

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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

CASE 98-M-1343 In the Matter of Retail Access Business Rules

**NEW YORK RETAIL CHOICE COALITION COMMENTS
ON THE WHITE PAPER ON
ENERGY SERVICE COMPANY HOME WARRANTY PRODUCTS**

The New York Retail Choice Coalition (“Coalition”) respectfully submits these comments in response to the May 29, 2024, White Paper on Energy Service Company Home Warranty Products filed by the Department of Public Service staff (“Staff”) on May 29, 2024, in case 24-M-0324 (“White Paper”) and the Notice Soliciting Comments (“Notice”), subsequently issued on July 24, 2024. The Notice included seven questions from Staff regarding issues presented in the White Paper, of which the Coalition has responded to questions 2-7, below.

The Coalition, which represents many small and midsize ESCOs in New York State, welcomes the opportunity to work with Staff in crafting a regulatory framework that provides for improved consumer protections in home warranty product (“HWP”) offerings; however, before implementing any changes to the current HWP standards and requirements, the Coalition recommends that the New York Public Service Commission (“NYPSC” or “Commission”) direct Staff to convene a technical conference and working group. This would allow service providers, ESCOs, Staff, and other stakeholders to openly discuss the recommendations. A collaborative report reflecting the working group’s findings should then be submitted to the Commission for consideration.

I. GENERAL COMMENTS ON STAFF RECOMMENDATIONS

The Coalition commends the Staff's commitment to enhancing consumer protection and agrees with several recommendations that aim to strengthen safeguards for consumers. We particularly support the initiatives that promote transparency, ensure timely service delivery, and protect consumers from unfair limitations. Our goal is to work collaboratively to achieve a balanced regulatory framework that maximizes consumer benefits while maintaining operational efficiency and choice.

We have carefully reviewed the recommendations proposed by Staff in their White Paper and, while we appreciate the intent to enhance consumer protections, we have concerns regarding the necessity and practicality of certain proposals. We believe that many of the existing regulations under New York State law, the Uniform Business Practices (UBP), and other relevant NYS and federal regulations already offer substantial protection for consumers. Specifically, Home Warranty Products (HWP) are already under the purview of the Department of Financial Services, which provides a robust framework for oversight and consumer protection. We have outlined our specific feedback below:

A. Recommendations Supported by the Coalition to Improve Consumer Protection

The Coalition supports the following recommendations, and suggests implementation of these recommendations be considered in the working group, as suggested above.

- **Prohibit Consumer Redemption Limits:** The Coalition supports Staff's recommendation to prohibit limits on the amount consumers can redeem per service call. This measure aligns with our shared goal of ensuring that customers receive the full value of their HWP, thereby enhancing consumer protection.
- **Service Window Guarantee:** We also endorse the recommendation to establish a three-day guaranteed service window and to waive service call fees if service is delayed. This proposal is consistent with our commitment to providing timely and reliable service, which is a cornerstone of consumer trust and satisfaction.

- **Standardize Contracts and Quarterly Reporting.** The Coalition is generally supportive of some standardization of HWP contract requirements and implementation of a reporting requirement. These measures will likely improve transparency and ensure that consumers are well-informed, although we would need to review the specific requirements before offering detailed comments.

B. Balancing Practicality of Certain Recommendations with Consumer Protection

In reviewing the proposed recommendations, the Coalition acknowledges the importance of consumer protection and transparency. However, we believe that some of the recommendations may impose unnecessary burdens on both providers and consumers without delivering commensurate benefits. The following points outline our concerns regarding these recommendations, which we believe could be reconsidered to better align with industry practices and consumer preferences.

1. Prohibit Third-Party HWP Models

Staff recommends that only ESCOs with certified employees be allowed to offer HWPs. The Coalition disagrees with this recommendation. The use of third-party providers allows ESCOs to leverage specialized expertise and established service networks, ultimately benefiting consumers through higher-quality and more reliable services. Restricting HWPs to ESCOs with in-house employees will limit consumer choice and reduce service quality. Staff's concerns about consumer confusion and data transparency are, in our view, overstated and can be managed effectively without imposing such restrictive measures.

2. Separate Billing from Commodity Costs:

The Coalition disagrees with the recommendation to separate HWP costs from commodity costs on customer bills. The current unified billing structure provides significant benefits in terms of operational efficiency, cost savings, and simplicity for consumers. Introducing separate billing would likely cause confusion, increase operational costs, and disrupt the cohesive value

proposition that bundled services offer. The concerns raised by Staff regarding pricing transparency and the risk of overcharging customers do not, in our opinion, justify the proposed solution, as the existing framework already offers adequate safeguards.

3. Restrict HWP Offerings to Bundled Guaranteed Savings or Capped Fixed-Rate Products:

Staff recommends that ESCOs be allowed to offer HWPs only if they are bundled with guaranteed savings or capped fixed-rate products. The Coalition believes this recommendation unnecessarily limits the flexibility and variety of offerings available to consumers. Imposing such restrictions also reduces consumer choice. Moreover, this recommendation undermines the Commission's previous findings that HWPs provide value independently of these other products.

4. Required Site Visits

Staff recommends requiring site visits for eligibility verification. The Coalition opposes a requirement for site visits to verify eligibility. This proposal is impractical, does not align with industry practices, and would place an undue burden on both providers and consumers.

II. RESPONSES TO STAFF QUESTIONS

Below the Coalition provides its comments on Questions 2-7, posed by Staff in the Notice.

2. What barriers, if any, prevent ESCOs from separately disclosing the cost of the service contract from the cost(s) of commodity supply, thereby increasing the transparency of bills including HWP costs?

Several barriers prevent ESCOs from separately disclosing the cost of the home warranty (HW) service from the cost of commodity supply:

- **Integrated billing systems:**
 - **System complexity:** Current consolidated billing systems are designed to provide a single rate to the customer, simplifying the billing process. To separately disclose the costs of HW services from commodity supply would require a substantial overhaul of these systems, involving significant investment and the potential for billing errors and customer confusion.

- **Operational disruptions:** Separating these costs could disrupt the streamlined operational processes that currently benefit customers, leading to inefficiencies and increased operational burdens.
- **Customer perception and experience:**
 - **Bundled value proposition:** Customers view the bundled service as a cohesive offering that provides value through the convenience of a single provider. Separating costs could diminish this perceived value, leading to confusion and dissatisfaction.
 - **Simplified billing:** A single, consolidated bill simplifies financial management for customers. Separate disclosures could complicate their billing experience, making it more difficult to track and manage expenses.
- **Cost efficiency and competitive pricing:**
 - **Lower rates through bundling:** Bundling allows ESCOs to negotiate lower rates with service providers, which are passed on to the customer. Unbundling could undermine this ability, potentially leading to higher costs for customers.
 - **Economies of scale:** The bundling of services enables ESCOs to achieve economies of scale, ensuring a more stable and predictable pricing structure, that would be lost if the services were offered separately.
- **Regulatory and compliance considerations:**
 - **Regulatory risks:** Separate cost disclosures could introduce new regulatory complexities and legal risks, increasing operational costs and burdens.
 - **Market disruption:** Separate disclosures could disrupt market dynamics, leading to fragmented service offerings that may not align with existing regulatory frameworks.

While we agree that transparency is important, the operational, financial, and customer experience considerations outlined above suggest that the current unified cost structure is more beneficial to consumers. Transparency is achieved through clear and comprehensive pricing and product terms. We believe the existing approach effectively balances transparency with the need to maintain service quality and value.

3. What added value do consumers receive by enrolling in ESCO HWP when they can otherwise directly sign up for home warranty services that are not tied to their energy provider?

Consumers who enroll in an ESCO HWP receive several added benefits as compared to signing up for a stand-alone home warranty service:

- **Integrated service experience:** Customers benefit from a streamlined service experience with energy and home warranty services managed together, reducing the hassle of dealing with multiple providers.
- **Bundled cost savings:** By bundling HWPs with energy services, we are able to offer the warranty at a lower cost compared to stand-alone products, providing consumers with direct financial savings.
- **Single point of contact:** Consumers enjoy the convenience of having a single point of contact for both energy and home warranty needs, simplifying customer service interactions and reducing the complexity of managing multiple service agreements.
- **Enhanced service coordination:** Partnerships with local service providers ensures quicker response times and better coordination of maintenance services, which are optimized for our energy customers' specific needs.

The bundled approach offers significant advantages in terms of convenience, cost savings, and service integration, which are not as easily achieved through stand-alone products.

4. What barriers, if any, prevent ESCOs from establishing their own in-house home warranty division that would free them from relying on a third party to handle the service obligation inherent in their HWP contract?

Several barriers prevent ESCOs from establishing an in-house home warranty division:

- **High initial investment:** Developing an in-house warranty division would require substantial up-front investment in infrastructure, staffing, and training, which could outweigh the benefits of maintaining third-party partnerships.
- **Expertise in home maintenance:** Home maintenance and warranty services require specialized expertise, typically outside the core competencies of energy companies. Leveraging third-party specialists allows for higher service quality.
- **Scalability challenges:** Scaling an in-house warranty division to meet the needs of a large and diverse customer base would be challenging, potentially leading to inconsistencies in service quality. Third-party providers offer established networks and processes that ensure consistent and reliable service.

- **Regulatory and compliance complexity:** Managing an in-house warranty division would introduce additional regulatory and compliance requirements, increasing operational complexity and potential risks.

Partnerships with specialized third-party providers can offer the best service to customers by leveraging expertise that may not be available within an ESCO's core operations.

5. How many maintenance professionals would an ESCO need to employ to ensure that their HWP customer base is covered in a way that supports the recommendations in the White Paper?

We disagree with the recommendation that ESCOs should directly employ maintenance professionals. In many cases, customers are better served by companies that specialize in HW services. While some ESCOs may choose to develop in-house capabilities, partnerships with specialized third-party providers often ensure that customers receive the highest quality service.

6. Are there any industry standards in New York or other states regarding HWPs and consumer protections associated with such products that the Commission should consider?

Robust consumer HWP protections are already well established under existing New York law, and so we do not agree with Staff's recommendation that the Commission should consider additional consumer protections specific to HWPs. These protections includes requiring companies offering home warranties in New York to register with the New York State Department of Finance and demonstrate proof of financial responsibility, which ensures that they have the financial stability necessary to honor their obligations.

There is no compelling need for the Commission to introduce additional regulations in this area. The protections currently in place are sufficient and effective in safeguarding consumer interests. Moreover, the development of further requirements falls outside the Commission's traditional scope and expertise. Agencies such as the New York State Department of Finance, which possess specialized knowledge and experience, have carefully crafted and enforced the

existing standards. Therefore, it would be prudent for the Commission to defer to these specialized bodies rather than creating duplicative or unnecessary regulations.

7. Are there any other consumer protections related to ESCO HWP that the Commission should consider?

The Commission should rely on its existing standards and rules, as outlined in the Uniform Business Practices (“UBP”), to ensure transparency and protect consumers in the context of ESCO HWP. The current UBP already includes comprehensive marketing standards that emphasize transparency, accurate communication, and consumer protection; these standards are sufficient to safeguard consumer interests.

Specifically, Section 10 of the UBP (Marketing Standards) lays out the marketing practices that ESCOs must adhere to when interacting with customers, including the following:

- **Training and knowledge:** ESCOs must ensure that all marketing representatives are properly trained and knowledgeable about the products and services being offered, as well as the rights of consumers.
- **Prohibition of deceptive conduct:** ESCOs must refrain from engaging in misleading or deceptive conduct and ensure that all representations, including those related to rates or savings, are accurate and not misleading (.).
- **Disclosure of terms and conditions:** ESCOs must provide clear and accurate information about the terms and conditions of service, including rates, contract terms, and the right of cancellation.
- **Third-party verification:** ESCOs must conduct independent third-party verification for enrollments resulting from door-to-door or telephonic marketing, ensuring that consumers fully understand and agree to the terms of service.

These provisions are designed to protect consumers by ensuring that they are fully informed about the services they are purchasing and not misled by false claims or deceptive marketing practices. The existing UBP framework is adequate to ensure consumer protection. The PSC should continue to enforce these established standards rather than developing new requirements that may exceed the Commission’s scope and expertise.

III. CONCLUSION

The New York Retail Choice Coalition respectfully requests that the Commission carefully consider its comments and responses, refraining from imposing new requirements on ESCOs as outlined above. The Coalition also urges the Commission to direct Staff to convene a working group and technical conference, enabling stakeholders to collaboratively discuss the recommendations and submit a comprehensive report of their findings.

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Respectfully submitted,

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