

Proposed Definitions – Energy Broker and Representative Strawman Proposal

Representative

- **ESCO Marketing Representative** – An individual or **independent** entity that is either the **ESCO** or a **contractor/vendor** under contract on behalf of a **single or multiple** energy services ~~company~~**company's** (“ESCO”) in that market, conducting, on behalf of that ESCO, any marketing activity that is designed to enroll customers with ESCO.
 - **All representatives must receive training consistent with Section 10(b) of the UBP**

Broker

- **An individual or entity, including an aggregator, which may or may not be under a contractual agreement with a customer, who earns a unit fee for their services that is included in the price of energy in a retail customer's contract and such fee is directly paid by an ESCO to the Broker through a formal contractual relationship between the parties. A Broker represents that customer(s) interests and negotiates or facilitates the purchase and/or sale of natural gas or electricity, or both, but does not take title to the energy supply purchased by the customer.**
- Examples of Broker arrangements:
 - **Aggregator** -a person joining two or more customers, other than municipalities and political subdivision corporations, into a single purchasing unit to negotiate the purchase of electricity from ESCOs. Municipalities and townships acting on their own behalf can be exempted from brokering licensing requirement.
 - **Broker: An independent sales company which markets ESCO(s) energy products to retail consumers and businesses. Help you shop energy services which provide multiple options for consumer choice through internet or other sales methods.**
- **All arrangements classified as brokers are required to be certified/licensed by the New York Public Service Commission or designee.**

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Require Additional Discussion

Whatever the ultimate decision, the final regulations will need to provide precise clarity on the following types of entities and whether the licensing requirements are imposed upon them:

- **Consultant** - If an entity conducts activities only in the capacity of advisor to a customer or set of customers, without contact with ESCO specific to that customer or customer group? The definition of a “Broker” should take care of this issue.
- **Friends and Family programs** – If an ESCO has a friends and family referral program, does that customer act as a broker? There will not be a contract between customer and ESCO, but often the customer will receive gift card or discount on energy rate if their referrals enroll with ESCO. The definition of a “Broker” should take care of this issue.
- **Websites** - Websites that work with several ESCOs or perform auction type services or that provide products/offers for multiple suppliers may be considered as providing brokering services. Generally, internet sites that offer multiple suppliers' products do not have a contractual relationship with the customers. Final rule will need clear guidance

on this issue. Unclear whether a website that runs site exclusive to ESCO is a broker if they also run exclusive sites exclusive for other suppliers in the same market. The definition of a "Broker" should take care of this issue.

- **Telesales Broker** – Brokers that market multiple ESCOs products via outbound telephone solicitation in the market? How should they be classified and do they currently exist in the market? The definition of a "Broker" should take care of this issue.
- **Multi-Level Marketing (Network Marketing)** - A sales model that emphasizes recruiting its customers or other people to market the ESCO's products? The definition of a "Broker" should take care of this issue.
- **Industry Association** - Chamber of Commerce, industry association, etc that submits referrals to ESCO(s) or that may offer exclusive ESCO products to their members as part of the membership benefits?
- **Third Party Verification companies (TPV)** - Independent party used in the enrolment process to ensure authenticity of sales.

Items for Further Discussion/Consideration

Broker Licensing or Registration Requirements

- Establish licensing or registration requirements for brokers in New York State to identify third parties either aggregating energy arrangements for a group of customers or on behalf of an individual customer. (TBA – Jurisdictional authority? NYS State Dept. of State, NYS PSC and/or by utility service territory.) Licensing requirements should exist for arrangements classified as brokers. The licensing should be done by one entity preferably the New York State Public Service Commission or designated agency, as it is the agency with the expertise in retail energy markets.
- Should aggregators be included in the broker classification or they be treated separately in their own classification?
- Should the requirements be the same as for ESCOs as is in several states? Yes, it terms of marketing standards only.
- Set ESCO compliance parameters for using an unlicensed or unregistered broker or representative. The final rules should be clear on the risks an ESCO may face if it coordinates with an unlicensed broker in the enrollment of that broker's customers. The ESCO should not be responsible for training brokers.
- Require mandatory participation in routine training sessions in each utility service territory where the broker intends to conduct business. (TBA – Training program criteria and who would conduct – NYS PSC, utilities, and/or industry organizations). Determined that the broker licensing process will include a web-based universal training to be developed and administered by the New York Public Service Commission or a designated agency. In addition, additional utility overviews can be provided the brokers as part of the web-based training and offered during the calendar year. This creates additional cost that customers end up paying. Brokers have an obligation to follow rules like an ESCO or risk losing their license. The Commission is tasked with determining if an ESCO or Broker is not meeting licensing requirements. If an ESCO is not required to have on-going regulatory training for their direct sales staff, why is it reasonable to require it from a Broker?
- Maintain the ESCO as the responsibility party for the enrollment process and final contractual agreement as identified in UBP Section 5 with both residential and nonresidential customers under the UBP. **Yes**

- Suspension or revocation of license or registration – same compliance criteria under UBP 10, Marketing Standards and UBP 2, Eligibility Requirements as for ESCOs. General consensus was penalty provisions were necessary to provide market structure and credibility.

Full Disclosure of Payment Terms

- Additional information should be provided on the terms and conditions of payments made to third parties for greater customer understanding (e.g., who is paying whom, inclusion of broker fees in kWh rate or per-therm basis, one-time finder's fee). The general consensus is full transparency that the broker will receive some form of compensation is necessary. It is reasonable to disclose in a retail contract that broker fees are applicable (when a broker is used), but not the actual fee. Disclosing fees puts a Broker at a competitive disadvantage with other brokers and direct ESCO sales. It is up to the consumer to place a demand to the broker for disclosure. That is the case in other industries such as insurance and financial services. An ESCO is not required to state the amount of their gross margin or fees today, so why single out brokers?
- Requirement to maintain updated information, after licensing or registration, sources of known or planned compensation.