COUCH WHITE
COUNSELORS AND ATTORNEYS AT LAW

Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
(518) 426-4600

Amanda De Vito Trinsey

Direct Dial: (518) 320-3432
Telecopier: (518) 426-0376
email: adevito@couchwhite.com

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VIA E-FILING

Honorable Kathleen Burgess
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: 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.

Dear Secretary Burgess:

The City of New York ("City") respectfully submits this letter in lieu of filing formal comments in the above referenced proceedings on the "Notice Seeking Comments" ("Notice") in response to the three whitepapers submitted by Department of Public Service Staff ("Staff") on the following topics: (1) express consent from Energy Service Company ("ESCO") customers (hereinafter "Consent Whitepaper"); (2) performance bonds or other security interests for ESCOs (hereinafter "Performance Bond Whitepaper"); and (3) reference prices for ESCO products (hereinafter "Reference Price Whitepaper").

The City commends the New York State Public Service Commission's ("Commission") efforts to improve the retail marketplace for mass market customers. This letter incorporates by reference the correspondence filed by the City on March 14, 2016 regarding similar issues. The City respectfully urges the Commission to adopt the recommendations below so that mass market customers are provided with sufficient safeguards and protections from retail market abuses.

Consent Whitepaper

In the Consent Whitepaper, Staff proposes an alternative to express consent wherein ESCOs must send three separate notices to mass market customers regarding upcoming renewals or material changes to contract terms. Staff's proposal is modeled after customer notices that are used in Pennsylvania. The City submits that merely requiring a series of notices as a substitute for customer express consent is insufficient.

If the notice method proposed by Staff were to be implemented, once a customer signs up with an ESCO, the ESCO would potentially have the ability to renew and re-enroll the customer on new and different products (with differing prices) unless and until the customer affirmatively opted out of being served by the ESCO. From a consumer protection perspective, this could be very harmful to customers, and fails to provide ESCOs with an incentive to develop products and/or services for mass market customers that provide real and measurable value. Additionally, the Consent Whitepaper makes no mention as to whether an ESCO would still be permitted to charge customers an early termination fee for prematurely ending a contract for a new, and perhaps different, product/service that such customer was automatically re-enrolled in, but failed to opt out of for whatever reason.

The City recommends continuing the current practice of requiring ESCOs to receive affirmative consent from the customer upon any material change to the customer's agreement with an ESCO (*see* Uniform Business Practices Section 5(B)(1)). The City submits, however, that the Commission should go one step further and broaden the requirement for affirmative consent to include when a customer is re-enrolled by an ESCO for a product/service and there is a rate change, notwithstanding an agreement that renews on a monthly basis with a variable rate which was specified in the initial sales agreement. Given the disparity in energy supply costs charged to mass market customers by ESCOs as compared to utilities, it is the City's perspective that a contract price change should be prioritized as material and require the express consent of the customer.

In the event that the City's recommendations to maintain and/or broaden the express consent requirements for ESCOs are not adopted, the City recommends that the imposition of early termination fees on mass market customers be eliminated for agreements that include a material change and for which customers are re-enrolled in without express consent.

Performance Bond Whitepaper

Staff has proposed a number of different methods to be used for calculating a performance bond or security instrument for an ESCO's participation in New York's market. While the City does not endorse any particular methodology for calculating such bond or security instrument, the City strongly supports this concept of imposing financial requirements on ESCOs. The method chosen for determining the amount of bond or security instrument should be one that has the ability to deter bad actors from participating in New York's markets and protects mass market customers from a retail marketplace in which participants enter and exit too fast and too frequently with little value provided to customers.

The City submits that it is also important that Staff develop a guidance document that sets forth transparent standards and enforcement mechanisms for how, and when, performance bonds and security instruments will be used to mitigate instances when an ESCO's guaranteed performance of a contract has not been met. Without proper guidance and standards, requiring ESCOs to have a performance bond or security interest will not have the desired effects of deterring improper market behavior.

Reference Price Whitepaper

Staff's Reference Price Whitepaper proposes formulae for calculating per-kWh reference prices for 12-month fixed price offerings of electric or gas products. The proposed reference price calculations are based on forward energy and capacity market prices and include adjustments to be periodically determined by the Commission. Staff proposes that the reference prices should be: transparent, sufficient, visible, timely provided and easy to administer.

The City's comments with respect to this topic are limited. The City generally supports the principle of creating a benchmark reference price for what ESCOs are permitted to charge customers. However, the City defers to Staff, the ESCO industry and the utilities to determine what the appropriate balance is for developing such threshold.

The City does recommend the implementation of a review process and penalty framework that would take place if an ESCO does not adhere to the reference price and markets a product to mass market customers that is above the benchmark reference price (*i.e.*, Staff investigation, penalties, inability to participate in the market, etc.). While the Reference Price Whitepaper states that "[p]rices above the reference price would be subject to Staff review and possible compliance action," the City submits that this is not enough. There should be a clear and transparent procedure in place that is triggered when an ESCO offers or sells and product and/or service into the market that is above the approved monthly reference price. Without enforceable guidelines, the markets will continue to improperly function and there will continue to be customer abuses.

Conclusion

For the foregoing reasons, the City respectfully requests that the Commission adopt the recommendations contained herein.

Dated: June 6, 2016
Albany, New York

Respectfully submitted,

/s/ Amanda De Vito Trinsey

Amanda De Vito Trinsey, Esq.
COUCH WHITE, LLP
Counsel for the City of New York
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
Tel.: 518-426-4600
Fax: 518-426-0376
E-mail:adevito@couchwhite.com