

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on November 14, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

CASE 12-M-0476 - Proceeding on Motion of the Commission to
Assess Certain Aspects of the Residential and
Small Non-Residential Retail Energy Markets in
New York State.

CASE 06-M-0647 - In the Matter of Energy Service Company Price
Reporting Requirements.

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

CASE 98-M-0667 - In the Matter of electronic data interchange.

ORDER APPROVING WAIVER OF THE PROHIBITION ON ESCO SERVICE TO
LOW-INCOME CUSTOMERS

(Issued and Effective November 20, 2024)

BY THE COMMISSION:

INTRODUCTION AND BACKGROUND

In the Order Adopting a Prohibition on Service to Low-
Income Customers by Energy Services Companies, issued on
December 16, 2016, in these proceedings, the Public Service
Commission (Commission) implemented a prohibition on energy
services company (ESCO) enrollments and renewals of customers
who are participants in utility-administered low-income bill
discount programs (referred to as the ESCO Low-Income

Prohibition).¹ The December 2016 Order also provided that any ESCO capable of demonstrating that it can provide a product with guaranteed savings compared to what the low-income customer would have otherwise paid as a full-service utility customer could petition the Commission for a waiver of the ESCO Low-Income Prohibition. To receive a waiver, an ESCO must: (1) demonstrate to Department of Public Service Staff (Staff) an ability to calculate what the customer would have paid as a full-service utility customer; (2) provide an assurance that the customer would be paying no more than what they would have paid as a full-service utility customer; and (3) agree to proper reporting and verification requirements to ensure compliance with these conditions.

On January 12, 2017, Zone One Energy, LLC (Zone One) filed a request for waiver of the ESCO Low-Income Prohibition. On October 19, 2017, the Commission approved Zone One's petition for a waiver, allowing Zone One to serve low-income customers for a period of 24 months beginning October 19, 2017.² On September 25, 2019, Zone One filed its first petition seeking to renew its waiver of the ESCO Low-Income Prohibition. The renewal was approved for a period of 24 months beginning February 7, 2020.³ On September 23, 2021, Zone One filed a second petition for renewal of the waiver of the ESCO low Income Prohibition, which was approved for a period of 24 months

¹ Case 12-M-0476 et al., Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies (issued December 16, 2016) (December 2016 Order).

² Case 12-M-0476 et al., Order Approving Zone One Energy, LLC's Petition for Waiver of the Prohibition on Service to Low-Income Customers by Energy Service Companies (issued October 19, 2017) (Zone One Waiver Order).

³ Case 12-M-0476 et al., Order Approving Waiver of the ESCO Low-Income Prohibition for Zone One Energy, LLC (issued February 7, 2020).

beginning January 21, 2022.⁴ On April 8, 2024, Zone One filed a third petition for renewal of the waiver of the ESCO Low Income Prohibition, which is the petition considered herein.

As discussed below, the Commission finds that Zone One has made the requisite demonstration pursuant to the December 2016 Order. Accordingly, we approve Zone One's petition to renew its waiver of the ESCO Low-Income Prohibition, thereby allowing Zone One to serve low-income customers for a period of 24 months beginning from the effective date of this Order.

THE PETITION

In its petition, Zone One requests an extension of the previously granted waiver of the ESCO Low-Income Prohibition. In support of this request, Zone One asserts that low-income customers served by Zone One have received an average of 3% savings compared to the default utility price, exceeding its guarantee of at least 1% savings. Zone One asserts that it has successfully implemented the Commission's policy objectives in providing waivers of the ESCO Low-Income Prohibition and that it has provided reliable benefits to low-income customers as demonstrated by its compliance filings. Thus, Zone One asserts that the Commission should grant the requested extension of its waiver to serve low-income customers.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) was published in the State Register on May 1, 2024 [SAPA No. 12-M-

⁴ Case 12-M-0476 et al., Order Approving Waiver of the ESCO Low-Income Prohibition for Zone One Energy, LLC (issued January 21, 2022).

0476SP42]. The time for submission of comments pursuant to the Notice expired on July 1, 2024. No comments were received.

LEGAL AUTHORITY

The Public Service Law (PSL) provides the Commission authority to limit or discontinue ESCOs' access to utility distribution systems based on whether such access is just and reasonable in all respects. PSL §5(1)(b) grants the Commission authority over, among other things, both the sale and the distribution of natural gas and electricity. In addition, PSL §§65 and 66 provide the Commission specific authority over utilities and their distribution services. As is relevant here, and pursuant to PSL §65(1), a utility's distribution services must be, "in all respects[,] just and reasonable."

Thus, the Commission has the "authority to condition ESCOs' eligibility to access utility [distribution systems] on such terms and conditions that the [Commission] determines to be just and reasonable."⁵ Consistent with this authority, the Commission adopted the Uniform Business Practices, which set forth various regulatory eligibility requirements for ESCOs to begin accessing, and to continue accessing, utility distribution systems for the purpose of selling energy services to customers. More specifically, with respect to the instant waiver extension request, the Supreme Court of New York, Appellate Division, Third Department upheld the ESCO Low-Income Prohibition directed in the December 2016 Order as lawful in all respects.⁶

⁵ Matter of National Energy Marketers Assn. v. New York State Pub. Serv. Commn., 33 N.Y.3d 336, 351 (2019); see PSL §§5(1)(b), 65(1), 66(5), 66-d(2); see generally GBL §349-d(11).

⁶ Matter of National Energy Marketers Assn. v. New York State Pub. Serv. Commn., 167 A.D.3d 88 (2018).

DISCUSSION AND CONCLUSION

Zone One has demonstrated in its semi-annual compliance reports that it has provided more than the 1% savings it guaranteed to its low-income customers, as compared to the otherwise applicable utility commodity supply price.⁷ Zone One's reports provide detailed information, including summaries of the number of customers served, as well as spreadsheets of each account's invoice figures, and, where necessary, data on refunds necessary to effectuate the savings guarantee.

Staff has reviewed the documents and calculations provided by Zone One and has audited bills and confirmed billing data with the utilities in whose service territories Zone One operates. Zone One has sufficiently demonstrated its ability to provide a guaranteed savings product to its low-income customers across New York State in a manner that complies with the requirements of the December 2016 Order. In particular, Zone One has demonstrated that it can calculate what the customer would have paid as a full-service utility customer, provide customers with a product that ensures the customer will be paying no more than what they would have paid as a full-service utility customer, and comply with the ongoing reporting and verification requirements.

Accordingly, we approve a renewed waiver for Zone One of the ESCO Low-Income Prohibition, subject to the continued requirement to report semi-annually on the status of its guaranteed savings product as it pertains to its low-income customers. Such reporting shall include the number of customers served, the monthly calculated amounts billed, the amounts that the customer would have paid as a full-service utility customer,

⁷ See Case 12-M-0476 et al., Low Income Waiver Reports filed September 15, 2022, January 30, 2023, July 25, 2023, January 5, 2024, and July 2, 2024.

the percentage and dollar amount of savings, as well as the amount of any refunds issued to each customer to effectuate the savings guarantee.

Finally, as the Commission directed in the Zone One Waiver Order, the Commission still find it appropriate to place a time limit on waivers to serve low-income consumers, and thus, this waiver will be effective for 24 months beginning from the effective date of this Order. During that time period, Staff will review Zone One's compliance with the December 2016 Order and Zone One will have the opportunity to petition for an extension of its waiver, based upon its successful compliance with this Order and the underlying regulatory requirements. If Zone One is interested in seeking a waiver beyond this 24-month period, Zone One is advised to file a petition to renew its waiver at least 180 days prior to the waiver expiring (i.e., May 2026).

Further, in order to ensure that ESCOs, including Zone One, are properly serving low-income customers with a guaranteed savings product, the utilities are reminded that they are required to provide ESCOs with updated lists, on a rolling basis, of customer accounts that subsequently become low-income customers that will need to be placed into a compliant product by the applicable ESCO.⁸

The Commission orders:

1. Zone One Energy, LLC is granted a 24-month limited waiver of the Public Service Commission's Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies, issued on December 16, 2016, in Case 12-M-0476 et

⁸ December 2016 Order, Ordering Clause 6.

al., thereby allowing Zone One Energy, LLC to serve low-income customers, as discussed in the body of this Order.

2. Zone One Energy, LLC shall file with the Secretary to the Commission semi-annual reports for the following periods: for bills rendered January 1, 2025, through June 30, 2025, file a report on July 30, 2025; for bills rendered July 1, 2025, through December 31, 2025, file a report on January 30, 2026; for bills rendered January 1, 2026, through June 30, 2026, file a report on July 30, 2026; and for bills rendered July 1, 2026, through December 31, 2026, file a report on January 30, 2027. The semi-annual reports shall detail the status of Zone One Energy, LLC's compliance with the December 2016 Order, as discussed in the body of this Order. Such reporting shall include the number of customers served, the monthly calculated amounts billed and the alternative amounts that the utility would have charged the customer, as well as the amount of any refunds issued to each customer to effectuate the savings guarantee.

3. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any requests for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

4. These proceedings are continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary