

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of the Commission to Regulate)	
Energy Services Company Home Warranty Product)	Case 24-M-0324
Offerings)	
In the Matter of the Retail Access Business Rules)	Case 98-M-1343

Comments of Family Energy, Inc.

Family Energy, Inc.¹ [hereinafter “Family Energy”] hereby submits these comments on the “Department of Public Service Staff White Paper on Energy Service Company Home Warranty Products,” dated May 29, 2024 [hereinafter the “White Paper”], pursuant to the Notice Soliciting Comments dated July 24, 2024, issued in the above-referenced proceedings as well as the June 26, 2024, New York State Register Notice. The White Paper makes a number of recommendations that would fundamentally alter the characteristics of Home Warranty Products (HWPs) from what the Commission adopted just three years ago and in so doing make these products uneconomic for ESCOs to offer and/or cause the price of such products to significantly increase for consumers. Family Energy submits that no record has been developed to justify the HWP product and pricing changes suggested in the White Paper, or the proposed prohibition on the third-party provider model, and those proposals should not be implemented.

The White Paper also recommends that certain terminology and contractual disclosures associated with HWPs be standardized in the interest of promoting consumer understanding and transparency. It also recommends requiring new service standards regarding site visits and service claims. Family Energy suggests that the subject of HWP contract standards and service standards

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

be referred to the Track II workgroup for stakeholder review and study, with a report to the Commission on whether there is a need for any changes, and if so, what changes are recommended.

I. No Record Has Been Developed to Justify Changes to the HWP Model That the Commission Recently Adopted

After having authorized one ESCO to offer a HWP in 2019 in the Order adopting changes to the Retail Access Energy Market,² the Commission subsequently received a number of petitions by other ESCOs requesting the ability to offer such a product. In January 2021, the Commission decided that additional ESCOs could offer a HWP. The Commission's reasoning was as follows,

Authorization is appropriate here because each of the respective petitions satisfy the criteria for a home warranty product bundle not subject to the default price guarantee rule. The proposals bundle commodity service with maintenance agreements closely related to ensuring that customers are able to use electricity and/or natural gas in a manner that provides essential services to the customers. The functions the home warranty products support include lighting and powering homes and buildings, heating and cooling air, heating water, and ensuring reliable water service. All of these functions are closely related to the reasons commodity energy supply is an essential service to New Yorkers. Moreover, the products are designed to insure against consumers suddenly facing a high-cost repair bills, for which the inability to pay may threaten access to these essential functions. Moreover, we find that each petition reasonably describes the relationship between the benefits provided by the proposed products and cost.³

The Commission decided that energy commodity bundled with a HWP constituted a value-added energy related service that justified an exception to the default price guarantee rule. Furthermore, the Commission decided that ESCOs would no longer need to petition to offer HWPs, but rather

² Cases 15-M-0127, 12-M-0476 and 98-M-1343, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process, effective December 12, 2019, at p. 23.

³ Cases 15-M-0127, 12-M-0476 and 98-M-1343, Order Addressing ESCO Petitions Requesting Authorization to Provide Additional Products and Services, effective January 25, 2021, at p. 15-16.

could submit sales agreements and other supporting documentation to Staff for approval prior to making this product offering.⁴

Subsequently, in November 2022, Staff issued interrogatory requests to ESCOs that were offering HWPs. Based upon the interrogatory responses, Staff drew some inferences about ESCO product offerings that ostensibly underly the White Paper. To be clear, the ESCO data responses are not publicly available, and thus not subject to outside critical review or challenge. An ESCO is only privy to the answers it directly provided to Staff. Notwithstanding this limitation, Family Energy can unequivocally state that there are generalizations made in the White Paper that do not reflect its business model. Family Energy filed its sales agreement and supporting documentation for its HWP for Staff approval⁵ and also fully responded to the interrogatory requests. Family Energy objects to the application of the broad-brush conclusions in the White Paper to its HWP. Moreover, Family Energy believes it is fundamentally unfair and unjustified to adopt the product and pricing changes, as well as the third-third party provider prohibition, that are proposed in the White Paper based on those generalizations.

II. The Proposed HWP Product and Pricing Changes Should Be Rejected

The product and pricing changes that are proposed in the White Paper would render a HWP uneconomic for an ESCO to offer and are based on a misapprehension of the value of the bundled offering to consumers. The White Paper would eliminate the product bundling benefits of the HWP by requiring it only be offered in conjunction with a guaranteed savings product or fixed price with 5% cap product and simultaneously requiring that HWP product charges be set forth on

⁴ Id. at 16-17.

⁵ Matter Number 14-02554, Family Energy, Inc. submission dated March 5, 2021.

a line item basis on bills (which are rendered by utilities on ESCOs behalf and therefore subject to utility billing requirements), or if not, that ESCOs separately bill HWP products to customers. This proposal shows a clear misunderstanding of the value of product bundling in general, and a devaluing of HWPs, specifically. Here, the home warranty product is being bundled with energy commodity because they are complementary products and because it provides the customer with the convenience of obtaining both in one transaction from one provider. The Commission recognized the complementary nature of HWPs and energy commodity in the January 2021 Order when it deemed it an energy-related value-added service. The HWP product, that can protect home heating, cooling and lighting, is directly linked to the customer's consumption of energy commodity itself. As such, there is a clear synergy between the offerings to support a bundled product for customers.

When a customer purchases a fixed price commodity product bundled with a HWP, the customer benefits from the stability of the commodity rate coupled with the on-call repair service, which is of significant combined value. The ESCO bears the cost and risk of satisfying the guarantees inherent in each component – a fixed commodity rate (even though market conditions change over time) and an on-call repair service (that can be requested at any moment given individual customers changing circumstances).

The White Paper also questions the value of the HWP product itself. A home warranty product is an on-demand service that provides a known value of service repairs to a customer, as disclosed in the contract. When a customer faces a situation where the HWP can be used, it is of unquestioned value for the customer to be able to rely on that. Indeed, its highest value to the customer comes at a time of unplanned stress. Like insurance, the customer pays a monthly charge for the security of being able to depend on this product when needed. As a reference, home warranty products are

offered as a standalone product by some companies, at a cost of \$40 to \$115 per month in New York.⁶

III. The Proposal to Prohibit the Third-Party Provider Model Should Be Rejected

The White Paper would also prohibit ESCOs from employing the third-party provider model to offer HWPs and instead require ESCOs to directly employ certified maintenance personnel. The primary justification for the prohibition appears to be based on Staff concerns related to a particular provider that certain ESCOs are using but that Family Energy is not. If such a requirement were to be adopted, it would be cost-prohibitive for ESCOs to offer HWPs and/or price-prohibitive for consumers to purchase these products from ESCOs. The proposal would require ESCOs to stand up an entirely new business with statewide coverage. For an ESCO that serves customers across the state, in order to be able to have staff available on-call to respond to service requests, that would require recruiting and hiring qualified employees across the state, buying relevant repair equipment and parts to perform the service, providing employee transportation, training, and uniforms, paying employee compensation and benefits, and insurance, at a minimum. It is no easy feat to be able to build that expertise from the ground up. That is why it is beneficial to use a qualified third-party to perform the service repair. Third-party providers already have the expertise available, and in the location where it is needed, without requiring an ESCO to create a redundant business and incur additional unnecessary costs. That being said, the customer service and contract administration function should remain in-house with the ESCO, so that the customer is provided with a single point of contact when they need to request a service

⁶ <https://www.consumeraffairs.com/homeowners/home-warranty-companies-new-york.html>

visit and to ensure that appropriate service records are maintained. Family Energy has provided documentation to Staff regarding the third-party providers it works with for its HPP.

IV. Contractual Disclosure and Terminology Standardization Should Be Reviewed in the Track II Workgroup

The customer sales agreement should clearly disclose that the customer is contracting for both commodity and the HWP, and also disclose the coverage and terms of service. The White Paper suggests a series of requirements to be memorialized in customer sales agreements related to the HWP, including that the ESCO handles all disputes, a process for consumer recourse, a minimum \$1,000 annual service coverage with the ability for the customer to carry an unused credit forward, and standardization of the definition of “service call fee” or “deductibles.” The White Paper also makes other vague references to “establish[ing] HWP contract requirements” and “includ[ing] in customer disclosure statement relevant language about HWP, and references to appropriate terms and conditions.” (White Paper at p. 16-17). There are some contract terms for which standardization may be useful, while other terms bear directly on an individual ESCO’s ability to differentiate itself from the competition. While the White Paper suggests additional contractual disclosures are needed, it offers no explicit proposals in that regard. Family Energy submits that the topic of standard HWP contract terms would be appropriate for the Track II⁷ stakeholder workgroup to examine and provide recommendations to the Commission.

⁷ Cases 15-M-0127, 12-M-0476 and 98-M-1343, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process, effective December 12, 2019, at Ordering Paragraph 3, provides that,

Department of Public Service Staff (staff) is directed to convene a collaborative in Track II of these proceedings to explore: (1) which, if any, ESCO-offered energy-related products and services are most likely to benefit customers and advance the State’s energy policy goals, which products and services can or should be offered by ESCOs bundled with commodity, and which are more appropriately offered separately from commodity; and (2) what rules, including pricing and disclosure requirements, should be applied to ESCO-offered energy-related products and services.

V. HWP Service Standards Should Be Reviewed in the Track II Workgroup

The White Paper also proposes to adopt certain service standards, including requiring an ESCO to perform a site visit within five business days of contract execution to ensure eligibility as well as instituting a three-day window for service claims. Establishing service standards may be appropriate, however the basis for proposing those particular timelines is not explained or substantiated in the White Paper. Family Energy submits that the topic of HWP service standards would also be appropriate for the Track II stakeholder workgroup to examine and provide recommendations to the Commission.

VI. Conclusion

For the foregoing reasons, Family Energy recommends that the Commission reject the home warranty product pricing and product proposals set forth in the White Paper as well as the proposed prohibition on the third-party provider model. The subjects of HWP contract standards and service standards should be referred to the Track II stakeholder workgroup for further study.

Respectfully submitted,

s/Stacey Rantala

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