SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

NATIONAL ENERGY MARKETERS ASSOCIATION; BLUEROCK ENERGY, INC.; RESIDENTS ENERGY, LLC; and VERDE ENERGY USA NEW YORK, LLC, Petitioners/Plaintiffs, - against - NEW YORK STATE PUBLIC SERVICE COMMISSION, Respondent/Defendant.	**AFFIDAVIT OF BRUCE ALCH IN SUPPORT OF RESPONDENTS' ANSWERS AND MEMORANDUM OF LAW** INDEX NO.: 05680-16

BRUCE ALCH, being duly sworn, deposes and states:

1. I am Chief of the Retail Access and Economic Development Section in the Office of Consumer Services at the New York State Department of Public Service (DPS). I have been continuously employed by the DPS since December 1985.

2. I have a Bachelor of Science in Mechanical Engineering and a Masters of Business Administration, with a concentration in economics and finance, from Lehigh University. I am a licensed Professional Engineer in the State of New York.

3. During my 30 years of service with the Department I have worked on and lead numerous rate cases and investigations into the operating practices of the electric, gas and water utilities including the purchasing of commodity, engineering services, contracting for

construction, operating and maintenance budgets, commodity price and sales forecasting, and the development of associated revenue requirements. My work has also included analysis and development of rate design and cost allocations, utility tariff revisions and various other aspects involved in the delivery and consumption of utility services by the public at large and in compliance with all state codes and regulations including the Public Service Law. My current responsibilities at the DPS include overseeing a multi-disciplinary staff responsible for, among other things, regulatory supervision of retail energy markets. Such supervision includes facilitating retail collaborative efforts, determining eligibility of competitive energy supply companies (ESCOs) doing business in New York, modifying and enforcing the Commission's Uniform Business Practices (UBP), responding to customer contacts, mediating disputes, addressing allegations of slamming and unfair marketing practices, analyzing ESCO pricing, and working with ESCOs to develop quality assurance plans, among others.

4. I submit this affidavit in support of Respondents' Answers and Memorandum of Law in the above referenced cases.

5. It is my opinion that Petitioners, representatives of ESCOs doing business in New York, will not be irreparably harmed by the

Commission's *Order Regarding the Provision of Service to Low-Income Customers by Energy Service Companies*, issued July 15, 2016 and as further clarified in its September 15, 2016 *Order on Rehearing and Providing Clarification* in Cases 12-M-0476, et al. (Orders). Conversely, as stated in the September Order and as explained herein, I believe low-income customers have been, and will continue to be, materially harmed via their participation in ESCO agreements if the moratorium is not reinstated. I here refer to the chart in Attachment A, which depicts the significant seasonal impact of the pricing difference between ESCO and utility bills for comparable electric and natural gas commodity consumption. This chart provides the basis and immediacy for my request to reinstate the moratorium for low income customers as quickly as possible. In viewing this data I would note that the November 2014 to May 2015 heating season was a more typical winter than the more recent November 2015 through May 2016 winter which was significantly warmer than normal. Yet, as depicted in the chart, customers served by ESCOs were subjected to significant financial impacts during both periods. This chart depicts what customers who were served by ESCOs paid for energy commodity and delivery, over what the same customers would have paid if they had obtained both energy commodity delivery from their distribution utility.

6. Based on data gathered during utility rate requests, and the result of subsequent utility reporting, staff estimates that there are approximately 7 million residential electric customers and approximately 4.5 million residential gas customers in New York State. Approximately 13% of residential electric customers receive ESCO commodity service, while 16% of residential gas customers receive ESCO commodity service. Further, approximately 9% of the residential electric and 10.6% of the residential gas customers are participants in their incumbent utility low-income programs (low-income customers). Of those low-income customers, approximately 19% of electric customers and 15% of gas customers take ESCO service.

7. As background, over two years ago, the Commission clearly expressed its concern regarding the use of ratepayer and taxpayer funds intended to assist low-income customers that are instead paid to ESCOs for higher priced commodity without a corresponding value to the customer. The Commission thus directed ESCOs, as a condition of serving low-income customers, to either guarantee that the customer will pay less than they would pay the utility, or to offer energy-related value-

added services (ERVAS) designed to reduce the customer's overall energy bills. Since 2014, efforts to implement this directive have proven fruitless. While participating in the effort to reach a collaborative solution, several ESCOs acknowledged to Staff that they have neither the ability nor the desire to guarantee prices equal to or less than utility commodity prices. This point was subsequently presented in the Collaborative Report and not contemporaneously challenged by the ESCOs.

8. As a consequence, and among other things, the Orders imposed the moratorium on the enrollment for provision of retail energy commodity to low-income customers and otherwise directed that all low-income customers that are currently receiving commodity services from an ESCO be returned to their incumbent utility at the expiration of their existing agreements. The Commission took these actions based on data obtained from utilities in 2012 and 2016 suggesting that the vast majority of low-income customers have paid more for energy supply through ESCO providers then if they remained with their incumbent utility service provider.

9. Staff's review of the marketing tactics and transcripts of ESCO calls with customers reveals that many residential ESCO

customers, including low-income customers, are victims of high-pressure sales tactics, deceptive marketing, or both. In such instances, the ESCO marketer offers verbal assurances that the customer will save money on his/her electric or gas bill. Initially, this may actually occur but after the first or second month, during which the ESCO has offered teaser rates, the ESCO substantially increases the price without notice to the customer. Thus, I believe that many ESCOs rely upon customer's lack of knowledge or understanding when marketing and enrolling customers.

10. As explained herein a disproportionate amount of ESCO overcharges involve products sold to low-income customers. It defies reason to believe a low-income customer-or any customer-would knowingly and willingly pay more for commodity. As previously stated, staff's review of customer complaints show that customers are deceived, often by high pressure sales people, into believing that they will save money. It is also difficult for a customer to determine whether or not he or she has saved money. In other markets the customer, when making a purchase, knows what he or she will pay. With the vast majority of customers being served by variable rate products, this is not the case with the energy market. If, for example, I go to the market to purchase cereal, I can look at the clearly labeled price on each box of cereal and determine

whether or not I want to pay more for the higher priced name brand cereal. In the energy market, the energy being delivered by the ESCO is exactly the same as the energy being delivered by the utility. The primary difference is the price and as I explain herein ESCO commodity generally costs significantly more.

11. Based on data recently provided by the major electric and gas utilities, in response to a staff interrogatory in this case, staff was able to again confirm that customers served by ESCOs are charged significantly more for commodity service. More specifically, the data indicates that for the 30 months ended June 30, 2016, New York State residential (and in some instances small commercial) utility customers who chose to take service from an ESCO paid nearly $820 million more than if they instead elected to take commodity supply from their incumbent utility. Similarly, the utilities report that low-income customers who chose to take service from an ESCO paid almost $96 million more than residential customers that elected to take commodity supply from their utility for the same period. See Attachment B for individual utility details. Also included in Attachments C and D are charts depicting the percent's by which the aggregated ESCO billing data has exceeded the otherwise incumbent

utility data for the first six months of 2016 for electric and gas commodity respectively.

12. More specifically, as of June 2016 Consolidated Edison Company of New York, Inc. (Con Edison) reports that 103 ESCOs provide electric commodity to approximately 490,000 customers and 93 ESCOs provide natural gas commodity to approximately 165,000 residential customers in its service territory. A recent bill analysis comparing the total bills of these customers to what they would have paid had they taken commodity supply from Con Edison shows that the customers collectively paid $269 million more during the period January 2014 – June 2016 simply because they took commodity service from an ESCO. Similarly, for just the first two quarters of 2016, ESCO customers were billed nearly $44 million (16.8%) more than what Con Edison would have billed these customers if they had remained full service utility customers. A similar calculation for low-income customers indicated that for the period January 2014 through June 2016 ESCOs customers were billed $41 million more than they would have been billed if they had taken service from Con Ed, and for the first two quarters of 2016 ESCOs customers were billed over $7 million (18%), more than if they had remained full service utility customers.

13. National Grid also provided a recent bill analysis of ESCO customers in its Niagara Mohawk Service Territory which compared the total bills of approximately 235,000 electric and approximately 88,000 gas residential ESCO customers compared to what they would have paid if they had taken commodity supply from National Grid. The analysis shows that for the period from January 2014 – June 2016, ESCO residential customers were billed over $175 million more because they took service from an ESCO. For the first two quarters of 2016, ESCO customers were billed over $45.5 million, or approximately 25%, more than if they had taken commodity service from the utility. During the period January 2014 – June 2016 low-income customers were billed $18.5 million and for the first two quarters of 2016 $5.4 million, or approximately 30.7% more, because they took service from an ESCO.

14. In National Grid's Keyspan NY's service territory, during the period from January 2014 – June 2016, residential natural gas customers were billed nearly $114 million more because they took commodity service from an ESCO than what they would have been billed for the same period if they had purchased commodity from Keyspan NY. For the first two quarters of 2016, the approximately 179,000 ESCO customers were billed $19.3 million, or 20.4%, more. The approximately

14,000 low-income customers using ESCO services in Keyspan NY's service territory were billed nearly $7.5 million more for the thirty months ending June 30, 2016 and nearly $1.4 million, or 23.5%, more for the first two quarters of 2016, than they would have been billed if they had purchased commodity from Keyspan NY.

15. In National Grid's KEDLI service territory, during the period from January 2014 – June 2016, ESCO residential natural gas customers were billed over $28.1 million more than if they had purchased commodity from KEDLI, and over $9 million or 27.2% more for the first two quarters of 2016. KEDLI's low-income customers served by ESCO's were billed 35% more than they would have been under KEDLI's tariff for the first six months of 2016.

16. For the New York State Electric & Gas's (NYSEG) service area during the period from September 2014 – June 2016, ESCO residential and small commercial customers were billed over $86. million more compared to what they would have been billed for the same period if they had purchased commodity from NYSEG, and over $21 million more for the first two quarters of 2016. For low-income customers, the total amount billed to customers who took service from an ESCO was greater than what NYSEG would have billed by more than $14 million for

the period September 2014 through June 2016 and $2 million or 17.5% more for the six months ended June 2016.

17. For Rochester Gas and Electric Corporation (RG&E) during the period from September 2014 – June 2016, ESCO residential and small commercial customers were billed $45.5 million more because they purchased commodity from an ESCO compared to what they would have been billed for the same period if they had purchased supply from RGE, and nearly $11 million more for the first two quarters of 2016. For low-income customers, the total amount billed was greater than what RG&E would have billed by over $5 million for the period September 2014 through June 2016 and $1.2 (13%) for the first six months of 2016.

18. For Central Hudson Gas and Electric Corporation (Central Hudson) during the period from January 2014 – June 2016, ESCO residential and small commercial customers were billed over $23 million more because they purchased ESCO commodity than they compared to they would been billed for the same period if they had purchased commodity from Central Hudson, and over $5 million more for the first two quarters of 2016. During the January 2014 – June 2016 time period low-income customers ESCO customers were billed more than $1 million

more than if they had purchased commodity from the utility, and for the first half of 2016 over $260,000 or 17%.

19. For Orange and Rockland Utilities, Inc. (O&R) during the period from January 2014 – June 2016, ESCO residential customers were billed over $48 million more compared to what O&R would have billed for the same period, and nearly $15 million more for the first two quarters of 2016. Low-income customers were billed over $2.1 million and over $700,000 or 8.5%, respectively than if commodity was purchased from O&R.

20. For National Fuel Gas Distribution Corporation (NFG) during the period from January 2015 – April 2016, ESCO residential customers were billed over $29 million as a result of purchasing commodity from an ESCO than what they would have been billed if they purchased commodity from NFG, and over $12 million more for the first six months of 2016. For the period January 2015 – June 2016 low-income ESCO customers were billed almost $5 million more than if they had purchased commodity from NFG and for the first 6 months of 2016, nearly $2 million, or 28.9% more.

21. In summary, staff's review of the data provided by the utilities, summarized in Attachment B, confirms the concern that the vast

majority of residential customers, including low income customers, that participate in ESCO programs, pay significantly higher rates for commodity than if they had remained with their otherwise incumbent utility provider.

22. The value of financial assistance programs is diminished when a low-income customer takes more expensive ESCO service, thus making it more difficult for those consumers to pay their utility bills in full. Based on the Staff investigation that began in 2012 in this proceeding, this likely results in increased arrears and utility shut-offs that are detrimental to both customers and utilities, and interferes with the Commission's interest in minimizing the unnecessary termination of electricity and natural gas service to residential customers.

23. The Orders directed the ESCOs to discontinue their marketing efforts to secure new utility low-income customers and otherwise allowed for the orderly transition of low-income customers back to their incumbent utility as their existing ESCO agreements expire, a process which will vary by agreement type.

24. Pursuant to the Orders, low-income customers would have a block placed on their account that would prevent them from being switched to an ESCO. Additionally, any customer can elect to have a

block placed on their account at any time, and, based on Staff review of ESCO marketing practices and customer complaints, customers often do so after a negative experience with an ESCO and/or to avoid unknowingly being switched to an ESCO.

25. In general, Petitioners offer three types of agreements to their customers. The first is a fixed-rate contract, guaranteeing a fixed volumetric rate for a specified period of time. The second is a variable-rate contract that guarantees savings when compared to the utility's rate. The third is a variable-rate contract that does not guarantee any savings.

26. Under the moratorium fixed-rate contracts with terms longer than one month will not be affected until they expire in accordance with their own terms. Thus, the Orders do not prematurely terminate any existing fixed-rate contracts.

27. Similarly, not all variable-rate contracts will require immediate termination. While most variable-rate contracts are month-to-month, some variable-rate contracts have terms of multiple months. These contracts will not be interrupted during their terms and are instead only being precluded from renewal.

28. Furthermore, because in the otherwise ordinary course of business ESCOs have no guarantee that month-to-month customers will

renew agreements for any given month, any ESCO assertion that the Order will be the sole cause of customer loss is speculative. As such, it is my opinion that Petitioners are not facing substantial immediate or irreparable harm.

29. Conversely, I believe that if this Court were to issue a preliminary injunction, immediate and irreparable harm could accrue to the vast majority of ESCO low-income customers.

30. Upon issuance of the September Order, the utilities, pursuant to Commission Orders, sent letters to all of its customers who were served by ESCOs, informing the customers that they would be returned to their distribution utility. Upon receipt of those letters, some customers contacted the Department, either to the OCS call center or to the External Affairs office, to express dissatisfaction with the Commission's decision stating that they did not agree with the Orders and further that they believed that they were saving money with their ESCO. For each of the customers who complained to the Department, Staff requested that the distribution utilities prepare a bill analysis to show what the customer was billed for ESCO commodity and delivery, to what the customer would have paid for commodity and delivery if both were provided by the utility.

31. Eleven customers that believed they were saving money with their ESCO were in fact billed 5.6 % more on average for electric and 28.2% more for gas service than they would have if they had taken commodity and delivery service from their incumbent utility. This small sample highlights that a significant portion of customers are under the mistaken belief that their ESCO is providing them with savings when in fact they aren't. I believe it is those customers, and low-income customers in particular, that most deserve our protections while we otherwise determine how and why certain ESCOs are in fact able to provide tangible financial benefits, while the majority do not.

32. Finally, I believe that the regulatory actions taken via the related July and September 2016 Orders should not have been a surprise to either Petitioners or the larger ESCO community. Over the past ten years, the Commission has taken numerous actions to curtail ESCO abuses of our UBP, which each ESCO agreed to abide by when establishing their businesses in New York. These actions include, but have not been limited to, revoking eligibility of individual ESCOs, requiring public posting of program prices, strengthening consumer protections, imposing marketing restrictions, and directing refunds to consumers where appropriate.

33. The Commission has similarly endeavored to ensure that customers participating in low-income programs are minimizing their utility bills and overall energy burden while they struggle to balance their economic priorities.

34. For the foregoing reasons, it is my opinion that the temporary restraining order should not be continued and that the moratorium on signing up new low-income customers and retaining of existing low-income customers be reinstated as soon as possible. Again, the chart in Attachment A demonstrates the urgency in reinstating the moratorium prior to the 2016 heating season. Alternatively the ESCOs might consider posting performance bonds against their financial windfalls if they wish to continue pursuing and serving low-income program participants with a guaranteed savings product. In the event that ESCO's are individually or collectively able to subsequently develop products that can provide low-income customers with consistent financial benefits, along with any other benefits that may accrue, such that low-income customers' bills can be lower than the incumbent utility's comparable service bills, then I would recommend that the ESCOs be prepared to make that case for lifting the moratorium in comments on the Commission's emergency SAPA notice, due November 21st and ask the Commission to reconsider the

circumstances and conditions under which ESCOs could be allowed to reenter this customer segment.

BRUCE ALCH
Chief, Retail Access and Economic Development
Office of Consumer Services
New York State Department of Public Service
3 Empire State Plaza
Albany, New York 12223-1350

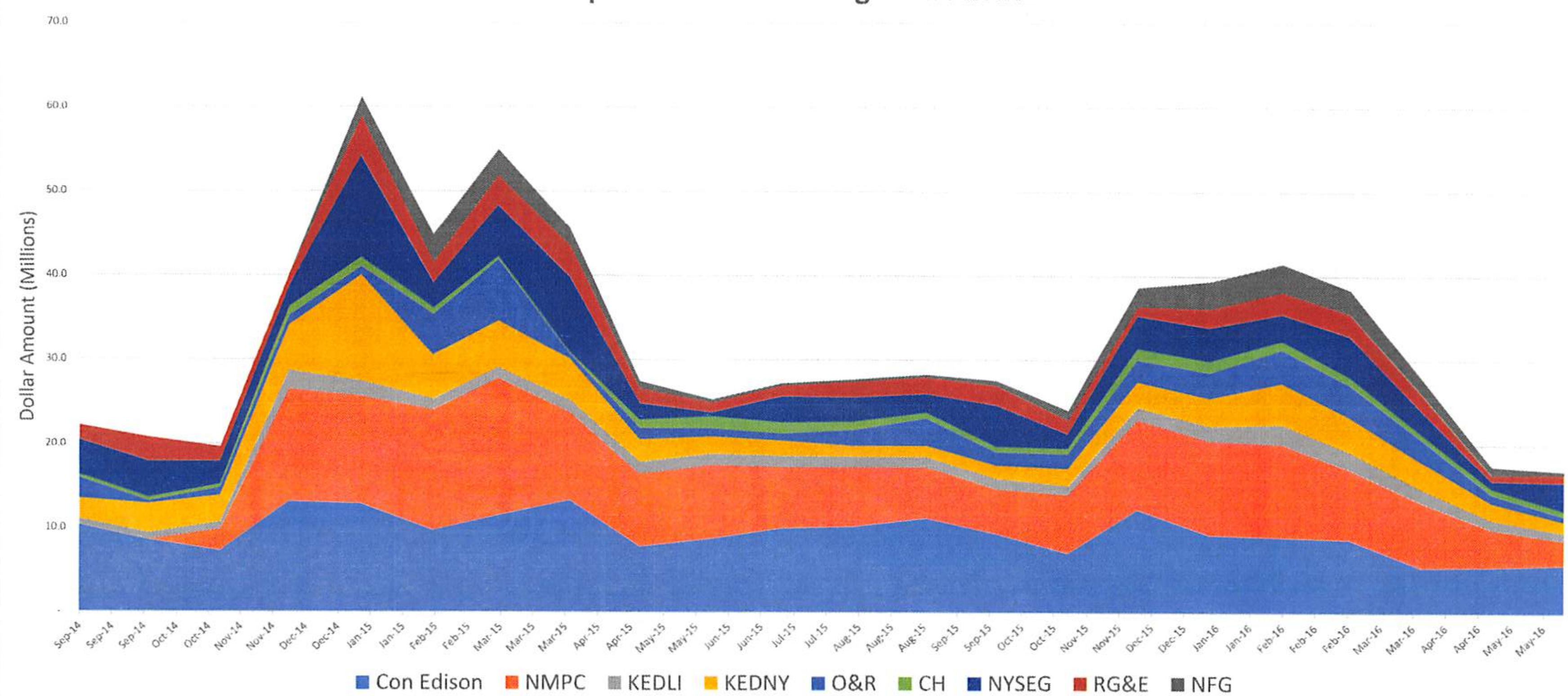
Sworn to before me this
26th day of October, 2016

NOTARY PUBLIC

JOHN C. GRAHAM
Notary Public, State of New York
No. 02GR6080602
Qualified in Rensselaer County
Commission Expires Sept. 16, 2018

ATTACHMENT A

Combined charges by ESCOs above what would have been charged by the Electric and Gas Utilities September 2014 through June 2016



ATTACHMENT B

Aggregate ESCO Bill Variance Compared to Utility

All Residential

Utility	2014	2015	Jan - Jun 2016	Total
Con Edison	$ 100,961,371	$ 124,459,021	$ 43,749,006	**$ 269,169,398**
KEDNY	$ 50,011,218	$ 44,676,328	$ 19,313,903	**$ 114,001,448**
KEDLI	$ 2,221,329	$ 16,085,661	$ 9,831,907	**$ 28,138,897**
NMPC	$ 15,888,813	$ 114,313,799	$ 45,529,836	**$ 175,732,447**
O&R	$ 5,593,773	$ 27,697,566	$ 14,996,523	**$ 48,287,861**
CH	$ 7,136,086	$ 10,563,235	$ 5,363,423	**$ 23,062,745**
NFG*		$ 16,824,282	$ 12,421,057	**$ 29,245,339**
NYSEG**	$ 14,077,760	$ 51,206,880	$ 20,966,072	**$ 86,250,711**
RG&E**	$ 7,616,789	$ 26,981,221	$ 10,976,572	**$ 45,574,583**
Total	**$ 203,507,137**	**$ 432,807,993**	**$ 183,148,299**	**$ 819,463,429**

Low Income

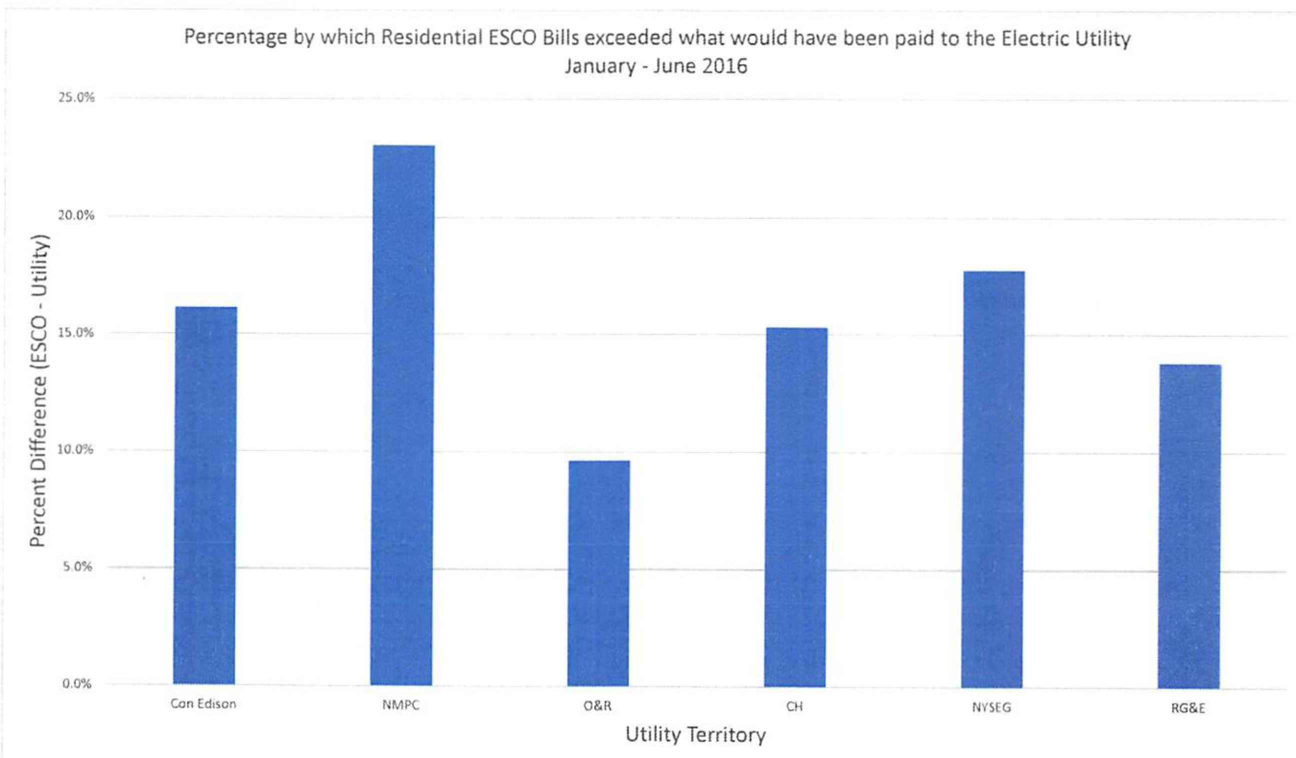
Utility	2014	2015	Jan - Jun 2016	Total
Con Edison	$ 13,227,141	$ 20,643,087	$ 7,209,056	**$ 41,079,285**
KEDNY	$ 3,396,353	$ 2,675,958	$ 1,393,724	**$ 7,466,035**
KEDLI	$ 182,145	$ 524,747	$ 341,222	**$ 1,048,114**
NMPC	$ 1,583,973	$ 11,578,938	$ 5,389,988	**$ 18,552,899**
O&R	$ (133,693)	$ 1,552,855	$ 704,160	**$ 2,123,321**
CH	$ 353,480	$ 451,482	$ 260,275	**$ 1,065,237**
NFG*		$ 2,711,664	$ 2,174,968	**$ 4,886,632**
NYSEG**	$ 1,560,004	$ 10,766,397	$ 2,072,873	**$ 14,399,273**
RG&E**	$ 980,914	$ 2,991,633	$ 1,242,551	**$ 5,215,098**
Total	**$ 21,150,315**	**$ 53,896,761**	**$ 20,788,817**	**$ 95,835,893**

* Unable to furnish data for 2014.

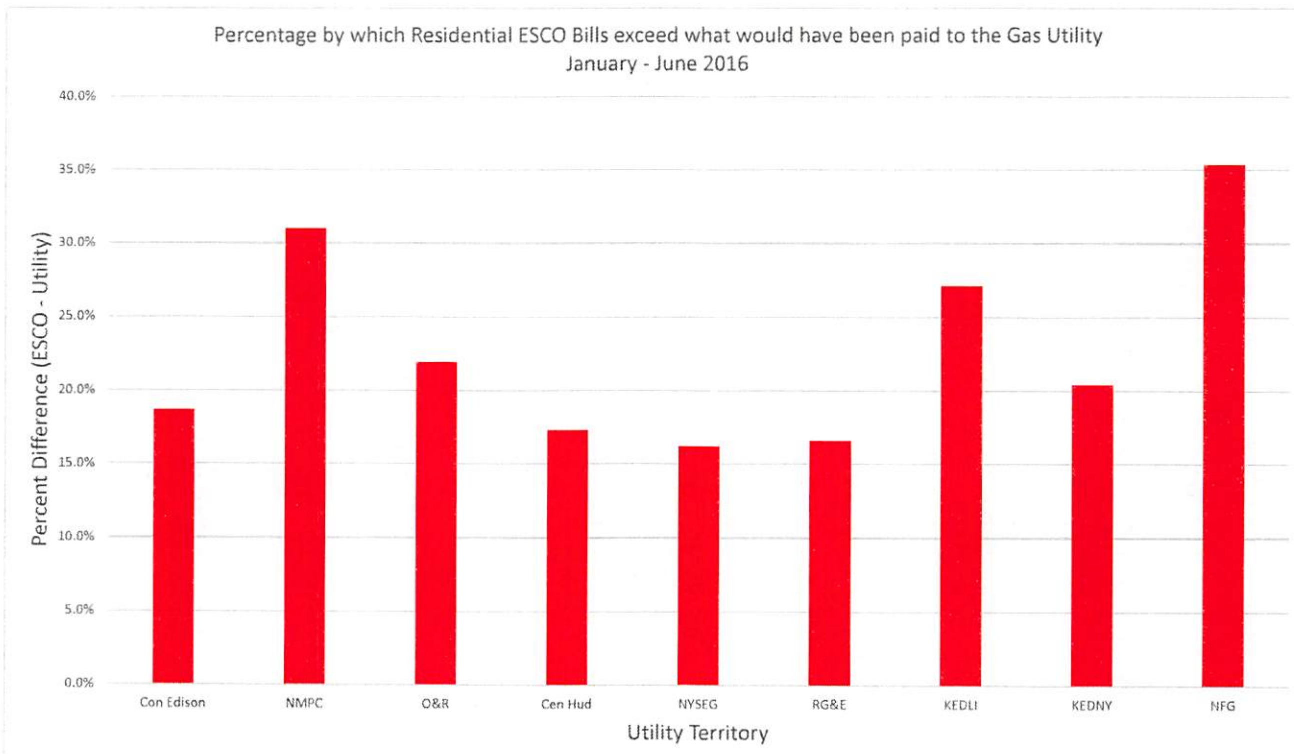
** Unable to furnish data for January - August 2014.

CH, NSYEG, and RG&E include some small commercial

ATTACHMENT C


Percentage by which Residential ESCO Bills exceeded what would have been paid to the Electric Utility
January - June 2016
Percent Difference (ESCO - Utility)
25.0%
20.0%
15.0%
10.0%
5.0%
0.0%
Con Edison
NMPC
O&R
CH
NYSEG
RG&E
Utility Territory

ATTACHMENT D


Percentage by which Residential ESCO Bills exceed what would have been paid to the Gas Utility
January - June 2016
40.0%
35.0%
30.0%
25.0%
20.0%
15.0%
10.0%
5.0%
0.0%
Percent Difference (ESCO - Utility)
Con Edison
NMPC
O&R
Cen Hud
NYSEG
RG&E
KEDLI
KEDNY
NFG
Utility Territory