



Retail Energy Supply Association

**P.O. Box 6089
Harrisburg, PA 17112
717-566-5405**

December 14, 2006

The Hon. Jaclyn A. Brillling
Secretary to the Commission
New York State Department of Public Service
3 Empire State Plaza
Albany, NY 12223-1350

Subject: Electronic Data Interchange (EDI) Standards by U.S. Energy Savings Corporation
(98-M-1343SA14)
Uniform Business Practices and Related Matters by U.S. Energy Savings Corporation
(98-M-0667SA57)

Dear Secretary Brillling:

The Retail Energy Supply Association (“RESA”)¹ submits these reply comments in the matter of U.S. Energy Savings Corp.’s (“U.S. Energy Savings”) petition to implement a “Contest Period”. RESA is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than regulated energy markets. We are devoted to working with all stakeholders to promote vibrant and sustainable competitive retail energy markets.

In its initial comments, RESA pointed out that with 1.2 million New York customer accounts taking electricity and gas supply from alternate energy providers, occasionally two or

¹ RESA member companies include Consolidated Edison Solutions, Inc., Direct Energy Services, LLC, Hess Corporation, Reliant Energy Retail Services, LLC, Sempra Energy Solutions, Strategic Energy LLC, SUEZ Energy Resources NA, Inc., and U.S. Energy Savings Corp. The opinions expressed in this document may not represent the views of all members of RESA.

more ESCOs will dispute which one should be supplying the customer. RESA supports the Contest Period proposal as it will ensure the customer takes services with the ESCO of his or her choosing and prevent disagreements between ESCO from leading to the Commission or a utility being forced into the role of arbitrator.

RESA submits these reply comments to correct the characterization of the Contest Period offered by the upstate New York utilities (“Upstate Utilities”) in its initial comments and to support Con Edison’s proposal to implement the Contest Period.²

The Upstate Utilities’ comments assert the U.S. Energy Savings Contest Period petition will authorize an incumbent ESCO to cancel its customer’s request to switch to another ESCO “without the customer’s actual knowledge” (Upstate Utilities, p. 9). This position rests on the mistaken belief that the petition allows the pending ESCO to cancel a switch by exercising its authority solely under the original contract with the customer. For example, the Upstate Utilities’ comments state that the petition will allow the incumbent ESCO to exercise “agency rights” (Upstate Utilities, p. 9) and enforce “specific performance” (Upstate Utilities, p. 10) under the original contract. This view is incorrect. While the petition discussed agency law, it stated a customer may authorize an ESCO to cancel a pending enrollment with a contemporaneous grant of authority not that the ESCO had inherent agency rights under the original contract for energy services to cancel a switch.

The U.S. Energy Savings petition proposes each ESCO be empowered to cancel a pending enrollment only after receiving permission from the customer. It states “positive confirmation from the customer is required before an incumbent ESCO may cancel a pending switch” (Petition, p. 4). The petition proposes an amendment to section (5)(E)(1) of the UBP to provide customer protection by requiring that the incumbent ESCO obtain “verifiable written, telephonic, or electronic authorization of the customer” before it may cancel the pending enrollment (Petition, p. 2). Contrary to the interpretation of the Upstate Utilities, an ESCO may cancel a pending enrollment under the Contest Period only after receiving the customer’s permission for that transaction.

The Contest Period provides greater benefit to the customer than the existing process. For example, some instances can exist in which a customer may forget he or she is under contract with another ESCO or is unaware another member of the household or a business partner entered into an agreement with another ESCO. A customer informed of such a situation by the incumbent ESCO may choose not to enroll with another ESCO. Under the Contest Period, the incumbent ESCO may cancel the pending switch after receiving the customer’s permission so as to prevent an interruption in service.

The fact an incumbent ESCO may send an EDI drop request under the Contest Period proposal rather than have the customer make a phone call to the utility if the customer wishes to remain with the incumbent will provide a benefit to utilities and other ESCOs through fewer calls to their customer service centers. It will also save each customer some effort.

Con Edison announced it will implement the Contest Period proposal effective December 15, 2006. Con Edison has apparently concluded it may implement the Contest Period without any changes to the UBP and through existing EDI transactions. RESA supports Con Edison’s interpretation that the Contest Period may be implemented in this manner. Its approach as detailed in its initial comments and newsletter reveals that the Contest Period can be

² Con Edison unveiled its plan to implement the Contest Period through its initial comments and through its newsletter “Con Edison ESCO News” dated November 29, 2006. Con Edison announced in that newsletter it will be launching several operational changes, including the Contest Period, effective December 15, 2006.

implemented in a manner that enhances consumer protections and lowers administrative costs. Con Edison will require that any ESCO submitting a request to cancel a pending switch have verifiable written, telephonic, or electronic authorization of the customer. RESA supports Con Edison's requirement and reiterates that, to protect customers and a pending ESCO against the possibility of abuse, these records should be subject to periodic review and audit by the Commission.

RESA urges the Commission to grant the relief sought by U.S. Energy Savings as proposed by Con Edison. It will ensure that customers are served by the ESCO of their choosing and avoid disputes between ESCOs over customers.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tracy McCormack", with a long horizontal flourish extending to the right.

Tracy McCormack
Executive Director

c: Fran Hart (by e-mail)