

Michael L. Mosher, P.E.
Vice President - Regulatory Affairs



Via UPS Overnight

May 28, 2008

Hon. Jaclyn Brilling, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: **Case 98-M-1343** - In the Matter of Retail Access Business Rules

Case 07-M-1514 - Petition of New York 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 ESCO's

Dear Secretary Brilling:

Enclosed please find an original and five copies of the Reply Comments by Central Hudson Gas & Electric Corporation in the above captioned proceedings. Electronic copies are also being served on the active parties to each proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. L. Mosher", with a long, sweeping underline that extends to the right.

Michael L. Mosher

Encl.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

-----X	
In the Matter of Retail Access Business Rules	: Case 98-M-1343
-----X	
Petition of New York Consumer Protection Board and the	:
New York City Department of Consumer Affairs Regarding	: Case 07-M-1514
the Marketing Practices of Energy Service Companies	:
-----X	
Ordinary Tariff Filing of National Fuel Gas Distribution	:
Corporation to establish a set of commercially reasonable	: Case 08-G-0078
standards for door-to-door sales of natural gas by ESCO's	:
-----X	

**REPLY COMMENTS OF CENTRAL HUDSON GAS & ELECTRIC CORP.
REGARDING
PROPOSED REVISIONS TO THE UNIFORM BUSINESS PRACTICES (UBP)**

Central Hudson restates its support for the proposed revisions to the UBP, subject to the matters noted in its Initial Comments, and comments here on positions presented by several parties in their Initial Comments.

Slamming and Improper Termination

Two parties, Gateway Energy Services ("Gateway") and the Small Customer Marketer Coalition ("SCMC) propose in their comments a modification to the UBP definition of "Slamming" to include drops initiated by utility actions. This proposal seems designed to support another of their proposals, that they have termed "improper" termination by utilities. Central Hudson strongly opposes both of these proposals.

The closing of a customer account by the utility in response to changes in the ownership or responsibility for the account is not a tactic for utilities to return customers to utility service, but a necessary and valid business activity. Except in the case of a marriage or a deceased spouse¹, virtually every name change on an account is the result of a substantial change in the identity of the responsible party. It may be the result of a divorce, business dissolution, change in partners (business or domestic), or transfer to another family member. Whatever the cause, the usual result is that a different person (including a business entity) assumes responsibility for the account. In these cases, utilities generally close the original account, and open a new account, with a different account number, in the name of the new owner. This action properly establishes responsibility for both past and future charges. Existing account features, such as budget (level) billing, e-bills, special designations such as disabled codes and other customer preference items are terminated, as these are not choices made by the new account owner. The choice to purchase supply from an ESCO should likewise be selected by the new account owner. Indeed, ESCOs would not have a valid agreement with an account owner following a name and account number change, since the owner of record with whom the ESCO originally reached agreement is no longer the account owner. The Gateway and SCMC proposals to alter the definition of slamming and to direct utilities to carry over ESCO service when an account number is changed should be rejected.

¹ Central Hudson will generally, with proper proof of identity, allow a resident account owner who wishes to record a change in name as a result of marriage, to retain the original account number. Also on occasion, as a courtesy to a surviving spouse, Central Hudson will allow the customer to change the name on an account, without changing the account number. Other utilities may have different practices.

Conference Calls

Gateway recommends that the UBP should include language allowing conference calls between the three parties; the customer, the ESCO and the utility, for handling customer inquiries. Central Hudson agrees that such calls should be allowed, but notes that utilities should not be compelled to participate in such conference calls. Often, customers call their distribution utility because, for a variety of reasons, they do not wish to deal with their ESCO. In addition, conference calls place a burden on utility call centers as they tend to be more complex, and require much more time to resolve.

Customer of Record

Several commenting parties have recommended that any “authorized person” should be permitted to approve a switch. This sounds reasonable in theory, but will be difficult to apply in practice. Central Hudson’s customer information system allows for non-account owners to be designated as persons who are authorized to transact business on an account. But this designation is only accepted from the customer of record. Until that approval by the customer of record is granted, a person claiming to have such authority will be denied any right to transact business. It is unclear how an ESCO will confirm that an individual claiming to have such authority does possess the authority of the account owner. Further, if an ESCO accepts a non-owner’s assurance of their right to authorize a switch, and the account owner later denies that authority existed, the ESCO should have no rights to enforce any agreements entered into by the non-owner. The most appropriate solution to this dilemma is to determine that only the customer of record can enroll an account.

Switching Fees

Public Utility Law Project (PULP) proposes (at 6) the imposition of a “cost-based” fee to customers switching to ESCOs. This would not be practical. Most customer enrollments are transacted with little or no involvement by utility personnel when the ESCO submits the required EDI transaction. When a problem does occur, the utility (and the ESCO) may invest a great deal of time in resolving it. It would be difficult or impossible to allocate switching fees on an equitable basis, and it would be unfair to impose a fee on the customer whose transaction requires no intervention. Such an arrangement would be similar to charging a fee to the customer who calls periodically with questions about his bill, while the customer who never calls with such questions would avoid the fee. An arrangement like this would certainly be cost-based, but would be virtually impossible to forecast, and would undoubtedly be a source of customer dissatisfaction.

Switching Period

PULP (at 10) proposes that once a customer notifies the utility or the ESCO of their intention to switch, that the switch take place within five days of the request. Such a practice would place an extreme hardship on utilities as the utilities would be required to read the meters of such customers off-cycle and on short notice. It would also deprive the ESCO of the opportunity currently afforded by the 15-day minimum switching period, to “win back” the customer by resolving the customer’s concern, or making an improved offer.

ESCO Consolidated Billing

Intelligent Energy (at 15) proposes that all utilities should be required to allow ESCO consolidated billing. Central Hudson opposes such a requirement. The certain problems that would be encountered when dealing with perhaps 30 or 40 different billing entities would be extremely burdensome to utilities and potentially very confusing for customers. In the event that the Commission chooses to impose such a requirement, a collaborative should be convened to determine the appropriate financial security, disbursement rules, and other important features of the program. Central Hudson would also propose that billing service fees under ESCO consolidated billing be subject to Commission review and approval.

Return to Full Utility Service

SCMC (at 22) proposes that the UBP be modified to require that a customer contact the ESCO before the utility may affect a return to full service. This would be an impractical requirement and would unnecessarily inconvenience customers. Under this requirement, a customer who first contacts the utility (as do most customers) would be required to make three contacts in order to end their ESCO service. In addition, the utility would have no way of assuring that a customer has or has not contacted the ESCO first. Also, some customers who wish to terminate their ESCO arrangement are doing so because of some dispute with the ESCO, and will not wish to have contact with the ESCO. The current practice, which includes notice to the ESCO by the utility, the utility reminder to the customer to advise their ESCO of their intended switch, and the 15-day

switching rule, provide ESCOs ample opportunity to contact their customer to advise them of any contract requirements.

Creditworthiness

Consolidated Edison (Con Ed) proposes a revision of the language in UBP Section 3.B.1.b. that would require an ESCO to satisfy the existing creditworthiness requirements with respect to their customers served outside of a consolidated billing arrangement. Central Hudson does not believe it was ever the intention of the drafters of the UBP to excuse ESCOs from their security obligations for their dual billed customers. Con Ed's proposed change should be adopted.

Applicability to Non-Residential Customers

Several parties have commented that the protections contemplated by the proposed UBP revisions should apply only to residential customers. The logic relied upon in support of this position is that commercial customers are better able to understand and evaluate deals that are offered to them, and therefore have less need for formal protections. While this might be true when it comes to prices and contract terms, a non-residential customer is no more able to protect against false statements or a subsequent failure to deliver promised savings than is a residential customer. And while a commercial customer may be more likely to take advantage of legal remedies, there is no reason they should be obligated to resort to such actions. SCMC states (at 26), with respect to the proposal that the Commission may require the ESCO to provide reimbursements for savings that did not materialize, that "...it is unnecessary in the case

of the far more sophisticated commercial customers.”. Central Hudson disagrees. If a representation of savings is made, but is not delivered, the sophistication of the buyer in the initial sales contact will have made no difference. These proposed UBP revisions are designed to assure fair and honest marketing practices, and to provide remedies to Staff and the Commission. Central Hudson believes that their supposed higher level of business sophistication should not deprive non-residential customers of the same rights to fairness and honesty, and when required, intervention by their regulators to remedy an offense.