

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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

**COMMENTS OF THE JOINT UTILITIES ON THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE STAFF WHITE PAPER ON
ENERGY SERVICE COMPANY HOME WARRANTY PRODUCTS**

I. INTRODUCTION

In response to the State of New York Public Service Commission’s (Commission) July 24, 2024 *Notice Soliciting Comments* (Notice),¹ the Joint Utilities² file these comments addressing Question 2 of the Notice, as well as the State of New York Department of Public Service Staff White Paper on Energy Service Company Home Warranty Products.³

In its December 12, 2019 *Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process*, the Commission stated, “[i]n the retail energy supply context, a value-added product or service is an enhancement to the commodity supply. Thus, when a product or service is described in this order as ‘value-added,’ that term should be understood as referring to bundled services—commodity service plus some additional product(s) or

¹ Case 24-M-0324, *In the Matter of the Commission to Regulate Energy Services Company Home Warranty Product Offerings* (HWP Proceeding), Notice Soliciting Comments (issued July 24, 2024).

² The Joint Utilities are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

³ HWP Proceeding, Department of Public Service Staff White Paper on Energy Service Company Home Warranty Products (issued May 29, 2024) (White Paper).

service(s).”⁴ The Commission has authorized energy service companies (ESCOs) to offer home warranty products (HWPs) as a value-added service since the Retail Markets Order. Moreover, throughout the Retail Markets Order, the Commission noted that whether a value-added service actually provided sufficient value to be adopted required a clear and demonstrable showing of the “value” of the particular service. After further review, Staff states in the White Paper that the bundling of HWPs with commodity supply has led to “a significant lack of pricing transparency.”⁵ Staff expresses concern that “consumers are not receiving sufficient energy related value-added benefits associated with the home warranty service, and in relation to the cost of the product.”⁶ To that end, Staff recommends that ESCOs “[e]stablish [a] billing process that makes clear on a line-item basis the charges a customer receives under their HWP plan.”⁷ In the alternative, Staff continues, “if the customer bill does not break out the cost of service on a line-item basis, then the HWP cost of service should not be bundled with commodity charges and be billed separately by the ESCO to the consumer.”⁸

The Joint Utilities support Staff’s efforts to protect customers and improve price transparency. If the Commission adopts Staff’s recommendation to break out the costs of the HWP on customers’ bills, then the Joint Utilities recommend that the Commission require ESCOs that use utility consolidated billing to separately bill their customers for HWP instead of having HWP appear as a separate line item on the consolidated utility bill. For the reasons

⁴ Case 15-M-0127, et al., *In the Matter of Eligibility Criteria for Energy Service Companies* (ESCO Proceeding), Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (issued December 12, 2019) (Retail Markets Order), p. 51.

⁵ HWP Proceeding, White Paper, p. 2.

⁶ *Id.*

⁷ *Id.*, p. 17.

⁸ *Id.*

described below, utilities cannot and should not be required to make system changes to offer a separate line item on their bills for HWP. Instead, ESCOs should be required either to separately bill the customer for the HWP, if the ESCO uses utility consolidated billing, or provide its commodity and value-added service separately on an ESCO bill issued directly to a customer.⁹

II. COMMENTS

The Joint Utilities generally support Staff’s proposals to enhance consumer protections and provide greater price transparency for ESCOs offering customers HWP services. The Joint Utilities’ comments focus on the White Paper’s recommendation to “[e]stablish [a] billing process that makes clear on a line-item basis the charges a consumer receives under their HWP plan; alternatively, if the customer bill does not break out the cost of service on a line-item basis, then the HWP cost of service should not be bundled with commodity charges and be billed separately by the ESCO to the consumer.”¹⁰ In addressing this recommendation, these comments also respond to Question 2 in the Notice, which asks, “What barriers, if any, prevent ESCOs from separately disclosing the cost of the supply service from the cost(s) of commodity supply, thereby increasing the transparency of bills including the HWP costs?”

Currently, utilities may offer consolidated billing under one of two methods: bill ready and rate ready. Under the bill ready method, utilities send customer usage data to the ESCOs to calculate their charges, and the ESCOs return to the utilities the charges that should appear on the customers’ bills for their individual levels of usage. Alternatively, under the rate ready method, the ESCOs provide the utilities the rates applicable to each customer prior to the utility

⁹ If the Commission adopts Staff recommendation, then ESCOs that do not use utility consolidated billing would either break out the cost of HWP on the customer’s separate bill or otherwise invoice customers for HWP separately from commodity supply. The Joint Utilities, however, express no opinion on how the Commission should implement this recommendation as to ESCOs that separately bill their customers.

¹⁰ HWP Proceeding, White Paper, p. 17.

billing the customer; then, after receiving customers' usage data, the utilities can use that information to calculate the customers' ESCO charges.

Under the existing Billing Services Agreements (BSAs) for utility consolidated billing, consolidated bills should only include ESCO commodity charges and any related fixed charges and applicable sales tax, but not charges for non-commodity products and services. Regardless of which methodology a utility uses to provide consolidated billing, it sees only the rate or total commodity charges set by the ESCO, without necessarily receiving a breakdown of the components of those figures.

From the perspective of utilities offering consolidated billing, breaking out home warranty costs as a separate line item on the utility bill, while potentially a reasonable consumer protection, would require changes to well-established billing arrangements and require further clarification concerning the ability of utilities to purchase receivables associated with HWP.

The Joint Utilities' billing operations are structured to bill customers for the energy commodity provided by the ESCO for retail service. At a system-software level, they cannot itemize and separately account for additional non-utility line-item charges, including bundled products offered by a third party. This limitation is not specific to ESCOs; even when the Joint Utilities issue charges or credits to customers outside of their regular utility service, such as charges related to a customer's service installation or a rebate for an energy efficient product, they do so separately from the customer's utility bill.

The Joint Utilities oppose expanding the use of utility bills for ESCO value-added charges, which in this instance would require utilities to incur additional costs for a number of significant process changes, including, but not limited to: (1) reprogramming their customer billing systems; (2) modifying their Electronic Data Interchange (EDI) systems; and (3)

reformatting their customer bills. Each process change would require development, testing, and implementation, at currently unknown costs. On top of these costs, modifying EDI systems has a broader impact because a new EDI segment would have to be created and added to the Commission-approved EDI standards. Even after the change is filed, subject to a public comment period, and approved by the Commission, the utilities and ESCOs would still need extensive testing of the new segment. Such an expansion would also create legal uncertainties related to which charges on a customer's bill are subject to being categorized as arrears for non-payment, which would require significant alterations to the Joint Utilities' collections procedures and automated notification systems.

Including itemized ESCO charges for non-utility services on consolidated utility bills would also raise the question of what customer receivables the Joint Utilities would buy from the ESCOs under their purchase of receivables (POR) programs. The Joint Utilities do not support any expansion to the types of receivables they should be required to purchase or to otherwise include in the calculation of POR rates. POR programs are governed by BSAs that each utility enters into with ESCOs that want consolidated billing. POR rates are also considered in the context of utility major rate proceedings. Currently, utilities purchase all ESCO receivables billed through utility consolidated billing. The customer is then responsible for paying the amount to the utility that purchased the ESCO's receivables and is subject to collections and turn-off procedures for non-payment of the bill.

The utilities' BSAs, however, do not allow for the purchase of receivables for charges other than ESCOs' retail commodity. If utilities were to include HWP charges on consolidated utility bills, then one of two things would have to happen. If the utilities purchased the receivables attributable to HWP, then they would have to enter into new BSAs with the ESCOs.

Alternatively, if they collected these payments for the ESCOs without purchasing the receivables, then they would have to develop new processes to account for and remit payments for these products directly to the ESCOs outside of normal POR processes and without the ability to apply normal credit and collection processes. In either case, the Joint Utilities do not think it reasonable for the Commission to require them to fundamentally change their relationship with ESCOs or residential customers by including both commodity and non-commodity charges on customer bills or to incur the burden and expenses associated with such efforts. ESCOs should be responsible for billing costs and include them in the price of the value-added product. Furthermore, Joint Utilities have many billing system changes in the pipeline, and changes to support ESCOs' HWP products should not be given a higher priority.

Moreover, the Commission also would have to consider and ultimately approve a host of new rules for any itemized non-utility charges.

First, the Commission would have to consider where these charges fall in the order of priority for partial customer payments. The Joint Utilities would propose that these charges fall lower in priority than all supply and delivery costs and any taxes, fees, or any other charges related to supply or delivery costs because they are not fundamental elements of utility service.

Second, if utilities were responsible for collecting customer payments for these ancillary products, then the Commission would have to determine whether utilities could terminate service to customers for non-payment under the Home Energy Fair Practices Act (HEFPA). If utilities could not turn off customers for non-payment of these charges, then utilities would need to make further programming changes to their billing systems to avoid turn off and collections activity for non-payment of these charges while still allowing termination for non-payment of other charges on the same bills. Furthermore, the utilities would have to implement costly new collection

practices and policies for the non-commodity products that would offset any benefits customers receive. Utility arrears are already at an all-time high even as utilities can utilize the potential for customer shut-off as an incentive to pay. Adding charges tied to non-commodity services on utility bills would potentially increase the utilities' arrears burden. (Note that in the analogous circumstance of NYSERDA's on-bill financing program, the Legislature specified that utilities would have the right to terminate for non-payment of those charges. There is no similar legislative directive here.)

Third, the utilities also would have to update their BSAs with ESCOs that offer these products to reflect these new regulatory requirements.

The Commission can avoid the costs and problems identified above by making ESCOs—not the utilities—responsible for implementing changes to their billing practices. Specifically, if ESCOs that use consolidated billing have to “make clear on a line-item basis the charges a customer receives under their HWP plan,” they should do so outside of the utility bill by separately billing their customers for this non-commodity-related service. Given the potential costs to utilities of updating their billing processes to implement this recommendation, it is appropriate that the cost of increased transparency should be borne by the ESCOs that have chosen to offer these additional products which the White Paper has found to be of questionable value, rather than the distribution utilities, who neither offer these additional products nor endorse their sale.

Moreover, in the wake of DPS Staff's other proposals—such as eliminating the third-party service model, requiring site visits to determine customer eligibility, limiting commodity charges for customers who subscribe to home warranty products, and imposing other new and potentially costly consumer protections—it is unclear whether the market for home warranty

products bundled with commodity supply will even survive. Utilities and their customers should not have to bear significant expenses to serve a market that may no longer exist or may be substantially diminished in the near future.

For ESCOs interested in offering HWP products, there are no barriers to directly billing their customers for these non-commodity charges—or for both commodity supply and non-commodity products, avoiding consolidated billing entirely. The utility BSAs allow ESCOs to separately bill for non-commodity charges, and the Uniform Business Practices (“UBPs”) already contemplate that ESCOs may bill their customers separately from the utilities.

The Commission has already acknowledged that “overhauling the POR system may not be worth its costs if the underlying concern is largely mitigated via other reforms.”¹¹ The circumstances are effectively unchanged, and to the extent the Commission determines that charges for this ancillary service should be transparent, the Commission can avoid the expenses and complexities associated with these potential rulemakings by requiring ESCOs to separately bill for HWP charges.

The concerns identified above demonstrate why the distribution utilities should not have to bear the cost of system upgrades to bill and collect ESCO charges for an insurance product that is also provided by third-party entities and DPS Staff has found to be of dubious value. Nor should utilities have to employ staff to manage customer inquiries and complaints likely to follow if the Commission requires utilities to separately bill for HWP.

III. CONCLUSION

The Joint Utilities support Staff’s efforts to protect customers and improve price transparency. Nevertheless, if the Commission adopts Staff’s recommendation that ESCOs must

¹¹ ESCO Proceeding, Retail Market Order, p. 102.

break out the costs of the HWP on the customer bill, the Joint Utilities recommend that only commodity-related charges be included on utility bills and that ESCOs be required to separately bill for the HWP if the ESCO uses consolidated billing, or provide its commodity and value-added service separately from the utility bill entirely. For the reasons described above, utilities cannot and should not be required to make major system changes to offer a separate line item on the utility bill for ESCO value-added or other non-commodity charges.

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Respectfully submitted,

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