

Electronic Communications

- To the extent possible, and at the option of the customer, ESCO and utility correspondence should be made available in electronic format for enrollment notices, verification letters of customer intent, disclosure notices, renewal notices, welcome letters, and other transactions. Uniform Business Practices (UBP) should be updated to allow for this option while ensuring compliance with consumer protection.
- ESCOs and utilities should maintain a database of electronic transactions, and provide explicit customer acknowledgement when electronic transactions are utilized.

Section 5: Changes in Service Providers

Application of Electronic Enrollments and General Use of Social Media

- Electronic transactions with the customer should only take place from an ESCO or utility website portal. No enrollments, renewals, verifications or other customer correspondence are allowed on any other digital medium (i.e., Facebook, Twitter, etc.).
- ESCO and utilities that utilize electronic transactions for official components of the business relationship (i.e., enrollment, renewal, verification, etc.) must specifically inform customers of their privacy policies with regard to the use and disposition of their information.
- ESCOs and utilities that utilize electronic transactions for enrollment shall maintain a database of customer acknowledgement as they would a paper transaction.

Consumer Privacy Issues and Protections

- No customer information which is obtained by ESCOs or utilities is to be sold or transferred to outside third parties for any purpose without the expressed permission of the customer. ?
Family recommends that the assignment of contracts to another licensed ESCO should be permitted. When this occurs, the incumbent ESCO shall, within 30 days of the assignment, sale or transfer of the agreement to the other ESCO notify the consumer of the new ESCO's contact details.
- In addition to the provisions outlined in the UBPs, ESCOs and utilities are required to comply with all other applicable industry standards or regulations which provide guidance with respect to customer privacy and marketing practices. Among other criteria that may apply, specific regulatory provisions can be found at <http://www.ftc.gov/privacy/protect.shtm>, <http://business.ftc.gov/documents/bus61-can-spam-act-compliance-guide-business>, and <http://business.ftc.gov/legal-resources/all/34>. Other statutory and regulatory provisions may also apply (additional research needed).

ESCO Consumer Bill of Rights (ECBR)

- ESCOs and utilities should make the ECBR available to consumers at any time an in-person sale is made. Once a prospective customer has indicated intent to purchase, the ECBR should be provided as one component of the documents which are provided to the customer for

enrollment. If the customer is enrolling with an ESCO through a utility, sponsored referral program, the utility should also provide the ECBR (electronically or via USPS at the customer's option).

- ECBR is not required to be part of mass mailings for marketing purposes only. If such mailing includes the ability to sign up for ESCO service, the ECBR must be included in the mailing.

Proposed Language Modifications

5.B.1.d. – All enrollments initiated via electronic methods (other than telephone sales which meet the provisions of the UBP) must be completed on the ESCO's official company website or through the ESCO's official company e-mail address in accordance with requirements in Attachment 2 – Electronic Agreement and Authorization. Enrollments cannot be initiated through social media or other electronic means (Facebook, Twitter, text message, etc.).

5 – Attachment 2.A. – Reiterate 5.B.1.b.

5 – Attachment F. – The ESCO shall maintain a record of the customer's acceptance of verification e-mail or other electronic transaction from the ESCO's official company website, including date and time, in a retrievable format for two years from the effective date of the customer's acceptance and/or authorization or for the length of the agreement, whichever is longer.

Section 10, Marketing Standards

Following are proposed changes to the marketing standards:

10. A. – This Section describes the standards that ESCOs and ESCO marketing representatives must follow when marketing residential and nonresidential customers in New York State.

10.C. – Whenever seeking to initiate a sales agreement (through electronic, telephonic, door-to-door, or other interaction) with the prospective customer, ESCOs must disclose up front that they are an independent supplier of energy and not associated with the public utility.

10.C.3.b. For your interest, I have included below excerpts Ontario's Regulation 389/10 (under the Energy Consumer Protection Act, 2010 which deals with internet contracts). – If ESCOs employ the use of other electronic communications (e.g., social media sites, text messaging) for marketing purposes, the customer must be directed to the ESCO's official company website or official company e-mail address for affirmative actions including enrollment, renewal verification, etc. If the ESCO intends to utilize electronic transactions to complete or renew a sale, the company website must contain the ESCO Consumer Bill of Rights; provision of the terms and conditions of the sales agreement; and, any other documentation and instructions the consumer may need to complete the enrollment process, including authorization and verification.

10.C.3.c. – ESCOs must provide the customer with a non-avoidable check box and verification e-mail to accept the terms and conditions of the sales agreement or non-automatic renewal as part of an electronic transaction.

10.C.3.d. – ESCOs must provide easily identifiable instructions to the customer which enable the customer to opt-out of receiving further electronic information from the ESCO. Upon receiving this request from a consumer, ESCOs must comply with this request within three (3) business days of receipt of this request (note - this is another way to approach 3-day recession period via electronic communications).

10.C.4.f. – ESCOs and utilities which receive customer inquiries and complaints concerning marketing practices must acknowledge receipt of the inquiry and/or complaint within two (2) business days of receipt of the inquiry or complaint, and must provide a response to the customer in the same medium in which the inquiry or complaint was received within five (5) business days.

Section 2, Eligibility Requirements

ESCO Use of Social Media

2.B. – ESCOs planning to utilize social media as part of their official marketing and sales strategy with consumers are required to indicate this intent as part of their Marketing Standards Quality Assurance Plan (Section 10).

Housekeeping

D.5.b. – Inclusion of natural gas, to read as “Consequences for non-compliance in one or more of the categories set forth in UBP Section 2.D.4 may include one or more of the following restrictions on an ESCO’s opportunity to sell electricity and/or natural gas to retail customers:”

Regulation 389/10 Contracts entered into over the internet

- 9.** If a contract is entered into over the internet, the supplier shall ensure,
- (a) that its internet website is secure;
 - (b) that its internet server will cancel the consumer’s session on the website in a reasonable period of time if the consumer does not continue the session;
 - (c) that the web page includes statements with boxes to be checked off by the consumer in order to proceed with the transaction,
 - (i) that remind the consumer that entering and leaving his or her personal information on a public computer is not recommended,
 - (ii) that confirm that the consumer understands that the supplier does not represent an energy distributor, the Board or the Government of Ontario, and

- (iii) that confirm that the consumer is the account holder with respect to any contract entered into through the website or is the account holder’s agent for the purposes of entering into the contract;
- (d) that the website provides the terms and conditions of available contracts, the disclosure statement applicable to each form of contract and a link to the Board’s website, without requiring the consumer to commence a transaction;
- (e) that, as part of the transaction, the consumer is requested to review the applicable disclosure statement and price comparison and indicate that he or she has read and understood it by checking a box;
- (f) that the consumer has the option to download or print each form of available contract and disclosure statement without any obligation to enter into a contract;
- (g) that the signature page of the contract contains the electronic signature of a director or officer of the supplier and the date the contract was entered into over the internet;
- (h) that below the signature contemplated in clause (g), two boxes are displayed with a request that the consumer check only one, to either,
 - (i) expressly accept the provisions of the contract offer, or
 - (ii) expressly decline the contract offer and terminate the transaction without completing it; and
- (i) that, if the reader checked the box to accept the terms and conditions of the contract offer, the consumer is required to provide his or her e-mail address in order to complete the transaction.