STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of Eligibility Criteria for Energy Services Companies	**CASE 15-M-0127**
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 12-M-0476**
In the Matter of Retail Access Business Rules	**CASE 98-M-1343**
In the Matter of Electronic Data Interchange	**CASE 98-M-0667**

NEW YORK RETAIL CHOICE COALITION COMMENTS ON THE PETITION OF THE JOINT UTILITIES FOR COST RECOVERY AND OTHER RELIEF RELATED TO GBL § 349-d(9) AND (10)

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The New York Retail Choice Coalition ("Coalition" or "NYRCC")[1] respectfully submits these comments to the New York Public Service Commission ("Commission") in response to the June 15, 2026 Petition of the Joint Utilities ("JU") for Cost Recovery and Other Relief Related to General Business Law ("GBL") § 349-d(9) and (10) ("Petition"). The Petition was noticed for comment in the New York State Register on July 8, 2026.

I. EXECUTIVE SUMMARY

The Joint Utilities ask the Commission to approve implementation and cost-recovery mechanisms associated with implementation of the recent amendments to GBL § 349-d before the Commission has established the generally applicable standards those mechanisms assume. That sequence should be reversed. The JU's proposal should be evaluated against Commission-established implementation standards, rather than allow the proposal itself to establish those standards.

Amendments to GBL § 349-d add monthly and annual ESCO-to-utility comparison requirements and authorize recovery from ESCOs of utility costs incurred to comply with those requirements, in a manner prescribed by the Commission. The Coalition supports the customer-information objectives reflected in those amendments. But before implementation can proceed, the Commission must resolve threshold questions concerning covered customers, the utility-side benchmark, and the verification, correction, and use of utility-generated information.

[1] The Coalition represents the interests of small-to-medium-sized energy service companies ("ESCOs"), many of which have their primary business in New York. The Coalition seeks to strengthen New York's competitive energy markets, preserve customer choice, and ensure an equal playing field for all ESCOs. The comments expressed in this filing represent the NYRCC's position as a coalition and may not represent the views of individual entities participating in the Coalition.

The Petition itself demonstrates why a Commission-led rulemaking should come first. It asks the Commission to require ESCOs to use utility-generated comparison values "without modification," to approve recovery of estimated and continuing implementation costs, and to authorize collection mechanisms that include POR deductions and reallocation of certain unpaid ESCO obligations. Those requests go beyond programming details. They assume answers to unresolved questions of statutory implementation and ESCO compliance.

The statutory comparison is meaningful only if the utility-side benchmark accurately reflects what the customer would have paid for utility service. But the utility supply rate is not a simple market price; it reflects ratemaking determinations concerning cost allocation, Merchant Function Charges, reconciliations, adjustments, taxes, and service classifications. Because those methodologies have been repeatedly disputed and not comprehensively resolved for purposes of the new GBL § 349-d benchmark, the Commission should require utilities to provide enough methodology and supporting information for ESCOs to verify the calculation, correct errors, and resolve disputes before treating utility-generated values as conclusive.

The cost-recovery proposal presents a similar need for scrutiny. The utilities' stated per-customer implementation charges range from approximately $0.86 to $10.83. Different systems may justify different costs, but that spread warrants comparative review rather than automatic pass-through. Before ESCOs are charged, the Commission should require documentation sufficient to evaluate whether the costs are prudently incurred, reasonable, necessary, and attributable to statutory compliance, and should require reconciliation of estimates to actual costs.

The Coalition therefore recommends that the Commission first establish the generally applicable standards necessary to implement GBL § 349-d through a SAPA-compliant rulemaking process. Once those standards are in place, the Commission can evaluate the Joint Utilities' implementation mechanisms and requested cost recovery against a defined regulatory framework before any utility-specific mechanism is approved or any ESCO assessment is imposed.

II. LEGISLATIVE BACKGROUND AND THE JOINT UTILITIES' PROPOSED IMPLEMENTATION FRAMEWORK

A. The Legislature Adopted New Billing-Comparison Requirements and Directed ESCOs to Bear Utility Compliance Costs

The amendments to General Business Law ("GBL") § 349-d(9), (10) and (10-a) (collectively, "GBL § 349-d Amendments") set forth new requirements for a side-by-side bill comparison of the price charged by the ESCO for commodity and delivery service, versus what the customer would have paid for commodity and delivery service from the local utility; identification of the price charged for any energy-related value-added products ("ERVAs"); [2] and an annual statement comparing the amounts paid to the ESCO serving the customer versus what the customer would have paid for commodity and delivery service from the utility ("Annual Statement"). [3] The customers subject to new subdivisions 9 and 10 are residential customers and

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[2] GBL § 349-d(9)(a) states, "The first page of each billing statement from an ESCO delivered to the customer, whether by the ESCO directly, by a utility corporation, by a municipality, or by any other method, shall include a side-by-side comparison showing both the price charged by the ESCO for commodity service and the price charged to the customer for delivery service during the prior billing period, and the price the customer would have paid had the customer taken both commodity and delivery service from their local utility corporation or municipality, as applicable. Such statement shall also include, separately and apart from the price charged by the ESCO for commodity service and the price charged to the customer for delivery service, an itemized list of prices charged by the ESCO for any energy-related value-added products provided by the ESCO during the prior billing period." GBL § 349-d(9)(b) identifies that, "[f]or the purposes of this subdivision and subdivision ten of this section, 'customer' shall mean a person receiving residential utility service from an ESCO or a small non-residential customer, as that term is defined in section sixty-six-w of the public service law, receiving utility service from an ESCO."

[3] GBL § 349-d(10) provides that "Every twelve months, an ESCO shall provide each of its customers with a statement comparing the price charged by the ESCO for commodity service, the price charged to the customer for delivery service and any other energy-related value-added products charged to the customer as a customer of the ESCO over the prior twelve-month period

small non-residential customers as defined by Public Service Law § 66-w.[4] GBL § 349-d(10-a) provides that ESCOs are responsible for "any costs incurred by a utility corporation or municipality to comply with subdivisions nine and ten" and directs that those costs be recovered "in a manner prescribed by the public service commission."[5]

The GBL § 349-d Amendments establish a customer-facing disclosure intended to let customers compare what they actually paid for ESCO service against what they would have paid for utility service, so they could evaluate the relative cost of commodity service. The side-by-side comparison is useful only if the utility-side information used in the comparison is accurate, consistent, transparent, and reflects the applicable utility supply rate and properly associated commodity-service costs.

B. The Joint Utilities Proposed Framework for Implementing the GBL § 349-d Amendments Exceeds the Statute's Implementation Mandate

The Legislature limited utility recovery of costs incurred to implement the GBL § 349-d Amendments. The Petition goes beyond implementation mechanics by seeking approval of several additional measures: requiring ESCOs to use utility-provided comparison values without modification; recovering estimated, future, and continuing implementation costs; deducting amounts from POR payments where permitted under billing service agreements; reallocating an individual ESCO's unpaid charges to other ESCOs; and recovering attorneys' fees and other

with the price such customer would have paid had such customer taken both commodity and delivery service from the local utility corporation or municipality, as applicable, for such period. Such statement shall convey such information in a manner that unambiguously conveys whether the customer is saving money or paying a premium for service from the ESCO over such period."

[4] GBL § 349-d(9)(b).

[5] GBL § 349-d(10-a), as added by L. 2026, ch. 8.

collection expenses. Each request must be justified independently as a measure authorized by, or reasonably necessary to implement, GBL § 349-d.

The Petition seeks approval of an initial assessment calculated from projected implementation costs and allocated among ESCOs based on customer counts, followed by recovery of continuing implementation and maintenance expenses. The reasonableness of the estimates, the relationship between the costs and statutory compliance, the allocation methodology, the treatment of costs serving other utility functions, and the reconciliation of estimated costs to actual expenditures all remain matters for Commission review.

More significantly, the Petition seeks a mandate dictating how each ESCO will pay its allocable share of legitimate compliance costs. For ESCOs participating in consolidated billing, the Joint Utilities propose recovery through deductions from POR payments. If an ESCO defaults, becomes insolvent, enters bankruptcy, or exits the market without paying its assessment, the Joint Utilities propose to shift that ESCO's unpaid obligation to the remaining ESCOs in the utility's service territory. The Petition also seeks recovery of attorneys' fees and other expenses incurred in pursuing unpaid assessments.

The Joint Utilities further ask the Commission to require ESCOs to use the utilities' calculated full-service supply, full-service delivery, and as-billed delivery values without modification. GBL § 349-d does not impose that requirement. The statute specifies the comparison that customers must receive, but it does not make a utility's calculation conclusive, bar an ESCO from identifying an apparent error, or relieve the utility of responsibility for the accuracy of information it supplies.

None of these additional mechanisms is expressly set forth in GBL § 349-d. The Legislature did not provide that: (1) an ESCO is responsible for another ESCO's unpaid compliance costs; (2) unpaid amounts may be redistributed among other ESCOs remaining in the market; (3) utilities may recover attorneys' fees and other debt-collection expenses as statutory compliance costs; (4) disputed assessments may be deducted automatically from POR remittances; or (5) utility-generated comparison values must be accepted by ESCOs without modification or an opportunity for verification. These are implementation choices advanced by the Joint Utilities, not requirements imposed by the Legislature.

III. COMMISSION GUIDANCE IS REQUIRED BEFORE THE JU'S IMPLEMENTATION AND COST-RECOVERY PROPOSALS CAN BE APPROVED

A. The Commission Should First Establish Generally Applicable Standards Governing Implementation Through a Commission-Led Rulemaking Process

The GBL § 349-d Amendments identify the customer disclosures that must be provided, but they do not prescribe the process for implementing those new requirements. Those implementation questions call for a State Administrative Procedure Act ("SAPA") rulemaking because they require the Commission to adopt generally applicable standards implementing statutory requirements rather than merely approving utility-specific billing-system changes. The Joint Utilities likewise recognize the Commission's role to establish the rules necessary to implement the new requirements and have appended to their Petition a Draft Notice of Proposed Rulemaking contemplating Commission consideration of their Petition.

The significance of that rulemaking authority is particularly apparent here because the Petition does not merely propose utility-specific programming or billing-system changes. It asks the Commission to establish requirements that would govern the conduct and compliance obligations of ESCOs generally, including a requirement that ESCOs use utility-generated comparison values "without modification."[6] At the same time, numerous predicate questions affecting those obligations remain unresolved. The open issues are not merely technical matters concerning how a particular utility programs its billing system. Among other things, the Commission must determine which customers are covered; what constitutes the utility comparison value; how prior-period adjustments, rebills, reconciliations, taxes, and budget billing are treated; how energy related value add services ("ERVAs") charges are reflected; what information utilities must provide to ESCOs; when a utility-generated value becomes final; how errors and disputes are handled; and what an ESCO must do when required utility information is unavailable or disputed when a statutory disclosure is due.

Under SAPA, an agency statement of general applicability that "implements or applies law" constitutes a rule, and such a rule ordinarily may not be adopted without publication of a notice of proposed rulemaking and an opportunity for public comment.[7] The Commission therefore should not resolve these questions indirectly by approving particular implementation assumptions embedded in the Joint Utilities' Petition. To the extent those assumptions would establish generally applicable requirements governing ESCO compliance with GBL § 349-d, they should first be proposed and considered through a SAPA-compliant rulemaking process. Once those standards are established, the Commission can evaluate the Joint Utilities' proposed implementation mechanisms and claimed compliance costs against a defined regulatory framework rather than allowing the utilities' proposals themselves to establish that framework.

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[6] Petition at 4.

[7] State Administrative Procedure Act §§ 102(2)(a), 202(1)(a) (defining a "rule" to include an agency statement of general applicability that implements or applies law and requiring notice of proposed rulemaking and an opportunity for public comment prior to adoption).

B. The Joint Utilities' Treatment of ERVAs Demonstrates Why a Commission-Led Rulemaking Must Precede Utility Implementation

The Petition's treatment of ERVAS provides perhaps the clearest example of an unresolved statutory question that cannot be resolved through the JU's implementation proposal. The statute requires the first page of an ESCO billing statement, whether delivered by the ESCO directly, "by a utility corporation" or through another method, to include the side-by-side comparison and, separately, "an itemized list of prices charged by the ESCO for any energy-related value-added products" provided during the billing period.[8] GBL § 349-d(10) separately requires the annual statement to address the commodity, delivery, and ERVAs charges paid by the customer and to convey unambiguously whether the customer saved money or paid a premium for ESCO service over the twelve-month period.

The Joint Utilities do not propose a mechanism for satisfying those ERVAs disclosure requirements for customers receiving utility-consolidated billing. Instead, they reason that, because existing utility billing arrangements do not permit utilities to bill customers for ERVAs and ESCOs remain responsible for ERVAs billing, utilities are "never the billing party for these items." On that basis, the Petition concludes that utilities need not reflect ERVAs charges on consolidated bills that "no Commission action is required on this issue," and declines to address the subject further.[9] Rather than identifying a purely technical question concerning how an established Commission requirement should be implemented, the Petition effectively adopts an

[8] GBL § 349-d(9)(a).

[9] Petition at 7 & n.18 (stating that ERVAs are not permitted on utility billing statements under existing arrangements and concluding that, because utilities do not bill ERVAs products, utilities need not reflect ERVAs charges on consolidated bills and "no Commission action is required on this issue").

interpretation of what GBL § 349-d requires, and based on that interpretation, concludes that no Commission action is necessary.

That conclusion does not resolve the statutory implementation question; just the opposite, it demonstrates why Commission resolution is necessary. The fact that a utility does not itself charge for an ERVAs does not answer what information must appear on an ESCO billing statement that is delivered through the utility. Indeed, the statutory text expressly contemplates ESCO billing statements delivered "by a utility corporation" and requires "[s]uch statement" to include the ERVAs itemization.[10]

These are precisely the type of generally applicable implementation questions that should be resolved through the Commission's rulemaking process rather than implicitly through approval of the JU's implementation proposal. The Commission must determine, at minimum, what products fall within the statutory category of ERVAs, how the ERVAs disclosure is to be provided for utility-consolidated-billing customers if existing utility billing arrangements prohibit ERVAs charges from appearing on the utility bill; whether additional information must be transmitted by the ESCO to the utility for presentation; whether a separate ESCO communication can satisfy the statutory first-page requirement; and what changes, if any, are necessary to the UBP, billing agreements, or electronic-data processes.

C. Commission Guidance Is Required to Identify Covered Small Non-Residential Customers

The proposed customer-count allocation mechanism depends on accurate identification of the residential and small non-residential customers subject to GBL § 349-d. That determination is generally straightforward for residential accounts, but it can be more complex for commercial

[10] GBL § 349-d(9)(a).

accounts: the statutory definition incorporates the small non-residential customer criteria under PSL § 66-w, and utility service classifications, meter configurations, account structures, and commercial contracting relationships do not always align with that statutory category. Circumstances requiring careful classification include:

- a single commercial customer responsible for numerous individual meters or utility accounts;
- colleges, universities, or housing arrangements with multiple separately metered locations;
- master commercial agreements covering numerous utility accounts;
- incidental properties held under a common customer relationship; and
- gas accounts governed by annual usage thresholds rather than service classification alone.

The Coalition urges the Commission to establish guidelines for these circumstances and a process for ESCOs and utilities to jointly verify covered-account status before it is used to calculate ESCO assessments.

At minimum, utilities should be required to:

- identify the basis on which each account is classified as covered;
- provide ESCOs with a process to challenge apparent classification errors;
- correct assessments when classifications are corrected; and
- ensure that ESCOs are not financially responsible for additional charges caused by utility misclassification, duplicate counting, or other utility-side classification errors.

These protections matter most because a classification error compounds when a single commercial relationship spans many separately metered accounts. Without a defined classification and correction process, customer-count assessments can overstate an ESCO's allocable share and shift costs based on utility account structures rather than the statutory customer categories.

IV. THE UTILITY SUPPLY RATE USED IN THE STATUTORY COMPARISON MUST BE ACCURATE IN ORDER TO BE ECONOMICALLY MEANINGFUL

The statute requires a comparison between the price of the customer's ESCO service and what the customer would have paid for utility service. That makes the accuracy of the utility supply rate a threshold concern.

A. The Accuracy and Composition of Utility Supply Rates Have Been Repeatedly Challenged

For over two decades, questions concerning the identification, allocation, and recovery of costs associated with utility commodity service have arisen repeatedly in retail-market proceedings and individual utility rate cases because the utility supply rate is not simply an external market price; it is shaped by ratemaking determinations about which costs are recovered through supply rates, delivery rates, or separate mechanisms. That history matters here because GBL § 349-d would convert the utility-side supply value into a mandatory customer-facing comparison benchmark, increasing the consequence of any unresolved cost-allocation or methodology issue.

The following history is offered to demonstrate that the benchmark now proposed for mandatory customer use rests on methodologies that have long been disputed but never comprehensively resolved in a manner universally applicable to all utilities.

1. The current framework traces to the Commission's 2004 unbundling proceeding

The Commission established the basic framework for separating competitive commodity-related costs from monopoly distribution costs in Case 00-M-0504. The 2004 Unbundling Order sought to establish cost-based competitive-service rates and recognized that the exercise involved judgments about how utility costs should be functionalized and allocated. The Commission itself described the process as an early comprehensive effort and encouraged further refinement as future utility filings developed the record.[11]

The 2004 framework established the foundation for the later utility-specific Merchant Function Charge ("MFC"), which is the ratemaking mechanism used to identify and recover certain costs associated with the utility's merchant or commodity-supply function. The MFC matters here because, if costs economically associated with utility commodity service are recovered through delivery rates or other mechanisms rather than through the utility supply rate, the utility-side comparison value may appear lower than the full cost of utility commodity service. The MFC reflects procurement-related costs and allocations of customer service, information technology, credit and collection, uncollectible expense, and working-capital costs. The accuracy of those allocations bears directly on whether the utility supply price provides an economically meaningful benchmark for comparison to ESCO service.

2. Early rate cases demonstrated that implementation of the MFC required material judgments concerning cost allocation

In NYSEG's 2005 electric rate proceeding, the Commission addressed the transition from retail-access back-out credits to a cost-based MFC.[12] The Commission concluded that the change from back-out credits to an MFC was sufficiently material to justify a phase-in, illustrating that

[11] Case 00-M-0504, *Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of Utilities in Competitive Energy Markets, and Fostering the Development of Retail Competitive Opportunities* - Unbundling Track, Statement of Policy on Unbundling and Order Directing Tariff Filings (issued Aug. 25, 2004), at 2-3.

[12] Back-out credits were credits provided to retail-access customers to reflect costs associated with functions the utility no longer performed when the customer obtained commodity supply from an ESCO.

changes in the identification and recovery of the MFC could materially affect the economics of retail access and the apparent utility commodity price.[13]

Central Hudson's 2008 electric and gas rate cases more directly illustrate the allocation problem. The Commission addressed objections to the inclusion and allocation of commodity procurement and generation-related costs in cost-of-service studies. It required Central Hudson to redo its pro forma study using an allocator appropriate for procurement labor costs and concluded that procurement costs should be allocated to customers and then unbundled to the MFC because of the utility's continuing provider-of-last-resort function.[14] The Commission also required Central Hudson to submit a delivery-only historic embedded cost-of-service study with its next rate filing to facilitate comparison with the pro forma study and improve the ability to identify and understand variations in costs over time.[15]

That proceeding is especially useful here because it shows that the location of costs within a utility cost-of-service study is not self-evident. The Commission had to determine both whether particular procurement costs belonged in the merchant function and how those costs should be allocated.

The same pattern continued in Niagara Mohawk's 2010 electric rate case. Staff characterized the MFC issues as "Contested In Part" and addressed, component by component,

[13] Case 05-E-1222, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service*, Order Adopting Recommended Decision with Modifications (issued Aug. 23, 2006), at 108-09 (noting that the cost-of-service analysis resulted in MFCs of 2.2 mills/kWh for small customers and 0.8 mills/kWh for large customers, compared with the existing back-out credits of 4 mills/kWh and 2 mills/kWh, respectively, and concluding that the magnitude of the change warranted a phase-in).

[14] Cases 08-E-0887, 08-G-0888 & 09-M-0004, *Central Hudson Gas & Electric Corporation – Electric and Gas Rates*, Order Adopting Recommended Decision with Modifications (issued June 22, 2009) at 48.

[15] *Id*. at 49.

commodity-related credit and collection costs, uncollectibles, competitive supply procurement, working capital, and reconciliation.[16] Staff and Niagara Mohawk differed on aspects of the allocation methodology and on whether certain MFC components should be trued up. The proceeding demonstrates that even where parties agreed on the general categories comprising the merchant function, the calculation depended upon contestable allocation, forecasting, and reconciliation judgments.[17]

These proceedings support a narrow but important point: there is no single market-observed "utility supply rate" divorced from ratemaking methodology. The utility-side commodity amount depends on regulatory judgments about which costs belong in the merchant function, how those costs are allocated, and how actual and forecast costs are reconciled.

3. The Reset Order left challenges to the utility supply-rate and MFC methodologies unresolved

The methodology underlying the utility supply rate was squarely challenged in the Commission's reset order proceeding in Cases 15-M-0127, 12-M-0476, and 98-M-1343. Multiple witnesses identified specific features of utility ratemaking and commodity-cost recovery that could affect whether the nominal utility supply rate reflected the full economic cost of utility commodity service.[18]

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[16] Case 10-E-0050, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Electric Service, New York Department of Public Service, Electric Rates Panel at 20-29.

[17] Case 10-E-0050, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Electric Service, Department of Public Service Staff Initial Brief (Oct. 8, 2010), at 323-30.

[18] Cases 15-M-0127 et al., *Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process* ("2019 Reset Order") (issued Dec. 12, 2019), at 32 & n.53 (summarizing ESCO challenges to the validity of monthly comparisons).

Michael P. Kagan, testifying for Direct Energy, addressed the allocation of merchant-function costs between utility supply and delivery service. Kagan testified that, to the extent the MFC is developed on an incremental rather than fully allocated cost basis, costs properly associated with default service can be shifted to delivery service. He explained that this allocation can create an "artificially low default rate" and a correspondingly "artificially high rate for delivery service."[19] Kagan further testified that a valid comparison would have to account for utility hedging and deferral activities and for the utility's ability to shift costs between delivery and default service.[20]

Ronald G. Lukas, testifying for Great Eastern Energy, separately challenged the consistency and reliability of utility commodity reporting. Lukas identified differences among utilities in the treatment of MFC and POR components, the use of estimated values, and the effect of prior-period adjustments. He also relied on discovery concerning utility and Staff review of monthly commodity-cost filings and testified that self-reconciling electric commodity mechanisms can recover costs in periods different from those in which the costs were incurred.[21] Lukas recommended greater uniformity and transparency in utility commodity-cost reporting, including separating market commodity costs from prior-period and other adjustments.[22]

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[19] Cases 15-M-0127 et al., Direct Testimony of Michael P. Kagan on behalf of Direct Energy, at 8, lines 4-14 (testifying that use of an incremental rather than fully allocated MFC shifts costs associated with default service to delivery service and creates an artificially low default rate and artificially high delivery rate).

[20] *Id.* at 6, line 19 through page 7, line 21 (criticizing comparisons that fail to account for utility hedging and deferral activities and explaining that the utility may shift costs between delivery and default service and recover prior above-market costs in later periods).

[21] Cases 15-M-0127 et al., Direct Testimony of Ronald G. Lukas on Behalf of Great Eastern Energy, at 28-32 (addressing differences in utility commodity reporting, MFC/POR treatment, prior-period adjustments, and self-reconciling utility supply mechanisms).

[22] *Id.* at 32-37 (recommending separation of market commodity costs from prior-period and non-market adjustments and further review of utility commodity-price and MFC methodologies).

Frank Lacey, testifying for RESA, addressed the extent to which procurement and administrative costs associated with utility default service could remain embedded in distribution rates. He argued that the true cost of default commodity service could not be evaluated without fully unbundling costs properly attributable to the merchant function from delivery service.[23] Charles J. Cicchetti similarly testified that regulatory cost allocation between utility supply and delivery must be considered before comparing utility and ESCO prices because supply-related utility functions can be recovered through delivery rates.[24]

These witnesses approached the issue from different perspectives, but the common point was that the utility supply rate used as a comparison benchmark is an output of cost allocation, tariff design, reconciliation, and billing mechanisms, and those mechanisms can affect whether the nominal supply rate captures all costs economically associated with utility commodity service.

In the December 2019 Order, the Commission expressly acknowledged that "some ESCOs advocate for an updated methodology to calculate each utility's Merchant Function Charge," recognized that the MFC framework and underlying policies dated to 2004, and cited briefs filed by Great Eastern Energy, Agway, and NEMA raising the issue.[25]

The Commission did not resolve the merits of those challenges. Instead, it concluded that because the MFC is litigated and adjusted in individual utility rate cases, the Reset Order proceeding was not the appropriate forum to change the methodology. The Commission stated that

[23] Cases 15-M-0127 et al., RESA Reply Brief at 24, citing Lacey testimony at Tr. 1149:18–1153:8 (citing testimony of Frank Lacey concerning utilities' recovery of procurement-related costs in both commodity and delivery rates and the resulting effect on utility-versus-ESCO comparisons).
[24] Cases 15-M-0127 et al., Direct Testimony of Charles J. Cicchetti on Behalf of the National Energy Marketers Association, at 22-23.
[25] 2019 Reset Order at 42 & n.63 (citing Great Eastern Energy Initial Brief at 27-32; Agway Reply Brief at 3; and NEMA Initial Brief at 57-58).

parties taking issue with "cost allocation and rate design issues" could participate in the utilities' individual rate cases.[26]

That procedural disposition is important. The Commission did not determine that the existing MFC methodology remained accurate, that all supply-related costs had been properly removed from delivery rates, or that the nominal utility supply rate represented a fully allocated and economically equivalent commodity benchmark. Rather, it identified individual rate cases as the forum in which those issues should be addressed.

4. The methodology issues deferred to utility rate cases remain unresolved

Following the Reset Order's direction that cost-allocation issues be addressed in individual utility rate cases, the Coalition raised the issue in Con Edison's 2019 electric and gas rate proceedings, Cases 19-E-0065 and 19-G-0066. NYRCC witness Ronald G. Lukas challenged Con Edison's continued application of the existing cost-allocation methodology and argued that greater functional detail was necessary to determine whether costs were properly allocated to the merchant function. Lukas specifically identified IT and computer software, legal, regulatory, accounting, call-center, senior-management, and cybersecurity costs as categories warranting greater scrutiny and concluded that the existing embedded cost-of-service methodology understated the merchant function.[27]

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[26] *Id.* at 42-43 (declining to modify the MFC methodology in the reset order proceeding and directing parties with cost-allocation and rate-design concerns to individual utility rate cases).

[27] Cases 19-E-0065 & 19-G-0066, Direct Testimony of Ronald G. Lukas on Behalf of the New York Retail Choice Coalition (filed May 24, 2019), at 13-16 (challenging the functional allocation of costs to the merchant function and identifying IT/software, legal, regulatory, accounting and related costs for further analysis).

Con Edison simply defended its position by standing by its continued use of the Commission's 2004 unbundling methodology.[28] Con Edison's Gas Rate Panel likewise summarized Lukas's position as a proposal to update the MFC methodology and an argument that the Company's ECOS study under-allocated costs to the MFC.[29]

Those rate proceedings, however, were resolved through a Joint Proposal and a Commission order adopting the resulting electric and gas rate plans rather than through a litigated Commission determination resolving the NYRCC's MFC methodology challenge.[30]

Similar to the 2019 ConEd Rate Case, many post-2019 individual utility rate cases did not involve a reexamination of utility supply-rate methodology that the new statutory comparison now warrants. In several proceedings, existing MFC methodologies simply were carried forward and updated using current ECOS results. In others, parties continued to litigate particular functionalization, classification, and calculation issues affecting supply-related costs. Most recently, review of Central Hudson's ECOS workpapers revealed that costs the Company represented would be functionalized to MFC Supply had inadvertently been omitted from that function altogether,[31] while the pending NYSEG/RG&E rate cases involve active disputes concerning the calculation, frequency of reset, and reconciliation of the commodity-uncollectible component of the MFC.

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[28] Case 19-E-0065, Consolidated Edison Company of New York, Inc., Demand Analysis and Cost of Service Panel Rebuttal Testimony at 20-22 (stating the Company follows the Commission's 2004 unbundling methodology).

[29] Case 19-G-0066, Consolidated Edison Company of New York, Inc., Gas Rate Panel Rebuttal Testimony, at 5.

[30] Cases 19-E-0065 & 19-G-0066, *Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan* (issued Jan. 16, 2020).

[31] Cases 24-E-0461 & 24-G-0462, Central Hudson Gas & Electric Corporation Response to Multiple Intervenors Information Request MI-03, IR-038 (Nov. 18, 2024), reproduced in Exhibit JL-4.

The relevance to the present proceeding is critical. The historical record establishes that the methodology and cost allocations underlying the utility supply rate have been directly and repeatedly challenged, that the Commission has recognized those issues, and that the Commission has not comprehensively resolved those methodological challenges in a generic proceeding applicable to the customer-facing benchmark now required by GBL § 349-d . The Commission therefore should not treat utility-generated supply values as conclusively accurate without reviewing the underlying methods for calculating supply, deliver and MFC costs.

B. The Commission's Recognized Limits on Monthly Utility-to-ESCO Price Comparisons Must Be Addressed Before GBL § 349-d Implementation

The Commission's prior treatment of utility-to-ESCO comparisons shows that monthly comparisons present distinct accuracy concerns. The Commission and DPS Staff have recognized that utility supply rates can include prior-period adjustments, reconciliations, and other timing-related components that may materially affect the price shown in a particular month. Those concerns were addressed, if at all, in the context of annual or trailing-period comparisons, where distortions may net out over time. GBL § 349-d now requires a billing-period comparison presented directly to customers, making it necessary for the Commission to address how these known timing and adjustment issues will be handled before monthly utility-generated values are used for the side-by-side comparison.

Consideration of prior-period adjustments has only been addressed in the context of annual comparisons. Specifically, the 2019 Order separately addressed ESCO concerns regarding out-of-period adjustments to utility commodity rates. While the Commission recognized that utility-approved prior-period adjustments could affect the apparent utility price in the billing period in which the adjustment was applied;[32] it nevertheless concluded that such adjustments did not provide utilities with an unfair pricing advantage "when a price comparison is made on an annual basis."[33] Staff Rates Panel specifically recognized that a prior-period adjustment "could have a significant impact on the utility charge to customers in a given month."[34]

The Commission's prior disposition rested on the use of a longer comparison period that allowed increases and decreases attributable to different periods to net against one another.[35] GBL § 349-d(9), however, requires a billing-period side-by-side comparison. A prior-period credit or surcharge may therefore materially affect the apparent utility price shown to a customer in a particular month even if the effect ultimately reverses over the course of a year.

The Commission's prior annual-comparison rationale therefore does not resolve the monthly comparison issue presented by the new statute. At minimum, the Commission must determine how prior-period adjustments, reconciliations, deferrals, and similar mechanisms will be reflected in the monthly utility-side value and whether customers will be informed when a comparison amount includes costs or credits attributable to another period.

The Commission's prior response to some of these concerns was to use longer-period averages rather than to determine that monthly utility prices were economically equivalent. In the

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[32] 2019 Reset Order at 43 & n.66 (describing ESCO concerns regarding out-of-period adjustments and citing Great Eastern Energy Initial Brief at 12, 16, and 20 and Agway Reply Brief at 3).

[33] *Id.* at 43 (concluding that out-of-period adjustments do not unfairly provide utilities a pricing advantage "when a price comparison is made on an annual basis").

[34] *See* Case 15-M-0127 et al., Petition of the New York Retail Choice Coalition and Supporting ESCOs for Rehearing, Reconsideration and Clarification (January 13, 2020) at 14, citing Hearing Tr. 3186:19-23 and Tr. 3187:20-22. The Commission subsequently addressed petitions for rehearing in *Order on Rehearing, Reconsideration, and Providing Clarification* (issued Sept. 18, 2020).

[35] Cases 15-M-0127 et al., Direct Testimony of Ronald G. Lukas on Behalf of Great Eastern Energy, at 29-32 (identifying prior-period gas adjustments and self-reconciling electric supply mechanisms and explaining that costs not recovered in the billed month may be recovered through subsequent adjustments).

Reset Order, for example, the Commission characterized the trailing 12-month utility rate as a "reasonable proxy" and "meaningful baseline." That solution does not resolve the different question presented by GBL § 349-d(9), which mandates a monthly billing-period comparison.

C. The Commission's Recent Order Regarding Renewal-Notice Requirements Demonstrates the Practical Problems Created When ESCO Compliance Depends on a Utility Benchmark That Is Historical, Periodically Updated, And Not Necessarily Contemporaneous

The concern regarding the timing and reliability of utility-generated comparison information is not hypothetical. The Commission confronted a closely related issue in implementing the amendments implementing the amendments to GBL § 349-d governing ESCO contract renewals.[36] Among other disclosures, renewal notices must identify: (i) the price currently charged by the ESCO; (ii) the price the ESCO proposes to charge upon renewal; (iii) the price charged by the customer's distribution utility; and (iv) information allowing the customer to compare prior bills with what the customer would have paid for utility service.[37] The Commission explained that these disclosures are intended to ensure that customers have sufficient information to make an informed decision whether to renew ESCO service.[38]

In implementing that requirement, DPS Staff confronted a practical question that is directly relevant here: *what utility price should an ESCO place on the renewal notice?* Staff proposed that ESCOs use the most recent trailing 12-month average utility supply rate posted by the applicable distribution utility. The Commission adopted Staff's recommendation, reasoning that the utilities

[36] Case 98-M-1343, *Order Adopting Modifications to Uniform Business Practices* (issued Nov. 13, 2025) ("2025 UBP Order").

[37] 2025 UBP Order at 17-18 (adopting renewal-notice requirements that include the current ESCO price, proposed renewal price, distribution-utility price, and information concerning comparison of prior bills with utility service).

[38] *Id.* at 18 (finding the disclosures appropriate to ensure that the customer understands how energy service is changing and can make an informed decision whether to continue with the ESCO).

already publish the trailing averages and that the methodology would provide ESCOs with a "readily available price to compare."[39]

The utility benchmark selected by the Commission therefore does not represent the utility price contemporaneous with the ESCO's renewal offer. By design, it is an average of historical utility prices, updated only periodically. That distinction is particularly significant because, similar to new GBL § 349-d(9), GBL § 349-d(7) requires the renewal notice to disclose the specified pricing information "as it exists at the time of such notice."[40]

V. UTILITY-PROVIDED COMPARISON VALUES SHOULD NOT BE GIVEN CONCLUSIVE EFFECT WITHOUT VERIFICATION, CORRECTION, AND FURTHER REVIEW

A. The Petition Assumes a Level of Accuracy That the Existing Record Does Not Establish

The Joint Utilities ask the Commission to direct ESCOs to use utility-provided values for full-service supply, full-service delivery, and as-billed delivery "without modification." That request should not be granted unless the Commission first establishes that those values are accurate, timely, consistently calculated, and appropriate for the statutory comparison.

In January 2024, for example, DPS Staff issued a Notice of Apparent Violation directing a CCA Administrator to correct the Orange & Rockland 12-month Price to Compare displayed for multiple municipalities, identifying $0.08484/kWh as the correct small-commercial value for the period ending September 2023.[41] The CCA Administrator responded that Orange & Rockland's

[39] 2025 UBP Order at 21-22 (adopting Staff's recommendation to use the 12-month trailing average already posted by distribution utilities and explaining that the approach provides ESCOs with a "readily available price to compare").
[40] GBL § 349-d(7).
[41] Matter No. 23-02183, *In the Matter of Notice of Apparent Violation Against Joule Assets, Inc.*, Department of Public Service, Notice of Apparent Violation (Jan. 9, 2024).

own filing for that period showed a different value—$0.08425/kWh—which was the value the Administrator had used, and further noted that the utility's trailing-average Price to Compare had since been updated through December 31, 2023.[42] This is an example in which Staff and the market participant identified different "correct" utility price to compare values. This example illustrates the practical problem presented here: when compliance depends on a utility-generated comparison value, the rules must establish which published value and time period control, how the recipient can verify that value against the utility's underlying information, and how discrepancies are resolved before they create compliance exposure.

ESCOs have struggled to obtain the information needed to independently reconstruct utility comparison values. In the Reset Order proceeding, when RESA requested historical, fully inclusive Con Edison price-to-compare information—including reconciliation adjustments, Merchant Function Charges, and other bypassable components—Con Edison responded that the requested historical information was "not readily available."[43] That response underscores why utility-generated values should not be presumed complete or conclusive unless ESCOs receive the methodology, source data, effective period, and supporting inputs needed to verify them.

Accordingly, the Coalition recommends that the Commission reject the Joint Utilities' proposed "without modification" requirement unless and until those safeguards are in place.

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[42] Matter No. 23-02183, Joule Assets, Inc., Response to Notice of Apparent Violation (Feb. 6, 2024) at 11.

[43] Cases 98-M-1343 et al., Con Edison Response to Retail Energy Supply Association Interrogatories – Set RESA-1, Response No. 1 (Mar. 13, 2017), at 1.

B. The Commission Must Define the Information Necessary to Reproduce and Validate the Utility-Side Calculation Before Approving Utility-Specific Data Mechanisms

A comparison intended to provide transparency to customers should itself be capable of verification. What information is necessary to accomplish that objective is an implementation question for the Commission, not a matter that should vary according to the particular EDI transaction, portal, or flat file selected by each utility.

The Petition proposes materially different data-delivery approaches. Con Edison and O&R propose new EDI charge codes for hypothetical full-service supply, hypothetical full-service delivery, and as-billed delivery, while other utilities propose secure portals or customer-history files containing different fields and retention periods.[44] Those mechanisms may appropriately differ based on existing utility systems, but the substantive information conveyed through them should be governed by uniform Commission standards. A code labeled "Hypothetical Full Service Supply," for example, does not itself disclose how that amount was calculated, what rate components it contains, which billing period and service classification were used, or whether the value incorporates a reconciliation or other adjustment. Providing only a final utility-generated price would prevent an ESCO from determining whether a discrepancy arises from usage, rate application, service classification, tax treatment, a rebill, or another input. At minimum, the utility data provided to ESCOs should identify for each customer, as applicable:

- the billing period and usage;
- the customer's service classification and any sub-classification or eligibility determination affecting the rate;
- the applicable utility supply rate and effective period;
- commodity adjustments, reconciliations, taxes, and other supply-related components;
- delivery information relevant to the statutory comparison;
- rebills, corrections, cancellations, and retroactive adjustments; and

[44] Petition at 4 and Appendix A.

- other inputs necessary to reproduce the utility-side comparison value.

The Coalition recommends that the Commission require each utility to disclose the methodology used to calculate the comparison and sufficient supporting information to permit a representative calculation to be reproduced.

C. The Commission Must Establish a Defined Correction, Dispute, and Reliance Framework

Ordinary utility billing events can alter the statutory comparison after an initial bill or data transmission — estimated and corrected meter reads, rebills, canceled bills, retroactive rate adjustments, tax corrections, missing transactions, budget billing, service-classification changes, supplier changes, and corrected historical data. The implementation rules should therefore establish a uniform process for resolving discrepancies in utility-generated comparison information. At minimum, that process should specify:

- the point at which a utility comparison value becomes available and final for compliance purposes;
- a defined period during which an ESCO may identify an apparent discrepancy and request supporting information or correction;
- timeframes for utility acknowledgment, investigation, and correction;
- prompt transmission of corrected data;
- retention of original and corrected values for audit purposes; and
- treatment of a disputed value when a statutory disclosure is due before the dispute is resolved.

An ESCO should not be required to knowingly reproduce information it has documented reason to believe is inaccurate. At the same time, the review process should not let an ESCO alter utility values unilaterally. That process's purpose is to provide an orderly means of identifying and resolving errors before those values become mandatory customer-facing representations.

Responsibility should follow control over the data. Where the utility determines the service classification, applies its tariff, calculates hypothetical utility charges, applies utility-specific taxes or adjustments, generates historical comparison data, or later revises those values, an ESCO that accurately reproduces the information supplied to it should not face enforcement exposure, restitution, customer-compensation obligations, or allegations of deceptive conduct solely because a utility-generated value is later found to have been incorrect. If the Commission limits ESCO control over the data, it should correspondingly limit ESCO responsibility for errors originating with the utility.

D. The Commission Should Address Benchmark Methodology Through a Technical Conference or Parallel Proceeding Before Treating Utility Values as Conclusive

The unresolved benchmark issues extend beyond isolated billing errors and should be addressed through a focused process before utility-generated values are treated as conclusive for GBL § 349-d purposes. Those issues include tariff design, embedded cost allocation, Merchant Function Charges, reconciliation mechanisms, procurement and hedging costs, taxes and adjustments, service-class differences, and the relationship between published utility rates and the values actually used for the statutory comparison.

The Coalition recommends that the Commission convene a technical conference, establish a parallel proceeding, or adopt a similar process to develop a complete record on the methodology underlying the utility-side benchmark. That process should examine, at minimum:

- supply-rate methodology and included/excluded components;
- treatment of reconciliations and inter-period adjustments;
- utility-specific differences;
- reproducibility and correction of customer-level calculations.

To make that process meaningful, each utility should provide its methodology, included and excluded rate components, relevant tariff provisions, representative residential and small-commercial calculations, and sufficient supporting data in advance of the technical conference or parallel proceeding. The Coalition further recommends that the Commission use that process to determine what ongoing verification mechanism is necessary once utility-generated values become mandatory regulatory inputs. Appropriate mechanisms could include DPS Staff audits, utility certification of methodologies and published values, random sampling of customer-level comparisons, reporting of identified errors and corrections, or another independent validation process.

VI. THE JOINT UTILITIES' COST-RECOVERY AND COLLECTION PROPOSALS REQUIRE VERIFICATION, LIMITS, AND PROCEDURAL SAFEGUARDS

A. The Proposed Cost-Recovery Mechanism Lacks a Verification Step and Rests on Unexplained, Widely Divergent Implementation-Cost Estimates

The Petition proposes to bill ESCOs for estimated implementation costs shortly after a Commission order approving the recovery mechanism, but it identifies no Staff review, audit, or prudence check that would occur before those initial charges are imposed. That omission is significant because Appendix A shows a striking spread in both total estimated costs and per-customer charges, without any comparative explanation of why implementations serving the same statutory functions should differ so substantially. As discussed above, the validity of any customer-count allocation also depends on the accurate identification of customers subject to GBL §§ 349-d(9) and (10).

Utility	**Total Estimated Cost**	**Per-Customer Charge**
National Fuel	$26,050	$0.86[45]
Central Hudson	$15,000	$1.09[46]
Con Edison / O&R	$625,000	$1.76[47]
National Grid	$833,690	$3.62[48]

[45] Petition, Appendix A at 22.
[46] Petition Appendix A at 20.
[47] Petition Appendix A at 18.
[48] Petition Appendix A at 26.

NYSEG / RG&E	$769,000 / $397,000	$10.83[49]

NYSEG/RG&E's stated per-customer charge is approximately 12.6 times National Fuel's, even though the implementation plans on their face address comparable core functions: a side-by-side bill comparison and delivery of data needed for the 12-month statement. Different legacy systems can justify different costs, but the magnitude of the disparity itself warrants explanation rather than automatic pass-through.

The need for review is reinforced by four out of the five utilities' repeated characterization of their estimates as preliminary or subject to change.[50] A preliminary estimate should not become a self-executing entitlement to recover whatever amount is later incurred. Nor should costs incurred before the Commission approves a recovery methodology escape review merely because implementation began in advance of an order.

The Staff review should be comparative rather than limited to reviewing each utility's estimate in isolation. Where utilities seek materially different amounts to implement the same statutory requirements, the Coalition recommends that the Commission require an explanation of the reasons for those disparities. That review should consider, among other things:

- differences in legacy billing systems;
- whether existing functionality is being reused;
- whether one utility proposes functionality beyond the statutory minimum;
- different accounting treatment of internal labor or capital costs;
- whether costs are already recovered through base rates or another mechanism;
- whether portal or EDI development serves functions unrelated to GBL § 349-d;
- the extent to which utility estimates include contingency amounts or future functionality; and
- whether lower-cost approaches used by other utilities could reasonably be adapted.

[49] Petition, Appendix A at 28

[50] See Petition Appendix A at 17 (ConEd/O&R), 19 (Central Hudson), 22 (National Fuel) and 28 (NYSEG/RG&E).

B. The Annual Reconciliation and Ongoing-Maintenance Request Has No Defined Review or Dispute Mechanism

The Petition states that “additional implementation or maintenance costs” will be “charged (or credited)” annually for most utilities beginning around or after June 17, 2027.[51] It does not describe what documentation will accompany the reconciliation, when an ESCO may object, whether a disputed amount must be paid before review, or how a dispute will be resolved.

The category of recoverable “maintenance” costs is also open-ended. Footnote 24 identifies “administrative, printing, contractor, etc.” costs only as examples, leaving no defined boundary between incremental statutory-compliance costs and ordinary utility billing-system maintenance or administrative expense.[52] National Fuel’s proposal is different still: it would recover ongoing costs monthly as a bill line item, including the recurring cost of an additional bill page.[53]

Any reconciliation authority should therefore be conditioned on advance notice, itemized supporting documentation, a defined opportunity to challenge the amount before collection or setoff, and a requirement that recurring costs be incremental and demonstrably attributable to GBL § 349-d compliance.

The reconciliation process should also run in both directions. Because the initial assessment is itself based on preliminary estimates that the utilities describe as subject to change,[54] the Coalition recommends that the Commission require a true-up of the initial charge against actual, verified implementation costs once known, with prompt refunds or bill credits to ESCOs for any amount collected in excess of actual prudently incurred costs. A preliminary estimate should not

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[51] Petition at 9.
[52] Petition at 9 n.24.
[53] Petition, Appendix A at 22.
[54] *See* Petition, Appendix A at 17 (ConEd/O&R), 19 (Central Hudson), 22 (National Fuel) and 28 (NYSEG/RG&E).

become a floor for recovery any more than it should become a ceiling, and the Coalition recommends that the Commission require credits for any over-collection as readily as it permits recovery of a shortfall. Separately, where a defaulting ESCO's unpaid share has been socialized among other ESCOs, the Coalition recommends that the Commission require that any amount the utility later recovers from that ESCO, through bankruptcy proceedings, collection efforts, or otherwise, be credited back to the ESCOs that funded the shortfall.

C. Direct Invoicing and POR Deductions Must Remain Subject to the Actual BSA Setoff Provisions and a Meaningful Right to Dispute Charges

The Petition relies on setoff language in existing billing service agreements (which may be titled as "billing practices and consolidated utility billing service and assignment agreements ("BSAs") that state compliance charges may be deducted from POR payments.[55] Commission approval of a general cost-recovery mechanism should not be treated as a determination that every utility's existing BSA authorizes automatic setoff of this new category of charge.

At minimum, the Coalition recommends that the Commission make clear that utilities must provide sufficient invoice detail to permit review; and that genuinely disputed amounts should not be automatically swept from POR proceeds before the applicable dispute process has run its course.

D. Pro Rata Reallocation of Defaulted ESCO Charges Requires Clear Triggers, Cure Rights, and Recovery Limits

The Joint Utilities ask to reallocate an individual ESCO's unpaid amounts to the remaining ESCOs in the utility's service territory on a pro rata basis.[56] The Petition offers bankruptcy and

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[55] Petition at 9 & n.25.
[56] Petition at 9-10.

going out of business only as examples of default; it does not define the trigger, specify a notice-and-cure period, require exhaustion of security or other collection remedies, or limit how much may be shifted.

The proposal also departs from ordinary cost causation. A non-defaulting ESCO would be required to pay an amount arising solely from another market participant's failure to satisfy its obligation, not from the non-defaulting ESCO's own compliance activity or customer count. The Coalition recommends that the Commission reject that socialization. If any reallocation is permitted, it should occur only after a defined final default, notice and cure, exhaustion of available security, POR setoff and other reasonable collection remedies, and should include a cap and a requirement to credit later recoveries back to the ESCOs that funded the shortfall.

E. The Joint Utilities Have Not Shown That Attorneys' Fees and Collection Costs Fall Within the Statutory Category of 'Costs of Compliance'.

As explained above, GBL § 349-d(10-a) authorizes recovery only of utility costs of compliance with the statutory billing and comparison requirements. Attorneys' fees and other collection expenses incurred because an ESCO later fails to pay a utility invoice are qualitatively different: they arise from enforcing a separate payment obligation, not from designing, programming, testing, printing, transmitting data, or otherwise complying with GBL § 349-d(9) and (10).

The Petition does not supply an independent statutory analysis supporting that broader category; it simply asks that such fees be recoverable if legal action becomes necessary.[57] This request is severable from the implementation-cost mechanism and should be rejected, or at minimum considered only upon a separate showing of contractual or other legal authority.

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[57] Petition at 9-10.

VII. CONCLUSION AND REQUESTED COMMISSION ACTION

GBL § 349-d requires a customer comparison, but implementation should not rest on an unexamined assumption that the utility supply rate is an accurate and complete benchmark, nor should the statute be used to create an open-ended utility cost-recovery mechanism without verification, procedural safeguards, and reasonable market implementation requirements.

Before approving the relief requested in the JU Petition, the Coalition urges the Commission to first establish the generally applicable standards necessary to implement the GBL § 349-d Amendments through a SAPA-compliant rulemaking process.

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Respectfully submitted,

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