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John B. Rhodes, Chair

Contact:

James Denn | James.Denn@dps.ny.gov | (518) 474-7080

<http://www.dps.ny.gov>

<http://twitter.com/NYSDPS>

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PSC Enacts Significant Reforms to the Retail Energy Market

PSC Improves Transparency of ESCO Product and Pricing Information Through On-Bill Comparison of ESCO-to-Utility Commodity Prices and Through Requiring Itemized ESCO Charges

Limits ESCO Product Offerings Lacking Customer Value

NEW YORK — The New York State Public Service Commission (Commission) today announced significant reforms to the retail energy market to strengthen customer protections and to enhance price and operational transparency. The resetting of the retail energy market in New York will impact the day-to-day business of energy service companies, or ESCOs, doing business in the New York State and the two million residential and small commercial customers in New York State who they serve.

“The Commission recently took steps to protect low-income customers and required that ESCOs guarantee savings for these customers as a condition of service,” **said Commission Chair John B. Rhodes.** “Our action today stops ESCOs from offering products that provide no value to retail energy customers and focuses the companies on those products that do. Today’s action prevents bad actors among ESCOs from overcharging New York consumers, and requires all ESCOs to clearly show each customer how much he or she is being charged for what service.”

With today’s decision, the Commission strengthened protections for residential and small commercial customers in the retail energy market by enhancing ESCO eligibility criteria and adopting limitations on the types and prices of products that may be offered to those customers by ESCOs to ensure that those customers are receiving value from the retail energy market.

In its order, the Commission took the following actions:

- **Accountability:** Increased ESCO accountability by enhancing eligibility criteria and increasing scrutiny of ESCO eligibility and business practices.
- **Transparency:** Empowered customers by improving transparency of ESCO product and pricing information by establishing a pathway toward an ESCO to utility on-bill commodity price comparison and an itemization of ESCO charges; and,
- **Products:** Prohibited ESCO product offerings that lack energy-service-based value by adopting restrictions on the types of products and services ESCOs are allowed to offer residential and small-business customers.

During the last 30 years, the Commission has witnessed significant, and in some instances unexpected, developments in the retail energy market. Ultimately, the Commission determined that the market has not evolved as originally intended and, more importantly, was not providing sufficient energy-related value to customers.

Commission efforts to reform the state's retail markets were repeatedly opposed by the ESCO industry. In an effort to block the Commission from protecting consumers from unscrupulous industry practices, ESCOs repeatedly sued the Commission. Every court that entertained an ESCO claim that the Commission lacked consumer-protection authority, however, sided decisively with the Commission. Recently, the state's highest court definitively halted ESCOs' attempts to use litigation to evade and/or delay consumer-protection regulation. The Court agreed with the Commission and definitively established that the Commission has the legal authority to protect the public by regulating ESCO access to utility distribution systems. This authority includes the power to deny or revoke eligibility for ESCOs that are unqualified to serve New York consumers.

Today, the Commission provides an opportunity for those ESCOs that are willing and able to provide meaningful value for customers. Recognizing that certain ESCO products and services have the potential to provide benefits to customers and help the State advance its clean energy goals, the Commission determined that, at this time, the regulated retail energy market will continue. However, this continuation is contingent upon the participants' unconditional commitment to, and strict compliance with, the reforms adopted in today's order, which are intended to enhance transparency for customers, provide greater customer protection from bad-acting ESCOs, and ensure that only the products and services that truly benefit the customers and the State are offered.

Before adopting these vital reforms, the Commission received and considered comments from various stakeholder parties, including individual ESCOs and ESCO trade organizations, state agencies, and consumer protection organizations. The review process included an administrative hearing that took place over the course of 10 days before two administrative law judges. The transcript of the hearing consists of 4,233 pages of testimony and cross-examination of 22 witnesses and panels of witnesses.

The record compiled in these proceedings demonstrates that, despite the Commission's previous reform efforts, little has changed in New York's retail energy market since 2014, when the Commission observed that complaint rates related to ESCOs were high, gas and electric commodity prices for the majority of customers in the retail energy market were significantly higher than the utility prices, and no meaningful energy-related innovation had evolved over the market's approximately two-decade-long existence.

The complaint rate for ESCOs remains unacceptably high. Between 2014 and 2016, the Commission received more than 11,000 initial complaints about ESCOs. The record also shows a positive correlation between the level of extra cost associated with ESCO service and the overall number of initial complaints. ESCOs have been losing market share in New York State. In 2018, approximately two million residential and small commercial customers received electricity or natural gas from an ESCO, down 12 percent from 2.3 million customers in 2017.

The most commonly offered ESCO product continues to be a commodity-only, variable-rate product that, while identical to what customers can obtain from the utilities, nevertheless frequently is provided by ESCOs at a higher rate than that charged by the utilities. While some ESCOs provide fixed-rate products, ESCO customers who receive such service — an estimated 20 percent of all ESCO customers — frequently pay a significant and unreasonable premium for that service.

To the extent that any value-added products and services are available to New York customers, those products and services are, by and large, not energy related. Rather, they are typically products that are more accurately described as marketing devices or one-time offers intended to induce customers to enroll with the ESCO. The items — such as frequent flyer miles, gift cards, sports tickets, LED light bulbs, and “smart” thermostats — frequently have a market value that is much lower than the amount customers ultimately pay to the ESCO over the course of the contract in excess of what they would have paid to the utilities.

Throughout these proceedings, non-ESCO parties raised many concerns about the current operation of the retail energy market. The Commission shares those concerns, particularly regarding the lack of easily accessible and comprehensible product and pricing information and the number of complaints alleging that bad-acting ESCOs were exploiting customers. Thus, the Commission concludes that significant changes to provisions governing retail access are needed to provide adequate protections for New York customers. If market participants are unwilling or unable to provide material benefits to customers — beyond those provided by utilities — at reasonable prices, the market serves no proper public interest purpose and should be ended.

The strengthened criteria by which ESCOs obtain and exercise the privilege of access to utility distribution systems, thereby participating in the retail energy market, approved today by the Commission take effect in 60 days.

In a separate action concerning an ESCO, the Commission today revoked the eligibility of Atlantic Power & Gas (AP&G) to participate in the retail energy market for continued violations of the Commission’s rules governing ESCOs. AP&G is a mid-sized ESCO operating in the service territories of Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; and National Grid. AP&G has shown a pattern of persistent disregard for the Commission’s consumer protections for the retail energy market. AP&G has previously been penalized by the Commission for its violations of consumer protection practices, and the record before the Commission established that AP&G had once again violated the rights of New York consumers. The Commission determined that the company appears either unwilling or unable to observe the required business practices, even after having its eligibility to market to and enroll residential and non-residential customers revoked in 2017.

Today’s decisions may be obtained by going to the Commission Documents section of the Commission’s Web site at www.dps.ny.gov and entering Case Number 15-M-0127 [Eligibility Criteria for ESCOs] and 16-M-0618 [Atlantic Power & Gas] in the input box labeled “Search for Case/Matter Number”. Many libraries offer free Internet access. Commission documents may also be obtained from the Commission’s Files Office, 14th floor, Three Empire State Plaza, Albany, NY 12223 (518-474-2500). If you have difficulty understanding English, please call us at 1-800-342-3377 for free language assistance services regarding this press release.