

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.

STAFF WHITEPAPER ON EXPRESS CONSENT

Dated: May 4, 2016

INTRODUCTION AND BACKGROUND

As directed by the Uniform Business Practices (UBP), express customer consent is required to switch a full service utility customer prior to enrollment with an energy service company (ESCO), or when switching from one ESCO to another. Customer consent is also required to release customer information, such as usage consumption and billing information, to the ESCO by the utility. This is accomplished by the customer signing a sales agreement or contract and/or requiring an ESCO to record a third party verification (TPV) call disclosing the terms of the agreement.¹

On December 17, 2010, the Commission revised the UBP to address contract renewals by Order Implementing Chapter 416 of the Laws of 2010.² With the exception of a rate change, or an agreement that renews on a monthly basis with a variable rate which was specified in the initial sales agreement, all other changes are considered material and require that the ESCO obtain the customer's express consent for contract renewal.

On February 23, 2016, additional measures were taken in an Order Resetting Retail Energy Markets and Establishing Further Process to ensure residential and small non-residential commercial customers receive value from the retail energy markets.³ Pursuant to this Order, and consistent with the UBP,

¹ UBP Section 5(B)(1)

² Case 98-M-1343, Retail Access Business Rules, Order Implementing Chapter 416 of the Laws of 2012 (issued December 17, 2010).

³ Cases 15-M-0127, et al., In the Matter of Eligibility Criteria for Energy Service Companies, Order Resetting Retail Energy Markets and Establishing Further Process (issued February 23, 2016). Portions of this order are stayed pending judicial review.

ESCOs must receive affirmative or express consent from a mass market customer prior to renewing that customer from a fixed rate or guaranteed savings contract into a contract that provides renewable energy but does not guarantee savings.

DISCUSSION AND CONCLUSION

Goals of Express Consent

The Commission's primary objective for express consent is to ensure mass market customers have adequate notice and a complete understanding of any changes to their energy service. The UBP provisions for express consent fulfil the Commission's intent of providing consumer protections against unauthorized switching or slamming and unauthorized release of customer information.

Notice Requirements in Other Jurisdictions

Other jurisdictions, such as Pennsylvania, do not require express or affirmative consent for contract expiration or material change in terms for mass market customers. Similar to UBP Sections 5(B) (5) (e-g), Pennsylvania requires several customer notices be sent to customers prior to expiration of a fixed term contract or prior to a change in contract terms.

Alternatives to Express Consent

In an effort to simplify the requirement for express consent for ESCOs, Staff proposes that UBP Section 5(B) (5) (d) be modified to provide for an alternative to express consent for renewals and material changes to customer contracts. The proposed modification would require ESCOs to send a total of three notices to customers as follows:

1st Notice: Change is coming; watch your mail for additional information as well as options.

2nd Notice: The details of the change(s); the customer's options for rejecting the changes/discontinuing service,

details of other offers available from their ESCO, shopping for another ESCO or returning to utility service; a copy of the new Terms of Service.

3rd Notice: a postcard reminding customers to read the 2nd Notice.

The specific notice details would be in the standardized format provided by the Department and include the following:

1st Notice

- Sent 45-60 days prior to the material change or contract expiration.
- General description of the changes.
- Effective date of the changes.
- Explanation of why the change is needed.
- Statement that a follow-up "option" letter will be coming soon.

2nd Notice

- Sent 30 days prior to the material change or contract expiration.
- Summarize the specific changes (use the standardized format in NY UBP with the summary table).
- Explanation of how to exercise options
 - Ability to accept change;
 - Ability to reject change;
 - Choose another offer from current ESCO;
 - How to select another ESCO;
 - How to return to utility service.
- Contact info: toll-free phone and web addresses for ESCO, DPS and PowerToChoose, and the local utility.
- The bill cycle in which the change takes effect.
- New price (if applicable).

3rd Notice

- Unique NY requirement (not in PA rule).
- Should be mailed two-three days after 2nd Notice.
- A reminder to read the 2nd Notice letter.

The proposed 1st and 2nd Notice letters as well as the envelope message should be consistent with the standardized renewal notice under UBP Section 5. Additionally, Staff recommends that electronic notices be allowed, only with the customer's authorization, if that is the customer's preferred method of receiving notices. In the case of electronic notices, the message in the Subject field should be consistent with the envelope message requirements.