

1 SUBJECT TO AND COMPLY WITH SECTIONS THREE HUNDRED NINETY-NINE-PP AND
2 THREE HUNDRED NINETY-NINE-Z OF THE GENERAL BUSINESS LAW, INCLUDING BUT
3 NOT LIMITED TO THE ADHERENCE TO THE NATIONAL "DO-NOT-CALL" REGISTRY
4 ESTABLISHED, MANAGED AND MAINTAINED BY THE FEDERAL TRADE COMMISSION
5 PURSUANT TO 16 CFR SECTION 310.4(B)(1)(III) AS AMENDED FROM TIME TO
6 TIME.

7 (B) EACH ENERGY SERVICES COMPANY SHALL REQUIRE ANY CONTRACT FOR TELE-
8 MARKETING SERVICES TO REQUIRE THE TELEMARKETER TO HAVE A CERTIFICATE OF
9 REGISTRATION FROM THE SECRETARY OF STATE AND SUCH TELEMARKETER SHALL
10 AGREE TO BE SUBJECT TO AND COMPLY WITH SECTIONS THREE HUNDRED
11 NINETY-NINE-PP AND THREE HUNDRED NINETY-NINE-Z OF THE GENERAL BUSINESS
12 LAW, INCLUDING BUT NOT LIMITED TO THE ADHERENCE TO THE NATIONAL
13 "DO-NOT-CALL" REGISTRY ESTABLISHED, MANAGED AND MAINTAINED BY THE FEDER-
14 AL TRADE COMMISSION PURSUANT TO 16 CFR SECTION 310.4(B)(1)(III) AS
15 AMENDED FROM TIME TO TIME.

16 3. THE COMMISSION SHALL DIRECT EACH ENERGY SERVICES COMPANY AND ANY
17 ESCO TELEMARKETING 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 TELEMARKETING DATABASE
21 UPON 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 TELEMARKETING REPRESENTATIVE ON THE CALL,
24 THE NAME OF THE ESCO ON WHOSE BEHALF THE CALL IS BEING MADE AND THE
25 PURPOSE OF SUCH CALL AND, UPON REQUEST, THE ESCO TELEMARKETING REPRESEN-
26 TATIVE'S IDENTIFICATION NUMBER;

27 (C) IMMEDIATELY TRANSFER A RESIDENTIAL OR SMALL NON-RESIDENTIAL
28 CUSTOMER TO A REPRESENTATIVE WHO SPEAKS THE RESIDENTIAL OR SMALL NON-RE-
29 SIDENTIAL CUSTOMER'S PRIMARY LANGUAGE OR TERMINATE THE CALL;

30 (D) USE INDEPENDENT THIRD PARTY VERIFICATION OF TELEMARKETING TRANS-
31 ACTIONS, AS APPROVED BY THE COMMISSION, PRIOR TO ENROLLING A RESIDENTIAL
32 OR SMALL NON-RESIDENTIAL CUSTOMER; AND

33 (E) PROHIBIT ESCO TELEMARKETING REPRESENTATIVES FROM ASSERTING THAT AN
34 ESCO IS ACTING ON BEHALF OF A DISTRIBUTION UTILITY.

35 4. (A) THE COMMISSION IS HEREBY GRANTED THE AUTHORITY, SUBJECT TO
36 PARAGRAPH (B) OF THIS SUBDIVISION, TO ASSESS A CIVIL PENALTY NOT TO
37 EXCEED ONE THOUSAND DOLLARS AGAINST ANY ESCO WHEN SUCH ESCO OR ITS ESCO
38 TELEMARKETING REPRESENTATIVES KNOWINGLY FAILS OR NEGLECTS TO COMPLY WITH
39 ANY PROVISION OF THIS SECTION OR ANY REGULATION OR ORDER OF THE COMMIS-
40 SION IMPLEMENTING OR ENFORCING THE PROVISIONS OF THIS SECTION. IN THE
41 CASE OF A CONTINUING VIOLATION, THE COMMISSION IS HEREBY AUTHORIZED TO
42 DEEM EACH DAY A SEPARATE AND DISTINCT OFFENSE.

43 (B) WHENEVER THE COMMISSION HAS REASON TO BELIEVE THAT AN ESCO SHOULD
44 BE SUBJECT TO IMPOSITION OF A CIVIL PENALTY OR PENALTIES AS SET FORTH IN
45 THIS SUBDIVISION, THE COMMISSION SHALL NOTIFY SUCH ESCO. SUCH NOTICE
46 SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO (I) THE DATE AND A BRIEF
47 DESCRIPTION OF THE FACTS AND NATURE OF EACH ACT OR FAILURE TO ACT FOR
48 WHICH SUCH PENALTY IS PROPOSED; (II) THE AMOUNT OF EACH PENALTY THAT THE
49 COMMISSION PROPOSES TO ASSESS; AND (III) THE OPTION TO REQUEST A HEARING
50 TO DEMONSTRATE WHY THE PROPOSED PENALTY OR PENALTIES SHOULD NOT BE
51 ASSESSED AGAINST SUCH ESCO.

52 5. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT ANY AUTHORITY OF
53 THE COMMISSION OR THE LONG ISLAND POWER AUTHORITY TO LIMIT, SUSPEND OR
54 REVOKE THE ELIGIBILITY OF AN ENERGY SERVICES COMPANY OR ESCO TELEMARKE-
55 TING REPRESENTATIVE TO SELL, OFFER, OR MARKET ENERGY SERVICES FOR

1 VIOLATION OF ANY PROVISION OF LAW, RULE, REGULATION OR POLICY ENFORCEA-
2 BLE BY THE COMMISSION OR THE LONG ISLAND POWER AUTHORITY.

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

10 S 2. This act shall take effect on the ninetieth day after it shall
11 have become a law; provided however that the public service commission
12 is authorized and directed to take any and all actions, including but
13 not limited to the promulgation of any orders, guidelines, practices,
14 policies, rules and regulations necessary to implement the provisions of
15 this act on or before such effective date.