

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of Eligibility Criteria for Energy Service Companies))	Case 15-M-0127
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 12-M-0476
In the Matter of Retail Access Business Rules))	Case 98-M-1343

**Subject: INITIAL COMMENTS OF MIRABITO NATURAL GAS, LLC
REGARDING THE ORDER RESETTING RETAIL ENERGY MARKETS FOR
MASS MARKET CUSTOMERS**

Mirabito Natural Gas, LLC (Mirabito) is certified by the New York Public Service Commission as a natural gas Energy Services Company and is a wholly owned subsidiary of Mirabito Holdings, Inc. (MHI). MHI has an 88 year operating history in New York State and includes a diverse group of energy management operations including diesel fuel and heating oil, propane, natural gas, motor transportation fuels, natural gas and electricity. Mirabito appreciates the opportunity to respond to the Commission's inquiry regarding conduct in the retail natural gas and electric markets.

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?

Mirabito supports the Commission’s efforts to resolve the underlying issues that we believe resulted in issuance of the subject Order. Specifically, we believe the intent was to protect the smallest of gas and electric utility customers from being subjected to inordinately high commodity charges. Lacking specific quantitative supporting evidence regarding mass-market customer complaints and abuse, Mirabito abstains from commenting on corrective measures for such issues.

However, Mirabito strongly disagrees with the recently developed definition of mass market gas customer (or small non-residential gas customer). The chart below demonstrates the comparable size (in mmbtus) of mass market electric customers as defined by the Order based on criteria from 3 separate utility service territories for non-demand electric customers.

Utility	Criteria for Demand Status	Max Metered Demand - kW	Load Factor	kWhs / Month	kWhs / Year	Annual btus	Annual mmbtus (DTs)
NYSEG	>5 kW Demand	5	100%	3,650	43,800	149,445,600	149
		5	60%	2,190	26,280	89,667,360	90
RGE	>12 kW Demand OR >3,000 kWh/Month in 4 Consecutive Months	12	100%	8,760	105,120	358,669,440	359
		12	60%	5,256	63,072	215,201,664	215
		N/A	100%	3,000	36,000	122,832,000	123
		N/A	60%	3,000	21,600	73,699,200	74
NGRID (NMPC)	>2,000 kWhs/Month in 4 Consecutive Months	N/A	100%	2,000	24,000	81,888,000	82
		N/A	60%	2,000	14,400	49,132,800	49

Based on the above table, a comparable natural gas customer would be no more than 4,000 therms (or 400 DTs or mmbtus) annually.

We feel the Commission has too broadly defined mass market gas customer and as such is unnecessarily damaging both the choice process and doing financial harm to a number

of respectable ESCOs. For example, numerous small businesses consume less than 7,500 therms of natural gas annually. Such businesses may benefit significantly through the option to obtain competing price quotes and the stability of price certainty. Additionally, those that operate at a high load factor (such as restaurants, bakeries and other process loads) have a significant advantage based on more efficient use of fixed cost capacity and should not be subjected to a utility “one-size-fits-all” price.

We also request clarification and make the following comments regarding the definition of mass market electric customer. In previous related Orders, the Commission uses the definition below for “residential customer” from 16NYCRR Part 11.2(a)(2).

The term residential customer or current residential customer includes any person who, pursuant to an application for service or an agreement for the provision of commodity supply made by such person or a third party on his or her behalf, is supplied directly with all or any part of the gas, electric or steam service at a premises used in whole or in part as his or her residence where:

(i) the distribution utility's effective tariff specifies a residential rate for such service; provided, however, that no person who is supplied service to an entire multiple dwelling or for the common areas of a multiple dwelling as defined in the Multiple Dwelling Law or the Multiple Residence Law, shall be considered a residential customer solely because the distribution utility's effective tariff specifies a residential rate;

(ii) such service is primarily used for his or her residential purposes and the customer has so notified the utility;

(iii) the utility knows or reasonably should have known that any of such service is provided through a single meter to both units of a two-family dwelling, as defined in section 11.8 of this Part

(iv) such person was a residential customer, as defined in the preceding subparagraphs of the same distribution utility within 60 days of making the request, was not terminated, disconnected or suspended for nonpayment, meter-tampering or theft of services, and has moved to a different dwelling within the distribution utility's service territory so long as such person remains a residential customer as defined in the preceding subparagraphs.

The above definition should remain valid and accordingly, the Order should be modified to clarify the exceptions. This includes large customers such as churches, multi-family dwellings, and large lighting operations.

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?

Mirabito strongly advocates in any scenario where a definition of value-added becomes material in determining whether service to a customer class is permitted that the following products be considered “value-added”:

- any gas or electric product with a fixed price;
- any gas or electric product with a capped or collared or option based price; or
- any other gas or electric product that contains a fixed element within a contracted price (such as “NYMEX HH Plus” pricing or blended fixed and variable products).

Products with fixed elements such as those described above require the transference of market risk from the customer (and the utility) to the market. This process involves often complicated networks of supply and hedging resources, financial security and credit operations, volume risk and swing risk management and a number of other elements. Price certainty is one the most significant reasons a customer may elect to participate in the retail market. Fixed products, by their very nature, provide a differentiation or value over default utility variable prices.

Having made the above conditional comment, Mirabito does not feel that attempt to define value-added products is ultimately necessary. Beyond the straight-forward products mentioned above there are countless other variations and varieties of products that might be considered value added. Attempts to define such products will inevitably be insufficient, be subject to abuse, and more importantly, will result in difficult or inconsistent enforcement. We believe there are other avenues that will be more effective and that will create a more focused solution without damaging the competitive market. We cannot satisfactorily describe such efforts in the time allotted but we look forward to working with the Commission, the utilities and other ESCOs to implement solutions.

- 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.**

Other than our disagreement with the recently proposed definition of mass market gas customer as described in Item 1, Mirabito has no other comments at this time.

- 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 30 days?**

Mirabito does not see the need for any change to the residential rescission period.

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

No rescission/cancellation period should be applied to any non-residential customer who voluntarily enters into a service contract in compliance with Uniform Business Practices Section 5, Appendix 3 (Written Agreement and Authorization Requirements). We do not believe contractual obligations obtained in this manner are at issue nor do they generally involve the types of marketing cited previously in Commission documents as resulting in customer dissatisfaction.

- 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?**

Mirabito is not opposed to strengthening ESCO or Broker qualification or certification requirements. However, we see little or no connection between an entity's ability to post financial security and ethical pricing conduct. Where the intent is to improve ESCO qualification, we favor more rigorous standards regarding, qualification and experience of personal, adequacy of supply capabilities, adequacy of account receivable operations (including direct or dual billing), and financial solvency and net worth minimums.

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

There is not sufficient time allotted to fully comment on this question.

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

Mirabito has no comments other than we support and encourage the Commission to undertake enforcement actions as currently authorized as necessary to maintain the credibility of the retail natural gas and electric markets.