

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**CASE 24-M-0324    In the Matter of the Commission to Regulate Energy Services Company  
Home Warranty Product Offerings**

**CASE 98-M-1343    In the Matter of Retail Access Business Rules**

**MPOWER ENERGY LLC'S RESPONSES TO STAFF QUESTIONS  
CONTAINED IN THE WHITE PAPER ON ENERGY SERVICE  
COMPANY HOME WARRANTY PRODUCT**

**1.        What qualitative and/or quantitative evidence can ESCOs provide that shows their HWP offerings are providing value to customers? This evidence should include, but not be limited to, data specific to the number of consumer service claims, the rate of increase in commodity costs to the consumer over the contract period, and the number of successful service claims that resolve consumer service requests.**

**Response:**

The types of data identified above are certainly relevant to show that an approved HWP offers value to customers. ESCOs should be able to provide such data on an ongoing periodic basis as determined by Staff. However, an approved HWP is much like any insurance policy in that it offers customers peace of mind that in the event of an occurrence, the HWP will provide needed repair service that the customer might not be able to afford.

**2.        What barriers, if any, prevent ESCOs from separately disclosing the cost of the service contract from the cost(s) of commodity supply, thereby increasing the transparency of bills including HWP costs?**

**Response:**

The cost to an ESCO of an approved HWP is dynamic and changes with the increase/decrease in the scope and amount of coverage, the level of staff needed to satisfy service needs. Further, HWPs have been approved for an insufficient amount of time and, in the case of Mpower, have been temporarily ceased at Staff's instruction, to enable determination of the cost of the HWP product.

A prohibitive barrier of separate disclosure of costs of commodity vs. service contract is that ESCOs that offer an approved HWP at no additional charge to their customers would no longer be able to offer a warranty service free of charge while maintaining competitive commodity pricing. ESCOs that have chosen to offer the HWP at no additional charge while maintaining competitive commodity pricing have undertaken the risk that the cost of offering this service will exceed profitability in their commodity business. Itemization of costs in this regard will frustrate

that ability. Further, such itemization will serve no useful purpose in that ESCOs can adjust pricing at their discretion.

A similar problem exists if HWP offers are limited to guaranteed savings or capped fixed-rate products. No ESCO would be able to continue offering an ERVAS while fully absorbing the costs of an HWP. Staff's recommendation would thus unnecessarily limit the flexibility and variety of offerings available to consumers. Imposing such restrictions would also reduce consumer choice and substantially limit the ability to offer renewable products as they would likely become cost prohibitive.

**3. What added value do consumers receive by enrolling in ESCO HWPs when they can otherwise directly sign up for home warranty services that are not tied to their energy provider?**

**Response:**

The PSC has undertaken a thoughtful approach to reviewing ESCO HWP contracts to avoid unfair barriers, exclusions, and preconditions to coverage contained in the "small print" of warranty companies. Thus far, Staff's review has effectively eliminated many (if not all) of the misleading problems that consumers have addressed in dealing with national warranty companies. Accordingly, ESCO HWPs can offer true value rather than false promises.

**4. What barriers, if any, prevent ESCOs from establishing their own in-house home warranty division that would free them from relying on a third-party to handle the service obligation inherent to their HWP contract?**

**Response:**

The cost to an ESCO of retaining staff to satisfy all service obligations would significantly increase overhead and impact pricing, and would require ESCOs to develop an expertise in areas other than their primary field of endeavor. This would result in an inevitable increase in commodity charges associated with increased overhead. Because individual ESCOs serve a far smaller population than warranty companies (many of which are national), ESCOs would have a difficult time competing with such companies in terms of pricing and would result in higher prices to consumers.

More significantly, ESCOs that offer an approved HWP at no additional charge to customers would no longer be able to offer a warranty service free of charge.

The Staff recommended site visits for eligibility verification are also an added impediment to effective HWP offerings and would greatly increase the cost of such coverage and places an undue burden on providers and consumers. Instead, Mpower suggests that - at most - a site visit might be useful *only* in limited circumstances, such as where a customer's eligibility is later denied.

Further, an absolute restriction to relying solely on in-house staff to provide HWP services would be damaging to consumers and providers. In practice, Mpower has found that many customers choose the option to retain repair personnel of their own choice at Mpower's expense (up to the \$2000 annual cap). This is of tremendous value to customers in that it avoids additional

staff and infrastructure costs to the ESCO and enables the ESCO to offer huge value to customers in terms of financial benefits, timing of repairs, and lack of contractual “loopholes” as an excuse to avoid coverage. Moreover, national warranty companies generally utilize a network of independent providers for repairs. There is no reason to depart from that standard to address Staff’s perceived need for additional consumer protection measures. Protective measures can be created in line with the long-established industry standard relied on by warranty companies that have indisputably services many millions of consumers despite high numbers of complaints.

**5. How many maintenance professionals would an ESCO need to employ to ensure their HWP customer base is covered in a way that supports the recommendations in the White Paper?**

**Response:**

HWPs have been approved for an insufficient amount of time and, in the case of Mpower, have been temporarily ceased at Staff’s instruction, to enable determination of the cost of the HWP product. However, Mpower has found that the dozen staff repair personnel has thus far been sufficient to satisfy its repair obligations.

**6. Are there any industry standards in New York or other states regarding HWPs and consumer protections associated with such products that the Commission should consider?**

**Response:**

The NY Department of Finance maintains obligations for companies that sell warranties, including contractual requirements, training, and financial security. NY General Business Law and New York Administrative law provide additional guidelines for the sale of warranty services and the avoidance of deceptive business practices. Other states have similar laws. We are unaware of any “industry” standards regarding HWPs that the Commission should consider. We believe that the home warranty industry is lacking in adequate standards and that the Commission is in a unique position to ensure that the services offered by ESCOs meet or exceed statewide standards.

**7. Any there any other consumer protections related to ESCO HWPs that the Commission should consider?**

**Response:**

As noted above, there are governing NYS laws and regulations. We believe that Staff’s reliance on publicly available complaints addressed to national warranty companies provide a good source of information from which additional consumer protections can be derived. We believe that the additional regulation to which ESCOs are subject, including the UBP and the scrutiny of HWP contracts, is adequate to ensure consumer protection.

One protection that we believe should be utilized is a prohibition on the use by ESCOs of official-looking solicitations. Some commercial companies that offer warranties (particularly vehicle warranties) have used official-looking mail solicitations designed to mislead consumers (including new car buyers) into believing that they need to complete a document to “activate” their

already-existing warranty or renew an expired warranty. In fact, those solicitations are for entirely new warranty services that are generally unwanted and, in case of new vehicles, completely unnecessary.

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Respectfully submitted,

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