

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**INTELLIGENT ENERGY COMMENTS ON THE PETITION FILED BY U.S.
ENERGY SAVINGS CORP TO ESTABLISH A CONTEST PERIOD**

Infinite Energy Inc., dba Intelligent Energy (“Intelligent Energy”), respectfully submits the following comments in the matter of the petition filed by U.S. Energy Savings Corp to establish a “Contest Period” as stated in the New York State Register published September 27th, 2006¹.

Intelligent Energy strongly opposes the request to institute a consent period as defined by the petition and contends that U.S. Energy Savings Corp has failed to demonstrate how a contest period achieves any of the below objectives argued within the petition:

1. Ensures customers are served by the ESCO they choose.
2. Prevents slamming allegations.
3. Helps customers avoid early termination fees.
4. Avoids disputes between ESCOs over customers

U.S. Energy Savings Corp has in no way demonstrated how a contest period would ensure that customers are served by the ESCO of their choosing. On the contrary, the contest period allows the incumbent ESCO to switch the customer back from a legitimately chosen supplier. It is not the role of one supplier to police another, if a question about the validity of an ESCO’s contract exists, then the situation should be resolved by the Commission and not unilaterally by an incumbent ESCO.

Obviously only two possible scenarios exist: Either the customer was properly enrolled, sent terms and conditions, given the appropriate rescission period (if applicable) and eventually submitted for switch. Or the enrollment guidelines were not followed and the agreement and enrollment are invalid.

In the first instance, the customer has affirmatively selected an ESCO, received the proper terms and conditions, waited for the appropriate rescission period to pass and has finally been scheduled for switch to the new supplier. Clearly this customer has made a valid decision. The ESCO community as a whole should not want to engage in a proverbial “tug-of-war” over customers. The net effect would seem to be customer confusion and frustration with the deregulated market. Additionally, with approximately 90% of the customer still with the utilities in the state there would seem to be more than enough customers to obtain with out “bickering” over the 10% that have switched to an ESCO.

In the second instance, a customer has been improperly enrolled and is in danger of being switched away from their legitimately selected supplier. The Uniform Business Practices

¹ New York State Register, September 27th, 2006, I.D. No. PSC-39-06-00021-P and I.D. No. PSC-39-06-00022-P, pages 63-65.

already provide an opportunity for a customer to be restored to the appropriate provider in the infrequent event of an unauthorized enrollment, UBP Section 5 (D) (6):

Upon acceptance of an enrollment request, the distribution utility shall send a notice to any incumbent ESCO that the customer's service with that ESCO will be terminated on the effective date of the new enrollment. In the event that the distribution utility receives notice no later than three business days before the effective date that a pending enrollment is cancelled, the distribution utility shall transmit a request to reinstate service to any incumbent ESCO, unless the ESCO previously terminated service to the customer or the customer requests a return to full utility service.

Every switch in service providers generates a utility confirmation letter to the customer and a drop transaction in the case of a switch away from an ESCO. The utility confirmation letter notifies the customer of the imminent switch and provides information on contacting the utility in the event the switch is unauthorized or unwanted.

Intelligent Energy further contends that U.S. Energy Savings Corp has in no way demonstrated how a contest period would prevent slamming. The Uniform Business Practices define slamming as “Enrollment of a customer by an ESCO without authorization”, by this definition the very act of enrolling a customer without proper authorization constitutes a slam, regardless of any subsequent actions taken to resolve the situation and restore the original provider (whether it be the utility or another ESCO).

On the contrary, a contest period provides the opportunity for the incumbent ESCO to slam a customer by unilaterally cancelling the enrollment of another ESCO without proper authorization. A contest period actually increases the possible types and potential frequency of slamming allegations.

Ideally slamming should never occur, it greatly hinders the collective efforts of the ESCO community to advance deregulation and severely diminishes public confidence. Intelligent Energy and many other ESCOs proactively monitor sales efforts and implement various quality assurance measures to prevent slamming. Granting incumbent ESCOs the ability to unilaterally cancel the enrollments of other ESCOs will in no way prevent slamming allegations, it can only serve to increase them.

In the rare instance of a slam, the customer can be fully restored to the appropriate supplier by contacting the utility. Additionally, if an ESCO realizes that an enrollment request was submitted without the customer's proper authorization, the ESCO which submitted the request in error can also contact the utility and cancel the pending enrollment request.

In the infrequent occasion that slamming does occur, it is up to the Commission to take appropriate action against the offending party, it is not the role of one ESCO to police another. The UBP contains more than adequate consumer protections and provisions for restoring the appropriate supplier. The utility notification letter provides ample

opportunity for the customer to contact either the utility or the pending ESCO in order to fully resolve any problems and to cancel the enrollment if necessary. Allowing one ESCO to cancel the pending enrollments of another ESCO does not positively serve the customer, rather it serves to increase the opportunities for a customer to be slammed. The UBP has served customers and ESCOs very well over the years and slamming has not been much of an issue. Changing it now, as suggested in the petition, could open up a whole new set of issues and possibly create significant customer confusion.

U.S. Energy Savings Corp has in no way demonstrated how a contest period would help customers avoid early termination fees. Every residential customer in New York is provided a three business day rescission period. The rescission period allows the customer to review the contract, seek advice from friends, do research, or to simply ponder and review every detail and make an informed choice.

Once the rescission period ends, the contract becomes binding and the ESCO is authorized to submit an enrollment request to initiate a switch in providers. Assuming that the sale and the contract are valid, a switch away from the new provider constitutes a breach of the agreement and could result in penalties as specified by the terms and conditions.

Conversely, if the sale and the contract are not valid (a slam has occurred), then the customer can be returned to the correct provider as provided for by UBP Section 5 (D) (6) and the Commission should take appropriate action against the offending party, if necessary. Allowing a second ESCO to unilaterally switch a customer back to their service in no way guarantees that the customer will not be assessed early termination penalties and it raises questions about who actually breached the new agreement (the customer or the incumbent ESCO). Allowing an incumbent ESCO to cancel an enrollment request of the pending ESCO is problematic and not in the best interest of the customer.

Intelligent Energy further contends that U.S. Energy Savings Corp has in no way demonstrated how a contest period would avoid disputes between ESCOs. Fundamentally two parties are competing for one customer, however in each and every instance one of the ESCOs will have a contract (be it verbal, written or electronic) which was "signed" after the other ESCO's contract and therefore supersedes it.

The question falls back to the validity of the new contract. If the customer was enrolled properly and has had the opportunity to rescind the contract under the three day rescission period provided by regulation in New York, then the contract is valid, no slam exists and the new ESCO is fully justified in enrolling the new customer. There is no dispute.

On the other hand if a customer was not enrolled properly or was not provided the appropriate rescission period, then a slam has occurred and the new contract is invalid, no dispute exists between the two ESCOs. As stated in previous sections, the Uniform Business Practices already provide a mechanism for restoring the appropriate provider. The customer may either contact the utility or the pending ESCO to cancel the pending

enrollment and the Commission is within its right to penalize the offending party if appropriate.

Allowing an ESCO to cancel the pending enrollment of another ESCO in no way avoids, or limits potential disputes between ESCOs. In fact it has the reverse effect by opening the door to additional disputes and conflict. It is not the role of one ESCO to police another, any question about the validity of a contract should be resolved by the Commission, not unilaterally by the incumbent ESCO.

The current practice of allowing the customer to contact the utility or allowing the new ESCO to cancel the enrollment, as provided for by UBP Section 5 (D) (6) avoids disputes between ESCOs over customers; the proposed change has the completely opposite effect.

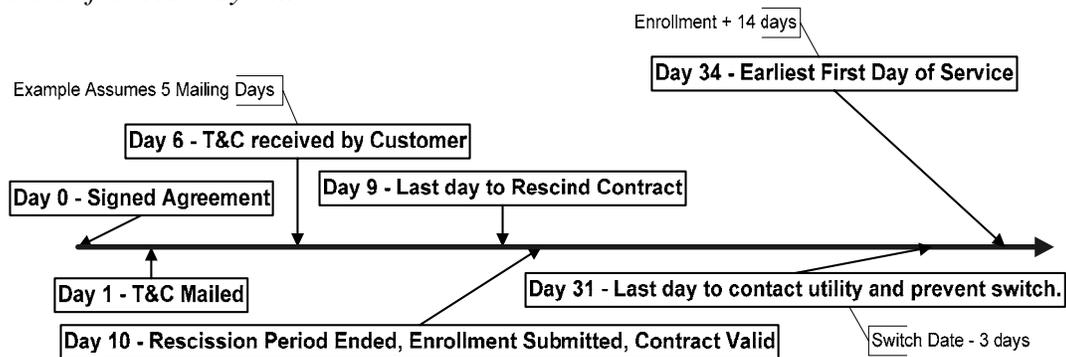
Alternative Proposal

Intelligent Energy is strongly opposed to the creation of a contest period as defined by the petition. If the Commission wishes to:

1. Ensure that customers are served by the ESCO they choose.
2. Prevent slamming.
3. Help customers avoid early termination fees.
4. Avoid disputes between ESCOs over customers.

Then the only logical course of action is to change the rules so that a customer's rescission period occurs after the enrollment. Under the current system, when a contract is signed, the ESCO must mail the customer written terms and conditions within 72 hours, the customer then receives a three day right of rescission, upon the expiration of which the ESCO is authorized to submit an enrollment request.

Timeline of Current System:

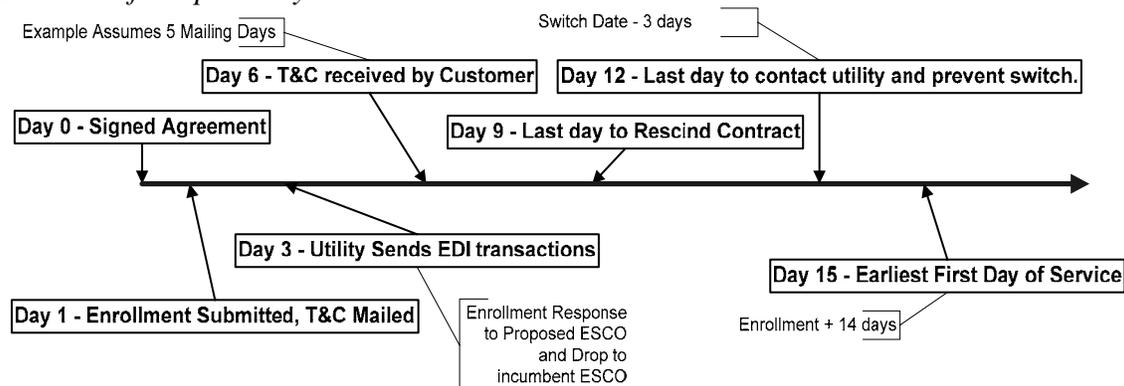


Intelligent Energy contends that if ESCOs were permitted to submit enrollment requests prior to the expiration of the rescission period, then all four goals of the contest period would be met without any erosion to customer protections.

Under Intelligent Energy's proposed system:

- A contract is signed on "day 0"
- The ESCO mails the customer Terms and Conditions and submits the account for enrollment on "day 1"
- The utility accepts the enrollment and sends the appropriate enrollment response to the pending ESCO and a drop request to the proposed ESCO on "day 3".
- The utility mails the customer a confirmation letter on "day 4" which notifies the customer of the switch.
- The customer receives Terms and Conditions on "Day 6", this assumes 5 mailing days. The customer has until "Day 9" to rescind, the incumbent ESCO has also already been notified as of "day 3".
- The customer's rescission period is over on "Day 10" and the contract is valid, however the customer still has until "day 12" to contact the utility and prevent a switch.

Timeline of Proposed System:



Unlike the previous proposal, Intelligent Energy's suggestion successfully ensures that customers are served by the ESCO they choose because the customer is afforded ample opportunity to rescind while all involved parties are notified and have sufficient time to contact each other and take action if necessary.

Unlike the previous proposal, Intelligent Energy's proposal successfully prevents slamming allegations, because it is the customer's right to rescind and no third party is unilaterally canceling switches. Furthermore, Intelligent Energy's proposal successfully helps customers avoid early termination fees because the rescission has the effect of canceling both the pending enrollment and the pending contract which could have early termination fees associated with it. Intelligent Energy's proposal also successfully avoids disputes between ESCOs over customers, because it is the customer who is making the choice and taking the action to rescind, not a unilateral third party.

While customers must take responsibility for their actions, and breaching a contract may be subject to breach damages as contained in the contract, Intelligent Energy does recognize that a customer may "forget" about breach damages when they make the

decision to switch to another provider. Under a long term fixed agreement, this could be a substantial amount since the existing provider may have purchased a large amount of a commodity in order to ensure the fixed price for the customer. Intelligent Energy asserts that the current petition from US Energy Savings Corp does not adequately address that situation and that Intelligent Energy's proposed alternative better helps customers avoid any confusion/forgetfulness over the breach damages by notifying the existing ESCO of the switch through a more timely EDI transaction. This gives the existing ESCO an opportunity to reach out and remind the customer of the terms and conditions and most ESCOs would happily take the customer back under the same rate and terms and conditions if that is what the customer desires.

It is important to note that a "post-enrollment rescission period" (a rescission period which may begin after an account has been submitted for switch) is currently in effect in both Georgia and New Jersey and causes no loss of consumer protections. The customer remains protected as there is more than ample opportunity to cancel the pending enrollment and avoid a switch. On the other hand, the proposed method does have the added benefit of not having to wait for the rescission period to end before an enrollment can be submitted, as a result the time between initial contact with the customer and the earliest possible first day of service is shortened from approximately 34 days to about 15 days.

Intelligent Energy strongly opposes the petition filed by U.S. Energy Savings Corp to establish a "Contest Period" and requests that the Commission reject the original proposal. Intelligent Energy also recommends that the Commission consider the alternative proposal of changing the rescission period to post-enrollment. Such a step would more effectively resolve any problems, without eroding existing consumer protections.

Respectfully submitted,

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