NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

15-M-0127 IN THE MATTER OF ELIGIBILITY CRITERIA FOR
ENERGY SERVICE COMPANIES

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

98-M-1343 IN THE MATTER OF RETAIL ACCESS BUSINESS RULES

January 4, 2018
Three Empire State Plaza
Albany, New York 12223

ADMINISTRATIVE LAW JUDGE
ERIKA BERGEN

ADMINISTRATIVE LAW JUDGE
ASHLEY MORENO
Pursuant to the January 4, 2018 Ruling Admitting Testimony, the pre-filed direct and rebuttal testimony of Michael Schueler is entered into the record as though given orally.
BEFORE THE
NEW YORK PUBLIC UTILITIES COMMISSION

PROCEEDING ON MOTION OF THE COMMISSION TO ASSESS CERTAIN ASPECTS OF THE RESIDENTIAL AND SMALL NONRESIDENTIAL RETAIL ENERGY MARKETS IN NEW YORK STATE, ET AL.

Case 15-M-0127
Case 12-M-0476
Case 98-M-1343

PRE-FILED TESTIMONY

Direct Testimony of
Michael Schueler
Suburban Propane, L.P.
I. INTRODUCTION AND BACKGROUND

Q. Please state your name and business address.
A. My name is Michael Schueler, and my business address is 240 Route 10 West, Whippany, New Jersey, 07981-0206.

Q. By whom are you employed and in what capacity?
A. I am employed by Suburban Propane, L.P. (Suburban), which is the sole owner of Agway Energy Services, an Energy Services Company (ESCO) operating in New York and Pennsylvania. My title is Managing Director – Product Supply.

Q. What is your educational background?
A. I received a B.S. in Finance from Montclair State University in 1988, and received my MBA in Corporate Finance from Fairleigh Dickenson University in 1992.

Q. Please describe your professional experience.
A. I began my career in the energy field with PSEG in 1996. While with the company, I was involved in energy trading and the management of generation assets, including load forecasting and bidding. In this position, I rose to the level of Manager of Resource Supply, where I supervised a team of 10 people. In 2005, I moved on to Suburban. At Suburban, I started as the Director of Buying for Refined Products, and then assumed the additional responsibility for managing the Agway business in early 2009. More recently, I have also assumed the responsibility for propane purchasing in the West and mid-continent territories of Suburban. In these roles, I have become very familiar with the practice and operations of the Agway business.

II. PURPOSE OF TESTIMONY

Q. Please describe the purpose of your testimony
A. My testimony is designed to satisfy two separate obligations. The first is to provide an overview and understanding of the unique nature of Agway, even within the space of high-quality, energy related value-added ESCO providers. The second is to address the 20 questions set forth by the New York Public Service Commission (PSC) in its Order initiating this proceeding.

III. DESCRIPTION AND OVERVIEW OF AGWAY ENERGY SERVICES

Q. Please provide a general overview of Agway and the services it provides in the New York ESCO market.

A. Agway provides electric and natural gas service to approximately 70,000 residential and small commercial customers throughout New York State, bundled with energy related value added services. Agway conducts on-line and direct marketing sales, teleservices and also sells its services through inbound referrals. Agway has served the energy needs of families and businesses for approximately 20 years, and has effectively provided highly respected and desired energy related value-added services in addition to its basic energy offerings.

Agway provides a unique service within the confines of the ESCO market in the State of New York. The Agway model provides EnergyGuard™, an energy related value-added service that holistically addresses its customers' energy requirements. This innovative and popular service is provided to all customers who select Agway commodity service.

For residential natural gas customers, EnergyGuard™ covers the full cost of most repairs – parts and labor – to a customer’s home heating system with no deductible or dollar limit on coverage. For residential electricity customers, Agway’s EnergyGuard™ program covers the cost of most repairs to a homeowners central air conditioner up to $1,000 per
year, as well as providing coverage to repair the electric wires in the home with a separate $1,000 maximum on annual coverage. Again, there is never a deductible for any repair. The Agway EnergyGuard™ repair program is also extended to all commercial customers. The only difference for commercial customers is that all programs come with a separate $1,000 per year maximum, but that could mean $3,000 of total repair coverage for an Agway commercial customer. All customers enjoy the benefit of 24/7/365 emergency service, and all of this valuable protection is covered in our standard rate. Agway includes EnergyGuard™ as a “value added” service to all of our customers. Similar to a pre-paid maintenance contract, EnergyGuard™ provides customers with essential peace of mind through its comprehensive and always-available parts and services.

Q. **How does Agway provide its value-added service?**

A. To support our EnergyGuard™ program, and to ensure a high quality service experience for our customers, Agway has developed an infrastructure to back our commitments. Agway has developed a network of heating, ventilation and air conditioning (HVAC) experts, including plumbers, electricians and other tradespeople, all available and ready to work 24 hours per day, 7 days per week, 365 days each year, including holidays. Agway has a call center staffed around the clock, ready and available to dispatch a service technician to provide emergency service.

Q. **What business risks does Agway face in providing EnergyGuard™?**

A. As with any service or repair program, Agway incurs the business risks inherent in this model. The costs of honoring the service commitment to our customers can be highly unpredictable, and there is always the risk that, at any given time, the total repair costs...
incurred by Agway will exceed the amounts collected through customer billings for that period. Agway also assumes the risk that customers who require extensive repair service will sign up with Agway, take advantage of the EnergyGuard™ program, and then immediately thereafter cancel their contract with Agway. Agway neither require a customer to be signed up as a customer for a set period time in order to be eligible for the EnergyGuard™ program, nor are customers required to remain a customer for an extended period even after the service work is performed. In these ways, the EnergyGuard™ program works essentially like an insurance product in which premiums are collected and losses can occur at any time. The costs can certainly outweigh the revenues collected; Agway therefore must balance these costs carefully across the full year. This balancing of premiums collected versus expenses for the services necessarily costs more than a simple commodity product.

Agway mitigates its risk in part through marketing and selling its service across a large and varied base of potential customers in order to increase revenue opportunities. Agway actively advertises and highlights the value of the EnergyGuard™ program, using every point of contact as an opportunity to remind customers of this important and valuable component of their purchase. It bears repeating – Agway operates in a highly competitive environment. No customer seeks out Agway because of its high quality electrons; Agway succeeds and builds its market presence by providing something of value that no others provide – the EnergyGuard™ program. As such, it is in Agway’s continuing best interest to remind everyone of the value and opportunity provided by this program.

Agway markets the value and desirability of the EnergyGuard™ program at every opportunity, be it through a welcome kit, newsletters, emails, on-bill reminders, and
every time a customer calls in, for any reason. This promotes market awareness and
reminds customers of the value of targeted, bundled one-stop, worry-free shopping.
Agway also strives both to keep current customers and to ensure the acquisition of new
customers through one of the most valuable vectors - word-of-mouth from satisfied
customers. Indeed, JD Power's ESCO customer satisfaction surveys from last year rank
Agway Energy first in the State of New York in customer satisfaction.

IV PUBLIC SERVICE COMMISSION QUESTIONS

Q. The Notice of Evidentiary and Collaborative Tracks and Deadline for Initial
Testimony and Exhibits document, issued on December 2, 2016, sets forth 20
questions that the PSC has asked for response on. Are you familiar with this
document and the questions it contains?

A. Yes. I am familiar with the questions and possess the information and understanding
necessary to provide responses on behalf of Agway Energy Services.

Q. Question 1 is “Whether ESCOs should be prohibited in total or in part from serving
their current products to mass-market customers, or whether ESCOs should be
required to offer value-added energy efficiency and energy management services as
a condition to offering commodity services.” How does Agway respond?

A. No, ESCOs should not be prohibited in any manner from providing their current products
and services to mass-market customers. ESCOs such as Agway provide an important and
valuable service to the New York energy market, a unique service not offered by many
competitors. Requiring ESCOs to offer a value-added energy efficiency or energy
management services as a condition to offering commodity services is quite acceptable to
Agway, as we already offer these services and have no intention of withdrawing them.
Nonetheless, setting up a market to require value-added energy efficiency and energy management services would only reduce the number of participants in the market without providing any discernable contemporaneous benefit.

The proposed total prohibition would serve only as a limitation on the existing market. New York must remember that the energy market has been very successful to date. It is well-known that the Village Voice article caused a firestorm at the PSC, which was a justified reaction to the competitive abuses detailed in that article, many of which were directed at the poor and uninformed. Unfortunately, the article led to an overreaction on the part of staff and some of the commissioners and created an untenable and unnecessary situation: the planned and systematic destruction of the entire ESCO industry (and with it, the competitive marketplace), all for the purpose of eliminating the evils perpetrated by a few bad actors.

We now find ourselves in a place where New York is attempting to attack and undermine the companies that abide by the rules; provide goods and services that the market finds attractive; and have developed innovative offerings, all in the name of dealing with the small but undesirable element of the market that is causing all of the trouble. This is the legal/regulatory equivalent of throwing out the baby with the bathwater. As Agway has indicated in various venues, the PSC possesses the necessary tools to enforce any and all statutory and/or regulatory requirements on ESCOs. In plain terms, the PSC can target, investigate and levy penalties on the miscreants who live on the fringes and have caused the problems. The decision on the part of the PSC to forego using the enforcement tools at its disposal is odd, and leaves the ESCO market confused. We at Agway, and likely other similarly-situated ESCOs, would prefer to see the PSC enforce the law against
those entities that have behaved inappropriately, while recognizing and protecting the
competitive marketplace and those actors who have followed the rules.
In fact, Agway strongly supports additional enforcement authority and the PSC’s
additional use of that authority as we move forward. Good actors should be allowed to
continue to provide their valuable products and services in the markets; bad actors should
be brought into line or removed.

Q. Question 2 is “Whether the regulatory regime of how the Commission applies the
Public Service Law to ESCOs should be modified to ensure that customer abuses
and overcharging by ESCOs is deterred. In particular, the Commission has not
applied Article 4 to ESCOs, based on a construction that Public Service Law §66(1)
only applies to utilities with plant in public streets. Is that construction justified
today? Would it be appropriate to revisit that construction in light of subsequent
events, such as the adoption of the 2002 amendments to the Home Energy Fair
Practices Act? If the construction is revisited, would it be appropriate and beneficial
to customers and in the public interest to apply the restrictions of Public Service
Law §65 to ESCOs?” How does Agway respond?

A. The PSC’s regulatory regime should not be modified at this time. As an initial matter,
this question assumes a false premise – that the market is awash in customer abuse and
overcharging. The market has been functioning well. In fact, the mass market has found
greater than 20% penetration by competitors at this point. New York customers, large,
medium and small, have taken the opportunity to find new and innovative energy
providers. Some have selected straight commodity cost providers with a variety of
pricing alternatives; and some have selected value-added products and services providers,
such as Agway.

The PSC seems intent upon replacing the freedom of New York energy customers to choose the provider that best meets their needs with the PSC's own belief of what is best: monopoly service by incumbent carriers, with no choice left for customers. While paternalistic (and demeaning), this approach is also an incorrect and inappropriate response to a specific threat: the rapacious business practices of a few miscreant companies, mostly directed at the poorest and most uninformed consumers. Rather than enforcing its own thoughts on what should or should not be an acceptable energy product or service alternative, the PSC should continue to allow the market to develop, while ruthlessly weeding out those bad actors who prey upon the consumers at the fringes of society. Good companies will succeed; bad ones will fail. That is the purpose and intent of the market: reward innovation, and let customers choose the winners and losers. As such, there is no reason to revisit Article 4 regulation or seek additional amendments to the Home Energy Fair Practices Act. Instead, the PSC should step up enforcement of the current rules and regulations, and ensure that market participants are behaving responsibly.

Q. Question 3 is "Whether the regulatory regime of how the Commission applies the Public Service Law to ESCOs should be modified to ensure adequate enforcement mechanisms, including penalties, to deter customer abuses and overcharging. In this regard, please comment on whether it is possible for the Commission to seek penalties against ESCOs under the current regime, pursuant to which they are only regarded as "gas" and/or "electric" corporations under PSL Article 1, or if it is necessary to also regulate ESCOs under Article 4 to seek penalties against ESCOs?"
If Article 4 regulation is deemed necessary, then what burdens would such regulation impose? For instance, would it be possible for ESCOs to obtain “incidental” regulation under Public Service Law §66(13) and would such “incidental” regulation serve the public interest? Would ESCOs also be subject to undue burdens if they needed to obtain approval for stock issuances under Public Service Law §69 or the transfer of stocks, plant or franchises under Public Service Law §70? Should ESCOs be further regulated as to credit worthiness?” How does Agway respond?

A. The PSC need not seek additional enforcement mechanisms at this time, but should instead use those mechanisms already at its disposal to their fullest potential. No Article 4 regulation is necessary, as the PSC already has sufficient tools to bring those companies behaving in an inappropriate manner into line. Agway believes that the PSC currently has sufficient authority to seek penalties against ESCOs. At a minimum, Agway believes that the PSC has the ability to suspend ESCOs from operations if they significantly violate the rules of the market. While the PSC would need to exercise due process and use its investigative powers, the assignment of additional enforcement authority is not necessary. Once again, Agway notes that the PSC can and should use its current authority to require financial security and sufficient assets to ensure that ESCOs are capable of serving their customers. This fits under the current abilities of the PSC and does not require Article 4 regulation.

Q. Question 4 is “Whether the regulatory regime of how the Commission applies the Public Service Law to ESCOs should be modified to guide ESCOs toward acceptable rates and practices and deter customer abuses and overcharging. In
particular, if the Commission decides that Public Service Law Article 4 applies to ESCOs, should the Commission use the discretionary authority of Public Service Law §66(12)(a) to require filing of tariffs by ESCOs in order to ensure that ESCO bills be no greater than utility bills? If so, should the Commission require filing of tariffs by all ESCOs, just ESCOs offering commodity-only service, or just ESCOs that have been determined to charge prices in excess of utility bills? Should the Commission take steps to void existing ESCO contracts if it tariffs ESCO services?"

How does Agway respond?

A. Once again, Agway does not believe that the PSC needs additional regulatory authority in order to enforce appropriate behavior. Nor should the PSC seek to determine the rates for ESCO-provided products and services. “Acceptable” rates are not something the PSC should seek to establish – it is customers who establish “acceptable” rates through their purchase decisions. The PSC has enabled the development of a competitive market; that market must set the prices, terms and conditions of service, as well as determine the products and services that have value in the marketplace. Forcing rate-based, rate of return market controls onto what is designed to be an open and thriving competitive market would be a mistake. Instead, the PSC should respect the value of the competitive market that has been developed and operating effectively since 1997.

Agway’s experience with customer retention proves that the competitive marketplace is working well: Agway’s contract permits customers at their total discretion to terminate services at any time, at no cost. Yet, tens of thousands of customers remain with Agway. Why? Unless one considers most consumers incapable of acting in their own economic best interest, the reason for the continued success of Agway’s EnergyGuard™ model is
clear—it provides real value to over 70,000 real people. Customers are free to accept or reject Agway’s services; many have selected Agway and continue service with us. The market has multiple providers of services and products, and customers can move between providers with little friction. This ability, combined with the available regulations for the PSC to investigate and prosecute bad actors, means that the PSC need not regulate price or other terms and conditions of service.

Likewise, there is no foundation for the theory that ESCO bills should be no greater than an incumbent utility bill. Many ESCOs provide bundled products and services that bear little resemblance to standard utility service. In fact, the very purpose of the competitive energy market is to provide customers with options that would not exist in a tightly regulated marketplace open only to monopoly providers with little or no incentive to innovate. These options allow for customers to make choices among competing providers and service plans. Forcing ESCO bills to be no greater than utility bills would take away one of the core elements of the competitive marketplace: customers establish the market price by selecting the products and services that best meet their needs and requirements.

Agway, among others, provides additional services in a bundled package. The energy-related value-added services provided by Agway, by their nature, have a cost and inherent risks. The vast number of New York customers are capable of assessing their needs and choosing the provider that best meets these needs at competitive rates and under acceptable terms and conditions of service. The PSC should continue to enable this marketplace.

Q. Question 5 is “Whether the rules applicable to ESCOs should be modified to ensure that customer abuses and overcharging by ESCOs are deterred. If so, then should
the authority be imposition of Public Service Law Article 4 and/or other requirements created by Public Service Law Article 6?” How does Agway respond?

A. As previously noted, there is no reason to modify the rules applicable to ESCOs to minimize customer abuses and overcharging. Agway believes that the PSC already has more than sufficient authority to enforce, aggressively, existing customer service and consumer protection requirements. If, for some reason, the PSC insists upon additional enforcement, it can be accomplished well short of the Article 4 regulation applicable to monopoly services.

Q. Question 6 is “Whether the Uniform Business Practices (UBP) applicable to ESCOs should be modified to ensure that customer abuses and overcharging by ESCOs are deterred.” How does Agway respond?

A. There is no reason to modify the Uniform Business Practices currently in place. What does need to occur is for the PSC to use the tools already at its disposal to bring into compliance those few entities that choose to behave inappropriately. Once the PSC does so, there will be no need for modifications of statutes or rules, or adopting new regulations. Agway calls upon the PSC to use all of its abilities to enforce the existing regime.

Q. Question 7 is “Whether door-to-door and outbound telemarketing practices of ESCOs to mass market customers should be prohibited, and whether other ESCO marketing practices should be prohibited?” How does Agway respond?

A. Door-to-door and outbound telemarketing practices do not need to be prohibited. Once again, Agway notes that the PSC has sufficient authority to enforce the existing rules. That the PSC has elected not to do so should not form the basis for the exclusion of
effective sales techniques when used in conjunction with appropriate rules and restrictions. Once again, the PSC is overreacting and demanding new powers, even though its existing powers are sufficient and could be used effectively.

Q. Question 8 is “Whether the purchases of receivables system regarding mass market customers should be modified in any way, including but not limited to imposing “purchase with recourse” provisions or tiered discount rates so that ESCOs with abusive practices bear more financial risk from such practices?” How does Agway respond?

A. The New York non-recourse purchase of receivable system (“POR”) is an efficient and effective method to bill customers for ESCO services. Any purchase with recourse requirement would be more administratively burdensome to both the ESCO and the billing utility and should be avoided. In an effort to provide clean and more energy efficient service the PSC should consider modifications to its POR requirements to allow the use of POR for other ESCO value-added energy related services.

Q. Question 9 is “The prices for retail gas and/or electric service charged to and paid by mass-market customers of ESCOs in the recent past, including, at a minimum, calendar years 2014 and 2015 and as much of 2016 as may be available, and the prices those customers would have paid for comparable utility service. If different products are offered (e.g., fixed vs. variable), the prices by product offering. In addition to annual data, seasonal (summer and winter) and monthly data should be provided where possible and relevant. Data for residential and small commercial customers should be provided separately. Data for electric and natural gas products should be provided separately. Where an ESCO product has been offered for more
than five years, the last five years of historical data should be provided. Parties providing significant quantities of data should consult with Staff as to providing the data in a useful electronic format.”

A. This information was provided in discovery.

Q. Question 10 is “Data setting forth the number of customers served by ESCOs, by ESCO, for 2014, 2015, and so much of 2016 as is available.”

A. This information was provided in discovery.

Q. Question 11 is “Data setting forth the volume of sales in total dollars and in kWh, by ESCO, for 2014, 2015, and so much of 2016 as is available.”

A. This information was provided in discovery.

Q. Question 12 is “Evidence that an ESCO has, in fact, in recent years offered or is currently offering lower prices on an annual basis compared to the incumbent utility consistently, including number of customers served and total volume of sales in both dollars and kWh. Such evidence should also include an analysis of whether that price offering has been profitable or resulted in a loss to the ESCO.” How does Agway respond?

A. Again, this question is predicated upon a fundamentally flawed understanding of the competitive energy markets. Agway is not able to show that it consistently offers a lower price than the incumbent utility, for the simple reasons that Agway does not provide the same service as the incumbent utility. The PSC should note that at no time has Agway ever claimed it is the cheapest source of power in the market. We are not. If a customer wants that absolute lowest price, then Agway is the wrong provider for them. If, however, a customer wants the best value, then Agway becomes one of the strongest
options in the market. The price Agway charges is acceptable to those customers who choose to remain with Agway. As mentioned earlier, Agway offers up no barrier to the customer's ability to exit. If a customer is unhappy with the products or services that Agway provides, that customer may leave at any time with no termination fee. Yet our customers are happy to remain with us. So the question of whether our prices are lower than the incumbent's prices is irrelevant in a competitive marketplace. Additionally, as a competitive market provider, Agway's profit or loss is of no significance to the PSC. As long as Agway is capable of remaining in business and providing service to its customers, and obeying the rules, the PSC should be agnostic as to its profit or loss. Once again, this is a competitive market that was established to drive innovation and create competition for customers from the regulated utility market model. Agway receives no authorized rate of return. Agway operates in a competitive market, and the determining factor of Agway success or failure is if Agway offers the proper mix of products and services, at the prices demanded by its customers. Its value proposition must be reasonable in order for Agway to remain in business.

Q. Question 13 is “Whether, given the current retail market structure, it is possible for an ESCO to profitably offer lower prices on an annual basis compared to the incumbent utility consistently and, if possible, how it can be done.” How does Agway respond?

A. This question does not make sense. The market drives prices and services, and those prices and services must include at a minimum the rates that incumbent utilities charge to ESCO customers for transporting or distributing the gas and electric power that ESCOs then sell to customers. What an ESCO can or cannot do is based upon the cost to the
ESCO for acquiring wholesale products and services, and the price that the competitive retail market will bear. The utility supply model does not include any profits on the supply of commodity. All costs of procurement including hedging costs are passed along to the rate payer. If the utility does not recover all of its costs, it can recover them in a later period and bears no risk for recovery. The competitive model is very different from the utility model, and poor decisions are never rewarded in the competitive model. The PSC should step out of the way and let the retail market determine if ESCOs can compete. Agway has faith that most customers rationally purchase power. We do not believe that customers will spend more money for the same products or services. As such, we believe that ESCOs sell products and services that consumers want, and at competitive rates. This has been proven out by the number of customers that have chosen to get their gas or electricity from an ESCO vs the incumbent utility and, specific to Agway, the more than 70,000 customers that have remained with us, as well as the vast number of customer testimonials Agway receives every year regarding the value of the products and services that are offered.

Q. Question 14 is “The number and nature of customer complaints regarding i) retail prices and bills and ii) sales and marketing practices from a) customers directly to ESCOs, b) from customers to utilities about ESCOs, by ESCO, and c) customers to the Commission about ESCOs, by ESCO during calendar years 2014 and 2015 and as much of 2016 as it is available.”

A. This information was provided in discovery.

Q. Question 15 is “ESCO marketing and sales practices, including printed materials, customer contracts, scripts for telephone or door-to-door solicitations, and other
training materials for ESCO sales people for practices in effect during calendar years 2014, 2015, and 2016. Such evidence should include all efforts by ESCOs to ensure that they and their personnel comply with the Uniform Business Practices (UBP) and that they otherwise avoid any deceptive marketing practices.”

A. This information was provided in discovery.

Q. Question 16 is “The ability of mass-market customers to obtain information about relative prices and offerings of ESCOs and regulated utilities and to understand such information, including evidence regarding the transparency of the retail market for mass-market customers and the level of knowledge in that market.”

A. This information was provided in discovery.

Q. Question 17 is “Tools that are available in the public domain that customers can use to do comparison shopping.”

A. This information was provided in discovery.

Q. Question 18 is “Specific customer surveys that shed light on customers’ understanding about retail choices available and how to make informed choices.”

A. This information was provided in discovery.

Q. Question 19 is “Actions by state agencies or consumer advocacy groups to protect customers, to monitor the state of the retail market customers, to provide information, or to lodge complaints or impose discipline in the case of improper ESCO practices, including specific concrete steps the group has taken and any results obtained from those actions.”

A. This information was provided in discovery. Agway’s number of complaints is significantly lower than the average, and Agway addresses and resolves any complaints
expeditiously and fairly.

Q. Question 20 is "Actions that have been taken or that could be taken to strengthen the retail market or otherwise to provide consumer protections sufficient to protect mass-market customers from overcharges or deceptive marketing practices. For instance, if the Commission decided to subject ESCOs to Article 4 of the Public Service Law would it be appropriate to require ESCOs to obtain Certificates of Public Convenience and Necessity under Public Service Law §68 in order to provide commodity service?"

A. The clearest and quickest way for the PSC to address the real issues of concern is to use the current available enforcement mechanisms to identify and prosecute bad actors for their misconduct.

IV. CONCLUSION

Q. Based on the foregoing discussion, would you please provide your overall opinion on this issue?

A. The vast majority of ESCOs are good actors striving to meet customer demands. Some, like Agway, provide creative and innovative products and services that certain consumers choose (and retain) because of the value proposition – these customers find the price well worth the services and products provided. The PSC should encourage the competition that has provided this opportunity to New York consumers. The PSC should focus its efforts here on investigating bad actors and enforcing current laws and regulations vigorously against those ESCOs that engage in the unacceptable practices that caused these issues in the first instance.

Q. Does this conclude your direct testimony?
A. Yes.
BEFORE THE
NEW YORK PUBLIC UTILITIES COMMISSION

PROCEEDING ON MOTION OF THE COMMISSION TO ASSESS CERTAIN ASPECTS OF THE RESIDENTIAL AND SMALL NONRESIDENTIAL RETAIL ENERGY MARKETS IN NEW YORK STATE, ET AL.

Case 15-M-0127
Case 12-M-0476
Case 98-M-1343

PRE-FILED REBUTTAL TESTIMONY

Rebuttal Testimony of
Michael Schueler
Suburban Propane, L.P.
I. INTRODUCTION AND BACKGROUND

Q. Please restate your name and business address.

A. My name is Michael Schueler, and my business address is 240 Route 10 West, Whippany, New Jersey, 07981-0206.

Q. By whom are you employed and in what capacity?

A. I am employed by Suburban Propane, L.P. (Suburban), which is the sole owner of Agway Energy Services, an Energy Services Company (ESCO) operating in New York and Pennsylvania. My title is Vice President – Product Supply.

II. PURPOSE OF TESTIMONY

Q. Please describe the purpose of your testimony

A. This rebuttal testimony is designed to further highlight the unique nature of Agway and to touch upon a number of issues raised by testimony filed in this New York Public Service Commission (PSC) proceeding.

III. REBUTTAL TESTIMONY

Q. Any number of parties discussed ERVAs. Does Agway provide such a product?

A. Yes. ERVAs, or energy related value-add services, were defined by Staff as “products or services that can be provided by ESCOs that enhance the value of traditional utility products or services to customers.” Prepared Testimony of the Staff Panel, page 44, lines 8-11. Staff then identified things like “furnace repair” as an ERVA. Id. at line 17. This is an identification of the product that Agway provides. As discussed previously, Agway provides EnergyGuard™, an energy related value-added service to all of its customers. For residential natural gas customers, Agway’s EnergyGuard™ covers the full cost of most repairs – parts and labor – to repair a customer’s home heating system, and there is never
a deductible or dollar limit on coverage. For residential electricity customers, the
EnergyGuard™ program covers the cost of most repairs to a homeowner’s central air
conditioner up to $1,000 per year, as well as providing coverage to repair the electric wires
in the home with a separate $1,000 maximum on annual coverage. Again, there is never a
deductible for any service call and annual electricity plan coverage could total $2,000. The
Agway EnergyGuard™ repair program is also extended to all commercial customers. The
only difference for commercial customers is that all programs come with a separate $1,000
per year maximum, but that could mean $3,000 of total repair coverage for an Agway
commercial customer with no deductible for service calls. Even if an Agway customer
doesn’t use our repair services in a given year, they have the peace of mind knowing that
a reputable company like Agway will be there for them when they need us most. We work
diligently every day to prove our value to our customers, and we are very proud of our
hard-earned reputation.

Q. Staff states that “most mass market customers taking commodity service from
ESCOs are not receiving any value, in terms of whether lower cost service or value
added products, than they would have received from their default utility provider
with considerably less price risk.” Id., at page 20, line 16-21. Do you have a response
or comment?

A. Yes. Agway’s customers are receiving a valuable benefit they would not receive from the
utility – the EnergyGuard™ repair service that has been discussed. Agway has received
many unsolicited testimonials from customers attesting to the value of this service to them,
including testimonials from several customers that the Staff would characterize as low
income customers as the PSC has identified them.
Q. Staff, at page 64, lines 8-13, states that “Thus there is no real benefit of one commodity product over another beyond its price, other than renewable offerings, which the typical consumer of such products makes a choice to purchase electrons produced in an environmentally friendly manner.” Do you have any comment?

A. Yes I do. I do not understand why Staff believes that customers can make a choice to pay beyond the “commodity” cost for environmentally friendly service, but are unable to make the decision to pay beyond the “commodity” cost for the valuable repair coverage and peace of mind that comes with the EnergyGuard™ product. This testimony serves as but one example of the approach that Staff is taking – pre-deciding what decisions consumers will be allowed to make, rather than allowing the market to evolve and focusing solely on the commodity being delivered.

Q. Do you see other examples of this?

A. Yes. Again in Staff testimony, at page 77, lines 14-23, Staff notes that low income customers should not be allowed to choose “ESCO electric commodity renewable resource energy products.” Once again, Staff is making decisions about who is capable of making decisions and what decisions they are capable of making, based upon the assumptions of what Staff, rather than the market, thinks is “good” or “bad.” We have numerous satisfied customers who are low income customers and are very disappointed that they will lose our valuable service. These customers count on Agway to help them manage their overall heating and cooling bills, as well as electrical repairs. Thus, as it relates to Staff’s position with respect to low income customers, it is even more offensive to isolate a single group of customers that Staff believes is incapable of making an informed purchase decision.

Q. Staff claims, at page 93, line 23 to page 94, line 6, that an ESCO can “hedge in the
same declining or rising marketplace as the utility” and can thus “beat” the utility price. Is this correct?

A. No. This reflects a fundamental misunderstanding of the ability of an ESCO like Agway to hedge. Hedging is not a free process, and it is not without risk. Saying that Agway, with a customer base of tens of thousands of customers can hedge in the same manner as a Con Edison or other utility is financially untenable because ESCOs are not able to recover losses – due to hedging or otherwise – in the same manner that the utilities can through simple rate adjustments to all default service customers. Additionally, the utility model does not allow for any profits derived from the sale of commodities, which inhibits the proper and long term development of a competitive market.

Q. Has staff disputed the value of the EnergyGuard™ product?

A. No. Prior to this proceeding, Staff and the former Commission Chair were complementary of both Agway as a company and the value-added service provided. Now, in this case, Staff notes that it has no data to determine the value of any value-added services. Prepared Testimony of Joel Andruski, page 7, lines 19-13. Yet even this statement is incorrect – Staff does have quite a bit of evidence that EnergyGuard™ has value, and that proof comes in the form of thousands and thousands of customers who have voluntarily purchased and retained the program in an environment where cancelling or transitioning to another provider is relatively easy. Beyond that, on numerous occasions, Staff has been provided with real customer testimonials about the value that the customer perceives from EnergyGuard™.

Q. Does Agway support additional enforcement and regulation of the ESCO industry?

A. Yes. As Agway has stated many times, the PSC should use its enforcement powers to the
fullest extent, and if additional powers are necessary, such as the requirement of bonding for companies, Agway supports that. Agway’s position has been and remains that the industry is primarily composed of companies that are attempting to comply with the rules, and a few “bad apples.” Agway fully supports the PSC going after these bad actors and has said on many occasions that it is willing to work on criteria that would allow the market to thrive while ensuring that actors who do not wish to comply are forced out. But making the wholesale statement that ESCOs, as an industry, are failing the market is overly-broad and unsupported.

**Q. Do you see any specific misconceptions on this topic?**

**A.** Yes. In the Direct Testimony of Gerald Norlander, Esq., on behalf of the Public Utility Law Project of New York, Inc., on page 26, at lines 9 through 16, the statement is made that it is not currently possible for the Commission to seek penalties against ESCOs. This is untrue. The PSC cannot enforce pricing – that is correct. But the PSC can and should enforce all obligations upon ESCOs and can penalize ESCOs in the ultimate manner of disallowing them to provide service.

**Q. PULP alleges that Agway has “marked its products and services to New York residential customers in a deceptive manner in that its sales ‘promises’ are not reflected in its terms of service and that its variable rate disclosures are insufficient and unreasonable.” Testimony of Barbara Alexander on behalf of the Public Utility Law Project of New York, Inc., on page 41, at lines 5 through 8. What do you think of this conclusion?**

**A.** I find it unfounded and wrong. The PSC has approved each of the documents that Ms. Alexander finds unacceptable. Our terms are clear, promises are kept, and as mentioned,
Agway allows for termination of the contract at any time with no cost to the customer. This statement by Ms. Alexander is self-serving and without merit, and runs counter to the findings of the PSC.

Q. How do you react to the testimony in a number of places that notes that the complaint level for ESCOs is comparable to complaint levels for utilities?

A. As discussed previously, Agway’s complaint level is very low. This is because we are a market participant. If a customer is unhappy with us for any reason, they leave – because they can. It is this healthy market action that helps to encourage and reinforce the existing customer service tradition of Agway. Choice does not just allow a customer to switch providers, it also is a moving force that creates positive change in the marketplace.

Q. If Agway makes a pricing mistake, who loses money?

A. Agway does.

Q. If the utility makes a pricing mistake, who loses money?

A. Certainly not the utility. With the ability for deferred accounting and other methods for recovery through rate cases, a utility that makes a bad business decision is made whole. ESCOs have no such security, yet the Staff and others would impose all the liabilities without the benefits. This is a situation that calls for the PSC to further engage in a process of deregulation of the industry, not to seek to impose additional regulation upon ESCOs.

IV. CONCLUSION

Q. Based on the foregoing discussion, would you please reiterate your overall opinion on this issue?

A. Again, I would say that the vast majority of ESCOs are good actors striving to meet customer demands. Some, like Agway, provide creative and innovative products and
services that certain consumers choose (and retain) because of the value proposition – these customers find the price well worth the services and products provided. The PSC should encourage the competition that has provided this opportunity to New York consumers. The PSC should focus its efforts here on investigating bad actors and enforcing current laws and regulations vigorously against those ESCOs that engage in the unacceptable practices that caused these issues in the first instance.

Q. **Does this conclude your rebuttal testimony?**

A. Yes.