

8164--B

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, MAYER, GALEF -- 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 -- reported and referred to the Committee on Codes -- 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 practices of energy services companies

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

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

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

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ers, the legislature finds it necessary to establish enhanced penalties to end abusive practices.

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

ARTICLE 4-C

ENERGY SERVICE COMPANIES

SECTION 89-Q. ENERGY SERVICES COMPANY MARKETING STANDARDS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) NO ESCO OR ESCO MARKETING REPRESENTATIVE SHALL MARKET, INCLUDING BUT NOT LIMITED TO TELEPHONE CALLS, TO A RESIDENTIAL OR SMALL NON-RESI-

1 DENTIAL CUSTOMERS THAT IS ON A DISTRIBUTION UTILITY'S ESCO MARKETING
2 OPT-OUT REGISTRY.

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

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

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

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

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