



Public Utility Law Project of New York, Inc.

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Via U.S. Postal Service and E-mail

April 18, 2008

Hon. Jaclyn Brilling
Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 98-M-1343, Case 07-M-1514, and Case 08-G-0078 - In the Matter of Retail Access Business Rules 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 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

Dear Secretary Brilling:

Enclosed you will find the original and five copies of the Initial Comments of Public Utility Law Project of New York, Inc. in the above referenced matter.

Sincerely,

Gerald A. Norlander
Executive Director

cc: All active parties

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of Retail Access Business Rules)	Case 98-M-1343
)	
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 07-M-1514
)	
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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)	Case 08-G-0078
)	

**INITIAL COMMENTS
OF
PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.**

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**INITIAL COMMENTS
OF
PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.**

On March 19, 2008, the New York State Public Service Commission (“Commission”) issued a Notice Soliciting Comments¹ regarding revisions to the Uniform Business Practices (“UBP”) applicable to Energy Service Companies (“ESCOs”) operating in the state. In the Notice, the Commission proposed changes to the UBP and posed 10 questions in which it seeks input from the active parties to this proceeding. The Public Utility Law Project of New York, Inc. (“PULP”) hereby submits its initial comments on ESCO marketing issues raised in the Notice.

¹ *Notice Inviting Comments on Revisions to the Uniform Business Practices*, In the Matter of Retail Access Business Rules, 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, 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, Cases 98-M-1343, 07-M-1514, and 08-G-0078 (Issued March 19, 2008).

PULP is a nonprofit organization representing the interests of low and fixed income residential utility consumers in matters affecting affordability, universal service, and consumer protection. PULP has been an active participant in this proceeding, being one of the two parties to file comments on the Petition submitted by the Consumer Protection Board and the New York City Department of Consumer Affairs regarding the retail marketing tactics employed by ESCOs.² PULP urged the Commission to consider the concerns raised in the Petition and in addition, requested that other issues be included, such as the application of regulatory assessment fees to ESCOs and enforcement of any new standards.

The introduction of ESCOs to New York's retail energy market has not resulted in "robust competition" in any measurable manner. While a number of medium and large businesses have selected ESCOs over the past 10 years,³ their introduction in the retail residential market has been slow and full of pitfalls for consumers. About 16 percent of the initial complaints against electric and natural gas utilities the Commission handled in 2007 involved ESCOs.⁴ The complaints against ESCOs have increased to the point that the Commission established its own "ESCO Hotline" at 888-697-7728. In addition, a substantial amount of Commission resources go into continuous modification of the ESCO regime and handling complaints against ESCOs. Yet, ESCOs make no contribution to the costs of running the Commission through regulatory assessment fees

² The other party filing comments on the Petition was the Retail Energy Supply Association.

³ There is no study demonstrating that these large user ESCO customers receive price benefits beyond arbitrage of tax breaks on delivery service and Commission backout credit adders.

⁴ In 2007, 1,903 initial complaints and 323 escalated complaints against ESCOs were received by the Commission. In contrast, all electric and natural gas utility complaints combined totaled 11,649 complaints in 2007. There were also 1,572 escalated complaints against the electric and natural gas utilities last year, resulting in ESCO escalated complaints accounting for 20.5 percent of the total.

like those placed on all other entities regulated by the Commission. A detailed discussion supporting the application of regulatory assessments to ESCOs follows.

On the telecommunications side of entities regulated by the Commission, the only reasonable, yet imperfect, comparison to ESCOs is to telephone service resellers. These entities are assessed regulatory fees and are subject to all regulations that logically would apply to providers which have no facilities of their own, such as the duty to abide by Telephone Fair Practices Act (“TFPA”) regulations.⁵ Since the Legislature’s repudiation of the Commission’s initial regulatory regime in 2002, ESCOs have been subject to HEFPA, just as telephone resellers are subject to TFPA.

Moreover, the telecommunications competitors to the incumbent local telephone companies are subject to the Commission’s rules and regulations regarding customer service and service quality.⁶ Special “Guidelines” have also been implemented which cover the steps which must be taken for customer migrations from one provider to another and “Mass Migration Guidelines” have been enacted to protect residential customers when a provider exits the market.⁷ Both sets of Guidelines were the result of industry collaborative discussions and were included in Commission Orders, specifically and clearly rendering them with the power of a Commission Order or regulation.⁸ Under

⁵ 16 NYCRR Part 609.

⁶ See 16 NYCRR Parts 602, 603, and 609.

⁷ *Order Adopting Phase II Guidelines*, Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carriers, Case 00-C-0188 (Issued and Effective June 14, 2002) and *Order Adopting Revised Mass Migration Guidelines*, Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carriers, Case 00-C-0188 (Issued and Effective January 2, 2003). (“*Revised Mass Migration Guidelines Order*”)

⁸ For example, the Revised Mass Migration Guidelines Order specifically states in its ordering clause: “All certificated telecommunications carriers doing business in New York State are ordered to comply with these revised Mass Migration Guidelines.” *Revised Mass Migration Guidelines Order*, at p. 20.

all of these circumstances, it is the Commission and not the incumbent local telephone company which is charged with enforcing the regulations or Guidelines.

PULP strongly believes that the oversight and enforcement of ESCOs also should be placed directly under the Commission, not the utilities. However, on the energy side, no analogous regulatory provisions regarding service quality and customer service apply to ESCOs and no equivalent to the Migration Guidelines and Mass Migration Guidelines exist. Rather, the only thing that remotely provides protections to ESCO customers is the UBP. But, because the UBP amends the utilities' tariffs, the UBPs place the electric and gas utilities in the role of policeman/enforcer. For competitive neutrality reasons, and for enforcement, the Commission, not the distribution utilities, should be enforcer of any standards affecting the relationship between ESCOs and retail customers.

Thus, before addressing where to tweak the existing UBP, or to respond to the questions posed by the Commission regarding the UBP, PULP urges the Commission, as a threshold matter, to consider enacting a new set of standards. The new standards would result from this collaborative effort by the Commission, the industry, consumer groups, and the public and would be attached to a Commission order clearly stating that the new standards have the full force of a Commission order or regulation. The existing UBP, insofar as they address relations between ESCOs and retail customers, with the proposed changes, could be used as a starting point. A single document would be created, which would be applicable to all ESCOs regardless of where they operate in the state. Such a result would create a uniform statewide regulatory scheme enforceable with specific penalties by the Commission in the same manner as its regulations or orders, such as the

Orders Adopting Guidelines for the Migration and Mass Migration Guidelines, which have become a model in numerous other states.

The substantive changes proposed in the Notice will serve as a solid starting point for the creation of a new ESCO regulatory scheme. Details regarding how ESCOs establish and terminate service to customers, and any resulting penalties for breach of standards, for example, will go a long way in limiting abuse of customers, but do not belong only in the tariffs of the regulated utilities. Rather, these types of provisions properly should be placed in the Commission's regulations or in Commission-approved guidelines, as discussed above.

PULP strenuously objects to the content of the proposed changes revolving around the permitted use of early termination fees for customers who choose to take service from another ESCO or from the distribution company. In several instances, the proposals include references to an ESCO's application of early termination fees, but no evidentiary justification for their existence or amount is provided. PULP is opposed to early termination fees because they severely restrict the ability of consumers to change providers by locking in customers against their will when better opportunities for service may exist.

Oftentimes a customer may find that the anticipated savings touted by a particular ESCO may not be realized and he or she may choose to go back to the utility or select a different ESCO. Such a realization may occur after the available "grace period" to change one's mind without penalty because more than one billing cycle may need to occur before the customer finds out that his or her bill will not be as low as promised by the ESCO. A customer who is "locked in" to a two year contract, for example, should

not be penalized for wanting to make a considered decision to take one's business elsewhere before the term expires. If costs are incurred by switching providers, the same cost-based fee should be imposed on customers switching to ESCOs, rather than spreading them among customers who are not cost-causers.

On a related note, even ESCOs which do not charge early termination fees may effectively "lock in" customers for longer than anticipated. One such ESCO, IGS, advertises "no cancellation fees," but reveals in the fine print on the back of its direct mailer that "it may take up to ten (10) weeks for Customer to return to the LDU for commodity supply service, and Customer is liable for all IGS charges until Customer switches to the LDU or another supplier."⁹ Such activities could lock in a customer for much of the heating or cooling season, and must be rejected by the Commission as yet another example of a limitation on customer choice. PULP does not believe that competition is promoted when customers are not truly free to select the provider of their choice and that charging exorbitant early termination fees, in effect, prohibits customers from exercising their right to change providers.¹⁰ In addition, such delays appear to be contrary to HEFPA, which requires utilities to provide service upon oral or written request within five days (§31).

⁹ See Attachment A. "LDU" is the acronym for "Local Distribution Utility."

¹⁰ In yet another telecommunications example, landline local exchange and long distance carriers do not charge early termination fees. While wireless providers do charge such fees, it is usually justified as a means to amortize "free" or below cost provision of wireless telephones. Legislation in Congress is looking to eliminate or minimize early termination fees in wireless contracts. *See, e.g.*, discussion draft issued by Congressman Ed Markey (D-MA) on February 15, 2008 entitled "Wireless Consumer Protection and Community Broadband Empowerment Act of 2008." If the telecommunications industry is moving away from early termination fees, so should the energy industry, particularly where the ESCO is not providing hardware to the customer and should be able to hedge its risks of customer migration.

The Commission posed ten specific questions for commenters to address, which PULP will consider in turn:

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

Yes. As noted above, the Commission’s Customer Complaint Statistics indicate that ESCOs are the subject of a disproportionate percentage of Commission complaints, but ESCOs do not contribute to the running of the agencies as other utilities do. In fact, in March 2008, there were 1,024 initial complaints against providers of electric and natural gas service, 176 of which (17 percent) were made against ESCOs. In the same month, the report indicated that there were 110 “escalated” complaints against providers of electric and natural gas service, 27 of which (24.5 percent) were lodged against ESCOs. Resolving these complaints should require a significant amount of administrative resources, but ESCOs do not contribute at all to the costs of handling them and running the Commission.

Section 18-a(1) of the Public Service Law (“PSL”) provides that:

The total of such costs and expenses [to operate the Commission and Department of Public Service] shall be borne by the public utility companies . . . , corporations (including the power authority of the state of New York), *and persons subject to the commission’s regulation . . .*¹¹

Clearly the ESCOs are corporate “persons subject to the commission’s regulation” and are subject to the Commission’s regulatory jurisdiction for compliance with HEFPA, including resolution of customer complaints.¹² However, unlike other entities subject to

¹¹ NY Pub. Serv. Law §18-a(1) (emphasis added).

¹² Accordingly, it is not necessary to consider whether ESCOs, through their facilities and contracts, are electric or gas companies as defined by the Public Service Law (“PSL”). The PSL does not define an ESCO.

the Commission's regulatory oversight, ESCOs do not pay any regulatory fees required by PSL §18-a. Implementation details would need to be worked out. Without the assessment on ESCOs, ESCOs are at a competitive advantage because there is already an assessment on the distribution utility. To assume a level playing field, the commodity-related portion of distribution charges should include the assessment.

PULP suggests that the Commission continue this proceeding, with strict deadlines, to implement assessments on ESCOs from the date of the order (such as one-third of one percent of gross intrastate operating revenues). Of primary concern to PULP is that retail access customers pay once, and not pay twice, for these fees, and that the fees be applied in a non-discriminatory manner.

Any argument by the ESCOs that the assessment of regulatory fees on ESCOs would be punitive to those who do not generate high complaint volume should be dismissed because, in addition to the costs incurred by the Department of Public Service ("DPS") Office of Consumer Services complaint handling process related to complaints against ESCOs, the Commission incurs significant other costs that would not be incurred but for the ESCOs. These include, but are not limited to:

- the cost of printing and public relations expenses incurred by the Commission to promote ESCO choice and provide information about ESCO services;
- the askPSC.com website costs, related to ESCO information and promotion;
- the cost of DPS staff involved in issues related to the "uniform business practices" defining ESCO relationships with other utilities;
- the cost of DPS staff involved in rate case issues related to ESCO concerns;
- the cost of responding to ESCO concerns, such as DPS staff meetings with ESCOs;
- the cost of responding to concerns of other utilities about ESCOs;

- the cost of the “Provider of Last Resort” (“POLR”) proceeding (Case 00-M-0504);
- the cost of overseeing the “ESCO Referral Programs;”
- the cost of auditing claims of utilities, *e.g.*, Con Edison, for incentive payments from its ratepayers based on ESCO migration;
- the cost of maintaining ESCO migration and complaint statistical data and issuing reports on these issues;
- the cost of DPS staff who review ESCO applications to consider whether the ESCO is eligible to provide service; and
- the cost of maintaining the “ESCO Hotline” (888-697-7728).

Accordingly, there is ample justification for the Commission to assess the PSL §18-a(1) regulatory fees upon ESCOs.

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

PULP believes that since ESCOs have been covered by the Home Energy Fair Practices Fair Practices Act since 2002, as well as its implementing regulations, they should generally follow all of the provisions applicable to utilities. Utilities provide service to owners or occupants upon their proof of identity and residence. Once service is established, it would seem logical to require the account holder to authorize a switch of providers, and for the ESCO to take steps to assure that it has that person’s authority to switch providers.

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?*

There should be NO early termination fees assessed on ESCO customers. As discussed above, this limits customer choice and even the wireless telecommunications industry which provides telephones below cost is moving in the direction against early termination fees. It is ironic that the Commission, having let go of supervision of ESCO rates, now would set rates for such objectionable, unjustified, and unsupported charges without any evidence to support the charges or the amount.

As a matter of law, there can be no separate fee for termination of service to gas customers, who can only be charged for gas supplied and other charges permitted by statute, which do not include switching to a new provider.¹³ There is no reason to treat electricity customers differently. Any proposals which include early termination fees would be unreasonable and in no event should they be allowed without evidentiary hearings as to reasonableness of the amount.

Equally important is that once a customer notifies the utility or the ESCO that it would like to terminate service that the switch take place within five days of the request to avoid the “piling on” of charges indicated in the attached IGS direct mailer.

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?*

As previously stated, PULP opposes early termination fees and sees no reason for the Commission to set rates for such unreasonable charges. Further, any price caps for

¹³ PSL §65(6). See: *Kovarsky v. Brooklyn Union Gas Company*, 279 NY 304, 18 NE2d 287 (1938).

ESCOs should be at the same price for similar services charged by the distribution companies for switching providers.

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?

Under no circumstances should an ESCO's customer count be considered proprietary. This statement is especially true where the ESCO operates in multiple counties or utility markets. A customer seeking information on an ESCO should know not just the number of complaints filed against an ESCO in a given time period, but how many customers the company serves as well, broken down by business and residential customers. For example, 20 complaints in a month is a much more significant figure for a company serving 100 residential customers than one serving 25,000 residential customers.

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 UBP provisions should be included in a Commission Order or included in industry guidelines and made applicable to all ESCO customers. Small commercial customers should be defined by service classification so that customers and ESCOs could determine which standards apply. Alternatively, the Commission, in its "Typical Utility Customer Bill" section of its webpage, already breaks down electric service to commercial customers as Small (10 kW), Medium (50 kW), and Large (250 kW) and natural gas service to commercial customers as "1,000 MCF OR 10,000 THERMS,"

“10,000 MCF OR 100,000 THERMS,” and “100,000 MCF 1,000,000 THERMS.” These categories could be used as a guide for defining 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?

To reiterate, PULP strongly believes that there should not be any early termination fees applied to ESCO customers.

In general, a “wet” signature requirement would certainly help reduce confusion and miscommunication with customers who can read and understand the contracts they sign. However, the most vulnerable customers can still be taken advantage of by unscrupulous ESCO employees if the contracts themselves are unreasonable or misleading.

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.

PULP does not have information which would assist the Commission on this topic.

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

There is no need to define the term “plain language” in the UDP since it is not defined in the Public Service Law or State Administrative Procedure Act, including references there to plain language, including §102-A, §201, and §301. As long as the

language used in the UBP is likely to be understood by the average citizen, no definition should be needed.

That said, §5-702 of the state's General Obligations Law requires the use of plain language in consumer transactions primarily for personal, family, or household purposes and defines "plain language" in this context as "1. Written in a clear and coherent manner using words with common and every day meanings; 2. Appropriately divided and captioned by its various sections." If the Commission deems a definition of plain language to be necessary, this definition should suffice.

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

As stated above, PULP's position is that any current UDP provisions relating to the relationships between ESCOs and new retail customers must be removed from the utility tariffs and either implemented as binding standards in a Commission Order or added to the Commission's rules. Such a move will promote competitive neutrality and benefit consumers because of improved enforceability by the Commission if any ESCOs violate them since monetary and other enforceable penalties for non-compliance will be possible.

PULP appreciates the opportunity to share its positions with the Commission.

Respectfully Submitted,



**PUBLIC UTILITY LAW PROJECT
OF NEW YORK, INC.**

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April 18, 2008



Natural gas prices projected to increase!*

Dear National Grid Natural Gas Customer,

A recent *New York Times* headline announced: **“Utilities turn from coal to gas, raising risk of price increase.”**** What does this mean to you? American utilities are converting to natural gas to meet the country’s growing power needs. As a result, the cost of the natural gas you use to heat your home is likely to increase in the near future.

The heating season may be coming to an end. But, with the *Energy Information Administration* projecting price increases in natural gas over the next several months, it’s the perfect time to sign up for a guaranteed lower rate with IGS Energy®.

Switch to IGS Energy and you will pay 7% less than the National Grid GCR rate for the first two months. **And, the savings continue. After your first 2 months, we will guarantee that IGS Energy’s price will be lower than the National Grid GCR rate every month through December 2008.**

National Grid will continue to deliver your gas, read your meter and send you a monthly invoice. The only thing that changes is the price you pay.

IGS Energy is certified by the New York State Service Commission and is already serving over 700,000 natural gas customers in New York and across the Midwest.

It’s simple to enroll and your service will not change. Take advantage of this special offer today. **There is absolutely no risk with IGS Energy, since there are no sign up fees, no cancellation fees, no long term commitments.** If you are ever unhappy you can cancel, free of charge.

More questions? For more information, see the attached Frequently Asked Questions located on the back of the enrollment card.

THIS OFFER IS AVAILABLE FOR A LIMITED TIME ONLY! TO ENSURE ENROLLMENT IN THIS PLAN, REPLY BY MAY 15, 2008.

Choose one of four easy ways to enroll:

- 1 **Mail:** Return the enclosed enrollment card in the postage paid envelope.
- 2 **Internet:** Go to www.IGSEnergy.com for online enrollment.
- 3 **Fax:** Fax the enclosed enrollment card to IGS Energy at **1-800-584-4839**.
- 4 **Phone:** Call IGS Energy toll free at **1-877-444-7427** M-F, 8 a.m. to 8 p.m. (EST).

You will need your National Grid Gas account number at the time you enroll. You can find your account number on your most recent gas bill. You’ll also need the IGS Energy enrollment code that appears below.

IGS Energy Enrollment Code: 



Your Natural Gas Choice.™

*According to the Energy Information Administration website at http://tonto.eia.doe.gov/cfapps/STEO_Query/steotables.cfm?periodType=Monthly, natural gas prices are expected to increase over the next several months.

**From the New York Times business section, published Feb., 5, 2008 by Matthew L. Wald.

**MY GAS SUPPLY AGREEMENT WITH INTERSTATE GAS SUPPLY OF NEW YORK, INC. ("IGS")
RESIDENTIAL/SMALL COMMERCIAL CUSTOMERS - FORM VNGDNC-GS-1208-59MV**

Term: This Agreement shall commence with initial gas deliveries and shall continue month-to-month thereafter at the same terms herein, at the price, detailed under Pricing, Billing and Termination, below, until and unless cancelled by either party as detailed under Cancellation.

Pricing, Billing, and Termination: During your first two (2) billing cycles on this program with IGS, your price will be a 7% discount off of what you would have paid with the LDU. Thereafter, unless otherwise agreed to in writing, the price for all gas sold under this Agreement beginning with your third billing cycle with IGS through your **December, 2008** billing cycle shall be less than the applicable National Grid gas cost recovery rate each billing cycle, plus all applicable taxes and any applicable LDU charges. Beginning with your **January, 2009** billing cycle and month to month thereafter, your price will vary each billing cycle based on market conditions but is guaranteed not to be more than the monthly final closing NYMEX settlement price plus an amount not to exceed **\$0.59 per THERM**, plus all applicable taxes and any applicable LDU charges. IGS reserves the right to make changes to this Agreement from time to time, but only after IGS provides you with a 30 day notice of such changes. Due to the LDU billing system, your monthly variable rate may be a blend of two (2) monthly variable prices, or may be the next months variable price, depending on the end date of your billing cycle. IGS will invoice through the LDU, pursuant to the LDU meter-reading and billing schedule for volumes as measured by the LDU. Customer will pay each invoice in full within twenty (20) days of the invoice date or be subject to a late payment charge of 1.5% per month. Alternatively, Customer may receive a single bill for both commodity and delivery costs from IGS, or the LDU and IGS may invoice separately. Customer payments remitted in response to a consolidated bill shall be pro-rated in accordance with procedures adopted by the Department of Public Service ("DPS"). In the event of failure to remit payment when due, IGS will have the right to terminate commodity service and to seek suspension of distribution service in conformance with HEPPA. If you disagree with disconnection, you can contact the DPS at **1-800-342-3377**. A \$20 fee will be charged for all returned checks. If IGS sells its receivables to the LDU it will also assign its right to the LDU to disconnect service for non-payment of IGS charges.

Agreement to Sell and Purchase Energy: IGS agrees to sell and deliver and Customer agrees to purchase and accept the quantity of natural gas necessary to meet Customer's requirements based upon consumption data obtained by IGS or the delivery schedule of the Local Distribution Utility ("LDU"). The amount of natural gas delivered is subject to change based upon data affecting consumption obtained by IGS or the LDU's delivery schedule and all volumes will be delivered to the LDU for delivery to you. Since this agreement is intended for residential and small commercial users, IGS reserves the right not to enroll or to discontinue service at any point to customers that consume more than 50,000 therm per year, without penalty to either party.

Assignment: The Customer may not assign its interests in and obligations under this Agreement without the express written consent of IGS. IGS may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financial agreement and may assign this Agreement to another energy supplier, energy services company or other entity as authorized by the DPS, however IGS must provide you with at least 30 days notice of such assignment prior to making the assignment.

Customer authorizes IGS to obtain and review information regarding the customer's credit history from credit reporting agencies, and the following information from the LDU: consumption history; billing determinants; credit information; public assistance status; general account information; existence of medical emergencies, status as to whether Customer has a medical emergency, is human needs, elderly, blind or disabled and data applicable to cold weather periods under PSL § 32 (3); and information pertaining to PSL § 33, tax status and eligibility for economic development or other incentives. This information may be used by IGS to determine whether it will commence and/or continue to provide energy supply service to Customer and will not be disclosed to a third-party unless required by law. Customer's execution of this Agreement shall constitute authorization for the release of this information to IGS. This authorization will remain in effect during the Initial Term and any Renewal Term of this Agreement. Customer may rescind this authorization at any time by providing written notice thereof to IGS or calling IGS at 1-800-720-0875. IGS reserves the right to cancel this Agreement in the event Customer rescinds the authorization.

Consumer Protections: The services provided by IGS are protected by the terms and conditions of this Agreement, and for residential Customers (as defined by the DPS/LDU) the services are protected by the Home Energy Fair Practices Act ("HEPPA"). In addition to this agreement, for non-residential Customers (as defined by the DPS/LDU), the Non-Residential Regulations enforced by the NYS Department of Public Service may also be relevant. For both residential and non-residential Customers, except in instances where service is discontinued as a result of disconnection by the utility, IGS will provide at least fifteen (15) calendar days notice prior to any cancellation of service by IGS to Customer. In the event of non-payment of any charges owed to IGS, whether payment is due to the LDU or IGS directly, Customer may be subject to termination of commodity service and the suspension of distribution service under procedures approved by the New York State Department of Public Service ("DPS"). Residential and Non-residential Customers are subject to disconnection by the LDU for non-payment of IGS fees. Customer may obtain additional information by contacting IGS at 1-800-720-0875 or the DPS Consumer Assistance Line at 1-888-697-7728, or by writing to the DPS at: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, or through its website at <http://www.dps.state.ny.us>. The DPS will monitor complaints against all energy companies, and an excessive number of complaints may result in an energy company no longer being eligible to supply electricity or natural gas in New York State. The alternative supplier telephone number for general inquiries is 1-888-697-7728.

Cancellation: The Customer may rescind this Agreement within three (3) days of entering this Agreement with IGS, by contacting IGS at 1-800-720-0875 or in writing. Also, either party can cancel this Agreement at any other time, without penalty, by providing the other with notice of cancellation. The customer can notify either IGS or the utility that it wants to cancel this agreement and return to LDU service in writing or by telephone. If notice of cancellation is not given at least 15 days prior to the next scheduled meter reading, the customer may request a special meter reading, although there may be an LDU charge to the customer for this service. In the event of a cancellation or termination of this Agreement after the residential or non-residential Customer has been switched to IGS and a special meter reading is not requested, it may take up to ten (10) weeks for Customer to return to the LDU for commodity supply service, and Customer is liable for all IGS charges until Customer switches to the LDU or another supplier. Regarding invoicing for reported volumes, a final bill should be rendered within twenty (20) days after the final scheduled meter reading by the LDU or if access is unavailable, an estimate of usage will be used for the final bill, which will be true-up when the final meter reading is provided. Pursuant to HEPPA, Customer's distribution service may be suspended if Customer fails to pay IGS's outstanding charges. With disconnections, HEPPA provides that you can contact the DPS at 1-800-342-3377 for disputes regarding shutoffs or disconnection of service.

Dispute Resolution: In the event of a billing dispute or a disagreement involving IGS's service, the parties will use their best efforts to resolve the dispute. **For Residential Customers, the services in dispute are protected where applicable by HEPPA (as noted above under Consumer Protections you can call 1-800-342-3377), and any action taken by IGS must conform to HEPPA protections for Customer.** Customer should contact IGS in writing at P.O. Box 9060 Dublin OH 43017, or by telephone at 1-800-720-0875. For Residential Customers, if the dispute is not resolved within 45 days, it may be submitted by either party to the DPS pursuant to its Complaint Handling Procedures ("Procedures"). **For general competitive market related inquiries, the DPS can be reached through the Alternative Energy Provider Line at 1-888-697-7728, or by writing to: The New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, or through its website at: <http://www.dps.state.ny.us>. Please note that the DPS does not resolve disputes regarding non-residential customers.** The Residential Customer shall remit payment as required under the Procedures during the pendency of the dispute, and such payment shall be refunded if warranted by the DPS decision. For Non-Residential Customers, the Customer must pay the bill in full, except for the disputed portion, during the pendency of the dispute. For Non-Residential Customers, if the parties cannot resolve the dispute within forty-five (45) days, either party may avail itself of all remedies available under law or equity. Notwithstanding anything to the contrary herein, for Non-Residential Customers, the parties acknowledge and agree that the LDU is responsible for reading Customer's meter and metered volumes are removed from IGS' pool according to LDU readings or estimates, and as a result, volume disputes are to be pursued with the LDU and invoices are to be paid in full for all volumes and seek a remedy from the LDU. To the extent the LDU makes a volume adjustment resulting from a Customer dispute and Customer has paid for those volumes, such adjustment shall be passed on to the Customer.

Agency: Customer hereby appoints IGS as agent for the purposes of acquiring the supplies necessary to meet its natural gas needs, arranging, contracting for and administering transportation, transmission and related services over interstate facilities and those of the LDU needed to deliver natural gas to the Customer's premises. These services are provided on an arm's length basis and market-based compensation is included in the price noted above.

Title: All natural gas sold under this Agreement shall be delivered to the LDU at a location considered the "Point of Delivery", and shall constitute the point at which title transfers and the sale occurs. IGS will indemnify and hold harmless Customer from all taxes, royalties, fees or other charges incurred with respect to the natural gas before title passes.

Warranty: This Agreement, including applicable attachments, makes up the entire Agreement with IGS. IGS makes no representations or warranties other than those expressly set forth in these Terms and Conditions, and IGS expressly disclaims all other warranties, express or implied, including merchantability and fitness for a particular use.

Force Majeure: IGS will make commercially reasonable efforts to provide gas service, but does not guarantee a continuous supply of natural gas. Certain causes and events out of the control of IGS ("Force Majeure Events") may result in interruptions in service. IGS will not be liable for any such interruptions caused by a Force Majeure Event. IGS does not transmit or distribute natural gas. Therefore, IGS is not and shall not be liable for damages caused by Force Majeure Events, including acts of God, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the local distribution utility system, non-performance by the LDU including but not limited to a facility outage on its gas distribution lines, changes in laws, rules, or regulations of any governmental authority or any cause beyond IGS's control.

Liability: The remedy in any claim or suit by Customer against IGS will be solely limited to direct actual damages. By entering into this Agreement, Customer waives any right to any other remedy in law or equity. In no event will either IGS or Customer be liable for consequential, incidental, or punitive damages. These limitations apply without regard to the cause of any liability or damages. There are no third-party beneficiaries to this Agreement.

IGS Contact Information: The Customer may contact IGS's Customer Service Contact Center at 1-800-720-0875, Monday through Friday 8:00 a.m. - 5:00 p.m. EST (contact center hours subject to change), or write to IGS at P.O. Box 9060 Dublin OH 43017.

Choice of Laws: Venue for any lawsuit brought to enforce any term or condition of this agreement or to construe the terms hereof shall lie exclusively in the State of New York. This Agreement shall be construed under and shall be governed by the laws of the State of New York without regard to the application of its conflicts of law principles.

Taxes and Laws: Except as otherwise provided in the Agreement or provided by law, all taxes of whatsoever kind, nature and description, due and payable with respect to customer's performance of its obligations under this Agreement, shall be paid by the Customer. The parties' obligations under this Agreement are subject to any validly issued present and future legislation, orders, rules or regulations of a duly constituted governmental authority having jurisdiction over this Agreement or the services to be provided herein.

Emergency Service: In the event of a gas leak, service interruption or other emergency regarding your natural gas service, Customer should immediately call the LDU at 1-800-892-2345 and emergency personnel. You may then call IGS at 1-800-720-0875.

Parties Bound: This Agreement is binding upon the parties hereto and their respective successors and legal assigns.