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December 19, 2003

VIA HAND DELIVERY

Hon. Jaclyn Brilling
Acting Secretary
State of New York Public
Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 98-M-1343 – In the Matter of Retail Access Business Rules

Dear Acting Secretary Brilling:

Pursuant to Section 22 of the New York State Public Service Law and Rule 3.7 of the New York State Public Service Commission's ("Commission") Rules of Procedure, 16 N.Y.C.R.R. § 3.7, Multiple Intervenors, an unincorporated association of approximately 57 large commercial and industrial energy consumers with manufacturing and other facilities located throughout New York State, hereby files an original and 25 copies of this letter petitioning the Commission for clarification of the "Order Adopting Revised Uniform Business Practices", issued November 21, 2003.[1] Specifically, Multiple Intervenors

[1] Case 98-M-1343, In the Matter of Retail Access Business Rules, "Order Adopting Revised Uniform Business Practices" (issued November 21, 2003) ("November 2003 Order").

requests that the Commission clarify that: (i) Direct Customers are not obligated to comply with ESCO and electronic data interchange ("EDI") requirements; and (ii) that losses incurred by utilities in their business arrangements with Direct Customers, ESCOs, or Marketers are not recoverable from the general body of transmission and distribution customers.

In the November 2003 Order, the Commission held that "Direct Customers that perform ESCO functions, for example, purchasing and reselling gas supplies to end users, are required to apply for eligibility as an ESCO." (November 2003 Order, Appendix A at 2.) However, the Commission rejected a proposal by National Fuel Gas Distribution Corporation ("National Fuel") to require EDI compliance by Direct Customers "because more information is needed to analyze and resolve the issue." (Id.)

The Commission should clarify that the term "ESCO functions" is limited to purchasing and reselling of natural gas and electricity to end users, and the responsibilities that accompany such resales. Direct Customers that schedule and/or conduct imbalance trading for themselves or within an aggregation group should not be subject to ESCO and/or EDI requirements. As Multiple Intervenors demonstrated in its Reply Comments,[2] Direct Customers acting on their own behalf or engaging in the aggregation of gas and/or electricity do not assume the role of an ESCO and should not be required to comply with the same requirements. Importantly, all Direct Customers, even if part of an aggregation scheduling

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[2] Pursuant to the Commission's schedule, Multiple Intervenors filed Comments and Reply Comments with the Commission in the most recent phase of this proceeding on April 4, 2003 and May 2, 2003, respectively.

group, must meet the requirements of a Direct Customer under the Uniform Business Practices ("UBP") on an individual basis. In addition, each Direct Customer would have its load scheduled on an individual basis.

The application of ESCO and/or EDI requirements to Direct Customers would impose unnecessary costs on these customers. There simply is no basis for imposing ESCO and/or EDI requirements on Direct Customers for the scheduling of their own loads. And, even where scheduling occurs as part of a Direct Customer aggregation group, the utilities' risks are limited and amply covered by Direct Customer credit requirements.[3] Accordingly, in order to avoid confusion, Multiple Intervenors requests that the Commission clarify that ESCO and EDI requirements do not apply to Direct Customers or Direct Customer aggregation groups that are not engaged in the purchase and resale of electricity and natural gas to end use customers.

In the November 2003 Order, the Commission also maintained provisions in the UBP that allow an ESCO to reduce or satisfy a utility's creditworthiness requirements through the establishment of a lockbox mechanism and/or a billing agreement with the utility.[4] Multiple Intervenors takes no position with respect to the prudence of these provisions. However, as

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[3] Upon information and belief, in most instances, Direct Customers engaged in scheduling of electricity will receive a credit from the applicable utility.

[4] The lockbox mechanism provided for in Section 3.F of the UBP, states that if a utility and an ESCO arrange for a lockbox mechanism that meets applicable criteria, security requirements may be reduced by 50%. Similarly, in accordance with Section 3.B(1)(b) of the UBP, an ESCO may satisfy a utility's creditworthiness requirements by entering into a billing agreement whereby the utility bills customers on behalf of the ESCO and retains the funds it collects to offset any balancing and billing service charges.

Multiple Intervenors established in its Reply Comments, the Commission should clarify that if an entity eludes payment under the lockbox or billing arrangement that it establishes with a utility and such payments are not recovered in the future, the utility should bear these losses. Having had no control over specific security and/or lockbox arrangements agreed to by the utility and the entity, neither customers as a whole nor other ESCOs, Marketers or Direct Customers should be required to shoulder any losses from the utility's security decisions.

If you have any questions please call me.

Very truly yours,

COUCH WHITE, LLP

James S. King

JSK/glm
cc: Service List (via e-mail and/or U.S. Mail)
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