

7896--C

Cal. No. 815

2013-2014 Regular Sessions

I N A S S E M B L Y

June 7, 2013

Introduced by M. of A. PAULIN, BUCHWALD, ABINANTI, PRETLOW, GALEF, OTIS, KATZ -- read once and referred to the Committee on Energy -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Energy in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Ways and Means -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

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; and providing for the repeal of such provisions upon expiration thereof

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 small non-residential electric and/or gas supply from a distribution  
5 utility at the time of a local resolution by his or her municipality to  
6 establish and/or participate in a municipal energy aggregation program.  
7 Small non-residential shall include the distribution utility's smallest  
8 general service rate schedule applicable to non-residential customers.  
9 2. "Distribution utility" or "distribution utilities" shall mean  
10 Consolidated Edison (Con-Edison) and/or New York State Electric and Gas  
11 ("NYSEG").

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

LBD11030-13-4

1 3. "Participating customer" shall mean a resident who receives his or  
2 her electric and/or gas supply through a municipal energy aggregation  
3 program.

4 4. "Municipal energy aggregation program" or "aggregation program"  
5 shall mean an inter-municipal agreement pursuant to article 5-G of the  
6 general municipal law or a local resolution for the purpose of coordi-  
7 nating or initiating efforts by a municipality or by municipal energy  
8 aggregators to request bids for and potentially select an ESCO or ESCOs  
9 to provide electric and/or gas supply to participating customers.

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

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

15 7. "Municipal energy aggregator" or "energy aggregator" shall mean a  
16 municipality authorized pursuant to a local resolution to establish an  
17 aggregation program or participate in an inter-municipal agreement  
18 establishing a municipal energy aggregation program.

19 8. "Program administrator" shall mean an employee that is designated  
20 pursuant to an inter-municipal agreement pursuant to article 5-G of the  
21 general municipal law or, in the case of an aggregation program with one  
22 energy aggregator, an employee designated by such energy aggregator to  
23 fulfill the responsibilities of: (i) requesting and compiling historical  
24 usage data of distribution utility customers as required under this act,  
25 (ii) submitting a request for bids for energy supply from ESCOs author-  
26 ized to supply electric and/or gas in New York state, and (iii) carrying  
27 out the administration of the contract and implementation of aggregated  
28 supply. Such responsibilities shall not be contracted or subcontracted  
29 out to any private or not-for-profit corporation or organization.

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

31 S 2. Municipal energy aggregation programs. 1. A municipality may,  
32 after adopting a resolution approved by a majority of its governing  
33 board, participate in a municipal energy aggregation program through an  
34 inter-municipal agreement with one or more municipalities in order to  
35 coordinate efforts, or through its own municipal aggregation program to  
36 procure electric and/or gas supply on behalf of its residents. Such  
37 municipal energy aggregation program must provide for the designation of  
38 a program administrator to facilitate the operations of a municipal  
39 energy aggregation program, including but not limited to the receipt of  
40 resident historical usage data information from distribution utilities  
41 pursuant to section three of this act and any communications necessary  
42 with potential ESCOs that would provide electric and/or gas supply for  
43 such program.

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

50 3. In establishing a contract for an energy aggregation program with  
51 an ESCO, a program administrator shall comply with article 7 of the  
52 public officers law.

53 S 3. Establishment of municipal energy aggregation program. 1. The  
54 program administrator designated pursuant to an inter-municipal agree-  
55 ment establishing an aggregation program or a local ordinance authoriz-  
56 ing a municipality to become an energy aggregator shall provide a copy

1 of such agreement to the distribution utilities and submit a formal  
2 request for bulk usage information provided for under subdivision 2 of  
3 this section.

4 2. (a) Within 60 days of the establishment of a municipal aggregation  
5 program and after a formal request, distribution utilities shall, at a  
6 reasonable cost as determined by the commission within 60 days of the  
7 effective date of this act, provide to the program administrator the  
8 following utility bulk information regarding residents receiving gas or  
9 electric supply from such distribution utility:

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

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

18 (iii) the average monthly per kWh and per Btu supply rates by class  
19 served charged by the distribution utility for the previous 12 months;  
20 and

21 (iv) to the degree that it is available, reasonable efforts to provide  
22 more detailed historic information relating to energy usage character-  
23 istics of customers, including but not limited to information by rate  
24 class on meter type, kWh usage and peak demand information classifica-  
25 tion, meter reading cycle information, load profile designating informa-  
26 tion, the number of customers enrolled in budget billing plans, loss  
27 factor information, net metering information, individual capacity tag  
28 information and any other information deemed useful by the program  
29 administrator to successfully solicit bids for and implement the aggre-  
30 gation program;

31 (b) In providing the utility bulk information required under this  
32 subdivision, a distribution utility shall not provide to a program  
33 administrator any information identifying, by name or address, any  
34 customer of such utility or the financial information of any such  
35 customer, including, but not limited to social security numbers, credit  
36 card or bank account numbers.

37 S 4. Selection of ESCO providers. 1. Upon receipt of utility bulk  
38 information required under section three of this act, the program admin-  
39 istrator is authorized to advertise for the request of bids from ESCOs  
40 for the provision of supply for an aggregation program. Any request for  
41 bids shall specify that a contract for an aggregation program must:

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

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

44 (i) in the case of a contract that includes electric supply, a fixed  
45 monthly per kWh supply rate for the first 6-month sub-period that is  
46 below the average monthly rate of supply provided by the distribution  
47 utility in the previous 12-month period;

48 (ii) a commitment to provide fixed monthly per kWh supply rates for  
49 each subsequent 6-month sub-period, and a commitment by the ESCO  
50 selected to notify the program administrator of the kWh supply rate for  
51 the upcoming sub-period no later than two months prior to the commence-  
52 ment of each such sub-period pursuant to section seven of this act;

53 (iii) in the case of a contract that includes gas supply, a fixed  
54 monthly per Btu supply rate for the first 6-month sub-period that is  
55 below the average monthly price of supply provided by the distribution  
56 utility in the previous 12-month period; and

1 (iv) a commitment to provide fixed monthly Btu supply rates for each  
2 subsequent 6-month sub-period, and a commitment by the ESCO selected to  
3 notify the program administrator of the Btu supply rate for the upcoming  
4 sub-period no later than 2 months prior to the commencement of each such  
5 sub-period pursuant to section seven of this act;

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

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

12 (e) provide that any costs associated with preparation for or imple-  
13 mentation of this program or contract shall only be reflected in the  
14 benchmark per kWh and/or per Btu fixed rate.

15 2. (a) After a review of bids submitted for energy supply, energy  
16 aggregators are authorized to select the ESCO or ESCOs that will offer  
17 the best service, price and any other factors, determined to be appro-  
18 priate, provided that the per kWh rate for electric supply and per Btu  
19 rate for gas supply for the first 6-month sub-period are below the aver-  
20 age monthly price of supply provided by the distribution utility in the  
21 previous 12 months and meet the requirements of subdivision 1 of this  
22 section, provided that energy aggregators, may at their discretion,  
23 reject all bids or offers and readvertise for new bids or offers in the  
24 manner provided by this act.

25 (b) In making a selection, energy aggregators shall (i) select one  
26 ESCO for the provision of electric supply; and (ii) select one ESCO for  
27 the provision of gas supply, provided however that the energy aggrega-  
28 tors may select an ESCO to provide both electric and gas supply,  
29 provided further that energy aggregators may not select any ESCO that  
30 has been deemed ineligible to provide energy services by the department.

31 3. The energy aggregator or aggregators shall document, and make  
32 available upon request, the process used for the selection of an ESCO or  
33 ESCOs including, but not limited to documenting all bids received and  
34 the criteria and factors used for the selection process.

35 4. After selection of an ESCO or ESCOs, the energy aggregators are  
36 authorized to enter into a contract for energy aggregation program  
37 services of up to 30 months. Such contract shall include:

38 (a) provisions prohibiting the ESCO or ESCOs from denying service to:

39 (i) in the case of a contract that includes electric supply, any resi-  
40 dent receiving service from his or her distribution utility at the  
41 commencement of such contract; and

42 (ii) any customer of record of a distribution utility receiving resi-  
43 dential or small non-residential services whose municipality is an ener-  
44 gy aggregator in the aggregation program for which the ESCO or ESCOs  
45 will provide supply;

46 (b)(i) a provision requiring a fixed monthly per kWh supply rate for  
47 the first 6-month sub-period that is below the average monthly price of  
48 supply provided by the distribution utility in the previous 12-month  
49 period; and

50 (ii) a provision requiring the ESCO to provide fixed monthly per kWh  
51 rates for each subsequent 6-month sub-period; and that no later than 2  
52 months prior to the commencement of each 6-month sub-period, the ESCO  
53 shall notify the program administrator of the fixed monthly per kWh rate  
54 for such upcoming sub-period, pursuant to section seven of this act;

55 (c)(i) a provision requiring a fixed monthly per Btu supply rate for  
56 the first 6-month sub-period that is below the average monthly price of

1 supply services provided by the distribution utility in the previous  
2 12-month period; and

3 (ii) in the case of a contract that includes gas supply, a provision  
4 requiring the ESCO to provide fixed monthly per Btu rates for each  
5 subsequent 6-month sub-period; and that no later than 2 months prior to  
6 the commencement of each 6-month sub-period, the ESCO shall notify the  
7 program administrator of the fixed monthly per Btu rate for such upcom-  
8 ing sub-period, pursuant to section seven of this act;

9 (d) provisions requiring the ESCO or ESCOs to provide electric and/or  
10 gas supply rates lower than the distribution utility's electric and/or  
11 gas supply rates pursuant to paragraphs (b) and (c) of this subdivision,  
12 provided that a violation of this provision shall subject such ESCO to  
13 refund participating customers at the time of termination of a contract  
14 pursuant to section nine of this act;

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

17 (f) provisions for the termination of a contract for an energy aggre-  
18 gation program if an ESCO fails to meet the requirements of this act  
19 with the ESCO having exclusive responsibility for all re-entry fees  
20 charged to a participating customer by distribution utilities for the  
21 resumption of supply;

22 (g) provisions indemnifying energy aggregators from all liabilities,  
23 damages and costs associated with the performance of an ESCO operating  
24 under a contract for an energy aggregation program; and

25 (h) a requirement that the ESCO provide a performance bond if required  
26 by the energy aggregators.

27 5. Immediately following the finalization of a contract for an energy  
28 aggregation program pursuant to subdivision four of this section, the  
29 program administrator shall promptly notify the distribution utility  
30 and/or distribution utilities of such contract, the length of such  
31 contract and the distribution utility's responsibilities under this act.

32 S 5. Notice of municipal energy aggregation contract required. 1.  
33 Upon the completion of the contract for an energy aggregation program  
34 provided for under subdivision three of section four of this act, the  
35 program administrator shall obtain from distribution utilities at a  
36 reasonable cost as determined by the commission within 60 days of the  
37 effective date of this act their lists of residents that may be affected  
38 by such contract and provide the municipal energy aggregators with such  
39 information. Each municipal energy aggregator shall then notify such  
40 residents as to the provisions of such contract, including but not  
41 limited to price benchmarks.

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

47 3. Upon completion of a contract provided for under subdivision three  
48 of section four of this act, municipal energy aggregators must mail a  
49 notice to each resident which shall include:

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

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

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

5 (d) that each resident who does not elect to opt-out within the  
6 prescribed period and becomes a participating customer, may elect to  
7 opt-out of such contract at any time; and

8 (e) that in the case of a participating customer the distribution  
9 utility will no longer be responsible for supply rates charged to such  
10 customer and that all complaints about supply under the aggregation  
11 contract shall be the responsibility of the municipal energy aggregator  
12 in which the customer resides and ESCO or ESCOs.

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

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

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

22 5. The program administrator, upon receipt of information required  
23 under subdivision four of this section, shall submit such information  
24 and the information provided for under subdivision two of section three  
25 of this act to the ESCO or ESCOs. Such ESCOs shall commence electric  
26 and/or gas supply to participating customers.

27 S 6. Distribution utility requirements following a contract for aggre-  
28 gation program services. No later than 2 weeks preceding the expiration  
29 of the initial 6-month sub-period under a contract for an energy aggre-  
30 gation program and any subsequent 6-month sub-period pursuant to such  
31 contract for an aggregation program, a distribution utility shall  
32 provide the program administrator with:

33 1. the average monthly per kWh rate for supply by class served for the  
34 previous 6-month period; and

35 2. the average monthly per Btu rate for supply by class served for the  
36 previous 6-month period.

37 S 7. ESCO supply rate notification requirements. 1. For the sub-period  
38 commencing after the initial sub-period provided for under a contract  
39 for an energy aggregation program, the ESCO or ESCOs shall provide the  
40 program administrator with the fixed monthly per kWh supply rate and/or  
41 the fixed monthly per Btu supply rate for the upcoming 6-month sub-per-  
42 iod.

43 2. Any expenses incurred by an ESCO or ESCOs, including but not limit-  
44 ed to expenses incurred in the execution of a contract for an energy  
45 aggregation program pursuant to section four of this act, shall only be  
46 recovered from the per kWh supply rate and/or per Btu supply rate  
47 charged to participating customers pursuant to a contract for energy  
48 aggregation services. The ESCO or ESCOs selected shall not issue any  
49 charge, fee, or bill for aggregation program services to an aggregator,  
50 resident, participating customer or program administrator to recover  
51 expenses, including, but not limited to expenses incurred for:

52 (a) electric and gas supply procurement;

53 (b) taxes, assessments, fees and surcharges;

54 (c) wheeling and/or transfer costs; and

55 (d) administrative charges, expenses, staff and consultant costs.

1 S 8. Notice of 6-month fixed rate. 1. No later than 2 months prior to  
2 the commencement of each 6-month sub-period under a contract for an  
3 aggregation program, the program administrator shall mail to each  
4 participating customer a notice that shall provide the fixed monthly per  
5 kWh rates and/or fixed monthly per Btu rates for such upcoming sub-per-  
6 iod.

7 2. No later than 6 months after the commencement of a contract for an  
8 aggregation program and every six months thereafter, the program admin-  
9 istrator shall mail to each participating customer a statement that  
10 shall provide:

11 (a) the average per kWh and/or per Btu rate for supply for the previ-  
12 ous 6-month sub-period charged by the distribution utility, provided  
13 that such rates shall only be the actual supply rates charged by the  
14 utility, and shall not include any delivery rates, service charges, or  
15 taxes, assessments, fees and surcharges recovered from customers;

16 (b) the fixed monthly rate charged by the ESCO and/or ESCOs for the  
17 previous 6-month sub-period;

18 (c) the fixed monthly per kWh rates and/or fixed monthly per Btu rates  
19 to be charged by an ESCO and/or ESCOs for such upcoming sub-period; and

20 (d) instructions detailing how a resident may submit an opt-out.

21 3. If any word, statement, notice or any other information required by  
22 or under the authority of this act appears in any letter, email or any  
23 other written communication to a recipient, including but not limited to  
24 a resident or participating customer, such word, statement, notice or  
25 other information must be prominently placed thereon with such conspicu-  
26 ousness (as compared with other words, statements, designs, devices also  
27 included thereon) and in such terms as to render it likely to be read  
28 and understood by an ordinary individual under customary conditions of  
29 purchase and use.

30 Any letter, email or other written communication from an ESCO seeking  
31 to or selected to provide energy aggregation program supply, a program  
32 administrator, or an energy aggregator, to a customer or participating  
33 customer relating to an energy aggregation program shall be written in a  
34 conspicuous font size of 12 point or greater.

35 S 9. Public service commission review. 1. Within 365 days of the  
36 commencement of gas and/or electric supply services under an aggregation  
37 contract, the commission, after consultation with the department shall  
38 commence an audit to ensure such ESCO or ESCOs selected has met the  
39 terms of its contract.

40 2. (a) If the commission determines that the ESCO or ESCOs providing  
41 gas and/or electric supply has failed to achieve the terms of its  
42 contract, the contract for an energy aggregation program established  
43 pursuant to subdivision 3 of section four of this act shall be termi-  
44 nated immediately.

45 (b) Within 30 days of the termination of a contract for an energy  
46 aggregation program, the ESCO shall issue payment to each participating  
47 customer for any supply rates above those specified in the contract,  
48 including the cost of any applicable re-entry fees charged to a resident  
49 for resumption of supply.

50 (c) The commission shall ensure that all residents eligible for  
51 resumption of electric and/or gas supply from their respective distrib-  
52 ution utility receive such services regardless of the actual timing of  
53 the payment provided for under paragraph (b) of this subdivision.

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

1 S 10. Within 30 months of the establishment of a contract for an ener-  
2 gy aggregation program or upon the termination of such contract, the  
3 commission shall submit a report to the executive, the temporary presi-  
4 dent of the senate, the speaker of the assembly, the chairs of the  
5 senate energy and telecommunications committee and the assembly energy  
6 committee detailing the performance of any aggregation contract. Such  
7 report shall include the following information:

- 8 1. the number of participating customers served;
- 9 2. the ability of the ESCO or ESCOs selected under an aggregation  
10 program to provide adequate supply services;
- 11 3. the actual kWh and/or Btu supply rates charged under a contract for  
12 an energy aggregation program;
- 13 4. the amount, if any, of participating customers whose residential or  
14 non-residential service was disconnected; and
- 15 5. any other information the public service commission deems neces-  
16 sary.

17 S 11. Energy services company bill of rights applicable to participat-  
18 ing customers. For purposes of this act the term "customer" as defined  
19 in paragraph (c) of subdivision 1 of section 349-d of the general busi-  
20 ness law, shall include participating customers.

21 S 12. This act shall take effect immediately; and shall expire and be  
22 deemed repealed 5 years after such date.