

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany of January 21, 2021

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman, concurring, in part and dissenting, in part
James S. Alesi
Tracey A. Edwards
John B. Howard

CASE 15-M-0127 - In the Matter of Eligibility Criteria for
Energy Service Companies.

CASE 12-M-0476 - Proceeding on Motion of the Commission to
Assess Certain Aspects of the Residential and
Small Non-residential Retail Energy Markets in
New York State.

CASE 98-M-1343 - In the Matter of Retail Access Business Rules.

ORDER ADDRESSING ESCO PETITIONS REQUESTING AUTHORIZATION TO
PROVIDE ADDITIONAL PRODUCTS AND SERVICES

(Issued and Effective January 25, 2021)

BY THE COMMISSION:

INTRODUCTION

For the past decade, the Commission has worked to reform the retail energy market in New York to better ensure that customers receive value from the retail market and Energy Services Companies (ESCOs) in a way that justifies ESCOs' continued access to utility distribution systems. To this end, the Commission has recently enacted new rules regarding products that are permissible in the retail mass market, the portion of the retail market comprised of residential and small non-

residential customers.¹ The Commission has provided ESCOs significant time to prepare to comply with the new product rules, which are set to take effect in February 2021.

The default rule for a permissible product for the mass market is "that ESCOs must serve the mass market with guaranteed savings products - products where ESCOs must meet or beat the price of equivalent utility commodity service on an annual basis" (the default guaranteed savings rule).² The Commission has provided specific exceptions to the default guaranteed savings rule, two of which are relevant to this Order. First, the Commission recognized that, in a 2017 evidentiary hearing, the ESCO Agway Energy Services, LLC (Agway) had made a sufficient showing to establish that its home warranty product EnergyGuard, which covered home heating, ventilation, and air conditioning (HVAC) systems and was bundled with commodity energy service, provided sufficient value to consumers to justify an exception to the default guaranteed savings rule. In reaching the conclusion that Agway's product would be excepted, the Commission noted that other ESCOs could petition to sell similar home warranty products pursuant to the same exception.³ As to the second exception relevant to this Order, the Commission has permitted ESCOs to charge customers more for electric commodity than the distribution utility when the ESCO bundles commodity electricity with the purchase of

¹ See generally Case 15-M-0127, et al., Order on Rehearing Reconsideration, and Providing Clarification (issued September 18, 2020) (September 2020 Order); Order Adopting Changes to the Retail Access Energy market and Establishing Further Process (issued December 12, 2019) (December 2019 Order).

² See September 2020 Order, p. 20.

³ See December 2019 Order, p. 54.

specified Renewable Energy Certificates (RECs) or Alternative Compliance Payments.⁴

The instant order addresses numerous petitions filed in the past year, supported by more than thirty ESCOs, that, broadly, seek one or both of two forms of relief: (1) Commission approval of a commodity product bundled with a proposed home warranty product not subject to a price restriction or (2) Commission approval of a commodity natural gas product bundled with either carbon offsets or RECs not subject to a price restriction.

In this Order, the Commission finds that the various applications for authorization regarding home warranty product bundles satisfy the adopted criteria, and the Commission grants authorization subject to specified conditions. Moreover, given the clear guidance in this and previous orders, the Commission finds it unnecessary to continue requiring ESCOs to petition for a waiver to offer home warranty products. Instead, going forward, ESCOs wishing to offer such products will file a contract for review and approval by Department of Public Service Staff (Staff), who will review the proposed home warranty product and ensure compliance with the Uniform Business Practices (UBP) and Commission orders.

As to the petitions seeking authorization for an exception to the default guaranteed savings rule for natural gas bundled with carbon offsets or RECs, the Commission denies the requested authorization. The Commission reaffirms its recent determination that further consideration of such products is necessary in future collaborative proceedings (generally referred to as "Track II") with interested parties. In the meantime, and to avoid disruption for customers, the Commission

⁴ See Id., pp. 75-83.

provides a limited, one-year waiver during which ESCOs that have marketed such natural gas and carbon offset/REC bundled products can continue to offer those products to customers who currently purchase them.

BACKGROUND

Home Warranty Product Proposals

In the December 2019 Order, the Commission found that Agway had presented credible proof in an evidentiary hearing that its EnergyGuard home warranty product was an energy-related value-added product or service that justified an exception to the default guaranteed savings rule. As the Commission explained,

Agway offers "EnergyGuard" as a service bundled with both natural gas and electricity supply. Agway claims that this service, which it describes as "[s]imilar to a pre-paid maintenance contract," provides its customers with "valuable and essential peace of mind." Agway asserts that the value of the EnergyGuard service is quantifiable, in that the service covers the cost of most parts and repairs to the residential customer's air conditioning unit, up to \$1,000 annually, as well as the additional cost for electrical wiring repairs, up to \$1,000 annually.⁵

Based on the evidence Agway presented, the Commission concluded that EnergyGuard was an "energy-related value-added product or service" that "provides benefits to customers comparable to its costs," and as a result permitted EnergyGuard to be marketed without a price cap.⁶ Recognizing that other ESCOs may wish to market a similar home warranty product, the Commission stated that, "[i]f any other ESCO wishes to offer a

⁵ Id., p. 52.

⁶ Id., p. 53.

product like EnergyGuard during the pendency of Track II, it may submit a petition for waiver to the Commission explaining the benefits its product provides and how they will reasonably relate to its cost.”⁷

Bundled Natural Gas Product Proposals

Prior to the Commission’s adoption of the new mass market product rules in December 2019, ESCOs had provided little or no indication to the Commission suggesting that the industry believed that natural gas - and attendant emissions of carbon dioxide and other greenhouse gases - could be bundled with environmental-attribute products in a manner that provided value to mass-market consumers and furthered New York’s climate and clean and renewable energy goals.

When a number of ESCOs raised the issue of bundling carbon offsets or RECs with the sale of natural gas, which ESCOs label as “green gas” products, in petitions for rehearing, reconsideration, and/or clarification of the December 2019 Order, the Commission addressed the general claim that the Commission should immediately authorize such products to be sold at a market rate, i.e., not subject to the default guaranteed savings rule. The Commission explained that ESCOs had made virtually no mention of “green gas” products during the ten days of administrative hearings that were held in 2017 to better understand the mass market.⁸ In its September 2020 Order responding to the aforementioned petitions, the Commission elaborated that

The December 2019 Order did not provide for a “green gas” product because the record that was developed during the administrative hearing process did not include proof that any existing or proposed “green

⁷ Id., pp. 53-54.

⁸ See September 2020 Order, p. 39.

gas" products provide benefits to mass market customers that would justify an exception to the guaranteed savings requirement. While the Commission is aware of the petitions filed by ESCO requesting a waiver to offer various "green gas" products, virtually no evidence related to such products was provided by the ESCO parties during the hearings. Conversely, there is ample record basis supporting a renewable electric product.

The Commission notes that the concept of "green gas" products is relatively novel. The Commission's existing renewable energy policies, particularly those included as part of the [Clean Energy Standard], have to date been focused on the electric sector. Within the CES program, a REC is tied to a megawatt hour of electric generation, and there is no equivalent certificate for therms or any other measurement of natural gas production or consumption. Thus, while the Commission is not foreclosing the option of a product offering intended to provide a renewable generation component to offset natural gas usage, an insufficient record was developed during the administrative hearing to provide for a green gas product in the December 2019 Order, or in this Order on rehearing. The Commission may revisit the "green gas" option in response to the ESCO petitions mentioned above, or generically as part of Track II.⁹

As the Commission noted, many of the petitions discussed in this order regarding "green gas" proposals were filed between the issuances of the December 2019 Order and the September 2020 Order.

PETITIONS REGARDING HOME WARRANTY PRODUCT PROPOSALS

In this Order, the Commission addresses a number of petitions containing proposals for home warranty products. The petitions addressed are those that have been respectively subject to public notice and a public comment period that has expired.

⁹ See Id., pp. 39-40.

In a May 7, 2020 filing, Interstate Gas Supply, Inc., Accent Energy Midwest Gas, LLC dba IGS Energy, and Accent Energy Midwest II, LLC dba IGS Energy (collectively, "IGS") sought approval for proposed home warranty products not subject to a price cap. IGS proposes to bundle electric and natural gas service with a variety of home warranty plans. These plans include inside/outside utility line protection, HVAC system protection, and complete home protection. These plans variously cover warranties for gas, electric, water, and sewer lines (inside and outside) and furnaces, central air conditioning systems, boilers, heat pumps, and water heaters. The plans have differing annual limits for coverage.

In a July 9, 2020 petition, Kiwi Energy NY LLC (Kiwi) petitioned for authorization to sell "Kiwi Guard" not subject to a price cap. According to Kiwi, Kiwi Guard provides twenty-four hours, seven days per week (24/7) customer support and the product covers central air and heating systems and ductwork. The cap on annual coverage for Kiwi Guard is \$750 a year, plus a \$25 credit that applies to the cost of an air filter. The product includes a \$125 deductible per claim. For certain types of equipment outages, Kiwi Guard provides up to \$1,200 of coverage for needed emergency lodging. Kiwi Guard provides technicians who are prescreened and licensed.

In a September 9, 2020 petition, Mpower Energy LLC (Mpower) sought authorization to offer a home warranty product not subject to a price cap. According to Mpower, its proposed home warranty product would provide customers with a warranty covering parts and labor for certain repairs of heating and/or cooling equipment and household wiring. The warranty covers the cost of parts and repairs up to \$1,000 annually for a customer's air-conditioning unit, home wiring, and heating system repairs. Mpower would be available at all times to receive reports of

problems at all times. Mpower would dispatch a licensed and bonded technician to address reported problems. To deter unwarranted service calls and account for parking costs, Mpower would charge a \$150 deductible. According to Mpower, commercially available home warranties generally range in price from \$20-\$50/month, and Mpower asserts that its warranty will be competitively priced in this range, subject to future market changes.

In a September 15, 2020 filing, Constellation NewEnergy - Gas Division, LLC and Constellation NewEnergy, Inc. (collectively, "Constellation") sought approval for two home warranty products to be sold without price restriction. The first product would bundle retail electric service with an HVAC protection plan and electronic surge protection. This product would be paired with electricity supply, sold at a fixed or variable rate. The second product would bundle retail natural gas service with water heater maintenance and gas line protection. This product offering would provide customers a fixed or variable natural gas supply rate, coverage on the cost of gas line failures within the home, and coverage on a residential hot water heater. Constellation proposes to offer 24-hour call service and to dispatch appropriate contractors in a timely fashion. Constellation would charge a \$100 deductible for HVAC maintenance and a \$50 deductible for service to the other covered products. For each proposed product, Constellation would impose a cap of \$1,500 in total claims per twelve-month period. Constellation represents that it would ensure that contractors have appropriate licensing and liability insurance and would hold contractors to minimum customer satisfaction ratings.

PETITIONS REGARDING BUNDLED NATURAL GAS PRODUCT PROPOSALS

This Order also addresses numerous petitions seeking authorization from the Commission to market and sell, not subject to a price cap, natural gas products bundled with either carbon offset products or RECs. The petitions addressed in this order are limited to those that have been subject to a public notice and comment period that has expired.

Petitions seeking such relief were filed by ESCOs as follows: Family Energy, Inc. (Family Energy) on February 14, 2020; Direct Energy Services LLC and Gateway Energy Services Corporation (collectively, "the Direct Energy group") on February 28, 2020; Alpha Gas & Electric, LLC (Alpha) on March 27, 2020; Kiwi on May 4, 2020; IGS on May 7, 2020;¹⁰ American Power & Gas LLC (American Power) on May 14, 2020; Citizens Choice Energy, LLC d/b/a AmeriChoice Energy (Citizens Energy) on May 21, 2020; Residents Energy, LLC and IDT Energy, Inc. (collectively, the "Residents Energy group") on May 21, 2020; Green Mountain Energy Company, Reliant Energy Northeast LLC d/b/a NRG Home and d/b/a NRG Business Solutions, Energy Plus Holdings LLC, Energy Plus Natural Gas LLC, Independence Energy Group LLC d/b/a Cirro Energy, XOOM Energy New York, LLC, and Stream Energy New York, LLC (collectively, the "NRG Retail Companies") on May 22, 2020; Atlantic Energy, LLC (Atlantic Energy) on May 26, 2020; CenStar Energy Corp., Major Energy Services, LLC, and Spark Energy Gas, LLC (collectively, the "CenStar Group") on May 27, 2020; Marathon Energy LLC d/b/a Marathon Energy (Marathon) on May 28, 2020; South Bay Energy Corp. (South Bay) on May 29, 2020; Energy Service Providers, Inc. d/b/a New York Gas & Electric; U.S. Gas & Electric, Inc. d/b/a New York Gas & Electric; Everyday Energy, LLC d/b/a Energy

¹⁰ IGS sought authorization for a home warranty product and a "carbon-neutral" natural gas product in one petition.

Rewards; Public Power, LLC; Viridian Energy NY, LLC d/b/a Viridian Energy; Viridian Energy PA, LLC d/b/a Viridian Energy; and Ambit New York, LLC d/b/a Ambit (collectively, the "Energy Service Providers Group") on June 17, 2020; and Brown's Fuel Services, LLC (Brown's Fuel) on August 7, 2020.

The petitioners seeking authorization regarding these proposed natural gas product bundles were filed in one of two ways. One set of ESCOs described their proposed products in fully-public filings, while another set provided a redacted public filing and an unredacted confidential filing with Staff.¹¹ The petitioners that submitted fully-public filings include the Direct Energy group, the NRG Retail Companies, the CenStar Group, Marathon, the Energy Service Providers Group, and Brown's Fuel. The remaining petitioners provided public filings that redacted some portion of the full petition, usually the descriptions of the proposed "green gas" product(s).

Turning to the petitions' concerns with procedural issues, a number of ESCOs ask the Commission to forego any public notice and comment period and promptly issue a declaratory ruling authorizing the respective proposals for natural gas product bundles to be sold at premium prices. Other ESCOs, petitioning before the Commission's September 2020 Order, requested that the Commission issue a rehearing or clarification order in regard to the December 2019 Order in which the Commission addressed the respective ESCO petitions and approved the respective proposals. Finally, a number of ESCOs acknowledge that the Commission may address the petitions after

¹¹ This distinction is relevant to the Commission's ability to discuss the details of the various proposals before it.

compliance with the State Administrative Procedure Act's notice and comment procedures.¹²

Many of the petitions describe proposed natural gas product bundles that share similar or identical features. For example, Direct Energy proposed one product that pairs commodity natural gas with specified purchases of Regional Greenhouse Gas Initiative (RGGI) allowances and another product based around pairing gas commodity with the purchases of RECs, in a manner that has some resemblance to the pairing of electric commodity and RECs that the Commission approved of as an exception to the default price guarantee rule in the December 2019 Order. Many other petitioners offer proposals that are either similar or identical to Direct Energy's proposals. Still other petitioners propose to pair natural gas with other forms of "certified" carbon offsets. The proposed certification process is often confidentially disclosed, but the entity providing such certification often varies between petitions. According to a number of petitions, carbon offsets would be calculated against natural gas use in a manner that recognizes not only combustion emissions, but also lifecycle emissions that related to extraction, production, and/or delivery of natural gas. Otherwise, the proposals vary in regard to how much of a customer's natural gas usage would ostensibly be offset. Some proposals would bundle a carbon-offset product designed to offset 50% of the emissions related to a customer's natural gas usage, while others would be designed to offset 100% of such usage. Finally, some petitioners ask for much broader relief,

¹² The issuance of the September 2020 Order denying requests to authorize some form of "green gas" products as exempt from the default guaranteed savings rule on rehearing of the December 2019 Order and Staff's submission of the discussed petitions for public notice and comment render these alternative procedural proposals academic.

contending that the Commission should exclude the entire commodity category of natural gas from any price cap.

Finally, certain petitions claim that specified ESCOs have already been marketing carbon-offset bundled natural gas products to New Yorkers, while other petitions make clear that the petitioners are making proposals to market a product not yet offered. Still other petitioners do not clearly disclose whether their proposals are related to products that they currently offer or to products that they wish to prospectively offer upon authorization.

NOTICES OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), Notices of Proposed Rulemaking were respectively published in the State Register on March 11, 2020 (SAPA No. 15-M-0127SP10 [Family Energy Petition]), March 25, 2020 (SAPA No. 15-M-0127SP11 [Direct Energy group Petition]), April 29, 2020 (SAPA No. 15-M-0127SP12 [Alpha Petition]), May 27, 2020 (SAPA Nos. 15-M-0127SP14 [Kiwi Petition] and 15-M-0127SP15 [IGS petition]), June 10, 2020 (SAPA Nos. 15-M-0127SP16 [American Power Petition], 15-M-0127SP17 [Citizens Energy Petition], and 15-M-0127SP18 [Residents Energy Group Petition]), June 17, 2020 (SAPA Nos. 15-M-0127SP19 [NRG Retail Companies Petition], 15-M-0127SP20 [Atlantic Energy Petition], and 15-M-0127SP21 [Censtar Group Petition]), June 24, 2020 (SAPA Nos. 15-M-0127SP23 [South Bay Petition] and 15-M-0127SP24 [Marathon Petition]), July 15, 2020 (SAPA No. 15-M-0127SP25 [Energy Service Providers Group Petition]), July 21, 2020 (SAPA No. 15-M-0127SP26 [Kiwi Petition]), September 2, 2020 (SAPA No. 15-M-0127SP27 [Brown's Fuel Petition]), and October 7, 2020 (SAPA Nos. 15-M-0127SP28 [Mpower Energy Petition] and 15-M-0127SP29 [Constellation New Energy Petition]).

PUBLIC COMMENT

On May 29, 2020, the Direct Energy group filed comments supporting its petition, asking for prompt approval of its petition, and opposing Commission authorization of confidentially proposed "green gas" product bundles.

On June 26, 2020, The New York Department of State's Utility Intervention Unit and the Office of the New York State Attorney General (collectively, "UIU/NYAG") filed comments opposing proposals for authorization to sell "green gas" product bundles at premium prices. The UIU/NYAG criticizes the lack of transparency related to the high number of largely-redacted petitions, argues that the petitions do not fit within any Commission-approved waiver process, and recommends that the Commission wait to address products such as "green gas" until after Track II collaborative proceedings. The UIU/NYAG note that during the current pandemic conditions, it is particularly important to protect consumers so that value propositions for them are "fair and transparent."¹³ Contrasting "green gas" proposals with the renewable electricity product that the Commission has approved, the UIU/NYAG notes that "there are significant differences between the proposed [green gas proposals] and the renewable electric product authorized by the [December 2019] Order. For example, customers can purchase a REC in an electric product that has a one-to-one relationship with their estimated electric energy usage. There is, however, no equivalent measure for natural gas products."¹⁴ The UIU/NYAG also note that the petitions fail to compare prices to consumers of bundling carbon offsets or REC purchases with natural gas as

¹³ UIU/NYAG Comments, p. 3.

¹⁴ Id., p. 5.

compared with consumers merely purchasing unbundled carbon offsets or RECs.

In respective comments filed on July 2, 2020, July 6, 2020, and August 27, 2020, IGS, the Direct Energy group, and the NRG Retail Companies submitted comments generally advocating for authorization of "green gas" product proposals and arguing that such authorization was appropriate prior to Track II proceedings.

On May 28, 2020, Agway submitted comments on the petition by IGS. After arguing that green gas petitions should only be considered by the Commission after public notice and comment, Agway notes that it opposes authorization of the IGS home warranty product proposal. Agway contends that the proposal is "conclusory and superficial" as compared to its detailed evidence presented on EnergyGuard.¹⁵ In addition, Agway contends that IGS "can continue to offer this product without bundling it with the commodity."¹⁶ On July 29, 2020, Agway submitted comments opposing Kiwi's petition for authorization to market a proposed home warranty bundle product. Agway argues that Kiwi has failed to submit the same type and quality of evidence that it submitted as to its EnergyGuard product. Agway also notes that the home warranty portion of Kiwi's proposed product need not be bundled with sales of commodity energy. On September 30, 2020, Agway submitted two comments, respectively opposing petitions for approval of home warranty products by Mpower and Constellation. As in previous comments regarding other home warranty proposals, Agway argues that neither Mpower or Constellation have provided the type or quality of evidence to justify their respective product proposals.

¹⁵ Agway May 28, 2020 Comments, p. 8.

¹⁶ Id., p. 9.

LEGAL AUTHORITY

Pursuant to the Public Service Law (PSL), the Commission has "authority to condition ESCOs' eligibility to access utility [distribution systems] on such terms and conditions that the [Commission] determines to be just and reasonable."¹⁷

DISCUSSION AND CONCLUSIONS

Home Warranty Product Proposals

The Commission hereby grants those petitions and portions of petitions seeking authorization to market home warranty products at market prices reasonably related to the value added through such bundling. To begin, we disagree with Agway's assertion that petitioners should be held to an across-the-board standard requiring proof at an evidentiary hearing regarding the product proposals. Petitioners propose products that they wish to prospectively market, and we do not agree that the appropriate standard is to hold an evidentiary hearing in which petitioners have to provide information regarding products currently sold. In the context of the current petitions, ongoing Staff and Commission oversight will ensure that petitioners market and enroll customers according to the terms that the petitioners have respectively proposed in the petitions and consistent with the UBP and Commission orders.

Authorization is appropriate here because each of the respective petitions satisfy the criteria for a home warranty product bundle not subject to the default price guarantee rule.

¹⁷ Matter of National Energy Marketers Assn. v. New York State Pub. Serv. Commn., 33 N.Y.3d 336, 350 (2019), reargument denied, 33 N.Y.3d 1130 (2019); see PSL §§5(1)(b), 65(1), 66(5), 66-d(2); see generally GBL §349-d(11).

The proposals bundle commodity service with maintenance agreements closely related to ensuring that customers are able to use electricity and/or natural gas in a manner that provides essential services to the customers. The functions the home warranty products support include lighting and powering homes and buildings, heating and cooling air, heating water, and ensuring reliable water service. All of these functions are closely related to the reasons commodity energy supply is an essential service to New Yorkers. Moreover, the products are designed to insure against consumers suddenly facing a high-cost repair bills, for which the inability to pay may threaten access to these essential functions.¹⁸ Moreover, we find that each petition reasonably describes the relationship between the benefits provided by the proposed products and cost.

As a condition of such authorization, each petitioner shall, within 30 days of the issuance of this Order, file with Department of Public Service Staff, in DMM Matter No. 14-02554, standard sales agreements for each of the products authorized by this determination.

Finally, given the Commission's rules and guidance set forth in this and previous orders, the Commission finds it unnecessary to continue requiring ESCOs to petition the Commission for a waiver to market qualifying home warranty product bundles that provide an exception to the default guaranteed savings rule. Instead, ESCOs wishing to offer such

¹⁸ As an example that would contrast these relevant features, we have not been persuaded that ESCOs that have historically bundled commodity with low-cost, widely available consumer retail goods that generally require little or no professional maintenance, such as lightbulbs, have shown that they provided an energy-related value-added service that would justify charging premiums to consumers.

products shall file the proposed standard sales agreement(s), and any other supporting information, for review and approval by Staff, who will review the proposed home warranty product(s) and ensure compliance with the Uniform Business Practices (UBP) and Commission orders. ESCOs may not market or sell such products without first obtaining Staff approval.¹⁹

Bundled Natural Gas Product Proposals

With a limited exception described below, the Commission denies the requested relief regarding Commission authorization to sell natural gas bundled with environmental attributes not subject to a price cap. We find that, at present, we lack requisite assurances that the natural gas bundle proposals will provide value-added energy related services that are consistent with New York's clean and renewable energy goals so as to justify providing a permanent exception to the default price guarantee rule. This conclusion is consistent with our previous descriptions of the need for further consideration of "green gas" product proposals in Track II proceedings.

Track II proceedings will provide the needed opportunity for engagement between interested parties and Staff to permit a better understanding of proposals related to "green gas" products. The Commission anticipates that collaboration will allow interested ESCO industry representatives to address concerns related to both the provision of value to customers (including the match between marketing and the value a customer actually receives) and the manner in which "green gas" proposals

¹⁹ Given the large number of "green gas" petitioners who have cited the Commission's invitation to ESCOs to submit petitions related to home warranty product bundles as an express justification for other product proposals, we emphasize that this process is limited to the exception for home warranty product bundles.

relate to New York's aggressive clean energy goals. As to the latter issue, interested ESCOs may wish to address the possibility that an unintended consequence of ESCOs offering "green gas" products is that customers will be incented to either consume more natural gas or, relatedly, reduce their use of natural gas over time less than they would have otherwise had the commodity not been included in a "green gas" bundle. These concerns should not be understood as exhaustive, or as Commission conclusions on relevant issues; the concerns are intended to be helpful illustrations of issues interested ESCOs should address, and that other parties may wish to address, in the Track II proceedings.

While granting the requested relief regarding "green gas" products would be unwarranted at this time, we offer limited procedural relief designed to minimize customer disruption during the pendency of Track II. We find it appropriate to issue a waiver limited by time and scope while interested parties engage in discussions regarding "green gas" product proposals. To that end, the Commission authorizes a one-year, limited waiver that permits ESCOs currently selling natural gas bundled with either a carbon offset component or a REC purchase component (a "waiver-qualified bundle") to continue to market such eligible bundles to customers already purchasing them. The purpose of this time-limited waiver is to allow customers currently purchasing waiver-qualified bundles to continue, where desirable, to renew the products that they are currently receiving during the next year, without the relevant ESCO having to offer the waiver-qualified bundle in accordance with the default guaranteed savings rule.

Authorization to market a waiver-qualified bundle is limited to those ESCOs that began marketing the respective waiver-qualified bundle before the Commission finalized its

recent rules regarding permissible ESCO products and services. Thus, in order for a product to be eligible for the one-year limited waiver, the ESCO must have been marketing the waiver-qualified bundle prior to our issuance of the September 2020 Order.

ESCOs that wish to avail themselves of the limited waiver must take two steps. First, an ESCO must provide proof to Staff of sufficient history of marketing a waiver-qualified bundle. To meet this standard, an ESCO must, within 30 days of the issuance of this order, file with Department of Public Service Staff, in DMM Matter No. 14-02554, proof of at least one valid mass market sales agreement reflecting the waiver-qualified bundle that the ESCO wishes to continue to market during the waiver period. Such an agreement or agreements must reflect that they were entered into before the issuance of the September 2020 Order (September 18, 2020). Second, the ESCO must, within 30 days of the issuance of this Order, file with Department of Public Service Staff, in DMM Matter No. 14-02554, a standard sales agreement for any product that the ESCO believes meets the aforementioned standards for an eligible bundle and for which the ESCO intends to market during the waiver period to pre-existing customers.

Finally, we note that the Track II collaboration should commence after the implementation of the new product rules set forth in the December 2019 Order and reaffirmed in the September 2020 Order.²⁰ To this end, the Secretary shall, within 60 days of the implementation of such rules, issue a notice establishing the date and time of an initial collaborative opportunity for interested parties.

²⁰ Commencement of Track II during the pre-implementation stage of the product rules established in the December 2019 Order would be premature and unwarranted.

CONCLUSION

For the foregoing reasons, the Commission grants those portions of the petitions before us seeking authorization to market home warranty products that do not comply with the default price guarantee rule. The Commission denies the portions of the petitions seeking authorization to market "green gas" products without complying with the default price guarantee rule, except to the extent that we offer a limited waiver as described in the body of this Order.

The Commission orders:

1. The portions of the petitions by Interstate Gas Supply, Inc., Accent Energy Midwest Gas, LLC dba IGS Energy, and Accent Energy Midwest II, LLC dba IGS Energy, Mpower Energy LLC, Kiwi Energy NY LLC, and Constellation NewEnergy - Gas Division, LLC and Constellation NewEnergy, Inc. seeking authorization to market specified home warranty product bundles are granted consistent with the body of this Order and contingent upon compliance with Ordering Clause No. 2.

2. Interstate Gas Supply, Inc., Accent Energy Midwest Gas, LLC dba IGS Energy, and Accent Energy Midwest II, LLC dba IGS Energy, Mpower Energy LLC, Constellation NewEnergy - Gas Division, LLC, Kiwi Energy NY LLC, and Constellation NewEnergy, Inc. shall, within 30 days of the issuance of this Order, file with Department of Public Service Staff, in DMM Matter No. 14-02554, the standard sales agreements for each authorized home warranty product bundle.

3. The portions of the petitions of Family Energy, Inc., Direct Energy Services LLC and Gateway Energy Services Corporation, Alpha Gas & Electric, LLC, Kiwi Energy NY LLC, American Power & Gas LLC, Citizens Choice Energy, LLC d/b/a

AmeriChoice Energy, Residents Energy, LLC and IDT Energy, Inc., Green Mountain Energy Company, Reliant Energy Northeast LLC d/b/a NRG Home and d/b/a NRG Business Solutions, Energy Plus Holdings LLC, Energy Plus Natural Gas LLC, Independence Energy Group LLC d/b/a Cirro Energy, XOOM Energy New York, LLC, and Stream Energy New York, LLC, Atlantic Energy, LLC, CenStar Energy Corp., Major Energy Services, LLC, and Spark Energy Gas, LLC, Marathon Energy LLC d/b/a Marathon Energy, South Bay Energy Corp., Energy Service Providers, Inc. d/b/a New York Gas & Electric; U.S. Gas & Electric, Inc. d/b/a New York Gas & Electric, Everyday Energy, LLC d/b/a Energy Rewards, Public Power, LLC, Viridian Energy NY, LLC d/b/a Viridian Energy, Viridian Energy PA, LLC d/b/a Viridian Energy, and Ambit New York, LLC d/b/a Ambit, and Brown's Fuel Services, LLC seeking authorization to market natural gas commodity service bundled with carbon offsets or Renewable Energy Certificates are denied as set forth in terms of the body of this Order and except as provided for in Ordering Clauses 4 and 5.

4. The Commission authorizes a limited waiver, in effect for one year from the date of issuance of this Order, of price cap rules for the marketing of natural gas bundled with either carbon offsets or Renewable Energy Certificates according to the terms set forth in the body of this Order.

5. ESCOs seeking to avail themselves of the limited waiver set forth in Ordering Clause 4 shall, within 30 days of the issuance of this order, submit to Department of Public Service Staff, in DMM Matter No. 14-02554, proof of eligibility for the waiver in the form of (1) at least one valid mass market sales agreement, entered into prior to September 18, 2020, for the waiver-eligible natural gas product that the ESCO wishes to continue to market during the waiver period and (2) a standard sales agreement for any waiver-eligible gas product that the

ESCO wishes to continue to market during the waiver period, as described in the body of this Order.

6. The Secretary shall, within 60 days after the implementation of Ordering Clause 3 of the September 18, 2020 Order of Rehearing, Reconsideration and Providing Clarification in the instant case dockets, issue a notice establishing a date and time for the initiation of Track II proceedings.

7. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

8. These proceedings are continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary