

VIA OVERNIGHT DELIVERY

December 14, 2006

Hon. Jaclyn A. Brillig,  
Secretary  
State of New York  
Public Service Commission  
Three Empire Plaza, 19th Floor  
Albany, NY 12223-1350

Re: Case 98-M-0667 – In the Matter of Electronic Data Exchange (98M0667 SA57)  
Case 98-M-1343 – In the Matter of Retail Access Business Rules (98M1343 SA14)

**Reply Comments of Liberty Power in Response to Proposed ESCO Contest Period**

Dear Secretary Brillig,  
Please find attached the reply comments of Liberty Power in response to the above referenced petition from U.S. Energy Savings Corp. Hard copies will be sent via overnight mail.

Please contact the undersigned with any questions in regard to these comments.

Respectfully submitted,

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Liberty Power (“Liberty”) hereby submits reply comments in response to U.S. Energy Savings Corp’s (“Energy Savings”) August 17, 2006 petition to create a contest period through changes to New York State’s Uniform Business Practices and the Electronic Date Interchange. Energy Savings proposed the contest period to reduce slamming and customer burden. Liberty is a licensed energy services company (ESCO) eligible to serve load in New York.

Liberty support policies to combat slamming which harms customers and market integrity. It welcomes changes that would boost the efficiency in the de-enrollment process but has several concerns with Energy Savings' proposal.

Energy Savings’ proposal may close some doors to slamming while opening new ones.

#### Additional Customer Burden

Liberty worries Energy Savings’ proposal places new burdens and obligations on customers to prevent slamming and remain with their legitimate provider.

Liberty currently uses the re-enrollment process to prevent illegitimate and unauthorized switches and finds that it meets our customers’ needs.

The new contest period by imposing a new, additional third-party verification (TPV) to stop illegitimate switches would burden customers who simply wish to remain with their legitimately chosen provider.

Customers during the contest period contacted by the incumbent ESCO could be too busy to complete the new TPV, preventing the incumbent from rightfully stopping an illegitimate switch.

The intent of the contest period is to reduce the burden on customers who have been slammed but actually adds to customers’ burden through another time-consuming verification process.

#### Slamming through Silence

Energy Savings’ proposal also opens the door for slamming simply where customers aren’t reachable.

Customers who can’t be reached by the incumbent ESCO would be switched after the contest period ends since the incumbent ESCO would be unable to get a new TPV.

ESCOs now have the opportunity to prevent such potentially illegitimate switches when customers aren’t reachable by using the re-enrollment/reinstatement process and original contracts and TPVs to prevent illegitimate switches.

Favoring the pending ESCO when there is customer silence would harm Liberty’s contractual relationships.

Liberty contractually requires customers to submit written notice that if they wish to terminate their contract. The measure shields customers from unauthorized switches and ensures customers understand their obligations upon terminating the contract. Liberty does not want to prevent customers from picking the supplier they want but simply wishes to preserve the mutual rights and responsibilities of its contracts.

The proposed contest period seems to override customers’ contractual obligations and would let customers leave Liberty even without submitting written notification.

Liberty simply wishes that customers to fulfill that contractual obligation. Modifying Energy Savings' proposal to allow Liberty's contractual right to written notification of a switch would remove all doubt about a customer's intentions and dispense of disputes over which customer authorization the utility should accept.

#### Collaborative Approach

Liberty agrees with Constellation NewEnergy's concerns about the relatively short time-periods proposed – specifically in notifying customers<sup>1</sup>. Liberty favors Constellation's proposal for a collaborative process to examine the contest period as well as other possible solutions that would reduce slamming<sup>2</sup>.

Respectfully submitted,

/s/ Nelson Reyneri

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<sup>1</sup> Constellation NewEnergy comments, p. 3

<sup>2</sup> Ibid.