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Honor Kennedy
NYS Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Strawman Proposals

Dear Honor:

The Small Customer Marketer Coalition (“SCMC”) submits these informal comments in response to the proposed Strawman developed by Staff dealing with licensing and definitions for ESCO marketing representatives and energy brokers and other issues.

The effort spearheaded by Staff to help improve the workings of the retail market and ensure application of good practices in the marketing of retail energy products, are laudable goals that will improve the integrity of the retail energy market.

The comments presented herein are aimed at supporting the Staff efforts

The comments previously submitted herein by other parties provide a useful exposition of the complexities and issues associated with application of certification for brokers and developing useful definitions of the term ESCO Marketing Representative and Broker. It is in our view useful to underscore the following additional concerns.

In developing a useful and functional definition of an ESCO Marketing Representative it is vital that such status incorporate a person or entity with a defined relationship with the ESCO involving the undertaking of direct marketing activities on behalf of the ESCO which are designed to induce customers to enroll with the ESCO. The liability of the ESCO should only extend to those entities that have a clearly defined relationship with the ESCO and where the entity is marketing specifically on behalf of the ESCO. This direct nexus is vitally important because only in this manner can the ESCO have the ability to train and monitor the activities of the representative.

The classification of a Broker at a minimum would include an entity or aggregator that negotiates or facilitates the sale of commodity without taking title to the product. These criteria would tend to cover various market players that attempt to match customers with an ESCO and arrange a sale. The definition should be broad enough to cover all entities who are engaged in this effort of direct marketing with the customer which is aimed at securing an agreement between an ESCO and a

customer. However, the status of Broker must be carefully delineated (either by definitions or through enumeration of exemptions) not to cast in its net entities that more properly are deemed an ESCO marketing representative or for example, only act as a consultant or an advisor to an ESCO.

The complexities inherent in developing definitions that carefully balances these considerations and the plethora of varying entities active in the retail market, underscores the benefits of instituting a working group to further develop the appropriate definitions and potential exemptions, and it is recommended that such a working group be established.

The imposition of Broker certification as proposed in the Strawman also needs to balance several important concerns. First, it should provide the requisite capability to identify market players and help assess responsibility for marketing behavior. Second, it should not attempt to be overly burdensome but instead needs to focus on ensuring that retail market behavior can be properly monitored and good behavior is encouraged and enforced.

In connection with the modification of the UBP to incorporate electronic social media sites, it is important that ESCOs have the ability to maximize the potential associated with the proliferation of electronic portals that produce much customer traffic, subject to meeting the various consumer protections codified in the UBP and other

laws. Therefore, electronic enrollments should be allowed in various sites other than an ESCO's official web site where the ESCO ensures that all of the procedures governing an electronic enrollment are fully implemented. This matter warrants further discussion as it represents an ever changing material part of the ESCO marketing environment.

SCMC appreciates the opportunity to submit these comments and aid the Commission in its deliberations. We look forward to discussing these issues at the August 9, 2012 meeting.

Thank you for your assistance in this matter.

Respectfully submitted,

Small Customer Marketer Coalition

By: Usher Fogel
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