

STATE OF NEW YORK

Public Service Commission

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FOR RELEASE: IMMEDIATELY

08035/98-M-1343;07-M-1514;08-G-0078

COMMISSION TO CONSIDER NEW RULES FOR ESCOs

— Input Sought on Potential Changes to Strengthen Consumer Protections —

New York, NY—3/19/08—The New York State Public Service Commission (Commission) today said it would issue for comment certain revisions to its uniform business practices (UBP) and that it would present for consideration other questions both of which relate to marketing standards for Energy Services Companies (ESCOs), the development of new types of residential consumer protections, and a review of the adequacy of remedies available if an ESCO fails to comply with stated business practices.

“Residential consumers are entitled to the same level of protections whether they take service from a competitive energy supplier or a traditional utility,” said Commission Chairman Garry Brown. “While we welcome and encourage ESCOs to do business in New York, we must ensure that they also offer value to their customers, and that they be good corporate citizens. The issues we are raising for comment are designed to see if the existing system can be improved.”

An ESCO is an entity eligible to sell electricity and/or natural gas to end-use customers using the transmission or distribution system of a utility. ESCOs may also perform other retail service functions.

The UBP provides standard state-wide business procedures for distribution utilities working with ESCOs. In addition, the UBP establishes a process for determining an ESCO’s eligibility to operate in New York, and it sets forth enforcement provisions that apply when ESCOs fail to comply with UBP requirements. Currently, the enforcement provisions of the UBP

have focused on withdrawal of an ESCO's eligibility to operate in New York and discontinuance of an ESCO's participation in the distribution utilities' retail access program. The UBP does not currently establish standard and acceptable ESCO marketing practices or appropriate consumer remedies.

In this proceeding, the Commission is proposing changes to the UBP to provide marketing standards for ESCOs, expanded residential consumer protections, and better remedies for ESCO failure to comply with the UBP. Specifically, these changes would provide for:

- Plain language sales agreements
- An explicit process to resolve ESCO related consumer complaints
- Graduated consequences for ESCO failure to comply with the UBP
- Up to 30 day grace periods when the ESCO contract includes a early termination fee
- Standards for telephone and in-person ESCO contacts with customers
- Same language marketing for non-English speaking customers

As part of its review, the Commission also seeks comments from interested parties on the following questions:

- Should ESCOs be subject to the utility assessments provided by PSL §18-a?
- Should the customer of record be the only person qualified to enroll the residential account with an ESCO?
- 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?
- Should a grace period for early termination fees be incorporated into the UBP, and if so, what is the appropriate length of the grace period?
- 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?
- Should the UBP provisions with respect to Marketing Standards be applicable to small commercial customers? If so, how should small commercial customers be defined?
- Should ESCOs that include early termination fees in residential sales agreements be required to obtain a "wet" signature on the sales agreement?

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

Background

On December 20, 2007, the New York State Consumer Protection Board (CPB) and the New York City Department of Consumer Affairs filed a petition with the Commission seeking incorporation into the UBP, with modification, a voluntary ESCO industry Statement of Principles. The Statement of Principles sets forth standards related to: 1) training of ESCO marketing representatives; 2) door-to-door and telephonic ESCO marketing practices; and, 3) ESCO conduct. In addition, in response to ESCO marketing activity in its service territory, National Fuel Gas Distribution Corporation (NFG), filed a new tariff with the Commission to incorporate, by reference, a section in its Gas Transportation Operating Procedures manual governing ESCO door-to-door marketing practices.

In addition, Staff has reviewed complaints from residential customers and media reports, and received informal reports from distribution utilities regarding the marketing practices of ESCOs. Specifically, residential customers have complained about, and the media has reported on, misrepresentations by ESCO marketing representatives, including misrepresentation concerning the affiliation of the ESCO with the distribution utility and savings provided by the ESCO, but not realized by the residential customer. In general, the petition of CPB and the tariff filing of NFG all touch upon a basic concern; i.e., ESCOs are marketing to residential customers without Commission approved standards or consequences.

Interested parties may submit an original and five copies of their comments on Cases 98-M-1343, 07-M-1514 and 08-G-0078 on the modifications to the UBP and/or responses to the questions set forth above by April 18, 2008, to Jaclyn A. Brillling, Secretary, Public Service Commission, Three Empire State Plaza, Albany, New York 12223-1350 and by e-mail to secretary@dps.state.ny.us. Reply comments may be filed with the Secretary by May 12, 2008. The Secretary may, in her sole discretion, extend these deadlines.

A copy of the Commission's notice soliciting comments, when available, can be found on the Commission's www.dps.state.ny.us Web site by accessing the File Room section of the homepage and searching for Cases 98-M-1343, 07-M-1514, and 08-G-0078. Many libraries offer free Internet access. Commission documents can also be obtained from the Files Office, 14th floor, Three Empire State Plaza, Albany, NY.