

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held in the City of  
Albany on November 8, 2006

COMMISSIONERS PRESENT:

William M. Flynn, Chairman  
Patricia L. Acampora  
Maureen F. Harris  
Robert E. Curry, Jr.  
Cheryl A. Buley

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

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

ORDER ADOPTING ESCO PRICE REPORTING REQUIREMENTS  
AND ENFORCEMENT MECHANISMS

(Issued and Effective November 8, 2006)

BY THE COMMISSION:

BACKGROUND

As discussed in the ESCO Price Notice,<sup>1</sup> since October 2004, the energy services companies (ESCOs) serving residential customers in the various utility service territories, along with additional information on those ESCOs, has been listed at our Web site, [www.AskPSC.com](http://www.AskPSC.com). In October 2005, the Web site's capabilities were enhanced by adding a "Power to Choose" (Power Choose) feature, at [www.PowertoChooseNY.com](http://www.PowertoChooseNY.com), that enabled customers to make more meaningful price comparisons among ESCOs and utilities.

For Power Choose to function properly, ESCOs must submit timely and accurate price information for posting on the

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<sup>1</sup> Case 06-M-0647, supra, Notice Soliciting Comments on ESCO Price Reporting Requirements (issued May 31, 2006).

Web site. Not all ESCOs, however, have been willing to furnish complete information voluntarily. An inquiry was therefore launched into the requirements, if any, that should be imposed on ESCOs for reporting to Department of Public Service Staff (Staff) the prices offered to residential customers.

Because some ESCOs may be unwilling to comply with price reporting requirements, an enforcement mechanism was proposed. Under the Uniform Business Practices (UBP),<sup>2</sup> Staff is authorized to determine if an ESCO should no longer be eligible to sell electricity or gas to retail customers because it has failed to satisfy UBP or other applicable requirements. Withdrawing that eligibility under the UBP process was suggested as an appropriate sanction for enforcing ESCO compliance with price reporting requirements.

Initial and Reply Comments on ESCO price reporting requirements and enforcement mechanisms were solicited in the ESCO Price Notice. Those deadlines were extended to July 28, 2006 for Initial Comments and to August 21, 2006 for Reply Comments.<sup>3</sup> Moreover, notice of the proposed requirements was published in the State Register on July 5, 2006, in conformance with State Administrative Procedure Act (SAPA) §202(1). Under SAPA §202(1)(a), the comment period for responding to that notice expired on August 21, 2006. The parties that submitted comments are listed, with abbreviations, and their comments are summarized, in Appendix A.

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<sup>2</sup> See, e.g., Case 98-M-1343, supra, Order Modifying Electronic Data Interchange (EDI) Standards and Uniform Business Practices (issued May 19, 2006).

<sup>3</sup> Case 06-M-0647, supra, Notice Extending Filing Deadlines (issued June 23, 2006).

DISCUSSION

Additional residential customers could be encouraged to participate in retail gas and electric competitive markets if more extensive ESCO pricing information were readily available. It does not appear that the complete price information customers have come to expect when making price comparisons for competitively-priced goods is easily accessible in the markets for gas and electric commodity supply. Power Choose is currently the primary tool that could be used to better compile and more widely disseminate that information. Those functions, however, cannot be accomplished unless all ESCOs report price information to the Web site.

To date, voluntary price reporting has not been successful. Too many ESCOs decline to report prices, leaving the Power Choose Web site without sufficient data to enable consumers to conduct satisfactory inquiries into retail gas and electric supply prices. As a result, mandatory price reporting requirements are necessary.

The Price Reporting Requirement

While the price reporting requirements imposed on ESCOs should be sufficient to obtain the additional information needed to enhance price transparency and price discovery, compelling overly extensive or intrusive reporting could unnecessarily constrain the flexibility that is characteristic of competitive markets. An approach requiring ESCOs to submit snapshots of prices for their generally available offerings would assist customers in obtaining information about pricing alternatives while avoiding impediments to the proper functioning of the market. Therefore, ESCOs shall report, by the 5<sup>th</sup> day of each month, for each generally-available service they were offering to eligible residential customers, the price they would have charged for each service as of the 1<sup>st</sup> day of

that month.<sup>4</sup> Those prices will then be posted to Power Choose, along with the disclaimer that the prices are illustrative, to alert customers that the Web site is only the starting point for price discovery and that an actual offer to provide service must be obtained directly from an ESCO.

Although ESCOs must post prices for all of the services they offer that are generally available to eligible residential customers, an ESCO that offers only one service need report only the one price for that service. ESCOs may also continue to make offers to consumers at prices other than those reported, in response to emerging market opportunities they deem not adequately met through their generally available offers. Moreover, because reporting is limited to the price snapshots, ESCOs may promptly revise their offers after the snapshots are submitted, to adapt to changes in market conditions or opportunities. This approach properly balances consumers' interests in obtaining reasonably timely and accurate information and ESCOs' interests in retaining the flexibility to nimbly respond to evolving market conditions and opportunities.

ESCOs shall accompany each price they report with some basic information on the terms and conditions of the offer tied to the price, including the price offer type (fixed, variable, capped or other), the term the price is available, any cancellation fees or notice requirements,<sup>5</sup> any late payment charges, any deposits required, the billing options available

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<sup>4</sup> Advice on the format and software necessary for submitting the price information to the Web site operator can be obtained from Staff of the Office of Retail Market Development (ORMD).

<sup>5</sup> If the cancellation fee varies according to a formula, the ESCO may report it as a variable fee instead of as a fixed amount; as ESCOs contend, attempting to represent a variable fee in a single number would create confusion. The ESCO, however, will note that information on the calculation of the variable fee could be obtained from it.

(single bill from the utility, dual billing, or other), and payment options (credit card, on-line, automated draft or other). ESCOs will also be able to submit such comments or additional information concerning their pricing as can be readily accommodated into the Power Choose format.<sup>6</sup>

The basic information will be submitted in a standardized format, which should improve customer understanding of ESCO offers. ESCOs themselves may decide how much additional information to submit beyond the basic information, affording them flexibility in assessing which additional information should be reported to assist consumers and which should be left unreported, because customer confusion is best avoided if the information is obtained in detail directly from the ESCO. Since the standardized format is limited to basic information that the ESCOs should find easy to provide, and they may present more complex information as best fits their marketing strategies, the information reporting requirements should not overly burden the ESCOs.

#### Enforcement

A mechanism for enforcing reporting requirements is needed. Some ESCOs are likely to resist price reporting requirements by simply failing to submit a price. Enforcement action may also be required if ESCOs report prices that are inaccurate. In the ESCO Price Notice, it was suggested that withdrawing an ESCO's eligibility to participate in retail markets would be a sanction sufficient to impel ESCO compliance with price reporting requirements.

The withdrawal of eligibility, however, may be an overly punitive sanction in many circumstances that nonetheless

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<sup>6</sup> As an alternative to Internet access, customers may obtain the pricing and other information from ORMD via regular mail.

warrant enforcement action of a lesser degree. Moreover, if an ESCO is no longer eligible to participate in markets, its customers may no longer receive service from it and will be compelled to make alternative arrangements. So disrupting customer reliance on service from an ESCO should not be undertaken lightly. Therefore, an enforcement mechanism must be carefully tailored to ensure compliance with the reporting requirements without overly interfering with the functioning of retail markets.

A properly refined enforcement mechanism begins by addressing circumstances where ESCOs fail to report any information. In those circumstances, Staff would determine that no price has been reported and issue a notification to the ESCO requiring it to comply with the reporting requirement. After being given an opportunity to cure the failure to report, and declining to take advantage of it, these ESCOs would be precluded from enrolling new customers, with Staff informing the utility that it is to cease processing requests from the ESCO to switch customers to ESCO service.<sup>7</sup> This sanction should be sufficient to impel an ESCO to meet its reporting responsibilities, without disrupting service to existing customers.

A similar mechanism would serve to enforce the accuracy of price reporting. Again, following a determination and issuance of a notification by Staff, an ESCO would be given the opportunity to revise an inaccurate price during a cure period. If the ESCO declined to make the revisions necessary to accurately report its prices, however, Staff would inform the

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<sup>7</sup> Implementation of this sanction necessitates the suspension of the ESCO from the utility's ESCO referral program, if the ESCO is participating in it.

utility that it is to cease processing the ESCO's requests to enroll new customers.

In some instances, ESCOs might become repeat offenders, by continually refusing to participate in price reporting, or become flagrant offenders, by refusing to correct inaccuracies in reported prices or posting false information in an effort to manipulate markets. In those instances, withdrawal of eligibility to participate in markets might be appropriate. While that more stringent sanction should be imposed only carefully upon sufficient cause, the UBP already authorize Staff to determine if it is necessary to remedy other serious transgressions ESCOs might commit.<sup>8</sup> Extending that existing authority to include the repeated or flagrant violation of reporting requirements is appropriate.

To implement price reporting, and the enforcement mechanisms, changes to the UBP are needed; UBP §2.D.2 shall provide for ESCO price reporting requirements; UBP §2.D.3 shall provide for the sanction, upon a failure to properly report, of precluding ESCOs from enrolling new customers; and, UBP §2.D.4 shall include, among its categories warranting the withdrawal of eligibility, ESCO failures to report prices that are of a more serious nature. The new UBP subdivisions are attached at Appendix B.<sup>9</sup>

This approach to ESCO price reporting requirements and their enforcement properly balances the interests of consumers in price transparency and the interests of ESCOs in avoiding unnecessarily burdensome regulatory interference. It enhances price discovery without impeding innovation, constraining market

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<sup>8</sup> Case 98-M-1343, supra, UBP §2.D.4.

<sup>9</sup> The entire UBP, including these revisions, has been posted to the Web site and may be obtained at the following electronic link: <http://www.dps.state.ny.us/ubf.htm>.

flexibility or restricting the ability of market participants to tailor their offers to meet rapidly-changing market conditions or opportunities to make sales to individual consumers. As a result, the criticisms the commentators present that conflict with this approach are rejected, as discussed further below.

#### Arguments Against Price Reporting

While the majority of commentators concede that ESCO price reporting would facilitate residential customer participation in retail competitive markets, many nevertheless maintain that price reporting should not be mandated because it would disrupt the market or is otherwise improper. These arguments lack merit.

The price reporting requirement described above avoids impediments to the development of competitive markets. The requirement will not vitiate an ESCO's ability to respond to market forces. Because the prices reported are snapshots of what was offered on a particular day, ESCOs are not bound to offer them to new customers after that date, enabling them to modify their prices rapidly in response to new market circumstances. Product innovation is not disrupted or impeded, because ESCOs may respond to rapidly-evolving market opportunities by immediately devising specially-tailored products (at prices they need not report), beyond the scope of their generally-available offerings (whose prices they must report). To avoid customer surprise and confusion, the Power Choose Web site will advise consumers that the ESCO prices are illustrative only, and will present other disclaimers to the extent appropriate.

Nor will the price reporting requirement dissuade customers from considering value-added services. ESCOs may, at their option, list those services at the Power Choose Web site, or offer them separately. With basic price information in hand



from the Web site, consumers are encouraged to explore the market further instead of experiencing frustration because price information is not available. Once they embark upon their exploration of the market, assisted by the price information they have obtained, they are more likely to consider value added services, rather than to never reach that point if deterred by the absence of price discovery.

Some ESCOs also suggest that market forces are sufficient to police price reporting, in that ESCOs that do not publicize their prices adequately will lose customers and will eventually exit the marketplace. These ESCOs also point out that other markets for consumer goods and services function well without centralized price discovery through a vehicle like the Power Choose Web site.

At this stage of the development of retail energy markets, however, a vehicle to facilitate price discovery is needed. Because these markets are still developing, the means for making price comparisons that take place in more traditional markets are not yet fully developed. Moreover, the complexity of gas and electric commodity offerings, along with the presence of the formerly-dominant utility providers in the market, can frustrate consumers inexperienced with making energy commodity choices. As a result, market forces alone cannot be relied upon to yield price transparency and to educate consumers. While perhaps at some future stage, the Power Choose Web site will become unnecessary, at this point the market is more likely to function properly if price discovery is available through the Web site.

Some ESCOs claim that imposing price reporting requirements is improper even if the effect on the market were benign. These commentators contend that mandatory price reporting is inconsistent with the existing regulatory framework

for ESCOs under which they are minimally regulated and exempted from application of Article 4 of the Public Service Law (PSL).

Mandatory price reporting requirements, however, are fully consistent with the regulatory requirements imposed on ESCOs previously, and with the UBP. While ESCOs are exempt from PSL Article 4 regulation,<sup>10</sup> Opinion No. 97-5 establishes an oversight process that nonetheless applies to ESCOs under PSL Article 1.<sup>11</sup> That oversight process requires ESCOs to provide the data necessary to demonstrate they should be eligible to serve customers in New York, and provides for denying ESCOs eligibility if they do not comply. Requiring price reporting is merely an extension of the ESCO's pre-existing PSL Article 1 obligation to furnish data.

Moreover, the regulatory framework first adumbrated in Opinion No. 97-5 was later expanded into the UBP requirements.<sup>12</sup> The UBP establishes the standards and criteria ESCOs must satisfy to obtain and retain eligibility to serve residential customers. Adding mandatory ESCO price reporting to the UBP requirements does not change the character of those requirements, which, besides establishing the data ESCOs must submit to obtain and retain eligibility, also set forth detailed requirements on creditworthiness standards, customer enrollment procedures, billing protocols, and similar matters. Since the UBP requirements fit within the ESCO regulatory framework adopted in Opinion No. 97-5, mandatory ESCO price reporting also falls within the ambit of that framework.

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<sup>10</sup> Case 94-E-0952, supra, Opinion No. 97-17 (issued November 18, 1997), pp. 29-35.

<sup>11</sup> Case 94-E-0952, Competitive Opportunities For Electric Service, Opinion No. 97-5 (issued May 19, 1997), pp. 43-44.

<sup>12</sup> See, e.g., Case 98-M-1343, supra, Opinion No. 99-3 (issued February 16, 1999).

Mandatory ESCO price reporting does not impose a regulatory burden on ESCOs similar to that imposed on utilities, or force ESCOs to assume responsibilities that resemble those utilities must bear. Fully-regulated utilities that tariff their prices are restricted to charging only the tariffed prices and can revise their tariffs only after securing regulatory approvals in accordance with law. In contrast, ESCOs, after reporting the snapshots of their generally-available prices, may revise them at any time subsequent to their submittal without seeking regulatory authorization. ESCOs also may offer products and prices, in addition to the price reported, that are not generally available. Therefore, the price reporting requirement is designed to properly recognize that ESCOs are competitive market participants distinguishable from fully regulated utilities that must tariff their prices.

#### Price Reporting Proposals

Commentators presented a variety of positions on the type of price reporting requirement that should be adopted. Some commentators suggested that ESCOs would find it difficult to express their prices in a rate applicable for a particular period of time. Others stress that the reporting requirement should be established with clarity and specificity. Requiring the reporting of the snapshot prices meets these criteria. ESCOs need only report the generally-available prices they have offered and could have charged to customers; that standard is clear, specific, and can be readily met, because ESCOs must understand and be able to calculate those prices that they have offered and will bill.

Other commentators assert that the prices the ESCOs post must be available for some period of time after posting. Imposing such a requirement, however, goes beyond what is necessary under these circumstances. The purpose of the price

reporting requirement is to enable consumers to conduct a more meaningful inquiry into the prices available in the market. Because the prices the ESCOs report must be accurate as of the 1<sup>st</sup> of the month date they were offered and could have been charged, providing those prices facilitate price transparency and price comparison. With those objectives realized, it is not necessary to go further at this time by burdening the Web site with the additional functions of quoting current prices or identifying price availability. Those functions could be difficult to implement promptly, especially for all ESCOs that report prices, and would create confusion if implemented hastily or poorly.

Requiring that ESCOs tie themselves to a particular price for a particular period of time would not necessarily further enhance price transparency. It could overly intrude upon the functioning of a competitive market, because, compelling ESCOs to act as utilities in meeting such a tariff-like requirement could impede their ability to respond to market conditions and could obstruct the development of creative service offerings that customers desire.

Nor will the snapshot prices create the opportunity for the deceptive business practice widely known as "bait and switch." Because the accuracy of the prices will be supervised, ESCOs cannot create a fictitious price, as occurs under the bait and switch scenario, in order to declare it unavailable when the consumer requests it, and then seek to entice a customer to accept a higher-priced alternative. With accurate prices in hand, customers may make comparisons, even though they will find it necessary to inquire further into the market to ascertain the actual prices that remain available.

Some commentators maintain that accurate utility commodity prices must also be reported before ESCOs should be

mandated to report their prices. They buttress their argument with a claim that comparisons between ESCO and utility prices are misleading because utility prices are forecast in advance, subject to subsequent modification through application of various adjustment factors. These factors, say the commentators, often lead to wide price variations, with prices for commodity substantially understated in some months. These commentators add that the utilities' commodity prices often cannot be readily determined from the content of their tariffs, and that extracting the commodity prices from overall utility rates can be difficult.

The price reporting requirement adopted above, however, places ESCOs and utilities on a reasonably equal footing. Both report snapshots of prices that were actually available and could have been charged as of a certain date. This facilitates price transparency, even though the utility price may be subject to adjustments and the ESCO price may be subject to change. Although, as discussed below, further improvements to price reporting are contemplated, that the ability to make comparisons of prices among various providers under the price reporting requirement adopted here at present will be somewhat less than some parties desire does not prevent its adoption as an advancement over the existing circumstances.

Moreover, the issues of utility commodity price transparency and utility commodity price reporting are under consideration in Case 06-M-1017.<sup>13</sup> As discussed in the Notice issued there, comments have been solicited on the cost elements that should comprise utility electric commodity charges to their customers, and the appropriate level of gas and electric utility

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<sup>13</sup> Case 06-M-1017, Utility Commodity Supply Service, Order Instituting Proceeding and Notice Soliciting Comments (issued August 28, 2006).

supply portfolio information that should be made public to promote price discovery. Once that proceeding is decided, the comparability of utility commodity prices to ESCO prices will improve. It is not necessary, however, to await a decision in that proceeding before moving forward with mandatory ESCO price reporting. The measures adopted here are sufficient to ensure that the ESCO prices reported are reasonably meaningful in comparison to the utility prices that are available, in the interim before further improvements to the accuracy and usefulness of the utility price information are implemented.

#### Enforcement Proposals

Numerous commentators examined the issue of enforcing the price reporting requirement. Most agree that withdrawing an ESCO's eligibility for a single price reporting failure would be a draconian remedy that would cause more harm than a sole price reporting failure. The price reporting enforcement mechanism adopted here recognizes those arguments. The enforcement mechanism now properly incorporates the interim measure of suspending an ESCO's new customer enrollment privileges, which will induce compliance while leaving withdrawal of eligibility as a last resort for enforcing compliance upon more serious violations of the reporting requirements.

One commentator suggested that an enforcement mechanism could provide for the substitution of a default price for an inaccurately-reported price.<sup>14</sup> That mechanism is unduly complex. While the enforcement mechanism adopted here properly provides for an inquiry into price accuracy, that inquiry is of sufficient difficulty to implement without adding another layer of complexity in devising and adopting a default price.

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<sup>14</sup> Another commentator suggested a system of monetary penalties; the PSL does not provide for the administrative assessment or collection of monetary fines from ESCOs, under the PSL Article 1 regulation applicable to them.

Moreover, requiring an ESCO to offer any price runs counter to the regulatory framework adopted for these competitive entities. Unlike merely reporting a price that they charge, setting a rate for them would go well beyond the regulatory requirements that have been imposed under Opinion No. 97-5 and the UBP, and would be inconsistent with the approaches taken to recognize the competitive character of these market participants. Therefore, the proposed default price mechanism is rejected.

#### Criticisms of Power Choose

Commentators presented a welter of suggestions for improving the Power Choose Web site. The Web site, however, was developed in response to consumer suggestions, after attempting to incorporate the best features of Web sites in other states. Moreover, further improvements to the Web site are an ongoing process. Therefore, that the Web site might be improved is not a reason to decline to impose mandatory price reporting on ESCOs at this time.

One improvement under development is the ability to make comparisons of historic price information. This ability will assist customers in exploring the difference between ESCO prices and utility prices over time, and will add significantly to the information derived from the ESCO snapshot prices subject to change and utility snapshot prices subject to adjustment. Until ESCO prices have been reported for a sufficient period of time, however, there is no historic ESCO data available for comparison to the utility prices. Once ESCO prices are reported, comparisons of historic prices may begin,<sup>15</sup> a process

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<sup>15</sup> The criticisms of the "Savings First Year" column of Power Choose will be addressed when the modifications are made to show savings based on the utility's historic price rather than the snapshot of the utility's price projection for a month.

expected to commence sometime early in 2007.<sup>16</sup> The absence of this feature at this time, however, is not a reason to preclude customers from availing themselves of the existing Power Choose price comparison functions, which have value notwithstanding the ESCOs' criticisms.

Some commentators suggest that more frequent price updating would facilitate price reporting accuracy and transparency. Some ESCOs also asked to update their prices more frequently than monthly. Work on expanding the Web site's capabilities to accommodate more frequent updates is ongoing. More frequent updating may make it possible for ESCOs to tag their offers with inception and expiration dates, improving the usefulness of Power Choose as a price discovery tool.

Finally, as some commentators suggest, the link from our Web site to Power Choose and its charts could be made more visible. The means for accomplishing this goal are under consideration.

#### Other Issues

Commentators also raise some other issues. As they point out, price reporting is restricted to ESCO offers to residential customers. This is the body of customers that requires assistance with penetrating opaque prices and in making comparisons among competing entities in the new market. As there has been no showing to date that commercial and industrial customers require the same protection, price reporting will not be extended to non-residential customers at this time.

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<sup>16</sup> Some commentators suggest that price reporting by commodity load zone is needed, but the Web site already recognizes that function; one commentator believes New York State taxes should be reported separately, but taxes are incorporated in the bill comparison calculation and to separate them out would be a complex endeavor unlikely to meaningfully advance consumer understanding.



Some commentators suggest that customer complaint rates for ESCOs could be made available to the public, just as utility complaint rates are. While information on complaints about ESCOs would be useful to the public, ESCO-specific complaint rates are not currently calculated. Commencing their calculation, however, may be feasible, and that possibility will be explored in the future. The absence of that information is not a reason to delay implementation of the ESCO price reporting requirements adopted here.

If the Power Choose Web site is the only source of price comparison information, some commentators caution, the result could be market distortion, because these commentators hypothesize, reliance on vehicles like the Web site is not a feature typical of competitive markets. At this stage of market development, however, the Web site serves an important function in facilitating price transparency. That, as the market develops over time, other sources of price information may become available does not prevent use of this tool at this time to promote price discovery and transparency.

Moreover, while the snapshot prices ESCOs report will serve as means for assisting customers as they embark upon exploration of competitive markets, customers will not be able to actually participate in those markets through the Web site. They must take the additional step of contacting ESCOs and inquiring further into the content of available offerings. With the assistance of the Web site in taking the first step, consumers can be expected to explore further on their own initiative, just as they do in markets for other goods and services.

CONCLUSION

ESCOs shall comply with the mandatory price reporting requirements detailed above, by commencing reporting of the required price data as of December 5, 2006, for prices that were offered and could have been charged as of December 1, 2006, along with the other information necessary to complete the standard price reporting format developed by Staff. With the basic price information successfully posted to the Web site, residential customers may find the information that will better prepare them to evaluate the choices available in the competitive retail energy markets. Staff will continue its efforts to develop and refine Power Choose as a tool for promoting customer participation in those markets.

The Commission orders:

1. The electric and gas commodity price reporting requirements and enforcement mechanisms discussed in the body of this order, applicable to energy services companies eligible to provide retail electric and gas commodity service in New York, are adopted.
2. Revisions to Section 2 of the Uniform Business Practices, as set forth in the body of this Order, are approved.
3. Electric and gas utilities providing distribution service that have tariffed provisions opening their service territories to retail access are directed to file tariff amendments or addenda to incorporate or reflect in their tariffs the Uniform Business Practices revisions approved in Ordering Clause No. 2. The tariff revisions shall be allowed to become effective on not less than one day's notice on or before November 30, 2006.

CASE 06-M-0647, et al.

4. The requirements of Public Service Law §66(12)(b) as to newspaper publication of the tariff revisions filed in accordance with Ordering Clause No. 3 are waived, because this Order gives adequate notice of the changes.

5. These proceedings are continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING  
Secretary

**POSITIONS OF THE PARTIES**INITIAL COMMENTSAdvantage

While agreeing that residential customers require easy access to pricing information so that they may intelligently select among commodity supply options, Advantage Energy, Inc. (Advantage) urges that rigid price reporting requirements be avoided. Advantage argues against imposing price reporting requirements for offerings to non-residential customers, because they are more sophisticated and knowledgeable than residential customers and ESCO offerings to them are better developed.

According to Advantage, the Public Utility Commission of Ohio (PUCO) has developed "apples to apples" charts that enable gas and electric customers to readily make rate comparisons. At the PUCO Web site, price and basic information for each supplier is listed and updated weekly, and each ESCO's price may be compared to the local utility's offer. Price reporting to PUCO is voluntary, Advantage relates, and ESCOs may describe variable pricing in general terms instead of submitting complex formulas detailing the price calculation. Advantage favors this type of rate comparison tool instead of creating burdensome price reporting requirements.

If it is determined that a voluntary approach is inadequate, Advantage would limit a mandatory price reporting requirement to general information, including the ESCO's pricing structure, its average cost per unit, the terms of service and any restrictions or fees attending contract termination. It asserts that ESCOs should retain the flexibility to refresh fixed-price offers, which would require a disclaimer advising consumers that the price is subject to change without notice. Advantage emphasizes that a description is adequate for variable

rates, if accompanied by reporting of historical costs. Any added value services the ESCOs provide should be prominently displayed, so that consumers can factor into their decisions the benefits that they may derive from those services. The rate offered by the local utility, Advantage insists, must be made available to consumers on the same basis as the ESCO price.

Satisfactory reporting, Advantage maintains, would be achieved if a fixed rate is available on the date it is reported.<sup>1</sup> Requiring ESCOs to hold open a fixed-rate offer for a mandated period of time, Advantage claims, would force the ESCOs to raise their prices to reflect a premium compensating them for the additional risks they incur during the additional time the offer remains open. Forcing prices upward in a competitive market, Advantage argues, disadvantages consumers, and is unnecessary if the price information is updated frequently.

If a mandatory reporting requirement is adopted, Advantage contends, clear guidelines must be developed detailing the specific information that each ESCO is to report and setting the format for submitting the information. Advantage would identify the criteria and process that will be used to review the price information, and the method for informing ESCOs of deficiencies. Advantage would also open a cure period for ESCOs to remedy deficiencies and calls for an expedited dispute resolution process.

Advantage would allow ESCOs to make individualized offers to residential customers outside the scope of the reported prices, notwithstanding any standard offer that is reported. Advantage believes that reporting requirements should not discourage flexibility in making offers or otherwise obstruct the development of the competitive marketplace.

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<sup>1</sup> Fixed-price reporting, Advantage adds, must recognize that those prices might vary by load zone.

Con Ed/O&R

Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc. (O&R) (collectively, Con Ed/O&R) agree with the premise that the ready availability of ESCO price information to customers would assist them in selecting among ESCOs. The utilities, however, observe that the listing of ESCO pricing raises complex issues. The utilities doubt that ESCO prices can be expressed as a single rate applicable for a particular period of time, because the rate may be subject to various types of adjustments. It may also be difficult, the utilities warn, to keep price listings current, because information changes rapidly.

ESCOs, Con Ed/O&R point out, also may compete on aspects of energy commodity supply service other than price. The utilities maintain it may not be feasible to fully disclose all the terms and conditions of a commodity service offering on a Web site in a common format. An overly-simplified Web site presentation, the utilities are concerned, might unfairly disadvantage many ESCOs, while failing to provide customers with a complete picture of the ESCO offerings might adversely affect their ability to select among those offerings.

In light of the difficulties attending the posting of ESCO price information, Con Ed/O&R would not punish a failure to post by withdrawing an ESCO's eligibility to participate in retail access. The utilities express their concern that that sort of punitive measure might discourage the development of competitive markets.

CPB

Voicing its strong support for efforts aimed at giving consumers accurate and comprehensible pricing information on energy commodity supply, the Consumer Protection Board (CPB) finds the existing Web site information inadequate to achieve

that goal. According to CPB, most ESCOs do not post sufficient information to enable consumers to make meaningful price comparisons. CPB maintains this lack of information is a serious impediment to the development of competitive markets.

Identifying the criteria it believes will ensure fair and effective price reporting, CPB would require weekly price reporting, and that the posted price be available at least on the day of posting. To facilitate price comparisons, ESCOs would report a variable price for a one-month period and a fixed price for a one-year period, if they offer those options. ESCOs that do not offer the options, however, would not be compelled to submit artificially-calculated prices. Besides the mandatory price reporting requirement, CPB would permit ESCOs to submit pricing information on other products they offer, upon disclosure of key terms and conditions. These would include any minimum commitments, whether commitments are mutual, penalties for early termination, and whether the ESCO may unilaterally revise the price.

To enforce these price reporting requirements, CPB would deny to non-compliant ESCOs the right to post any product information on the Web site. The offending ESCOs, CPB asserts, should also be excluded from utility efforts to promote competition, through utility outreach and education efforts and ratepayer-funded programs. CPB, however, would not bar an ESCO from doing business in New York for failing to meet price reporting requirements. CPB believes that such a drastic penalty should be reserved for actions that are related to a company's ethical, financial or operational fitness.

#### Direct

While agreeing that transparent product and pricing information enhances the development of residential retail energy markets, Direct Energy Services LLC (Direct), like other

ESCOs, argues that ESCOs that decline to provide that information will ultimately fail in the marketplace. If a mandatory price reporting program is adopted nonetheless, Direct recommends enforcement mechanisms similar to CPB's.

Direct also believes that improvements to the Commission's Web site are needed if price reporting improvements are to be realized. The site's link to the Power Choose charts, Direct asserts, should be more readily visible. Direct would also eliminate from the chart the "Savings First Year" column, because, it argues, those comparisons of utility and ESCO rates are misleading. Direct also joins in proposals to accompany price postings with appropriate disclaimers.

Direct would also post the current utility commodity rates along with the highest and lowest rates from the previous twelve months. That information, Direct states, would enable customers to compare the variability of utility and ESCO prices. Direct would include customer complaint information about ESCOs on the Web site, enabling customers to compare the quality of service among ESCOs.

The supplier comparison chart for gas customers at the Georgia PSC's (GPSC) Web site, Direct asserts, is a source of useful features that could be incorporated in the Power Choose Web site. Information available at the GPSC site includes cancellation fees, customer charges, and a clear distinction between variable and fixed product offers. Misleading price comparisons are avoided at the GPSC Web site, Direct claims, because there is no calculation of savings.

#### Energetix/NSI

Arguing against imposing mandatory price reporting, Energetix, Inc. (Energetix) and NYSEG Solutions, Inc. (NSI) (collectively, Energetix/NSI) maintain that requiring ESCOs to share commercially-sensitive pricing information will disrupt



product innovation and impede the growth of competitive markets. Mandatory reporting, Energetix/NSI complain, would amount to increasing regulatory oversight, when reducing oversight better assists the development of competitive markets, and would be akin to the rate regulation imposed on utilities. Energetix/NSI also protest that mandatory price reporting runs counter to the decision to exempt ESCOs from PSL Article 4.<sup>2</sup>

If mandatory price reporting is adopted, Energetix/NSI fear the Web site resource will either create customer confusion, because too much information is provided, or will be misleading, because of too little information. To solve this conundrum, Energetix/NSI would leave it to an ESCO's discretion which information it desires to report.

Criticizing the Web site as overly simplistic and incomplete, Energetix/NSI assert that the calculations made there, based upon average monthly customer usage, are not informative because they do not predict future bills. Another Web site shortcoming, the ESCOs claim, is the confusion created by attempting to compare distinctive products, like green energy, variable price service and fixed price service. To reduce confusion, Energetix/NSI would upgrade the Web site to allow customers, using their own consumption patterns, to calculate the annualized bill they would receive from the utility for fixed and variable priced utility options. The proposed upgrade, the ESCOs continue, would then allow customers to take information obtained from an individual ESCO to calculate the price the ESCO would charge.

Energetix/NSI is critical of the proposal to enforce mandatory price reporting requirements through withdrawal of eligibility. This approach, they contend, contravenes promises

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<sup>2</sup> Case 94-E-0952, Electric Competitive Opportunities, Opinion No. 97-17 (issued July 17, 1997), pp. 34-35.

to keep regulatory requirements imposed on ESCOs to the minimum needed to "ensure the competency of providers, protect system reliability, and oversee the development of the market."<sup>3</sup>

#### ESPA

The Empire State Petroleum Association, Inc. (ESPA) finds no support for the notion that mandatory reporting will foster retail market developments, and so it opposes mandatory price reporting. ESPA asserts that the manner of presenting customers with price information may be left to each individual ESCO because ESCOs that do not make their price information readily available will lose business.

On the other hand, ESPA complains, price reporting requirements will hamper the ability of ESCOs to respond to market forces. Even posting historic price information, ESPA argues, would be misleading, because historical prices are not necessarily relevant to current price offerings. ESPA also argues that mandatory price posting could dissuade consumers from considering value-added services and the non-price terms of ESCO offerings, and could create customer confusion.

#### IDT

While IDT Energy, Inc. (IDT) supports the continued deployment of the Power Choose Web site, it complains that its current configuration is too confusing. Describing the comparisons of utility estimated-rates to ESCO prices as misleading, IDT maintains that actual historic utility prices should be compared to actual historic ESCO prices to achieve an accurate comparison, albeit it notes a disclaimer informing customers that past performance is not a guarantee of future performance would be needed.

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<sup>3</sup> Case 94-E-0952, Electric Competitive Opportunities, Opinion No. 97-5 (issued May 19, 1997), pp. 30-31.

IDT also finds confusing the comparisons of variable rate offers with fixed-rate offers, monthly offers with longer-term offers, and renewable energy offers with non-renewable energy offers. IDT believes this difficulty can be avoided by allowing customers to select among various options. In conformance with this approach, it would limit the explanatory information ESCOs provide, generally characterizing that material as of little assistance in selecting among ESCO offers.

As to enforcement, IDT joins other commentors in opposing the proposal to bar an ESCO from serving customers as a remedy for failure to post a price. That draconian remedy, it contends, should be reserved for ESCOs that repeatedly violate regulatory requirements.

#### Intelligent

Infinite Energy, Inc. d/b/a Intelligent Energy (Intelligent) supports the goal of educating consumers through providing them with meaningful price comparisons. Intelligent, however, cautions that implementing mandatory requirements might lead to treating ESCOs like utilities, which could quash innovation and slow the growth of competitive markets.

According to Intelligent, ESCO make offerings that are dynamic and require them to respond immediately to changing market conditions. As a result, it would mandate the posting of a price subject to the disclaimer that the price is subject to change. Intelligent also maintains that ESCO price reporting will be successful only if utility prices are transparent and can be readily compared to ESCO prices.

Foreseeing complications if termination fees must be reported, Intelligent relates that it charges a termination fee based on a formula reflecting each customer's individual usage that is too complex to adequately describe on a Web site. Joining with other ESCOs in arguing revocation of eligibility is

an overly-punitive sanction, Intelligent would allow ESCOs to cure deficiencies before enforcement action is taken.

IGS/Vectren

Describing the proposed mandatory price reporting requirement as a well-intentioned effort intended to educate consumers, Interstate Gas Supply of New York, Inc. and Vectren Retail LLP d/b/a Vectren Source (IGS/Vectren) caution that customer education cannot be achieved overnight. Questioning the efficacy of the proposed reporting requirement, IGS/Vectren point out real-time prices cannot be posted, and non-standard, customer-specific offers cannot be readily accommodated, at a Web site. Instead of mandating reporting requirements, IGS/Vectren would allow ESCOs to post their standard service offers, and would make other product offerings available through electronic links to ESCO-specific Web sites. IGS/Vectren also join with other ESCOs in complaining about the lack of utility price transparency.

MXe

Noting that it submits pricing information to the Power Choose Web site, MXenergy, Inc. (MXe) praises the improvements that have been made to the Web site and characterizes it as an informative tool. Nonetheless, MXe contends, mandatory price reporting can be accomplished only if ESCO price revisions are posted rapidly, by allowing ESCOs to log into the Web site and perform the updates themselves.

Other than the length of the term, MXe does not believe that ESCOs should be required to post conditions attending their offers. Once the reporting of terms and conditions is embarked upon, MXe discerns, the outcome is the posting of too much information, creating customer confusion. Consumers, MXe contends, could obtain information additional to that posted by electronically linking to ESCO Web sites.

NEM

The National Energy Marketers Association (NEM) believes ESCO price posting must be accompanied by accurate utility price posting conveying their fully unbundled commodity prices. Without the posting of accurate utility information, NEM argues, the posting of ESCO price information unfairly burdens ESCOs. NEM adds that requiring utilities to post the historic commodity rates would also assist consumers.

Discerning that it might not be possible to capture and express the value some components of an ESCO innovative competitive offering might add to a price, NEM cautions that a price reporting mandate should be designed so that it does not stifle ESCO efforts to develop innovative product offerings. NEM would therefore limit the information ESCOs would be required to report to a monthly submission of a price offering that would remain available through a stated time period, subject to appropriate disclaimers. Joining other criticisms of revoking permission to do business as a sanction for failing to report, NEM would allow ESCOs to cure errors and would enforce reporting requirements through monetary penalties.

NFR

While National Fuel Resources, Inc. (NFR) supports the goal of better informing consumers, it says it has been hesitant to report prices to the Web site, because the site portrays information incompletely, fails to accommodate price variability and volatility, and does not capture the benefits of non-price terms and conditions. As a result, it opposes any mandatory price reporting requirement. Given that opposition, it sees no need to establish mechanisms for enforcing such a requirement.

Joining with other ESCOs, NFR argues that any ESCO price reporting requirement is meaningless unless utility prices are also transparent. Utility figures, NFR complains, are

merely forecasts and are also problematic as a basis for predicting customer bills because a customer's estimated annual usage may vary with weather and weather normalizations are difficult to calculate properly. In particular, NFR criticizes the Power Choose Web site's one-month cost calculation as a misleading comparison, because fixed and variable prices available over different time periods are improperly matched against each other.

If a price reporting requirement is adopted, NFR would require that prices be reported monthly as of a given day. ESCOs would be allowed to establish the periods of time over which the offers would remain in effect, permitting them to change fixed-price offers immediately whenever necessary.

#### NYSEG/RG&E

New York State Electric & Gas Corporation (NYSEG) and Rochester Gas & Electric Corporation (RG&E) (collectively, NYSEG/RG&E) support adoption of mandatory price reporting requirements, because it would address deficiencies in the availability of price information. In their experience, the utilities explain, customers desire more visible and transparent ESCO pricing information, compiled in a format that enables them to compare and contrast ESCO offerings. As a result, NYSEG/RG&E asserts all ESCOs should be required to provide pricing elements and other terms and conditions, on a standard template. ESCOs would also be compelled to update this information whenever they change a price, term or condition.

#### PULP

According to the Public Utility Law Project (PULP), mandatory price reporting is a fundamentally important consumer protection measure. Without that reporting, PULP maintains, consumers may act on imperfect price information, which could lead to market failures.

PULP would not limit ESCOs to reporting their price information to Staff, because if Staff alone performs the information-gathering function, the Power Choose Web site might become a bottleneck as the only location where accurate price comparisons can be made. PULP also contends that if Staff acts as the source for ESCO price disclosure, it could prejudice Staff's roles as the mediator of bill disputes between ESCOs and customers under the Home Energy Fair Practices Act (HEFPA) (PSL Article 2).

ESCOs, says PULP, should report the factors used to establish a variable rate, the time period of a price commitment, the conditions and penalties constraining the customer's commitment, switching charges, and historic monthly price data, and pose a standard contract. ESCOs would also separately identify the amount of New York taxes they collect. These requirements, PULP asserts, can be implemented without restricting ESCO pricing flexibility, which, PULP believes, is advantageous to consumers. As a result, PULP would allow ESCOs to post a variety of different prices for differing products they might offer. To conform to the UBP, however, PULP would require that ESCOs give at least four days' notice of a price change.

To enhance price accuracy, PULP, like MXenergy, would allow ESCOs to continually refresh their reported information electronically. If the information is not kept current, PULP warns, customers may find themselves victims of "bait and switch," where an offer is withdrawn so that more expensive offer can be presented in its place.

PULP joins other commentators in arguing mandatory price reporting should extend to utilities as well as ESCOs. Utility tariffs, says PULP, are not a substitute for price reporting, because they are "likely indecipherable" to most

residential consumers.<sup>4</sup> The utilities should, PULP asserts, offer on their Web sites calculators that would allow the customer to input their own consumption data into a comparison of an ESCO price to the utility's price.

Revoking ESCO eligibility, PULP observes, might be a clumsy enforcement mechanism. ESCOs, it posits, might avoid revocation simply by revising their practices, leaving consumers without a remedy. Moreover, PULP notes that actually excluding an offending ESCO from participation in the market would require that ESCO's customers to find alternative sources of supply, which could be burdensome, and would reduce competition as the number of competitors would decrease.

PULP claims an effective remedy would be to create a default price based on a discount from the utility's commodity price and any lost opportunity costs customers incur because a price was not properly posted. The customer would be given the opportunity to select among the ESCO contract price, the default price, or switching to another provider.

#### SCMC

The Small Customer Marketer Coalition and Retail Energy Supply Association (SCMC) concur that the provision of accurate pricing information is important to the development of retail energy markets. It joins with other ESCOs, however, in claiming the operation of the competitive marketplace will punish those ESCOs that do not make their product offerings and prices readily available. SCMC claims that no bureaucratic price-reporting requirements are imposed on vendors of most retail products; for example, it asserts, advertising and other customary marketing devices are deemed sufficient for a plethora of high definition TV vendors to distinguish their products.

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<sup>4</sup> PULP Comment, p. 8.



Making a point similar to PULP'S, SCMC questions the effect on consumers of reliance on Power Choose Web site as a sole source of information. If price reporting to the Web site is mandated, SCMC proposes that it be limited to an ESCO standardized product offering. ESCOs would remain free to offer other products not reported, including specialized discounts intended to match the prices of competitors or individualized to a particular customer. Like other ESCOs, SCMC would also provide for appropriate disclaimers.

As do MXe and Intelligent, SCMC perceives problems with the reporting of complex and variable contract cancellation requirements and fees. SCMC would also omit from mandatory reporting the submission of historic monthly price data, because it claims, ESCO historic prices are final while utility historic prices are subject to adjustment. For that reason, SCMC, like other ESCOs, argues the savings comparisons made at the Power Choose Web site are misleading.

It would be premature, says SCMC, to create mechanisms for enforcing a price reporting requirement now. Providing for enforcement, SCMC asserts, should await the result of experience with price reporting which, it states, is an experiment. It would be unfair to punish ESCOs, SCMC claims, before the inevitable problems with a price reporting regime are solved.

#### Stuyvesant

According to Stuyvesant Energy LLC (Stuyvesant), ESCO price reporting is a complex topic that may be difficult to simplify. Although Stuyvesant states it offers a standard rate on a monthly basis, it notes that it contracts with many customers for different rates.

As to enforcement, Stuyvesant warns that it may be nearly impossible to police the accuracy of price reporting. It maintains that ESCOs might post a standard price, but then

charge all or most customers a higher rate. According to Stuyvesant, preventing that practice, without constraining the pricing flexibility characteristic of a competitive market, is not readily accomplished.

#### REPLY COMMENTS

##### Con Ed/O&R

Responding to commentators that suggest ESCO price reporting is contingent upon the imposition of similar reporting requirements on utilities, Con Ed/O&R maintain that utility prices are already a matter of public record. Con Ed/O&R assert that utilities should not be required to reconfigure their filed rates, approved by the Commission, into a comparison format that would oversimplify their charges. For example, they claim, such a format would not reflect the impact of automatic adjustment clauses or billing pro-ration protocols.

##### CPB

According to CPB, the goal of mandatory ESCO price reporting requirements should be to furnish information that is useful to consumers. CPB believes that objective can be achieved without constraining ESCO market activities, subjecting them to unnecessary regulation, or imposing draconian enforcement mechanisms.

CPB opines that voluntary price reporting has been generally successful in Ohio. Two factors, it contends, have prevented duplication of that success in New York -- the failure to update reported prices with sufficient rapidity to keep pace with changing market conditions, and the concern that the current Power Choose Web site does not fairly compare ESCO and utility prices. CPB believes these obstacles can be overcome.

CPB would limit mandatory ESCO price reporting to a few readily comparable products, albeit ESCOs could be allowed

to post prices for other product offerings. In keeping with its principle of simplifying reporting requirements, CPB would accompany the presentation of pricing data with only some very basic additional information on contract term, termination, and price modification.

Responding to the concern that mandatory reporting renders prices static, which is inconsistent with marketplace variability, CPB states that either prices must be updated frequently or consumers must be alerted through disclaimers that the availability of the posted prices is limited. The disclaimer approach, CPB discerns, may induce consumers to avoid the Web site because they would conclude the data reported there is stale. CPB therefore prefers weekly updating, with prices available as of the day of posting.

CPB agrees with commentators that assert utility prices must also be posted. CPB points out that National Grid already provides on its Web site monthly natural gas supply charges from January 2001 forward, and historic daily electric supply charges from September 1, 1998 forward. CPB maintains that all utilities can publish similar data, and electronically link it to the Power Choose Web site.

#### Constellation

Constellation New Energy, Inc. (CNE) urges that mandatory price reporting remain limited to prices for service to residential customers. Requiring reporting for non-residential customers, it contends, is unnecessary and would stifle the development of innovative energy solutions.

#### Direct Energy

Direct Energy continues to favor monthly price reporting requirements, with the opportunity for ESCOs to update their prices on a more frequent basis. It opposes, however, a requirement to keep a posted price open for any period, as

shackling the price flexibility crucial to the development of retail energy markets. It also reiterates that ESCOs should be permitted to cure violations of reporting requirements before sanctions are imposed.

NEM

According to NEM, most commentators caution against imposing mandatory ESCO price reporting requirements. If such requirements are nevertheless adopted, NEM would optimize the usefulness of the prices reported and limit the burdens the on the nascent competitive marketplace.

The value of ESCO price reporting, NEM emphasizes, is tied to utility rate transparency, and NEM agrees with PULP that tariffs do not clearly identify the price utilities actually charge consumers. Without that transparency, NEM protests, consumers cannot rationally compare ESCO and utility prices.

NEM would minimize price reporting requirements, and would not require ESCOs to make a standardized product offering. It also opposes the non-price reporting requirements that CPB would impose, arguing that disclosures about ESCO terms and conditions of service are best obtained from the ESCO itself. Moreover, any price that is reported, NEM claims, should be subject to a disclaimer that it can be changed at any time. NEM also asserts that it is impossible to devise an accurate bill calculator for the Web site that would enable consumers to accurately predict future utility or ESCO charges or make comparisons among those charges.

Most commentators, NEM notes, agree that the suspension of an ESCO's permission to do business is too onerous a penalty for failure to accurately report prices. NEM also opposes PULP's suggested mechanism, of substituting a default price for an erroneously reported price, because it exposes

ESCOs to too much price risk. NEM advocates SCMC's approach of awaiting experience before imposing an enforcement mechanism.

PULP

Responding to commentators that claim the marketplace itself is sufficient to police price reporting, PULP argues that market benefits cannot be optimized unless consumers have accurate information on prices readily available to them. According to PULP, price volatility is not an impediment to mandatory ESCO price reporting, because reporting may be implemented upon a requirement that leaves a price in place for as little as four days, a period deemed sufficient under the UBP to protect ESCOs from price volatility. Price reporting, PULP asserts, would not prevent ESCOs from offering value-added products. PULP sees no difficulty with allowing the offering of such products in addition to the prices reported.

UGI

UGI Energy Services, Inc. (UGI) joins Constellation in opposing the imposition of mandatory price reporting requirements on ESCOs serving non-residential customers. UGI argues such a requirement is unnecessary.

REVISIONS TO UBP

§2.D.2 [an ESCO shall submit at other times during the year:]<sup>1</sup>

....

- c. no later than the 5<sup>th</sup> day of each month, each price, on a per unit basis, that the ESCO offered and could have charged for each of its services generally available to eligible residential customers as of the 1<sup>st</sup> day of that month, along with such other information about each price as is required to complete the standardized price reporting format developed by the DPS.

§2.D.3 [The DPS shall provide written notice to an ESCO of any deficiency in the maintenance of its eligibility status, including failure of any ESCO to disclose a major price change] and failure of any ESCO to timely and accurately submit required price information.

- a. [the ESCO shall have 10 business days after receipt of written notice to provide a response or request an extension of time.]

- b. The ESCO shall have 10 days after receipt of a written determination from the DPS that price information was not timely or accurately reported to cure the deficiency identified in the determination by reporting the information required. If the ESCO fails to timely cure the deficiency, the DPS may notify distribution utilities that they shall cease to enroll new customers for that ESCO, until such time as the DPS informs them the processing of new enrollments shall resume.

§2.D.4 [The DPS may, at any time, determine that an ESCO is no longer eligible to sell electricity and/or natural gas to retail customers for reasons including, but not limited to:]

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<sup>1</sup> Existing UBP provisions are shown in [brackets]; new material is underlined.

- h. repeated failures to comply with price reporting requirements, reporting misleading price information, or continuing to fail to comply with price reporting requirements after withdrawal of eligibility to enroll new customers; or
- i. [any of the reasons stated in Subdivision F of this Section.]