

INFORMAL COMMENTS OF JOINT UTILITIES
ON DRAFT STRAWMAN PROPOSALS

On June 28, 2012, the New York State Public Service Commission (“Commission”) Office of Consumer Policy Staff (“Staff”) issued an email requesting informal comments by July 31, 2012 (“Request”) upon draft strawman proposals with proposed suggestions and related questions regarding the treatment of electronic communications (“Electronic Communications Strawman”) in the competitive energy market as well as definitions and requirements regarding energy brokers and other marketing representation (“Energy Broker Marketing Strawman”). In response to the Staff’s Request, Central Hudson Gas & Electric Corporation (“Cen Hud”), Consolidated Edison Company of New York, Inc. (“Con Edison”), Orange and Rockland Utilities, Inc. (“Orange and Rockland”), National Fuel Gas Distribution Corporation (“NFG”), The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Corporation d/b/a National Grid (“National Grid”), New York State Electric & Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RG&E”) (together, the “Joint Utilities”) hereby submit their comments.

As a general matter, Joint Utilities believe both strawman proposals are timely relative to the current developments within the competitive retail energy market and would benefit from further discussion within New York’s newly created Retail Energy Market Stakeholder Forum (“RSF”). These discussions would be expected to result in proposals to modify the Uniform Business Practices (“UBP”).

I. Energy Broker Marketing Strawman

Recent years have seen several developments in the regulation of ESCO marketing practices. A new section of the General Business Law, §349-d, enacted by Chapter 416 of the Laws of 2010, specifies requirements ESCOs must comply with when marketing natural gas and/or electricity to residential customers and/or through door-to-door sales and directs the Commission to develop an ESCO Consumers Bill of Rights (“ECBR”). The Commission issued an Order implementing GBL §349-d through (1) modifications to the UBPs, and (2) preparation of an ECBR to be available on the Commission’s website and which ESCOs are to provide to prospective residential customers and any customers marketed to through door-to-door sales. Despite these efforts to improve consumer protections, unseemly marketing practices persist. Joint Utilities affirm their commitment to a competitive market but believe that unless additional steps are taken to address these practices, the credibility of the competitive retail energy market is at risk.

In general, the parties engaging in the aforementioned unseemly marketing practices are “Brokers”, “Consultants” and/or “Representatives” (collectively “Brokers/Consultants” that do not have any contractual obligation to a particular ESCO.¹ Whether to appear more credible or intentionally to deceive prospective ESCO customers, some Brokers/Consultants claim to be working with or on behalf of ESCOs and/or utilities². An ESCO that by itself or through an agent engages in such practices would be at risk of losing its eligibility to serve customers in a Retail Access Program.

¹ An ESCO that enters into a contractual relationship with a party for marketing purposes should be liable for the marketing conduct of that party as the ESCO’s agent.

² No utility works with such entities for the purpose of enrolling customers in its Retail Access Program.

Brokers/Consultants bear no such risk because the Commission has not addressed their role in the market.

Joint Utilities support further discussion with the RSF on each of the topics identified within the Energy Broker Marketing Strawman and look forward to a formal proposal to modify the UBPs to protect energy consumers in ways that will support the competitive retail market. In particular, development of broker licensing and registration requirements is critical. Transparency requirements applicable to Brokers/Consultants are essential so that prospective ESCO customers know that they are not dealing with utilities or specific ESCOs.

Although new rules may be adopted to address the current marketing issues, the Joint Utilities suggest that the new rules not be so narrowly drafted as to be limited to the issues the RSF can identify today. So that the Commission can regulate new marketing techniques/venues as they arise, serious consideration must be given to making ESCOs that accept enrollments from Brokers/Consultants responsible by rule for their actions, i.e. as responsible as they would be if the Brokers/Consultants were contractually-bound agents of the ESCO.

II. Electronic Communications Strawman

Joint Utilities support the evolution of correspondence between the ESCO and Customer and/or Utility and Customers, to the extent possible, and at the option of the customer, to be in electronic format. Some customers prefer electronic forms of correspondence while others prefer traditional paper correspondence mailed via the U.S.

Postal Service. The proposals³ raised in the Electronic Communications Strawman are worthy of further discussion in the RSF prior to development of formal UBP proposals.

Joint Utilities suggest that new UBPs addressing electronic formats be written in a permissive format rather than as formal requirements with a date certain by which utilities must comply. This approach should prove less costly because it would permit implementation of new formats to occur in the normal course of business as a part of other larger systems development efforts. Additionally, technological advances will continue; what might make sense in 2013 could be obsolete by 2015. Those who implement later should have the benefit of opting for then-current technologies.

Finally, Joint Utilities believe that care should be given to ensure that for matters directly related to ESCO service, communications should remain between ESCOs and ESCO Customers. Utilities should not be required to ensure that ESCOs are resolving disputes between ESCOs and their customers in a timely fashion. Never the less, utilities should have the latitude to respond to ESCO customer requests for information concerning the competitive market (for example, providing a copy of the ECBR upon customer request) and utility delivery service when appropriate.

³ This excludes the Housekeeping proposal for UBP 2.D.5.b. which Joint Utilities believe to be no more than addressing errata, therefore not requiring further discussion.

CONCLUSION

In summary, the Joint Utilities appreciate the opportunity for informal comment and look forward to further developing the strawman proposals.

Respectfully submitted,



Michael E. Novak
Assistant General Manager,
Rates & Regulatory Affairs
**National Fuel Gas Distribution
Corporation**
6363 Main Street
Williamsville, NY 14221
(716) 857-7884
novakm@natfuel.com

Darlene M. Clay
Customer Choice Coordinator
Central Hudson Gas & Electric Corp.
284 South Avenue
Poughkeepsie, NY 12601
(845) 486-5466
dclay@cenhud.com

Adrienne Austin
Section Manager, RC Operations
**Consolidated Edison Company of
New York, Inc.**
4 Irving Place, Room 1815-S
New York, NY 10003
(212) 780-6702
aaustin@coned.com

Marc Webster
Manager – Supplier Relations
**New York State Electric & Gas Corp.
Rochester Gas and Electric Corporation**
James A. Carigg Center - 18 Link Drive
Binghamton, NY 13902
(607) 762-8075
mpwebster@nyseg.com

Terrence Kain
Director of Customer Choice &
Strategic Projects
National Grid
175 East Old Country Road
Hicksville, New York 11801
(516) 545-2352
Terrence.Kain@us.ngrid.com

Robert J. Melvin
Manager - Retail Access
Orange and Rockland Utilities, Inc.
390 W. Route 59
Spring Valley, NY 10977
(845) 577-3373
melvinr@oru.com

Dated: July 31, 2012