

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to	:	
Implement Utility Billing Requirements Pursuant	:	Case 24-M-0239
to Public Service Law Sections 41, 44, and 66-w	:	
	:	

COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association (“RESA”)¹ hereby submits comments regarding the amendments to Public Service Law (“PSL”) section 41 and new PSL section 66-w (collectively, the “Amendments”).

INTRODUCTION

Earlier this year, the legislature amended provisions of the PSL regarding the timely billing of residential and small non-residential customers.² As a consequence, as of June 19, 2024, distribution utilities can only bill residential and small non-residential customers³ for previously unbilled charges within three months of the end of the applicable billing period “unless the failure . . . to bill sooner was not due to the neglect of the [utility] or was due to the culpable conduct of the customer.”⁴

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² See Chapter 62 of the Laws of 2024.

³ A small non-residential customer is defined as “non-residential customers that are non-demand billed customers and non-residential gas customers that use less than or equal to 750 dekatherms per year.” PSL § 66-w.

⁴ PSL §§ 41, 66-w.

On May 17, 2024, the Commission issued an order initiating this proceeding and “to make clear that the amendments to PSL §§41 and 44 and the new PSL §66-w override any conflicting regulatory and tariff provisions . . . and to . . . provide guidance regarding the new requirements”⁵ RESA now hereby submits these comments regarding the Amendments.

COMMENTS

RESA certainly appreciates and supports the desire to ensure customers are timely billed for services rendered. Discouraging distribution utilities from back billing for substantial periods of time will help ensure that fewer customers are surprised by exorbitant bills covering multiple months⁶ and, in some cases, years⁷ of charges. However, when a distribution utility fails to issue

⁵ Order Initiating Proceeding to Implement Public Service Law Sections 41, 44 and 66-w (May 17, 2024) (“Order”), at 2.

⁶ See Case 22-E-0064, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service*, Direct Testimony of Daniel W. Allegretti on Behalf of the Retail Energy Supply Association (May 20, 2022) (“RESA Testimony”), at 2:9-13 (“In fact, at times, because of these data issues, customers will not receive bills for months at a time and then suddenly receive a bill that covers multiple months”); Case 22-M-0645, *Proceeding on Motion of the Commission Concerning Central Hudson Gas & Electric Corporation’s Development and Deployment of Modifications to its Customer Information and Billing System and Resulting Impacts on Billing Accuracy, Timeliness, and Errors*, Order to Commence Proceeding and Show Cause (Issued Dec. 15, 2022), at 8 (“Between go-live and April 2022, over 14,000 Central Hudson CDG customers received a late bill, some delayed over six months.”); Case 22-E-0121, *Petition of Agway Energy Services, LLC for a Declaratory Ruling Concerning Failure of Central Hudson Gas and Electric Corporation to Provide Accurate Electronic Data Interchange Information or Provide Accurate Client Bills*, Agway Energy Services, LLC Petition for Declaratory Ruling and Action Plan (Feb. 25, 2022), ¶ 22 (“Even more disturbing, some of the customers that Agway shares with Central Hudson have not received a bill since Central Hudson’s new system came on line, nearly six months ago.”) (emphasis in original); Case 22-E-0121, *Petition of Agway Energy Services, LLC for a Declaratory Ruling Concerning Failure of Central Hudson Gas and Electric Corporation to Provide Accurate Electronic Data Interchange Information or Provide Accurate Client Bills*, Retail Energy Supply Association’s Response to Petition for Declaratory Ruling and Corrective Action Plan (Mar. 18, 2022), at 4 (“As a result, bills to affected customers have gone several months without including supply charges.”); Matter 22-00666, *In the Matter of Staff’s Investigation into Central Hudson’s Customer Information System Implementation and Resulting Billing Errors*, Motion of the Public Utility Law Project to Compel a Prudence Review, of Costs Incurred by Central Hudson Gas and Electric Corporation in Relation to the Upgrade of their Customer Information System and the Significant and Widespread Customer Service Problems that Persisted, and an Assessment of Civil Penalties Under the Public Service Law, Following Completion of the Department of Public Service’s Investigation into the Company, at 2 (“These problems included customers who received no bills for several months at a time”); see also Matter 23-00068, *In the Matter of Staff’s Investigation into Billing, Customer Service, and Meter Reading Issues Affecting Customers of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation*, Public Comments.

⁷ See, e.g., Case 24-M-0259, *Complaint of Robison Energy, LLC Regarding Payments Due*, Complaint and Formal Dispute Resolution Request For Expedited Resolution of Robison Energy (Commercial), LLC Regarding Payments Due From Consolidated Edison, Inc. (Apr. 30, 2024) (“Robison Complaint”), at 3 (“In some cases, such as the

a timely bill that includes energy service company (“ESCO”) charges and such failure is not due to the conduct of the ESCOs, ESCOs should not be subjected to the severe financial consequences that could arise. Thus, for the reasons set forth more fully below, RESA requests that the Commission require the distribution utilities to make ESCOs whole in the event the distribution utilities fail to timely bill residential and small non-residential customers and such failure is not excused by reasons permitted in the Amendments.

I. THE DISTRIBUTION UTILITIES’ FAILURE TO TIMELY BILL WILL FINANCIALLY HARM ESCOS

Pursuant to the Amendments, if a distribution utility fails to issue a bill to a residential or small non-residential customer within three months and such failure is not excused by reasons permitted in the Amendments, the distribution utility can *never* bill the customer.⁸ As the Commission is aware, each distribution utility is required to allow customers served by ESCOs to choose from the billing options available in the distribution utilities’ service territory.⁹ Those billing options are: (a) consolidated billing where both the ESCO’s and distribution utility’s charges appear on a single bill; or (b) dual billing where the distribution utility issues a bill for delivery charges and the ESCO issues a separate for supply charges.¹⁰

account ending 0009, energy commodity charges were canceled without rebills for the service period spanning September 2, 2021 through April 6, 2023.”).

⁸ PSL § 41 (“Notwithstanding any other provision of law, if a utility corporation . . . does not render a residential customer . . . a . . . bill for gas and/or electric services used by such customer . . . within three months from the end date of [the applicable] monthly billing period, then, such residential customer *shall not be charged* for such gas and electric services which were not billed to the customer as provided herein”) (emphasis added); PSL § 66-w (“Notwithstanding any other provision of law if a utility corporation . . . does not render a small non-residential customer . . . a . . . bill for gas and/or electric services used by such customer within three months from the end date of [the applicable] monthly billing period, then, such small non-residential customer *shall not be charged* for such gas and electric services which were not billed to the customer as provided herein. . . .”) (emphasis added).

⁹ Uniform Business Practices (“UBP”), § 9(B)(3) (“A distribution utility *shall allow* its customers to select, through their ESCOs, one of the billing and payment options available in the distribution utility’s service territory.”) (emphasis added).

¹⁰ See generally, UBP, § 9(B).

When an ESCO avails itself of consolidated billing, the distribution utility purchases the receivable due to the ESCO from the customer.¹¹ However, the distribution utility does not actually pay an ESCO for the receivable until after the bill has been issued to the customer.¹² Conversely, if a distribution utility fails to issue a bill, an ESCO is not paid for the receivable.¹³ As a consequence, unless the distribution utilities are required to make the ESCOs whole, if a distribution utility fails to issue a bill to a residential or small non-residential customer within three months as required and such failure is not excused by reasons permitted in the Amendments, the ESCO will never be paid for its receivables even though it supplied gas and/or electricity to the customer.

As the Commission is well aware, several of the distribution utilities have experienced chronic issues with failure to timely issue bills.¹⁴ While steps are being taken to remedy some of

¹¹ See, e.g., Consolidated Edison Company of New York, Inc. Consolidated Utility Billing Service and Assignment Agreement (Apr. 22, 2011) (available at: <https://www.coned.com/-/media/files/coned/documents/business-partners/become-energy-service-company-partner/consolidated-utility-billing/bsa.pdf>) (last visited Aug. 26, 2024) (“ConEd BSA”), at 7 (“Upon commencement of consolidated billing under this Agreement, Con Edison will purchase and undertake an obligation to pay ESCO for the ESCO Account Receivable created on each ESCO Customer account net of amounts due from ESCO to Con Edison.”); The Brooklyn Union Gas Company d/b/a National Grid NY Billing Services, Purchase Of Accounts Receivables and Assignment Agreement (available at: <https://www.nationalgridus.com/media/pdfs/microsites/energy-service-companies/metro-ny/billing-services-agreement-ny.pdf>) (last visited Aug. 26, 2024) (“KEDNY BSA”), at 2 (“[A]s a condition to Company purchasing ESCO Accounts Receivable, ESCO must participate in Company’s consolidated billing program . . .”).

¹² ConEd BSA, at 7 (“Con Edison’s payment obligation shall be effective as to any ESCO Charges as of the date on which the ESCO Charges **are billed** to the ESCO Customer”); KEDNY BSA, Appendix A (available at: <https://www.nationalgridus.com/media/pdfs/microsites/energy-service-companies/long-island/bsa-appendix-a-for-website.pdf>) (last visited Aug. 26, 2024), at § 2.3(a) (“No later than twenty (20) calendar days (or the next Business Day if the 20th day falls on a Saturday, Sunday, or public holiday) following the end of the month in which Company **issues any Consolidated Bill**, Company will pay ESCO the amount due for each New ESCO Account Receivable . . .”) (emphasis added).

¹³ *Id.*

¹⁴ See generally, Case 24-M-0259, *Complaint of Robison Energy, LLC Regarding Payments Due*; Matter 23-00068, *In the Matter of Staff’s Investigation into Billing, Customer Service, and Meter Reading Issues Affecting Customers of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation*; Case 22-M-0645, *Proceeding on Motion of the Commission Concerning Central Hudson Gas & Electric Corporation’s Development and Deployment of Modifications to its Customer Information and Billing System and Resulting Impacts on Billing Accuracy, Timeliness, and Errors*; Case 22-E-0121, *Petition of Agway Energy Services, LLC for a Declaratory Ruling Concerning Failure of Central Hudson Gas and Electric Corporation to Provide Accurate Electronic Data Interchange Information or Provide Accurate Client Bills*; Matter 22-00666, *In the Matter of Staff’s Investigation into Central Hudson’s Customer Information System Implementation and Resulting Billing Errors*.

these issues, at least one distribution utility continues to fail to timely issue a significant percentage of bills.¹⁵ This has already had a substantial financial impact on ESCOs who buy gas or electricity to supply to customers and, at times, do not get paid for it until months or, even years, later.¹⁶ However, now, if a distribution utility fails to bill a residential or small non-residential customers within three (3) months, unless the failure to bill was not due to the neglect of the distribution utility¹⁷ or was due to the customer's culpable conduct,¹⁸ ESCOs will *never* get paid¹⁹ unless the Commission requires the distribution utilities to pay ESCOs for receivables even when a bill is never issued to the customer.

¹⁵ See Case 22-E-0064, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service*, Consolidated Edison Company of New York, Inc. Estimated and Delayed Billing Report Q2 2024 (Jul. 30, 2024) (showing that, in June 2024, ConEd failed to bill more than 5% of ESCO-supplied electric accounts (excluding NYPA customers) and more than 16% of NYPA accounts); Case 22-E-0064, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service*, Consolidated Edison Company of New York, Inc. Estimated and Delayed Billing Metric Rate Year 2 - 2024 (Jul. 30, 2024) (reflecting number of bills that have been delayed by more than 125 days).

¹⁶ See, e.g., Robison Complaint, at 1 (asserting that ConEd owes Robison \$550,000 “as a result of ConEd’s failure to accurately and timely bill customer accounts”).

¹⁷ See, e.g., Case 98-E-0801, *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures--Appeal by Joseph Piccininni of the Informal Decision Rendered Partially in Favor of Consolidated Edison Company of New York, Inc.*, Commission Determination (Issued Feb. 16, 2000), at 10 (finding that “neglect for purposes of Section 11.14(b) may be found whenever a meter, which has not been shown to have been tampered with, underregisters beyond the permissible range of accuracy”) (internal quotations omitted).

¹⁸ See, e.g., Case 98-E-0801, *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures--Appeal by Joseph Piccininni of the Informal Decision Rendered Partially in Favor of Consolidated Edison Company of New York, Inc.*, Commission Determination (Issued Feb. 16, 2000), at 10-11 (indicating that a customer may be culpable if (s)he knew or should have known that billing was incorrect); Case 10-M-0088, *Appeal by Ms. Reena Pearl of the Informal Decision Rendered in Favor of Consolidated Edison of New York, Inc.*, Commission Determination (Issued May 19, 2015), at 11 (finding culpability when customer supplied meter “readings were provided in bad faith”).

¹⁹ See PSL § 41 (“Notwithstanding any other provision of law, if a utility corporation . . . does not render a residential customer . . . a . . . bill for gas and/or electric services used by such customer . . . within three months from the end date of [the applicable] monthly billing period, then, such residential customer **shall not be charged** for such gas and electric services which were not billed to the customer as provided herein”) (emphasis added); PSL § 66-w (“Notwithstanding any other provision of law if a utility corporation . . . does not render a small non-residential customer . . . a . . . bill for gas and/or electric services used by such customer within three months from the end date of [the applicable] monthly billing period, then, such small non-residential customer **shall not be charged** for such gas and electric services which were not billed to the customer as provided herein. . . .”) (emphasis added); ConEd BSA, at 7 (“Con Edison’s payment obligation shall be effective as to any ESCO Charges as of the date on which the ESCO Charges **are billed** to the ESCO Customer”); KEDNY BSA, Appendix A, at § 2.3(a) (“No later than twenty (20) calendar days (or the next Business Day if the 20th day falls on a Saturday, Sunday, or public

Because of the amount of usage, the potential financial impact of this issue would increase exponentially if the billing restrictions were extended to all non-residential customers.²⁰ For example, in the ConEd service territory, the percentage of non-mass market customers that have not received bills in more than 125 days is substantially higher than the percentage of residential and small non-residential customers.²¹ This combined with the significantly higher usage of those customers²² will exacerbate the potential financial consequences to ESCOs of a distribution utility’s failure to timely bill customers if the Amendments are applied to all customers.

Moreover, extending the protections of the Amendments to all customers would contravene the plain language of the statute. As the Commission is aware, “the clearest indicator of legislative intent” is the plain language of the statute.²³ Thus, the Commission is required to “construe unambiguous language to give effect to its plain meaning.”²⁴ The legislature explicitly limited the applicability of the Amendments to residential and “small non-residential customer[s].”²⁵ In fact, to ensure there was no ambiguity, the legislature took the added step of

holiday) following the end of the month in which Company *issues any Consolidated Bill*, Company will pay ESCO the amount due for each New ESCO Account Receivable”) (emphasis added).

²⁰ Order, at 15 (“Next, although PSL §66-w will apply the three-month billing requirement only to small non-residential electric or gas customers, the Commission directs Staff to consider extending the three-month billing requirement to all non-residential electric or gas customers . . .”).

²¹ Case 22-E-0064, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service*, Consolidated Edison Company of New York, Inc. Estimated and Delayed Billing Metric Rate Year 2 - 2024 (Jul. 30, 2024) (reflecting that number of bills that have been delayed by more than 125 days for Metric 2 (non-mass market customers) is exponentially higher than those delayed by more than 125 days for Metric 1 (mass market customers)).

²² See Case 22-E-0064, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service*, Consolidated Edison Company of New York, Inc. Estimated and Delayed Billing Report Q2 2024 (Jul. 30, 2024) (reflecting total billed electric usage and natural gas consumption by rate class each month).

²³ *Nitkewicz v. Lincoln Life & Annuity Company of New York*, 40 NY3d 349, 354 (2023) (citations omitted).

²⁴ *James B. Nutter & Company v. County of Saratoga*, 39 NY3d 350, 355 (2023) (citations omitted).

²⁵ PSL §§ 41, 66-w.

specifically defining small non-residential customer.²⁶ Thus, consistent with the plain language of the statute, the Commission should refrain from extending the back billing restrictions to all customers.

II. ESCOS DO NOT HAVE MEANINGFUL ALTERNATIVES IF THE DISTRIBUTION UTILITY FAILS TO BILL

While it is possible for ESCOs to bill customers separately in an attempt to avoid being reliant on the distribution utilities to timely bill customers, dual billing is not a meaningful or customer-friendly alternative. First and foremost, forcing customers to accept dual billing would violate the UBP.²⁷ Moreover, residential customers and many small non-residential customers do not like receiving two bills - one from the ESCO and one from the distribution utility.²⁸ Further, residential and small non-residential customers may not be familiar with receiving bills from ESCOs; therefore, customers may not pay for the energy services provided by ESCOs. In addition, to the extent an ESCO does not already have the necessary infrastructure in place to issue separate bills, the ESCO would need to develop such infrastructure or retain a third-party to undertake billing services at a substantial cost. Thus, creating significant financial consequences for some suppliers.

Additionally, because the distribution utilities do not purchase the receivables of ESCOs that dual bill,²⁹ the ESCOs will also need to have the necessary infrastructure in place to perform

²⁶ *Id.* (“For the purposes of this section, ‘small non-residential customer’ means non-residential electric customers that are non-demand billed customers and non-residential gas customers that use less than or equal to 750 dekatherms per year. Such term shall not include street lighting accounts.”).

²⁷ *See* UBP, § 9(B)(3) (“A distribution utility *shall allow* its customers to select, through their ESCOs, one of the billing and payment options available in the distribution utility’s service territory.”) (emphasis added).

²⁸ UBP, § 1 (defining dual billing).

²⁹ *See, e.g.,* ConEd BSA, at 7 (“*Upon commencement of consolidated billing* under this Agreement, Con Edison will purchase and undertake an obligation to pay ESCO for the ESCO Account Receivable created on each ESCO Customer account net of amounts due from ESCO to Con Edison.”) (emphasis added); KEDNY BSA, at 2 (“[A]s a condition to Company purchasing ESCO Accounts Receivable, ESCO *must* participate in Company’s consolidated billing program”) (emphasis added).

or have a third-party perform payment processing and undertake collection activities; thereby, adding more costs. Furthermore, because ESCOs lack the same recourse as distribution utilities to collect past due amounts (e.g., ESCOs cannot disconnect a customer's service for failure to make timely payments),³⁰ ESCOs will also likely see additional write-offs; further increasing their costs to serve customers.

Alternatively, assuming it has the necessary systems, an ESCO could bill separately only when the distribution utility is not going to issue a timely bill. However, such an arrangement would violate the billing services agreements between ESCOs and the distribution utilities.³¹ Moreover, in order to do so, the ESCO would have to closely monitor the time that has passed since the end of the billing period and guess as to whether the distribution utility will issue a timely bill. Even if an ESCO could overcome this hurdle, the ESCO would still not know if the distribution utility's failure to bill was excused.³² This creates the risk that the ESCO will issue a bill (based on the assumption the distribution utility will not do so timely) and then the distribution utility would issue a bill that includes the ESCO charges for the same billing period. In this scenario, the customer would receive two bills - one for the ESCO's supply charges and a consolidated bill from the distribution utility that includes both the ESCO's supply charges and

³⁰ See 16 NYCRR 11.4.

³¹ See, e.g., ConEd BSA, at 5 ("ESCO hereby assigns to Con Edison all of ESCO's right, title and interest in such ESCO Accounts Receivable as and when the commodity or commodities supplied by ESCO flow through the applicable ESCO Customer's meter (or in the case of unmetered electric service, when the commodity first flows over the ESCO Customer's wiring), which right, title and interest include, without limitation, the right to bill to, and **collect** from, ESCO Customers the ESCO Charges associated with such commodity or commodities.") (emphasis added); KEDNY BSA, Appendix A, at 2.1 ("ESCO shall **not** seek to **collect** payments from any ESCO Customers for any ESCO Gas Charges arising from such ESCO Accounts Receivable.") (emphasis added); *Id.* at § 2.2 ("ESCO hereby assigns to Company all its rights and remedies under Applicable Law with respect to the ESCO Accounts Receivable, including, without limitation, all rights and remedies to seek **collection** of such ESCO Accounts Receivable directly from ESCO Customers . . .") (emphasis added).

³² PSL §§ 41, 66-w (permitting utilities to bill customers more than three months after the applicable billing period if "the failure . . . to bill sooner was not due to the neglect of the [utility] or was due to the culpable conduct of the customer").

the distribution utilities' delivery charges. Such a scenario would result in significant customer confusion, generate complaints, and decrease the likelihood that customers will pay their bills. Thus, ESCOs do not have a meaningful alternative available if the distribution utilities fail to issue timely bills as required by the Amendments.

III. DISTRIBUTION UTILITIES SHOULD BE REQUIRED TO MAKE ESCOS WHOLE

As soon as an ESCO provides electric or natural gas supply to a customer receiving a consolidated bill from the distribution utility, an ESCO receivable is created³³ that the distribution utilities have the obligation to purchase.³⁴ However, as noted above, the distribution utilities do not pay the ESCOs for those receivables until after bills are issued to the customers.³⁵ As a consequence, ESCOs will *never* get paid³⁶ unless the Commission requires the distribution

³³ See ConEd BSA, at 5 (“On and after the effective date of this Agreement, *whenever electricity or natural gas commodity flows* through an ESCO Customer’s meter (or in the case of unmetered electric service, when the commodity first flows over the ESCO Customer’s wiring)) [sic], ESCO hereby sells to Company and Company hereby purchases from ESCO, the ESCO Account Receivable associated with such commodity or commodities, as applicable, even though the ESCO Charges for such commodity or commodities may not yet be billed.”) (emphasis added); KEDNY BSA, Appendix A, at 2.1 (“Effective as of the Consolidated Billing Commencement Date, *whenever natural gas flows* through an ESCO Customer's gas meter, ESCO hereby sells to Company and Company hereby purchases from ESCO, all New ESCO Accounts Receivable arising from the ESCO Gas Charges resulting from such flow of gas through such meter.”) (emphasis added).

³⁴ ConEd BSA, at 7 (“Upon commencement of consolidated billing under this Agreement, Con Edison will purchase and undertake an *obligation* to pay ESCO for the ESCO Account Receivable created on each ESCO Customer account net of amounts due from ESCO to Con Edison.”) (emphasis added); KEDNY BSA, Appendix A, at § 2.1.1 (“Company is and will remain *obligated*, in accordance with this Agreement, to purchase ESCO Accounts Receivable and to issue bills to ESCO Customers for any gas that flows through the ESCO Customer meters.”) (emphasis added).

³⁵ ConEd BSA, at 7 (“Con Edison’s payment obligation shall be effective as to any ESCO Charges as of the date on which the ESCO Charges *are billed* to the ESCO Customer”); KEDNY BSA, Appendix A, at § 2.3(a) (“No later than twenty (20) calendar days (or the next Business Day if the 20th day falls on a Saturday, Sunday, or public holiday) following the end of the month in which Company *issues any Consolidated Bill*, Company will pay ESCO the amount due for each New ESCO Account Receivable”) (emphasis added).

³⁶ See PSL § 41 (“Notwithstanding any other provision of law, if a utility corporation . . . does not render a residential customer . . . a . . . bill for gas and/or electric services used by such customer . . . within three months from the end date of [the applicable] monthly billing period, then, such residential customer *shall not be charged* for such gas and electric services which were not billed to the customer as provided herein”) (emphasis added); PSL § 66-w (“Notwithstanding any other provision of law if a utility corporation . . . does not render a small non-residential customer . . . a . . . bill for gas and/or electric services used by such customer within three months from the end date of [the applicable] monthly billing period, then, such small non-residential customer *shall not be charged* for such gas and electric services which were not billed to the customer as provided herein. . . .”) (emphasis added); ConEd BSA, at 7 (“Con Edison’s payment obligation shall be effective as to any ESCO Charges as of the

utilities to pay ESCOs for receivables even a bill is never issued to the customer. Thus, to ensure that ESCOs are not subject to severe financial consequences,³⁷ RESA requests that the Commission require the distribution utilities to establish a process to make ESCOs whole.

This could be accomplished by requiring that, if the distribution utilities do not issue a bill to a residential or small non-residential customer within the prescribed time (and such failure is not excused by reasons permitted in the Amendments), the distribution utilities pay the ESCOs for the receivables as if the customer bills had been properly issued. Such a scenario would still avoid the bill shock that some customers have experienced³⁸ while ensuring that ESCOs are not inadvertently punished for the distribution utility's failure to bill. Moreover, the added financial consequences to the distribution utilities for failure to timely bill will also incentivize them to significantly reduce the number of customers that do not receive timely bills. As such, RESA urges the Commission to require each distribution utility to pay ESCOs for their purchased receivables even if the distribution utility is unable to bill the customer due to the utility's unexcused failure to issue a timely bill and to modify their billing services agreements to incorporate this requirement.

date on which the ESCO Charges *are billed* to the ESCO Customer"); KEDNY BSA, Appendix A, at § 2.3(a) ("No later than twenty (20) calendar days (or the next Business Day if the 20th day falls on a Saturday, Sunday, or public holiday) following the end of the month in which Company *issues any Consolidated Bill*, Company will pay ESCO the amount due for each New ESCO Account Receivable . . .") (emphasis added).

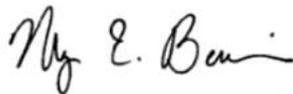
³⁷ See, e.g., Robison Complaint, at 1-2 (noting that ConEd's "failure to properly bill hundreds of . . . customer accounts . . . has significantly impacted [Robison]'s operating cash flow, limiting its capacity to manage and fulfill its financial commitments effectively. The ongoing harm caused by ConEd's inaction poses a substantial financial risk . . .").

³⁸ See, e.g., RESA Testimony, at 5:21-23("[O]nce those customers are actually billed for the missing months, they are hit with a staggering energy bill that negatively impacts their cash flow."); Matter 23-00068, *In the Matter of Staff's Investigation into Billing, Customer Service, and Meter Reading Issues Affecting Customers of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation*, Public Comments.

CONCLUSION

For all the foregoing reasons, RESA requests that the Commission require the distribution utilities to make ESCOs whole in the event the distribution utilities fail to timely bill residential and small non-residential customers and such failure is not excused by reasons permitted in the Amendments.

Respectfully submitted,
RETAIL ENERGY SUPPLY ASSOCIATION

By: 

Megan E. Baroni
Robinson & Cole LLP
1055 Washington Boulevard
Stamford, CT 06901
Phone: (203) 462-7528
Fax: (203) 462-7599
E-Mail: mbaroni@rc.com

Attorney for Retail Energy Supply Association

Dated: August 29, 2024