STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

In the Matter of Retail Access Business Rules.	Case 98-M-1343
Petition of New York State Consumer Protection Board and the New York City Department of Consumer Affairs Regarding the Marketing Practices of Energy Service Companies.	Case 07-M-1514
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REPLY COMMENTS OF THE NEW YORK STATE CONSUMER PROTECTION BOARD

Mindy A. Bockstein
Chairperson and Executive Director

Douglas W. Elfner
Director of Utility Intervention

David Prestemon
Intervenor Attorney

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Albany, New York

NYS CONSUMER PROTECTION BOARD
5 EMPIRE STATE PLAZA
SUITE 2101
ALBANY, NEW YORK 12223-1556
http://www.nysconsumer.gov

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REPLY COMMENTS OF THE NEW YORK STATE CONSUMER PROTECTION BOARD

In Initial Comments filed on April 18, 2008, the Consumer Protection Board ("CPB") responded to a series of ten questions posed by the Public Service Commission ("Commission") in its Notice of March 19, 2008,[1] covering a variety of issues related to energy service companies ("ESCOs") and their marketing practices. We also commented on proposed changes to the Commission's Uniform Business Practices for retail access ("UBP") that were included with the Notice and were intended to address problems revealed by consumer complaints about certain marketing practices.

Throughout our comments, we emphasized five principal themes:

1. The Commission's ability to respond to abusive ESCO marketing practices should be streamlined and enhanced by incorporating into the UBP

[1] "Notice Soliciting Comments on Revisions to the Uniform Business Practices."

enforceable standards of conduct similar to those proposed by the CPB and the New York City Department of Consumer Affairs in our original December 20, 2007, petition in Case 07-M-1514.[2]

2. The focus of the standards should be measures which ensure that consumers receive a clear and complete disclosure of all the critical facts necessary for them to reach informed judgments about the merits of contracting for services offered by ESCOs. We recommended that key contract terms including duration, price, price variability (fixed, variable, capped, etc.), early termination fees and late payment fees be prominently displayed on the front of contract documents in a chart similar to the disclosure box currently required by federal law for credit card solicitations.

3. Outright proscription, specific dollar limitations and extended cancellation periods for early termination fee provisions are not necessary at this time if our disclosure recommendations are adopted. However, the UBP should require that these fees be reasonably related to the damages an ESCO will be likely to incur in the event of a customer's early termination, and they should not be permitted at all when the ESCO does not have a reciprocal obligation to complete the term of the contract.

4. The potential for customer confusion concerning the relationship of an ESCO to the customer's distribution utility should be minimized by a

[2] "Petition of the New York State Consumer Protection Board and the New York City Department of Consumer Affairs Regarding the Marketing Practices of Energy Service Companies."

requirement that ESCO representatives make a short, explicit statement that they do not represent the utility.

5. The standards of conduct should apply to marketing activities directed at small commercial customers as well as residential customers.

Over twenty other parties responded to the March 19, 2008, Notice with initial comments. While nothing in those filings changed the CPB's views on the general principals stated above, they did raise a number of issues concerning the details of implementing those objectives, as well as several related matters associated with the questions posed in the Notice. We address those issues in these Reply Comments.

A. Applicability of Standards of Conduct to Marketing to Small Commercial Customers.

The UBP apply to both residential and commercial customers.[3] The current voluntary marketing standards developed by the ESCO community are titled, "Statement of Principles for Marketing Retail Energy to Residential *and Small Business Customers* in New York State." (emphasis supplied) No party in its initial comments has provided any rational explanation why principles currently applicable to small commercial customers should cease to be so when they are incorporated in business practices that are themselves applicable to small commercial customers.

Those consumer representatives and utilities that addressed the issue in their initial comments all supported the inclusion of small commercial customers

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3 See e.g., UBP Section 2.B.1.a, and also Case 98-M-1343, In the Matter of Retail Access Business Rules, "Order Adopting Revised Uniform Business Practices," Issued November 21, 2003, Appendix A, p, 29

within the coverage of proposed Section 10.[4] ESCOs overwhelmingly, but not quite unanimously, opposed it.[5]

The reason expressed most frequently by opponents was that commercial customers can take care of themselves because they are business people who "possess the requisite sophistication to enter in many complex transactions ... without the cloak of additional consumer protections."[6] No one, of course, provides any empirical basis for the conclusion that small business owners are less susceptible to confusing marketing tactics when they are in their offices, stores and restaurants than they are in their homes.

The purpose of the proposed standards of conduct is to establish a minimum level of fairness in the dealings between ESCOs and consumers. Even assuming that commercial customers are somewhat better attuned to vendors' sales pitches than the average residential customer, the question remains, which of the standards should not apply to them? Should they not be entitled to a clear and prominent disclosure of the key terms and conditions of an offer? Should it not be required that they be informed of those terms and conditions in a language they speak? Is it acceptable for them to be confused as to whether the salesperson they are speaking with represents their distribution utility?

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[4] CPB Initial Comments, pp. 3-5; "Initial Comments of the Office of the Attorney General of the State of New York, Andrew M. Cuomo," April 18, 2008, p. 5 ("AG Comments"); "Initial Comments of the Public Utility Law Project of New York, Inc.," April 18, 2008, p.11 ("PULP Initial Comments"); "Initial Comments of National Fuel Gas Distribution Corporation," April 18, 2008, p. 8 ("NFG Initial Comments").

[5] Reliant Energy supported application of the standards to small commercial customers, which it recommended be defined as non-residential customers with a peak load of 25 kW or below. "Comments of Reliant Energy in Response to the Notice Soliciting Comments on Revisions to the Uniform Business Practices Issued March 19, 2008," April 18, 2008, p. 2 ("Reliant Comments").

[6] "Comments of the National Energy Marketers Association," April 18, 2008, p. 7.

There is no reason why the small business owner who negotiates individually with an ESCO representative should be assumed to have any advantage over an individual homeowner. The operative word, of course, is "small." The definition chosen for "small commercial customer" will determine the scope of the market to which UBP Section 10 will apply. In their initial comments, parties suggested a number of measures based on annual energy consumption or service class eligibility.[7] In our view, however, none of these characteristics of a business will consistently be clear and unambiguous for the ESCO marketing representative. Consequently, we recommended that the marketing standards be made applicable to all unsolicited sales contacts.[8] This makes it unnecessary for the marketing representative to have any specific information about the customer in order to know whether the marketing standards apply. It should also assure that the standards will not apply to most contacts with large commercial customers since they are unlikely to entertain cold calls from energy marketers by phone or at the door.

If the Commission considers even this level of applicability to encompass too many customers who are not deserving of the protections afforded by the marketing standards, we would suggest an alternative. Limit the applicability of the standards to those commercial customers not currently served by an ESCO. This will automatically eliminate large commercial customers, nearly all of whom have ESCO service, as well as smaller customers that have already gained

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[7] See Reliant Comments, p. 2 (usage); "Comments of UGI Energy Services, Inc.," April 18, 2008, p. 4 (usage); NFG Initial Comments, p. 8 (usage); PULP Initial Comments, p. 11 (service class); AG Comments, p. 5 (service class or usage).

[8] CPB Initial Comments, p.5.

some familiarity with alternative suppliers. The standards would then apply only to residential customers as a class, and to commercial customers not taking ESCO service. Although the information required to apply this test is not directly observable by the ESCO marketing representative, it is easily ascertained with a simple yes or no question.

B. Statement That ESCO Representative Is Not from the Customer's Local Distribution Utility.

In our initial comments, we emphasized the need to reduce the instances of confusion experienced by customers concerning the relationship between ESCO representatives and the customers' distribution utility.[9] Accordingly, we endorsed modification of the proposed marketing standards in Section 10 of the UBP to require that marketers not only identify the company for which they work, but also expressly state that they do not work for the local utility.

From comments submitted in response to the CPB's original petition, and made at the technical conferences in this proceeding, we discern that ESCOs have two basic concerns with the requirement. They do not like to have to inject negative statements into their sales presentations ("We are not your utility."), and they worry that the required statement may be long and distracting for the customer.

The CPB's recommendation would eliminate the second concern. We consider the simple statement, "I represent ESCO. I do not represent

9 CPB Initial Comments, pp. 6-8.

Distribution Utility," to be sufficient. Any claim that this short statement will somehow disrupt the representative's sales effort is just not credible.

Nevertheless, for ESCOs that feel strongly about avoiding negative statements, we can recommend an alternative that would be equally acceptable. The CPB recently received a form of contract currently in use by a major ESCO in New York. The contract includes a box on the front page with a message in all capitals that states "CUSTOMER UNDERSTANDS THAT [ESCO] IS AN INDEPENDENT ENERGY SERVICES COMPANY AND IS NOT AFFILIATED WITH CUSTOMER'S LOCAL UTILITY." Customers are required to sign their names in the box, next to the statement.

The CPB recommended in its initial comments that key contract provisions be disclosed in a "Schumer Box" type chart on the top page of the contract documents.[10] Inclusion of an additional cell in that box incorporating the statement and signature space described above would be a satisfactory alternative to the requirement of an oral disclosure of the distinction between the ESCO and the local distribution utility. A similar presentation could be used for Internet-based enrollments, with a check box for customer acknowledgement, and for telephone enrollments, the statement and acknowledgement of understanding could be included in the audio recording.

Statistics on initial ESCO complaints received by the Commission during 2007, which were, provided to the parties at the April 28, 2008, technical conference, showed that by far the largest single category of complaint was "Alleged ESCO Slamming," with 542 instances compared to 268 for the next

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10 CPB Initial Comments, p. 9.

highest. Discussions at the conference indicated that most of these complaints came from customers who thought they were dealing with their distribution utility when they were, in fact, contracting for service with an ESCO. The CPB's recommendations address this problem head on, while the proposed language in UBP Sections 10.C.1.b and 10.C.2.c merely continues the harmful status quo.

C. Termination Fees, Grace Periods, Wet Signatures.

Most of the concerns raised by ESCOs about proposed restrictions on the use of early termination fees -- including size limitations, extended grace periods and the requirement of a "wet" signature on the sales agreement -- would be avoided by the adoption of the CPB's recommendation that the matter be handled through prominent disclosure. Our conversations with various ESCOs have indicated that many would consider this an acceptable solution. Indeed, the Retail Energy Supply Association ("RESA") suggested just such an approach in its initial comments, saying that when the problem involves customer understanding of the implications of early termination fee provisions in sales agreements:

> the appropriate redress is to deal with the matter during the marketing and enrollment process by providing consumers with sufficient notice of the conditions and elements associated with such fees.[11]

The display of critical contract terms in a "Schumer Box" type chart on the top page of the sales agreement provides protections for both the consumer and the ESCO. For consumers, it minimizes the likelihood of a future, unpleasant

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[11] "Initial Comments of the Retail Energy Supply Association," April 18, 2008, p. 15 ("RESA Initial Comments").

surprise from the operation of a contract provision that might otherwise have been lost in the "fine print." For ESCOs, it makes it much less likely that consumers will feel that they have a legitimate basis for complaining about being misled.

The CPB continues to advocate that "early termination fees" be defined as any charge defined in the sales contract that may be assessed by an ESCO if a customer refuses to honor the full term of the agreement. This has nothing to do with the ESCO's right to pursue actual damages for breach of contract. The early termination fee is a charge that the ESCO has a contractual right to bill without having had to prove damages through litigation. Only the extended cancellation period for contracts with early termination fees, which we recommended against, has the potential to cut off an ESCO's right to be made whole for actual damages sustained.

We also recommend against attempting to establish a one-size-fits-all termination fee. Instead, we suggest a limitation modeled after that used for liquidated damages in § 2-718(1) of the Uniform Commercial Code:

> The amount of any early termination fee provided for in a sales agreement must be reasonable in the light of the anticipated or actual harm caused to the ESCO by the customer's termination of the agreement prior to completion of its full term, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing an unreasonably large fee is void.[12]

[12] Cf. UCC § 2-718:

> (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

This provision would permit the DPS Staff to evaluate the reasonableness of proposed fees in the course of their review of ESCO standard sales agreements.

In addition to the reasonableness requirement, early termination fees should expressly be dependent on a reciprocity of obligation. Indeed, RESA essentially makes this very argument in reverse when it defends the fees on the grounds that:

> [If we] require the ESCO to fulfill all of the terms of the agreement, including the provision of service when it may not be economic for the ESCO, the same principle should apply to the customer.[13]

Thus, if the customer has no right to seek damages from the ESCO for terminating a sales contract early, the ESCO should have no right to charge an early termination fee when the customer does so. This should be true not only when the ESCO has reserved an unconditional termination right, but also where its sales agreement includes a "price majeure" clause allowing it to back out when it becomes unhappy with the economics of the contract.

Finally, in our initial comments, we suggested that early termination fees should not be permitted for variable price contracts. Our reasoning was that those contracts do not require any advance purchase or other hedging of supply obligations and, therefore, present no supply-related risk of loss if they are terminated early. On further consideration, however, we recognize that a fixed term of service may have other value to an ESCO that would be at risk from early termination. Therefore, we recommend that the general requirement of

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[13] RESA Initial Comments, p. 14.

reasonableness set out above be applied as well to early termination fees included in variable price contracts.[14]

D. Section 18a Assessments to ESCOs.

RESA raises issues concerning the impact on commodity pricing of the extension of PSL §18-a assessments to ESCOs that have merit.[15] The first, which we also described in our initial comments, is generated by the fact that utilities currently recover all of their assessments through delivery rates, even though half or more of their gross operating revenues derived from intrastate utility operations come from commodity sales. That recovery mechanism creates no problem as long as ESCOs are not also paying regulatory assessments which they must recover through their commodity sales. If ESCOs are assessed, then the utility assessment must be unbundled into its delivery and commodity-related components or else the relative pricing of utility and ESCO commodity services will be distorted.

The second, closely-related problem concerns the general overcharging of consumers that would occur if ESCOs were assessed under § 18-a and the methodology for recovering assessments in utility rates were not changed. Currently, as noted above, the forecast expense for these assessments is recovered through delivery rates without true-up or reconciliation. If

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[14] Energetix and NYSEG Solutions similarly advocates the application of a "rule of reason" in judging the legitimacy of termination fees. Initial Comments of Energetix and NYSEG Solutions, Inc. in Response to March 19, 2008 Notice," April 17, 2008, p. 9.

[15] RESA Initial Comments, p. 8.

assessments go up, the utility's bottom line is reduced. If they go down, consumers pay for non-existent costs, and profits increase.

All other factors remaining equal, as consumers migrate to ESCOs, utility gross revenues will decline and ESCO revenues will increase. Annual PSC assessments to utilities will also decline, but the recovery in rates for this expense will not. Until rates are reset, all utility customers will pay too much in delivery rates for regulatory expense. For ESCO customers, the situation will be even worse, because they will have to pick up the increasing assessment to their ESCOs without the offsetting benefit of the declining assessment to the utility. They will be double-charged for the commodity related portion of the assessment until a rate case, temporarily, provides a readjustment.

If ESCOs are assessed for regulatory expenses based on gross revenues as currently provided in the Public Service Law, fairness to consumers requires that the assessments to utilities be unbundled and the commodity component reconciled, with over and undercollections deferred. This cannot realistically be accomplished on a generic basis in this case.

E. Disclosure of ESCO Customer Numbers.

In response to the question whether the number of customers served by an ESCO is proprietary trade secret information, most ESCO respondents simply pointed to a ruling issued by the Commission's Secretary in 2006 and said, "case closed."[16] Unfortunately, what they failed to address was that (1) the ruling is not directly on point because it relates to a request for much broader, and arguably

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[16] See e.g. RESA Initial Comments, p. 17.

more sensitive, information than mere customer numbers, and (2) it is an egregiously bad decision that should not be relied upon.

The request involved in the 2006 ruling was for ESCO-specific information on the number of customers served and "the total volume of gas moved to such customers."[17] From the discussion of affidavits opposing disclosure, it is clear that it was the latter information that was of concern to ESCOs. As one affiant stated, "disclosure would adversely affect the ESCO's ability to procure natural gas supplies because *suppliers could demand higher prices if they knew exactly what volume of gas the ESCO needed.*"[18] (emphasis supplied) No such problem arises from the disclosure of mere customer numbers.

Ultimately, the decision rests on the conclusion that the "disclosure of the number of customers and associated gas volumes" might generate a "distortion of perception of potential customers."[19] They might think that an ESCO with fewer customers is less capable than one with many. In other words, the ruling advocates withholding useful information from the public when the consumers who receive it might interpret it in ways the Commission does not consider acceptable. That is not an appropriate basis for a non-disclosure decision. The purpose of the Freedom of Information Law is to protect the public's right to know. What consumers do with that knowledge is their business.[20]

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[17] Letter ruling on Trade Secret Request 06-1 dated October 20, 2006 (Attachment "A" to RESA Initial Comments), p.5.

[18] Id. at p. 3.

[19] Id. at p. 5.

[20] "[There is no] requirement that the person seeking disclosure set forth good cause, or, indeed, any cause for requesting the documents." Johnson v. New York City Police Dept., 257

If the logic used in the 2006 decision had even a glimmer of validity, the government would never release the results of its school report cards or hospital ratings.[21] After all, some consumer might conclude that a hospital with a surgical infection rate below the State average was too risky a place for an operation when, in fact, that hospital accepted a disproportionately high percentage of difficult emergency cases; or that a school with lower than average test scores was of poor quality, when actually its student base included a high number of children with special requirements.

Most certainly, the Commission would never post ESCO complaint numbers on its website. Just imagine the "distortion of perception" that could result from that disclosure.

Of course, the Commission does post those numbers, and the most recent listing on its website shows complaints for the year to date by ESCO ranging from 0 to 140.[22] Is the company with 140 complaints running roughshod over consumers while those with zero are customer-friendly? What if the former has 20,000 customers while the latter average fewer than 20? It might actually be a lot fairer to ESCOs and a lot more useful to consumers if customer numbers

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A.D.2d 343, 346 (1st Dept., 1999). In other words, how the recipient of the information intends to use it is not relevant to an agency's disclosure determination.

[21] Hospital rankings can be found on the New York State Health Department website at http://hospitals.nyhealth.gov/. School report cards are published by the Department of Education at http://www.emsc.nysed.gov/irts/reportcard/.

[22] http://www.dps.state.ny.us/April_08_FinalReport.pdf

were set out next to the complaint figures so that, as the CPB has recommended, a complaint rate can be calculated.[23]

F. Definition of "Plain Language."

In response to the question of how the term "plain language" as used in Section 2.B.1.b of the UBP should be defined, most commenters simply pointed to the existence of General Obligations Law § 5-702 and suggested that nothing further was necessary. That statute requires any agreement "to which a consumer is a party," that concerns goods or services intended "primarily for personal, family or household use," must be "written in a clear and coherent manner using words with common and every day meaning." Obviously, the statute applies to contracts for the sale of natural gas or electricity to residential customers. Unfortunately, it is equally obvious that the law is not accomplishing its objective.

The UBP currently require that the standard sales agreements used by ESCOs be "written in clear, plain language," and copies of those contracts must be submitted to DPS Staff for review. In fact, the PSC's website touts this review as one of the "protections in place" for residential customers.[24] Despite this effort, however, the marketplace remains filled with sales agreements incorporating industry jargon and legalese ranging from confusing to incomprehensible.

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[23] CPB Initial Comments, p. 22.

[24] http://www.dps.state.ny.us/gas3.html

Furthermore, the wording of GOL §5-702 is not all that helpful. Every word has a "common and every day meaning," no matter how obscure it may be, and sentences can be clear and coherent in structure while still being opaque in content. For example, the statement that "the parties agree that should the liquidated damages provision be deemed unenforceable for any reason, that provision is replaced by a provision providing for actual damages," uses ordinary words and is reasonably coherent, but it would not be surprising if most residential customers had little idea what it meant.

Accordingly, the CPB continues to recommend that more specific guidance be given for language used in sales agreements with residential and small commercial customers. Plain language should avoid legal or energy industry terms, acronyms or abbreviations that a person of ordinary intelligence would not be expected to recognize and understand, and any unavoidable term that the average homeowner, tenant or small businessperson would not be likely to recognize should be clearly defined before it is used. The more specific the guidelines for plain language can be made, the easier it will be for DPS Staff to identify and weed out consumer-unfriendly jargon when it performs its review of ESCO sales agreements.

G. Statement of "No Savings"

A number of ESCOs objected to the modification of the Attachments to Section 5 of the UBP that would require sales representatives to either state that the customer is not assured of receiving any savings, or to explain the circumstances under which savings might be realized. Their concern is that the

requirement forces the inclusion of a negative statement into a sales presentation even when the product being sold is aimed at customer interests other than savings (price security, for example).[25] The CPB agrees that this is a legitimate issue.

The Small Customer Marketer Coalition suggests alternative language that would require a statement only when an ESCO represents that savings are "guaranteed."[26] We think this is a step in the right direction, but that the wording is too narrow. It is very easy, and common, for sales representatives to sell the idea of savings without ever guaranteeing, or even promising, them ("You might see some big savings," "Your bills could be lower," etc.). This is clearly evidenced by the fact that the second largest number of complaints received by the Commission in 2007 was in the category of "No Savings Realized." Therefore, we would recommend the following language requiring ESCOs to provide:

> A clear description of the conditions that must be present in order for savings to be provided, if the ESCO has represented that the customer will, or may, realize savings.

H. ESCO Application Renewal.

A number of commenters suggested that the proposed new Section 2.B.2-A that would require an ESCO to resubmit its application package every

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[25] See e.g. "Comments of Gateway Energy Services Corporation," April 18, 2008, p. 15 ("Gateway Comments"). Gateway recommends that the conditions necessary for savings to be realized be explained only when savings are promised by the ESCO.

[26] "Initial Comments of the Small Customer Marketer Coalition," April 18, 2008, p. 28 ("SCMC Initial Comments").

three years is redundant.[27] Superficially, this would seem to be a valid concern given the existing requirements that ESCOs annually submit and describe any changes made to the package, and also report between filings any major revisions adopted. The rules, however, only require that ESCOs provide the revised portions of the application or accompanying attachments. Consequently, over time, the DPS Staff may accumulate a thick folder of revisions, and revisions to revisions, without having any single, coherent, up-to-date document to refer to. The new requirement would clean out that folder periodically.

As a possibly less burdensome alternative, instead of a new three-year reapplication requirement, we would suggest that the existing annual eligibility maintenance filing requirements be revised. Rather than having ESCOs submit only the revised portions of documents, they should be required to provide a complete copy of the document in which the revisions are incorporated. This would assure that DPS Staff has a full, clean copy of the application package after each January 31 filing.

I. Other Proposals.

In response to question 10 in the March 19, 2008, Notice, which asked whether there were any other needed modifications to the UBP, several ESCOs pointed to a variety of proposals or issues that have been pending for some time. For the most part, the CPB finds these ideas unobjectionable in concept (subject

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[27] See e.g., "Comments of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. on Revisions to the Uniform Business Practices," April 18, 2008, p.3 ("ConEd Comments").

to the devil in the details) and, indeed, we have supported many of them -- such as the Accent petition and service initiation referral programs -- in the past.

As a part of the effort announced by the Commission's Chairman in March to clean up the backlog of retail access issues, it would clearly be desirable to resolve these outstanding matters. However, the proposals cited by the ESCO commenters are all concerned with improving the marketing environment for ESCOs. The motivating force behind this proceeding was a desire to enhance protections for consumers. Adoption and implementation of the enhanced protections the CPB and others have recommended should not be delayed in any way by consideration of ancillary issues.

A few of the "other proposals" presented by various parties require specific comment:

a. Unauthorized return of customers to utility service. A number of ESCOs report problems with customers being improperly returned to utility service, apparently because certain changes in customer data can trigger an automatic drop by some customer service systems.[28] This is clearly a problem that needs to be addressed. The thwarting of customer choice, whether deliberate or inadvertent, is no more acceptable when caused by a utility than it is when it results from ESCO action. It is also clear, however, that solving the problem may cost money, and that the solution may vary from utility to utility. A generic resolution in this case is not achievable. The CPB recommends that a

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[28] See e.g., SCMC Initial Comments, pp. 17-18.

separate inquiry be initiated to determine the scope of the problem and the possible means of rectifying it.

b. Customer tax information. Gateway Energy suggests that utilities be required to provide information about the sales tax rates applicable to their customers.[29] This is clearly inappropriate. Unlike usage data, tax rate information is not something utilities possess as a result of their delivery service monopolies. Utilities have to obtain and compile that information just like any other business that markets products across a large geographic area. Competitively priced commercial services and software for determining the proper sales tax to charge a customer are readily available. Having utilities hand out the information for free would be anticompetitive, and possibly violate the licensing agreements of any utilities that use third-party products.

c. ESCO re-enrollment after termination. Consolidated Edison reports that it has experienced problems with ESCOs' using an initial enrollment authorization to re-enroll customers who have elected to switch providers or return to the utility.[30] They recommend that the UBP be amended to require that an ESCO obtain a new enrollment authorization from the customer before submitting an enrollment. Again, this is an issue of the customer's choice being ignored. ConEd's recommendation is simple and fair, and should be adopted.

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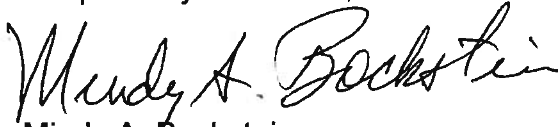
[29] Gateway Initial Comments, p. 9.

[30] ConEd Comments, pp. 6-7.

CONCLUSION

The New York State Consumer Protection Board urges the Public Service Commission to adopt the recommendations identified herein and in our Initial Comments, as soon as possible.

Respectfully submitted,



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