



May 28, 2024

The Honorable Michelle Phillips
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350
Via DMM Filing

RE: Cases 23-M-0106, 15-M-0180 and 98-M-1343 – Request for Extension of Family Energy, Inc.

Dear Secretary Phillips,

Family Energy, Inc.¹ [hereinafter “Family Energy”] hereby respectfully submits this filing to Request an Extension for compliance with Ordering Paragraphs 3, 6, 7 and 9 set forth in the Declaratory Ruling and Order on Rehearing, issued April 18, 2024 [hereinafter “Order”], in the above-referenced proceeding. As per Ordering Paragraph 11, a request for extension must be submitted at least three days prior to the affected deadline, which in the instant case is June 17, 2024. Therefore, this request is timely filed. Family Energy respectfully requests an extension of ninety (90) days for compliance with the Order.

The Order sets forth the Commission’s interpretation of Public Service Law (PSL) § 66-t. PSL § 66-t requires “energy brokers” and “energy consultants” to register with the Public Service Commission, sets forth compensation disclosure requirements, and prohibits the payment of rebates by brokers and consultants as an inducement for, or as compensation for any supply business. The Order adopts new and revised Sections of the Uniform Business Practices (UBP) to implement the law to become effective on June 17, 2024. Energy brokers and energy consultants (“brokers and consultants”), as defined, must develop and implement practices in compliance with the UBP and submit a registration package, including payment of a registration fee and demonstration of financial accountability in the form of a letter of credit, to the Commission by June 17, 2024. ESCOs must update their sales agreements to include required disclosures of energy broker or energy consultant compensation by June 17, 2024, as well.

Since the Order was issued, Family Energy has been working to update its sales agreements to include the required compensation disclosure. This is not a simple matter of generically adding a few lines of text to the Customer Disclosure Statement. The disclosure must be customized to

¹ Family Energy, Inc. is a Business Corporation, incorporated in New York, and authorized by the Commission to serve electric and natural gas customers as an Energy Service Company.

the sales method as well as the brokers and consultants sales activities. Once that is completed, the revised documentation must be disseminated to all of Family Energy's brokers and consultants for use, and they too will require time to update their various sales platforms.

Concurrent with the update of the sales agreements, Family Energy must coordinate with brokers and consultants to ensure that they understand their new compliance responsibilities under UBP Section 11 and that the shared compliance responsibilities under UBP Section 5 are appropriately managed and performed. Training for marketing representatives regarding the new and revised UBP requirements must also be developed and administered.

Only brokers and consultants that submit a registration package by June 17, 2024, may continue to operate while Staff reviews the registration packages. If an energy broker or consultant has timely submitted the initial registration package, an ESCO can continue to do business with the broker or consultant while Staff completes its review. An ESCO cannot do business with a broker or consultant that submits an initial registration package after June 17th until that entity's registration is approved. Family Energy must also develop internal processes and checks to monitor and ensure that it only continues to do business with energy brokers and consultants that meet the registration requirement.

The registration package is a significant undertaking for the brokers and consultants, many of whom are small businesses, that will be required to register. Registrants must assemble the documentation, pay a \$500 registration fee and obtain a \$50,000 (consultant) or \$100,000 (broker) letter of credit to submit to the Commission. The process for obtaining a letter of credit is also time-consuming, burdensome and expensive to complete (although the cost and complexity of obtaining a letter of credit may prove prohibitive for many small entities to obtain at all).

In addition, Family Energy filed a Petition for Rehearing, Reconsideration and/or Clarification of the Order on May 17, 2024, and is incorporated by reference herein. In the Petition, Family Energy requested rehearing, reconsideration and/or clarification with respect to the following:

- 1) The 2024 Order and associated UBP provisions are not appropriately tailored to the operation and function of energy brokers and energy consultants in the retail energy marketplace. By applying the existing rules that govern ESCOs to brokers and consultants in a one-size-fits-all manner, the Commission has engaged in impermissible regulatory overreach.
- 2) The 2024 Order's direction to Staff in Ordering Paragraph 10 to identify modifications to the UBP by August 16, 2024, is explicit recognition that new Section 11 should not and cannot be applied to energy brokers and energy consultants as currently written.
- 3) The requirement of the 2024 Order for energy brokers, energy consultants and ESCOs to come into compliance with the new UBP provisions as of June 17, 2024, when the Commission expressly stated the intention for Staff to review those same provisions sixty days later for the purpose of future modification is untenable, unworkable and unfair. Requiring entities to expend the resources, time and money to come into compliance with short-lived rules is wasteful, irrational and unreasonable.

- 4) The process for Staff's review of the UBP should include the inquiry into and consideration of industry solutions as to how to ensure the regulations are right-sized to simultaneously: accomplish the goals of consumer protection and oversight; appropriately reflect the size and scale of the business models and operations of brokers and consultants, many of whom are small businesses; and enhance competition in the marketplace, rather than be so onerous as to eliminate competition.
- 5) The 2024 Order relied upon contradictory logic to justify the registration requirement for independent contractors and agents of energy brokers and energy consultants. This error warrants reversal by the Commission.
- 6) The 2024 Order failed to consider industry input regarding the preferability of surety bonds to satisfy the financial accountability requirement. The UBP should be modified to permit the submission of a surety bond or a letter of credit.

An extension is warranted here in order to provide time for the Commission to consider the Petition and in order to avoid the administrative burden of complying with an Order that the Commission may determine requires further revision. An extension is also warranted because of the Commission's direction to Staff in Ordering Paragraph 10 of the Order to review the UBP and identify modifications by August 16th. Industry participants should not be required to expend resources to develop compliant practices with a UBP that is expected to change again in short order.²

The broker and consultant registration requirements and the UBP behavioral requirements become effective on June 17th, which is 60 days after the Order was issued. By comparison, we would note that after the Commission adopted the Retail Access Energy Market rule changes it provided a 150-day period for ESCOs to develop and implement compliant practices.³ The Order in the instant case is imposing a registration process on brokers and consultants for the first time and applying marketing standards and dispute resolution standards to the newly registered entities. ESCOs must ensure that the brokers and consultants that they do business with are prepared to satisfy those standards, and ESCOs must develop their own contractual documentation and internal processes to become compliant as well. Accordingly, a commensurate period of at least 150 days for entities to become compliant with the Order is warranted and would justify an extension of 90 days.

² Case 98-M-1343, *In the Matter of Retail Access Business Rules*, Notice Extending Deadlines, issued February 16, 2018 (granting extension request to accommodate the requests for clarification and the requests for additional time to comply with the UBP revisions); Case 15-M-0127, *In the Matter of Eligibility Criteria for Energy Service Companies*, Notice Granting Extension Requests, issued April 7, 2020 (granting extension request for compliance with Commission Order during the pendency of outstanding petitions for rehearing pertaining to that Order).

³ Case 15-M-0127 et. al., Order on Rehearing, Reconsideration, and Providing Clarification, effective September 18, 2020, at Ordering Paragraphs, 3, 4, 5, and 6. In that proceeding, the Commission provided 150 days from the effective date of the Order for ESCOs to become compliant with the revised UBP and required ESCOs that intended to enroll or renew customers under the new rules to file a revised application within 60 days of effective date of the Order. A bifurcation of compliance dates for the broker and consultant registration requirement versus the UBP behavioral requirements may also be warranted in the instant matter. To be clear, an extension of both aspects is requested and necessary, but the duration of extensions may differ.

Under all of these circumstances, Family Energy submits that an extension of the compliance date for Ordering Paragraphs 3, 6, 7 and 9 of the Order by ninety (90) days is justified and reasonable.

Thank you for your consideration of this request.

Respectfully submitted,

s/Stacey Rantala

Stacey Rantala

Associate Director, Government & Regulatory Affairs

Family Energy

P.O. Box 967

Buffalo, NY 14240-0967

PH: 646-720-1038

srantala@sfeenergy.com