

September 26, 2025

Hon. Michelle Phillips
Secretary to the Commission
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

RE: Case 15-M-0127 – In the Matter of Eligibility Criteria for Energy Service Companies.
Joint Utilities’ Comment Letter Regarding NOCO Electric, LLC and NOCO Natural Gas, LLC’s
Smart Monitoring Product Waiver Request for Offering Smart Monitoring Product to Mass
Market Customers

Dear Secretary Phillips:

The Joint Utilities¹ submit this letter in response to the notice in the July 30, 2025 New York State Register regarding the petition filed with the Public Service Commission (“Commission”) on May 30, 2025 by NOCO Electric, LLC and NOCO Natural Gas, LLC (collectively, “NOCO”).² In its petition, NOCO seeks a declaratory judgment that its smart monitoring product (“SMT Product”) qualifies as an energy-related value-added product or service under the Commission’s Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process, issued on December 12, 2019 in Case 15-M-0127 (the “Second Reset Order”) or, in the alternative, for a waiver to the Second Reset Order so that NOCO can sell the SMT Product to mass-market customers. NOCO further proposes to charge for this product by bundling its charges into its rates for electric and gas supply, thereby having customers pay for this non-commodity products through their utility bills.

The Joint Utilities recommend that charges for energy service companies’ (“ESCOs”) non-commodity products should not be part of the utility bills but should instead be billed for separately by ESCOs, as allowed under existing Business Service Agreements (“BSAs”) and the Commission’s Uniform Business Practices (“UBPs”). First, utility bills are designed to clearly

¹ The Joint Utilities are Central Hudson Gas & Electric Corporation (“Central Hudson”), Consolidated Edison Company of New York, Inc. (“Con Edison”), National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation (“NYSEG”), Niagara Mohawk Power Corporation d/b/a National Grid, KeySpan Gas East Corporation d/b/a National Grid, and The Brooklyn Union Gas Company d/b/a National Grid NY (“National Grid”), Orange and Rockland Utilities, Inc. (“O&R”), and Rochester Gas and Electric Corporation (“RG&E”) (collectively “the JU” or “utilities”).

² Case 15-M-0127, In the Matter of Eligibility Criteria for Energy Service Companies, Petition for Declaratory Ruling (filed May 30, 2025) (the “Petition” or “NOCO’s petition”). NOCO’s petition was noticed in the July 30, 2025 NYS Register, I.D. No. PSC-30-25-00001-P.

communicate supply and delivery charges to customers. Introducing non-commodity ESCO charges into the utility bill poses risks to customer transparency, utility operations, and the customer experience. Second, including non-commodity ESCO products on consolidated utility bills does not align with the existing UBPs. It also violates existing BSAs between ESCOs and distribution utilities, including provisions governing the Purchase of Receivables (“POR”). Third, requiring utilities to bill for non-commodity products would require clarification of rules related to partial payments, priority of payments, and termination under the Home Energy Fair Practice Act (“HEFPA”). Such a requirement would also compel utilities to adopt new billing practices, assume additional administrative burdens, manage increased collections risks, and address potential customer confusion regarding their bills.

The Joint Utilities do not take a position on whether NOCO’s SMT Product qualifies as an energy-related value-added product or service under the Second Reset Order or whether the Commission should grant NOCO a waiver of that order. But, even if the Commission sees merit in the SMT Product, the Joint Utilities respectfully urge the Commission to deny the petition to the extent it proposes to permit NOCO to include charges for this product on consolidated bills issued by utilities.

I. ESCOs’ Non-Commodity Charges Are Not Part of Utility Bills Under the UBPs and BSAs, and POR Rules

A. Uniform Business Practices (“UBPs”)

The UBPs outline business requirements for ESCOs, including procedures for consolidated billing. Under the UBPs, “[a] distribution utility is not required to calculate or bill for ESCO services that are not directly related to the commodity it delivers.”³ Likewise, a utility using consolidated billing “is not obligated to calculate or bill separately for other goods and services that an ESCO may provide.”⁴ Therefore, under the UBPs, utilities are not required to provide consolidated billing for ESCO non-commodity products.

B. Billing Service Agreements (“BSAs”)

BSAs are agreements between utilities and ESCOs that govern the practices and procedures related to consolidated bills, including what charges appear on a consolidated bill. Under current BSAs, consolidated bills may have ESCOs’ supply charges but not charges for other products, such as non-commodity products.

Therefore, allowing ESCOs to include non-commodity products in a utility bill, such as by allowing NOCO to bundle the charges for non-commodity products with its energy supply charges, would violate billing services agreements between utilities and ESCOs. Accordingly,

³ *Uniform Business Practices*, p. 50 fn 1.

⁴ *Id.*, p. 49.

the Commission should not allow NOCO to bundle these charges into commodity supply charges that appear on consolidated bills.

BSAs also do not allow for additional fees, such as early termination fees. Accordingly, should NOCO seek early termination fees for its SMT Product, those fees should not appear on consolidated utility bills.

ESCOs can avoid these concerns by billing separately for any non-commodity goods or services, like the SMT Product.

C. Purchase of Receivables (“POR”) Rules Do Not Allow Utilities to Buy Receivables for Non-Commodity Products

Utilities often purchase accounts receivable from ESCOs for energy supplied to ESCO customers. The current POR process does not include non-commodity products within the definition of what receivables utilities can purchase. NOCO’s proposal to bundle the charges of its SMT Product with its supply charges raises the prospect that utilities that purchase NOCO’s receivables for energy supply charges would also assume responsibility for collecting these non-commodity charges. As noted below, this situation would raise the further prospect that customers would face the possibility of termination of their utility service if they fail to pay these non-commodity charges. Should the Commission grant the requested waiver, the utilities strongly urge the Commission to direct that NOCO and the utilities disaggregate charges of the SMT Product from supply charges, thus making any charges for non-commodity goods or services separate and transparent for customers without having to make any fundamental changes to the POR system. The Commission has previously acknowledged that “overhauling the POR system may not be worth its costs if the underlying concern is largely mitigated via other reforms.”⁵ That remains true here, and the Commission can avoid such an overhaul here by preventing the bundling of charges for the SMT Product into commodity supply costs.

Overall, under POR rules, BSAs, and the UBPs, ESCOs may bill their customers directly either for non-commodity charges or for both commodity supply and additional non-commodity products. Because ESCOs can bill for this product without utility involvement, consolidated billing through the utility is not necessary, and utilities should not have to bear the costs and risks of billing for non-commodity goods and services.

II. Challenges and Additional Customer Expenses if ESCO Non-Commodity Charges Are Added to Utility Bills

A. Customer Payments Collection and Priority Challenges

If the Commission were to allow NOCO to bundle the charges for its non-commodity SMT Product into customers’ energy supply charges on consolidated bills, then the utilities

⁵ 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* (Dec. 12, 2019), p. 102.

would be responsible for collecting these charges from customers. The Commission would then need to determine how to prioritize partial payments from customers not only between ESCO supply charges and utility delivery charges, as under current regulations, but also as to the newly embedded charges for the extra SMT Product. If the Commission allows these charges on consolidated utility bills, then they should be given lower payment priority than all supply and delivery charges and any taxes, fees, or any other charges directly related to supply or delivery because they are not necessary to utility service. Overall, however, the Joint Utilities recommend that such extra non-commodity products not appear directly or indirectly on consolidated bills, and that NOCO be required to separately, directly bill customers for its non-commodity products and services.

B. Home Energy Fair Practice Act (“HEFPA”) Termination Challenges

HEFPA does not allow for termination of customers for failure to pay for non-commodity products, like the SMT Product. If the Commission rules on NOCO’s petition in such a way that utilities become required to collect customer payments for non-commodity products, then the Commission would also need to clarify whether utilities could terminate service to customers for non-payment for these charges under HEFPA. If utilities could not turn off customers for non-payment of these charges, then utilities would need to reprogram their billing systems so that customers would be subject to collection actions or service termination only for non-payment of charges related to supply and delivery service. These HEFPA-related termination and billing complexities are another reason that an ESCO’s non-commodity products should not be included on consolidated utility bills.

C. Increased Utility Work at Customers’ Expense

The JU also oppose expanding the use of utility bills to include ESCO non-commodity charges, like those proposed by NOCO, because doing so would require substantial modifications to their billing systems. Implementing changes to expand the utility bill would require utilities to incur additional operational and financial challenges, including: (1) reprogramming customer billing systems; (2) modifying/updating Electronic Data Interchange (EDI) systems; and (3) reformatting customer bills. Each of these process changes would involve development, testing, and implementation. The full scope of these costs is currently unknown. Importantly, if the Commission requires utility to implement these changes, utility customers would ultimately bear these costs.

Likewise, expanding the use of utility bills to include ESCO non-commodity charges would require utilities to employ and train staff to manage the customer inquiries and complaints likely to follow if the Commission requires utilities to bill for non-commodity charges. Moreover, utilities would have to undertake additional work explaining the resulting rate impacts in rate cases and to the public. Again, all such additional work would come at ratepayer expense.

CONCLUSION

However, the Commission rules on NOCO’s petition, the Joint Utilities recommend that only commodity-related charges continue to appear on utility bills. Utilities should not be

required to make major system changes to accommodate non-commodity ESCO charges on utility bills. As the UBPs and BSA already provide, ESCOs should bill separately for any additional non-commodity products and service they offer. The utilities are available for further discussion on this matter.

Respectfully submitted on behalf of
the Joint Utilities,

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If you have any questions, please do not hesitate to contact me.

Regards,

A handwritten signature in cursive script that reads "Amy A. Davis". The signature is written in black ink and is positioned to the right of the typed name.

Amy A. Davis