

S T A T E O F N E W Y O R K

5500--B

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sen. BALL -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT authorizing certain municipalities to participate in a municipal energy aggregation program through an inter-municipal agreement with one or more municipalities in order to coordinate efforts to procure electric and/or gas supply services on behalf of its residents

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Definitions. The following terms, when used in this act,
2 shall have the following meanings:
- 3 1. "Resident" shall mean a customer of record who received residential
4 or non-residential electric and/or gas supply services from a distrib-
5 ution utility at the time of a local resolution by his or her munici-
6 pality to participate in a municipal energy aggregation program,
7 provided that such customer did not receive electric and gas supply
8 services from an energy services company and/or the power authority of
9 the state of New York.
- 10 2. "Distribution utility" or "distribution utilities" shall mean
11 Consolidated Edison (Con-Edison) and/or New York State Electric and Gas
12 ("NYSEG").
- 13 3. "Participating customer" shall mean a resident who receives elec-
14 tric and/or gas supply services through a municipal energy aggregation
15 program.
- 16 4. "Municipal energy aggregation program" or "aggregation program"
17 shall mean an inter-municipal agreement or a municipal resolution for
18 the purpose of coordinating or initiating efforts by a municipality or
19 by municipal energy aggregators to request bids for and potentially

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD11030-06-3

1 select an ESCO or ESCOs to provide electric and/or gas supply services
2 to participating customers.

3 5. "Energy services company" or "ESCO" shall have the same meaning as
4 such term is used in subdivision 5 of section 44 of the public service
5 law.

6 6. "Municipality" or "municipalities" shall mean a city, town or
7 village located in Westchester county.

8 7. "Municipal energy aggregator" or "energy aggregator" shall mean a
9 municipality authorized pursuant to a local resolution to participate in
10 an inter-municipal agreement establishing a municipal energy aggregation
11 program.

12 8. "Program administrator" shall mean a municipal energy aggregator
13 that is designated pursuant to an inter-municipal agreement or an
14 employee designated by a municipal energy aggregator to fulfill the
15 responsibilities of: (i) requesting and compiling historical usage data
16 of distribution utility customers as required under this act, (ii)
17 submitting a request for bids for energy supply services from ESCOs
18 authorized to supply electric and/or gas in New York state, and (iii)
19 carrying out the administration of the contract and implementation of
20 aggregated services.

21 9. "Department" shall mean the New York department of public service.

22 S 2. Municipal energy aggregation programs. 1. A municipality may,
23 after adopting a resolution approved by a majority of its governing
24 board, participate in a municipal energy aggregation program through an
25 inter-municipal agreement with one or more municipalities in order to
26 coordinate efforts, or through its own municipal aggregation program to
27 procure electric and/or gas supply services on behalf of its residents.
28 Such municipal energy aggregation program must provide for:

29 (a) The expiration of such program of no later than five years; and

30 (b) The designation of a program administrator to facilitate the oper-
31 ations of a municipal energy aggregation program, including but not
32 limited to the receipt of resident historical usage data information
33 from distribution utilities pursuant to section three of this act and
34 any communications necessary with potential ESCOs that would provide
35 electric and/or gas supply services for such program;

36 2. A municipal energy aggregator shall be responsible for responding
37 to inquiries regarding the particular municipal energy aggregation
38 program in which it is a participant. Such municipal energy aggregator
39 shall provide contact information, including but not limited to a mail-
40 ing address, telephone number, e-mail address and fax number at which it
41 may be contacted in all notices to participating customers.

42 3. In establishing a contract for electric and/or gas services with an
43 ESCO, a program administrator shall comply with article 7 of the public
44 officers law.

45 S 3. Establishment of municipal energy aggregation program. 1. The
46 program administrator designated pursuant to an inter-municipal agree-
47 ment establishing an aggregation program shall provide a copy of such
48 agreement to the distribution utilities and submit a formal request for
49 bulk usage information provided for under subdivision two of this
50 section.

51 2. (a) Within 60 days of the establishment of a municipal aggregation
52 program or of an inter-municipal agreement establishing an aggregation
53 program and the formal request, distribution utilities shall, at a
54 reasonable cost as determined by the commission within 60 days of
55 adoption of this act, provide to the program administrator the following

1 utility bulk information regarding residents receiving gas or electric
2 supply services from such distribution utility:

3 (i) the number of residents, by class served that do not receive elec-
4 tric and/or gas supply service from an ESCO or the power authority of
5 the state of New York;

6 (ii) the aggregate gas and electric usage of residents, by class
7 served, for the 12-month period preceding the request; the system peak
8 hour or hours that determines capacity buying requirements, and to the
9 degree that it is available the aggregated load factor by class served
10 for the 12-month period preceding the request; and

11 (iii) to the degree that it is available, reasonable efforts to
12 provide more detailed historic information relating to energy usage
13 characteristics of customers, including but not limited to information
14 by rate class on meter type, the number of smart meters deployed, kwh
15 usage and peak demand information classification, meter reading cycle
16 information, load profile designating information, the number of custom-
17 ers enrolled in budget billing plans, loss factor information, net
18 metering information and any other information deemed useful by the
19 program administrator to successfully solicit bids for and implement the
20 aggregation program;

21 (b) In providing the utility bulk information required under this
22 subdivision, a distribution utility shall not provide to a program
23 administrator any information identifying, by name or address, any
24 customer of such utility or the financial information of any such
25 customer, including, but not limited to social security numbers, credit
26 card or bank account numbers.

27 S 4. Selection of ESCO providers. 1. Upon receipt of utility bulk
28 information required under section three of this act, the program admin-
29 istrator is authorized to advertise for the request of bids from ESCOs
30 for the provision of services for an aggregation program. Any request
31 for bids shall specify that a contract for aggregation program services
32 must:

33 (a) be limited to a period of no greater than 30 months;

34 (b) include price benchmarks, which shall provide for:

35 (i) monthly per kwh rates for electric supply services for each appli-
36 cable class of customers that are below the 12-month average monthly
37 price of supply services provided by distribution utilities or lower
38 than the distribution utility's rate at the time of a request for bids
39 as provided for in this section;

40 (ii) monthly per Btu rates for gas supply services for each applicable
41 class of customers that are below the 12-month average monthly price of
42 supply services provided by distribution utilities or lower than the
43 distribution utility's rate at the time of a request for bids as
44 provided for in this section;

45 (c) provide that the ESCO will not levy any form of cancellation
46 charge to participating customers who, after receiving electric and/or
47 gas supply services from the ESCO, choose to receive such supply
48 services from their respective distribution utility;

49 (d) provide for a website for participating customers to view the
50 monthly rates charged for electric and/or gas supply services; and

51 (e) provide that any costs associated with preparation for or imple-
52 mentation of this program or contract shall only be reflected in the
53 benchmark per kwh and per Btu bid price.

54 2. (a) After a review of bids submitted for energy supply services,
55 energy aggregators are authorized to select the ESCO or ESCOs that will
56 offer the best service, price and other factors considered, provided

1 that the per kWh supply rate for electricity and per Btu rate for gas
2 supply services that is lower than the distribution utility's average
3 monthly rate for supply services for the prior 12-month period, or lower
4 than the distribution utility's rate at the time of a request for bids
5 as provided for in this section and meet the requirements of subdivision
6 one of this section, provided that energy aggregators, may at their
7 discretion, reject all bids or offers and readvertise for new bids or
8 offers in a manner provided by this act.

9 (b) In making a selection, energy aggregators shall (i) select one
10 ESCO for the provision of electric supply services; and (ii) select one
11 ESCO for the provision of gas supply services, provided however that the
12 energy aggregators may select an ESCO to provide both electric and gas
13 supply service, provided further that energy aggregators may not select
14 any ESCO that has been deemed ineligible to provide energy services by
15 the department.

16 3. After selection of an ESCO or ESCOs, the energy aggregators are
17 authorized to enter into a contract for supply services of up to 30
18 months. Such contract shall include:

19 (a) provisions prohibiting the ESCO or ESCOs from denying service to
20 any resident receiving service from his or her distribution utility at
21 the commencement of such contract;

22 (b) monthly per kWh rates for electric supply services for each appli-
23 cable class of customers that is below the average monthly rate of
24 supply services provided by distribution utilities in the previous
25 12-month period or lower than the distribution utility's rate at the
26 time of a request for bids as provided for in this section;

27 (c) monthly per Btu rates for gas supply services for each applicable
28 class of customers that is below the average monthly rate of supply
29 services provided by distribution utilities in the previous 12-month
30 period or lower than the distribution utility's rate at the time of a
31 request for bids as provided for in this section;

32 (d) provisions requiring the ESCO or ESCOs to provide electric and/or
33 gas supply rates lower than the distribution utility's electric and/or
34 gas supply rates pursuant to paragraphs (b) and (c) of this subdivision
35 for the duration of the contract, provided that a violation of this
36 provision shall subject such ESCO to refund participating customers at
37 the time of termination of a contract pursuant to section six of this
38 act;

39 (e) provisions prohibiting a municipal energy aggregator from opting-
40 out of the contract during the term of such contract;

41 (f) provisions for the termination of a contract for services if an
42 ESCO fails to meet the price benchmarks pursuant to this act with the
43 ESCO having exclusive responsibility for all re-entry fees charged to a
44 participating customer by distribution utilities for the resumption of
45 supply services;

46 (g) provisions indemnifying energy aggregators from all liabilities,
47 damages and costs associated with the performance of an ESCO operating
48 under a contract for services;

49 (h) a requirement that the ESCO provide a performance bond if required
50 by the energy aggregators; and

51 (i) any other requirement that the energy aggregators deem necessary
52 for the adequate and reliable supply of electric and/or gas supply
53 services to participating customers.

54 S 5. Notice of municipal energy aggregation contract required. 1.
55 Upon the completion of the contract for services provided for under
56 subdivision three of section four of this act, the program administrator

1 shall obtain from distribution utilities at a reasonable cost as determined by the commission within 60 days of the effective date of this act their lists of residents that may be affected by such contract and provide the municipal aggregators with such information. The municipal aggregator shall then notify such residents as to the provisions of such contract, including but not limited to price benchmarks.

2. Distribution utilities must make all reasonable preparations to release residents who do not choose to opt-out pursuant to subdivision three of this section from receiving electric and/or gas supply services, provided that all residents shall continue to receive delivery services from such utilities.

3. Upon completion of a contract provided for under subdivision three of section four of this act, municipal energy aggregators must mail a notice to each resident not currently receiving supply services from an ESCO and/or the power authority of the state of New York which shall include:

(a) that the resident's municipal board has chosen to participate in a municipal energy aggregation contract;

(b) that unless he/she elects to opt-out within 60 days of the post-marked notice, such resident will become a participating customer and will receive electric and/or gas supply services through a municipal energy aggregation contract;

(c) instructions detailing how a resident may submit an opt-out response, provided that such procedures shall permit the resident to opt-out by contacting the program administrator and/or ESCO or ESCOs selected pursuant to the contract;

(d) that each customer who does not elect to opt-out within the prescribed period may elect to opt-out of such contract at any time; and

(e) that in the case of a participating customer the distribution utility is no longer responsible for supply rates charged to such customer and that all complaints about supply service under the aggregation contract shall be the responsibility of the program administrator and ESCO or ESCOs.

4. Immediately following the 60-day opt-out period provided for in paragraph (b) of subdivision three of this section, a municipal energy aggregator shall provide the program administrator with the following information:

(a) the number of residents that received electric and/or gas supply services from such distribution utility who are participating customers by rate class; and

(b) the name, address, and account number of each participating customer.

5. The program administrator, upon receipt of information required under subdivision four of this section, shall submit such information and the information provided for under subdivision two of section three of this act to the ESCO or ESCOs. Such ESCOs shall commence supply services to participating customers.

S 6. Public service commission review. 1. Within 365 days of the commencement of gas and/or electric supply services under an aggregation contract, the commission, after consultation with the department shall commence an audit to ensure such ESCO or ESCOs selected have achieved benchmarks established pursuant to paragraph (b) of subdivision one of section four of this act.

2. (a) If the commission determines that the ESCO or ESCOs providing gas and/or electric gas supply services has failed to achieve such benchmarks as established in subdivision three of section four of this

1 act, the contract for services established pursuant to subdivision three
2 of section four of this act shall be terminated immediately.

3 (b) Within 30 days of the termination of a contract for services, the
4 ESCO shall issue payment to each participating customer for any supply
5 rates above those specified in the contract, including the cost of any
6 applicable re-entry fees charged to a resident for resumption of supply
7 services.

8 (c) The commission shall ensure that all residents eligible for
9 resumption of electric and/or gas supply service from their respective
10 distribution utility receive such services regardless of the actual
11 timing of the payment provided for under paragraph (b) of this subdivi-
12 sion.

13 3. An ESCO shall not levy any charge to an energy aggregator to cover
14 expenses related to the termination of a contract.

15 S 7. Within 30 months of the establishment of a supply services
16 contract for services or upon the termination of such contract, the
17 commission shall submit a report to the executive, the temporary presi-
18 dent of the senate, the speaker of the assembly, the chairs of the
19 senate energy and telecommunications committee and the assembly energy
20 committee detailing the performance of any aggregation contract. Such
21 report shall include the following information:

22 1. the number of participating customers served;

23 2. the ability of the ESCO or ESCOs selected under an aggregation
24 program to provide adequate supply services;

25 3. the actual supply rates charged under a contract for services;

26 4. the amount, if any, of participating customers whose residential or
27 non-residential service was disconnected; and

28 5. any other information the public service commission deems neces-
29 sary.

30 S 8. Energy services company bill of rights applicable to participat-
31 ing customers. For purposes of this act the term "customer" as defined
32 in paragraph (c) of subdivision 1 of section 349-d of the general busi-
33 ness law, shall include participating customers.

34 S 9. This act shall take effect immediately.