2-5.

¹⁴ If a fixed rate customer becomes an APP during the term of the contract, the question arises whether that would nullify the need to send the customer an expiration notice as they are going back to the utility once the term is over?

¹⁵ Case 12-M-0476, et al, *Report of the Collaborative Regarding Protections for Low Income Customers of Energy Service Companies* (issued November 5, 2015) at pp.2-5.

The Commission should therefore clarify the standards in these two documents and what process should finally be applied in the instant proceeding. To the extent that further analyses is needed the Commission should consult with the parties and provide additional time for such review

E. Notification Letter

The Order directs that no later than 14 days after the utility contacts the ESCO regarding the accounts the ESCO is no longer eligible to serve,

the utility will also send a letter to the ESCO customer, informing the customer: (1) that they are enrolled in the utility's low-income program; (2) of the moratorium directed in this Order; (3) the reason for and protections provided under the moratorium; and, (4) that they will be returned to utility service at the expiration of their existing ESCO agreement. Utilities are required to file drafts of these letters with the Secretary for Staff review within 30 days of the effective date of this Order.¹⁶

Under item 3 the incorrect impression may be conveyed that the ESCO has not properly served the customer. It would be inappropriate to insinuate such a position without knowing the charges and other value added services that were previously supplied by the ESCO.

As this letter will impact on the relationship between the ESCO and the customer in the future, it would be reasonable for ESCOs to be able to review and comment on the form letter being sent by the respective utilities. In fact, this letter should be

¹⁶ Order, p. 15. The Order does not clearly explain what is the impact of this letter. If it acts as a drop does the ESCO need to take any other action . This requires clarification

consistent across all utilities as it responds directly to the Order. In this manner, ESCOs can contribute to the efficacy of the letter and respond intelligently to customer inquiries about the contents of the letter.

F. APP Questions

The Order raises certain operational questions regarding the manner by which APP status is maintained. The following APP related issues should be clarified by the Commission

1. How are customer blocks put into place – by name, address, account no., meter no.?
2. How will they “unlock” an account?
3. How often is block list updated?
4. What if a customer moves from getting assistance to not getting?
5. How often do customers apply for assistance? Do they need to re-apply every year?
6. What programs fall into the APP that is referenced in the Order?

G. Customer Choice

It is anticipated that there will be a material level of communication through the moratorium process and even after since customers may call the ESCO as the process unfolds including after receipt of the utility 14 day letter. This is a customary process that follows changes in retail access. The Customer will of course be curious about the process and inquire from the ESCO what products are available under customer choice. The ESCO may in fact have products that can be valuable to the customer either in the

form, for example, a robust appliance repair offering, renewable energy or a price guarantee or guarantee of a material refund. Under these circumstances where the customer is interested in taking a product from the ESCO the Commission should clarify whether the ESCO can serve the customer. This would accommodate the customer's right to customer choice with the prospect of a beneficial outcome.¹⁷

In addition, clarification is requested on how an ESCO can respond to a customer's request to secure a fixed rate guaranteed product that provides budget certainty. Will the ESCO be allowed to offer such a product, especially for the winter period?

H. Complaints

The ESCOs are concerned that with this massive level of customer interaction and reshuffling, some customers will become angry or befuddled and file complaints against the ESCO as that will be the nearest address to file a complaint. Staff should recognize this critical factor and recognize that ESCOs should not be faulted in the Complaint process for carrying out the directives contained in the Order. The following scenario may become prevalent. A customer who is not APP but has a block comes into contact with an ESCO rep who informs the customer the ESCO may not provide service because the customer may be APP. The customer will become irate that the ESCO rep should insinuate that the customer is low income and therefore file a complaint. The

¹⁷ It would be worthwhile for the Commission to allow an APP customer to affirmatively and voluntarily have the utility block removed.

customer may also take umbrage that its service provider is being terminated without notice even if the customer has had a positive experience with the ESCO.

I. Timeliness

In order to ensure the orderly progress of the APP process, it is respectfully requested that the Commission provide responses and clarification to the requests for clarification noted herein in a timely manner that accommodates the September 15, 2016 implementation dates.

In addition there is a need for a meeting between the utilities and interested ESCOs to fully discuss all aspects of the Order and ensure a smooth transition.

IV. CONCLUSION

RESA appreciates the opportunity to address the issues raised in the Order and contribute to the Commission's understanding of the issues and concerns associated with this new direction in retail access service

Respectfully submitted

Retail Energy Supply Association

By: Usher Fogel, Counsel

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