

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 17, 2009

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

CASE 07-E-0949 – Proceeding on Motion of the Commission as to the Rates, Charges,
Rules and Regulations of Orange and Rockland Utilities, Inc. for
Electric Service.

ORDER CONCERNING ESCO REFERRAL PROGRAM

(Issued and Effective September 21, 2009)

BY THE COMMISSION:

BACKGROUND

On July 23, 2008, we issued an Order in Case 07-E-0949 directing Orange and Rockland Utilities, Inc. (O&R or Company) to submit a report on the feasibility of referring new customers to Energy Services Companies (ESCOs) when the customer contacts the utility to arrange for service. O&R has an existing ESCO Referral Program, *PowerSwitch*, through which O&R refers existing customers to ESCOs. We directed O&R to evaluate the advantages and disadvantages of the expansion of *PowerSwitch* to include the enrollment of new service customers with ESCOs and to address recovery of any costs associated with the expansion.

As directed, O&R filed a report (ESCO Referral Report or Report) on January 23, 2009.¹ The ESCO Referral Report includes a description of the current ESCO Referral Program (*PowerSwitch*), a proposed process for expansion of the Program to include enrollment of new customers, a cost recovery proposal, and a timetable for implementation and an evaluation of the advantages and disadvantages of enabling new customers to enroll in *PowerSwitch* at service initiation.

In accordance with the State Administrative Procedure Act §202(1), a notice of the proposal was published in the State Register on March 25, 2009. The National Energy Marketers Association (NEMA) and the Small Customer Marketer Coalition (SCMC) submitted initial comments; O&R filed reply comments.²

Existing PowerSwitch Program

PowerSwitch offers residential and small non-residential electric customers and all firm service gas customers a seven percent discount for an introductory period of two billing cycles. After the introductory period, the customer may elect to enter into a separate sales agreement with the ESCO or return to the Company for energy supply. Customers are not eligible to participate in *PowerSwitch* if they have previously participated in the ESCO Referral Program, are currently enrolled with an ESCO or have an enrollment with an ESCO which is still being processed (a pending enrollment).

Currently, customers can enroll in *PowerSwitch* by completing and returning enrollment cards which are periodically included with monthly customer bills, by completing an online enrollment form on the O&R's website, or by telephone, either through the Company's integrated voice response (IVR) unit or by speaking to a call center representative. According to O&R, the enrollment cards included in monthly

¹ Case 07-E-0949 – Orange & Rockland Utilities, Inc., Report Regarding the Expansion of its ESCO Referral Program (January 23, 2009) (ESCO Referral Report).

² O&R filed its Reply Comments on June 3, 2008, which is outside the SAPA comment period. In order to ensure a full and complete record for our determination we shall consider these comments.

customer bills have been very successful, resulting in the majority of customer enrollments in *PowerSwitch*. *PowerSwitch* allows customers to either choose a specific ESCO or be randomly assigned to an ESCO. Customers choosing to be randomly assigned to an ESCO for both electricity and natural gas supply are enrolled with a dual-commodity ESCO. ESCOs participating in *PowerSwitch* are required to participate in O&R's consolidated billing program and to sign the Company's billing services and *PowerSwitch* agreements. There are currently ten ESCOs participating in *PowerSwitch*.

Proposed Expansion of PowerSwitch

Currently, the effective date for a change in commodity provider is, for electric customers, on the date of the next meter reading occurring at least 15 days after submission of the ESCO enrollment request, and for gas customers, on the first of the next month at least 15 days after submission of the ESCO enrollment request. O&R proposes that when a new service customer enrolls in *PowerSwitch* for electric service, the effective date of his or her enrollment would be, for electric customers, the date of service initiation, and for gas customers, on the first day of the next month, or the first day of the following month, depending on the date the new service order is processed. O&R notes that in order to allow for the release of capacity and appropriate scheduling of gas deliveries by ESCOs, a *PowerSwitch* enrollment would become effective on the first of the month, so long as the customer requests enrollment at least 15 days prior to the first of that month. If the customer requests enrollment in *PowerSwitch* after that date, the enrollment in *PowerSwitch* would begin on the first of the following month. Therefore, O&R states that a new gas customer's initial gas bill is likely to include supply charges from O&R.

In order to track enrollments, O&R proposes that new electric and gas customers be allowed to request participation in *PowerSwitch* only within 10-days of the service activation date. Though current customers can enroll in *PowerSwitch* in four ways, O&R proposes that new service customers enroll in *PowerSwitch* only through the Company's Call Center. O&R states that its proposal requires several changes to the

Company's systems to accommodate the enrollment of new electric and gas customers in *PowerSwitch*, and makes a proposal to recover the costs of completing these changes.

In addition, the Company seeks waivers of the UBP requirements contained in Sections 5.B.2, 5.D.5, 5.D.7 and 5.E.1. UBP Section 5.B.2 provides residential customers with the right to rescind a sales agreement within 3 days of receiving that agreement. UBP Section 5.D.5 requires the distribution utility to provide a response to an ESCO indicating acceptance of a customer's enrollment and the effective date for the change of provider within two business days of receiving the enrollment request. UBP Section 5.D.7 requires that electric enrollments be submitted 15 days prior to the next scheduled meter read date and gas enrollments be submitted 15 days prior to the first of the next month. UBP Section 5.E.1 requires the distribution utility to send a verification letter to the customer no later than one calendar day after acceptance of the enrollment request.

When existing customers enroll in *PowerSwitch*, O&R states that once the enrollment transaction is processed, a letter is sent to the customer notifying him or her of the pending enrollment and his or her ability to rescind that enrollment; and an Electronic Data Interchange (EDI) message is sent to the ESCO notifying it of the pending enrollment and providing the upcoming start date. O&R states that currently its Customer Information Management System (CIMS) assigns a customer account number when the customer's service is activated. O&R proposes that, since the account number is assigned upon activation of service, the enrollment notification letter to the customer would not be sent until the service actually begins; the enrollment would become effective immediately upon service activation, without any written notice to the customer or opportunity to rescind. In addition, the EDI notice, which is usually sent within two business days of receiving an enrollment request, will not be sent to the ESCO until the date of the service activation, so no advanced notice of the enrollment will be provided to the ESCO.

O&R claims that it will incur implementation costs, as well as ongoing operations and maintenance costs, to facilitate the enrollment of new service customers in

PowerSwitch. Currently, O&R's CIMS requires that a retail access customer receive at least one bill from O&R before an enrollment with an ESCO can occur. O&R states that modification of the CIMS would be required to allow the billing system to identify the enrollment date as the activation date. Additionally, new enrollment letters will need to be developed, specific to this proposal, and modification of the CIMS would be required to ensure that the appropriate letter is sent to customers. O&R estimates that the required system modifications will cost approximately \$21,000. Additionally, O&R notes that the Retail Access Information System (RAIS), which handles all EDI transactions, currently blocks enrollments during the 15-day period before a meter read, for electric customers, and before the first of the month, for gas customers. Consequently, the RAIS will require modification to allow enrollments to validate within that 15-day period. O&R estimates that the required changes to the RAIS will cost approximately \$21,000. Further, O&R estimates that annual operating costs in the amount of approximately \$4,100 will be incurred for daily processing of these unique enrollments and other manual processes required to enroll these customers. In summary, O&R estimates that costs in the first year, including the costs to modify the existing systems will be \$46,100, with ongoing maintenance costs of approximately \$4,100 annually.

O&R proposes that ESCOs participating in *PowerSwitch* fund the cost of this proposal. O&R proposes to divide the total estimated first year cost of \$46,100 evenly among the current ESCOs at the time of implementation. Currently, ten ESCOs participate in *PowerSwitch*, making each ESCO's estimated charge \$4,610 for the first year. O&R proposes that the estimated ongoing operational and maintenance costs of the program of \$4,100 would be shared evenly among the participating ESCOs and would, based on current estimates and participation rates, result in a cost of \$410 per ESCO per year in the second and following years. The ongoing operations and maintenance costs will be evaluated and trued-up at the end of each calendar year and an estimate of costs for the upcoming year would be determined. O&R proposes that any new ESCOs wishing to participate in *PowerSwitch* will be obligated to pay an initial processing and set up fee in order to add them to the program. This fee would only be charged when the

ESCO first enters the program. Each new ESCO would also be responsible for paying its share of the operation and maintenance costs for the remainder of the year on a prorated basis. O&R states that all fees for ESCOs entering the program would be used to offset the cost of the program for all ESCOs in the upcoming year. Since these ESCOs must participate in the consolidated billing program, these charges would be deducted from the ESCO's monthly purchase of receivables' remittance. O&R estimates that all changes to *PowerSwitch* to accommodate the enrollment of customers at the activation of service will take seven months to complete. Before any changes are made, O&R would require that all ESCOs participating in *PowerSwitch* agree to the terms, conditions, and costs for expanding the program.

DISCUSSION AND CONCLUSION

The parties' comments are generally supportive of O&R's proposal to expand *PowerSwitch* to new service customers as it can be accomplished economically and will facilitate customer migration. The comments were directed to the following areas: cost recovery for the program's expansion; customer enrollment mechanisms; and, coordination with the ESCO Referral Working Group in the Uniform Business Practices Phase II Proceeding.³

Cost Recovery for *PowerSwitch* Expansion

NEMA asked three questions with respect to O&R's proposal to charge ESCOs for the costs of implementing and maintaining the program. First, NEMA asks whether ESCOs will have input and oversight of program implementation and schedule as they will be responsible for the costs. ESCO input and oversight is unnecessary as O&R is proposing only limited technical upgrades to facilitate new service applicants. Second, NEMA asks whether the estimated costs are strictly limited to the operation of this program or will they include some components of other O&R operations. O&R clarified that the costs identified in the proposal are limited to costs associated with the technical upgrades to accommodate new service customers in *PowerSwitch*. Third,

³ Case 98-M-1343, et. al., In the Matter of Retail Access Business Rules .

NEMA asked whether a separate cost recovery mechanism will be developed for single-service ESCOs, as they will receive a different benefit from the *PowerSwitch* assignment process than will dual-service ESCOs. O&R states that it is amenable to NEMA's recommendation that an accommodation in cost allocation be made for ESCOs providing only a single service, so long as participating ESCOs agree on the method of cost allocation. At this time, we will approve O&R's proposal to recover the costs of the expansion of *PowerSwitch* from participating ESCOs on an equal basis. However, O&R and the participating ESCOs should consider alternative cost recovery mechanisms and report back within 60 days of this Order regarding any modifications to this cost recovery mechanism, which they may propose. Once we have received this report, and any comments from other interested parties, we would then consider whether this Order should be modified to reflect such proposals.

SCMC proposes an alternative to recovering the costs from participating ESCOs. It notes that in its pending gas rate proceeding,⁴ O&R reported a deferred balance of \$400,000, which was set aside for retail access outreach and education. According to SCMC, these unspent funds should be directed to educate consumers about retail access and related energy options, including the ability to select an ESCO through the expansion of *PowerSwitch* to new customers. SCMC contends that in light of the current challenging economic environment, O&R has a public policy obligation to inform consumers of options to reduce energy costs, such as *PowerSwitch*. SCMC recommends that O&R be allowed to use the deferred funds to mitigate costs to expand *PowerSwitch*.

In its current gas rate proceeding, O&R proposed that the deferred balance in the retail access outreach and education fund be returned to customers to offset rate increases and O&R notes that Staff concurred with this proposed treatment. Further, the Company states that its proposal to recover the costs of the expansion of *PowerSwitch*

⁴ Case 08-G-1398, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Gas Service (filed November 26, 2008).

from participating ESCOs is consistent with our order issued on October 28, 2008 in Case 07-M-0458, which conditioned implementation or continuation of ESCO referral programs upon ESCO funding for those programs. We agree with O&R and find that the costs associated with the expansion of its ESCO referral program to include new electric and gas customers should be recovered from participating ESCOs.

SCMC views O&R's proposal to require that all current and future ESCOs participating in *PowerSwitch* accept new customer service enrollments unreasonable, and recommends that the Company implement the expansion of *PowerSwitch* if only a reasonable number of ESCOs agree to accept new service enrollments. However, according to the Company, it maintains a single list of ESCOs participating in *PowerSwitch* and finds no reason for allowing ESCOs to opt out of new service customer enrollments. O&R further contends such an approach would result in customer confusion and increased Call Center workload. O&R has only one ESCO referral program, which, with the expansion discussed in this Order, will apply to new as well as existing customers. Since ESCOs are not required to participate in *PowerSwitch*, we find it reasonable for O&R to require that ESCOs participating in *PowerSwitch* accept both new and existing customer enrollments.

Customer Enrollment Mechanisms

SCMC recommends that, in order to avoid customer confusion, the Company inform new natural gas customers who enroll in *PowerSwitch* that they may receive their gas supply from O&R for a portion of the first billing cycle depending on the time of the enrollment. O&R disagrees with SCMC noting that the process outlined in O&R's proposal is similar to the one currently in place regarding notification of natural gas customers and that they have not encountered any noticeable customer confusion or cynicism regarding these enrollments.

A gas customer enrollment could be delayed for a period of up to two months depending on when the customer arranges for service. It is not unreasonable to require the Company to explain the cause of the delay to customers. O&R should revise its customer service script to inform natural gas customers enrolling in *PowerSwitch* of

the potential delay in the customer's enrollment with the ESCO, and that the customer would not receive the seven percent discount in the price of the commodity until its enrollment with the ESCO becomes effective.

SCMC recommends that the program allow ESCOs acting as agents to enroll customers. SCMC states that when an ESCO is in direct contact with a customer, "it is most appropriate for the ESCO, after obtaining the requisite authorization from the customer, to be able to complete the enrollment on behalf of the customer." By doing so, SCMC contends administrative burdens would be reduced and the entire enrollment process would be expedited. O&R states that it requires that customers, not ESCOs, submit enrollments for *PowerSwitch* as this process allows the Company to enroll the customer in a timely fashion so that the customer receives the guaranteed savings quickly, and ensures that the customer's consent is properly retained in the event consent is subsequently challenged. According to O&R, these program features are important because *PowerSwitch* is identified as the Company's program. We agree that, since O&R is responsible for administering its ESCO referral program, it should establish reasonable safeguards to ensure that customers enrolled therein have consented to enrollment and are enrolled in a timely fashion.

SCMC also urges the Company to examine potential mechanisms that would allow customers to choose an ESCO at service initiation without entering the *PowerSwitch* program. However, this topic is beyond the scope of this Order, which is limited to the expansion of O&R's *PowerSwitch* program to include new electric and gas service customers.

SCMC finds the Company's proposal to provide EDI notice of a customer enrollment to an ESCO on the date of enrollment problematic. The ESCOs, according to SCMC, will require some advance notice in order to make arrangements to procure commodity supply on behalf of the customer. SCMC suggests that advance notice could be by e-mail or telephone, but is necessary. In its reply comments, O&R acknowledges that prior notice of gas customer enrollments must be provided to ESCOs in order to effectuate capacity releases and gas scheduling, and states that "all gas enrollments,

whether through *PowerSwitch* or otherwise, must be timed to provide the ESCO prior EDI notification of enrollment.” Therefore, the Company’s proposal to provide EDI notice of a customer enrollment to an ESCO on the date the enrollment is effective only applies to electric customers. Further, while O&R understands there is a benefit to an ESCO receiving notice prior to an electric customer’s enrollment in *Power Switch*, the need for advance notice of electric customer enrollments is not as compelling as for gas customer enrollments, and ESCOs should be able to accommodate an electric enrollment without advance notice. Moreover, the Company objects to an implementation of manual processes which could result in subsequent complications. The Company claims that the extra communications would also require additional staffing, the costs of which would be borne by the ESCOs. While we will allow the expansion of *PowerSwitch* to go forward with the notice procedures O&R proposes, we wish to be apprised of any problems that result from these notice procedures. Accordingly, we grant O&R a waiver of the provision specifying the timing of notice to ESCOs of customer enrollments contained in UBP Section 5.D.5, in relation to new electric and gas customers enrolling in *PowerSwitch*, and Section 5.D.7, only in relation to new electric customers enrolling in *PowerSwitch*.

NEMA asks whether dual commodity customers can be assigned to multiple ESCOs, one ESCO for electricity and a second ESCO for natural gas. Under the current *PowerSwitch* program, a customer can request to be randomly assigned to an ESCO for the provision of electricity, gas or both commodities. However, customers who seek random assignment and require the provision of both commodities are limited to taking service from one ESCO that provides both commodities. Where we have considered this issue previously, we have found that, in order for customers to find a product or combination of products and services that are best for them, customers should be offered the greatest number of options available.⁵ Therefore, O&R should modify its

⁵ See, e.g., Case 07-E-0523, Consolidated Edison Company of New York, Inc. – Electric Rates, Order Concerning ESCO Referral Program (issued June 3, 2009).

ESCO random assignment process so that single commodity customers can be assigned to the dual-fuel ESCOs or single-fuel ESCOs and dual commodity customers can be assigned to the electricity-only and natural gas-only ESCOs as well as the dual-fuel ESCOs.

We grant O&R a waiver of UBP Section 5.B.2, which provides a customer with a three day period in which it can rescind an enrollment, and UBP Section 5.E.1, which requires that a verification letter be sent to customers within one calendar day of accepting an enrollment request, only in relation to new customers enrolling in its *PowerSwitch* program. Although new customers will not have an opportunity to rescind an enrollment with the ESCO prior to the effective date of that enrollment, all customers enrolling in *PowerSwitch* can return to full utility service upon request during the ESCO Referral introductory period. In addition, the customers would not be harmed financially because the ESCO referral program guarantees a seven percent discount during the introductory period.

Coordination with the UBP Phase II ESCO Referral Working Group

NEMA suggests that we provide guidance for the coordination of the O&R proposal with the ongoing discussions being pursued in the concurrent UBP's Phase II Proceeding ESCO Referral Working Group. The UBP Phase II Working Groups are separate and apart from this proceeding; therefore, no guidance is necessary.

The Commission orders:

1. The expansion of Orange & Rockland Utilities, Inc.'s ESCO Referral Program, *PowerSwitch*, to customers at initiation of service, is approved in accordance with the discussion set forth in the body of this Order.

2. As they apply to new electric and gas customer enrollments in *PowerSwitch*, we grant a temporary waiver of Uniform Business Practices Sections 5.B.2, 5.D.5, and 5.E.1. As it applies to new electric customer enrollments in *PowerSwitch*, we grant a temporary waiver of Uniform Business Practices Section 5.D.7.

3. Orange & Rockland Utilities, Inc. is directed to modify its ESCO assignment process so that single commodity service customers can be assigned to the dual-fuel ESCOs or single-fuel ESCOs, and that dual commodity customers can be assigned to the electricity-only and natural gas-only ESCOs, as well as the dual-fuel ESCOs.

4. Orange & Rockland Utilities, Inc. is directed to consider alternative ESCO cost sharing mechanisms for single commodity ESCOs and submit a report within 60 days of this Order regarding any proposed modifications to the cost recovery mechanism approved in this Order.

5. The Secretary may, in her sole discretion, extend the deadlines set forth in this order.

6. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary