

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

- 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.

NOTICE EXTENDING DEADLINES

(Issued January 25, 2017)

On December 16, 2016, the Commission issued its Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies.¹ That Order sought to address the findings that (1) low-income ESCO customers are generally paying more for gas and electricity than they would as full utility customers, and (2) that the taxpayer and ratepayer funded financial assistance programs, which provide a subsidy on low-income customers' bills, are frustrated when the customer takes more expensive ESCO service. Implementation of the prohibition was directed to begin 60 days after the effective date of the Order.

On January 17, 2017, the Impacted ESCO Coalition filed a Petition for Rehearing and Clarification of the Prohibition Order, which asks the Commission to extend the effective date of the Prohibition Order from 60 to 120 days after issuance, in

¹ Case 12-M-0476 et al., Retail Access, Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies (issued December 16, 2016) (Prohibition Order).

order to allow time for the Commission to decide requests for waivers of the Prohibition Order and for ESCOs granted waivers to enroll low-income customers with guaranteed savings products. On the same day the National Energy Marketers Association (NEM) filed a letter requesting rehearing of the Prohibition Order, referring to a December 2, 2016 Notice² and its court papers.

Neither petition complies with the formal requirements for a rehearing petition stated in 16 NYCRR 3.7(b). They accordingly do not toll the statute of limitations on any challenge to the Prohibition Order under Public Service Law (PSL) §22 and CPLR 7801(1). Both documents will, however, be treated as requests for extensions of time and, for reasons stated in them and discussed below, the deadlines for implementing the prohibition are extended until May 26, 2017.

The challenges regarding the Commission's Order Regarding the Provision of Service to Low-Income Customers by Energy Service Companies³ and Order on Rehearing and Providing Clarification⁴ remain pending.⁵ NEM has advised it also intends to enjoin the Prohibition Order and has developed a schedule for amending its current challenge with Commission appellate counsel. In order to avoid the customer confusion that may arise in implementing the prohibition that may be subject to

² Case 12-M-0476, et al., supra, Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits (Issued December 2, 2016).

³ Case 12-M-0476, et al., supra, Order Regarding the Provision of Service to Low-Income Customers by Energy Service Companies (issued July 15, 2016).

⁴ Case 12-M-0476, et al., supra, Order on Rehearing and Providing Clarification (issued September 19, 2016).

⁵ National Energy Marketers Association et al. v. New York Public Service Commission, Alb. Co. Index No. 5680-16; Retail Energy Supply Association v. New York Public Service Commission et al., Alb. Co. Index No. 05693-16.

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change pending the outcome of that litigation, it is appropriate to delay the implementation of the Prohibition Order until a judgment can be had, at the very least, from Albany County Supreme Court. After a conference with the Justice assigned to the pending Albany County proceedings, Commission appellate counsel is reasonably confident that a judgment in those proceedings will be had by mid-May, though it remains free to negotiate additional extensions. Therefore, the requirements of Ordering Clauses 1-3, and 5-11 of the Prohibition Order are extended until May 26, 2017.

(SIGNED)

KATHLEEN H. BURGESS
Secretary