

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

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

DEPARTMENT OF PUBLIC SERVICE STAFF
WHITE PAPER ON ENERGY SERVICE COMPANY
HOME WARRANTY PRODUCTS

Dated: May 29, 2024

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1. Introduction

On November 18, 2022, thirty-five months after the Public Service Commission (Commission) allowed Energy Service Companies (ESCOs) to offer home warranty products, Department of Public Service Staff (DPS Staff or Staff) sought to determine the status of the ESCO Home Warranty Product (HWP) marketplace. DPS Staff sent out interrogatory requests (IRs) to the 21 ESCOs eligible to offer such products posing 11 questions that would provide insight into the ESCO HWP marketplace. DPS Staff focused these questions around ESCO performance, third-party participation, consumer participation, and financial data specific to service costs. The goal of this review was to determine whether the value-added proposition inherent to the viability of the ESCO home warranty market was being upheld. In this instance, the product or service enhancement is defined as being a home warranty service that can assist consumers in offsetting the cost of energy-related appliance maintenance or repair.

An ESCO HWP provides the consumer with the option to utilize a capped rebate that consumers can use to service heating, ventilation, and air conditioning (HVAC) components and/or plumbing equipment. The ability to offer HWPs stems from the 2019 Commission Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (December 2019 Order).¹ The value-added proposition for energy related value-added products established a framework where value-added products act as an enhancement to traditional gas and electricity service (also referred to as commodity service). Further, the Commission stated that whether a particular offering falls within the definition of value-added, or not, may depend on a case-by-case qualitative assessment. Based upon the ESCOs IR responses, DPS Staff has gained a clearer picture of the ESCO HWP marketplace and found that there are several issues that necessitate additional oversight. DPS Staff's concerns are centered around the lack of pricing transparency, the negative involvement of third-party home warranty service providers, and weak consumer rights. These concerns have been validated through DPS Staff's experiences in reviewing and overseeing ESCO HWPs. DPS Staff believes additional enforcement tools that would impose stronger requirements on ESCO HWPs could facilitate more robust oversight by Staff over the ESCO HWP marketplace, and would provide more flexibility and enforcement tools to act on these matters in the public interest. Consequently, DPS Staff's policy recommendations proposed herein identify regulatory updates (*i.e.*, new rules) that would

¹ Case 15-M-0127, *et al.*, In the Matter of Eligibility Criteria for Energy Service Companies, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (issued December 12, 2020) (December 2019 Order).

address Staff's concerns, maintain the ESCO HWP marketplace, and provide strong consumer protections.

With respect to pricing transparency, DPS Staff is concerned that there is a significant lack of pricing transparency when it comes to consumers being able to decipher how much they are paying for their HWP. As many HWPs utilize consolidated billing with their respective utility, the consumer is not able to see a line-item break out of costs as it pertains to their service. Additionally, DPS Staff is concerned that there is an overly complicated process that consumers need to follow to redeem their home warranty service under the third-party ESCO HWP model, which has proliferated in a way that is disadvantageous to the consumer. DPS Staff is also concerned about consumer protections, in that consumers are not receiving sufficient energy related value-added benefits associated with the home warranty service, and in relation to the cost of the products. The Commission allowed the energy related value-added benefits like the HWP because consumers would, in theory, receive sufficient value in relation to the cost of the product from the HWP. The HWP would then have the effect of justifying the high commodity rate they would be charged on a variable rate contract with the ESCO. Consumers pay more for their commodity service for enrollment in an ESCO HWP, and for this reason it is imperative that consumer rights regarding price transparency and other protections are strengthened. The higher price itself pertains to the higher commodity rate associated with warranty coverage contained in such products. This is done in conjunction with the fees associated with the consumer redeeming service from their ESCO home warranty agreement. Additionally, fixed rate ESCO HWPs can include the same fees associated with the consumer redeeming service from their ESCO HWP. DPS Staff must ensure that when the home warranty service is used, there aren't unduly burdensome contract stipulations that impede consumers from utilizing those services. To ensure adequate consumer protections are in place and that the value-added proposition inherent to the HWP marketplace is upheld, DPS Staff has laid out within this white paper the market analysis and policy recommendations necessary to correct the deficiencies in the HWP marketplace. By adopting the policy recommendations identified herein, DPS Staff is confident that the value-added proposition for the ESCO HWP marketplace will be upheld and improved upon.

2. Evolution of Home Warranty Products in New York State

In the December 2019 Order, the Commission enacted new rules regarding products that are permissible in the retail mass market (i.e., the portion of the retail market comprised of

residential and small non-residential customers), along with modifications to the Uniform Business Practices (UBP). Any product marketed to mass market customers by an ESCO, as of the effective date of the December 2019 Order, must meet at least one of three criteria: (a) it must include a guaranteed savings; (b) it must be a fixed rate product compliant with a price limit; or, (c) it must be a renewably sourced product compliant with rules regarding content, sourcing, and transparency.² The Commission provided one exception to these three criteria, and allowed Agway Energy Services, LLC (Agway) to continue offering its EnergyGuard service, a Home Warranty Product, due to the specific, credible evidence Agway submitted regarding the energy-related value of this product.³ Specifically, Agway’s EnergyGuard is explained as a service bundled with both natural gas and electricity supply that is “similar to a prepaid maintenance contract,”⁴ and provides its customers with “valuable and essential peace of mind.”⁵ This service is quantifiable, in that the service covers most parts and repairs to the residential customer’s air conditioning unit, up to \$1,000 annually, as well as the additional cost for electrical wiring repairs, up to \$1,000 annually with no deductible.⁶ Agway also offers coverage for the cost of most repairs to customers’ home heating system, with no dollar limit and no deductible. The Commission also permitted an opportunity for other ESCOs to petition for the opportunity to sell a product/service that met the elements established in the December 2019 Order, as specific products and services have the potential to provide benefits to customers.

To further clarify the criteria required for ESCOs to offer a compliant HWP, the Commission issued the Order Addressing ESCO Petitions Requesting Authorization to Provide Additional Products and Services on January 25, 2021 (January 2021 Order).⁷ In that order, the Commission discussed several petitions filed by ESCOs seeking authorization to offer HWPs to the mass market, and concluded that each of the respective petitions satisfied the criteria to allow the HWP products to be offered. The proposals bundled commodity service and closely-related

² December 2019 Order, p. 108.

³ Id., p. 23.

⁴ Id., p. 52.

⁵ Id.

⁶ Id.

⁷ Case 15-M-0127, et al., In the Matter of Eligibility Criteria for Energy Service Companies, Order Addressing ESCO Petitions Requesting Authorization to Provide Additional Products and Services (issued January 25, 2021) (January 2021 Order).

maintenance agreements, with the intention that customers can use electricity and/or natural gas in a manner that maintains essential services and avoids sudden high-cost repair bills. The Commission also concluded that each petitioner shall, within 30 days of the issuance of the January 2021 Order, file with DPS Staff, in Matter No. 14-02554, standard sales agreements for each of the products authorized. Finally, the Commission concluded that, given the rules and guidance set forth in this and previous orders, it was unnecessary to continue requiring ESCOs to petition the Commission for a waiver to market qualifying HWPs. Instead, ESCOs wishing to offer such products were required to file the proposed sales agreements and any other supporting information, for review and approval by Staff, who will review the proposed HWPs and ensure compliance with the UBP and Commission orders.

Following the December 2019 Order, several ESCOs submitted petitions to offer a HWP. Among these companies were Interstate Gas Supply, Inc., Accent Energy Midwest Gas, LLC d/b/a IGS Energy and Accent Energy Midwest II, LLC d/b/a IGS Energy (collectively, “IGS”), Kiwi Energy NY LLC (Kiwi), Mpower Energy LLC (Mpower), Constellation NewEnergy – Gas Division, LLC and Constellation NewEnergy, Inc. (collectively, “Constellation”), and Vistra Corp. (Vistra). Agway submitted comments in response to ESCO petitions to offer a HWP. In general, throughout these comments, Agway agrees that customers having access to such products and services that offer energy-related value-added components is beneficial, but also notes that products should only be approved if they are supported by substantial, credible evidence that meets the benchmarks sanctioned by the Commission. Agway explains in each of these responses that the Commission identified its EnergyGuard program as a notable exception, and that it opened its corporate books and records to the Commission and explained in detail how Agway arrived at its variable rate price, which includes EnergyGuard. Agway expresses that, as the Commission stated in the December 2019 Order, products similar to EnergyGuard can be offered, but ESCOs should be held to the same rigorous standards established by the Commission and met by Agway. This includes substantial financial and business information, including costs to administer and market the program, the benefits received by consumers, the risks taken in offering the service, and customer testimonials establishing the value of the product.

3. Status of Home Warranty Products in New York State

The January 2021 Order established a process for ESCOs to file HWPs for Staff approval to offer such products to mass market consumers. Since that time, 21 ESCOs have been

approved to serve HWP to New York State consumers.⁸ On November 18, 2022, DPS Staff issued IRs to the 21 ESCOs currently approved to offer HWP to mass market customers. The purpose of this request for information was to enable Staff to perform an analysis of the HWP market in New York State. Specifically, the request for information, which focused on the time period between January 25, 2021, and October 31, 2022 (the requested timeframe), examined whether the value-added proposition of the HWP had led to verifiable consumer benefits. To accomplish this, Staff asked ESCOs offering HWP 11 questions about rates being charged to consumers, product transparency, third-party involvement, value added benefits, and consumer participation. A full list of these questions is available in the Attachment. In this section of the white paper, DPS Staff focuses on the common types of HWP currently available to consumers, the level of customer participation in the HWP market, and a summary of the IR responses.

The January 2021 Order characterized the criteria for common types of HWP offered in New York State as follows:

The proposals bundle commodity service with maintenance agreements closely related to ensuring that customers are able to use electricity and/or natural gas in a manner that provides essential services to the customers. The functions the home warranty products support include lighting and powering homes and buildings, heating and cooling air, heating water, and ensuring reliable water service. All of these functions are closely related to the reasons commodity energy supply is an essential service to New Yorkers. Moreover, the products are designed to insure against consumers suddenly facing high-cost repair bills, for which the inability to pay may threaten access to these essential functions. Moreover, [the Commission found] that each petition reasonably describes the relationship between the benefits provided by the proposed products and cost.⁹

DPS Staff has approved HWP that have adhered to the Commission's outlined criteria and has approved HWP that have expanded offerings not contemplated in the January 2021 Order.

The most common type of HWP offered in the ESCO marketplace has both fixed and variable rate structures where there is no cap on the commodity rate that consumers are charged. Within this model, the most commonly offered home warranty service involves a \$1,000 capped rebate that consumers can use to service heating, ventilation, and air conditioning (HVAC)

⁸ The approved ESCOs include Agway, Alpha Gas & Electric, Browns Energy, Browns Fuel, Constellation New Energy, Constellation New Energy Gas, Energy Service Providers Inc. d/b/a NYG&E, Family Energy, Great American Gas & Electric, IDT Energy, Kiwi, M&R Energy, Main Care Energy, Marathon Power, Mpower, Noco Electric LLC, NOCO Natural Gas LLC, Public Power, Resident's Energy, and USG&E d/b/a NYG&E.

⁹ January 2021 Order, p. 16.

components and/or plumbing equipment. Current iterations of this model have some variation, with options for consumers to utilize the service for appliance repair, annual maintenance service, and surge protection.¹⁰ It is common for service fees and/or deductibles to be charged to consumers when a utilization of a home warranty service occurs. This service fee, ranging from \$50-\$200 for each repair or maintenance call, occurs when the consumer calls to redeem service and is added on top of the premium on commodity service that each customer pays while enrolled on an ESCO HWP. The concepts relating to service call fees and/or deductibles raises a concern over the lack of uniformity in terminology as it pertains to service fees and/or deductibles. ESCOs and their third-party HWP partners use the terms “service fees” and/or “deductibles” inconsistently. One ESCO refers to the action of a consumer calling to redeem home warranty service as a service call fee, whereas another ESCO will refer to the consumer calling to redeem service as paying the deductible. To address this concern, DPS Staff proposes that definitions for the terms be made clear and apparent in contract terms and conditions. For example, the term “service fee” should exclusively define the fee that consumers pay when calling to redeem their home warranty service. Further, the term “deductible” should exclusively define a specified amount of money that the consumer must pay before service can be rendered under the warranty plan.

Notably, many ESCO HWPs involve a third-party provider that is a separate entity from the ESCO itself. Of the ESCOs that responded to the IRs, 13 of the companies confirmed that they contract with a third-party to handle the physical labor associated with the home warranty service. Six of the ESCO respondents using a third-party stated that, while eligible to offer a HWP, they were not offering the product to consumers during the requested reporting period. Only two ESCOs that responded to the IRs stated that their employees handle the on-site labor associated with utilization of the home warranty service. Of the 13 ESCOs offering a HWP under the third-party model, eight ESCOs are using the same third-party home warranty company to perform the on-site labor associated with the product offering. The third-party home warranty company in question, Cinch Home Services (Cinch), has a litany of consumer complaints on the Better Business Bureau website. According to Cinch’s Better Business Bureau webpage, consumers have made 3,500 complaints against the company over the last 3

¹⁰ Surge protection service on its own was deemed by DPS Staff to be an insufficient value to justify being offered to consumers.

years. These complaints describe issues where consumers are faced with a convoluted service redemption process, a misrepresentation of issue resolution timeframes, and an abdication of responsibility for adequate maintenance service.¹¹ The nature of the complaints outlined above exemplifies Staff's concern over the third-party model, particularly in regards to a singular company being over utilized when their service record is problematic.

Customer participation in the ESCO home warranty market is significant. Based off the IR responses, there were 52,838 customers enrolled in an ESCO HWP between January 25, 2021, and October 31, 2022. Customers enrolled in an ESCO HWP represented 3.24% of the total ESCO customers reported during the requested timeframe. Of the ESCO respondents, only four companies reported receiving complaints regarding their HWP. Additionally, four companies reported that they had denied 13 consumer claims for home warranty service. More troubling, five ESCOs reported that they did not collect any data pertaining to denied home warranty service claims. The IR responses demonstrate that \$1,009,051 had been redeemed by all consumers enrolled in a HWP during the requested reporting period. Further, the monetary amount in question comes almost exclusively from one ESCO, and that company's average consumer redemption amount is \$709 per consumer over the requested timeframe. Considering the most common HWP offers consumers a \$1000 annual rebate, that company's \$709 per consumer average over the requested timeframe appears to be a reasonable benefit to the consumer. Moreover, six of the ESCO respondents reported their company as being unable to collect data that dealt with the value of service redeemed across their HWP customers.

In reviewing the ESCO IR responses, DPS Staff gained significant additional insight into the current status of the HWP marketplace in New York State. Notable findings pertain to HWP cost and transparency as well as third-party involvement that makes it difficult for consumers to utilize their home warranty service. One of DPS Staff's key findings pertains to the premium that consumers are charged for their HWP service. Staff found that ESCOs are charging HWP consumers 46.5% over the average utility rate. This disparity increases to 60% when looking only at natural gas customers. This high consumer cost, in conjunction with the infrequent use of HWP service by consumers, poses a considerable problem to the value-added proposition inherent in allowing ESCOs to offer HWPs to consumers. In addition to problems posed by

¹¹ Better Business Bureau, Complaints, Cinch Home Services, Inc. (February 13, 2024), available at: <https://www.bbb.org/us/fl/boca-raton/profile/home-warranty-plans/cinch-home-services-inc-0633-4004196/complaints?page=1>.

increasingly high rates, there is a significant lack of transparency in the realm of the billing processes and third-party involvement in HWP service fulfillment, placing consumers at a disadvantage. When asked about the monetary amount each consumer had redeemed through their specific HWP offering, six ESCOs that represent a large portion of the HWP consumer base revealed that their companies do not collect this data. This response highlights the ESCOs' reliance on third-party home warranty service providers, leading to ESCOs' inability to provide the data necessary to accurately answer DPS Staff or consumer questions. Additionally, when asked about the number of HWP service claim denials, five ESCOs that represent a large portion of the HWP consumer base stated their company does not collect this data. All five of the ESCOs in question utilize a third-party home warranty company to perform the service that is part of the ESCO's HWP offering. DPS Staff found that the majority of gaps in data where ESCOs were unable or unwilling to provide answers related to were ESCOs use the third-party home warranty model.

4. Challenges in the Home Warranty Product Marketplace

a. Pricing Transparency and Bundling with Commodity

As Staff continues to receive and review HWP submissions of products ESCOs wish to offer consumers, Staff has identified concerns regarding a significant lack of pricing transparency and service limitations on the coverage plans. Consumers are not able to decipher how much they are actually paying for the product when bundled with commodity and are limited in understanding how much of their service cap they can redeem in a given claim. Consistent with the January 2021 Order, ESCOs offering a HWP are exempt from the default guaranteed savings requirement outlined in the December 2019 Order, and can thus charge consumers a premium for commodity in order to include the price of the HWP. This leads to potential consumer harm resulting from ESCOs that charge a premium for commodity alone, while also charging an additional per kilowatt hour (kWh) or per therm charge to cover the price of the HWP itself. Consumers should have clarity as to what they are being charged for both the HWP and commodity independently of one another in order to make an informed decision as to whether the cost is worth the benefits they are receiving. Concerningly, some ESCOs using the third-party model implemented limitations to the amount a consumer could redeem within a given service visit. The result of this limitation is that if a serious issue were to arise, the consumer would not be able to redeem the total service value from their annual coverage limit. Staff proposed that consumers should not be prevented from utilizing the full monetary value of

their HWP in a singular service call by the ESCO, regardless of whether a third-party is involved in the service agreement.

If ESCOs are going to bundle commodity with a HWP, Staff recommends that those ESCOs offering a HWP do so in conformance with one of the price capped Commission approved products from the December 2019 Order. Staff recommends that HWPs be offered only in conjunction with a guaranteed savings product, or a fixed rate with 5% price cap product to ensure the consumer is not being overcharged for the commodity price. HWPs should not be offered in conjunction with renewable energy agreements, as those products have no price cap associated with the service. Staff believes that bundling a HWP with a renewable energy product reduces transparency of commodity pricing, and contributes to higher consumer cost burdens. ESCOs should also provide Staff with a detailed overview of the pricing structure used to add the cost of the HWP to commodity charges. This would ensure that customers are not being unnecessarily overcharged and would give DPS Staff a clearer understanding of how ESCOs come to the amount they charge consumers for the product. ESCOs should also be required to submit quarterly reports that include how many customers are enrolled with a HWP, how many certified maintenance professionals are employed by the ESCO to perform service, the monetary value of service claims made, number of service claim denials with explanation for service denial in accordance with contract terms and conditions, and number of service claims administered. These reports would allow Staff to track the cost-benefit details of the products across the ESCO market to ensure the value-added proposition is upheld.

b. Role of third parties

In the ESCO HWP marketplace, some ESCOs have opted to contract out the home warranty service obligation to third-party companies that facilitate maintenance services to consumers. As stand-alone entities, home warranty companies offer consumers a service resembling a pre-paid service contract functioning similarly to an insurance policy. According to New York State insurance law, home warranties are subject to the same regulations as any other extended service contract or warranty. New York State insurance law states that the service consists of a contract or agreement of limited duration that provides for scheduled maintenance of property where service performance functions to repair, replace, or maintain property.¹² From the perspective of DPS Staff, home warranty services relate to maintenance service being

¹² N.Y. Ins. Law § 7902(k).

performed by, or in conjunction with, ESCOs, rather than through a separate home warranty company that specializes in the provision of home warranty services.

The primary example of an ESCO offering a HWP comes from the first ESCO approved to offer a HWP by the Commission where the company established that the service portion was to be handled directly by trained maintenance professionals at the company. Additionally, where the company made a sufficient showing to establish that its HWP, which covers home HVAC systems and is bundled with commodity energy service, provides sufficient value to consumers to justify an exception to the Commission's default guaranteed savings rule.¹³ Since the approval of the first ESCO HWP, several other ESCOs have submitted home warranty agreements for Staff's review and approval. However, many of the ESCO HWPs were structured differently than that of the first ESCO HWP and several existing ESCO HWPs include a partnership with a third-party home warranty company that will provide the services to the ESCO customer. As Staff performed its duties in reviewing and approving ESCO HWPs, it became apparent the third-party HWP offering was the preferred model by ESCOs, prompting Staff to investigate these offerings more thoroughly.

It is important to note the difference between ESCOs offering a HWP on its own, and those ESCOs that offer a HWP in partnership with a third-party home warranty company. An ESCO offering a HWP on its own has dedicated personnel working at the company that will handle any service requests submitted by consumers enrolled on the company's product. This allows the ESCO to have a more direct and transparent control over the service mechanism that is inherent to the value-added nature of the product. When a consumer on an ESCO exclusive HWP calls the company to redeem service, the consumer is dealing with one party. It is the same party the consumer knows to be providing their energy service. Should an issue arise with a service claim, the consumer will be dealing directly with the ESCO to address any issues that result from that claim. More importantly, the service claim process for the consumer is singular in that they call the ESCO to redeem home warranty coverage and address any other matters related to their energy service.

An ESCO offering a HWP in partnership with a third-party is substantially less transparent by nature of the multiple entities involved in providing the home warranty service. Currently, there are 13 active ESCOs that offer their HWP in partnership with a third-party home

¹³ January 2021 Order, p. 16.

warranty company. ESCOs utilizing a third-party home warranty company rarely have certified employees on staff to perform the covered service aspects of the HWP. Even the third-party company themselves will often have to utilize a list of independent certified maintenance professionals to perform the work. The third-party model effectively adds another party that consumers must interact with when redeeming coverage or disputing a service issue. Under this third-party model, the consumer's service redemption process becomes more complicated because the consumer must first contact their ESCO, which then contacts its third-party home warranty company. Under some service agreements, the consumer is required to contact the home warranty company directly to redeem coverage, resulting in the ESCO being unaware of the consumer's service request until a later time in the service transaction. It is at this point where it is common for the consumer to have to pay a service call fee which can range from \$50-\$200 per service call. From there, the third-party home warranty company then contacts a certified maintenance professional who will then be responsible for determining whether the consumer's service claim is valid by executing a site visit. This visit must then be scheduled with the certified maintenance professional that the third-party home warranty company has contracted the service obligation out to. Should the claim be valid under the selected coverage plan, the consumer then receives the service they requested. Should the claim be deemed invalid for coverage, the consumer is often left with an unclear process for remedying their situation if they wish to dispute the matter further.

One of Staff's concerns in the HWP third-party model is a lack of transparency over service issues. In the HWPs that ESCOs have submitted for review, transparency over service issues comes in the form of the terms and conditions of service agreements, which are often a separate agreement from the ESCO supply agreement, that outline several disqualifying factors and situations that can prevent a consumer from redeeming coverage. These factors are considered and a determination is made by the selected certified maintenance professional as to whether service could be rendered. Such situations put consumers in a disadvantageous position, where the service they pay a premium for can be denied based on the decision of the third-party home warranty contractor.

For example, in 2019, the State of Arizona filed a complaint against a third-party home warranty company called CHW Group Inc. d/b/a Choice Home Warranty (CHW).¹⁴ In the complaint, the State of Arizona outlines a pattern of misleading tactics where CHW advertised that it would replace a consumer's air conditioner if a repair was not able to be performed in a cost-effective manner or if the air conditioner broke down due to normal wear and tear. As stated in the case record, "[i]n reality, CHW only covered appliance breakdowns that CHW deemed to be "normal wear and tear," and a CHW selected technician made that designation. Even then, CHW would often declare that the issue was not "normal wear and tear," and deny the claim under other exceptions, such as blanket exceptions for rust, corrosion, or lack of maintenance."

Another example of concerning situations occurring can be seen in a 2023 enforcement action from the State of Ohio where the state's attorney general filed suit against third-party home warranty company called Amazon Home Warranty, LLC.¹⁵ In its complaint, the State of Ohio contends that the company exhibited a pattern of misrepresentation of its service offerings. The lawsuit states that when consumers followed the procedures outlined in their contract to redeem their service benefit, the third-party technicians dispatched by Amazon Home Warranty, LLC took an inordinate amount of time to perform the service. After being forced to wait weeks for service, the consumers in this case were forced to seek out their own technician to perform the needed service repair. The consumers then had to seek reimbursement with the home warranty company, only then to have their service claims denied. A Consent Judgement was issued in this case that, among other things: (1) declared that defendants violated Ohio law; (2) permanently enjoined defendants from engaging in the acts that were the subject of the complaint; (3) ordered defendants to pay a civil penalty of \$100,000.00 if they fail to comply with other aspects of the Consent Judgment; (4) ordered defendants to pay \$55,000.00 in customer refunds.¹⁶

¹⁴ Civil Complaint for Injunctive and Other Relief, State of Arizona vs. CHW Group Inc. d.b.a Choice Home Warranty (2019) (No. 7872166).

¹⁵ Complaint and Request for Declaratory Judgment, Injunctive Relief, Consumer Restitution, Civil Penalties, and Other Appropriate Relief, State of Ohio vs. Amazon Home Warranty, LLC and Amazon Warranty Administrators, LLC (2023) (No. 23CV000331).

¹⁶ State of Ohio vs. Amazon Home Warranty, LLC and Amazon Warranty Administrators, LLC, No. 23CV000331 (Ohio Court of Common Pleas September 22, 2023).

Concerningly, the patterns of troubling business practices outlined in the previous court cases echo the same previously mentioned complaints from consumers against Cinch. Again, Cinch is the most frequently used third-party provider utilized by New York State ESCOs to provide their home warranty service, raising the potential for similar adverse customer impacts here. To prevent the inaction referenced above, Staff proposes, upon consumer enrollment, that the ESCO perform a site visit of covered appliances within 5 business days of contract execution to ensure coverage eligibility. Without a site visit and subsequent eligibility determination, the consumer's enrollment with the ESCO should be cancelled. Lastly, as an added enhancement to the value-added proposition for HWPs, Staff recommends a maximum three day window from the time service is requested to the time the service claim is addressed. This will ensure consumer service requests do not linger and are responded to effectively by the ESCO.

Another Staff concern pertains to the value-added proposition to consumers and the incentives between the ESCOs and third-party home warranty companies and their partners. As discussed previously, consumers already pay a high premium for enrollment in an ESCO HWP as ESCOs are charging HWP consumers 46.5% over the average utility rate. When the consumer is enrolled in a HWP under the third-party model, there is significant risk that the consumer will not receive what they pay for while both the ESCO and the third-party home warranty company make substantial revenue. In the case involving the State of Arizona and CHW, service agreement exclusions, payment caps, and CHW's policy of issuing minimal payments that did not redeem the full contractual value of the service agreement, all illustrate DPS Staff's concerns over the third-party HWP model. Because of the imbalance between control over service redemption, consumers were left with limited recourse and higher bills, while the home warranty company made substantial profits off the unfair circumstances. The troubling imbalance that could face NYS consumers would be compounded by the premium being paid for bundled commodity rates and home warranty services on top of any product related service charges that may be included in the consumer's monthly bills.

Staff also has concerns with the lack of transparency in billing and consumer data handled by the third-party companies. In reviewing the ESCO IR responses, Staff found that only one of the 21 ESCOs eligible to offer a HWP provided direct billing to consumers. While this is a common practice among ESCOs in NYS, the situation is problematic when it comes to HWPs because these agreements sometimes charge consumers additional monthly fees that are not included in the consolidated bill from the utility companies. In some instances, ESCOs

offering a HWP utilizing the third-party model were unable to provide Staff a response pertaining to how much of the rate charged to consumers is allocated to providing the home warranty service. The failure or reluctance on behalf of the ESCOs to collect the data that clearly determines if additional charges are integrated into the consumers monthly bill as it pertains to home warranty service exemplifies the disadvantage consumers face under the third-party model. Adding to Staff's concerns over data transparency, six of the 21 ESCOs partnered with a third-party home warranty company do not record internally or have access to data pertaining to consumer claim redemption. This is cause for concern because it again puts consumers at a disadvantage as they do not have a readily available means to review past or ongoing service claims. This also puts Staff at a disadvantage because they do not have the visibility into a new ESCO product marketplace, making Staff less equipped to determine the health of the marketplace, ensure consumer protections are being followed, and ensure that the value-added proposition inherent in these HWPs is being upheld by market participants.¹⁷

Because of the inability to provide a substantial value-added benefit, and the potential for nefarious business practices, Staff believes that the third-party model in which ESCOs partner with home warranty companies should be prohibited. ESCOs that offer a HWP through their own dedicated maintenance staff should be allowed to continue offering their products, provided improvements are made in the area of transparency and the value-added proposition inherent to HWPs being allowed in the NYS marketplace. Given the absence of appropriate consumer protections, the third-party home warranty model puts consumers in a position where they can be charged 46.5% more for their commodity service than consumers under utility service, while often being unable to utilize their selected product offering to perform service on essential home appliances. Such an imbalance can only be corrected by the Commission prohibiting the further proliferation of the ESCO third-party home warranty model. Taking such action will further enable market participants as well as DPS Staff to ensure the value-added proposition is upheld. Lastly, to ensure that market participants adhere to any new regulatory requirements specific to HWPs, DPS Staff recommends that market participants re-file all materials related to their HWP

¹⁷ Case 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) (February 2016 Order); Case 12-M-0476, *et al.*, Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets, Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets (issued February 25, 2014) (February 2014 Order).

offer. In doing so, DPS Staff and market participants will ensure that the future execution of HWP agreements are done so with enhanced consumer protections.

c. Consumer Rights

Considering the potential for consumer harm in the ESCO home warranty product marketplace, particularly under the third-party model, Staff maintains that any continuation of ESCO HWPs must include the following clearly defined provisions: (1) a single point of contact to address issues with HWP service; (2) a clearly established process of liability in which vague language and excessive coverage limitations are not left to the consumer to navigate; and (3) a clearly established process for consumer recourse. Regarding the second point, Staff believes that ESCOs must take full responsibility for HWP liability to reduce the logistical burden the consumer might have to navigate should an issue arise with their home warranty service.

In the context of consumer dispute resolution processes, any consumer on an ESCO product has a defined dispute resolution and consumer protection section included in the product's terms and conditions. Similarly, any HWP, third-party or otherwise, has the same consumer protections included in the product terms and conditions. However, in the realm of ESCO third-party offerings, consumers must communicate with the third-party home warranty company to claim service or dispute an issue. The consumer is then in between the third-party home warranty company and that company's certified maintenance professional where the consumer must schedule a service appointment. Once the service appointment occurs, and after the consumer pays the service call fee, the certified maintenance professional will perform the service if the consumer's claim is eligible or deny the claim as ineligible. In the situation where consumers must dispute the certified maintenance professional's determination, they must navigate a complex web of competing entities to address their undesirable outcome. Instead of forcing consumers to run this frustrating gauntlet, Staff proposes that the ESCO exclusively handle all dispute resolutions to ensure the consumer is made whole. It should not be the consumer's responsibility to navigate a burdensome process to ensure they receive quality service which they pay a premium for. By establishing ESCOs as the main point of contact to deal with consumer disputes with the home warranty service, a more user-friendly process and equitable outcome for the consumer would be achievable.

In the context of a clearly established liability, the third-party home warranty arrangements pertaining to what consumer appliances are eligible for coverage are problematic areas of the third-party model. Frequently, companies will provide long lists of factors that will

disqualify a consumer from redeeming service. While some of these exclusions are indeed reasonable, many of the exclusions of liability disqualify consumers from redeeming service from the outset of the agreement. Factors that enable third-party companies and their partners to abdicate the company's service obligations, such as requirements that the third-party and its affiliates be the sole source for consumers to obtain service on their appliances, should not be permitted. Circumstances in third-party provider arrangements that disqualify consumers from redeeming service over a failure to perform maintenance on their appliances, when the knowledge to perform such maintenance is not within the consumer's skill set, should not be permitted. Factors that disqualify a service claim from coverage are not unreasonable, but these factors must be grounded in reality such that a reasonable level of circumstantial understanding is attained by the consumer. In the context of clearly established processes for fair and reasonable consumer recourse, it should be a top priority for ESCOs offering a HWP, third-party or otherwise, to have in place a system for recourse in which it is abundantly clear to the consumer. Considering the value-added proposition that enabled the proliferation of HWPs in the retail energy marketplace, ESCOs have an obligation to ensure that fair and reasonable consumer recourse is made paramount in its partnerships with third-party home warranty companies. This is not to say that all ESCOs offering a HWP are inherently bad actors, but the potential for nefarious business practices warrants the upmost protection of consumer rights. If a consumer wishes to pay a premium for their energy while obtaining a service contract as part of that energy agreement, then there should be adequate protections in place to ensure the service arrangement is equitable.

5. Recommendations and Improvements

The following section is a summary of DPS Staff's policy recommendations to improve the ESCO HWP market. The list below offers Staff's recommendations for consumer-oriented improvements to the ESCO HWP marketplace.

- a. Updated Filing Procedures & Product Standardization
 - i. Establish HWP reset in which all ESCOs still eligible re-file contracts for approval under new requirements.
 - ii. Establish separate matter number for all HWP related filings going forward.
 - iii. Establish HWP contract requirements.
 - iv. Include in customer disclosure statement relevant language

about HWP, and references to appropriate terms and conditions.

- b. Prohibit ESCO HWPs to be offered under the third-party model. Only ESCOs with certified maintenance personnel employed directly by the ESCO itself should be allowed to offer HWPs to consumers.
- c. Establish billing process that makes clear on a line-item basis the charges a consumer receives under their HWP plan; alternatively, if the customer bill does not break out the cost of service on a line-item basis, then the HWP cost of service should not be bundled with commodity charges and be billed separately by the ESCO to the consumer.
- d. HWP should only be offered in conjunction with a guaranteed savings product or fixed price with 5% cap product.
- e. To address concerns over ESCO HWPs arbitrarily limiting the service redemption value a consumer can utilize when obtaining assistance, Staff proposes that the Commission prohibit per-claim cost limitations. Consumers should be allowed to use the full coverage amount in a given service claim.
- f. To address these concerns over ESCO HWPs not performing contractual due diligence to ensure consumers' appliances are eligible for the service coverage offered by the HWP itself, Staff proposes that, upon enrollment, the ESCO home warranty provider must perform a site visit of covered appliances within five business days of contract execution to ensure coverage eligibility. Without a site visit, customer enrollment with an ESCO should be cancelled.
- g. Provide clarity regarding any service call fees or deductibles from service included in customer agreements.
- h. Establish a guaranteed service window of three business days from consumer service call. If service is not administered in this time, the service call fee would be waived.

- i. Require the ESCO to offer a minimum \$1,000 annual service coverage, and allow the customer to carry the unused credit forward until it can be used, unless the customer ends the contract with the ESCO.
- j. ESCOs offering a HWP should be required to submit quarterly reports detailing how many customers enrolled, monetary value of service claims made, how many certified maintenance professionals are employed by the ESCO to perform service, number of service claim denials with an explanation for service denials in accordance with contract terms and conditions, number of service claims administered, and any other data deemed relevant to maintaining consumer protections in the ESCO HWP market.

6. Conclusion

As the New York retail energy market continues to evolve within the regulatory paradigm established by the Commission, the ESCO HWP marketplace offers NYS consumers both opportunity and hazard. Despite the ESCO HWP market only making up 3.24% of the overall retail energy marketplace in New York State, the potential for consumer harm is higher than any of the other Commission approved ESCO products. While there are ESCOs that currently offer a beneficial HWP, there exists an imbalance between the cost of the product offerings, excessive liability protections, and transparency surrounding the administering of the agreements themselves. DPS Staff is confident that enacting the policy recommendations established by this white paper will substantially improve the ESCO home warranty marketplace. While not all recommendations may be enacted, DPS Staff believes the most essential recommendation is to prohibit the ESCO third-party HWP model. While DPS Staff cannot tolerate HWP offerings that put consumers at risk of harm, Staff remains committed to working with all affected stakeholders to ensure HWPs can be offered fairly.

Attachment – Questions for IRs to ESCOs

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.

INTERROGATORY/DOCUMENT REQUEST

Request No.:	
Directed To:	
From:	DPS Staff
Date of Request:	November 18, 2022
Response Required by:	November 30, 2022

SUBJECT: Home Warranty Products

On January 25, 2021, the New York State Public Service Commission issued its Order Addressing Energy Service Company (ESCO) Petitions Requesting Authorization to provide additional products and services which, among other things, provided your Company the opportunity to offer a Home Warranty Product (HWP) to mass-market customers.

For the time period January 25, 2021 through October 31, 2022 provide:

1. A disclosure regarding any changes to the ESCOs HWP. ESCOs must disclose the following:
 - a. Has the HWP changed in any way since it was first approved by DPS Staff? If yes, explain the changes in detail.
 - b. Is the ESCO's HWP offered solely by the ESCO itself or is it offered in partnership with a third-party provider?
 - c. If the ESCO uses a third-party provider to perform the home warranty service, has that entity changed? If yes, this disclosure should state the date the change occurred, and the number of consumer contracts affected by the change.
 - d. If there have been changes in third party providers, include in your response the new home warranty provider's company name and the company's terms and conditions that govern the contract with the consumer.

2. For each HWP currently offered, how is the product marketed to consumers? Provide any marketing materials, sales materials, or internal company policies that govern the marketing of these agreements to consumers.
3. The rate structure of each HWP (variable or fixed rate, term of the contract, service territory, etc.). What HWP services does the ESCO bundle with the commodity service? Describe these additional services in detail.
4. The monetary amount each customer has redeemed through the home warranty offering relative to the maximum annual value that can be redeemed through the HWP. Include in this the HWP name, the customer's utility account number, the customer's enrollment date, and the monetary amount the customer has redeemed through the home warranty service.
5. Provide by utility, the average rate charged to consumers served on each HWP, in each month of the product offering period.
6. Provide by utility, the range of rates (highest and lowest) charged to customers served on each Home Warranty Product, in each month of the product offering period.
7. How much of the rate charged to consumers served on an HWP is allocated to providing the home warranty service associated with the product?
8. Provide a sample bill for each HWP the ESCO is currently permitted to offer consumers. This bill should be as current an example as possible, redacting any sensitive consumer information (name, address, etc.).
9. The number of times, if any, in which the consumer's home warranty claim was denied by either the ESCO or the third party HWP provider. Include in this the enrollment date, and the ESCO's or third party HWP provider's reasoning for denying the claim.

10. Provide any consumer complaints submitted to the company from consumers as they relate to HWPs. Provide all details related to the complaint(s) in your response.

11. Provide by utility the number of consumers served on each HWP in each month the product has been offered.