

STATE OF NEW YORK PUBLIC SERVICE COMMISSION CASE

- CASE 15-M-0127 In the Matter of Eligibility Criteria for Energy Service Companies.
- CASE 12-M-0476 Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State.
- CASE 98-M-1343 In the Matter of Retail Access Business Rules.

COMMENTS OF ENERGY COOPERATIVE OF AMERICA

Date: June 6, 2016

BACKGROUND

The Energy Cooperative of America, Inc. (“ECA”) was originally formed as the Energy Cooperative of Western New York, Inc. in 1997 and after expanding into utility territories across the State became the Energy Cooperative of New York (in 1999). In 2009, to reflect the fact that its footprint had grown beyond the State of New York, its name was changed to Energy Cooperative of America.

ECA supplies natural gas to customers in the National Fuel Gas, New York State Electric & Gas, Rochester Gas & Electric and National Grid utility territories, and electricity to customers in the New York State Electric & Gas, Rochester Gas & Electric, National Grid and Consolidated Edison utility territories across New York State. Its customers fall under the residential and small non-residential commercial customer service classes covered under these proceedings.

ECA has been able to historically deliver savings on a consistent basis due to the fact that it is a true not-for-profit cooperative, run by a board of directors that is elected by its members, or customers. It is the only not-for-profit energy marketer of its kind in the State of New York, and, upon information and belief, the country. However, despite its focus on ensuring that its customers pay the lowest possible price for their commodity there are no guarantees that this will happen.

COMMENTS

To a certain extent aspects that are being addressed in this proceeding are a long time coming. However, that is not to say that the relief requested is altogether required or that the provisions proposed are necessary in order to address many of the problems that seem to be at the core of the Commission's concerns.

The Commission has long had the power to discourage the types of practices that unethical marketers utilize to prey on unsuspecting consumers. In fact, ECA respectfully suggests that had it been more aggressive in enforcing the anti-slamming provisions of its Retail Access Business Rules, fewer of the ESCOs that engage in the types of price-gouging behavior that the Commission is apparently seeking to now reign in would have been drawn to New York's retail access market.

In addition, more closely monitoring the prices that have been charged by many of the ESCOs since the electricity reporting rules were mandated may have helped avoid some of the black eyes that retail access has taken. Clearly, no ESCO that posted a customer price for electricity supply of double digits for a given month in the past three years was going to be delivering savings when compared to virtually any utility outside of the downstate area ... and yet there were handfuls that were posting these rates.

Simply put, a close review of the retail access pricing model shows that there is very little available margin when comparing electricity commodity-only offerings between an ESCO and the utility. Accordingly, this suggests that marketers that reap high profits in New York's deregulated market based on commodity alone are more than likely doing so at the expense of the customer.

Therefore, given the Commission's long-standing authority to police the actions of ESCOs, and the fact that there have been many instances of complaints over the years against numerous retail access participants – some of which have resulted in the assessment of fines and/or other penalties – it should have a general idea of the types of participants that may “deserve” the types of additional scrutiny and/or monetary protection in order that their customers are not unfairly treated.

ECA supports the Commission's efforts to protect the consumer. Furthermore, ECA strongly encourages the Commission to act upon the following language in the Reset Order: “Further, the level of security could be moderated based on an ESCOs historic performance as well as complaint levels.” ECA respectfully requests that “moderated” be interpreted broadly to include waiving altogether any security requirement for ESCOs that have been found to

consistently follow business practices designed to facilitate the growth of retail access, while respecting the integrity of the deregulated markets.¹

In the event that the Commission decides that every ESCO must post some form of security relative to savings guarantees, regardless of their past performance, then ECA respectfully requests that this take the form of a Surety Bond, and that said Bond be held by the Commission and not by individual utilities. The tight margins and inherent cash flow challenges that ESCOs face (especially in periods where NYISO supply charges spike but consumer invoices will not reflect those increased prices until thirty or more days later) could make any requirement that restricts cash flow (such as a Letter of Credit, or any instrument that has the same effect) a non-starter for continuing to serve these customers.

Finally, it is incumbent upon the Commission to clearly set forth the manner by which it will determine whether or not an ESCO is in compliance with whatever requirements are ultimately adopted, as well as what the penalties will be for noncompliance. This would include exactly how the thirty percent renewable electricity calculation would be performed. Clearly now is the best time to define the investigatory process and the penalties for failing to comply, given that the Commission has the undivided attention of all interested parties.

¹ For example, the Commission could review the past three years' price reporting by ESCOs to determine which ones were charging rates within an acceptable range; the complaint rates against ESCOs over the same period; and instances of slamming or other inappropriate marketing practices to determine which ESCOs' practices suggest that their customers are in need of the additional protections referenced in these proceedings.

CONCLUSION

ECA has successfully competed in New York's deregulated markets for more than seventeen years. It has battled not only the challenges that any small business faces when dealing with larger competitors, but those virtually unique to this state's model, such as the ability for each utility to have its own affiliate compete for retail access customers. Absent unusual circumstances, it has consistently delivered savings to its customers, many of which have been with the company since the outset of its formation.

Maintaining the integrity of the deregulated markets is an important and viable goal, however it should be approached cautiously. The small margins available to ESCOs make it difficult for many of them to absorb the economic impact of changes that would add what might otherwise appear to be insubstantial costs to their bottom line, while still providing the benefit to the customers that the Commission is seeking to ensure.

Furthermore, to the extent that the underlying focus is to protect consumers from ESCOs that may have been drawn to this market based upon the apparent ability to charge unconscionable rates and make substantial profits, the Commission should be able to, firstly, identify those that operated such a model in the past and, secondly, craft a policy that properly prevents this type of behavior from occurring in the future, without penalizing those ESCOs that did not engage in this type of approach.

Respectfully submitted,

/s/ Joseph Mascaro

Joseph Mascaro
Executive Director