

**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.**

**INITIAL COMMENTS OF  
CONSTELLATION ENERGY COMMODITIES GROUP, INC. AND  
CONSTELLATION NEWENERGY, INC.**

**I. INTRODUCTION**

Constellation Energy Commodities Group, Inc. (“CCG”) and Constellation NewEnergy, Inc. (“CNE”) (together, “Constellation”) herein submit their initial comments in response to the New York Public Service Commission’s (“PSC”) March 19, 2008 *Notice Soliciting Comments on Revisions to the Uniform Business Practices*. CCG and CNE are wholly-owned subsidiaries of Constellation Energy Group, Inc. (“CEG”). CEG is a North American energy company with several merchant subsidiaries in addition to CCG and CNE, including a regulated utility subsidiary, Baltimore Gas and Electric Company.

CCG focuses on serving the full requirements power needs of distribution utilities, co-ops and municipalities that competitively source their load requirements. CCG also sells natural gas and other commodities at wholesale, both in the United States and abroad, and holds interests in exploration and production companies. CCG does not own any physical assets for the generation, transmission or distribution of electric power

and has no retail electric customers or service territories. However, CCG bids energy, capacity and ancillary services on behalf of generation-owning affiliates into the New York Independent System Operator Inc. (“NYISO”) administrated markets.

CNE is a retail electricity supplier that provides customized energy solutions and comprehensive energy services to commercial and industrial customers. CNE does not currently serve residential rate classes in New York State. CNE has been certified to act as a competitive retail electric supplier to serve customers located within various service territories throughout the United States and Canada. Nationwide, CNE has over 16,000 MW of load under contract with over 15,000 retail customers.

## **II. PRELIMINARY STATEMENT**

Constellation supports the PSC objective in this proceeding of increasing consumer protection in retail electric and gas markets. Constellation believes that the Uniform Business Practices (“UBP”) has been effective to date in providing rules and guidelines governing the interaction between customers, distribution utilities, and retail competitive providers. If the PSC decides to adopt revisions to the UBP, Constellation believes the revisions should be tailored to specific problems that have been clearly defined.

## **III. RESPONSES TO NOTICE QUESTIONS:**

### **1. Should the ESCOs be subject to the utility assessments provided by PSL §18-a?**

No. Subjecting Energy Service Companies (“ESCOs”) to such fees could create several problems. First, the fees are currently recovered through utility delivery rates. As such, if ESCOs also recovered these fees through their commodity charges those customers being served by ESCOs could be double-billed. Secondly, imposition of these fees on ESCOs could create a significant administrative burden on the PSC. Rather than collecting fees from a small number of utilities for which recovery of these costs from customers is all but guaranteed, the PSC would have to begin collecting the fees from dozens of ESCOs.

**5. Is the number of Customers served by an ESCO proprietary trade secret information, under the standards set forth in the State Freedom of Information Law?**

Yes. Additionally, it is unclear what purpose would be served by requiring ESCOs to provide this information when the utilities already provide detailed information on switching rates.

**6. Should the UBP provisions with respect to Marketing Standards be applicable to small commercial customers? If so, how should small commercial customers be defined?**

No, the proposed revisions to the UBP should only apply to residential customers. The UBP has functioned well to date as a platform on which retail markets have continued to flourish in New York. The success of the UBP, in great part, has been the balance it strikes between general guidelines and more proscriptive rules. For example, the UBP has very specific minimum guidelines on creditworthiness while it is largely

silent on issues of advertising and marketing practices. The former is necessary for consumer protection purposes since it may be difficult for a customer to independently gauge an ESCO's creditworthiness with excessive cost and effort; the latter is appropriate in that it allows customers to benefit from innovative outreach strategies employed by the competitive marketplace. Additional prescriptive measures imposed on sales to small commercial customers are unnecessary and would place undue burden on the broader business activities of ESCOs.

If the PSC were to define a specific "small commercial" class of customers and have separate rules for those customers, ESCOs would have difficulty segregating that subclass within their general commercial sales and marketing activities. An ESCO typically does not learn which customer class a prospective customer is in until after the ESCO has made initial contact with them and received their meter data from the utility. To ensure compliance with the "small commercial" UBP rules, an ESCO would have to essentially adopt such "small commercial" marketing standards for *all* of its commercial customers.

Finally, while some concerns have been raised by parties regarding residential ESCO practices, no evidence has been presented that a problem exists with ESCOs serving small commercial customers. Modifications to the UBP, therefore, are unwarranted.

**9. How should the term "plain language" as used in Section 2.B1.b of the UBP be defined?**

The term “plain language” is widely used throughout commercial law in New York and therefore requires no additional definition within the UBP.

**IV. CONCLUSION**

Constellation appreciates the opportunity to respond to the questions posed by the PSC in this proceeding. While Constellation believes that consumer protection is a central element of properly functioning competitive retail markets, it also believes that the UBP in its current form provides an adequate amount of protection for all commercial and industrial customers. Therefore, if any of the proposed changes to the UBP are adopted they should only apply to residential customers.

Respectfully Submitted,

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