

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**Case 98-M-1343 – In the Matter of Retail Access Business Rules.**

**Case 07-M-1514 – Petition of the New York State Consumer Protection Board and the New York City Department of Consumer Affairs Regarding the Marketing Practices of Energy Service Companies.**

**Case 08-G-0078 – Ordinary Tariff Filing of National Fuel Gas Distribution Corporation to establish a set of commercially reasonable standards for door-to-door sales of natural gas by ESCOs.**

**REPLY COMMENTS OF CONSOLIDATED EDISON SOLUTIONS, INC.**

**I. INTRODUCTION AND PRELIMINARY STATEMENT**

These reply comments are submitted on behalf of Consolidated Edison Solutions, Inc. (“CES”) in response to the initial comments submitted by Reliant Energy Solutions Northeast, LLC (“Reliant”) in these proceedings on April 18, 2008. Reliant’s initial comments suggest that the Uniform Business Practices (“UBP”) needs to be modified to include a uniform state-wide code of conduct that would govern the relationship between utilities and their affiliated marketing companies. Furthermore, Reliant proposes that elements of the UBP be applied on a discriminatory basis such they only apply to utility affiliates. For the following reasons, CES recommends that Reliant’s proposal be rejected by the Commission.

**II. THERE IS NO NEED TO MODIFY THE CURRENT AFFILIATE RULES**

As justification for recommending that the UBP be updated to include a state-wide set of affiliate rules, Reliant indicates that “current utility–affiliate rules are difficult to find” and they “should be strengthened and applied uniformly to enhance competitive opportunities for all consumers.” CES agrees that the existing affiliate rules may be hard to locate and would

encourage the Commission and/or the utilities to post the affiliate rules electronically. However, the fact that Reliant could not readily find the Commission-approved affiliate rules for each utility does not mean those rules are lacking or need to be revised. The Commission-approved affiliate rules were systematically developed and implemented, typically as part of each utility's rate case negotiations, and impose stringent criteria to ensure that all ESCOs (both affiliated and non-affiliated) are treated fairly and equally.

### **III. ANY COMMISSION REVIEW OF AFFILIATE RULES SHOULD BE CONSIDER OTHER COMMISSION PRACTICES**

Although Reliant has not identified any shortcoming in the existing affiliate rules and CES is not aware of any, if the Commission were to conduct a review of affiliate rules, an appropriate starting point would be to review other state-commission approved rules in the region. In particular, CES believes that market power concerns may warrant a review of marketers that own generation which can be sold into the New York market. For example, the New Jersey Board of Public Utilities imposed a market share limitation on a specific supplier to ensure that its generation positions did not distort or adversely impact the competitive electric markets. As the Federal Energy Regulatory Commission has recognized, these market power concerns could arise both from generation within New York and also from generation located in adjacent regions if it can be sold into the New York Market. Therefore, CES would recommend that any review of affiliate rules also consider rules for all ESCOs that either own or have affiliates that own generating assets located in, or whose output can be sold into, New York.

### **IV. ALL RULES MUST BE APPLIED ON A COMPARABLE AND NON-DISCRIMINATORY BASIS**

In its concluding comments, Reliant apparently requests that the Commission implement the Agreement and Authorization Requirements of Section 5.A 6 in Attachment 1 in a discriminatory fashion and only to affiliated ESCOs. This would undermine the effectiveness of the proposed UBPs:

Reliant also suggests that the proposed Agreement Requirement regarding the customer's statement that he or she acknowledges that the agreement for services is with an ESCO and not the utility should be applied to all three types of Agreements *and only to utility affiliates*. [emphasis added]

This is clearly discriminatory and would undermine the intent of the UBPs, which is to correct allegations of deceptive marketing practices. Since those allegations have been focused on ESCOs that are not affiliated with utilities, Reliant's proposal would eviscerate the value of the proposed UBPs and, while encumbering utility affiliates with an additional requirement, permit non-affiliated ESCOs to continue to use questionable practices.

## V. CONCLUSION

For the reasons stated above, the Commission should reject Reliant's request to implement a new state-wide set of affiliate rules within the UBP and should also reject Reliant's request that elements of the UBPs be applied on a discriminatory basis only to affiliated ESCOs.

Respectfully Submitted,

*/s/ Stephen B. Wemple*  
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Consolidated Edison Competitive Shared Services  
for Consolidated Edison Solutions, Inc.

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