

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 ESCO's.

April, 18, 2008

**Comments of Reliant Energy in Response to the  
Notice Soliciting Comments on Revisions to the  
Uniform Business Practices Issued March, 19, 2008**

**Introduction and Background**

Reliant Energy Solutions Northeast, LLC (“Reliant”) and its affiliates provide electricity and energy-related services to almost 1.8 million customers across the United States and has entered the New York market as an energy service company (“ESCO”) serving commercial and large institutional customers in certain utility areas<sup>1</sup>. Reliant endorses the goals of the Public Service Commission (“Commission”), the New York State Consumer Protection Board (“CPB”) and the New York City Department of Consumer Affairs (“NYC”) to enhance the Uniform Business Practices (“UBP”) and make them a more comprehensive statement of the principles by which the key players in

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<sup>1</sup> Reliant is currently eligible to serve commercial customers in the following utility areas: Consolidated Edison Company of New York (ConEd), National Grid, New York State Electric and Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RGE).

New York's energy market must conduct themselves. For these reasons, Reliant respectfully submits the following comments relating to the definition of "small commercial customer", new enrollment requirement disclosures and the development of a uniform code of conduct governing the utility-affiliate relationship in response to the March 19, 2008 Notice issued by the Commission.

**Definition of "Small Commercial Customer" Should be 25 kW and Below**

In its Notice Soliciting Comments, the Commission requested input on the question of whether the UBP provisions with respect to Marketing Standards should be applicable to small commercial customers and, if so, how should "small commercial customers" be defined?<sup>2</sup> Reliant believes that the proposed Marketing Standards (Section 10) should be applicable to small commercial customers and suggests that the term be defined as any non-residential customer with a peak load of 25 kW or below.<sup>3</sup>

While there is no perfect line of demarcation between small and other commercial customers, the intent is to group similarly situated customers together. It has consistently been Reliant's experience in other markets, such as Maryland, that commercial customers meeting the criteria set forth above have similar characteristics to residential in terms of usage and market savvy.<sup>4</sup> Conversely, commercial customers using more than 25 kW are experienced at making procurement decisions for their business. For these reasons, it is respectfully submitted that a definition of small commercial customer based upon a peak

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<sup>2</sup> Commission Notice Soliciting Comments on Revisions to the Uniform Business Practices (issued March 19, 2008), at p. 4.

<sup>3</sup> Non-residential customers whose load is part of an aggregation in excess of 25 kW and those with multiple meters, the sum of which exceeds 25 kW would not be considered "small commercial customers".

<sup>4</sup> Maryland recently approved the 25 kW or less demarcation for classification of its small commercial customers.

load of less than or equal to 25 kW be adopted. Furthermore, Reliant believes that in order to achieve uniformity and predictability, the new Section 10 of the UBP, as well as the above definition, should be applied statewide in all utility service territories.

### **New Agreement Disclosure Requirements Are Appropriate**

Proposed Section 5. A.6. of Attachment 1 (“Telephonic Agreement and Authorization Requirements”) would require an ESCO to obtain “a statement from the customer acknowledging that the customer understands that the agreement for services is with the ESCO and not the local distribution utility”. Reliant believes this statement should also be included in Section 5.A. of Attachment 2 (“Electronic Agreement and Authorization Requirements”) and Section 5.A. of Attachment 3 (“Written Agreement and Authorization Requirements”) to ensure that all methods of enrollment include the same disclaimer. This requirement should be applied only to utility affiliates because they are most at risk of being confused with the utility by the customer.

### **Uniform Rules Governing the Utility-Affiliate Relationship Are Necessary**

Reliant submits the following in response to the Commission’s request for any “additional modifications to the UBP which should be considered”. The CPB and NYC made the underlying petition to address the ESCO–consumer relationship by speaking to the marketing practices of ESCOs.<sup>5</sup> Specifically, CPB and NYC seek to make the voluntary Statement of Principles now adhered to by most ESCOs, with some

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<sup>5</sup> 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 (filed December 20, 2007).

modification, mandatory by incorporating it into the UBP.<sup>6</sup> The goal is to better protect consumers and create a more competitive market in New York State. Reliant recommends that there be a set of standards to which market participants must adhere and that these standards be located in a centralized place where consumers and energy companies alike can easily review them. This consistency and accessibility make for a level playing field and a more inviting competitive energy market for consumers, generators, suppliers, retailers and investors to participate in. This is especially important in a market where the utility also functions as the default provider, thus creating an opportunity for anti-competitive behavior or, at the very least, the appearance thereof. Reliant believes that the very reasoning and methodology driving the ESCO-customer standards should also be applied to the utility-affiliate relationship and hereby proposes that a uniform code of conduct (“Code”) be developed and incorporated into the UBP as well.<sup>7</sup>

The UBP is the appropriate place to incorporate a statewide Code because it was adopted to remedy inconsistencies among the retail access business rules and procedures.<sup>8</sup> From early on, it was recognized that “because electric and gas retail competition [was] in it[s] infancy in New York State, flexibility must be allowed and revisions will be required as we learn more about actual market conditions.”<sup>9</sup> Almost a decade later, the competitive market in New York continues to evolve and mature and the time is ripe to address the issue of utility-affiliate relationships more comprehensively.

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<sup>6</sup> *Id.*, at 3.

<sup>7</sup> For these purposes, the term “affiliate” is defined as an affiliate of a utility that provides service or sells products in a competitive energy-related market in New York State, to the extent those services are energy related.

<sup>8</sup> Case 98-M-1343, *In the Matter of Retail Access Business Rules*, Order Adopting Uniform Business Practices and Requiring Tariff Amendments (issued January 22, 1999), p. 1.

<sup>9</sup> *Id.*, at 2.

Until now, rules pertaining to utility-affiliate relationships have been established on a utility-by-utility basis.<sup>10</sup> The market and all of its participants would be best served by a Code, collaboratively reached and universally applied, which would make clear certain essential guidelines in the utility-affiliate relationship.

A compelling reason for the incorporation of a Code into the UBP is that current utility-affiliate rules are difficult to find because they are buried within the utilities' restructuring filings and settlement agreements.<sup>11</sup> Part of the effectiveness of any rule is the ability of those who are purportedly protected by that rule to identify when such is not the case. This idea is supported by the fact that, for example, the Con Edison Affiliate Transaction Standards ("Standards") set out a process by which a customer or competitor can file a complaint with the utility if the Standards are violated. Taken to its final stage, the process would have the Commission act on the dispute. The problem is that because the standards are not readily available, a party has little chance of knowing what constitutes a violation and therefore lacks the necessary information to dispute adherence to the Standards. Importantly, this reasoning applies to ESCOs as well. Transparency and the ability to check and balance the competition are essential to an effective energy market. Investors like to know the rules and be assured that they are applied fairly. Incorporating a Code into the UBP that is applied uniformly across all utility-affiliate relationships will benefit consumers by increasing transparency, enhancing competition and will also equip competitors, investors and consumers with the wherewithal to assert their rights. It is fair to say that rules governing utility-affiliate conduct are generally

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<sup>10</sup> The ESCO Report of October, 1996 addressed this issue, choosing at that time to leave the rules for individual utility restructure filings.

<sup>11</sup> For example, Con Edison's Affiliate Transaction Standards are found in Appendix A of the Settlement Agreement in Case 98-M-0961.

accepted as necessary. To varying degrees, utilities already have such rules in place. However, the current codes should be strengthened and applied uniformly to enhance competitive opportunities for all consumers. What is proposed herein is to centralize the existing rules into a Code which would include certain basic principles to be applied to any utility-affiliate relationship or transaction. Both the universal application and the central location are important to the success of the Code. Currently, for a customer or ESCO to educate themselves about the ground rules governing utility-affiliate conduct, it is a burdensome and time-consuming process. Below, Reliant suggests some general principles to be included in a statewide Code.<sup>12</sup> This is not a comprehensive list and would obviously be supplemented through the drafting process:

- Utility may not provide to an affiliate any customer information unless such information is simultaneously provided to all ESCOs or except as otherwise provided in the law;
- Utility may not provide sales leads to an affiliate unless such lead is provided to all ESCOs
- Prohibition on co-marketing with affiliates;
- Affiliates must disclose to customers that they are not the utility and that service will not be affected by the customer's choice of an affiliate or other ESCO;
- Affiliates and utilities may not represent or imply to any party that a benefit, such as faster restoration of service or more reliable delivery service, would be realized by using the affiliate's services in conjunction with those of the utility nor by using the utility default service;

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<sup>12</sup> While many of these principles are in existing utility codes or the law, not all are in any one utility code.

- As a default provider, a utility may not market or sell its commodity service or any service of its affiliate when handling a customer's billing inquiries on behalf of an ESCO;
- Any goods or services purchased by a utility from an affiliate may not be purchased at a discount rate unless that discount rate is in accordance with a PSC approved policy and that discount rate is applied consistently to any affiliate and any other ESCO;
- If a utility makes a product or service available to an affiliate, it must make that product or service available to other ESCOs at the same time and at the same cost;
- Utility will process all requests for information and services from affiliates and other ESCOs on a non-discriminatory basis.
- Utility will provide utility services to ESCO customers on a comparable basis as to its default customers.

As stated above, the foregoing are general principles and by no means a complete list of what may be included in any Code developed as a result of this or any future proceeding. Reliant realizes that the drafting and adoption of a Code is an important and delicate task which requires the input of all stakeholders. Reliant believes that a clear and easily-accessible code of conduct governing utility-affiliate relationships is essential to a truly effective competitive market and will produce the greatest benefits to consumers.

## Conclusion

The New York energy market has evolved substantially since competition was introduced, in large part due to the active and prudent oversight of the Commission. It is robust and growing, and it is for these reasons that Reliant is making the significant investment to enter New York as an ESCO. But for New York to continue in this direction, efforts must be made to ensure that its market is as open and fair as practicable. Reliant believes a statewide definition of small commercial customer at 25 kW and below is an appropriate definition and having a consistent standard, rather than today's utility-by-utility segmentation, will help promote retail competition in the State. Reliant also suggests that the proposed Agreement Requirement regarding the customer's statement that he or she acknowledges that the agreement for services is with an ESCO and not the utility should be applied to all three types of Agreements and only to utility affiliates.

The changes that would result from the action proposed by Reliant herein would promote transparency, instill confidence and ultimately further competition. Reliant, therefore, urges the Commission to examine the issue of a uniform utility-affiliate code of conduct to be incorporated into the UBP and make recommendations regarding same.

Respectfully submitted on  
behalf of Reliant Energy  
Solutions Northeast, LLC by,



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