B M & G | BEVAN, MOSCA & GIUDITTA, P.C.
ATTORNEYS AT LAW

222 MOUNT AIRY ROAD, SUITE 200
BASKING RIDGE, NJ 07920-2335
(P) 908.753.8300
(F) 908.753.8301
WWW.BMG.LAW

MURRAY E. BEVAN
mbevan@bmg.law

June 6, 2016

VIA ELECTRONIC FILING

The Honorable Kathleen H. Burgess
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Re: **Cases 98-M-1343, 12-M-0476, 15-M-0127: *Comments on Staff Whitepaper on Benchmark Reference Prices* (May 4, 2016) *and Staff Whitepaper Regarding ESCO Performance Bonds or Other Security Interests* (May 4, 2016)**

Dear Secretary Burgess:

In response to the Notice Seeking Comments issued by the New York Public Service Commission ("PSC") in the above-referenced docket on May 10, 2016, Agway Energy Services, LLC ("Agway") respectfully submits these Comments to the Staff Whitepaper on Benchmark Reference Prices (the "Reference Price Whitepaper") and the Staff Whitepaper Regarding ESCO Performance Bonds or Other Security Interests (the "Performance Bond Whitepaper," and collectively with the Reference Price Whitepaper, the "Whitepapers"), which were issued by the PSC in the above-referenced docket on May 4, 2016.

Licensed as a New York Energy Service Company ("ESCO") since 1997, Agway has been an active participant in the PSC's collaborative process in this docket both preceding and following the PSC's issuance of the Order Resetting Retail Energy Markets and Establishing Further Processes ("Resetting Order") on February 23, 2016. Throughout the proceeding, Agway has offered its unique perspective as an ESCO that provides an energy-related value-added service product to all of its approximately 70,000 mass market electric and natural gas customers in New York as part of its overall offering to customers. Specifically, through its EnergyGuard™ program, Agway provides a home furnace/boiler repair program to all natural gas customers, in which no deductible is applied and coverage is available around-the-clock, including weekends. Agway also provides a central air conditioning repair program and electric wires program to all residential electric customers, as well as an energy efficiency check and safety inspection of commercial customers' heating or cooling systems, through its EnergyGuard™ program. Agway's customers appreciate and have come to depend on these value-added services for peace of mind, which is evidenced by Agway's high degree of customer loyalty and the vast amount of customer testimonials it receives each year. At the same time, customers also appreciate that Agway allows them to terminate their contracts at any time without penalty.

Despite the unchallenged integrity of Agway's product and its demonstrated value to customers, the PSC placed severe restrictions on ESCOs in the Resetting Order that, if allowed to go into effect as written, would significantly harm Agway's business, as well as Agway's customers who rely on its EnergyGuard™ services. Indeed, these far-reaching restrictions have the potential to force the vast majority of ESCOs out of business, even ESCOs like Agway which have satisfactorily and reliably met customers' various energy-related needs over the years. Therefore, as detailed in Comments submitted to the PSC on March 18, 2016 (the "Comments"), Agway firmly believes that the PSC should enact reforms to the marketplace aimed at increasing enforcement action and penalties against bad actors who have and/or who would taint the marketplace, instead of taking the draconian steps set forth in the Resetting Order.

I. Reference Price Whitepaper

In line with its prior Comments, Agway is also concerned that the proposals set forth in the subsequently-issued Reference Price Whitepaper on May 10, 2016 would have the unnecessary and undesired effect of eradicating an entire industry that has generally had a positive effect on New York's economy and energy consumers. As a value-added ESCO that offers a variable rate contract, Agway is particularly concerned about the proposal to require ESCOs providing month-to-month variable rate value-added products to "guarantee savings with respect to the commodity portion of the product and disclose in the customer disclosure statement the additional cost attributed to the energy related value added product or service." Agway believes that a benchmark reference price or any additional modifications to the way ESCOs currently provide value-added services are neither appropriate nor necessary and that the PSC should maintain the status quo.

In order to win and retain customers, and to differentiate themselves from the utility and other ESCOs, many ESCOs use a service bundling approach – they combine basic commodity service with value-added services (such as Agway's EnergyGuard™ repair program) and offer the bundle to customers for a single, undifferentiated price. This approach is quite similar to that seen in other competitive markets such as cable and telecommunications (e.g., bundled wireless packages, and bundled cable and satellite television offers). It also affords the customer the comfort of having a single bill, at a fully transparent price, to cover the service bundle from the ESCO that best meets that customer's energy preference. Agway's customers have often expressed that they like the convenience and value afforded by the bundled pricing of the commodity and EnergyGuard™ product.

Accordingly, Agway does not support any requirement for ESCOs to unbundle their value-added products, nor does Agway believe that any other limitations on how ESCOs provide or price these value-added services are warranted. Such restrictions would curtail further innovative solutions in the marketplace, leaving customers with fewer options and stifling the development of new products designed to realize New York's broader Reforming the Energy Vision ("REV") strategy. As a result, most ESCOs could not be expected to compete in such a restricted marketplace and the industry and its customers would suffer.

In addition to threatening innovation, Agway believes that restricting how ESCOs provide and price value-added services would be nearly impossible to accomplish. Developing an objective measure of the value of an energy-related value-added service would be unworkable since that measure can depend on many factors, including, but not limited to, type of service, usage patterns, age of equipment, location, etc. Similar to an insurance policy, some energy-related value-added service offerings, including those provided by Agway, become extremely valuable when they are needed and the peace of mind they afford customers along the way is considered invaluable by many customers. Accordingly, any attempt to establish a benchmark reference price for such value-added services would not provide a true apples-to-apples comparison of the service offerings and prices of other competitors (including the utility) given the various resources and infrastructure that are deployed to support such value-added service offerings, as well as the differences in the value-added services themselves, which can range from frequent flier miles to carbon offsets to Agway's EnergyGuard™ product.

Instead of requiring ESCOs to unbundle services and guarantee savings on the commodity portion of a product, Agway submits that the marketplace and its customers would be better served if the PSC were to penalize ESCOs who engage in misleading and price-gouging practices. Agway understands that it is this type of behavior that has prompted action by the PSC, and Agway certainly supports increased PSC enforcement mechanisms which would be aimed at curbing these bad actors, as discussed in its previous Comments. These mechanisms include imposing increased fines for bad acts (e.g., slamming, cramming, misrepresentation), which should increase for repetitive bad acts and willful misbehavior. For ESCOs that repeatedly engage in serious and systematic misbehaviors, the PSC should institute proceedings to revoke their authority to operate in the ESCO marketplace.

II. Performance Bond Whitepaper

With regard to Staff's comments in the Performance Bond Whitepaper, Agway supports a PSC requirement for ESCOs to meet financial assurance requirements to secure certain future liabilities they may face. Agway believes, however, that ESCOs should be permitted to demonstrate financial assurance through a variety of means, including surety bonds, parental guaranties and letters of credits, as is permitted in other states. Agway further believes that such requirement should be separate and apart from any financial requirements imposed by utilities, and that the financial assurance instrument discussed in the Performance Bond Whitepaper should be held in the name of the PSC. Agway proposes that the specific amount of financial assurance required of each ESCO should be a flat, fixed amount that does not vary based on the ESCO's number of customers or revenue.

III. Implementation Time for Changes Required of ESCOs

No matter the specific requirements that the PSC ultimately orders, Agway urges the PSC to provide sufficient time for ESCOs to implement any changes required of them. Obtaining financial assurance instruments, modifying computer information systems, adjusting accounting methods, training sales forces and effecting other operational changes takes far more time than was provided to ESCOs in the Resetting Order, and Agway respectfully requests that the PSC keep this in mind when ordering any additional changes. Agway suggests that the PSC give ESCOs until March 1, 2017 to effectuate any changes required of them.

Agway appreciates the opportunity to submit these comments and urges the PSC to adopt Agway's recommendations expressed herein. Please do not hesitate to contact me should you have any questions or require further information.

Very truly yours,

Murray E. Bevan
Counsel for Agway Energy Services, LLC

cc: Service list *(via electronic mail)*