

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 15, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman, dissenting
James S. Alesi

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.

CASE 06-M-0647 - In the Matter of Energy Service Company Price
Reporting Requirements.

CASE 98-M-0667 - In the Matter of Electronic Data Interchange.

ORDER APPROVING NEW WAVE ENERGY CORPORATION'S PETITION FOR
WAIVER OF THE PROHIBITION ON SERVICE TO LOW-INCOME
CUSTOMERS BY ENERGY SERVICE COMPANIES

(Issued and Effective March 16, 2018)

BY THE COMMISSION:

INTRODUCTION

In the Order Adopting a Prohibition on Service to Low-
Income Customers by Energy Service Companies, issued on
December 16, 2016 in these proceedings, the New York State
Public Service Commission (Commission) directed a prohibition on
energy service company (ESCO) enrollments and renewals of
customers who are participants in utility low-income assistance

programs, referred to as an Assistance Program Participant (APP).¹ Further, the December 2016 Order provided that any ESCO that could provide guaranteed savings to APP customers could petition the Commission for a waiver by demonstrating: (a) an ability to calculate what the customer would have paid to the utility; (b) an assurance that the customer will be paying no more than what they would have paid to the utility; and, (c) proper reporting and verification to ensure compliance.

On January 30, 2017, New Wave Energy Corporation (New Wave) filed a request for waiver of the prohibition as directed in the December 2016 Order. After denial of that petition by the Commission in October 2017,² New Wave filed a new petition for waiver on December 13, 2017. As discussed below, the Commission finds that New Wave has made the requisite demonstration under the December 2016 Order, and accordingly, approves New Wave's petition authorizing the company to serve low-income customers.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on January 10, 2018 [SAPA No. 12-M-0476SP31]. The time for submission of comments pursuant to the SAPA Notice expired on March 12, 2018. While there were no specific comments regarding New Wave's current waiver petition, UIU previously stated that a uniform methodology for calculating the

¹ Case 12-M-0476, et al., Retail Access, Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies (issued December 16, 2016) (December 2016 Order).

² Case 12-M-0476, et al., supra, Order Denying New Wave Energy Corporation's Petition for Waiver of the Prohibition on Service to Low-Income Customers by Energy Service Companies (issued October 20, 2017).

ESCO-utility price comparison should be adopted to ensure against overcharges. Public Utility Law Project of New York and the City of New York concurred with UIU's comments. The NY Office of the Attorney General requested that the petitions for waivers be denied until the ESCOs can adequately substantiate their claims that they can guarantee savings to low-income customers.

LEGAL AUTHORITY

The Commission has broad legal authority to oversee ESCOs, pursuant to its jurisdiction in Articles 1 and 2 of the Public Service Law (PSL).³ In addition, the Commission has authority over the tariffed rules and regulations of electric and gas distribution utilities, and has placed conditions on when the distribution utilities may allow ESCOs to use utility infrastructure to distribute electricity and natural gas to ESCO customers.⁴ Therefore, the Commission has jurisdiction and authority to establish and modify the conditions under which ESCOs may offer electric and gas commodity service to customers, and to impose consequences when ESCOs fail to abide by those conditions.

³ See PSL §5 (Commission's broad statutory grant of authority over the sale of natural gas and electricity); PSL §53 (stating Article 2 of the PSL applies to "any entity that, in any manner, sells or facilitates the sale or furnishing of gas or electricity to residential customers").

⁴ Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion and Order Establishing Regulatory Policies for the Provision of Retail Energy Services (issued May 19, 1997) (Opinion 97-5); Opinion and Order Deciding Petitions for Clarification and Rehearing (issued November 18, 1997) (Opinion 97-17).

DISCUSSION

On January 30, 2017, New Wave filed with the Secretary, a request for waiver of the December Order. After reviewing New Wave's petition as amended, the Commission found that New Wave failed to demonstrate that it met the criteria set forth in the December Order to provide, manage, and report on New Wave's proposed guaranteed savings plan.

On December 13, 2017, New Wave filed a new petition requesting a waiver to serve low-income customers. In this second petition for waiver, New Wave focused on the previous petition's shortcomings and addressed all of Staff's prior concerns. More specifically, New Wave included detailed spreadsheet cost calculations to demonstrate the ability to calculate and monitor its price versus the default utility for each utility service area and further details on their calculation methodology. New Wave's product proposal guarantees a 1% savings compared to the default utility price for all APP customers. New Wave's new petition also details its quarterly compliance filings to include month-by-month customer-specific breakdowns of what the customer would have paid to the utility and what they actually paid as a New Wave customer. This compliance filing will include the percentage of savings in dollars and includes statistics on the effectiveness of New Wave's rate calculation methodologies. New Wave stated that upon approval they would immediately assign all APP customers, with proper notification, to its herein described guaranteed savings product. New Wave also indicated that if customer true-ups are necessary they would occur annually or at the end of the individual contract term, whichever was sooner.

CONCLUSION

New Wave's new petition provides sufficient documentation, calculations, and detailed explanations to adequately address and respond to the requirements identified in the December 2016 Order. The Commission has reviewed the documents and calculations and is confident in New Wave's ability to provide this product to APP customers across New York State. The Commission, therefore, finds that New Wave's Request for Waiver complies with the requirements outlined in the December 2016 Order.⁵ Accordingly, the Request for Waiver by New Wave Energy Corporation is approved, subject to a requirement to report semi-annually on the status of its Guaranteed Savings Plan product as it pertains to its low-income customers. Such reporting shall include the number of customers served, the monthly calculated amounts billed and the alternative amounts that the utility would have charged the customer, as well as the amount of any refunds issued to each customer to effectuate the savings guarantee.

While New Wave's petition for a waiver is granted, the Commission finds that it is appropriate to place a time limit on such waivers. Thus, this waiver will expire 24 months from the date of this Order given the nascent nature of the prohibition. During that time period, Staff will review New Wave's compliance with the December 2016 Order and New Wave will have the opportunity to petition for an extension of its waiver. Additionally, given the desire to ensure that low-income customers are receiving the most cost-effective service, having the waiver expire, unless there is further Commission action,

⁵ By Notice Further Extending Deadlines on a Limited Basis, issued July 18, 2017, the Commission granted, to those ESCOs seeking a petition for waiver of the prohibition to serve APP customers, an extension to implement the prohibition until the Commission acted on each company's waiver petition.

errs on the side of caution; a strategy that is most appropriate when dealing with vulnerable customer groups.

Further, in order to ensure that ESCOs, including New Wave, are serving low-income customers with a guaranteed savings product, the utilities are reminded that they are required to provide ESCOs with updated lists, on a rolling basis, of customer accounts that subsequently become APPs that will need to be placed into a compliant product by the applicable ESCO.⁶

The Commission orders:

1. New Wave Energy Corporation's request for waiver to serve low-income customers is approved, as discussed in the body of this Order.

2. New Wave Energy Corporation shall report to Department of Public Service Staff semi-annually on the status of its compliance with the December 2016 Order, as discussed in the body of this Order.

3. The Secretary shall have sole discretion to extend the deadlines set forth in Ordering Clause Number 2. Any requests for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

4. These proceedings are continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

⁶ December 2016 Order, Ordering Clause 6.