

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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 12-M-0476
In the Matter of Retail Access Business Rules)	Case 98-M-1343
In the Matter of Energy Service Company Price Reporting Requirements))	Case 06-M-0647
In the Matter of Electronic Data Interchange)	Case 98-M-0667

**COMMENTS OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association (NEM)¹ hereby submits comments on the Commission’s February 25, 2014, Notice Seeking Comments in the new phase of its assessment of the retail energy mass markets. This new phase of the proceeding is specifically directed at, “identify[ing] additional actions that could facilitate the development of value-added product and service offerings for mass market energy consumers.” This proceeding is closely linked with the newly-initiated proceeding on Reforming the Energy Vision that is exploring how to achieve greater market animation and increased deployment and participation of demand-side resources in the market. As explained by the Commission, this will, “result in greatly increased opportunities for ESCOs to offer value-added services to residential customers. Our goal is to transition to competitive retail energy markets in which ESCOs and other vendors offer a wide range of innovative products and services to enable mass market customers to more effectively manage and control their energy bills.”² NEM strongly supports the Commission’s goal of facilitating ESCO provision of competitive energy-related value-added services on a more widespread basis. Indeed, the questions set forth in the Notice identify a number of the barriers that ESCOs currently encounter to offering mass market customers value-added services, including market structure issues, regulatory barriers, and information needs. NEM’s comments identify a number of solutions that can be implemented to overcome these existing barriers.

¹ The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM’s membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting, and power line technologies.

² Cases 12-M-0476, Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets, issued February 25, 2014, pages 47, 48.

This request for comments is also tied to the determinations in the Commission's February 25, 2014, Order on the Retail Access Markets that incorporate the concept of energy-related value-added services into a number of new ESCO compliance obligations. However, the February 2014 Order does not define "energy-related value-added service," and as a result has imposed a significant degree of regulatory uncertainty on ESCOs seeking to comply with its various provisions. NEM recommends that the terminology of "energy-related value-added service" be construed in a manner that provides a bright line that enables ESCO compliance and that also is broad enough to allow for near and long-term product innovation. As a base point, the natural utility distribution monopoly function is to reliably install, maintain, and upgrade the wires and pipelines that deliver energy. Conversely, competitive energy-related value-added services consist of those services that are and can be performed attendant to the ESCO's provision of competitive commodity service. Energy-related value-added services include, for example, commodity procurement, hedging and risk management, underlying the pricing and product structures of variable, fixed,³ and hybrid rate structures. Energy-related value-added services include time-differentiated rates that encourage consumers to modify their usage into lower-priced periods. They also include renewable products that allow a consumer to satisfy a desire to use green energy, including solar installations and storage devices. Energy efficiency products, such as appliances and windows as well as home control devices, beginning with the smart thermostat are also energy-related value-added services. Another example is the conversion of fuel oil customers to natural gas.⁴ And, just as the iPhone is an innovation that could not have been conceived of when Bell first invented the telephone, there will be future innovations in energy-related value-added services that cannot be anticipated or foreseen. ESCOs should be encouraged to pursue these innovations and the regulatory structure adopted will impact their ability to do so.

With these concepts in mind, NEM provides its responses to the questions propounded by the Commission.

A. Costs of Acquiring New Customers

1. Are there specific actions that the Commission could take to reduce the costs to energy service companies (ESCOs) of acquiring mass market customers who will purchase energy-related value-added services? What are the costs and benefits of these potential actions?

The Commission has previously taken actions to assist ESCOs in the reduction of their customer acquisition costs in general, including implementation of utility POR programs, ESCO referral programs, energy fairs and the like. The Commission has also examined the benefits of implementing programs such as ESCO referral programs at the time of service initiation and providing ESCOs with access to zip+4 information in lieu of a customer list. All of these measures reduce customer acquisition costs to ESCOs, regardless of the service or product that they are marketing to consumers.

³ The Commission determined in 2005 that, "a fixed price supply option is a service that could and should be developed and offered by the *competitive marketplace*," (emphasis added) and that a utility fixed price offer should not be available because it, "distorts the market, acts as a barrier against ESCO entry into the market, and is an obstacle to innovation in the market." Case 05-G-0311, Order Directing the Future Termination, Subject to Conditions, of a Fixed Price Offer, issued July 22, 2005, pages 7-8.

⁴ Utilities cannot market or promote the sale of natural gas commodity.

With specific reference to reducing customer acquisition costs associated with consumers who will purchase competitive energy-related value-added services, NEM suggests that a utility on-bill repayment mechanism for ESCO energy-related value-added services be implemented. This would facilitate these offerings inasmuch as many products could entail a sizable cost and the on-bill repayment mechanism would make payment more economical by spreading the costs over time. Alternatively, the utility POR programs could be expanded to include ESCO energy-related value-added services in order that consumer credit status will become less of a barrier to offering these types of products to a diverse customer base across New York State. Currently, utility POR programs are generally limited to ESCO commodity offerings. The success of utility POR programs in supporting supplier market entry and participation has been well-proven by the resultant consumer migration rates. A logical extension of this success would be to implement utility POR programs and/or a utility on-bill repayment mechanism for ESCO energy-related value-added services. Indeed, the Power NY Act of 2011 already authorized and directed the establishment of a utility on-bill financing mechanism for energy efficiency measures.

It is imperative that the costs ESCOs incur to acquire customers not be undermined by utility default service pricing that has not fully unbundled commodity and commodity-related costs from delivery rates and is not reflective of current market-based pricing signals. This is true irrespective of whether the ESCO is offering a commodity-only product or an energy-related value-added service. A consumer needs to be able to clearly differentiate and distinguish utility delivery rates, utility default rates and ESCO pricing so that consumers are not unduly dissuaded from buying value-added services from an ESCO and can understand the true value of what it is they are purchasing.

Another way in which the Commission can assist in mitigating customer acquisition costs for ESCOs is to ensure that the utilities are not charging punitive fees for advanced metering, net metering, standby rates and demand charges that make otherwise attractive ESCO value-added service options uneconomic for participation by consumers.

2. Should a new generation of utility ESCO referral programs be developed to facilitate customer awareness of energy related value-added services offered by ESCOs? Should customers be referred to specific ESCOs based on their interest in energy-related value-added services? What are the costs and benefits of these potential changes?

The original ESCO referral programs were a successful, low cost, low risk means of exposing consumers to energy choice options. NEM agrees that using this proven mechanism as a way to expand consumer participation in ESCO energy-related value-added service options is a logical progression and represents a beneficial way to leverage experience and lessons learned with the original programs to promote ESCO energy-related value-added service offerings.

The original referral programs were put in place in the majority of utility service territories. The implementation costs of the referral programs have already been paid, and therefore the costs to “reactivate” the programs at the utilities should be minimal. NEM suggests that Value-Added Services Referral programs be offered at the time of a customer’s initiation of service with the utility, in addition to when the customer contacts a utility with a non-emergency inquiry and on the utilities’ websites

3. Should utilities be directed to obtain information from their customers regarding their interest in energy-related value-added services that might facilitate ESCO marketing? What are the costs and benefits of such a requirement?

NEM is concerned that, as worded, this proposal seems to potentially cross the line into utility marketing activity of what should appropriately only be competitively-provided ESCO energy-related value-added services. It is important that any activities undertaken clearly distinguish the role of the ESCO and the role of the utility in the provision of competitive energy-related value-added services. In order to ensure the competitive neutrality of the communication and the information gathered, it may be preferable for the Commission to solicit this information from customers, rather than the utility.

B. Billing

4. Are changes to Commission policies concerning consolidated ESCO billing (CEB) required to remove unwarranted barrier(s) or impediment(s) to ESCOs seeking to use CEB? What are the costs and benefits of any proposed modifications to the Commission's policies to further facilitate CEB?

It is unlikely that the utilities will implement expanded billing options for ESCOs, to include consolidated ESCO billing (CEB), without specific direction from and approval by the Commission. NEM supports the availability of billing options for ESCOs that can enhance their individual business models, to include consolidated ESCO billing.

The availability of consolidated ESCO billing in the marketplace would yield significant benefits to consumers and suppliers. When a supplier is able to render a consolidated bill, it permits the supplier to establish a direct, enhanced relationship with its customers in a way that is not possible under the current utility consolidated billing scenario. Consolidated ESCO billing permits the supplier to offer both an enhanced customer service experience and also to offer an increased array of differentiated and innovative products and services in accordance with consumer preferences.

Suppliers value highly the ability to have control of the customer interface and the presentation of their products as is made possible with consolidated ESCO billing. By contrast, the current format of utility consolidated bills offers very limited ability for suppliers to include relevant information for their customers. Most of the New York utilities offer rate ready billing to suppliers, which imposes severe limitations on supplier pricing flexibility. Under rate ready billing, the supplier provides rate information to the utility to calculate and include the supplier's charges on the utility consolidated bill. By comparison, CEB allows the supplier to offer time-differentiated products that cannot be offered on rate ready utility bills. Consolidated ESCO billing would provide suppliers with the improved ability to communicate with their customers and offer increased innovation in their product offerings, thereby making the bill and competitive offerings more consumer-oriented as a result. This is a significant benefit for choice customers.

ESCOs in the NFG service territory use the single retailer model for billing and have done so for some time. This has not posed a problem with HEFPA compliance. Suppliers currently operating in jurisdictions such as Texas and Georgia have also already made significant

investments in billing infrastructure to provide supplier consolidated billing.⁵ It is clear from the suppliers' performance of the billing function in other jurisdictions that they possess the experience, expertise and operational capability to provide consolidated ESCO billing for New York consumers as well. Indeed, the expansion of consolidated ESCO billing may facilitate market entry by these suppliers to operate and do business in New York that are not already doing business in the State and also facilitate ESCO offerings of energy-related value-added services.

With respect to the costs of supplier consolidated billing, it will require unbundling of the billing function from utility delivery charges in order to avoid imposing duplicative costs on consumers. Suppliers that currently perform this function in NFG and/or other jurisdictions have already incurred the information technology and back office costs to offer CEB. Existing EDI transactions from NFG and other jurisdictions can be leveraged to further minimize implementation costs associated with expanding CEB into other utility service territories.

5. Under consolidated utility billing (CUB), what are the benefits and costs of requiring utilities to increase the space on bills to be used for ESCOs to provide information regarding energy-related value-added products and services, to approximately 1000 characters?

As it stands currently, the consolidated utility bill (CUB) offers very little opportunity for the supplier to differentiate itself and its products to consumers. Increasing the space available on CUBs will allow suppliers to provide improved messaging to their customers, thereby enhancing the customer relationship. As anticipated by the question, it will also specifically allow ESCOs to promote customer awareness of energy-related value-added services. Expanding the space available to ESCOs on the bill by 1,000 characters is a reasonable, minimal modification of billing systems to require of the utilities related to the Commission's goal of fostering the availability of ESCO energy-related value-added services.

6. Under CUB, what are the benefits and costs of requiring utilities to modify their billing systems to enable ESCOs to provide tailored customer-specific billing messages regarding energy related value-added services?

The benefits of requiring utilities to modify their billing systems to enable ESCOs to provide customer-specific messages on consolidated utility bills include permitting the ESCO to provide narrowly-tailored information targeted to a consumer's individual needs. Customer-specific bill messages can also be used to make the individual customer aware of other value-added products that may suit the customer's preferences. Ideally, the ESCO should be able to provide bill messages that are specific to an individual and/or to a group of customers to send targeted, relevant information. The bill messages should be capable of being changed with each billing cycle. The dynamic bill message should be sent via EDI stream.

7. What specific changes to utility billing systems are required to facilitate the ability of ESCOs to offer time-of-use products for mass market customers? What are the benefits and costs of any proposed changes?

⁵ See, e.g., TX Electric Substantive Rule § 25.479 regarding supplier issuance and format of bills.

In order to facilitate ESCO offerings of time-of-use products to mass market consumers, utility billing systems should be modified to permit bill ready billing. Bill ready billing refers to a billing process wherein the utility provides the marketer with the meter readings and the marketer applies the contracted-for billing rate and calculates the customer bill. The marketer transmits this information to the utility for inclusion on the customer bill.

The majority of the New York utilities currently offer rate ready billing. Rate ready billing systems⁶ are simply incompatible with the creation of time-of-use ESCO products. This is because the ESCO has to provide the utility with the rate before they know the customer's usage. In addition, the value of smart meter installations will be significantly diminished without better utility billing systems. Bill ready billing systems must be accompanied by real-time, non-discriminatory access to the data by competitive stakeholders. We note that NYSEG/RGE currently provide the most billing functionality to marketers in this regard.

8. What other modifications to CUB should be considered to facilitate development of energy related value-added services, and what are the benefits and costs of such modifications?

Other modifications to CUB that would facilitate ESCO offerings of energy-related value-added services include a utility on-bill repayment mechanism and/or utility POR programs for ESCO energy-related value-added services as well as provision of increased billing line items to ESCOs.

As noted in NEM's Response to Question 1, the implementation of utility POR programs was pivotal to overcoming the barrier of consumer credit status as an impediment to participation in energy choice. However, utility POR programs are currently generally limited to ESCO commodity offerings. Permitting ESCOs to include energy-related value-added services in utility POR programs and/or a utility on-bill repayment mechanism will similarly support increased offerings of these services to consumers. In this regard, the Power New York Act of 2011 requires utility on-bill financing⁷ for residential consumers for energy efficiency upgrades. This on-bill financing must be offered to all customers, including ESCO POR customers. This is an opportunity for ESCOs to provide value-added energy efficiency products to consumers. However, an on-bill repayment mechanism should be available for the greater universe of consumer purchases of energy-related value-added services.

An additional modification to consolidated utility billing to facilitate ESCO offerings of energy-related value-added services would be the provision of more flexibility with respect to bill line items. This would enhance ESCOs ability to provide innovative products. For example, time-of-use pricing may require more line items than the utility currently provides. Also, certain products require more bill flexibility as to how the line will read and the total will be presented. Additionally, it would facilitate product innovation if suppliers were able to have a line item available for discounts or refunds.

⁶ Under rate ready billing, the supplier provides rate information to the utility to calculate and include the supplier's charges on the utility consolidated bill.

⁷ Power New York Act of 2011. Available at: <http://assembly.state.ny.us/leg/?term=2011&bn=A08510>

C. Processing of Enrollment Requests

9. To what extent do current enrollment requirements limit the ability of ESCOs to offer value-added services?

Current enrollment requirements constitute an impediment to ESCO offerings of value-added services. This is because many energy-related value-added services include a time differentiation component. The prolonged customer enrollment process largely prohibits an ESCO from mounting effective marketing campaigns for timely solutions. For example, the current 45 day (monthly meter read)/75 day (bimonthly meter read) lag in time between the submission of the customer enrollment and the ESCO's commencement of service creates a barrier because the perceived "urgency" of reducing usage during peak times (i.e., turning down air-conditioning in the summer afternoons) cannot be aligned with marketing campaigns and then expeditiously provided as a solution to the customer that desires that product. The delay in the customer enrollment process effectively divorces the signal the consumer would perceive in the value of changing usage during high demand times versus when the value-added service could actually be rendered to the customer.

10. What specific actions could be taken to reduce the period between when a customer enrolls with an ESCO and when service commences? What are the benefits and costs of those actions?

There are specific actions that can be taken to reduce the period between when a customer enrolls with an ESCO and when service commences. The enrollment process currently hinges on the next regularly scheduled meter read date after the ESCO submits the enrollment request. In order to accelerate this process, the Commission should require off-cycle meter reads and switching that utilizes a physical meter read or advanced meter, when available. The physical meter read should be allowed to be customer-provided, subject to revision and correction upon an actual meter read.

D. Net Metering Refinements

11. Do existing rules governing net metering, particularly concerning billing, allocation of credit and the settlement of outstanding balances, impose undue costs or burdens on ESCOs? If so, explain those concerns and the impact on ESCO operations and the ability of ESCOs to offer value-added services requiring net metering.

No response.

E. Data Availability

12. What specific data might be available to assist ESCOs in developing innovative energy-related value added services?

ESCOs and their customers need access to detailed and timely energy use data that will allow them to reduce energy consumption and reduce load when available power is in short supply, prices are high or distribution system conditions make it necessary to reduce load. Timely access to usage data will allow ESCOs to better match supplies with consumer demand, which can

significantly reduce ESCO costs and risks, and that can be passed along to consumers as savings on energy bills.

Additionally, in the interim before wide-scale deployment of advanced meters is achieved, ESCOs would be assisted in developing innovative energy-related value-added services through the provision of Retail Demand Response Load Profiles.⁸ These Retail DR Load Profiles could be developed for ESCOs using **current** utility metering systems and **historical** usage data combined with the sophistication and reliability of utility data statistical modeling.

Retail DR Load Profiles can be developed and implemented to support consumers pursuing an array of competitively provided DR and efficiency-related products, services, and technologies with resulting benefits and cost savings. For example, consumers who embrace existing home energy management technologies that increase their ability to reduce energy usage at peak demand should be offered a load profile that better reflects the cost savings of their DR usage behavior. Likewise, consumers who invest in cleaner, more efficient Energy Star home electric appliances should also benefit from a modified profile that better reflects the cost savings of their reduced demand. Existing utility data can be adapted to develop first generation, transitional Retail DR Load Profiles to start to encourage DR behavior by residential and small-commercial customers, pending the full implementation of smart-grid technology and related infrastructure.

13. Who currently owns or maintains that data, and what are the barriers to making that data available to ESCOs and other parties? What are the costs and benefits of removing or reducing those barriers?

The consumer owns its own usage data. The utility is maintaining the data, but does not own it and should not be permitted to dictate the terms of its use or disclosure. The Commission previously examined the issue of ESCO access to meter data and found,

We do not support the creation of an information monopoly through our approval of these smart grid projects, and thus, require utilities to take all steps appropriate, including adherence to the AMI minimum functional requirements, to prevent such monopoly from being created. Consequently utilities, unless otherwise waived, shall adhere to the AMI minimum functional requirement that customers or their competitive providers will be able to access meter data in an open, standard, non-proprietary format, as both NEM and EnerNOC suggest.⁹

The validity of this finding continues, and supports a Commission requirement that utilities should make customer usage data available to ESCOs on a timely, nondiscriminatory basis.

14. How can this data be made generally available? Are there specific standards and protocols that should be adopted to ensure statewide consistency and ensure customer privacy?

⁸ See NEM's "Achieving Significant, Near-Term Demand Response by Residential and Small-Commercial Customers," available at: <http://www.energymarketers.com/Documents/ACF82C.pdf>

⁹ Cases 09-E-0310 and 09-M-0074, ORDER AUTHORIZING RECOVERY OF COSTS ASSOCIATED WITH STIMULUS PROJECTS, issued July 27, 2009, at pages 39-40.

All authorized market participants should be provided with secure, reliable, non-discriminatory (non-proprietary), open access to the information that will be created to facilitate the “smart grid.” This will entail the use of “open standards” to implement new generations of smart meters and smart IT infrastructures needed to “interoperably” handle a virtual tsunami of near real-time usage and pricing data. Open standards and non-discriminatory (non-proprietary) access to smart grid infrastructure will serve to incent a new critically-needed generation of services, application developers and information technologies, to securely, reliably and interoperably collect (meters), process (analyze), store and provide secure access to the substantial increase of data needed to develop new demand response-related products, services, information technologies and price offerings.

F. Other Proposals to Facilitate Energy-Related Value-Added Services

15. What other specific barriers to offering energy-related value-added services do ESCOs face? What action(s) could the Commission take to address those barriers? What are the costs and benefits of those actions?

The Commission has identified in the foregoing questions a number of significant barriers to ESCO offerings of energy-related value-added services. These include utility billing system limitations, lack of real-time usage data from the utility, delays in the customer enrollment process, limitations on ESCO products eligible for utility POR programs amongst others as discussed in NEM’s previous responses. There are additional barriers to ESCO offerings of energy-related value-added services related to the overall structure of the marketplace.

First, retaining incumbent utilities in the default service role for all consumers and setting a price for default service that does not bear a close correlation to market-based pricing and that fails to fully capture the cost of providing no-notice last resort service, creates a significant barrier to competitive suppliers and perpetuates the same non-competitive energy services that restructuring is designed to replace. Commodity supply and energy-related value-added services, information and technologies are inherently competitive functions. Allowing the utility to remain in the default service role, and provide other competitive energy-related value-added products such as time-of-use rates etc., can discourage competitive entities from doing so. Competitive entities lack the instant scope and scale that captive customers offer the utilities and therefore different cost considerations underly said entities offerings versus those of the utility. Additionally, retaining a regulated monopoly in a competitive marketplace inherently distorts the competitive playing field and requires a significant amount of regulatory intervention and oversight to try to ensure a level competitive playing field.

Relatedly, the lack of real-time pricing signals for mass market consumers presents a significant impediment to ESCO offerings of energy-related value-added services. So long as consumers do not receive a price signal related to their usage patterns, they will not perceive a value to engaging in demand responsive behaviors. When consumers can closely monitor their energy consumption they will be able to reduce costs, create energy efficiencies and benefit from conservation incentives.

16. What other specific regulatory changes to enhance the ability of ESCOs to offer energy-related value-added services to mass market customers should be considered by the Commission? What are the benefits and costs of those proposals?

See Response to Question 15.

G. ESCO Eligibility

17. Consistent with the Commission’s efforts to encourage energy-related value-added services as well as compliance with the UBP, what changes to ESCO eligibility requirements should the Commission consider?

ESCO eligibility requirements are clearly defined and well-established by the Commission and need not be modified to account for the provision of energy-related value-added services. With respect to non-ESCO vendors of energy-related products, i.e., solar installations, home energy efficiency products, etc., the vendors product offers must comply with truth-in-advertising laws and FTC Guides for the Use of Environmental Marketing Claims (“Green Guides”).¹⁰

18. Consistent with efforts to encourage ESCO compliance with the UBP and other Commission rules, what changes to ESCO eligibility requirements should be considered? For example, should the Commission consider requiring ESCOs to pay application or annual fees?

NEM submits that supplier application or annual fees in other jurisdictions are typically charged for the purpose of recovering the administrative cost of processing the license application and related subsequent renewal documentation. Assessing an application or annual fee is not the appropriate mechanism for incenting compliance with the UBP and other rules. Rather, clearly-delineated and reasonable ESCO obligations and responsibilities and associated consequences for failure to perform those obligations and responsibilities are the proper tools to encourage compliance. The Commission and industry stakeholders have already expended significant efforts to ensure that the UBP accomplishes this goal.

H. ESCO Compliance

19. Should the Commission require that the annual and triannual filings required by the UBP be accompanied by a letter from the ESCO’s Chief Executive Officer certifying that the filing is in full compliance with the UBP and that the ESCO has the resources and practices in place to ensure compliance with the UBP and other Commission Orders related to retail supply service?

The information submitted in the ESCO’s application with the Commission and the subsequent annual and triannual filings directly demonstrate the ESCO’s ability to comply with UBP requirements. Currently, a company officer signs off on the comprehensive triannual filing that is made with the Commission. In addition, UBP Section 2.D.5.f. already explicitly states that an ESCO will be subject to sanction for, “failure to comply with the UBP terms and conditions, including discontinuance requirements.”

¹⁰ 16 CFR Part 260.

Conclusion

NEM appreciates this opportunity to offer comments on existing barriers to ESCO offerings of competitive energy-related value-added services as well as measures that can facilitate the increased availability of these competitive offerings to residential and small commercial customers.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig Goodman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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