



**Department of
Consumer Affairs**

**Testimony of Fran Freedman, Deputy Commissioner for External Affairs
New York City Department of Consumer Affairs**

**Before the
New York City Council Committee on Consumer Affairs**

**Oversight Hearing on
Energy Service Companies: How Are Consumers Protected Against Aggressive and
Misleading Sales Tactics in New York City?**

and on

Intro Number 1034

October 15, 2013

Good morning Chair Garodnick and members of the Committee on Consumer Affairs. I'm Fran Freedman, Deputy Commissioner for External Affairs for the Department of Consumer Affairs. On behalf of Commissioner Mintz, I thank you for the opportunity to testify at today's Oversight Hearing on "Energy Service Companies: How Are Consumers Protected Against Aggressive and Misleading Sales Tactics in New York City?", as well as to comment on Intro #1034, a bill to prohibit door-to-door commercial solicitations in private and multiple dwellings.

The Department strongly shares your concerns regarding ESCOs, the energy service companies from which more than one million businesses and residents of New York State have been purchasing alternative energy supplies, both electricity and natural gas, for more than a decade. As you know, the State's Public Service Commission (PSC) regulates ESCOs and, as the regulator, handles all consumer complaints.

ESCOs typically provide a wide variety of products and services, from long-term fixed prices to variable rates that change with market conditions to options that let consumers lock in rates during peak months. Some services are provided at a variable price on a month-to-month basis that can be cancelled at any time. Other ESCOs require customers to enter into contracts which commit them to purchasing for a specific amount of time. Since their inception, many ESCOs have employed marketing techniques, including door-to-door solicitation and telemarketing which, at best, tend to confuse both residential and commercial consumers and at worst are abusive, misleading and deceptive. Over the years, in their efforts to expand their businesses in the City, many ESCO sales persons have: misrepresented themselves as agents of regulated distribution utilities like Con Ed; failed to provide relevant and critical information to prospective customers in plain English or in the customer's own language; made false or misleading statements about the terms and fees of the contract; and were overly persistent and disruptive in their conduct upon contact with customers.

After receiving too many media reports and a plethora of information from consumers and the industry about consumers being taken advantage of by unscrupulous ESCOs, the Department mounted what would become a multi-year advocacy campaign to help protect New Yorkers from predatory practices. In December, 2007, the Department joined with the then New York State Consumer Protection Board (CPB) to file a Petition with the Commission seeking incorporation into its Uniform Business Practices (UBP) a Statement of Principles for the industry related to training marketing representatives, door-to-door and telephonic marketing practices, and overall ESCO conduct. Our Petition called for the PSC to establish mandatory, enforceable rules governing ESCOs' marketing practices to protect consumers from the ongoing onslaught of aggressive tactics. The Petition asked the PSC to

- Develop and adopt new marketing standards for ESCOs;
- Define and establish legal authority to directly sanction those ESCOs whose marketing practices are detrimental to consumers to prevent further harm;
- Enforce requirements that ESCOs and their representatives clearly identify themselves immediately upon first contacting consumers; and

- Compel ESCOs to clearly explain to consumers that they are not acting on behalf of or at the request of a regulated distribution utility, e.g. Con Ed, to minimize confusion and misunderstanding.

The Department and the CPB issued a joint press release on this issue, which included tips for consumers to give them some tools to protect themselves against unrelenting aggressive marketing tactics.

In March, 2008, we scored a huge and quite unprecedented victory to protect the City's consumers. Based upon our Petition, the PSC issued, for public comment, proposed revisions to its UBP to provide marketing standards for ESCOs, expand residential consumer protections and offer better remedies for ESCOs who fail to comply. Specifically, those changes included:

- Plain language sales agreements
- An explicit process to resolve ESCO- related consumer complaints
- Graduated consequences for ESCOs' failure to comply with the UBP
- Up to 30-day grace periods when the ESCO contract includes an early termination fee
- Standards for telephone and in-person ESCO contacts with customers
- Same-language marketing for non-English speaking customers

To ensure that DCA's strong consumer protection strategies would be permanently included in the Commission's final rules, the Department issued comments on PSC's proposed modifications to the UBP in April, 2008. We elaborated on plain language requirements and communications with consumers whose primary language is not English; urged adoption of the disclosure that ESCOs are not affiliated with the public utility; asked that the Commission safeguard consumers from ESCOs' using excessive termination fees and clearly disclose any such fees in marketing materials; and finally, recommended that a trial period covering at least one billing cycle be offered to consumers before termination fees are applied.

On October 15, 2008, the *New York Times* City Room online applauded the set of stronger consumer safeguards announced by the PSC, crediting the Department's protective measures that were folded into the PSC's ruling.

DCA continued its advocacy with the PSC to encourage the Agency to strengthen and further its work in this critical arena. Chapter 416 of the State Laws of 2010 established a requirement that ESCOs provide consumers with a consumer bill of rights. In November, 2010, we provided comments on the PSC's draft Consumer Bill of Rights and revised Uniform Business Practices. The draft Bill of Rights and the revised UBP were designed to ensure that consumers fully understand their rights before purchasing energy services from ESCOs, especially with regard to door-to-door sales, to help consumers make informed choices, and to prevent deceptive business practices from these companies. Our recommendations for the ESCO Consumer Bill of Rights included that it should feature clear, easy-to-read complete and accurate disclosures in plain language in a clear and easy-to-read format; that PSC branding be prominent on the document to lend it credibility; that consumer complaints should be lodged with the PSC and all contact information for the Agency's Consumer Services Division should be included; that the PSC translate the Bill of Rights in the languages most commonly used in New York City and

post them on its website and that ESCOs must provide the Bill of Rights to every consumer and in the same language utilized to solicit the prospective customer. We also suggested that the Bill of Rights include a brief statement about its purpose and that the document be given to prospective customers at the point of contact in advance of any sales pitch or discussion. For phone sales, we urged that ESCO representatives identify themselves at the outset of the conversation and alert consumers to the Bill of Rights, giving them the opportunity to end the conversation if they so desired and requiring that the Bill be included in any follow up materials mailed to the residents. Similarly, for online sales, we advocated that the Bill of Rights be presented as a non-avoidable screen prior to any enrollment or decision to "proceed to checkout" to purchase ESCO services.

In December, 2010, the PSC published a Consumer Bill of Rights which included our proposals.

In October, 2012, the PSC instituted a proceeding and called for comments to assess certain aspects of the ESCO markets, including the impact of door-to-door marketing on households with low incomes where English is not the primary language. PSC staff found that high pressure tactics were used in such sales presentations and called for changes including limiting termination fees for contracts arrived at through this tactic and requiring the marketers to begin any interaction with a disclosure statement. Further, PSC staff noted that consumer complaints regarding door-to-door sales had increased and announced that the Agency was formally investigating the door-to-door marketing practices of five ESCOs.

In January, 2013, DCA responded to the proceeding with comments urging the PSC to take meaningful action to empower consumers through complete and accurate disclosure of the true costs of these energy services by ensuring that consumers have access to current pricing information to be able to comparison shop and by enabling consumers to easily compare historical prices for electricity and gas purchased from ESCOs to the prices charged by regular utilities.

We are proud of our successful multi-year advocacy to protect City consumers interested in engaging alternative energy suppliers and look forward to the PSC's further revisions to the UBP regarding ESCOs, to strengthen its oversight of these providers.

I turn now to the proposed Intro #1034. While we are sympathetic to the idea of curtailing door-to-door solicitation at New Yorkers' residences, the bill, as written, raises many concerns.

First, DCA's mission is to empower consumers and businesses to ensure a fair and vibrant marketplace. This means that while the Department protects consumers in the marketplace, their residences are outside our jurisdiction and our mandated mission. Typically, our inspectors visit for inspection retail stores and businesses, not private homes or multiple dwellings. Enforcement of this bill would be very challenging. Without more specifics, we don't know if the bill applies only to face-to-face solicitations or if it applies to businesses who leave flyers, advertisements, coupons, menus or other materials under residents' doors or affixed to the doors or door knobs, without engaging with residents. Without more specifics, adjudicating violations with appropriate fines raises issues of due process: how would we prove that a tenant actually received a solicitation of any kind or that a private house or multiple dwelling had

the appropriate sign posted on a particular date and time without a hearing becoming a "he said/she said" affair?

Second, although we think there needs to be a balance between business interests and consumer concerns, it is hard to weigh those competing interests without knowing what problem the bill is attempting to address and remediate.

Finally, although ordinances restricting door-to-door solicitation have been adopted in other municipalities, such regulations, when challenged, often do not survive First Amendment scrutiny. The Law Department is currently reviewing legal issues, in particular the First Amendment concerns that are raised by the bill.

Until these issues are resolved, the Department can neither support nor oppose this bill.

Thank you again for the opportunity to comment on both the bill relating to door-to-door solicitations and ESCOs. I'll be happy to answer your questions.



TESTIMONY OF ANGELA SCHORR

BEFORE THE NEW YORK CITY COUNCIL'S COMMITTEE ON CONSUMER AFFAIRS

HEARING ENTITLED, "ENERGY SERVICES COMPANIES: HOW ARE CONSUMERS PROTECTED

AGAINST AGGRESSIVE AND MISLEADING SALES TACTICS IN NEW YORK CITY?"

Good morning. My name is Angela Schorr and I am a Manager of the Government and Regulatory Affairs department at Direct Energy. I appreciate the opportunity to speak today about my company, our sales channels, and the design of our sales quality controls and processes which we consider to be best practices in the industry and a critical component of how we go to market. Direct Energy Services is a registered natural gas and electricity Energy Services Company ("ESCO") in New York that serves customers in 14 states, the District of Columbia and five Canadian provinces. We offer electricity, natural gas, and energy management solutions to residential, commercial, and industrial customers. The Direct Energy family of businesses serves over six million customers across North America. Direct Energy serves a large base of residential and commercial customers in New York under the following brand names: Direct Energy Services, Direct Energy Business, Gateway Energy Services, Vectren Retail, Energetix, and NYSEG Solutions.

Direct Energy is wholly-owned by Centrica plc, one of the world's leading integrated energy companies. Centrica plc operates in seven countries and employs more than 34,000 employees worldwide. As part of a large, diverse company that spans the globe, Direct Energy

is committed to meaningful customer satisfaction and providing customers with a suite of different products and services to meet their needs. We utilize various sales channels including door-to-door, web, multi-level marketing, direct mail, and inbound/outbound telesales.

At Direct Energy, we believe that having a robust and effective sales quality framework is the key to sustaining our position in the marketplace and retaining customers. We have a variety of controls in place that are designed to ensure a compliant and customer centric sales experience. We utilize both internal employee sales teams as well as third party vendor sales teams and manage to keep our sales touches to customer complaint ratio down to 1 complaint for every 4,400 sales attempts. Today I will summarize our best practices.

First, we have a very stringent vendor vetting process. Before we agree to do business with a vendor we do our homework, including visiting the vendor and interviewing key personnel. When we are comfortable that the vendor is the right fit for us, we ensure that our legal team negotiates a contract that embeds strong quality controls. On-boarded vendor agents are required to pass a rigorous background check and drug screen in order to become eligible to work on any Direct Energy sales campaigns. Agents are also required to complete a Direct Energy training program and pass a proficiency review before being allowed to interact with customers on behalf of Direct Energy. All door-to-door agents then receive an identification badge and branded clothing which must be worn and visible at all times when they are out in the field.

Once the agents go live, our compliance and ethics program begins. Our compliance and ethics program is about education, prevention, detection, collaboration, and enforcement.

It is a living, continuous process. It is the starting point to safeguarding our responsibility to abide by laws and regulations, conduct business in an ethical manner, and treat our customers properly. It was designed to meet or exceed federal and state standards including the Federal Energy Regulatory Commission's Revised Policy Statement on Enforcement, Federal Sentencing Guidelines, and state and provincial regulations.

An effective compliance program should begin with the support and backing of senior leadership and Direct Energy's program has this support. Our senior leadership mandates an open line of communication including an anonymous hotline and non-retaliation policy where issues can be reported. We have a strong code of conduct which all employees and agents are trained on and agree to abide by. We utilize live monitoring, real-time spot checking, and audits that are designed to identify gaps and develop more efficient processes. Lastly, we report regularly to senior leadership to keep them apprised of complaints or any other important issues.

Some additional controls that we put in place that are above and beyond the regulations of many of the states in which we operate are as follows. We conduct Third Party Verifications on 100% of our vendor outbound telesales and door-to-door sales. We also require that the door-to-door agents leave the premises before the voice verifications begin to ensure the customer feels comfortable with their decision to switch. In our back office, we monitor our verification results and have specific flag warnings that alert us to any unusual behavior. This behavior is then analyzed and investigated by our sales quality team. We perform post sale assessment surveys on our door-to-door and network marketing sales to

gauge customer satisfaction with the sales process. We also conduct a second, more in depth quality control call back on a percentage of sales. Lastly, reports are tallied and reviewed regarding all of the data received from the surveys and call backs and are utilized for re-training and to address process improvement opportunities.

Direct Energy also takes our complaint process very seriously. We have a fully committed resolution team that investigates, communicates with customers and third parties, and will escalate within the company if any trends are identified. Agents are re-trained and reprimanded if necessary. Agents may also be terminated at our discretion based on the seriousness of any complaint, excessive complaint volumes or other issues. Our sales quality team is dedicated to correcting all problems as quickly as possible in order to provide customers with the best possible experience.

Direct Energy is strongly committed to providing customers with a positive sales experience that provides all the information necessary for making an informed supplier decision. We recommended and encourage all ESCOs in the state to follow a strict program of compliance and quality controls similar to what I have described to you in these comments. We appreciate your time today and I encourage you to contact me for more information.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

Date: _____

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Name: Angela Schorr

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Fran Freedman

Address: Deputy Commissioner

I represent: Dept. of Consumer Affairs

Address: _____

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