

May 23, 2008

Jaclyn A. Brillling - Secretary  
Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223-1350

To Secretary Brillling;

Enclosed are an original and five copies of reply comments on behalf of Gateway Energy Services Corporation with regard to the following case numbers: 98-M-1343, 07-M-1514 and 08-G-0078. An electronic copy has also been e-mailed to [secretary@dps.state.ny.us](mailto:secretary@dps.state.ny.us). If you have any questions please contact me at [aschorr@gesc.com](mailto:aschorr@gesc.com) or (845) 503-5360. Once again Gateway Energy appreciates the opportunity to comment in these cases.

Sincerely,



Angela Schorr  
V.P. of Regulatory Affairs and Quality Assurance

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

<b>In the Matter of Retail Access Business Rules</b>	)	<b>Case 98-M-1343</b>
<b>Petition of New York State Consumer Protection Board and the New York City Department of Consumer Affairs Regarding the Marketing Practices of Energy Service Companies</b>	)	<b>Case 07-M-1514</b>
<b>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</b>	)	<b>Case 08-G-0078</b>

**REPLY COMMENTS OF GATEWAY ENERGY SERVICES CORPORATION**

**I. INTRODUCTION**

Gateway Energy Services Corporation (“Gateway Energy”)<sup>1</sup> hereby submits comments in reply to the Initial Comments received for the Notice Soliciting Comments on Revisions to the Uniform Business Practices, issued on March 19, 2008 in the above-referenced proceedings.<sup>2</sup> Once again, Gateway Energy appreciates the opportunity to provide comments and commends Staff on its efforts to improve the retail program.

**II. SCHUMER BOX**

The New York State Consumer Protection Board (“CPB”) recommended that a “Schumer Box” be utilized as part of the customer’s agreement. In its Initial comments filed on April

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<sup>1</sup> Gateway Energy, based in Rockland County, N.Y., is a leading energy supplier providing electric and natural gas to residential and commercial customers in New York, New Jersey, Texas, Ohio, Maryland, Virginia and Washington, D.C. A privately held company supplying energy since 1997, Gateway Energy (formerly Econnergy Energy Company) provides competitive pricing plans to consumers resulting in more control over energy costs.

<sup>2</sup> 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, and 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

18, 2008, the CPB encouraged Staff to make changes to the UBP, which would include the required use of a “Schumer Box”. This box, which would be displayed on the first page of a customer’s agreement, is a useful tool that would assist customers in fully understanding the offer being presented. The “Schumer Box” would contain the rates, fees and terms of service that the customer is being offered.

Gateway Energy fully supports the use of a “Schumer Box”, contingent upon the removal of any early termination fee restrictions. Gateway Energy strongly believes that the “Schumer Box” would clearly spell out all of the offer terms in a clear and concise manner, right on the front page of the agreement. This would negate the need to offer a grace period as was recommended in the proposed revisions of the UBP. Additionally, early termination fee amounts would not need to be capped or limited in anyway since they would be stated up front and clearly in the “Schumer Box”.

### **III. SIGNING OR INITIALING CERTAIN STATEMENTS ON THE CUSTOMER’S AGREEMENT**

The CPB and the Office of the Attorney General of the State of New York (“Attorney General’s Office”) both recommended that customers should have to affirmatively indicate acceptance of certain statements by initialing or signing certain statements in the customer’s agreement. Gateway Energy opposes this. Customer’s signature on the bottom of the Agreement clearly indicates the customer’s intention to sign up for the deal. Requiring several sets of initials and signatures creates practical problems. How does an agreement that is signed in 3 different places, but is missing one set of initials, get treated? Does this get rejected because the customer didn’t initial one statement? The ESCO would then have to go back to the customer to seek out more initials. The customer’s signature at the bottom

of the Agreement is binding from a contractual standpoint and should be enough to satisfy the UBP requirements.

Additionally, if the “Schumer Box” plan is adopted, there should be no need for the customer to initial and sign in several places since all of the information will be clear and concise, up front in a standardized format. The “Schumer Box” would increase the customer’s understanding and awareness.

#### **IV. ESCO REFERRAL PROGRAMS**

The CPB opposed the use of random assignments under the ESCO Referral Programs and recommended that instead, if a customer could not affirmatively choose which ESCO they wanted, the customer’s information could be sent to all of the ESCOs in the program so that each ESCO could individually contact the customer with an offer. Gateway Energy opposes the elimination of random assignments under the ESCO Referral Programs. Customers should not be denied the savings guaranteed as part of these programs. If the customers are not randomly assigned at the time of contact, they most likely will not participate in the program. The customer may forget they asked for information, get confused by the different ESCO offers that are being provided, or ultimately choose to do nothing. Participation in the program offers customers a set discount for the introductory period, followed by the ESCOs specific rate, which would continue on a month-to-month basis. Customer can cancel at any time without penalty and therefore is not harmed in any way by this program.

Gateway Energy supports the Retail Energy Supply Association (“RESA”) on the topic of participation in ESCO Referral Programs by customers requesting new utility service. New utility customers should not be prohibited from participating in these types of programs and

should be allowed to receive their discount in the introductory period. When the distribution utility communicates with the customer regarding new service, they should ask the customer if they are interested in participating in the program, thus providing the customer with the opportunity to receive the benefits of purchasing energy from an ESCO. Customers applying for new service should not be treated differently than existing customers under the parameters of these programs.

#### **V. CUSTOMER CANCELLATION**

Consolidated Edison Company of New York, Inc. (“Con Edison”) and Orange and Rockland Utilities, Inc. (“O&R”) suggested that the customer cancellation process be changed. Both companies recommended that a customer should contact either the distribution utility or the ESCO to switch back to distribution utility service. If the customer contacted the distribution utility, the distribution utility would recommend that they should also contact the ESCO, however, it would not be mandatory. Gateway Energy strongly opposes this change. It is important that the customer contact the ESCO to determine if they will be subject to any early termination fee as well as to inform the ESCO of the cause of the cancellation. Gateway Energy takes pride in customer satisfaction and is always interested in rectifying any situation in which a customer is not fully satisfied. In light of the recent focus on termination fees in this rulemaking process, we also believe it is important for the ESCO and customer to have a clear communication and explanation of any applicable termination fees at the time the customer cancels its ESCO service.

#### **VI. ESCO’S UTILIZATION OF CUSTOMER’S INITIAL AUTHORIZATION TO RE-ENROLL THE ACCOUNT**

Con Edison, O&R, New York State Electric & Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RGE”) discussed situations that were occurring in which customers cancel with the ESCO, and then the ESCO re-enrolls the customer using the customer’s initial authorization. Gateway Energy was confused by these situations and would like clarification. If Con Edison, O&R, NYSEG and RGE are identifying a situation in which a customer clearly does not wish to continue on with the ESCO – they have cancelled with the ESCO and the switch back to utility distribution service or to another ESCO has occurred; Gateway Energy agrees with the Companies’ comments.

If, however, these companies are referring to other situations that may occur in which a customer initially wishes to cancel and subsequently changes his/her mind, then Gateway Energy does not agree. Sometimes, after speaking with a customer, the ESCO resolves a customer concern and the customer chooses to retain its ESCO service. The ESCO memorializes the customer’s intention not to change providers (thereby wishing to remain the ESCO’s customer) via recorded phone line or in writing. In these cases it is fully appropriate for the ESCO to stop the cancellation and enable the account to be re-enrolled.

## **VII. RELEASE OF NON-SENSITIVE CUSTOMER INFORMATION AND REVITALIZATION OF THE EDMP**

Gateway Energy encourages the release of basic non-sensitive utility information to ESCOs as suggested in the comments filed by New York State Energy Marketers Coalition. This type of information would allow ESCOs to do targeted direct mail pieces to customers in specific utility territories. This would also be helpful to customers in that it would enable them to receive more tailored offers (instead of blanket direct mail pieces that are sent to everyone) that are targeted to their utility and the commodity they utilize.

Gateway Energy also supports the comments filed by RESA, which called for the revitalization of the ESCO Direct Marketing Program. This program would enable the use of a third party mail house. The utility would provide customer specific information to the mail house, but not to the ESCO. ESCOs wishing to contact customers in a particular territory would send their desired mail piece to the third party mail house. The third party mail house would then send the mailing to the appropriate customers (at the expense of the ESCO). ESCOs would be able to get their offers out to customers while the customers' personal information was kept confidential.

#### **VIII. UTILITIES SOLICITING CUSTOMERS FOR DEFAULT SUPPLY SERVICE**

Gateway Energy strongly agrees with the comments filed by RESA relating to utility companies soliciting customers to switch back to default supply service when fielding a customer inquiry. Gateway Energy hears anecdotal reports from some of our customers that the utility has encouraged the customer to cancel its ESCO contract. The utility should field customer inquiries and help customers to resolve problems. The utility should not display bias against ESCOs. Many times the customer simply has a question about rates or is confused about the invoice. Many of the utilities' customer service representatives display a very negative bias when speaking about ESCOs and often try to convince the customer they would be better off returning to default supply service. These recommendations are made without the customer service representative having any knowledge of the specific product the customer signed up for, whether it was a fixed price or variable price, whether or not there was an early termination fee, whether there was a specific savings guarantee, etc. Utility company personnel should merely assist the customer with their current issue and should not solicit customers to return to default supply service.

**IX. CONCLUSION**

Gateway Energy once again appreciates the opportunity to express our opinions on the comments filed by other market participants. It is crucial that all parties cooperate and continue to bring creative and productive ideas into this process.

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