

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 98-M-1343 – In the Matter of Uniform Business Rules.

NOTICE SOLICITING COMMENTS

(Issued December 13, 2001)

The Commission is considering modifications to the “Uniform Business Practices (UBP)” it initially adopted on January 22, 1999.¹ The proposed modifications, which are the subject of this Notice, are to reflect changed circumstances and to incorporate, where appropriate, recommendations arising from a national stakeholder effort to develop common retail access business practices (including consideration of comments parties submitted in response to a prior Notice concerning the national consensus document). In particular, at this time, the Commission is considering replacement of the provisions identified in the “Definitions,” “Customer Information,” “New Delivery Customer Requirements,” “Switching Requirements,” “Slamming Prevention Process,” “Discontinuance of Service,” and “Dispute Resolution Process” sections of the current New York UBP with the provisions set forth in the “Glossary,” “Customer Information,” “Customer Agreement and Switching,” “Customer Inquiries,” “Disputes Between Distribution Utilities, ESCO, Direct Customers, Default Providers, and Registration Agents,” and “ESCO Eligibility”² attachments to this Notice.

¹ Modifications of the UBP were previously adopted by the Commission on February 16 and April 15, 1999 in this proceeding. The April 15, 1999 UBP version is on the Commission’s website. Recently, however, in Opinion 01-03 of Case 98-M-0667, the Commission ordered several additional changes to provide for EDI implementation. Those changes are reflected in the modifications proposed here. The Commission does not seek comments on the appropriateness of the EDI modifications.

² The proposal assumes that the eligibility requirements will become effective immediately upon issuance of the Commission’s Order adopting revised Practices.

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Any party wishing to submit comments on the proposals should file ten copies of their comments by February 4, 2002 with Janet Hand Deixler, Secretary, Three Empire State Plaza, Albany, New York 12223-1350.

JANET HAND DEIXLER
Secretary

GLOSSARY

Affiliate – A subsidiary of any company, including a distribution utility, that sells electricity or natural gas to customers. A voting interest of 10 percent or more defines an affiliate relationship and creates a rebuttable presumption of control.

Aggregator – An agent or broker that organizes customers into a group to purchase electricity and/or natural gas or other services but does not sell electricity or natural gas.

Alternative Dispute Resolution – A process to resolve a dispute between the ESCO and the customer that is agreed to by the parties in a sales agreement. Forms of mediation, arbitration, settlement conferences and mini-trials may be used.

Bill Ready – A consolidated billing practice in which the billing party receives the calculated charge amount(s) directly from the non-billing party in lieu of the billing party calculating it directly from the rate.

Billing Agency - A legal arrangement between a customer and an ESCO (“Billing Agency Agreement”) in which a “billing agent” is authorized by a customer to: receive the customer’s bills from the distribution utility; consolidate those bills with the ESCO’s charges; rebill the entire amount to the customer in a single bill format; receive payments from the customer; and remit the appropriate part of payments to the distribution utility. ESCOs offering billing agency services may perform those services or obtain a third party to perform the services, but in either case, the ESCO is considered to be the customer’s billing agent. Customers may also individually establish arrangements with third parties to perform similar services on their behalf, but those arrangements are not the subject of the Uniform Business Practices.

Billing Service Agreement – A legally binding agreement between the distribution utility and the ESCO used when one of the parties is performing consolidated billing for the other party. The agreement details expectations and responsibilities of each party.

Budget Billing – Calculation of uniform monthly payments over a set period of time, typically 12 months, by estimating a customer’s future bill amounts and dividing by a time period, which allows for equal monthly payments, not counting a final “true-up” at the end of the period to account for actual customer usage and bill amounts.

Complaint - When a customer contacts an ESCO, distribution utility or the Department of Public Service to protest, criticize, or express dissatisfaction with service, billing, procedures, etc. Prior to contacting the Department of Public Service, the customer should attempt to resolve issues with the ESCO and/or the distribution utility.

Consolidated Billing Option – A customer billing option combining both distribution utility and supplier charges on one statement.

Core Customer – A customer who depends on a distribution utility for the delivery of energy or services. This customer generally does not have alternatives to buy energy from another supplier.

Cramming – The addition of unauthorized charges to a customer’s bill.

Data Validation – The process used to ensure that an incoming EDI transaction is processed for the correct customer account. Matching one or more data elements in an incoming EDI transaction to the same element(s) in the recipient’s record(s) for the customer validates the transaction.

Default Service – Energy supply service provided, pursuant to rules established by the New York State Public Service Commission, to customers in a competitive energy market who are not being served by an ESCO for any number of reasons, including the following:

1. customer’s chosen ESCO no longer provides service for the customer’s account;
2. customer is unable to locate an ESCO to service their account; or
3. customer has not chosen an ESCO.

Default Provider – The entity(ies) assigned to provide Default Service.

Demand – The amount of energy that must be provided to meet the needs of all customers at a certain point of time.

Electric - The amount of electricity, typically measured in kilowatts (kW), that customers use instantly, or is averaged over a set period of time.

Natural Gas – The rate at which gas is delivered to or by a system, part of a system, or a piece of equipment, expressed in cubic feet or therms, over a set period of time.

Direct Customer - A customer that purchases and schedules delivery of electricity or natural gas for its own consumption and not for resale. Direct Customers do not have to file an application with the Department of Public Service to become eligible as an ESCO or comply with EDI criteria, but must comply with certain operating requirements established by the utilities. A Direct Customer may aggregate and schedule load for itself.

Electric - A customer, with a load of 1MW or more of electricity, that acts on its own behalf to obtain electric energy and capacity from one or more suppliers.

Natural Gas - A customer, with an annual natural gas consumption in excess of 3,500 Dekatherms, that acts on its own behalf in arranging to bring natural gas to the distribution utility’s city gate.

Distribution Utility – See Utility below.

Dual Billing – A customer billing option in which the distribution utility and ESCO render separate bills to the customer and the customer pays each separately.

Dynamic Load Profiling – A load profiling methodology whereby customer energy demand profiles are derived from actual trading day patterns of energy use, by telemetering loads from sample customer points following the end of the measurement period.

Electronic Data Interchange (EDI) - The electronic exchange of data on customer account information that is provided between and maintained by ESCOs and utilities based on specific standards approved by the Public Service Commission. ESCOs must demonstrate EDI capabilities in Phase One of three test phases as part of the ESCO eligibility application process.

Energy Broker – A non-utility entity that performs certain energy management functions on behalf of customers to manage energy consumption and efficiency. The energy broker is not an ESCO as it does not take title to the energy supply.

Energy Services Company (ESCO) - A non-utility company that can perform energy and customer service functions in a competitive environment, including provision of energy and associated customer service functions to customers in New York State. An ESCO must meet specific Public Service Commission eligibility criteria.

Enroll/Enrollment – Initial customer sign-up for energy supply with an ESCO; enrolled to receive service, but not actually switched yet.

Gas Day – A period of 24 consecutive hours commencing at 9:00 AM Central Time on a given calendar day.

Guarantor – An entity that provides a formal assurance as security that another's debt or obligations will be paid.

Human Needs Customer – Accounts that rely solely on natural gas or electricity for heating that are residential in character, such as facilities which house patients or residents on an overnight basis (prisons or hospitals) or critical care accounts (nursing or other acute care facilities.)

Independent System Operator (ISO) – An independent management organization that operates the bulk electric transmission system in New York State.

Interval Data – Customer load data collected by a meter or metering system reflecting actual energy usage for each time interval (e.g., hour, half-hour, etc.) during the billing cycle.

Load –

Electric - An end-use device or customer that receives power from the electric system. Load should not be confused with demand, which is the measure of power associated with a load.

Natural Gas - The amount of gas delivered or required at any specified point or points on a system; load originates primarily at the customer's gas consuming equipment.

Load Profile – An allocation of a customer’s electricity usage over a period of time. Load profiles can be used by suppliers and system operators to forecast electricity and natural gas supply requirements and to determine the cost of serving a customer; profiles may represent individual customers or customer class averages.

Lockbox - A collection mechanism agreed upon by a distribution utility and an ESCO or a Direct Customer, which employs a third party financial institution to receive and disburse customer payments.

Master Service Agreement – An umbrella agreement that includes the business transactions and operational criteria between a distribution utility and an ESCO. The master service agreement includes, but is not limited to, the billing service, meter service and trading partner agreements.

Meter – A device for measuring and totaling the variable consumption and/or demand of energy.

Meter Service Agreement – A legally binding agreement, between the distribution utility and the ESCO, used when one party is providing metering services for the other party. The agreement details expectations and responsibilities of each party.

Municipal Utilities (MUNIs) and Cooperatives - MUNIs are electric or natural gas utility enterprises owned and operated by a municipal government. Cooperatives are electric or natural gas enterprises with ownership vested in members of the cooperative.

New Delivery Customer - A customer initiating delivery service.

Nomination – A request for a physical quantity of natural gas under a specific purchase, sales, or transportation agreement or for all contracts at a specific point.

Pay As You Get Paid Model – Billing party payment option when providing consolidated billing where the billing party forwards payment to the non-billing party for the non-billing party charges only after receiving payment from the customer. The customer remains responsible for payment to the non-billing party.

Pending Stage – The pending stage commences with validation of a switch transaction and ends on the first day the customer receives service from an ESCO.

Provider of Last Resort (POLR) – A legal obligation, traditionally given to utilities, to provide service to a customer when competitors have chosen not to provide service (also referred as supplier of last resort, SOLR).

Rate Ready – Refers to the practice in which the non-billing party provides rate information to the billing party sufficient to calculate the non-billing party’s charge(s).

Regional Transmission Organization (RTO) – An organization that manages a bulk electricity transmission system. There is a proposal to establish a Northeast RTO that would include the NYISO, ISONEPOOL and the PJM transmission grids.

Registration Agent – The entity assigned to facilitate switches and perform recordkeeping for a specified service area.

Rescission Period – The period in which customers may rescind (nullify or cancel) a pending switch request. The period begins on the date a valid switch request was received by the Registration Agent utility and extends up to and including three business days prior to the effective date of a pending switch.

Reconciliation – The process by which initial load allocations are “trued-up” to known metered loads; preliminary reconciliation can be performed using bulk area loads; final reconciliation can be performed using actual customer meter readings for the current month being settled.

Reserve – The availability of additional generation.

Installed Reserve – The amount of existing generation that is higher than needed to meet a forecasted peak load.

Operating Reserve – The amount of generation that may be used to offset a loss of supply to maintain a power system.

Settlement – The hourly accounting process by which costs of energy supplied into the grid by generation operators are reconciled with payments for energy delivered to customers by their ESCOs; generally performed by an ISO or control area authority; the means by which bilateral arrangements between generators and retail suppliers are supported.

Single Retailer – An alternative model for implementation of retail access in which an end-use customer selects among suppliers of bundled electric and/or natural gas service that purchase the delivery service from the distribution utility. Thus, the ESCO bills the customer for both commodity and delivery costs and generally serves as the primary point of contact for the customer for non-emergency services.

Slamming – The act of changing a customer’s choice of energy supply without the customer’s consent, except where permitted under the Uniform Business Practices.

Special Meter Read - A service provided to obtain an actual meter reading on a date that is different than the regularly scheduled meter read date. A fee may be charged for this service.

Special Needs Customer - A customer, as defined by the Home Energy Fair Practices Act (HEFPA), with documented medical conditions or who is elderly, blind or physically challenged. HEFPA provides special protections to these customers regarding utility service and life threatening situations.

Storage – The placement of natural gas in underground facilities during the summer, when demand is low, for withdrawal in the winter when gas consumption is higher.

Supplier – Any entity that sells energy to Direct Customers or ESCOs through the use of the transmission and/or distribution system of a distribution utility.

Supplier of Last Resort (SOLR) – See Provider of Last Resort.

Supply Stage – The supply stage commences when the customer receives service from an ESCO.

Switch – A customer move from one supply source to another.

Switch Date – Date on which a customer is actually assigned to a new supply source.

Switch Request – A request from an ESCO to switch a customer to begin receiving service from that supplier.

Switch Response – A response, sent by the Registration Agent to the ESCO that submitted a switch request, which verifies a customer's switch to the requesting ESCO and provides certain customer information. If the switch request is denied, the switch response provides a reason or code that explains why the customer was not switched.

Trading Partner Agreement - A legally binding agreement between the distribution utility and the ESCO defining each party's responsibilities for doing business with each other using electronic data interchange protocols for transmitting Uniform Electronic Transactions. The agreement details expectations and operational responsibilities of each party.

Transaction – The EDI term for an electronic business transaction, such as an enrollment (switch request) or a drop (request for discontinuance).

TS 814 Enrollment Request & Response – The EDI transaction set that is used to enroll or switch a customer, and to request secondary services coincident with that customers enrollment with an ESCO for supply services.

TS 814 Request for Consumption History/Gas Profile – The EDI transaction set that is used to request either electric or natural gas history on a customer's account. A request for a customer's consumption history or gas profile may also be made in conjunction with an enrollment request (See TS 814 Enrollment Request & Response).

TS 814 Drop Request & Response – The EDI transaction set that is used to discontinue a customer's current or pending relationship with an energy supplier (utility or ESCO). This transaction is synonymous with closing a customer's account with a specific entity. Drop transactions are most frequently used when a customer rescinds a pending switch (drop issued to pending ESCO), a customer chooses to discontinue service with an ESCO (drop sent to or by the Registration Agent) or the ESCO chooses to discontinue service to a customer (drop sent to the Registration Agent).

TS 814 Change Request & Response - The EDI transaction set that is used to communicate changes in customer account information between market participants.

TS 867 Historic Consumption/Gas Profile – The EDI transaction set that is used to return consumption history or gas profile information in response to an 814 consumption history/gas profile request or to a secondary request for history gas profile data sent in an 814 enrollment request transaction.

TS 867 Monthly Usage - The EDI transaction set that is used to transmit current usage data to the ESCO of record, subsequent to switching, after the data has been validated for billing.

TS 824 Application Advice – The EDI transaction set that may be used by non-metering parties to reject an 867 transaction.

TS 997 Functional Acknowledgement – An EDI transaction that is sent by the recipient of an incoming EDI transaction to the sender of the transaction to acknowledge receipt.

Transmission –

Electric - Interconnecting high voltage electric lines that move electricity from a generation facility to the distribution lines of an electric distribution company.

Natural Gas - Pipelines installed for the purpose of transmitting gas from a source or sources of supply to one or more distribution centers, to one or more large volume customers, or a pipeline installed to interconnect sources of supply. Traditionally, these systems operate at higher pressure than distribution pipelines that connect the gas system to most customers.

Transmission Losses – The actual or estimated amount of energy lost to the system during the process of transmitting energy across a service territory's transmission lines.

Types of Electric Service

Firm – The delivery of electricity to a customer on a continuous basis. Residential and small commercial customers generally use this service.

Interruptible - The delivery of electricity to a customer that may be interrupted by the local distribution company generally because of system supply or capacity limitations.

Types of Natural Gas Service

Firm – The delivery of natural gas to a customer on a continuous basis. Residential and small commercial customers generally use this service.

Interruptible – The delivery of natural gas to a customer that may be interrupted by the local distribution company generally because of system supply or capacity limitations.

Off-peak or Seasonal – The delivery of natural gas, firm or interruptible, sold only during certain times of the year, generally when there are not high system demands.

Uniform Electronic Transaction – Specific data arrangements for trading information, making business requests and exchanging other information, encompassing a number of electronic media and utilizing specified transport protocols.

Utility or Distribution Utility – A regulated electric or gas company that constructs and maintains the transmission and/or distribution facilities that deliver energy to the customer. Also referred to as the local distribution company (LDC) or investor-owned utility (IOU).

Utility Account Number – The identifier used by the Utility to uniquely identify a Customer account.

Utility Tariff – A document that lists the rates, terms and conditions of a local distribution company's services, that are subject to review and approval by the New York State Public Service Commission.

Customer Information

A. INTRODUCTION

The competitive market needs and relies on accurate and timely customer information. The necessary data include current customer account information and historic consumption information, which may pertain to individual natural gas and/or electricity accounts or be aggregated to reflect classes of customers of market segments. This Chapter describes practices for release of customer information by utilities and/or meter data service providers (MDSP) to Energy Service Companies (ESCOs)¹, as well as specifications for the information to be released.²

B. CUSTOMER AUTHORIZATION PROCESS

Information about a specific customer, requested by an ESCO authorized by that customer to receive the information, shall be provided by the customer's utility and/or MDSP. Customer authorization requirements for release of information in response to a valid request must follow the practices described in this section.

1. ESCOs must obtain customer authorization for obtaining information, using one or more of the authorization methods specified in the "Customer Agreement and Switching" chapter of these Practices (except that credit information may only be obtained with a valid customer signature). The methods of solicitation and obtaining needed authorizations must conform to all applicable consumer protection provisions of New York State Law and Public Service Commission regulations and/or Orders. Customers identified in the New York State "Do-Not-Call" registry shall not be solicited by telephone. Upon notification to the applicable utilities (or MDSPs), customers can block and/or unblock ESCO access to their consumption history.
2. ESCOs must inform customers of the types of information to be obtained, to whom it will be given, how the information will be used, and how long the authorizations will be valid (no greater than 90 days for historic or initial customer account information unless written contracts or written sales agreements provide for longer periods of time; once service commences, ESCOs shall be entitled, without further customer authorization, to receive current customer usage information for billing purposes.)

¹ Some of the specified practices also apply to Direct Customers, where appropriate.

² The business practices described here require, except in certain instances identified herein, that data be exchanged between the utilities (or MDSPs) and ESCOs using the uniform electronic data interchange (EDI) approach and EDI data standards published by the New York State Public Service Commission. During the period of transition to EDI systems, however, some data may be exchanged using existing systems if the affected parties agree. It is also recognized that some utilities (or MDSPs) may have automated systems that will provide the information immediately and automatically without the necessity of requests being made directly to the utility (or MDSP).

3. ESCOs must retain verifiable proof of each customer's authorization for a minimum of two (2) years. Verification records shall be provided by the ESCOs to the staff of the New York State Department of Public Service within five (5) calendar days of a request by the Staff to inspect such records. The physical locations for storage of the records shall be at the discretion of the ESCOs.
4. Except where historic credit information is sought (as explained below), utilities (and MDSPs) shall, in the first instance, assume that ESCOs have obtained proper customer authorization if the ESCOs are authorized by the New York Public Service Commission to serve retail customers and appropriate validation elements (discussed below) are submitted as part of the information requests. Requests for historic customer credit information must be accompanied by written or verifiable electronic authorizations from the customers.³

C. CUSTOMER LISTS

Distribution utility companies (and MDSPs) may not furnish ESCOs or others with lists of potential customers, and/or specific information about them, unless the customers agree to have their names placed on such lists and the lists are updated at least quarterly. If distribution utilities (or MDSPs) propose to develop such lists for distribution, the authorizations from the customers must clearly specify or acknowledge the types of information, if any, that the customers are agreeing to have released in conjunction with agreeing to be identified on the lists. ESCOs may request lists each quarter of their customers to ensure that distribution utility and ESCO records are consistent (See "Customer Agreement and Switching" chapter).

³ Requests for historic usage and billing information and requests for credit information are two distinct requests that must be submitted separately. Requests by ESCOs for historic usage and billing information shall be via an appropriate EDI transaction. Requests for customer credit information shall be submitted through other means to be designated by the distribution utilities (or MDSPs); credit information requests must be accompanied by the customers' written or verifiable electronic authorizations for release of credit information.

D. CUSTOMER INFORMATION REQUESTS

This section provides the practices for handling individual information requests submitted by an ESCO or Direct Customer [for its own account(s)] prior to, or at the time of, an agreement or an actual switch (and thereafter if the customer authorizes such later requests).^{4 5}

1. Handling of Information Requests

- a. An ESCO or Direct Customer, with proper authorization and a validated information request, may receive the information specified below in the “Customer Contact Information Set”, the “Billing Determinant Information Set”, and the “Credit Information Set” (all as defined below). The request(s) must be made using the appropriate EDI data transactions⁶, excepts where specified below.⁷
- b. The Utility (or MDSP) must process and respond via EDI to all requests for the information specified herein within two (2) business days of the receipt of the requests, except that responses to requests for itemized interval data may

⁴ Where a customer has more than one meter associated with an account, the applicable information must be provided, where available, for each meter for the service(s) of interest.

⁵ Once a customer is switched, the ESCO or Direct Customer is entitled to receive, at the same time data and information is validated for use by the distribution utility, all usage data (for the service switched) recorded by and retrieved from the customer’s meters for billing purposes. Where meter readings are estimated instead, the estimates shall also be provided to the ESCOs and Direct Customers at the same time they are validated for use by the distribution utility. All subsequent changes or corrections and adjustments to previously supplied data must then also be made available to the ESCOs and Direct Customers when the modified data is validated for use. ESCOs authorized to issue consolidated bills for both utility and ESCO services shall be entitled to receive all the information necessary to issue such consolidated bills in accordance with the provisions of the “Billing and Payment Processing” chapter of these Uniform Business Practices.

⁶ The manner in which information is categorized here should not be interpreted as implying that the same categorization is used for EDI transaction requests and responses. Parties should refer to the Commission’s published EDI data standards for information about which standards must be used to transmit or receive which specific data. The EDI standards may also require that additional information be provided.

⁷ ESCOs are also entitled to receive from utilities (or MDSPs) profiles of aggregated customer loads (aggregated as the utilities choose, but typically aggregated by the utilities’ service classes). Such requests and responses shall be made through non-EDI means.

take up to five (5) business days and may be sent via other means as described below.

- c. If for any reason the submitted information request must be rejected,⁸ the utility (or MDSP) must send, within the same two (2) business day period, a rejection notice, along with the reason for the rejection, to the ESCO or Direct Customer.

2. Validation Elements

The validation elements for an information request shall be the same as those for validating a customer switch as defined in the “Customer Agreement and Switching” chapter (customer name, service address, and utility account number), except that a request for credit information must be accompanied by written or verifiable electronic authorization from the customer.

3. Customer Contact Information Set

The following information shall be released, upon request using the appropriate EDI transaction request and to the extent the information exists within the utility (or MDSP) files, to an ESCO or Direct Customer, assuming proper authorization from the customer or the customer’s agent:

- a. Billing address (if different than service address);
- b. Sales tax district;
- c. Meter number, where available;
- d. Electric or Gas account;
- e. Meter reading date or cycle;
- f. Wholesale delivery point, if applicable (for example: interstate or intrastate pipeline from which large volume natural gas customer is served.)

4. Billing Determinant Information Set

The following information shall also be released to an ESCO or Direct Customer, assuming proper customer authorization from the customer or the customer’s agent and a proper EDI request is submitted:⁹

- a. Current rate service class and subclass or rider, as applicable;
- b. Load profile reference category, if not based on service class;

⁸ See the Commission’s published EDI data standards for a list of acceptable rejection reasons (e.g., incorrect validation elements provided, customer has blocked release of information, etc.). A request for a customer’s credit information may also be rejected if it is not accompanied by a written or verifiable electronic authorization from the customer.

⁹ EDI requests for information pertaining to the natural gas components of combined natural gas and electricity accounts and EDI requests for information pertaining to the electricity components of combined accounts must be submitted separately.

- c. Twelve (12) months, or the life of the account,¹⁰ whichever is less, of historic billing, energy usage and, where applicable, demand information used for billing purposes.¹¹ The historic billing information shall include the billed rate per unit and the total billed amount for the commodity supplied for each billing period. The historic usage information shall include: meter reading dates, consumption (Therms, Mcf/ccf, KW, KWh, and RKVA, as appropriate, including on- and off-peak values), indications of which, if any, consumption information was estimated, indications of the rate service classification and subclass (where applicable) for each billing period, and indications of any changes (e.g., service location, meter, meter reading corrections, etc.) that could affect the validity of the reported information. Where interval load data was used for billing of a customer's account, the historic data to be provided through EDI shall be at the summary level used for billing only. The details of the interval data shall, however, be available upon further request as a non-EDI transaction if the ESCO or Direct Customer makes such a request. The detailed historic interval data shall cover the same twelve months (or the life of the account, if less) period and shall be provided through a secured Web site or via other electronic means (or by non-electronic means if the parties agree).
- d. Current budget billing indicator ("Y"/"N")¹²; and
- e. Current sales tax exemption indicator ("Y"/"N"). Yes indicates a full or partial sales tax exemption from services provided by the utility (does not imply that the sales tax exemption will continue to exist).¹³

5. Credit Information Set

Credit information shall also be made available for the same 12 month period, but only upon written or verifiable electronic authorization from the customer. Credit information shall be limited to whether the customer had late payment charges (and, if so, the number of times a late payment charge was assessed), and whether the customer was disconnected during the period.¹⁴

¹⁰ Where more than one meter is associated with an account, the applicable information must be provided for each meter, where available.

¹¹ Either the most recently completed calendar year data, or the most recent rolling twelve months of data, may be supplied, at the distribution utility's (or MDSP's) option. Where distribution utilities offer customer-specific profile data as options to the 12 months of historic data, ESCOs and Direct Customers may choose either option.

¹² This indicator is limited to 12 month levelized payment plans and does not include other payment plans.

¹³ This information is provided to ESCOs via EDI as part of the enrollment transaction.

¹⁴ As previously noted, requests for credit information shall be made in accordance with procedures to be specified by the utilities (or MDSPs).

E. Charges for Customer Information

There shall be no charges assessed to ESCOs or Direct Customers for provision of the information described herein. An incremental cost based fee, as may be authorized in tariffs, may be charged for each year of historic data beyond the 12 months of data specified herein and for other data elements not identified herein, if available.

F. Unauthorized Information Release

ESCOs, their employees, agents, and designees may not sell, disclose or otherwise provide customer information obtained from utilities (or MDSPs) in accordance with this chapter to others, including affiliates, except as required to facilitate energy service to the customer, unless otherwise specifically disclosed to and authorized by the customer or otherwise authorized by appropriate legal authority. If such authorization is requested from the customer, the customer must be informed of what information is to be released and to whom it might be, or will be, provided. The customer must also be informed, prior to any authorization, if the entity to whom the information is to be provided will not be bound by the confidentiality and authorization provisions of these business practices.

Customer Agreement and Switching

A. INTRODUCTION

This chapter presents business practices for receiving, processing, and fulfilling a request to change a customer's retail electric generation or natural gas retail commodity providers.¹ It is not intended to, nor does it, present processes or procedures for a customer to obtain other energy-related services or to change their billing option (see the "Billing and Payment Processing" chapter for the procedures to change billing options.).

In the following discussion, the process of changing a retail energy supplier is divided into two discrete steps:

"Customer Agreement" is the process whereby a customer agrees to accept either electric or natural gas service from an Energy Service Company (ESCO) according to the terms and conditions of the offer.² This transaction is between the ESCO and the customer.

"Customer Switching" is the process involving the actual transition of the customer's account to a different retail energy supplier for electric and/or natural gas service. This transaction is primarily between the retail energy supplier and the entity facilitating switches and performing the overall record keeping for a given jurisdiction. This entity is called the "Registration Agent" in this document (the distribution utility currently plays this role). Customer Switching normally requires use of EDI for both the enrollment and drop of customers.

The business practices presented here cover a number of situations in which a change of retail suppliers may occur. This includes switching from: (1) one ESCO to another; (2) one ESCO to the Default Provider (currently, the distribution utility company); and (3) the Default Provider to a new ESCO. In addition, this section also addresses situations when a customer drops an ESCO or an ESCO drops the customer, as well as situations where a "seamless move" (i.e., the customer's current ESCO is retained during a physical move by the customer within a distribution utility's service area with minimal customer intervention) is desired, and situations where "assignments" (i.e., an ESCO assigns customers to another ESCO, provided the customers were advised that assignments might occur) are proposed.

¹ The business practices described here assume, except where otherwise noted or where Direct Customers must provide or receive information, that data will be exchanged using a uniform electronic data interchange (EDI) system authorized by the New York State Public Service Commission. To the extent that EDI is not operational at the time a specific transaction is required, existing utility data exchange systems shall be used on an interim basis. Direct Customers may use non-EDI means for communication.

² In some jurisdictions, this process is called "Customer Enrollment". The term "Customer Agreement" is used here to avoid confusion with the use of the word "enrollment" for a different purpose for EDI.

B. CUSTOMER AGREEMENT PROCEDURES

Eligible ESCOs and their authorized agents may solicit and enter into agreements with customers subject to the following:

1. The ESCO (or its agent) must provide the customer a statement of the ESCO's terms and conditions (a "sales agreement") that details the customer's rights and responsibilities, as well as the particulars of the agreement with the ESCO (such as price, term, and services to be provided). Customers must be allowed at least (3) business days after receiving the Sales Agreement to rescind any agreement that they may have made with ESCOs..
2. The ESCO may obtain customer authorization to switch the customer via any one or more of the following methods, subject to verification requirements:
 - a. telephone authorization in accordance with attached Exhibit 1 – Telephonic Agreements;
 - b. electronic authorization in accordance with attached Exhibit 2 – Internet Agreements;
 - c. written authorization bearing a customer's signature (original document signed or a fax copy of signed document) in accordance with attached Exhibit 3 – Written Agreements; and
 - d. any additional methods, so long as there is proof of the customer's intent. See Exhibit 4 – Other Agreements.
3. Once an ESCO has entered into an agreement with, its customer, it effectuates the switch by transmitting the appropriate EDI request transaction with the Registration Agent, following the procedures in Section "D" below of these business practices.

C. ESCO LISTS

1. ESCOs serving in areas subject to the jurisdiction of the New York State Public Service Commission must be registered with the Commission and with the distribution utility companies for the areas they intend to serve. They must keep both entities informed in a timely fashion of their service status regarding customer classes, geographic areas served (if less than entire utility service area) and intent with regard to accepting additional customers. These entities will maintain lists of eligible ESCOs.
2. Distribution utility companies must offer to provide new customers current lists of eligible ESCOs during the customers' initial contacts with the utilities. In addition, the distribution utility companies shall make current lists of ESCOs available to customers upon request.

D. SWITCHING PROCEDURES

1. ESCOs and Default Providers (if different than the Registration Agents) shall transmit to the Registration Agents, switch requests via the appropriate EDI transactions. Direct customers may submit their requests to the Registration Agent or to either the Default Provider or the distribution utility company who will communicate

with the designated Registration Agent. The requests shall identify the affected parties in enough detail to enable transfers of the accounts. Appropriate requests shall also provide information necessary to ascertain billing, metering, or other service options being selected, if any. The information to be submitted shall be in accord with the specific EDI requirements for the transaction desired, which shall as a minimum include: commodity involved and the utility account number of the customer to be switched. ESCOs and Direct Customers shall also provide any information about the customer's special needs that they may be aware of, if that information would be relevant to the distribution utility's provision of safe and adequate delivery service.³

2. Except where return to default service is required due to discontinuance of the ESCO or Direct Customer⁴ or where an assignment is proposed, the Registration Agents shall activate only one (1) valid⁵ switch request per commodity per customer per switching cycle.⁶ Otherwise where multiple switch requests for the same customer are received during the same cycle, the first valid switch request received by the Registration Agent, based on the time and date of the transaction, will be processed and all subsequent requests during the cycle will be rejected.⁷

3. Except where return to default service is requested by the customer (or due to discontinuance of the ESCO (see Section "H" below) or where an assignment is proposed (see Section "I" below), ESCOs may not transmit switch requests until the three day recession period described in Section "B. 6" above has expired.

4. The Registration Agents must acknowledge receipt of EDI requests within one business day and process (except in the event of errors or omissions in the requests⁸) such requests within two (2) business days of receipt. The Registration Agents shall, within the same two business day periods, send to any incumbent (except Default Provider incumbents that serve as the Registration Agents) ESCO currently serving the

³ ESCOs and Direct Customers shall also provide such information at any subsequent times they become aware of special needs.

⁴ See the "Discontinuance of ESCO and Direct Customer" chapter.

⁵ A valid request is defined as one in which the party receiving the transaction has verified that the required data elements contained in the transaction are sufficient and is able to process the request successfully.

⁶ A switching cycle is the period between the days when a switch would occur if neither an estimated or special meter reading is requested. Standard switch days are defined in Section "D. 6" below.

⁷ Switch requests may be rejected for the reasons given in Section "F" below.

⁸ The processing of a switch request requires a determination of whether it is "valid" or "invalid." Where errors or omissions in switch requests are identified, the Registration Agent shall reject the request in accordance with the procedures specified in Section "F".

customers, via the appropriate EDI transactions, notices that services are to be terminated, including the planned customer switch dates. In the event that a pending switch request is subsequently cancelled before the effective date, the Registration Agents shall transmit to the incumbents, if any, via the appropriate EDI transactions, a request to reinstate the current retail supplier's services, unless they have themselves submitted timely transactions to terminate service to the customers.

5. Other than for new installations, or where special meter reads or estimated readings are requested, a switch will be effective for electric customers on the day their meters are normally scheduled to be read and, for gas customers, either on the day meters are normally read or on the first day of the calendar month, depending on the provisions set forth in the utility's tariff. The "switch dates" shall be set by the Registration Agent for the appropriate day, which shall be no sooner than fifteen (15) calendar days after the switch request was transmitted (except as otherwise authorized herein). Service to new delivery customer installations shall be effective after the installation is complete and inspected. The acknowledgements provided by the Registration Agents, as described in paragraph 4 of this section, must contain the effective date for the switch.

6. Off-cycle switches shall be allowed where the new ESCO or the customer requests an estimated reading or a special meter reading at least fifteen (15) calendar days before the date requested for the switch. The requesting party must agree to pay the cost for any special meter reading in accordance with the provisions set forth in the utility's tariff. Where a special meter reading is made, the switch will be effective on the day the meter reading is obtained if the switch request is submitted at least fifteen (15) calendar days prior to the requested meter read date and the customer has been advised that the switch is to be made.

7. The requirement to submit switch requests at least fifteen (15) calendar days before the switch date may be waived by the Registration Agent at its discretion, so long as the waivers are available for all parties on a non-discriminatory manner. Further, any party may request expedited treatment of all switching requirements upon a showing of need to the Public Service Commission or its designee, who shall have authority to grant such a request. Registration Agents (and also the Default Providers, if different), ESCOs, and affected customers shall have standing in any such process.

E. CUSTOMER NOTIFICATION

The Registration Agents must initiate notification of the customers at the same time it acknowledges receipt of valid switch requests. Except for “assignments”, as discussed in Section “I” below, and switches to default service, as described in Section “H” below, the customers shall be requested to review any sales agreements they may have received and contact the Registration Agent if the pending switch is unauthorized and/or should be cancelled. Upon such contact by the customers, the Registration Agents shall cancel the pending switch and reinstate the customer with its prior ESCO, if any, provided there remains at least three (3) business days until the planned switch date (if less than three business days remain, the switch will be cancelled on the following cycle). The Registration Agents shall immediately notify affected ESCOs of the cancellation via the appropriate EDI transaction(s) within two (2) business days of the customer’s contact.. These procedures do not affect any contractual rights or obligations of the parties. The Registration Agents must maintain, for two (2) years, records of the customer responses stopping the switch.

F. REJECTION OF SWITCH REQUESTS

The Registration Agents may reject requests under any of the following circumstances:

1. The validation element(s) submitted are incorrect, incomplete, or inactive;
2. The ESCO is not in compliance with the prerequisites for providing service in the specified territory;
3. The customer’s electric or gas service is not activated and service activation is not pending;
4. A valid prior switch request is pending for the next switch date; or
5. The customer has previously requested to be listed on a “do not switch” list and has not cancelled that request.

When any of these circumstances occur, the Registration Agents shall not complete processing the requests and shall respond with rejections of the switch requests via appropriate EDI transactions, along with the reasons for the rejections, within two (2) business days of the requests.

G. SEAMLESS MOVES WITHIN UTILITY SERVICE TERRITORIES

The goal of the “seamless move” process is to make it as convenient as possible for a retail access customer to transfer both its delivery and energy commodity service when it physically moves from one service location to another within a distribution utility service territory. The following is the process for supporting seamless moves.

1. When a retail access customer requests to move its energy service within a distribution utility's territory and wants to remain with its current ESCO, the customer (or its authorized agent) should contact both the distribution utility and the ESCO.⁹ If the customer calls only the ESCO, the customer should be instructed to contact the utility, or the ESCO may arrange for a conference call.¹⁰ The distribution utility's representative shall inform the customer (or the customer's agent) that the utility (contingent on the customer's approval) will notify the customer's ESCO of the change in service location and the date when the new service will be available. For moves where overlapping service is desired by the customer, the ESCO shall supply service at both locations until such time as the customer requests discontinuance of service at one of the locations.

2. In the event the ESCO is unable to or does not wish to serve at the new location, the ESCO must notify the Registration Agent, within two (2) business days, to drop the customer. If the customer is dropped, the Default Provider will provide service at the new location, unless or until the customer enters into an agreement with another ESCO and a switch is processed in accordance with the provisions of section "D" above, and both the ESCO and the Registration Agent must advise the customer.¹¹

H. SWITCH OF CUSTOMERS TO DEFAULT SERVICE

1. For a customer initiating a voluntary switch from an ESCO to default service, the customer should contact the Default Provider, who will initiate the switch in accord with Section "D" above (ESCOs may also contact the Default Provider on behalf of their customers.) Upon such contacts the business practices outlined for other switches in Section "D" above, shall apply. If a switch to default service places tariff restrictions on the customer's right to choose another supplier or places the customer into a rate structure different than other default service customers, then the Default Provider must provide advance notice of these conditions to the customer.

2. A Direct Customer may also voluntarily switch from procuring its own supplies to default service by notifying the Default Provider in the manner specified above. A Direct Customer may be involuntarily discontinued and returned to default service for the reasons, and in the same manner, as an ESCO would be discontinued (see the "Discontinuance of ESCO and Direct Customer" chapter), except that notices to customers are not required where the Direct Customer is a single customer.

3. The following process outlines the steps, beyond those specified in Section "D" above, for customers to be switched to default service due to circumstances beyond their immediate control, such as an ESCO's decision to drop the customer, an ESCO's

⁹ Under the Single Retailer Model, the customer would contact only its ESCO. Direct customers would contact only the utility.

¹⁰ The customer may also provide specific written authorization to the ESCO for it to act as the customer's authorized agent.

¹¹ Under this circumstance, the 15 day customer notification requirement applies only if there is at least fifteen (15) days available before ESCO service is to be discontinued.

discontinuation of operations or bankruptcy, or other situations that would interrupt the customer's current arrangement for energy supply.

- a. An ESCO may discontinue sales to individual retail customers (or to all or a large portion of customers) in a distribution utility's service territory and return those customers to default service at will (except as may be otherwise limited by contracts with customers), upon submission of a notice to those individual customers and to the Registration Agent at least fifteen (15) calendar days prior to the discontinuance date. The notice to the Registration Agent shall be sent via the appropriate EDI transaction, consistent with the "Switching Procedures" outlined in Section "D" above. The notices to retail customers shall inform them:
 - (1) of the expected dates that discontinuances will occur (which, subject to the fifteen (15) day requirement, would be set by the Registration Agents and should be at the customers' next meter read dates or the first of the month, consistent with the utilities' tariffs, unless the ESCOs have arranged for special meter readings or estimated readings).
 - (2) of their options either to select other ESCOs, or to receive services from the Default Provider, or to be assigned randomly by the Registration Agent to an eligible ESCO, if this option is available in the distribution utility's service area;
 - (3) that if they do select other ESCOs, those entities will file switch requests on their behalves; and
 - (4) that after the discontinuances and until new ESCOs are selected and the switches are completed, service will be provided by the Default Providers under the applicable tariff rates unless the Default Providers notify the customers that utility services will be terminated on or before the discontinuance dates (not applicable to the "Single Retailer" model).
- b. The Registration Agents, upon receiving notice of the discontinuance of the customer(s), shall send a notice to the customer(s) that provide them with the same information required to be provided by the ESCOs and also with a list of the names and telephone numbers of eligible ESCOs.
- c. Sample copies of the form of the notices to customers under this process must be provided to the Staff of the Department of Public Service for review at least five calendar days before the letters are sent to customers. Once the sample letters are submitted, they need not be resubmitted to the Staff for subsequent discontinuance unless significant modifications are proposed.
- d. If ESCOs do not give the required notices to their retail customers and to the Registration Agents, the ESCOs may be determined ineligible by the New York State Public Service Commission to sell electricity or natural gas to retail customers in New York State and/or may be assessed monetary penalties by the New York State Public Service Commission. Under such

circumstances, the Registration Agents shall send the notices described in subsection “a” above.

- e. Upon receipt of switch requests from subsequent ESCOs following the discontinuance notices, the Registration Agents will verify the intended switches to the new ESCOs with the customer in accordance with the customer notification provisions of Section “E” above

4. ESCOs that discontinue all services, discontinue servicing an entire customer class, or that experience any other unique event that would lead to the transfer of a large number of customers to other ESCOs or to the Default Providers shall attempt, where practicable, to provide the Registration Agents, the Default Providers, the affected customers, and the Staff of the Department of Public Service with a minimum of 60 calendar days notice before the effective dates of the events.

I. ASSIGNMENT OF ESCO CONTRACTS

1. ESCOs may assign customer contracts to other eligible ESCOs, and transfer the rights to serve those customers, provided that the ESCOs’ contracts and disclosure statements clearly state that such assignments and transfers may occur. The assignments and transfers may be initiated upon submission of switch requests in accordance with Section “D” above and submission of non-EDI notices to the Registration Agents, the Staff of the Department of Public Service, and the ESCOs’ customers at least 15 calendar days prior to the transfer dates. The non-EDI notices to the Registration Agents and the Public Service Commission shall include copies of the assignment documents (with financial information redacted), executed by officers of the involved ESCOs, and copies of the notices being sent to customers

2. The assignment document(s) shall indicate which party will be responsible for payment or reimbursement of any and all sums owed under the tariff or under any tariffs on file with the FERC and service agreements relating thereto, or under any agreements between the ESCO and the distribution utility and between the ESCO and the customers.

3. The notices to retail customers must inform them:
 - (a) of the effective date(s) of the assignments;
 - (b) that service will be provided by the assigned ESCO;
 - (c) of any changes in the contract or disclosure statement terms (to the extent permitted by the existing contracts and disclosure statements), including information about ministerial changes such as telephone numbers, mailing addresses, etc.

4. Sample copies of the form of the notices to customers shall be submitted to the Staff of the Department of Public Service for review at least five (5) calendar days before the letters are sent to customers.

5. The Registration Agents must, within two (2) business days of the receipt of the switch requests from the ESCOs, acknowledge and process the switch requests and also send notices to the ESCOs’ assigned customers advising them that assignment transfer requests have been received.

6. If customers object to the assignments, they shall be referred to the ESCOs involved to resolve the objection. Customers may then opt to seek another ESCO or return to default service, in accordance with the provisions of Sections “D” and “H” above. If customers desire to return to default service, the Registration Agent shall refer or transfer the customers to the appropriate Default Provider representatives, if applicable. These provisions are not intended to supercede agreements between customers and ESCOs, if proper ESCO disclosure was made. Registration Agents should assume that customers are aware of any contractual obligations they may have accepted.

J. UNAUTHORIZED CUSTOMER SWITCHING

1. A switch of a retail customer from one retail energy supplier to another without the customer’s authorization (except as may be allowed as an “assignment”, per Section “I” above, or as a “discontinuance”), per Section “H” above), i.e., slamming, is not permitted. To minimize the chance of slamming, the following process must be used:

- a. To request switches, ESCOs and Default Providers must notify the Registration Agents of the switches using the process outlined in Section “D” above.
- b. Upon receipt of a valid switch request, the Registration Agent must, in accordance with Section “E” above, send a verification letter to the affected customer, and it shall also notify the incumbent ESCO, if any, that is serving the customer at that time.
- c. If the customer notifies the Registration Agent that the request is not valid, the switch will not be made or will be reversed.
- d. All claims of unauthorized switches must be reported by the Registration Agent to the Staff of the Department of Public Service.

2. ESCOs that slam customers will be fully responsible for all wrongful charges applied to the customers’ bills and for all reasonable costs incurred by the utilities to correct the situation. Such ESCO’s eligibility to serve retail customers may also be suspended or terminated by the New York State Public Service Commission and/or a monetary penalty may be imposed.

3. Parties must retain for six (6) years documentation of a customers’ authorization to switch commodity suppliers. Such documentation must be in the forms described in attached Exhibits 1, 2, 3 or 4.

K. VERIFICATION OF ACCOUNTS

To enable ESCOs and Default Providers to verify accounts, Registration Agents, upon request, shall provide, by the fifth calendar day of each calendar quarter, listings of the ESCOs’ customers that were receiving retail access services as of the first calendar day of the quarter. There shall be no fee charged for such lists.

L. BUDGET BILLING ADJUSTMENTS

Budget billings, if any, for delivery service shall be adjusted at the switch dates, if necessary to reflect changes in utility service, and shall be reflected in the customer's next bills.

M. NUMBER AND FREQUENCY OF SWITCHES ALLOWED

There shall be no restrictions, except as may result from the notice period requirement or as may be specified in agreements between ESCOs and their customers, on the number or frequency of switches of retail energy suppliers.

N. SWITCHING FEES

Registration Agents, Default Providers, and distribution utilities shall not charge for a customer's switch of retail energy suppliers.

O. SPECIAL METER READING FEES

A fee of \$20 may be charged to the party (ESCO, Direct Customer, or retail access customer) requesting a special meter reading, as may be established in utility retail access tariffs. A special meter reading is a meter reading performed on a date other than the customer's regularly scheduled meter reading date. No fee may be charged for a meter reading to establish new delivery service or to terminate existing delivery service. No fee may be charged for an estimated meter reading.

Exhibit 1
Exhibit to Customer Agreement and Switching:
Telephonic Agreements

ESCOs may telephonically reach agreements with customers under the following conditions:

- A. While engaged in a telephone conversation with the potential customer, the ESCO or its third party agent must audio record or third-party verify (via either a live independent third party or interactive voice response [IVR],¹² both recording the conversation) the following information in order to substantiate the customer agreement:
1. A statement that the conversation between the customer and the ESCO is being recorded or verified.
 2. A statement from the customer acknowledging the date of the call.
 3. A statement from the customer agreeing to accept the ESCO's offers or to allow the ESCOs to obtain information so that an offer can be made.
 4. A statement from the customer providing or acknowledging:
 - a. the customer's name;
 - b. the customer's service address; and
 - c. the customer's utility account number.
 5. The ESCO may request additional information from the customer to verify the customer's identity.
- B. For customers verbally accepting an ESCO's offer and who have not previously reviewed the specific terms and conditions of the offer, the ESCO must provide the customer, within three (3) business days, a Sales Agreement that discloses the ESCO's terms and conditions and detail the customer's rights and responsibilities, as well as the particulars of the offer (such as price, term, and services to be provided) and the right of recession within no less than three (3) business days of receipt of the Sales Agreement. A toll-free telephone number shall also be provided for the customer to use to exercise such recession.

¹² Any IVR system used for this purpose must clearly indicate a path for the customer to follow to talk with a live operator.

- C. The ESCO or its third party agent conducting the telephone conversation has an obligation to conduct the conversation in the same language in which the marketing or sales materials are written or presented, and to speak clearly and in a manner that is likely to be understood by the customer.
- D. In the event of any dispute involving a telephonic agreement, the ESCO must make the audio recording of the customer agreement available within five (5) business days of a request by the Staff of the New York State Department of Public Service. ESCOs must retain such verification records for a period of six (6) years from the effective date of the enrollment or switch.
- E. In addition to the above requirements, an ESCO or its agent or distributor (including multi-level marketers) that engages in telephonic agreement shall be subject to any other requirements that may be imposed by federal, State or local laws.

Exhibit 2
Exhibit to Customer Agreement and Switching:
Internet Agreements

- A. ESCOs may reach agreement with customers by means of the internet provided that the terms and conditions of the agreements are publicly posted and accessible to the user. These terms and conditions must comply with all applicable legal requirements.
- B. The rules to facilitate internet agreements are outlined herein:
1. The means of all electronic enrollment, renewal, re-negotiation and cancellation information transfer between the customer and the ESCO must be by an encrypted transaction using Secure Socket Layer or a similar encryption standard to ensure privacy of customer information.
 2. Any electronic agreement containing an ESCO's terms and conditions shall be identified by a version number to ensure the ability to verify the particular agreement to which the customer assents.
 3. The internet agreement procedure must prompt the customer to print or save the terms and conditions (i.e., the Sales Agreement) to which the customer assents and provide an option to have a hard copy of the Sales Agreement sent by regular mail within three (3) business days.
 4. Upon request by the customer, the ESCO must make available throughout the duration of the agreement, a copy of the version of the Sales Agreement to which the customer assents. The ESCO must provide to the customer a toll-free telephone number, internet means, or an electronic mail (e-mail) address for the customer to request this information throughout the duration of the agreement.
 5. The internet agreement procedure must require the customer to include at a minimum, his/her name, service address, e-mail address, and utility account number to effectuate an agreement or to allow the ESCO to obtain information so that an offer can be made. The procedures must also require the customer to "accept" or "not accept" the terms and conditions by checking the appropriate box, which must be displayed as part of the terms and conditions. Such acceptance or rejection by the customer will be retained, in a retrievable format, by the ESCO.
 6. The internet procedure must incorporate a customer cancellation period that automatically provides for at least a three (3) business day recession period. The ESCO must provide to the customer a toll-free telephone number, an internet means, and/or an e-mail address for the customer to cancel the agreement within the period. If the agreement is cancelled, the ESCO must provide the customer with a cancellation number.

7. The ESCO must provide a mechanism by which the customer's acceptance or rejection of the Sales Agreement are recorded by time and date.

8. After the customer checks the appropriate box relative to the acceptance of the Sales Agreement, the internet agreement process must disclose conspicuously that the customer has been accepted for the purposes of the agreement.

9. The ESCO must, within three (3) business days of any final agreement to initiate retail energy service to the customers, provide a confirmation notice to the customer, by e-mail at the customer's specified e-mail address or by regular mail at the address specified by the customer.

C. ESCOs must retain for at least six (6) years documentation of customers' authorizations. In the event of any dispute involving an internet agreement, the ESCO must provide either a date and time stamped copy of the customer's acceptance of the Sales Agreement or on-line access to the same to the Staff of the New York State Department of Public Service within five (5) calendar days of any such request.

D. In addition to the above requests, an ESCO, or its agent, or distributor (including multi-level marketers) that engages in internet agreements shall be subject to any other requirements that may be imposed by federal, State or local laws.

Exhibit 3
Exhibit to Customer Agreement and Switching:
Written Agreements

- A. An ESCO may enter into an agreement with a customer by obtaining the customer's signature on a Sales Agreement. The term "Sales Agreement" means an easily separable document whose sole purpose is to authorize an ESCO to initiate electricity and/or natural gas supply service for a customer and/or to obtain information that might allow such service to be initiated.
- B. A copy of the Sales Agreement with the terms and conditions of the Agreement must be given to the customer. The Sales Agreement must conspicuously inform the customer that the customer has the right to rescind the authorization within a period of no less than three (3) business days of signing the Sales Agreement. The ESCO must also provide a toll-free telephone number to use to exercise any such rescission. The Sales Agreement must be signed and dated by the customer and must be physically separate from any check, prize or other document that intends to confer any benefit on the customer as a result of the customer's selection of the ESCO. The Sales Agreement may be faxed by the customer to the ESCO, so long as all such transmittals can be shown to have originated with the customers.
- C. In addition to the above requirements, an ESCO or its agent that engages in door-to-door marketing at the consumer's residence, or personal solicitation at a public location (such as malls, fairs, or places of retail commercial activity, or multi-level marketing), shall be subject to any additional requirements that may be imposed by local or State laws.
- D. ESCOs must retain for at least six (6) years' documentation of customers' authorizations. In the event of any dispute involving an enrollment, the ESCO must make a copy of the documentation available within five (5) business days of a request by the Staff of the New York State Department of Public Service.

Exhibit 4
Exhibit to Customer Agreement and Switching
Other Agreements

- A. An ESCO may enter into an agreement with a customer by other means so long as there is written or audio or video proof of the customer's intent.
- B. ESCOs must retain for at least six (6) years documents of customer's authorizations. In the event of any dispute involving an authorization, the ESCO must make a copy of the documentation available within five (5) business days of a request by the Staff of the New York State Department of Public Service.
- C. If the agreement involves a written contract, the conditions of Exhibit 3 shall apply. If the agreement involves a verbal commitment, the conditions of Exhibit 1 apply (except that a video recording may also be used). If the agreement involves use of the Internet, the conditions of Exhibit 2 shall apply. In all cases, customers must receive a Sales Agreement and be given at least three (3) business days after receiving the Sales Agreement to rescind the agreement.

Customer Inquiries

A. INTRODUCTION

This Chapter addresses customer inquiries with either the ESCO or the distribution utility and the responsibilities of the party receiving the inquiry. Customer inquiries are forms of communications between retail access customers and either the utility or ESCO. Communications can be electronic mail, telephonic, postal mail, or face-to-face. The subjects raised in inquiries may result in the filing of “complaints”, as defined in the glossary.

B. GENERAL

1. Distribution utilities and ESCOs must provide consistent, fair, and favorable treatment to customers at the initial point of contact and adhere to any performance standards for customer service and other criteria established by the Public Service Commission (PSC).
2. Distribution utilities and ESCOs must maintain processes and procedures to resolve customer inquiries in a nondiscriminatory and efficient manner.
3. All customers must have easy, no-cost access to distribution utility and ESCO customer relations functions to address inquiries and complaints.
4. Customer service representatives (CSR) should initially collect information from the customer to verify the account. Once verification has been made, the CSR should determine the nature of the inquiry, and based on this determination, decide which party (the distribution utility or the ESCO) should handle the inquiry.
5. The CSR should follow normal procedures for handling inquiries. If the inquiry is specific to the other party’s service, the CSR should do one of the following:
 - a. Forward the inquiry to the other party.
 - b. Direct the customer to contact the other party
 - c. Contact the other party to resolve the matter and provide a response to the customer.
6. Distribution utilities and ESCOs must designate representatives to coordinate and communicate information regarding customer inquiries between the two parties.

C. SPECIFIC REQUESTS FOR INFORMATION

1. Each party must answer customer inquiries to the extent it has the necessary information to respond, including inquiries for public information that either provider can reasonably access and provide.
2. Customer inquiries related to usage should be resolved by the party with access to the customer's usage history and responsible for the accuracy of meter readings.
3. The method of handling inquiries about billing and payment processing is addressed in the "Customer Billing and Payment Processing" chapter of these Uniform Business Practices.

D. EMERGENCY CONTACTS

In the event a customer contacts an ESCO concerning an emergency situation related to the distribution system (e.g., smell of gas, natural disaster, wires down, electrical contact, fire, etc.), the ESCO's CSR must provide the customer with the utility contact information and direct the customer to contact the utility (or transfer the call). There should be continuing customer education directing customers to contact the utility for emergency situations.

Disputes Between Distribution Utilities, ESCOs, Direct Customers, Default Providers, and Registration Agents¹

A. INTRODUCTION

The following sections describe the process to address disputes between ESCOs, Direct Customers and distribution utilities with respect to the retail access program. This process does not address disputes involving retail customers of the ESCOs or distribution utilities.² Other sections describe the necessary consumer protections to govern a customer complaint resolution process established by the Public Service Commission (PSC).

B. DISPUTE RESOLUTION PROCESS

The parties shall each use good faith and commercially reasonable efforts to resolve all disputes informally. Each party shall designate specific personnel to be responsible for responding to complaints and disputes under this process.

Distribution utility tariffs and/or operating documents and/or service agreements shall reference the Practices specified here. The parties may also pursue other legal mechanisms to address disputes, but are encouraged to use the following process first.

1. Any ESCO, / direct customer or utility may initiate a formal dispute resolution process by presenting a written description of the dispute and a proposed resolution to the other party involved in the dispute, sent in a manner that will verify its receipt.
2. As soon as possible, but in no more than 15 calendar days following receipt of the dispute, the receiving party must provide a written response to the party (ies) that initiated the dispute, with an alternative proposal for resolution if the complaining party's(ies) proposed resolution is deemed unacceptable or with the results of any informal resolution that may have been reached with the other party(ies) prior to that date. The response must be sent in a manner that will verify its receipt.
3. If the initial exchange of written material (and perhaps verbal discussions) does not resolve the dispute, the parties may request a meeting(s) to discuss the matter further. The responding party(ies) must agree to such a meeting(s) to be held within 15 calendar days following the request.
4. The parties may agree to use Alternative Dispute Resolution prior to or in lieu of petitioning the appropriate court or the Department of Public Service (DPS)

¹ Currently, the distribution utility serves as both the Default Provider and the Registration Agent.

² The process may also be used during the "cure" period described in the "Billing and Payment Processing" chapter of these Practices.

to intervene within mutually agreed-upon time frames that may differ from those defined in this dispute resolution process. The parties must mutually agree on the selection of the neutral third party to administer Alternative Dispute Resolution.

5. The neutral third party providing Alternative Dispute Resolution shall be authorized only to interpret and apply the provisions of the tariff, operating documents, or service agreements, Uniform Business Practices (UBP), and PSC Orders, and it shall have no power to modify or change any of the above in any manner. The PSC shall retain the ultimate authority to interpret its requirements.
6. If, under this process, a resolution is not obtained within 45 calendar days, or a mutually agreed-upon time frame, after the receipt of the initial dispute letter, either party may submit the dispute to the appropriate court or to the DPS for resolution.
7. If a party believes that special circumstances (such as an emergency involving public safety, system reliability or significant financial risk) exist that would require more expeditious resolution of a dispute than might be expected under the process described here, it may submit its complaint to the DPS, with a copy provided to the other parties involved in the dispute. The DPS will respond to such a filing by:
 - a. expeditiously resolving the dispute;
 - b. providing an interim resolution (subject to refund, etc.) and initiate the standard resolution process to provide a final resolution; or
 - c. advising that the dispute resolution process described above be followed.
8. If a dispute involves the accuracy of invoiced charges, the invoiced charges must be paid, subject to refund with applied interest (1.5% per month). This interest is only payable when associated with a finding of deficiency on the part of the party holding the funds determined to be due the other party.
9. Absent agreement to the contrary, nothing shall restrict the rights of any party to file a dispute with the DPS under relevant state law and regulations.
10. Absent agreement to the contrary, nothing shall restrict the rights of any party to file a dispute with the Federal Energy Regulatory Commission under relevant provisions of the Federal Power Act.
11. Neither party should be required to give up its right to seek formal resolution of a dispute except as part of a signed, mutual agreement.
12. If any resolution between the parties results in competitive benefits for a party, those benefits must also be made available to other similarly situated parties.

ESCO ELIGIBILITYA. NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE (DPS)
ELIGIBILITY REQUIREMENTS

Any energy supplier who seeks to sell electricity and/or natural gas at retail in New York State as an Energy Service Company (ESCO) must comply with the following requirements to be deemed eligible to serve retail customers in New York State. If an end-use customer (Direct Customer) purchases electricity or natural gas for its own consumption and not for resale, it does not need to file an application with the Department of Public Service (DPS). It must, however, comply with certain operating requirements established by the distribution utilities and the Independent System Operator (ISO). Aggregators do not need to be determined eligible by the DPS if they do not function as ESCOs. The process to discontinue ESCO and Direct Customers is define in Section “F” below.

B. APPLICATION REQUIREMENTS

ESCOs must submit to the DPS for review sample standard Sales Agreements for all market segments to be served. The sample standard Sales Agreements must be presented in clear, plain language format.

The following information must be included in the sample standard Sales Agreements:

1. A statement that the customer will be given at least 15 calendar days advance notice of any cancellation of service by the ESCO;
2. A description of the dispute resolution process to be employed by the ESCO;
3. A description of the consumer protections to be provided by the ESCO to the customer and any protections otherwise available under default service that will be waived in the transaction;
4. The DPS contact information, including identification of the DPS’s retail market complaint line at 1-888-NYS-PSC8;
5. ESCO customer contact information, including identification of the ESCO’s local or toll-free number;

6. Identification of the billing arrangements offered;
7. A statement explaining how partial payments will be applied;
8. Identification of any charges or fees, including information on fees associated with additional services, options or products to be provided by the ESCO;
9. Specific processes to be employed by the ESCO and the customer, if the customer desires to switch to another retail supplier or to the Default Provider; and
10. Information explaining that the fuel mix and emissions characteristics of the generation sources of the electricity supplied by the ESCO will be provided to the customer on a periodic basis as determined by the PSC (information about the ESCO's planned fuel mix and emissions characteristics must be indicated if environmental claims are to be made).

In addition, ESCO's must file the following with the DPS as part of its application package. The knowing and/or intentional making of false statement(s) in the application package are grounds for denying eligibility or, if discovered later, the revocation of eligibility.

1. Sample Bill(s) – The sample bills must be in a clear, plain language format.
2. Customer Authorization Process - Information on the processes, in accordance with the Uniform Business Practices, to be used to obtain customer authorization if the ESCO intends to retrieve the customers' usage, billing, and/or credit information.
3. Department of State Registration - Proof of registration with the New York State Department of State (DOS).
4. Slamming and Cramming Prevention Process – information on the internal procedures the ESCO uses and will use to prevent slamming and cramming;
5. Corporate Information - The names and addresses of the corporate headquarters and of any energy affiliates located or operating in New York State.
6. Ownership Information – The names, addresses, of any entities that hold ownership interests of 10% or more in the ESCO or any of its affiliates located or operating in New York State. If the entity is not a single person, a contact name must be provided.

7. Sanction Disclosure - If any civil, criminal or regulatory sanctions have been imposed against any of the general partners, corporate officers or directors employed by or affiliated with the ESCO during the previous 36 months, a detailed explanation must be provided.
8. Marketing Practices - Acknowledgement of liability for any marketing practices conducted by the ESCO, or any agent on behalf of the ESCO, that do not comply with local or State rules and statutes, and the rules of the Federal Trade Commission.
9. Certification of Phase I EDI Capability - ESCO must submit the required EDI transactions to the DPS Test Moderator for syntactical verification in the Phase I testing program. The DPS will maintain a listing of ESCOs that successfully complete all Phase I requirements.
10. Confidentiality - If the application package contains information that should be deemed confidential because of competitive or security reasons, the Applicant should request confidential treatment of the specific information, and explain why it should be held confidential. The confidentiality of the information will then be maintained consistent with the DPS's rules and regulations and the Freedom of Information Law.
11. Customer Information Material - Informational and promotional materials that the ESCO provides, or intends to provide, to its customers. This package may be filed after the DPS determines that the ESCO has met the eligibility criteria.

C. DPS REVIEW PROCESS

1. The DPS will review filings submitted by the ESCOs and advise the ESCOs if they have fulfilled the eligibility requirements by providing the information required above and as established in Opinion No. 97-5 (Opinion and Order Establishing Regulatory Policies for the Provision of Retail Energy Services, issued May 19, 1997 in Case 94-E-0952) and in the Order Clarifying Consumer Protections, issued October 25, 1996, in Cases 93-G-0932, *et. al.* Upon completion of the review process, the DPS will issue a compliance letter to the ESCO. If the requirements have not been met, the ESCO may be asked to provide additional information or the ESCO will be advised that it does not meet the eligibility requirements. This review process typically will be completed within 30 days of receipt of an ESCO's filing.
2. This process may be conducted simultaneously with the distribution utility application process.

D. MAINTAINING ESCO ELIGIBILITY STATUS

1. ESCOs must submit updated application packages by January 31 each year to maintain eligibility. The package should include only new or updated information that has not previously been submitted to the DPS.
2. If there are any material changes to the application package information while ESCO eligibility is being, or after it has been considered, the ESCO must inform the DPS within thirty (30) days of the change.
3. If the DPS finds a deficiency in the ESCO's maintenance of its eligibility status, the ESCO will have thirty (30) days upon receipt of written notice to correct the deficiency or to file a request for an extension to correct it.
4. ESCO eligibility to serve customers in New York State is valid until revoked by the DPS, after notice and opportunity for response is afforded, or until the ESCO chooses to abandon its eligibility status.
5. The DPS will maintain an updated listing of eligible ESCOs, including their status, on its Website. ESCOs must keep the DPS informed of their status.

E. DISTRIBUTION UTILITY REQUIREMENTS

1. After the issuance of the DPS compliance letter, the ESCO must notify the distribution utility [and the Independent System Operator (ISO)] to initiate or complete the process to commence operation in the distribution utility's service area.
2. If the ESCO is deemed eligible by the DPS and meets the distribution utility's (and the ISO's, if applicable) requirements, it may enter into an agreement with the distribution utility to commence operations in the distribution utility's service territory.

F. DISCONTINUANCE OF ESCOS AND DIRECT CUSTOMERS

1. A distribution utility shall have the right to initiate a process to discontinue an ESCO or a Direct Customer's participation in the utility's retail access program:
 - (a) where the distribution utility determines that it is necessary or desirable for safety or system reliability reasons (including, but not limited to, the proper scheduling and delivery of energy supplies, which shall include an understanding that actual energy deliveries must not deviate unreasonably beyond a pre-determined percentage (to be set forth in the tariff or operating agreements) of the energy requirements forecast for the ESCO or Direct Customer);

- (b) where the ESCO or Direct Customer fails to comply with the terms and conditions of the distribution utility's tariff and/or operating agreement;
 - (c) where there is a continued pattern of attempts by the ESCO to transfer retail customers without proper customer authorization;
 - (d) where the FERC issues an order authorizing discontinuance of participation by the ESCO or Direct Customer under the distribution utility's open access transmission tariff;
 - (e) where the ISO discontinues the ESCO's or Direct Customer's participation (and the ESCO or Direct Customer does not make alternative arrangements);
 - (f) where a court of competent jurisdiction issues an order authorizing discontinuance of the ESCO or Direct Customer;
 - (g) where the ESCO or Direct Customer fails to pay a bill for delivery or consolidated billing services or a natural gas imbalance charge when due, does not pay the bill within 10 calendar days after being notified of the non-receipt of payment, and/or the available security is or will be insufficient to cover the amount of default; or
 - (h) where the PSC has determined that the ESCO is not eligible to sell electricity or natural gas to retail customers in the State.
2. The distribution utility may initiate the process to discontinue an ESCO by providing the ESCO a notice (with a copy to the PSC and, if applicable, the Registration Agent) that advises the ESCO that its right to switch additional customers is immediately suspended immediately. The notice shall also state that unless the stated cause for the discontinuance is corrected within a designated period (not less than 10 calendar days) from the ESCO's receipt of the notice, or the PSC or its designee requires otherwise, the ESCO's existing customers will be notified by the Registration Agent that the ESCO will be discontinued. The discontinuance will take place no longer than 15 calendar days after the end of the designated period to cure the problem except that in cases of non-payment of invoices, the discontinuance will take place at the end of the designated period. Discontinuance of Direct Customers may be initiated by a similar notice stating that unless the identified cause is corrected within the designated period (e. g., not less than 10 calendar days), or the

PSC, or its designee, requires otherwise, the Direct Customer will no longer be allowed to procure its own energy supplies. The discontinuance process will stop if the ESCO or Direct Customer corrects the problem within the cure period unless otherwise directed by the PSC or its designee. If a more expedited process is deemed necessary for any discontinuance, the process outlined in sub-section 6 below may be followed.

3. The distribution utility may suspend an ESCO or Direct Customer immediately if an imminent risk exists that compromises the safety or operational reliability of the distribution utility's system. Distribution utilities shall advise Registration Agents (if the Registration Agent and the distribution utility are not the same), and then the Registration Agent shall send notices to the ESCOs' customers as specified in Subsection 4 below.
4. The notices to be sent to customers by Registration Agents on behalf of the distribution utilities shall advise the customers:
 - (a) that the discontinuance shall (or did) occur at the meter reading date, or the first of the month, or at another date where readings were or will be estimated, or at a dated set for a special meter reading;
 - (b) of their option either to either select another ESCO to be their energy service provider, to have their names and telephone numbers provided to eligible ESCO, or to return to default service;
 - (c) of their option to remain in the retail access program by accepting the random assignment of their account to the next eligible, available ESCO as successor ESCO from the approved ESCO supplier list on a rotation basis (if this option is available in the applicable distribution utility service territory);
 - (d) of the names and telephone numbers of eligible ESCOs that have indicated a willingness to serve retail customers in the distribution utility's service territory;
 - (e) that if they do select other ESCO, those entities will file switch requests with the Registration Agent on their behalf, and there will be no fee charged by the distribution utility or the Registration Agent for the switches; and
 - (f) that after the discontinuance and unless/until new ESCOs are selected and the switches are completed, service will be provided by the

Default Provider under its applicable tariff rate, unless the distribution utility has notified the customer that delivery services will be terminated on or before the discontinuance date.

5. Sample copies of the form of the notices to customers shall be submitted to the DPS for review at least five calendar days before the letters are sent to customers.
6. If a more expeditious discontinuance process is judged to be needed in a specific situation, the distribution utility may request such expedited treatment upon a showing of need to the PSC or its designee, who shall have the authority to grant such a request. The PSC or its designee may also, for good cause, initiate an expeditious discontinuance process on its own motion. The ESCO or Direct Customer and the Registration Agent (if the Registration Agent is not also the distribution utility) shall have standing in any such process.
7. ESCOs and Direct may contest any suspension or proposed discontinuance by use of the "Dispute Resolution Process" if that process is initiated in a timely manner.
8. Upon any discontinuance of an ESCO or Direct Customer, the ESCO or Direct Customer shall remain responsible for payment or reimbursement of any and all sums owed under the tariff or under any tariffs on file with the FERC, and service agreements relating thereto, or under any agreements between the ESCO or Direct Customer and the distribution utility. The ESCO shall also remain obligated to customers to the extent provided for in any agreements with them.
9. Upon receipt of a switch request from a subsequent ESCO following the discontinuance notice, the Registration Agent will verify the intended switch with the customer in accordance with section "E" of the "Customer Agreement and Switching" chapter (e. g., the Registration Agent must notify customers within five calendar days of the switch request).
10. The PSC may, at any time, determine that an ESCO is no longer eligible to sell electricity or natural gas to retail customers in the State for reasons including:
 - (a) a determination that the information filed in the ESCO's application package was false or misleading;
 - (b) an ESCO's failure to adhere to the policies and procedures described in its disclosure to customers;
 - (c) failure to comply with prescribed consumer protections;
 - (d) an unacceptably high volume of customer complaints;

- (e) failure of an ESCO to comply with applicable ISO/RTO requests;
 - (f) failure to comply with prescribed reporting requirements;
 - (g) failure to comply with oversight requirements;
 - (h) failure to apprise the PSC of all material changes in the information in the applicant's initial filing;
 - (i) failure to comply with the voluntary discontinuance requirements set forth above;
 - (j) failure to comply with other applicable requirements of the Public Service Commission, including those in Opinion No. 97-5 (Opinion and Order Establishing Regulatory Policies for the Provision of Retail Energy Services, issued May 19, 1997 in Case 94-E-0952) and in the Order Clarifying Consumer Protections, issued October 25, 1996, in Cases 93-G-0932, et. al.;
 - (k) failure to maintain properly functioning EDI systems; or
 - (l) for any of the reasons identified in section "F.1." above; .
11. If the PSC discontinues or suspends an ESCO, the Registration Agent shall send notices to the ESCO's customers in accordance with sections "F.4." and "F.5." above.