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

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

MURRAY E. BEVAN
mbevan@bmgzlaw.com

March 18, 2016

VIA ELECTRONIC FILING

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

Re: **Cases 98-M-1343, 12-M-0476, 15-M-0127:** ***Order Resetting Retail Energy Markets and Establishing Further Processes*** **(February 23)**

Dear Secretary Burgess:

On February 23, 2016, the New York Public Service Commission ("PSC") issued a Notice Seeking Comments on Resetting Retail Energy Markets for Mass Market Customers (the "Notice"), and invited interested parties to provide Comments on eight issues. Agway Energy Services, LLC ("Agway"), a licensed New York Energy Service Company ("ESCO") since 1997, is pleased to submit its responses to the questions outlined in that Notice. As a long-standing ESCO, Agway has enjoyed a good working relationship with the PSC and, in fact, on many occasions has sought guidance from the PSC on customer communications, marketing materials and value-added service offerings in an attempt to provide its customers and the market with greater transparency and overall value. Agway has also been a frequent contributor to collaborative sessions, sponsored by the PSC, on a variety of topics designed to strengthen New York's competitive energy markets, including low income consumer offerings, utility consolidated billing and electronic data interface standards, among others.

Agway is one of several ESCOs that provides an energy-related value-added service product to all of its approximately 70,000 mass market electric and natural gas customers in New York as part of its overall offering to its customers. Specifically, Agway provides a home furnace/boiler repair program to all natural gas customers, in which no deductible is applied and coverage is available around-the-clock, including weekends. Agway also provides a central air conditioning repair program and electric wires program to all residential electric customers, as well as an energy efficiency check and safety inspection of commercial customers' heating or cooling systems. Agway's customers have come to depend on these value-added services for peace of mind, which is evidenced by the vast amount of customer testimonials Agway receives each year.

The preamble to the PSC's Order Resetting Retail Energy Markets and Establishing Further Process, dated February 23, 2016 (the "Order"), draws a distinction between ESCOs that provide a commodity-only offering and those, like Agway, that provide value-added services. The PSC has on numerous occasions advised Agway that its value-added service approach is the kind of customer-focused offering that the PSC would like ESCOs to provide mass market customers. The Order was issued by the PSC to "immediately address the unfair business practices currently found in the energy services industry and to ensure residential and small non-residential commercial customers (mass market customers) are receiving value from the retail energy market." Agway recognizes that all markets, no matter how competitive, will have a few bad actors who seek to take advantage of certain uninformed or unsuspecting customers. Agway understands that it is this type of behavior that has prompted action by the PSC, and it supports the PSC's efforts to address the "bad apples" that already have or may taint the entire ESCO market.

Agway did not file a lawsuit against the Order, and remains committed to working with the PSC and other parties to help improve the operational effectiveness of the ESCO market and to enhance consumer protections. However, Agway does believe that the requirements of the Order have the far-reaching effects of re-regulating a competitive market that has developed over the past 20 years and, for many practical business reasons, if allowed to go into effect as written, will force the vast majority of ESCOs out of business, which will likely include many of the ESCOs that consumers rely on for their energy needs. Agway is a strong proponent of deregulated markets and believes steadfastly that competition is superior to regulation in competitive markets by: (i) allocating resources; (ii) establishing efficient pricing; and (iii) driving the development of innovative products and services. Therefore, Agway supports any efforts to bring a swift resolution to the ongoing proceedings and would urge the PSC to conduct future proceedings in a more collaborative manner with an eye toward permitting competitive forces to discipline the marketplace, while developing effective targeted enforcement mechanisms aimed at curbing the bad actors.

Agway proudly participates in this marketplace and is uniquely positioned as one of several ESCOs that has developed a business model focused entirely on delivering an energy-related value-added service offering to each and every customer from the moment he or she signs up with Agway. Agway values its customers, listens closely to them, and strives on a daily basis to meet their needs and demands. Agway's focus remains first and foremost on retaining its ability, and flexibility, to serve its customers consistently with its high standards of service and integrity. As a result of its valued-added service model for all mass market natural gas and electricity customers, Agway maintains an infrastructure of support functions to ensure these services are available whenever needed. This support infrastructure includes a 24/7/365 day call center operation located in Syracuse, New York in which customers can access live support. Additionally, Agway has relationships with over 25 licensed, independent contractors throughout the state of New York to provide the value-added services on Agway's behalf.

Please find more detailed responses to each of the questions raised by the Notice below. We look forward to working with the PSC to provide any further clarity on our responses and to ensuring an amicable resolution.

Issues

(1) Whether prospective ESCO sales to mass market customers, including renewal of expiring contracts, should be limited to products that include guaranteed savings or a defined energy-related value-added service. If not, precisely how should this requirement be broadened or narrowed?

Answer: Agway is a firm believer in the benefits of a competitive marketplace and the value afforded to customers by the marketers' need to distinguish themselves from their competition through different pricing mechanisms and/or the development of innovative products and solutions to meet the customers' demands. The PSC should permit market forces to establish pricing for retail services, and should not restrict how ESCOs offer and price products and services. As it relates to comparisons of ESCO commodity prices to the utility commodity prices, it is Agway's position that any such comparisons are not practical without better transparency toward the utilities' commodity pass-through mechanisms.

With respect to valued-added services, it is Agway's position that there should be no limits placed on the type of value-added services that ESCOs may offer. Limitations would limit further innovative solutions. The definition of "value" will likely be different from one customer to the next. Additionally, Agway believes that it would be nearly impossible to develop an objective measure of the value of an energy-related value-added service since that measure can depend on many factors, including, but not limited to, type of service, usage patterns, age of equipment, location, etc. Similar to an insurance policy, some energy-related value-added service offerings (such as the ones provided by Agway) become extremely valuable when they are needed and the peace of mind that is afforded the customer can be considered invaluable along the way.

Agway certainly recognizes the PSC's duty to address certain bad practices in the industry. Where end-user rates are concerned, the PSC should consider more closely tracking and reporting to the public (via website) a list of ESCOs, the services they offer and the manner in which they are offered, as well as the prices they charge for various bundled or other services offered to customers. This information could prove valuable to the public in making informed purchasing decisions and accomplish the enhanced transparency desired by the PSC. It affords the customer the convenience of having a single bill, at a fully transparent price, to cover the services from the ESCO that best meets that customer's energy preference.

If the PSC were to demand "guaranteed savings" or particular "defined energy-related value-added service," the PSC would, in effect, be declaring a market failure of a magnitude that requires it to re-regulate the pricing and packaging of ESCO services. No such market failure exists.

(2) What specific products or categories of products should constitute energy-related value-added services. For example, if energy efficiency products are to qualify, should a specific minimum energy savings be required and if so, of what amount? If certain commodity-only products are to qualify, such as fixed price products or green energy products, should any

restrictions be placed on the prices for such products and, if so, how should those restrictions be determined?

Answer: Again, Agway urges the PSC to exercise caution as it evaluates whether and to what extent it should regulate the types of products and services that ESCOs are providing to customers, including inquiries into the pricing structures and possible pricing limits or "guaranteed discounts" for any of these products or services. The ESCO marketplace is already a highly competitive market which requires continuous focus on the customers' needs and strategies to build customer loyalty. As an energy-related value-added service provider, Agway invests a significant amount of capital in the development of innovative service offerings, flexible billing options, energy efficiency tips and customer communications, which are all focused on the customer's comfort and peace of mind. To isolate any one of these value-added services would be to diminish the overall value proposition that a customer is afforded when doing business with Agway and, in fact, will never result in a true apples-to-apples comparison of the service offerings and prices of other competitors (including the utility) given the resources and infrastructure that is deployed to support such value-added service offerings.

(3) Whether other requirements, in addition to those identified in question 1, above, should be imposed on ESCO marketing or sales to mass market customers.

Answer: To the extent that the PSC finds that a particular marketplace sector faces special challenges with marketing and sales practices or materials, then the PSC should consider additional rules and enforcement mechanisms targeted to dealing more effectively with the offending companies and practices. Generally speaking, these companies are already subject to state and federal law directed toward unfair advertising practices.

(4) What changes, if any, should be made to the three-day period for residential customer rescission/cancellation of an agreement with an ESCO. Should this period be extended to thirty days?

Answer: Other states with deregulated energy markets have instituted and maintained a three-day period for rescission/cancellation. These states include Illinois and Pennsylvania. Maryland has no state-mandated rescission period and Ohio and Delaware only have rescission periods (three and seven days, respectively) for customers solicited through door-to-door marketing. New Jersey has a seven-day period for all residential customers. New York should continue with the current three-day period, as there has been no showing whatsoever, let alone a compelling showing, of any issues with the current policy. Additionally, Agway believes that lengthening the rescission period could cause undo harm to ESCOs who purchase the commodity in good faith, only to find out that customers have decided to cancel.

(5) Whether a rescission/cancellation period should be applied to small non-residential customers. If so, what period is appropriate?

Answer: There is no need to apply such a period here. Because they operate a commercial enterprise, small business owners tend to be sophisticated customers of the various suppliers of products and services they need to conduct their businesses. They deal on a frequent basis with landlords, utilities and sophisticated customers of their own services. They are capable of making informed decisions for power purchases without further PSC involvement. It is worth noting that other states do not impose a rescission/cancellation period on non-residential customers.

(6) Whether and under what circumstances ESCOs should be required to post performance bonds or other forms of demonstrated financial capability. If so, what magnitude is appropriate and how can this be administered most efficiently?

Answer: The PSC should adopt a stringent licensing process for would-be ESCOs similar to what it has in place for competitive telecommunications carriers. An ESCO seeking authority to do business should prove that it has the financial, managerial and technical capabilities essential to carry out the responsibilities it seeks. As part of this process, the ESCO should post a reasonable performance bond with the PSC, comparable to other states with deregulated markets, to secure any future liabilities it may face as a result of bankruptcy or insolvency. The PSC should determine the magnitude of the bond based on a variety of factors, including the amount of customers the ESCO serves and the ESCO's performance in other markets.

(7) Whether the Commission should reconsider the framework for ESCO oversight under the Public Service Law, and if so, what changes should be made.

Answer: The current Public Service Law is adequate to address the PSC's ESCO oversight with respect to rates, terms and conditions of service. The law may need tweaking to give the PSC additional fining power for bad acts (e.g., slamming, cramming, misrepresentation), but the law should not be amended to enlarge the PSC's authority generally over competitive markets.

(8) What penalties may apply to ESCOs that violate the UBP or other Commission Orders or provisions of the PSL (for example, the application of PSL secs. 25 and 25-a).

Answer: The PSC should fine ESCOs that engage in bad acts outlined above, and the fines should increase for repetitive bad acts and willful misbehavior. For ESCOs that repeatedly engage in serious and systematic misbehaviors, the PSC should institute proceedings for license suspension and even revocation.

Once again, Agway appreciates the opportunity to submit these comments and looks forward to working with the PSC and other parties to help improve the operational effectiveness of the ESCO market and to enhance consumer protections. Please do not hesitate to contact me should you have any questions or require further information.

Very truly yours,

Murray E. Bevan / KM

Murray E. Bevan
Counsel for Agway Energy Services, LLC

cc: Service list *(via electronic mail)*