



Jeffrey R. Clark
Secretary and
Managing Attorney

April 17, 2008

VIA UPS NEXT DAY AIR

Hon. Jaclyn A. Brillling
Secretary
State of New York 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 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 ESCO's.

Dear Secretary Brillling:

Pursuant to the Notice Soliciting Comments on Revisions to the Uniform Business Practices, issued March 19, 2008, in the above captioned proceedings, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (collectively the "Companies") herein respectfully submit their comments. Copies of the comments are being filed via regular and electronic mail.

The Companies are in support of efforts to establish standard and acceptable ESCO marketing practices along with appropriate remedies for residential consumer protection with revisions to the Uniform Business Practices as reflected in the attached comments.

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Questions regarding these comments may be directed to Marc Webster at (607)762-8075
or Kathy Grande at (585)771-4514.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jeffrey R. Clark". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Jeffrey R. Clark
Attorney for
New York State Electric & Gas Corporation and
Rochester Gas and Electric Corporation

Xc: Ms. Kimberly Harriman, Staff Asst. Counsel
Active Party List via Electronic Service

State of New York
Public Service Commission

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

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COMMENTS OF NEW YORK STATE ELECTRIC & GAS CORPORATION AND
ROCHESTER GAS AND ELECTRIC CORPORATION IN RESPONSE TO NOTICE
SOLICITING COMMENTS

Introduction

On December 20, 2007, the New York State Consumer Protection Board (“CPB”) and the New York City Department of Consumer Affairs (“NYC”) filed a Petition with the Public Service Commission (“Commission”) requesting that the Commission address concerns arising out of observed marketing practices on the part of certain Energy Service Companies (“ESCOs”). The Petition outlined proposed changes and sought to incorporate a “Statement of Principles” in the Uniform Business Practices (“UBP”).

In a separate filing and in response to recent marketing activities by ESCOs in its service territory, National Fuel Gas Distribution Corporation (“NFG”) proposed changes to its tariff to create standards to govern door-to-door sales practices by ESCOs in its service territory.

The CBP/NYC Petition and the NFG Tariff Filing, appear to have been triggered by recent questionable ESCO marketing practices. Media attention to ESCO marketing activities and an increase in the number of residential customer complaints regarding such practices were recently reviewed by Staff of the Department of Public Service.

On March 19, 2008, the Commission issued a Notice Soliciting Comments On Revisions To The Uniform Business Practices (the “Notice”) seeking comments from interested parties on certain questions as well as comments on proposed modifications to the UBP.

New York State Electric & Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RG&E”, collectively “the Companies”) are combination gas and electric utilities serving approximately 1,783,000 customers throughout New York State. Approximately 291,000 of the Companies’ customer accounts are served by ESCOs for either their gas or electric supply service. The Companies currently have 61 ESCOs qualified to provide supply service to customers. The nature of the complaints that the Companies do receive about ESCOs are largely consistent with the very marketing practices addressed in the instant case. For this reason, the Companies are offering answers to some of the questions asked by Staff on page 4 of the Notice. Additionally, the Companies are also commenting on some of the proposed changes to the UBP identified in the Notice.

Companies’ Answer to Selected 1 Questions in the Notice

Question 2:

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

Answer:

The Companies recommend that the customer of record, as well as anyone the customer of record has authorized to act on their behalf, be allowed to enroll a residential account with an ESCO.

Question 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?.

Answer:

The Companies do not have a specific recommendation on the level of early termination fees charged by ESCOs to residential customers. The Companies believe that, regardless of the final decision reached by the Commission on this issue, ESCO's should be required to explain all such fees to the customer during both the sales pitch to the customer and, in the case of a telephonic enrollment, during the Third Party Verification (TPV) stage of the enrollment. The TPV is recorded and can be solicited by the Commission and the utility to prove or disprove a slamming complaint. If rules are promulgated to require ESCOs to clearly explain early termination fees to customers in both the sales pitch and the TPV, the Commission and utility will be able to quickly and efficiently verify ESCO compliance with the rules.

Question 7:

Should ESCOs that include early termination fees in residential sales agreements be required to get a "wet" signature on the sales agreement?

Answer:

As with our response to Question 3 above, the Companies believe that a wet signature is not necessary provided that the terms of the contract are clearly explained during the TPV phase. Since the TPV is recorded and must be provided upon request, a voice approval should suffice in lieu of a wet signature. In cases where an enrollment is not telephonic, but is done in person, a wet signature should be required. By the same token, an electronic verification or electronic signature should be required from customers who enroll via the internet or through email.

Question 9:

How should the term "plain language" as used in Section 2.B.1.b of the UBP be defined?

Answer:

The Companies believe that a single definition of "plain language" is neither practical nor

¹ The Companies have no comment on Questions 1, 4-6 and 8.

enforceable. Rather, the Companies believe that the Commission Staff should continue to review all ESCO materials, be they contractual or marketing, prior to their use to ensure that the language is clear and understandable to the general public.

Question 10:

Are there additional modifications to the UBP that should be considered?

Answer:

The Companies suggest that 5.E.2 of the UBP needs to be modified to include language requiring an ESCO to get a new customer authorization before resubmitting an enrollment that a customer has properly reversed. The Companies have experienced numerous complaints from customers who call the utility to cancel a pending switch only to have the ESCO resubmit the enrollment. An ESCO should be required to treat a reversed switch as a “no” from a customer. A customer may not realize that the switch letter that he or she receives for the 3rd, 4th, or 5th time is being sent because the ESCO resubmitted the enrollment that many times. This issue is not isolated to one or two ESCOs. The Companies have experienced this complaint with many of the ESCOs who actively serve customers in their service territories. A customer should be able to contact the utility, reverse the pending switch, and know that they do not have to worry about this issue anymore unless they again authorize an enrollment.

The Companies also propose an additional change to the UBP that is in conjunction with a language change in Section 2.C.1. The Companies will describe this proposed change later in this document in our comments on specific UBP changes.

Companies’ Comments to Specific Proposed UBP Changes

Section 2 (Eligibility Requirements)

In section 2.B.1.b.6, the Commission proposes to add an ESCO Hotline number. This would replace the old “retail market complaint line.” The Companies support this change. The phrase “retail market complaint line” would not be recognizable to most consumers. However, the New York standard use of the phrase ESCO has been advertised both in the State’s publications and

the Companies' advertising and outreach materials. By using a more standard and easily recognizable name for the complaint line, it will facilitate customer contact with the Commission should complaints arise.

In section 2.C.1, the proposed language has been changed to read "ESCOs deemed eligible to provide commodity service by the DPS must commence service within 2 years from the date of the letter notifying the ESCO of their eligibility status (eligibility letter). An ESCO commencing service after the two-year anniversary date must submit a new application pursuant to Section 2.B and may be required to conduct additional Phase 1 testing before eligibility status may be granted." The Companies support this change and believe that an interested ESCO should be willing to become qualified and operational within a reasonable timeframe. Such a requirement would give ESCOs an incentive to decide if their business plan should include operating in the New York market. The Companies suggest that the proposed section 2.C.1 be expanded even further to also address Phase 3 testing with the utility and initiating service. The Companies propose that this section also include the following language: "An ESCO must commence providing service to customers within six (6) months of completing EDI Phase 3 testing with the utility or must submit a new EDI test application and be re-tested." While this would in some instances create an additional EDI phase 3 testing burden on the utility, the Companies have experienced several instances where the Companies' EDI testing and Information Technology resources have been taxed by an ESCO demanding an immediate EDI test and then sitting idle for up to two years after completing Phase 3 testing before "going live". After sitting idle for so long, many of these ESCOs were unable to perform the EDI transactions adequately and had numerous problems in production, which then required even more resources to diagnose the EDI problems and fix errors created in the Companies' computer systems. Utilities are required to perform Phase 3 testing in an expeditious manner. The requirements in the EDI technical operating profile requires that an EDI Phase 3 test be performed within 60 days of receiving a complete application from an ESCO. A similar requirement to go into production in an expeditious manner should also be required of ESCOs. If an ESCO is required to go into production close to the testing date, that ESCO would be less likely to have production issues due to stale information or skills and would not tax the utilities' resources unnecessarily.

Section 2.D.6 was added to provide the Commission or Staff with the ability to investigate potential violations of the UBP and pursue customer complaints. This section provides the Commission and DPS with the ability to assess certain consequences based on their investigations. The Companies support this section without modification. In the Companies' opinion, the proposed language provides a clear process that will be followed in the case of UBP violations and also provides numerous remedies for a workable framework as well as a flexible solution to problems as they arise.

Section 5 (Changes in Service Providers)

Section 5.B.3 was added, and states that where an ESCO assesses an early termination for a residential agreement, the termination fee would not be in effect until at least 30 days after the customer receives their first commodity bill from the new ESCO. The Companies seek clarification that this new provision allows a residential customer to cancel their service within 30 days of receiving their first ESCO bill (either consolidated bill or from the ESCO) without being subject to an early termination fee. Additionally, the Companies believe that, if an early termination fee is assessed, a utility should not be required to place the early termination fee on the customer's final ESCO bill if it is a utility consolidated bill. An early termination fee is a special provision in a supply contract between the customer and the ESCO. A utility consolidated bill should include charges for commodity services rendered by an ESCO. Placing an early termination fee on a utility consolidated bill, particularly in the case of the utility purchasing receivables without recourse, places the utility in the position of becoming a collector for special, non-commodity services for the ESCO. The Companies propose that Section 5.B.3 be modified to require any early termination fee to be billed directly by the ESCO, and not billable on a utility consolidated bill.

As was stated in our response to the questions in the Notice, the Companies believe that the language proposed earlier for section 5.E.2 needs to be expanded to require ESCOs to get another customer authorization before resubmitting an enrollment.

Finally in section 5.K.1, the Commission has amended the language to now require utilities to provide a slamming report “on at least a monthly basis”. The Companies support this proposed change. The Companies currently provide a slamming report every month to the DPS.

Section 10 (Marketing Standards)

The Commission has proposed an entirely new Section 10 to address ESCO marketing standards.

This section describes the standards that ESCOs and ESCO marketing representatives must follow when marketing to residential customers in New York State. It covers the training of marketing representatives, contact with the customer (both in-person and via telephone), and general conduct guidelines.

The Companies fully support the inclusion of Section 10 into the UBP. As mentioned earlier, the Companies have received customer complaints regarding both telephonic and door-to-door marketing, and the Companies believe that the language in Section 10 would help to diminish complaints and customer confusion by providing clear guidelines and an incentive for strict adherence to the rules.

Conclusion

For all the foregoing reasons, the Companies support many of the proposed UBP changes. The Companies agree that now is the time to expand the UBP to address the various ESCO marketing practices that have come into question.

Respectfully Submitted,

Jeffrey R. Clark
Attorney for
New York State Electric & Gas Corporation and
Rochester Gas and Electric Corporation