STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of Eligibility Criteria for Energy Service 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 the Retail Access Business Rules	)	**Case 98-M-1343**
In the Matter of Electronic Data Interchange	)	**Case 98-M-0667**

Comments of Family Energy, Inc. on Petition of the Joint Utilities

Family Energy, Inc.[1] [hereinafter "Family Energy"] hereby submits these comments on the "Petition of the Joint Utilities for Cost Recovery and Other Relief Related to GBL § 349-d(9) and (10)," [hereinafter "JU Petition"] filed on June 15, 2026, to implement amendments to General Business Law (GBL) § 349-d made by Chapter 685 of the Laws of 2025. These comments are being filed pursuant to the July 8, 2026, New York State Register Notice of the Petition. For the reasons explained herein, Family Energy maintains that the JU Petition is premature and lacking in critical detail that is needed for stakeholder review and Commission approval. Family Energy respectfully requests that the Commission first initiate a rulemaking to provide the industry with necessary guidance on the implementation of new Sections 349-d(9), (10) and (10-a) of the GBL. The results of the rulemaking process could obviate or significantly change the processes proposed in the JU Petition for compliance with the new law. A rulemaking should address the fundamental issue of the utility price to compare benchmark that is incorporated into GBL 349-d disclosures;

[1] Family Energy, Inc. is a Business Corporation, incorporated in New York, and authorized by the Commission to serve electric and natural gas customers as an Energy Service Company.

how the benchmark should be published so that consumers and ESCOs can easily access that information; and ensure the disclosures are coordinated to enhance their usefulness and understandability for consumers.

I. JU Petition for Cost Recovery of Compliance Obligations, Provision of Data to ESCOs, and Direction to ESCOs to Use Exact Values Conveyed

The JU Petition is directed at addressing the utilities' compliance obligations under new Sections 349-d(9), (10) and (10-a) of the General Business Law. The law creates a new obligation for a side-by-side bill comparison of ESCO pricing and utility pricing (hereinafter "Bill Message") and an Annual Statement to ESCO customers regarding ESCO pricing and utility pricing (hereinafter "Annual Statement"). Utility cost recovery for compliance obligations is also addressed under the new law. Sections 349-d(9), (10) and (10-a) specifically provide that,

> 9. (a) 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.
>
> (b) For 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.
>
> 10. 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 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.
>
> 10-a. (a) ESCOs shall be responsible for any costs incurred by a utility corporation or municipality to comply with subdivisions nine and ten of this section, and any such costs incurred by a utility corporation or municipality shall be recoverable from the ESCO, in a manner prescribed by the public service commission. ESCOs shall not recover any costs from customers related to compliance with subdivisions nine and ten of this section.
>
> (b) For the purposes of this subdivision, "customer" shall mean a person receiving energy service from an ESCO.

The JU Petition is chiefly directed at obtaining authorization for cost recovery from ESCOs for the utilities' initial implementation costs as well as on-going implementation and maintenance costs which the utilities propose be assessed to ESCOs in the form of a per customer charge. The charge would be invoiced and deducted from ESCOs purchase of receivables payments. The utilities' new compliance obligations include bill modifications to make the side-by-side price comparison Bill Message available and the provision of utility rate information that can be utilized by ESCOs on the Annual Statement to customers. The utilities suggest that the changes required "are extensive to implement, spanning information technology, billing, and customer communications. Each utility has its own unique systems, billing platforms, and service configurations." (JU Petition at p.3).

Also included in the JU Petition is a description of how the utilities intend to make utility rate data available to ESCOs for use on the Annual Statement. The utilities do not propose a uniform approach. ConEd and O&R request authorization to make EDI implementation guide modifications in the form of new charge codes to the existing 810 URR-Invoice Transaction – Utility Rate Ready guide. These charge codes are described as,

1. *Hypothetical full-service supply:* The full-service supply charge that the customer would have been responsible for had it taken both commodity delivery and supply from the utility.

2. *Hypothetical full-service delivery:* The full-service delivery charge that the customer would have been responsible for had it taken both commodity delivery and supply from the utility.

3. *As-billed delivery.* The as-billed delivery cost for the utility's delivery while the customer is enrolled with the ESCO for supply. (JU Petition at p.11).

NFG, NYSEG, RGE, and the National Grid utilities propose that the utility rate data be shared with ESCOs via "existing or enhanced secure utility platforms, including secure web portals or other secure data-delivery platforms." (Id.).

The final element of the JU Petition is the request that the Commission "direct ESCOs to use the utility-provided values, without modification, in customer-facing billing statements and the required 12-month statement, whether those values are transmitted through EDI, made available through a secure utility platform, or provided through another Commission-authorized mechanism." (JU Petition at p.14). The JU Petition suggests this is necessary to ensure "ESCOs cannot modify these figures and will use accurate information as conveyed by the utilities." (JU Petition at p.12).

II. A Commission Rulemaking Should Be Commenced to Provide Industry Guidance on Implementation of New General Business Law Sections 349-d(9), (10) and (10-a)

Section 2 of Chapter 685 of the Laws of 2025 specifically contemplates the necessity of a rulemaking to implement new Sections 349-d(9), (10) and (10-a). It states that "[e]ffective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made on or before such date."

The detail missing from the JU Petition is that the "extensive" changes to information technology, billing, and customer communications for which they are seeking cost recovery approval have been initiated without first having received Commission guidance and rules on how to comply with new GBL Sections 349-d(9), (10) and (10-a). For example, rules regarding the required content (such as whether the comparison will be based on per unit figures or total bill amounts), appearance and placement of the Bill Message under Section 349-d(9) have not been established. (Notable here is that the JU Petition does not include any sample bill pages for review). The required content of the Annual Statement has not been established in a rule either.

A. A Utility Price to Compare Benchmark for GBL 349-d Disclosure Purposes Should Be Established

More fundamentally, before the contents of a Bill Message or Annual Statement can be assembled, a common definition of the utility "price to compare" benchmark for these purposes must be established. (Beside reference to the undefined term "hypothetical full service supply," the JU Petition is also lacking in this detail). Both the Bill Message and Annual Statement are intended to enhance price transparency to consumers through the provision of comparative ESCO and utility rate information. A rulemaking to establish the utility "price to compare" benchmark is needed to effectively accomplish this task.

Noteworthy in this regard are the Petitions for Rehearing that are currently pending before the Commission regarding its Order Adopting Modifications to the Uniform Business Practices[2] that implemented GBL Sections §§349-d(6) and (7) pertaining to what constitutes a material change to an ESCO contract and the required disclosures that must be made within ESCO contract

[2] Case 98-M-1343, Order Adopting Modifications to the Uniform Business Practices, issued November 13, 2025.

Renewal Notices, respectively. Specifically with respect to the content of ESCO Renewal Notices, the Commission decided that Section 349-d(7) requires such notices to include:

> (1) the price charged for energy services; (2) the price the Energy Service Company proposes to charge upon renewal; (3) the price that is charged by the customer's distribution utility; and (4) information notifying the customer how they may compare past bills with what they would have been charged had they received energy services from the respective distribution utility, including the internet address of any bill calculator offered by such customer's distribution utility's website, as discussed in the body of this Order.[3]

For purposes of disclosing utility pricing on the Renewal Notice, the Commission directed that ESCOs use the 12-month trailing average posted by the utilities.[4] The Commission also required that ESCOs submit sample customer Renewal Notices as part of the retail access application requirements.[5]

RESA's Petition for Rehearing noted that a revised standardized template Renewal Notice that complied with the Order requirements had not been made available for ESCO reference or use, including historical utility bill information and bill calculator information.[6] RESA therefore requested that an updated template Renewal Notice be issued that "include(s) instructions for customers to determine how to compare past ESCO bills with the price the distribution utility would have charged for the same period of time, as required by the GBL."[7] Regarding the utility price benchmark to be used on the Renewal Notice, RESA "request[ed] the Commission reconsider its directive for ESCOs to use the utility's 12-month default average price and instead

[3] Id. at Ordering Clause 7.
[4] Id. at p. 21-22.
[5] Id. at Ordering Clause 6.
[6] Case 98-M-1343, Petition for Rehearing, Request for Clarification, and Motion for Stay of the November 13, 2025 Order Adopting Modifications to the Uniform Business Practices by the Retail Energy Supply Association, filed December 15, 2025, at p.6.
[7] RESA Petition at p.8.

require the use of the utility's current PTC on contract renewal notices" reasoning that for a customer "considering the renewal of a contract for future energy consumption, it makes more sense to provide the customer with the utility's current PTC, rather than an average of last year's prices."[8]

The Bill Message and Annual Statement required by GBL Sections 349-d(9) and (10) and the Renewal Notice required by GBL Section 349-d(7) are interrelated inasmuch as they all involve the comparison of ESCO and utility rate information, albeit in different timeframes. The Bill Message is a comparison of the prior billing period ESCO and utility rates. The Annual Statement is a historical twelve-month comparison of the rates paid while on ESCO service with the full service utility rate. The Renewal Notice should permit a comparison of the ESCO's renewal offer rate with the utility rate that will be applicable at the start of the renewal period. A thoughtful, coordinated approach to these GBL 349-d disclosures is necessary to promote price transparency to consumers and informed decisions.

Central to that effort should be identifying what constitutes the utility price to compare benchmark for purposes of the GBL 349-d disclosures. At a minimum, a review of the disclosures should be made with the objectives of ensuring the availability of useful, timely and accurate information to consumers and also determining how ESCOs should obtain access to the utility rate information that is needed for completion of the disclosures in an efficient, reliable and cost-effective manner. The utility price to compare benchmark for full utility commodity and delivery service should adequately capture all of the commodity and delivery charges that full service

[8] RESA Petition at p.9-10.

customers pay and be inclusive of the utility charges that ESCO customers avoid.[9] The full service utility commodity rate should be expressed separately from the full service delivery rate, and the utility delivery rate for ESCO customers should be made available as well. The guidance provided to ESCOs for Determining Total Utility Supply Cost for Customer Savings Comparison that is posted on the Commission website would be a starting point for the commodity rate benchmark.[10] Utility rate information should be publicly and prominently posted for purposes of the GBL 349-d disclosures, and it should be easily searchable and verifiable by the customer through reference to the utility website without having to comb through a complicated utility tariff.

B. ESCO Compliance Obligations Should Be Addressed in the Rulemaking

Compliance issues that are specific to ESCOs should also be addressed in the rulemaking. For example, when should the Annual Statement be issued – 12 months after the effective date of the customer's enrollment or with reference to a static calendar date? The timing of the Annual Statement must also be coordinated to reflect the timing at which data becomes available, i.e., any lag in the availability of utility rate data must be accommodated and also permit time for the ESCO to generate the notice once the utility rate data is received. The length of time that the historical

---

[9] Charges that full service utility customers pay that are bypassable by ESCO customers should also be included in the full service utility rate for comparison, for example, billing and payment process charges.

[10] Resources for Determining Total Utility Supply Cost for Customer Savings Comparison, dated February 12, 2021, available at: https://dps.ny.gov/system/files/documents/2022/12/resources-for-determining-total-utility-supply-cost-for-customer-savings-comparison-2.12.21.pdf. The guidance document includes the following "generic formulas" for calculating the comparison utility supply charge:

Gas Formula: Gas Supply Cost +/- Supply Cost Adjustments + Merchant Function Charge (MFC) + Revenue Tax = Total Utility Supply Charge (before Local Tax)

Electric Formula: Electric Supply Cost +/- Supply Cost Adjustments + MFC + Clean Energy Standard Supply surcharge, if applicable + Revenue Tax = Total Utility Supply Charge (before Local Tax) utility rate data will be available to ESCOs should also be established (this is important, for example, in the case of customer cancel/rebills as discussed further in Section III).

III. The JU Petition is Premature

A. The JU Petition Proposals for Data Sharing are Problematic

The aforementioned issues should be addressed in a rulemaking prior to consideration of the JU Petition. Notwithstanding the premature status of the JU Petition, the utilities proposals in the JU Petition for sharing utility rate data with ESCOs for the Annual Statement are problematic for other reasons. The utilities approach to sharing utility rate data in the JU Petition is to share the twelve-month historical data specific to each individual customer, but the methods that they propose to share the data are different.

ConEd and O&R propose changes to the EDI 810 transaction to add new charge codes. To be clear, this would not be a one-sided obligation for ConEd and O&R. ESCOs will also have to redevelop the 810 transaction in order to use the information and will require time to do so. The 810 transaction is a critical transaction to ensure that billing is being done correctly. ConEd recently replaced its billing system, which had been a source of longstanding ESCO complaints. Given the nascent state of ConEd's billing system, it is unclear if this proposed change will cause instability and possibly create new issues.

NFG, NYSEG, RGE, and the National Grid utilities propose that the utility rate data be shared with ESCOs through existing or enhanced secure utility platforms. Sharing the utility rate data for the Annual Statement in this manner presents challenges. In order to retrieve the data from the platform it will require manual intervention from the ESCO and then the ESCO will need to manually use that data to populate each customer's Annual Statement. It will be a time- and resource-intensive process. There are also questions about when and how the data will be available on the utility platforms. Customer bill cycles don't start and end precisely at the beginning and end of the month. ESCOs will need the data on a bill cycle to bill cycle basis. It is also unclear in what format the data will be shared. If, for example, it is in Microsoft Excel, the data could be truncated. There are other practical concerns with this data sharing method. This includes the potential unavailability of the utility platform when the ESCO needs access for Annual Statement generation purposes.

Finally, with respect to all of the utilities proposed methods of sharing data, it is unclear how cancel/rebill scenarios are supposed to be handled. Cancel/rebills don't happen immediately. They can occur months later. In the case of cancel/rebills, it is unclear if and when the utilities will make corrected data available for ESCO use on a revised Annual Statement.

In view of the foregoing concerns, the better course would be to utilize general utility price to compare benchmark information that is publicly and prominently posted and available on the utility websites for purposes of the Annual Statement, rather than specific, individual customer data. This ensures that the data is available to ESCOs when needed and in a clear, standardized fashion. While the JU Petition was concerned that it was necessary to direct that ESCOs use the "utility-provided values, without modification" in Annual Statements, from an ESCO perspective, there is concern that ESCOs will receive data from the utility platforms or EDI transactions for which the ESCOs will not know the basis of the calculations and which ESCOs will not be able to verify or audit. Using publicly posted utility rate information for purposes of the Annual Statement will address both sides of that concern.

B. The JU Petition Proposal for Cost Recovery Should Be Suspended Until Compliance Obligations are Established in a Rulemaking

The cost recovery proposal in the JU Petition is based on assumptions of billing and IT changes without the benefit of a Commission rulemaking that finalizes compliance obligations under the new law. The consideration of the cost recovery proposal should be suspended until a rulemaking is concluded. Moreover, relying on public posting of utility price to compare benchmark information as suggested above for GBL 349-d disclosures would also minimize implementation costs because it would eliminate the need for the proposed EDI changes or web platform changes.

IV. Conclusion

For the foregoing reasons, Family Energy submits that the JU Petition is premature prior to a rulemaking that implements the compliance obligations of new GBL Sections 349-d(9), (10) and (10-a). A rulemaking should address the fundamental issue of the utility price to compare benchmark that is incorporated into GBL 349-d disclosures; how the benchmark should be published so that consumers and ESCOs can easily access that information; and ensure that the disclosures are coordinated to enhance their usefulness and understandability for consumers.

Respectfully submitted,

s/Stacey Rantala

Stacey Rantala
Associate Director, Government & Regulatory Affairs
Family Energy, Inc.
P.O. Box 967
Buffalo, NY 14240-0967
PH: 646-720-1038
srantala@sfeenergy.com

Dated: September 1, 2026.