

to maintain a reasonably level playing field, we concur with UIU and direct that the utilities continue to inform new and moving residential and small business customers of their option to select an ESCO and how to obtain information on ESCO products.

F. Treatment of Customers Participating in Utility Low Income Assistance Programs.

As discussed earlier, residential customers are generally paying more for commodity service from an ESCO than if they had purchased their energy from the utility. We expect that the increase in information and transparency in the retail markets will increase competitive pressure and significantly sharpen competition. However, we must ensure that the current operation of the residential retail energy market does not negatively impact other policy goals.

An important component of our statutory policy is the continued provision of electric and natural gas service to all residential customers.<sup>30</sup> To that end, we authorize more than \$100 million annually for ratepayer-funded utility low income assistance programs. These ratepayer funds augment taxpayer funds that provide financial assistance to utility customers through the Home Energy Assistance Program (HEAP).

As explained in the October 2012 Order, in at least one utility service territory, customers participating in the utility's low-income assistance program are more likely to obtain their energy commodity from an ESCO than customers who do not participate in these programs. We are concerned about the use of ratepayer and taxpayer funds intended to assist low

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<sup>30</sup> PSL §30 states that the continued provision of electric and natural gas service to all residential customers "is necessary for the preservation of the health and general welfare and is in the public interest."

income customers instead paying ESCOs for higher priced commodity without corresponding value to the customer.

As a threshold matter, several parties point out that customers who participate in utility low income assistance programs and HEAP are benefitting, or could benefit, from obtaining service from an ESCO. However, the data we have reviewed show that residential ESCO customers in New York State, as a group, have not benefited in recent years in comparison with what they would have paid if they were full service customers of the utility.

We note that all customers, particularly those who participate in utility low income assistance programs and HEAP can benefit from energy-related value-added services such as home energy management services, demand response programs and tools, energy efficiency measures, and other tangible services as determined by Staff. By helping customers reduce their utility bills, such services make it easier for customers participating in utility low income assistance programs or HEAP to pay their energy bills, and maintain the value of existing financial assistance programs. However, at this time the scope of value-added services offered by ESCOs to residential customers continues to be very limited.

By charging more for energy supply without providing energy-related value-added benefits, ESCOs serving customers who participate in utility low income assistance programs or receive HEAP benefits diminish the value of those programs. Diminishing the value of public assistance in relation to customers' bills will make it harder for those consumers to pay their utility bills in full, which may lead to increased arrears and utility shut-offs, to the detriment of utilities and their customers. Further, the use of limited utility low income assistance program and HEAP funds to pay ESCOs higher-than-necessary energy

prices reduces the availability of the funds for other consumers.

Continuing to allow participants in utility low income assistance programs and HEAP to purchase energy commodity from an ESCO, without a guarantee of savings in comparison with what the customer would have paid the utility, or without tangible energy-related value-added services that may reduce a customer's overall energy bill, is not in the public interest. Doing so diminishes the value of utility low income assistance programs and federal and state assistance programs. In addition, it may also interfere with our interest in minimizing the unnecessary termination of essential electricity and natural gas service to residential customers.

Therefore, we agree, in part, with the recommendation of utilities, OAG and PULP/AARP. Specifically, we require that ESCOs serving customers participating in utility low income assistance programs must do so with products that guarantee savings over what the customer would otherwise pay to the utility. To comply with this guarantee, an ESCO must be able to compare actual customer bills to what the customer would have been billed at the utility's rates and, on at least an annual basis, provide any required refund as a credit on the customer's bill. Alternatively, ESCOs may also provide these customers energy-related value-added services that are designed to reduce customers' overall energy bills as described above.<sup>31</sup> If an ESCO cannot or will not comply with these conditions, it can choose

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<sup>31</sup> We emphasize that it is not up to the utilities to enforce this policy.

not to serve customers participating in utility low income assistance programs or HEAP.<sup>32</sup>

To accommodate this new policy and to assist ESCOs in determining whether prospective customers qualify as low income, several administrative changes are required. Currently, as part of the process of enrolling a new customer, ESCOs must obtain customer authorization for the utility to release certain information to the ESCO. The information is transmitted via Electronic data interchange (EDI), but does not indicate whether a potential customer is a participant in either a utility low income assistance program or HEAP. In order for the ESCO to obtain this information, two things need to happen. First, the ESCO must seek customer authorization to obtain that information, which requires a modification to the customer authorization rules in the UBP. Second, as discussed above, EDI standards must be modified to provide a field for information on the customer's low income program enrollment status.

ESCOs that intend to serve customers participating in low income assistance programs, but do not provide qualifying value-added services, must develop a mechanism to implement the price guarantee. That mechanism must enable the ESCO to compare the actual customer bill to what the customer would have been billed if served by the utility and, on at least an annual

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<sup>32</sup> As explained in prior Commission Orders, ESCOs are not required to only charge tariffed prices approved by this Commission. See Case 06-M-0647 et al., supra, Order Adopting ESCO Price Reporting Requirements and Enforcement Mechanisms (issued November 8, 2006) (p. 11). In requiring that ESCOs guarantee savings compared to what the customer would have paid to the utility for customers who participate in utility low income assistance programs and HEAP, we do not change this policy. ESCOs remain free to set prices without seeking Commission approval. The ESCO must only show that it can offer the customer value beyond what the utility would provide, either through savings or value-added services.

basis, provide any required credit on the consolidated utility bill. Billing changes may be necessary to accommodate ESCO credits and should be implemented within 90 days.

Regarding customers who are participants in the utilities' low income assistance programs and/or HEAP, and who are currently served by ESCOs, we will require that, within 90 days of the date of this Order, each utility provide a notice, through a bill insert or targeted letter, to such customers. The notice must inform the customer (1) that he or she may be eligible for a lower rate from their ESCO, and (2) that the customer should contact his or her ESCO to inform it that he or she is a participant in a utility low income assistance program and/or HEAP.

For a low income customer with an ESCO contract without an early termination fee who contacts his or her ESCO, the ESCO may offer one or more plans that comply with our policy, or the ESCO shall offer to switch the customer back to utility default service without an early termination fee. For a low income customer with an ESCO contract that includes an early termination fee who contacts his or her ESCO, the ESCO must inform the customer of his or her options to continue with ESCO service for a specified number of months or pay the specified early termination fee. For a low income customer who does nothing in response to the notice, the ESCO may keep the customer on his or her existing plan for the remainder of the plan's then-current term, but shall not renew the existing plan unless it complies with our policy for new low-income customer enrollments. In such a situation, the ESCO must either switch the customer back to utility default service at the end of the current term and notify the customer that it is doing so, or obtain affirmative customer agreement to a new plan that complies with our policy.

Further details regarding the implementation of this new policy concerning ESCO offerings for customers who participate in utility low-income assistance programs and HEAP are to be addressed at the technical conference to be convened within 60 days of issuance of this notice.

## PART II

### IMPROVEMENTS TO MARKETING AND CUSTOMER ENROLLMENT

The UBP establishes marketing standards that ESCOs and their representatives must follow when marketing to consumers, including through in-person contact, such as door-to-door marketing. We have strengthened these rules on occasion to address new developments and concerns. However, apparent abuses continue.

At this time, we will build on recommendations to establish more stringent requirements regarding ESCO marketing in order to reflect best practices. We identify new requirements for ESCO marketing in a few areas of critical importance, incorporate these new requirements in the UBP and, as with other UBP modifications, require that they be implemented by ESCOs within 90 days of the issuance of this Order.<sup>33</sup>

#### A. ESCO Customer Agreement Verification

Under our current rules, verification of customer agreement to take service from an ESCO may be obtained through a signature on a written agreement, through electronic authorization, or through a recorded telephonic authorization. ESCO representatives conducting door-to-door marketing are

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<sup>33</sup> General Business Law §349-d(12) specifically permits the Commission to adopt additional requirements relating to ESCO marketing practices that are not inconsistent with the statute. We find that our new requirements are consistent with GBL §349-d.