

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

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 THE JOINT UTILITIES

On March 8, 2017, the New York State Public Service Commission (“Commission”) issued its Notice Seeking Comments on Revisions to the Uniform Business Practices (“Notice”) in the above referenced proceedings. The Commission is considering modifications to the UBPs. Central Hudson Gas & Electric Corporation (“Central Hudson”), Consolidated Edison Company of New York, Inc. (“Con Edison”), New York State Electric & Gas Corporation (“NYSEG”), National Fuel Gas Distribution Corporation (“National Fuel”), Niagara Mohawk Power Corporation d/b/a National Grid (“NMPC”), KeySpan Gas East Corporation d/b/a National Grid (“KEDLI”), and The Brooklyn Union Gas Company d/b/a National Grid NY (“KEDNY” and collectively with KEDLI and NMPC, “National Grid”), Orange and Rockland Utilities, Inc. (“O&R”), and Rochester Gas & Electric Corporation (“RG&E”) (together, the “Joint Utilities”) respectfully offer the following comments in response to the Notice in order to enhance the record in this proceeding, seek to clarify proposed changes consistent with the Commission’s intent, and provide additional perspective for consideration by the Commission.

I. Specific Comments on Other Related Matters and Housekeeping Items

a. UBP § 1 - ESCO Agent Definition

The Joint Utilities do not object to the inclusion of a definition for the term “ESCO Agent” which appears to merely formally define the term as it is currently used in Section 5(I). While the definition appropriately acknowledges that, if requested, the ESCO must provide a clear demonstration that it is authorized to act as the applicant’s agent, the definition should also specify that the utility is under no obligation to process an application for a new delivery account until any ambiguity concerning the ESCO Agent’s authorization to act on the applicant’s behalf is resolved. The exchange of an applicant’s information with an ESCO Agent also raises concerns with customer data privacy. The definition of an ESCO Agent should also include language requiring ESCO Agents to not only act on the applicant’s behalf, but also secure the applicant’s consent to obtain and disclose confidential customer information between the ESCO Agent and the utility. Such a requirement is critical because the establishment of a new delivery account could include the exchange of sensitive personal information, such as the applicant’s social security number, arrears from a former account, and necessity for a deposit.

b. UBP § 2.G – Compliance with the Clean Energy Standard

To address what appears to be a drafting oversight, the word “electric” needs to be inserted in the first sentence of proposed UBP § 2.G.1.a between the words “retail” and “customers” so as not to apply the proposed UBP provision regarding the Clean Energy Standard to retail gas customers. Additionally, in the last sentence of §2.G.2, the word “ratepayer” should be replaced with the words “their end-use customers” to clarify that Zero Emission Credit costs are recovered from the ESCOs end-use customers and not all utility ratepayers.

c. UBP § 5.A & UBP § 5.K.1 – Service Provider Changes - Community Choice Aggregation

The choice of words proposed to be inserted in UBP § 5.A is overly broad because it is not clear whether the proposed Community Choice Aggregation (“CCA”) exclusion is for all of UBP § 5 or just UBP § 5.A. Final CCA business practices and processing rules are still being established. To avoid customer confusion and an overly broad interpretation of the exclusion, the Joint Utilities suggest adding the following clarifying sentences to the end of UBP § 5.A: “For enrollment in a CCA, the first step of obtaining customer agreement is addressed by the terms of the municipally-authorized CCA, except in cases where the customer opts-out of the CCA. The second step of the process would still apply to a CCA.”

Similarly, the proposed language change in UBP § 5.K.1 is overly broad and, in fact, unnecessary. The CCA Order¹ discusses the opt-out process in detail and the substitution of the municipally-authorized CCA, on an opt-out basis, in lieu of specific customer authorization to change service providers. In accordance with the CCA Order, for CCA programs, the municipal approval is considered a reasonable proxy for the customer’s consent to participate in the CCA, unless the customer opts out. Thus, the language is not necessary to add to the UBPs. Moreover, it is inappropriate given that customers in municipalities participating in CCA are still at risk of unauthorized switching of providers, including by the ESCO selected for the CCA. Customers are permitted to opt-out and stay with the utility or, following initiation of CCA service, to opt-out and return to utility service (or service with another ESCO) any time before the end of the third billing cycle after enrollment without penalty. Switching a customer who has opted-out, or failing to permit them to return to the utility before the end of the third billing cycle, would be a

¹ Cases 14-M-0224, *Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs*, Order Authorizing Framework For Community Choice Aggregation Opt-Out Program (issued April 21, 2016), pp. 27-30.

switch without the customer's authorization.² Therefore, the Commission should decline to adopt the proposed language in UBP § 5.B. If the Commission, however, believes some language must be added to address CCAs, the proposed language should be modified to read "in which case customer authorization to switch to the CCA is addressed by the terms of the municipally-authorized CCA, unless the customer opts out."

The Joint Utilities view their proposed language as interim solutions; a better long-term solution is to formalize CCA-oriented enrollment rules within the UBPs.

d. UBP § 5.I.5 – New Delivery Customers

To address what the Joint Utilities believe is a drafting oversight, the word "ESCO" needs to be inserted in the first sentence of proposed UBP § 5.I.5 between the words "customer's" and "Agent" to tie into the new definition for ESCO Agent proposed in UBP § 5. This insertion is necessary to avoid any potential ambiguity concerning which customer agent is authorized to establish new delivery service. Similar edits should also be made to Section UBP § 5.I.3 to reflect the use of the new term "ESCO Agent".

e. UBP § 5.L.2 – Budget Billing

The proposed modification is overly broad because, as written, it could be construed to apply to all ESCO billing models, including Utility Consolidated Billing ("UCB"). Budget plans are already offered by utilities to ESCO customers billed under UCB. Particularly for ESCO UCB customers where the ESCO's receivables are purchased and billed by the utility, the customer is already offered a budget billing option by the Joint Utilities. With UCB, an ESCO budget bill would be superfluous and could result in logistical issues with the utility's

² In cases where customers do not initially opt-out, the initial opt-out enrollment would be authorized but once the customer informs the CCA's ESCO that they wish to return to the utility, arguably the enrollment is no longer authorized.

consolidated bill calculations and reconciliations. Beyond encouraging their customers to contact the utility to enroll in budget billing, the UBPs should not require that ESCOs have a role in budget billing for customers using UCB. Therefore, the Commission should revise the proposed modifications to the UBP § 5.L.2, to limit the ESCO's requirement to provide budget billing to their customers to situations where the customer is billed directly by the ESCO (*i.e.*, dual billing).³

II. Conclusion

The Joint Utilities request that the Commission revise the proposed changes to the UBPs as discussed above.

³ Or for ESCO Consolidated Billing, which is currently available only in National Fuel's territory.