

5500--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

- 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 non-residential electric and/or gas supply services from a distrib-
5 ution utility at the time of a local resolution by his or her munici-
6 pality to participate in a municipal energy aggregation program,
7 provided that such customer did not receive electric and gas supply
8 services from an energy services company and/or the power authority of
9 the state of New York.
- 10 2. "Distribution utility" or "distribution utilities" shall mean
11 Consolidated Edison (Con-Edison) and/or New York State Electric and Gas
12 ("NYSEG").
- 13 3. "Participating customer" shall mean a resident who receives elec-
14 tric and/or gas supply services through a municipal energy aggregation
15 program.
- 16 4. "Municipal energy aggregation program" or "aggregation program"
17 shall mean an inter-municipal agreement or a municipal resolution for
18 the purpose of coordinating or initiating efforts by a municipality or
19 by municipal energy aggregators to request bids for and potentially
20 select an ESCO or ESCOs to provide electric and/or gas supply services
21 to participating customers.

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

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

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

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

10 8. "Program administrator" shall mean a municipal energy aggregator
11 that is designated pursuant to an inter-municipal agreement or an
12 employee designated by a municipal energy aggregator to fulfill the
13 responsibilities of: (i) requesting and compiling historical usage data
14 of distribution utility customers as required under this act, (ii)
15 submitting a request for bids for energy supply services from ESCOs
16 authorized to supply electric and/or gas in New York state, and (iii)
17 carrying out the administration of the contract and implementation of
18 aggregated services.

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

20 S 2. Municipal energy aggregation programs. 1. A municipality may,
21 after adopting a resolution approved by a majority of its governing
22 board, participate in a municipal energy aggregation program through an
23 inter-municipal agreement with one or more municipalities in order to
24 coordinate efforts, or through its own municipal aggregation program to
25 procure electric and/or gas supply services on behalf of its residents.
26 Such municipal energy aggregation program must provide for:

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

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

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

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

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

49 2. (a) Within 60 days of the establishment of a municipal aggregation
50 program or of an inter-municipal agreement establishing an aggregation
51 program and the formal request, distribution utilities shall, at a
52 reasonable cost as determined by the commission within 60 days of
53 adoption of this act, provide to the program administrator the following
54 utility bulk information regarding residents receiving gas or electric
55 supply services from such distribution utility:

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

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

9 (iii) to the degree that it is available, reasonable efforts to
10 provide more detailed historic information relating to energy usage
11 characteristics of customers, including but not limited to information
12 by rate class on meter type, the number of smart meters deployed, kWh
13 usage and peak demand information classification, meter reading cycle
14 information, load profile designating information, the number of custom-
15 ers enrolled in budget billing plans, loss factor information, net
16 metering information and any other information deemed useful by the
17 program administrator to successfully solicit bids for and implement the
18 aggregation program;

19 (b) In providing the utility bulk information required under this
20 subdivision, a distribution utility shall not provide to a program
21 administrator any information identifying, by name or address, any
22 customer of such utility or the financial information of any such
23 customer, including, but not limited to social security numbers, credit
24 card or bank account numbers.

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

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

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

33 (i) monthly per kWh rates for electric supply services for each appli-
34 cable class of customers that are below the 12-month average monthly
35 price of supply services provided by distribution utilities or lower
36 than the distribution utility's rate at the time of a request for bids
37 as provided for in this section;

38 (ii) monthly per Btu rates for gas supply services for each applicable
39 class of customers that are below the 12-month average monthly price of
40 supply services provided by distribution utilities or lower than the
41 distribution utility's rate at the time of a request for bids as
42 provided for in this section;

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

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

49 (e) provide that any costs associated with preparation for or imple-
50 mentation of this program or contract shall only be reflected in the
51 benchmark per kWh and per Btu bid price.

52 2. (a) After a review of bids submitted for energy supply services,
53 energy aggregators are authorized to select the ESCO or ESCOs that will
54 offer the best service, price and other factors considered, provided
55 that the per kWh supply rate for electricity and per Btu rate for gas
56 supply services that is lower than the distribution utility's average

1 monthly rate for supply services for the prior 12-month period, or lower
2 than the distribution utility's rate at the time of a request for bids
3 as provided for in this section and meet the requirements of subdivision
4 one of this section, provided that energy aggregators, may at their
5 discretion, reject all bids or offers and readvertise for new bids or
6 offers in a manner provided by this act.

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

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

17 (a) provisions prohibiting the ESCO or ESCOs from denying service to
18 any resident receiving service from his or her distribution utility at
19 the commencement of such contract;

20 (b) monthly per kWh rates for electric supply services for each appli-
21 cable class of customers that is below the average monthly rate of
22 supply services provided by distribution utilities in the previous
23 12-month period or lower than the distribution utility's rate at the
24 time of a request for bids as provided for in this section;

25 (c) monthly per Btu rates for gas supply services for each applicable
26 class of customers that is below the average monthly rate of supply
27 services provided by distribution utilities in the previous 12-month
28 period or lower than the distribution utility's rate at the time of a
29 request for bids as provided for in this section;

30 (d) provisions requiring the ESCO or ESCOs to provide electric and/or
31 gas supply rates lower than the distribution utility's electric and/or
32 gas supply rates for each monthly billing cycle for the duration of the
33 contract, provided that a violation of this provision shall subject such
34 ESCO to refund participating customers at the time of termination of a
35 contract pursuant to section seven of this act;

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

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

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

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

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

51 S 5. Notice of municipal energy aggregation contract required. 1.
52 Upon the completion of the contract for services provided for under
53 subdivision three of section four of this act, the program administrator
54 shall obtain from distribution utilities at a reasonable cost as deter-
55 mined by the commission within 60 days of the effective date of this act
56 their lists of residents that may be affected by such contract and

1 provide the municipal aggregators with such information. The municipal
2 aggregator shall then notify such residents as to the provisions of such
3 contract, including but not limited to price benchmarks.

4 2. Distribution utilities must make all reasonable preparations to
5 release residents who do not choose to opt-out pursuant to subdivision
6 three of this section from receiving electric and/or gas supply
7 services, provided that all residents shall continue to receive delivery
8 services from such utilities.

9 3. Upon completion of a contract provided for under subdivision three
10 of section four of this act, municipal energy aggregators must mail a
11 notice to each resident not currently receiving supply services from an
12 ESCO and/or the power authority of the state of New York which shall
13 include:

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

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

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

24 (d) that each customer who does not elect to opt-out within the
25 prescribed period may elect to opt-out of such contract at any time; and

26 (e) that in the case of a participating customer the distribution
27 utility is no longer responsible for supply rates charged to such
28 customer and that all complaints about supply service under the aggre-
29 gation contract shall be the responsibility of the program administrator
30 and ESCO or ESCOs.

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

35 (a) the number of residents that received electric and/or gas supply
36 services from such distribution utility who are participating customers
37 by rate class; and

38 (b) the name, address, and account number of each participating
39 customer.

40 5. The program administrator, upon receipt of information required
41 under subdivision four of this section, shall submit such information
42 and the information provided for under subdivision two of section three
43 of this act to the ESCO or ESCOs. Such ESCOs shall commence supply
44 services to participating customers.

45 S 6. Public service commission review. 1. Within 365 days of the
46 commencement of gas and/or electric supply services under an aggregation
47 contract, the commission, after consultation with the department shall
48 commence an audit to ensure such ESCO or ESCOs selected have achieved
49 benchmarks established pursuant to paragraph (b) of subdivision one of
50 section four of this act.

51 2. (a) If the commission determines that the ESCO or ESCOs providing
52 gas and/or electric gas supply services has failed to achieve such
53 benchmarks as established in subdivision three of section four of this
54 act, the contract for services established pursuant to subdivision three
55 of section four of this act shall be terminated immediately.

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

6 (c) The commission shall ensure that all residents eligible for
7 resumption of electric and/or gas supply service from their respective
8 distribution utility receive such services regardless of the actual
9 timing of the payment provided for under paragraph (b) of this subdivi-
10 sion.

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

13 S 7. Within 30 months of the establishment of a supply services
14 contract for services or upon the termination of such contract, the
15 commission shall submit a report to the executive, the temporary presi-
16 dent of the senate, the speaker of the assembly, the chairs of the
17 senate energy and telecommunications committee and the assembly energy
18 committee detailing the performance of any aggregation contract. Such
19 report shall include the following information:

20 1. the number of participating customers served;

21 2. the ability of the ESCO or ESCOs selected under an aggregation
22 program to provide adequate supply services;

23 3. the actual supply rates charged under a contract for services;

24 4. the amount, if any, of participating customers whose residential or
25 non-residential service was disconnected; and

26 5. any other information the public service commission deems neces-
27 sary.

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

32 S 9. This act shall take effect immediately.