

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of the Commission to Regulate
Energy Services Company Home Warranty
Product Offerings.

Case 24-M-0324

In the Matter of Retail Access Business Rules.

Case 98-M-1343

COMMENTS OF AGWAY ENERGY SERVICES, LLC

Agway Energy Services, LLC (“Agway”) respectfully submits these Comments in response to the Commission’s Notice Soliciting Comments issued on July 24, 2024 in the above cases (“Notice”), and includes responses to the questions relating to the White Paper on Energy Service Company Home Warranty Products submitted by Department Staff.¹

This subject matter is of crucial importance to us because Agway’s EnergyGuard™ repair protection program, our Home Warranty Product (“HWP”), is at the center of our business model. Historically, we are unique among Energy Services Companies (“ESCOs”) with respect to HWP offerings. EnergyGuard received particular attention in the 2019 Commission Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process.² That Order, which increased ESCO accountability and improved transparency to customers, also imposed new restrictions on the types of products offered by ESCOs to mass-market customers: the offerings must either (a) include guaranteed savings compared to the utility price, (b) be a price-capped,

¹ Case 24-M-0324, In the Matter of the Commission to Regulate Energy Services Company Home Warranty Product Offerings (filed May 29, 2024) (“White Paper”).

² Case 15-M-0127, et al., In the Matter of Eligibility Criteria for Energy Service Companies, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (issued December 12, 2019).

fixed-rate product, or (c) comply with the requirements for renewably sourced products. The Commission carved out only one exception to the new restrictions, allowing Agway and only Agway to offer a product not meeting any of those criteria. The Commission explained that this sole exception was based on Agway's EnergyGuard, "due to the specific, credible evidence Agway submitted regarding the energy-related value of this product."³

When it comes to HWPs, Agway has remained the industry leader due to EnergyGuard's proven and consistent value to its customers. EnergyGuard's standout qualities include:

- **Superior coverage:** Customers with electrical service receive \$2,000.00 in annual coverage, consisting of \$1,000.00 for central air conditioning repairs and \$1,000.00 for in-wall wiring repairs. Customers with gas service receive coverage for natural gas furnace or boiler repairs, with no maximum annual coverage.
- **Zero deductible:** Benefits begin at the first dollar spent and there are no charges for diagnostic visits, even if the issue ends up being out of scope.
- **No fees of any sort for claims:** Customers never pay an additional dime, no matter how many claims they make or how many service visits are required, provided they have not exceeded the annual coverage maximum where applicable.
- **Transparency:** The covered parts and other terms are specified clearly and in detail in the EnergyGuard brochure sent to the customer and on Agway's website.
- **In-House Administration:** When a customer has a claim, they call Agway's in-house service team, not a third party.
- **Fast, Competent Service Throughout New York:** Agway maintains a network of hundreds of vetted, experienced, reliable, independent HVAC and electrical technicians, so that every customer location is served quickly, competently, and consistently.
- **Attention to Customer Feedback:** After a claim is fulfilled, Agway sends surveys to its customers to learn about their experience and improve our service.

Some of these qualities were referenced in Staff's White Paper, along with a history of Agway's past participation in setting the standards for HWP offerings in New York.⁴ Agway's commitment

³ December 2019 Order, at p.23.

⁴ White Paper, pp.3-4.

to this issue reflects the central role EnergyGuard plays in Agway's business model. It is not a gimmick or a teaser: EnergyGuard is the primary reason customers choose Agway.

In the years that followed, the Commission approved twenty other ESCOs for the exemption, based on their representations that they would provide HWPs that provided similar coverage and service provided by EnergyGuard. Unfortunately, it is evident that many if not all have fallen far short of demonstrating the same evidence-based value of an EnergyGuard.

Based on the information detailed in the White Paper, most of Agway's competitors are selling third-party warranty products with no connection to the ESCOs themselves, resulting in massive numbers of customer complaints.⁵ The warranties charge additional service fees as high as \$200.00, and deductibles that are either undisclosed or inconsistently described.⁶ Other than Agway, the few ESCOs that maintained information about fulfillment of warranty claims have collectively provided under \$10,000.00 in benefits. The other ESCOs do not even maintain information about fulfillment of warranty claims.⁷ It is unclear if there is one HWP other than Agway's EnergyGuard that has provided the same level of value in terms of actual dollars to the customers.⁸

We are therefore encouraged by the Department's White Paper, which expresses many of the same values underlying EnergyGuard. Agway shares the Department's concern about deductibles and fees, the apparent lack of transparency, use of third-party administrators, disregard for consumer rights, and high levels of customer complaints, which characterize other HWPs in the New York market. Any ESCO offering a valuable HWP should be able to demonstrate that

⁵ White Paper, pp. 6-7.

⁶ Id., pp. 5-6.

⁷ Id., p. 7.

⁸ See id.

value, and the White Paper reveals that a significant number of ESCOs have not been able to do so. That is an obvious problem for customers, and it is also a problem for those ESCOs like Agway who insist on higher standards and do not want to compete in a race-to-the-bottom market.

At the same time, we urge caution. While disclosure requirements can and should be imposed immediately, some requirements should be imposed incrementally, so that both ESCOs and the Commission have time to learn about the scope and value of available HWP offerings. It is crucial that any new regulations that are intended to stop bad actors, who flout the spirit of the rules anyway, do not make business harder for good actors, like Agway, who strive to exceed customer expectations. The opposite should occur, where the upright behavior of the good actors set the bar and those who consistently fall below it should lose their privilege to offer this product.

Therefore, and as set forth in greater detail below in Agway's Responses to Staff's Questions, we strongly encourage the Commission to focus on the following items:

1. **Transparency:** Agway supports the proposal for quarterly disclosures by ESCOs offering HWPs. Disclosures should include claims data including number of claims made, serviced, and denied; the cost to the ESCO for claims serviced; the average time from the when the time is made until the first communication by a technician, the first on-site visit, and service completion, categorized into emergent and non-emergent claims.
2. **Product Quality and Consumer Protection:** Agway supports minimum coverage levels (such as \$1,000 per year), absolute prohibitions on deductibles and service fees, pre-coverage inspections for any HWP that excludes preexisting conditions, clear contract terms, a prohibition against third-party warranty service providers, and the requirement of a single point of contact.

Agway thanks the Commission for its attention to this matter.

Agway's Responses to Staff Questions follows

RESPONSES TO STAFF QUESTIONS

1. What qualitative and/or quantitative evidence can ESCOs provide that shows their HWP offerings are providing value to customers? This evidence should include, but not be limited to, data specific to the number of consumer service claims, the rate of increase in commodity costs to the consumer over the contract period, and the number of successful service claims that resolve consumer service requests.

ESCOs should be able to provide claims data, on a quarterly basis, to demonstrate the value of the HWP. The data should include: (a) the total number of claims made by customers, (b) the number of claims serviced, and (c) the number of claims denied.

ESCOs should also be able to state (d) the total cost to the ESCO for claims serviced, which can be compared to the bundled rate paid by the customer. Although costs can be dramatically affected by economic forces such as supply chain issues and inflation, transparency as to those costs can help prevent unjustified price increases.

Finally, ESCOs should be able to disclose (e) the average time from the submission of a claim to the first communication by the service technician, (f) the average time from the submission of a claim to the first on-site visit by the technician, categorized into emergent and non-emergent claims, and (g) the average time from submission of a claim to service completion, categorized into emergent and non-emergent claims. The distinction between emergent and non-emergent claims is crucial. In Agway's experience, the time to complete a non-emergent claim is more highly variable than that of emergent claims, due to multiple factors including the customer's preference for a later repair date. Disclosures that statistically separate emergent and non-emergent claims will result in more informative data.

Because the timing data is being made available by ESCOs for the first time, Agway encourages the Commission to receive and analyze the data prior to imposing specific timing requirements. For example, the strict three-day response maximum on *every* claim

proposed in the White Paper (at p.13) would not be a universally reasonable metric, especially if it does not distinguish between emergent and non-emergent claims. Instead, the disclosure requirements will, over time, provide concrete data from which the Commission will be able to promulgate more specific requirements targeting whatever issues are discovered.

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?

The most significant obstacle is the lack of detail available on the utility bill. HWPs are typically marketed to and intended for residential and/or small commercial customers, which usually receive consolidated utility billing, which limits the available detail. However, ESCOs offering fixed rate products can provide customers with a breakdown of the commodity and service contract costs at the time of the sale or renewal. ESCOs may also wish to charge a variable, per-kWh price for the HWP. Doing so would encourage energy conservation among customers, and would appropriately tailor the price of the warranty in recognition that customers with lower usage will tend to require fewer repairs.

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

Other than the simplicity of a single bundled bill, we at Agway see our service contract as our differentiator. Unlike stand-alone service contract businesses, we do not avoid paying out claims, because the value of our service contract to the customer is precisely what makes them want to purchase commodity supply from us. Agway shares the concern expressed at length in the White Paper about the use of third-party stand-alone service contract businesses to administer HWPs, and the apparent lack of evidence that

claims were being fulfilled. Third-party administrators likely have a greater incentive to avoid the cost of repair whenever possible, particularly since the customer is not signing up with them directly but rather through the ESCO. In those circumstances, the ESCO, not the service provider, owns the customer relationship, so the service provider lacks the same incentive to do right by the customer. On the contrary, at Agway, we have relationships with over one hundred HVAC/electrical contractors across the state that fulfill repair claims for us. The tens of thousands of customers we have provide significant work for these contractors, who in turn can provide Agway with preferential treatment, which our customers experience.

Two of the more common pain points consumers face are just getting someone to show up when a repair is needed, and knowing which contractors are most reliable. Service calls are frequently a one- or two-interaction event for the contractor, so they can lack incentive to provide the best and fastest service, especially if they are busy, and the good ones are typically the busiest. As a result, consumers acting on their own are unlikely to find the best options. By contrast, customers with Agway's EnergyGuard are assisted by contractors who have been vetted, and since we use them on a regular basis, they respond to Agway quickly and do their jobs well. They also know they will be paid, and do not have to worry about potential collection issues that can occur with single-incident consumers.

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 to their HWP contract?

Agway's in-house EnergyGuard division receives customer service calls, processes claims, ensures timely repairs, and ensures compliance with its contracts. When a

customer's central air unit fails, they call Agway's customer service center, a single point of contact. Agway's in-house team confirms coverage under Agway's agreement with the customer, which is set forth in plain language on Agway's website. Agway is also directly responsible for establishing and managing its statewide network of repair contractors, so that all claims can be fulfilled quickly and by technicians already vetted by Agway. There are *no* significant barriers to utilizing an in-house division. Although serving the warranty in-house may require substantially higher costs than outsourcing the service, Agway has always incurred those cost because of the importance in delivering top-quality service (see response to #3, above).

The White Paper goes further, however, recommending (at p.17) that ESCOs directly employ all maintenance personnel as well as the warranty service personnel. Directly employing technicians would be extremely difficult if not impossible for most ESCOs, including Agway. This is because the economics of the commodity supply market conflict with the economics applicable to repair technicians. From a commodity supply perspective, ESCOs typically strive to reach a customer base across a large geographical area, through multiple utilities, to overcome the high fixed cost and barriers of entry to the market. The ESCO's personnel does not need to be physically present across the state in order to provide the commodity service or the warranty service.

Technicians, by contrast, can provide service only by being physically present, which limits each technician's range to a limited geography near their particular locations. As a result, even an ESCO like Agway, with an in-house warranty provider, must maintain a large network of repair contractors across the state to ensure that every customer's claim can be addressed quickly, even in sparsely populated areas where claims are seldom made,

and even during the shoulder months when the number of claims tends to decrease due to the reduced use of air conditioning and heat. To require permanent, full-time employment of every technician, in every possible location of a claim, at all times of year, would present a very high barrier to ESCOs.

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

The number would depend on the number of customers and the geographic spread of those customers. At Agway, we have roughly 30,000 customer accounts enrolled, and through our network, we have hundreds of technicians throughout the state that are available to serve those customers. Permanent, full-time employment of that technician network would not be economically feasible, as discussed in the response to #4, above.

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?

In the states where Agway operates, service contracts fall under general business rules regarding marketing and contract fulfillment.

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

Agway supports many of the types of consumer protections recommended in the White Paper, and specifically proposed a focus on the following key protections:

- **Coverage minimums.** Annual minimum coverage in the amount of \$1,000 is a reasonable requirement.
- **Prohibition against deductibles and fees.** Customers should not be required to pay any deductibles or service fees.
- **Pre-coverage inspections.** If the terms of an ESCO's HWP contains coverage exclusions for preexisting conditions, the ESCO should be required to perform

a pre-coverage inspection and provide the customer with clear notice of any preexisting conditions not receiving coverage by the HWP. An ESCO that does not perform the inspection and provide clear notice to the customer should be required to cover all preexisting conditions.

- **Transparency.** Customers should be made aware of the price they are paying for the HWP. This requirement will depend, however, on the type of service being provided and whether the utility's bill permits the additional information. See response to #2.
- **Clear, easy-to-understand agreements.** The terms and conditions for an ESCO's HWP should be available on the ESCO's website.⁹ The terms should be clear and unambiguous, specifically with respect to the scope of coverage, including a list of covered parts and labor, exclusions and limitations to coverage, and eligibility requirements.
- **No third-party warranty service providers.** An absolute prohibition against third-party administrators protects customers from warranty companies that do not share the ESCO's incentive to maintain its customers by providing quality service.
- **Single point of contact.** Customers should be able to contact the ESCO directly for all claims and follow-up communications under the HWP.

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Respectfully submitted,



Jesse C. Morris

COYLE & MORRIS LLP

201 Littleton Rd., Suite 210

Morris Plains, NJ 07950

973.370.0216

jmorris@coylemorris.com

Counsel for Agway Energy Services, LLC

⁹ Agway's EnergyGuard terms and conditions are provided at:
<https://www.agwayenergy.com/energyguard/residential-protection/> and
<https://www.agwayenergy.com/energyguard/commercial-protection/>