



November 20, 2020

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 Access 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.

**DEPARTMENT OF PUBLIC SERVICE STAFF GUIDANCE REGARDING ESCO
ELIGIBILITY REVIEW**

This document provides guidance to ESCOs regarding Staff's review of ESCO eligibility applications. Nothing in this guidance document should be viewed as either supplementing or altering the terms of either the December 12, 2019 Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process, the September 18, 2020 Order on Rehearing, Reconsideration, and Providing Clarification, or the Uniform Business Practices (UBP). Rather this guidance document is being provided as a resource to ESCOs.

Staff will undertake the following procedure for Staff Review of ESCO eligibility:

1. No later than 60 calendar days after the effective date of the September 2020 Order, all currently operating ESCOs that wish to continue serving mass market customers must file an application in accordance with the September 2020 Order and the newly modified UBP.
 - a. If a currently operating ESCO fails to submit its new application within 60 days of the effective date of the September 2020 Order, it shall be immediately and automatically suspended from entering into any new agreements, or renewing existing agreements, with mass-market customers.
2. The Retail Access Application Form (RAAF) and additional documents will be requested:
 - a. Completed RAAF (including all additional requirements listed in RAAF Section 7 A-S (see Attachment A);
 - b. NYS Dept of State Proof of Registration (if DBA: Assumed Name Certificate Required);
 - c. Sales Agreements with Terms and Conditions and Disclosure Statement;

- d. Sample Notices (UBP Section 5);
 - e. Sample ESCO Dual Bill (UBP Section 9);
 - f. Procedures to authorize access to customer historical information (UBP Section 4);
 - g. Sample copies of mass marketing promotional materials;
 - h. Procedures for prevention of slamming and cramming (UBP Definitions);
 - i. A list of the entities, including contractors and sub-contractors, that will market to customers on behalf of your ESCO;
 - j. Trade Secret request (if applicable);
 - k. Quality Assurance Program containing:
 - Description of training program (Note whether In-person or Telephonic);
 - Independent third party (TPV) verification script (UBP Section 5, Attachments 1-3);
 - Code of Conduct;
 - Marketing representative identification badge;
 - Customer services performance monitoring program and quality assurance procedures;
 - Internal customer dispute resolution procedures and processes;
 - Any internal customer satisfaction metrics, to the extent the ESCO has any.
 - l. OCS Service Provider Contact Form;
 - m. HEFPA Documents (For Residential Only):
 - Residential Payment Agreement
 - Asset Evaluation
 - Budget Billing Plan
 - Quarterly Billing
 - Past Due Reminder
 - Notification to Social Services of Customers Inability to Pay
 - Final Termination Notice
 - Final Suspension Notice
 - n. Attestation to comply with the Environmental Disclosure Program (For Electric Only);
 - o. Complaint history, including individual complaint narrative and ultimate resolution, for the past two years for the ESCO's New York operations;
 - p. Complaint history, including individual complaint narrative and ultimate resolution, for the past two years for other jurisdictions the ESCO operates in; and
 - q. Information regarding enforcement actions in other jurisdictions over the past two years.
3. Staff will review all documents to make sure they meet the requirements of the UBP and HEFPA, as well as any New York Public Service Commission (Commission) Orders.
 4. If any items are missing, incomplete or need revision, Staff will send a request to the ESCO for those items. The ESCO shall promptly provide such items in order to avoid waiving the opportunity to supplement its application materials.
 5. Staff will contact other State Public Service Commissions to review complaint data and compare any such data to information on complaints that was disclosed by the ESCO.

6. Staff will contact other State Public Service Commissions to obtain information on any enforcement actions and will compare such information to information disclosed by the ESCO.
7. Staff will use information provided by the ESCO and other State Public Service Commissions to either permit the ESCO to continue eligibility or recommend revocation of eligibility to Commission.
 - a. If Staff finds there are no issues with the application and information provided by other State Public Service Commission(s), the ESCO will receive a letter from Staff notifying them that the review is complete and that they satisfy the requirements of eligibility.
 - b. If Staff finds there are deficiencies with the application (after attempting to resolve the deficiencies) and/or the information provided by other State Commission(s) cause concern, Staff will provide a detailed report of those deficiencies and will make a recommendation to the Commission that the ESCO should not be permitted to continue eligibility in the State of New York.
 - c. ESCO applicants shall be afforded an opportunity to provide information in support of its application to the Commission before a final determination is made.
 - d. For New ESCO Applications, ESCOs will not be eligible to operate in New York State until its application has been approved by staff or the Commission. For ESCO's that already have eligibility, they will remain eligible until Staff has determined otherwise.
8. Staff will periodically review ESCOs eligibility, in addition to annual and triennial compliance.
9. Staff will e-mail the ESCO's regulatory contact on file to request their full application package be submitted to Document and Matter Management system into matter number 14-02554 within 30 days.

In addition to ensuring that each ESCO has submitted all required documents, staff will evaluate the materials in considering whether to grant eligibility or recommend to the Commission a denial or revocation of eligibility. In evaluating marketing materials and sales agreements, Staff will ensure that those marketing materials and sale agreements do not contain any false or misleading information. Staff reviews these marketing materials and sales agreements to ensure they are written in plain language that is not intended or likely to deceive customers as to the nature of the product they are receiving or with respect to the terms and conditions of the agreement. Sample notices provided with the application will also be reviewed to ensure accuracy and clarity. Staff further reviews these materials to verify that claims being made in ESCO marketing materials and sale agreements are not inconsistent with laws, rules, or regulations.

With respect to information collected regarding an ESCO's managerial staff, contractors, and sub-contractors, Staff reviews instances where senior management has been engaged in, or has worked for ESCOs that have engaged in, violations of law, regulations or rules, including those violations that occurred in other jurisdictions. In instances where an ESCO employs senior management or hires contractors and/or subcontractors that have a history of legal noncompliance and/or disregard for relevant customer protections, Staff may recommend that the ESCO's eligibility be denied or revoked. Staff will also review the ESCO's criminal and

regulatory sanctions during the previous 36 months. Based on the data received, Staff will determine whether it is appropriate to recommend either denying or revoking eligibility based on the severity of the sanctions.

Further, with respect to information collected regarding an ESCO's complaint history in New York and other jurisdictions, Staff reviews the complaint data, type of complaint and number of complaints received. Staff will look to see if the complaints were determined to be valid, and if the ESCO resolved the complaint to the satisfaction of the consumer. If it is found that there is a trend of complaints, or complaints were not resolved an appropriate manner, Staff may recommend the ESCO's eligibility be denied or revoked.

Likewise, staff reviews whether the ESCO proposes adequate procedures for preventing slamming and cramming, an adequate quality assurance program, and sufficient policies and procedures for protecting customer data. In addition, staff will assess information related to past data breaches related to customer proprietary information. Staff considers all of the aforementioned issues in determining whether to grant eligibility or whether to make a recommendation to the Commission that eligibility should be denied or revoked.