

8164--A

2013-2014 Regular Sessions

I N A S S E M B L Y

August 30, 2013

Introduced by M. of A. OTIS, BRENNAN, McDONALD -- Multi-Sponsored by --
M. of A. BUCHWALD -- read once and referred to the Committee on
Corporations, Authorities and Commissions -- recommitted to the
Committee on Corporations, Authorities and Commissions in accordance
with Assembly Rule 3, sec. 2 -- committee discharged, bill amended,
ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law, in relation to marketing prac-
tices of energy services companies

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

1 Section 1. Legislative intent. The legislature finds that on March 14,
2 1996, the New York State Public Service Commission authorized energy
3 services companies (ESCOs) to compete with traditional utilities to
4 supply consumers with electricity or natural gas. Since then, approxi-
5 mately 85 ESCOs have become certified to provide electricity in New York
6 state and over 100 ESCOs have become certified to provide natural gas.
7 The legislature further finds that on October 19, 2012, the Public
8 Service Commission instituted a new proceeding (12-M-0476) to examine
9 aspects of the residential and small non-residential retail energy
10 markets in the state, during the course of which proceeding, the Depart-
11 ment of Public Service found that some large scale non-residential
12 customers were benefiting from competition, while some small non-resi-
13 dential and residential customers were not benefiting and paying more
14 for energy than they typically would pay with their utility. The legis-
15 lature further finds that the proceeding discovered "major weaknesses in
16 the residential and small non-residential retail energy markets due to
17 the lack of accurate, transparent and useful information and marketing
18 behavior that creates and too often relies on customer confusion."
19 Therefore, to protect customers, the legislature finds it necessary to
20 establish enhanced penalties to end abusive practices.

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

LBD11695-03-4

1 S 2. The public service law is amended by adding a new article 4-c to
2 read as follows:

3 ARTICLE 4-C

4 ENERGY SERVICE COMPANIES

5 SECTION 89-Q. ENERGY SERVICES COMPANY MARKETING STANDARDS.

6 S 89-Q. ENERGY SERVICES COMPANY MARKETING STANDARDS. 1. FOR THE
7 PURPOSE OF THIS SECTION:

8 (A) "ENERGY SERVICES COMPANY" OR "ESCO," SHALL MEAN ANY ENTITY ELIGI-
9 BLE TO SELL ENERGY SERVICES TO END USE CUSTOMERS USING THE TRANSMISSION
10 OR DISTRIBUTION SYSTEM OF A UTILITY CORPORATION.

11 (B) "DISTRIBUTION UTILITY" SHALL MEAN A GAS OR ELECTRIC CORPORATION
12 OWNING, OPERATING OR MANAGING ELECTRIC OR GAS FACILITIES FOR THE PURPOSE
13 OF DISTRIBUTING GAS OR ELECTRICITY TO END USERS.

14 (C) "ESCO MARKETING REPRESENTATIVE" SHALL MEAN ANY EMPLOYEE OR AGENT
15 OF AN ESCO THAT ENGAGES IN ANY MARKETING ACTIVITY INTENDED TO ENROLL,
16 CONTRACT OR SELL ENERGY SERVICES TO END USE CUSTOMERS WITH SUCH ESCO.

17 (D) "INDEPENDENT THIRD PARTY VERIFICATION" SHALL MEAN THE CONFIRMATION
18 OF A CUSTOMER'S AGREEMENT TO TAKE SERVICE FROM AN ESCO, BY AN ENTITY
19 THAT IS INDEPENDENT OF THE ESCO.

20 (E) "ESCO MARKETING OPT-OUT REGISTRY" SHALL MEAN A LIST OF RESIDENTIAL
21 AND SMALL NON-RESIDENTIAL CUSTOMERS THAT DO NOT WANT TO BE CALLED BY AN
22 ESCO OR ESCO MARKETING REPRESENTATIVE.

23 2. THE COMMISSION SHALL DIRECT EACH ENERGY SERVICES COMPANY AND ANY
24 ESCO MARKETING REPRESENTATIVE SELLING OR OFFERING FOR SALE ENERGY
25 SERVICES TO RESIDENTIAL OR SMALL NON-RESIDENTIAL CUSTOMERS TO:

26 (A) REMOVE A RESIDENTIAL OR SMALL NON-RESIDENTIAL CUSTOMER'S NAME,
27 TELEPHONE, AND CONTACT INFORMATION FROM ANY ESCO MARKETING DATABASE UPON
28 SUCH RESIDENTIAL OR SMALL NON-RESIDENTIAL CUSTOMER'S REQUEST;

29 (B) PROVIDE TO A POTENTIAL RESIDENTIAL OR SMALL NON-RESIDENTIAL
30 CUSTOMER: THE NAME OF THE ESCO MARKETING REPRESENTATIVE ON THE CALL, THE
31 NAME OF THE ESCO ON WHOSE BEHALF THE CALL IS BEING MADE AND THE PURPOSE
32 OF SUCH CALL AND, UPON REQUEST, THE ESCO MARKETING REPRESENTATIVE'S
33 IDENTIFICATION NUMBER;

34 (C) INDICATE THAT THE CONTRACT FOR PROVISION OF ENERGY SERVICES BY AN
35 ESCO WILL NOT AFFECT THE RESIDENTIAL OR SMALL NON-RESIDENTIAL CUSTOMER'S
36 EXISTING RELATIONSHIP WITH THE DISTRIBUTION UTILITY SERVICE OTHER THAN
37 THAT SUCH RESIDENTIAL OR SMALL NON-RESIDENTIAL CUSTOMER WILL NO LONGER
38 BE PURCHASING ELECTRICITY AND/OR NATURAL GAS FROM THE DISTRIBUTION UTIL-
39 ITY;

40 (D) IMMEDIATELY TRANSFER A RESIDENTIAL OR SMALL NON-RESIDENTIAL
41 CUSTOMER TO A REPRESENTATIVE WHO SPEAKS THE RESIDENTIAL OR SMALL NON-RE-
42 SIDENTIAL CUSTOMER'S PRIMARY LANGUAGE OR TERMINATE THE CALL;

43 (E) USE INDEPENDENT THIRD PARTY VERIFICATION, AS APPROVED BY THE
44 COMMISSION, PRIOR TO ENROLLING A RESIDENTIAL OR SMALL NON-RESIDENTIAL
45 CUSTOMER; AND

46 (F) PROHIBIT ESCO MARKETING REPRESENTATIVES FROM ASSERTING THAT AN
47 ESCO IS ACTING ON BEHALF OF A DISTRIBUTION UTILITY.

48 3. (A) THE COMMISSION SHALL REQUIRE EACH DISTRIBUTION UTILITY TO
49 ESTABLISH AN ESCO MARKETING OPT-OUT REGISTRY. EACH DISTRIBUTION UTILITY
50 SHALL PROVIDE AN ANNUAL NOTICE TO ITS RESIDENTIAL AND SMALL NON-RESIDEN-
51 TIAL CUSTOMERS ON HOW SUCH CUSTOMERS MAY ACCESS AND ENROLL ONTO ITS ESCO
52 MARKETING OPT-OUT REGISTRY.

53 (B) NO ESCO OR ESCO MARKETING REPRESENTATIVE SHALL MARKET, INCLUDING
54 BUT NOT LIMITED TO TELEPHONE CALLS, TO A RESIDENTIAL OR SMALL NON-RESI-
55 DENTIAL CUSTOMERS THAT IS ON A DISTRIBUTION UTILITY'S ESCO MARKETING
56 OPT-OUT REGISTRY.

1 4. (A) THE COMMISSION IS HEREBY GRANTED THE AUTHORITY TO ASSESS A
2 CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS AGAINST ANY ESCO WHEN
3 SUCH ESCO OR ITS ESCO MARKETING REPRESENTATIVES KNOWINGLY FAILS OR
4 NEGLECTS TO COMPLY WITH ANY PROVISION OF THIS SECTION OR ANY REGULATION
5 OR ORDER OF THE COMMISSION IMPLEMENTING OR ENFORCING THE PROVISIONS OF
6 THIS SECTION. IN THE CASE OF A CONTINUING VIOLATION, THE COMMISSION IS
7 HEREBY AUTHORIZED TO DEEM EACH DAY A SEPARATE AND DISTINCT OFFENSE.

8 (B) WHENEVER THE COMMISSION HAS REASON TO BELIEVE THAT AN ESCO SHOULD
9 BE SUBJECT TO IMPOSITION OF A CIVIL PENALTY OR PENALTIES AS SET FORTH IN
10 THIS SUBDIVISION, THE COMMISSION SHALL NOTIFY SUCH ESCO. SUCH NOTICE
11 SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO (I) THE DATE AND A BRIEF
12 DESCRIPTION OF THE FACTS AND NATURE OF EACH ACT OR FAILURE TO ACT FOR
13 WHICH SUCH PENALTY IS PROPOSED; (II) THE AMOUNT OF EACH PENALTY THAT THE
14 COMMISSION PROPOSES TO ASSESS; AND (III) THE OPTION TO REQUEST A HEARING
15 TO DEMONSTRATE WHY THE PROPOSED PENALTY OR PENALTIES SHOULD NOT BE
16 ASSESSED AGAINST SUCH ESCO.

17 5. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT ANY AUTHORITY OF
18 THE COMMISSION OR THE LONG ISLAND POWER AUTHORITY TO LIMIT, SUSPEND OR
19 REVOKE THE ELIGIBILITY OF AN ENERGY SERVICES COMPANY OR ESCO MARKETING
20 REPRESENTATIVE TO SELL, OFFER, OR MARKET ENERGY SERVICES FOR VIOLATION
21 OF ANY PROVISION OF LAW, RULE, REGULATION OR POLICY ENFORCEABLE BY THE
22 COMMISSION OR THE LONG ISLAND POWER AUTHORITY.

23 6. NOTHING IN THIS SECTION SHALL LIMIT THE AUTHORITY OF THE COMMISSION
24 OR THE LONG ISLAND POWER AUTHORITY TO ADOPT ADDITIONAL ORDERS, GUIDE-
25 LINES, PRACTICES, POLICIES, RULES OR REGULATIONS RELATING TO THE MARKET-
26 ING PRACTICES OF ENERGY SERVICES COMPANIES TO RESIDENTIAL, SMALL NON-RE-
27 SIDENTIAL AND COMMERCIAL CUSTOMERS, WHETHER IN PERSON (INCLUDING DOOR TO
28 DOOR), OR BY MAIL, TELEPHONE OR OTHER ELECTRONIC MEANS, THAT ARE NOT
29 INCONSISTENT WITH THE PROVISIONS OF THIS SECTION.

30 S 3. This act shall take effect on the ninetieth day after it shall
31 have become a law; provided however that the public service commission
32 is authorized and directed to take any and all actions, including but
33 not limited to the promulgation of any orders, guidelines, practices,
34 policies, rules and regulations necessary to implement the provisions of
35 this act on or before such date.