

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of Retail Access Business Rules)	Case 98-M-1343
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)))))	Case 07-M-1514
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))))	Case 08-G-0078

COMMENTS OF GATEWAY ENERGY SERVICES CORPORATION

I. INTRODUCTION

Gateway Energy Services Corporation (“Gateway Energy”)¹ hereby submits comments in response to the Notice Soliciting Comments on Revisions to the Uniform Business Practices, issued on March 19, 2008 in the above-referenced proceedings.² Gateway Energy supports the efforts by Staff in reviewing appropriate UPB modifications that would 1) incorporate standards for marketing by ESCOs and third party contractors, 2) improve residential customer protections, and 3) strengthen the oversight and expand the remedies available to Staff and the Commission.

Gateway Energy is a strong believer in providing customers with all of the information necessary to make an informed decision. Therefore, in general terms, we concur with the Commission’s efforts to ensure that the proper rules and requirements are in place that would benefit all consumers. Consumer protection rules should require that ESCOs make accurate statements pertaining to the products they are offering and the company they

¹ 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.

² 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

represent. Disclosure of all of the necessary product information is also paramount in obtaining a customer's full understanding of the product offering. However, rules that impose undue burdens upon ESCOs as well as additional costs will be harmful to both consumers and ESCOs alike. Some of the proposed modifications to the UBP are extremely prescriptive and will result in the inability for ESCOs to offer innovative products at a reasonable price.

Additionally, the Commission should only implement changes to rules and processes where the changes are designed to address specific problems at hand. Creating remedies that do not pose clear resolutions to the problems in question (i.e. limiting the amount of early termination fees that may be charged when the problem is really the disclosure of those fees) will only act as a deterrent to participating in this market, which will inevitably be harmful to consumers who will not have as many choices.

In the following comments, Gateway Energy will respond first to the Commission's specific questions set forth in the Notice, secondly to the proposed UBP modifications, and lastly to the CPB petition and NFG proposal for door-to-door sales standards.

II. RESPONSE TO THE COMMISSION'S SPECIFIC QUESTIONS SET FORTH IN THE NOTICE

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

No, ESCOs should not be subject to the utility assessments. Applying the assessment fees to ESCOs would put us at an unfair disadvantage compared to the local utility. Currently, according to PSL §18-a, the utility companies are able to recover the assessment fee through their customers via the rate design. There is currently no method in place that would allow ESCOs a guaranteed recovery on any new fee that is imposed upon us. ESCOs would inevitably be forced to raise customers' rates, which in turn would harm consumers and impact competition.

Assessing a portion of this fee to ESCOs could also cause a double burden to ESCO customers. These customers could potentially be paying the fee to the utility through

by ESCOs, *Notice Soliciting Comments on Revisions to the Uniform Business Practices* (issued March 19, 2008) ("Notice").

their delivery charges while also paying the fee to the ESCO via the ESCO's rate structure.

2. *Should the customer of record be the only person qualified to enroll the residential account with an ESCO?*

The following parties should be allowed to enroll a residential account:

- The customer of record;
- Customer's spouse or domestic partner;
- Any other party in the household who is authorized to do so.

The utility companies have indicated that they allow their customers to designate other members of the household to make decisions on the account. Allowing these other household members to enroll would therefore be consistent with the current utilities' practices.

3. *Should early termination fees for residential customers be limited to: (a) a flat amount (e.g. \$200); (b) an amount based upon a set fee per month multiplied by the number of months remaining on the contract (e.g. \$8 x 20 months = \$160); or (c) some other variation?*

Early termination fees are extremely important for ESCOs who are selling fixed price or capped rate products. ESCOs hedge contracts for the natural gas or electricity they are providing to the customer. If customers cancel before their contract is over, the ESCO is subject to significant risk in unwinding that hedged product. The purpose of the early termination fee is to cover the risks involved in offering these types of products. The Commission should not cap the amount we can charge in the event of early termination or limit the way these fees are calculated. The way the fees are calculated should be left to the discretion of the ESCO. The competitive nature of the marketplace in itself creates sufficient disincentive for ESCOs to impose needless or unreasonable fees.

The focus here should be on proper disclosure of the early termination fees that would apply in each and every agreement between the ESCO and the customer. Charging an early termination fee should not be an issue as long as the ESCO discloses the fee properly in the sales agreement. Full disclosure of the product terms and conditions are necessary under both the current UBP rules as well as the proposed UBP revisions. Lastly, if there is a cap placed on the amount or calculation that is allowed for an early termination fee, the result will be a higher price for all customers. ESCOs will need to build the risk into the cost of the product for all customers, thereby punishing all customers for the proportion of customers who actually cancel prematurely.

4. *Should there be a grace period for the application of early termination fees to residential customers, and if so, what is the appropriate length of time for the grace period?*

The Commission should not apply a grace period for the application of an early termination fee. Gateway Energy believes that adhering to the UPB by completely disclosing all of the necessary terms and conditions negates the necessity for a grace period longer than the three-day right of rescission. A financially responsible ESCO hedges new customer contracts very quickly, so any grace period longer than the three-day right of rescission puts us at risk for unwinding any hedges we have locked into on behalf of customers. Again, such a rule would force ESCOs to charge a higher rate to all customers, thus hampering competition that benefits these customers.

Another potential result of the imposition of a grace period is the lack of product variety and innovation. ESCOs may deem it too risky to offer anything other than a simple variable rate. Limiting the variety of products available to consumers would once again harm consumers and reduce customer choice. In the past, the Commission has strongly encouraged ESCOs to offer a variety of products including fixed rate and capped rate products. This proposed grace period would act in direct opposition to the Commission's prior wishes.

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, the number of customers served by an ESCO is proprietary trade secret information. A previous Freedom of Information Law (“FOIL”) request for this information was rejected. A FOIL request was made for the names of gas ESCOs serving customers and the number of customers (non-residential, residential-heating and residential non-heating) served by each ESCO. In the previous case (Trade Secret 06-1), it was determined that disclosure of the specific information requested could damage the competitive position of ESCOs, namely new entrants into the market. It is unclear what legitimate purpose disclosing this information could serve.

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?*

The Marketing Standards should not be made applicable to small commercial customers. Commercial customers, of any size, are expected to be able to make knowledgeable decisions and protect their own interests when entering into contracts. These customers should be able to transact and conduct their daily business without needing additional help. Small business owners sign leases, negotiate contracts for supplies, handle payroll activities, etc. They are more sophisticated in financial matters than is a typical residential customer and therefore, can be expected to perform due diligence on any offer that is presented to them.

Additionally, there are already state laws that govern marketing and business practices regardless of customer class. The General Business Law covers topics such as deceptive practices and false advertising for all customers. There is also the New York Executive Law that provides additional provisions regarding fraud. The existing UBP has certain provisions in place to control marketing practices for all consumers. Under the current rules, failure to abide by the provisions could result in losing your eligibility to serve customers. It is Gateway Energy’s position that there are already adequate protections in place to protect small commercial customers to the extent that they would need to be protected.

Lastly, defining a “small” commercial customer (as opposed to any other size commercial customer) would be difficult. Each of the utilities has different definitions of small commercial customers. Sometimes, there are customers that are classified as small commercial for one commodity but not for the other commodity. It would be very difficult from a practical standpoint to be able to administer this type of classification.

7. *Should ESCOs that include early termination fees in residential sales agreements be required to obtain a “wet” signature on the sales agreement?*

ESCOs that include early termination fees in residential sales agreements should not be required to obtain a “wet” signature on the sales agreements. Once again, the price, terms and conditions need to be properly disclosed to the consumer at the time of sale. Included in these terms are the early termination fees that would apply if the customer cancels and how these fees would be calculated. The Commission has already put forth standards on the use of telephonic and electronic enrollments. In the past, a telephonic enrollment was held to have the same effect as a written “wet” signature contract. There is no evidence that the current process is not working properly. Customers are protected by the use of recorded voice verifications and in the case of electronic enrollments, the use of encrypted data. Many customers enjoy the convenience of signing up via telephone or Internet. As stated above, restricting the ability to charge early termination fees and in this case, requiring a “wet signature” would result in higher prices and inconvenience to all consumers, as well as a disincentive for ESCOs to offer the type of product requiring the “wet” signature.

8. *How often do ESCOs enforce early termination fees for residential contracts? If available, the Commission seeks this information on an annual basis separated by contract types, e.g. fixed and variable price contracts.*

Gateway Energy does not wish to disclose this information as it is considered a confidential and proprietary trade secret.

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

The term plain language should be defined as provided in CPLR Section 4544, Section 5-702 of the General Obligations Law, which states that written agreements, should be, “1. Written in a clear and coherent manner using words with common and everyday meanings; 2. Appropriately divided and captioned by its various sections.” Gateway Energy recommends using this definition.

10. *Are there any additional modifications to the UBP that should be considered?*

Gateway Energy submits the following recommendations for additional modifications to the UBP:

A. Changing the UBP Definition of Slamming

Currently, the UBP defines Slamming as the “Enrollment of a customer by an ESCO without customer authorization.”³ This definition implies that the only party who can slam a customer is an ESCO. We have found that the reverse is also true – a utility company can also de-enroll a customer, thereby returning them to full utility service, without the customer’s clear intention or authorization to do so. Gateway Energy therefore submits the definition be revised to include the utility’s unauthorized switch of a customer back to full utility service.

B. Improper Termination of ESCO Supply Service

Some utility companies (including NYSEG, National Grid and National Fuel) terminate ESCO supply service and return customers back to the utility company whenever there is a change in account information. This change could include a simple name change on the account or any other data modification that precipitates a utility account number change. Anytime the account number changes, the utility automatically drops the ESCO service and returns the customer back to full service.

³ UBP, Section 1, p.4

This practice is not only harmful to both the customer and ESCO, it also is in violation of the UBP. Under the UBP Section 5.H.1, a customer “arranges for return to full utility service by contacting the distribution utility and the ESCO.” As clearly indicated, a customer must contact both the utility and the ESCO expressing their intent to return to utility service. Clearly, in this case, the customer has not expressed any desire to return to utility service, nor have they contacted the ESCO. This practice is in direct violation of the UBP requirements. If a customer has signed up for a fixed rate, this practice automatically returns them to utility service, thus voiding their ability to pay the fixed rate they requested. The customer may also be subject to an early termination fee since they have terminated before the expiration of their term.

This practice also violates a second UBP provision – Section 5.k.1, which states that, a “change of a customer to another provider without the customer’s authorization...is not permitted.” The utility is not obtaining authorization from the customer to switch their provider, yet the utility is taking the liberty to do so regardless. The utility has no authorization to return the customer to full utility service without first determining the customer’s wishes. Under this practice, even if the customer expresses a wish to remain with the ESCO, the utility is dropping them anyway, with complete disregard for the customer’s wishes.

When a change of name or data creates the need for an account number change, the information should just simply be sent to the ESCO via an EDI 814 change transaction. The customer would remain on ESCO service and the ESCO would receive the updated information so that our systems could be kept up to date. This would prevent the unauthorized switches from taking place and would retain the contractual rights and obligations between the customer and the ESCO. The existing practice of some utility companies must be corrected to protect the customer from being inadvertently switched back to full utility service without their authorization.

C. Uniformity of Customer Drop Information

Currently, when a customer drops or cancels, the utilities provide ESCOs with notification of the drop or cancel. There is a lack of uniformity among

utilities. Our systems have to be designed to handle all the varying processes followed by each utility. Additionally, the reason for the drop is not always clear. A mechanism should be developed through a joint collaborative between ESCOs, utilities and Staff to provide for not only the required uniformity, but also a more detailed description of the reason for the drop.

D. Customer Tax Data

It is currently the ESCO's responsibility to obtain the correct tax data for a customer's account at the time of enrollment. This is sometimes difficult since the customer often doesn't even know what his/her tax status is. This potentially delays the enrollment process. The utilities, on the other hand, already have this information on record. It would be advantageous for the utilities to provide this information to the ESCOs. The ESCOs have already gotten all the necessary consents from the customer, so a breach of confidentiality does not exist. Gateway Energy recommends that the utilities be directed to provide this information.

E. Return of Customer to Full Utility Service

There is some confusion as to how the process for returning a customer to full utility service works. Under the current rules, a customer wishing to return to full utility service must contact both the ESCO and the distribution utility. Each provider should then notify the other provider within two days to inform them of the customer's intention to switch. They should also remind the customer to contact the other provider.

The current procedure does not work well in practice. ESCOs are often not notified properly or promptly of the customer's intention to cancel. This creates problems in that the customer may not realize the contractual obligations with which they still may be faced. Additionally, if the ESCO is not notified in a timely fashion, the ESCO is not provided the opportunity to contact the customer and discuss the cancellation with them.

Section 5.H.1 should be modified to state that the customer must first contact the ESCO and then the utility to initiate a return to full utility service. If the customer contacts the distribution utility first, the customer should be

advised to contact the ESCO before any changes are made to their service. This would provide the necessary opportunity for the ESCO to explain any existing contract obligations that exist while at the same time finding out the reason for the switch. The reason the customer desires to switch is important to Gateway Energy so that we can constantly work to improve our customer service.

F. Utility Customer Service

In our past experience, when a customer is confused about a billing issue or other problem, they contact Gateway Energy for help. Often (especially in areas where the utility companies are providing the billing), the customer is in need of assistance from the utility directly. We try to maintain good relationships with our customers and as a standard practice, we often conference in the utility and attempt to stay on the line in order to make sure the customer's issue(s) is fully resolved.

A number of the utility companies will not speak with the customer if we remain on the conference line. The customer is informed that they have to hang up and call back the utility on a private line without anyone else on the call. This acts as a punishment to the customer and conveys to the customer the impression that we do not have a good working relationship with the utility. The customer must then hang up, dial the utility directly and attempt to explain the issue to the utility's representative.

In our experience, the process works more effectively if we can conduct a conference call with the customer and the utility and explain the issue to the utility rep on behalf of the customer. Sometimes it takes us 15 minutes to determine what the actual problem is before we can establish that a call to the utility is required. Once we reach the utility, we can usually explain the situation more quickly than the customer can. It is truly an inconvenience to force the customer to hang up and call back on a non-conference line and this leaves a questionable impression about the retail program as a whole. The UBP should clarify how customer inquiries should be handled, including allowing conference calls as a method for handling customer questions effecting both the ESCO and the utility.

Additionally, customers often call the utility to obtain information about the price of utility service. The utility should clearly state the price to the customer and explain that it represents the price right now, that that price will vary on a monthly basis and could be subject to retroactive adjustments. The utility should also include any other information that would be necessary for the customer to make an informed choice (such as the existence of tax savings benefits; that the customer will not be charged a merchant function charge, etc.). Simply quoting the then current rate does not give the customer a clear apples-to-apples comparison between the utility's rate and that of the ESCO.

Accent Petition

Gateway Energy urges the Commission to approve the procedures proposed by the utilities that were filed in response to a petition from Accent Energy LLC.⁴ These filings, as proposed by the utilities, would make customers account numbers more readily available in the case when customers do not have access to their utility bills.

III. COMMENTS ON UBP MODIFICATIONS

UBP Section 2

Gateway Energy is strongly opposed to Section 2.D.2-A, which would require an ESCO to resubmit an application package every three years in addition to the current annual requirement. Currently, ESCOs are required to notify the Commission throughout the year whenever a change in their application occurs. Additionally, once per year, we are required to submit a full package containing all updates to our status, as well as our marketing materials, terms and conditions, etc. Having to perform these updates both annually and every three years seems unnecessarily redundant. Gateway Energy recommends that either the existing process continue without change (without the three-year updates), or the

⁴ Case 980M-1343 – Accent Energy LLC, *Order Denying Petition and Making Other Findings* (issued November 7, 2006)

annual application process be eliminated with the three-year package becoming the replacement.

Clarification is necessary on Section 2.D.4.j, which states that an ESCO is subject to disciplinary consequences where there is a failure to respond to a residential complaint “within the timeframe established by the DPS’ Office of Consumer Services”. These time frames must be directly tied to HEFPA regulations and other statutes. Gateway Energy recommends the following language as proposed by Usher Fogel:

“Failure to reply to a residential complaint filed with DPS and referred to the ESCO within the timeframe established by the DPS’ Office of Consumer Services consistent with all applicable regulations and the Public Service Law.”

Clarification is also sought on Section 2.D.6.a.iii, which provides for disciplinary consequences where the ESCO fails to remedy the situation within the cure period. The cure period should be directly related to the corrective action the ESCO has been asked to take. Gateway Energy recommends the following language as proposed by Usher Fogel:

“Upon failure of the ESCO to take corrective actions or provide remedies within the cure period, which shall be commensurate with the level of time required to implement the cure requested by the Commission, the Commission may impose the consequences listed below.”

According to section 2.D.6.a.iv, disciplinary action will not be imposed until the ESCO has the opportunity to respond to a notice issued by the DPS. The ESCO is then given the opportunity to take remedial action to correct the problem. Therefore Gateway Energy recommends the following language as proposed by Usher Fogel:

“Consequences shall not be imposed until after DPS provides notice to the ESCO and the ESCO has been afforded an opportunity to respond to said notice and complete the requisite corrective action.”

Section 2.D.6.b.i implies that the DPS can suspend the ESCO from all programs rather than suspending the ESCO from participation in the specific program where the problem lies. Therefore the following language is proposed:

“Suspension from a Commission-approved retail access program.”

In Section 2.D.6.b.iv, reimbursements should be limited to any savings that were actually promised to the customer in the sales agreement. The term “substantially demonstrated” as set forth in this item is vague and leaves it up to interpretation by both the Commission and the customer. This should be rephrased to remove this unclear language. Additionally, this section should not apply to commercial customers as commercial customers are more sophisticated and have a better understanding of the contract to which they agreed. Gateway Energy proposes the following language:

“Reimbursements to residential customers who did not receive the specific savings promised in the sales agreement.”

Section 2.D.6.vii should be completely eliminated. This is a broad, all-encompassing statement that subjects the ESCO to unknown risk. Given the specific consequences now defined in Section 2, this catchall provision is not necessary.

UBP Section 5

The grace period referenced in Section 5.B.3 is quite problematic from a risk standpoint. This provision calls for a grace period of 30 days from the time the customer receives the first invoice. This could extend the grace period upward of 75 days. As mentioned above,

ESCOs rapidly lock into hedges for fixed energy products once a new customer is enrolled. Implementing a grace period of 75 plus days would be an extremely risky procedure for an ESCO to follow. In addition to normal attrition risk, as an example, the following scenario could occur: a customer could sign up for a fixed rate. The customer receives his invoice 75 days later. The market price for the commodity has dropped. The customer then decides the price he had locked into 75 days earlier is no longer the best price available in the market. The customer cancels, penalty free. Obviously, Gateway Energy would not be able to sell that same fixed rate product at that same price to anyone – since the market drop has caused that product to be priced too high compared to other offers. Gateway Energy is then forced to unwind that hedge at a loss. ESCOs must be able to recoup that loss via the collection of an early termination fee. Any grace period in addition to the already existing three-day right of rescission would (as previously mentioned) cause ESCOs to either stop offering fixed or capped rates, or charge all customers a higher rate to cover the risk. In either case, consumers are harmed and ESCOs are placed at an unfair competitive and financial disadvantage.

Once again, the focus should be on proper disclosure of the existence of an early termination fee, plus full disclosure of all pricing, terms and conditions. These full disclosures must take place at the time of sale and must be included in the customer's sales agreements. Many of the suggested revisions to the UBP incorporate stricter language to include more specific consumer protections that would also effectively eliminate the need for the grace period as proposed.

Section 5, Attachment 1.A.3 requires that the ESCO obtain "A statement from the customer accepting such terms and conditions that is unaided or prompted by the ESCO marketing representative." This is virtually impossible, and frankly absurd. This requirement implies that an ESCO may only passively respond to inbound inquiries from customers, not

proactively sell to customers. Such a notion is anticompetitive and unrealistic. Gateway Energy therefore recommends that this item be eliminated from the final draft.

Section 5, Attachment 1.A.5 contains a very negative message that needs to be stated to the customer. The UBP as revised mandates that the ESCO provide a statement informing the customer that “no savings is guaranteed or if a savings is guaranteed, a clear description of the conditions that must be present in order for the savings to be provided.” Gateway Energy instead proposes a more tailored version of this language. This item should state that if the ESCO is promising savings, a clear description of the conditions that must be present in order for the savings to be provided must be given. In other words, savings would only need to be mentioned to the customer if they are being promised to the customer.

Currently this provision emphasizes a savings message. Savings are not always the top priority for a customer. Sometimes customers are looking for other innovative products, such as fixed products, capped products, green energy, etc. When marketing these types of products, customers are fully aware that they may not save any money. They are looking for other things like price stability, environmental attributes or budget predictability. Requiring ESCOs to disclaim any savings up-front is not necessary.

Gateway Energy also recommends that the item in Section 5, Attachment 1.A.g be revised to speak in a more positive and constructive manner. The proposed revision would force ESCOs to obtain affirmation from the customer that they understand that their agreement for services is with the ESCO and not the local distribution utility. It better serves customers to be able to tell customers exactly what we do. For example, “Gateway Energy is an independent company providing commodity supply service in this territory. Your local distribution utility will continue to deliver the energy to you and respond to all energy

emergencies.” It is not necessary to require the customer to acknowledge that we are not the local distribution utility.

UBP Section 10

Section 10.C.1.a requires a lot of information to be provided on a representative’s badge. Gateway Energy deems it adequate to contain the name and photo of the representative, the full company name and logo, and a toll-free number that a customer can call with any questions. It is not feasible or necessary to include the complete business address on the badge because there may not be enough room to display all of the other things in a readable font size and because much of the other marketing literature and sales agreements contain the full address. Gateway Energy therefore recommends eliminating item 10.C.1.a.iv.

Section 10.c.1.a.iii should be reworded to state that ESCOs must use their legitimate trade name and logo. Additionally, it should be clarified to only include the ESCOs name, and not the marketing representative’s name. It is possible that the particular marketing representative could have a name that resembles a utility’s name.

Section 10.C.1.b could potentially be confusing to the customer. It requires the ESCO to “clearly indicate that taking service from an ESCO will not affect the customer’s distribution service and such service will continue to be provided by the customer’s distribution utility.” This statement can be simplified by simply stating things more affirmatively such as “Gateway Energy will now provide your natural gas service; your local distribution company will continue to provide your distribution service.”

A great deal of subjectivity exists in Section 10.C.1.e. This section requires that the marketing representative determine if it is apparent that the customer’s English language

skills are insufficient for the customer to be able to understand and respond to the information being conveyed during the sale. Additionally, if a representative goes to the home of someone who is non-English speaking, this rule would require the representative to find another representative in the area who is fluent in that language. If it is determined that the customer speaks a language that the ESCO is not set up to handle, the ESCO should be able to simply terminate the sale. This requirement should be eliminated altogether since it is already implied by other sections of the UBP that the sale should be conducted in the same language as the marketing materials or sales materials that are provided to the customer. If the customer (or authorized representative of the customer) does not speak that language, the sale should not be conducted.

Section 10.C.2.f discusses removing customer's names from the ESCO's database upon customer's request. It also states that we must abide by the rules of the State and federal do-not-call registry. This section is redundant and should be eliminated. We must abide by the rules of the do-not-call registries regardless of what this section states.

Section 10.C.3.g is vague in that it doesn't clearly identify the true obligation of the ESCO. The terms "promptly" and "fairly" are very subjective and would be open to interpretation by all parties. This item needs to be clarified.

IV. COMMENTS ON THE CPB PETITION AND THE NFG FILING

The UBP amendments as proposed in the Notice seem to address both of the CPB issues identified in its petition as well as the in-person standards that were sought by the NFG filing. The Commission should reject NFG's proposed revisions to both its utility tariff and GTOP for the incorporation of marketing standards into these documents. Compiling and policing a set of marketing standards is the job of the Commission, not of each individual

utility. Providing NFG the ability to police its own standards would enable NFG to terminate a particular ESCOs eligibility to market in its service territory. This is in violation of standard anti-trust principles and therefore should be rejected.

The Commission under the UBP has its own standards and rules that must be followed. Additionally, the Commission has the ability to revoke an ESCO's eligibility to serve customers if it is deemed that the marketer is not in compliance with the UBP. Marketing standards belong in the UPB where they will be treated uniformly across all territories and among all parties.

V. CONCLUSION

Gateway Energy appreciates the opportunity to comment on the proposed UBP modifications and the ability to engage in dialogue with the Commission and other parties at the technical conference held to discuss these modifications. It is paramount that all parties work together to develop and maintain rules and regulations that protect consumers, while also facilitating a marketplace that is conducive for conducting business.



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Dated: April 17, 2008