

Proposed Definitions – Energy Broker and Representative Strawman Proposal

Representative

- **ESCO Marketing Representative – An individual or entity that is either the ESCO or a contractor/vendor** under contract on behalf of a **single** energy services company (“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 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 supply**
- 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.
- **All arrangements classified as brokers are required to be certified/licensed by the New York Public Service Commission or designee.**

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?
- **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.
- **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.
- **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?
- **Multi-Level Marketing (Network Marketing)** - A sales model that emphasizes recruiting its customers or other people to market the ESCO’s products?

- **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?
- 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.**
- 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.**
- Requirement to maintain updated information, after licensing or registration, sources of known or planned compensation.