

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.

NOTICE SEEKING COMMENTS ON REVISIONS TO  
THE UNIFORM BUSINESS PRACTICES

(Issued March 8, 2017)

In February 1999, the Commission issued an order in Case 98-M-1343 adopting the Uniform Business Practices (UBP) to provide consistent business procedures for energy service companies (ESCOs).<sup>1</sup> As the competitive retail energy market evolved, the Commission has modified the UBP to reflect changes in the market.

To this end, the Commission is modifying the UBP to incorporate a new law that provides additional protections for families of deceased account holders of energy service contracts. This new UBP modification will prevent energy providers from charging a contract termination or early cancellation fee in the event of a customer's death.

Additionally, as a matter of safety and privacy for ESCO marketers, in a petition filed October 7, 2016, Green Mountain Energy Company (Green Mountain) requested that the UBP Sections 10.C.1.b.1 and 10.C.1.d be amended to eliminate the

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<sup>1</sup> Case 98-M-1343, Retail Access Business Rules, Opinion NO. 99-3, Opinion And Order Concerning Uniform Business Practices (issued February 16, 1999).

appearance of an ESCO representative's full name on the UBP required identification badge. Green Mountain proposed to amend this section to display only the first name of the ESCO representative as well as the representative's unique employee identification number.

Given the aforementioned change in law and petition filed by Green Mountain, the Commission is considering modifications to the UBP to: (1) incorporate protections to prevent early termination or cancellation fees in the event of energy account holders death before the end of the contract term; (2) to eliminate the appearance of an ESCO representative's full name on the identification badge worn by the marketer while soliciting to potential customers; and (3) other related matters and housekeeping items. The proposed modifications to the UBP are attached in redline format to this notice.

Interested parties are invited to submit comments on the proposed standards by May 8, 2017. Parties are asked to submit comments by e-filing through DMM,<sup>2</sup> or by e-mail to the Secretary at [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov). If unable to file electronically, parties may make submissions by post or hand delivery to the Hon. Kathleen H. Burgess, Secretary, Three Empire Plaza, Albany, New York 12223-1350.<sup>3</sup> All comments received will be posted to the Commission's website and become an official part of the case record.

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<sup>2</sup> To register with DMM, go to <http://www.dps.ny.gov/efile/registration.html>.

<sup>3</sup> Information and instructions related to subscribing to the service list or otherwise monitoring the status of this proceeding can be found on the Commission's Web site at: <http://documents.dps.ny.gov/public/MatterManagement/RequestAPStatus.aspx>.

CASES 15-M-0127 et al.

Any questions may be directed to Chris Bosy, Office of Consumer Services at Christine.Bosy@dps.ny.gov, or Tom Dwyer, Office of General Counsel at Francis.Dwyer@dps.ny.gov.

(SIGNED)

KATHLEEN H. BURGESS  
Secretary

## UBP REDLINE CHANGES

### UBP § 1: Definitions

ESCO Agent - A customer may authorize an ESCO to act as the customer's agent (ESCO agent) in establishing a new delivery account for distribution utility service. The ESCO agent shall retain, and produce upon request, documentation that the customer authorized the ESCO to act as the customer's agent for this purpose only.

Door-to-door sales – The sale of energy services in which the ESCO or the ESCO's marketing representative personally solicits the sale, and the buyer's agreement or offer to purchase is made by customer signing the ESCO's sales agreement, at a place other than the place of business of the seller; provided that “door-to- door sales” shall not include any sale which is conducted and consummated entirely by mail, telephone or other electronic means, or during a scheduled appointment at the premises of a buyer of nonresidential utility service, or through solicitations of commercial accounts at trade or business shows, conventions or expositions.

Marketing - The publication, dissemination or distribution of informational and advertising materials regarding the ESCO's services and products to the public by print, broadcast, electronic media, direct mail, telecommunication or direct in-person contact.

Termination Fee – An amount specified in an ESCO sales agreement where such agreement permits the ESCO to assess and collect a charge in such amount to a customer who terminates the agreement before the end of a term described in that agreement, regardless of whether the assessed amount is identified as a fee, a charge, liquidated damages or a methodology for the calculation of damages, and regardless of whether it is fixed, scaled or subject to calculation based on market factors. In the event the customer is deceased before the end of such contract term, no fee for termination or early cancellation shall be assessed.

### UBP § 2.B.1.b

b. A sample standard Sales Agreement for each customer class that meets the requirements set forth in Section 5.B.~~43~~, infra.

### UBP § 2.D.5

o. failure to comply to Department requests for any and all information.

### UBP § 2.G.

#### G. Compliance with the Clean Energy Standard

##### 1. Renewable Energy Standard

a. ESCOs are required to serve their retail customers by procuring new renewable resources, evidenced by the procurement of qualifying renewable energy credits (RECs), in proportion to the total load served by the ESCO. This obligation can be met by purchasing RECs from the New York State Energy Research and

Development Authority (NYSERDA), by purchasing qualified RECs from other sources, or by making Alternative Compliance Payments to NYSERDA.

2. Zero Emissions Credits

a. ESCOs that provide service to end-use customers are required to purchase the percentage of zero-emissions credits (ZECs) purchased by NYSERDA in a year that represents the portion of the electric energy load served by the ESCO in relation to the total electric energy load served by all such load serving entities. ESCOs shall make ZEC purchases by contract with NYSERDA and will recover costs from ratepayers through commodity charges on customer bills.

UBP § 5.A.

This Section establishes practices for receiving, processing, and fulfilling requests for changing a customer's electricity or natural gas provider and for obtaining a customer's authorization for the change. A change in a provider includes transfer from: (1) one ESCO to another; (2) an ESCO to a distribution utility; and (3) a distribution utility to an ESCO. This Section also establishes practices for: an ESCO's drop of a customer or a customer's drop of an ESCO, retention of an ESCO after a customer's relocation within a distribution utility's service area, assignment of a customer, and initiation or discontinuance of procurement of electricity or natural gas supplies by a Direct Customer. This Section does not establish practices for obtaining other energy-related services or changing billing options.

The process of changing a service provider is comprised of two steps and is applicable whenever a customer enrolls with an ESCO, except when the customer is enrolled in a Community Choice Aggregation (CCA) program, in which case this process does not apply. For enrollment with an ESCO, the first step is obtaining customer agreement, and any required third party verification, to accept electric and/or natural gas service according to the terms and conditions of an offer. A sales agreement establishes the terms and conditions of the customer's business arrangement with the ESCO. The second step is enrollment and the distribution utility's modification of its records to list the customer's transfer to a provider on a specific date. The second step is primarily between the ESCO and the distribution utility.

UBP § 5.B.1.c

- c. Written agreement bearing a customer's signature on a sales agreement (original, emailed or fax copy of a signed document), in accordance with requirements in Attachment 3 – Written Agreement and Authorization Requirements.

UBP § 5.B.2

2. In addition to the requirements in UBP Section 5.B.1., for any sale, including, but not limited to those resulting from: 1) ~~either~~ door-to-door solicitation; 2) ~~or~~ telephonic marketing; 3) scheduled appointment; 4) direct mailer; or 5) electronic enrollments, each enrollment is only valid with an independent third party verification.

UBP § 5.B.4

4. The standard Sales Agreements for each customer class shall include the following information written in plain language, in font size of 10 or larger.

UBP § 5.H.4.b.2

2. Statement that the customer has the option to select another ESCO or receive full utility service from the distribution utility, ~~or, if available in the distribution utility's service area and the customer is eligible, accept random assignment by the distribution utility to an ESCO;~~ and,

UBP § 5.I (New Delivery Customers)

3. An ESCO acting as a customer's agent shall establish a new delivery account on behalf of the customer and enroll the customer with the distribution utility so that ESCO commodity service commences when distribution utility delivery service begins. The ESCO shall retain, and produce upon request, documentation that the customer authorized the ESCO to act as the customer's agent for this purpose only. An ESCO that is a customer's agent is authorized to submit the customer's application for new delivery service, in compliance with requirements for such applications stated in the law, rules and distribution utility tariffs. An ESCO shall provide the customer's name, service address and, if different, mailing address, telephone number, customer's requested service date for initiation of delivery service, and information about any special need customers, including any need for life support equipment. An ESCO shall refer a customer directly to a distribution utility for arrangement of distribution related matters, such as contribution-in-aid of construction and construction of facilities necessary to provide delivery service and settling of arrears and posting security.

5. The customer's Agent is not authorized to cancel a pending enrollment, an enrollment with a different ESCO or utility, or place and/or lift utility account blocks where a customer has authorized a change in provider.

UBP § 5.J.1

1. An ESCO may assign all or a portion of its sales agreements to other ESCOs provided that ~~the assigned sales agreements clearly authorize such assignments or~~ the ESCO provides notice to its customers prior to the assignments and an opportunity for each customer to choose another ESCO or return to full utility service. An ESCO shall provide a written

notice no later than 30 calendar days prior to the assignment or transfer date to each customer and distribution utility. The notice to the distribution utility shall include a copy of the assignment document, with financial information redacted, executed by the officers of the involved ESCOs, and a copy of the notice sent to the customer, or, if a form notice, a copy of the form and a list of recipients.

#### UBP § 5.K.1

1. A change of a customer to another energy provider, without the customer's authorization, commonly known as slamming, is not permitted, except when the customer is enrolled in a Community Choice Aggregation (CCA) program, in which case this does not apply. The distribution utility shall report slamming allegations to the Department on at least a monthly basis.

#### UBP § 5.K.3

ESCOs shall retain from the effective date of the agreement and/or authorization for two years or for the length of the sales agreement whichever is longer as long as the customer remains with the ESCO, and for two years thereafter, documentation of a customer's authorization to change providers. Such documentation shall comply with the requirements described in Attachments 1, 2 or 3.

#### UBP § 5.L.2

2. Every ESCO shall offer residential customers a voluntary budget billing or levelized payment plan for the payment of charges. The ESCO is responsible for determining the budget bill amount and must evaluate each budget billed account on a quarterly basis for conformity with actual billings. Each such plan shall provide that bills clearly identify consumption and state the amounts that would be due without levelized or budget billing. A distribution utility shall adjust its bills rendered under a budget billing plan on the effective date for changing a provider and include the adjustments in the customer's next bill.

#### UBP § 5, Attachment 1.A.

- A. A voice-recorded verification is required to enter into a telephonic agreement, ~~or a door to door agreement~~, a direct mailer agreement, electronic enrollment, or agreement that resulted from an appointment with a customer to initiate service and begin enrollment. Use of either an Independent Third Party or an Integrated Voice Response system to obtain customer authorization is required for all mass market enrollments any telephone solicitation or sales resulting from door-to-door marketing in addition to the requirements in UBP Section 5.B.1. Verification by an Independent Third Party or an Integrated Voice Response system shall be recorded and conducted without the ESCO marketing representative's presence, either on the telephone or in person and, for door-to-door marketing and appointments, should be conducted no less than 30 minutes after the marketer has left the premises. The verification

call should be terminated if the customer asks any questions with respect to the agreement during the process. A voice-recorded verification shall verify the following information to substantiate the customer's agreement or authorization:

UBP § 5, Attachment 1.A.

4. If the sale was conducted through door-to-door marketing or a prearranged appointment, has the marketer left the premises more than 30 minutes prior to this call?
17. Do you participate in your utility's low-income assistance program?
18. Did the marketer advise you to check your utility bill for the utility's rate as a comparison to the price that you were offered?

UBP § 5, Attachment 1.D

D. An ESCO shall retain independent third party verification records from the effective date of the agreement and/or authorization for as long as the customer remains with the ESCO, and for two years thereafter for two years from the effective date of the agreement and/or authorization or for the length of the sales agreement whichever is longer. In the event of any dispute involving agreement, authorization and/or the independent third party verification, the ESCO shall make available the audio recording of the customer's agreement and/or authorization, including the independent third party verification within five business days after a request from the Department.

UBP § 5, Attachment 2.A

A. To enter into an electronic agreement with a customer to initiate service and begin enrollment or to obtain customer authorization for release of information, an ESCO, or its agent, shall electronically record communications with the potential customer. As required in Section 5.B.2, the Electronic Agreement and authorization may also requires an independent third party verification call, which must include the information in UBP § 5, Attachment 1. An ESCO shall provide the following electronic information, as applicable, to substantiate the customer's agreement and/or authorization:

13. A Statement advising customer to check their utility's rate to compare the rate offered by ESCO.

UBP § 5, Attachment 2.E

E. An ESCO shall retain independent third party verification records ~~documentation of a customer's agreement in a retrievable format~~ from the effective date of the agreement and/or authorization for as long as the customer remains with the ESCO, and for two years thereafter, for two years from the effective date of the customer's acceptance and/or authorization or for the length of the sales agreement for as long as the customer remains with the ESCO,



~~whichever is longer.~~ In the event of any dispute involving an electronic agreement or authorization, the ESCO shall provide a copy of the customer's acceptance of the sales agreement and/or authorization for release of information or provide on-line access to the acceptance and/or authorization within five calendar days after a request from the Department.

UBP § 5, Attachment 3.A

- A. An ESCO may enter into a written agreement (original, emailed or fax copy) of a signed document) with a customer to initiate service and begin enrollment or to obtain customer authorization for release of information. As required in Section 5.B.2, the Electronic Agreement and authorization may also requires an independent third party verification call, which must include the information in Attachment 1. A sales agreement shall contain, in addition to the Customer Disclosure Statement discussed in UBP Section 2.B.1.b.25.B.4.a & b, the following information, as applicable:

UBP § 5, Attachment 3.B

- B. ESCOs shall retain written agreements and/or authorizations from the effective date of the agreement and/or authorization for as long as the customer remains with the ESCO, and for two years thereafter for two years from the effective date of the agreement and/or authorization or for the length of the agreement whichever is longer. In the event of any dispute involving a sales agreement or authorization, the ESCO shall provide a copy of the sales agreement and/or authorization within five business days after a request from the Department.

PER GREEN MOUNTAIN'S PETITION

UBP § 10.C.1.b.1

C. Contact with Customers

1. In-Person Contact with Customers

b. Produce identification, to be visible at all times thereafter, which:

1. Prominently displays in reasonable size type face the full first name and employee identification number of the marketing representative;

UBP § 10.C.1.c

c. During the sales presentation, the marketing representative must also state that if customer purchases natural gas and/or electricity from the ESCO, that the customer's utility will continue to deliver their energy and will respond to any leaks or emergencies. This requirement may be fulfilled either (a) by an oral statement by the ESCO marketing representative, or (b) written material left by the ESCO marketing representative. The ESCO must also advise customer to check the utility's price on customer's bill as a comparison to the price that ESCO is offering. Further, ESCOs that are affiliates of distribution utilities should not describe or disclose their relationship to the distribution utility unless such information is specifically requested by the customer.

UBP § 10.C.1.d

An ESCO marketing representative must provide each prospective residential customer a business card or similar tangible object with the ESCO marketing representative's first name and employee identification number; ESCO's name, address, and phone number; date and time of visit and website information for inquires, verification and complaints.