

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on December 11, 2014

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Garry A. Brown  
Gregg C. Sayre  
Diane X. Burman

CASE 12-M-0476 - Proceeding on Motion of the Commission to Assess  
Certain Aspects of the Residential and Small  
Non-residential Retail Energy Markets in New  
York State.

CASE 98-M-1343 - In the Matter of Retail Access Business Rules.

CASE 06-M-0647 - In the Matter of Energy Service Company Price  
Reporting Requirements.

CASE 98-M-0667 - In the Matter of Electronic Data Interchange.

ORDER AUTHORIZING ACCELERATED SWITCHING  
OF COMMODITY SUPPLIERS

(Issued and Effective December 15, 2014)

BY THE COMMISSION:

INTRODUCTION

Accelerating the switching process for competitive commodity providers, will benefit customers and the retail energy market. The current process entails what can be a lengthy period between when a customer agrees to take service from an energy services company (ESCO) and when that ESCO actually begins to provide service to the customer. By accelerating the switching process, that period can be shortened. A tighter temporal connection between customer choice and execution will encourage customers to be more engaged in the marketplace, and will lessen confusion, as customers will

see the fruit of their energy provider decision in a more timely fashion. Greater customer engagement will help to ensure that the retail energy market responds to customer demands.

By this Order, the Commission adopts modifications to the Uniform Business Practices (UBP) to streamline the process for changing a customer's commodity supplier.<sup>1</sup> The modifications, proposed in a Staff Report on Accelerated Switching,<sup>2</sup> enable switches in electricity providers as quickly as five business days after the customer enrolls with an ESCO. Additionally, the modifications streamline both gas and electricity commodity switches by allowing the residential customer cancellation period to run concurrently with ESCO and utility enrollment processes. Finally, the modifications would allow the cancellation of a switch in commodity provider as late as the day before it would be effective.

#### BACKGROUND

Currently, the UBP requires that an "enrollment request" to change a customer's commodity provider must be submitted to a utility at least 15 days prior to the "effective date" of the switch.<sup>3</sup> For changes in electricity suppliers, the effective date of the switch is the next regularly scheduled meter reading date.<sup>4</sup> For changes in gas suppliers, each utility has chosen one effective date, either the next regularly

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<sup>1</sup> The change in commodity provider can be from the customer's utility to an ESCO, from an ESCO to the customer's utility, or from one ESCO to another ESCO.

<sup>2</sup> Case 12-M-0476 et al., supra, Department of Public Service Staff Report Regarding Accelerated Switching of Commodity Providers for All Customer Classes (filed October 17, 2014) (Staff Report).

<sup>3</sup> UBP §5.D.1.

<sup>4</sup> UBP §5.D.7.

scheduled meter reading date, or the first day of the month. A switch in commodity provider can also occur on other days, which is known as an "off-cycle" switch; however, there are additional requirements for off-cycle switches.<sup>5</sup> In practice, such switches are utilized sparingly.

On July 28, 2014, Staff submitted a proposal to accelerate the switching process for both gas and electricity providers.<sup>6</sup> The proposal would have shortened the "enrollment window" by requiring that a change in a customer's commodity supplier be effectuated within five business days of the date the customer agrees to the switch. The July Proposal would have made off-cycle switches a standard practice. The Secretary issued a notice seeking comment on, and scheduling a technical conference to discuss, the July Proposal.<sup>7</sup>

At technical conferences held on September 9, 2014 and October 7, 2014, Staff and interested parties discussed the July Proposal, various parties' concerns with that proposal and possible alternatives. At the technical conferences, various parties explained how gas pipeline capacity requirements necessitate a longer switching period for gas providers than is required for electricity providers.<sup>8</sup> In addition, parties opined

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<sup>5</sup> UBP §5.D.8. Off-cycle switches of electricity providers specifically require a special meter reading, for which the utility may charge a tariffed fee, unless the customer and ESCO agree to accept an estimated interim meter reading. Off-cycle switches of gas suppliers require that both a customer's incumbent ESCO and new ESCO agree on an effective date.

<sup>6</sup> Case 12-M-0476 et al., supra, Department of Public Service Staff Proposal Regarding Accelerated Switching of Commodity Providers for All Customer Classes (filed July 28, 2014) (July Proposal).

<sup>7</sup> Case 12-M-0476 et al., supra, Notice Seeking Comments and Scheduling Technical Conference Regarding Accelerated Switching of Providers (issued August 1, 2014).

<sup>8</sup> Staff Report, pp. 1-2.

that making off-cycle switching the rule rather than a limited exception would involve complexities, including, for some utilities, devising a method for identifying multiple ESCOs providing the same commodity on a single month's utility bill, and determining how to address the need for an off-cycle meter read or estimate.<sup>9</sup>

In light of the input received at the technical conferences, Staff filed the Staff Report on October 17, 2014, in which it set forth a Revised Proposal. That same day, the Secretary issued a Notice providing parties with the opportunity to comment on the Staff Report.<sup>10</sup> The Revised Proposal would require that changes in electricity providers be effective as soon as five business days after the enrollment request has been provided to the utility. However, the change in electricity provider would still occur on the next regularly scheduled meter reading date. For changes in gas suppliers, the Revised Proposal would maintain the current requirement that an ESCO submit an enrollment request at least 15 days prior to the effective date.

In addition, the Revised Proposal streamlines the switching process for both commodities. First, the Revised Proposal requires ESCOs to submit a customer enrollment request after it obtains customer authorization, third party verification where required, and provides the sales agreement to the customer. An ESCO enrolling a residential customer no longer has to wait until the customer's three-day cancellation period expires to submit the enrollment.

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<sup>9</sup> Id. at 2.

<sup>10</sup> Case 12-M-0476 et al., supra, Notice of Staff Report on Accelerated Switching of Energy Providers and Extending Deadline for Comments (issued October 17, 2014) (October Notice).

Second, the Revised Proposal requires quicker responses by ESCOs and utilities. For example, where a utility currently has two business days to provide a response to an ESCO's enrollment request, the utility now must respond within one business day. Third, the Revised Proposal allows customers or ESCOs to cancel an enrollment as late as one day prior to the effective date of the enrollment.

The Revised Proposal identifies proposed modifications to specific provisions of the UBP that are necessary to effectuate the Revised Proposal.<sup>11</sup> It also suggested the need for a 60 day period to implement the Revised Proposal, and states the expectation that the utilities would provide estimates of the implementation costs.

#### PUBLIC NOTICE AND COMMENTS

On August 1, 2014, the Secretary issued a Notice soliciting responses to the July Proposal. Moreover, in accordance with the State Administrative Procedure Act (SAPA) §202(1), a notice [SAPA No. 12-M-0476SP9] was published in the State Register on August 13, 2014. The SAPA §202(1)(a) period for submitting comments in response to the notice expired on September 29, 2014. In order to allow for multiple technical conferences and party comments on the Staff Report, the Secretary issued the October Notice extending the deadline for submitting comments until October 27, 2014. Seven parties

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<sup>11</sup> The Staff Report includes specific changes to UBP §§ 5.D.1, 5.D.4, 5.D.5, 5.D.6, 5.D.7, 5.E.1, 5.E.3 and 5.H.1. The proposed changes can be found in Appendix A to this order.

submitted comments on the Staff Report.<sup>12</sup> The Comments are considered below in the context of each issue decided in this order.

#### DISCUSSION AND CONCLUSION

This order addresses: (1) the process for switching electricity suppliers; (2) the process for switching gas suppliers; (3) specific proposed UBP language; (4) further process toward off-cycle and accelerated gas switches; and (5) implementation and costs.

##### Switching Electricity Providers

RESA, Joint Utilities, UGI, NRG, NEMA and Infinite generally support the modifications to the electricity provider switching process contained in the Revised Proposal. NRG asserts that the five-business day enrollment window has the potential to allow 33% more customers to effectuate a switch in their electricity provider a month faster than under the current rules.

GEE, while stating that it does not specifically comment on the electricity supplier process, expressed concern

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<sup>12</sup> The following parties submitted comments: the Retail Energy Supply Association (RESA); the National Energy Marketers Association (NEM); UGI Energy Services, LLC (UGI); the NRG Retail affiliate companies of NRG Energy, Inc. (NRG); the Joint Utilities (Consolidated Edison Company of New York, Inc. (CECONY); Orange & Rockland Utilities, Inc. (O&R); Central Hudson Gas & Electric Corporation (Central Hudson); KeySpan Gas East Corp. d/b/a National Grid (KEDLI), National Fuel Gas Distribution Corporation (NFG), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (NMPC), Rochester Gas and Electric Corporation (RGE), and The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY)); Infinite Energy, Inc. d.b.a. Intelligent Energy (Infinite); and, Great Eastern Energy (GEE).

that a shortened enrollment window could have an adverse impact on customer protections. According to GEE, the shortened enrollment window may impinge residential customers' three-day cancellation period. Further, states GEE, shortening the period may make it difficult for customers to cancel a pending enrollment in a timely manner.

The Revised Proposal significantly shortens the enrollment window for electricity supply providers, from 15 calendar days to five business days. While the effective date of a switch will remain the customer's next regularly scheduled meter reading date, ESCOs can now enroll customers just five business days prior to that date.

While shortening the enrollment window, the Revised Proposal continues important customer protections. Regarding GEE's concern, residential customers will retain the right to a three-day cancellation period.<sup>13</sup> Under the Revised Proposal, that cancellation period would run concurrently with the Utility and ESCO enrollment processes.

Similarly, the customer will still receive a "verification letter" from the utility.<sup>14</sup> By extending the time during which the customer may contact the utility to cancel the pending switch,<sup>15</sup> the Revised Proposal continues this important protection against unauthorized switches, or "slamming."

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<sup>13</sup> UBP §5.B.2 states that "The ESCO shall provide residential customers with the right to cancel a sales agreement within three business days after its receipt (cancellation period)."

<sup>14</sup> UBP §5.E.1.

<sup>15</sup> Under the Revised Proposal, the customer may cancel a pending switch by notifying the utility as late as the day prior to the planned effective date. In addition, if slamming has occurred and the customer does not contact the utility in time to cancel the switch, the customer should not be harmed. UBP §5.K.2 requires that an ESCO that slams a customer must refund to the customer the difference between what that ESCO charged and what the customer's incumbent provider would have charged.

Accordingly, the five-business day enrollment window for changing an electricity supplier is approved.

#### Switching Gas Suppliers

The Joint Utilities, GEE and UGI support retaining the 15 day enrollment window for changes in gas supplier, as described in the Revised Proposal. According to the Joint Utilities, changes in gas supplier must be completed prior to the assignment of pipeline capacity, which occurs prior to the beginning of each calendar month in accordance with North American Energy Standards Board standards. GEE asserts that, because of issues related to the release of customer pool reports and capacity, shortening the enrollment window to five business days would adversely affect gas operations. UGI cites comments it made to the Pennsylvania Public Utility Commission, in which UGI stated that, while it is supportive of the development of a workable solution for accelerated switching for some types of gas customers, it could be useful to observe how accelerated switching works for electricity suppliers before modifying the process for gas suppliers.

In contrast, RESA and NRG recommend modifying the enrollment period for changes in gas suppliers, from 15 calendar days to nine business days. Stating that the modification would only shorten the enrollment period by three business days, NRG asserts that it could be accomplished "without detrimental impact to the protocols for assigning and releasing capacity." While Infinite supports the RESA and NRG position as an alternative solution, it would rather the Commission adopt Staff's July Proposal of a five-day enrollment window for gas suppliers.

The existing 15-day enrollment window for switching gas suppliers will not be modified at this time. As evidenced



by positions presented at the technical conferences and in comments, parties are divided on the issue of the minimum necessary enrollment window for switches in gas suppliers. While Infinite, NRG and RESA seek a shorter enrollment window for gas suppliers, the comments of the Joint Utilities, UGI and GEE illustrate the practical concerns that the proposals presented. As the goal here is to implement changes to the commodity supplier switching process that can be simply and expeditiously effectuated, and the proposals presented fail to achieve that goal, the enrollment window for gas suppliers will remain at 15 calendar days.<sup>16</sup>

The Revised Proposal does include changes to the UBP that apply to switches of both electricity and gas suppliers. Paramount among these changes is that the customer cancellation period will now run concurrently with the ESCO and utility enrollment processes. The other changes to the UBP primarily require more immediate communication between ESCOs and utilities during the switching process. While these changes do not affect the overall length of the gas supplier enrollment window, they should increase efficiency and lay the groundwork for a shorter gas supplier enrollment window in the future.

#### Revised UBP Language

With regard to the specific UBP language identified in the Revised Proposal, that language, with certain revisions described below, is adopted, as set forth in Appendix A.

Two commenters, RESA and Infinite requested modifications to the proposed UBP language. RESA suggests two changes to UBP §5.D.6. First, it states, the utility should be

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<sup>16</sup> While, at this time, the UBP will not be revised to require utilities to process switches of gas suppliers in less than 15 days, utilities are encouraged to do so in practice, whenever possible.

required to provide a notice to a customer's incumbent ESCO "contemporaneously" with the utility's acceptance of an enrollment request. This change reinforces the intent of quickening the communication between the utilities and ESCOs throughout the switching process and so is accepted.

Second, RESA would require the utility to reinstate a customer's incumbent ESCO even if the reinstatement request is sent to the utility on the planned effective date of the switch. Although the Revised Proposal limits acceptance of reinstatement requests to a date prior to the planned effective date in another context,<sup>17</sup> RESA constrains its proposal only to cancellations in the one instance it selects. In addition to its limited scope, the change could cause complications on which other parties have not had the opportunity to comment. However, RESA's proposal should be considered in the collaborative and be evaluated in all instances where it would adhere.

RESA also asks that the following language in UBP §5.D.4, as drafted in the Revised Proposal, be rejected:

For telephonic enrollments, in which the ESCO sends the customer the sales agreement via US Mail, the ESCO shall provide for two business days for the customer to receive the sales agreement.

RESA argues that the ESCO has already obtained the customer's agreement during a telephone call, and waiting for the transmittal of the sales agreement is unnecessary. Infinite also seeks to strike this language from UBP Section 5.D.4.

Although RESA and Infinite assert that this provision is unnecessary, it is integral to the operation of the three-day cancellation period afforded to residential customers by statute and the UBP, and therefore cannot be jettisoned. Personal Property Law (PPL) §427(1), which may apply to some ESCO

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<sup>17</sup> Appendix A, UBP § 5.E.2.

marketing activities, provides that customers have the right to cancel a "door-to-door sale until midnight of the third business day ... after the day on which the buyer has signed an agreement or offer to purchase relating to such a sale." Similarly PPL §442(1) affords customers the right to "cancel the telephone sale until midnight of the third business day after the day on which the buyer has received written notice from the seller notifying the buyer of his right to cancel the telephone sale." Drawing upon the protection afforded by PPL §§427(1) and 442(1), UBP §5.B.3 provides that "[t]he ESCO shall provide residential customers the right to cancel a sales agreement within three business days after its receipt (cancellation period)." Without providing for the transmittal of the sales agreement, the enrollment window would not be long enough to allow residential customers to avail themselves of this important consumer protection.

Collaborative Process to Develop  
Off-cycle and Accelerated Gas Switching

RESA, NEM, NRG and Infinite believe the modifications contained in the Revised Proposal should only be an initial measure. Each commenter supports further progress toward accelerated switching for gas suppliers and off-cycle switching for both commodities. Indeed, Infinite supports implementation of the July Proposal, including off-cycle switching of both gas and electricity suppliers at this time. However, the technical conferences and comments demonstrate that parties are divided as to how to facilitate off-cycle switching. With regard to both electricity and gas suppliers, the Joint Utilities explain that off-cycle switching requires some form of special meter read,

either actual or estimated.<sup>18</sup> The Joint Utilities also noted that effectuating off-cycle switching requires that the utility be able to acknowledge that two different ESCOs have provided a single commodity in a given billing cycle. While some utilities may be able to do so, others cannot at this time, at least not in a straightforward customer-friendly manner.<sup>19</sup>

RESA and NRG, with the support of Infinite, request that the Commission institute a formal collaborative process with the goal of developing recommendations for accelerating switching no later than April 2015. Such a process may be fruitful in developing proposals to shorten the enrollment window for gas suppliers and to effectuate regularized off-cycle switching. Staff should convene the first meeting of this collaborative within forty-five days of the date of this order. The Staff-led collaborative shall culminate in a report of its findings, which shall be submitted to the Secretary by August 31, 2015. This process will allow the participants to learn from experience with the first few months of accelerated switching for electricity providers. The report should identify changes that the participants recommend implementing in order to effectuate accelerated switching of gas suppliers and to effectuate off-cycle switching for gas and/or electricity suppliers, and identify any changes that impact the development of accelerated and off-cycle switching, that may be outside the scope of these proceedings, such as AMI. Finally, the Report

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<sup>18</sup> One difficulty is the lack of widespread advanced metering infrastructure (AMI) in New York State. AMI would make it much easier to obtain off-cycle meter reads, as is the case in other jurisdictions which allow off-cycle switches, such as Pennsylvania and Texas.

<sup>19</sup> The Joint Utilities states that for some, off-cycle switching might require changing the customer's account number, i.e., closing an existing account and establishing new account.

should, if experience suggests the need, recommend further changes to the processes adopted here.

Implementation and costs

The Joint Utilities state that they could implement the modifications contained in the Revised Proposal within 60 days of a Commission order. The 60 day implementation period appears reasonable. Accordingly, the changes to the commodity provider switching process adopted in this order shall be operable within 60 days of the date of this order.

With regard to costs of implementation, the Joint Utilities submit what they describe as "initial budget estimates [that] may need to be adjusted as actual system modifications and timelines are identified."<sup>20</sup> CECONY and O&R estimate that implementation would cost \$60,000 collectively; NYSEG and RG&E estimate \$6,000; Central Hudson estimates \$5,000 and National Grid estimates costs of \$60,000 for all of its distribution utilities, exclusive of costs for testing.<sup>21</sup> UGI states that as the implementation of accelerated switching would benefit all customers, the recovery of implementation costs should be addressed in each utility's next base rate proceeding. These costs should be treated consistent with each utility's existing rate plan. To the extent a utility does not currently have a rate plan, or the rate plan does not address these types of costs, these costs are de minimis, and there is no need to provide for their recovery in this order.

The Commission orders:

1. Revisions to the Uniform Business Practices, as set forth in Appendix A to this Order, are adopted in accordance

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<sup>20</sup> Comments of the Joint Utilities, p. 4.

<sup>21</sup> Id.

with the discussion in the body of this Order. Energy Service Companies (ESCOs) eligible to operate in New York are directed to comply with the revised Uniform Business Practices.

2. The Uniform Business Practices, as amended, are adopted prospectively to apply to new ESCO service agreements and to renewals of current ESCO service agreements.

3. Electric and gas distribution utilities that have tariffed provisions providing for retail access are directed to implement any changes necessary to effectuate the modifications to the commodity provider switching process within 60 days of the date of this order.

4. Electric and gas distribution utilities that have tariffed provisions providing for retail access are directed to submit a letter to the Secretary, within 60 days of the date of this order, stating that commodity provider switching processes are in compliance with this order.

5. A collaborative is instituted to develop proposals to shorten the enrollment window for gas suppliers and to effectuate regularized off-cycle switching. A report of the collaborative findings, consistent with the body of this order, shall be submitted to the Secretary by August 31, 2015.

6. The Secretary, in her sole discretion may extend the deadlines set forth in this order, provided the request for such extension is in writing, including a justification for the extension, and filed on a timely basis, which should be on at least one day's notice prior to any affected deadline.

7. These proceedings are continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary

Modifications to Provisions of the  
Uniform Business Practices to effectuate  
Accelerated Switching of Commodity Providers

5.D.1 - An ESCO shall transmit:

a. ~~An~~ an electric enrollment request to a distribution utility no later than ~~15 calendar~~ business days prior to the effective date of the enrollment.

b. A gas enrollment request to a distribution utility no later than 15 calendar days prior to the effective date of the enrollment.

c. The enrollment request shall contain as at a minimum, the information required for processing set forth in Attachment 5, Enrollment Request.

5.D.4 - An ESCO shall submit an enrollment request after it obtains customer authorization, and third party verification where required, and it has provided the sales agreement to the customer and, ~~for residential customers, after the expiration of the three day cancellation period.~~ For telephonic enrollments, in which the ESCO sends the customer the sales agreement via US Mail, the ESCO shall provide for two business days for the customer to receive the sales agreement.

5.D.5 - After receipt of an enrollment request, the distribution utility shall, within one business day, acknowledge its receipt, and, ~~within two business days,~~ provide a response indicating rejection and the reason, or acceptance and the effective date for the change of provider.

5.D.6 - Upon acceptance of an enrollment request, the distribution utility shall contemporaneously send a notice to any incumbent ESCO that the customer's service with that ESCO will be terminated on the effective date of the new enrollment. In the event that the distribution utility receives notice from the pending ESCO, the incumbent ESCO (with specific customer authorization for each cancellation), or the customer, prior to ~~no later than three business days before~~ the effective date that a pending enrollment is cancelled, the distribution utility shall transmit a request to reinstate service to any incumbent ESCO, unless the ESCO previously terminated service to the

\*Please note that the UBP additions are underlined and the deletions are identified by a strikethrough.

customer or the customer requests a return to full utility service.

5.D.7- With the exception of a new installation use of an interim estimate of consumption or a special meter reading,<sup>1</sup> a change of providers is effective: for an electric customer, on the next regularly scheduled meter reading date; and, for a gas customer, on the next regularly scheduled meter reading date or the first day of the month, in accordance with provisions set forth in the distribution utility's tariff.<sup>2</sup> The distribution utility shall set the effective date, which shall be no sooner than ~~15 calendar~~ business days after receipt of an enrollment request. Service to new delivery customers is effective after the installation is complete and, if necessary, inspected.

5.E.2 - Upon receipt of such cancellation, the distribution utility shall cancel the pending enrollment and reinstate the customer with the incumbent ESCO, if any, or the distribution utility, provided that the distribution utility is notified prior to no less than three business days remain before the planned effective date. If the distribution utility is notified on or after the planned effective date less than three business days remain, the change to the new provider shall occur and remain effective for one billing cycle. The customer shall return to full utility service at the end of the next switching cycle, unless the customer is enrolled by another ESCO in accordance with this section prior to at least 15 days before the beginning of the next switching cycle.

5.E.3. - If a customer notifies the pending ESCO of such cancellation, the pending ESCO shall send a customer's drop request to the distribution utility within one at least three business days prior to the effective date for the pending enrollment.

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<sup>1</sup> If meters are read bimonthly and bills are issued monthly using estimated usage, the effective date for the interim months is the date usage is estimated for billing purposes.

<sup>2</sup> If meters are not read within two business days of the scheduled meter reading day, the distribution utility or MDSP shall estimate usage as of the scheduled meter reading day. The effective date for a change of provider is that date, except where changes of natural gas suppliers are scheduled for the first of the month.

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5.H.1 - A customer arranges for a return to full utility service by contacting either the ESCO or the distribution utility in accordance with this paragraph. An ESCO contacted by the customer shall, within ~~two~~ one business days, process the customer's request to return to full utility service. A utility contacted by a customer shall remind the customer to contact the ESCO about ~~their~~ the customer's returning to full utility service provided, however, that if the customer has already contacted the ESCO or wants to proceed without contacting the ESCO, the utility shall, within one business ~~two~~ days, process the customer's request to return to full utility service. If a change to full utility service results in restrictions on the customer's right to choose another supplier or application of a rate that is different than the one applicable to other full service customers, the distribution utility shall provide advance notice to the customer.

\*Please note that the UBP additions are underlined and the deletions are identified by a strikethrough.