



national fuel

March 1, 2013

Hon. Jeffrey Cohen
Acting Secretary
State of New York
Public Service Commission
Three Empire State Plaza, 19th Floor
Albany, NY 12223-1350

RE: **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.

Dear Secretary Cohen:

Central Hudson Gas & Electric Corporation, National Fuel Gas Distribution Corporation, The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Corporation d/b/a National Grid, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (together, the “Joint Utilities”) hereby submit *Reply Comments Of The Joint Utilities* in accordance with the schedule adopted in the above referenced cases.

Please contact the undersigned at (716) 857-7884 if you have any questions regarding this filing.

Respectfully submitted,

Michael E. Novak
Assistant General Manager,
Rates & Regulatory Affairs

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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REPLY COMMENTS OF THE JOINT UTILITIES

On October 19, 2012, the Public Service Commission (“Commission” or “PSC”) issued an Order Instituting Proceeding and Seeking Comments Regarding the Operation of the Retail Energy Markets in New York State (“Instituting Order”) in the above referenced proceedings. On the same date, the Commission issued a Notice Seeking Comments (“Notice”) requesting answers to certain questions regarding the operation of the retail energy markets in New York State. Central Hudson Gas & Electric Corporation (“Central Hudson”), National Fuel Gas Distribution Corporation (“National Fuel”), The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Corporation d/b/a National Grid (“collectively, National Grid”), New York State Electric & Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RG&E”) (together, the “Joint Utilities”) hereby submit the following comments replying to select initial comments filed by parties in the above-captioned proceedings.¹

¹ For its initial response to the Commission's Notice, the Joint Utilities filed comments on January 25, 2013 (“Initial Joint Utility Comments”).

I. General

The Joint Utilities appreciate the opportunity to reply to initial comments filed by others in this matter. These comments reflect general agreement among the signatories with regard to certain issues contained herein.

II. Replies

- 1. Cost Comparison Tools: Historic bill calculators and requiring that utilities include a line item on ESCO customer bills that identifies what the customer would have paid had supply been purchased from the utility.**

The Joint Utilities recognize the value to customers of obtaining clear and simple pricing information when it comes to receiving supply from a third party. We support the efforts that have been put forth by the Commission to ensure customers receive this information to review their past decisions and assist with current decisions. Many parties support the idea of the historic bill calculator and state that it would be beneficial for customers to be able to review and analyze their decision.

The Joint Utilities agree, as do other parties, that this tool is not intended to be used to make future purchasing decisions since this tool is not indicative of future prices.

To set the basis for its opposition to utility historical bill calculators and line items on ESCO customer bills identifying what the customer would have paid had supply been purchased from the utility, National Energy Marketers Association (“NEM”)² opines that utility rates have yet to be adequately unbundled and therefore, utility products cannot be compared to ESCO products. The New York State Energy Marketers Coalition (“NYSEMC”)³ and Green Mountain,

² Case 12-M-0467, et al., Comments of the National Energy Marketers Association, (Jan 25, 2013) (“NEM Comments”) at 7.

³ Case 12-M-0467, et al., Initial Comments of the New York State Energy Marketers Coalition, (Jan 25, 2013) (“NYSEMC Comments”) at 7.

Reliant, and Energy Plus (collectively, the “NRG Retail Affiliates”)⁴ raise similar arguments. While there may have been merit to an unbundling argument a decade ago, the Commission should dismiss such arguments because unbundling of rates has been addressed exhaustively in Case 00-M-0504, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets, as well as in individual utility rate cases. In 2013, a call by ESCOs for further unbundling is inapposite in this proceeding.

Similarly, arguments concerning what is or isn’t, or should or should not be, included in a price-to-compare, as well as a proposal by Constellation NewEnergy, Inc. (“Constellation”)⁵ for a Price-to-Compare Workgroup, are off the mark. The Commission should not establish the proposed collaborative because the result will not be of practical value to the typical shopping customer. To the extent they could be attained, refinements to the price-to-compare may have some academic value but reliance on them for the effective operation of the retail energy market would be misplaced.

The response to Notice Question 1 provided by the Retail Energy Supply Association (“RESA”) reasonably details what is involved in calculating monthly bill totals for both ESCO and utility supply service;⁶ in effect it is an explanation of why it is sometimes difficult to compare supply prices on an apples-to-apples basis. For customers who shop to save money, a comparison of historical bill totals⁷ over a relevant period of time is easier to comprehend than

⁴ Case 12-M-0467, et al., Combined Comments of Green Mountain Energy Company, Reliant Energy Northeast LLC, and Energy Plus Holdings LLC, (Jan 25, 2013) (“NRG Retail Affiliates Comments”) at 6-7.

⁵ Case 12-M-0467, et al., Initial Comments of Constellation NewEnergy, Inc., (Jan 25, 2013) (“Constellation Comments”) at 7.

⁶ Case 12-M-0467, et al., Initial Comments of the Retail Energy Supply Association, (Jan 25, 2013) (“RESA Comments”) at 12-14.

⁷ Many responses noted that the bill calculator does not correctly display savings the ESCO customers receive that are associated with the Merchant Function Charge (“MFC”) or sales tax savings for residential and commercial customers. By comparing bill totals (rather than bill components), historical bill calculators can obviate this concern. For example, as ESCO bill total would be the amount the customer was actually billed (less the MFC

the esoteric points of rate design and resulting price comparisons. This is the case whether bill totals are provided through a web site or compiled from a line item over a comparable number of bills.

Concerns have been raised based on the time period that should be displayed within the calculator. The Joint Utilities agree that a comparison of prices over a longer period of time rather than a shorter period is more optimal; however for new accounts, this is simply not possible. Even if 12 months are available, if a customer begins a new ESCO offer in month 9, the comparison for the initial 8 months must be viewed in a different light. The utility would have no way of knowing about the new ESCO offer; both the customer and their ESCO must take some role in gaining an understanding of the product being offered.

Suggestions to repress historical bill comparisons under various scenarios, such as that proposed by Consolidated Edison Solutions,⁸ should be rejected. The extra programming required, which would add complexity and increase implementation cost, could not possibly capture every scenario. Further, it could have the unintended effect of suppressing discourse between the customer and their ESCO that would better inform the customer about the product offering. The Joint Utilities believe that disclosure statements⁹ are a better approach.

The Joint Utilities also recognize that loyalty reward programs, value added services and/or green power can present a challenge for customers viewing historical bill comparisons. Even so, historical utility full-service bill totals serve as a useful benchmark. Web site

Supply, and reduced sales tax). The full service utility total would include the MFC plus the sales tax when applicable.

⁸ “Bill Comparisons should not be provided with less than a year of actual data to avoid conveying transient or incomplete information to customers”, Case 12-M-0467, et al., Initial Comments of Consolidated Edison Solutions, Inc., (Jan 25, 2013) at 2.

⁹ For example, the Central Hudson Historical Price web site contains the disclosure message “A comparison of an ESCO bill that includes marketer charges with a utility bill in any single period may be affected by one-time charges or very short-term changes in energy prices. It is therefore recommended that comparisons be made over a longer period of time and, if possible, for one year or more.”

disclosures¹⁰ can help explain the difference between their ESCO products and standard utility service but ESCOs should take the primary role in educating their customers. Well informed ESCO customers should be able to understand why they may pay more than they would for standard utility service.¹¹ In this case, historical bill totals could help provide customers with a relative value of their choice which may lead to more informed future shopping decisions.

2. Other proposed changes to information provided on utility bills.

Making changes to the utility bill raises many issues, including space limitations, added customer confusion, and increased costs. The Utility Intervention Unit of the Department of State (“UIU”)¹² suggests that the utility consolidated bill be enhanced to include comparative pricing information, including: (i) the amount of the previous month’s total bill; (ii) the amount the prior month bill would have been if the customer had purchased energy supply from the utility; (iii) the difference in the two amounts; and (iv) the cumulative costs or savings over a twelve month period. In addition, the inclusion of a graph comparing the total actual bill with ESCO charges to the same bill if the customer had purchased energy supply from the utility has been proposed. This graph would contain 12 – 24 months of data.

The Joint Utilities oppose UIU’s suggestion. Currently, the utility bill contains a large amount of information, and the proposed additional information may ultimately confuse the customer. Placing the amount that the utility would have charged on the bill may confuse the

¹⁰ For example, the Central Hudson Historical Price web site contains the disclosure message “If the supply service purchased from an ESCO includes a value added feature such as a price that is fixed for a period of time, green energy, a furnace repair package or airline miles, the costs of this value added feature may be reflected in the charges from your ESCO. The supply service provided by Central Hudson, however, does not include such value added services. Keep this in mind when interpreting the results of the bill comparison.”

¹¹ Because utilities generally do not know the ESCO offer details (unless provided by the customer), the explanation of why the ESCO cost is higher than the full service utility cost should take place between the ESCO and the customer. The ESCO thereby has the opportunity to correct any customer misunderstanding by reinforcing the value provided by the offer, e.g. in the case of green products, loyalty rewards programs, value-added services, etc.

¹² Case 12-M-0467, et al., Initial and Reply Comments of the Utility Intervention Unit of the Department of State, (Feb 1, 2013) (“UIU Comments”) at 10.

customer into thinking that he or she can pay this amount, if it is lower. This may increase calls to the utility's call center and increase collection costs. Adding information, particularly a graph, to the bill is costly and may occupy so much space on the bill that an additional page is required. This in turn increases the bill costs, including the cost of additional paper and postage. These increased costs will be borne by all customers even though only shopping customers will receive this information on their bills. This cross-subsidization of shopping customers by non-shopping customers unfairly discriminates against those customers who choose to remain with the utility for their energy supply.¹³

Additional ESCO information proposed to be displayed on the bill includes whether the ESCO price is fixed or variable, the length of the ESCO agreement and the end date of the contract, if one exists. Pursuant to Uniform Business Practice ("UBP") Section 5.B.3, this information is provided by the ESCO to the customer and therefore does not need to be repeated on the monthly bill. If the customer has any questions regarding his or her ESCO agreement, the customer should contact the ESCO directly to discuss the pricing package.

UIU also proposes that utilities should be required to send a letter to a customer at the end of a contract term with an ESCO that explains the amount of savings received by the customer from the ESCO contract.¹⁴ Although it may be useful to customers to know how much they actually saved from taking energy supply from an ESCO, the Joint Utilities oppose this suggestion because much of the information necessary to comply is not available to the utilities. As discussed below, ESCOs possess the information essential to calculating the actual savings. While the customer can obtain total billed information from the utility, it is more appropriate for

¹³ Depending upon how these changes might be implemented, they could also discriminate against dual bill customers. At the very least, dual bill customers might also be confused because the utility bill for delivery charges would contain information concern energy supply; for which they receive a separate bill from their ESCO.

¹⁴UIU Comments at 10.

the customer to obtain information about value added services, green products and/or other promotional gift/reward benefits directly from the ESCO.

Utilities do not have access to the terms of a contract between an ESCO and its customer and therefore do not know when the contract ends, nor would the utility know whether the contract was extended and what the new terms would be. To fulfill this requirement, the terms of the contract between the ESCO and the customer would need to be provided to the utility up-front in order for the utility to mail a letter to the customer at the end of the contract term. ESCOs may not be willing to provide contract terms to utilities as these may be confidential and may have been negotiated between the ESCO and the customer. Even if ESCOs were willing or were ordered to provide contract information, the variability of ESCO product offers adds significant complications to the data transfer.

Moreover, requiring the utility to maintain a database with ESCO contract information for each retail access customer will increase utility costs. Likewise, calls to the utility's call center will increase as customers reach out to the party who sent this letter with their questions. The costs associated with producing and mailing this letter, as well as any increased call center volume, must be recovered. These increased costs will be borne by all customers even though only shopping customers will receive this letter. This cross-subsidization of shopping customers by non-shopping customers unfairly discriminates against those customers who choose to remain with the utility for their energy supply.

In lieu of a letter, the amount of billed savings could be made available to the customer on the utility's web-based historical bill calculator or through the proposed monthly bill comparison line item. However, any additional costs or savings arising from value added services or termination fees would not be known by the utility and therefore not reflected in

either a letter or on the web-based bill calculator. Rather, to provide the customer with the full amount of savings, the onus should be on the ESCO to mail a letter which would include the cost savings from a lower ESCO rate, a promotional gift/reward and/or the value derived from any value added service.

3. Joint Utilities should not be required to change their POR programs to full recourse.

The Joint Utilities, along with nearly all parties filing comments, oppose mandating a Purchase of Receivables (“POR”) with full recourse as suggested by the Attorney General’s Office (OAG).¹⁵ As asserted by OAG, utility purchase of ESCO receivables should be with full recourse:

To qualify as independent competitors, ESCOs should bear the full risk of their customers' uncollectible accounts. After fifteen years in existence, ESCOs today have adequate financial resources to stand on their own. To affect a genuine competitive retail energy market, the PSC must provide that utility ratepayers and shareholders are not responsible for ESCO collections.

Under a properly implemented non-recourse POR program, ESCOs already bear the full risk of bad debt. ESCOs pay for costs associated with uncollectible expense (i.e., “bad debt”) up front through the discount rate imposed when utilities purchase ESCO receivables. The discount rate reflects the percentage of uncollectible debt or write-offs of utility and ESCO customers during a given time period. Since the cost for bad debt is imputed (discounted) off what the utilities pay for ESCO receivables, there is no reason to modify current POR programs to achieve the goal of making ESCOs bear the risk of uncollectable accounts.

¹⁵ Case 12-M-0467, et al., Comments of Eric T. Schneiderman Attorney General of the State of New York, (Jan 25, 2013) (“OAG Comments”) at 21.

UIU¹⁶ and jointly, Public Utility Law Project of New York, Inc. and AARP (“PULP/AARP”),¹⁷ advocate moving to POR with Partial Recourse; i.e. having ESCOs take responsibility for the unpaid portion of purchased receivables above what would have been charged for full utility service. While potentially less damaging to the retail market than a change to POR with full recourse, the Joint Utilities believe mandating any changes to existing utility POR programs could be expensive and not as cost-effective as other measures to protect customers, particularly low-income customers.

Changes to a utility’s POR program would require extensive modifications to the customer system and electronic data interchange (“EDI”) interfaces. Coding and testing of the systems would also be required. All of the utilities that currently operate POR programs have invested substantial time and money into developing the necessary billing systems, transactions and other requirements to implement the changes to their respective programs. To achieve what PULP/AARP is seeking would require, at a minimum, development and implementation of a POR with partial recourse program.¹⁸ However, it appears as if the objective of the PULP/AARP proposal in this regard may be to implement a price cap on what the utilities can collect on behalf of the ESCO. The same results may be achieved by placing a cap on ESCO pricing directly.

PULP/AARP claims that customers are not affirmatively informed of their right to obtain reconnection by paying the “lesser of amount”¹⁹, if applicable. PULP/AARP also states that

¹⁶ UIU Comments at 22-23.

¹⁷ Case 12-M-0467, et al., Comments of the Public Utility Law Project of New York, Inc. and AARP, (Jan 25, 2013) (“PULP/AARP Comments”) at 26.

¹⁸ While National Fuel has a partial recourse POR program, mandated changes to its program would raise the same issues as those faced by utilities with non-recourse POR programs.

¹⁹ Pursuant to HEFPA, when participating in a consolidated billing and a POR program, customers are entitled to have service reinstated by paying the lower of two amounts: 1) the ESCO’s charges or 2) what the customer would have paid if receiving fully bundled service from the utility. The amount is commonly referred to as the “lesser of amount”.

utilities seek payment arrangements on the full amount overdue and not the lesser of amount, when customers call to avoid termination for nonpayment. In response to PULP/AARP's assertion, the Joint Utilities note these precautions and customer protections are already encoded in the utilities systems and practices. Moreover, customers are periodically advised by utilities (e.g., in the annual billing disclosures and via utility website disclosures) of their rights under HEFPA.

The Joint Utilities reiterate that the effect of moving to a full recourse approach could ultimately be the same as if POR was discontinued. Additionally, adopting a full recourse model could actually enable the ESCOs to interrupt service as part of their collection efforts which would then expose the customer to interruptions from both the utility and the ESCO. It may be more appropriate to consider other options within the current recourse programs such as more frequent updates to discount rates. As noted in the Initial Joint Utility Comments, every utility should be allowed to determine the optimal POR program structure that works best for their customer demographics and billing system, rather than mandating one single solution for all utilities.

4. Role of ESCOs serving customers participating in any state or federal energy assistance program, such as the Home Energy Assistance Program, or in any utility-sponsored affordability program.

Given the wide range of comment on this issue, the Joint Utilities recognize the potential for conditions to be placed upon ESCOs that elect to serve the low-income market. As indicated through comments submitted by several ESCOs in opposition to limitations on service limitations to low income customers proposed in Notice Question 7, it appears as if not all ESCOs would be willing to serve low income customers under the conditions that could potentially be put in place. While no position is being taken upon which conditions, if any,

should be put in place, the Joint Utilities recognize that some changes could significantly impact the enrollment process and billing/remittance functions administered through utility systems. To minimize the cost of changes to utility systems, Joint Utilities recommend that the Commission develop UBPs and other administrative rules/procedures that would identify and perhaps certify ESCOs to serve the low income market.

RESA recommends consideration of the Summary developed by the Low Income Customer Working Group²⁰ to address the needs of low-income customers.²¹ Small Customer Marketer Coalition (“SCMC”) goes a step further by commending the Summary to the Commission for review and implementation.²² The Joint Utilities believe that both RESA and SCMC are overstating support and consensus for the Summary. While the Summary may be worthy of consideration and/or further development in a more formal setting, the Joint Utilities urge the Commission to reject SCMC’s recommendation.

The Joint Utilities note the Summary proposes exchange of low-income customer data between utilities and ESCOs. Since certain of the information to be transferred pre-enrollment could be sensitive and/or confidential, it seems reasonable that new UBPs, regulations or tariff conditions apply solely to those ESCOs that would be certified to serve low income customers would need to be developed. Some of the information to be transferred could be subjective; it could all be confidential. Unless the information is limited to a customer’s factual status, e.g. whether or not the customer received HEAP during the prior winter, it could be difficult for

²⁰ The Low Income Customer Working Group was a task force of the Retail Energy Market Stakeholder Forum (“Stakeholder Forum”) which itself is an ad hoc group of market participants. While the Stakeholder Forum facilitates discussion on retail market issues among representatives of ESCOs, Staff and Utilities, it has no official regulatory standing.

²¹ RESA Comments at 12, 25 and Attachment “A”.

²² Case 12-M-0467, et al., Comments of the Small Customer Marketer Coalition, (Jan 25, 2013) (“SCMC Comments”) at 11.

utilities to produce information in a format that is suited to standardized electronic formats such as EDI.

It is simply premature to commit to EDI changes (along with the accompanying back office systems changes) without determining first how many ESCOs are willing to serve low income customers. The Joint Utilities do not intend to categorically preclude the development of EDI transactions but offer that non-EDI transactions may be more suitable,²³ at least for some utilities and ESCOs. A cautious approach to implementing changes, if any, will be the most cost-effective path forward.

5. Door-to-door marketing should be prohibited. In the event that it is not prohibited, enhanced protections and enforcement must be adopted and a moratorium on door-to-door marketing of electricity and/or natural gas to residential and/or small non-residential customers should be imposed until further controls are in place.

Not surprisingly, nearly all ESCOs support door-to-door marketing. Direct Energy Services, LLC (“DES”) is perhaps the most effusive in praise when it states that some customers allegedly actually prefer the door-to-door experience.²⁴ The Joint Utilities note that door-to-door marketing is not the only way ESCOs and customers can engage in person-to-person contact. Certainly other less controversial marketing channels could be used to arrange home sales appointments with prospective customers. Notably, not all ESCOs are supportive of door-to-door marketing; Great Eastern Energy notes the potential for deceit and predatory practices²⁵ and

²³ EDI is best suited for high-volume transactions exchanged widely by market participants. Since the number of ESCOs willing to serve low income customers may be a small subset of all ESCOs and low income data in utility systems may not be standard across all utilities, non-EDI solutions may in some cases be more cost-effective to implement.

²⁴ “In our experience, DES has seen that many customers actually prefer the personal attention that the door-to-door experience provides, and that such customers often get a more helpful and complete explanation of how the competitive market works than customers reached through other sales channels.”, Case 12-M-0467, et al., Initial Comments of Direct Energy Services, LLC, (Jan 25, 2013) (“DES Comments”) at 11.

²⁵ Case 12-M-0467, et al., Comments – Great Eastern Energy, (Dec 19, 2012) at 6.

U.S. Energy Partners LLC (“USEP”),²⁶ who vows that it will never engage in door-to-door marketing, notes the tendency for this sales tactic to take place in densely populated low income areas. In varying degrees, nearly all parties recognize the need to place better controls on door-to-door marketing.

The Joint Utilities note the opposition to door-to-door marketing expressed by PULP/AARP, Consumer Power Advocates,²⁷ OAG and UIU.²⁸ The OAG stated, in relevant part:

“The PSC should ban door-to-door marketing by ESCOs. In the alternative, the PSC should require such solicitations to be recorded and audited and should otherwise strictly regulate such marketing”.²⁹

As noted in the Initial Joint Utility Comments, the Joint Utilities believe that the Commission should prohibit the suspect practice of door-to-door marketing by ESCOs or agents/brokers. Despite assertions to the contrary by RESA³⁰ and SCMC,³¹ New York’s General Business Law (“GBL”) §349-d does not provide any impediment to a Commission prohibition of door-to-door marketing. Joint Utilities continue to believe that enforcement of controls on door-to-door marketing is near impossible; stronger controls will not make enforcement any more likely. As pointed out by USEP: “There is not enough paper and ink to develop rules for door to door marketing that will be workable and prevent problems. Our time is better spent on more critical market issues.”³²

Should the Commission decide not to fully ban door-to-door marketing, PULP/AARP recommends that, at a minimum, the Commission consider following best practices for

²⁶ Case 12-M-0467, et al., Comments – U.S. Energy Partners LLC, (Dec 27, 2012) (“USEP Comments”) at 3.

²⁷ Case 12-M-0467, et al., Comments – Consumer Power Advocates, (Jan 25, 2013) at 3.

²⁸ UIU Comments at 17-20.

²⁹ OAG Comments at 18.

³⁰ RESA Comments at 25.

³¹ SCMC Comments at 13.

³² USEP Comments at 3.

development of door-to-door marketing consumer protections.³³ For licensing and enforcement authority, PULP/AARP recommends regulations adopted by the Maine Public Utility Commission³⁴ for adoption by the Commission. Constellation³⁵ and DES³⁶ also make recommendations worth consideration.

While the Joint Utilities prefer a prohibition, a Commission directed collaborative could be implemented to develop additional rules for door-to-door energy marketing. Such a collaborative should consider more intensive oversight and enforcement tools for Staff with respect to door-to-door marketing practices. Due to the complexity of the controls under consideration, this collaborative will likely take considerable time to complete its work. For example, SCMC wants door-to-door marketing issues specifically identified and delineated prior to an analysis to determine if the concerns can be addressed through consistent and timely application of existing regulations and standards.³⁷ During this time, the abuses associated with door-to-door marketing could continue unabated. To avoid this outcome, the Joint Utilities recommend a moratorium on door-to-door marketing of energy until a Commission Order implementing the new controls is issued and effective.

Additionally, the Joint Utilities strongly support creation of new UBPs relating to marketing activities conducted by Energy Brokers. As pointed out by IDT Energy, Inc.,³⁸ Commission oversight, including a registry of agents and companies involved in direct

³³ For door-to-door marketing consumer protections, PULP/AARP points to revised regulations recently adopted in Pennsylvania and suggests development of improved consumer protections in the following categories: Licensing/Certification, Disclosures, Regulation of Contract Terms and Customer Education, PULP/AARP Comments at 15-18.

³⁴ *Id.*, at 19-22.

³⁵ Among other suggestions, Constellation recommends third party verification of door-to-door enrollments and rudimentary reporting that would be made available to the Commission, Constellation Comments at 21-22.

³⁶ DES, in recognition that door-to-door marketing programs must be conducted with a sufficient level of quality assurance and safeguards against unscrupulous behavior, also suggests agent registration and background checks, DES Comments at 11.

³⁷ SCMC Comments at 12.

³⁸ Case 12-M-0467, et al., Comments – IDT Energy, Inc., (Dec 11, 2012) at 10.

marketing along with a licensing or qualification process, may be helpful to ESCOs who want to avoid the “bad players”. The Joint Utilities have not found the Commission or Staff to be lacking any effort to address door-to-door marketing; indeed, Staff has been responsive and active in addressing customer concerns. Additional regulations, such as prohibiting door-to-door marketing, increasing the regulatory requirements on door-to-door marketers and/or appropriate enforcement authority would provide the Staff additional tools to address customer concerns as they arise.

6. Proposed changes to ESCO customer billing.

DES³⁹ believes customers and ESCOs would benefit from the availability of ESCO consolidated billing, provided it was available on appropriate operational and financial terms. The Commission has required utilities to accommodate the wishes of retail access customers who elect to receive combined, single bills for both utility and ESCO services.⁴⁰ Contrary to conventional wisdom at the time of the Order, most customers ended up preferring that consolidated bills be prepared by utilities. The demand for ESCO consolidated billing was so lacking that necessary EDI transactions to bill utility charges were not fully developed.

Without elaboration upon what DES deems the appropriate operational and financial terms should be, the Joint Utilities do not believe any regulatory impediment to ESCO consolidated billing exists.⁴¹ Whatever financial incentives DES might believe necessary, the Joint Utilities do not believe any sort of subsidy of ESCO consolidated billing would be warranted. As with other ESCO proposed changes, the ESCOs promoting such changes should

³⁹ DES Comments at 14.

⁴⁰ Case 99-M-0631 - *In the Matter of Customer Billing Arrangements Alternative Billing Arrangements*, Order Providing For Customer Choice Of Billing Entity (March 22, 2000).

⁴¹ Marketers issue consolidated bills to customers for delivery and commodity services under a single retailer format in National Fuel’s service territory.

bear the costs of implementing such changes. The Joint Utilities question whether the DES proposal has broad support among other ESCOs. If not, the Commission should question whether changes that would benefit DES would actually be detrimental to other ESCOs satisfied with current utility provided ESCO billing options.

The NRG Retail Affiliates recommend that the Commission should work with the utilities and ESCO industry to develop a uniform, competition-friendly format for consolidated billing offered by distribution companies and ESCOs.⁴² Constellation includes consolidated bill format as one of the items it believes the Commission should make uniform across all utilities.⁴³

The format of utility combined bills is not confusing to customers, rather customer familiarity with utility provided bills is one reason that the predominant mode of ESCO billing is utility prepared consolidated bills. As PULP/AARP observes, the customer naturally views the utility's billing and collection function as "regulated" and approved by the Commission.⁴⁴ There may be other reasons to consider changes to utility bill formats but if retail competition is the only driver, the Commission should reject this request.

USEP proposes that utilities be required to prepare ESCO consolidated bills using both bill ready and rate ready methodologies.⁴⁵ Section 9.C of the UBPs allows for utilities to choose either the bill ready or rate ready method. This choice was originally made to allow utilities to select the lowest cost method in an effort to keep the costs of retail access to a minimum. USEP does not provide any substantive support for their suggestion and, if enacted, their proposal would impose extraordinary cost on all the utilities for no foreseeable customer or utility value. The goal of retail access has always been to seek ways to provide value and lower prices to the

⁴² NRG Retail Affiliates Comments at 13.

⁴³ Constellation Comments at 8.

⁴⁴ PULP/AARP Comments at 6.

⁴⁵ USEP Comments at 4.

customer. Requiring redundant billing options and systems that would likely impose significant incremental costs upon utility billing systems has no place in this discussion and should be summarily rejected.

The choice of whether a utility provides bill ready or rate ready ESCO consolidated bills is based upon the capabilities of the utility's billing system. Relative to any randomly selected ESCO product, either approach has advantages and disadvantages. It simply is not cost effective to retrofit existing utility billing systems to provide functionality for whichever approach is not currently provided. Such changes would clearly only benefit the subset of ESCOs that offered products better suited to whichever model is not currently supported; a subset that may vary by utility. Additionally, many ESCOs already adapt their service offerings such that they may be billed under either rate ready or bill ready approaches. As such, not only should ESCOs be responsible for any system development costs but the ESCOs initiating the change should be responsible for building consensus for the change among all ESCOs. With scarce resources available for systems development, even when ESCOs provide cost recovery to utilities, it is essential that utility resources be deployed in an effective manner.⁴⁶

UIU advocates a different outcome for preparation of ESCO consolidated bills (i.e., bills to customers choosing an ESCO for energy supply should be distributed by the full service utility).⁴⁷ UIU's proposal to restrict ESCO billing options may appear to be a simplification but it also could end up as costly to the market. While the Joint Utilities presume such a proposal would be applicable only to residential and small commercial customers, a threshold question concerning utility preparation of ESCO consolidated bills would need to be answered first.

⁴⁶ The prioritization of projects and the consequent allocation of systems development resources, a project with a broad range of beneficiaries may deserve priority over a project with fewer beneficiaries. In some cases, time spent on one project is time that cannot be spent on another project.

⁴⁷ UIU Comments at 23.

Should utility billing systems be enhanced to be capable of billing any ESCO service or should ESCO products be simplified to a subset of offerings that can be billed by existing utility systems? The Joint Utilities suggest that the status quo is the most cost-effective approach for the market.

So long as ESCOs have the ability to invoice for their services under the dual billing option, they have an alternative relative to whichever form of ESCO consolidated billing is offered by the utility. The Joint Utilities recommend the status quo; at best enhancements to billing systems should be considered solely on a utility by utility basis.

7. Calls for additional Smart Metering should be addressed in individual utility rate proceedings.

DES recommends a statewide commitment to smart meters as a measure to be implemented to overcome barriers created by the current utility rate setting mechanism.⁴⁸ DES elaborates further that New York's residential electric customers should see pricing driven by the dynamic of marginal pricing rather than rates reflecting average prices.

The Joint Utilities believe that installation of smart meters is outside the scope of this proceeding; this issue has been addressed in Cases 94-E-0952 – In the Matter of Competitive Opportunities Regarding Electric Service and 00-E-0165 – In the Matter of Competitive Metering as well as individual utility proceedings. Prospective use of smart meters should be addressed on an individual utility basis in future rate proceedings.

8. Utility promotion of retail competition should reflect market experience.

PULP/AARP recommends that the Commission, and thereby the utilities, "stop promoting customer choice as primarily a means to 'save' on the customer's bill."⁴⁹ The customer has come to expect that when a regulatory agency and the customer's utility both

⁴⁸ DES Comments at 4.

⁴⁹ PULP/AARP Comments at 8.

advertise retail access as a means to save, those savings will materialize. If the customer does not save after switching, the customer may blame the utility for suggesting that the customer switch to an ESCO.

Utilities strive to be neutral when presenting information to customers concerning retail access customer inquiries following UBP Section 6 – Customer Inquiries.⁵⁰ To the extent it would help clarify matters for customers, the Joint Utilities do not oppose PULP/AARP’s recommendation.

9. Calls to remove utilities as a supply option should be rejected.

The NRG Retail Affiliates offer that New York energy customers should be availed of a fully-competitive market; one in which utilities must be removed as a supply option in order for the market to be fully-functioning, robust and sustainable.⁵¹ NYSEMC states that so long as the utility has a provider role, there will never be an accurate and natural state of competition.⁵² In a footnote to the discussion advocating further unbundling of utility rates, NEM dismisses utility default service as redundant and a distraction.⁵³

In 2013, no New York customer is captive to their utility for commodity service. If 20-25% of customers choose service from ESCOs, it should not invalidate the choice of the remaining customers any more than their selection of utility service should invalidate the choice of those who select ESCO service. It is not axiomatic that customers who do not choose ESCO service are not making a choice.

⁵⁰ When addressing consumer inquiries dealing with specific requests for information, utility consumer service representatives, respond in accordance with UBP § 6.C.1, which states “[a] *distribution utility or ESCO shall respond directly to customer inquiries for any information that is related to commodity supply and/or delivery service, to the extent it has the necessary information to respond.*”

⁵¹ NRG Retail Affiliates Comments at 5.

⁵² NYSEMC Comments at 10-11.

⁵³ NEM Comments at 8, fn 15.

The Commission's questions in the Notice are consistent with the Commission's competitive vision;⁵⁴ they suggest potential for regulatory adjustments tailored to reflect the competitiveness of the market. No proof is presented that removing utility service will improve the competitive options available to customers and the Commission should dismiss such statements calling for removal of utilities as a supply option.

10. Mid-cycle switches could be costly to implement.

The OAG⁵⁵ states utilities should be required to effect customer cancellation orders (of ESCO service) more promptly. It is suggested that where the consumer's next scheduled meter reading is more than a week after the utility's receipt of the customer's change order, the consumer should be informed that he/she can request a special reading be taken within a week at a reasonable fee (the amount to be determined by the PSC). While the Joint Utilities understand and appreciate the concerns of the OAG, this process, including a special meter reading fee, is already authorized by the UBPs. Due to the configuration of utility billing systems, it can be difficult, if not impossible to prepare a cycle bill with service from more than one ESCO.⁵⁶

In many cases, existing utility systems simply cannot handle these requests in an automated fashion, particularly for gas choice programs. Gas customers are typically assigned to pools prior to the start of the month to facilitate gas nominations, scheduling and capacity releases transactions. The requirements are locked in to provide a degree of business certainty to

⁵⁴ In Case 00-M-0504 - *Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of Utilities in Competitive Energy Markets and Fostering Development of Retail Competitive Opportunities, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets*, issued August 28, 2004, the Commission announced its Vision Statement: "The provision of safe, adequate, and reliable gas and electric service at just and reasonable prices is the primary goal. Competitive markets, where feasible, are the preferred means of promoting efficient energy services, and are well suited to greater choice, value and innovation. Regulatory involvement will be tailored to reflect the competitiveness of the market."

⁵⁵ OAG Comments at 23.

⁵⁶ In some cases, the utility has to close the account with the former ESCO, issue a final bill and then open a new account for service from the subsequent supplier in order to provide two bills within a billing cycle.

utilities, pipelines and gas marketers. Based on that information the marketers accept, initiate, and execute bids for storage capacity. Storage inventory transfers are typically based upon pool load requirements for the first day of the calendar month. Additionally, some marketers take actions to optimize their portfolios, including reassignment of capacity to asset managers. A mid-cycle switch changes pool load requirements which impacts capacity release quantities, including storage inventory considerations. Current utility systems are unable to change recall and re-release pipeline capacity, and process inventory transfers in an automated fashion. It is far more preferable to process the switches at the start of the next month. The impact of reassigning a customer from one gas marketer's pool to another marketer's pool could unwind a series of capacity release transactions and would be disruptive to several parties.

Requests for mid-month switches are infrequent and the Joint Utilities believe it would be best to maintain the status quo. Due to low volume of such requests, the current business process for mid-cycle switches is generally manual. The Joint Utilities believe this is a cost-effective approach but to the extent the Commission believes it is necessary to automate or standardize the process, not only should utilities receive cost recovery but an allowance for implementation flexibility should be provided in consideration of differing utility billing systems.

There may be other alternatives to mid-cycle switches worth exploring. For example, in such cases where a mid-cycle switch is warranted, the ESCO could be required to charge a safe-harbor rate, e.g. no more than the lesser of its rate or the utility's full service rate. The customer switch would then take place at the start of the next month and therefore not be disruptive to gas scheduling, capacity release or storage inventory concerns.

III. Cost Recovery

As discussed above, several parties have proposed changes to billing, EDI or other systems/processes concerning retail access. The Joint Utilities wish to reiterate that the Commission should exercise caution in adopting any proposals that would require the expenditure of customer funds. If changes are directed, both cost recovery and the time necessary for utilities to test and implement any system changes are critical to the technical success of implementation. In keeping with past guidance that "costs associated with ESCO-related programs" should be recovered from those who benefit from the programs, the Commission should also consider whether any cost expenditures would benefit ESCOs generally or would benefit a small subset of ESCOs. The Joint Utilities believe whether changes are recovered from all customers or ESCO customers alone, the Commission should not only apply cost/benefit analysis but also make an assessment of whether the beneficiaries of such changes are broadly based. Changes that benefit only a narrow range of parties should be avoided.

Summary

In a competitive market, customers should have access to the information necessary to allow for informed choices. In determining the next steps forward for the retail market, the Commission should rely upon factual data and historical experience.

Respectfully submitted,

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