



3333 K Street, NW, Suite 110  
Washington, D.C. 20007  
Tel: 202-333-3288  
Fax: 202-333-3266

June 6, 2016

The Honorable Kathleen H. Burgess  
Secretary  
New York Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223-1350  
[secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

**RE: Case 15-M-0127 – In the Matter of Eligibility Criteria for Energy Service Companies**  
**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**

Dear Secretary Burgess:

The National Energy Marketers Association (NEM)<sup>1</sup> hereby submits these letter comments in response to three whitepapers submitted by Staff on May 4, 2016, pertaining to: 1) performance bonds or other security interests for ESCOs; 2) benchmark reference prices for ESCO products; and 3) express consent from ESCO customers. The Commission issued a Notice Seeking Comments on the whitepapers on May 10, 2016, and notice of the proposals was published in the NYS Register on May 4, 2016.

In response to the whitepapers, NEM hereby submits, incorporates by reference and attaches hereto its Reply Memorandum of Law and supporting Exhibits, Affirmation and Affidavit filed

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<sup>1</sup> 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. NEM members are serving and intend to serve all classes of electric and natural gas consumers in the service territories of the New York utilities.

The responses set forth herein should not be construed as a waiver of any rights, issues, or claims being adjudicated by the Court in the pending litigation concerning the "Order Resetting Retail Energy Markets and Establishing Further Process," issued on February 23, 2016, all of which are expressly reserved and incorporated herein by reference. NEM reserves its rights to supplement these comments.

in National Energy Marketers Association, et al. v. New York State Public Service Commission (Alb. Co. Index No. 868-16). These pleadings capture NEM's positions with respect to the whitepapers and the issues related thereto.<sup>2</sup>

Respectfully submitted,

Craig G. Goodman, Esq.  
President  
Stacey Rantala  
Director, Regulatory Services  
National Energy Marketers Association  
3333 K Street, NW, Suite 110  
Washington, DC 20007  
Tel: (202) 333-3288  
Email: [cgoodman@energymarketers.com](mailto:cgoodman@energymarketers.com);  
[srantala@energymarketers.com](mailto:srantala@energymarketers.com)

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<sup>2</sup> It also comports with Commission precedent and practice that, "it is well understood that we [the Commission] lack authority to regulate the rates that an ESCO charges any customer (residential or nonresidential). Therefore, neither an informal hearing officer nor the Commission may determine that an ESCO's charges to its customer is improper." Case 09-G-0289, Commission Determination, issued August 23, 2010, at 7.