

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of Eligibility Criteria for Energy Service Companies.

Case 15-M-0127

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 12-M-0476

In the Matter of Retail Access Business Rules.

Case 98-M-1343

**NOCO PETITION FOR DECLARATORY RULING RECOGNIZING NOCO SMART
MONITORING PRODUCT AS A COMPLIANT ENERGY-RELATED VALUE-ADDED
PRODUCT, OR, IN THE ALTERNATIVE, PROVIDING A LIMITED WAIVER OF THE
ORDER ADOPTING CHANGES TO THE RETAIL ACCESS ENERGY MARKET AND
ESTABLISHING FURTHER PROCESS**

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On December 12, 2019, the New York State Public Service Commission (the “Commission”) issued an *Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process* (the “Second Reset Order”).¹ The Second Reset Order requires energy service companies (“ESCOs”) to provide certain customers with products that either include: (i) guaranteed savings; (ii) a fixed-rate capped at a trailing 12-month average utility rate plus 5 percent; or (iii) a renewable electric component.² The Second Reset Order, however, also recognizes that products that “further the State’s energy policy goals and provide meaningful value

¹ 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).

² *Id.* at 23.

to the customer” qualify as energy-related value-added products and services (“ERVAS”).³ Indeed, in subsequent re-affirming and clarifying orders to the Second Reset Order,⁴ the Commission recognized certain ERVAS products, including renewable energy and home warranty products.⁵ For the reasons discussed in detail below, NOCO Electric, LLC and NOCO Natural Gas, LLC (together, “NOCO”) respectfully seeks a declaratory ruling from the Commission recognizing NOCO’s smart monitoring product, hereinafter referred to as “the SMT Product,” as a permissible ERVAS under the Second Reset Order, or, in the alternative, providing NOCO a limited waiver to sell and deliver the SMT Product to current and prospective customers.

I. STANDARD OF REVIEW

Pursuant to the Department of Public Service rules and regulations in Title 16 of the New York Codes, Rules and Regulations (“NYCRR”), a petition for declaratory ruling may be sought with respect to “the applicability to any person, property, or state of facts of any rule or statute enforceable by the commission or the validity of any such rule” or “whether any action by the commission should be taken pursuant to a rule”⁶ In addition, the Commission may also review a petition for declaratory ruling where “warranted by the public interest.”⁷

Here, the Second Reset Order explicitly recognizes that there may be a number of ERVAS products or services that provide beneficial value to customers. Specifically, the Second Reset Order, notes that “demand-management programs or tools, voluntary dynamic pricing programs or tools, energy-efficiency measures, sophisticated energy management services and smart-grid technologies, energy storage products, and electric vehicle-related services” are examples of

³ Second Reset Order at 52.

⁴ Case 15-M-0127, *supra*, Order on Rehearing, Reconsideration and Providing Clarification (Issued Sept. 18, 2020) (the “Clarification Order”); Case 15-M-0127, *supra*, Order Addressing ESCO Petitions Requesting Authorization to Provide Additional Products and Services (Issued Jan. 25, 2021) (the “HWP Order”).

⁵ *See generally* Clarification Order, HWP Order and Second Reset Order.

⁶ 16 NYCRR § 8.1 (a) (1) and (2).

⁷ 16 NYCRR § 8.1 (b).

ERVAS products that could be developed by ESCOs.⁸ Since the Commission has previously identified these products as potentially qualifying as ERVAS, a petition for declaratory ruling is warranted here to clarify that NOCO may provide customers with the SMT Product. In addition, as noted below, it is also in the public interest for the Commission to issue a declaratory ruling recognizing the SMT Product as a compliant ERVAS because such product can assist customers and the electric grid by reducing energy consumption and optimizing customers' energy usage. Pursuant to 16 NYCRR § 8.2 (c), the comment period for a petition for declaratory ruling is 21 days.⁹ Since this petition deals with the applicability of an already established rule (i.e., Commission approval of a compliant ERVAS under the Second Reset Order), the requirements in the State Administrative Procedure Act for notice, publication, and comment are not applicable. All interested and participating parties to these proceedings have been provided notice consistent with 16 NYCRR § 8.2 (b).

II. INTRODUCTION

On December 12, 2019, the Commission issued the Second Reset Order, which purports to limit the types of products ESCOs may sell to “mass market customers.”¹⁰ According to the Second Reset Order, ESCOs may only provide customers with the following: (1) guaranteed savings products, (2) fixed products that are capped at a certain price, or (3) products that provide added value to customers.¹¹ For purposes of determining qualifying products under the Second Reset Order, the Commission stated that “value-added” means “something more than the standard; something that exceeds the expectations associated with provision of what is otherwise an

⁸ Second Reset Order at 52-53.

⁹ 16 NYCRR § 8.2 (c).

¹⁰ Second Reset Order at 2.

¹¹ *Id.* at 39, 65, and 75-76.

undifferentiated commodity.”¹² In particular, products that “further the State’s energy policy goals and provide meaningful value to the customer” are explicitly recognized in the Second Reset Order as ERVAS.¹³ Although the Commission noted that it would need to further consider “whether and how ESCOs could and would be willing to provide those services and whether the tethering of those services with energy supply by ESCOs would create benefits,”¹⁴ NOCO’s petition and supporting documentation demonstrate that its SMT product can reduce customer consumption around 20-33%, which would provide meaningful benefits to not only customers, but also New York’s energy grid. Accordingly, NOCO seeks a declaratory ruling from the Commission recognizing that the SMT Product is an ERVAS product.

III. THE COMPANY

NOCO is a leading retail electricity and natural gas company based in Buffalo, New York, proudly serving customers throughout upstate New York with innovative and sustainable offerings for nearly a century. Through its innovative and customer centric approach, NOCO’s ensures that customers are provided with products and services that match their needs in an ever-evolving market. NOCO, who has been authorized to operate as an ESCO in New York for nearly 20 years, currently provides services to residential and commercial customers in the following service territories: National Grid, New York State Electric and Gas (“NYSEG”), Rochester Electric and Gas, and National Fuel. NOCO is proud to be an energy efficiency contractor with strong relationships across multiple utilities and the broader New York State energy ecosystem and has been recognized as a “Gold Partner” with National and a NYSEG “Trade Ally.” NOCO is also registered with the New York Energy Research and Development Authority (“NYSERDA”) under

¹² *Id.* at 51.

¹³ *Id.* at 52.

¹⁴ *Id.* at 53.

a wide range of programs, including: “EmPower+,” “Comfort Home,” “Clean Heat,” “NY-SUN,” “Charge Ready NY,” and the “NYS Utility Make-Ready” initiative. In the last several years, NOCO’s focus on innovative energy solutions has led to numerous awards including being honored by Buffalo Business First as the western New York “Energy Company of the Year” and receipt of two National Grid “ProNet Gridee Awards” in the electric energy efficiency category in 2025. These accolades celebrated NOCO’s commitment to energy innovation and recognized its efforts in helping our customers save more than 7,278,000 kWh in a single year. Through every initiative, NOCO remains focused on environmental stewardship, community engagement, and helping its customers thrive through smarter, cleaner energy solutions.

With respect to its commercial customers, NOCO provides a full range of energy services including services that encompass environmental remediation and erosion control, installation and maintenance of electric vehicle charging stations, battery storage systems, backup generators, geothermal systems, high-efficiency lighting, mechanical heating ventilation and air conditioning (“HVAC”), motors and electric supplies, solar energy systems, as well as traditional fuels, glycol, and electricity and natural gas supply. Each of these services is designed to help NOCO’s commercial customers operate their businesses more efficiently, sustainably, and reliably.

For residential customers, NOCO offers a wide variety of energy solutions to improve comfort, energy efficiency, and cost savings. At the initial engagement stage, NOCO prides itself on educating customers on smart energy options for their homes with services such as geothermal heating and cooling, home generators, traditional and heat-pump based heating and cooling, home energy assessments, insulation, propane and heating oil, plumbing, and residential solar and optimizing the best solution to meet each individual customer’s needs.

Finally, NOCO's commitment to an innovative customer-centric energy model is demonstrated through its record of minimal to no customer complaints,¹⁵ and the results of an independent third-party study showing deep customer satisfaction with NOCO's reliability, responsiveness, and reputation.

IV. THE SMART MONITORING PRODUCT

The SMT Product is a fully integrated smart monitoring system designed to optimize heating and cooling in residential and commercial buildings by pairing customers' thermostats with a dedicated energy dashboard, both inside the home or business and remotely, to provide real-time feedback on customer consumption, performance, comparison with neighboring properties, and potential carbon savings. Indeed, the SMT Product integrates advanced HVAC controls with a user-friendly dashboard, enabling automatic adjustments to reduce energy waste while maintaining comfort. The system provides real-time data insights, allowing property owners and tenants to monitor and control energy usage effectively. In addition, the SMT Product dashboard communicates consistent recommendations to the consumer on how to reduce energy and potential measures for increasing efficiency such as upgrading HVAC equipment or replacing filters within the home. Finally, the dashboard connects the consumer with information on potential incentive

¹⁵ Matter 19-00950, *In the Matter of Consumer Complaint Statistics – Office of Consumer Services*, Monthly Report on Consumer Complaint Activity March 2025 (issued Apr. 24, 2025) (showing that NOCO had no complaints in 2024 or the beginning of 2025); Matter 19-00950, *supra*, Monthly Report on Consumer Complaint Activity March 2024 (issued Apr. 30, 2024) (showing that NOCO had two complaints in 2023); Matter 19-00950, *supra*, March 2023 (issued Apr. 27, 2023) (showing that NOCO had one complaint in 2022); Matter 19-00950, *supra*, March 2022 (issued Apr. 27, 2022) (showing that NOCO had no complaints in 2021); Matter 19-00950, *supra*, March 2021 (issued Apr. 28, 2021) (showing that NOCO had no complaints in 2020); Matter 19-00950, *supra*, March 2020 (issued Apr. 28, 2020) (showing that NOCO had no complaints in 2019); Matter 19-00950, *supra*, March 2019 (issued Apr. 26, 2019) (showing that NOCO had two complaints in 2018); Matter 19-00950, *supra*, March 2018 (issued Mar. 1, 2018) (showing that NOCO had no complaints in 2017); Matter 19-00950, *supra*, March 2017 (issued Dec. 31, 2017) (showing that NOCO had no complaints in 2016); Matter 19-00950, *supra*, March 2016 (issued Dec. 31, 2016) (showing that, at the height of the Polar Vortex, NOCO only had two complaints in 2015); and Matter 19-00950, *supra*, March 2015 (issued Dec. 31, 2015) (showing that NOCO only had three complaints in 2014).

programs that may be available through NYSERDA or other third parties. An example of this highly informative consumer dashboard is attached for reference.

With the SMT Product, an independent third-party, Energy Guard (who bears no relationship with the home warranty product known by the same name), remotely monitors customers' energy dashboards 24 hours a day/7 days a week, to ensure the units are operating as intended and communicating accurate energy data to customers. There are no upfront costs to customers, but given the hardware that is installed on the customers' premises, which is to be recovered over time through the customer's utility bill, any early termination of the customer agreement would result in an early termination fee consistent with the applicable allowances under the Uniform Business Practices.¹⁶

V. THE SMT PRODUCT SHOULD BE RECOGNIZED AS A COMPLIANT ERVAS BECAUSE IT PROVIDES NUMEROUS BENEFITS FOR CUSTOMERS AND THE ENERGY GRID

Customers receiving the SMT Product experience a number of benefits, including potential savings compared to existing utility bills. On average, customers that switch to the SMT Product would likely see energy consumption reductions between 20-33%.¹⁷ Since the cost of electricity and natural gas is based on customers' usage, any reduction in energy consumption will allow the customer to pay less on their utility bill than when they were consuming more energy inefficiently. Customers also receive immediate alerts and notifications about their energy usage and efficiency, which ensures more timely and proper maintenance of energy equipment. Having access to constant information on consumption, performance, comparison with neighboring properties, and

¹⁶ Case 98-M-1343, *In the Matter of Retail Access Business Rules*, Uniform Business Practices (Oct. 27, 2024) (limiting early termination fees for residential and door-to-door customers).

¹⁷ Individual customer savings are not guaranteed as customer usage rates and energy efficiency measures will vary based on individual customer profiles and customers retain the right to override the program based on personal preferences or for other reasons.

potential carbon savings also permits customers to take a more active role in their energy accounts. These benefits are not merely speculative. The SMT Product was recently piloted in Binghamton, New York over a six-month period. On average, customers experienced an approximately 32% reduction in operations run-time, which is the equivalent of eliminating approximately 1.17 tons of carbon emissions on an annual basis. While NOCO did not have utility bill data for the entire customer portfolio, NOCO expected the reduction in energy usage to translate to at least a 20% reduction on customers' energy bills. These results are consistent with New York's stated energy goals.

In recent years, the State has adopted aggressive clean-energy goals to combat the deleterious effects of climate change on the environment. In 2014, the Commission instituted its groundbreaking Reforming the Energy Vision (“REV”) proceeding, which sought to modify the electric industry, in part, by improving system efficiency, empowering customer choice, reducing carbon emissions, and encouraging greater penetration of clean generation and energy efficiency technologies and practices.¹⁸ According to Governor Cuomo, the intended outcome of REV was to establish a “dynamic clean energy economy that empowers communities and customers – across all income levels, geographies, and demographics – to take control of their energy use, driving local economic growth and revitalization, improving the resiliency of our energy system, and protecting our environment.”¹⁹ To effectuate the goals outlined in REV, in 2016, Governor Andrew Cuomo directed the Commission to formalize the State's clean-energy goals, resulting in

¹⁸ Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Instituting Proceeding (Issued Apr. 25, 2014), at 7.

¹⁹ *Reforming the Energy Vision*, NY.Gov, available at <https://www.ny.gov/sites/default/files/atoms/files/WhitePaperREVMarch2016.pdf> (March 2016).

commencement of the Clean Energy Standard (“CES”) proceeding.²⁰ The CES aimed to transform the State’s renewable and carbon reduction targets from goals to enforceable mandates.²¹

Seeking to take New York’s clean energy platform to even greater heights, New York adopted the Climate Leadership and Community Protection Act (“CLCPA”), one of the most ambitious GHG emission reduction laws in the country. As noted in the CLCPA, the effects of climate change are adversely impacting public health and the environment.²² For example, the adverse impacts of climate change include increasing average temperatures and air pollution as a result of reliance on fossil fuels and their resulting carbon emissions.²³ In order to combat these detrimental impacts, the CLCPA requires New York to reduce GHG emissions and achieve 100 percent net zero carbon emissions by 2050.²⁴

The SMT Product can help the State achieve some of these energy goals. Indeed, the REV framework recognizes that increasing energy efficiency is the “most cost-effective way to reduce GHG emissions.”²⁵ As noted above, one of the key benefits of the SMT Product for consumers is related to optimizing their energy usage and therefore increasing their energy efficiency. The carbon savings that can be achieved through constant communication and education to customers cannot be understated. Currently, customers may receive a monthly report depicting their energy consumption compared to other similar homes, or may be provided such information on a more

²⁰ *Governor Cuomo Directs Department of Public Service to Begin Process to Enact Clean Energy Standard*, N.Y. GOV., <https://www.governor.ny.gov/news/governor-cuomo-directs-department-public-service-begin-process-enact-clean-energy-standard> (Dec. 2, 2015); Case 15-E-0302: *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Expanding Scope of Proceeding and Seeking Comments (Issued Jan. 21, 2016), at 2.

²¹ *See generally* Case 15-E-0302: *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting a Clean Energy Standard (Issued Aug. 1, 2016).

²² L. 2019, ch 106.

²³ *Id.*

²⁴ *Id.*

²⁵ *Reforming the Energy Vision*, NY.Gov, available at <https://www.ny.gov/sites/default/files/atoms/files/WhitePaperREVMarch2016.pdf> (March 2016).

limited basis, or not at all. With the SMT Product, however, customers have continuous 24/7 access to data to keep them informed and send signals to immediately impact customer's energy habits. Such a product and framework is exactly what the Commission envisioned in the REV proceeding to "empower customers to take control of their energy usage."²⁶ The pilot program also demonstrated the effectiveness of the SMT Product in action. As part of that program, customers reduced their energy usage by nearly one-third, reducing their carbon footprint and utility costs as a result.

Given the numerous benefits that can be achieved for both customers and the State, the Commission should recognize the SMT Product as a qualifying ERVAS.

VI. NOCO SHOULD BE PERMITTED TO PROVIDE A BUNDLED SMT PRODUCT BECAUSE THE PRODUCT IS DIRECTLY TIED TO CUSTOMER'S ENERGY

NOCO is committed to helping the state of New York achieve its ambitious renewable energy goals in the CES and CLCPA, which aim to reduce pollution, fight climate change, and reduce carbon energy supply. NOCO is also committed to empowering customers to take control of and remain knowledgeable of their energy usage to better serve the environment and their own homes and finances. Given that ESCOs are currently not permitted to separately itemize products on utility bills, and because the SMT Product is directly tied to customers' energy consumption, as discussed more fully above, NOCO should be permitted to bundle the SMT Product along with a customer's commodity product.

NOCO is aware that there is currently a bill that would require on-bill comparisons between ESCO and utility pricing, including ERVAS products. NOCO commits to complying with any applicable law related to on-bill comparisons for ERVAS products, once such laws take effect, or

²⁶ *Id.*

immediately upon approval of the SMT Product should the bill take effect prior to the Commission ruling on NOCO's petition.

VII. CONCLUSION

For all of the foregoing reasons, the Commission should recognize the numerous customer and energy benefits provided by NOCO's SMT Product and issue a declaratory ruling recognizing NOCO's SMT Product as a permissible ERVAS under the Second Reset Order, or, in the alternative, provide NOCO a limited waiver to sell and deliver the SMT Product to current and prospective customers.

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