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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:

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 small non-residential electric and/or gas supply from a distribution utility at the time of a local resolution by his or her municipality to establish and/or participate in a municipal energy aggregation program. Small non-residential shall include the distribution utility's smallest general service rate schedule applicable to non-residential customers.

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

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

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

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

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 establish an aggregation program or participate in an inter-municipal agreement establishing a municipal energy aggregation program.

8. "Program administrator" shall mean an employee that is designated pursuant to an inter-municipal agreement pursuant to article 5-G of the general municipal law or, in the case of an aggregation program with one energy aggregator, an employee designated by such energy aggregator 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 from ESCOs authorized to supply electric and/or gas in New York state, and (iii) carrying out the administration of the contract and implementation of aggregated supply. Such responsibilities shall not be contracted or subcontracted out to any private or not-for-profit corporation or organization.

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, or through its own municipal aggregation program to procure electric and/or gas supply on behalf of its residents. Such municipal energy aggregation program must provide for 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 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 an energy aggregation program 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 or a local ordinance authorizing a municipality to become an energy aggregator shall provide a copy

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

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

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

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

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

(iv) to the degree that it is available, reasonable efforts to provide more detailed historic information relating to energy usage characteristics of customers, including but not limited to information by rate class on meter type, kWh usage and peak demand information classification, meter reading cycle information, load profile designating information, the number of customers enrolled in budget billing plans, loss factor information, net metering information, individual capacity tag information and any other information deemed useful by the program administrator to successfully solicit bids for and implement the aggregation program;

(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 supply for an aggregation program. Any request for bids shall specify that a contract for an aggregation program must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) any customer of record of a distribution utility receiving residential or small non-residential services whose municipality is an energy aggregator in the aggregation program for which the ESCO or ESCOs will provide supply;

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

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

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

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

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

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

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

(f) provisions for the termination of a contract for an energy aggregation program if an ESCO fails to meet the requirements of 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;

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

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

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

S 5. Notice of municipal energy aggregation contract required. 1. Upon the completion of the contract for an energy aggregation program provided for under subdivision three of section four of this act, the program administrator 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 energy aggregators with such information. Each municipal energy aggregator shall then notify such residents as to the provisions of such contract, including but not limited to price benchmarks.

2. Distribution utilities shall 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, provided that all residents shall continue to receive delivery 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 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 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 resident who does not elect to opt-out within the prescribed period and becomes a participating customer, may elect to opt-out of such contract at any time; and

(e) that in the case of a participating customer the distribution utility will no longer be responsible for supply rates charged to such customer and that all complaints about supply under the aggregation contract shall be the responsibility of the municipal energy aggregator in which the customer resides 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 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 electric and/or gas supply to participating customers.

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

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

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

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

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

(a) electric and gas supply procurement;

(b) taxes, assessments, fees and surcharges;

(c) wheeling and/or transfer costs; and

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

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

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

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

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

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

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

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

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

S 9. 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 has met the terms of its contract.

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

(b) Within 30 days of the termination of a contract for an energy aggregation program, 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.

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

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

S 10. Within 30 months of the establishment of a contract for an energy aggregation program 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 kWh and/or Btu supply rates charged under a contract for an energy aggregation program;

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