

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of Energy Service Company Price
Reporting Requirements

Case
06-M-0647

INITIAL COMMENTS OF THE
NEW YORK STATE CONSUMER PROTECTION BOARD

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Albany, New York

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By notice issued May 31, 2006 in this proceeding, the Public Service Commission (“PSC” or “Commission”) asked interested parties to comment on the question of whether energy service companies (“ESCOs”) doing business in the state should be required, rather than simply requested, to provide the Commission Staff with more extensive information concerning “the prices and price formulas they offer to prospective residential customers.”¹ The information submitted would be posted on the Commission’s Web site where it would be readily available to consumers. Assuming the submission of such pricing information is required, the Commission then asks whether the process established by the Uniform Business Practices (“UBP”) for the discontinuance or suspension of ESCO eligibility to do business in the state should be extended to enforcement of the price reporting requirements.

The New York State Consumer Protection Board (“CPB”) strongly supports all efforts aimed at giving consumers the complete, accurate and comprehensible pricing information they need to make informed decisions about their energy suppliers.

¹ “Notice Soliciting Comments on ESCO Price Reporting Requirements (“Notice”), pp. 2-3.

Currently, as an examination of the Commission's Power To Choose Web site² clearly shows, that information is not easy for customers to find. For example, a residential customer who used the Web site to request prices for an Albany zip code on June 15, 2006, would have seen a list of 18 suppliers for electricity and 11 for gas. Five of the ESCOs listed for electricity provided no pricing information at all, while six said simply that their price was "Variable." Of the seven that actually showed a price, five were "green" power providers charging premium rates. Only two suppliers offering conventional, competitively priced power supplies posted their rates.

For natural gas suppliers, the situation was a little better as three out of eleven companies showed actual prices. Still, three ESCOs gave no pricing information at all, and five stated only that their prices were "Variable" or "Fixed."

This lack of useful, easily accessible pricing information is not only a problem for consumers attempting to make an intelligent evaluation of their supply options, it is a serious impediment to the growth of competitive energy markets in general. In a recently released draft report prepared under the mandate of the Energy Policy Act of 2005, a task force of federal agencies concluded that:

One reason why retail competition for small customers may be slow to develop is that it is difficult to for [sic] the consumer to find competitive supplier offers in the first place and to understand the terms and conditions of those offers. It also is unclear whether the effort to find this information is justified by the potential cost savings that can be realized. As and when there are more alternative suppliers, it may result in greater potential savings. But the need for clear and readily available information relating to competitive offers will remain.³

² <http://www.energyguide.com/finder/NYFinder.asp>

³ "Report To Congress On Competition In The Wholesale And Retail Markets For Electric Energy – Draft," The Electric Energy Market Competition Task Force, June 5, 2006, p. 6 (published at 71 Federal Register 34,083, June 13, 2006).

This report, which was based on a study of the implementation of retail competition for electricity in seven states, including New York, suggested that consumers' unwillingness to spend the time necessary to inform themselves about supply alternatives might be an example of "rational ignorance."⁴

One reason why retail competition could be slow to develop is that the expected gains from learning more about market choices are too small to make it worthwhile to learn.⁵

Enhancing the relevant pricing information available on the Commission's Web site could be an important step forward in making enlightenment, rather than ignorance, the rational consumer choice. The Power to Choose Web site could, and should, be an essential resource for consumers investigating competitive suppliers, and the CPB would wholeheartedly support promoting it as such when the information appearing there warrants such an effort.

Accordingly, we urge the Commission to move expeditiously to require all ESCOs doing business in the state to submit for publication on the Power to Choose Web site, the prices and other key terms and conditions of the services they offer to residential electric and gas customers. These requirements should be in place as soon as possible, preferably in time to assist consumers in making decisions for the upcoming winter heating season.

Set out below are a number of recommendations which the CPB believes will assure both the fairness and the effectiveness of the price reporting requirements.

(1) Require Weekly Price Reporting. Energy commodity prices are constantly changing. A price quoted today is unlikely to be the same tomorrow, and one posted by

⁴ Id., p. 94, n. 241.

⁵ Id., pp. 93-94.

a supplier on the first of the month may bear little resemblance to the price that company is offering on the 25th of the month, particularly for a variably priced product. It may be impractical for the Commission's Web site to track such changes, but some effort should be made to minimize the staleness of the pricing information displayed. Consumers are likely to become disillusioned with the utility of a site that seems to provide unreliable data. Requiring weekly updating should reduce this problem considerably. It might also promote more serious shopping as consumers interested in considering ESCO service will know that they never have to wait more than a week to get current price information that will enable them to compare available alternatives.

(2) Require That Prices Actually Be Obtainable by Consumers on the Day They Are Posted. Prices posted on the Commission's Web site should be ones that consumers can actually obtain, at least on the day of posting. If ESCOs have no obligation to offer the prices they post, the Web site becomes completely worthless for consumers, at least as far as price discovery is concerned, and potentially even deceptive. On the other hand, providing prices that are actually available may generate increased interest in the site as consumers learn to check-in regularly on the days that prices are refreshed. Consequently, we recommend that the price reporting guidelines defined by the Commission include the requirement that reported prices actually be available to consumers on, at a minimum, the day that they are posted.

(3) Require a Standardized Format for Price Reporting. In order to enhance the ability of residential consumers to compare prices directly, ESCOs should be required to provide pricing for two simple, commonly available options, if they offer them: (a) a one-month variable price, and (b) a one-year fixed price. ESCOs that certify that they do not

offer either or both of these options should not be required to submit artificially calculated prices, but the website should clearly show that the ESCO does not offer the option for which it gives no information. As with mortgage rate tables appearing weekly in many newspapers, this format permits consumers to quickly and conveniently compare the prices offered by suppliers for common products.

(4) Permit Reporting ESCOs to Submit Additional Product Information. ESCOs otherwise in compliance with the price reporting requirements should be permitted to submit pricing information for other products they offer, provided that the key terms and conditions set forth in (5) below are disclosed. As is currently the case, this additional information would also be included on the Power to Choose Web site.

(5) Require Disclosure of Certain Key Terms and Conditions. For any ESCO product listed on the Commission website, additional information concerning key terms and conditions of service should also be required and displayed, namely: (a) the term of any minimum customer commitment required; (b) any penalty for early termination; (c) whether the minimum commitment is mutual or can be terminated early by the ESCO; and (d) whether the price quoted can be changed unilaterally by the ESCO during the term of the customer's commitment. These are simple, straightforward, easily answered questions, and yet they are essential to a consumer's ability to evaluate an offer. The latter two, for example, are critical in the case of a putative fixed price offer, which would effectively be worthless if the ESCO could terminate the contract or change the price during the term of the deal.

(6) Non-Compliant ESCOs Should be Barred from Ratepayer Funded Marketing Programs and Should Not be Included in Ratepayer Funded Programs Promoting Retail


Access. ESCOs that refuse to provide the required pricing information should not be permitted to post product information on the Commission's Power to Choose website; should be excluded from promotional programs that are part of utility outreach and education efforts funded through rates, including advertising, bill inserts, Market Expos, Market Match, Energy Fairs, and the like; and should not be allowed to participate in ESCO Referral Programs or any other market development programs funded in whole or in part by ratepayers. Consumers are paying for these programs in order to foster the development of competitive markets which they hope, and expect, will ultimately provide them lower prices, better service and a greater variety of product choices. If an ESCO is not willing to make the modest commitment to the improved availability of pricing information that the Commission is proposing in this case, it should not benefit directly from those consumer expenditures.

We believe these sanctions should be sufficient to assure reporting by most, if not all, ESCOs. It should not be necessary to threaten uncooperative suppliers with the loss of their certification to do business in a service territory or the state. Such a drastic "death penalty" should be reserved, as it currently is, for actions that cast doubt on a company's ethical, financial or operational fitness.

CONCLUSION

The CPB urges the Commission to implement ESCO price reporting in accordance with the recommendations contained herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Teresa A. Santiago". The signature is written in a cursive style with a large, sweeping initial "T".

Teresa A. Santiago
Chairperson and Executive Director

Douglas W. Elfner
Director of Utility Intervention

David Prestemon
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Dated: Albany, New York
July 25, 2006