

**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 ESCOs.

INITIAL COMMENTS OF CONSOLIDATED EDISON SOLUTIONS, INC.

I. INTRODUCTION

These initial comments are submitted on behalf of Consolidated Edison Solutions, Inc. (“CES”) in response to the Commission’s *Notice Soliciting Comments on Revisions to the Uniform Business Practices*, issued in these proceedings on March 19, 2008.

II. PRELIMINARY STATEMENT

CES supports consumer protections and believes that it would be helpful to codify within the Uniform Business Practices (“UBP”) standards for marketing by ESCOs and third party contractors acting on their behalf to ensure that residential customers are provided with appropriate consumer protections. In addition, CES also supports modification of the UBP to expand the remedies available to Staff and the Commission when violations occur.

III. RESPONSE TO QUESTIONS PRESENTED IN THE NOTICE

CES supports the efforts by the Commission to ensure that consumers receive accurate and timely information so that they can exercise their free choice in an informed and accurate

manner. CES was actively involved in the development of the Voluntary Code of Marketing Standards (“Marketing Standards”) that form the basis of the current Staff proposal to ensure that the customers have access to and properly understand the value added products and services available in the competitive markets. Accordingly, CES supports incorporation of those Marketing Standards into the UBP and offers the following comments on the questions posed in the March 19, 2008 Notice.

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

No, it would be inappropriate to subject ESCOs to the PSL § 18-a assessment fees. Currently those fees are applied to public utilities and collected from all customers in rates approved by the Commission in individual utility rate cases. Expanding the assessment fees to ESCOs would cause retail access customers to pay twice for these fees, once to the utility in their existing Commission approved delivery tariff and again in the competitive charges for ESCO commodity service. This result would neither be just nor reasonable.

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

Under current agency and commercial law, the customer of record and any other individual with actual or apparent authority to act on the customer’s can authorize the enrollment of a residential account with an ESCO. This approach provides adequate consumer protections as it places responsibility on the ESCOs in the event of a challenge to demonstrate that the authorizing individual had the requisite authority to act on behalf of the customer of record.

There is no rational basis to apply a different standard for energy purchases by residential customers.

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?**

CES believes that an ESCO should be able to establish fees that adequately protect them from economic harm in the event of a breach of contract and, as long as those fees are clearly communicated to the customer, there is no rational basis to administratively limit such fees. Furthermore, if an administrative limit reduces an ESCO's recourse to less than the ESCO's actual exposure, it is likely to reduce the types of products and services the ESCO offers.

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?**

There is no need to impose an additional grace period before applying "early termination fees" to residential customers. Such a restrictive condition would unreasonably limit the ability of an ESCO to contractually protect itself from financial harm in the event that a customer terminates a contract.

Under the proposed language in UBP § 5.B.3., a customer would have until 30 days AFTER receipt of their first bill for commodity service before a termination fee would become binding. Because an ESCO's financial exposure to a customer's breach of a fixed priced contract begins when the contract is executed, this proposal needlessly exposes ESCOs to supply

risks associated with market price movements from the date the contract was executed until the commodity supply begins, PLUS an additional period in excess of two months. This would impose significant financial risk to ESCOs offering fixed priced or hedged products, with the ESCO being exposed to the risk of market price movements from the point of contract execution until more than two months AFTER the contracted supply begins. Such a provision would inappropriately restrict the ESCO's legal right to protect itself from damages associated with a customer's unauthorized termination of a contract.

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.

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 specific standards presented in the new proposed Section 10 to the UBP should be limited to residential customers as currently proposed by Staff and should not made applicable to small commercial customers.

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

A “wet” signature requirement will limit existing sales channels and will not provide additional protection to customers. Instead, it would limit the ability of consumers to change

suppliers on the telephone or through other electronic means and would likely reduce the number of ESCOs offering residential customers energy options.

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**

CES is willing to share this information with the Commission and Staff on a confidential basis but considers the structure of its termination fees and its practices for enforcing them as proprietary.

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

The term “plain language” has previously been defined in Section 5-702 of the General Obligations Law and the continued use of this well-established definition is reasonable and does not require any further modification at this point.

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

Yes, in addition to the above comments on the specific questions in the March 19, 2008 Notice, there are three areas of the proposed UBP that CES believes should be modified:

A. Section 6.b.i

CES believes the phrase “any Commission approved retail program” in Section 6.b.i should be replaced with “a specific Commission approved retail access program or programs” to clarify that the Commission and DPS have the ability to suspend an ESCO from specific retail

access program elements and thereby differentiate it from section 6.b.vi which effectively suspends the ESCO from all programs by revoking their eligibility.

B. Section 10.C.a.iii

CES recommends replacing the phrase “does not resemble the name or logo of a distribution utility” with “uses the ESCO’s official logo.” As discussed at the technical conference, both Staff and the utilities have copies of each ESCO’s logo and if there are concerns, such concerns should be addressed with the ESCO before the marketing campaigns begin.

C. Section 10.C.b

CES recommends deleting the phrase “or affiliated with” as CES and other existing ESCOs that are corporate affiliates of distributions utilities could, under the proposed language, be required to misrepresent themselves to customers.

IV. CONCLUSION

CES appreciates the opportunity to address the important issues raised in this proceeding and respectfully requests that the Commission adopt policies consistent with the comments presented herein.

Respectfully Submitted,

/s/ Stephen B. Wemple
Vice President, Regulatory Affairs
Consolidated Edison Competitive Shared Services
for Consolidated Edison Solutions, Inc.

Dated: April 18, 2008