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Commission Moves Ahead with ESCO Investigation

— PSC Flatly Rejects ESCO Effort to Further Delay In-Depth Industry Examination —

ALBANY — The New York State Public Service Commission (Commission) today rejected a request by an energy service company (ESCO) trade group seeking to halt the upcoming evidentiary hearing phase of the Commission’s ongoing ESCO investigation. The Commission also rejected the group’s effort to curtail the scope of the Commission’s investigation by excluding issues relating to commercial and industrial ESCO customers and ESCO profitability.

“The record is clear that certain ESCO customers have paid much more for their energy than necessary, and instead exposes them to the risks of overcharging,” **said Commission Chair John B. Rhodes**. “We have cracked down on bad-acting ESCOs, and we have banned ESCOs from serving low-income consumers. This action signals the end of an ESCO market that provides no value to customers, and instead exposes them to the risks of overcharging. The next step we will take is to explore whether and how ESCOs can truly provide energy services and value to New Yorkers in support of Governor Cuomo’s Reforming the Energy Vision.”

In its decision today, the Commission rejected the April 12, 2017 request by the Retail Energy Supply Association (RESA), and an earlier request by Direct Energy Services, an ESCO, to put a stop to the pending evidentiary hearing phase of these proceedings, currently slated to begin in October.

As the ESCO proceeding moves into the next phase of its investigation, the Commission said it will be facing significant decisions and it is important that it have the benefit of a robust record established pursuant to a process where every participant has the opportunity to be heard. Given those realities, the Commission said parties should put aside their objections and embrace the evidentiary hearing process that has been established without further delay and distractions.

The Commission often uses trial-type evidentiary hearings in rulemakings when there is significant disagreement among the stakeholders as to facts because the evidentiary process is often the most efficient and precise method to get to the truth. Given the fact that there has been a substantial change in the Commission’s membership in the past few months, the Commission felt that the time was right to make it clear that the Commission authorizes and supports such hearings.

The Commission had two major legal victories in its efforts to rein-in higher ESCO prices. On June 30, 2017, a state Supreme Court judge in Albany County ruled that New York State’s efforts could

protect low-income households, from paying ESCO charges that were higher than utility rates, as a misuse of subsidies intended to keep gas and electricity more affordable for such households. And on July 27, 2017, the Appellate Division upheld Albany County Supreme Court's conclusion that the Commission had authority to cap prices of ESCOs at utility rates. In that ruling, the court found that broad Commission authority to control ESCO access to utility systems allowed the Commission to place conditions on ESCO prices, even though the Commission did not have ratemaking jurisdiction over ESCOs.

In addition to its decision regarding evidentiary hearings, the Commission ruled that no ESCO would be required to provide or disclose the information requested as it pertains to the release of personally identifiable information of its customers. The Commission said that the release of such information would be contrary to long-standing Commission policy and a violation of the consumer-protection rules applicable to ESCOs.

Today's decisions may be obtained by going to the Commission Documents section of the Commission's Web site at www.dps.ny.gov and entering Case Number 15-M-0127 in the input box labeled "Search for Case/Matter Number". Many libraries offer free Internet access. Commission documents may also be obtained from the Commission's Files Office, 14th floor, Three Empire State Plaza, Albany, NY 12223 (518-474-2500). If you have difficulty understanding English, please call us at 1-800-342-3377 for free language assistance services regarding this press release.