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I N S E N A T E

June 11, 2014

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

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

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

23 ARTICLE 4-C

24 ENERGY SERVICE COMPANIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50 4. (A) THE COMMISSION IS HEREBY GRANTED THE AUTHORITY, SUBJECT TO
51 PARAGRAPH (B) OF THIS SUBDIVISION, TO ASSESS A CIVIL PENALTY NOT TO
52 EXCEED ONE THOUSAND DOLLARS AGAINST ANY ESCO WHEN SUCH ESCO OR ITS ESCO
53 MARKETING REPRESENTATIVES KNOWINGLY FAILS OR NEGLECTS TO COMPLY WITH ANY
54 PROVISION OF THIS SECTION OR ANY REGULATION OR ORDER OF THE COMMISSION
55 IMPLEMENTING OR ENFORCING THE PROVISIONS OF THIS SECTION. IN THE CASE OF

1 A CONTINUING VIOLATION, THE COMMISSION IS HEREBY AUTHORIZED TO DEEM EACH
2 DAY A SEPARATE AND DISTINCT OFFENSE.

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

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

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

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