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

5500

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

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:

Section 1. Definitions. The following terms, when used in this act, shall have the following meanings:

1. "Resident" shall mean a customer of record who received residential or non-residential electric and/or gas supply services from a distribution utility at the time of a local resolution by his or her municipality to participate in a municipal energy aggregation program, provided that such customer did not receive electric and gas supply services from an energy services company and/or the power authority of the state of New York.

2. "Distribution utility" or "distribution utilities" shall mean Consolidated Edison (Con-Edison) and/or New York State Electric and Gas ("NYSEG").

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

4. "Municipal energy aggregation program" or "aggregation program" shall mean an inter-municipal agreement for the purpose of coordinating efforts by municipal energy aggregators to request bids for and potentially select an ESCO or ESCOs to provide electric and/or gas supply services to participating customers.

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

LBD11030-01-3

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

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

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

8. "Program administrator" shall mean a municipal energy aggregator that is designated pursuant to an inter-municipal agreement to fulfill the responsibilities of: (i) requesting and compiling historical usage data of distribution utility customers as required under this act, (ii) submitting a request for bids for energy supply services from ESCOs authorized to supply electric and/or gas in New York state.

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

S 2. Municipal energy aggregation programs. 1. A municipality may, after adopting a resolution approved by a majority of its governing board, 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. Such inter-municipal agreement must provide for:

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

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

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

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

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

2. (a) Within 60 days of an inter-municipal agreement establishing an aggregation program and the formal request, distribution utilities shall provide to the program administrator the following utility bulk information regarding residents:

(i) the number of residents, by class served; and

(ii) the aggregate gas and electric usage of residents for the 12-month period preceding the request;

(b) In providing the utility bulk information required under this subdivision, a distribution utility shall not provide to a program administrator any information identifying, by name or address, any customer of such utility or the financial information of any such

customer, including, but not limited to social security numbers, credit card or bank account numbers.

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

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

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

(i) monthly per kWh rates for electric supply services for each applicable class of customers that are below the average price of supply services provided by distribution utilities;

(ii) monthly per Btu rates for gas supply services for each applicable class of customers that are below the average price of supply services provided by distribution utilities;

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

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

2. (a) After a review of bids submitted for energy supply services, energy aggregators are authorized to select the ESCO or ESCOs that will offer the lowest bid and meet the requirements of subdivision one of this section, provided that energy aggregators, may at their discretion, reject all bids or offers and readvertise for new bids or offers in a manner provided by this act.

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

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

(a) monthly per kWh rates for electric supply services for each applicable class of customers that is below the average rate of supply services provided by distribution utilities;

(b) monthly per Btu rates for electric supply services for each applicable class of customers that is below the average rate of supply services provided by distribution utilities in the previous 12-month period specified in paragraph (a) of subdivision two of section three of this act;

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

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

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

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

S 5. Notice of municipal energy aggregation contract required. 1. Upon the completion of the contract for services provided for under subdivision three of section four of this act, the program administrator shall obtain from distribution utilities their lists of customers that may be affected by such contract. The municipal aggregator shall then notify such customers as to the provisions of such contract, including but not limited to price benchmarks. The program administrator shall then notify the distribution utility of entry into such contract and that all residents will be automatically enrolled to receive electric and/or gas supply service within 60 days of the next monthly utility bill unless they opt-out.

2. No municipal aggregator may opt-out during the term of a contract.

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

4. (a) Upon receipt of such notification in subdivision one of this section, distribution utilities must include a notice to each resident not currently receiving supply services from an ESCO and/or the power authority of the state of New York in the next monthly bill for service. Such notice shall include the following information:

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

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

(iii) instructions detailing how a resident may submit an opt-out or opt-in response, provided that such procedures shall permit the customer to opt-out by contacting a customer service representative of the distribution utility;

(iv) 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 within the 365-day period immediately following the commencement of supply services, provided that such customer may be liable for any applicable re-entry fees charged by the distribution utility; and

(v) that each customer who does not elect to opt-out within the 365-day period immediately following the commencement of supply services, shall be permitted to opt-out without charge during a 30-day period immediately following such 365-day period;

(vi) that the distribution utility is no longer responsible for supply rates charged to participating customers and that all complaints about supply service under the aggregation contract shall be the responsibility of the program administrator and ESCO(s);

(b) Distribution utilities must also include a notice to each customer currently receiving supply services from an ESCO or the power authority of the state of New York in the next monthly bill for service. Such notice shall include the following information:

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

(ii) that he/she may elect to opt-in at any time following to become a participating customer and receive electric and/or gas supply services through such municipal energy aggregation contract;

(iii) instructions detailing how a customer may submit an opt-in response;

(iv) that he/she may still be responsible for any cancellation fees charged by their respective ESCO(s) and/ or the power authority of the state of New York;

(v) that each participating customer of an energy aggregation contract may elect to opt-out of such contract at any time within the 365-day period immediately following the commencement of supply services, provided that such if such customer further elects to receive supply services from a distribution utility, he/she may be liable for any applicable re-entry fees charged by such distribution utility;

(vi) that each customer who does elect to opt-in within the 365-day period immediately following the commencement of supply services shall be permitted to opt-out without charge during a 30-day period immediately following such 365-day period; and

(vii) that the ESCO and/or the power authority of the state of New York is no longer responsible for supply rates charged to participating customers and that all complaints about supply services under the aggregation contract shall be the responsibility of the program administrator and ESCO(s).

5. Immediately following the 60-day opt-out period provided for in paragraph (a) of subdivision four of this section, a distribution utility 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 that:

(i) elected to opt-out during the 60-day period;

(ii) elected to opt-in during the 60-day period;

(b) the name, address, and account number of each participating customer who has not elected to opt-out of the aggregation contract;

(c) the name, address and account number of each customer who has elected to opt-in to the aggregation contract.

6. The program administrator, upon receipt of information required under subdivision four of this section, shall submit such information to the ESCO(s). Such ESCOs shall commence supply services to participating customers.

7. After entry into a contract pursuant to subdivision five of this section, and upon a request to establish new service, a distribution utility, such utility shall notify the resident that he/she is a participating customer of such contract. Such resident shall have 30 days from the establishment of electric and/or gas service to opt-out of the contract, by contacting the distribution utility. The distribution utility shall forward all opt-out information to the program administrator immediately.

8. The ESCO or ESCOs providing gas and/or electric services to an aggregation contract shall not charge a different rate than applicable to existing 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, the contract for services established pursuant to subdivision three of section four of this act shall be terminated immediately.

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

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

S 7. Within 30 months of the establishment of a supply services contract for services or upon the termination of such contract, the commission shall submit a report to the executive, the temporary president of the senate, the speaker of the assembly, the chairs of the senate energy and telecommunications committee and the assembly energy committee detailing the performance of any aggregation contract. Such report shall include the following information: 1. the number of participating customers served; 2. the ability of the ESCO or ESCOs selected under an aggregation program to provide adequate supply services; 3. the actual supply rates charged under a contract for services; 4. the amount, if any, of participating customers whose residential or non-residential service was disconnected; and 5. any other information the public service commission deems necessary.

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

S 9. This act shall take effect immediately.