

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

In the Matter of Energy Service Company Price  
Reporting Requirements

Case  
06-M-0647

REPLY COMMENTS OF THE  
NEW YORK STATE CONSUMER PROTECTION BOARD

Teresa A. Santiago  
Chairperson and Executive Director

Douglas W. Elfner  
Director of Utility Intervention

David Prestemon  
Intervenor Attorney

Dated: August 21, 2006  
Albany, New York

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

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

In the Matter of Energy Service Company Price  
Reporting Requirements

Case  
06-M-0647

REPLY COMMENTS OF THE  
NEW YORK STATE CONSUMER PROTECTION BOARD

The Consumer Protection Board (“CPB”) strongly supports the efforts of the Public Service Commission (“PSC” or “Commission”) to establish price reporting requirements for energy service companies (“ESCOs”) that will permit the Power to Choose Web site to become a much more complete and useful source of information for consumers. Implementation of such requirements, together with some website modifications recommended by various parties in their initial comments, will significantly enhance the ability of consumers to make well-informed choices of energy suppliers. Equally importantly, it will further the education of residential customers about natural gas and electricity pricing, leading eventually to consumers becoming as familiar with the prices of those commodities as they are currently with the prices of home heating oil and gasoline. As one ESCO put it, the Commission’s objective should be “providing customers with a sense of pricing” so that over time they can make better energy commodity purchasing decisions.<sup>1</sup>

Although the CPB advocates mandatory reporting requirements at this time, we do so only to assure that the Commission’s website will have sufficient timely

---

<sup>1</sup> Comments of National Fuel Resources, Inc., (“NFR Comments”), p. 3.

information to make it both useful to, and used by, consumers. Contrary to the concerns expressed by some parties, we do not see such requirements being necessary to constrain the marketing activities of ESCOs or to keep a regulatory eye on their product offerings.

The primary objective of this proceeding should be to produce a timely, accurate source of pricing information for consumers that will also be viewed as a useful, perhaps even essential, marketing tool for ESCOs. That clearly is not an impossible task. As Advantage Energy points out in its Initial Comments, the website maintained by the Public Utilities Commission of Ohio is “widely utilized by both customers and suppliers,” and ESCOs in that state “have been very receptive to performing price reporting” voluntarily.<sup>2</sup>

If voluntary price reporting has generally been working in Ohio, why has it been largely ineffective in New York? The initial comments suggested two principal reasons: (1) concern that reported prices cannot keep pace with changing market conditions, putting either ESCOs’ credibility or their profits at risk depending on whether they change the prices without notice or hold to the reported numbers for some arbitrary period;<sup>3</sup> and (2) the view that the current website presents an unfair comparison of ESCO and utility prices.<sup>4</sup> Both of these issues are soluble, as we discuss below.

---

<sup>2</sup> Initial Comments of Advantage Energy, Inc. (“Advantage Comments”), p. 4.

<sup>3</sup> NFR Comments, p. 2; Advantage Comments, p. 7; Comment From MXEnergy on ESCO Price Reporting Requirements (“MXE Comments”), pp. 2-3; Comments of Energetix, Inc. and NYSEG Solutions, Inc. (“EI/NSI Comments”), p. 10; Comments of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. on ESCO Price Reporting Requirements (“ConEd/O&R Comments”), p.2.

<sup>4</sup> Comments of the Small Customer Marketer Coalition and Retail Energy Supply Association (“SCMC/RESA Comments”), p. 11; NFR Comments, p. 2; Comments of IDT Energy, Inc. (“IDT Comments”), p. 3; EI/NSI Comments, p.7, 9; NFR Comments, pp. 3-4.

Initial comments in this case were submitted by seven ESCOs or representatives of ESCOs, two utilities, the Public Utility Law Project (“PULP”) and the CPB. As would be expected, the diversity of viewpoints represented by these parties revealed some differing perspectives on the questions posed in the notice initiating the proceeding. At the same time, the comments showed considerable agreement on a number of important points. That common ground, we believe, can provide the basis for a price reporting scheme that will be workable for ESCOs, will provide consumers with the information they need, and will promote the growth of retail energy shopping by residential customers. Such a price reporting program should have the characteristics described below.

### **Keep it Simple**

Some commenters expressed the view that ESCOs should not be required to report and update prices for multiple products and product variations.<sup>5</sup> One suggested that it could be a competitive disadvantage for ESCOs with new and innovative products to have to disclose the pricing terms before, or as soon as, a product was rolled out.<sup>6</sup> The CPB agrees that this is not necessary.

As we stated in our initial comments, to be workable for ESCOs, and more importantly, to be useful to consumers, mandatory reporting should be limited to a few simple, readily comparable products. SCMC/RESA and Advantage expressed a similar view in their initial comments, suggesting that reporting should only cover certain

---

<sup>5</sup> Initial Comments of the National Energy Marketers Association (“NEMA Comments”), p.3; EI/NSI Comments, p. 3.

<sup>6</sup> EI/NSI Comments, p. 4.

“standardized product offerings” available to residential consumers.<sup>7</sup> We recommended in our initial comments, and continue to advocate, that required price reporting be limited to a variable rate offer and a one-year fixed rate offer.

We also recommended in our initial comments that ESCOs in compliance with the basic, mandatory price reporting requirements be allowed, but not required, to post prices for other product offerings. The CPB considers this accommodation essential for fairness to those companies that are trying to compete on the basis of service elements other than, or in addition to, pure price.<sup>8</sup> To preserve the “keep it simple” principle, these offerings should be included in a separate section directly linked to the ESCO’s name in the mandatory price reporting area of the website. This will keep the direct comparison section of the website clean, clear and uncluttered.<sup>9</sup>

Fairness among ESCOs in the presentation of pricing data also requires that some very basic information about terms of service also be provided. As we suggested in our initial comments, we would recommend that four questions be answered: (1) Is there a minimum contractual term required? (2) Is there a penalty for early termination? (3) Does the ESCO have the right to terminate the agreement early for reasons other than the customer’s performance? (4) Can the ESCO unilaterally change the price term during the required service period?

---

<sup>7</sup> SCMC/RESA Comments, p. 6; Advantage Comments, p. 11.

<sup>8</sup> ConEd and O&R expressed a similar concern, noting that “limiting the disclosure to some prescribed pricing format not compatible with the myriad of pricing methodologies used in the market ... may unfairly disadvantage many ESCOs.” ConEd/O&R Comments, p. 2.

<sup>9</sup> In this vein, IDT Energy has made the excellent suggestion that the website be designed to include additional search filters that would enable consumers, for example, to pull up available fixed price offers without having to hunt through a long list of all products offered. IDT Comments, pp. 3-4.

A simple yes or no answer is all that need be shown on the website. That will be sufficient to alert the consumer that there is additional information to be checked. Perhaps, as MXEnergy suggests, that information could be made readily available by a link to the ESCO's website requiring only a click on the ESCO's name, or on a "Get Details" button.<sup>10</sup>

### **Keep it Current**

Commenters nearly all agreed that any price reporting scheme must include measures to accommodate the fact that market prices in the real world are constantly changing. Either prices must be updated frequently, or consumers must be alerted through disclaimers to the fact that the numbers they are looking at may already have changed.<sup>11</sup>

The latter approach, obviously, tends to cast doubt in consumers' minds as to the usefulness of the reported prices, and may lead to the website being ignored by shoppers if reported prices more often than not are different from the ESCOs' current offers. Consequently, we recommended that reporting be required weekly and that the reported prices be accurate as of the day they are posted. This gives consumers at least one day a week when they can make comparisons they can fully rely on.

ESCOs generally seem to agree that more frequent reporting would be better.<sup>12</sup> MXEnergy even suggests that the website be redesigned to give ESCOs direct, secure

---

<sup>10</sup> MXEnergy Comments, p. 4.

<sup>11</sup> Advantage Comments, p. 6; NEMA Comments, p.4; EI/NSI Comments, p. 10; NFR Comments, p. 6; SCMC/RESA Comments, p. 8; ConEd/O&R Comments, p.2.

<sup>12</sup> MXE Comments, pp. 2-3; Advantage Comments, p. 6; NFR Comments, p.3; EI/NSI Comments, p. 10.

access to update their prices in real time.<sup>13</sup> This would be an excellent improvement to the website if it is feasible. In addition to keeping prices current, it might also facilitate real time price competition among providers, to the benefit of consumers.

### **Provide Utility Price Information**

The CPB agrees fully with the commenters who recommend that the Commission's website include information on utility commodity prices.<sup>14</sup> As long as utilities remain the default option for commodity service -- and the only option with which many consumers are familiar -- ESCO prices by themselves are meaningless. The utility price sets the standard, the price to beat against which consumers judge all other offers. To be useful, the website must show the utility price information in close proximity to the ESCO offers.

This is certainly feasible. National Grid currently provides on its website historic monthly natural gas supply charges since January 2001, and projected monthly charges for the next 12 months.<sup>15</sup> It also allows customers to look up historic daily electric supply charges by service class and load zone from September 1, 1998, to the present.<sup>16</sup> Other utilities may similarly publish commodity price data (we have not done a complete survey), but if not, there is no reason why they could not generate such information and allow it to be linked to the Commission's website.

---

<sup>13</sup> MXE Comments, p. 2.

<sup>14</sup> NEMA Comments, p.3; Advantage Comments, p. 6 ("ensure that the customer actually understands the default service rate."); NFR Comments, p. 4.

<sup>15</sup> [http://www.nationalgridus.com/niagaramohawk/business/rates/4\\_gas\\_supply.asp](http://www.nationalgridus.com/niagaramohawk/business/rates/4_gas_supply.asp).

<sup>16</sup> [http://www.nationalgridus.com/niagaramohawk/business/rates/5\\_supp\\_charge.asp](http://www.nationalgridus.com/niagaramohawk/business/rates/5_supp_charge.asp).

## **Present a Fair Price Comparison**

Several commenters note that the current website does not always provide a fair comparison of ESCO offers and utility prices.<sup>17</sup> Clearly, when an ESCO one-year fixed price offering is compared to a utility's July gas price projected forward for a year, the result is neither fair to the ESCO nor useful to the consumer.

Clearly, more work is required to provide consumers with fair and helpful comparisons. Every effort should be made to make the website presentation meaningful, taking into account such factors as seasonal load variations, projected utility prices, the effect of merchant function charges, competitive service backout credits, differential tax rates, competitive transition charge fluctuations, referral program discounts, and so forth. These issues are soluble and should be addressed as soon as possible.

In the meantime, the basic reporting we have advocated should proceed immediately. The sooner consumers begin to see a variety of commodity price offerings on a regular basis, the sooner they will be able to make more informed energy supply decisions, and the faster retail competition will develop.

## **Penalties for Non-Reporting Should Reflect Intent**

Several ESCOs express concern that they not be barred from doing business in New York, or suffer some other severe penalty, as a result of minor or inadvertent price reporting failures.<sup>18</sup> Certainly, this is neither necessary nor desirable. Mistakes that can

---

<sup>17</sup> See p. 3, n. 4.

<sup>18</sup> SCMC/RESA Comments, pp. 12-13; Advantage Comments, p.10; NEMA Comments, p.7; IDT Comments, p. 5.



be cured should be cured. Penalties should be reserved for those companies who willfully refuse to provide pricing information or who accumulate such a long rap sheet of “mistakes” that willful noncompliance can reasonably be inferred.<sup>19</sup>

As we said in our initial comments, even in those cases where sanctions are justified, the penalty should not be preclusion from doing business in the state. Such cases should, however, result in barring the offending ESCOs from participating in, or benefiting from, any programs for the promotion of retail access that are funded in whole or in part by ratepayers. This would include utility websites, bill inserts, market match programs, and other consumer education efforts paid for with outreach and education funds, as well as ESCO referral programs that are not fully funded by ESCO contributions. If a company is unwilling to promote retail access by contributing basic information to an effort to educate consumers about commodity prices, it does not deserve to benefit from promotional efforts funded by consumers.

---

<sup>19</sup> See for example, IDT Comments, p. 5, (“ESCO disqualification should be imposed as a penalty only for *repeated violations* of any price reporting requirements.”)

## CONCLUSION

The Commission should order the reporting of price information by ESCOs in a manner consistent with the recommendations made 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  
Intervenor Attorney

Dated: Albany, New York  
August 21, 2006