

Proposal Concerning Modifications to LIPA's Tariff for Electric Service

Requested Action:

The Long Island Power Authority ("LIPA") staff proposes to modify LIPA's Tariff for Electric Service (the "Tariff") effective June 1, 2020, to require that each Energy Service Company ("ESCO") proposing to serve mass market customers in the Long Island Choice Program, in order to be eligible, must meet the latest requirements established by the New York Public Service Commission for ESCOs doing business in New York. Specifically, each ESCO must complete a Retail Access Eligibility Application Form with the New York Department of Public Service (the "Department" or "DPS"), receive a finding from the Department of eligibility to sell electricity as an ESCO, and maintain eligibility with the Department at all times during the ESCO's participation in Long Island Choice.

Background:

In December of 2016, the New York State Public Service Commission (the "PSC" or the "Commission") commenced a proceeding to examine measures to ensure that ESCO customers in New York pay just and reasonable rates.¹ Multiple parties, including ESCOs and Non-ESCOs participated in the hearing. A substantial evidentiary record was developed including initial testimony, rebuttal testimony, cross-examination testimony and exhibits, initial briefs, reply briefs and public comments. The record showed that mass market ESCO customers continued to pay above utility prices for the commodity and that the complaint rate for ESCOs remain unacceptably high.

On December 12, 2019, Commission issued the *Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process* (the "December Order"). The Commission concluded that significant changes to the provisions governing retail access are necessary to provide adequate protections for all New Yorkers. The December Order was adopted to strengthen protections for mass market customers in the retail energy market by enhancing ESCO eligibility criteria and adopting limitations on the types and prices of products that may be offered to those customers by ESCOs to ensure that those customers are receiving value from the retail energy market.

Proposal:

LIPA staff is proposing to require ESCOs serving mass market customers in the LIPA territory to receive a finding of eligibility from the Department of Public Service pursuant to the rules adopted in the December Order. In order to be eligible to serve mass market customers, ESCOs are now required to provide either guaranteed savings, a fixed-rate product with a price limit, or green energy; to give customers access to transparency of pricing information; to refrain from offering non-energy related valued-added products and services pending further Commission proceedings regarding such products and service; and to refrain from the use of misleading marketing materials. The newly revised ESCO application and eligibility process will allow the DPS to review each ESCO's plans to adhere to the new provisions outlined in the December Order.

Specifically, in order for an ESCO to be eligible, it must submit the following documentation to the Department and receive a finding of eligibility:²

- A Retail Access Eligibility Form;

¹ Case 15-M-0127, *In the Matter of Edibility Criteria for Energy Service Companies*.

² For more information on the eligibility requirements and a copy of the application form, see <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/753D3D35C877963485257687006F39DB?OpenDocument>.

- A variety of sample forms, including sales agreements;
- Sample promotional materials;
- Internal procedures to prevent unauthorized and illegal conversion of accounts – practices known as “slamming”;
- The name and contact information for the applicant’s main office;
- The name and contact information for any entity holding an ownership interest of 10% or more in the ESCO; and
- An explanation of any regulatory or criminal sanctions imposed during the last 36 months against any senior officer of the ESCO or entity holding 10% or more ownership interest.

Additionally, to maintain eligibility, at least once every 30 days an ESCO must post on the Department’s “Power to Choose” website a price for each commodity-only product offered to residential customers. The Commission adopted these criteria to ensure that ESCOs participating in the retail energy market satisfy minimum eligibility conditions and facilitate development of competitive retail energy markets.

Financial Impacts:

The proposal will have no financial impact on LIPA. Currently, LIPA has fewer than 50 mass market customers on Long Island Choice. The proposal will not affect the prices these customers pay to LIPA.

Affected Tariff Leaves: Leaf 290

Summary of Proposed Changes:

LIPA is proposing to update the Tariff to require ESCOs serving mass market customers in the LIPA Territory to adhere to the rules adopted by the NY PSC that strengthen protections for mass market customers in the retail energy market³.

³ Case 15-M-0127, *In the Matter of Edibility Criteria for Energy Service Companies, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process*, Issued and effective: December 12, 2020.

IX. Long Island Choice Program (continued):**A. General Provisions (continued):**1. ESCO or DRC License Application, Suspension and Revocation

a) The Authority may exchange information with, and use any information received from, the New York Public Service Commission as the Authority deems appropriate in considering the granting, suspension, or revocation of a License of an ESCO or DRC. The Authority will license an ESCO or DRC, when the following requirements have been met:

- (1) The ESCO or DRC signs an Operating Agreement with the Authority, and
- (2) The ESCO or DRC submits a completed Application form to the Authority, including all of the required documents listed on the Application form, and
- (3) The Authority confirms that the Application is complete and consistent with the Authority's requirements, and

~~(4)~~ The ESCO or DRC meets the Authority's security deposit requirements and all other requirements set forth in the Operating Procedures and this Tariff.

~~(4)~~~~(5)~~ ESCOs wishing to serve customers in the LIPA Service Area must maintain a finding of eligibility from the New York State Department of Public Service.

~~(5)~~~~(6)~~ The Authority, in its sole discretion, may waive some or all of its licensing application requirements if the ESCO is already duly registered with the New York State Department of Public Service to sell electricity to retail customers in the state.