STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on December 14, 2017

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 WAIVER AND AUTHORIZING UTILITY EXPENSE REDUCTION, LLC TO SERVE LOW-INCOME CUSTOMERS

(Issued and Effective December 14, 2017)

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, Utility Expense Reduction, LLC (UER) filed a request for waiver of the prohibition on ESCOs serving low-income customers, as directed in the December 2016 Order. As discussed below, the Commission finds that UER has made the requisite demonstration under the December 2016 Order, and accordingly approves UER's petition authorizing the Company to serve low-income customers.

THE PETITION

UER's January 30, 2017 waiver request briefly describes its guaranteed savings plan as one that will provide a guarantee that the low-income customer will pay no more than if the customer was a full-service utility customer. UER will provide a bill credit at the end of the year for amounts in excess of what the customer would have paid under utility service. UER did not, however, provide specific calculations to demonstrate how it would calculate the APP customer's monthly rate, calculations to determine what the customer would have paid to the utility or the methodology upon which the guaranteed savings was based. Further, UER's petition mentioned that it would ensure annual reporting compliance to

[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).

the Commission, but provided no calculations substantiating the mechanics of its proposal.

To clarify the details of UER's proposal, Staff requested additional information by letter dated May 12, 2017. Staff requested samples of UER's proposed compliance reporting formats, proposed program marketing materials, and calculations substantiating the mechanics of their guaranteed savings plan proposal. More specifically, Staff requested the information to include spreadsheet analysis, with supporting calculations, to verify that participating customers will realize a savings, additional information to explain how its current APP customers will be transitioned to the guaranteed savings program, and to otherwise demonstrate compliance with the three requirements outlined in the December 2016 Order. Staff also requested samples of any contracts, marketing materials, or notices that will be used to enroll or transition new and existing APP customers into the guaranteed savings program, and to explain whether UER offers guaranteed savings products to APP/low-income customers in any other states.

Staff sent additional questions to UER via email on July 11, 2017, requesting the following information: (1) the utility service area(s) in which the ESCO intended to offer a guaranteed savings plan; (2) how the ESCO intended to ensure the customer would pay no more than what they would have paid to the utility; (3) how the ESCO intended to measure and demonstrate that it can and will be able to offer and monitor guaranteed savings offering; and, (4) how the guarantee savings would be calculated (monthly or annually). On this final point, Staff asked, if calculated annually, how the refund will be credited to the customer; and if the customer moves out of the service territory, how the credit/refund (if any) will be provided.

UER provided a supplemental response on July 11, 2017 to staff’s May 12, 2017 information request. UER also filed additional information and clarifications on October 25, October 27, November 3, and December 1, 2017. UER’s supplemental filings modified its original filing and clarified that it will provide 100% renewable energy that is fully compliant with the Commission’s environmental disclosure program (EDP) to its existing low-income electric customers under a variable-priced month-to-month contract that ensures a low-income customer, on an annual basis, will pay no more than what he or she would have paid if the customer received full service from the utility company. UER retitled its program, which is designed to serve utility APP customers and is intended to be offered in all utility service territories, as a Green Energy Price Cap Program (GEPC). Existing low-income gas customers will be served via a variable-priced month-to-month contract that ensures the customer, on an annual basis, will pay no more than what he or she would have paid if the customer received full service from the utility company. Low-income customers will not be subject to an early termination fee, and in the event that the customer cancels before its 12-month term expires, UER will provide a true-up refund in the month following the customer’s termination for amounts paid in excess of what the customer would have paid under full utility service.

UER further explained that it will utilize modeling software, along with the utility price to compare, to replicate utility tariffs to determine utility electric and gas prices for comparison purposes. UER will determine the customer’s monthly bill by tracking and analyzing the most recent published utility rate versus UER’s Energy Cost Calculators and apply a rate that is no greater than the most recent published utility rate for that given billing period. This will allow UER to provide its low-income customers with monthly prices that are nearly identical to what the customer would have paid for full utility service, resulting in minimum year-end true-ups.

UER's supplemental filings included several detailed spreadsheets with supporting detailed calculations of Consolidated Edison Company of New York, Inc. (Consolidated Edison), Orange & Rockland Utilities, Inc. (O&R) and Niagara Mohawk Power Corporation d/b/a National Grid's (NMPC) prices by load zone as determined through UER's modeling software. Using a partial sample of these utilities' 2017 data as a model, UER provided its calculation methodology to demonstrate its ability to calculate its low-income customers' hypothetical monthly price in each utility service territory and load zone area. Further, UER provided a sample annual report detailing UER's product price, what the utility price for full service would have been, and the calculation methodology demonstrating the dollars or percentage discount that would be realized by the low-income customer, which will be provided as a credit on the customer's utility bill. UER will provide quarterly reports to the PSC which will include the number of customers served by UER for both its electric and gas product, the month-by-month breakdown of amounts billed to customers compared to what the utility would have charged, and a demonstration of an accurate assessment of any accumulated true up amount owed to a customer.

UER supplied an updated sales agreement specifically for the GEPC program for low-income customers clarifying that there are no early termination fees to customers ending their service with UER prior to the end of the 12-month contract term. Low-income customers enrolled in the GEPC program are subject to a price cap such that they will pay no more than what they would have paid under utility service, while its electric commodity customers will also receive the benefits of a EDP compliant 100%

renewable energy product. UER's sales agreement provides that, in the event of any assignment of accounts, low-income customers will be returned to the utility or to an ESCO approved by the PSC to serve APP customers. UER also explained that it did not provide associated program marketing materials because they do not intend to actively market the program and would instead only automatically enroll customers into the compliant product where those customers were identified as APP customers during the enrollment process. UER also indicated that, if granted a waiver and with proper notice, it will immediately begin to enroll all of its existing APP customers, whether on fixed term or monthly variable contracts, into its new GEPC product to provide immediate price protection to its current 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 April 5, 2017 [SAPA No. 12-M-0476SP21]. The time for submission of comments pursuant to the SAPA Notice expired on May 22, 2017. Several comments were received and are discussed below.

COMMENTS

Comments were received by various consumer advocate groups. The Utility Intervention Unit (UIU) of the New York State Department of State's Division of Consumer Protection conclude in their general comments that at a minimum, ESCOs should demonstrate their willingness to develop this program to ensure low-income customers have adequate protection from potential overcharges. The New York Office of the Attorney General (NYAG) requests that the petitions for waivers of the prohibition on service to low-income customers be denied unless and until these ESCOs can adequately substantiate their claims that they can ensure the delivery of savings to low-income customers.

DISCUSSION AND CONCLUSION

UER's petition, as supplemented, provides sufficient documents, calculations, and detailed explanations to adequately address the matters identified in the December 2016 Order. The Commission has reviewed the documents and calculations and is confident in UER's ability to provide this product to low-income customers across New York State. UER's 100% green electric product will ensure that UER is working to achieve New York's Clean Energy Standard goals while protecting its customers from high energy rates. In order to ensure that ESCOs, including UER, are serving low-income customers with a product that meets the requirements of the December 2016 low income order, 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.[2]

The Commission, therefore, finds that UER's Request for Waiver complies with the requirements outlined in the December 2016 Order.[3] Accordingly, the Request for Waiver by Utility Expense Reduction, LLC is approved, subject to a requirement to report semi-annually, starting 6 months from the

[2] December 2016 Order, Ordering Clause 6.

[3] 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.

date of this Order, on the status of its Green Energy Price Cap Program 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 by customer, as well as the amount of any refunds issued to each customer to effectuate the price guarantee. UER shall also provide, in its semi-annual report, proof of its procurement of 100% renewable electricity that conforms to the Environmental Disclosure Label Program.[4] UER is also ordered to report within 60 days of this Order, that all of its existing low-income customers have been moved over to its new GEPC program.

While UER'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 UER's compliance with the December 2016 Order and UER 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, errs on the side of caution; a strategy that is most appropriate when dealing with vulnerable customer groups.

The Commission orders:

1. Utility Expense Reduction, LLC's request for waiver to serve low-income customers is approved, as discussed in the body of this Order.

---

[4] Case 94-E-0952, Opinion and Order Adopting Environmental Disclosure Requirements and Establishing a Tracking Mechanism.

2. Utility Expense Reduction, LLC 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. Utility Expense Reduction, LLC shall report to Department of Public Service Staff, within 60 days of the date of this Order, on the status of its compliance with moving all existing APP customers to its new green energy price cap program, as discussed in the body of this Order.

4. The Secretary shall have sole discretion to extend the deadlines set forth in this Order. 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.

5. These proceedings are continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary