

PSC No: 120 - Electricity
New York State Electric and Gas Corporation
Initial Effective Date: December 1, 2012

Leaf No. 106
Revision: 1
Superseding Revision: 0

GENERAL INFORMATION

16. Customer Advantage Program - General Retail Access: (Cont'd.)

I. Indemnity and Limitation on Liability:

1. Indemnification:

ESCO and DC, as applicable, agree to indemnify, defend and save harmless NYSEG from and against any and all liabilities, losses, damages, costs, expenses, causes of action, suits, judgments and claims, including, but not limited to, reasonable attorneys fees and the costs of investigation, (collectively "claims"), in connection with any action, suit or proceeding by or on behalf of any person, firm, corporation or other entity arising from, caused by or relating to the (i) curtailment or interruption of services to the ESCO or its Customers, or a DC, as applicable, due to causes beyond the control of NYSEG (including, without limiting the generality of the foregoing, executive or administrative rules or orders issued from time to time by State or Federal officers, commissions, boards or bodies having jurisdiction) or (ii) interruption, irregularity, failure or defective character of services to the ESCO, its Customers, or a DC, as applicable, due to causes beyond the control of NYSEG (including, without limiting the generality of the foregoing, executive or administrative rules or orders issued from time to time by State or Federal officers, commissions, boards or bodies having jurisdiction) or (iii) failure by ESCO or DC, as applicable, to perform any of the agreements, terms, covenants or conditions of the General Retail Access Program to be performed by ESCO or DC, as applicable, or (iv) failure of ESCO to perform any agreement between ESCO and its Customers.

2. Limitation on Liability:

NYSEG will endeavor at all times to provide regular and uninterrupted service to the ESCO, its Customers, or a DC, as applicable, but in case the service shall be interrupted or irregular or defective or shall fail, from causes beyond the control of NYSEG (including, without limiting the generality of the foregoing, executive or administrative rules or orders issued from time to time by State or Federal officers, commissions, boards, or bodies having jurisdiction) or because of the ordinary negligence of NYSEG or its employees, servants or agents, NYSEG shall not be liable to the ESCO, its Customers, or a DC, as applicable, therefor.

Compliance with directives of the NYISO shall, without limitation by reason of specification, constitute a circumstance beyond the control of NYSEG for which NYSEG shall not be liable; provided, however, that NYSEG shall not be absolved from any liability to which it may otherwise be subject for gross negligence or intentional wrongdoing in the manner in which it carries out the NYISO instructions.

ISSUED BY: James A. Lahtinen, Vice President Rates and Regulatory Economics, Binghamton, New York