

STATE OF NEW YORK

Public Service Commission

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FOR RELEASE: IMMEDIATELY

08108/98-M-1343

COMMISSION EXPANDS CONSUMER PROTECTIONS

— ESCO Customer Safeguards Strengthened and Improved —

Albany, NY—10/15/08—The New York State Public Service Commission (Commission) today expanded consumer protections concerning the marketing of competitive energy services companies' (ESCOs) service offerings. The new and improved marketing practices approved by the Commission will provide reasonable standards of conduct for ESCOs to help ensure customer expectations of fair and accurate information are met.

“Today’s action balances consumer needs for greater protection in the marketplace with the needs of ESCOs to avoid unnecessary barriers to entry and participation in the marketplace,” said Commission Chairman Garry Brown. “The improvements we are making to ESCO marketing practices will provide even greater confidence and security to consumers.”

The new marketing standards require, among other things: a “Consumer Disclosure Statement” on the first page of every sales agreement, which will include the most important terms of the ESCO agreement, such as the contract’s term and termination fee provisions; training of ESCO marketing representatives; protocols for ESCO in-person and telephone contacts with customers; added measures for protecting non-English speaking customers; and processes for handling customer complaints and resolving disputes arising from ESCO marketing activities.

The revisions to the Uniform Business Practices (UBP) also create additional tools by which the Commission can respond to lapses in ESCO marketing practices. Until now, the only remedy available to respond to an ESCO’s failure to comply with applicable regulatory

requirements was the revocation of ESCO eligibility from participation in New York's retail energy markets. The new remedies afford the Commission with opportunities for more modulated responses so that ESCO customers need not lose, due to a revocation of ESCO eligibility, the benefits of ESCO services for which they may negotiate for.

In related actions today, the Commission granted, in part, the joint petition filed by the New York State Consumer Protection Board and the New York City Department of Consumer Affairs; rejected the tariff filing submitted by National Fuel Gas Distribution Corporation concerning ESCO marketing standards and enforcement mechanisms; and initiated a second phase to its proceeding to address additional issues raised by interested parties regarding ESCO marketing practices and enforcement mechanisms.

Once issued, the Commission's written decisions regarding Retail Access Business Rules (Case 98-M-1343), the New York State Consumer Protection Board and the New York City Department of Consumer Affairs Joint Petition (Case 07-M-1514), and National Fuel Gas Distribution Corp.'s Tariff Filing (Case 08-G-0078) can be obtained from the Commission's www.dps.state.ny.us Web site by accessing the "File Room" section of the homepage. Many libraries offer free Internet access. Commission decisions may also be obtained from the Commission's Files Office, 14th floor, Three Empire State Plaza, Albany, NY 12223 (518-474-2500).

ATTACHMENT: Marketing Standards for ESCOs

A. Applicability

This Section describes the standards that ESCOs and ESCO marketing representatives must follow when marketing to customers in New York.

B. Training of Marketing Representatives

ESCOs shall ensure that the training of their marketing representatives includes:

1. Knowledge of this Section and awareness of the other Sections of the New York Uniform Business Practices;
2. Knowledge of the ESCO's products and services;
3. Knowledge of ESCO rates, payment options and the customers' right to cancel, including the applicability of an early termination fee;
4. Knowledge of the applicable provisions of the Home Energy Fair Practices Act that pertains to residential customers; and,
5. The ability to provide the customer with a toll-free number from which the customer may obtain information about the ESCO's mechanisms for handling billing questions, disputes, and complaints.

C. Contact with Customers

1. In-Person Contact with Customers

ESCO marketing representatives who contact customers in person at a location other than the ESCO's place of business for the purpose of selling any product or service offered by the ESCO will, as soon as possible and prior to describing any products or services offered for sale by the ESCO:

- a. Produce identification, to be visible at all times thereafter, which:
 1. Prominently displays in reasonable size type face the full name of the marketing representative;
 2. Displays a photograph of the marketing representative and depicts the legitimate trade name and logo of the ESCO they are representing;
 3. Provides the ESCO telephone number for inquires, verification and complaints.
- b. Shall identify the ESCO which they represent as an independent energy marketer, and shall identify him or herself as a representative of that specific ESCO. During the sales presentation, the marketing representative must also state that if customer purchases natural gas and/or electricity from the ESCO, that the customer's utility will continue to deliver their energy and will respond to any leaks or emergencies. This requirement may be fulfilled either (a) by an oral statement by the ESCO marketing representative, or (b) written material left by the ESCO marketing representative. Further, ESCOs that are affiliates of distribution utilities should not describe or disclose their relationship to the distribution utility unless such information is specifically requested by the customer.
- c. Never represent that the ESCO marketing representative is an employee or representative or acting on behalf of a distribution utility. In addition, the ESCO marketing representative must 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;
- d. An ESCO marketing representative shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises.
- e. An ESCO marketing representative will provide the customer with written information regarding ESCO products and services immediately upon request which shall include the ESCOs name and telephone number for inquires, verification and complaints.
- f. Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the ESCO representative or where the customer or another third party informs the ESCO marketing representative of this circumstance, the ESCO marketing representative shall either find a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead or terminate the in-person contact with the customer. The use of translation services and language identification cards is permitted.

2. Telephone Contact with Customers

ESCO marketing representatives who contact customers by telephone for the purpose of selling any product or service offered by the ESCO shall:

- a. Provide the ESCO marketing representative's first name and, on request, the identification number;
- b. State the name of the ESCO on whose behalf the call is being made;
- c. Never represent that the ESCO marketing representative is an employee or representative or acting on behalf of a distribution utility. In addition, the ESCO marketing representative must 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;
- d. State the purpose of the telephone call;
- e. Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the ESCO representative or where the customer or another third party informs the ESCO marketing representative of this circumstance, the

ESCO marketing representative will immediately transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call; and,

- f. Remove Customers' names from the marketing database upon Customers' request.

3. Conduct

ESCOs shall:

- a. Not engage in misleading or deceptive conduct as defined by State or federal law, or by Commission rule, regulation or Order;
- b. Not make false or misleading representations including misrepresenting rates or savings offered by the ESCO;
- c. Provide the customer with written information, upon request, or with a website address at which information can be obtained, if the customer requests such information via the internet;
- d. Use reasonable efforts to provide accurate and timely information about services and products. Such information will include information about rates, contract terms, early termination fees and right of cancellation consistent with Section 2 of the UBP and any other relevant Section;
- e. Ensure that any product or service offerings that are made by an ESCO contain information written in plain language that is designed to be understood by the customer. This shall include providing any written information to the customer in a language in which the ESCO representative has substantive discussions with the customer or in which a contract is negotiated;
- f. Investigate customer inquiries and complaints concerning marketing practices within five days of receipt of the complaint; and,
- g. Cooperate with the Department and PSC regarding marketing practices proscribed by the UBP and with local law enforcement in investigations concerning deceptive marketing practices.

4. Dispute Resolution

ESCOs will maintain an internal process for handling customer complaints and resolving disputes arising from marketing activities and shall respond promptly to complaints forwarded by the Department.