State of New York
Public Service Commission

Case 98-M-0667 – In the Matter of Electronic Data Interchange

Case 98-M-1343 – In the Matter of Retail Access Business Rules

PETITION OF U.S. ENERGY SAVINGS CORP.

In accordance with 16 NYCRR Section 3.5, U.S. Energy Savings Corp. hereby petitions the New York State Public Service Commission ("PSC" or "Commission"), and in support thereof, respectfully shows as follows:

PARTIES

1. U.S. Energy Savings Corp. ("USESC") is an energy services company ("ESCO") eligible to sell electricity and natural gas to end-use customers using the transmission and distribution system of local utilities in the State of New York. USESC currently provides this service to residential and commercial electricity and natural gas customers in New York.

RELIEF REQUESTED

2. USESC respectfully requests that the Commission issue an order establishing a "Contest Period" to cover the process by which an ESCO attempts to enroll a customer already receiving service from another ESCO ("incumbent ESCO"). The Contest Period proposal ensures customers are served by the ESCO they choose, prevents slamming allegations, helps customers avoid early termination fees and avoids disputes between ESCOs over customers. It succeeds primarily by authorizing the incumbent ESCO to cancel a pending enrollment with

another ESCO ("pending ESCO") using an Electronic Data Interchange ("EDI") transaction. The incumbent ESCO must receive the consent of the customer before canceling the enrollment. The proposal also calls for the pending ESCO to receive notice at the time of enrollment that a customer receives supply from another ESCO. USESC requests amendment of the Uniform Business Practices ("UBP") as follows to allow for implementation of these actions by the Commission:

> **UBP Section 5 (D) (4):**
> After receipt of an enrollment request, the distribution utility shall, within one business day, acknowledge its receipt, and, within two business days, provide a response indicating rejection and the reason, or acceptance and the effective date for the change of provider. <u>The distribution utility shall indicate whether the customer is being served by another ESCO.</u>
>
> **UBP Section 5 (E) (1):**
> The distribution utility shall send no later than one calendar day after acceptance of an enrollment request a verification letter to the customer notifying the customer of the acceptance. The notice shall inform the customer that if the enrollment is unauthorized or the customer decides to cancel it, the customer is required immediately to so notify the distribution utility<u>, incumbent ESCO</u> ~~and~~ <u>or</u> pending ESCO. <u>Upon verifiable written, telephonic, or electronic authorization of the customer, the incumbent ESCO may cancel the pending enrollment by notifying the distribution utility.</u>
>
> Key: ~~strike~~ <u>insert</u>

USESC further requests that the Commission take any other action, including other changes to the UBP and the EDI Standards, as it deems necessary within its discretion to accommodate and implement the relief sought in this Petition.

THE RELIEF REQUESTED IS JUST AND REASONABLE AND SHOULD BE ADOPTED

3. USESC currently provides service to residential and small commercial natural gas and electric customers in New York and several other states and Canadian provinces. USESC is

a subsidiary of Energy Savings Income Fund ("ESIF"), a publicly traded company with a current market capitalization of over $1.5 billion. Since its inception in 1997, ESIF has grown to become one of the largest independent energy marketers in North America. USESC works closely with fellow members in the industry to promote competition, continually improve satisfaction for customers, and provide long-term energy solutions for consumers. USESC provides an attractive alternative for household and business customers purchasing their natural gas and electricity supply by providing them with peace of mind and protection from increasingly volatile energy prices.

4. The Contest Period allows the customer to select positively the ESCO for commodity service by authorizing the incumbent ESCO to cancel a pending enrollment with another ESCO. For example, if ESCO A (incumbent ESCO) is the ESCO of record when an enrollment request is submitted by ESCO B (pending ESCO), a potential ESCO to ESCO change in service providers is created, and the transfer process is subject to a Contest Period. The contest period, relying on existing enrollment request and drop deadlines in UBP 5 (D) and (E), starts on the date ESCO A is informed of the enrollment request and ends on the third day prior to the effective date. Under the Contest Period, once a customer learns of the pending change in service providers, he or she may authorize either the utility, the pending ESCO, or, unique to the Contest Period, the incumbent ESCO to cancel a pending switch so as to prevent an interruption in service.

In an active, competitive market such as New York, customers may be offered products from multiple ESCOs. The Contest Period ensures the customer receives commodity service from the ESCO of his or her choosing. The Contest Period, by maintaining the current practice of providing notice of a pending change in service providers to the incumbent ESCO, in addition to the customer, continues to ensure that a change in service providers only occurs with the knowledge of all parties. This reduces the likelihood of any customer confusion or allegations of slamming.

Occasionally, two or more ESCOs will dispute which one should be supplying the customer. In the worst cases a customer might "flip flop" between two ESCOs unable to resolve their dispute. This type of disagreement can lead to the Commission or a utility being forced to broker disputes between two ESCOs. Since positive confirmation from the customer is required before an incumbent ESCO may cancel a pending switch, the Contest Period removes the burden from the PSC or a utility and allows ESCOs to resolve their own disputes.

5. Under the current system, the ESCO enrolling the customer does not receive notification that the customer takes supply from another ESCO. In some instances, for example, 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. An ESCO informed of such a situation, as proposed here, may choose not to enroll the customer rather than bind the customer to another energy supply contract.

6. By maintaining the existing notification to the incumbent ESCO of a pending change in service providers, that incumbent ESCO has the ability to contact affected customers to ensure that they wish to switch suppliers. This step of allowing confirmation of the change before it occurs helps customers avoid early termination fees present in some ESCO contracts.

The Contest Period proposal adds the incumbent ESCO to the list of eligible parties that may cancel a pending enrollment using EDI. [1] This change will give the incumbent ESCO the

[1] The Commission, addressing the law of agency, has noted that a customer may also provide written authorization to an ESCO for that ESCO to contact the pending ESCO to cancel a pending switch before the effective date. (Case 98-M-0667, Retail Access Business Rules, Opinion No. 99-3 (issued February 16, 1999), p. 69). The Contest Period facilitates the incumbent ESCO's powers under the law of agency by allowing the incumbent ESCO as the

same authority to act on behalf of the customer now held by the utility and the pending ESCO as opposed to giving the incumbent ESCO any unique authority. Under the Contest Period, the contacted ESCO will cancel the pending enrollment by issuing a drop request before the third day prior to the effective date— a process that may now only be performed by the pending ESCO.[2] Under the Contest Period, the customer need only contact either the utility, the incumbent ESCO or the pending ESCO. Under the current UBP, the customer wishing merely to keep service with the incumbent ESCO is burdened with having to contact both the utility and the pending ESCO. The Contest Period will decrease the number of parties the customer must contact. The fact an incumbent ESCO may send an EDI drop request 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.

While an incumbent ESCO might receive authorization from the customer to initiate a "re-enrollment" before the switch becomes effective,[3] the fact the UBP requires that it must enroll the customer at least 15 calendar days prior to the enrollment date will often not provide it with sufficient time to avoid an interruption in service. Under the UBP, the incumbent ESCO receives notice a day or two after the utility confirms the enrollment. It then might need several days to contact the customer to receive authorization to make the "re-enrollment." As a result, the incumbent ESCO would likely be unsuccessful at submitting a timely "re-enrollment" if

---

customer's agent to process the request solely through its own EDI transaction rather than having to contact the pending ESCO.

[2] Section 5(E) of the UBP requires the utility to cancel the switch and reinstate the customer with the incumbent ESCO if the customer calls the utility requesting this action within the allotted reinstatement period. The EDI Standards do not currently provide for this transaction. As a result, the customer trying to remain with its current ESCO is at the mercy of the pending ESCO. In the current environment, timely reinstatement is dependent on the pending ESCO not the wishes of the customer.

[3] The Contest Period amends the UBP to state explicitly that the incumbent ESCO must receive the customer's authorization before canceling a pending enrollment. The current UBP does not address a "re-enrollment" or what type of authorization an ESCO having a customer under contract would need before submitting a "re-enrollment."

another ESCO tried to enroll its customer during the week leading up to the 15 day cut-off. The only alternative for the incumbent ESCO to cancel the pending enrollment after the 15 day cut-off is to ask the customer to contact the call centers at both the utility and pending ESCO. The Contest Period, by contrast, enables an incumbent ESCO to cancel the switch using an EDI transaction at any point until the third day prior to the effective date.

7. The Contest Period may be instituted through minor modifications to the EDI 814 transaction. Rules around the timing and number of switches per account per meter read cycle require no modification. This will ensure initiation of only one Contest Period at a time. The two main changes required to the EDI Standards are: (1) notification to an ESCO if they enroll a customer already served by another ESCO; and (2) enabling of the current Reinstatement transaction for incumbent ESCOs to send to utilities in order to cancel a switch initiated by another ESCO.

8. Under the Contest Period, the transaction flows shown below are dependent on who initiates the switch and the status of the enrollment request with the current ESCO when the new ESCO submits an enrollment request. In these scenarios, an ESCO (ESCO A) already supplies energy to the customer on the date an enrollment request is submitted by another ESCO (ESCO B). If the enrollment request is correctly formatted, contains all required data and can be processed, the utility must process the Enroll Request. Upon determining that the customer is currently served by an ESCO (ESCO A), the switch process is subjected to a Contest Period. The process flows are described and illustrated below.

I. The Utility receives an 814 Enroll Request from ESCO B for a customer currently being served by ESCO A.

II. The Utility responds to ESCO B with an 814 Enroll Accept that includes an indicator to signify that the customer is currently served by another ESCO.

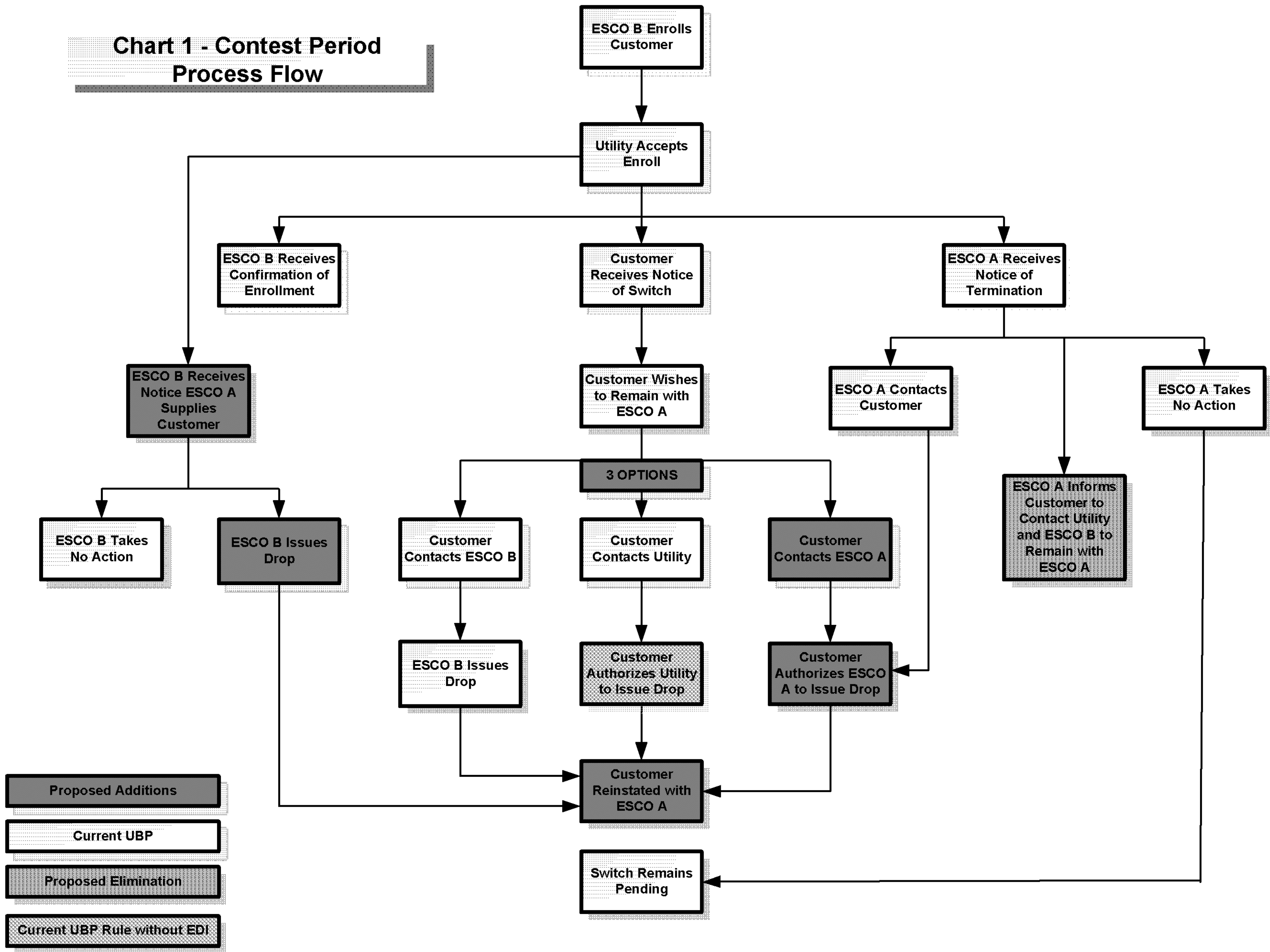
III. The Utility sends an 814 Drop for Broker Switch ("DBS") transaction to ESCO A. The Contest Period begins upon receipt of the DBS and ends on the third day prior to the effective for the potential switch.

IV. During the Contest Period, ESCO A may:
   a. Take no action to allow the switch to proceed as scheduled (here ESCO A does not contest the switch).
   b. Upon verifiable written, telephonic, or electronic authorization of the customer, ESCO A may cancel the pending switch by notifying the utility through an 814 Reinstatement transaction. Upon receipt of an 814 Reinstatement transaction, the Utility notifies ESCO B, the switch to ESCO B is terminated and the customer remains with ESCO A.

V. During the Contest Period, ESCO B may:
   a. Cancel the switch request by sending an 814 Drop Request to the Utility canceling the Enroll Request. The Utility will send an 814 Reinstatement transaction to ESCO A canceling the pending drop.

VI. During the contest period, the customer may:
   a. Contact the Utility to request cancellation of the switch to ESCO B. The Utility sends an 814 Reinstatement transaction to ESCO A canceling the switch; and an 814 Drop Request to ESCO B canceling the switch. The customer remains with ESCO A.
   b. Contact ESCO B to cancel the switch to ESCO B. ESCO B sends an 814 Drop Request transaction to the Utility canceling the switch. The Utility sends an 814 Reinstatement transaction to ESCO A canceling the Switch.
   c. Contact ESCO A to cancel the switch. This would be the same as scenario IV(b)
   d. Take no action to allow the switch to proceed in favor of ESCO B.

Chart 1 - Contest Period Process Flow



9. The operation of the transactions described herein is exemplified by Ontario's Gas Distribution Access Rule Electronic Business Transactions Standards Document (Appendix D Sec. 5.1.4) and electric Retail Settlement Code (Sec. 10.5.4) copies of which may be found on the web at <*http://www.oeb.gov.on.ca/documents/cases/RP-2000-0001/appendixd_151105.pdf*> and <*http://www.oeb.gov.on.ca/documents/cases/RP-1999-0032/code_231104.pdf*>, respectively.

10. In summary, granting the relief sought by USESC will ensure customers are served by the ESCO of their choosing, prevent slamming allegations, help customers avoid early termination fees and avoid disputes between ESCOs over customers.

WHERFORE, it is respectfully requested that the relief sought for herein by USESC be granted in its entirety.

Respectfully submitted,

U.S. Energy Savings Corp.

By: ____________________________

Francis E. Pullaro
Director of U.S. Regulatory Affairs

6345 Dixie Rd., Suite 200
Mississauga, ON L5T 2E6
Canada
fpullaro@energysavings.com
646-734-8768 (USA)
647-200-4113 (Canada)

Dated: August 17, 2006
New York, New York