

Consumer Power Advocates

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Via e-mail to secretary@dps.ny.gov

January 25, 2013

Honorable Jeffrey Cohen
Acting Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

RE: 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

Dear Acting Secretary Cohen:

On October 19, 2012, the Commission issued a Notice Seeking Comments on 15 questions concerning the marketing efforts directed at residential and small non-residential retail energy consumers. These are the responses of CPA to some of those questions.

1. What are the benefits and costs of requiring that utilities develop and make available historic bill calculators through utility websites and/or smart phones to enable ESCO customers to compare their actual charges to what they would have paid if they were a full-service utility customer? How should such tools be designed so that they are easy to use, factually oriented, and produce accurate and useful information for ESCO customers?

Bill calculators are a valuable tool to verify the accuracy of bills, but the use of bill calculators to compare various purchase options is problematic. Any number of variables may combine to make such comparisons difficult, if not impossible. Most obviously, full service rates in New York universally include monthly adjustments and subsequent reconciliations, while competitive rates typically provide for either a fixed price or a defined monthly escalation over the term of the contract. In this situation, a comparison of rates at any particular point in time is more likely to be misleading than informative.

2. What are the benefits and costs of requiring that utilities include a line item on ESCO customer bills that identifies what the customer would have paid had supply been purchased from the utility? Precisely what information should be published on the bill so that it is most useful to customers?

For the same reason that we are wary of simple rate comparisons, we believe including the amounts that a customer would have paid is not helpful without a full reconciliation of the differences between ESCO and utility rates. For example, many utility tariffs require proration of rates between the current month and the prior month, effectively creating a different rate for each billing cycle of the month. Utility rates are further subject to various out-of-period reconciliations and/or true-ups. ESCO rates are contractual prices that vary by negotiated terms, and the duration of the contract, escalation factors, creditworthiness and other factors determine the ultimate price. None of these things are factors in utility rates.

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3. *What are the benefits and costs of requiring that utilities explain to payment-troubled ESCO customers contacting the utility, or provide to such customers in a subsequent mailing, what the customer would have paid had the energy supply been purchased from the utility, and the difference between that amount and what they were actually billed for energy supplied by the ESCO? What information should utilities provide to existing low-income and payment-troubled ESCO customers to assist them in making informed decisions and how should utilities provide that information?*

This question deals with two different groups of customers. “Payment-troubled ESCO customers” need to settle their accounts with the ESCO, without interference from the utility. On the other hand, we recognize the concern the Commission has historically shown regarding “low income” customers, which we assume means customers who are eligible for any of the various assistance programs. We believe that these customers are capable of making informed decisions on the same basis as all other residential customers, and that no preferential treatment is necessary with regard to ESCO activities.

4. *What are the reasons why the Commission should, or should not, collect monthly data on prices charged by ESCOs to residential and small non-residential customers for all or some of their products? How would Commission publication of all or part of this data assist customers and/or impact retail competition? What level of data aggregation would be sufficient to adequately address the need to maintain the confidentiality of customer-specific data?*

While a data base of published prices may be a useful tool for consumers, care must be taken to avoid publishing data in a misleading or anti-competitive way. As noted above, simple price comparisons do not adequately reflect the differences in other terms and conditions that are relevant to setting the price. In the large commercial market the situation is even more complex, with the possibility of minimum and maximum purchases, hourly pricing or associated demand response requirements. A simple average of all prices does not capture all the relevant factors. A more useful way to publish prices is to identify a range of prices for various terms of specified duration. Data should be published only in the aggregate of all reported contracts, without attribution to any particular ESCO and disaggregated by region and by the term of the contract.

5. *What are the advantages and disadvantages of requiring ESCOs to honor rates and terms posted on the Commission’s “Power to Choose” website? What are the benefits and costs of requiring that ESCOs post all of their offerings on that website? What other enhancements to the site should be considered to increase its usefulness to consumers?*

The problem with requiring ESCOs to post all their offerings on the Commission’s website is that utility rates in New York are so complex, making valid comparisons nearly impossible for even the most well informed customers. For what period would the ESCO be required to honor any particular posted rate? In the event that an ESCO developed a new product, could that product be offered before it was posted? If it were required to be posted, would the Commission review posted prices? Would that cause a delay in price changes?

6. *What is the basis for continuing the existing ESCO Referral Programs in the service territories of Con Edison, Orange & Rockland, Central Hudson, and National Grid (upstate)? If these programs should continue, should they be modified, and how long should they be maintained?*

CPA has no opinion on this question.

7. *What are the advantages and disadvantages of allowing customers participating in any state or federal energy assistance program, such as Home Energy Assistance Program, or in any utility-sponsored affordability program,*

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to obtain commodity service from an ESCO? How does the analysis change if the ESCO guarantees a price no higher than that charged by the utility?

Absent a finding that customers in these assistance programs are particularly vulnerable to predatory or abusive practices, CPA believes that these customers should enjoy the same opportunity as all other customers. To the extent ESCOs make themselves subject to audit by the various agencies and advocates for these programs, all customers will benefit if abusive practices are discovered.

8. What are the legal and policy reasons for permitting or prohibiting door-to-door marketing of electricity and/or natural gas to residential and/or small non-residential customers?

In our members' experience, door-to-door marketing often leads to abusive practices. Often, ESCOs use contractors for door-to-door marketing, allowing the ESCO to avoid accountability. In the worst cases, marketers misrepresent themselves as utility employees, and are able to slam accounts using customer information obtained by deceptive means. We find no mitigating value in unsolicited marketing.

9. What are the reasons why the Commission should continue to permit termination fees in sales contracts made between ESCOs and residential and small non-residential customers through the door-to-door marketing channel? Are there circumstances under which termination fees for such contracts would be appropriate (e.g., fixed-rate contracts), and what should an ESCO be required to demonstrate to be able to include termination fees for door-to-door marketing in its sales contract?

Termination fees are an ordinary part of many commercial transactions, and should not be prohibited. ESCOs may make long term commitments to provide service, and they have a legitimate interest in guaranteeing the recovery of the associated costs. However, all fees must be disclosed to the customer. To the extent termination fees cause problems when included in door-to-door contracts, the problem is the obscure or even deceptive provisions in those contracts, not the fee itself. Prohibiting a useful fee because it is sometimes included in a deceptive way will only cause unscrupulous marketers to move on the next predatory practice.

10. Are there other conditions or requirements that should be imposed on door-to-door marketing by ESCOs, such as a requirement that such marketers begin an interaction with a potential customer with a disclosure statement? An example of a possible disclosure statement is: "My name is _____. I represent _____. _____ can provide you with your electricity and/or natural gas. I do not work for or represent your utility." How should such a requirement be enforced?

Everyone involved in marketing products should be willing to disclose who it is that they represent. We believe it should be a requirement.

11. Should the Commission have the authority to preclude or limit an ESCO's door-to-door marketing in the future in specific circumstances?

In our experience, some ESCOs have used contract marketers without adequate oversight. To the extent any ESCO is found to benefit from slamming or other seriously abusive practice, whether caused by a contractor or its employee, that ESCO should be prohibited from using door-to-door sales for at least one year.

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12. What are the advantages and disadvantages of modifying the Uniform Business Practices to require ESCOs to obtain consent from customers for contract renewals involving a change in price? What are the advantages and disadvantages of requiring ESCOs to obtain affirmative consent from customers for all contract renewals?

All contract renewals should require affirmative consent. In the case of contracts which are extended without a material change in terms, the consent requirement serves as an opportunity for the customer to review the terms and to consider alternate suppliers. Obviously, any contract renewal that includes a change in price or any other change in important terms must require the specific consent of the customer.

13. What are the advantages and disadvantages of requiring ESCOs to provide their rate methodology and related billing calculations to customers with variable rate contracts? What are the advantages and disadvantages of requiring all variable rate methodologies to be based on specified formulas tied to publicly available information, with the formulas varying by ESCO? If this is to be required, when and how should ESCOs provide this information?

CPA does not believe that all ESCO contracts must be tied to public information, nor do we believe it necessary to require ESCOs to disclose rate methodologies.

14. What would be the impact of requiring utilities to purchase receivables with recourse and thereby have ESCOs assume whole or partial responsibility for the uncollectibles of their customers? Should this be a requirement? What would be the impact of discontinuing POR without recourse on ESCOs for some ESCOs and how would those ESCOs be identified?

Utilities should have the ability to discontinue POR without recourse in the case of any ESCO that is found to be abusing the opportunity to assign collection responsibility to the utility. It is easy to imagine that an ESCO could develop a business strategy of enrolling poor credit customers and merely selling the receivable. That situation is costly for ratepayers, and of no benefit to the poor credit ESCO customer. Any ESCO whose uncollectible rate is found to be more than one standard deviation greater than the rate for all load serving entities (including the regulated utility) in a particular service territory should be excluded from the POR program.

Respectfully submitted,

Catherine M. Luthin

Executive Director
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Cc: All Active Parties

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