

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 17, 2011

COMMISSIONERS PRESENT:

Patricia L. Acampora, Deputy Chairwoman
Maureen F. Harris, dissenting
Robert E. Curry, Jr.
James L. Larocca

CASE 98-M-1343 - In the Matter of Retail Access Business Rules.

ORDER DENYING REHEARING AND ACCEPTING UTILITY COMPLIANCE FILINGS
RELATED TO REMOTE CUSTOMER ACCESS TO ACCOUNT INFORMATION

(Issued and Effective November 23, 2011)

BY THE COMMISSION:

On August 17, 2010, the Retail Energy Supply Association (RESA) filed a petition for rehearing of our July 19, 2010 Order¹ regarding the provision to customers of remote access to their utility account numbers. In its petition, RESA seeks reversal of our determination requiring costs associated with providing increased customer access to account numbers from remote locations be borne by Energy Service Companies (ESCOs). In this order, we deny RESA's petition for rehearing. Additionally, the July 2010 Order required utilities to file reports and, in some cases, proposals to provide customers with remote access to their account numbers. We address these utility filings in this order.

¹ Case 98-M-1343, In the Matter of Retail Access Business Rules, Order Concerning Remote Customer Access to Account Information (issued July 19, 2010) (July 2010 Order).

BACKGROUND

The July 2010 Order approved plans submitted by Central Hudson Gas and Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (Con Edison), Niagara Mohawk Power Company, d/b/a National Grid (National Grid) and Orange & Rockland Utilities, Inc. (O&R) to provide customers with remote access to the customer utility account numbers or Point of Delivery Identification Numbers (POD ID).² The July 2010 Order required utilities using Integrated Voice Response-based systems (IVR) to allow customers to access their account numbers by providing the last four digits of their social security numbers (SSN) and, potentially, additional identifying information, such as a zip code or customer last name.

The July 2010 Order determined that ESCOs should shoulder the incremental costs associated with the use of IVR-based systems to increase remote access to account numbers. To this end, the Order directed Central Hudson, Con Edison, National Grid and O&R to collaborate with the ESCOs on cost recovery mechanisms and implementation timelines. These utilities were directed to file status reports within 60 days of issuance of the July 2010 Order. If the parties could not achieve a workable cost recovery mechanism or determined that IVR upgrades were unnecessary, the utilities were directed to include an explanation of this result in their reports.

The July 2010 Order directed KeySpan Energy Delivery of New York and KeySpan Energy Delivery of Long Island (collectively, KeySpan Companies) to provide a report on the

² While NYSEG/RG&E utilize POD IDs rather than account numbers as the relevant customer identifier for ESCOs, for simplicity, this Order will refer only to account numbers, which should be read to include POD IDs, where applicable.

reassessment of their estimated costs for the provision of real-time remote access via an IVR system. Additionally, New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation (NYSEG/RG&E) and National Fuel Gas Distribution Corporation (National Fuel) were directed to submit plans for providing real-time customer access to account numbers via an IVR system or other mechanisms, including projected implementation costs. These utilities were also directed to collaborate with ESCOs on cost recovery mechanisms.

On August 17, 2010, RESA filed a petition (RESA Petition) for rehearing of the July 2010 Order's direction that ESCOs shoulder the costs associated with the implementation of programs to provide remote customer access to account numbers. Subsequently, the Small Customer Marketers Coalition (SCMC), and the Joint Utilities³ filed responses to the RESA Petition. In conformance with the State Administrative Procedures Act (SAPA) §202(1)(a), a notice of the petition was published in the State Register on September 29, 2010. The comment period expired on November 15, 2010. No additional comments were received.

The RESA Petition and the utilities' filings are addressed separately in this Order.

RESA PETITION

The RESA Petition asserts that the July 2010 Order made an error of fact and law in requiring ESCOs to be responsible for the costs of implementing and maintaining systems providing customers with remote access to their customer account number in each utility service territory. RESA disagrees with the July 2010 Order's assessment that providing

³ Joint Utilities represents Central Hudson, Con Edison, O&R, National Fuel, KeySpan Companies Gas East Corporation d/b/a National Grid, National Grid, and NYSEG/RG&E.

for remote customer account number access serves explicitly as a marketing tool for ESCOs at public venues.⁴ Instead, RESA asserts that providing customers with remote access to their utility account numbers should be deemed a part of the "retail access platform" because it is "... essential to maintaining a competitive market structure; allows the ESCOs to operate on an equal footing with the utility service providers;⁵ and enhances the ability of ratepayers to participate in retail access." (internal quotation marks omitted).⁶

The RESA Petition contends that the July 2010 Order deviates from Commission policy regarding rate recovery of retail access program costs. It notes that the retail access customer enrollment process in our Uniform Business Practices (UBP) requires the use of the utility account number to effectuate a customer enrollment with an ESCO. RESA asserts that the utility account number is "the crucial data element in the retail access platform" and that, because the creation of an avenue to remotely access customer account numbers supports the

⁴ RESA Petition, p. 3.

⁵ RESA states that in order to "obtain commodity and/or distribution service from the utility [a customer] merely has to call the utility, request institution of service and provide some basis [sic] information to set up the account. The customer is not required to present an account number as a prerequisite to obtaining utility commodity service" as a customer must do to arrange for an ESCO to provide the energy commodity. RESA asserts that because of this, "ESCOs operate at a distinct competitive disadvantage to the utility with respect to customer enrollment. The institution of corrective measures to address this competitive disparity is therefore properly viewed as an effort to buttress the retail access platform." RESA Petition, p. 6.

⁶ RESA Petition, pp. 3-4. RESA cites Case 07-M-0458 - Competitive Retail Energy Markets, Order Determining Future of Retail Access Programs (issued October 27, 2008), pp. 7-8 (Competitive Markets Order) as the source of these criteria.

retail access platform, the costs of creating and maintaining remote customer account number access should be recovered from ratepayers. RESA likens the programs for providing remote customer account number access approved in the July 2010 Order to other retail access programs, such as Electronic Data Interchange (EDI) and utility consolidated billing, for which we have previously provided ratepayer funding.⁷ RESA requests that the utilities recover the costs of implementing and maintaining systems that provide customers with remote access to their utility account numbers from ratepayers rather than ESCOs.

On August 30, 2010, SCMC filed a response to the RESA Petition. SCMC supports RESA's petition for rehearing and urges the Commission to provide for ratepayer funding of programs designed to provide remote access to customer utility account numbers.

The Joint Utilities filed a response to the RESA Petition on September 1, 2010. As an initial matter, the Joint Utilities assert that RESA has failed to meet the standard for seeking rehearing set forth in 16 NYCRR §3.7.⁸ The Joint Utilities assert that RESA has failed to demonstrate "that the Commission's determination violated any law or was inconsistent with any fact."⁹ Moreover, the Joint Utilities positively assert that the July 2010 Order is "fully consistent with its [this

⁷ RESA Petition, p. 9.

⁸ 16 NYCRR §3.7 states that "Rehearing may be sought only on the grounds that the commission committed an error of law or fact or that new circumstances warrant a different determination. A petition for rehearing shall separately identify and specifically explain and support each alleged error or new circumstances said to warrant rehearing."

⁹ Joint Utilities, p. 2.

Commission's] precedent, supported by the facts and well within the Commission's discretion."¹⁰

The Joint Utilities observe that RESA's statement that "without access to account number information, customers cannot participate in customer choice" does not address the issue presented in the July 2010 Order.¹¹ The Joint Utilities point to the numerous options customers have to access their utility account numbers, including contacting the utility call center, accessing utility websites, and referring to monthly utility bills. The Joint Utilities argue that the additional avenue of remote access to customer account numbers through IVR or other systems is "intended solely to satisfy the ESCOs' desire to market to customers in public places during non-business hours - and to sign them up immediately."¹²

Additionally, the Joint Utilities dispute RESA's conclusion that ESCOs are at a competitive disadvantage because customers are required to have their utility account number to enroll with an ESCO. The Joint Utilities note that, in a key respect customer enrollment for utility service is treated no differently than enrollment for ESCO service. According to the Joint Utilities, customers must speak with a utility service representative to arrange for utility service. Whether the customer needs to call the utility to begin utility service or to procure his or her account number to enroll with an ESCO, the customer must call during the operating hours of the utility call center.¹³ Therefore, according to the Joint Utilities, the

¹⁰ Joint Utilities, p. 2.

¹¹ Joint Utilities, p. 5.

¹² Joint Utilities, p. 5.

¹³ Joint Utilities, p. 8. The Joint Utilities provide the business hours of each utility's respective call center in Appendix A to their filing.

remote access to account numbers at issue in the July 2010 Order should not be viewed as correcting a situation where ESCOs are at a competitive disadvantage.

Furthermore, citing *Rochester Telephone Corp. v. Public Service Commission*, 87 N.Y.2d 17, 28-29 (1995), Joint Utilities explains that this Commission's determinations may not be set aside unless they are without a rational basis or without reasonable support in the record. Its review of the RESA Petition, states Joint Utilities, reveals that RESA does not demonstrate that the determination that ESCOs pay for remote customer access to account numbers is without either a rational basis or record support.

According to Joint Utilities, the July 2010 Order was in line with the Competitive Markets Order.¹⁴ Joint Utilities note that the Competitive Markets Order explained that ratepayers would no longer pay incremental costs for promotional retail access programs unless there is a direct ratepayer benefit.¹⁵ The Joint Utilities assert that increased access to customer account numbers has been pursued by ESCOs, not customers; and "even RESA concedes that the ESCOs will benefit from the program."¹⁶ Accordingly, the Joint Utilities conclude that we acted within our authority in determining that ESCOs should be financially responsible for the costs of providing remote access to customer account numbers.

UTILITY REPORTS

As required by the July 2010 Order, Central Hudson, Con Edison, O&R and National Grid filed reports explaining the

¹⁴ Joint Utilities, p. 8 and 9.

¹⁵ Joint Utilities, pp. 9 - 10; Competitive Markets Order, p. 19.

¹⁶ Joint Utilities, p. 9.

results of their respective discussions with ESCOs regarding the recovery of costs associated with the implementation and maintenance of systems providing remote access to customer account information. Additionally, National Fuel and NYSEG/RG&E were directed to submit new proposals to provide customers with remote access to account numbers through an IVR or other mechanism. Finally, the KeySpan Companies were required to submit a report detailing a reassessment of the companies' estimated costs to implement their original proposal. Each of the utilities' reports are summarized below.

Central Hudson

On August 31, 2010, Central Hudson reported that it considered the costs to implement remote customer access to account numbers through its IVR system as negligible and that it elected not to seek cost recovery from the ESCOs. The service is now available, in English and Spanish, and written user directions were provided to all active ESCOs to assist customers at remote locations.

Con Edison

In its an August 13, 2010 report, Con Edison advised that the cost required to modify its existing IVR system would be approximately \$750 with an annual expense of \$1,800 for on-going maintenance. Viewing the overall costs as minimal, Con Edison has not sought cost recovery from the ESCOs in its service territory. As of November 15, 2010, the Company completed the modifications to its IVR system, which allows customers to retrieve their account number by entering the telephone number associated with their account and the last four digits of their SSNs.

O&R

According to O&R's September 17, 2010 report, the ESCOs have agreed to equally split the one-time \$5,000 charge to

implement the system to provide customers with remote access to account numbers. Additionally, the ESCOs would pay an equal share of the estimated annual \$500 maintenance costs. O&R will recover these costs through either its consolidated billing program or via a separate invoice for those ESCOs who do not participate in consolidated billing. O&R advises that the IVR modifications can be completed within 60 days of our approval.

National Grid

In its October 18, 2010 submission,¹⁷ National Grid explained that due to unrelated upgrades to its IVR system, the projected cost to implement changes to its IVR system to allow for remote customer access to account number have increased from the \$17,500 (estimated costs approved in the July 2010 Order) to approximately \$62,000. The Company advises that it would seek to recover only the originally quoted \$17,500 from ESCOs operating in its service territory. National Grid also notes that it would take about 40 days to develop, test, implement and monitor the required changes to its IVR system.

The Company sponsored a teleconference on September 29, 2010 with the active ESCOs to discuss the IVR system upgrades and its cost recovery proposal. Subsequently, National Grid conducted a vote of the active ESCOs on various approaches to cost recovery. National Grid reported that the ESCO vote resulted in 11 unconditional votes in favor of proceeding with the IVR upgrades and cost recovery from ESCOs, two conditional votes in favor of proceeding, 10 votes against proceeding and no

¹⁷ On September 21, 2010, National Grid was granted a 30-day filing extension by the Secretary to the Commission to October 18, 2010.

responses from 23 ESCOs.¹⁸ Given the number of votes against, and the number of ESCOs who did not vote at all, National Grid recommends that the modifications to its IVR system to allow remote access to account numbers not be pursued at this time. Should the Commission direct National Grid to implement the IVR modifications, National Grid proposes to allocate costs to all of the ESCOs in its service territory.

National Fuel

In its September 20, 2010 submission, National Fuel proposed two different approaches to provide remote access to customer account information: access through either its existing SmartPhone system or web-based Internet access. The SmartPhone system would enable customers to telephonically access their account number. The web-based approach would allow customers to access their account number via the Internet, presumably provided on the ESCO's computer at the marketing location. In both approaches, customers would be required to provide the following specific information: the last 4 digits of their SSN; the house number from their street address; the associated zip code; and, the telephone number on the account. In addition, the system would require the input of a pre-defined ESCO pin number to identify the ESCO marketing to the customer. The ESCO would only be assigned a number if it is authorized to market in National Fuel's service territory.

The Company projects that modifications to the SmartPhone system would cost \$105,000, while modifications to the web-based ESCO Internet application would be approximately \$40,000.

¹⁸ Out of a total of 46 ESCOs actively marketing in its service territory. National Grid report filing (October 18, 2010), footnotes 3 and 4.

National Fuel advises that should either or both of its proposals be approved, it will meet with ESCOs to discuss their preferences and to develop a cost recovery mechanism.

NYSEG/RG&E

NYSEG/RG&E use a POD ID¹⁹ rather than a customer's account number for ESCO enrollments. In the September 17, 2010 NYSEG/RG&E filing, the Companies proposed to make customers POD IDs available through IVR and/or web-based systems.

According to the Companies' September 17, 2010 filing, enhancements to these systems will enable easier customer access to their POD IDs via different technologies and allow the ESCOs to vigorously promote their product offerings. NYSEG/RG&E project implementation costs for enhancements to both systems at \$83,000 (\$74,600 for IVR modifications and an incremental \$8,400 for website changes). For the IVR system, NYSEG/RG&E propose to use new company specific toll-free numbers, which would cost \$200 per month per company. The Companies propose to collect the first three years of the costs of the toll-free numbers from ESCOs up front, adding \$14,400 to the initial implementation costs.²⁰

NYSEG/RG&E explain that, through the IVR system, a customer would call the dedicated toll-free number to obtain his or her customer POD ID after following an authentication procedure. That procedure would first entail automatically attempting to verify that the origin of the telephone call matches a telephone number for a POD ID in the Company's

¹⁹ The POD IDs are premise-specific and customers have different POD IDs for electric service, gas service, and unmetered light service (as applicable).

²⁰ NYSEG/RG&E's previous proposal used a web-based application only with a one-time \$13,000 projected cost charged to participating ESCOs (July 2010 Order, p. 14).

records. If no match is found, the customer would enter either the account or telephone number associated with the sought after POD ID(s). If any of the above processes results in a match, the customer would enter the last four digits of his or her SSN for validation and would be provided with his or her electric and gas POD IDs. Those customers who cannot find a match through the IVR system, or those with multiple POD IDs, would be directed to the NYSEG/RG&E websites or the Companies' respective general toll-free numbers to speak with a customer service representative during business hours.

Customers accessing the Companies' websites would see, as an option, an "Online POD ID Access" link. After selecting the link, they would enter either their telephone or account number and the last four digits of their SSN. Customers would then receive up to 100 POD IDs associated with the submitted information. If customers are unable to validate information through either approach, they will be advised to contact the Companies' call centers for assistance during business hours.

NYSEG/RG&E propose to recover the system modification costs together with the costs for providing dedicated toll-free numbers for three years from all active ESCOs in the Companies' service territories. ESCOs would have a 90 day period to remit payment. After all payments are received, the Companies state that it would take approximately 10 weeks to complete the required modifications. Upon approval of either or both of the systems described above, the Companies would meet with ESCOs to discuss the ESCOs' preferences for either or both of the systems and cost recovery proposals.

KeySpan Companies

As directed in the July 2010 Order, the KeySpan Companies conducted a reassessment of the estimated costs to provide remote access to customer account numbers via their

respective IVR systems. The Companies explain, in their September 17, 2010 report, that after the reassessment, the combined projected costs have been reduced from \$322,000 to \$147,000. KeySpan Long Island estimates that the costs for IVR system upgrades are \$82,000 and states that implementation would take approximately 60 days. KeySpan New York estimates that its proposed IVR system upgrades would cost approximately \$65,000 and would require approximately 42 days to implement.

In a letter submitted on July 29, 2011, the Companies advised that they had presented the proposed IVR system modifications and cost recovery mechanism to the 60 ESCOs actively marketing in their service territories during a June 9, 2011 meeting. The Companies report that the ESCOs were provided with an opportunity to vote on whether they supported the proposal and whether they were willing to pay an appropriate share. Out of 60 ESCOs, 11 responded, with eight in favor of the proposal and three against. Accordingly, the Companies suggest not implementing the IVR upgrades at this time. Should the Commission determine that the Companies should move ahead, they propose to divide the implementation costs equally among the ESCOs in their respective service territories.

DISCUSSION AND CONCLUSION

RESA Petition

The July 2010 Order directed utilities to propose cost recovery mechanisms, to be funded by the ESCOs in their service territories, to cover the costs associated with implementation and on-going management of remote access to customer account number through web-based venues or IVR upgrades. RESA seeks rehearing of our determination to assign these costs to ESCOs. As noted above, 16 NYCRR §3.7(b) states that rehearing may only be sought on the grounds that our underlying Order was based on

an error of law or fact, or that new circumstances warrant a different determination. RESA's petition asserts that the July 2010 Order included errors of either fact or law. However RESA's assertions are unsupported and its petition for rehearing is denied.

RESA asserts that providing customers with remote access to account numbers should be viewed as part of the retail access platform, with costs recovered in rates. However, providing customers with the remote access to their account numbers at issue in the July 2010 Order is not essential to maintaining a competitive market structure, nor is it required to allow the ESCOs to operate on an equal footing with the utility service providers.

Although it is not clear in RESA's petition, the issue considered in the July 2010 Order was who should pay for providing *additional* access to utility account numbers. Customers already have access to their account numbers. Customers can refer to their monthly utility bills. They can, in most cases, access account information, including their account numbers, on their utility's website. Additionally, customers can call their utility's customer service center, during the center's hours of operation, and retrieve their account number. In fact, many customers have used these methods to obtain their account information when they arranged for their energy commodity to be supplied by an ESCO. Accordingly, the additional venue for retrieving account numbers through an IVR system is not a part of the retail access platform.

Similarly lacking in support is RESA's assertion that additional remote access to account information is necessary to allow ESCOs to operate on an equal footing with the utility service providers. As explained by the Joint Utilities, customers can only arrange for utility service (whether just for

distribution or also for supply of the energy commodity) during the utility's business hours. Thus, although customers do not need a utility account number in order to sign up for utility service, they are required to contact the utility during its business hours, in exactly the same manner as would a customer seeking his or her account number to enroll with an ESCO.

Additionally, we note that it has been ESCOs who have advocated for programs to expand remote access to customer account numbers. This is because some ESCOs seek to market to and enroll customers at public places and events. It may be true that the effectiveness of these ESCOs marketing efforts would be hampered without the sought after additional access to customer account numbers. However, as we stated in the July 2010 Order, the benefit clearly inures to the ESCOs choosing to market in these public places. Accordingly, as we determined in the July 2010 Order, the costs of providing this additional remote access to customer account numbers should be borne by the ESCOs. RESA's petition for rehearing is denied.

Utility Reports

Central Hudson and Con Edison have already commenced providing remote customer access of account number, consistent with our prior orders. Because neither utility seeks recovery of the costs associated with this service no further action is necessary on our part.

O&R's implementation process and cost allocation proposals to establish remote access to customer account number through its IVR system are reasonable and O&R should move forward with implementation.

In addition, we find each of National Fuel's two methods for remote access to customer account number -

SmartPhone or ESCO Web-based - acceptable.²¹ National Fuel is directed to meet with the active ESCOs in their service territory to discuss which method(s) of remote access the ESCOs would like to have implemented and how related costs should be recovered from the ESCOs. Further, National Fuel is directed to file with the Secretary to the Commission within 60 days of issuance of this order a time table for implementation along with a description of how the costs will be recovered from the ESCOs. At that time, National Fuel may implement the plan without receiving additional approval from this Commission. If National Fuel and the ESCOs cannot come to an agreement on implementation, National Fuel shall file a report with the Secretary to the Commission within 60 days of issuance of this order explaining why, after consulting with the ESCOs, the parties cannot devise a workable cost recovery mechanism or stating that the ESCOs determined that the approved plan is not necessary.

We likewise approve NYSEG/RG&E's dual methods for remote access to customer account numbers subject to agreement by the parties to a cost recovery mechanism.²² NYSEG/RG&E are directed to meet with the active ESCOs in their service territories and file with the Secretary to the Commission within 60 days of issuance of this order a time table for implementation along with a description of how the costs will be

²¹ The use of only a four digit portion of a customer's SSN together with numerous other pieces of information satisfies the concerns we raised about using web-based systems in the July 2010 Order.

²² As with National Fuel, the NYSEG/RG&E plan's reliance on additional pieces of information in addition to the four digit portion of the customer's SSN assuages our concerns regarding the use of web-based systems.

recovered from the ESCOs. At that time, NYSEG/RG&E may implement the plan without receiving additional approval from this Commission. If the utilities and the ESCOs cannot come to an agreement, the utilities shall file a report with the Secretary to the Commission within 60 days of issuance of this order explaining why, after consulting with the ESCOs, the parties cannot devise a workable cost recovery mechanism or stating that the ESCOs determined that the approved plan is not necessary.

If, at some point, the ESCOs in National Fuel's or NYSEG/RG&E's respective service areas decide they would like to move forward with these programs to provide enhanced remote access to customer account numbers, the utilities shall implement these programs and recover the implementation and ongoing maintenance costs from the ESCOs operating in their respective service territories without receiving any further approval. Should National Fuel or NYSEG/RG&E implement these programs in the future, within 30 days of implementation, the utility shall file a report with the Secretary to the Commission. This report should state the date the program was implemented, the implementation costs incurred, updated expected maintenance costs and the manner in which costs were or will be recovered from ESCOs.

The ESCOs active in National Grid's and the KeySpan Companies' service territories could not reach consensus on the recovery of the costs associated with providing remote access to customer account number. We will not force ECSOs to shoulder the costs associated with this service if it is not wanted. Nor will we force ratepayers to pay for such service. Consequently, National Grid and the KeySpan Companies are not required to go forward with their plans to provide remote access to customer account numbers. If, at some point, the ESCOs in National

Grid's or the KeySpan Companies' respective service areas decide that they would like to move forward with these programs to provide enhanced remote access to customer account numbers, then, as discussed in the preceding paragraph, the utilities may implement these programs and recover the implementation costs incurred at that time. No further approvals would need to be sought from this Commission. Should National Grid or the KeySpan Companies implement these programs at some point, they shall file the report described in the preceding paragraph.

The Commission orders:

1. The Retail Energy Supply Association petition for rehearing is denied.

2. The plans submitted by New York State Electric & Gas Corporation, and Rochester Gas & Electric Corporation and National Fuel Gas Distribution Corporation, as discussed in the body of this Order, are approved subject to agreement on a cost recovery mechanism. As described in this Order, the utilities are directed to consult with the ESCOs actively marketing in their respective service territories, to determine how to recover the costs of the approved plans from those ESCOs. Each of the utilities shall submit the report described in the body of this Order on the status of its plan to the Secretary, within 60 days of the date of this Order.

3. The plan submitted by Orange & Rockland Utilities, Inc., along with the cost recovery mechanism, are approved. Orange & Rockland Utilities, Inc. should submit a report on the implementation of its plan to the Secretary, within 60 days of the date of this Order.

4. The Secretary may, at her sole discretion, extend the deadlines set forth in this Order.

5. This proceeding is continued.

By the Commission,

JACLYN A. BRILLING
Secretary