

**BEFORE THE
PUBLIC SERVICE COMMISSION
STATE OF NEW YORK**

In the Matter of Retail Access Business Rules.

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Case 98-M-1343

**PETITION FOR REHEARING, REQUEST FOR CLARIFICATION, AND MOTION
FOR STAY OF THE NOVEMBER 13, 2025 ORDER ADOPTING MODIFICATIONS
TO THE UNIFORM BUSINESS PRACTICES BY THE
RETAIL ENERGY SUPPLY ASSOCIATION**

The Retail Energy Supply Association (“RESA”)¹ submits this Petition for Rehearing, Request for Clarification, and Motion for Stay (“Petition”) of the Commission’s November 13, 2025 Order Adopting Modifications to the Uniform Business Practices (“UBP Order”) pursuant to Public Service Law (“PSL”) §22 and Parts 3.5, 3.6, and 3.7 of the Commission’s Procedural Rules, 16 NYCRR §§3.5, 3.6, and 3.7.

INTRODUCTION

In 2023, the General Business Law (“GBL”) was amended to further clarify the definition of a “material change” to an ESCO contract for residential and door-to-door customers, to refine the requirements to obtain express customer consent for such changes, and to include specific additional required disclosures for any ESCO contract renewal notices issued to these customers.² In early 2024, the Department proposed amendments to the Uniform Business Practices (“UBP”) to incorporate the new requirements of the amended GBL.³ The UBP Order adopts the 2024 Staff

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 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 GBL §§349-d(6-7), effective March 18, 2024.

³ Case 98-M-1343, *In the Matter of Retail Access Business Rules*, Staff Proposal for Implementing Stronger Price Transparency for Consumers (issued March 26, 2024) (“2024 Staff Proposal”).

Proposal, with modifications, and the resulting revisions to the UBP are currently scheduled to go into effect on December 31, 2025.

RESA respectfully requests the Commission grant rehearing of the following requirements of the UBP Order to correct errors of law or fact, or in consideration of additional circumstances and information:

- The Commission should grant rehearing on its requirement for ESCOs to use the Department’s sample renewal notice, as neither the currently-available form of contract renewal notice, nor the updated version of contract renewal notice included in the 2024 Staff Proposal, complies with the goals or requirements of GBL §349-d(7) or the proposed amendments to UBP §5.B.5.
- The Commission should grant rehearing on the requirement to use the default utility’s 12-month trailing average price in the contract renewal notice as a basis for comparison to the current ESCO price offering, and should instead require the use of the default utility’s then-current price to compare (“PTC”);
- The Commission should grant rehearing on the requirement for ESCOs to send the contract renewal notice via regular mail, and should allow electronic service of these notices to customers; and
- The Commission should grant rehearing and consider the underlying facts and circumstances that gave rise to the existing UBP requirements for contract renewal notices, and should amend the UBP to ensure uniform rescission periods for initial and renewal residential contracts and eliminate other now-unnecessary notice requirements.

In addition, RESA respectfully seeks clarification regarding certain aspects of the renewal notice requirement and new Department reporting requirement imposed by the UBP Order:

- How does UBP §5.B.5 impact CCA programs? Do ESCOs have to send contract renewal notices in addition to existing notices required under the CCA program rules?
- While the Department was ordered to report to the Commission the number of ESCO customers served on variable rate, month-to-month agreements by March 1 each year, ESCOs request the Commission provide additional clarification regarding the scope, timing, and specifics of how this information will be requested from ESCOs and compiled by the Department.

Lastly, and in order to ensure a smooth transition to the amended UBP and implementation of updated contract renewal notices, RESA includes with this Petition a motion to stay

implementation of the UBP Order and its requirements, including but not limited to the requirement for ESCOs to use the Department’s form of contract renewal notice, until 60 days after the Commission makes a determination regarding RESA’s Petition.

For the reasons set forth in this Petition, RESA believes rehearing and clarification of the UBP Order is warranted and will ensure ESCOs are complying with the requirements of GBL §349-d and the proposed amendments to the UBP, and a stay of implementation of the UBP Order will ensure that ESCOs have both sufficient time to implement these new requirements and a complete understanding of the new requirements.

PROCEDURAL BACKGROUND

On September 20, 2023, in an effort to ensure residential and door-to-door customers receive “full disclosure [of] any material change in price or in contract terms that may be proposed by their energy provider,” and in order to ensure these customers “consent[] to the changes,” amendments were adopted to GBL §349-d(6) and (7). Notably, the legislature adopted specific requirements pertaining to “any notice regarding contract renewability,” that direct ESCOs to include the following information “as it exists at the time of such notice,”

- (i) the price charged for energy services; (ii) the price it proposes to charge upon renewal; (iii) the price that is charged by the customer’s distribution utility; and (iv) information notifying the customer how they may compare past bills with what they would have been charged had they received energy services from their respective distribution utility, including, the internet address of any bill calculator offered by such customer’s distribution utility’s website.⁴

While the GBL is self-effectuating and no action was required by the Department to induce compliance with the amendments to GBL §349-d, consistent with past practice, the Department issued its 2024 Staff Proposal and introduced proposed amendments to the UBP to incorporate the GBL’s updated requirements. Included with these proposed amendments was additional guidance

⁴ GBL §349-d(7)

regarding Staff's interpretation of the amended law. The 2024 Staff Proposal went beyond the scope of GBL §349-d by proposing to restructure to UBP to apply these amendments to all customer classes, rather than residential and door-to-door customers, and also opined that ESCOs were required to issue renewal notices, every month, to all customers on variable rate, month-to-month contracts (and receive express consent for renewal for any change in price).⁵ Fortunately, the UBP Order did not incorporate many of the changes included in the 2024 Staff Proposal that were in excess of the requirements of GBL §349-d, and appropriately limited the corresponding UBP amendments to residential and door-to-door customers only.⁶

The UBP Order did adopt some of Staff's recommendations, including a requirement that ESCOs must adopt the Department's form of contract renewal notice and must include a sample renewal notice with the ESCO's next annual or triennial application (or in initial applications for new ESCOs). The Commission also adopted Staff's recommendation to utilize the utility's 12-month trailing average price on contract renewal notices as the comparative price charged by the customer's distribution utility. Citing other notice requirements imposed on ESCOs, the Commission declined to allow electronic service of contract renewal notices to customers and adopted Staff's recommendation that renewal notices be issued via regular mail, consistent with the Department's template renewal notice. The UBP Order closes with a new reporting requirement for the Department, and directs Staff to collect information on the number of ESCO customers serviced on variable rate, month-to-month contracts, regardless of customer class, and to report this information to the Commission by March 1.

While RESA generally supports the amendments to the UBP recently adopted by the Commission, RESA believes rehearing is warranted to ensure the Commission fully considers the

⁵ 2024 Staff Proposal at 7.

⁶ UBP Order at 15-16.

requirements of GBL §349-d and ensures these requirements are correctly incorporated into the UBP and the Department's required form of contract renewal notice. RESA also believes the Commission should rehear its directive to utilize the utility's 12-month trailing average price on renewal notices and should instead direct the use of the utility's current PTC, and should also reconsider the requirement that the contract renewal notice must be mailed to customers. RESA also submits that the Commission should reconsider the inclusion of an additional rescission period for customers that expressly consent to renew their contracts, and should eliminate other notice requirements that are no longer necessary.

ANALYSIS

I. THE COMMISSION COMMITTED AN ERROR OF LAW OR FACT AND CIRCUMSTANCES WARRANT REHEARING OF THE UBP ORDER TO ELIMINATE CONFUSION AND ENSURE COMPLIANCE WITH GBL §349-d

The Commission's regulations allow a party to request rehearing of an order on the grounds the Commission "committed an error of law or fact or that new circumstances warrant a different determination."⁷ RESA respectfully submits the legal and factual premises underlying some of the Commission's conclusions in the UBP Order, and therefore the resulting amendments to the UBP, do not support the Commission's findings or its goals of enhancing consumer protection, and that rehearing of a few key issues will ensure compliance with the GBL, enhance the UBP, and improve the ESCO customer experience.

A. The Commission Should Rehear the Requirement for ESCOs to Use the Current or Proposed Template Contract Renewal Notice

The UBP Order updates the eligibility requirements for ESCOs by adding a requirement for ESCOs to include a form of residential and door-to-door customer renewal notice in the ESCO's next annual or triennial application for Department review.⁸ Per the UBP, ESCOs must

⁷ 16 NYCRR §3.7(b).

⁸ UBP Order at 14.

use a “standardized format provided by the Department,” for renewal notices issued to residential and door-to-door customers.⁹ To be clear, prior to the UBP Order the Department previously provided a form of renewal notice for ESCOs to use with respect to residential and door-to-door customer contract renewals.¹⁰ However, ESCOs were not previously required to include this notice in their initial or renewal eligibility filing, and the previously-required renewal notice does not include the new disclosures required by the amended GBL. Additionally, while the 2024 Staff Proposal contains a proposed updated residential contract renewal notice, this updated document has not been posted or provided anywhere except as an attachment to the 2024 Staff Proposal.¹¹

Although the Commission made clear that it adopted the “[2024 Staff Proposal] and will require ESCOs to include sample renewal notices as part of the retail access application requirements,” the UBP Order is silent on whether ESCOs should use the renewal notice attached to the 2024 Staff Proposal, and does not direct the Department to update its website or information to ensure ESCOs have transparent access to the updated renewal notice.¹² Regardless of the lack of clarity as to the correct form of renewal notice, neither the current nor the proposed contract renewal notice informs customers that they must provide express consent for any renewal to be effectuated. In addition, neither form of contract renewal notice includes the historical utility bill information and bill calculator information required by GBL §349-d(7)(iv) or proposed UBP §5.B.5.f, effective December 31, 2025.¹³ At this juncture, RESA is concerned as the implementation deadline is fast approaching and, as of this writing, the Department has not

⁹ See current UBP §5.B.5.d (proposed UBP §5.B.5.f, effective December 31, 2025).

¹⁰ Attached as Exhibit A is a copy of the residential contract renewal notice currently available on the Department’s website. See <https://dps.ny.gov/energy-services-company-esco-competitive-market-information> (last accessed December 15, 2025).

¹¹ Attached as Exhibit B is a copy of the updated contract renewal notice that was included as Attachment B to the 2024 Staff Proposal.

¹² UBP Order at 13-14.

¹³ See UBP Order, Appendix A, p. 2 (UBP §5.B.5.f, effective December 31, 2025).

provided a form of contract renewal notice that complies with either the GBL or the proposed revised UBP.

As a threshold matter, the updated contract renewal notice does not contain any disclosure to the customer that their express consent is required to renew the contract. In fact, the updated renewal notice merely requests that customers “review the terms and conditions to assure your renewal agreement best suits your current needs.”¹⁴ The updated renewal notice goes on to advise the customer:

If you choose not to continue your service with us, you may switch to another supplier or return to your local utility company, without an early termination fee, at the expiration of your current agreement by contacting us or your local utility company by (insert date).¹⁵

Rather than advise customers that express consent is required to renew the contract, the updated contract renewal notice template seems to suggest that no action is needed on the part of the customer unless the customer is not interested in renewing the agreement.

The UBP Order expresses a clear intention to ensure that ESCO customers “have all the necessary information before deciding whether or not to renew an ESCO contract,” and to ensure that ESCO customers “are informed of and given an opportunity to consent to or reject material changes . . .”¹⁶ RESA respectfully submits that since these goals express an overarching desire to educate consumers on their choice and ability to provide express consent to renew an ESCO contract, the renewal notice should inform customers that they must provide express consent in order for the contract to renew or the material change to be effectuated. Rehearing is warranted in order to ensure that customer renewal notices meet this minimum threshold.

¹⁴ Ex. B.

¹⁵ *Id.*

¹⁶ UBP Order at 10.

With respect to the more specific requirements of the GBL and the lack of historical utility pricing information, RESA submits that the “Bill Comparison Information” box included in the 2024 Staff Proposal’s renewal notice is insufficient to meet the requirements of GBL §349-d(7)(iv). At most, an ESCO might be able to include a link to the utility bill calculator. The proposed form of renewal notice otherwise does not address the requirement to provide customers with information so they can compare past ESCO bills with what they would have been charged by their distribution utility.¹⁷

In fact, instead of providing instructions on accessing historical utility bill comparison information, the template renewal notice provide customers with detailed instructions on how to access an ESCO’s historical price comparison information at the Department’s Power to Choose website. Unfortunately, this website does not provide customers with any information on how to compare past ESCO bills with what the distribution utility would have charged the customer. RESA requests the Commission grant rehearing and direct the Department to issue an updated and corrected template renewal notice and that this renewal notice include instructions for customers to determine how to compare past ESCO bills with the price the distribution utility would have charged for the same period of time, as required by the GBL.

Under the circumstances, the Commission should reconsider the UBP Order and ensure that any required contract renewal notice that ESCOs are required to issue is compliant with the requirements of the GBL, consistent with the UBP, and fully informs residential and door-to-door customers that their express consent is required before a material change is effectuated or a contract is renewed.

¹⁷ See Ex. B.

B. The Commission Should Rehear the Requirement to Use the Utility's 12-month Trailing Average Price on Contract Renewal Notices and Instead Require ESCOs to Use the Current Utility Price to Compare

RESA shares the Commission's concerns with the increasing costs for electric and gas utility services, and supports the Commission's efforts to ensure price transparency for residential and door-to-door customers. In order to ensure that customers considering renewal of their ESCO electric or gas supply service are making an informed decision, RESA respectfully requests the Commission reconsider its directive for ESCOs to use the utility's 12-month default average price and instead require the use of the utility's current PTC on contract renewal notices.

By definition, the utility's default, 12-month trailing average price only provides a customer with one thing: the average price the utility would have charged a residential customer over the last 12-month period. For a residential or door-to-door customer that is considering the renewal of a contract for future energy consumption, it makes more sense to provide the customer with the utility's current PTC, rather than an average of last year's prices. The GBL actually has separate requirements, first to disclose the utility's then current, default price, and second, to provide instructions for access of monthly historical pricing data. It is duplicative to require disclosure of an average historical price when the law already requires the inclusion of specific instructions to access what the customer would have historically paid for utility service, on a monthly basis. If the customer has instructions on how to access specific monthly historic pricing data, the customer can compare this to the historic ESCO pricing data available on the Power to Choose website.

In the context of current price offerings, providing old, summary price information does not help a customer looking to renew a contract for future electric and gas consumption. Customers need clear and up-to-date utility price information to compare to the ESCO renewal price in order to make a clear and informed decision. In addition, the use of outdated utility default price

information will be further exacerbated by pending and anticipated increases to default utility rates.¹⁸

To ensure compliance with the GBL and consistent with the Commission's goals of providing price transparency to customers, the Commission should rehear and reconsider its directive for ESCOs to use the 12-month trailing utility average price in contract renewal notices, and instead direct the use of the utility's then-current PTC in contract renewal notice. This ensures the complete and correct adoption of the amendments to the GBL and eliminates any needless duplication in information provided to customers.

C. The Commission Should Reconsider the Requirement for ESCOs to Mail all Renewal Notices to Residential and Door-to-Door Customers

RESA appreciates the Commission's concern that not all customers have an email address, and a hard copy notice should be required for these customers.¹⁹ However, this unsupported and conclusory assertion ignores those customers who may have affirmatively chosen to receive correspondence via electronic format only. Under the circumstances, RESA respectfully requests the Commission reconsider the requirement for renewal notices to be sent via hard copy for customers, especially for those customers who affirmatively opt-out of the receipt of paper correspondence.

RESA notes that while the Commission accurately points out that other customer notices are required by the UBP, RESA is not aware of a specific requirement for these notices to be provided only via regular mail to customers. Many residential customers complete enrollment

¹⁸ See, e.g., Case 25-E-0379 *et al.*, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Electric Service* (current RGE and NYSEG joint electric and gas rate cases seeking residential rate increases ranging from approximately 22-26% per month); see also Case 25-E-0072 *et al.*, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service*, Summary of Joint Proposal (issued November 5, 2025) (explaining in part that residential gas and electric bills will increase between 3.1% and 5.7% per month over a three year period if the Joint Proposal is adopted).

¹⁹ UBP Order at 30.

electronically and receive all required notices – disclosure statements, customer agreements, HEFPA documents, and the like – via electronic mail. While RESA does not object to providing notices and disclosures to customers, RESA is also cognizant of the expressed preferences of its customers, and the UBP Order does not consider customers who have affirmatively expressed a preference to receive electronic correspondence over regular mail. Given the requirements imposed on ESCOs to seek affirmative consent to renew a customer agreement, RESA believes it would be inconsistent for ESCOs to ignore their customers’ affirmative request for electronic service of documents. RESA also notes that the renewal notice must include links to certain websites, and electronic service of the renewal notice allows ESCOs to provide direct website links, easing customer access to important price information.

RESA respectfully requests the Commission reconsider the requirement for customer renewal notices to be transmitted via regular mail, and allow ESCOs to transmit these notices to their customers in their usual course of communication, including via email.

D. The Commission Should Reconsider Language in UBP §5.B.5.d Allowing Customers to Rescind Renewed Agreements After Receipt of the First Billing Statement, and Should Consider Eliminating UBP §5.B.5.f²⁰ As These Requirements Are No Longer Necessary

When a residential customer initially enrolls with an ESCO, the UBP provides the customer with three days from receipt of the executed agreement to rescind the contract without penalty.²¹ When the Commission initially adopted UBP §§5.B.5.d and f, consistent with GBL §349-d prior to the recent amendments, ESCOs were required to allow a customer to cancel enrollment without penalty three days after receipt of the first bill under a renewed agreement (as opposed to three days after receipt of the agreement). At this time, ESCOs were not required to obtain express

²⁰ This reference is to the current UBP effective October 27, 2024. In the amended UBP effective December 31, 2025, this becomes UBP §5.B.5.h.

²¹ UBP §5.B.3.

customer consent “except for changes in rates or for contracts that renew on a monthly basis where the rate methodology is specified.”²² As an additional measure of protection, and as required by GBL §349-d, the Commission instead required ESCOs to send renewal notices to customers at least 30 to 60 days in advance of renewal of the customer agreement, and to allow a customer additional time to rescind the agreement without penalty.²³ With the adoption of clear requirements to obtain express customer consent for all residential and door-to-door customer contract renewals and material changes to contracts, the Commission should reconsider and eliminate these extended rescission periods for renewed contracts, and should also eliminate additional notice requirements that are now superfluous.

To be clear, RESA believes that residential customers in particular should be afforded the opportunity to ensure they are comfortable with their ESCO contract and the three-day rescission period required by UBP §5.B.3 should not be altered. However, since affirmative consent is required for all contract renewals, the three-day rescission period should be tied to receipt of the new contract and not to receipt of the first bill. As it stands, under the amended UBP, a renewal customer (who has provided affirmative consent for renewal) now receives an additional rescission period that can potentially be months in excess of the standard three-day rescission period provided to first-time customers.²⁴ Since the customer is affirmatively consenting to a renewal or material change rather than reacting to a renewal or change made without affirmative consent, the typical three-day rescission period tied to receipt of the customer agreement (and consistent with UBP §5.B.3) should apply to all residential and door-to-door customers contract renewals.

²² 2014 Order at 32-33.

²³ *Id.* at 32; GBL §349-d(6)

²⁴ Renewal notices must be sent between 30 and 60 days before a contract renewal per UBP §5.B.5.d; coupled with the timing of the customer’s utility bill, it is possible that the rescission period for contract renewal could be as long as three months.

Similarly, RESA submits that the language currently found in UBP §5.B.5.f, requiring ESCOs to provide customers renewing a fixed rate agreement to another fixed rate agreement with “an additional notice before the issuance of the first billing statement under the terms of the contract as renewed, but not more than 10 days prior to the date of issuance of that bill,” is another vestigial remnant of the 2014 Order that can be eliminated. This section of the UBP was incorporated explicitly because ESCOs could renew certain customer contracts without express consent.²⁵ As express consent is now required this additional notice is unnecessary and this requirement can be removed from the UBP.

RESA recommends the Commission reconsider the amendments to UBP §5, and revise UBP §5.B.5.d to maintain a consistent three-day right of rescission for all new and renewed residential customer contracts. RESA further recommends that in light of all of the facts and circumstances, the Commission should reconsider the need for current UBP §5.B.5.f and remove this section from the UBP, as it no longer serves its intended purpose.

II. RESA REQUESTS THE COMMISSION CLARIFY WHEN RENEWAL NOTICES ARE REQUIRED AND THE PROPOSED SCOPE OF FUTURE CONTRACT REPORTING REQUIREMENTS

RESA supports the Commission’s efforts to ensure ESCO customers receive clear signals regarding any material change to or renewal of their contracts so they can provide express consent to any such changes. In the interest of ensuring customers are not confused and do receive appropriate signals from their supplier of choice, RESA requests the Commission provide clarification regarding the use of renewal notices in CCA programs. In addition, RESA requests clarification on the requirement for the Department to report the number of customers served on month-to-month contracts, as it applies to all customer classes and is not tied to residential or door-

²⁵ 2014 Order at 32-33.

to-door customers. This information is not required by GBL§349-d, and it is not clear how or when this information will be collected from ESCOs, or how much time ESCOs will have to comply with this new reporting requirement.

A. The Commission Should Clarify the Applicability of UBP §5.B.5 to CCA Programs

The UBP Order advises that “GBL §349-d does not include any carve out or exceptions for CCA programs and thus these consumer protections would apply to all ESCOs serving residential customers or customers marketed to via door-to-door sales, including those that do so as part of a CCA program.”²⁶ While the Commission correctly observes that the GBL does not carve out CCA programs, GBL §349-d is applicable to “any person who is sold or offered an energy services contract by an ESCO.”²⁷ RESA understands that in a CCA program, the ESCO does ultimately serve residential customers, but does not enter into any contract with residential customers. Instead, under a CCA program an ESCO will execute a contract with a municipality in order to serve residents and other customers within the municipality.

RESA requests the Commission provide further clarification on the application of UBP §5.B.5 to CCA programs. RESA further request clarification as to whether ESCOs serving CCA programs must send contract renewal notices in addition to the notices required by the CCA Program Rules, and where these notice(s) should be sent.

B. The Commission Should Provide Clarification Regarding the Department’s Contract Reporting Requirements

RESA also respectfully requests clarification regarding the UBP Order’s requirement for Staff to “collect information on the number of customers served on month-to-month contracts by

²⁶ UBP Order at 18.

²⁷ GBL §349-d(1)(c).

each ESCO.”²⁸ This directive, found in the conclusion of the UBP Order, is intended “to track retail access market changes, including the impact that the changes directed in this Order have on the types of products and services offered in the State . . .”²⁹ However, the UBP Order explicitly rejects proposed changes to the UBP that would have expanded the consumer protection requirements of UBP §5.B.5, applicable only to residential and door-to-door customers, to all customer classes.

Regarding the proposed structural changes to UBP §5, the Commission rejects this change and instead includes this new language as part of the existing list found within UBP §5. As proposed, the structural changes would have expanded the applicability of these consumer protections beyond those residential customers and those marketed to via door-to-door marketing, which are the consumer groups to which GBL §349-d is applicable.³⁰

Since the UBP Order does not change the products or services that ESCOs may offer to customers in the State, and the UBP only impacts residential and door-to-door customers, the UBP Order will have little impact on commercial and industrial product offerings. As there does not appear to be any relationship between the changes required by the UBP Order and the data requested for review, RESA requests clarification on the directive to collect information on the number of customers, regardless of customer class, served on variable rate, month-to-month contracts.

RESA acknowledges that the UBP Order directs the Department to report this information to the Commission by March 1 each year. However, the UBP Order contains no information for an ESCO to gauge when the Department will request this information, the form or scope of the request, or the amount of time ESCOs will be provided to comply. RESA requests that any clarification provided by the Commission include this additional information, or provide additional

²⁸ UBP Order at 30.

²⁹ *Id.*

³⁰ *Id.* at 15.

guidance to the Department regarding the new reporting requirements sufficient to apprise ESCOs of the new reporting obligation.

III. MOTION FOR STAY

RESA includes with its Petition a Motion to Stay enforcement and enactment of the entirety of the UBP Order until sixty (60) days after the Commission issues a determination of this Petition. Importantly, the driving impetus for the proposed amendments to the UBP and updates to the required form of contract renewal are driven by the amendments to GBL §349-d. As explained in this Petition, to date, no form of renewal notice has been proffered by the Department for use by ESCOs that fully complies with GBL §349-d(7) or the amendments proposed to the UBP. At this juncture, RESA believes the Commission is unintentionally requiring ESCOs to use a form of contract renewal notice that does not adequately inform residential and door-to-door customers of their right to provide express consent to a contract renewal, and is not consistent with the requirements of GBL §349-d.

Implementation of the amendments to the UBP without rehearing of the requirement to provide the contract renewal notice vial regular mail, or the now-unnecessary additional notice requirements for certain customers, would create a confusing regime characterized by meaningless volleys of notices to customers. The shared goal of RESA and the Commission is to ensure customers receive appropriate notices with meaningful information in order to inform them of their right to provide express consent to renew their ESCO contract. It would therefore be sensible to stay implementation of the UBP Order until a complete determination is made on RESA's Petition, and to allow an appropriate period of time following this determination to implement any proposed changes.

Further highlighting the need for a stay, the UBP Order requires ESCOs to provide a sample renewal notice in their next annual or triennial update to the Department.³¹ As of this writing, the Triennial Compliance Instructions have not been updated to reflect the requirement to include a sample renewal notice.³² RESA notes that while the Department provided the amended UBP to be effective as of December 31, 2025, this document also does not include a template contract renewal notice.³³ And as previously explained, the current template documents for ESCO use available on the Department's website do not include an updated contract renewal template consistent with the requirements of GBL §349-d(7).³⁴

Unless action is taken to stay implementation, the new UBP is effective in two weeks, leaving ESCOs with little time to ensure they can comply with the Commission's rules in advance of their effective date, and ostensibly requiring ESCOs to choose whether to defy the requirements of GBL §349-d(7) by using the current (or proposed) form of template contract renewal, or defy the UBP Order. In addition, ESCO annual reports are due on January 31 of each year, and even if the Department updates the template renewal notice immediately after this Petition is filed, ESCOs will have less than six weeks to review the template, populate the renewal notice with the appropriate ESCO, utility, and customer information, and provide this renewal notice for review by the Department in annual or triennial reports.

In light of the above considerations, RESA submits a stay of implementation of the UBP Order is warranted. The Commission may order other changes to the template renewal notice, and

³¹ *Id.* at 14.

³² Attached as Exhibit C is a copy of the Triennial Compliance Instructions currently available on the Department's website. See <https://dps.ny.gov/energy-services-company-esco-competitive-market-information> (last accessed December 15, 2025).

³³ See Case 98-M-1343, *In the Matter of Retail Access Business Rules*, ESCO UBP Revised Clean (issued November 24, 2025).

³⁴ See <https://dps.ny.gov/energy-services-company-esco-competitive-market-information> (last accessed December 15, 2025), and see Ex. A.

regardless, ESCOs need clear guidance to ensure they are not in the unfortunate position of implementing a renewal notice required by the Commission that falls short of the obligations imposed by GBL §349-d(7). A stay of implementation of the UBP Order further ensures ESCOs do not spend time creating inadequate renewal notices and that the Department does not waste any time reviewing non-compliant renewal notices during the upcoming annual renewal cycle. RESA respectfully requests that the Commission stay implementation of the UBP Order until 60 days after a determination is made on the foregoing Petition.

IV. CONCLUSION

RESA believes the Commission should rehear and clarify the UBP Order, and a stay of implementation of the UBP Order is warranted while the Commission undertakes this review. RESA's petition is supported both by the explicit requirements of GBL §349-d as well as a complete review of the facts and circumstances underlying the Commission's previous amendments to the UBP. Granting RESA's Petition would provide the Commission with the opportunity to consider all of the relevant facts and law to better refine the UBP and the required form of contract renewal notice. Providing clarification on the limited items RESA seeks to understand will also give ESCOs certainty as to the Commission's future customer notice and reporting requirements.

RESA appreciates the opportunity to submit this Petition in support of the Commission's consumer protection goals, and respectfully requests the Commission stay implementation of the UBP Order until after its Petition is considered.

Respectfully submitted,

/s/

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Dated: December 15, 2025

EXHIBIT A

Date

Customer Name
Address
City, State, Zip

RESIDENTIAL RENEWAL NOTICE

Dear Customer,

This letter is to inform you that your **[Electric/Natural Gas]** agreement(s) with (Company Name) will expire on (date). We hope you will continue to choose (Company Name) for your **[Electric/Natural Gas]** supply needs. Listed below is a summary of your renewal agreement.

Account Number(s):	
Account Name:	
Service Address(es):	
Local Utility Company(s):	
Type(s) of Service:	[Electric/Natural Gas]
Product Type: Fixed/Variable and, if variable, how the price is determined	
Agreement Term:	[Month to Month/Fixed for X Months]
Renewal Price:	
Early Termination Fee:	
Term Start/End Date:	(Start _____) (End _____)

Attached, you will find a copy of the new agreement's Terms and Conditions. Please review the terms and conditions to assure your renewal agreement best suits your current needs.

To compare historic and current prices offered by all ESCOs for standard service without energy-related value-added attributes, please visit the Department of Public Service's Power to Choose website at: <http://www.newyorkpowertochoose.com>.

If you are interested in hearing about other supply plans that we offer, please contact us at 1-XXX-XXX-XXXX. If you choose not to continue your service with us, you may switch to another supplier or return to your local utility company, without an early termination fee, at the expiration of your current agreement by contacting us or your local utility company by **(insert date)**.

(Additional personalized company message, i.e. website link, etc.)

Thank you for allowing us to serve you.

(Name/Company)

EXHIBIT B

Date
 Customer Name
 Address
 City, State, Zip

RESIDENTIAL RENEWAL NOTICE

Dear Customer,

This letter is to inform you that your [Electric/Natural Gas] agreement(s) with (Company Name) will expire on (date). We hope you will continue to choose (Company Name) for your [Electric/Natural Gas] supply needs. Listed below is a summary of your renewal agreement.

Account Number(s):	
Account Name:	
Service Address(es):	
Local Utility Company(s):	
Type(s) of Service:	[Electric/Natural Gas]
Product Type: Fixed/Variable and, if variable, how the price is determined	
Agreement Term:	[Month to Month/Fixed for X Months]
<u>Current Price:</u>	
Renewal Price:	
<u>Distribution Utility Price</u>	
<u>Bill Comparison Information</u>	
Early Termination Fee:	
Term Start/End Date:	(Start) (End)

Attached, you will find a copy of the new agreement’s Terms and Conditions. Please review the terms and conditions to assure your renewal agreement best suits your current needs.

To compare historic and current prices offered by all ESCOs for standard service without energy-related value-added attributes, please visit the Department of Public Service’s Power to Choose website at: <http://www.newyorkpowertochoose.com>.

If you are interested in hearing about other supply plans that we offer, please contact us at 1-XXX-XXX-XXXX. If you choose not to continue your service with us, you may switch to another supplier or return to your local utility company, without an early termination fee, at the expiration of your current agreement by contacting us or your local utility company by (insert date).

(Additional personalized company message, i.e., website link, etc.)

Thank you for allowing us to serve you.

(Name/Company)

EXHIBIT C

TRIENNIAL COMPLIANCE INSTRUCTIONS:

Uniform Business Practices (UBP) Section 2.D.2 requires:

“An ESCO shall update all the information it submitted in its original application package to the Department every three years, starting from the date of its eligibility letter, consistent with the requirements of UBP Section 2.B. An ESCO’s status as an eligible supplier is continuous from the date of the Department eligibility letter, unless revoked or otherwise limited in accordance with UBP Section 2.D.5. If the three year anniversary date falls within one month of January 31, the ESCO shall resubmit its application package in lieu of the January 31 statement.”

Unlike the annual compliance filing, the triennial filing requires you to resubmit your entire application, regardless of whether there have been any updates. Items required in your original application are listed in **ATTACHMENT A** of this document.

FOR BOTH PUBLIC AND TRADE SECRET FILINGS:

ESCOs are directed to e-file this information with the Secretary by the due date listed above in DMM **Matter Number: 14-02554**. Directions on how to e-file with the Secretary can be found on our website:

<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/4BDF59B70BABE01585257687006F3A57?OpenDocument>

Please note: If you are filing with Trade Secret Protection, you are required to submit a trade secret letter addressed to the Records Access Officer, a cover letter addressed to the Secretary, the original document and a redacted document.

For help using DMM please contact the DMM Help Desk at 518-474-3204.

Questions can be sent to Jessica.Phalen@dps.ny.gov

ATTACHMENT A

NEW YORK ESCO TRIENNIAL CHECKLIST

- Completed RAAF (including listing of entities with ownership interests; sanctions; contact info)
- NYS Dept of State Proof of Registration (if DBA: Assumed Name Certificate Required)
- Sales Agreements with Terms and Conditions and Disclosure Statement
- Sample Notices (UBP Section 5)
 - Assignment
 - Discontinuance
 - Transfer
- Sample ESCO Dual Bill (UBP Section 9)
- Procedures to authorize access to customer historical information (UBP Section 4)
- Sample copies of mass marketing promotional materials
- Procedures for prevention of slamming and cramming (UBP Definitions)
- A list of the entities, including contractors and sub contractors, that will market to customers on behalf of your ESCO.
- Trade Secret request (if applicable)
- Quality Assurance Program (must contain)
 - Description of training program (Note whether In-person or Telephonic)
 - Independent Third party verification script (TPV) (UBP Section 5, Attach. 1-3)
 - Code of Conduct
 - Marketing representative identification badge
 - Monitoring program and quality assurance procedures
 - Internal dispute resolution process
- OCS Service Provider Contact Form
- HEFPA Documents (Residential Only)
 - Residential Payment Agreement
 - Asset Evaluation
 - Budget Billing Plan

- Quarterly Billing
- Past Due Reminder
- Notification to Social Services of Customers Inability to Pay
- Final Termination Notice
- Final Suspension Notice
- Attestation to comply with the Environmental Disclosure Program (Electric Only)
- Complaint data from each state in which your company has served within the last 24 months. If your company operates under multiple trade names, you must identify each name used separately and the state in which it was used
- List and describe any security/data breaches associated with customer proprietary information that occurred in any jurisdiction in which it operates, under any trade name, within the 24 months prior to the application, and actions taken by the applicant in response to the incident. ESCOs also shall provide specific policies and procedures addressing how they intend to secure customer data
- Disclose any history of bankruptcy, dissolution, merger, or acquisition activities during the 24 months prior to this application for each trade name used as well as affiliates of the ESCO, including upstream owners and subsidiaries
- Provide an officer certification, in which a high-level officer affirms that the ESCO is willing and able to comply with all applicable laws and regulations