

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on February 29, 2000

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman  
Thomas J. Dunleavy  
James D. Bennett  
Leonard A. Weiss

CASE 99-M-0631 - In the Matter of Customer Billing Arrangements  
Alternative Billing Arrangements

ORDER PROVIDING FOR CUSTOMER CHOICE OF BILLING ENTITY

(Issued and Effective March 22, 2000)

BY THE COMMISSION:

INTRODUCTION

Several New York utilities bill for both distribution service and energy supplied by energy service companies (ESCOs),<sup>1/</sup> affording customers the advantages of not having to pay two separate bills. These arrangements, however, are not available to customers statewide, nor is there consistency among those that are available. By this order, we direct the major gas and electric utilities<sup>2/</sup> to file tariff amendments as necessary to accommodate the wishes of retail access customers who prefer to receive combined, single bills from either their utility company or from their ESCO.

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<sup>1/</sup> An ESCO is typically considered to be an entity that can perform electric energy and customer service functions in a competitive environment, including the provisions of electric energy and assistance in the efficiency of its use. A marketer provides the same functions with respect to natural gas. We use the term ESCO to refer to both. ESCOs may choose to offer any or all of the billing arrangements authorized here.

<sup>2/</sup> The major gas and electric utilities that are subject to this order are listed in Attachment A.

In a Staff Report on Alternative Billing Arrangements, (Staff Report) dated May 19, 1999, Staff discussed the various alternative billing arrangements and concluded that a single bill for both the commodity and its distribution was desirable. In that report, Staff proposed that we require that utilities allow ESCOs to bill for both elements of electric and gas service. By Notice issued June 7, 1999, we requested comments on the Staff Report and also requested comments on the propriety of extending the "Single Retailer Model" (a form of which is employed in RG&E's service territory for its electric retail access program) to all service territories. Comments were to be submitted by July 26, 1999, and reply comments were to be submitted by August 10, 1999. Subsequently, comments and replies were provided by the entities identified in Attachment B.<sup>1/</sup>

#### DISCUSSION

##### Constitutional and Statutory Issues

The structure of Staff's proposal -- that we require utilities to offer "ESCO Single Billing" -- may have caused Niagara Mohawk to comment extensively on what it saw as various constitutional and statutory impediments to such action. Niagara Mohawk's comments appear to rest in part on a mistaken view that Staff proposed to compel adoption of the "Single Retailer Model" and therefore would displace utilities as retail service providers, but Niagara Mohawk also raised objections to Staff's proposal for an "ESCO Single Bill" arrangement as well.

Under Staff's proposed variant of an "ESCO Single Bill," utilities would remain the retail delivery service

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<sup>1/</sup> The entities submitting comments and replies are identified in Attachment B. The Attachment also provides the acronyms used in this order for each of the listed entities. Attachment C summarizes the comments, which are resolved in the text of this order. The New York Energy Service Providers Association, by petition dated May 11, 1999, asked that we require that ESCOs be allowed to offer single consolidated bills; the issues raised by the petition are addressed here.

provider, but ESCOs would have the option to bill for the utilities' services. Because we are only requiring that utilities allow customers a choice of their billing entity, the remaining legal issues raised by Niagara Mohawk are almost completely beside the point; we are not precluding customers from choosing service from a utility, but are giving customers a choice between either their utility or ESCOs that might offer billing services. Contrary to Niagara Mohawk's claims, we are not restricting competition or denying it a chance to market its billing services. We are responding to customers' expressed preferences for a single bill and encouraging development of the energy services market by giving customers other options in addition to the choice of energy supplier.

In any event, the constitutional issues, such as equal protection and substantive due process, pose no bar to our action. There is no constitutional requirement that customers receive their bills directly from a utility. Allowing customers to choose their billing provider is a reasonable means to the ends of meeting customer needs and promoting the long-term interest by encouraging competitive energy markets, in which the State has a compelling interest.

That analysis also answers the claim that our action violates utilities' free speech rights. The free speech argument is not dispositive because even if billing is "speech" (which is doubtful), utilities have no right to submit bills directly to customers that have chosen to receive their bills for utility services through an intermediary. If customers want to receive information from a utility, they may choose the utility as their billing provider. Further, our action does not preclude utilities from engaging in protected speech acts by communicating in other ways with customers.

There is also no statutory bar to enabling customers to choose their billing entity. Our power to set "just and reasonable" rates includes setting delivery charges that do not include a cost for non-existent utility billing, and allows us to preclude utilities from subjecting customers to "any undue or

unreasonable prejudice" in the form of a denial of customers' choices of billing providers. Niagara Mohawk's claimed duty to sell gas and electricity to all overstates its statutory responsibilities. Not only do customers now have the option of going to an ESCO for gas and electric supply, but they also have the options of generating their own electricity and switching to other fuels. They should also have the option of deciding if they want to be billed for the utilities' delivery services through intermediaries of their choice.

Such alternative billing would not prevent the utilities from being fairly compensated for their services. Also, there is no violation of utility franchise agreements because, among other things, utilities will continue to carry electricity and gas for customers. More fundamentally, customers will be given the freedom to contract with the providers of their choice for billing services. Competition for billing services will increase customer options and may drive down costs. Providing for that competition is thus consistent with our duty of "long range planning for the public benefit."<sup>1/</sup> Finally, customers will retain protections now available to them on the utility portion of the bill pursuant to New York State's Home Energy Fair Practices Act and our non-residential regulations, 16 NYCRR Part 13.

#### The Need For A Single Bill

Although some utilities currently offer combined, single bills, those approaches are not universally or consistently offered throughout the State. As noted, RG&E offers a form of a single bill arrangement under its "Single Retailer Model" (where the ESCOs purchase delivery services from the utility and then provide most or all of end use customers' services directly, taking over many or all of the utility's retail functions), but the parties raise issues that need to be

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<sup>1/</sup> Energy Ass'n v. Public Serv. Commn. 169 Misc. 2d 924, 929 (1997).

addressed further before it is considered for expansion to other utilities.<sup>1/</sup> Con Edison offers another one bill arrangement under "Billing Agency" (where the ESCOs, as the customers' agents, receive customers' utility billing data and combine that data with the ESCOs' charges before submitting the bills to customers), but that specific approach provides no discount in Con Edison's charges even though Con Edison no longer provides certain services assumed by the ESCOs, which therefore may result in customers paying twice for some billing and customer care services (or in ESCOs having to absorb the extra billing costs).

A single bill is important to ensure the development of a robust competition in the utility industry. The comments from the ESCOs made clear that their customers prefer a single bill. Staff's evaluation of the Con Edison Retail Choice program (Phase I) found that most customers were dissatisfied with receiving two bills. About 90 percent of the survey respondents identified themselves as receiving two bills, and most of them were critical of the two bill system. About 80 percent indicated that they "disliked" the system, and another 12 percent found the two-bill system "less convenient" but worth it. Staff's evaluation of the Farm and Food Processor Pilot Program<sup>2/</sup> found similar results. About 62 percent of the customers surveyed in this study preferred combined bills, while only 12 percent preferred separate bills. In Staff's interviews with ESCOs participating in both programs, ESCOs often expressed interest in providing combined bills for both ESCO and utility charges.

Accordingly, we will require, by this order, that utilities file tariff amendments to allow retail access customers

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<sup>1/</sup> NFG offers a billing arrangement that is similar in some respects to what is available in RG&E's territory for electric customers, but NFG continues to have relationships with its retail access customers; as such, its arrangement does not meet our definition of a "Single Retailer Model."

<sup>2/</sup> Case 96-E-0948, Petition of Dairylea Cooperative Inc. to establish an Open-Access Pilot Program for Farm and Food Processor Electricity Customers, Order Establishing Retail Access Pilot Programs, (issued June 23, 1997).

to choose the entity that they would like to do their billing. There are several implementation issues that flow from that determination.<sup>1/</sup>

#### Competitive Billing Functions

The entity (either utility or ESCO) that issues the combined bill<sup>2/</sup> shall be responsible for the following billing functions and their associated customer care elements (other billing functions remain unaffected unless mutual agreements are reached on other options, and utilities would continue to be responsible for adherence to all HEFPA-related responsibilities):

- printing and mailing consolidated bills;
- printing standard bill messages and forwarding standard bill inserts;
- receiving and processing payments;
- apportioning and remitting the non-billing entity's portion of accounts collected; and
- providing payment details by account to the non-billing entity.

Each of these responsibilities was the subject of discussion in the proceeding. For example, Staff had proposed that ESCOs be required to print standard utility bill messages of up to 200 characters. That size message, however, is considered insufficient by the utilities to convey much of the required

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<sup>1/</sup> The Brooklyn Union Companies propose that both the utilities and the ESCOs be required to advise customers of all available billing options. While this would be an appropriate task for the utilities and Staff, and for any ESCO that wishes to do so, we do not consider it appropriate to impose such a requirement on ESCOs, especially those that do not intend to offer all the options.

<sup>2/</sup> To allow utilities to render single combined bills, we waive those regulations that prevent utilities from printing non-utility information on their bills [16 NYCRR 273.1(o), 13.11(a)(1) and 140.1(o)]. Those regulations are waived as of the effective date of this order to allow utilities to implement programs, if they so desire, before the date required by this order.

information. Therefore, we will provide for a 400 character minimum allowance, but we also now will apply this same standard to ESCO bill messages that the utility would include if it does the combined billing. If either entity finds this limitation, or the content of such notices, unsatisfactory or inappropriate, they should inform us. This and other implementation matters should be addressed in more detail in the utilities' tariffs, which would be available for review and comment by the parties.<sup>1/</sup>

#### Apportioning Customer Payments

Staff's initial proposal specified that payments to an ESCO under the "ESCO Single Bill" arrangement would be allocated first to the utility portion of combined bills. The ESCO would be allocated funds only after all utility charges were satisfied. This was proposed to minimize the chance that customers' services would be disconnected by the utility for non-payment. The ESCOs object to this proposal, saying that it is not equitable.

We will require, for now, that customer payments under any arrangement where one entity bills for both aspects of utility service be allocated first to the utility portion of combined bills. This is consistent with the Uniform Business Practices (UBP)<sup>2/</sup> requirements for "Billing Agency" arrangements, and it ensures that non-retail access customers do not incur costs caused by retail access customers' default. The equity concerns raised by the ESCOs, however, can be revisited when the UBP requirements are updated, which may occur later this year upon completion of a national effort underway to reach industry

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<sup>1/</sup> Bill inserts required by statute, regulation or Commission Order must also be included in the billing entity's mailings, with the costs reflected in the backout credit and billing charges. The non-billing entity may send other notices or information by separate mailing or may negotiate with the billing entity for inclusion of such materials in the billing entity's mailings.

<sup>2/</sup> Case 98-M-1343, Retail Access Business Rules, Order Granting Portions of Petitions for Rehearing, (issued April 15, 1999) Appendix A.

consensus. In addition, utilities and ESCOs are free to negotiate other payment allocation arrangements so long as customers are adequately protected.

#### Performance Standards

Staff proposed that ESCOs be required to demonstrate that they have had (or will have when they commence service) reasonable rates of billing errors (no more than 5% initially, but ultimately no more than 3%) and that they meet (or will meet) various other criteria for posting payments and rendering bills in an appropriate manner. Several of the parties propose minor modifications to Staff's initial proposal, but there is general agreement that ESCO bills need to be prompt and accurate.

We will not set specific performance standards here but instead direct that the utilities set forth in their compliance filings standards for any entity that does the billing that are generally consistent with those that the utilities are otherwise required to meet. To the extent that any existing utility standards are not consistent among the utilities, the utilities should here propose standards that would be universal for all ESCOs and all utilities. Finally, we recognize that some billing difficulties may not be avoidable in the initial stages of these arrangements, and any performance standards adopted may not be realistically achievable in the short run. As such, complaints against utilities or termination of an ESCO's rights to issue combined bills should only be considered for repeated occurrences of improper billing.

#### Financial Security Arrangements

##### ESCO Single Bills

Having ESCOs bill on behalf of utilities can affect the utilities' financial risks because ESCOs may default on their obligations to the utility and/or may go bankrupt. Staff proposed several solutions designed to ameliorate this problem.



Uniform Business Practices (UBP) Standard

The Commission has previously established (as part of the UBP) creditworthiness criteria for ESCOs that wish to sell commodity to retail customers connected to the utilities' systems and several of the utilities proposed using those same standards for "ESCO Single Billing." Staff, however, proposed security requirements at one-half those required under the Uniform Business Practices for "Billing Agents." The comments asserting that that level is insufficient are persuasive. We will require that the security coverage requirements established in the Uniform Business Practices for Billing Agencies be used for ESCO Single Billing (i.e., security coverage equivalent to 45 days of delivery charges).

Use of a Third Party Payment Processor

Staff proposed that no security deposit would be necessary if the parties agreed upon a creditworthy third party payment processor (i.e., a lockbox arrangement). The utilities propose several additional safeguards. We will modify the staff proposal so that the security coverage for a lockbox arrangement is the same amount specified in the Uniform Business Practices for a billing agency lockbox (i.e., coverage equal to 22.5 days of delivery charges).

ESCO Purchase of Accounts Receivable

Staff proposed that no security deposit would be required where the ESCO purchases the utility's accounts receivable at a discount. Most of the non-utility parties indicate that the purchase of accounts receivable is the most acceptable option that could facilitate the implementation of single bills, but the utilities raised concerns and objections.

While the purchase of accounts receivable may be a reasonable approach, it results in an arrangement that is somewhat similar to the arrangement used in the single retailer model and, as such, it also poses implementation issues. We will

not require it at this time, but ESCOs and utilities are free to discuss and reach agreements on such arrangements if they desire.

#### Daily Scheduled Payments

Another option proposed by Staff would be for the ESCO to make daily scheduled payments based on the utility's receivables. The sum of the scheduled payments could be reconciled periodically with actual collections.

Few parties commented on this option, and the one primary objection assumed that the arrangement might be imposed on ESCOs. No party seemed interested in this approach, and we will not require it now, but ESCOs and utilities are free to reach agreement on such arrangements if they so desire.

#### "Utility Single Bills"

If utilities bill on behalf of ESCOs, the utilities' risks would generally be limited to the amount of the billing costs due from ESCOs. That limited risk, however, can be addressed if the utilities specify in their tariffs that their billing costs can, if necessary, be guaranteed by the ESCOs' portions of revenues collected from customers and held by the utilities. The ESCOs' risks, on the other hand, would generally be equal to the revenues collected from customers by the utilities for ESCO services. Application of the UBP creditworthiness standards that heretofore have been considered to apply only to the ESCOs would be appropriate for coverage of the ESCOs' risks and should be met by utilities.

#### Billing Costs

Because the utilities (other than RG&E for its electric retail access program) recover the costs of billing and customer care from retail access customers in delivery rates, they will need to develop credits to be deducted from the delivery rates (backout credits) for those instances where the ESCOs bill for both aspects of utility service. Utilities will also need to develop charges in the instances where they do all the billing.

For backout credits, we will apply the principles we recently elucidated in the competitive metering proceeding.<sup>1/</sup> We will require that the credits be based on long run avoided costs (LRACS) for the billing functions described herein and the associated customer care functions that would be avoided if ESCOs do the billing, and they may be differentiated by customer class if supported by the LRACS.<sup>2/</sup> Further, the LRACs should be derived based on an assumption that the utilities exit the retail billing function for all customers, or, alternatively, based on the incremental cost for the total billing function if it were being established today. In either case, the calculation should include the cost of all support functions associated with billing to serve the full complement of customers.

In deriving the appropriate LRACs, the utilities shall ensure that they include allowances for all associated costs, similar to allocating administrative and general and common costs in an embedded costs study. This might be accomplished by using an embedded cost of service approach that first divides total embedded costs for bundled utility services into three basic service categories: delivery, supply and retailing. Each of these categories would include allocations of administrative and general and common costs. The administrative and general and common costs so allocated to the retailing category could then be expressed as a percentage of the overall embedded retailing costs. The embedded cost-based administrative and general and common loading percentage would then be applied to the LRAC-based numbers in arriving at the full back-out credit for these billing services. To ensure that the backout credits appropriately

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<sup>1/</sup> Case 94-E-0952, Competitive Opportunities Regarding Electric Service, Order Providing for Competitive Metering (issued June 16, 1999) p. 19.

<sup>2/</sup> If determination of such LRAC estimates cannot be accomplished within the time periods provided by this order, proxy amounts, using the same methodology as above, but based on embedded cost of service studies instead of LRACs, can be presented and used, subject to provision of the LRAC estimates in a reasonable time thereafter.

include all applicable costs, and no inapplicable costs, the utilities will be required to submit to Staff, with the tariff filings, the work papers and results of the analyses.<sup>1/</sup>

Utilities are also authorized, as they were in the metering context, to petition for recovery of any sufficiently documented and fully mitigated net differences between the costs that are ultimately avoided and the projected costs assumed here and for any net incremental costs associated with implementation of the new billing arrangements.<sup>2/</sup>

Charges that utilities may assess to ESCOs, for undertaking their billing functions under the "Utility Single Bill" arrangement, shall be established based on the utilities' long run incremental costs of providing this service to all its current customers. The tariffs would specify these charges, which again may vary by class, and be subject to review before becoming effective.

#### Bill Content and Format

In instances where customers, through ESCOs, choose the "ESCO Single Bill" arrangement, the content of the utility portion of the bills must meet the same standards that are

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<sup>1/</sup> Utilities may include in their April 24 draft submissions (discussed below) only a description of the methodology to be used to calculate LRACs, with the actual backout credits to be provided on June 26 when the formal tariff filings are to be submitted.

<sup>2/</sup> MI requests that the costs be determined accurately in advance and that they be allocated only to customers who opt for single bills. We will decide the allocation issue when the magnitude of the costs becomes known.

applicable to utilities.<sup>1/</sup> With respect to bill format, however, the ESCOs are free to use whatever billing format they find useful as long as the utility portion of the consolidated bill contains the required information and notices in an understandable manner and is also consistent with the UBP requirements for Billing Agency.

In those instances where the utilities provide retail access customers with single bills, the content of the ESCO portion of the bill must provide understandable information as generally defined by us in our Order Regarding the Regulatory Regime for the Single Retailer Model, Issued December 24, 1997 in Case 96-E-0898. The specific requirements necessary to meet this guideline shall be proposed by the utilities in their tariffs that will be submitted for review. With respect to format, the utilities are free to use formats that are consistent with the formats that they use for their own portions of the bills.

#### CONCLUSION

It is in the public interest for retail access customers to have greater opportunities for access to the billing entities of their choices. To accomplish this objective, we will direct the major gas and electric utilities to accommodate the wishes of retail access customers who elect to receive combined, single bills for both utility and ESCO services, consistent with the elements contained in Attachment D.

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<sup>1/</sup> The requirements for billing specified in Attachment D will be reflected in the utilities' tariffs to be filed June 26, 2000. We will entertain petitions for waiver of application of any of the requirements specified in Attachment D upon a showing that they are unreasonably burdensome. Such petitions should be filed with the comments on the utilities' tariffs so we can consider them in conjunction with our review of the tariffs. A petition for a waiver should show adequate justification for waiver, the lack of necessity of the allegedly burdensome requirements for competitive billing of customers and that customers will not be disadvantaged by such waiver.

Accordingly, the utilities are directed to file tariff amendments, to become effective no later than October 2, 2000<sup>1/</sup>, that will provide the additional details necessary to implement "ESCO Single Bill" and "Utility Single Bill" arrangements as generally described herein and which will otherwise be consistent with the provisions specified in the UBP applicable to "Billing Agencies" (except that no tariff amendments are required where a "Single Retailer Model" is authorized). The utilities should coordinate their efforts<sup>2/</sup> so that, to the extent practicable, the contents, structure, and language of each filing is the same and stakeholder input is received. Drafts of the tariff amendments (with proposed backout credits, or the intended calculation methodology, and billing costs) should be submitted for comment by April 24, 2000 to Staff and parties to this proceeding and made available to all the ESCOs authorized to serve retail customers in New York State. Following this opportunity for collaboration, formal tariff amendments (with actual proposed backout credits and billing costs) should be filed with us and all parties by June 26, 2000, to become effective no later than October 2, 2000.

The Commission orders:

1. Each jurisdictional utility as specified in Attachment A shall provide drafts of proposed tariff amendments (with proposed backout credits, or the method it would use to compile those credits, as well as billing costs) consistent with the foregoing discussion, to Staff and each party to this

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<sup>1/</sup> If ESCOs and utilities believe they can initiate "ESCO Single Bill" or "Utility Single Bill" arrangements sooner, they should proceed with negotiated agreements. Those agreements, however, would not supersede the requirements here.

<sup>2/</sup> Utilities should also coordinate their efforts with their EDI efforts. Extensive utility system modifications should not be made now if they will not be useful when EDI is available. Accordingly, transactions necessarily made through other mechanisms should be handled through EDI when it becomes operational.

proceeding, and to each ESCO that requests a copy and is eligible to provide service in New York State, by April 24, 2000.

2. Each utility subject to ordering clause 1 shall file with the Commission and serve, on each entity required to be served by ordering clause 1, by June 26, 2000, tariff amendments, consistent with the foregoing order, to become effective no later than October 2, 2000.

3. Any utility desirous of filing additional tariff amendments to authorize other billing arrangements to meet customer needs in the interim, as such customers may request, may do so, to become effective on not less than one day's notice, on a temporary basis. Newspaper publication is waived.

4. This proceeding is continued.

By the Commission,

(SIGNED)

DEBRA RENNER  
Acting Secretary

MAJOR GAS AND ELECTRIC UTILITIES  
SUBJECT TO "ESCO SINGLE BILL" REQUIREMENTS

Central Hudson Gas & Electric Corporation

Consolidated Edison Company of New York, Inc.

New York State Electric & Gas Corporation

Niagara Mohawk Power Corporation

Orange and Rockland Utilities, Inc.

Rochester Gas and Electric Corporation (for natural gas service only)

The Brooklyn Union Gas Company

Brooklyn Union of Long Island

National Fuel Gas Distribution Corporation

St. Lawrence Gas Company, Inc.

Corning Natural Gas Corporation



Entities Submitting Comments and/or Replies

Case 99-M-0631

Consumer Protection Board (CPB)

New York State Electric & Gas Corporation (NYSEG)

New Energy Ventures East, L.L.C. (NEV)

Statoil Energy, Inc., TXU Energy Services, AllEnergy Marketing  
Company, L.L.C., North American (Marketers Group)

North American Energy, Inc. (NAE)

The Brooklyn Union Gas Company and KeySpan Gas East Corporation  
(the Brooklyn Union Companies)

Multiple Intervenors (MI)

New York Energy Service Providers Association (NESPA)

Rochester Gas & Electric Corporation (RG&E)

The E Cubed Company, L.L.C. (Behalf of the Joint Supporters and  
its Member KeySpan Energy Services, Inc.) (E Cubed)

National Fuel Gas Distribution Corporation (NFG)

Niagara Mohawk Power Corporation (Niagara Mohawk)

Consolidated Edison Company of New York, Inc. and Orange and  
Rockland Utilities, Inc. (O&R) (Con Edison/O&R)

St. Lawrence Gas Company, Inc. (St. Lawrence Gas)

Local 1-2, Utility Workers Union of America, AFL-CIO and  
Local 97, International Brotherhood of Electrical  
Workers (IBEW)

Small Customer Marketer Coalition (Coalition)

Reliant Energy Retail, Inc. (Reliant Energy)

New York State Electric & Gas Corporation, Niagara Mohawk Power  
Corporation, Rochester Gas and Electric Company and  
Central Hudson Gas & Electric Corporation (jointly as  
"the utilities")

CUSTOMER BILLING ARRANGEMENTS  
DISCUSSION OF PARTIES' COMMENTS

Statutory and Constitutional Issues

Several parties assert there are statutory and constitutional bars to adoption of Staff's proposed ESCO single bill model. Niagara Mohawk claims that Section 12 of the Transportation Corporations Law and Sections 31, 65(1), and 65-b of the Public Service Law charge utilities with an absolute duty to sell gas and electricity. It goes on to argue that the duty to serve retail customers exists in the absence of any statutory authority because of the utilities' various franchise agreements. The parties go on to raise numerous constitutional arguments.

First, they assert that a mandatory single retailer model or ESCO single bill option would violate substantive due process rights because utilities have a constitutionally protected property interest in their retail business and, where property interests are affected, substantive due process requires that state imposed policies not be arbitrary or constitutional oppressive and that they bear a reasonable relationship to a legitimate state objective.

Second, Niagara Mohawk claims that the single retailer model or the ESCO single bill option would violate utility equal protection rights because the proposals are not related to the furtherance of any legitimate state interest and would discriminate against utility providers of retail service.

Third, Niagara Mohawk asserts that a mandatory ESCO single bill option would violate its free speech rights. It claims that content based restrictions on political and most other speech are sustained only in extraordinary circumstances of compelling state interests and that the rationale for the proposed ESCO single bill option cannot be justified here. It says that the asserted customer preference for a single bill is supported by neither the law nor the facts and that the record evidence offers no factual support for the conclusion that a single bill must emanate from an ESCO. Niagara Mohawk goes on to assert that Staff's proposal is more restrictive than necessary to further the goal of customer preference and that the

development of brand identification is an insufficient basis to support Staff's position here.

Next, Niagara Mohawk asserts that a mandatory ESCO single bill option would violate the commerce clause in as much as the utilities' use of the mail for the purpose of transmitting its bills to retail customers constitutes the use of interstate commerce facilities. Niagara Mohawk argues that the single bill option requires compensation pursuant to the taking clause as well in as much as both its retail businesses and its franchises are property rights.

#### Threshold Policy Issues

Most of the parties comment in response to the "threshold" issues presented by Staff. Each of the issues is presented below.

##### Is a "Single Bill" arrangement necessary to meet customer preference and foster competition?

In response to Staff's November 1998 billing discussion paper, the ESCOs and most of the other parties agreed that consumers would rather receive one bill for both ESCO and utility charges (i.e., a single bill). The parties responding to the Commission's June 1999 request for comments on the subsequent Staff Report offered similar views.

Most of the parties acknowledge a consumer preference for a single bill. There were, however, disagreements on the importance of the role of a single bill in stimulating competition and the methods for implementing a single bill arrangement. For example, some of the utilities prefer a "Utility Single Bill" arrangement to the "ESCO Single Bill" arrangement (see later discussion of this issue).<sup>1/</sup>

The ESCOs and the CPB view a single bill as an important ingredient in stimulating retail competition and

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<sup>1/</sup> Others urge that the "ESCO Single Bill", the "Utility Single Bill" and the "Two Bill" arrangements all be made available.

satisfying the needs of their customers. NAE notes that "the most important features that small commercial and residential customers desire are savings and the simplicity of a single bill." NESPA observes that "Single consolidated bills are absolutely necessary for the competitive market to flourish."<sup>1/</sup> The Coalition declares that "a single bill mechanism must become immediately available if ESCOs are to continue to provide service to small customers." NEV stresses the importance of bills as a marketing tool. According to NEV, "access to customers is critical, and traditionally, the utility bill has been an effective means of communicating with customers."

In addition to responding to consumer preferences, ESCOs highlight several advantages of the single bill over the two bill system. NAE notes that attrition of its enrolled accounts is higher in territories with a two bill system primarily because consumers dislike getting two bills. The Coalition points out, with documentation, that the two bill system results in "customer confusion and the creation of unacceptably high customer default rates." It says that a single bill is essential for creating a robust retail access market for residential consumers.

While opposed to any single bill arrangement mandate, both Con Edison/O&R and IBEW acknowledge that the availability of a single bill is important to consumers. Con Edison/O&R, however, does not agree that a single bill arrangement is necessary to foster competition.

NYSEG suggests that "whether (and to what extent) single bill services are provided should be based upon the voluntary and mutual business decisions among consumers, utilities and ESCOs." While MI does not oppose the "ESCO Single Bill" arrangement as an option, provided that the arrangement's users pay all incremental costs, it does not consider the arrangement "necessary". It also questions if there is

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<sup>1/</sup> NESPA and others argue that other elements, such as appropriate back-out credits, are also essential.

sufficient evidence of consumer desire for it. According to MI, "the evidence cited by the Staff in support for its recommendation is so limited and preliminary that the Commission should not rely on it."<sup>1/</sup>

Assuming that a "Single Bill" arrangement is necessary, why do the existing "Single Bill" alternatives not void the need for an "ESCO Single Bill" arrangement?

In the June 1999 Staff Report, Staff reasoned that the acceptance of the premise that there is a strong customer preference (at least for small usage customers) for single bills leads to an obvious question: why don't the existing "Single Bill" alternatives (i.e., RG&E's "Single Retailer Model", the "Utility Single Bill" arrangement, and the "Billing Agency" arrangement) not void the need for an "ESCO Single Bill" arrangement? In this latest round of comments, parties respond to these questions as well as to the appropriateness of Staff's Initial Proposal.

#### Single Retailer Model

Under the "Single Retailer model," ESCOs purchase delivery services from the utilities on a wholesale basis and then provide most or all of the end use customers' services, taking over many or all of the utilities' retail functions (e.g., service initiation), including the provision of a single bill for all services.<sup>2/</sup> Utilities generally are opposed to the Commission's adoption of the "Single Retailer Model" (whether the RG&E version or another) on a statewide basis. They are concerned about the model's limited track record, legal complications (e.g., status of existing restructuring

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<sup>1/</sup> Some large commercial and industrial consumers prefer to have direct legal relationships with both the delivery company and the commodity supplier.

<sup>2/</sup> RG&E's electric retail access program is based on the "Single Retailer Model".

settlements) and the lack of an appropriate forum to analyze far ranging issues that could result from the implementation of the model. ESCOs, on the other hand, are generally supportive of the "Single Retailer Model," but often with some reservation. Several ESCOs are particularly not enthusiastic about the RG&E version of the "Single Retailer Model, arguing that the program places additional burdens on the ESCOs without adequate compensation (i.e., inadequate backout credits).

Con Edison/O&R, NYSEG, NFG and the Combined Utilities argue that more experience and research is necessary before determining if the "Single Retailer Model" is the most appropriate approach. Combined Utilities notes that the Staff discussion of the "Single Retailer Model" raises far more questions than it answers. NFG argues that significant legal issues (e.g., HEFPA, Commission authority, etc.) must be addressed before the "Single Retailer Model" can be considered seriously. Niagara Mohawk takes the issue further by offering a legal argument--based on federal and state law--that the Commission lacks the authority to mandate a "Single Retailer Model."

NYSEG and Con Edison/O&R raise concerns about the impact of imposing the "Single Retailer Model" on the existing restructuring agreements. NYSEG contends that implementation of the "Single Retailer Model" "would potentially have complex and pervasive implications on the fundamental provisions of most utilities' PSC-approved restructuring agreements, including the NYSEG agreement."

St. Lawrence Gas questions if a "Single Retailer Model" arrangement is any more market driven than service from a single utility. It also questions whether the utilities would truly be out of retailing if they have piping and meters in each home. It believes that ultimately the market place should decide the most desirable model.

The Brooklyn Union Companies are the only entities that endorse the "Single Retailer Model," but only if it is "appropriately" structured. The Brooklyn Union Companies,

however, offer little detail as to what might be an appropriate structure.

IBEW is opposed to the "Single Retailer Model." It argues that the Commission should not take any action on any Staff billing proposal until more research is undertaken, including a thorough evaluation of the impact of the proposals on employment levels.

MI is opposed to the "Single Retailer Model" because it alleges that it destroys the direct relationship between transmission and distribution ("T&D") utilities and the end-use customers.

NEV and NESPA say that the "Single Retailer Model" is the best model for promoting competition in the long run. The Marketers Group also likes the single retailer concept, but it says that the costs loaded onto ESCOs under the RG&E version far outweigh the benefits of participating in the RG&E program. NAE says that ESCOs should not be required to handle all non-emergency customer care. It believes that non-billing services should be optional until deregulation is more firmly established.<sup>1/</sup>

The CPB is a strong advocate of the "Single Retailer Model" as a long-term goal. It supports the model for its ability to differentiate clearly between the wholesale delivery functions of the utility and retail services functions of the ESCO. Under this approach, there is no longer a source of conflict between two retailers, one of which is simultaneously providing retail delivery service for the other. CPB's endorsement of the "Single Retailer Model," however, is contingent upon resolution of issues related to the provider of last resort (POLR). Under the "Single Retailer Model," there must be a system for handling customers who do not choose or are not served by an ESCO, the POLR function.

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<sup>1/</sup> The Marketers Group also supports the "Single Retailer Model" concept, but it argues that such a model should not be implemented unless or until the economics of the model are corrected.

### Utility Single Bills

Under this approach, utilities could modify their billing systems such that a consolidated bill reflecting both utility and ESCO charges would be rendered. Some utilities currently provide (or are willing to provide) this service for a fee.<sup>1/</sup>

NYSEG is a strong advocate of this approach if a specific single bill arrangement is to be required, arguing that "customer preferences and the marketplace clearly indicate that the consolidated bill should be rendered by the utilities." It also says that the "Utility Single Bill" arrangement would be more cost-effective, avoid system redundancies and protect utilities and customers from undue credit exposure." NYSEG then explains in extensive detail how a "Utility Single Bill" would benefit consumers.<sup>2/</sup> Niagara Mohawk suggests that its capability to target bill messages to specific geographic areas, which allows the company to provide focused information on a geographic basis, is a benefit that may not be achievable by ESCOs. Finally, IBEW indicates that it favors the "Utility Single Bill" approach, and NFG says that the approach addresses both MI's concerns and Staff's desire for a single bill.

### Billing Agency

This approach, currently employed only in Con Edison's territory, is similar to the "ESCO Single Bill" arrangement, but it is not mandatory for customers or the utilities or the ESCOs. In many respects, it is simply an extension of a common practice of utilities that allows customers to select an agent to receive and pay their bills (albeit at a much larger level of participation using electronic mechanisms for transmitting data

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<sup>1/</sup> NEV and NESPA say that utilities should be required to offer "Utility Single Billing" in addition to "ESCO Single Billing" and "Two Bill" arrangements, at least initially.

<sup>2/</sup> NYSEG also says that Staff ignored customer preferences because the surveys cited by Staff indicate that customers preferred a combined bill issued by the utilities.



in bulk). As such, the "Billing Agent" is the agent of the customer, not the utility as is the case under the "ESCO Single Bill" arrangement. The Parties offer relatively few comments on this topic.

Con Edison/O&R note that Con Edison's "Billing Agency" program eliminates the need for a mandatory "ESCO Single Bill" at this time. CPB, in its reply comments, argues that "Billing Agency" shifts cost responsibility from utilities to ESCOs, and thus customers without a corresponding off-set. NYSEG comments that the "Billing Agency" arrangement used by Con Edison (or any "Billing Agency" arrangement) should be considered only as a voluntary option for both utilities and ESCOs.

Even if the "ESCO Single Bill" arrangement is desirable, why should the Commission require utilities to offer it to ESCOs? Why not leave it to the market to select the best arrangements?

NEV and CPB argue that, with only the utility in control of how a single bill arrangement will be offered, there is no opportunity for market place forces to work. NFG contends that while it would be preferable to rely on market forces, it is not a viable option because utilities' are obligated to provide billing services. It argues "if the utilities' HEFPA billing responsibilities can lawfully be assigned to a marketer or third party billing agent, then arguably a competitive model can be designed. Until that point, however, utilities will be required to maintain a billing function."

Con Edison/O&R, NYSEG and Niagara Mohawk argue that the Commission should not mandate that utilities offer an "ESCO Single Bill" arrangement. Con Edison/O&R suggests that it is too early to tell whether the "ESCO Single Bill" arrangement as proposed is necessary or even preferable to other single bill options. Niagara Mohawk also argues that the Commission lacks the power to offer the single bill arrangement. NYSEG says the market should be the deciding force.

The Marketers Group says that NFG's voluntary "ESCO Single Bill" arrangement in New York is fraught with difficulties, and, in its Pennsylvania program, NFG recently withdrew the arrangement as an option after marketers had already made investments in billing systems. As such, depending on voluntary arrangements is a cause for concern.<sup>1/</sup>

If an "ESCO Single Bill" arrangement is authorized, when should it be implemented?

The suggestions are varied. Strong supporters of the "ESCO Single Bill" arrangement, such as NEV and the Coalition, urge a timetable that would implement the policy as quickly as possible and sooner than Staff's original proposal of the first quarter of 2000. Several respondents, however, note the importance of having an electronic data interchange (EDI) arrangement in place to coincide with the implementation of a single bill arrangement. Others cite Y2K concerns as a reason to delay (the comments were received during the summer of 1999). Con Edison/O&R says that if a single bill arrangement is implemented, it should only be implemented after the expiration of utility settlement agreements (which generally is in the 2001-2002 period). Niagara Mohawk suggests that it not be implemented until the ESCOs can demonstrate that they are capable of handling the billing function. MI says that the incremental costs should first be determined. Finally, NFG says that provider of last resort issues need to be resolved first.

If an "ESCO Single Bill" arrangement is authorized, how should billing costs be treated?

The Staff Report noted that some parties have argued that an "ESCO Single Bill" arrangement will not result in any avoided costs for utilities and, in fact, could result in

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<sup>1/</sup> NAE, however, says that the NFG model, with some modifications, is the best model to use.

additional costs for them.<sup>1/</sup> As such, those parties would not increase the backout credits to reflect illusionary avoided costs or otherwise reimburse ESCOs for the ESCOs' cost for billing for the utilities. Others, including Staff, believe that in the long run the costs to be avoided by the utilities could be significant.

Several methodologies were described in the Staff Report for establishing the proper methodology to remove utility billing costs from delivery rates: short run avoided costs; long run avoided costs (LRACs); and embedded costs. Staff suggested in the report that use of short run avoided costs would result in very low (or, some utilities argue, perhaps negative) avoided costs due to the extensive billing systems of the utilities. As such, it would be difficult, if not impossible, for competitors to participate during the early implementation stages of competitive billing. The Staff Report goes on to say that using LRACs may better facilitate market entry for competitors that can bill more efficiently than the utilities in the long run. Consequently, the Staff Report proposed that LRACs for billing services be used to establish backout credits for billing. Because determination of LRACs could be a lengthy and labor intensive task, the Staff Report suggested that the utilities' costs of service, based on their most recent embedded cost of service studies,<sup>2/</sup> be used as proxies until more accurate LRAC estimates can be developed. The Staff Report also proposed that utilities be authorized to petition for recovery or reimbursement of any documented net differences between actual avoided costs and the backout credits, and also for any net incremental costs for implementation of the new billing arrangement, to the extent

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<sup>1/</sup> Niagara Mohawk claims that it will incur costs in implementing single billing that should be an offset to any back out credit.

<sup>2/</sup> NFG says that calculation of LRAC's would not be a lengthy or difficult task because the costs avoided would include little more than postage and stationary, given that the utilities must still maintain all the functions of traditional billing.

permitted by their individual restructuring Orders and to the extent they take all reasonable steps to mitigate such costs.<sup>1/</sup>,<sup>2/</sup> Parties were invited to respond more completely to these issues and specifically to comment on how LRACs should be defined and determined.

In their responses to the Staff Report, most of the utilities oppose the use of LRACs<sup>3/</sup> for determining backout credits for billing.<sup>4/</sup> They also disagree with the Staff suggestion that embedded costs would serve as a good proxy for LRACs.<sup>5/</sup> On the other hand, all the ESCOs favor the use of LRACs

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<sup>1/</sup> The Brooklyn Union Companies say that it would be unfair to restrict recovery for these new costs based on restrictive language that may exist in settlement agreements written without knowledge of the new billing proposal. Staff notes, however, that the settlement agreements generally do not preclude recovery but instead address the way in which added costs are to be handled during the settlement period.

<sup>2/</sup> MI responds to this proposal by requesting the costs be determined accurately in advance and that they be allocated only to customers who opt for single bills.

<sup>3/</sup> The Brooklyn Union Companies, however, propose the use of variable LRACs, which would recognize that the achievement of cost-avoidance is linked to the level of participation in retail access generally and in "ESCO Single Billing" in particular.

<sup>4/</sup> The utilities say that Staff's Proposal will create inefficiencies and cause added costs. They paraphrase Alfred Kahn as saying that short-run avoided costs (SRACs) are more appropriate and that LRACs create subsidies with artificially high back-outs (NESPA says that the utilities did not accurately quote Dr. Kahn). Several utilities claim that if LRACs were done correctly (which they infer is not the case with the methodologies traditionally used), they would actually resemble SRACs. They argue that changes in technology will make the costs of current systems significantly different than for systems in the future. The technology change is similar to the experience of using coal plants in developing LRACs when the actual avoided cost turned out to be gas-fired cogenerators.

<sup>5/</sup> The utilities argue that actual costs could be greater than today's costs, that embedded costs could exceed actual avoided costs, and there are substantial economies of scale that are ignored by use of embedded costs.

or embedded costs.<sup>1/</sup>,<sup>2/</sup> In essence, the positions of the parties are the same as those set forth in the competitive metering proceeding.<sup>3/</sup> There, the Commission rejected arguments opposing use of LRACs.

#### Staff's Initial Proposal

Under Staff's Initial Proposal, qualified ESCOs would be assured of the opportunity to provide end-use retail access customers with a single consolidated bill for both utility and ESCO charges. Both electric and gas utilities would be required to allow ESCOs to perform various billing functions, for some or all of their customers, assuming that the ESCOs meet basic performance standards. The requirement would not have precluded ESCOs and utilities from agreeing upon other billing arrangements, such as "Utility Single Billing", "Billing Agency", or "Dual Billing."

ESCOs are generally supportive of Staff's Initial Proposal. The Coalition describes Staff's Initial Proposal as a "judicious balancing of several important policy goals including providing consumers with a clear, distinct and understandable billing option." NEV endorses Staff's Initial Proposal as a transitional step to the "Single Retailer Model." Reliant Energy "generally supports the proposal with the caveat that the bill's format and content should not be strictly proscribed."

Utilities are much less supportive. Comments range from cautioned support to Niagara Mohawk's questioning the

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<sup>1/</sup> The comments submitted by the Marketers Group suggest, however, that switching from embedded costs to LRACs would confuse customers. It suggested, therefore, that embedded costs be used for the back-out without any later change to LRACs (or at least not for three to five years).

<sup>2/</sup> E Cubed identified several items that it says should either be included in, or excluded from the LRAC calculations.

<sup>3/</sup> Case 94-E-0952 - Competitive Opportunities Regarding Electric Service, Order Providing for Competitive Metering (issued June 16, 1999) p.19.

Commission's authority to mandate such an arrangement. The Brooklyn Union Companies "generally" support "the ESCO Single Bill" proposal but warn that requiring utilities to provide various billing options will result in additional costs. Other utilities also suggest that cost savings would be minimal or actually result in higher costs for the consumer. NYSEG argues that customer preferences and the market place indicate that consolidated billing should be offered by the utilities. NYSEG notes that "if the Commission desires to adopt a single bill arrangement, the "Utility Single Bill" arrangement would be more cost effective, avoid system redundancies and protect customers from undue credit exposure."

Competitive Billing Functions

Staff's Initial Proposal designated utilities to be responsible for calculation of their own charges, maintenance of their own accounts receivables, collection action on their own past due accounts, handling inquiries about their charges and notices, commencement and termination of services, and adherence to all HEFPA-related responsibilities. ESCOs would be responsible for:

- Printing and mailing consolidated bills;
- Printing standard utility bill messages (up to 200 characters) and/or distributing suitable bill inserts provided by the utility (not to exceed one-half ounce in weight);
- Receiving and processing payments;
- Apportioning and remitting the utility portion of amounts collected; and
- providing payment details by account to the utility.

Several parties raise concerns about the appropriateness of some elements of the delegation of responsibilities proposed by Staff.

General Comments

Niagara Mohawk comments that any single bill arrangement would require written terms and conditions between the ESCO and the utility and that the terms and conditions would stipulate requirements such as audit rights, ESCO liabilities and indemnification provisions. It claims as well that ESCO billing services should be at no charge to utilities and that it is concerned that under the "ESCO Single Bill" arrangement utilities will not know of the availability of cash on a day to day basis as they do when they receive payment directly from customers. Niagara Mohawk claims such knowledge is critical to cash forecasting.

Niagara Mohawk next states that the specific understandings reached between the utility and the ESCO could address the precise scope of services such as the various liabilities that would be associated with performing these functions and could assure the utilities had audit rights to verify compliance with these terms and conditions. It states that a key liability may arise under applicable tax laws where a billing services provider may be deemed to be the agent of New York State or some local jurisdiction for the purposes of the collection and remittance of taxes, including gross revenue taxes. It suggests that other matters need to be clarified such as whether an ESCO is required to inform the utility of the existence of a customer complaint regarding utility charges and whether payments to utilities will be made by electronic funds transfer.

Bill Printing and Mailing

Niagara Mohawk sees several ambiguities in Staff's Initial Proposal. For example, will there be requirements regarding the timing of utility submittals of calculated charges to ESCOs? What happens in the event utilities need to re-bill or back-bill their charges? Will ESCOs have additional charges to re-bill or back-bill? How fast would an ESCO be required to correct its defective billing? In the event of customer

inquiries regarding defective ESCO billing, would utilities be able to recover their associated costs from ESCOs? Will ESCOs be required to bill at the utility-required frequency?

Bill Inserts and Bill Messages

Niagara Mohawk argues that because the company needs to communicate with its customers, ESCOs should be required to provide bill messages and bill inserts as requested by the utilities.<sup>1/</sup> For example, it says the provision of large print, braille, and voice bills should be required of ESCOs in appropriate circumstances. It also says limiting bill messages to 200 characters would pose serious communication problems for the company, given the extensive number of issues it needs to communicate. It says a typical message requires about 350 characters and a regulatory notice required for a customer's failure to pay under a deferred payment agreement uses about 400 characters. It says that is the absolute minimum that must be required of ESCOs for utility bill messages. The Brooklyn Union Companies say that ESCOs should print standard utility bill messages up to 500 characters.

Turning to Staff's Initial Proposal, which referred to "suitable" bill inserts, Niagara Mohawk notes that a utility and an ESCO could disagree as to what constitutes a "suitable" insert and that ESCOs should be required to insert any bill insert that a utility would otherwise directly provide customers of the same class within one half ounce total maximum weight. The Marketers Group says that ESCOs should not be required to market for the utilities, and NESPA says that it should only be required to transmit notices mandated by statute or regulation.

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<sup>1/</sup> NEV argues that this requirement could impact an ESCO's ability to offer large multi-jurisdictional customers the "ESCO Single Bill" arrangement. It says that it would be difficult to provide a customer with multiple locations within a state a single bill. Staff notes, however, that ESCOs may negotiate alternative arrangements with utilities to do as NEV proposes.



Apportionment and Remittance of Payments

Staff's Initial Proposal required that partial payments on consolidated bills be applied first to utility charges because service may be terminated if utility bills are not paid. In their comments, NEV and the Coalition propose instead that the application of partial payments be prorated equitably between the utilities and ESCOs. E Cubed says that the Commission should adopt NEV's and the Coalition's proposal, and NYSEG indicates that the Coalition's proposal is reasonable so long as there is no impairment to utility service. Niagara Mohawk, however, finds the proposal unacceptable because utilities are bound by HEFPA and cannot immediately drop a customer who fails to pay its bill.

Performance Standards

The Staff Report proposed several performance standards ESCOs would have to meet to render, or continue to render, consolidated bills. Under these standards, which would be set forth in greater detail in utility tariffs, an ESCO would be required to demonstrate that:

- . it has met the EDI standards and testing requirements for sending and receiving data;
- . its bill format clearly separates ESCO charges from utility charges;
- . its bills meet the Commission's "plain language" and "clear and easy to read" standards;
- . its bill content meets a set of "minimum content" requirements that were appended to the Staff Report;
- . it is capable of printing and mailing bills within two calendar days of receipt of utility data;
- . it can post payments to customer accounts within one business day of receipt; and
- . the ESCO's rate of billing errors is reasonable. (the parties were asked to comment on what would be an acceptable rate.)

While no ESCO expresses concerns with being required to meet performance standards, several do raise more specific concerns. In its comments, NEV indicates that while it is agreeable to the proposed performance standards in general, it is concerned that the standards would not allow ESCOs to meet customers needs if they request specific bill content that differs from that proscribed by Staff. In addition, NEV also expresses concerns that Staff's Initial Proposal not be interpreted as mandating how the required information is presented on the bill.

In their comments, NESPA and the Marketers Group maintain that before the ESCOs are required to keep a certain billing error rate, the ESCOs should be given a transition period on each utility's system to get the all the "bugs" worked out and to resolve any other issues. After this transition period, NESPA indicates that a 97% accuracy rate would be reasonable, while the Marketers Group suggests that the ESCO's rate should be set at the utility's rate.

With the exception of St. Lawrence Gas, the utilities generally maintain that the proposed performance standards be strengthened in various ways. The Brooklyn Union Companies recommend that:

- . the standards be amended to specifically require ESCOs to mail bills within 2 calendar days of receipt of utility data and to post payments within one day of receipt. (The proposed standards required ESCOs to demonstrate the ability to do this.)
- . the utilities be allowed to require ESCOs, who propose to issue a single bill, to provide the utility with the ESCO's written procedures for billing, including the controls that are in place to ensure billing accuracy and the proper distribution of utility messages and inserts;
- . that utilities be allowed to undertake reasonable quality control checks on ESCOs;

- . that the utilities be allowed to terminate billing arrangements if an ESCO cannot meet the performance standards; and
- . the utilities be allowed to negotiate minimum performance levels and billing error rates.

Niagara Mohawk generally echoes The Brooklyn Union Companies' recommendations and stresses that the performance standards need to be enforceable by the utilities. It claims that the timing of bill messages and inserts is sometimes critical as for example those concerning payment plans, final service bills and similar matters. The company also indicates that a 95% accuracy rate would be appropriate initially and should increase over time.

NYSEG's initial comments endorse Staff's proposed standards, and its reply comments endorse the Marketers Group's comments. The company goes on to argue that ESCOs rendering a single bill should be required to: comply with any applicable HEFPA requirements, including the rules addressing bill preparation and payment collection; comply with the utility's internal billing standards and procedures and have a fully operational call center.

While St. Lawrence Gas agreed with the notion that ESCOs should be subject to performance standards, the company argued that it was unfair to require utilities to bear the costs of "policing" ESCOs. IBEW raised similar concerns and argued that individual utilities should not have the responsibility for setting performance standards and enforcement standards.

Finally, in its comments, CPB's suggested that after an initial period where billing problems and deficiencies are resolved, ESCOs should be subject to an initial 5% billing error rate, which should be lowered to 3% over time.

#### Financial Security Arrangements

Staff's Initial Proposal recognized that ESCOs billing on behalf of utilities can impact a utility's financial risk even though they may be acting as agents for the utilities. The

impact could be due to an increase in the lag between reading the meter and receipt of the bill by the customer (which would result in bills being paid later), by the utility portion of customer receipts not being remitted promptly or apportioned correctly, by an ESCO being slow to bill, or by an ESCO entering bankruptcy. Consequently, the Staff Initial Proposal offered four options. After a presentation of the parties' general comments, the four options are described below along with the parties' comments on use of those options. Also discussed below are comments submitted with respect to which party should have the right to select the option to be employed.

#### General Comments

ConEdison/O&R states that implementation of any of the four options would result in increased exposure to loss resulting from ESCO non-payment of utility charges and would expose utilities to potential adverse impacts to their financial ratings and increased borrowing costs. It says that no utility should be compelled, without adequate assurances and financial security, to entrust an ESCO (within minimal business qualification requirements) with control over its revenue. It reiterates the concerns presented by Con Edison in the UBP proceeding with respect to the impact of "Billing Agency" (which it says is the same whether the ESCO is the customer or the utility's agent) on a utility's credit standing with national debt-rating agencies. ConEdison/O&R included with its comments an opinion by Ellen Lapson, a Senior Director at Fitch IBCA, Inc., to support its claim. Specific concerns expressed by Ms. Lapson include:

- 1) that the ESCO be competent to perform billing services because the capability and integrity of the service is critical to maintaining customer confidence in the utilities' retail access programs;
- 2) that there is a potential for a commingling of funds in the account of the servicer, particularly, if the servicer is at risk of bankruptcy; and
- 3) the importance of requiring ESCOs to meet threshold requirements because poor performance of ESCOs acting as servicers may adversely affect corporate ratings of

utilities. ConEdison/O&R reiterates its concern about weakened credit ratings and inadequate security for ESCO bill collections and the security of utility cash flows. Further, it notes that at page 16 of the Commission's UBP rehearing order, the Commission recognized the significant financial risk associated with an ESCO acting as a customers' agent in billing for the utility's delivery charges and required that security be posted to cover the specified delivery charges regardless of whether the ESCO met the other creditworthiness requirements. ConEdison/O&R then states that the current Staff Report (p. 10) notes that "Billing Agency" is now, in a practical sense, nearly the same as "ESCO Single Billing." It then states that if in Staff's view "Billing Agency" is nearly the same as the "ESCO Single Bill," then the security requirements should be the same as those permitted under the UBP.

Niagara Mohawk emphasizes the fact that cash flows from its receivables are critical to its operations. It states that the company could become unable to pay its bills if a significant problem occurs and funds are not made available to it. Further addressing a delay in the flow of cash could require increased expenses in maintaining a higher level of cash or in paying for credit facilities at a level significantly higher than would otherwise be required. Niagara Mohawk is also concerned that its use of accounts receivable as collateral financing facility could be terminated without the prospect of some offsetting improved or accelerated cash flow.

Niagara Mohawk opposes the characterization of the ESCO being an agent of the utility. It states that under principles of agency, the principal is generally liable for the acts of its agent. It asserts that the utility should not be required to assume such liability. It indicates that the agency status denotes a fiduciary relationship, which should not occur under the "ESCO Single Bill" arrangement. Niagara Mohawk proposes that ESCO billing providers should have the status of independent contractors, which is the same status that utilities now have vis-a-vis ESCOs under the utility single bill. Niagara Mohawk

also assumes that mutual agreement would be required as to the choice of financial arrangement. It proposes that because of the financial risks associated with ESCO billing (or lockbox arrangements), the billing agreement should be subject to termination at any time if an ESCO: defaults on its obligation to render bills to customers; fails to pay the utility in a timely manner; fails to provide any appropriate security; fails to replenish any security as requested by the utility; violates any of the performance standards; or violates the utility tariff or billing agreement. In the event of ESCO bankruptcy, an ESCO billing arrangement may or may not be terminable by the utility or avoided by the ESCO and as a practical matter, the utility may be required to demonstrate that the funds in the hands of the bankrupt ESCO debtor belong to the utility. Finally, Niagara Mohawk proposes that utilities have recourse against customers in the event of ESCO default. It recommends that the ESCO state explicitly on its bills that the utility has the right to disconnect service to the customer's premises in the event the ESCO (or lockbox provider) defaults in making payment of the customer's delivery charges to the utility. Niagara Mohawk also recommends that the utility tariff or billing agreement between the ESCO (or lockbox provider) and the utility state clearly that the billing services provider is liable for the remittance of all sums forwarded to it by customers and must reimburse the utility for all costs (including legal fees and expenses) associated with the collection of unpaid sums from the billing services provider.

NFG states that to the extent that the four security "options" are an exclusive menu of financial security arrangements to be utilized as a replacement for the UBPs, it objects. NFG states that the UBP clearly applies to "ESCO Single Bill" arrangements. For example, procedures for calculating security amounts for delivery service apply to circumstances "where the ESCO/marketer bills customers for both delivery and commodity services." Further, it notes that Staff's security arrangement options would be allowed under the UBPs as "other mutually acceptable means of providing or establishing adequate

security." It says that Utilities are entitled to greater protection under the UBPs' standard financial security provisions, and, therefore, the standard provisions should not be replaced by Staff's proposed security options. (See additional discussion under Option 1 below).

NEV provides a general comment concerning how risk should be assessed. While it agrees that an entity collecting payment for another entity poses some financial risk, it proposes that the assessment of these risks and the allocation of these risks between the utility and ESCO be reasonable and in conformance with common business practices. The level of risk should be analyzed in the context of the creditworthiness of the ESCO, the payment terms, and rules regarding collections. It provided the example that, if the ESCO is required to remit payments to the utility for receivables on a daily basis, the utility's risk of non-payment is lower than if payment occurs on a monthly basis. It states that payment arrangements (such as money transfer to the non-billing entity upon receipt of customer payment) between the parties can assuage financial risk and eliminate the need for a security deposit from the billing entity. Further, if there is perceived risk that an entity will go out of business or declare bankruptcy, that perception should be part of the financial risk assessment. NEV says that receivables related to the non-billing party (the utility) would be tagged and traced as part of normal business practice as it would allow the billing entity (the ESCO) to audit the non-billing entity's (the utility's) invoice.

On reply, Reliant states that it does not object to reasonable security requirements, but suggests that the requirements be reciprocal and applicable to any billing party. It also states that it supports the Staff approach to providing alternatives to satisfy security requirements and disagrees with the utilities' unsubstantiated concerns about the security requirements being inadequate, in particular because the ESCO/Marketer will have already satisfied the Commission's licensing requirements, the utilities' creditworthiness checks

and security postings, along with additional posting of security or guaranteed payments for the single bill scenario.

In its reply, the Coalition says that the basic fallacy of the utilities' arguments rests in their failure to acknowledge the interactive and dynamic process under which the "ESCO Single Bill" arrangement will be implemented. Based upon the collective experience of the Coalition members, it says that in reality, implementation of a "ESCO Single Bill" arrangement involves a coordinated interactive relationship between the ESCO and the utility wherein careful attention and oversight is focused on the receipt and deposit of customer payments. Throughout the process, the utility is able to monitor the ESCOs' billing system, assure timely deposit of customer payments and full compliance with the PSC standards. The Coalition, therefore, states that the "doom and gloom" scenario painted by the utilities is too extreme and unrealistic.

On reply, the IBEW expresses its agreement and disagreement with the comments and recommendations put forth by the various parties. Specifically: it agrees with the utilities that the Staff options will increase the risk of financial loss and potential adverse impacts on their financial ratings; it disagrees with NESPA that the utility's uncollectible risk and uncollectible expense will be reduced if the ESCO is obliged to pay the utility for transmission and distribution charges, regardless of receipt from the retail customer; it states that only good payment history reduces uncollectible risk and only paid bills reduce uncollectible expense; and it states that the ESCOs' comments concerning the utilities being shielded from much of the receivables risk because of the uncollectible accruals built into rates is only true under the current billing system and, therefore, the Marketers are not considering the increased risk resulting from the adoption of an "ESCO Single Bill" option.



Options

Option #1 - UBP Standard

The ESCO would be subject to late payment charges, creditworthiness standards and/or requirements for deposit or letters of credit similar to those that the Commission established for Billing Agencies in its Order on Uniform Business Practices, except that the amount of any required security for the delivery charges would be one-half the amount that would be required for Billing Agencies.<sup>1/</sup>

The utilities (Con Edison/O&R, Niagara Mohawk and NYSEG) comment that the risk to the utility is the same whether combined billing is done by an ESCO or by an ESCO acting as a "Billing Agent." They say, therefore, that security requirements should be the same as required for "Billing Agents" under the UBPs, not one half as proposed by Staff. ConEdison/O&R states that the direct agency relationship with an ESCO does not help the utility recover funds in the event of a bankruptcy and that the legal status (ESCO agent of the utility) does not reduce the dollar amount of the utility's exposure; it is the same as it would be under the billing agency arrangement. Niagara Mohawk adds that the proposed security requirements alone may not be sufficient because the risk of non-payment by the ESCO of customer utility charges is compounded in the event of an ESCO's failure to deliver adequate supplies of energy. Niagara Mohawk, therefore, proposes that if there is insufficient security to call upon in order to cover both the risk of non-delivery of energy and the non-remittance of utility charges, the utility have the right to seek direct payment from the ESCO's customers, to terminate the billing arrangement, to draw down on security, to require additional security, and to initiate the process for

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<sup>1/</sup> The reduced security requirement was to recognize that the utility would have civil recourse against the ESCO as its agent; under "Billing Agency", the ESCO/Billing Agent is the customer's agent.

discontinuance of the ESCO's participation in the retail access program.

While NYSEG agrees that ESCOs should be subject to a late payment charge, creditworthiness standards and/or requirements for deposits or letters of credit, it disagrees with Staff's Initial Proposal that the amount of the security for delivery charges be limited to one-half the amount that would be required for "Billing Agencies" under the UBPs. NYSEG states that Staff incorrectly assumes that "civil recourse" would adequately compensate the utilities for this substantial limitation on security requirements. In addition to such recourse being cost prohibitive, untimely and/or unsuccessful, NYSEG argues that it had an experience with an ESCO that declared bankruptcy before a civil action could be brought against the ESCO. NYSEG, therefore, recommends that the Commission determine that the required security for delivery charges under the "ESCO Single Bill" arrangement be the full amount authorized to be collected from a "Billing Agent" under the UBPs (i.e., two months).<sup>1/</sup>

NFG pointedly says that the proposed option is in conflict with the UBP and makes the following case. It states that absent ESCO consent, Staff's Option 1 is its default security arrangement, which apparently replaces the UBP standards for delivery risk that would otherwise apply. Option 1 calls for a significantly reduced level of security, compared to the UBPs. And, although it believes Staff is right in its assumption that under an agency arrangement, the utility "would have civil recourse against the ESCO," the ability to sue the ESCO does not mitigate the utility's risk, compared to the circumstances presumed in the UBPs. It states that under the UBPs there is a contractual relationship between the ESCO/Marketer and the utility and upon default of the ESCO/Marketer, the utility would

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<sup>1/</sup> NYSEG assumes, incorrectly, that the UBP security requirement for "Billing Agency" covers two months of delivery charges; where a lockbox is not involved, the UBP requirement is for 45 days.

have the same civil recourse against the ESCO/Marketer, as under Option 1. According to NFG, in both cases, the civil recourse is only as good as a judgement: if the ESCO/Marketer has no assets (which is likely if security is authorized), nothing is recovered. It adds that litigation and efforts to execute the civil judgement would impose additional costs on the utility and its customers. NFG states that because the risk of default under Staff's Initial Proposal is no different from that contemplated by the Commission and the parties involved in jointly drafting the UBPs, Staff's reduced security requirement under Option 1 is neither justified nor necessary. Therefore, NFG urges Staff to revise its list of security options by removing Option 1 (and referring to the UBPs) or by adopting the list as a non-exclusive menu of suggested, mutually acceptable security arrangements.

The ESCOs generally consider Option 1 as reasonable. The Coalition, however, requests that, for clarity, the security requirement be set directly at no more than 22 days because the proposed language would cause confusion (i.e., one-half of the UBP Billing Agency 45 day requirement would yield a fractional number, 22 1/2). E Cubed and the Marketers Group say that the need for security should be reassessed and rescinded after an ESCO establishes its ability to bill and collect.

On reply, Niagara Mohawk asserts that Staff's basis for the 50% reduction in security is insufficient. It requests, however, that if the Commission upholds the 50% security requirement, 23 days of coverage should be assumed instead of 22 days as proposed by the Coalition. Niagara Mohawk also rejects E Cubed's proposal for refunding security and/or removing the security requirements on the basis that even though an ESCO may establish its ability to bill customers, bankruptcy is still a possibility.

NYSEG, in reply, supports NFG's claim that requiring only half the otherwise applicable security is inconsistent with the UBP and says that Staff has provided no foundation for its proposal that security be reduced below the Commission-approved UBP. Further, it states that Staff improperly relied upon the

second paragraph of Section C.1 of the UBPs to set the maximum security for delivery services because that paragraph governs the security associated with the electric delivery risk "where the ESCO is acting as the customer's Billing Agent," whereas the legal relationships among a customer, an ESCO and a utility are different under the "Billing Agency" arrangement and the "ESCO Single Bill" arrangement. It states that it is for this reason that the UBP distinguishes the amount of security under the Billing Agency Arrangement (i.e., no more than 45 days) and the amount of security under the "ESCO Single Bill" Arrangement (i.e., no more than 60 days). NYSEG, therefore, states that the Commission should clarify that the maximum security that a utility could request from an ESCO under the "ESCO Single Bill" arrangement is "no more than 60 days of the ESCO's customers' projected peak period energy requirements over the coming 12 months priced at the utility's applicable delivery tariff rate."

Con Edison/O&R, in its reply, restated its belief that the single bill provided by the ESCO presents the same risks to the utility as does "Billing Agency."

Option #2 - Third Party Payment Processor

Customer payments are directly received and processed by a creditworthy third party payment processing agent (essentially a lockbox arrangement; no delivery charge security deposit would be necessary).

NYSEG does not oppose use of a lockbox arrangement with no security requirements, but it asserts that, in order for it to agree to the use of a creditworthy third-party payment processing agent, four conditions must be satisfied: 1) the parties should mutually agree on the third party processor; 2) the ESCOs should bear all implementation and administrative costs; 3) the ESCOs should have a verifiable billing process; and 4) any partial payments must be allocated to utility charges over the ESCO charges. Con Edison/O&R disagrees with NYSEG: it says that even with the lockbox there is always the possibility that ESCOs can redirect funds, which would create a standing risk for the

utilities. Niagara Mohawk says that under this option the ESCOs should provide security equal to at least seven days of utility charges (not zero as proposed by Staff) and that ancillary issues (e.g., misdirected payments to ESCOs or utilities instead of the lockbox, allocation of partial payments, etc.) should be addressed.

ConEdison/O&R also comments on NYSEG's stated position concerning its acceptance of a lockbox arrangement utilizing a "creditworthy third-party processing agent." While ConEdison/O&R agrees that the lockbox service provider should provide the ESCO with insurance or indemnification against defalcation and misapplication of receipts, it opposes the Staff Report's suggestion, and NYSEG's agreement with it, that a billing arrangement using a lockbox would not involve the provision of any form of financial security from the ESCO or on the ESCO's behalf. It states that in the UBP proceeding, the Commission recognized that security is necessary to recognize the fact that an ESCO may direct customers to make payments to a location other than the lockbox and the policy that customers should be insulated from ESCO impropriety.

From the ESCO viewpoint, the Coalition states that: funds in the lockbox must be limited solely to payments for services the utility has rendered; that the utility has no right to the funds related to the commodity service provided by the ESCO; and that standard procedures and allocation of payments should be established by the parties.

In reply, NYSEG indicates that the Commission should reject the Coalition's proposal that the utility not have access to revenues in the lockbox that represent the reimbursement of ESCO charges, because utilities are the providers of last resort, and have the statutory obligation to provide service to a customer upon request and the statutory power to terminate service to a customer upon nonpayment. NYSEG, therefore, says that it is to the customer's benefit that the utility be fully reimbursed in a timely manner for the services that the utility has rendered.

Niagara Mohawk, in reply, states that it is not opposed to the Coalition's proposal, but it requests clarification that a utility should have access to all revenues necessary to cover any commodity imbalance services it provides (this was intended to cover the utility's obligation until the ISO became operational, which has now occurred).

Option #3 - ESCO Purchase of Accounts  
Receivables (A/R)

The ESCO would purchase a utility's accounts receivable at a negotiated discount; no security deposit would be necessary for the delivery charges.

ConEdison/O&R states that this option serves to increase the utility's risk and ignore the losses that may occur after the ESCO's default and before the utility converts the customer to direct utility billing. It is also concerned about the risk to its credit rating as the result of its reliance on an ESCO for transmittal of its transmission and distribution revenues. (See discussion under General Section).

NYSEG says that the implementation should not interfere with existing sale of receivable practices or with existing contracts that govern accounts receivable. NYSEG requests, however, that Staff clarify that the "negotiated discount" at which an ESCO would purchase a utility's accounts receivable must be derived from the business decisions of the utility and ESCO and be mutually acceptable between those two parties.

Niagara Mohawk asserts that this option is not a security arrangement, but rather a business transaction between the parties. As such, any contract concerning the sale of accounts receivable would be outside of the jurisdiction of the Commission. Further, it notes that if the Commission mandates that utilities offer this option, Niagara Mohawk may be precluded from its current practice of selling its accounts receivable to third parties as a financing mechanism, which may result in increased costs to Niagara Mohawk.

E Cubed offers several proposals: 1) ESCOs' collections of individual accounts should not be subject to utility oversight; 2) late payment fees should only be applicable to the utility delivery portion of bills; 3) ESCOs should benefit from utilities' bad debt funding allowances; and 4) if ESCOs bill for utilities, the ESCOs should be paid for providing the service (long run incremental costs) and/or the utilities should reduce their T&D charges to the ESCOs.

NAE says that the utility should be at risk for customer non-payment of utility portion of the combined bill. Reliant proposes that an ESCO be allowed to bundle charges, because it would essentially be providing a bill to the customer for ESCO charges only.

CPB indicates that it prefers that this option be the state-wide standard because it produces the lowest overall cost when discounts are adjusted to reflect reductions in utility uncollectibles and collection expenses and the time value of money. Further, it states that should the ESCO and utility mutually agree to a different arrangement that does not increase the risk to other utility customers, it would not object.

On reply, E Cubed expresses its support of the Reliant proposal to allow ESCOs to bundle bills if they purchase the utilities' accounts receivables and recommends that the Commission adopt it.

On reply, CPB states that although it suggests that the purchase of a utility's receivables be the mandatory standard, with optional arrangements only allowed as mutually agreed to by the parties, its only caveat is that "under no circumstances should a utility be allowed to go directly to the customer to recover funds already remitted to the ESCO, regardless of the arrangement agreed to by the parties."

Option #4 - ESCO makes Daily Scheduled Payments

The ESCO would make daily scheduled payments based on the utility's receivables. The sum of the scheduled payments, which would be based on estimates, could be reconciled periodically with actual collections, at the end of the month, for example. A delivery charge security deposit equal to one day's worth of the utility's receivables to be billed by the ESCO would be required.

ConEdison/O&R's concerns about option 3 are applicable to this option as well.

Niagara Mohawk states that because this option addresses only losses due to an ESCO's failure to remit payment, the option should require ESCOs to make payments even where they fail to bill or are tardy in billing. Niagara Mohawk also states that limiting the delivery charge security deposit to one day's worth of utility's accounts receivable does not reasonably address the utility risk because if an ESCO fails to remit payments to the utility and fails to issue bills, utilities would be required to prepare and issue their own separate bills, which could take up to seven days. Therefore, Niagara Mohawk proposes that the required security be increased from one day to seven days' worth of utility accounts receivable.

NYSEG states that in order for this option, which it initially suggested, to be fully effective, the utilities must have avenues by which to address instances in which ESCOs fail to make daily scheduled payments. NYSEG specifically requests that two modifications be made: 1) an agreement between a utility and an ESCO should govern the daily transactions and authorize the utility to terminate the ESCO Single Billing Arrangement with an ESCO for failure to make timely payments based on the utility's receivables; and 2) ESCOs should be required to provide utilities with a one-month security deposit to cover the grace period when the utility is unable to collect payments from a terminated ESCO's customers.



The Marketers strongly oppose this option; it states that this option would wreak havoc on the ESCOs cash flows and accounting requirements.

Although few parties commented on this option, it was only opposed by the Marketers Group, but their comments assume that the arrangement might be mandated for use by ESCOs. Staff's Initial Proposal, however, assumed that the ESCOs would have the right to select the option that is best suited to meet their needs.

Proposals for Parties' Selection of Financial Options

Con Edison/O&R, NFG, Niagara Mohawk, NYSEG and CPB all indicate that the selection of the appropriate option should be a mutual agreement between the parties. Con Edison/O&R says that it is very concerned about its financial risk and requests that the Commission consider the financial implications of Staff's Initial Proposal. It says that the Commission should allow utilities "to employ more conservative and more prudent credit policies and financial security arrangements than those embodied in the Staff Proposal." CPB prefers the purchase of accounts receivables by ESCOs, but it indicates that it is open to allowing mutual agreement between the parties for other options.

Only the Brooklyn Union Companies propose that the utility alone has the authority to select the financial option. It states that the financial security arrangements may not afford sufficient security in certain circumstances. Absent such authority, the Brooklyn Union Companies would reject the "ESCO Single Bill" arrangement.

E Cubed and the Coalition indicate their preference for the ESCO to make the choice instead of having it made by the utility or by mutual agreement.

In response to the Coalition's comments that the ESCO alone should have the right to designate the method of providing financial security, ConEdison/O&R replies that allowing ESCOs alone to select the method of providing security will ensure that the method chosen will be the highest risk for the utility. It

further states that, as a practical matter, because there is no difference between the proposed "ESCO Single Bill" arrangement and the "Agency Billing" arrangement, the financial security requirements should be no different.

#### Billing Costs

The comments submitted on this portion of the Staff's Initial Proposal were discussed earlier in the "Threshold Issues" section.

#### Bill Content

Staff's Initial Proposal indicated that in all cases, except where the ESCO purchases a utility's accounts receivables, the utility portion of the "ESCO Single Bill" would have to meet the current regulatory requirements pertaining to content of bills. These requirements were provided in summary form in Appendix B of the Staff Report. Several parties provide comments on this matter.

NEV says that ESCOs should be given flexibility with respect to bill content to meet customer needs. Similarly, Reliant says that bill content, and especially, format beyond what is required by appropriate consumer protection laws, should not be strictly prescribed. It says that ESCOs should be allowed to make their own billing arrangements, particularly for commercial and industrial customers. This would include allowing them to provided bundled bills. If the ESCO selects the "ESCO Purchase of Accounts Receivable" financial security option, Reliant says that it should not be required to include utility messages or bill inserts with its bills. It says that the list of bill requirements set forth in Staff's Initial Proposal should not be required, but if the Commission desires to impose requirements, it could develop bill content requirements for residential customers that would, at most, include: customer name; account number; customer billing address; ESCO name; address and telephone number; utility name and telephone number; customer charges/payments due; and sufficient space for bill

message, subject to an agreement between the utility and the ESCO. Finally, Reliant says that the Commission should allow flexibility in the presentation of ESCO process and not limit the supplier's contract prices to "price per unit" formulas.<sup>1/</sup>

The Brooklyn Union Companies would require that the utility portion of the "Single Bill" include:

- (a) complaint handling procedures;
- (b) phone numbers for complaints;
- (c) the indices used to calculate bills for metered service (or the per day or other basis used for calculating bills for unmetered service);
- (d) information on time of use billing;
- (e) information on deferred payment agreements (for residential accounts);
- (f) a statement that meter readings can be provided by the customer (for residential accounts);
- (g) information on billed demand (for non-residential accounts); and
- (h) information on penalty charges (for non-residential accounts).

It also suggests that the Staff's Initial Proposal for the ESCO portion of bills be modified to:

- (a) eliminate the requirement that the ESCO telephone number to be displayed be identified as "at the ESCO's office";<sup>2/</sup>
- (b) add information on how customers can safeguard privacy of account and payment information; and
- (c) provide complaint handling procedures and phone numbers.

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<sup>1/</sup> Reliant misunderstands the intent of the "price per unit" criterion. The "unit" need not be "kWh" or "therm", for example, but could be "per billing period" or whatever was set forth in the ESCO's agreement with its customer.

<sup>2/</sup> We agree that the phrase "at the ESCO's office" is unnecessary, and we have deleted it in Attachment D.

Reliant's and Brooklyn Union's proposals have merit in many respects, but the Public Service Law and the Commission's regulations place a number of obligations on the utilities with respect to the billing of end use customers. If the utility's charges are billed by an outside billing agent, an ESCO or any other entity, the obligations remain and the utility has the responsibility of ensuring that the billing procedures comply with the applicable regulations. Thus, if retail access customers want their ESCOs to provide them with single bills, the utility portions of those bills must generally meet the same standards that are applicable to utilities (except as discussed below), and the utilities must take reasonable steps to ensure that the ESCOs are billing in compliance with the regulations. Staff believes that the proposed billing standards, with some refinements, generally represent the least costly and least intrusive method of balancing the desire of ESCOs to provide a single bill with the utilities' obligation to abide by billing requirements.

BILL CONTENT<sup>1/</sup>The Utility's Portion of Consolidated Bills

The content of the section pertaining to the Utility's charges and its messages must continue to conform to HEFPA requirements. Accordingly, the following data elements must be displayed on the utility's portion of a consolidated bill:

For All Bills:

- the utility name and a telephone number to call (at the utility) for billing inquiries regarding the utility's charges;
- the customer's name, address, service classification and account number;
- the date the most recent payment was received or the date through which any payments have been credited, and the debit or credit balance carried over from the prior bill, if any;
- the amount of any late payment charge applied during the current billing cycle;
- an explanation of how (or where) the bill may be paid;
- messages and information pertinent to the service being provided, such as the initial, or modifications to, terms of deferred payment or budget billing plans, disconnect notices, public safety notices, etc.

For Metered Service Bills:

- the registered demand for every demand meter, whether or not the customer is currently subject to a demand charge;
- the indices being used to calculate the bill, whether they are based on an actual reading of the meter, a remote register, a customer provided reading, or are estimated, and if estimated, the reason therefor;
- the meter multiplier or constant for each meter;
- the next scheduled meter reading date.

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<sup>1/</sup> The format of the consolidated bill is not proscribed, but it should be such that the utility's charges can be clearly distinguished from the ESCO's charges.

For Unmetered Service Bills:

- a clear statement that the bill is for an estimated amount of service utilized but not metered;
- the per day or other basis used for calculating the amount of service billed.

For Residential Bills (in addition to above):

- dates of the present and previous meter readings;
- whether the meter readings are estimated or actual;
- amount consumed between present and previous readings;
- amount owed for the latest period,
- the date by which payments for the latest period may be paid without a penalty;
- the penalty charge for late paid bills;
- credits from past bills and any amounts owed and unpaid from previous bills;
- the billed demand;
- any charges or credits that are adjustments to the base charges imposed by the utility's tariff for the rate classification of that customer.

For budget billing plans, the following additional information must be displayed:

- the total of the budget bills rendered from the beginning of the budget plan year to the end of the period covered by the current bill;
- the amount of the difference between the two;
- the debit or credit balance.

For Non-Residential Bills (in addition to above):

- the address and location of the premises where the service was supplied;
- the unit of measurement;
- an explanation of any calculations or factors used in calculating charges;
- an explanation of any abbreviation or symbol used that is not common English usage.

The ESCO's Portion of Consolidated Bills

With respect to the level of detail that should be provided for the ESCO's charges and its messages on consolidated bills, the Commission has previously expressed its expectation that "ESCO customers ... receive the billing equivalent in accuracy to what they would receive from the traditional regulated utility."<sup>1/</sup> Accordingly, the intent of the guidelines listed below is to aid parties in understanding how to meet the Commission's expectations.

- Display the name of the ESCO;
- Display the ESCO account number for the customer;
- Display taxes as a separate line item;
- Display price per unit (e.g., per kWh, per therm, per month, etc.) and number of units for each product or service;
- Display the telephone number to call for billing inquiries;
- Display the date the bill was rendered;
- Display the date payment is due and how [where] payment may be made;
- Display text messages;
- Display the period in which the charges were incurred (e.g., for the month of February, from 2/1 to 2/28, etc.)

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<sup>1/</sup> Case 96-E-0898, Order Regarding the Regulatory Regime for the Single Retail Model, issued December 24, 1997, page 19.